BTXN 099 (rev. 12/14)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re: Highland Capital Management, L.P. Debtor(s) Hunter Mountain Investment Trust Appellant(s) vs. Highland Capital Management, L.P. Appellee(s)	§	Case No.: 19−34054−sgj11 Chapter No.: 11 Civil Case No.: 3:24−CV−1786−L

TRANSMITTAL AND CERTIFICATION OF RECORD ON APPEAL

Pursuant to Federal Rules of Bankruptcy Procedure 8010, the appeal filed on 7/8/2024 regarding [4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024 by Hunter Mountain Investment Trust in the above styled bankruptcy case is hereby transmitted to the U.S. District Court for the Northern District of Texas.

This record on appeal contains all items listed on the attached index, and is in compliance with Rule 8010 of the Federal Rules of Bankruptcy Procedure.

All further pleadings or inquiries regarding this matter should be directed to the U.S. District Clerk's Office until such time as the appeal is fully processed in the U.S. District Court.

The above referenced record was delivered to the U.S. District Clerk's Office on August 20, 2024.

DATED: 8/20/24

FOR THE COURT:
Stephen Manz, Clerk of Court

by: /s/J. Blanco, Deputy Clerk

1934054240820000000000008

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

Volume 1

MINI RECORD

BTXN 101 (rev. 10/02)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re: Highland Capital Management, L.P.		§	
		§	Case No.: 19−34054−sgj11
	Debtor(s)	§	Chapter No.: 11
Hunter Mountain Investment Trust		§	
	Appellant(s)	§	
vs.		§	
Highland Capital Management, L.P		§	
	Appellee(s)	§	

INDEX OF RECORD FOR THE PURPOSE OF APPEAL

DATED: 8/20/24

FOR THE COURT:
Stephen Manz, Clerk of Court

by: /s/J. Blanco, Deputy Clerk

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Counsel for Hunter Mountain Investment Trust

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

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

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APPELLANT'S STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL BY RIGHT

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, Appellant Hunter Mountain Investment Trust ("HMIT") hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal by right of the "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt. 4104] that was signed June 22, 2024, and entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024.[1]

[1] Given the lack of clarity in the law about the appropriate mechanism for obtaining review, HMIT filed a Notice of Appeal by Right and a Notice of Appeal by Leave (along with a motion for leave to file an interlocutory appeal) and a petition for writ of mandamus (which will be filed shortly thereafter).

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court abused its discretion in granting Appellees' motion for an indefinite stay of Appellant's gatekeeper motion seeking permission to bring suit in Delaware to remove the trustee of a Delaware statutory trust when (1) Appellees failed to meet the required standard for obtaining a stay; (2) the Bankruptcy Court erroneously concluded that the issue of Appellant's standing to seek removal of the Claimant Trustee would be decided in other cases pending before the Court; and (3) an indefinite or unduly lengthy stay of litigation of the type ordered by the Bankruptcy Court is expressly disfavored by the Fifth Circuit.

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Vol. 1

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Dkt. 4111]. — 00001

2. The judgment, order, or decree appealed from: "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt. 4104] — 000009

3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held June 12, 2024 before Judge Stacey G.C. Jernigan re: Motion to Stay Contested Matter [Dkt. 4091]. — SEE Vol. 17 - 001988

4. Docket Sheet for Bankruptcy Case No. 19-34054-sgj11 kept by the Bankruptcy Clerk. — 000012

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

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DATE	CASE NO.	DKT. NO.	DESCRIPTION
01/09/2020	19-34054-sgj-11	399	Order Approving Settlement with Official Committee of Unsecured Creditors regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course — 000578
02/22/2021	19-34054-sgj-11	1943	Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) — 000586
03/28/2023	19-34054-sgj-11	3699	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding — Vol 3 000747
04/21/2023	19-34054-sgj-11	3756	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 3/31/23 — Vol. 4 001134

Vol 4 001149	04/21/2023	19-34054-sgj-11	3757	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 3/31/23
001164	04/23/2023	19-34054-sgj-11	3760	Hunter Mountain Investment Trust's Supplement to Emergency motion for Leave to File Verified Adversary Proceeding
001209	06/05/2023	19-34054-sgj-11	3815	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
001274	06/05/2023	19-34054-sgj-11	3816	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
001339	07/21/2023	19-34054-sgj-11	3888	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 6/30/23
001351	07/21/2023	19-34054-sgj-11	3889	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 6/30/23
Vol. 5 001363	08/25/2023	19-34054-sgj-11	3903	Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trusts' Emergency Motion for Leave to File Verified Adversary Proceeding
001468	01/01/2024	19-34054-sgj-11	4000	Motion for Leave to File a Delaware Complaint
Vol. 6 001606	10/23/2023	19-34054-sgj-11	3955	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 9/30/23
001618	10/23/2023	19-34054-sgj-11	3956	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 9/30/23
001630	01/16/2024	19-34054-sgj-11	4013	Highland's Motion to Stay Contested Matter [Dk No. 4000] or for Alternative Relief
001638	01/22/2024	19-34054-sgj-11	4019	James P. Seery, Jr.'s Joinder to Highland Capital Management L.P.'s Motion to Stay Contested Matter [Dk No. 4000] or for Alternative Relief and Emergency Motion to Expedite Hearing on Motion for Stay
001640	06/11/2024	19-34054-sgj-11	4087	Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay
001669	01/22/2024	19-34054-sgj-11	4020	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 12/31/23
001681	01/22/2024	19-34054-sgj-11	4021	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 12/31/23

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06/24/2024	19-34054-sgj-11	4104	Order Extending Stay of Contested Matter [Docket No. 4000]
01/22/2024	19-34054-sgj-11	4049	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 3/31/24
01/22/2024	19-34054-sgj-11	4050	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 3/31/24
07/18/2024	19-34054-sgj-11	4130	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 6/30/24, dated July 18, 2024
07/18/2024	19-34054-sgj-11	4131	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 6/30/24, dated July 18, 2024

001696
001708
001720
001732

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
05/10/2023	23-03038	0001	Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0013	The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0014	Memorandum of Law in Support of Highland Capital Management L.P. and the Highland Claimant Trust's Motion to Dismiss Complaint

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DATE	CASE NO.	DKT. NO.	DESCRIPTION
12/29/2023	23-03038	0017	The Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

001809

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12/29/2023	23-03038	0018	Appendix in Support of the Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

001839

01/19/2024	23-03038	0021	The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint

001863

05/24/2024	23-03038	0026	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets

001875

05/24/2024	23-03038	0027	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets

001911

06/07/2024	23-03038	0030	Notice of Appeal [Appellant Designation due by 06/21/2024] (Filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust)

001947

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

001988

DATE	CASE NO.	DKT. NO.	DESCRIPTION

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06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript

Dated: July 22, 2024

STINSON LLP

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Counsel for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 22, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

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Counsel for Highland Capital Management, L.P.

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

INDEX

APPELLEE'S SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

Vol. 11

Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

002805

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Thru Vol. 20

	Date	Docket No.	Description
			# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
Vol. 21	01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
004757 Thru Vol. 26			
Vol. 27	03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
005995	03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
006048	04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
006120	06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
006170	06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
006176			

Dated: August 5, 2024

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Counsel for Hunter Mountain Investment Trust

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

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

NOTICE OF APPEAL OF "ORDER EXTENDING STAY OF CONTESTED MATTER [DOCKET NO. 4000]" [DKT 4104] BY RIGHT

Part 1: Identify the appellant(s)

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

Hunter Mountain Investment Trust

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

For appeals in an adversary proceeding:
□ Plaintiff
□ Defendant
□ Other (describe)

For appeals in a bankruptcy case and not in an adversary proceeding:
□ Debtor
X Creditor
□ Trustee
□ Other (describe)

Part 2: Identify the subject of this appeal

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

DKT 4104 - ORDER EXTENDING STAY OF CONTESTED MATTER [DOCKET NO. 4000][1]

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

2. State the date on which the judgment, order, or decree was entered: signed June 22, 2024 and filed June 24, 2024 [Dkt. No. 4104]

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

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

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

Attorney:

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2. *Party/Appellee:* James P. Seery, Jr.

Attorneys:

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[1] Given the lack of clarity in the law about the appropriate mechanism for obtaining review, Hunter Mountain is filing a Notice of Appeal by Right and a Notice of Appeal by Leave (along with a motion for leave to file an interlocutory appeal) and a petition for writ of mandamus (which will be filed shortly thereafter).

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2. *Party/Appellant:* Hunter Mountain Investment Trust

Attorney:

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Dated: July 8, 2024

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Counsel for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 8, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

EXHIBIT A

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 22, 2024

United States Bankruptcy Judge

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

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

ORDER EXTENDING STAY OF CONTESTED MATTER
[DOCKET NO. 4000]

Having considered (a) *Highland's Motion to Stay Contested Matter [Dkt No. 4000] or for Alternative Relief* [Docket No. 4013] (the "Motion"),[1] filed by Highland Capital Management, L.P. ("HCMLP"), the reorganized debtor in the above-referenced bankruptcy case, and the Highland Claimant Trust (the "Trust," and together with HCMLP, "Highland"); (b) *James P. Seery, Jr.'s Joinder to Highland Capital Management, L.P.'s Motion to Stay Contested Matter [Dkt No. 4000] or for Alternative Relief and Emergency Motion to Expedite Hearing on Motion*

[1] Capitalized terms not defined herein shall take on the meaning ascribed to them in the Motion.

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for Stay [Docket No. 4019], filed by James P. Seery, Jr.; (c) *Hunter Mountain Investment Trust's Response in Opposition to Highland's Motion to Stay Contested Matter [Dkt No. 4000] or for Alternative Relief* [Docket No. 4022], filed by Hunter Mountain Investment Trust ("HMIT"); (d) *Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay* [Docket No. 4087], filed by HMIT; (e) the arguments heard at the hearing on the Motion on June 12, 2024 (the "Hearing"); and (f) all prior proceedings relating to this matter, including (i) the *Order Granting in Part Highland's Motion to Stay Contested Matter* [Docket No. 4033] (the "First Stay Order"), pursuant to which all proceedings in connection with the *Motion for Leave to File a Delaware Complaint* [Docket No. 4000] (the "Motion for Leave") were stayed (the "Stay") until the Court issued an order determining *The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust* [Adv. Proc. 23-03038-sgj, Docket No. 13]; (ii) the Court's *Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets* [*id.* at Docket No. 27] (the "Dismissal Order"); (iii) HMIT's pending appeal of the Dismissal Order [*id.* at Docket No. 30] (the "Dismissal Appeal"); and (iv) HMIT's pending appeal of the Court's *Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3903] (the "Order Denying Leave"), [*see* Case 3:23-cv-02071-E] (the "Appeal of Order Denying Leave," and together with the Dismissal Appeal, the "Appeals"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant

to 28 U.S.C. § 1409; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and, this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein for the reasons set forth on the record during the Hearing; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Stay is hereby extended until a court of competent jurisdiction enters final, non-appealable orders resolving the Appeals (the "Resolution Orders");

2. HMIT is directed to seek a further status conference in connection with the Motion for Leave within ten (10) days of the entry of the Resolution Orders;

3. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

###End of Order###

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 22, 2024

United States Bankruptcy Judge

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

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

ORDER EXTENDING STAY OF CONTESTED MATTER
[DOCKET NO. 4000]

Having considered (a) *Highland's Motion to Stay Contested Matter [Dkt No. 4000] or for Alternative Relief* [Docket No. 4013] (the "Motion"),[1] filed by Highland Capital Management, L.P. ("HCMLP"), the reorganized debtor in the above-referenced bankruptcy case, and the Highland Claimant Trust (the "Trust," and together with HCMLP, "Highland"); (b) *James P. Seery, Jr.'s Joinder to Highland Capital Management, L.P.'s Motion to Stay Contested Matter [Dkt No. 4000] or for Alternative Relief and Emergency Motion to Expedite Hearing on Motion*

[1] Capitalized terms not defined herein shall take on the meaning ascribed to them in the Motion.

for Stay [Docket No. 4019], filed by James P. Seery, Jr.; (c) *Hunter Mountain Investment Trust's Response in Opposition to Highland's Motion to Stay Contested Matter [Dkt No. 4000] or for Alternative Relief* [Docket No. 4022], filed by Hunter Mountain Investment Trust ("HMIT"); (d) *Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay* [Docket No. 4087], filed by HMIT; (e) the arguments heard at the hearing on the Motion on June 12, 2024 (the "Hearing"); and (f) all prior proceedings relating to this matter, including (i) the *Order Granting in Part Highland's Motion to Stay Contested Matter* [Docket No. 4033] (the "First Stay Order"), pursuant to which all proceedings in connection with the *Motion for Leave to File a Delaware Complaint* [Docket No. 4000] (the "Motion for Leave") were stayed (the "Stay") until the Court issued an order determining *The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust* [Adv. Proc. 23-03038-sgj, Docket No. 13]; (ii) the Court's *Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets* [*id.* at Docket No. 27] (the "Dismissal Order"); (iii) HMIT's pending appeal of the Dismissal Order [*id.* at Docket No. 30] (the "Dismissal Appeal"); and (iv) HMIT's pending appeal of the Court's *Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3903] (the "Order Denying Leave"), [*see* Case 3:23-cv-02071-E] (the "Appeal of Order Denying Leave," and together with the Dismissal Appeal, the "Appeals"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant

to 28 U.S.C. § 1409; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and, this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein for the reasons set forth on the record during the Hearing; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Stay is hereby extended until a court of competent jurisdiction enters final, non-appealable orders resolving the Appeals (the "Resolution Orders");

2. HMIT is directed to seek a further status conference in connection with the Motion for Leave within ten (10) days of the entry of the Resolution Orders;

3. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

###End of Order###

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

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

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

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

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DALLAS−TX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

	U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	135 Objection U.S. Trustee's Objection to the Motion of Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Provide a Chief Restructuring Officer, Additional Personnel and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date (related document(s)75) Filed by U.S. Trustee (Attachments: # 1 Certificate of Service)(Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #130 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	136 Certificate of Service of United States Trustees Objection to Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)127) Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #131 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	137 Certification of Counsel Regarding Debtor's Motion Pursuant to Sections 105(A), 330 and 331 of the Bankruptcy Code for Administrative Order Establishing Procedures for the Interim Compensation and Reimbursement of Expenses of Professionals (related document(s)73) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Blackline Order)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #132 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	138 Certificate of No Objection Regarding Debtor's Application for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date (related document(s)74) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A − Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #133 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	139 Certificate of No Objection Regarding Motion of the Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s)4) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A − Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #134 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	140 Notice of Appearance. The party has consented to electronic service. Filed by Crescent TC Investors, L.P.. (Held, Michael) [ORIGINALLY FILED AS DOCUMENT #135 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	141 ORDER ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMI3URSEMENT OF EXPENSES OF PROFESSIONALS(Related Doc # 73) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #136 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	142 ORDER AUTHORIZING THE DEBTOR TO EMPLOY AND RETAIN KURTZMAN CARSON CONSULTANTS LLC AS ADMINISTRATIVE ADVISOR EFFECTIVE NUNC PRO TUNC TO THE PETITION DATE (Related Doc # 74) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #137 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

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

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

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

	DOCUMENT #165 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	173 Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76, 99, 162) Filed by Highland Capital Management, L.P (Attachments: # 1 Exhibit A # 2 Exhibit B)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #166 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	174 Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # 1 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #167 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	175 FINAL ORDER (A) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS AND (B) GRANTING RELATED RELIEF (Related document(s) 3, 40) Signed on 11/26/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #168 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A − Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	178 Supplemental Declaration in Support of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date (related document(s)71) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #171 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE(Okafor, M.) (Entered: 12/05/2019)
12/04/2019	179 Certification of Counsel Regarding Debtor's Application Pursuant to Section 327(A) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date (related document(s)71) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Blackline Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #172 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)

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

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

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

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

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

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

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

12/11/2019	234 Order granting joint motion to continue hearing on (related document # 232) (related documents Hearing held) Status Conference to be held on 12/18/2019 at 09:30 AM. Entered on 12/11/2019. (Banks, Courtney)
12/11/2019	235 Application for compensation *First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019* for Highland Capital Management, L.P., Debtor's Attorney, Period: 10/16/2019 to 10/31/2019, Fee: $383,583.75, Expenses: $9,958.84. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/2/2020. (Pomerantz, Jeffrey)
12/11/2019	236 Motion to appear pro hac vice for Lauren Macksoud. Fee Amount $100 Filed by Interested Party Jefferies LLC (Doherty, Casey)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27250084, amount $ 100.00 (re: Doc# 236). (U.S. Treasury)
12/11/2019	237 Motion to appear pro hac vice for Patrick C. Maxcy. Fee Amount $100 Filed by Interested Party Jefferies LLC (Doherty, Casey)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27250165, amount $ 100.00 (re: Doc# 237). (U.S. Treasury)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (0.00). Receipt Number KF − No Fee Due, amount $ 0.00 (re: Doc233). (Floyd)
12/11/2019	238 BNC certificate of mailing − PDF document. (RE: related document(s)216 Order granting motion to appear pro hac vice adding Jeffrey N. Pomerantz for Highland Capital Management, L.P. (related document 190) Entered on 12/9/2019.) No. of Notices: 1. Notice Date 12/11/2019. (Admin.)
12/11/2019	239 BNC certificate of mailing − PDF document. (RE: related document(s)217 Order granting motion to appear pro hac vice adding John A. Morris for Highland Capital Management, L.P. (related document 191) Entered on 12/9/2019.) No. of Notices: 1. Notice Date 12/11/2019. (Admin.)
12/12/2019	240 Notice of Appearance and Request for Notice by J. Seth Moore filed by Creditor Siepe, LLC. (Moore, J.)
12/12/2019	241 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Charles Harder)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
12/12/2019	242 Order granting motion to appear pro hac vice adding Michael I. Baird for Pension Benefit Guaranty Corporation (related document # 233) Entered on 12/12/2019. (Okafor, M.)
12/12/2019	243 BNC certificate of mailing. (RE: related document(s)227 INCORRECT ENTRY: DEFICIENCIES ARE DUE 12/13/2019 − Notice of deficiency. Schedule A/B due 10/30/2019. Schedule D due 10/30/2019. Schedule E/F due 10/30/2019. Schedule G due 10/30/2019. Schedule H due 10/30/2019. Declaration Under Penalty of Perjury for Non−individual Debtors due 10/30/2019. Summary of Assets and Liabilities and Certain Statistical Information due 10/30/2019. Statement of Financial Affairs due 10/30/2019. (Okafor, M.) Modified on 12/10/2019 (Okafor, M.).) No. of Notices: 8. Notice Date 12/12/2019. (Admin.)

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

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

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

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

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

	Andrews Kurth LLP) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 276 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Wilmer Cutler Pickering Hale and Dorr LLP)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	293 Certificate of service re: *Disclosure Declaration of Ordinary Course Professional* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)278 Declaration re: *Disclosure Declaration of Ordinary Course Professional (Kim & Chang)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	294 Certificate Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)226 Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney *(Co−Counsel) Nunc Pro Tunc*). (Hoffman, Juliana)
01/02/2020	295 Notice of Appearance and Request for Notice by Edwin Paul Keiffer filed by Interested Party Hunter Mountain Trust. (Keiffer, Edwin)
01/02/2020	296 Certificate of service re: *Documents Served on December 27, 2019* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)280 Motion for protective order*Joint Motion for Entry of an Order Approving the Agreed Protective Order* Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors, 281 Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) filed by Debtor Highland Capital Management, L.P., 282 Support/supplemental document *to the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)74 Application to employ Development Specialists, Inc as Financial Advisor). (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., 283 Motion for expedited hearing(related documents 281 Motion to compromise controversy) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	297 BNC certificate of mailing − PDF document. (RE: related document(s)291 Order granting motion for expedited hearing (Related Doc283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 281, Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
01/03/2020	298 Order Regarding Telephonic Appearances Entered on 1/3/2020 (Okafor, M.)
01/03/2020	299 Motion to extend time to (RE: related document(s)273 Motion for leave) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/8/2020. (Hoffman, Juliana)
01/03/2020	300 Order granting motion to appear pro hac vice adding Dennis M. Twomey for Official Committee of Unsecured Creditors (related document # 222) Entered on 1/3/2020. (Okafor, M.)
01/03/2020	301 Order granting the joint motion to extend time to object to the motion of PensionDanmark's motion for relief from the automatic stay (related document # 273). The Committee and the Debtor shall have until January 6, 2020 to object to PensionDanmarks

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

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

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

01/08/2020	327 Declaration re: *(Declaration of Bradley D. Sharp in Support of the Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors.). (Annable, Zachery)
01/08/2020	328 Agreed Notice of hearing*with PensionDanmark and Highland Capital Management, L.P.* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)218 Motion for relief from stay *MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT* Fee amount $181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # 1 Declaration # 2 Proposed Order)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 218, (Hoffman, Juliana)
01/08/2020	329 Response unopposed to (related document(s): 313 Objection) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Hayward, Melissa) Modified to match docket text to PDF on 1/9/2020 (Ecker, C.).
01/08/2020	330 Response unopposed to (related document(s): 313 Objection) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana) Modified text to match PDF on 1/9/2020 (Ecker, C.).
01/08/2020	331 Certificate of service re: *Order Regarding Request for Expedited Hearing; to be Held on January 9, 2020 at 9:30 a.m. (Prevailing Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)291 Order granting motion for expedited hearing (Related Doc283)(document set for hearing: 281 Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 281, Entered on 12/31/2019.). (Kass, Albert)
01/08/2020	332 Certificate of service re: *1) Amended Notice of Hearing on Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ Mercer (US) Inc. as Compensation Consultant; to be Held on January 21, 2020 at 9:30 a.m. (Central Time); 2) Amended Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief; to be Held on January 21, 2020 at 9:30 a.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)305 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)180 Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − Declaration of John Dempsey in Support # 4 Exhibit C − Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 180, filed by Debtor Highland Capital Management, L.P., 306 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A − Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 177, filed by Debtor Highland Capital Management, L.P.).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

01/29/2020	414 Certificate of service re: *Documents Served on January 24, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)392 Application for compensation *Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019* for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/2019 to 12/31/2019, Fee: $589,730.35, Expenses: $26,226.80. Filed by Debtor Highland Capital Management, L.P. Objections due by 2/14/2020. filed by Debtor Highland Capital Management, L.P., 394 Application for compensation *Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019* for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: $143,328.50, Expenses: $2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland), 395 Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 396 Motion for expedited hearing(related documents 395 Motion to extend/shorten time) *(Motion for (i) Expedited Hearing on Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. 1121(d) and Local Rule 3016−1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan, or Alternatively, (ii) Entry of a Bridge Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan Through February 19, 2020)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 397 Motion to enforce*(Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings)* (related document(s): 382 Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Email Correspondence) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/30/2020	415 Certificate of service re: *Documents Served on January 27, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)406 Notice *(Notice of Filing of Third Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1−−Updated OCP List # 2 Exhibit 2−−Blackline OCP List) filed by Debtor Highland Capital Management, L.P., 407 Declaration re: *(Disclosure Declaration of Ordinary Course Professional−−Shawn Raver)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 408 Notice of hearing*(Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)397 Motion to enforce*(Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings)* (related document(s): 382 Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Email Correspondence)). Status Conference to be held on 2/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/30/2020	416 Certificate of service re: *Documents Served on January 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)409 Order Denying as Moot the Motion of the Official Committee of Unsecured Creditors for an Order Authorizing Filing Under Seal of the Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (RE: related document(s) 128 Document). Entered on 1/28/2020 (Okafor, M.), 410 Bridge Order extending the exclusivity periods for filing Chapter 11 Plan and granting motion for expedited hearing (Related Doc396)(document set for hearing: 395 Motion to extend/shorten time) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 395, Entered on 1/28/2020. (Okafor, M.), 412 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)395 Motion to extend or limit

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

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

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

02/11/2020	439 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)67 Motion by Highland Capital Management, L.P..). (Annable, Zachery)
02/12/2020	440 Certificate of service re: *1) Order Granting Motion for Expedited Hearing on Debtor's Motion for an Order (I) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (II) Approving the Form and Manner of Notice Thereof; to be Held on February 19, 2020 at 9:30 a.m. (Central Time); 2) Order Denying United States Trustee's Motion for an Order Directing the Appointment of a Chapter 11 Trustee* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)427 Order granting motion for expedited hearing (Related Doc422)(document set for hearing: 421 Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 421, Entered on 2/5/2020. (Okafor, M.), 428 Order denying motion to appoint trustee. (related document 271) Entered on 2/5/2020. (Okafor, M.)). (Kass, Albert)
02/12/2020	441 Certificate of service re: *Order Extending Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)429 Order granting 419 Motion to Extend Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days Entered on 2/6/2020. (Okafor, M.)). (Kass, Albert)
02/12/2020	442 Application for compensation *Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: $89,215.36, Expenses: $3,955.12. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 3/4/2020. (Hoffman, Juliana)
02/12/2020	443 Notice *(Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)438 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)270 Application for compensation − *First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019* for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: $176129.00, Expenses: $7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 270,). (Annable, Zachery)
02/12/2020	444 Certificate No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)378 Application for compensation *First Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: $32). (Hoffman, Juliana)
02/13/2020	445 Certificate of service re: *1) Order Authorizing and Approving Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward & Associates PLLC as Local Counsel; 2) Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date; and 3) Notice of Hearing re: First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through November 30, 2019; to be Held on March 11, 2020 at 9:30 a.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related

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

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

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

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

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

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

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

	Distributions to Certain "Related Entities")). (Annable, Zachery)
02/28/2020	485 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit A−−OCP Tracking Report) (Annable, Zachery)
03/02/2020	486 Response opposed to (related document(s): 474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")* filed by Debtor Highland Capital Management, L.P.) filed by Interested Party California Public Employees Retirement System (CalPERS). (Attachments: # 1 Exhibit A − Purchase and Sale Agreement # 2 Exhibit B − Assignment and Assumption Agreement) (Shriro, Michelle)
03/02/2020	487 Objection to (related document(s): 474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")* filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
03/02/2020	488 Order Granting Motion (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof Filed by Debtor Highland Capital Management, L.P(related document # 421) The General Bar Date is April 8, 2020 at 5:00 p.m. Central Time; other dates per Order Entered on 3/2/2020. (Okafor, M.)
03/02/2020	489 Joinder by *Acis Capital Management, L.P. and Acis Capital Management GP, LLC to the Committee's Objection to the Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities," and Comment to the Same* filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)487 Objection). (Enright, Jason)
03/02/2020	490 Motion to appear pro hac vice for Louis J. Cisz, III. Fee Amount $100 Filed by Interested Party California Public Employees Retirement System (CalPERS) (Shriro, Michelle)
03/02/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27511024, amount $ 100.00 (re: Doc# 490). (U.S. Treasury)
03/02/2020	491 Certificate of service re: *1) Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"; 2) Debtor's Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P., 475 Motion for expedited hearing(related documents 474 Motion for authority to apply and disburse funds) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

03/02/2020	492 Certificate of service re: *1) Order Granting Debtor's Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"; 2) Notice of Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"; to be Held on March 4, 2020 at 1:30 p.m. (Prevailing Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)477 Order granting motion for expedited hearing (Related Doc475)(document set for hearing: 474 Motion for authority to apply and disburse funds) Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 474, Entered on 2/25/2020. (Okafor, M.), 478 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 474, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/02/2020	493 Certificate of service re: *1) Witness and Exhibit List for March 4, 2020 Hearing; 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)484 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")*). filed by Debtor Highland Capital Management, L.P., 485 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit A—OCP Tracking Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/02/2020	494 Objection to (related document(s): 451 Motion for relief from stay Fee amount $181, filed by Creditor Joshua Terry, Creditor Jennifer G. Terry)*(Debtor's Limited Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non−Debtors and Reservation of Rights)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/02/2020	495 Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)487 Objection). (Hoffman, Juliana)
03/02/2020	496 Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)474 Motion for authority to apply and disburse funds *(Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities")*). (Enright, Jason)
03/03/2020	497 Debtor−in−possession monthly operating report for filing period January 1, 2020 to January 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2020	498 Notice *of Bar Date for Filing Claims* filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
03/04/2020	499 Reply to (related document(s): 487 Objection filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)

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

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

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

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

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

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

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

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

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

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

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

04/14/2020	584 Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)536 Application for compensation *(Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020)* for Hayward &). (Annable, Zachery)
04/14/2020	585 Notice of Appearance and Request for Notice Filed by Creditor American Express National Bank. (Bharatia, Shraddha)
04/14/2020	586 Application for compensation *Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: $1,222,801.25, Expenses: $18,747.77. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/5/2020. (Pomerantz, Jeffrey)
04/15/2020	587 Certificate of service re: *Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)573 Application for compensation *(Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: $39,087.50, Expenses: $2,601.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−February 2020 Fee Statement) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
04/15/2020	588 Certificate of service re: Omnibus Limited Objection to Applications for Compensation and Reimbursement of Expense of Foley Gardere, Foley & Lardner LLP as Special Counsel for the Period From October 16, 2019 Through February 29, 2020 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)538 Amended application for compensation *Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November, 539 Amended application for compensation Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through, 540 Application for compensation Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020541 Application for compensation Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 20). (Chiarello, Annmarie)*
04/15/2020	589 Notice of hearing filed by Interested Party Hunton Andrews Kurth LLP (RE: related document(s)582 Motion for relief from stay − agreed Filed by Interested Party Hunton Andrews Kurth LLP (Attachments: # 1 Proposed Order)). Hearing to be held on 5/7/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 582, (Skolnekovich, Nicole)
04/15/2020	590 Motion to reclaim funds from the registry*[Motion for Remittance of Funds Held in Registry of Court]* Filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List) (Kane, John)
04/17/2020	591 Certificate of service re: *1) Notice of Bar Dates for Filing Claims; and 2) [Customized] Official Form 410 Proof of Claim* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)498 Notice *of Bar Date for Filing Claims* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management,

	L.P.). (Kass, Albert)
04/17/2020	592 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−DSI Staffing Report for March 2020) (Annable, Zachery)
04/17/2020	593 Motion for relief from stay Fee amount $181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # 1 Exhibit 1 (Draft Motion Show Cause Motion) # 2 Exhibit 2 (DAF Complaint 1st case) # 3 Exhibit 3 (DAF Dismissal first case) # 4 Exhibit 4 (DAF Complaint 2nd case) # 5 Exhibit 5 (DAF Dismissal 2nd Case) # 6 Proposed Order) (Shaw, Brian)
04/17/2020	Receipt of filing fee for Motion for relief from stay(19−34054−sgj11) [motion,mrlfsty] (181.00). Receipt number 27675692, amount $ 181.00 (re: Doc# 593). (U.S. Treasury)
04/20/2020	594 Application for compensation *Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 3/31/2020, Fee: $476,836.20, Expenses: $14,406.39. Filed by Attorney Juliana Hoffman Objections due by 5/11/2020. (Hoffman, Juliana)
04/21/2020	595 Certificate of service re: *Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)586 Application for compensation *Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: $1,222,801.25, Expenses: $18,747.77. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/5/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/21/2020	596 Certificate of service re: *Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)594 Application for compensation *Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 3/31/2020, Fee: $476,836.20, Expenses: $14,406.39. Filed by Attorney Juliana Hoffman Objections due by 5/11/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
04/21/2020	597 Certificate of service re: *Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)592 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−DSI Staffing Report for March 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/22/2020	

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

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

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

	617 Response unopposed to (related document(s): 593 Motion for relief from stay Fee amount $181, filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
05/05/2020	618 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
05/05/2020	619 Certificate of service re: *Documents Served on April 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)600 Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). filed by Debtor Highland Capital Management, L.P., 601 Application for compensation *Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 3/1/2020 to 3/31/2020, Fee: $82,270.50, Expenses: $12.70. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 602 Application for compensation *First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: $484,590.10, Expenses: $10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C − Proposed Order) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 603 Certificate of service re: *1) Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020; and 2) Notice of Additional Services to Be Provided by Deloitte Tax LLP* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)598 Application for compensation *(Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: $35,307.50, Expenses: $1,732.02. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A March 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, 599 Notice *(Notice of Additional Services to Be Provided by Deloitte Tax LLP)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)551 Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document 483) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−Deloitte Tax Engagement Letters) filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, 604 Application to employ Hunton Andrews Kurth LLP as Special Counsel *(Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Declaration of Alexander McGeoch # 2 Exhibit B−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Declaration of Timothy Silva # 2 Exhibit B−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 606 Motion to

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

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

05/08/2020	628 Order approving joint stipulation of the Debtor and the Official Committee of the Unsecured Creditors modifying the Bar Date Order (RE: related document(s)620 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/8/2020 (Okafor, M.)
05/12/2020	629 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)594 Application for compensation *Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 3/31/2020, Fee: $476,). (Hoffman, Juliana)
05/13/2020	630 Reply to (related document(s): 624 Objection filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Attachments: # 1 Service List) (Kane, John)
05/13/2020	631 Certificate of service re: *1) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020; and 2) Joint Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors Modifying the Bar Date Order* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)618 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 620 Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). (Attachments: # 1 Exhibit A−−Employee Letter) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2020	632 Certificate of service re: *Stipulation and Agreed Order Permitting Hunton Andrew Kurth LLP to Apply Prepetition Retaine* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)623 Stipulation and Agreed Order Permitting Hunton Andrews Kurth LLP to Apply Prepetition Retainer (related document 582) Entered on 5/6/2020. (Okafor, M.) filed by Interested Party Hunton Andrews Kurth LLP). (Kass, Albert)
05/13/2020	633 Certificate of service re: *Order Approving Joint Stipulation of the Debtor and the Official Committee of Unsecured Creditors Modifying Bar Date Order* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)628 Order approving joint stipulation of the Debtor and the Official Committee of the Unsecured Creditors modifying the Bar Date Order (RE: related document(s)620 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/8/2020 (Okafor, M.)). (Kass, Albert)
05/14/2020	634 Debtor−in−possession monthly operating report for filing period March 1, 2020 to March 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/15/2020	635 Notice of hearing filed by Creditor CLO Holdco, Ltd. (RE: related document(s)590 Motion to reclaim funds from the registry*[Motion for Remittance of Funds Held in Registry of Court]* Filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List)). Hearing to be held on 6/30/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 590, (Attachments: # 1 Service List) (Kane, John)
05/19/2020	

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

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

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

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

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

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

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

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

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

06/04/2020	701 Objection to (related document(s): 644 Motion for relief from stay *(UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action)* Fee amount $181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch)*Redacted Version of Redeemer Committee Objection to UBS Motion for Relief from the Automatic Stay to Proceed with State Court Action* filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # 1 Exhibit Exhibit A # 2 Exhibit Exhibit B # 3 Exhibit Exhibit C # 4 Exhibit Exhibit D # 5 Exhibit Exhibit E # 6 Exhibit Exhibit F # 7 Exhibit Exhibit G # 8 Exhibit Exhibit H slip sheet # 9 Exhibit Exhibit I slip sheet # 10 Exhibit Exhibit J # 11 Exhibit Exhibit K # 12 Exhibit Exhibit L # 13 Exhibit Exhibit M # 14 Exhibit Exhibit N) (Platt, Mark)
06/04/2020	702 Notice of Appearance and Request for Notice by Thomas M. Melsheimer filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent. (Melsheimer, Thomas)
06/04/2020	703 Motion to appear pro hac vice for David Neier. Fee Amount $100 Filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (Melsheimer, Thomas)
06/04/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27816362, amount $ 100.00 (re: Doc# 703). (U.S. Treasury)
06/05/2020	704 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/05/2020	705 Order granting motion to appear pro hac vice adding David Neier for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document # 703) Entered on 6/5/2020. (Okafor, M.)
06/05/2020	706 Order granting motion to appear pro hac vice adding Robert J. Feinstein for Highland Capital Management, L.P. (related document # 695) Entered on 6/5/2020. (Okafor, M.)
06/05/2020	707 Certificate of service re: *1) Fourth Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date; and 2) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 Through April 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)678 Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). filed by Debtor Highland Capital Management, L.P., 679 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 through April 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A−−DSI Staffing Report for April 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/05/2020	708 Certificate of service re: *Order Approving Fourth Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim After the General Bar Date* Filed by Claims Agent

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

06/08/2020	716 **SEALED document regarding: Exhibit B, Original Engagement Ltr. per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)711 Order on motion to seal). (Platt, Mark)
06/08/2020	717 **SEALED document regarding: Exhibit C, Original Cash Warehouse Agreement per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)711 Order on motion to seal). (Platt, Mark)
06/08/2020	718 **SEALED document regarding: Exhibit D, Expert Report of Louis G. Dudney per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)711 Order on motion to seal). (Platt, Mark)
06/08/2020	719 **SEALED document regarding: Exhibit E, 3/20/2009 Termination, Settlement, and Release Agreement per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)711 Order on motion to seal). (Platt, Mark)
06/08/2020	720 **SEALED document regarding: Exhibit H, UBS and Crusader Fund Settlement Agreement per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)711 Order on motion to seal). (Platt, Mark)
06/08/2020	721 **SEALED document regarding: Exhibit I, UBS and Credit Strategies Fund Settlement Agreement per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)711 Order on motion to seal). (Platt, Mark)
06/08/2020	722 Order granting motion to seal documents (related document # 689) Entered on 6/8/2020. (Okafor, M.)
06/08/2020	723 **SEALED document regarding: Appendix B of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)722 Order on motion to seal). (Annable, Zachery)
06/08/2020	724 Certificate of service re: *Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)704 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/10/2020	725 Motion to appear pro hac vice for Sarah Tomkowiak. Fee Amount $100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
06/10/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 27830926, amount $ 100.00 (re: Doc# 725). (U.S. Treasury)
06/10/2020	726 Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)488 Order on motion for leave). (Annable, Zachery)

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

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

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

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

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

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

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

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

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

	from May 1, 2020 through May 31, 2020) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2020	798 Certificate of service re: *re: The Official Committee of Unsecured Creditors' Witness and Exhibit List for the June 30, 2020 Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)789 Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)590 Motion to reclaim funds from the registry*[Motion for Remittance of Funds Held in Registry of Court]*). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/01/2020	799 Certificate of service re: *Cover Sheet and Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)795 Application for compensation *(Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: $24877.50, Expenses: $36.00. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A April 2020 Invoice) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
07/02/2020	800 Debtor−in−possession monthly operating report for filing period May 1, 2020 to May 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/02/2020	801 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
07/02/2020	802 Transcript regarding Hearing Held 06/30/2020 (100 pages) RE: Motion for Remittance of Funds (590). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/30/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 793 Hearing held on 6/30/2020. (RE: related document(s)590 Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court] filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List). (Appearances: J. Kane and B. Clark for Movant; J. Pomeranz, J. Morris, G. Demo, and Z. Annabel for Debtor; M. Clemente for Unsecured Creditors Committee; M. Platt and M. Hankin for Redeemers Committee; R. Patel for Acis; A. Anderson and J. Bentley for certain CLO Issuers. Evidentiary hearing. Motion denied, but court ordered that funds in registry of court will be disbursed to CLO Holdco, Ltd. in 90 days unless an adversary proceeding has been filed against it and injunctive/equitable relief is sought and granted in such adversary proceeding, requiring further holding of the funds in the registry of the court (subject to requests/agreements for extension of this 90−day deadline). Also, court registry will be receiving further funds that Debtor is due to disburse to CLO Holdco and Highland Capital

	Management Services, Inc. imminently (separate order is to be submitted by Debtors counsel; UCC counsel to submit an order on todays ruling on CLO Holdcos motion).). Transcript to be made available to the public on 09/30/2020. (Rehling, Kathy)
07/02/2020	803 BNC certificate of mailing. (RE: related document(s)792 Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A––Declaration of Timothy Silva # 2 Exhibit B––Proposed Order)) Responses due by 7/14/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/02/2020. (Admin.)
07/03/2020	804 Response unopposed to (related document(s): 737 Motion to extend or limit the exclusivity period (RE: related document(s)668 Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
07/06/2020	805 Notice of hearing *(Notice of September 10, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
07/07/2020	806 Certificate of service re: *1) Webex Meeting Invitation to participate electronically in the hearing on Tuesday, May 26, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)801 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/07/2020	807 Certificate of service re: *Statement of the Official Committee of Unsecured Creditors in Response to the Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016−1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)804 Response unopposed to (related document(s): 737 Motion to extend or limit the exclusivity period (RE: related document(s)668 Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/08/2020	808 Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020. (Montgomery, Paige)
07/08/2020	809 Certificate of service re: *Notice of September 10, 2020 Omnibus Hearing Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)805 Notice of hearing *(Notice of September 10, 2020 Omnibus Hearing Date)* filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

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

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

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

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

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

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

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

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

	869 Reply to (related document(s): 839 Response filed by Creditor Committee Official Committee of Unsecured Creditors) *(Debtor's Reply to the Committee's Response to the Debtor's Discovery Motion)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/17/2020	870 Declaration re: *(Declaration of John A. Morris in Further Support of the Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)810 Motion for protective order *(Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs). (Annable, Zachery)*
07/17/2020	871 Declaration re: *First Supplemental Declaration of Alexander McGeoch in Support of Debtor's Application for an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date* filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)604 Application to employ Hunton Andrews Kurth LLP as Special Counsel *(Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)*). (Hesse, Gregory)
07/17/2020	872 Response opposed to (related document(s): 841 Objection filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Funds I and its series, Interested Party Highland Healthcare Opportunities Fund, Interested Party Highland/iBoxx Senior Loan ETF, Interested Party Highland Opportunistic Credit Fund, Interested Party Highland Merger Arbitrage Fund, Interested Party Highland Funds II and its series, Interested Party Highland Small−Cap Equity Fund, Interested Party Highland Fixed Income Fund, Interested Party Highland Socially Responsible Equity Fund, Interested Party Highland Total Return Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, Interested Party NexPoint Real Estate Strategies Fund, 844 Objection filed by Interested Party CCS Medical, Inc., 845 Objection filed by Debtor Highland Capital Management, L.P., 846 Objection filed by Creditor CLO Holdco, Ltd., 847 Objection filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., 855 Objection filed by Interested Party MGM Holdings, Inc., 858 Objection filed by Interested Party Highland CLO Funding, Ltd.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)
07/17/2020	873 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 868, (Annable, Zachery)
07/19/2020	874 BNC certificate of mailing − PDF document. (RE: related document(s)865 Order granting motion to appear pro hac vice adding Tracy K. Stratford for CCS Medical, Inc. (related document 843) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)
07/19/2020	

	875 BNC certificate of mailing − PDF document. (RE: related document(s)866 Order granting motion to appear pro hac vice adding James A. Wright for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document 835) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)
07/19/2020	876 BNC certificate of mailing − PDF document. (RE: related document(s)867 Order granting motion to appear pro hac vice adding Stephen G. Topetzes for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document 849) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)
07/20/2020	877 Application for compensation *Eighth Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 6/30/2020, Fee: $493,788.96, Expenses: $5,759.29. Filed by Objections due by 8/10/2020. (Hoffman, Juliana)
07/20/2020	878 Application for compensation *Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: $818,786.50, Expenses: $3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. (Pomerantz, Jeffrey)
07/20/2020	879 Amended application for compensation *Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended to include Exhibit)* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: $818,786.50, Expenses: $3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. (Pomerantz, Jeffrey)
07/20/2020	880 Certificate of service re: *1) Debtor's Objection to Official Committee of Unsecured Creditors Emergency Motion to Compel Production by the Debtor; and 2) Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors Emergency Motion to Compel Production by the Debtor* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)845 Objection to (related document(s): 808 Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 848 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)845 Objection). (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/20/2020	881 Certificate of service re: *Documents Served on July 16, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)850 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)808 Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020., 810 Motion for protective order *(Debtor's Motion*

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

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

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

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

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

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

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

	Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax−Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event−Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce−Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A−−Proposed Order and Schedules 1−7)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 906, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/05/2020	917 Application for compensation *(Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: $17,667.50, Expenses: $37.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A May 2020 Invoice) (Annable, Zachery)
08/05/2020	918 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)831 Application for compensation *Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: $1,5). (Attachments: # 1 Exhibit) (Hoffman, Juliana)
08/05/2020	919 Certificate of service re: *1) Agreed Order Extending Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by Sixty Days; and 2) Order Directing Mediation* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)909 Agreed Order Granting 886 Motion to extend deadline to assume or reject unexpired nonresidential real property lease by sixty days. Entered on 8/3/2020. (Okafor, M.), 912 Order directing mediation (RE: related document(s)3 Document filed by Debtor Highland Capital Management, L.P.). Entered on 8/3/2020 (Okafor, M.)). (Kass, Albert)
08/05/2020	920 Certificate of No Objection (Amended) filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)918 Certificate (generic)). (Hoffman, Juliana)
08/05/2020	921 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN

	PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
08/06/2020	922 Application for compensation *Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 7/1/2020 to 7/31/2020, Fee: $6,264.50, Expenses: $0.00. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)
08/06/2020	923 Notice of Appearance and Request for Notice by Jared M. Slade filed by Interested Party NexBank. (Slade, Jared)
08/06/2020	924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: $87,931.00, Expenses: $833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A − Invoices # 2 Proposed Order Exhibit B − Proposed Order) (O'Neil, Holland)
08/06/2020	925 Certificate of service re: *re: 1) Cover Sheet and Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 Through May 31, 2020; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)917 Application for compensation *(Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: $17,667.50, Expenses: $37.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A May 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, 921 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/06/2020	926 Withdrawal of claim(s) Claim has been satisfied. Claim: 9 Filed by Creditor Gray Reed & McGraw LLP. (Brookner, Jason)
08/07/2020	927 Joinder by filed by Interested Party NexBank (RE: related document(s)914 Motion for leave *[CLO Holdco, Ltd.'s Motion for Clarification of Ruling]* (related document(s) 808 Motion to compel, 846 Objection, 872 Response, 894 Hearing held)). (Slade, Jared)
08/07/2020	928 Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19) (Annable, Zachery)
08/07/2020	929 Notice of hearing *(Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)928 Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital

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

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

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

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

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

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

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

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

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

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

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

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

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

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

	by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1015 Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/05/2020	1028 Witness and Exhibit List *for Hearing on September 10, 2020* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)831 Application for compensation *Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: $1,5, 883 Application for compensation *Second Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: $1,488,533.4, Expenses: $23,515.26., 924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020* for Foley Gardere, 949 Motion to extend or limit the exclusivity period (RE: related document(s)820 Order on motion to extend/shorten time), 964 Application for compensation *(Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorn, 971 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 202, 972 Application for compensation Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US), 975 Application for compensation (Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for). (Hayward, Melissa)*
09/08/2020	1029 Certificate of service re: *Order Approving Third Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1021 Order approving third joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc (RE: related document(s)1015 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/2/2020 (Okafor, M.)). (Kass, Albert)
09/08/2020	1030 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to July 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
09/09/2020	1031 Motion to appear pro hac vice for James E. O'Neill. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/09/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28083098, amount $ 100.00 (re: Doc# 1031). (U.S. Treasury)
09/09/2020	1032 Notice *(Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)976 Notice of hearing *(Omnibus Notice of Hearing on Second Interim*

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

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

	Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: $54,029.98, Expenses: $2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., 975 Application for compensation *(Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020)* for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: $615,941.40, Expenses: $2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A−1 # 2 Exhibit A−2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 964 and for 831 and for 975 and for 972 and for 971 and for 924 and for 883,). (Annable, Zachery)
09/10/2020	1061 Hearing held on 9/10/2020., Hearing continued (RE: related document(s)949 Motion to extend or limit the exclusivity period (RE: related document(s)820 Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.,) Continued Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 949, (Appearances: J. Pomeranz, J. Morris, and J. ONeill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Evidentiary hearing. Motion continued to 9/17/20 at 9:30 am.) (Edmond, Michael) (Entered: 09/14/2020)
09/10/2020	1062 Hearing held on 9/10/2020. (RE: related document(s)906 Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax−Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event−Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce−Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.,) (Appearances: J. Pomeranz, J. Morris, and J. ONeill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Nonevidentiary hearing. Based on record presented by counsel, certain objections sustained, certain objections resolved, and certain ones carried to a date to be continued. Counsel to upload orders where

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

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

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

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

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

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

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

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

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

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

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

09/30/2020	1114 Motion to appear pro hac vice for Elissa A. Wagner. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/30/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28143856, amount $ 100.00 (re: Doc# 1114). (U.S. Treasury)
09/30/2020	1115 Debtor−in−possession monthly operating report for filing period August 1, 2020 to August 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/30/2020	1116 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
10/01/2020	1117 Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim). (Annable, Zachery)
10/02/2020	1118 Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Hayward, Melissa)
10/02/2020	1119 Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020. (Montgomery, Paige)
10/02/2020	1120 Motion for expedited hearing(related documents 1119 Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
10/05/2020	1121 Response opposed to (related document(s): 1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
10/05/2020	1122 Agreed Order granting 1118 Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. Entered on 10/5/2020. (Okafor, M.)
10/05/2020	1123 Order granting motion to compromise controversy with Carey International, Inc.. (Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (related document # 1025) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	1124 Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document # 1114) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	1125 Order granting motion to seal exhibits (related document # 1091 Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A.

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

	(U.S. Treasury)
10/06/2020	1136 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1119 Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.). Hearing to be held on 10/8/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 1119, (Hoffman, Juliana)
10/06/2020	1137 Status Conference Hearing held on 10/6/2020. (RE: related document(s)928 Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and R. Feinstein for Debtor; A. Clubok, S. Tomkowiak, and J. Bjork for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; M. Clemente for UCC. Nonevidentiary status conference. Court approved a schedule for motions for summary judgment and Rule 3018 motions to estimate claim of UBS. Counsel to upload order. Hearing to be 11/20/20 at 9:30 am.)(Edmond, Michael)
10/06/2020	1138 Certificate of service re: *1) Motion for Admission Pro Hac Vice for Elissa A. Wagner to Represent Highland Capital Management, L.P.; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1114 Motion to appear pro hac vice for Elissa A. Wagner. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1116 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/06/2020	1139 Certificate of service re: *1) Webex Meeting Invitation to participate electronically in the hearing on October 6, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Stipulation Regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1117 Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)868 Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/06/2020	1140 Request for transcript regarding a hearing held on 10/6/2020. The requested turn−around time is daily (Jeng, Hawaii) (Entered: 10/07/2020)
10/07/2020	1141 Objection to (related document(s): 1119 Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
10/07/2020	1142 Application for compensation *(Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: $29,785.00, Expenses: $980.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A July 2020 Invoice) (Annable, Zachery)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

	Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #Q, #R, #S, #T, #U, #V, #W & #X; NOTE* EXHIBIT #P (Edmond, Michael) Modified on 10/28/2020 (Edmond, Michael). (Entered: 10/28/2020)
10/20/2020	1305 MODIFIED TEXT: Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (1304 Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #P, #Q, #R, #S, #T, #U, #V, #W & #X; JASON KATHMAN; COUNSEL FOR PATRICK DAUGHERTY EXHIBIT'S #1079 − AMENDED PLAN & #1080 − AMENDED DISCLOSURE STATEMENT ADMITTED INTO EVIDENCE BY PATRICK DAUGHTERY COUNSEL JASON KATHMAN) (Edmond, Michael) Modified on 10/28/2020 (Edmond, Michael). Modified on 10/30/2020 (Edmond, Michael). (Entered: 10/28/2020)
10/20/2020	1314 Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)1087 Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #P, #Q, #R, #S, #T, #U, #V, #W & #X; JASON KATHMAN ; COUNSEL FOR PATRICK DAUGHERTY EXHIBIT'S #1079 − AMENDED PLAN & #1080 − AMENDED DISCLOSURE STATEMENT ADMITTED INTO EVIDENCE). (Edmond, Michael) (Entered: 10/30/2020)
10/21/2020	1245 Request for transcript regarding a hearing held on 10/20/2020. The requested turn−around time is hourly. (Edmond, Michael)
10/21/2020	1246 Request for transcript regarding a hearing held on 10/20/2020. The requested turn−around time is hourly (Jeng, Hawaii)
10/21/2020	1247 Motion to appear pro hac vice for Faheem A. Mahmooth. Fee Amount $100 Filed by Creditor Pension Benefit Guaranty Corporation (Webb, Donna)
10/21/2020	1248 Application for compensation *Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020* for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: $828,193.00, Expenses: $7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.).
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (0.00). Receipt number KF: No Fee Due − Exempt U.S. Government Agency, amount $ 0.00 (re: Doc1247). (Floyd)
10/21/2020	1249 **SEALED document regarding: Debtor's Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1235 Order on motion to seal). (Annable, Zachery)

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

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

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

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

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

	Nonevidentiary closing arguments. Court granted motion, based on reasoning granted orally. Counsel to upload order.)). Transcript to be made available to the public on 01/22/2021. (Rehling, Kathy)
10/25/2020	1286 Omnibus Response opposed to (related document(s): 1209 Objection to disclosure statement filed by Interested Party Jefferies LLC, 1210 Objection to disclosure statement filed by Creditor Pension Benefit Guaranty Corporation, 1218 Objection to disclosure statement filed by Creditor Patrick Daugherty, 1219 Objection to disclosure statement filed by Creditor HarbourVest et al, 1238 Objection to disclosure statement filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch, 1239 Objection to disclosure statement filed by Creditor Committee Official Committee of Unsecured Creditors, 1241 Objection to disclosure statement filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/25/2020	1287 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan). (Annable, Zachery)
10/25/2020	1288 Support/supplemental document *(Redline of Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1287 Chapter 11 plan). (Annable, Zachery)
10/25/2020	1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement). (Annable, Zachery)
10/25/2020	1290 Support/supplemental document *(Redline of the Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Disclosure statement). (Annable, Zachery)
10/25/2020	1291 BNC certificate of mailing − PDF document. (RE: related document(s)1276 Order granting motion to appear pro hac vice adding Faheem A. Mahmooth for Pension Benefit Guaranty Corporation (related document 1247) Entered on 10/23/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/25/2020. (Admin.)
10/25/2020	1292 BNC certificate of mailing − PDF document. (RE: related document(s)1278 Order granting motion to appear pro hac vice adding Joseph T. Moldovan for Meta−e Discovery, LLC (related document 1262) Entered on 10/23/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/25/2020. (Admin.)
10/26/2020	1293 Certificate of service re: *(Supplemental) Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1081 Notice of hearing *(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit B−−Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1080, filed by Debtor Highland Capital Management, L.P., 1097 Certificate of service re: *Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1081 Notice of hearing *(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit

	B−−Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1080, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
10/26/2020	1294 Certificate of service re: *Documents Served on October 21, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., 1248 Application for compensation *Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020* for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: $828,193.00, Expenses: $7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1263 Emergency Motion to continue hearing on (related documents 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1264 Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/26/2020	1295 Support/supplemental document *(Notice of Supplemental Disclosures)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Disclosure statement). (Annable, Zachery)
10/27/2020	1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 8/31/2020, Fee: $1,865,520.45, Expenses: $18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020. (Hoffman, Juliana)
10/27/2020	1297 Request for transcript regarding a hearing held on 10/27/2020. The requested turn−around time is hourly (Jeng, Hawaii)
10/27/2020	1298 Certificate of service re: *Documents Served on or Before October 23, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1266 Order granting motion to continue hearing on (related document 1263) (related documents Disclosure statement) Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for 1080, Entered on 10/22/2020. (Ecker, C.), 1268 Amended Notice of hearing *(Amended Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit B−−Organizational Chart)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for 1080, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/27/2020	1307 Hearing held on 10/27/2020., Hearing continued (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth

	of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the $1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third−party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.) (Edmond, Michael) (Entered: 10/28/2020)
10/27/2020	1308 Hearing held on 10/27/2020., Hearing continued (RE: related document(s)1108 Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)) Continued hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the $1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third−party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.) (Edmond, Michael) (Entered: 10/28/2020)
10/28/2020	1299 Request for transcript regarding a hearing held on 10/28/2020. The requested turn−around time is hourly (Jeng, Hawaii)
10/28/2020	1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, (Annable, Zachery)
10/28/2020	1301 Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)1264 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.)
10/28/2020	1302 Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document # 1087) Entered on 10/28/2020. (Okafor, M.)
10/28/2020	1306 Hearing held on 10/28/2020. (RE: related document(s)1099 Motion for relief from stay − Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay, filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman and T. Uebler for Movant, P. Daugherty; J. Morris for Debtor. Nonevidentiary hearing (Declaration only). Motion granted for reasons stated orally. Mr. Kathman to upload order.) (Edmond, Michael)

10/28/2020	1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, (Annable, Zachery)
10/28/2020	1310 Certificate of service re: *1) Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith; 2) Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1273 Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document 1089) Entered on 10/23/2020. (Okafor, M.), 1274 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1099 Motion for relief from stay − *Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay* Fee amount $181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1099, filed by Debtor Highland Capital Management, L.P., 1275 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/28/2020	1311 Certificate of service re: *1) Summary Cover Sheet and Eleventh Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from September 1, 2020 Through September 30, 2020; and 2) Debtors Omnibus Reply to Objections to Approval of the Debtors Disclosure Statement for the Debtors First Amended Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1283 Application for compensation *Eleventh Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 9/30/2020, Fee: $356,889.96, Expenses: $2,204.73. Filed by Attorney Juliana Hoffman Objections due by 11/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, 1286 Omnibus Response opposed to (related document(s): 1209 Objection to disclosure statement filed by Interested Party Jefferies LLC, 1210 Objection to disclosure statement filed by Creditor Pension Benefit Guaranty Corporation, 1218 Objection to disclosure statement filed by Creditor Patrick Daugherty, 1219 Objection to disclosure statement filed by Creditor HarbourVest et al, 1238 Objection to disclosure statement filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch, 1239 Objection to disclosure statement filed by Creditor Committee Official Committee of Unsecured Creditors, 1241 Objection to disclosure statement filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.)

	filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/29/2020	1312 Transcript regarding Hearing Held 10/27/2020 (95 pages) RE: Amended Disclosure Statement, Motion for Entry of an Order Approving Adequacy of Disclosure Statement. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/27/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1308 Hearing held on 10/27/2020., Hearing continued (RE: related document(s)1108 Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)) Continued hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the $1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third−party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.)). Transcript to be made available to the public on 01/27/2021. (Rehling, Kathy)
10/29/2020	1313 Certificate of service re: *Summary Cover Sheet and Third Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from June 1, 2020 Through and Including August 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 8/31/2020, Fee: $1,865,520.45, Expenses: $18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
10/30/2020	1315 Order directing UBS' Offer of Proof (RE: related document(s)1089 Motion to compromise controversy filed by Debtor Highland Capital Management, L.P.). Entered on 10/30/2020 (Okafor, M.)
10/30/2020	1316 Certificate No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1160 Application for compensation *Ninth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: $198,616.32, Expenses: $0.). (Hoffman, Juliana)
10/30/2020	1317 Certificate of service re: *(Supplemental) Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1081 Notice of hearing *(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital

	Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit B−−Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1080, filed by Debtor Highland Capital Management, L.P., 1097 Certificate of service re: *Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1081 Notice of hearing *(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1080 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement). (Attachments: # 1 Exhibit A−−First Amended Plan of Reorganization # 2 Exhibit B−−Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1080, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
10/31/2020	1318 Transcript regarding Hearing Held 10/28/2020 (32 pages) RE: Patrick Daugherty's Motion to Confirm Status of Automatic Stay. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/29/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1306 Hearing held on 10/28/2020. (RE: related document(s)1099 Motion for relief from stay − Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay, filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman and T. Uebler for Movant, P. Daugherty; J. Morris for Debtor. Nonevidentiary hearing (Declaration only). Motion granted for reasons stated orally. Mr. Kathman to upload order.)). Transcript to be made available to the public on 01/29/2021. (Rehling, Kathy)
11/01/2020	1319 BNC certificate of mailing − PDF document. (RE: related document(s)1315 Order directing UBS' Offer of Proof (RE: related document(s)1089 Motion to compromise controversy filed by Debtor Highland Capital Management, L.P.). Entered on 10/30/2020 (Okafor, M.)) No. of Notices: 2. Notice Date 11/01/2020. (Admin.)
11/02/2020	1320 Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)771 Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.) Responses due by 11/16/2020. (Ecker, C.)
11/02/2020	1321 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)1119 Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.) Responses due by 11/16/2020. (Ecker, C.)
11/02/2020	1322 Certificate of service re: *Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1301 Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)1264 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), 1302 Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C)

	Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document 1087) Entered on 10/28/2020. (Okafor, M.), 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/03/2020	1323 Certificate of service re: Daugherty's Objection to Approval of Debtor's Disclosure Statement filed by Creditor Patrick Daugherty (RE: related document(s)1218 Objection to disclosure statement). (Kathman, Jason)
11/03/2020	1324 Certificate of service re: Daugherty's Motion for Leave to File Under Seal filed by Creditor Patrick Daugherty (RE: related document(s)1279 Motion to file document under seal.− *Daugherty's Motion for Leave to File Under Seal His Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 and Supporting Documents*). (Kathman, Jason)
11/03/2020	1325 Certificate of service re: Daugherty's Motion for Leave to Amend Proof of Claim No. 77 filed by Creditor Patrick Daugherty (RE: related document(s)1280 Motion for leave *to Amend Proof of Claim No. 77*). (Kathman, Jason)
11/03/2020	1326 Certificate of service re: Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes, Brief and Appendix filed by Creditor Patrick Daugherty (RE: related document(s)1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018*, 1282 Brief, 1284 Support/supplemental document). (Kathman, Jason)
11/03/2020	1327 Order on Creditor Patrick Daugherty's Motion to confirm status of automatic stay, or alternatively to modify automatic stay (related document # 1099) Entered on 11/3/2020. (Okafor, M.)
11/03/2020	1328 Notice *of Withdrawal of Motion for Relief from the Automatic Stay to Allow Pursuit of Motion for Order to Show Cause For Violations of the Acis Plan Injunction* filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)593 Motion for relief from stay Fee amount $181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # 1 Exhibit 1 (Draft Motion Show Cause Motion) # 2 Exhibit 2 (DAF Complaint 1st case) # 3 Exhibit 3 (DAF Dismissal first case) # 4 Exhibit 4 (DAF Complaint 2nd case) # 5 Exhibit 5 (DAF Dismissal 2nd Case) # 6 Proposed Order)). (Shaw, Brian)
11/03/2020	1329 Debtor−in−possession monthly operating report for filing period September 1, 2020 to September 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/03/2020	1330 Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)1142 Application for compensation *(Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020)* for Hayward & Associ). (Annable, Zachery)

11/03/2020	1331 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to September 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
11/04/2020	1332 Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1331 Notice (generic)). (Annable, Zachery)
11/05/2020	1333 Stipulation by Highland Capital Management, L.P. and Acis Capital Management, L.P., Acis Capital Management GP, LLC, Joshua N. Terry, Jennifer G. Terry, and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1302 Order on motion to compromise controversy). (Annable, Zachery)
11/05/2020	1334 Certificate of service re: *(Amended) Documents Served on October 21, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., 1248 Application for compensation *Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020* for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: $828,193.00, Expenses: $7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1263 Emergency Motion to continue hearing on (related documents 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1264 Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1294 Certificate of service re: *Documents Served on October 21, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., 1248 Application for compensation *Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020* for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: $828,193.00, Expenses: $7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1263 Emergency Motion to continue hearing on (related documents 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1264 Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
11/05/2020	1335 Certificate of service re: *(Amended) 1) Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith; 2) Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of*

	Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1273 Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document 1089) Entered on 10/23/2020. (Okafor, M.), 1274 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1099 Motion for relief from stay − *Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay* Fee amount $181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1099, filed by Debtor Highland Capital Management, L.P., 1275 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P., 1310 Certificate of service re: *1) Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith; 2) Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1273 Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document 1089) Entered on 10/23/2020. (Okafor, M.), 1274 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1099 Motion for relief from stay − *Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay* Fee amount $181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1099, filed by Debtor Highland Capital Management, L.P., 1275 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
11/05/2020	1336 BNC certificate of mailing − PDF document. (RE: related document(s)1327 Order on Creditor Patrick Daugherty's Motion to confirm status of automatic stay, or alternatively to modify automatic stay (related document 1099) Entered on 11/3/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 11/05/2020. (Admin.)
11/06/2020	1337 Response opposed to (related document(s): 1214 Motion for summary judgment filed by Debtor Highland Capital Management, L.P., 1215 Motion for summary judgment filed by Interested Party Redeemer Committee of the Highland Crusader Fund) filed by

	Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
11/06/2020	1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)* Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 11/20/2020. (Attachments: # 1 Proposed Order) (Sosland, Martin)
11/06/2020	1339 Notice of appeal . Fee Amount $298 filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)(Sosland, Martin)
11/06/2020	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28246686, amount $ 298.00 (re: Doc# 1339). (U.S. Treasury)
11/06/2020	1340 Application for compensation *Eleventh Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: $170,859.60, Expenses: $806.60. Filed by Attorney Juliana Hoffman Objections due by 11/30/2020. (Hoffman, Juliana)
11/06/2020	1341 Brief in opposition filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1214 Motion for summary judgment, 1215 Motion for summary judgment). (Sosland, Martin)
11/06/2020	1342 Brief in support filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)*). (Sosland, Martin)
11/06/2020	1343 Motion to file document under seal.*(With UBS's Brief and Appendix of Exhibits in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request)* Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
11/06/2020	1344 Motion to file document under seal.*(With UBS's Brief and Appendix of Exhibits in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)* Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
11/06/2020	1345 Exhibit List *(Appendix of Exhibits to UBS's Brief in Opposition to Motions for Partial Summary Judgment on Proof of Claims Nos. 190 and 191 and in Support of Rule 56(d) Request)* filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1337 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9−21 # 10 Exhibit 22) (Sosland, Martin)
11/06/2020	1346 Exhibit List *(Appendix of Exhibits to UBS's Brief in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)* filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9−29) (Sosland, Martin)
11/09/2020	1347 Notice of appeal . Fee Amount $298 filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)(Assink, Bryan)

11/09/2020	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28249949, amount $ 298.00 (re: Doc# 1347). (U.S. Treasury)
11/09/2020	1348 Motion to continue hearing on (related documents 1207 Motion to allow claims) Filed by Creditor HarbourVest et al (Attachments: # 1 Proposed Order) (Driver, Vickie)
11/09/2020	1349 Objection to (related document(s): 1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018* filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/09/2020	1350 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1349 Objection). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
11/10/2020	1351 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018* Filed by Creditor Patrick Daugherty (Attachments: # 1 Exhibit A − Proposed Order)). Hearing to be held on 11/17/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1281, (Annable, Zachery)
11/10/2020	1352 Order granting motion to continue hearing on (related document # 1348) (related documents Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*) Hearing to be held on 12/2/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1207, Entered on 11/10/2020. (Okafor, M.)
11/10/2020	1353 Order granting motion to seal documents with UBS's Brief and Appendix of Exhibits in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request (related document # 1343) Entered on 11/10/2020. (Okafor, M.)
11/10/2020	1354 Order granting motion to seal documents with UBS's Brief and Appendix of Exhibits in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 (related document # 1344) Entered on 11/10/2020. (Okafor, M.)
11/10/2020	1355 **SEALED document regarding: UBS's Brief in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request per court order** filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1353 Order on motion to seal). (Attachments: # 1 Exhibit 9 # 2 Exhibit 10 # 3 Exhibit 11 # 4 Exhibit 12 # 5 Exhibit 13 # 6 Exhibit 14 # 7 Exhibit 15 # 8 Exhibit 16 # 9 Exhibit 17 # 10 Exhibit 18 # 11 Exhibit 19 # 12 Exhibit 20 # 13 Exhibit 21) (Sosland, Martin)
11/10/2020	1356 **SEALED document regarding: UBS's Brief in Support of Motion for Temporary Allowance of claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 per court order** filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1354 Order on motion to seal). (Attachments: # 1 Exhibit 9 # 2 Exhibit 10 # 3 Exhibit 11 # 4 Exhibit 12 # 5 Exhibit 13 # 6 Exhibit 14 # 7 Exhibit 15 # 8 Exhibit 16 # 9 Exhibit 17 # 10 Exhibit 18 # 11 Exhibit 19 # 12 Exhibit 20 # 13 Exhibit 21 # 14 Exhibit 22 # 15 Exhibit 23 # 16 Exhibit 24 # 17 Exhibit 25 # 18 Exhibit 26 # 19 Exhibit 27 # 20 Exhibit 28 # 21 Exhibit 29) (Sosland, Martin)
11/10/2020	1357 Notice of hearing filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of*

	Bankruptcy Procedure 3018) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 11/20/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1338, (Sosland, Martin)
11/10/2020	1358 Certificate of service re: *Eleventh Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from September 1, 2020 to and Including September 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1340 Application for compensation *Eleventh Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: $170,859.60, Expenses: $806.60. Filed by Attorney Juliana Hoffman Objections due by 11/30/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
11/10/2020	1359 Certificate of service re: *1) Debtors Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018; and 2) Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1349 Objection to (related document(s): 1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018* filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1350 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1349 Objection). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/11/2020	1360 Motion to appear pro hac vice for Hayley R. Winograd. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28256837, amount $ 100.00 (re: Doc# 1360). (U.S. Treasury)
11/11/2020	1361 Certificate of service re: *1) Notice of Transfer for MCS Capital LLC c/o STC, Inc. re: Lynn Pinker Cox & Hurst, LLP (Claim No. 148); and 2) Notice of Transfer for Argo Partners re: Stanton Advisors LLC (Scheduled Amount $10,000.00)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1165 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 1 Transferors: Stanton Advisors LLC (Amount $10,000.00) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, 1166 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Lynn Pinker Cox & Hurst, LLP (Claim No. 148, Amount $507,430.34) To MCS Capital LLC c/o STC, Inc.. Filed by Creditor Argo Partners. filed by Creditor Argo Partners). (Kass, Albert)
11/12/2020	1363 Certificate of mailing regarding appeal (RE: related document(s)1347 Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
11/12/2020	1364 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1347 Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Whitaker, Sheniqua)
11/12/2020	1365 Agreed supplemental order regarding deposit of funds into the registry of the court (RE: related document(s)821 Agreed order regarding deposit of funds into the registry of

	the Court.). Entered on 11/12/2020 (Okafor, M.)
11/12/2020	1366 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 through August 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.), 853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Attachments: # 1 Exhibit A−−DSI Monthly Staffing Report for August 2020) (Annable, Zachery)
11/12/2020	1367 Certificate of service re: *Notice of Hearing on Patrick Hagaman Daughertys Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1351 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018* Filed by Creditor Patrick Daugherty (Attachments: # 1 Exhibit A − Proposed Order)). Hearing to be held on 11/17/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1281, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/12/2020	1368 Clerk's correspondence requesting to amend the notice of appeal from attorney for appellant. (RE: related document(s)1339 Notice of appeal . Fee Amount $298 filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) Responses due by 11/16/2020. (Whitaker, Sheniqua)
11/12/2020	1369 Amended notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1339 Notice of appeal). (Sosland, Martin)
11/12/2020	1370 Notice of docketing notice of appeal. Civil Action Number: 3:20−cv−03390−X. (RE: related document(s)1347 Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Whitaker, Sheniqua)
11/13/2020	1371 Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document # 1360) Entered on 11/13/2020. (Ecker, C.)
11/13/2020	1372 Order granting motion to seal documents (related document # 1279) Entered on 11/13/2020. (Ecker, C.)
11/13/2020	1374 INCORRECT ENTRY. Incomplete Form. Certificate of mailing regarding appeal (RE: related document(s)1339 Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) (Attachments: # 1 Service List) (Whitaker, Sheniqua) Modified on 11/13/2020 (Whitaker, Sheniqua).
11/13/2020	1375 Certificate of mailing regarding appeal (RE: related document(s)1339 Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
11/13/2020	

	1376 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1339 Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
11/13/2020	1377 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 94, Amount $268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	1378 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 97, Amount $268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	1379 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Amount $20,658.79) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	1380 WITHDRAWN per # 1421. Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLC (US) (Amount $1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas) Modified on 11/19/2020 (Ecker, C.).
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (25.00). Receipt number 28267014, amount $ 25.00 (re: Doc# 1377). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (25.00). Receipt number 28267014, amount $ 25.00 (re: Doc# 1378). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (25.00). Receipt number 28267014, amount $ 25.00 (re: Doc# 1379). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (25.00). Receipt number 28267014, amount $ 25.00 (re: Doc# 1380). (U.S. Treasury)
11/13/2020	1381 Notice of docketing notice of appeal. Civil Action Number: 3:20−cv−03408−G. (RE: related document(s)1339 Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
11/13/2020	1382 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018*). (Annable, Zachery)
11/13/2020	1383 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan). (Annable, Zachery)
11/13/2020	1384 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement). (Annable, Zachery)
11/13/2020	1385 Support/supplemental document *(Redline Comparison of Third Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1383 Chapter 11 plan). (Annable, Zachery)

11/13/2020	1386 Support/supplemental document *(Redline Comparison of Disclosure Statement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1384 Disclosure statement). (Annable, Zachery)
11/13/2020	1387 Certificate of service re: *(Supplemental) Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P., 1322 Certificate of service re: *Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1301 Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)1264 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), 1302 Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document 1087) Entered on 10/28/2020. (Okafor, M.), 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
11/13/2020	1388 Witness and Exhibit List *for Hearing on Motion for Allowance of Claim* filed by Creditor Patrick Daugherty (RE: related document(s)1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018*). (Attachments: # 1 Exhibit PHD−1 # 2 Exhibit PHD−2 # 3 Exhibit PHD−3 # 4 Exhibit PHD−4 # 5 Exhibit PHD−5 # 6 Exhibit PHD−6 # 7 Exhibit PHD−7 # 8 Exhibit PHD−8 # 9 Exhibit PHD−9 # 10 Exhibit PHD−10 # 11 Exhibit PHD−11 # 12 Exhibit PHD−12 # 13 Exhibit PHD−13 # 14 Exhibit PHD−14 # 15 Exhibit PHD−15 # 16 Exhibit

	PHD−16 # 17 Exhibit PHD−17 # 18 Exhibit PHD−18 # 19 Exhibit PHD−19 # 20 Exhibit PHD−20 # 21 Exhibit PHD−21 # 22 Exhibit PHD−22 # 23 Exhibit PHD−23 # 24 Exhibit PHD−24 # 25 Exhibit PHD−25 # 26 Exhibit PHD−26 # 27 Exhibit PHD−27 # 28 Exhibit PHD−28 # 29 Exhibit PHD−29 # 30 Exhibit PHD−30 # 31 Exhibit PHD−31 # 32 Exhibit PHD−32 # 33 Exhibit PHD−33 # 34 Exhibit PHD−34 # 35 Exhibit PHD−35 # 36 Exhibit PHD−36 # 37 Exhibit PHD−37 # 38 Exhibit PHD−38 # 39 Exhibit PHD−39 # 40 Exhibit PHD−40 # 41 Exhibit PHD−41 # 42 Exhibit PHD−42) (Kathman, Jason)
11/13/2020	1389 Notice *(Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1383 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan).). (Attachments: # 1 Exhibit A−−Form of Claimant Trust Agreement # 2 Exhibit B−−Form of New GP LLC Documents # 3 Exhibit C−−Form of Reorganized Limited Partnership Agreement # 4 Exhibit D−−Form of Litigation Sub−Trust Agreement # 5 Exhibit E−−Schedule of Retained Causes of Action # 6 Exhibit F−−Form of New Frontier Note # 7 Exhibit G−−Schedule of Employees # 8 Exhibit H−−Form of Senior Employee Stipulation) (Annable, Zachery)
11/14/2020	1390 BNC certificate of mailing. (RE: related document(s)1364 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1347 Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order))) No. of Notices: 1. Notice Date 11/14/2020. (Admin.)
11/15/2020	1391 BNC certificate of mailing. (RE: related document(s)1376 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1339 Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Attachments: # 1 Exhibit))) No. of Notices: 2. Notice Date 11/15/2020. (Admin.)
11/15/2020	1392 BNC certificate of mailing − PDF document. (RE: related document(s)1371 Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document 1360) Entered on 11/13/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 11/15/2020. (Admin.)
11/16/2020	1393 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1248 Application for compensation *Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Peri). (Pomerantz, Jeffrey)
11/16/2020	1394 **SEALED document regarding: Exhibit 1 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order** filed by Creditor Patrick Daugherty (RE: related document(s)1372 Order on motion to seal). (Kathman, Jason)
11/16/2020	1395 **SEALED document regarding: Exhibit 26 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order** filed by Creditor Patrick Daugherty (RE: related document(s)1372 Order on motion to seal). (Kathman, Jason)
11/16/2020	1396 **SEALED document regarding: Exhibit 27 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order** filed by Creditor Patrick Daugherty (RE: related document(s)1372 Order on motion to seal). (Kathman, Jason)

11/16/2020	1397 **SEALED document regarding: Exhibit 36 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order** filed by Creditor Patrick Daugherty (RE: related document(s)1372 Order on motion to seal). (Kathman, Jason)
11/16/2020	1398 **SEALED document regarding: Exhibit 37 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order** filed by Creditor Patrick Daugherty (RE: related document(s)1372 Order on motion to seal). (Kathman, Jason)
11/16/2020	1399 Notice *(Notice of Filing of Fourth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
11/16/2020	1400 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
11/16/2020	1401 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLP (US) (Amount $1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/16/2020	1402 Reply to (related document(s): 1337 Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/16/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (25.00). Receipt number 28270620, amount $ 25.00 (re: Doc# 1401). (U.S. Treasury)
11/16/2020	1403 Exhibit List *(Appendix of Exhibits to Debtor's Reply in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1402 Reply). (Annable, Zachery)
11/16/2020	1404 Objection to (related document(s): 1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)* filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

11/16/2020	1405 Motion to file document under seal.*MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC* Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Proposed Order) (Platt, Mark)
11/16/2020	1406 Motion to file document under seal.*MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS OBJECTION AND JOINDER TO DEBTORS OBJECTION TO UBS AG, LONDON BRANCH AND UBS SECURITIES LLCS MOTION FOR TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 3018* Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Platt, Mark)
11/16/2020	1407 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10.). (Hoffman, Juliana)
11/16/2020	1408 Reply to (related document(s): 1337 Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # 1 Exhibit A # 2 Exhibit B (slip sheet only)) (Platt, Mark)
11/16/2020	1409 Objection to (related document(s): 1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)* filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # 1 Exhibit A (slip sheet only) # 2 Exhibit B (slip sheet only) # 3 Exhibit C (slip sheet only) # 4 Exhibit D (slip sheet only)) (Platt, Mark)
11/16/2020	1410 Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10., 1407 Certificate (generic)). (Hoffman, Juliana)
11/16/2020	1411 Reply to (related document(s): 1349 Objection filed by Debtor Highland Capital Management, L.P.) − *Daugherty's Reply in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Bankruptcy Rule 3018* filed by Creditor Patrick Daugherty. (Kathman, Jason)
11/16/2020	1412 Declaration re: *Michael S. Colvin in Support of Motion for Temporary Allowance of Claims for Voting Purposes* filed by Creditor Patrick Daugherty (RE: related document(s)1411 Reply). (Kathman, Jason)
11/17/2020	1413 Witness and Exhibit List *(Debtor's Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1214 Motion for summary judgment, 1215 Motion for summary judgment, 1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)*). (Attachments: # 1 Exhibit 30) (Annable, Zachery)
11/17/2020	

	1414 Witness and Exhibit List *for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim* filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)1214 Motion for summary judgment, 1215 Motion for summary judgment, 1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)*). (Platt, Mark)
11/17/2020	1415 Request for transcript regarding a hearing held on 11/17/2020. The requested turn−around time is hourly. (Edmond, Michael)
11/17/2020	1416 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 8/31/2020, Fee: $1,86). (Hoffman, Juliana)
11/17/2020	1417 Certificate of service re: *1) Motion for Admission Pro Hac Vice of Hayley R. Winograd to Represent Highland Capital Management, L.P.; 2) Agreed Supplemental Order Regarding Deposit of Funds Into the Registry of the Court; and 3) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 Through August 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1360 Motion to appear pro hac vice for Hayley R. Winograd. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1365 Agreed supplemental order regarding deposit of funds into the registry of the court (RE: related document(s)821 Agreed order regarding deposit of funds into the registry of the Court.). Entered on 11/12/2020 (Okafor, M.), 1366 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 through August 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.), 853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Attachments: # 1 Exhibit A−−DSI Monthly Staffing Report for August 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/17/2020	1418 Witness and Exhibit List *(UBS's Witness and Exhibit List for November 20, 2020 Hearing)* filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1214 Motion for summary judgment, 1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)*). (Attachments: # 1 Exhibit 26 − 28 # 2 Exhibit 29 # 3 Exhibit 30 # 4 Exhibit AG30 # 5 Exhibit AG31 # 6 Exhibit AG32 − AG46) (Sosland, Martin)
11/17/2020	1419 Court admitted exhibits date of hearing November 17, 2020 (RE: related document(s)1281 Motion for leave − Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty., (COURT ADMITTED THE FOLLOWING EXHIBIT'S; PLAINTIFF'S PATRICK H. DAUGHERTY EXHIBIT'S #1 THROUGH #41 BY THOMAS UEBLER AND DEFENDANT DEBTOR'S EXHIBIT'S #A THROUGH #V & EXHIBIT'S #X1 & #X2 BY JOHN MORRIS) (Edmond, Michael) (Entered: 11/18/2020)
11/17/2020	1422 Hearing held on 11/17/2020. (RE: related document(s)1281 Motion for leave − Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 filed by Creditor Patrick Daugherty) (Appearances: T. Uebler, J. Christensen, and J. Kathman for P. Daugherty; J. Morris and J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Claim estimated for voting purposes at $9,134,019 for reasons stated on the record. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2020)

11/18/2020	1420 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from September 1, 2020 through September 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.), 853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
11/18/2020	1421 Withdrawal *[Notice of Withdrawal of Notice of Transfer of Claim From Debevoise & Plimpton LLP to Contrarian Funds, LLC]* Filed by Creditor Contrarian Funds LLC (related document(s)1380 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLC (US) (Amount $1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC). (Schneller, Douglas)
11/18/2020	1423 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1382 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 Exhibit X−1 # 24 Exhibit X−2) (Annable, Zachery)
11/18/2020	1424 Motion for leave *(Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery)
11/18/2020	1425 Motion for expedited hearing(related documents 1424 Motion for leave) *(Debtor's Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreement)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/18/2020	1426 Transcript regarding Hearing Held 11/17/2020 (90 pages) RE: Motion for Temporary Allowance of Claim (#1281). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/16/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1422 Hearing held on 11/17/2020. (RE: related document(s)1281 Motion for leave − Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 filed by Creditor Patrick Daugherty) (Appearances: T. Uebler, J. Christensen, and J. Kathman for P. Daugherty; J. Morris and J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Claim estimated for voting purposes at $9,134,019 for reasons stated on the record. Counsel to upload order.)). Transcript to be made available to the public on 02/16/2021. (Rehling, Kathy)
11/18/2020	1427 Certificate of service re: *Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from September 1, 2020 through September 30, 2020* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1420 Notice (generic)). (Annable, Zachery)
11/18/2020	1428 Certificate of service re: *Documents Served on or Before November 14, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1371 Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document 1360) Entered on 11/13/2020. (Ecker, C.), 1382 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related

	document(s)1281 Motion for leave − *Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018*). filed by Debtor Highland Capital Management, L.P., 1383 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1384 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement). filed by Debtor Highland Capital Management, L.P., 1385 Support/supplemental document *(Redline Comparison of Third Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1383 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1386 Support/supplemental document *(Redline Comparison of Disclosure Statement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1384 Disclosure statement). filed by Debtor Highland Capital Management, L.P., 1389 Notice *(Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1383 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan).). (Attachments: # 1 Exhibit A−−Form of Claimant Trust Agreement # 2 Exhibit B−−Form of New GP LLC Documents # 3 Exhibit C−−Form of Reorganized Limited Partnership Agreement # 4 Exhibit D−−Form of Litigation Sub−Trust Agreement # 5 Exhibit E−−Schedule of Retained Causes of Action # 6 Exhibit F−−Form of New Frontier Note # 7 Exhibit G−−Schedule of Employees # 8 Exhibit H−−Form of Senior Employee Stipulation) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/18/2020	1429 Expedited Motion to file document under seal.*(UBS's Expedited Motion for Leave to File Documents Under Seal With UBS's Witness and Exhibit List for November 20, 2020 Hearing)* Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
11/19/2020	1430 Order granting motion to seal documents regarding the RedeemerCommittee of the Highland Crusader Funds and Crusader Funds Reply Brief in Support of their Motion for Partial Summary Judgment and Joinder in the DebtorsMotion for Partial Summary Judgement on Proof of Claim Nos. 190 and 191 of UBS AG, LondonBranch and UBS Securities LLC.(related document # 1405) Entered on 11/19/2020. (Okafor, M.)
11/19/2020	1431 Order granting motion to seal documents regarding the RedeemerCommittee of the Crusader Fund and the Crusader Funds Objection and Joinder to Debtors Objection to UBS AG, London Branch and UBS Securities LLCs Motionfor Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of BankruptcyProcedure 3018 (related document # 1406) Entered on 11/19/2020. (Okafor, M.)
11/19/2020	1432 **SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS' OBJECTION AND JOINDER TO DEBTOR'S OBJECTION TO UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC'S MOTION FOR TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 3018 per court order** filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)1431 Order on motion to seal). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Platt, Mark)
11/19/2020	1433 **SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS AND THE CRUSADER FUNDS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTOR'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order** filed by Interested Party Redeemer Committee

	of the Highland Crusader Fund (RE: related document(s)1430 Order on motion to seal). (Attachments: # 1 Exhibit B) (Platt, Mark)
11/19/2020	1434 Notice of hearing *(Notice of Hearing on Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1424 Motion for leave *(Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1424, (Annable, Zachery)
11/19/2020	1435 Stipulation by Highland Capital Management, L.P. and MCS Capital, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1166 Assignment/Transfer of claim (Claims Agent)). (Annable, Zachery)
11/19/2020	1436 Order granting motion for expedited hearing (Related Doc# 1425)(document set for hearing: 1424 Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1424, Entered on 11/19/2020. (Okafor, M.)
11/19/2020	1437 Notice *(Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/19/2020	1438 Notice *(Reservation of Rights of UBS Regarding Debtor's Motion for Approval of the Debtor's Proposed Disclosure Statement and Certain Solicitation and Notice Procedures)* filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption), 1384 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement).). (Sosland, Martin)
11/19/2020	1439 WITHDRAWN per docket # 1622Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
11/19/2020	1440 Order granting motion to seal documents with UBSs Witness and Exhibit List for November 20, 2020 Hearing (related document # 1429) Entered on 11/19/2020. (Okafor, M.)
11/19/2020	1441 **SEALED document regarding: UBS's Witness and Exhibit List for November 20, 2020 Hearing per court order** filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1440 Order on motion to seal). (Attachments: # 1 Exhibit 26 # 2 Exhibit 27 # 3 Exhibit 28 # 4 Exhibit 30 # 5 Exhibit AG32 # 6 Exhibit AG33 # 7 Exhibit AG34 # 8 Exhibit AG35 # 9 Exhibit AG36 # 10 Exhibit AG37 # 11 Exhibit AG38 # 12 Exhibit AG39 # 13 Exhibit AG40 # 14 Exhibit AG41 # 15 Exhibit AG42 # 16 Exhibit AG43 # 17 Exhibit AG44 # 18 Exhibit AG45 # 19 Exhibit AG46) (Sosland, Martin)
11/19/2020	

	1442 Certificate of service re: *Documents Served on November 16, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1399 Notice *(Notice of Filing of Fourth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), 176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., 1400 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 1402 Reply to (related document(s): 1337 Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1403 Exhibit List *(Appendix of Exhibits to Debtor's Reply in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1402 Reply). filed by Debtor Highland Capital Management, L.P., 1404 Objection to (related document(s): 1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)* filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/19/2020	1443 Motion for expedited hearing(related documents 1439 Motion for leave) *(Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan)
11/20/2020	1444 Notice *(Revised Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1437 Notice *(Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P..). (Annable, Zachery)
11/20/2020	1445 Objection to disclosure statement (RE: related document(s)1384 Disclosure statement) filed by Creditor Patrick Daugherty. (Kathman, Jason)
11/20/2020	1446 Request for transcript regarding a hearing held on 11/20/2020. The requested turn−around time is hourly. (Edmond, Michael)
11/20/2020	1447 WITHDRAWN per # 1460 Response opposed to (related document(s): 1424 Motion for leave *(Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Bonds, John) Modified on 11/23/2020 (Ecker, C.).

11/20/2020	1448 Application for compensation *Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: $1,119,675.50, Expenses: $19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. (Pomerantz, Jeffrey)
11/20/2020	1449 Amended application for compensation *Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: $1,119,675.50, Expenses: $19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. (Pomerantz, Jeffrey)
11/20/2020	1450 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan). (Annable, Zachery)
11/20/2020	1451 Support/supplemental document *(Interim Redline of Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1450 Chapter 11 plan). (Annable, Zachery)
11/20/2020	1452 Support/supplemental document *(Cumulative Redline of Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1450 Chapter 11 plan). (Annable, Zachery)
11/20/2020	1453 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement). (Annable, Zachery)
11/20/2020	1454 Support/supplemental document *(Interim Redline of Disclosure Statement for the Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1453 Disclosure statement). (Annable, Zachery)
11/20/2020	1455 Support/supplemental document *(Cumulative Redline of Disclosure Statement for the Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1453 Disclosure statement). (Annable, Zachery)
11/20/2020	1456 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1369 Amended notice of appeal). Appellee designation due by 12/4/2020. (Sosland, Martin)
11/20/2020	1457 Certificate of service re: *(Supplemental) Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080

	Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P., 1322 Certificate of service re: *Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1301 Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)1264 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), 1302 Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document 1087) Entered on 10/28/2020. (Okafor, M.), 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
11/20/2020	1462 Hearing held on 11/20/2020. (RE: related document(s)1214 Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P., (RE: Related document(s) 928 Objection to claim filed by Debtor Highland Capital Management, L.P.,) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.) (Edmond, Michael) (Entered: 11/23/2020)
11/20/2020	1463 Hearing held on 11/20/2020. (RE: related document(s)1215 Redeemer Committee of the Highland Crusander Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) 933 Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.) (Edmond, Michael) (Entered: 11/23/2020)
11/20/2020	1464 Hearing held on 11/20/2020. (RE: related document(s)1338 Motion to allow claims (Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.,) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as follows: UBS shall have a voting claim estimated at $94.76 million. Counsel for UBS to submit an Order.) (Edmond, Michael) (Entered: 11/23/2020)

11/23/2020	1458 Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s)1456 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1369 Amended notice of appeal). Appellee designation due by 12/4/2020.) Responses due by 11/25/2020. (Blanco, J.)
11/23/2020	1459 Reply to (related document(s): 1447 Response filed by Interested Party James Dondero) *(Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/23/2020	1460 Withdrawal filed by Interested Party James Dondero (RE: related document(s)1447 Response). (Assink, Bryan)
11/23/2020	1461 Objection to (related document(s): 1443 Motion for expedited hearing(related documents 1439 Motion for leave) *(Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Co filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)*
11/23/2020	1465 Reply to (related document(s): 1461 Objection filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
11/23/2020	1466 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s)1347 Notice of appeal). Appellee designation due by 12/7/2020. (Assink, Bryan)
11/23/2020	1467 Notice of hearing filed by Interested Party James Dondero (RE: related document(s)1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1439, (Assink, Bryan)
11/23/2020	1468 Certificate of service re: *re: 1) WebEx Meeting Invitation to participate electronically in the hearing on Tuesday, November 20, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Debtors Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1413 Witness and Exhibit List *(Debtor's Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1214 Motion for summary judgment, 1215 Motion for summary judgment, 1338 Motion to allow claims*(Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)*). (Attachments: # 1 Exhibit 30) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/23/2020	1469 Certificate of service re: *1) Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements; and 2) Debtors Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter Into Sub−Servicer Agreement* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1424 Motion for leave *(Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital

	Management, L.P., 1425 Motion for expedited hearing(related documents 1424 Motion for leave) *(Debtor's Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreement)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/23/2020	1470 Certificate of service re: *Documents Served on November 19, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1434 Notice of hearing *(Notice of Hearing on Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1424 Motion for leave *(Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1424, filed by Debtor Highland Capital Management, L.P., 1435 Stipulation by Highland Capital Management, L.P. and MCS Capital, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1166 Assignment/Transfer of claim (Claims Agent)). filed by Debtor Highland Capital Management, L.P., 1436 Order granting motion for expedited hearing (Related Doc1425)(document set for hearing: 1424 Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1424, Entered on 11/19/2020. (Okafor, M.), 1437 Notice *(Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/23/2020	1478 Hearing held on 11/23/2020. (RE: related document(s)1424 Motion for leave (Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)
11/23/2020	1479 Hearing held on 11/23/2020. (RE: related document(s)1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement).) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Disclosure Statement approved as adequate. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)
11/23/2020	1480 Hearing held on 11/23/2020. (RE: related document(s)1108 Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)
11/24/2020	1471 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)1154 Motion for leave *to Amend Certain Proofs of Claim* Filed by Creditor The Dugaboy Investment Trust Objections due by 10/30/2020. (Attachments: # 1 Proposed

	Order)) Responses due by 12/8/2020. (Ecker, C.)
11/24/2020	1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan). (Annable, Zachery)
11/24/2020	1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement). (Annable, Zachery)
11/24/2020	1474 Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document # 1281) Entered on 11/24/2020. (Okafor, M.)
11/24/2020	1475 Order Granting Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements (related document # 1424) Entered on 11/24/2020. (Okafor, M.)
11/24/2020	1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)
11/24/2020	1477 Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s)1435 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)
11/25/2020	1481 Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s)1466 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s)1347 Notice of appeal). Appellee designation due by 12/7/2020.) Responses due by 12/2/2020. (Blanco, J.)
11/25/2020	1482 Transcript regarding Hearing Held 11/20/2020 (223 pages) RE: Motions for Partial Summary Judgment; Motion to Allow Claims for Voting Purposes. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/23/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1462 Hearing held on 11/20/2020. (RE: related document(s)1214 Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P., (RE: Related document(s) 928 Objection to claim filed by Debtor Highland Capital Management, L.P.,) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.), 1463 Hearing held on 11/20/2020. (RE: related document(s)1215 Redeemer Committee of the Highland Crusander Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) 933 Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.), 1464 Hearing held

	on 11/20/2020. (RE: related document(s)1338 Motion to allow claims (Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.,) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as follows: UBS shall have a voting claim estimated at $94.76 million. Counsel for UBS to submit an Order.)). Transcript to be made available to the public on 02/23/2021. (Rehling, Kathy)
11/25/2020	1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: $599,126.60, Expenses: $11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland)
11/25/2020	1484 Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1456 Appellant designation, Statement of issues on appeal). (Sosland, Martin)
11/25/2020	1485 Joint Motion to continue hearing on (related documents 1207 Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/26/2020	1486 BNC certificate of mailing − PDF document. (RE: related document(s)1474 Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document 1281) Entered on 11/24/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 11/26/2020. (Admin.)
11/26/2020	1487 BNC certificate of mailing − PDF document. (RE: related document(s)1477 Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s)1435 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 11/26/2020. (Admin.)
11/27/2020	1488 Certificate of service re: *Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from October 1, 2020 through October 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1449 Amended application for compensation *Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: $1,119,675.50, Expenses: $19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/30/2020	1489 Order granting motion to continue hearing on (related document # 1485) (related documents Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1207, Entered on 11/30/2020. (Ecker, C.)
11/30/2020	1490 Application for compensation *Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/1/2020 to 10/31/2020, Fee: $537,841.80, Expenses: $3,125.47. Filed by Objections due by 12/21/2020. (Hoffman, Juliana)
11/30/2020	

	1491 Motion for relief from stay Fee amount $181, Filed by Creditor Patrick Daugherty Objections due by 12/14/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion to Lift the Automatic Stay) (Kathman, Jason)
12/01/2020	1492 Clerk's correspondence requesting exhibits from attorney for plaintiff. (RE: related document(s)1484 Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1456 Appellant designation, Statement of issues on appeal).) Responses due by 12/14/2020. (Blanco, J.)
12/01/2020	1493 Debtor−in−possession monthly operating report for filing period October 1, 2020 to October 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/01/2020	1494 Notice of hearing *on Daugherty's Motion to Lift the Automatic Stay* filed by Creditor Patrick Daugherty (RE: related document(s)1491 Motion for relief from stay Fee amount $181, Filed by Creditor Patrick Daugherty Objections due by 12/14/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion to Lift the Automatic Stay)). Preliminary hearing to be held on 12/17/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Attachments: # 1 Creditor Matrix) (Kathman, Jason)
12/01/2020	1495 Certificate of service re: *1) Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements; and 2) Debtors Objection to Request for Emergency Hearing Filed by James Dondero [Docket No. 1443]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1459 Reply to (related document(s): 1447 Response filed by Interested Party James Dondero) *(Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1461 Objection to (related document(s): 1443 Motion for expedited hearing(related documents 1439 Motion for leave) *(Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Co filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
12/01/2020	1496 Certificate of service re: *1) Order Granting Patrick Hagaman Daughertys Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018; 2) Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter Into Sub−Servicer Agreements; and 3) Order Approving Stipulation Resolving Proof of Claim No. 148 Filed by Lynn Pinker Cox & Hurst, LLP* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1474 Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document 1281) Entered on 11/24/2020. (Okafor, M.), 1475 Order Granting Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements (related document 1424) Entered on 11/24/2020. (Okafor, M.), 1477 Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s)1435 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)
12/01/2020	1497 Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s)1466 Appellant designation, Statement of issues on appeal). (Assink, Bryan)
12/02/2020	Receipt of filing fee for Motion for relief from stay(19−34054−sgj11) [motion,mrlfsty] (181.00). Receipt number 28309234, amount $ 181.00 (re: Doc# 1491). (U.S. Treasury)
12/02/2020	

	1498 Notice of hearing filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: $599,126.60, Expenses: $11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland)). Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for 1483, (O'Neil, Holland)
12/02/2020	1499 Certificate of service re: *1) Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through October 31, 2020; and 2) Joint Motion to Continue Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: $599,126.60, Expenses: $11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 1485 Joint Motion to continue hearing on (related documents 1207 Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/03/2020	1500 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Katten Muchin Rosenman LLP (Claim No. 26, Amount $16,695.00) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) (Tanabe, Kesha)
12/03/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28312406, amount $ 26.00 (re: Doc# 1500). (U.S. Treasury)
12/03/2020	1501 Request for transcript regarding a hearing held on 11/23/2020. The requested turn−around time is hourly. (Edmond, Michael)
12/03/2020	1502 Stipulation by James Dondero and Highland Capital Management, L.P.. filed by Interested Party James Dondero (RE: related document(s)1179 Objection to claim). (Assink, Bryan)
12/03/2020	1503 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from October 1, 2020 through October 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring−Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.), 853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
12/03/2020	1504 Certificate of service re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from October 1, 2020 through October 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1503 Notice (generic)). (Annable, Zachery)
12/03/2020	

	1505 Certificate of service re: *Debtor's Notice of Affidavit of Publication of the Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm Plan; and (III) Related Important Dates in the New York Times* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)
12/03/2020	1506 Certificate of service re: *1) Order Granting Joint Motion to Continue Hearing; and 2) Twelfth Monthly Application of Sidley Austin for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2020 to and Including October 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1489 Order granting motion to continue hearing on (related document 1485) (related documents Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 1207, Entered on 11/30/2020. (Ecker, C.), 1490 Application for compensation *Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/1/2020 to 10/31/2020, Fee: $537,841.80, Expenses: $3,125.47. Filed by Objections due by 12/21/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/03/2020	1507 Transcript regarding Hearing Held 11/23/2020 (42 pages) RE: Disclosure Statement Hearing; Motion to Enter into Sub−Servicer Agreements; Motion for Order Shortening Time. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/3/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1478 Hearing held on 11/23/2020. (RE: related document(s)1424 Motion for leave (Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub−Servicer Agreements) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Counsel to upload order.), 1479 Hearing held on 11/23/2020. (RE: related document(s)1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement).) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Disclosure Statement approved as adequate. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.), 1480 Hearing held on 11/23/2020. (RE: related document(s)1108 Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.)). Transcript to be made available to the public on 03/3/2021. (Rehling, Kathy)
12/03/2020	

	1883 INCORRECT ENTRY − Agreed Notice of voluntary dismissal of appeals filed by Allied World Assurance Company (RE: related document(s)1347 Notice of appeal . Fee Amount $298 filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)). (Blanco, J.) Modified on 2/2/2021 (Blanco, J.). (Entered: 02/02/2021)
12/04/2020	1508 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Daniel Sheehan & Associates, PLLC (Claim No. 47, Amount $32,433.75) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
12/04/2020	1509 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Vengroff Williams Inc (American Arbitration Assoc (Claim No. 33, Amount $12,911.80) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
12/04/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28315512, amount $ 26.00 (re: Doc# 1508). (U.S. Treasury)
12/04/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28315512, amount $ 26.00 (re: Doc# 1509). (U.S. Treasury)
12/04/2020	1510 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 138 and 188 (RE: related document(s)1502 Stipulation filed by Interested Party James Dondero). Entered on 12/4/2020 (Ecker, C.)
12/04/2020	1511 Certificate of service re: *(Supplemental) Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P., 1322 Certificate of service re: *Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1301 Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)1264 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), 1302 Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP

	LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document 1087) Entered on 10/28/2020. (Okafor, M.), 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
12/07/2020	1512 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Foley Gardere, Foley Lardner LLP To Hain Capital Investors Master Fund, Ltd. Filed by Creditor Hain Capital Group, LLC. (Rapoport, Amanda)
12/07/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28320856, amount $ 26.00 (re: Doc# 1512). (U.S. Treasury)
12/07/2020	1513 Application for compensation *Twelfth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: $196,216.20, Expenses: $264.23. Filed by Attorney Juliana Hoffman Objections due by 12/28/2020. (Hoffman, Juliana)
12/07/2020	1514 Adversary case 20−03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Fee Amount $350 (Attachments: # 1 Adversary Cover Sheet). Nature(s) of suit: 72 (Injunctive relief − other). (Annable, Zachery)
12/07/2020	1515 Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party James Dondero (RE: related document(s)1466 Appellant designation, Statement of issues on appeal, 1497 Appellant designation, Statement of issues on appeal). (Assink, Bryan)
12/07/2020	1516 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1347 Notice of appeal, Modified LINKAGE AND TEXT on 3/12/2021 (Blanco, J.).
12/07/2020	1517 Appellee designation of contents for inclusion in record of appeal filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)1347 Notice of appeal). (Chiarello, Annmarie)
12/08/2020	1518 Order temporarily granting UBS' motion to allow claim number(s) (related document # 1338) Entered on 12/8/2020. (Ecker, C.)
12/08/2020	1519 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)1280 Motion for leave *to Amend Proof of Claim No. 77* Filed by Creditor Patrick Daugherty Objections due by 11/16/2020. (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Second Amended Proof of Claim)) Responses due by 12/22/2020. (Ecker, C.)
12/08/2020	1520 Application for compensation *(Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020)* for Hayward &

	Associates PLLC, Debtor's Attorney, Period: 8/1/2020 to 12/31/2020, Fee: $27,465.00, Expenses: $859.43. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−August 2020 Invoice) (Annable, Zachery)
12/08/2020	1521 Application for compensation *Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 11/1/2020 to 11/30/2020, Fee: $759,428.00, Expenses: $1,672.80. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/29/2020. (Pomerantz, Jeffrey)
12/08/2020	1522 INCORRECT EVENT: See # 1528 for correction. Motion to compel Temporary Restriction of Sales by Non−Debtors CLOs. Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Attachments: # 1 Affidavit # 2 Proposed Order) (Varshosaz, Artoush) Modified on 12/9/2020 (Ecker, C.).
12/08/2020	1523 Motion for expedited hearing(related documents 1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund. Modified linkage on 12/9/2020 (Ecker, C.).
12/08/2020	1528 Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non−debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund . (Ecker, C.) (Entered: 12/09/2020)
12/09/2020	1524 Joint Motion to continue hearing on (related documents 1207 Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/09/2020	1525 Request for transcript regarding a hearing held on 1/9/2020. The requested turn−around time is hourly. (Edmond, Michael)
12/09/2020	1526 Order granting partial summary judgment (related document # 1214) Entered on 12/9/2020. (Ecker, C.)
12/09/2020	1527 Order granting joint motion to continue hearing on (related document # 1524) (related documents Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*) Entered on 12/9/2020. (Ecker, C.)
12/09/2020	1529 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1179 Objection to claim). (Annable, Zachery)
12/09/2020	1530 Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s)1168 Order (generic)) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 12/30/2020. (Montgomery, Paige)
12/09/2020	1531 Application for compensation *(Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 9/1/2020 to 9/30/2020, Fee: $25,075.00, Expenses: $132.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A September 2020 Invoice) (Annable, Zachery)

12/09/2020	1532 Notice *(Notice of Stipulation Resolving Proof of Claim No. 164 Filed by Berkeley Research Group, LLC)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/10/2020	1533 Order granting motion to amend proof of claim #77 and to file supporting documents under seal. (related document # 1280) Entered on 12/10/2020. (Ecker, C.)
12/10/2020	1534 Order granting 1530 Motion to extend time. (Re: related document(s) 1530 Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s)1168 Order (generic))) Entered on 12/10/2020. (Ecker, C.)
12/10/2020	1535 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1207 Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1207, (Annable, Zachery)
12/10/2020	1536 Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)906 Objection to claim). (Annable, Zachery)
12/10/2020	1537 Order regarding objection to claim number(s) (RE: related document(s)1179 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)
12/10/2020	1538 Order approving stipulation resolving proof of claim #164 (RE: related document(s)1532 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)
12/10/2020	1539 Notice of hearing*on Motion Imposing Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non−Debotor CLO Vehicles* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1528 Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non−debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Ecker, C.)). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1528, (Varshosaz, Artoush)
12/10/2020	1540 Certificate of service re: *Twelfth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2020 to and Including October 31, 2020; and 2) Appellees Counter−Designation of Record on Appeal* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1513 Application for compensation *Twelfth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: $196,216.20, Expenses: $264.23. Filed by Attorney Juliana Hoffman Objections due by 12/28/2020. filed by Financial Advisor FTI Consulting, Inc., 1516 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1347 Notice of appeal, 1369 Amended notice of appeal). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/10/2020	1541 BNC certificate of mailing − PDF document. (RE: related document(s)1518 Order temporarily granting UBS' motion to allow claim number(s) (related document 1338) Entered on 12/8/2020. (Ecker, C.)) No. of Notices: 2. Notice Date 12/10/2020. (Admin.)
12/11/2020	

	1542 Support/supplemental document/*Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor* filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland)
12/11/2020	1543 Transcript regarding Hearing Held 01/09/2020 (91 pages) RE: Motion to Compromise Controversy (#281). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/11/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) Hearing held on 1/9/2020. (RE: related document(s)281 Motion to compromise controversy with Official Committee of Unsecured Creditors, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, I. Kharasch, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid and D. Tumi for Unsecured Creditors Committee; A. Chiarello and R. Patel for Asic; L. Lambert for UST; J. Bentley and J. Bain (both telephonically) for CLO and CDO Issuer Group; T. Mascherin and M. Hankin (telephonically) for Redeemer Committee; P. Maxcy (telephonically) for Jeffries. Evidentiary hearing. Motion granted. Counsel to upload appropriate form of order.)). Transcript to be made available to the public on 03/11/2021. (Rehling, Kathy)
12/11/2020	1544 Application for compensation *(First Interim Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: $206933.85, Expenses: $546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP (Hesse, Gregory)
12/11/2020	1545 Application for compensation *(Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: $82,325.00, Expenses: $1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A Invoices for July, August, and September 2020) (Annable, Zachery)
12/11/2020	1546 Objection to (related document(s): 1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2020	1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: $3,380,111.50, Expenses: $31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021. (Pomerantz, Jeffrey)
12/11/2020	1548 Notice to take deposition of James P. Seery, Jr. filed by Interested Party James Dondero. (Assink, Bryan)
12/11/2020	1549 Notice to take deposition of John Dubel filed by Interested Party James Dondero. (Assink, Bryan)
12/11/2020	1550 Notice to take deposition of Russell Nelms filed by Interested Party James Dondero. (Assink, Bryan)
12/11/2020	

	1551 Objection to (related document(s): 1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* filed by Interested Party James Dondero) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/11/2020	1552 Application for compensation *(Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020)* for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: $709,256.22, Expenses: $0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B) (Annable, Zachery)
12/11/2020	1553 Omnibus Notice of hearing *(Omnibus Notice of Hearing on Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1410 Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10., 1407 Certificate (generic))., 1416 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 8/31/2020, Fee: $1,86)., 1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: $599,126.60, Expenses: $11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland), 1542 Support/supplemental document*/Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor* filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland), 1544 Application for compensation *(First Interim Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: $206933.85, Expenses: $546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP, 1545 Application for compensation *(Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: $82,325.00, Expenses: $1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A––H&A Invoices for July, August, and September 2020), 1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: $3,380,111.50, Expenses: $31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021., 1552 Application for compensation *(Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020)* for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: $709,256.22, Expenses: $0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 1/6/2021 at 02:30 PM

	Dallas Judge Jernigan Ctrm for 1483 and for 1544 and for 1545 and for 1547 and for 1552 and for 1410 and for 1416 and for 1542, (Annable, Zachery)
12/11/2020	1554 Notice to take deposition of Dustin Norris filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2020	1555 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2020	1556 Certificate of service re: *1) Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020; and 2) Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1520 Application for compensation *(Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 8/1/2020 to 12/31/2020, Fee: $27,465.00, Expenses: $859.43. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−August 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, 1521 Application for compensation *Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 11/1/2020 to 11/30/2020, Fee: $759,428.00, Expenses: $1,672.80. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/29/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/11/2020	1557 Certificate of service re: *Documents Served on December 9, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1524 Joint Motion to continue hearing on (related documents 1207 Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1526 Order granting partial summary judgment (related document 1214) Entered on 12/9/2020. (Ecker, C.), 1527 Order granting joint motion to continue hearing on (related document 1524) (related documents Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*) Entered on 12/9/2020. (Ecker, C.), 1530 Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s)1168 Order (generic)) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 12/30/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, 1531 Application for compensation *(Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 9/1/2020 to 9/30/2020, Fee: $25,075.00, Expenses: $132.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A−−H&A September 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, 1532 Notice *(Notice of Stipulation Resolving Proof of Claim No. 164 Filed by Berkeley Research Group, LLC)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/11/2020	1639 Hearing set (RE: related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020., 1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 8/31/2020, Fee: $1,865,520.45, Expenses: $18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020.)

	Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for 1296 and for 1244, (Ellison, T.) (Entered: 12/29/2020)
12/12/2020	1558 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/13/2020	1559 WITHDRAWN per # 1622 Subpoena on Jean Paul Sevilla filed by Interested Party James Dondero. (Attachments: # 1 Ex. 1 − Sevilla Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/13/2020	1560 WITHDRAWN per # 1622 Subpoena on Russell Nelms filed by Interested Party James Dondero. (Attachments: # 1 Ex. 1 − Nelms Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/13/2020	1561 WITHDRAWN per # 1622 Subpoena on Fred Caruso filed by Interested Party James Dondero. (Attachments: # 1 Ex. 1 − Caruso Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/14/2020	1562 Order granting motion for expedited hearing (Related Doc# 1523)(document set for hearing: 1528 Generic motion) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1528, Entered on 12/14/2020. (Ecker, C.)
12/14/2020	1563 Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) (Assink, Bryan)
12/14/2020	1564 Motion to quash *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* (related documents 1559 Subpoena filed by Interested Party James Dondero, 1560 Subpoena filed by Interested Party James Dondero, 1561 Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	1565 Motion for protective order *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	1566 Notice to take deposition of James P. Seery, Jr. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)
12/14/2020	1567 Motion for expedited hearing(related documents 1564 Motion to quash, 1565 Motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	1568 Order approving stipulation and pre−trial schedule concerning Proof of Claim No. 146 filed by HCRE Partners, LLC (RE: related document(s)1536 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 12/14/2020 (Okafor, M.)
12/14/2020	1569 Objection to (related document(s): 1491 Motion for relief from stay Fee amount $181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/14/2020	1570 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Daugherty's Motion to Lift the Automatic Stay)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1569 Objection). (Attachments: # 1 Exhibit A #

	2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) (Annable, Zachery)
12/14/2020	1571 Objection to (related document(s): 1564 Motion to quash *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* (related documents 1559 Subpoena filed by Interested Party James Dondero, 1560 Subpoena file filed by Debtor Highland Capital Management, L.P., 1565 Motion for protective order *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
12/14/2020	1572 Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s)1491 Motion for relief from stay Fee amount $181,). (Attachments: # 1 Exhibit PHD−1 # 2 Exhibit PHD−2 # 3 Exhibit PHD−3 # 4 Exhibit PHD−4 # 5 Exhibit PHD−5 # 6 Exhibit PHD−6) (Kathman, Jason)
12/14/2020	1573 Witness and Exhibit List filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) (Varshosaz, Artoush)
12/14/2020	1574 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)*, 1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). (Annable, Zachery)
12/15/2020	1575 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1564 Motion to quash *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* (related documents 1559 Subpoena filed by Interested Party James Dondero, 1560 Subpoena filed by Interested Party James Dondero, 1561 Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P., 1565 Motion for protective order *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1564 and for 1565, (Annable, Zachery)
12/15/2020	1576 Order granting motion for expedited hearing (Related Doc# 1567)(document set for hearing: 1564 Motion to quash, 1565 Motion for protective order) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1564 and for 1565, Entered on 12/15/2020. (Okafor, M.)
12/15/2020	1577 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to October 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
12/15/2020	1578 Objection to (related document(s): 1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland

	Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A−1 # 2 Exhibit A−2 # 3 Exhibit A−3 # 4 Exhibit B−1 # 5 Exhibit B−2 # 6 Exhibit B−3 # 7 Exhibit C (Part 1) # 8 Exhibit C (Part 2) # 9 Exhibit C (Part 3) # 10 Exhibit D (Part 1) # 11 Exhibit D (Part 2) # 12 Exhibit D (Part 3) # 13 Exhibit E # 14 Exhibit F # 15 Exhibit G) (Annable, Zachery)
12/15/2020	1579 Amended Witness and Exhibit List *(Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on December 16, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1574 List (witness/exhibit/generic)). (Annable, Zachery)
12/15/2020	1580 Objection to (related document(s): 1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/15/2020	1581 INCORRECT ENTRY: See # 1580 for correction. Joinder to debtor's response to motion for order imposing temporary restrictions on debtor's ability to initial sales by non−debtor CLO vehicles filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1578 Objection). (Ecker, C.) Modified on 12/16/2020 (Ecker, C.). (Entered: 12/16/2020)
12/16/2020	1582 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: CVE Technologies Group Inc. (Amount $1,500.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
12/16/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28347173, amount $ 26.00 (re: Doc# 1582). (U.S. Treasury)
12/16/2020	1583 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)816 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 1/6/2021. (Annable, Zachery)
12/16/2020	1584 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1449 Amended application for compensation *Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)* for Jeffrey Nathan Pomer). (Pomerantz, Jeffrey)
12/16/2020	1585 Court admitted exhibits date of hearing December 16, 2020 (RE: related document(s)1528 Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non−debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund. (COURT ADMITTED EXHIBIT'S #A & #B BY JAMES WRIGHT) (Edmond, Michael)
12/16/2020	1586 Request for transcript regarding a hearing held on 12/16/2020. The requested turn−around time is hourly. (Edmond, Michael)
12/16/2020	1587 Certificate of service re: Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure filed by Debtor Highland Capital Management,

	L.P. (RE: related document(s)1583 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)816 Order on motion to extend/shorten time)). (Annable, Zachery)
12/16/2020	1588 Certificate of service re: *Documents Served on December 10, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1534 Order granting 1530 Motion to extend time. (Re: related document(s) 1530 Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s)1168 Order (generic))) Entered on 12/10/2020. (Ecker, C.), 1535 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1207 Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1207, filed by Debtor Highland Capital Management, L.P., 1536 Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)906 Objection to claim). filed by Debtor Highland Capital Management, L.P., 1537 Order regarding objection to claim number(s) (RE: related document(s)1179 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.), 1538 Order approving stipulation resolving proof of claim #164 (RE: related document(s)1532 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)). (Kass, Albert)
12/16/2020	1589 Certificate of service re: *Documents Served on or Before December 12, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1542 Support/supplemental document*/Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor* filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, 1544 Application for compensation *(First Interim Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: $206933.85, Expenses: $546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, 1545 Application for compensation *(Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: $82,325.00, Expenses: $1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A––H&A Invoices for July, August, and September 2020) filed by Other Professional Hayward & Associates PLLC, 1546 Objection to (related document(s): 1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: $3,380,111.50, Expenses: $31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021. filed by Debtor Highland Capital Management, L.P., 1551 Objection to (related document(s): 1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* filed by Interested Party James Dondero) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, 1552 Application for compensation *(Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of*

Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: $709,256.22, Expenses: $0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, 1553 Omnibus Notice of hearing *(Omnibus Notice of Hearing on Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1410 Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: $886,615.45, Expenses: $1,833.10., 1407 Certificate (generic))., 1416 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2020 to 8/31/2020, Fee: $1,86)., 1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: $599,126.60, Expenses: $11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland), 1542 Support/supplemental document*/Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor* filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland), 1544 Application for compensation *(First Interim Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: $206933.85, Expenses: $546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP, 1545 Application for compensation *(Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020)* for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: $82,325.00, Expenses: $1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A––H&A Invoices for July, August, and September 2020), 1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: $3,380,111.50, Expenses: $31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021., 1552 Application for compensation *(Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020)* for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: $709,256.22, Expenses: $0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for 1483 and for 1544 and for 1545 and for 1547 and for 1552 and for 1410 and for 1416 and for 1542, filed by Debtor Highland Capital Management, L.P., 1554 Notice to take deposition of Dustin Norris filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1555 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1558 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

12/16/2020	1596 Hearing held on 12/16/2020. (RE: related document(s)1528 Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non−debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wright for Movants; M. Clemente for UCC; R. Matsumura for HCLOF; J. Bain for CLO Issuers. Evidentiary hearing. Motion denied. Counsel to upload order.) (Edmond, Michael) (Entered: 12/18/2020)
12/16/2020	1597 Hearing held on 12/16/2020. (RE: related document(s)1564 Motion to quash (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) (related documents 1559 Subpoena filed by Interested Party James Dondero, 1560 Subpoena filed by Interested Party James Dondero, 1561 Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)
12/16/2020	1598 Hearing held on 12/16/2020. (RE: related document(s)1565 Motion for protective order (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)
12/16/2020	1599 Hearing held on 12/16/2020. (RE: related document(s)1439 Motion for leave (James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business) filed by Interested Party James Dondero.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Movant will withdraw this order. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)
12/17/2020	1590 Motion to pay *(Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery)
12/17/2020	1591 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Bates White LLC (Amount $90,855.70) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
12/17/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28350580, amount $ 26.00 (re: Doc# 1591). (U.S. Treasury)
12/17/2020	1592 Certificate of service re: *Documents Served on or Before December 16, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1564 Motion to quash *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* (related documents 1559 Subpoena filed by Interested Party James Dondero, 1560 Subpoena filed by Interested Party James Dondero, 1561 Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1565 Motion for protective order *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1567 Motion for expedited hearing(related documents 1564 Motion to quash, 1565 Motion for protective order) Filed by Debtor Highland Capital Management, L.P. filed by Debtor

	Highland Capital Management, L.P., 1568 Order approving stipulation and pre−trial schedule concerning Proof of Claim No. 146 filed by HCRE Partners, LLC (RE: related document(s)1536 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 12/14/2020 (Okafor, M.), 1569 Objection to (related document(s): 1491 Motion for relief from stay Fee amount $181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1570 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Daugherty's Motion to Lift the Automatic Stay)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1569 Objection). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) filed by Debtor Highland Capital Management, L.P., 1574 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)*, 1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/17/2020	1593 Certificate of service re: *Documents Served on December 15, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1575 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1564 Motion to quash *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* (related documents 1559 Subpoena filed by Interested Party James Dondero, 1560 Subpoena filed by Interested Party James Dondero, 1561 Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P., 1565 Motion for protective order *(Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1564 and for 1565, filed by Debtor Highland Capital Management, L.P., 1576 Order granting motion for expedited hearing (Related Doc1567)(document set for hearing: 1564 Motion to quash, 1565 Motion for protective order) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1564 and for 1565, Entered on 12/15/2020. (Okafor, M.), 1577 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to October 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 1578 Objection to (related document(s): 1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A−1 # 2 Exhibit A−2 # 3 Exhibit A−3 # 4 Exhibit B−1 # 5 Exhibit B−2 # 6 Exhibit B−3 # 7 Exhibit C (Part 1) # 8 Exhibit C (Part 2) # 9 Exhibit C (Part 3) # 10 Exhibit D (Part 1) # 11 Exhibit D (Part 2) # 12 Exhibit D (Part 3) # 13 Exhibit E # 14 Exhibit F # 15 Exhibit G) filed by Debtor Highland Capital Management, L.P., 1579 Amended Witness and Exhibit List *(Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on December 16, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1574 List (witness/exhibit/generic)). filed by Debtor Highland Capital Management, L.P., 1580 Objection to (related document(s): 1528 Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party

	NexPoint Strategic Opportunities Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/17/2020	1594 Adversary case 20−03195. Complaint by Official Committee of Unsecured Creditors against CLO Holdco, Ltd., Charitable DAF Holdco, Ltd., Charitable DAF Fund, LP, Highland Dallas Foundation, Inc., The Dugaboy Investment Trust, Grant James Scott III, James D. Dondero. Fee Amount $350. Nature(s) of suit: 13 (Recovery of money/property − 548 fraudulent transfer). 91 (Declaratory judgment). 72 (Injunctive relief − other). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Montgomery, Paige)
12/17/2020	1600 Hearing held on 12/17/2020. (RE: related document(s)1491 Motion for relief from stay filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman. J. Pomerantz and J. Morris for debtor. Motion denied.) (Edmond, Michael) (Entered: 12/18/2020)
12/18/2020	1595 Notice of Appearance and Request for Notice *with Certificate of Service* by Douglas S. Draper filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
12/18/2020	1601 Request for transcript regarding a hearing held on 12/17/2020. The requested turn−around time is daily. (Edmond, Michael)
12/18/2020	1602 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1590 Motion to pay *(Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1590, (Annable, Zachery)
12/18/2020	1603 Order resolving motions and adjourning evidentiary hearing (RE: related document(s)1439 Motion for leave filed by Interested Party James Dondero). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1439, Entered on 12/18/2020 (Ecker, C.)
12/18/2020	1604 Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (O'Neil, Holland)
12/18/2020	1605 Order denying motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non−debtor CLO Vehicles (related document # 1528) Entered on 12/18/2020. (Okafor, M.)
12/18/2020	1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation) (Annable, Zachery)
12/18/2020	1607 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1439, (Annable, Zachery)

12/18/2020	1608 Certificate of service re: *(Supplemental) Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1322 Certificate of service re: *Documents Served on October 28, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1300 Notice of hearing *(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1289 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1289, filed by Debtor Highland Capital Management, L.P., 1301 Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)1264 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), 1302 Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document 1087) Entered on 10/28/2020. (Okafor, M.), 1309 Amended Notice of hearing *(Second Amended Notice of Hearing)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1108 Motion for leave *(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)* (related document(s) 1079 Chapter 11 plan, 1080 Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1−−Proposed Order # 2 Exhibit 1−A−−Forms of Ballots # 3 Exhibit 1−B−−Notice of Confirmation Hearing # 4 Exhibit 1−C−−Notice of Non−Voting Status # 5 Exhibit 1−D−−Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for 1108, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
12/19/2020	1609 Transcript regarding Hearing Held 12/17/2020 (38 pages) RE: Motion for Relief from Stay (#1491). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1600 Hearing held on 12/17/2020. (RE: related document(s)1491 Motion for relief from stay filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman. J. Pomerantz and J. Morris for debtor. Motion denied.)). Transcript to be made available to the public on 03/19/2021. (Rehling, Kathy)
12/19/2020	1610 Transcript regarding Hearing Held 12/16/2020 (66 pages) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1596 Hearing held on 12/16/2020. (RE: related document(s)1528 Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non−debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wright for Movants; M. Clemente for UCC; R. Matsumura for HCLOF; J. Bain for CLO Issuers. Evidentiary

	hearing. Motion denied. Counsel to upload order.), 1597 Hearing held on 12/16/2020. (RE: related document(s)1564 Motion to quash (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) (related documents 1559 Subpoena filed by Interested Party James Dondero, 1560 Subpoena filed by Interested Party James Dondero, 1561 Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.), 1598 Hearing held on 12/16/2020. (RE: related document(s)1565 Motion for protective order (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.), 1599 Hearing held on 12/16/2020. (RE: related document(s)1439 Motion for leave (James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business) filed by Interested Party James Dondero.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Movant will withdraw this order. Counsel to upload agreed order.)). Transcript to be made available to the public on 03/19/2021. (Rehling, Kathy)
12/19/2020	1611 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1340 Application for compensation *Eleventh Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: $170,859.60, Expenses: $806.60.). (Hoffman, Juliana)
12/21/2020	1612 Order denying motion for relief from stay by Creditor Patrick Daugherty (related document # 1491) Entered on 12/21/2020. (Okafor, M.)
12/21/2020	1613 Certificate of service re: *re: 1) Instructions for any counsel and parties who wish to participate in the Hearing; 2) Joinder of the Official Committee of Unsecured Creditors to Debtor's Response to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non−Debtor CLO Vehicles; and 3) Debtors Motion Pursuant to the Protocols for Authority for Highland and Multi* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1581 INCORRECT ENTRY: See 1580 for correction. Joinder to debtor's response to motion for order imposing temporary restrictions on debtor's ability to initial sales by non−debtor CLO vehicles filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1578 Objection). (Ecker, C.) Modified on 12/16/2020 (Ecker, C.). filed by Creditor Committee Official Committee of Unsecured Creditors, 1590 Motion to pay *(Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/22/2020	1614 Notice *(Notice of Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/22/2020	1615 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1490 Application for compensation *Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/1/2020 to 10/31/2020, Fee: $). (Hoffman, Juliana)
12/22/2020	1616 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1283 Application for compensation *Eleventh Monthly Application for Compensation and Reimbursement of Expenses* for Official

	Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 9/30/2020, Fee: $356,889.96, Expenses: &#03). (Hoffman, Juliana)
12/23/2020	1617 Order approving stipulation resolving Proof of Claim No. 99 filed by Hunton Andrews Kurth LLP (RE: related document(s)1614 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2020 (Okafor, M.)
12/23/2020	1618 Notice *(Notice of Filing of Fifth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
12/23/2020	1619 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
12/23/2020	1620 Motion to appear pro hac vice for A. Lee Hogewood. Fee Amount $100 Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Varshosaz, Artoush)
12/23/2020	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28366971, amount $ 100.00 (re: Doc# 1620). (U.S. Treasury)
12/23/2020	1621 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
12/23/2020	1622 Withdrawal *(Notice of Withdrawal of James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business and Related Notices of Subpoena)* filed by Interested Party James Dondero (RE: related document(s)1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)*). (Assink, Bryan)
12/23/2020	1623 Motion to extend time to assume unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order) (Hayward, Melissa)
12/23/2020	1624 Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order) (Hayward, Melissa)
12/23/2020	1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)

12/23/2020	1626 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625, (Annable, Zachery)
12/23/2020	1627 Certificate of service re: *Documents Served on December 18, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1602 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1590 Motion to pay *(Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1590, filed by Debtor Highland Capital Management, L.P., 1603 Order resolving motions and adjourning evidentiary hearing (RE: related document(s)1439 Motion for leave filed by Interested Party James Dondero). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1439, Entered on 12/18/2020 (Ecker, C.), 1605 Order denying motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non−debtor CLO Vehicles (related document 1528) Entered on 12/18/2020. (Okafor, M.), 1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation) filed by Debtor Highland Capital Management, L.P., 1607 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1439 Motion for leave *(James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business)* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1439, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/23/2020	1628 Certificate of service re: *Order Denying Patrick Daughertys Motion to Lift the Automatic Stay* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1612 Order denying motion for relief from stay by Creditor Patrick Daugherty (related document 1491) Entered on 12/21/2020. (Okafor, M.) filed by Creditor Patrick Daugherty). (Kass, Albert)
12/23/2020	1629 Certificate of service re: *Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1614 Notice *(Notice of Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/23/2020	1630 Certificate of service re: *Solicitation Materials Served on or Before December 2, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement). filed by Debtor Highland Capital Management, L.P., 1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)

12/24/2020	1631 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) (Annable, Zachery)
12/24/2020	1632 Application for compensation *Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/1/2020 to 11/30/2020, Fee: $401,659.92, Expenses: $3,643.80. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. (Hoffman, Juliana)
12/24/2020	1633 Application for compensation *Thirteenth Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: $201,148.56, Expenses: $408.64. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. (Hoffman, Juliana)
12/24/2020	1634 Support/supplemental document *(Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Annable, Zachery)
12/26/2020	1635 Declaration re: *Supplemental Declaration of Matthew Clemente* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)206 Amended Application to employ Sidley Austin LLP as Attorney *APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T). (Hoffman, Juliana)*
12/28/2020	1636 Agreed order granting 1623 Motion to extend deadline to assume unexpired nonresidential real property lease and setting motion to assume for hearing at confirmation. Entered on 12/28/2020. (Okafor, M.)
12/28/2020	1637 Certificate of service re: *(Supplemental) Solicitation Materials Served on or Before December 2, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1630 Certificate of service re: *Solicitation Materials Served on or Before December 2, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement). filed by Debtor Highland Capital Management, L.P., 1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
12/28/2020	1638 Certificate of service re: *Documents Served on December 23, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1617 Order approving stipulation resolving Proof of Claim No. 99 filed by Hunton Andrews Kurth LLP (RE:

	related document(s)1614 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2020 (Okafor, M.), 1618 Notice *(Notice of Filing of Fifth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., 1619 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 1621 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 1623 Motion to extend time to assume unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/29/2020	1640 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1513 Application for compensation *Twelfth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: $196,216.20, Expenses: $264.23.). (Hoffman, Juliana)
12/30/2020	1641 Order granting motion to appear pro hac vice adding A. Lee Hogewood, III for Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (related document # 1620) Entered on 12/30/2020. (Okafor, M.)
12/30/2020	1642 Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)1520 Application for compensation *(Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020)* for Hayward & Ass). (Annable, Zachery)
12/30/2020	1643 Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Attachments: # 1 Proposed Order) (Smith, Frances)
12/30/2020	1644 Notice of Appearance and Request for Notice by Frances Anne Smith filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Smith, Frances)
12/30/2020	1645 Certificate of service re: Senior Employees Agreed Motion to Withdraw and Substitute Counsel of Record and Notice of Appearance filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1643 Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau, 1644 Notice of appearance and request for notice). (Smith, Frances)
12/30/2020	1646 Certificate of service re: *Documents Served on or Before December 24, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management,

	L.P., 1626 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625, filed by Debtor Highland Capital Management, L.P., 1631 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) filed by Debtor Highland Capital Management, L.P., 1632 Application for compensation *Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/1/2020 to 11/30/2020, Fee: $401,659.92, Expenses: $3,643.80. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 1633 Application for compensation *Thirteenth Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: $201,148.56, Expenses: $408.64. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. filed by Financial Advisor FTI Consulting, Inc., 1634 Support/supplemental document *(Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/30/2020	1647 Certificate of service re: *1) Supplemental Declaration of Matthew Clemente in Support of Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors; and 2) Agreed Order Extending Deadline to Assume Unexpired Nonresidential Real Property Lease and Setting Motion to Assume for Hearing at Confirmation* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1635 Declaration re: *Supplemental Declaration of Matthew Clemente* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)206 Amended Application to employ Sidley Austin LLP as Attorney *APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T). filed by Creditor Committee Official Committee of Unsecured Creditors, 1636 Agreed order granting 1623 Motion to extend deadline to assume unexpired nonresidential real property lease and setting motion to assume for hearing at confirmation. Entered on 12/28/2020. (Okafor, M.)). (Kass, Albert)*
12/30/2020	1648 Notice *(Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
12/31/2020	

	1649 Joint Motion to continue hearing on (related documents 1207 Motion to allow claims) Filed by Creditor HarbourVest et al (Attachments: # 1 Proposed Order) (Driver, Vickie)
12/31/2020	1650 Witness and Exhibit List filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) (O'Neil, Holland)
12/31/2020	1651 Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)1531 Application for compensation *(Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward & Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020)* for Hayward). (Annable, Zachery)
12/31/2020	1652 Order granting motion to continue hearing on (related document # 1649) (related documents Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan*) Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1207, Entered on 12/31/2020. (Okafor, M.)
12/31/2020	1653 Certificate of service re: *(Supplemental) Solicitation Materials Served on or Before December 2, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.), 1630 Certificate of service re: *Solicitation Materials Served on or Before December 2, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement). filed by Debtor Highland Capital Management, L.P., 1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
01/04/2021	1654 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1521 Application for compensation *Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020* for J). (Pomerantz, Jeffrey)
01/04/2021	1655 Application for compensation *Fourth Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: $710,280.45, Expenses: $1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021. (Hoffman, Juliana)
01/04/2021	1656 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by

	Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit L−−Amended Schedule of Retained Causes of Action # 2 Exhibit M−−Amended Form of Claimant Trust Agreement # 3 Exhibit N−−Redline of Form of Claimant Trust Agreement # 4 Exhibit O−−Amended Form of Litigation Trust Agreement # 5 Exhibit P−−Redline of Form of Litigation Trust Agreement) (Annable, Zachery)
01/05/2021	1657 Notice of Appearance and Request for Notice by Daniel P. Winikka filed by Interested Parties Brad Borud, Jack Yang. (Winikka, Daniel)
01/05/2021	1658 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: ACA Compliance Group (Amount $26,324.25) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
01/05/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28389049, amount $ 26.00 (re: Doc# 1658). (U.S. Treasury)
01/05/2021	1659 Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s)1545 Application for compensation *(Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020)* for Hayward & Associates PLLC, Debtor's Att). (Annable, Zachery)
01/05/2021	1660 Notice *(Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/05/2021	1661 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Party James Dondero. (Clarke, James)
01/05/2021	1662 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County. (Spindler, Laurie)
01/05/2021	1663 Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)1544 Application for compensation *(First Interim Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: $206933.85, Expenses: $546.52.). (Annable, Zachery)
01/05/2021	1664 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30,). (Annable, Zachery)*
01/05/2021	1665 Certificate of No Objection filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (RE: related document(s)1552 Application for compensation *(Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for). (Annable, Zachery)*
01/05/2021	1666 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang. (Winikka, Daniel)
01/05/2021	1667 Objection to confirmation of plan*with Certificate of Service* (RE: related document(s)1472 Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)

01/05/2021	1668 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor United States (IRS). (Adams, David)
01/05/2021	1669 WITHDRAWN per # 1845. Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Smith, Frances) MODIFIED on 1/27/2021 (Ecker, C.).
01/05/2021	1670 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # 1 Exhibit A) (Rukavina, Davor)
01/05/2021	1671 Trustee's Objection to *Fifth Amended Plan* (RE: related document(s)1472 Chapter 11 plan) (Lambert, Lisa)
01/05/2021	1672 Certificate of service re: Senior Employees' Objection to Debtor's Fifth Amended Plan of Reorganization filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1669 Objection to confirmation of plan). (Smith, Frances)
01/05/2021	1673 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
01/05/2021	1674 Joinder by *Kauffman, Travers and Deadman to Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization* filed by Paul Kauffman, Todd Travers, Davis Deadman (RE: related document(s)1472 Chapter 11 plan, 1666 Objection to confirmation of plan). (Kathman, Jason)
01/05/2021	1675 Joinder by *[Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Dkt. No. 1670] and Supplemental Objection to Plan Confirmation]* filed by Creditor CLO Holdco, Ltd. (RE: related document(s)1670 Objection to confirmation of plan). (Kane, John)
01/05/2021	1676 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank. (Drawhorn, Lauren)
01/05/2021	1677 Joinder by *NexPoint RE Entities to Objection to Confirmation of Fifth Amended Plan of Reorganization* filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc. (RE: related document(s)1670 Objection to confirmation of plan). (Drawhorn, Lauren)
01/05/2021	1678 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor Patrick Daugherty. (Kathman, Jason)
01/05/2021	

	1679 Joinder by *Kauffman, Travers and Deadman to Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization (Amended)* filed by Davis Deadman, Paul Kauffman, Todd Travers (RE: related document(s)1472 Chapter 11 plan, 1666 Objection to confirmation of plan). (Kathman, Jason)
01/05/2021	1680 Motion to appear pro hac vice for Debra Dandenau. Fee Amount $100 Filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, and Thomas Surgent (Soderlund, Eric) Modified to correct party filers on 12/7/2021 (Tello, Chris).
01/05/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28390902, amount $ 100.00 (re: Doc# 1680). (U.S. Treasury)
01/06/2021	1681 Motion to appear pro hac vice for Douglas S. Draper. Fee Amount $100 Filed by Get Good Trust, The Dugaboy Investment Trust (Draper, Douglas)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28393061, amount $ 100.00 (re: Doc# 1681). (U.S. Treasury)
01/06/2021	1682 Motion to appear pro hac vice for Leslie A. Collins. Fee Amount $100 Filed by Get Good Trust, The Dugaboy Investment Trust (Draper, Douglas)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28393082, amount $ 100.00 (re: Doc# 1682). (U.S. Treasury)
01/06/2021	1683 Motion to appear pro hac vice for Greta M. Brouphy. Fee Amount $100 Filed by Get Good Trust, The Dugaboy Investment Trust (Brouphy, Greta)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28393123, amount $ 100.00 (re: Doc# 1683). (U.S. Treasury)
01/06/2021	1684 Order granting third interim fee application for compensation (related document # 1296) granting for Official Committee of Unsecured Creditors, fees awarded: $1865520.45, expenses awarded: $18678.47 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	1685 Order granting third interim application for compensation (related document # 1244) granting for FTI Consulting, Inc., fees awarded: $886615.45, expenses awarded: $1833.10 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	1686 Order granting first interim application for compensation (related document # 1544) granting for Hunton Andrews Kurth LLP, fees awarded: $206933.85, expenses awarded: $546.52 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	1687 Order granting third interim application for compensation (related document # 1547) granting for Jeffrey Nathan Pomerantz, fees awarded: $3380111.5, expenses awarded: $31940.33 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	1688 Second Agreed Order regarding deposit of funds into the registry of the court (RE: related document(s) 1365 Agreed Supplemental Order re: 474 Motion for authority to apply and disburse funds filed by Debtor Highland Capital Management, L.P., 1365 Order (generic)). Entered on 1/6/2021 (Okafor, M.)
01/06/2021	1689 Motion to appear pro hac vice for Warren Horn. Fee Amount $100 Filed by Get Good Trust, The Dugaboy Investment Trust (Horn, Warren)

01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28393995, amount $ 100.00 (re: Doc# 1689). (U.S. Treasury)
01/06/2021	1690 Order granting motion to appear pro hac vice adding Debra A. Dandeneau for Frank Waterhouse, Scott B. Ellington, Isaac Leventon and Thomas Surgent (related document 1680) Entered on 1/6/2021. (Okafor, M.) Modified to correct parties on 12/7/2021 (Tello, Chris).
01/06/2021	1691 Order granting third and final application for compensation (related document 1483) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: $617654.60, expenses awarded: $11433.73 Entered on 1/6/2021. (Okafor, M.) Modified to correct text on 1/29/2021 (Ecker, C.).
01/06/2021	1692 Adversary case 21−03000. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., CLO Holdco, Ltd.. Fee Amount $350 (Attachments: # 1 Adversary Proceeding Cover Sheet). Nature(s) of suit: 91 (Declaratory judgment). 72 (Injunctive relief − other). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Annable, Zachery)
01/06/2021	1693 Subpoena on Highland Capital Management, L.P. filed by Interested Party James Dondero. (Attachments: # 1 Ex. 1 − Subpoena with Document Requests) (Assink, Bryan)
01/06/2021	1694 Subpoena on Kurtzman Carson Consultants LLC filed by Interested Party James Dondero. (Attachments: # 1 Ex. 1 − Subpoena with Document Requests) (Assink, Bryan)
01/06/2021	1695 Certificate of service re: *1) WebEx Meeting Invitation to participate electronically in the hearing on Wednesday, December 16, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Foley & Lardner LLP's Witness and Exhibit List for Final Fee Application* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1650 Witness and Exhibit List filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP). (Kass, Albert)
01/06/2021	1696 Certificate of service re: *1) Fourth Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from September 1, 2020 Through and Including November 30, 2020; and 2) Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1655 Application for compensation *Fourth Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: $710,280.45, Expenses: $1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021. filed by Financial Advisor FTI Consulting, Inc., 1656 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit L−−Amended Schedule of Retained Causes of Action # 2 Exhibit M−−Amended Form of Claimant Trust Agreement # 3 Exhibit N−−Redline of Form of Claimant Trust Agreement # 4 Exhibit O−−Amended Form of Litigation Trust Agreement # 5 Exhibit P−−Redline of Form of Litigation Trust Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

01/06/2021	1697 Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
01/07/2021	1698 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1583 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)816 Order on motion to extend/shorten time)). (Annable, Zachery)
01/07/2021	1699 Certificate of service re: Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1648 Notice (generic)). (Annable, Zachery)
01/07/2021	1700 Certificate of service re: Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1648 Notice (generic)). (Annable, Zachery)
01/07/2021	1701 Order granting motion to appear pro hac vice adding Douglas S. Draper for Get Good Trust and The Dugaboy Investment Trust (related document 1681) Entered on 1/7/2021. (Okafor, M.) Modified to add party on 1/7/2021 (Okafor, M.).
01/07/2021	1702 Order granting motion to appear pro hac vice adding Leslie A. Collins for Get Good Trust and The Dugaboy Investment Trust (related document # 1682) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	1703 Order granting motion to appear pro hac vice adding Greta M. Brouphy for Get Good Trust and The Dugaboy Investment Trust (related document # 1683) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	1704 Order granting motion to appear pro hac vice adding Warren Horn for Get Good Trust and The Dugaboy Investment Trust (related document # 1689) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	1705 Notice to take deposition of Michael Pugatch filed by Interested Party James Dondero. (Assink, Bryan)
01/08/2021	1706 Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.)*Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certficate of Service* filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
01/08/2021	1707 Objection to (related document(s): 1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
01/08/2021	1708 **SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF,**

	including Harbourvest, the Debtor, and CLO Holdco − Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/08/2021	1709 Notice *(Notice of Filing of Certificate of Service Regarding Letter Dated January 7, 2021 to Highland Capital Management Services, Inc. from James P. Seery, Jr. Regarding Demand on Promissory Note)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/08/2021	1710 Debtor−in−possession monthly operating report for filing period November 1, 2020 to November 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/08/2021	1711 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to November 30, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
01/08/2021	1712 Certificate of service re: *Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1660 Notice *(Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/08/2021	1713 BNC certificate of mailing − PDF document. (RE: related document(s)1690 Order granting motion to appear pro hac vice adding Debra A. Dandeneau for FTI Consulting, Inc. and Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document 1680) Entered on 1/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 01/08/2021. (Admin.)
01/09/2021	1714 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625, (Annable, Zachery)
01/11/2021	1715 Order granting application for compensation (related document # 1552) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: $709256.22, expenses awarded: $0.0 Entered on 1/11/2021. (Ecker, C.)
01/11/2021	1716 Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Kane, John)
01/11/2021	1717 **SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed**

	Protective Order] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/11/2021	1718 Amended Notice of hearing *(Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
01/11/2021	1719 Notice *(Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/11/2021	1720 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1207 Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1207, (Annable, Zachery)
01/11/2021	1721 Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # 1 Dondero Ex. A − POCs # 2 Dondero Ex. B # 3 Dondero Ex. C # 4 Dondero Ex. D # 5 Dondero Ex. E # 6 Dondero Ex. F # 7 Dondero Ex. G # 8 Ex. H − M) (Assink, Bryan)
01/11/2021	1722 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Annable, Zachery)
01/11/2021	1723 Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Driver, Vickie)
01/11/2021	1724 Certificate of service re: *Documents Served on January 6, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1684 Order granting third interim fee application for compensation (related document 1296) granting for Official Committee of Unsecured Creditors, fees awarded: $1865520.45, expenses awarded: $18678.47 Entered on 1/6/2021. (Okafor, M.), 1685 Order granting third interim application for compensation (related document 1244) granting for FTI Consulting, Inc., fees awarded: $886615.45, expenses awarded: $1833.10 Entered on 1/6/2021. (Okafor, M.), 1686 Order granting first interim application for compensation (related document 1544) granting for Hunton Andrews Kurth LLP, fees awarded: $206933.85, expenses awarded: $546.52 Entered on 1/6/2021. (Okafor, M.), 1687 Order granting third interim application for compensation (related document 1547) granting for Jeffrey Nathan Pomerantz, fees awarded: $3380111.5, expenses awarded: $31940.33 Entered on 1/6/2021. (Okafor, M.),

	1688 Second Agreed Order regarding deposit of funds into the registry of the court (RE: related document(s) 1365 Agreed Supplemental Order re: 474 Motion for authority to apply and disburse funds filed by Debtor Highland Capital Management, L.P., 1365 Order (generic)). Entered on 1/6/2021 (Okafor, M.), 1691 Order granting first and final application for compensation (related document 1483) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: $617654.60, expenses awarded: $11433.73 Entered on 1/6/2021. (Okafor, M.)). (Kass, Albert)
01/12/2021	1725 Order further extending period within which the Debtor may remove actions 1583 Motion to extend time. (Re: related document(s) 1583 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)816 Order on motion to extend/shorten time)) Entered on 1/12/2021. (Ecker, C.)
01/12/2021	1726 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1722 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 Exhibit W # 24 Exhibit X # 25 Exhibit DD) (Annable, Zachery)
01/13/2021	1727 Certificate of service re: Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to November 30, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1711 Notice (generic)). (Annable, Zachery)
01/13/2021	1728 Order granting application for compensation (related document # 1545) granting for Hayward & Associates PLLC, fees awarded: $82325.00, expenses awarded: $1972.63 Entered on 1/13/2021. (Ecker, C.)
01/13/2021	1729 Certificate of service re: Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the Fifth Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of the Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1476 Order approving disclosure statement). (Annable, Zachery)
01/13/2021	1730 Certificate of service re: Order Further Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1725 Order on motion to extend/shorten time). (Annable, Zachery)
01/13/2021	1731 Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/13/2021	1732 Amended Witness and Exhibit List *(Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1722 List (witness/exhibit/generic), 1726 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit EE) (Annable, Zachery)
01/13/2021	1733 Expedited Motion to file document under seal./*Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith* Filed by Creditor HarbourVest et al (Attachments: # 1 Exhibit A − Proposed Order) (Driver, Vickie)

01/13/2021	1734 Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) */HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith* filed by Creditor HarbourVest et al. (Driver, Vickie)
01/13/2021	1735 Support/supplemental document */Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith* filed by Creditor HarbourVest et al (RE: related document(s)1734 Reply). (Driver, Vickie)
01/13/2021	1736 Emergency Motion to file document under seal.*(Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A––Proposed Order) (Annable, Zachery)
01/14/2021	1737 Order granting motion to seal exhibits (related document # 1736) Entered on 1/14/2021. (Ecker, C.)
01/14/2021	1738 **SEALED document regarding: Exhibit A––Members Agreement per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal). (Annable, Zachery)
01/14/2021	1739 **SEALED document regarding: Exhibit B––Articles of Incorporation per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal). (Annable, Zachery)
01/14/2021	1740 **SEALED document regarding: Exhibit C––Offering Memorandum per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal). (Annable, Zachery)
01/14/2021	1741 Notice *(Notice of Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/14/2021	1742 Exhibit List *(Supplemental Exhibit List)* filed by Interested Party James Dondero (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # 1 Dondero Ex. N) (Assink, Bryan)
01/14/2021	1743 Declaration re: *Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors* filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)336 Order on application to employ). (Hoffman, Juliana)
01/14/2021	1744 Declaration re: *(Supplemental Declaration of Marc D. Katz)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)268 Declaration). (Annable, Zachery)
01/14/2021	1745 Motion to appoint trustee*Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)* Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # 1 Proposed Order) (Draper, Douglas)

01/14/2021	1752 INCORRECT Entry: Original entry at # [1745 is correct} Motion to Appoint Examiner pursuant to 11 U.S.C. § 1104(c) by Get Good Trust , The Dugaboy Investment Trust . (Ecker, C.) Modified on 1/15/2021 (Ecker, C.). (Entered: 01/15/2021)
01/14/2021	1753 Hearing held on 1/14/2021. (RE: related document(s)1590 Motion to pay Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) filed by Debtor Highland Capital Management, L.P. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Nonevidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	1754 Hearing held on 1/14/2021. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	1755 Hearing held on 1/14/2021. (RE: related document(s)1207 Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion resolved by approval of compromise and settlement. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	1782 Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON) (Edmond, Michael) (Entered: 01/20/2021)
01/15/2021	1746 Order granting motion to pay (related document # 1590) Entered on 1/15/2021. (Ecker, C.)
01/15/2021	1747 Order (RE: related document(s)1741 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.)
01/15/2021	1748 Motion for expedited hearing(related documents 1745 Motion to appoint trustee) Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # 1 Proposed Order) (Draper, Douglas)
01/15/2021	1749 Notice *(Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P.

	(RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/15/2021	1750 Request for transcript regarding a hearing held on 1/14/2021. The requested turn−around time is hourly (Green, Shanette)
01/15/2021	1751 Supplemental Certificate of service re: filed by Creditors The Dugaboy Investment Trust, Get Good Trust (RE: related document(s)1745 Motion to appoint trustee*Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)*, 1748 Motion for expedited hearing(related documents 1745 Motion to appoint trustee)). (Draper, Douglas) Modified on 1/15/2021 (Rielly, Bill).
01/15/2021	1756 Joinder by filed by Interested Party James Dondero (RE: related document(s)1745 Motion to appoint trustee*Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)*). (Assink, Bryan)
01/15/2021	1757 Notice *of Increase in Hourly Rates for Pachulski Stang Ziehl & Jones LLP Effective as of January 1, 2021* filed by Debtor Highland Capital Management, L.P.. (Pomerantz, Jeffrey)
01/15/2021	1758 Certificate No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1632 Application for compensation *Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/1/2020 to 11/30/2020, Fee: &#0). (Hoffman, Juliana)
01/15/2021	1759 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1633 Application for compensation *Thirteenth Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: $201,148.56, Expenses: $408.64.). (Hoffman, Juliana)
01/15/2021	1760 Certificate of service re: *(Supplemental) Solicitation Materials Served on January 11, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1630 Certificate of service re: *Solicitation Materials Served on or Before December 2, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement). filed by Debtor Highland Capital Management, L.P., 1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
01/15/2021	1761 Certificate of service re: *Documents Served on or Before January 12, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1714 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on

	1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625, filed by Debtor Highland Capital Management, L.P., 1715 Order granting application for compensation (related document 1552) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: $709256.22, expenses awarded: $0.0 Entered on 1/11/2021. (Ecker, C.), 1718 Amended Notice of hearing *(Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., 1719 Notice *(Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., 1720 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1207 Motion to allow claims *of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1207, filed by Debtor Highland Capital Management, L.P., 1722 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/15/2021	1762 Certificate of service re: *Documents Served on January 12, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1725 Order further extending period within which the Debtor may remove actions 1583 Motion to extend time. (Re: related document(s) 1583 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)816 Order on motion to extend/shorten time)) Entered on 1/12/2021. (Ecker, C.), 1726 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1722 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 Exhibit W # 24 Exhibit X # 25 Exhibit DD) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/15/2021	1763 BNC certificate of mailing − PDF document. (RE: related document(s)1728 Order granting application for compensation (related document 1545) granting for Hayward & Associates PLLC, fees awarded: $82325.00, expenses awarded: $1972.63 Entered on 1/13/2021. (Ecker, C.)) No. of Notices: 1. Notice Date 01/15/2021. (Admin.)
01/16/2021	1764 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/17/2021	1765 REFER TO DOCKET ENTRY 3348 FOR AMENDED TRANSCRIPT. Transcript regarding Hearing Held 01/14/2021 (173 pages) RE: Motion to Prepay Loan; Motion to Compromise Controversy; Motion to Allow Claims. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS

	AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1753 Hearing held on 1/14/2021. (RE: related document(s)1590 Motion to pay Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) filed by Debtor Highland Capital Management, L.P. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Nonevidentiary hearing. Motion granted. Counsel to upload order.), 1754 Hearing held on 1/14/2021. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.), 1755 Hearing held on 1/14/2021. (RE: related document(s)1207 Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion resolved by approval of compromise and settlement. Counsel to upload order.)). Transcript to be made available to the public on 04/19/2021. (Rehling, Kathy) Modified on 5/26/2022 (Tello, Chris).
01/17/2021	1766 BNC certificate of mailing − PDF document. (RE: related document(s)1747 Order (RE: related document(s)1741 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.)) No. of Notices: 1. Notice Date 01/17/2021. (Admin.)
01/18/2021	1767 Verified statement pursuant to Rule 2019 filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Smith, Frances)
01/18/2021	1768 Certificate of service re: Verified Statement Pursuant to Federal Rule of Bankruptcy Procedure 2019 of (I) Frances A. Smith and Disclosures of Ross & Smith, PC; and (II) Michelle Hartmann and Disclosures of Baker & McKenzie LLP filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1767 Verified statement pursuant to Rule 2019). (Smith, Frances)
01/18/2021	1769 Declaration re: *(Report of Mediators)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)912 Order (generic)). (Annable, Zachery)
01/19/2021	1770 Order Granting Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtors Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith (related document # 1733) Entered on 1/19/2021. (Okafor, M.)
01/19/2021	1771 Application for compensation *Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: $1,046,024.00, Expenses: $4,130.90. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 2/9/2021. (Pomerantz, Jeffrey)
01/19/2021	1772 Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

01/19/2021	1773 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/19/2021	1774 Notice to take deposition of Highland Capital Management, L.P. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Hogewood, A.)
01/19/2021	1775 Certificate of service re: *1) Order Granting Debtors Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay; 2) Order Approving Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP; and 3) Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1746 Order granting motion to pay (related document 1590) Entered on 1/15/2021. (Ecker, C.), 1747 Order (RE: related document(s)1741 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.), 1749 Notice *(Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/19/2021	1776 Notice to take deposition of Highland Capital Management LP filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
01/19/2021	1777 Motion for leave *(Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B−1 # 3 Exhibit B−2 # 4 Exhibit C) (Annable, Zachery)
01/19/2021	1778 Motion for expedited hearing(related documents 1777 Motion for leave) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/19/2021	1779 Certificate of service re: *Documents Served on January 13, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1728 Order granting application for compensation (related document 1545) granting for Hayward & Associates PLLC, fees awarded: $82325.00, expenses awarded: $1972.63 Entered on 1/13/2021. (Ecker, C.), 1731 Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1732 Amended Witness and Exhibit List *(Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1722 List (witness/exhibit/generic), 1726 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit EE) filed by Debtor Highland Capital Management, L.P., 1736 Emergency Motion to file document under seal.*(Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150,*

	153, 154), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/20/2021	1780 Notice *of District Court Order Accepting Documents Designated for Inclusion in Record on Appeal Under Seal* filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
01/20/2021	1781 Certificate of service re: Notice of Rule 30(b)(6) *Amended Certificate of Service* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1776 Notice to take deposition). (Draper, Douglas)
01/20/2021	1783 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1777 Motion for leave *(Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B−1 # 3 Exhibit B−2 # 4 Exhibit C)). Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1777, (Annable, Zachery)
01/20/2021	1784 WITHDRAWN PER # 1876. Objection to (related document(s): 1719 Notice (generic) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan) Modified on 2/2/2021 (Ecker, C.).
01/20/2021	1785 Order granting motion for expedited hearing (Related Doc# 1778)(document set for hearing: 1777 Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1777, Entered on 1/20/2021. (Rielly, Bill)
01/20/2021	1786 Certificate of service re: *Documents Served on January 14, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1737 Order granting motion to seal exhibits (related document 1736) Entered on 1/14/2021. (Ecker, C.), 1741 Notice *(Notice of Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1743 Declaration re: *Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors* filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)336 Order on application to employ). filed by Financial Advisor FTI Consulting, Inc., 1744 Declaration re: *(Supplemental Declaration of Marc D. Katz)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)268 Declaration). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/20/2021	1787 Certificate of service re: *Documents Served on or Before January 19, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1764 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1769 Declaration re: *(Report of Mediators)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)912 Order (generic)). filed by Debtor Highland Capital Management, L.P., 1771 Application for compensation *Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: $1,046,024.00, Expenses: $4,130.90. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 2/9/2021. filed by Debtor Highland Capital Management, L.P., 1772 Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1773 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1777 Motion for leave *(Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief)* Filed by Debtor Highland Capital

	Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B−1 # 3 Exhibit B−2 # 4 Exhibit C) filed by Debtor Highland Capital Management, L.P., 1778 Motion for expedited hearing(related documents 1777 Motion for leave) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/21/2021	1788 Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # 1625) Entered on 1/21/2021. (Okafor, M.)
01/21/2021	1789 Notice *(Notice of Service of Discovery on Highland Capital Management, L.P.)* filed by Interested Party James Dondero. (Attachments: # 1 Ex. A − Document Requests) (Assink, Bryan)
01/21/2021	1790 Subpoena on Jean Paul Sevilla filed by Interested Party James Dondero. (Attachments: # 1 Ex. 1 − Subpoena) (Assink, Bryan)
01/21/2021	1791 Notice *(Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1648 Notice *(Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation))., 1719 Notice *(Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation))., 1749 Notice *(Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)).). (Annable, Zachery)
01/22/2021	1792 Witness and Exhibit List *United States' (IRS) Witness & Exhibit List* filed by Creditor United States (IRS) (RE: related document(s)1668 Objection to confirmation of plan). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) (Adams, David)
01/22/2021	1793 Witness and Exhibit List *for Confirmation Hearing* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint

	Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)1670 Objection to confirmation of plan). (Hogewood, A.)
01/22/2021	1794 Witness and Exhibit List *with Certificate of Service* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit 5 # 2 Exhibit 6 # 3 Exhibit 6−1) (Draper, Douglas)
01/22/2021	1795 Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Dondero Ex. 1 # 2 Dondero Ex. 2 # 3 Dondero Ex. 3 # 4 Dondero Ex. 4 # 5 Dondero Ex. 5 # 6 Dondero Ex. 6 # 7 Dondero Ex. 7 # 8 Dondero Ex. 8 # 9 Dondero Ex. 9 # 10 Dondero Ex. 10 # 11 Dondero Ex. 11 # 12 Dondero Ex. 12 # 13 Dondero Ex. 13 # 14 Dondero Ex. 14 # 15 Dondero Ex. 15 # 16 Dondero Ex. 16 # 17 Dondero Ex. 17) (Assink, Bryan)
01/22/2021	1796 Witness and Exhibit List *for Hearing Scheduled for January 26, 2021 at 9:30 a.m.* filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit SE1 # 2 Exhibit SE2 # 3 Exhibit SE # 4 Exhibit SE4 # 5 Exhibit SE5 # 6 Exhibit SE6 # 7 Exhibit SE7 # 8 Exhibit SE8 # 9 Exhibit SE9 # 10 Exhibit SE10 # 11 Exhibit SE11 # 12 Exhibit SE12 # 13 Exhibit SE13 # 14 Exhibit SE14 # 15 Exhibit SE15 # 16 Exhibit SE16 # 17 Exhibit SE17 # 18 Exhibit SE18 # 19 Exhibit SE19 # 20 Exhibit SE20 # 21 Exhibit SE21 # 22 Exhibit SE22 # 23 Exhibit SE23 # 24 Exhibit SE24 # 25 Exhibit SE25 # 26 Exhibit SE26 # 27 Exhibit SE27 # 28 Exhibit SE28 # 29 Exhibit SE29 # 30 Exhibit SE30 # 31 Exhibit SE31 # 32 Exhibit SE33 # 33 Exhibit SE34 # 34 Exhibit SE35 # 35 Exhibit SE36 # 36 Exhibit SE37 # 37 Exhibit SE38 # 38 Exhibit SE39 # 39 Exhibit SE40) (Smith, Frances)
01/22/2021	1797 Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s)1472 Chapter 11 plan). (Kane, John)
01/22/2021	1798 Certificate of service re: Witness & Exhibit List for Hearing Scheduled for January, 26, 2021 at 9:30 a.m. filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1796 List (witness/exhibit/generic)). (Smith, Frances)
01/22/2021	1799 Witness and Exhibit List *for Hearing Scheduled for January 26, 2021 at 9:30 a.m.* filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit SE33) (Smith, Frances)
01/22/2021	1800 Exhibit and Witness List for Confirmation Hearing filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)1670 Objection to confirmation of plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit U # 21 Exhibit U # 22 Exhibit V # 23 Exhibit W # 24 Exhibit X # 25 Exhibit Y # 26 Exhibit Z # 27 Exhibit AA # 28 Exhibit BB # 29 Exhibit CC # 30 Exhibit DD # 31 Exhibit EE # 32 Exhibit FF # 33 Exhibit GG # 34 Exhibit HH # 35 Exhibit II # 36 Exhibit JJ # 37 Exhibit KK # 38 Exhibit LL # 39 Exhibit MM # 40 Exhibit NN # 41 Exhibit OO # 42 Exhibit PP # 43 Exhibit QQ # 44 Exhibit RR # 45 Exhibit SS # 46 Exhibit TT # 47 Exhibit UU # 48 Exhibit VV # 49 Exhibit WW # 50 Exhibit XX # 51 Exhibit YY # 52 Exhibit ZZ # 53 Exhibit AAA # 54 Exhibit BBB # 55 Exhibit CCC # 56 Exhibit DDD # 57 Exhibit EEE # 58 Exhibit FFF # 59 Exhibit GGG # 60 Exhibit HHH # 61 Exhibit III # 62 Exhibit JJJ # 63 Exhibit KKK # 64 Exhibit LLL # 65 Exhibit MMM # 66 Exhibit NNN # 67 Exhibit

	OOO # 68 Exhibit PPP # 69 Exhibit QQQ # 70 Exhibit RRR # 71 Exhibit SSS # 72 Exhibit TTT # 73 Exhibit UUU # 74 Exhibit VVV # 75 Exhibit WWW # 76 Exhibit ZZZ) (Hogewood, A.) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	1801 Adversary case 21−03003. Complaint by Highland Capital Management, L.P. against James Dondero. Fee Amount $350 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property − 542 turnover of property). 13−Recovery of money/property − §548 fraudulent transfer; 14−Recovery of money/property − other; 91−Declaratory judgment (Annable, Zachery) Modified text to update Natures of Suit on 8/30/2021 (Ecker, C.).
01/22/2021	1802 Adversary case 21−03004. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P.. Fee Amount $350 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property − 542 turnover of property). (Annable, Zachery)
01/22/2021	1803 Adversary case 21−03005. Complaint by Highland Capital Management, L.P. against NexPoint Advisors, L.P.. Fee Amount $350 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property − 542 turnover of property). 03 13−Recovery of money/property − §548 fraudulent transfer. 04 14−Recovery of money/property − other. 05 91−Declaratory judgment. (Annable, Zachery) MODIFIED to add natures of suit on 8/30/2021 (Ecker, C.).
01/22/2021	1804 Adversary case 21−03006. Complaint by Highland Capital Management, L.P. against Highland Capital Management Services, Inc.. Fee Amount $350 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property − 542 turnover of property). 03 13−Recovery of money/property − §548 fraudulent transfer . 04 14−Recovery of money/property − other. 05 91−Declaratory judgment. (Annable, Zachery) MODIFIED to add Natures of Suit on 8/30/2021 (Ecker, C.).
01/22/2021	1805 Adversary case 21−03007. Complaint by Highland Capital Management, L.P. against HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Fee Amount $350 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property − 542 turnover of property). 0313−Recovery of money/property − §548 fraudulent transfer. 04 14−Recovery of money/property − other . 0591−Declaratory judgment. (Annable, Zachery) MODIFIED to add Natures of Suit on 8/30/2021 (Ecker, C.).
01/22/2021	1806 Motion to file document under seal. Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund (Attachments: # 1 Proposed Order) (Vasek, Julian)
01/22/2021	1807 INCORRECT EVENT: Attorney to refile. Notice *(Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management L.P. (with Technical Modifications)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1661 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Party James Dondero., 1662 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County., 1666

	Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang., 1667 Objection to confirmation of plan*with Certificate of Service* (RE: related document(s)1472 Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust., 1668 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor United States (IRS)., 1669 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # 1 Exhibit A # 2 Exhibit B), 1670 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # 1 Exhibit A), 1673 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC., 1676 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank., 1678 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor Patrick Daugherty.). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Annable, Zachery)
01/22/2021	1809 Support/supplemental document *(Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Annable, Zachery)
01/22/2021	1810 Witness and Exhibit List [Exhibits 1−2 and 12−17] filed by Creditor CLO Holdco, Ltd. (RE: related document(s)1797 List (witness/exhibit/generic)). (Attachments: # 1 CLO Exhibit 2 # 2 CLO Exhibit 12 # 3 CLO Exhibit 13 # 4 CLO Exhibit 14 # 5 CLO Exhibit 15 # 6 CLO Exhibit 16 # 7 CLO Exhibit 17) (Kane, John) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	1811 NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD) (Annable, Zachery) Modified text on 1/25/2021 (Ecker, C.).
01/22/2021	1812 **SEALED document regarding: CLO Exhibit 3 − Aberdeen Loan Funding, Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1813 **SEALED document regarding: CLO Exhibit 4 − Brentwood CLO Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1814 Memorandum of Law in support of confirmation filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Annable, Zachery) Modified on 1/25/2021 (Ecker, C.).

01/22/2021	1815 **SEALED document regarding: CLO Exhibit 5 − Grayson CLO Ltd. Servicing Agreement and Amendment to Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1816 **SEALED document regarding: CLO Exhibit 6 − Liberty CLO, Ltd. Portfolio Management Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1817 **SEALED document regarding: CLO Exhibit 7 − Red River CLO Ltd. Servicing Agreement and Amendment to Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1818 **SEALED document regarding: CLO Exhibit 8 − Rockwall CDO Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1819 **SEALED document regarding: CLO Exhibit 9 − Valhalla CLO, Ltd. Reference Portfolio Management Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1820 **SEALED document regarding: CLO Exhibit 10 − Westchester CLO, Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1821 **SEALED document regarding: CLO Exhibit 11 − Debtor Prepared Summary of CLO Holdco, Ltd.'s Interest in Debtor−Managed CLO Funds [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1822 (REDACTED EXHIBITS ADDED 01/27/2021); Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 List of 20 Largest Creditors C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 List of 20 Largest Creditors W # 24 Exhibit X # 25 Exhibit Y # 26 Exhibit Z # 27 Exhibit AA # 28 Exhibit BB # 29 Exhibit CC # 30 Exhibit DD # 31 Exhibit EE # 32 Exhibit FF # 33 Exhibit GG # 34 Exhibit HH # 35 Exhibit II # 36 Exhibit JJ # 37 Exhibit KK # 38 Exhibit LL # 39 Exhibit MM # 40 Exhibit NN # 41 Exhibit OO # 42 Exhibit PP # 43 Exhibit QQ # 44 Exhibit RR # 45 Exhibit SS # 46 Exhibit TT # 47 Exhibit UU # 48 Exhibit VV # 49 Exhibit WW # 50 Exhibit XX # 51 Exhibit YY # 52 Exhibit ZZ # 53 Exhibit AAA # 54 Exhibit BBB # 55 Exhibit CCC # 56 Exhibit DDD # 57 Exhibit EEE # 58 Exhibit FFF # 59 Exhibit GGG # 60 Exhibit HHH # 61 Exhibit III # 62 Exhibit JJJ # 63 Exhibit KKK # 64 Exhibit LLL # 65 Exhibit MMM # 66 Exhibit NNN # 67 Exhibit OOO # 68 Exhibit PPP # 69 Exhibit QQQ # 70 Exhibit RRR # 71 Exhibit SSS # 72 Exhibit TTT # 73 Exhibit UUU # 74 Exhibit VVV # 75 Exhibit WWW # 76 Exhibit XXX # 77 Exhibit YYY # 78 Exhibit ZZZ # 79 Exhibit AAAA # 80 Exhibit BBBB # 81 Exhibit CCCC # 82 Exhibit DDDD # 83 Exhibit EEEE # 84 Exhibit FFFF # 85 Exhibit GGGG # 86 Exhibit MMMM # 87 Exhibit NNNN # 88 Exhibit OOOO # 89 Exhibit PPPP # 90 Exhibit QQQQ # 91 Exhibit RRRR # 92 Exhibit SSSS # 93 Exhibit TTTT # 94 Exhibit UUUU # 95 Exhibit VVVV # 96 Exhibit

	WWWW # 97 Exhibit XXXX # 98 Exhibit YYYY # 99 Exhibit ZZZZ # 100 Exhibit AAAAA # 101 Exhibit BBBBB # 102 Exhibit CCCCC # 103 Exhibit DDDDD # 104 Exhibit EEEEE # 105 Exhibit FFFFF # 106 Exhibit GGGGG # 107 Exhibit HHHHH # 108 Exhibit IIIII # 109 Exhibit JJJJJ # 110 Exhibit KKKKK # 111 Exhibit LLLLL # 112 Exhibit MMMMM # 113 Exhibit NNNNN # 114 Exhibit OOOOO # 115 Exhibit PPPPP # 116 Exhibit QQQQQ # 117 Exhibit RRRRR # 118 Exhibit SSSSS # 119 Exhibit TTTTT # 120 Exhibit UUUUU # 121 Exhibit VVVVV # 122 Exhibit WWWWW # 123 Exhibit XXXXX # 124 Exhibit YYYYY # 125 Exhibit ZZZZZ # 126 Exhibit AAAAAA # 127 Exhibit BBBBBB # 128 Exhibit CCCCCC # 129 Exhibit DDDDDD # 130 Exhibit EEEEEE # 131 Exhibit FFFFFF # 132 Exhibit GGGGGG # 133 Exhibit HHHHHH # 134 Exhibit IIIIII # 135 Exhibit JJJJJJ # 136 Exhibit KKKKKK # 137 Exhibit LLLLLL # 138 Exhibit MMMMMM # 139 Exhibit NNNNNN # 140 Exhibit OOOOOO # 141 Exhibit PPPPPP # 142 Exhibit QQQQQQ # 143 Exhibit RRRRRR # 144 Exhibit SSSSSS # 145 Exhibit TTTTTT # 146 Exhibit UUUUUU # 147 Exhibit VVVVVV # 148 Exhibit WWWWWW # 149 Exhibit XXXXXX # 150 Exhibit YYYYYY # 151 Exhibit ZZZZZZ) (Annable, Zachery) Additional attachment(s) added on 1/27/2021 (Okafor, M.). Modified on 1/27/2021 (Okafor, M.). Additional attachment(s) added on 1/28/2021 (Okafor, M.).
01/22/2021	1823 Response unopposed to (related document(s): 1828 Response filed by Debtor Highland Capital Management, L.P.. Modified linkage on 1/25/2021 (Ecker, C.).
01/22/2021	1828 Response opposed to (related document(s): 1661 Objection to confirmation of plan filed by Interested Party James Dondero, 1662 Objection to confirmation of plan filed by Creditor City of Richardson, Creditor Allen ISD, Creditor Kaufman County, Creditor Dallas County, Creditor City of Allen, 1666 Objection to confirmation of plan filed by Interested Party Jack Yang, Interested Party Brad Borud, 1667 Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1668 Objection to confirmation of plan filed by Creditor United States (IRS), 1669 Objection to confirmation of plan filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, 1670 Objection to confirmation of plan filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Funds I and its series, Interested Party Highland Healthcare Opportunities Fund, Interested Party Highland/iBoxx Senior Loan ETF, Interested Party Highland Opportunistic Credit Fund, Interested Party Highland Merger Arbitrage Fund, Interested Party Highland Funds II and its series, Interested Party Highland Small−Cap Equity Fund, Interested Party Highland Fixed Income Fund, Interested Party Highland Socially Responsible Equity Fund, Interested Party Highland Total Return Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, Interested Party NexPoint Real Estate Strategies Fund, 1671 Objection, 1673 Objection to confirmation of plan filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC, 1676 Objection to confirmation of plan filed by Interested Party NexBank, Interested Party NexBank Capital Inc., Interested Party NexBank Securities Inc., Interested Party NexBank Title Inc., 1678 Objection to confirmation of plan filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery) Modified date on 1/25/2021 (Ecker, C.). (Entered: 01/25/2021)
01/23/2021	1824 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/23/2021	1825 BNC certificate of mailing − PDF document. (RE: related document(s)1785 Order granting motion for expedited hearing (Related Doc1778)(document set for hearing: 1777 Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1777, Entered on 1/20/2021.) No. of Notices: 1. Notice Date 01/23/2021. (Admin.)
01/24/2021	1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)

	(Vasek, Julian)
01/25/2021	1827 Emergency Motion to continue hearing on (related documents 1808 Chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/25/2021	1829 Notice *(Notice of Increase in Hourly Rates for Hayward PLLC (Formerly Hayward & Associates PLLC) Effective as of January 1, 2021)* filed by Other Professional Hayward & Associates PLLC. (Annable, Zachery)
01/25/2021	1830 Order granting motion to continue hearing on (related document # 1827) (related documents Modified Chapter 11 plan) Confirmation hearing to be held on 2/2/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 1/25/2021. (Okafor, M.)
01/25/2021	1831 Order granting motion to file exhibits under seal (related document # 1806) Entered on 1/25/2021. (Okafor, M.)
01/25/2021	1832 Notice of hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1745 Motion to appoint trustee*Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)* Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # 1 Proposed Order)). Hearing to be held on 3/2/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1745, (Draper, Douglas)
01/25/2021	1833 Notice *(Notice of Certificate of Service re: Letter Dated January 19, 2021 to PCMG Trading Partners XXIII, L.P. from James P. Seery, Jr. re Highland Select Equity Fund, L.P.)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/25/2021	1834 Certificate of service re: Notice Of Hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1832 Notice of hearing). (Draper, Douglas)
01/25/2021	1835 INCORRECT ENTRY: Attorney to refile. Motion to redact/restrict Emergency Redact (related document(s):1822) (Fee Amount $26) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Annable, Zachery) MODIFIED on 1/26/2021 (Ecker, C.).
01/25/2021	Receipt of filing fee for Motion to Redact/Restrict From Public View(19−34054−sgj11) [motion,mredact] (26.00). Receipt number 28441834, amount $ 26.00 (re: Doc# 1835). (U.S. Treasury)
01/25/2021	1836 Motion to file document under seal. *Emergency Motion to File Competing Plan and Disclosure Statement Under Seal* Filed by Interested Party NexPoint Advisors, L.P. (Attachments: # 1 Proposed Order) (Rukavina, Davor)
01/25/2021	1837 Certificate of service re: *1) Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Relief; and 2) Order Granting Debtors Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1783 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1777 Motion for leave *(Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B−1 # 3 Exhibit B−2 # 4 Exhibit C)). Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1777, filed by Debtor Highland Capital Management, L.P., 1785 Order granting motion for expedited hearing (Related Doc1778)(document set for hearing: 1777 Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at

	09:30 AM Dallas Judge Jernigan Ctrm for 1777, Entered on 1/20/2021.). (Kass, Albert)
01/26/2021	1838 Notice *(Notice of Settlement)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A−−Settlement Agreement) (Annable, Zachery)
01/26/2021	1839 WITHDRAWN at # 1858. Notice to take deposition of Frank Waterhouse filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Hogewood, A.) Modified on 1/29/2021 (Ecker, C.).
01/26/2021	1840 INCORRECT ENTRY: Attorney to refile. Motion to withdraw document*Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only* (related document(s) 1669 Objection to confirmation of plan) Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Smith, Frances) MODIFIED on 1/27/2021 (Ecker, C.).
01/26/2021	1841 Certificate of service re: Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1840 Motion to withdraw document*Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only* (related document(s) 1669 Objection to confirmation of plan)). (Smith, Frances)
01/26/2021	1842 Application for compensation *Fourteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 12/31/2020, Fee: $416,359.08, Expenses: $5,403.36. Filed by Attorney Juliana Hoffman Objections due by 2/16/2021. (Hoffman, Juliana)
01/26/2021	1843 Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1623 Motion to extend time to assume unexpired nonresidential real property lease). (Hayward, Melissa)
01/26/2021	1844 Certificate of service re: *Documents Served on January 21, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1788 Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document 1625) Entered on 1/21/2021. (Okafor, M.), 1791 Notice *(Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1648 Notice *(Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation))., 1719 Notice *(Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).

	(Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation))., 1749 Notice *(Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)).). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/26/2021	1850 Hearing held on 1/26/2021. (RE: related document(s)1777 Motion for leave (Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC; J. Kane for CLO Holdco; D. Rukavina and L. Hogewood for Advisors and Funds; J. Wilson for J. Dondero. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/27/2021)
01/27/2021	1845 Withdrawal *of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only* filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)1669 Objection to confirmation of plan). (Smith, Frances)
01/27/2021	1846 Notice to take deposition of Isaac Leventon filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/27/2021	1847 Notice *(Fourth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/27/2021	1848 Amended Motion to redact/restrict (related document(s):1835) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order # 2 Exhibit PPPP # 3 Exhibit QQQQ # 4 Exhibit RRRR # 5 Exhibit SSSS # 6 Exhibit TTTT # 7 Exhibit UUUU # 8 Exhibit VVVV # 9 Exhibit WWWW # 10 Exhibit XXXX # 11 Exhibit YYYY # 12 Exhibit ZZZZ # 13 Exhibit DDDDDD) (Annable, Zachery)
01/27/2021	1849 Order Granting Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief (related document # 1777) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	1851 Order granting motion to seal documents (related document # 1836) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	1852 Order Granting Amended Emergency Motion to Redact Certain Exhibits Attached to Debtors Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021 (Related Doc # 1848) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	

	1853 Application for compensation *Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 11/30/2020, Fee: $1,620,489.60, Expenses: $8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021. (Hoffman, Juliana)
01/27/2021	1854 Certificate of service re: *Documents Served on January 22, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1807 INCORRECT EVENT: Attorney to refile. Notice *(Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management L.P. (with Technical Modifications)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1661 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Party James Dondero., 1662 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County., 1666 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang., 1667 Objection to confirmation of plan*with Certificate of Service* (RE: related document(s)1472 Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust., 1668 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor United States (IRS)., 1669 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # 1 Exhibit A # 2 Exhibit B), 1670 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # 1 Exhibit A), 1673 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC., 1676 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank., 1678 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor Patrick Daugherty.). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery) MODIFIED on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1809 Support/supplemental document *(Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1811 NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD) (Annable, Zachery) Modified text on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1814 Memorandum of Law in support of confirmation filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Annable, Zachery) Modified on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1822 (REDACTED EXHIBITS ADDED 01/27/2021); Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 List of 20 Largest Creditors C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 List of 20 Largest Creditors W # 24 Exhibit X # 25 Exhibit Y # 26 Exhibit Z # 27 Exhibit AA # 28 Exhibit BB # 29 Exhibit CC # 30 Exhibit

	DD # 31 Exhibit EE # 32 Exhibit FF # 33 Exhibit GG # 34 Exhibit HH # 35 Exhibit II # 36 Exhibit JJ # 37 Exhibit KK # 38 Exhibit LL # 39 Exhibit MM # 40 Exhibit NN # 41 Exhibit OO # 42 Exhibit PP # 43 Exhibit QQ # 44 Exhibit RR # 45 Exhibit SS # 46 Exhibit TT # 47 Exhibit UU # 48 Exhibit VV # 49 Exhibit WW # 50 Exhibit XX # 51 Exhibit YY # 52 Exhibit ZZ # 53 Exhibit AAA # 54 Exhibit BBB # 55 Exhibit CCC # 56 Exhibit DDD # 57 Exhibit EEE # 58 Exhibit FFF # 59 Exhibit GGG # 60 Exhibit HHH # 61 Exhibit III # 62 Exhibit JJJ # 63 Exhibit KKK # 64 Exhibit LLL # 65 Exhibit MMM # 66 Exhibit NNN # 67 Exhibit OOO # 68 Exhibit PPP # 69 Exhibit QQQ # 70 Exhibit RRR # 71 Exhibit SSS # 72 Exhibit TTT # 73 Exhibit UUU # 74 Exhibit VVV # 75 Exhibit WWW # 76 Exhibit XXX # 77 Exhibit YYY # 78 Exhibit ZZZ # 79 Exhibit AAAA # 80 Exhibit BBBB # 81 Exhibit CCCC # 82 Exhibit DDDD # 83 Exhibit EEEE # 84 Exhibit FFFF # 85 Exhibit GGGG # 86 Exhibit MMMM # 87 Exhibit NNNN # 88 Exhibit OOOO # 89 Exhibit PPPP # 90 Exhibit QQQQ # 91 Exhibit RRRR # 92 Exhibit SSSS # 93 Exhibit TTTT # 94 Exhibit UUUU # 95 Exhibit VVVV # 96 Exhibit WWWW # 97 Exhibit XXXX # 98 Exhibit YYYY # 99 Exhibit ZZZZ # 100 Exhibit AAAAA # 101 Exhibit BBBBB # 102 Exhibit CCCCC # 103 Exhibit DDDDD # 104 Exhibit EEEEE # 105 Exhibit FFFFF # 106 Exhibit GGGGG # 107 Exhibit HHHHH # 108 Exhibit IIIII # 109 Exhibit JJJJJ # 110 Exhibit KKKKK # 111 Exhibit LLLLL # 112 Exhibit MMMMM # 113 Exhibit NNNNN # 114 Exhibit OOOOO # 115 Exhibit PPPPP # 116 Exhibit QQQQQ # 117 Exhibit RRRRR # 118 Exhibit SSSSS # 119 Exhibit TTTTT # 120 Exhibit UUUUU # 121 Exhibit VVVVV # 122 Exhibit WWWWW # 123 Exhibit XXXXX # 124 Exhibit YYYYY # 125 Exhibit ZZZZZ # 126 Exhibit AAAAAA # 127 Exhibit BBBBBB # 128 Exhibit CCCCCC # 129 Exhibit DDDDDD # 130 Exhibit EEEEEE # 131 Exhibit FFFFFF # 132 Exhibit GGGGGG # 133 Exhibit HHHHHH # 134 Exhibit IIIIII # 135 Exhibit JJJJJJ # 136 Exhibit KKKKKK # 137 Exhibit LLLLLL # 138 Exhibit MMMMMM # 139 Exhibit NNNNNN # 140 Exhibit OOOOOO # 141 Exhibit PPPPPP # 142 Exhibit QQQQQQ # 143 Exhibit RRRRRR # 144 Exhibit SSSSSS # 145 Exhibit TTTTTT # 146 Exhibit UUUUUU # 147 Exhibit VVVVVV # 148 Exhibit WWWWWW # 149 Exhibit XXXXXX # 150 Exhibit YYYYYY # 151 Exhibit ZZZZZZ) (Annable, Zachery) Additional attachment(s) added on 1/27/2021 (Okafor, M.). Modified on 1/27/2021 (Okafor, M.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/28/2021	1855 Notice of Appearance and Request for Notice by Jeff P. Prostok filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Prostok, Jeff)
01/28/2021	1856 Notice of Appearance and Request for Notice by Suzanne K. Rosen filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Rosen, Suzanne)
01/28/2021	1857 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1624 Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order)). Hearing to be held on 2/2/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1624, (Annable, Zachery)
01/28/2021	1858 Withdrawal *of Notice of Deposition* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)1839 Notice to take deposition). (Hogewood, A.)
01/28/2021	1859 **SEALED document regarding: PLAN OF REORGANIZATION OF JAMES DONDERO, NEXPOINT ADVISORS, L.P. per court order** filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1851 Order on motion to seal). (Rukavina, Davor)
01/28/2021	

	1860 **SEALED document regarding: DISCLOSURE STATEMENT IN SUPPORT OF PLAN OF REORGANIZATION per court order** filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1851 Order on motion to seal). (Rukavina, Davor)
01/28/2021	1861 Certificate of service re: *Documents Served on or Before January 25, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1824 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1827 Emergency Motion to continue hearing on (related documents 1808 Chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1829 Notice *(Notice of Increase in Hourly Rates for Hayward PLLC (Formerly Hayward & Associates PLLC) Effective as of January 1, 2021)* filed by Other Professional Hayward & Associates PLLC. filed by Other Professional Hayward & Associates PLLC, 1830 Order granting motion to continue hearing on (related document 1827) (related documents Modified Chapter 11 plan) Confirmation hearing to be held on 2/2/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 1/25/2021. (Okafor, M.)). (Kass, Albert)
01/29/2021	1862 Transcript regarding Hearing Held 01/26/2021 (257 pages) RE: KERP Motion 1777. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/29/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1850 Hearing held on 1/26/2021. (RE: related document(s)1777 Motion for leave (Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC; J. Kane for CLO Holdco; D. Rukavina and L. Hogewood for Advisors and Funds; J. Wilson for J. Dondero. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 04/29/2021. (Rehling, Kathy)
01/29/2021	1863 Amended Witness and Exhibit List *of Funds and Advisors* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)1793 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73 # 74 Exhibit 74 # 75 Exhibit 75 # 76 Exhibit 76 # 77 Exhibit 77 # 78 Exhibit 78 # 79 Exhibit 79 # 80 Exhibit 80 # 81 Exhibit 81 # 82 Exhibit 82) (Hogewood, A.)
01/29/2021	1864 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 through November 30, 2020)* filed by Other

	Professional Development Specialists, Inc. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
01/29/2021	1865 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 through December 31, 2020)* filed by Other Professional Development Specialists, Inc. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
01/29/2021	1866 Amended Witness and Exhibit List *(Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1822 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit AAAAAAA # 3 Exhibit BBBBBBB # 4 Exhibit CCCCCCC # 5 Exhibit DDDDDDD # 6 Exhibit EEEEEEE) (Annable, Zachery)
01/29/2021	1867 Certificate of service re: *1) Notice of Settlement; 2) Fourteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2020 Through December 31, 2020; and 3) Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1838 Notice *(Notice of Settlement)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A−−Settlement Agreement) filed by Debtor Highland Capital Management, L.P., 1842 Application for compensation *Fourteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 12/31/2020, Fee: $416,359.08, Expenses: $5,403.36. Filed by Attorney Juliana Hoffman Objections due by 2/16/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 1843 Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1623 Motion to extend time to assume unexpired nonresidential real property lease). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/01/2021	Adversary case 3:20−ap−3128 closed (Ecker, C.)
02/01/2021	1868 Supplemental Objection to confirmation of plan *with Certificate of Service* (RE: related document(s)1472 Chapter 11 plan, 1808 Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
02/01/2021	1869 Certificate of service re: Monthly Staffing Reports by Development Specialists, Inc. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1864 Notice (generic), 1865 Notice (generic)). (Annable, Zachery)
02/01/2021	1870 Notice of appeal *and Statement of Election*. Fee Amount $298 filed by Get Good Trust, The Dugaboy Investment Trust. Appellant Designation due by 02/16/2021. (Draper, Douglas). Related document(s) 1788 Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.).
02/01/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28458158, amount $ 298.00 (re: Doc# 1870). (U.S. Treasury)
02/01/2021	1871 Reply to (related document(s): 1784 Objection filed by Interested Party James Dondero) *(Debtor's Reply to James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/01/2021	1872 **SEALED document regarding: Exhibit 76 per court order** filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund,

	Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)1831 Order on motion to seal). (Attachments: # 1 Exhibit 77 # 2 Exhibit 78 # 3 Exhibit 79 # 4 Exhibit 80 # 5 Exhibit 81 # 6 Exhibit 82) (Vasek, Julian)
02/01/2021	1873 Notice *(Fifth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
02/01/2021	1874 Amended Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)1795 List (witness/exhibit/generic)). (Attachments: # 1 Dondero Ex. 1 # 2 Dondero Ex. 2 # 3 Dondero Ex. 3 # 4 Dondero Ex. 4 # 5 Dondero Ex. 5 # 6 Dondero Ex. 6 # 7 Dondero Ex. 7 # 8 Dondero Ex. 8 # 9 Dondero Ex. 9 # 10 Dondero Ex. 10 # 11 Dondero Ex. 11 # 12 Dondero Ex. 12 # 13 Dondero Ex. 13 # 14 Dondero Ex. 14 # 15 Dondero Ex. 15 # 16 Dondero Ex. 16 # 17 Dondero Ex. 17 # 18 Dondero Ex. 18 # 19 Dondero Ex. 19 # 20 Dondero Ex. 20) (Assink, Bryan)
02/01/2021	1875 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF) (Annable, Zachery)
02/01/2021	1876 Withdrawal *(Notice of Withdrawal of Document)* filed by Interested Party James Dondero (RE: related document(s)1784 Objection). (Assink, Bryan)
02/01/2021	1877 Amended Witness and Exhibit List *(Debtor's Second Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1822 List (witness/exhibit/generic), 1866 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit DDDDDD # 3 Exhibit FFFFFFF # 4 Exhibit GGGGGGG # 5 Exhibit HHHHHHH # 6 Exhibit IIIIIII # 7 Exhibit JJJJJJJ # 8 Exhibit KKKKKKK # 9 Exhibit LLLLLLL # 10 Exhibit MMMMMMM # 11 Exhibit NNNNNNN # 12 Exhibit OOOOOOO # 13 Exhibit PPPPPPP # 14 Exhibit QQQQQQQ) (Annable, Zachery)
02/01/2021	1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B) (Montgomery, Paige)
02/01/2021	1879 Certificate of service re: *Documents Served on January 27, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1846 Notice to take deposition of Isaac Leventon filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1847 Notice *(Fourth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management,*

	L.P.) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., 1849 Order Granting Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non−Insider Employees and Granting Related Relief (related document 1777) Entered on 1/27/2021. (Okafor, M.), 1852 Order Granting Amended Emergency Motion to Redact Certain Exhibits Attached to Debtors Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021 (Related Doc 1848) Entered on 1/27/2021. (Okafor, M.)). (Kass, Albert)
02/01/2021	1880 Response opposed to (related document(s): 1868 Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
02/01/2021	1881 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1655 Application for compensation *Fourth Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: $710,280.45, Expenses: $1,479.47.). (Hoffman, Juliana)
02/02/2021	1882 Clerk's correspondence requesting File an amended appeal from attorney for appellant. (RE: related document(s)1870 Notice of appeal *and Statement of Election*. Fee Amount $298 filed by Get Good Trust, The Dugaboy Investment Trust. Appellant Designation due by 02/16/2021.) Responses due by 2/5/2021. (Blanco, J.)
02/02/2021	1884 Request for transcript regarding a hearing held on 2/2/2021. The requested turn−around time is hourly. (Edmond, Michael)
02/02/2021	1885 Hearing continued (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Edmond, Michael)
02/02/2021	1886 Certificate of service re: *Documents Served on or Before January 28, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1853 Application for compensation *Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 11/30/2020, Fee: $1,620,489.60, Expenses: $8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 1857 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1624 Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order)). Hearing to be held on 2/2/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1624, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/02/2021	1921 Hearing held on 2/2/2021. (RE: related document(s)1624 Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank; M. Held for Crescent landlord. L. Lambert for UST. Matter not taken up in light of all−day confirmation hearing.) (Edmond, Michael) (Entered: 02/09/2021)
02/02/2021	

	1922 Hearing held on 2/2/2021. (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank; M. Held for Crescent landlord. L. Lambert for UST. Evidentiary hearing. Hearing recessed and will resume on 2/3/21.) (Edmond, Michael) (Entered: 02/09/2021)
02/03/2021	1887 Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/03/2021	1888 WITHDRAWN at #3031. Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (Drawhorn, Lauren) MODIFIED and terminated on 11/18/2021 (Ecker, C.).
02/03/2021	1889 Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1870 Notice of appeal). (Draper, Douglas)
02/03/2021	1890 Request for transcript regarding a hearing held on 2/3/2021. The requested turn−around time is hourly. (Edmond, Michael)
02/03/2021	1891 Certificate of service re: *Supplemental Certification of Patrick M. Leathem with Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1887 Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/03/2021	1892 Certificate of service re: *1) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 Through November 30, 2020; 2) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 Through December 31, 2020; and 3) Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1864 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 through November 30, 2020)* filed by Other Professional Development Specialists, Inc. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Other Professional Development Specialists, Inc., 1865 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 through December 31, 2020)* filed by Other Professional Development Specialists, Inc. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Other Professional Development Specialists, Inc., 1866 Amended Witness and Exhibit List *(Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1822 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit AAAAAAA # 3 Exhibit BBBBBBB # 4 Exhibit CCCCCCC # 5 Exhibit DDDDDDD # 6 Exhibit EEEEEEE) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/03/2021	1893 Certificate of service re: *Documents Served on February 1, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1871 Reply to (related document(s): 1784 Objection filed by Interested Party James Dondero) *(Debtor's Reply to James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1873 Notice *(Fifth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor*

	Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1606 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Attachments: # 1 Exhibit I−−Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J−−Amended Form of Senior Employee Stipulation # 3 Exhibit K−−Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., 1875 Support/supplemental document *(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF) filed by Debtor Highland Capital Management, L.P., 1877 Amended Witness and Exhibit List *(Debtor's Second Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1822 List (witness/exhibit/generic), 1866 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit DDDDDD # 3 Exhibit FFFFFFF # 4 Exhibit GGGGGGG # 5 Exhibit HHHHHHH # 6 Exhibit IIIIIII # 7 Exhibit JJJJJJJ # 8 Exhibit KKKKKKK # 9 Exhibit LLLLLLL # 10 Exhibit MMMMMMM # 11 Exhibit NNNNNNN # 12 Exhibit OOOOOOO # 13 Exhibit PPPPPPP # 14 Exhibit QQQQQQQ) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/03/2021	1902 Bench Ruling set (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).) Hearing to be held on 2/8/2021 at 09:00 AM Dallas Judge Jernigan Ctrm for 1808, (Ellison, T.) (Entered: 02/05/2021)
02/03/2021	1915 Court admitted exhibits date of hearing February 3, 2021 (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).) (COURT ADMITTED ALL THE DEBTOR'S EXHIBIT'S THAT APPEAR AT DOC. #1822, #1866 & #1877 & DONDERO'S EXHIBITS #6 THROUGH #12, #15, 16 & #17; & HIGHLAND CAPTIAL MGMT. FUNDING EXHIBIT #2 AT DOC. #1863 AND JUDGE JERNIGAN TOOK JUDICIAL NOTICE OF THE DEBTOR'S SCHEDULES) (Edmond, Michael) (Entered: 02/08/2021)
02/03/2021	1923 Hearing held on 2/3/2021. (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan) (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank and NexPoint; L. Lambert for UST. Evidentiary hearing. Court took matter under advisement after conclusion of evidence and arguments. Bench ruling scheduled for 2/8/21 at 9:00 am.) (Edmond, Michael) (Entered: 02/09/2021)
02/04/2021	1894 Transcript regarding Hearing Held 02/02/2021 (295 pages) RE: Confirmation Hearing, Day One (#1808); Motion to Assume (#1624). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/5/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1885 Hearing continued (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm.). Transcript to be made available to the public on 05/5/2021. (Rehling, Kathy)

02/04/2021	1895 Amended Witness and Exhibit List *(Debtor's Third Amended Witness and Exhibit List with Respect to Confirmation Hearing Held on February 3, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1877 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit PPPPPPP # 2 Exhibit RRRRRRR # 3 Exhibit SSSSSSS # 4 Exhibit TTTTTTT # 5 Exhibit UUUUUUU) (Annable, Zachery)
02/04/2021	1896 Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1623 Motion to extend time to assume unexpired nonresidential real property lease). (Hayward, Melissa)
02/05/2021	1898 Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/05/2021	1899 Notice of docketing notice of appeal. Civil Action Number: 3:21−CV−00261−L (Lindsay). (RE: related document(s)1870 Notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas). Related document(s) 1788 Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.)., 1889 Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1870 Notice of appeal).) (Blanco, J.)
02/05/2021	1900 Certificate of mailing regarding appeal (RE: related document(s)1889 Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1870 Notice of appeal).) (Blanco, J.) Additional attachment(s) added on 2/5/2021 (Blanco, J.).
02/05/2021	1901 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1870 Notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust. Related document(s) 1788 Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.).) (Blanco, J.)
02/05/2021	1903 Order approving stipulation extending deadline to assume lease and setting motion to assume for hearing oat confirmation, which is currently set for February 2, 2021 at 9:30 a.m (RE: related document(s)1843 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)
02/05/2021	1904 Order approving second stipulation extending deadline to assume lease and setting motion to assume for hearing at confirmation (RE: related document(s)1896 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)
02/05/2021	1905 Transcript regarding Hearing Held 02/03/2021 (257 pages) RE: Confirmation Hearing, Day Two (#1808); Motion to Assume (#1624). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/6/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1885 Hearing continued (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm.). Transcript to be made available to the public on 05/6/2021. (Rehling, Kathy)
02/05/2021	1906 Certificate of service re: *Official Committee of Unsecured Creditors' Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B) filed by Creditor Committee Official

	Committee of Unsecured Creditors). (Kass, Albert)
02/05/2021	1907 Certificate of service re: *Response of the Official Committee of Unsecured Creditors to Supplemental Objection to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) Filed by the Dugaboy Investment Trust and Get Good Trust* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1880 Response opposed to (related document(s): 1868 Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
02/05/2021	1908 Certificate of service re: *Documents Served on February 4, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1895 Amended Witness and Exhibit List *(Debtor's Third Amended Witness and Exhibit List with Respect to Confirmation Hearing Held on February 3, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1877 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit PPPPPPP # 2 Exhibit RRRRRRR # 3 Exhibit SSSSSSS # 4 Exhibit TTTTTTT # 5 Exhibit UUUUUUU) filed by Debtor Highland Capital Management, L.P., 1896 Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1623 Motion to extend time to assume unexpired nonresidential real property lease). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/05/2021	1909 Certificate of service re: *(Supplemental) Solicitation Materials Served on February 1, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1630 Certificate of service re: *Solicitation Materials Served on or Before December 2, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1472 Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)944 Chapter 11 plan, 1079 Chapter 11 plan, 1287 Chapter 11 plan, 1383 Chapter 11 plan, 1450 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)945 Disclosure statement, 1080 Disclosure statement, 1289 Disclosure statement, 1384 Disclosure statement, 1453 Disclosure statement). filed by Debtor Highland Capital Management, L.P., 1476 Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and 1473 Amended disclosure statement filed by Debtor Highland Capital Management, L.P.). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
02/06/2021	1910 Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1870 Notice of appeal, 1889 Amended notice of appeal, 1899 Notice of docketing notice of appeal/record, 1900 Certificate of mailing regarding appeal, 1901 Notice regarding the record for a bankruptcy appeal). Appellee designation due by 02/22/2021. (Draper, Douglas)
02/06/2021	1911 Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1870 Notice of appeal, 1889 Amended notice of appeal, 1899 Notice of docketing notice of appeal/record, 1901 Notice regarding the record for a bankruptcy appeal, 1910 Appellant designation). (Draper, Douglas)
02/08/2021	1912 Clerk's correspondence requesting Amended designation from attorney for appellant. (RE: related document(s)1910 Appellant designation of contents for inclusion in record on appeal) Responses due by 2/10/2021. (Blanco, J.)
02/08/2021	1913 Request for transcript (ruling only) regarding a hearing held on 2/8/2021. The requested turn−around time is hourly. (Edmond, Michael)

02/08/2021	1914 Motion for leave *(Motion for Status Conference)* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order) (Assink, Bryan)
02/08/2021	1924 Hearing held on 2/8/2021. (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Appearances: J. Pomeranz; M. Clemente for UCC; M. Lynn, J. Bonds, and B. Assink for J. Dondero; D. Rukavina and L. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Lambert for UST (numerous others; full roll call not taken). Court read bench ruling approving plan. Counsel to incorporate courts bench ruling into their own set of FOFs, COLS and Order to be submitted.) (Edmond, Michael) (Entered: 02/09/2021)
02/09/2021	1916 Notice of hearing *(Status Conference)* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/22/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Attachments: # 1 Service List) (Vasek, Julian)
02/09/2021	1917 Transcript regarding Hearing Held 02/08/2021 (51 pages) RE: Bench Ruling. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/10/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1902 Bench Ruling set (RE: related document(s)1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).) Hearing to be held on 2/8/2021 at 09:00 AM Dallas Judge Jernigan Ctrm for 1808, (Ellison, T.)). Transcript to be made available to the public on 05/10/2021. (Rehling, Kathy)
02/09/2021	1918 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/09/2021	1919 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
02/09/2021	1920 Certificate of service re: *1) Debtors Notice of Rule 30(b)(6) Deposition to NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC; 2) Order Approving Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation; and 3) Order Approving Second Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1898 Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1903 Order approving stipulation extending deadline to assume lease and setting motion to assume for hearing oat confirmation, which is currently set for February 2, 2021 at 9:30 a.m (RE: related document(s)1843 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.), 1904 Order approving second stipulation extending deadline to assume lease and setting motion to assume for hearing at confirmation (RE: related document(s)1896 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)). (Kass, Albert)

02/09/2021	1925 Application for compensation *First Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 11/1/2020 to 12/31/2020, Fee: $73121.04, Expenses: $10.35. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 3/2/2021. (Hesse, Gregory)
02/10/2021	1926 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1771 Application for compensation *Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to). (Pomerantz, Jeffrey)
02/10/2021	1927 Application for compensation *Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: $239,297.76, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 3/3/2021. (Hoffman, Juliana)
02/10/2021	1928 Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1910 Appellant designation). (Draper, Douglas)
02/11/2021	1929 Order denying motion for status conference (related document # 1914) Entered on 2/11/2021. (Ecker, C.)
02/11/2021	1930 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Stanton Law Firm PC (Claim No. 163, Amount $88,133.99) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) (Tanabe, Kesha)
02/12/2021	1931 Agreed Order granting motion to assume nonresidential real property lease with Crescent TC Investors, L.P. (related document # 1624) Entered on 2/12/2021. (Okafor, M.)
02/12/2021	1932 Certificate of service re: *1) Debtors Notice of Deposition to James Dondero in Connection with Debtors Objection to Proof of Claim Filed by HCRE Partners, LLC; and 2) Notice of Statement of Amounts Paid to Ordinary Course Processionals for the Period from October 16, 2019 to December 31, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1918 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1919 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/13/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28493529, amount $ 26.00 (re: Doc# 1930). (U.S. Treasury)
02/16/2021	1933 Agreed Motion to continue hearing on (related documents 1826 Application for administrative expenses) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Hogewood, A.)
02/16/2021	1934 Certificate of service re: *Fourteenth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2020 to and Including December 31, 2020* Filed by Claims Agent Kurtzman Carson

	Consultants LLC (related document(s)1927 Application for compensation *Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: $239,297.76, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 3/3/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
02/17/2021	1935 Adversary case 21−03010. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. Fee Amount $350 (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Adversary Cover Sheet). Nature(s) of suit: 91 (Declaratory judgment). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 72 (Injunctive relief − other). (Annable, Zachery)
02/17/2021	1936 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)1643 Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Attachments: # 1 Proposed Order)) Responses due by 2/24/2021. (Ecker, C.)
02/17/2021	1937 Order granting motion to continue hearing on (related document 1933) (related documents Application for administrative expenses) The Status Conference is hereby continued from March 22, 2021 at 9:30 a.m. to to such date and time on or after March 29, 2021 that is determined by the Court. (Okafor, M.) MODIFIED to correct hearing setting on 2/17/2021 (Okafor, M.).
02/18/2021	1938 Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1745 Motion to appoint trustee*Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)*). (Annable, Zachery)
02/18/2021	1939 Certificate of service re: *Agreed Order on Motion to Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1931 Agreed Order granting motion to assume nonresidential real property lease with Crescent TC Investors, L.P. (related document 1624) Entered on 2/12/2021. (Okafor, M.)). (Kass, Albert)
02/19/2021	1940 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1842 Application for compensation *Fourteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 12/31/2020, Fee: $416,359.08, Expenses:). (Hoffman, Juliana)
02/22/2021	1941 Certificate of Counsel filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1924 Hearing held). (Annable, Zachery)
02/22/2021	1942 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1870 Notice of appeal, 1889 Amended notice of appeal, 1899 Notice of docketing notice of appeal/record, 1900 Certificate of mailing regarding appeal, 1901 Notice regarding the record for a bankruptcy appeal). (Annable, Zachery)
02/22/2021	1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
02/22/2021	

	1944 Application for compensation *Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: $2,557,604.00, Expenses: $32,906.65. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 3/15/2021. (Pomerantz, Jeffrey)
02/23/2021	1945 Certificate of service re: *Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1938 Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1745 Motion to appoint trustee*Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)*). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/24/2021	1946 Clerk's correspondence requesting from attorney for appellant. (RE: related document(s)1928 Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1910 Appellant designation).) Responses due by 3/10/2021. (Blanco, J.)
02/24/2021	1947 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1878, (Montgomery, Paige)
02/24/2021	1948 Notice *(Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). (Annable, Zachery)
02/24/2021	1949 Debtor−in−possession monthly operating report for filing period December 1, 2020 to December 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/24/2021	1950 BNC certificate of mailing − PDF document. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)) No. of Notices: 8. Notice Date 02/24/2021. (Admin.)
02/25/2021	1951 Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1942 Appellee designation). (Annable, Zachery)
02/25/2021	Receipt of Registry Funds − $43976.75 by SD. Receipt Number 338805. (admin)
02/25/2021	Receipt of Registry Funds − $3022.74 by SD. Receipt Number 338806. (admin)
02/25/2021	1952 Certificate of service re: *Documents Served on February 22, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1941 Certificate of Counsel filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1924 Hearing held). filed by Debtor Highland Capital Management, L.P., 1942 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1870 Notice of appeal, 1889 Amended notice of appeal, 1899 Notice of docketing notice of appeal/record, 1900 Certificate of mailing regarding appeal, 1901 Notice regarding the record for a bankruptcy appeal). filed by Debtor Highland

	Capital Management, L.P., 1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.), 1944 Application for compensation *Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: $2,557,604.00, Expenses: $32,906.65. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 3/15/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/26/2021	1953 Agreed Order granting motion to substitute attorney adding Frances Anne Smith for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Michelle Hartmann for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Debra A. Dandeneau for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, terminating David Neier. (related document # 1643) Entered on 2/26/2021. (Okafor, M.)
02/26/2021	1954 Certificate of service re: *1) Notice of Hearing on Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation; and 2) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1947 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1878, filed by Creditor Committee Official Committee of Unsecured Creditors, 1948 Notice *(Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/28/2021	1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Rukavina, Davor)
02/28/2021	1956 BNC certificate of mailing − PDF document. (RE: related document(s)1953 Agreed Order granting motion to substitute attorney adding Frances Anne Smith for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Michelle Hartmann for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Debra A. Dandeneau for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, terminating David Neier. (related document 1643) Entered on 2/26/2021. (Okafor, M.)) No. of Notices: 3. Notice Date 02/28/2021. (Admin.)
03/01/2021	1957 Notice of appeal . Fee Amount $298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # 1 Exhibit A)(Rukavina, Davor) Terminated appeal per circuit court's order dated 09/07/02022 on 06/21/2024 (Whitaker, Sheniqua).
03/01/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28523950, amount $ 298.00 (re: Doc# 1957). (U.S. Treasury)
03/01/2021	1958 Motion for expedited hearing(related documents 1955 Motion to stay pending appeal) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Rukavina, Davor)

03/01/2021	1959 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Action Shred Of Texas (Amount $3,825.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
03/01/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28524853, amount $ 26.00 (re: Doc# 1959). (U.S. Treasury)
03/01/2021	1960 Order Denying Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c) (related document # 1745) Entered on 3/1/2021. (Okafor, M.)
03/01/2021	1961 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1853 Application for compensation *Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 11/30/2020, Fee: $1,). (Hoffman, Juliana)
03/02/2021	1962 Certificate of service re: *Appellees Amended Supplemental Designation of Record on Appeal* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1951 Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1942 Appellee designation). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/02/2021	1963 Application for compensation *Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 1/1/2021 to 1/31/2021, Fee: $655,724.88, Expenses: $6,612.00. Filed by Attorney Juliana Hoffman Objections due by 3/23/2021. (Hoffman, Juliana)
03/03/2021	1964 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2021	1965 Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2021	1966 Notice of appeal . Fee Amount $298 filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1943 Order confirming chapter 11 plan). Appellant Designation due by 03/17/2021. (Hogewood, A.) Terminated appeal per circuit court's order dated 09/07/02022 on 06/21/2024 (Whitaker, Sheniqua).
03/03/2021	1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.)
03/03/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28532838, amount $ 298.00 (re: Doc# 1966). (U.S. Treasury)
03/03/2021	1968 Application for compensation *15th Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: $244,315.80, Expenses: $0.00. Filed by Attorney Juliana Hoffman Objections due by 3/24/2021. (Hoffman, Juliana)
03/03/2021	1969 Objection to (related document(s): 1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Assink, Bryan)

03/04/2021	1970 Notice of appeal . Fee Amount $298 filed by Interested Party James Dondero. Appellant Designation due by 03/18/2021. (Attachments: # 1 Exhibit)(Taylor, Clay) Terminated appeal per circuit court's order dated 09/07/02022 on 06/21/2024 (Whitaker, Sheniqua).
03/04/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28537086, amount $ 298.00 (re: Doc# 1970). (U.S. Treasury)
03/04/2021	1971 Joinder by *Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion) (Draper, Douglas)
03/04/2021	1972 Notice of appeal *Notice of Appeal and Statement of Election*. Fee Amount $298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1943 Order confirming chapter 11 plan). Appellant Designation due by 03/18/2021. (Draper, Douglas) Terminated appeal per circuit court's order dated 09/07/02022 on 06/21/2024 (Whitaker, Sheniqua).
03/04/2021	1973 Joinder by filed by Interested Party James Dondero (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Taylor, Clay)
03/04/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28537308, amount $ 298.00 (re: Doc# 1972). (U.S. Treasury)
03/04/2021	1974 Stipulation by Highland Capital Management, L.P. and the Official Committee of Unsecured Creditors; Highland Capital Management Fund Advisors, L.P.; NexPoint Advisors, L.P.; Highland Income Fund; NexPoint Strategic Opportunities Fund; Highland Global Allocation Fund; NexPoint Capital, Inc.; James Dondero; The Dugaboy Investment Trust; and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Annable, Zachery)
03/05/2021	1976 Certificate of No Objection Regarding First Monthly Fee Application filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)1925 Application for compensation *First Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 11/1/2020 to 12/31/2020, Fee: $73121.04, Expenses: $10.35.). (Hesse, Gregory)
03/05/2021	1977 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 12 Number of appellee volumes: 13. Civil Case Number: 3:20−CV−03390−X (RE: related document(s)1347 Notice of appeal) (Blanco, J.)
03/05/2021	1978 Notice of docketing COMPLETE record on appeal. 3:20−CV−03390−X (RE: related document(s)1347 Notice of appeal filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). (Blanco, J.)
03/05/2021	1979 Order approving stipulation regarding briefing (Re: related document(s) 1974 Stipulation) and setting hearing (RE: related document(s)1955 Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1955

	and for 1967, Entered on 3/5/2021 (Okafor, M.)
03/05/2021	1980 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1927 Application for compensation *Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: $239,297). (Hoffman, Juliana)
03/07/2021	1981 BNC certificate of mailing − PDF document. (RE: related document(s)1979 Order approving stipulation regarding briefing (Re: related document(s) 1974 Stipulation) and setting hearing (RE: related document(s)1955 Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1955 and for 1967, Entered on 3/5/2021 (Okafor, M.)) No. of Notices: 2. Notice Date 03/07/2021. (Admin.)
03/08/2021	1986 Certificate of mailing regarding appeal (RE: related document(s)1966 Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1943 Order confirming chapter 11 plan). (Attachments: # 1 Service List) (Whitaker, Sheniqua)
03/08/2021	1987 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1966 Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1943 Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/08/2021	1988 Certificate of mailing regarding appeal (RE: related document(s)1957 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
03/08/2021	1989 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1957 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
03/08/2021	1990 Certificate of mailing regarding appeal (RE: related document(s)1970 Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
03/08/2021	1991 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1970 Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
03/08/2021	1992 Certificate of mailing regarding appeal (RE: related document(s)1972 Notice of appeal *Notice of Appeal and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1943 Order confirming chapter 11 plan). (Attachments: # 1 Service List) (Whitaker, Sheniqua)
03/08/2021	1993 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1972 Notice of appeal *Notice of Appeal and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1943 Order confirming chapter 11 plan). (Whitaker, Sheniqua)

03/08/2021	1994 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), 1971 Joinder by *Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), 1973 Joinder by filed by Interested Party James Dondero (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)).). Hearing to be held on 3/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 1967 and for 1973 and for 1955 and for 1971, (Annable, Zachery)
03/08/2021	1995 Notice to take deposition of Paul Broaddus filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/08/2021	1996 Notice to take deposition of Mark Patrick filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/08/2021	1997 Certificate of service re: *Documents Served on or Before March 3, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1963 Application for compensation *Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 1/1/2021 to 1/31/2021, Fee: $655,724.88, Expenses: $6,612.00. Filed by Attorney Juliana Hoffman Objections due by 3/23/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 1964 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1965 Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1968 Application for compensation *15th Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: $244,315.80, Expenses: $0.00. Filed by Attorney Juliana Hoffman Objections due by 3/24/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
03/08/2021	1998 Certificate of service re: *1) [Customized for Rule 3001(e)(1) or 3001(e)(3)] Notice of Transfer of Claim Pursuant to F.R.B.P 3001(e)(1) or 3001(e)(3); and 2) [Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1377 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 94, Amount $268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, 1378 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 97, Amount $268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, 1379 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Amount $20,658.79) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, 1401 Assignment/Transfer of Claim. Fee Amount $25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLP (US) (Amount $1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC). (Kass, Albert)
03/08/2021	

	1999 Certificate of service re: *1) [Customized for Rule 3001(e)(1) or 3001(e)(3)] Notice of Transfer of Claim Pursuant to F.R.B.P 3001(e)(1) or 3001(e)(3); and 2) [Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1500 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Katten Muchin Rosenman LLP (Claim No. 26, Amount $16,695.00) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) filed by Creditor Cedar Glade LP, 1508 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Daniel Sheehan & Associates, PLLC (Claim No. 47, Amount $32,433.75) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, 1509 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Vengroff Williams Inc (American Arbitration Assoc (Claim No. 33, Amount $12,911.80) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, 1512 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Foley Gardere, Foley Lardner LLP To Hain Capital Investors Master Fund, Ltd. Filed by Creditor Hain Capital Group, LLC. filed by Creditor Hain Capital Group, LLC, 1582 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: CVE Technologies Group Inc. (Amount $1,500.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, 1591 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Bates White LLC (Amount $90,855.70) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, 1658 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: ACA Compliance Group (Amount $26,324.25) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, 1930 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Stanton Law Firm PC (Claim No. 163, Amount $88,133.99) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) filed by Creditor Cedar Glade LP). (Kass, Albert)
03/09/2021	2000 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−00538−N. (RE: related document(s)1957 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
03/09/2021	2001 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−00539−N. (RE: related document(s)1966 Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1943 Order confirming chapter 11 plan). (Hogewood, A.)) (Whitaker, Sheniqua)
03/09/2021	2002 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−00546−L. (RE: related document(s)1970 Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
03/09/2021	2003 Application for compensation *(First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020)* for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 7/31/2020, Fee: $87,972.80, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	2004 Application for compensation *(Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020)* for Deloitte Tax LLP, Other Professional, Period: 8/1/2020 to 8/31/2020, Fee: $91,353.40, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	2005 Application for compensation *(Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period*

	from September 1, 2020 through September 30, 2020) for Deloitte Tax LLP, Other Professional, Period: 9/1/2020 to 9/30/2020, Fee: $78,594.30, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	2006 Certificate of service re: *Stipulation Regarding Briefing and Hearing Schedule* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1974 Stipulation by Highland Capital Management, L.P. and the Official Committee of Unsecured Creditors; Highland Capital Management Fund Advisors, L.P.; NexPoint Advisors, L.P.; Highland Income Fund; NexPoint Strategic Opportunities Fund; Highland Global Allocation Fund; NexPoint Capital, Inc.; James Dondero; The Dugaboy Investment Trust; and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/10/2021	2007 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 through January 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
03/10/2021	2008 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−00550−L. (RE: related document(s)1972 Notice of appeal *Notice of Appeal and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1943 Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/10/2021	2009 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/29/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga. (Annable, Zachery)
03/10/2021	2011 Certificate of service re: *Order Approving Stipulation Regarding Briefing and Hearing Schedule* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1979 Order approving stipulation regarding briefing (Re: related document(s) 1974 Stipulation) and setting hearing (RE: related document(s)1955 Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1955 and for 1967, Entered on 3/5/2021 (Okafor, M.)). (Kass, Albert)
03/10/2021	2012 BNC certificate of mailing. (RE: related document(s)1989 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1957 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A))) No. of Notices: 1. Notice Date 03/10/2021. (Admin.)
03/10/2021	2013 BNC certificate of mailing. (RE: related document(s)1993 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)1972 Notice of appeal *Notice of Appeal and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1943 Order confirming chapter 11 plan).) No. of Notices: 1. Notice Date 03/10/2021. (Admin.)
03/11/2021	2014 Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1972 Notice of appeal). (Draper, Douglas)
03/11/2021	

	2015 Statement of issues on appeal, filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1957 Notice of appeal). (Rukavina, Davor)
03/11/2021	2016 Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1957 Notice of appeal). Appellee designation due by 03/25/2021. (Rukavina, Davor)
03/11/2021	2017 Certificate of service re: *Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1994 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), 1971 Joinder by *Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), 1973 Joinder by filed by Interested Party James Dondero (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)).). Hearing to be held on 3/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 1967 and for 1973 and for 1955 and for 1971, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/12/2021	2018 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 6 Number of appellee volumes: 1. Civil Case Number: 3:20−CV−03408−G (RE: related document(s)1339 Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Blanco, J.)
03/12/2021	2019 Notice of docketing record on appeal. 3:20−CV−03408−G (RE: related document(s)1339 Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Blanco, J.)
03/12/2021	2021 Notice of transmittal 20−CV−03408−G 13 SEALED DOCUMENTS (RE: related document(s)2019 Notice of docketing record on appeal. 3:20−CV−03408−G (RE: related document(s)1339 Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/12/2021	2022 Omnibus Response opposed to (related document(s): 1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan, 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery). Modified linkage on 3/12/2021 (Rielly, Bill).
03/12/2021	2023 Joinder by *the Official Committee of Unsecured Creditors* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2022 Response). (Hoffman, Juliana)

03/12/2021	2024 Application for compensation − *Second Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 1/1/2021 to 1/31/2021, Fee: $35042.76, Expenses: $3.80. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 4/2/2021. (Hesse, Gregory)
03/12/2021	2025 Application for compensation − *Third Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 2/1/2021 to 2/28/2021, Fee: $37092.24, Expenses: $94.54. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 4/2/2021. (Hesse, Gregory)
03/12/2021	2026 Certificate of service re: *1) First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 Through July 31, 2020; 2) Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 Through August 31, 2020; and 3) Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 Through September 30, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2003 Application for compensation *(First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020)* for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 7/31/2020, Fee: $87,972.80, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, 2004 Application for compensation *(Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020)* for Deloitte Tax LLP, Other Professional, Period: 8/1/2020 to 8/31/2020, Fee: $91,353.40, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, 2005 Application for compensation *(Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020)* for Deloitte Tax LLP, Other Professional, Period: 9/1/2020 to 9/30/2020, Fee: $78,594.30, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP). (Kass, Albert)
03/12/2021	2027 Certificate of service re: *(Supplemental) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1948 Notice *(Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 1954 Certificate of service re: *1) Notice of Hearing on Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation; and 2) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1947 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for 1878, filed by Creditor Committee Official Committee of Unsecured Creditors, 1948 Notice *(Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)

03/12/2021	2028 Certificate of service re: *1) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 Through January 31, 2021; and 2) Notice of Status Conference* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2007 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 through January 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., 2009 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/29/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/15/2021	2030 Debtor−in−possession monthly operating report for filing period January 1, 2021 to January 31, 2021 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
03/15/2021	2032 Notice of transmittal 3:20−CV−03390−X. CLERKS OFFICE OVERLOOKED SECOND APPELLEE. AMENDED MINI RECORD TO INCLUDE SECOND APPELLEE INDEX. ATTACHED ALSO: APPELLEE VOL. 27 (RE: related document(s)1978 Notice of docketing COMPLETE record on appeal. 3:20−CV−03390−X (RE: related document(s)1347 Notice of appeal filed by Interested Party James Dondero (RE: related document(s)1302 Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/16/2021	2033 Motion for Certification to Court of Appeals *(Joint Motion)* Filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., Highland Global Allocation Fund, Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund, Get Good Trust, The Dugaboy Investment Trust, Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Rukavina, Davor)
03/16/2021	2034 Order certifying appeals of the confirmation order for direct appeal to the United States Court of appeals for the Fifth Circuit (Related Doc # 2033) Entered on 3/16/2021. (Okafor, M.)
03/16/2021	2035 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1944 Application for compensation *Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/). (Pomerantz, Jeffrey)
03/16/2021	2036 Reply to (related document(s): 2022 Response filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. (Rukavina, Davor)
03/16/2021	2037 Reply to (related document(s): 2022 Response filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Hogewood, A.)
03/16/2021	2038 Second Notice *of Additional Services to be Provided by Deloitte Tax LLP* filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
03/16/2021	2039 Notice *of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE

	DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Hayward, Melissa)
03/17/2021	2040 Statement of issues on appeal, filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1966 Notice of appeal). (Hogewood, A.)
03/17/2021	2041 Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1966 Notice of appeal). Appellee designation due by 03/31/2021. (Hogewood, A.)
03/17/2021	2042 Certificate of service re: *1) Debtor's Omnibus Response to Motions for Stay Pending Appeal of the Confirmation Order; and 2) Omnibus Objection of the Official Committee of Unsecured Creditors Objection to Motions for Stay Pending Appeal of the Confirmation Order and Joinder in Debtors Omnibus Objection to Motions for Stay* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2022 Omnibus Response opposed to (related document(s): 1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan, 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery). Modified linkage on 3/12/2021. filed by Debtor Highland Capital Management, L.P., 2023 Joinder by *the Official Committee of Unsecured Creditors* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2022 Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/17/2021	2043 Witness and Exhibit List filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M) (Vasek, Julian)
03/17/2021	2044 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Bhawika Jain To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	2045 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Michael Beispiel To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	2046 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Sang Kook (Michael) Jeong To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	2047 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Phoebe Stewart To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	

	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28570099, amount $ 26.00 (re: Doc# 2044). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28570099, amount $ 26.00 (re: Doc# 2045). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28570099, amount $ 26.00 (re: Doc# 2046). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28570099, amount $ 26.00 (re: Doc# 2047). (U.S. Treasury)
03/17/2021	2048 Declaration re: *Third Supplemental Declaration* filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)336 Order on application to employ). (Hoffman, Juliana)
03/18/2021	2052 Notice of transmittal to submit Amended Mini Record Vol. 1 to remove appellee index and to disregard Appellee Record Vol. 8 filed at doc 27 in 3:20−CV−03408−G (RE: related document(s)2019 Notice of docketing record on appeal. 3:20−CV−03408−G (RE: related document(s)1339 Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)1273 Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/18/2021	2053 Clerk's correspondence requesting Amended designation from attorney for Appellant. (RE: related document(s)2041 Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1966 Notice of appeal). Appellee designation due by 03/31/2021. (Hogewood, A.)) Responses due by 3/24/2021. (Blanco, J.)
03/18/2021	2054 Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2014 Amended notice of appeal). Appellee designation due by 04/1/2021. (Draper, Douglas)
03/18/2021	2055 Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2014 Amended notice of appeal). (Draper, Douglas)
03/18/2021	2056 Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s)1970 Notice of appeal). (Taylor, Clay)
03/18/2021	2057 Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s)1970 Notice of appeal, 2056 Statement of issues on appeal). Appellee designation due by 04/1/2021. (Taylor, Clay)
03/18/2021	2058 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33) (Annable, Zachery)

03/18/2021	2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. (Annable, Zachery)
03/18/2021	2060 Motion to recuse Judge Jernigan Filed by Interested Party James Dondero (Lang, Michael)
03/18/2021	2061 Brief in support filed by Interested Party James Dondero (RE: related document(s)2060 Motion to recuse Judge Jernigan). (Lang, Michael)
03/18/2021	2062 Support/supplemental document*Appendix to Motion to Recuse* filed by Interested Party James Dondero (RE: related document(s)2060 Motion to recuse Judge Jernigan). (Lang, Michael)
03/19/2021	2063 Request for transcript regarding a hearing held on 3/19/2021. The requested turn−around time is hourly. (Edmond, Michael)
03/19/2021	2064 Motion to continue hearing on (related documents 1878 Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
03/19/2021	2065 Court admitted exhibits date of hearing March 19, 2021 (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), 1971 Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), 1973 Joinder by filed by Interested Party James Dondero (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)).) (COURT ADMITTED MOVANT'S EXHIBIT'S #A THROUGH #M BY DAVOR RUKAVINA & DEFENDANT'S EXHIBIT'S #1 THROUGH #33 BY JEFFREY POMERANTZ) (Edmond, Michael)
03/19/2021	2066 Witness List *(Debtor's Witness List with Respect to Hearing to Be Held on March 24, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero). (Annable, Zachery). Modified linkage on 3/19/2021 (Rielly, Bill).
03/19/2021	2067 Hearing held on 3/19/2021. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt

	determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.) (Edmond, Michael)
03/19/2021	2068 Hearing held on 3/19/2021. (RE: related document(s)1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.) (Edmond, Michael)
03/19/2021	2069 Hearing held on 3/19/2021. (RE: related document(s)1971 Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.) (Edmond, Michael)
03/19/2021	2070 Hearing held on 3/19/2021. (RE: related document(s)1973 Joinder by filed by Interested Party James Dondero (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan). (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.) (Edmond, Michael)
03/19/2021	2071 Witness List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Hoffman, Juliana). Related document(s) 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero. Modified to create linkages on 3/22/2021 (Tello, Chris).
03/19/2021	2072 Certificate of service re: *1) Second Notice of Additional Services to be Provided by Deloitte Tax LLP; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2038 Second Notice *of Additional Services to be Provided by Deloitte Tax LLP* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2039 Notice *of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October*

	16, 2019 to January 31, 2021 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/19/2021	2077 Hearing set − follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), 1971 Joinder by *Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), 1973 Joinder by filed by Interested Party James Dondero (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)).) Hearing to be held on 3/24/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 1955 and for 1967 and for 1973 and for 1971, (Ellison, T.) (Entered: 03/22/2021)
03/20/2021	2073 Transcript regarding Hearing Held 03/19/2021 (82 pages) RE: Motions/Joinders to Stay Pending Appeal. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 06/18/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2067 Hearing held on 3/19/2021. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.), 2068 Hearing held on 3/19/2021. (RE: related document(s)1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.), 2069 Hearing held on 3/19/2021. (RE: related document(s)1971 Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order

	confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.), 2070 Hearing held on 3/19/2021. (RE: related document(s)1973 Joinder by filed by Interested Party James Dondero (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan). (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4−factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.)). Transcript to be made available to the public on 06/18/2021. (Rehling, Kathy)
03/22/2021	2074 Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)2041 Appellant designation). (Hogewood, A.)
03/22/2021	2075 Notice to take deposition of James P. Seery filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Hogewood, A.)
03/22/2021	2076 Order granting motion to continue hearing on (related document # 2064) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.) Hearing to be held on 4/5/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 1878, Entered on 3/22/2021. (Okafor, M.)
03/22/2021	2078 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2059, (Annable, Zachery)
03/22/2021	2079 Declaration re: *(Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)70 Application to employ Pachulski Stang Ziehl & Jones LLP as Attorney). (Annable, Zachery)
03/22/2021	2080 Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)2016 Appellant designation). (Rukavina, Davor)

03/23/2021	2081 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)1888 Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) Responses due by 4/6/2021. (Ecker, C.)
03/23/2021	2082 Notice *of Authority to Clerk of Bankruptcy Court* filed by Get Good Trust, The Dugaboy Investment Trust. (Attachments: # 1 Order) (Draper, Douglas)
03/23/2021	2083 Order denying motion to recuse (related document #2060) Entered on 3/23/2021. (Okafor, M.)
03/23/2021	2084 Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document # 1955), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document # 1967), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document # 1971), denying Joinder by filed by Interested Party James Dondero (related document # 1973). Hearing to be held on 3/24/2021 at 09:30 AM at https://us−courts.webex.com/meet/jernigan for 1955 and for 1967 and for 1973 and for 1971, Entered on 3/23/2021. (Okafor, M.)
03/23/2021	2085 Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 4/5/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 1878, (Montgomery, Paige)
03/23/2021	2086 Support/supplemental document *(Letter to Court Regarding Mandatory Stay Pending Appeal Bond Hearing)* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) 2077 Hearing set/continued, 2084 Order on motion to stay pending appeal, Order on motion to stay pending appeal). (Rukavina, Davor)
03/23/2021	2087 Debtor's Supplemental Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Annable, Zachery). Related document(s) 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero. Modified to add linkages on 3/23/2021 (Tello, Chris).
03/23/2021	2088 Amended Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2058 List (witness/exhibit/generic), 2066 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 34) (Annable, Zachery)
03/23/2021	2089 Supplemental Response opposed to (related document(s): 1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
03/23/2021	

	2090 Certificate of service re: *Debtor's Witness and Exhibit List with Respect to Hearing to be Held on March 19, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2058 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/23/2021	2091 Certificate of service re: *Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021 (Rielly, Bill).
03/24/2021	2092 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Scott Ellington (Claim No. 244) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2093 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Frank Waterhouse (Claim No. 217) To CPCM, LCC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2094 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Jean Paul Sevilla (Claim No. 241) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2095 Supplemental Order on Motions for stay pending appeal (RE: related document(s) 2084 Order, 1955 Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)
03/24/2021	2096 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Isaac Leventon (Claim No. 216) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2097 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Lucy Bannon (Claim No. 235) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2098 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Jerome Carter (Claim No. 223) To CPCM, LLC. Filed by Interested Party

	CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2099 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Brian Collins (Claim No. 233) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2100 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Matthew DiOrio (Claim No. 230) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2101 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Hayley Eliason (Claim No. 236) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2102 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: William Gosserand (Claim No. 232) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2103 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Steven Haltom (Claim No. 224) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2104 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Charles Hoedebeck (Claim No. 228) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2105 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Mary Irving (Claim No. 231) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2106 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Helen Kim (Claim No. 226) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2107 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Kari Kovelan (Claim No. 227) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2108 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: William Mabry (Claim No. 234) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2109 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Mark Patrick (Claim No. 219) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2110 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Christopher Rice (Claim No. 220) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2111 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Jason Rothstein (Claim No. 229) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2112 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Kellie Stevens (Claim No. 221) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)

03/24/2021	2113 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Ricky Swadley (Claim No. 237) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2114 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Lauren Thedford (Claim No. 222) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2115 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Stephanie Vitiello (Claim No. 225) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	2116 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1963 Application for compensation *Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 1/1/2021 to 1/31/2021, Fee: $655,7). (Hoffman, Juliana)
03/24/2021	2117 Certificate of service re: *Documents Served on March 19, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2048 Declaration re: *Third Supplemental Declaration* filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)336 Order on application to employ). filed by Financial Advisor FTI Consulting, Inc., 2064 Motion to continue hearing on (related documents 1878 Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, 2066 Witness List *(Debtor's Witness List with Respect to Hearing to Be Held on March 24, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero). (Annable, Zachery). Modified linkage on 3/19/2021. filed by Debtor Highland Capital Management, L.P., 2071 Witness List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Hoffman, Juliana). Related document(s) 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero. Modified to create linkages on 3/22/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2092). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2093). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2094). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2096). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2097). (U.S. Treasury)

03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2098). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2099). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2100). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2101). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2102). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2103). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2104). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2105). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2106). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2107). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2108). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2109). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2110). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2111). (U.S. Treasury)
03/25/2021	

	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2112). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2113). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2114). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28587981, amount $ 26.00 (re: Doc# 2115). (U.S. Treasury)
03/25/2021	2118 Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/25/2021	2119 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/25/2021	2120 INCORRECT ENTRY: Attorney to refile. Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1968 Application for compensation *15th Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: $244,315.80, Expenses: $0.00.). (Hoffman, Juliana) Modified on 3/26/2021 (Ecker, C.).
03/25/2021	2121 BNC certificate of mailing − PDF document. (RE: related document(s)2084 Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document 1955), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document 1967), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document 1971), denying Joinder by filed by Interested Party James Dondero (related document 1973). Hearing to be held on 3/24/2021 at 09:30 AM at https://us−courts.webex.com/meet/jernigan for 1955 and for 1967 and for 1973 and for 1971, Entered on 3/23/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 03/25/2021. (Admin.)
03/26/2021	2122 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1968 Application for compensation *15th Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: $244,315.80, Expenses: $0.00.). (Hoffman, Juliana)
03/26/2021	2123 Amended Notice of hearing *(Amended Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga. (Annable, Zachery)
03/26/2021	2124 Application for compensation *Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: $1,358,786.50, Expenses: $21,401.29. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/16/2021. (Pomerantz, Jeffrey)

03/26/2021	2125 Certificate of service re: *1) Order Granting the Motion for Continuance of Hearing on the Preservation Motion Filed by the Official Committee of Unsecured Creditors; 2) Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims; and 3) Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2076 Order granting motion to continue hearing on (related document 2064) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.) Hearing to be held on 4/5/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 1878, Entered on 3/22/2021. (Okafor, M.), 2078 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2059, filed by Debtor Highland Capital Management, L.P., 2079 Declaration re: *(Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)70 Application to employ Pachulski Stang Ziehl & Jones LLP as Attorney). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/26/2021	2126 Certificate of service re: *Documents Served on March 23, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2084 Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document 1955), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document 1967), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document 1971), denying Joinder by filed by Interested Party James Dondero (related document 1973). Hearing to be held on 3/24/2021 at 09:30 AM at https://us−courts.webex.com/meet/jernigan for 1955 and for 1967 and for 1973 and for 1971, Entered on 3/23/2021. (Okafor, M.), 2085 Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 4/5/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 1878, filed by Creditor Committee Official Committee of Unsecured Creditors, 2087 Debtor's Supplemental Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan), 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan)). (Annable, Zachery). Related document(s) 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero. Modified to add linkages on 3/23/2021. filed by Debtor Highland Capital Management, L.P., 2088 Amended Exhibit List filed by Debtor Highland

	Capital Management, L.P. (RE: related document(s)2058 List (witness/exhibit/generic), 2066 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 34) filed by Debtor Highland Capital Management, L.P., 2089 Supplemental Response opposed to (related document(s): 1955 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal (related documents 1943 Order confirming chapter 11 plan) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/26/2021	2127 BNC certificate of mailing − PDF document. (RE: related document(s)2095 Supplemental Order on Motions for stay pending appeal (RE: related document(s) 2084 Order, 1955 Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 03/26/2021. (Admin.)
03/29/2021	2128 Motion for leave *to file Adversary Complaint and Other Materials Under Seal* Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
03/29/2021	2129 Motion to file document under seal. *(Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
03/29/2021	2130 Certificate of service re: *Supplemental Order on Motions for Stay Pending Appeal* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2095 Supplemental Order on Motions for stay pending appeal (RE: related document(s) 2084 Order, 1955 Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., 1967 Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, 1971 Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1973 Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)). (Kass, Albert)
03/29/2021	2131 Certificate of Conference filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2129 Motion to file document under seal. *(Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal)*). (Annable, Zachery)
03/29/2021	2132 Certificate of Conference filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)2128 Motion for leave *to file Adversary Complaint and Other Materials Under Seal*). (Sosland, Martin)
03/29/2021	2133 Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/28/2021. (Annable, Zachery)
03/29/2021	2134 Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/29/2021	

	2135 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/30/2021	2136 Notice to take deposition of Paul Broaddus filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/30/2021	2137 Notice to take deposition of Mark Patrick filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/30/2021	2138 INCORRECT EVENT: Attorney to refile. Notice *(Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED on 3/31/2021 (Ecker, C.).
03/31/2021	2139 Withdrawal of claim(s): *(Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152)* Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/31/2021	2140 Order granting motion for leave to file Adversary Complaint and Other Materials Under Seal Filed by Interested Parties UBS AG London Branch, UBS Securities LLC(related document # 2128) Entered on 3/31/2021. (Okafor, M.)
03/31/2021	2141 Certificate of service re: *1) Debtor's Second Amended Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC; and 2) Debtor's Second Amended Notice of Deposition to James Dondero in Connection with Debtor's Objection to Proof of Claim Filed by HCRE Partners, LLC* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2118 Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2119 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/31/2021	2142 Adversary case 21−03020. Complaint by UBS Securities LLC, UBS AG London Branch against Highland Capital Management, L.P.. Fee Amount $350. Nature(s) of suit: 72 (Injunctive relief − other). (Sosland, Martin)
03/31/2021	2143 Order approving joint stipulation as to withdrawal of Hunter Mountain Investment Trust's proof of claim No. 152 (RE: related document(s)2139 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2021 (Okafor, M.)
03/31/2021	2144 Certificate of service re: *1) Amended Notice of Status Conference; and 2) Seventeenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from February 1, 2021 Through February 28, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2123 Amended Notice of hearing *(Amended Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga. filed by Debtor Highland Capital Management, L.P., 2124 Application for compensation *Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: $1,358,786.50, Expenses: $21,401.29. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/16/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

03/31/2021	2145 Certificate of service re: *Doucments Served on March 29, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2129 Motion to file document under seal. *(Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 2131 Certificate of Conference filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2129 Motion to file document under seal. *(Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal)*). filed by Debtor Highland Capital Management, L.P., 2133 Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/28/2021. filed by Debtor Highland Capital Management, L.P., 2134 Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2135 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/01/2021	2146 Order Granting Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) Filed by Debtor Highland Capital Management, L.P. (related document # 2129) Entered on 4/1/2021. (Okafor, M.)
04/01/2021	Adversary case 3:20−ap−3105 closed (Ecker, C.)
04/01/2021	2147 Response unopposed to (related document(s): 2128 Motion for leave *to file Adversary Complaint and Other Materials Under Seal* filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/01/2021	2148 **SEALED document regarding: (Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2146 Order on motion to seal). (Annable, Zachery)
04/01/2021	2149 Notice of appeal . Fee Amount $298 filed by Interested Party James Dondero (RE: related document(s)2083 Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # 1 Exhibit)(Lang, Michael)
04/01/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28609730, amount $ 298.00 (re: Doc# 2149). (U.S. Treasury)
04/02/2021	2150 Certificate of service re: *re: Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2138 INCORRECT EVENT: Attorney to refile. Notice *(Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED on 3/31/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/02/2021	2151 Motion to appear pro hac vice for Zachary F. Proulx. Fee Amount $100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Clubok, Andrew)
04/02/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28612120, amount $ 100.00 (re: Doc# 2151). (U.S. Treasury)
04/02/2021	2152 Motion to appear pro hac vice for Kathryn K. George. Fee Amount $100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Clubok, Andrew)

04/02/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28612132, amount $ 100.00 (re: Doc# 2152). (U.S. Treasury)
04/02/2021	2153 Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.). (Attachments: # 1 Ex. 1 # 2 Ex. 2 # 3 Ex. 3 # 4 Ex. 4 # 5 Ex. 5 # 6 Ex. 6 # 7 Ex. 7) (Assink, Bryan)
04/02/2021	2154 Reply to (related document(s): 1969 Objection filed by Interested Party James Dondero) *Reply to James Donderos Objection and Response to the Committees Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation* filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)
04/02/2021	2155 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2014 Amended notice of appeal,). (Annable, Zachery). Modified LINKAGE and TEXT on 4/6/2021 (Blanco, J.).
04/02/2021	2156 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1970 Notice of appeal). (Annable, Zachery)
04/02/2021	2157 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1966 Notice of appeal). (Annable, Zachery)
04/03/2021	2158 Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.). (Montgomery, Paige)
04/05/2021	2159 Amended Witness and Exhibit List *for April 5, 2021 Hearing* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2158 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) (Montgomery, Paige)
04/05/2021	2160 Application for compensation *Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 2/1/2021 to 2/28/2021, Fee: $493,524.00, Expenses: $11,141.12. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. (Hoffman, Juliana)
04/05/2021	2161 Application for compensation *Sixteenth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: $187,387.56, Expenses: $0.00. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. (Hoffman, Juliana)
04/05/2021	2162 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111)* Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/05/2021	2163 Certificate of service re: *1) Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152; and 2) Order Approving Joint Stipulation as to Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2139 Withdrawal of claim(s): *(Joint Stipulation as to the Withdrawal of Hunter Mountain*

	Investment Trust's Proof of Claim No. 152) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2143 Order approving joint stipulation as to withdrawal of Hunter Mountain Investment Trust's proof of claim No. 152 (RE: related document(s)2139 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2021 (Okafor, M.)). (Kass, Albert)
04/05/2021	2164 Hearing held on 4/5/2021. (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation filed by Creditor Committee Official Committee of Unsecured Creditors) (Appearances: P. Montgomery for Unsecured Creditors Committee; A. Russell for J. Dondero; J. Pomeranz and J. Morris for Debtor. Evidentiary hearing. Motion granted. Counsel to submit an order.) (Edmond, Michael) (Entered: 04/06/2021)
04/06/2021	2165 Order granting motion to appear pro hac vice adding Zachary F. Proulx for UBS AG London Branch and UBS Securities LLC (related document # 2151) Entered on 4/6/2021. (Okafor, M.)
04/06/2021	2166 Order granting motion to appear pro hac vice adding Kathryn K. George for UBS AG London Branch and UBS Securities LLC (related document # 2152) Entered on 4/6/2021. (Okafor, M.)
04/06/2021	2167 Clerk's correspondence requesting to amend document from attorney for Interested Party. (RE: related document(s)2149 Notice of appeal . Fee Amount $298 filed by Interested Party James Dondero (RE: related document(s)2083 Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # 1 Exhibit)) Responses due by 4/8/2021. (Whitaker, Sheniqua)
04/06/2021	2168 Request for hearing filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s)2081 Clerk's correspondence). (Attachments: # 1 Proposed Order) (Drawhorn, Lauren)
04/06/2021	2169 Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)2149 Notice of appeal). (Lang, Michael)
04/06/2021	2170 Certificate of service re: *1) Order Granting Debtor's Motion for Leave to File Under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials Under Seal; and 2) Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials Under Seal* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2146 Order Granting Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) Filed by Debtor Highland Capital Management, L.P. (related document 2129) Entered on 4/1/2021. (Okafor, M.), 2147 Response unopposed to (related document(s): 2128 Motion for leave *to file Adversary Complaint and Other Materials Under Seal* filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/07/2021	2171 Request for transcript regarding a hearing held on 4/5/2021. The requested turn−around time is hourly. (Edmond, Michael)
04/07/2021	2172 Certificate of service re: *Documents Served on or Before April 3, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2154 Reply to (related document(s): 1969 Objection filed by Interested Party James Dondero) *Reply to James Donderos Objection and Response to the Committees Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation* filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, 2155 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland

	Capital Management, L.P. (RE: related document(s) 2014 Amended notice of appeal,). (Annable, Zachery). Modified LINKAGE and TEXT on 4/6/2021 (Blanco, J.). filed by Debtor Highland Capital Management, L.P., 2156 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1970 Notice of appeal). filed by Debtor Highland Capital Management, L.P., 2157 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1966 Notice of appeal). filed by Debtor Highland Capital Management, L.P., 2158 Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
04/07/2021	2173 Certificate of service re: *Documents Served on April 5, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2159 Amended Witness and Exhibit List *for April 5, 2021 Hearing* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2158 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Creditor Committee Official Committee of Unsecured Creditors, 2160 Application for compensation *Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 2/1/2021 to 2/28/2021, Fee: $493,524.00, Expenses: $11,141.12. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 2161 Application for compensation *Sixteenth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: $187,387.56, Expenses: $0.00. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. filed by Financial Advisor FTI Consulting, Inc., 2162 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111)* Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/08/2021	2174 Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)2024 Application for compensation − *Second Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 1/1/2021 to 1/31/2021, Fee: $35042.76, Expenses: $3.80.). (Hesse, Gregory)
04/08/2021	2175 Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)2025 Application for compensation − *Third Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 2/1/2021 to 2/28/2021, Fee: $37092.24, Expenses: $94.54.). (Hesse, Gregory)
04/08/2021	2176 Transcript regarding Hearing Held 04/05/2021 (75 pages) RE: Motion to Compel (1878). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 07/7/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2164 Hearing held on 4/5/2021. (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation filed by Creditor Committee Official Committee of Unsecured Creditors) (Appearances: P. Montgomery for Unsecured Creditors Committee; A. Russell for J. Dondero; J. Pomeranz and J. Morris for Debtor. Evidentiary hearing. Motion granted. Counsel to submit an order.)). Transcript to be made available to the public on 07/7/2021. (Rehling, Kathy)
04/08/2021	2177 Order requiring James D. Dondero to preserve documents and to identify measures taken to ensure document preservation (related document # 1878) Entered on 4/8/2021. (Okafor, M.)

04/08/2021	2178 BNC certificate of mailing − PDF document. (RE: related document(s)2165 Order granting motion to appear pro hac vice adding Zachary F. Proulx for UBS AG London Branch and UBS Securities LLC (related document 2151) Entered on 4/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 04/08/2021. (Admin.)
04/08/2021	2179 BNC certificate of mailing − PDF document. (RE: related document(s)2166 Order granting motion to appear pro hac vice adding Kathryn K. George for UBS AG London Branch and UBS Securities LLC (related document 2152) Entered on 4/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 04/08/2021. (Admin.)
04/09/2021	2181 Certificate of service re: *(Supplemental) Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2078 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2059, filed by Debtor Highland Capital Management, L.P., 2125 Certificate of service re: *1) Order Granting the Motion for Continuance of Hearing on the Preservation Motion Filed by the Official Committee of Unsecured Creditors; 2) Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims; and 3) Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2076 Order granting motion to continue hearing on (related document 2064) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation.) Hearing to be held on 4/5/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 1878, Entered on 3/22/2021. (Okafor, M.), 2078 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2059, filed by Debtor Highland Capital Management, L.P., 2079 Declaration re: *(Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014−1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)70 Application to employ Pachulski Stang Ziehl & Jones LLP as Attorney). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)

04/09/2021	2182 Application for compensation *(Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020)* for Deloitte Tax LLP, Other Professional, Period: 10/1/2020 to 12/31/2020, Fee: $153,957.60, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
04/09/2021	2183 Motion to withdraw as attorney (Brian P. Shaw) Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P., Jennifer G. Terry, Joshua Terry (Attachments: # 1 Proposed Order) (Shaw, Brian)
04/09/2021	2184 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE: related document(s)2162 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.)
04/11/2021	2185 BNC certificate of mailing − PDF document. (RE: related document(s)2184 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE: related document(s)2162 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 04/11/2021. (Admin.)
04/12/2021	2186 Notice of Appearance and Request for Notice by Jeff P. Prostok filed by Jennifer G. Terry, Joshua Terry. (Prostok, Jeff)
04/13/2021	2187 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8 Number of appellee volumes: 4. Civil Case Number: 3:21−CV−00261−L (Lindsay) (RE: related document(s)1870 Notice of appeal Related document(s) 1788 Order on motion to compromise controversy. (Blanco, J.)
04/13/2021	2189 Order granting motion to withdraw as attorney (attorney Brian Patrick Shaw terminated). (related document # 2183) Entered on 4/13/2021. (Ecker, C.)
04/13/2021	2190 Notice of docketing COMPLETE record on appeal. 3:21−CV−00261−L (Lindsay) (RE: related document(s)1870 Notice of appeal. Related document(s) 1788 Order on motion to compromise controversy. 1889 Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust.) (Blanco, J.)
04/13/2021	2191 Notice of Transmittal 3:21−CV−00261−L (Lindsay) TRANSMITTED 5 SEALED DOCUMENTS (RE: related document(s)2190 Notice of docketing COMPLETE record on appeal. 3:21−CV−00261−L (Lindsay) (RE: related document(s)1870 Notice of appeal. Related document(s) 1788 Order on motion to compromise controversy. 1889 Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust.) (Blanco, J.)). (Blanco, J.)
04/13/2021	2192 Certificate of service re: *1) Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation; 2) Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2020 Through December 31, 2020; and 3) Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2177 Order requiring James D. Dondero to preserve documents and to identify measures taken to ensure document preservation (related document 1878) Entered on 4/8/2021. (Okafor, M.), 2182 Application for compensation *(Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020)* for Deloitte Tax LLP, Other Professional, Period: 10/1/2020 to 12/31/2020, Fee: $153,957.60, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, 2184 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE:

	related document(s)2162 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.)). (Kass, Albert)
04/13/2021	2193 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2003 Application for compensation *(First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020)* for Deloitte Ta). (Annable, Zachery)
04/13/2021	2194 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2004 Application for compensation *(Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020)* for Deloitte Tax LLP, O). (Annable, Zachery)
04/13/2021	2195 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2005 Application for compensation *(Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020)* for Deloitte Tax L). (Annable, Zachery)
04/14/2021	2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A––Proposed Order) (Annable, Zachery)
04/14/2021	2197 Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)*). (Annable, Zachery)
04/14/2021	2198 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)*). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J) (Annable, Zachery)
04/15/2021	2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/15/2021	2200 Declaration re: *(Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) (Annable, Zachery)
04/15/2021	2201 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with*

	UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2199, (Annable, Zachery)
04/15/2021	2203 Certificate of mailing regarding appeal (RE: related document(s)2169 Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)2149 Notice of appeal).) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
04/15/2021	2204 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2169 Amended Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)2083 Order on motion to recuse Judge). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
04/15/2021	2205 Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s)2083 Order on motion to recuse Judge). (Lang, Michael)
04/15/2021	2206 Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s)2169 Amended notice of appeal). Appellee designation due by 04/29/2021. (Lang, Michael)
04/15/2021	2207 Certificate of service re: *(Supplemental) Debtor's Third Omnibus Objection to Certain No Liability Claim* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P., 2091 Certificate of service re: *Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021. filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
04/15/2021	2208 INCORRECT EVENT: Attorney to refile. Notice *of Transfer of Claim Other Than for Security* filed by Creditor Acis Capital Management, L.P.. (Prostok, Jeff) Modified on 4/16/2021 (Ecker, C.).
04/15/2021	2209 INCORRECT EVENT: Attorney to refile. Notice *of Transfer of Claim Other Than for Security* filed by Creditor Acis Capital Management GP, LLC. (Prostok, Jeff) Modified on 4/16/2021 (Ecker, C.).
04/16/2021	

	2210 Clerk's correspondence requesting Amended designation from attorney for appellant. (RE: related document(s)2206 Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s)2169 Amended notice of appeal). Appellee designation due by 04/29/2021.) Responses due by 4/20/2021. (Blanco, J.)
04/16/2021	2211 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount $23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. (Prostok, Jeff)
04/16/2021	2212 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management L.P. (Claim No. 23, Amount $23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management, L.P.. (Prostok, Jeff)
04/16/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28644419, amount $ 26.00 (re: Doc# 2211). (U.S. Treasury)
04/16/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28644419, amount $ 26.00 (re: Doc# 2212). (U.S. Treasury)
04/16/2021	2213 Amended appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s)2206 Appellant designation). (Lang, Michael)
04/16/2021	2214 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to February 28, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
04/16/2021	2215 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount $23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. (McIlwain, Brent)
04/16/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28646419, amount $ 26.00 (re: Doc# 2215). (U.S. Treasury)
04/16/2021	2216 Certificate of service re: *1) Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; 2) Debtor's Memorandum of Law in Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 3) Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 2197 Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips

	Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)*). filed by Debtor Highland Capital Management, L.P., 2198 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)*). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/18/2021	2217 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−00879−K. (RE: related document(s)2169 Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)2149 Notice of appeal).) (Whitaker, Sheniqua)
04/19/2021	2218 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2124 Application for compensation *Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 t). (Pomerantz, Jeffrey)
04/19/2021	2219 Certificate of service re: *Customized for Rule 3001(e)(1) or 3001(e)(3)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(1) or 3001(e)(3) [Re Docket No. 1959]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1959 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 1 Transferors: Action Shred Of Texas (Amount $3,825.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC). (Kass, Albert)
04/19/2021	2220 Certificate of service re: *1) Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith; 2) Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith; and 3) Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2200 Declaration re: *(Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P., 2201 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2199, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/19/2021	2221 Application for compensation *Fifth Interim Application for Compensation of FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: $838,751.40, Expenses: $0. Filed by Attorney Juliana

	Hoffman Objections due by 5/10/2021. (Hoffman, Juliana)
04/20/2021	2222 Response opposed to (related document(s): 2059 Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
04/20/2021	2223 Application for compensation *Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: $1,277,710.00, Expenses: $13,687.50. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/11/2021. (Pomerantz, Jeffrey)
04/20/2021	2224 Notice of Appearance and Request for Notice by Frances Anne Smith filed by Interested Party CPCM, LLC. (Smith, Frances)
04/20/2021	2225 Response opposed to (related document(s): 2059 Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Interested Party CPCM, LLC. (Smith, Frances) Filed by Interested Party CPCM, LLC (related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Smith, Frances)
04/20/2021	2226 Motion to continue hearing on (related documents 2059 Objection to claim) Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order) (Smith, Frances)
04/20/2021	2227 Motion for expedited hearing(related documents 2226 Motion to continue) Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order) (Smith, Frances)
04/20/2021	2228 Certificate of service re: *Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to February 28, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2214 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to February 28, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/20/2021	2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/20/2021	2230 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP

	as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 5/18/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2196, (Annable, Zachery)
04/21/2021	2231 Certificate of service re: Notice of Appearance, Preliminary Response to Debtors Third Omnibus Objection to Certain No Liability Claims, Motion to Continue Hearing on Debtors Third Omnibus Objection to Certain Liability Claims, and Motion for Setting and Request for Expedited Hearing filed by Interested Party CPCM, LLC (RE: related document(s)2224 Notice of appearance and request for notice, 2225 Response to objection to claim, 2226 Motion to continue hearing on (related documents 2059 Objection to claim), 2227 Motion for expedited hearing(related documents 2226 Motion to continue)). (Smith, Frances)
04/21/2021	2232 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2229, (Annable, Zachery)
04/21/2021	2233 Application for compensation *Sidley Austin LLP's Fifth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 2/28/2021, Fee: $1,957,009.95, Expenses: $23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021. (Hoffman, Juliana)
04/22/2021	2234 Notice of hearing *(Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga. (Annable, Zachery)
04/23/2021	2235 INCORRECT EVENT: Attorney to refile. Motion for contempt against The Charitable DAF Fund, L.P.; CLO Holdco, Ltd.; Persons Authorizing The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. to file the Seery Motion; and Sbaiti & Company PLLC regarding Violation of the (i) Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course; and (ii) Order Approving Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery) Modified on 4/26/2021 (Ecker, C.).
04/23/2021	2236 Brief in support filed by Debtor Highland Capital Management, L.P. Related document(s) 2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.).
04/23/2021	2237 Declaration re: *(Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P. Related document(s) 2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.).

04/23/2021	2239 Certificate of service re: *Documents Served on April 20, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2221 Application for compensation *Fifth Interim Application for Compensation of FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: $838,751.40, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 2223 Application for compensation *Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: $1,277,710.00, Expenses: $13,687.50. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/11/2021. filed by Debtor Highland Capital Management, L.P., 2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2230 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 5/18/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2196, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/23/2021	2240 Certificate of service re: *1) Notice of Hearing; and 2) Fifth Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from December 1, 2020 Through and Including February 28, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2232 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2229, filed by Debtor Highland Capital Management, L.P., 2233 Application for compensation *Sidley Austin LLP's Fifth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 2/28/2021, Fee: $1,957,009.95, Expenses: $23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
04/23/2021	2241 INCORRECT EVENT: See #2248 for correction. Notice *of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)854 Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).). (Attachments: # 1 Exhibit 1_Complaint # 2 Exhibit 2_Motion for Leave to File First Amended Complaint) (Sbaiti, Mazin) Modified on 4/27/2021 (Ecker, C.).
04/23/2021	2242 DUPLICATE ENTRY: See # 2241. Notice *of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)854 Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).). (Attachments: # 1 Exhibit 1_Complaint # 2 Exhibit 2_Motion for Leave to File First Amended Complaint) (Sbaiti, Mazin) Modified on 4/26/2021 (Ecker, C.).
04/23/2021	

	2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P. (Ecker, C.) (Entered: 04/27/2021)
04/24/2021	2243 Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. *(Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. Objections due by 5/17/2021. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Settlement Agreement) (Annable, Zachery)
04/26/2021	2244 Notice *of Filing of Monthly Staffing Report by Development Specialists Inc. for the Period from February 1, 2021 Through February 28, 2021* filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
04/26/2021	2245 Certificate of service re: *Notice of Status Conference* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2234 Notice of hearing *(Notice of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/26/2021	2246 Omnibus Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1655 Application for compensation *Fourth Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: $710,280.45, Expenses: $1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021., 1853 Application for compensation *Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 11/30/2020, Fee: $1,620,489.60, Expenses: $8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021., 2221 Application for compensation *Fifth Interim Application for Compensation of FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: $838,751.40, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021., 2233 Application for compensation *Sidley Austin LLP's Fifth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 2/28/2021, Fee: $1,957,009.95, Expenses: $23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021.). Hearing to be held on 5/18/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 1853 and for 1655 and for 2233 and for 2221, (Hoffman, Juliana)
04/27/2021	2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/27/2021	2249 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2247, (Annable, Zachery)
04/27/2021	2250 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2160 Application for compensation *Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 2/1/2021 to 2/28/2021, Fee: $). (Hoffman, Juliana)

04/27/2021	2251 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)2161 Application for compensation *Sixteenth Monthly Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: $187,387.56, Expenses: $0.00.). (Hoffman, Juliana)
04/27/2021	2252 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2247, (Annable, Zachery)
04/28/2021	2253 Certificate of service re: *1) Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders; 2) Debtor's Memorandum of Law in Support of Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders; and 3) Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2235 INCORRECT EVENT: Attorney to refile. Motion for contempt against The Charitable DAF Fund, L.P.; CLO Holdco, Ltd.; Persons Authorizing The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. to file the Seery Motion; and Sbaiti & Company PLLC regarding Violation of the (i) Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course; and (ii) Order Approving Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery) Modified on 4/26/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 2236 Brief in support filed by Debtor Highland Capital Management, L.P. Related document(s) 2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 2237 Declaration re: *(Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P. Related document(s) 2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/28/2021	2254 Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2248, (Sbaiti, Mazin)
04/29/2021	2255 Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document # 2247) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.)
04/29/2021	2256 Motion to compel Compliance with Bankruptcy Rule 2015.3. Filed by Get Good Trust, The Dugaboy Investment Trust Objections due by 5/20/2021. (Draper, Douglas)
04/29/2021	2257 Certificate of service re: filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2256 Motion to compel Compliance with Bankruptcy Rule 2015.3.). (Attachments: # 1 Exhibit − Matrix) (Draper, Douglas)

04/29/2021	2258 Certificate of service re: *1) Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith; and 2) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from February 1, 2021 Through February 28, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2243 Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. *(Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. Objections due by 5/17/2021. (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Settlement Agreement) filed by Debtor Highland Capital Management, L.P., 2244 Notice *of Filing of Monthly Staffing Report by Development Specialists Inc. for the Period from February 1, 2021 Through February 28, 2021* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/29/2021	2259 Certificate of service re: *1) Notice of Hearing on the Fourth and Fifth Interim Applications for Compensation and Reimbursement of Expenses; and 2) Amended Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2246 Omnibus Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1655 Application for compensation *Fourth Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: $710,280.45, Expenses: $1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021., 1853 Application for compensation *Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 11/30/2020, Fee: $1,620,489.60, Expenses: $8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021., 2221 Application for compensation *Fifth Interim Application for Compensation of FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: $838,751.40, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021., 2233 Application for compensation *Sidley Austin LLP's Fifth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 2/28/2021, Fee: $1,957,009.95, Expenses: $23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021.). Hearing to be held on 5/18/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 1853 and for 1655 and for 2233 and for 2221, filed by Creditor Committee Official Committee of Unsecured Creditors, 2252 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2247, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/30/2021	2260 Application for compensation *Seventeenth Monthly Application for Compensation for FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: $96,823.80, Expenses: $0.00. Filed by Attorney Juliana Hoffman Objections due by 5/21/2021. (Hoffman, Juliana)
04/30/2021	2261 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Redeemer Committee of the Highland Crusader Fund (Claim No. 72, Amount $137,696,610.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. (Leen, Edward)
04/30/2021	2262 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Highland Crusader Offshore Partners, L.P., et al. (Claim No. 81, Amount $50,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. (Leen, Edward)
04/30/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28681233, amount $ 26.00 (re: Doc# 2261).

	(U.S. Treasury)
04/30/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28681233, amount $ 26.00 (re: Doc# 2262). (U.S. Treasury)
04/30/2021	2263 Assignment/Transfer of Claim. Fee Amount $156. Transfer Agreement 3001 (e) 2 Transferors: HarbourVest 2017 Global Fund L.P. (Claim No. 143); HarbourVest 2017 Global AIF L.P. (Claim No. 147); HarbourVest Dover Street IX Investment L.P. (Claim No. 150); HV International VIII Secondary L.P. (Claim No. 153); HarbourVest Skew Base AIF L.P. (Claim No. 154); HarbourVest Partners L.P. (Claim No. 149) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. (McIlwain, Brent)
04/30/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (156.00). Receipt number 28682148, amount $ 156.00 (re: Doc# 2263). (U.S. Treasury)
04/30/2021	2264 Certificate of service re: *(Supplemental) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1948 Notice *(Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/30/2021	2265 Certificate of service re: *Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2255 Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document 2247) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.)). (Kass, Albert)
05/03/2021	2266 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Sahan Abayarathna To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
05/03/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number 28684014, amount $ 26.00 (re: Doc# 2266). (U.S. Treasury)
05/03/2021	2267 Status conference held on 5/3/2021., Trial set (RE: related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.) Trial date set for 9/21/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Appearances: J. Pomeranz for Debtor; F. Smith for CPMC LLC, purchaser of certain employee claims; J. Vasek for NextPoint, purchaser of certain other employee claims; M. Clemente for UCC; J. Dondero. Nonevidentiary status conference. Matter continued to September 13, 2021 at 1:30 for a Trial Docket Call with

	evidentiary trial to be held on September 21, 2021 at 9:30 am. Order to be uploaded memorializing this. (Ellison, T.)
05/03/2021	2269 INCORRECT ENTRY: DUPLICATE ENTRY. Hearing held on 5/3/2021. (RE: related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz for Debtor; F. Smith for CPMC LLC, purchaser of certain employee claims; J. Vasek for NextPoint, purchaser of certain other employee claims; M. Clemente for UCC; J. Dondero. Nonevidentiary status conference. Matter continued to September 13, 2021 at 1:30 for a Trial Docket Call with evidentiary trial to be held on September 21, 2021 at 9:30 am. Order to be uploaded memorializing this.) (Edmond, Michael) Modified on 5/4/2021 (Tello, Chris). (Entered: 05/04/2021)
05/04/2021	2268 Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P.)*Limited Preliminary Objection* filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
05/04/2021	2270 PDF with attached Audio File. Court Date & Time [05/03/2021 01:33:52 PM]. File Size [3670 KB]. Run Time [00:15:40]. (admin).
05/04/2021	2271 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2133 Objection to claim). (Annable, Zachery)
05/04/2021	2272 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2182 Application for compensation *(Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020)* for Deloitt). (Annable, Zachery)
05/04/2021	2296 Order from circuit court re: appeal on appellate case number: 21−10449, (RE: related document(s)1957 Notice of appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.). IT IS ORDERED that the motion of NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. for leave to appeal under 28 U.S.C. § 158(d) is GRANTED. Civil Case 3:21−cv−00538−N. Entered on 5/4/2021 (Whitaker, Sheniqua) (Entered: 05/12/2021)
05/05/2021	2273 Debtor−in−possession quarterly operating report (post−confirmation) for filing period January 1, 2021 to March 31, 2021 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/05/2021	2274 Objection to (related document(s): 1826 Application for administrative expenses filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/05/2021	2275 Declaration re: *(Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P.*

	and NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2274 Objection). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) (Annable, Zachery)
05/05/2021	2276 Certificate of service re: *Seventeenth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from March 1, 2021 to and Including March 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2260 Application for compensation *Seventeenth Monthly Application for Compensation for FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: $96,823.80, Expenses: $0.00. Filed by Attorney Juliana Hoffman Objections due by 5/21/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
05/06/2021	2277 Notice *(Notice of Cancellation of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). (Annable, Zachery)
05/06/2021	2278 Response opposed to (related document(s): 2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Attachments: # 1 Proposed Order) (Drawhorn, Lauren)
05/06/2021	2279 Brief in opposition filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)*, 2278 Response). (Drawhorn, Lauren)
05/06/2021	2280 Motion to file document under seal. *Appendix in Support of Response to Motion to Disqualify* Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Appendix) (Drawhorn, Lauren)
05/07/2021	2281 Notice of Appearance and Request for Notice by Brant C. Martin filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Martin, Brant)
05/07/2021	2282 Motion to continue hearing on (related documents 2229 Motion to borrow/incur debt) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/07/2021	2283 Application for compensation *(Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 through November 30, 2020)* for Hayward PLLC, Debtor's Attorney, Period: 10/1/2020 to 11/30/2020, Fee: $69,327.00, Expenses: $6,478.70. Filed by Attorney Hayward PLLC (Annable, Zachery)
05/07/2021	2284 Order granting motion to continue hearing on (related document # 2282) (related documents Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela) Hearing to be held on 6/1/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2229, Entered on 5/7/2021. (Okafor, M.)*
05/10/2021	2285 Notice of change of address filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Clubok, Andrew)

05/10/2021	2286 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/1/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2229, (Annable, Zachery)
05/10/2021	2287 Certificate of service re: *1) Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.; and 2) Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2274 Objection to (related document(s): 1826 Application for administrative expenses filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2275 Declaration re: *(Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2274 Objection). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/11/2021	2288 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)2221 Application for compensation *Fifth Interim Application for Compensation of FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: $838,751.40, Expenses: $0.). (Hoffman, Juliana)
05/11/2021	2289 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/11/2021	2290 Notice to take deposition of Highland Capital Management, L.P. filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
05/11/2021	2291 Notice *Notice of Return of Service* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2290 Notice to take deposition of Highland Capital Management, L.P. filed by Creditor The Dugaboy Investment Trust.). (Draper, Douglas)
05/11/2021	2292 Certificate of service re: *Notice of Cancellation of Status Conference* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2277 Notice *(Notice of Cancellation of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1826 Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/12/2021	2293 Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P.)*with Certificate of Service* filed by Creditor The Dugaboy Investment Trust. (Attachments: # 1 Exhibit A) (Draper, Douglas)
05/12/2021	2294 Reply to (related document(s): 2278 Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

05/12/2021	2295 Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
05/12/2021	2297 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/21/2021 at 09:00 AM at https://us−courts.webex.com/meet/jerniga for 2199, (Annable, Zachery)
05/12/2021	2298 Certificate of service re: *1) Motion to Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief; 2) Eleventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 Through November 30, 2020; and 3) Order Continuing Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2282 Motion to continue hearing on (related documents 2229 Motion to borrow/incur debt) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2283 Application for compensation *(Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 through November 30, 2020)* for Hayward PLLC, Debtor's Attorney, Period: 10/1/2020 to 11/30/2020, Fee: $69,327.00, Expenses: $6,478.70. Filed by Attorney Hayward PLLC, 2284 Order granting motion to continue hearing on (related document 2282) (related documents Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela) Hearing to be held on 6/1/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2229, Entered on 5/7/2021. (Okafor, M.)). (Kass, Albert)*
05/13/2021	2299 Clerk's notice of fees due in the amount of $207.00 (Filing Fee for Circuit Appeal) See Document 2296. filed by Interested Party Highland Capital Management Fund Advisors, L.P., and Interested Party NexPoint Advisors, L.P.. (RE: related document(s)1957 Notice of appeal . Fee Amount $298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
05/13/2021	2300 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2223 Application for compensation *Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021* for Jeffrey). (Pomerantz, Jeffrey)
05/13/2021	2301 Certificate of service re: *Amended Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2286 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/1/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2229, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

05/13/2021	2302 Certificate of service re: *Notice of Deposition* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2289 Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2021	2303 Certificate of service re: *[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2261 and 2262]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2261 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Redeemer Committee of the Highland Crusader Fund (Claim No. 72, Amount $137,696,610.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. filed by Creditor Jessup Holdings LLC, 2262 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Highland Crusader Offshore Partners, L.P., et al. (Claim No. 81, Amount $50,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. filed by Creditor Jessup Holdings LLC). (Kass, Albert)
05/13/2021	Receipt Number 338881, Fee Amount $207.00 (RE: related document(s)2299 Clerk's notice of fees due in the amount of $207.00 (Filing Fee for Circuit Appeal) See Document 2296. filed by Interested Party Highland Capital Management Fund Advisors, L.P., and Interested Party NexPoint Advisors, L.P.. (RE: related document(s)1957 Notice of appeal . Fee Amount $298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)1943 Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)) (Floyd, K) (Entered: 05/14/2021)
05/14/2021	2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/14/2021	2305 Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)*). (Sosland, Martin)
05/14/2021	2306 Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit # 2 Exhibit) (Hoffman, Juliana)
05/14/2021	2307 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2304, (Annable, Zachery)
05/14/2021	2308 Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) (Annable, Zachery)
05/14/2021	2309 Response to show cause order (related document(s): 2255 Order on motion to show cause) filed by Respondent Mark Patrick. (Phillips, Louis)
05/14/2021	

	2310 Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
05/14/2021	2311 Response opposed to (related document(s): 2248 Motion to Reconsider(related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/14/2021	2312 Objection to (related document(s): 2247 Motion for order to show cause *(Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P., 2255 Order on motion to show cause. MODIFIED to correct linkage on 5/17/2021 (Ecker, C.).
05/14/2021	2313 Response to show cause order (related document(s): 2255 Order on motion to show cause) filed by Plaintiff The Charitable DAF Fund, L.P.. (Attachments: # 1 Appendix) (Sbaiti, Mazin)
05/14/2021	2314 Witness and Exhibit List *with Certificate of Service* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)*). (Draper, Douglas)
05/14/2021	2315 Joinder by *to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2311 Response). (Hoffman, Juliana)
05/14/2021	2316 Motion to withdraw as attorney (John J. Kane, Brian W. Clark and the law firm of Kane Russell Coleman Logan PC) Filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Proposed Order) (Kane, John)
05/17/2021	2317 Agreed Order granting motion to continue hearing on (related document 2226) (related documents Objection to claim) Hearing to be held on 9/21/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2059, Entered on 5/17/2021. (Okafor, M.) Modified text on 5/17/2021 (Okafor, M.).
05/17/2021	2318 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2233 Application for compensation *Sidley Austin LLP's Fifth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 2/28/2021, Fee: $1,957,009.95, Expenses: $23,). (Hoffman, Juliana)
05/17/2021	2319 Notice *(Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/17/2021	2320 Certificate of service re: *1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2294 Reply to (related document(s): 2278 Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2297 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for*

	Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/21/2021 at 09:00 AM at https://us−courts.webex.com/meet/jerniga for 2199, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/18/2021	2321 Notice *(Notice of Cancellation of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). (Annable, Zachery)
05/18/2021	2322 Notice of Appearance and Request for Notice *for BH Equities LLC* by Casey William Doherty Jr. filed by Creditor BHH Equities LLC. (Doherty, Casey)
05/18/2021	2323 Response opposed to (related document(s): 906 Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor BHH Equities LLC. (Doherty, Casey)
05/18/2021	2324 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2243 Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. *(Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith)*
05/18/2021	2325 Order granting fifth interim fee application for compensation (related document # 2221) granting for FTI Consulting, Inc. Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: $838751.40, expenses awarded: $0.00 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	2326 Order granting fourth interim application for compensation (related document # 1655) granting for FTI Consulting, Inc., Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: $710280.45, expenses awarded: $1479.47 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	2327 Order granting fifth interim application for compensation (related document # 2233) granting for Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: $1957009.95, expenses awarded: $23156.48 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	2328 Application for compensation *Sidley Austin LLP's Seventeenth Monthly Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2021 to 3/31/2021, Fee: $371,842.20, Expenses: $6,279.02. Filed by Attorney Juliana Hoffman Objections due by 6/8/2021. (Hoffman, Juliana)
05/18/2021	2329 Order granting fourth interim application for compensation (related document # 1853) granting Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: $1620489.60, expenses awarded: $8974.00 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	2330 Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)*). (Attachments: # 1 Dondero Ex. A # 2 Dondero Ex. B # 3 Dondero Ex. C # 4 Dondero Ex. D # 5 Dondero Ex. E # 6 Dondero Ex. F # 7 Dondero Ex. G # 8 Dondero Ex. H # 9 Dondero Ex. I # 10 Dondero Ex. J # 11 Dondero Ex. K # 12 Dondero Ex. L # 13 Dondero Ex. M # 14 Dondero Ex. N # 15 Dondero Ex. O # 16 Dondero Ex. P # 17 Dondero

	Ex. Q # 18 Dondero Ex. R # 19 Dondero Ex. S # 20 Dondero Ex. T # 21 Dondero Ex. U # 22 Dondero Ex. V # 23 Dondero Ex. W # 24 Dondero Ex. X) (Assink, Bryan)
05/18/2021	2331 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. *(Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73) (Annable, Zachery)
05/18/2021	2360 Hearing held on 5/18/2021. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief) filed by Debtor Highland Capital Management, L.P., (Matter continued) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s)2221 Application for compensation Fifth Interim Application for Compensation of FTI Consulting, Inc., for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, filed by Attorney Juliana Hoffman). (***CNO filed; order signed in chambers***) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s)1853 Application for compensation Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 11/30/2020, filed by Attorney Juliana Hoffman) (***CNO filed; order signed in chambers***) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s)1655 Application for compensation Fourth Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, filed by Attorney Juliana Hoffman) (***CNO filed; order signed in chambers***) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s)2233 Application for compensation Sidley Austin LLP's Fifth Interim Application for Compensation for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 2/28/2021, filed by Attorney Juliana Hoffman) (***CNO filed; order signed in chambers***) (Edmond, Michael) (Entered: 05/24/2021)
05/19/2021	2332 Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	2333 Notice to take deposition of CLO Holdco, Ltd. and Charitable DAF Fund, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	

	2334 Withdrawal of claim(s): *#93* Filed by Interested Party Integrated Financial Associates, Inc.. (Attachments: # 1 Exhibit Ex. 1 − POC #93 Integrated Financial Associates) (Bryant, M.)
05/19/2021	2335 Notice *(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	2336 Amended Witness and Exhibit List *for May 21, 2021 Hearing* filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)2305 List (witness/exhibit/generic)). (Sosland, Martin)
05/19/2021	2337 Certificate of service re: *Documents Served on May 14, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2306 Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit # 2 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors, 2307 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2304, filed by Debtor Highland Capital Management, L.P., 2308 Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Debtor Highland Capital Management, L.P., 2311 Response opposed to (related document(s): 2248 Motion to Reconsider(related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2315 Joinder by *to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2311 Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
05/19/2021	2338 BNC certificate of mailing − PDF document. (RE: related document(s)2317 Agreed Order granting motion to continue hearing on (related document 2226) (related documents Objection to claim) Hearing to be held on 9/21/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2059, Entered on 5/17/2021. (Okafor, M.) Modified text on 5/17/2021 (Okafor, M.).) No. of Notices: 2. Notice Date 05/19/2021. (Admin.)
05/20/2021	2339 Amended Exhibit List *Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2314 List (witness/exhibit/generic)). (Draper, Douglas)
05/20/2021	2340 Motion to continue hearing on (related documents 2229 Motion to borrow/incur debt) *(Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/20/2021	2341 Response opposed to (related document(s): 2256 Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

05/20/2021	2342 Amended Exhibit List *Supplemental Exhibit List* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2339 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29) (Draper, Douglas)
05/20/2021	2343 Joinder by *Debtors Opposition to Motion to Compel* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2341 Response). (Hoffman, Juliana)
05/20/2021	2344 Certificate of service re: *Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2319 Notice *(Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time))* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/21/2021	2345 Agreed scheduling order with respect to Debtors Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (RE: related document(s)2274 Objection filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/28/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2274, Entered on 5/21/2021 (Okafor, M.)
05/21/2021	2346 Order granting motion to withdraw as attorney for CLO Holdco, LTD (attorney John J. Kane terminated). (related document # 2316) Entered on 5/21/2021. (Okafor, M.)
05/21/2021	2347 Reply to (related document(s): 2311 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
05/21/2021	2348 PDF with attached Audio File. Court Date & Time [05/21/2021 08:57:33 AM]. File Size [73177 KB]. Run Time [05:13:15]. (admin).
05/21/2021	2349 Omnibus Reply to (related document(s): 2309 Response to show cause order filed by Respondent Mark Patrick, 2312 Objection filed by Interested Party James Dondero, 2313 Response to show cause order filed by Creditor The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/21/2021	2350 Order approving Debtor's settlement with Siepe, LLC and Siepe Services, LLC.(Claims Nos. 38, 39) and authorizing actions consistent therewith (related document # 2243) Entered on 5/21/2021. (Okafor, M.)
05/21/2021	2351 Declaration re: *(Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2349 Reply). (Attachments: # 1 Exhibit 19 # 2 Exhibit 20 # 3 Exhibit 21 # 4 Exhibit 22) (Annable, Zachery)
05/21/2021	2352 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 165, 168, and 169 (RE: related document(s)2335 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.)
05/21/2021	2353 Order sustaining objection to claim number(s) #93 of Integrated Financial Associates, Inc. (RE: related document(s)2133 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.)
05/21/2021	

	2354 Order granting motion to continue hearing on (related document # 2340) (related documents Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela) Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2229, Entered on 5/21/2021. (Okafor, M.)*
05/21/2021	2355 Declaration re: *(Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2349 Reply). (Attachments: # 1 Exhibit 19 # 2 Exhibit 20 # 3 Exhibit 21 # 4 Exhibit 22) (Annable, Zachery)
05/21/2021	2356 Notice *(Notice of Filing of Sixth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
05/21/2021	2357 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
05/21/2021	2358 Certificate of service re: *Documents Served on May 18, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2321 Notice *(Notice of Cancellation of Status Conference)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). filed by Debtor Highland Capital Management, L.P., 2324 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2243 Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. *(Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith)2325 Order granting fifth interim fee application for compensation (related document 2221) granting for FTI Consulting, Inc. Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: $838751.40, expenses awarded: $0.00 Entered on 5/18/2021. (Okafor, M.), 2326 Order granting fourth interim application for compensation (related document 1655) granting for FTI Consulting, Inc., Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: $710280.45, expenses awarded: $1479.47 Entered on 5/18/2021. (Okafor, M.), 2327 Order granting fifth interim application for compensation (related document 2233) granting for Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: $1957009.95, expenses awarded: $23156.48 Entered on 5/18/2021. (Okafor, M.), 2328 Application for compensation Sidley Austin LLP's Seventeenth Monthly Application for Compensation for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2021 to 3/31/2021, Fee: $371,842.20, Expenses: $6,279.02. Filed by Attorney Juliana Hoffman Objections due by 6/8/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 2329 Order granting fourth interim application for compensation (related document 1853) granting Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: $1620489.60, expenses awarded: $8974.00 Entered on 5/18/2021.*

	(Okafor, M.), 2331 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/21/2021	2359 Hearing held on 5/21/2021. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (Appearances: R. Feinstein, J. Morris, J. Pomeranz, and G. Demo for Debtor; A. Clubok and K. Posin for UBS; D. Draper for Dugaboy and Get Good Trusts; C. Taylor and B. Assink for J. Dondero. Evidentiary hearing. Motion approved for reasons stated on the record. Counsel to upload order.) (Edmond, Michael) (Entered: 05/24/2021)
05/21/2021	2368 Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO (Edmond, Michael) (Entered: 05/24/2021)
05/24/2021	2361 Agreed scheduling order with respect to Debtor's motion to disqualify Wick Phillips Gould & Martin LLP as counsel to HCRE Partners, LLC (RE: related document(s)2196 Motion to compel filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2196, Entered on 5/24/2021 (Okafor, M.)
05/24/2021	2362 Order requiring James Dondero to appear at all hearings in the bankruptcy case Entered on 5/24/2021 (Okafor, M.)
05/24/2021	2363 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2021	2364 Request for transcript regarding a hearing held on 5/21/2021. The requested turn−around time is daily. (Edmond, Michael)
05/24/2021	2365 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 38 and 39)* Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2021	

	2366 Subpoena on Grant Scott filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2021	2367 Notice of hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2256 Motion to compel Compliance with Bankruptcy Rule 2015.3. Filed by Get Good Trust, The Dugaboy Investment Trust Objections due by 5/20/2021.). Hearing to be held on 6/10/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2256, (Draper, Douglas)
05/24/2021	2369 Certificate of service re: Notice of Hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2367 Notice of hearing). (Attachments: # 1 Mailing Matrix) (Draper, Douglas)
05/24/2021	2370 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)2260 Application for compensation *Seventeenth Monthly Application for Compensation for FTI Consulting, Inc.* for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: $96,823.80, Expenses: $0.). (Hoffman, Juliana)
05/24/2021	2371 Certificate of service re: *1) Debtor's Notice of Deposition to Mark Patrick in Connection with Debtor's Contempt Motion; 2) Debtor's Notice of Rule 30(b)(6) Deposition to (A) CLO Holdco, Ltd., and (B) Charitable DAF Fund, L.P.; and 3) Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2332 Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2333 Notice to take deposition of CLO Holdco, Ltd. and Charitable DAF Fund, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2335 Notice *(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/25/2021	2372 Subpoena on NexBank Capital, Inc. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/25/2021	2373 Subpoena on Highland Capital Management Fund Advisors, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/25/2021	2374 Certificate of service re: *1) Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief; 2) Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3 Filed by Dugaboy Investment Trust and Get Good Trust; and 3) Joinder of the Official Committee of Unsecured Creditors to Debtors Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3 Filed by Dugaboy Investment Trust and Get Good Trust* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2340 Motion to continue hearing on (related documents 2229 Motion to borrow/incur debt) *(Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2341 Response opposed to (related document(s): 2256 Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2343 Joinder by *Debtors Opposition to Motion to Compel* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2341 Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)

05/26/2021	2375 Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2359 Hearing held on 5/21/2021. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (Appearances: R. Feinstein, J. Morris, J. Pomeranz, and G. Demo for Debtor; A. Clubok and K. Posin for UBS; D. Draper for Dugaboy and Get Good Trusts; C. Taylor and B. Assink for J. Dondero. Evidentiary hearing. Motion approved for reasons stated on the record. Counsel to upload order.)). Transcript to be made available to the public on 08/24/2021. (Rehling, Kathy)
05/26/2021	2376 Notice of Appearance and Request for Notice by Linda D. Reece filed by Creditor Plano ISD. (Reece, Linda)
05/26/2021	2377 Declaration re: *(Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2349 Reply). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
05/26/2021	2378 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
05/26/2021	2379 Certificate of service re: *[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F. R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2092 2094 and 2096 2115]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2092 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Scott Ellington (Claim No. 244) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2093 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Frank Waterhouse (Claim No. 217) To CPCM, LCC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2094 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Jean Paul Sevilla (Claim No. 241) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2096 Assignment/Transfer of Claim. Fee Amount $26. Transferors: Isaac Leventon (Claim No. 216) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2097 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Lucy Bannon (Claim No. 235) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2098 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Jerome Carter (Claim No. 223) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2099 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Brian Collins (Claim No. 233) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2100 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Matthew DiOrio (Claim No. 230) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2101 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Hayley Eliason (Claim No. 236) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2102 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: William Gosserand (Claim No. 232) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2103 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Steven Haltom (Claim No. 224) To CPCM, LLC. Filed by

	Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2104 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Charles Hoedebeck (Claim No. 228) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2105 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Mary Irving (Claim No. 231) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2106 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Helen Kim (Claim No. 226) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2107 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Kari Kovelan (Claim No. 227) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2108 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: William Mabry (Claim No. 234) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2109 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Mark Patrick (Claim No. 219) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2110 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Christopher Rice (Claim No. 220) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2111 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Jason Rothstein (Claim No. 229) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2112 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Kellie Stevens (Claim No. 221) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2113 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Ricky Swadley (Claim No. 237) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2114 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Lauren Thedford (Claim No. 222) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2115 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Stephanie Vitiello (Claim No. 225) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC). (Kass, Albert)
05/26/2021	2380 Certificate of service re: *Documents Served on May 21, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2345 Agreed scheduling order with respect to Debtors Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (RE: related document(s)2274 Objection filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/28/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2274, Entered on 5/21/2021 (Okafor, M.), 2349 Omnibus Reply to (related document(s): 2309 Response to show cause order filed by Respondent Mark Patrick, 2312 Objection filed by Interested Party James Dondero, 2313 Response to show cause order filed by Creditor The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2350 Order approving Debtor's settlement with Siepe, LLC and Siepe Services, LLC.(Claims Nos. 38, 39) and authorizing actions consistent therewith (related document 2243) Entered on 5/21/2021. (Okafor, M.), 2352 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 165, 168, and 169 (RE: related document(s)2335 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.), 2353 Order sustaining objection to claim number(s) #93 of Integrated Financial Associates, Inc. (RE: related document(s)2133 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.), 2354 Order granting motion to continue hearing on (related document 2340) (related documents Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela) Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2229, Entered on 5/21/2021. (Okafor, M.), 2355 Declaration re: (Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders) filed by Debtor Highland Capital*

	Management, L.P. (RE: related document(s)2349 Reply). (Attachments: # 1 Exhibit 19 # 2 Exhibit 20 # 3 Exhibit 21 # 4 Exhibit 22) filed by Debtor Highland Capital Management, L.P., 2356 Notice (Notice of Filing of Sixth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 2357 Declaration re: (Disclosure Declaration of Ordinary Course Professional) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/26/2021	2381 BNC certificate of mailing − PDF document. (RE: related document(s)2362 Order requiring James Dondero to appear at all hearings in the bankruptcy case Entered on 5/24/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 05/26/2021. (Admin.)
05/27/2021	2382 Application for compensation *Eighteenth Monthly Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: $85,577.40, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 6/17/2021. (Hoffman, Juliana)
05/27/2021	2383 Application for compensation *(Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021)* for Pachulski Stang Ziehl & Jones LLP, Debtor's Attorney, Period: 4/1/2021 to 4/30/2021, Fee: $1,286,897.00, Expenses: $8,173.58. Filed by Other Professional Pachulski Stang Ziehl & Jones LLP (Annable, Zachery)
05/27/2021	2384 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 38 . Civil Case Number: 3:21−CV−00879−K (RE: related document(s)2149 Notice of appeal 2169 Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)2149 Notice of appeal).) (Blanco, J.)
05/27/2021	2386 Notice of docketing COMPLETE record on appeal. 3:21CV00879K (RE: related document(s)2149 Notice of appeal2169 Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)2149 Notice of appeal).) (Blanco, J.)
05/27/2021	2387 Notice of hearing *(Status Conference)* filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s)1888 Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.). Status Conference to be held on 8/4/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga. (Drawhorn, Lauren)
05/27/2021	2388 Order approving stipulation and agreed order authorizing withdrawal of proofs of claims No. 38 and No. 39 (RE: related document(s)2365 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/27/2021 (Okafor, M.)
05/27/2021	2389 Order approving Debtor's settlement with UBS Securities LLC and UBS AG London Branch and authorizing actions consistent therewith (related document # 2199) Entered on 5/27/2021. (Okafor, M.)

05/27/2021	2390 Certificate of service re: *Documents Served on May 24, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2361 Agreed scheduling order with respect to Debtor's motion to disqualify Wick Phillips Gould & Martin LLP as counsel to HCRE Partners, LLC (RE: related document(s)2196 Motion to compel filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2196, Entered on 5/24/2021 (Okafor, M.), 2363 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2365 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 38 and 39)* Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2366 Subpoena on Grant Scott filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/27/2021	2391 Certificate of service re: *1) Debtor's Notice of Service of Subpoena in Connection with Debtor's Contempt Motion; and 2) Debtor's Notice of Service of Subpoena in Connection with Debtor's Contempt Motion* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2372 Subpoena on NexBank Capital, Inc. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2373 Subpoena on Highland Capital Management Fund Advisors, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2021	2392 Withdrawal */Notice of Withdrawal of Appearance* filed by Interested Party NexBank (RE: related document(s)923 Notice of appearance and request for notice). (Slade, Jared)
06/01/2021	2393 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2229, (Annable, Zachery)
06/01/2021	2394 Certificate of service re: *1) Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders; and 2) Disclosure Declaration of Ordinary Course Professional* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2377 Declaration re: *(Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2349 Reply). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) filed by Debtor Highland Capital Management, L.P., 2378 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2021	2395 Motion to pay *(Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/01/2021	2396 Application for compensation *Sidley Austin LLP's Eighteenth Monthly Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 4/1/2021 to 4/30/2021, Fee: $417,427.20, Expenses: $21,694.88. Filed by Attorney Juliana Hoffman Objections due by 6/22/2021. (Hoffman, Juliana)
06/02/2021	2397 Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s)2283 Application for compensation *(Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for*

	the Period from October 1, 2020 through November 30, 2020) for Hayward PLLC, Debtor's Attorney,). (Annable, Zachery)
06/02/2021	2398 Notice of appeal *and Statement of Election*. Fee Amount $298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2389 Order on motion to compromise controversy). Appellant Designation due by 06/16/2021. (Draper, Douglas)
06/02/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28754649, amount $ 298.00 (re: Doc# 2398). (U.S. Treasury)
06/02/2021	2399 Certificate of service re: *Documents Served on May 27, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2382 Application for compensation *Eighteenth Monthly Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: $85,577.40, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 6/17/2021. filed by Financial Advisor FTI Consulting, Inc., 2383 Application for compensation *(Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021)* for Pachulski Stang Ziehl & Jones LLP, Debtor's Attorney, Period: 4/1/2021 to 4/30/2021, Fee: $1,286,897.00, Expenses: $8,173.58. Filed by Other Professional Pachulski Stang Ziehl & Jones LLP, 2388 Order approving stipulation and agreed order authorizing withdrawal of proofs of claims No. 38 and No. 39 (RE: related document(s)2365 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/27/2021 (Okafor, M.), 2389 Order approving Debtor's settlement with UBS Securities LLC and UBS AG London Branch and authorizing actions consistent therewith (related document 2199) Entered on 5/27/2021. (Okafor, M.)). (Kass, Albert)
06/02/2021	2466 Circuit Court Order granting motions for certification to court of appeals (Related Doc # 2033) Entered on 6/2/2021. IT IS ORDERED that the motion of Highland Global AllocationFund, Highland Income Fund, NexPoint Capital, Incorporated, and NexPoint Strategic Opportunities Fund for leave to appeal under 28 U.S.C.§ 158(d) is GRANTED.IT IS FURTHER ORDERED that the motion of James Dondero forleave to appeal under 28 U.S.C. § 158(d) is GRANTED.IT IS FURTHER ORDERED that the motion of Get Good Trust andThe Dugaboy Investment Trust for leave to appeal under 28 U.S.C. § 158(d)is GRANTED. USCA Circuit Court Case: 21−10449 (Whitaker, Sheniqua) (Entered: 06/21/2021)
06/03/2021	2400 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 through March 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
06/03/2021	2401 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through April 30, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/03/2021	2402 Certificate of service re: *1) Amended Notice of Hearing; and 2) Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2393 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to*

	(A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2229, filed by Debtor Highland Capital Management, L.P., 2395 Motion to pay *(Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/04/2021	2403 Objection to (related document(s): 2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela filed by Debtor Highland Capital Management, L.P.)Preliminary Objection filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)*
06/04/2021	2404 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
06/04/2021	2405 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2395 Motion to pay *(Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2395, (Annable, Zachery)
06/04/2021	2406 Response opposed to (related document(s): 2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Howell, William)
06/04/2021	2407 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2255 Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document 2247) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.), 2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2255 and for 2248 and for 2304, (Annable, Zachery)
06/04/2021	2408 Certificate of service re: *(Supplemental) 1) Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2307 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2304, filed by Debtor Highland Capital

	Management, L.P., 2337 Certificate of service re: *Documents Served on May 14, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2306 Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit # 2 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors, 2307 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2304, filed by Debtor Highland Capital Management, L.P., 2308 Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Debtor Highland Capital Management, L.P., 2311 Response opposed to (related document(s): 2248 Motion to Reconsider(related documents 854 Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2315 Joinder by *to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2311 Response). filed by Creditor Committee Official Committee of Unsecured Creditors). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
06/04/2021	2409 Certificate of service re: *Eighteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2021 Through April 30, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2396 Application for compensation *Sidley Austin LLP's Eighteenth Monthly Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 4/1/2021 to 4/30/2021, Fee: $417,427.20, Expenses: $21,694.88. Filed by Attorney Juliana Hoffman Objections due by 6/22/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
06/05/2021	2410 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53) (Annable, Zachery)
06/05/2021	2411 Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P., Respondent Mark Patrick (RE: related document(s)2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39

	# 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43) (Phillips, Louis)
06/05/2021	2412 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery)
06/06/2021	2414 Certificate of mailing regarding appeal (RE: related document(s)2398 Notice of appeal *and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2389 Order on motion to compromise controversy). Appellant Designation due by 06/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
06/06/2021	2415 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2398 Notice of appeal *and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2389 Order on motion to compromise controversy). (Whitaker, Sheniqua)
06/06/2021	2416 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−01295−X. (RE: related document(s)2398 Notice of appeal *and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2389 Order on motion to compromise controversy). (Whitaker, Sheniqua)
06/07/2021	2417 Notice *(Notice of Proposed Order)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
06/07/2021	2418 Declaration re: *(Declaration of Jeffrey N. Pomerantz)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
06/07/2021	2419 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) (Annable, Zachery)
06/07/2021	2420 Amended Witness and Exhibit List *Exhibits 44, 45, 46* filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2411 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 44 # 2 Exhibit 45 # 3 Exhibit 46) (Sbaiti, Mazin)
06/07/2021	2421 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2410 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 54 # 2 Exhibit 55) (Annable, Zachery)
06/08/2021	2422 Request for transcript regarding a hearing held on 6/8/2021. The requested turn−around time is hourly. (Edmond, Michael)
06/08/2021	2423 Amended Witness and Exhibit List *(Second Amended)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2419 List (witness/exhibit/generic)). (Hayward, Melissa)
06/08/2021	2424 Reply to (related document(s): 2341 Response filed by Debtor Highland Capital Management, L.P.) *Reply to Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3* filed by Get Good Trust, The Dugaboy Investment Trust. (Attachments: # 1 Exhibit 1) (Draper, Douglas)

06/08/2021	2425 Certificate of service re: Reply to Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2424 Reply). (Draper, Douglas)
06/08/2021	2426 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2306 Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional). (Hoffman, Juliana)
06/08/2021	2427 Certificate of service re: *[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2211 and 2215]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2211 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount $23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. filed by Creditor Acis Capital Management GP, LLC, 2215 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount $23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). (Kass, Albert)
06/08/2021	2428 Certificate of service re: *1) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 Through March 31, 2021; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2400 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 through March 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., 2401 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through April 30, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/08/2021	2430 Hearing held on 6/8/2021. (RE: related document(s)2255 Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document 2247) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor for J. Dondero; M. Clemente for UCC. Evidentiary hearing. Court took matter under advisement.) (Edmond, Michael)
06/08/2021	2431 Hearing held on 6/8/2021. (RE: related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor and J. Wilson for J. Dondero; M. Clemente for UCC. Nonevidentiary hearing. Court granted 90−day continuance without prejudice. Counsel to upload order.) (Edmond, Michael)
06/08/2021	2519 Court admitted exhibits date of hearing June 8, 2021 (RE: related document(s)2255 Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document 2247) Show Cause hearing to be held on

	6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (COURT ADMITTED DEBTOR'S EXHIBIT'S #12 THROUGH #55 THAT APPEAR AT DOC. #2410 BY JOHN MORRIS; (NOTE* EXHIBIT'S #1 THROUGH #11 WERE NOT ADMITTED) & THE COURT ADMITTED DEFENDANT'S EXHIBIT'S #1, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #15, #16, #17, #18, #19, #20, #21, #22, #23, #24, #25, #26, #27, #28, & #30 THROUGH #44 ALL ADMITTED BY LOUIS PHILLIPS; (NOTE* EXHIBIT'S #13, #14 & #29 WERE NOT ADMITTED) (Edmond, Michael) Modified on 10/22/2021 (Edmond, Michael). (Entered: 07/02/2021)
06/09/2021	2432 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 54 . Civil Case Number: 3:21−CV−00538−N (RE: related document(s)1957 Notice of appeal) (Blanco, J.)
06/09/2021	2433 Notice of docketing record on appeal. 3:21−cv−00538−N (RE: related document(s)1957 Notice of appeal) (Blanco, J.)
06/09/2021	2434 Certificate of service re: *1) Disclosure Declaration of Ordinary Course Professional; 2) Notice of Hearing; and 3) Amended Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2404 Declaration re: *(Disclosure Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 2405 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2395 Motion to pay *(Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2395, filed by Debtor Highland Capital Management, L.P., 2407 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), 2255 Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document 2247) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.), 2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2255 and for 2248 and for 2304, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	2435 Certificate of service re: *1) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021; and 2) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2410 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2255 Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53) filed by Debtor Highland Capital Management, L.P., 2412 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit

	3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	2436 Certificate of service re: *Documents Served on June 7, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2417 Notice *(Notice of Proposed Order)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., 2418 Declaration re: *(Declaration of Jeffrey N. Pomerantz)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2417 Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., 2419 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2412 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) filed by Debtor Highland Capital Management, L.P., 2421 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2410 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 54 # 2 Exhibit 55) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	2437 Certificate of service re: *Debtor's Second Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2423 Amended Witness and Exhibit List *(Second Amended)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2419 List (witness/exhibit/generic)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	2438 BNC certificate of mailing. (RE: related document(s)2415 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2398 Notice of appeal *and Statement of Election*. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2389 Order on motion to compromise controversy).) No. of Notices: 1. Notice Date 06/09/2021. (Admin.)
06/10/2021	2439 Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at https://us−courts.webex.com/meet/jerniga for 2248, (Sbaiti, Mazin)
06/10/2021	2440 Transcript regarding Hearing Held 06/08/2021 (298 pages) RE: Show Cause Hearing (2255); Motion to Modify Order (2248); Motion to Extend Time (2304). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/8/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2430 Hearing held on 6/8/2021. (RE: related document(s)2255 Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document 2247) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor for J. Dondero; M. Clemente for UCC. Evidentiary hearing. Court took matter under advisement.), 2431 Hearing held on 6/8/2021. (RE: related document(s)2304 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)1725 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor and J. Wilson for J. Dondero; M. Clemente for

	UCC. Nonevidentiary hearing. Court granted 90−day continuance without prejudice. Counsel to upload order.)). Transcript to be made available to the public on 09/8/2021. (Rehling, Kathy)
06/10/2021	2441 Agreed Motion to continue hearing on (related documents 2248 Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # 1 Proposed Order) (Sbaiti, Mazin)
06/10/2021	2442 Hearing held on 6/10/2021. (RE: related document(s)2256 Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Get Good Trust, The Dugaboy Investment Trust., (Appearances: D. Draper for Trusts; J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC. Nonevidentiary hearing. Motion continued for another hearing in early September (counsel should contact CRD for a setting). If Effective Date occurs before then, matter will be moot; if Effective Date has not occurred by then, court will consider motion further. Mr. Pomeranz should upload an order consistent with the courts ruling. Court will separately be issuing an order requiring: (a) Trust representative to appear at all future hearings in which Trusts take positions; and (b) certain information from Dondero−related entities for clarification of their standing.) (Edmond, Michael) (Entered: 06/11/2021)
06/11/2021	Receipt Number 338903, Fee Amount $207.00 − Filing Fee for Direct Appeal to Fifth Circuit Court of Appeals paid by K&L Gates LLP (RE: related document(s)1966 Notice of appeal . Fee Amount $298 filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)1943 Order confirming chapter 11 plan). Appellant Designation due by 03/17/2021. (Hogewood, A.)) (Floyd, K)
06/11/2021	2443 Order granting application to employ Teneo Capital, LLC as litigation advisor to the Official Committee of Unsecured Creditors effective April 15, 2021 (related document # 2306) Entered on 6/11/2021. (Okafor, M.)
06/11/2021	2444 Request for transcript regarding a hearing held on 6/10/2021. The requested turn−around time is hourly. (Edmond, Michael)
06/12/2021	2445 Transcript regarding Hearing Held 06/10/2021 (91 pages) RE: Motion to Compel Compliance (2256). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/10/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2442 Hearing held on 6/10/2021. (RE: related document(s)2256 Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Get Good Trust, The Dugaboy Investment Trust., (Appearances: D. Draper for Trusts; J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC. Nonevidentiary hearing. Motion continued for another hearing in early September (counsel should contact CRD for a setting). If Effective Date occurs before then, matter will be moot; if Effective Date has not occurred by then, court will consider motion further. Mr. Pomeranz should upload an order consistent with the courts ruling. Court will separately be issuing an order requiring: (a) Trust representative to appear at all future hearings in which Trusts take positions; and (b) certain information from Dondero−related entities for clarification of their standing.)). Transcript to be made available to the public on 09/10/2021. (Rehling, Kathy)
06/14/2021	Receipt Number 338904, Fee Amount $207.00 − Filing fee for Direct Appeal to Fifth Circuit Court of Appeals paid by Heller, Draper, Patrick, Horn & Dabney, LLC (Fifth Circuit Docket No. 21−10449) (RE: related document(s) 2014 Amended notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust.(RE: related document(s)1943 Order confirming chapter 11 plan)).
06/14/2021	

	2446 Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2248, (Sbaiti, Mazin)
06/14/2021	2447 Notice to take deposition of Trussway Industries, LLC filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/14/2021	2448 Notice to take deposition of Highland Capital Management, LP filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/15/2021	2449 Certificate of service re: *Order Pursuant to Section 1103 of the Bankruptcy Code Authorizing the Employment and Retention of Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors Effective April 15, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2443 Order granting application to employ Teneo Capital, LLC as litigation advisor to the Official Committee of Unsecured Creditors effective April 15, 2021 (related document 2306) Entered on 6/11/2021. (Okafor, M.)). (Kass, Albert)
06/15/2021	2450 Certificate of service re: *(Supplemental) [Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2211]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2211 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount $23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. filed by Creditor Acis Capital Management GP, LLC, 2427 Certificate of service re: *[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2211 and 2215]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2211 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount $23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. filed by Creditor Acis Capital Management GP, LLC, 2215 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount $23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
06/16/2021	2451 Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2389 Order on motion to compromise controversy). (Draper, Douglas)
06/16/2021	2452 Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2398 Notice of appeal, 2451 Statement of issues on appeal). Appellee designation due by 06/30/2021. (Draper, Douglas)
06/16/2021	2453 Order Further Extending Period Within Which The Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related document:# 2304 Motion to extend time.) Entered on 6/16/2021. (Okafor, M.)
06/16/2021	2454 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) (Annable, Zachery)
06/16/2021	2455 Support/supplemental document *(Notice of Final Term Sheet)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay*

	Related Fees and Expenses, and (II) Granting Rela). (Annable, Zachery)
06/16/2021	2456 Order granting unopposed emergency motion to continue hearing on (related document # 2441) (related documents Motion to Reconsider(related documents 854 Order on application to employ)) Hearing to be held on 6/25/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2248, Entered on 6/16/2021. (Okafor, M.)
06/17/2021	2457 Clerk's correspondence requesting exhibits from attorney for appellant. (RE: related document(s)2452 Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2398 Notice of appeal, 2451 Statement of issues on appeal). Appellee designation due by 06/30/2021.) Responses due by 6/21/2021. (Blanco, J.)
06/17/2021	2458 Order requiring a trustee of The Dugaboy Investment Trust and the The Get Good Trust to appear at all hearings in the bankruptcy case and adversary cases in which they take positions. Entered on 6/17/2021 (Okafor, M.)
06/17/2021	2459 Motion for leave *to Amend the Designation of Record Pursuant to Fed. R. Bankr. P. 8009* (related document(s) 2452 Appellant designation) Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # 1 Exhibit A) (Draper, Douglas)
06/18/2021	2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition . Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)
06/18/2021	2461 Application for compensation *(Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020)* for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: $43,270.00, Expenses: $1,693.45. Filed by Other Professional Hayward PLLC (Annable, Zachery)
06/18/2021	2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No−Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). (Annable, Zachery)
06/21/2021	2465 Certificate of service re: *1) Order Further Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; 2) Debtor's Second Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021; and 3) Notice of Final Term Sheet* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2453 Order Further Extending Period Within Which The Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related document:2304 Motion to extend time.) Entered on 6/16/2021. (Okafor, M.), 2454 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2421 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) filed by Debtor Highland Capital Management, L.P., 2455 Support/supplemental document *(Notice of Final Term Sheet)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*

06/21/2021	2467 Supplemental Objection to (related document(s): 2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)*
06/21/2021	2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)
06/22/2021	2469 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)2280 Motion to file document under seal. *Appendix in Support of Response to Motion to Disqualify* Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # 1 Exhibit A − Proposed Order # 2 Exhibit B − Appendix)) Responses due by 6/29/2021. (Ecker, C.)
06/22/2021	2470 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2383 Application for compensation *(Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021)* for Pachulsk). (Pomerantz, Jeffrey)
06/22/2021	2471 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)2382 Application for compensation *Eighteenth Monthly Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: $85,577.40, Expenses: $0.). (Hoffman, Juliana)
06/22/2021	2472 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2395 Motion to pay *(Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) (Annable, Zachery)
06/22/2021	2473 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) (Annable, Zachery)*
06/23/2021	2474 Order granting motion for leave to amend the Designation of Record Pursuant to Fed. R. Bankr. P. 8009 (related document # 2459) Entered on 6/23/2021. (Okafor, M.)
06/23/2021	2475 Witness and Exhibit List *with Certificate of Service* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4A # 5 Exhibit 4B # 6 Exhibit 5 # 7 Exhibit 6 # 8 Exhibit 7 # 9 Exhibit 8 # 10 Exhibit 9 # 11 Exhibit 10) (Draper, Douglas)*
06/23/2021	2476 Reply to (related document(s): 2403 Objection filed by Creditor The Dugaboy Investment Trust, 2467 Objection filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Annable, Zachery). Related document(s) 2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela filed by Debtor Highland Capital Management, L.P.. Modified on 6/24/2021 (Ecker, C.).*

06/23/2021	2477 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2473 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 5 # 3 Exhibit 6 # 4 Exhibit 7 # 5 Exhibit 8) (Annable, Zachery)
06/23/2021	2478 Certificate of service re: *1) Order Requiring Disclosures; 2) Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020; and 3) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), 2461 Application for compensation *(Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020)* for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: $43,270.00, Expenses: $1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, 2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No−Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/23/2021	2479 Certificate of service re: *First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). (Kass, Albert)
06/24/2021	2480 Application for compensation *Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: $7,527,021.50, Expenses: $80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021. (Pomerantz, Jeffrey)
06/24/2021	2481 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2480 Application for compensation *Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: $7,527,021.50, Expenses: $80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2480, (Pomerantz, Jeffrey)
06/24/2021	2482 Declaration re: *(Supplemental Declaration of Timothy F. Silva in Support of Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment). (Annable, Zachery)*

06/25/2021	2483 Certificate of service re: *1) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021 re: Debtors Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtors Chief Executive Officer and Chief Restructuring Officer; and 2) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021 re: Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2472 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2395 Motion to pay *(Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) filed by Debtor Highland Capital Management, L.P., 2473 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
06/25/2021	2484 Certificate of service re: *1) Debtor's Reply in Support of Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief; and 2) Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2476 Reply to (related document(s): 2403 Objection filed by Creditor The Dugaboy Investment Trust, 2467 Objection filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Annable, Zachery). Related document(s) 2229 Motion to borrow/incur debt *(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela filed by Debtor Highland Capital Management, L.P.. Modified on 6/24/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 2477 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2473 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 5 # 3 Exhibit 6 # 4 Exhibit 7 # 5 Exhibit 8) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
06/25/2021	2485 Amended U.S. Trustee's appointment of committee *of Unsecured Creditors* (Lambert, Lisa)
06/25/2021	2486 Certificate of service re: U.S. Trustee's Amended Appointment of Committee of Unsecured Creditors filed by U.S. Trustee United States Trustee (RE: related document(s)2485 UST appointment of committee). (Lambert, Lisa)
06/25/2021	2487 Hearing held on 6/25/2021. (RE: related document(s)2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael)
06/25/2021	2488 INCORRECT ENTRY (corrected by DE 2490) Hearing held on 6/25/2021. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee.

	Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael) Modified on 6/29/2021 (Ellison, T.).
06/25/2021	2489 Hearing held on 6/25/2021. (RE: related document(s)2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael)
06/25/2021	2490 Hearing held on 6/25/2021. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post−hearing order regarding jury trial rights discussed.) (Edmond, Michael)
06/25/2021	2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Annable, Zachery)
06/25/2021	2492 Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s)2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., 2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P. (Ecker, C.), 2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPREARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THORUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
06/28/2021	2493 Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY,JR.) a hearing held on 6/25/2021. The requested turn−around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
06/28/2021	Receipt Number 338916, Fee Amount $207.00 for Direct Appeal to the Fifth Circuit Court of Appeals (Reference 21−90011 and 21−10449) (RE: related document(s)1970 Notice of appeal . Fee Amount $298 filed by Interested Party James Dondero. Appellant Designation due by 03/18/2021. (Attachments: # 1 Exhibit)) (Floyd, K)
06/28/2021	2494 Order Requiring Post−Hearing Submissions. Details Per Order. (RE: related document(s)2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)

06/28/2021	2495 Notice *(Notice of Filing of Second Amended and Restated Investment Advisory Agreement)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2494 Order Requiring Post−Hearing Submissions. Details Per Order. (RE: related document(s)2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
06/28/2021	2496 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2491, (Annable, Zachery)
06/29/2021	2497 Request for transcript regarding a(ENTIRE) hearing held on 6/25/2021. The requested turn−around time is hourly (Jeng, Hawaii)
06/29/2021	2498 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2396 Application for compensation *Sidley Austin LLP's Eighteenth Monthly Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 4/1/2021 to 4/30/2021, Fee: $417,427.20, Expenses: $2). (Hoffman, Juliana)
06/29/2021	2499 Certificate of service re: *1) Fourth Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period from December 1, 2020 Through April 30, 2021; 2) Notice of Hearing on Fourth Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period from December 1, 2020 Through April 30, 2021; and 3) Supplemental Declaration of Timothy F. Silva in Support of Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2480 Application for compensation *Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: $7,527,021.50, Expenses: $80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021. filed by Debtor Highland Capital Management, L.P., 2481 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2480 Application for compensation *Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: $7,527,021.50, Expenses: $80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 2480, filed by Debtor Highland Capital Management, L.P., 2482 Declaration re: *(Supplemental Declaration of Timothy F. Silva in Support of Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel *(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
06/30/2021	

	2500 Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post−hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)
06/30/2021	2501 Transcript regarding Hearing Held 06/25/2021 (79 pages) (Excerpt 1: Proceedings from 9:36 am to 11:25 am) RE: Motion to Borrow (2229) and Motion to Pay Restructuring Fee (2395). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2487 Hearing held on 6/25/2021. (RE: related document(s)2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.), 2489 Hearing held on 6/25/2021. (RE: related document(s)2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)
06/30/2021	2502 Application for compensation *Twentieth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021, Fee: $1,603,754.00, Expenses: $28,644.51. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/21/2021. (Pomerantz, Jeffrey)
06/30/2021	2503 Order Granting Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief (related document # 2229) Entered on 6/30/2021. (Okafor, M.)
06/30/2021	2504 Order Granting Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer (related document # 2395) Entered on 6/30/2021. (Okafor, M.)
06/30/2021	2505 Order granting motion to seal appendix (related document # 2280) Entered on 6/30/2021. (Okafor, M.)
06/30/2021	2506 Order denying motion for modification of order authorizing retention of James P. Seery, Jr. (related document # 2248) Entered on 6/30/2021. (Okafor, M.)

06/30/2021	2507 Notice *(Third Notice of Additional Services Provided by Deloitte Tax LLP)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)551 Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document 483) Entered on 3/27/2020. (Okafor, M.)). (Annable, Zachery)
06/30/2021	2508 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/30/2021	2509 Certificate of service re: *Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2021	2510 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2480 Application for compensation *Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: $7,527,021.50, Expenses: $80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2480, (Annable, Zachery)
07/01/2021	2511 Certificate of service re: *1) Order Requiring Post−Hearing Submissions; 2) Notice of Filing of Second Amended and Restated Investment Advisory Agreement; and 3) Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2494 Order Requiring Post−Hearing Submissions. Details Per Order. (RE: related document(s)2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.), 2495 Notice *(Notice of Filing of Second Amended and Restated Investment Advisory Agreement)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2494 Order Requiring Post−Hearing Submissions. Details Per Order. (RE: related document(s)2248 Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 2496 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2491, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2021	2512 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2328 Application for compensation *Sidley Austin LLP's Seventeenth Monthly Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2021 to 3/31/2021, Fee:

	$371,842.20, Expenses: $). (Hoffman, Juliana)
07/02/2021	2513 Notice of appeal . Fee Amount $298 filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021. (Sbaiti, Mazin)
07/02/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28822100, amount $ 298.00 (re: Doc# 2513). (U.S. Treasury)
07/02/2021	2514 Application for compensation *Nineteenth Monthly Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: to, Fee: $88,932.60, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 7/23/2021. (Hoffman, Juliana)
07/02/2021	2515 Notice *(Notice of Filing of Seventh Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
07/02/2021	2516 Declaration re: *(Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Annable, Zachery)
07/02/2021	2517 Motion for leave *(Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021)* (related document(s) 2247 Motion for order to show cause) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
07/02/2021	2518 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2517 Motion for leave *(Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021)* (related document(s) 2247 Motion for order to show cause)). (Attachments: # 1 Exhibit 56) (Annable, Zachery)
07/06/2021	2520 Withdrawal of claim(s) Claim has been satisfied. Claim: *194* Filed by Creditor Crescent TC Investors, L.P.. (Held, Michael)
07/06/2021	2522 Notice of transmittal of appellee supplemental record vol. 1 3:21−CV−00261−L (RE: related document(s)2187 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8 Number of appellee volumes: 4. Civil Case Number: 3:21−CV−00261−L (Lindsay) (RE: related document(s)1870 Notice of appeal Related document(s) 1788 Order on motion to compromise controversy. (Blanco, J.)). (Blanco, J.)
07/06/2021	2523 Notice of transmittal SEALED DOCUMENTS 3;21−cv00261 (RE: related document(s)2187 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8 Number of appellee volumes: 4. Civil Case Number: 3:21−CV−00261−L (Lindsay) (RE: related document(s)1870 Notice of appeal Related document(s) 1788 Order on motion to compromise controversy. (Blanco, J.)). (Blanco, J.)

07/06/2021	2524 Certificate of service re: *Documents Served on June 30, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2502 Application for compensation *Twentieth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021, Fee: $1,603,754.00, Expenses: $28,644.51. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/21/2021. filed by Debtor Highland Capital Management, L.P., 2503 Order Granting Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief (related document 2229) Entered on 6/30/2021. (Okafor, M.), 2504 Order Granting Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer (related document 2395) Entered on 6/30/2021. (Okafor, M.), 2506 Order denying motion for modification of order authorizing retention of James P. Seery, Jr. (related document 2248) Entered on 6/30/2021. (Okafor, M.), 2507 Notice *(Third Notice of Additional Services Provided by Deloitte Tax LLP)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)551 Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document 483) Entered on 3/27/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 2508 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/06/2021	2525 Certificate of service re: *Amended Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2510 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2480 Application for compensation *Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: $7,527,021.50, Expenses: $80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2480, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/06/2021	2526 Application for compensation *Sidley Austin LLP's Nineteenth Monthly Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 5/1/2021 to 5/31/2021, Fee: $432,748.80, Expenses: $4,983.88. Filed by Attorney Juliana Hoffman Objections due by 7/27/2021. (Hoffman, Juliana)
07/07/2021	2527 Order granting Debtor's motion to supplement the record in the Contempt Hearing held on June 8, 2021 (related document # 2517) Entered on 7/7/2021. (Okafor, M.)
07/08/2021	2530 Certificate of mailing regarding appeal (RE: related document(s)2513 Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2506 Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
07/08/2021	2531 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2506 Order on motion to reconsider). (Whitaker, Sheniqua)

07/08/2021	2532 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−01585−S. (RE: related document(s)2513 Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2506 Order on motion to reconsider). (Whitaker, Sheniqua)
07/08/2021	2533 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
07/08/2021	2534 Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2494 Order (generic)). (Attachments: # 1 Exhibit 1_June 8, 2021 Hearing Transcript Excerpts # 2 Exhibit 2_June 25, 2021 Hearing Transcript Excerpts # 3 Exhibit 3_Subscription and Transfer Agreement # 4 Exhibit 4_Members Agreement) (Sbaiti, Mazin)
07/08/2021	2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Annable, Zachery)
07/08/2021	2536 Certificate of service re: *Documents Served on July 2, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2514 Application for compensation *Nineteenth Monthly Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: to, Fee: $88,932.60, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 7/23/2021. filed by Financial Advisor FTI Consulting, Inc., 2515 Notice *(Notice of Filing of Seventh Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A − Proposed Order # 3 Exhibit B − OCP List # 4 Exhibit C − Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 2516 Declaration re: *(Declaration of Ordinary Course Professional)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P., 2517 Motion for leave *(Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021)* (related document(s) 2247 Motion for order to show cause) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 2518 Declaration re: *(Declaration of John A. Morris in Support of the Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2517 Motion for leave *(Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021)* (related document(s) 2247 Motion for order to show cause)). (Attachments: # 1 Exhibit 56) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/08/2021	2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* Fee amount $188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E) (Annable, Zachery)

07/08/2021	Receipt of filing fee for Motion to Sell(19−34054−sgj11) [motion,msell] (188.00). Receipt number 28834907, amount $ 188.00 (re: Doc# 2537). (U.S. Treasury)
07/08/2021	2538 Motion to file document under seal. *(Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) (Annable, Zachery)
07/09/2021	2539 Notice *and Disclosures of Funds Pursuant to Court's Sua Sponte Order* filed by Interested Parties Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Hogewood, A.)
07/09/2021	2540 Support/supplemental document *(Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). (Annable, Zachery)*
07/09/2021	2541 Notice *of Disclosures* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)
07/09/2021	2542 Notice *of Disclosures* filed by Creditor Get Good Trust (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)
07/09/2021	

	2543 Notice *(Advisors' Disclosures in Respone to Sua Sponte Order)* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Rukavina, Davor)
07/09/2021	2544 Notice *and Disclosures of NexPoint RE Entities and HMCS Inc. in Response to Sua Sponte Order* filed by Creditor Highland Capital Management Services, Inc., Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc. (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Attachments: # 1 Exhibit A) (Drawhorn, Lauren)
07/09/2021	2545 Amended Notice *of Disclosures* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)
07/09/2021	2546 Amended Notice *of Disclosures* filed by Creditor Get Good Trust (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)
07/09/2021	2547 Notice *of Response and Disclosures related to sua sponte Order Requiring Disclosures* filed by Interested Parties Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, CLO Holdco, Ltd. (RE: related document(s)2460 Order Requiring Disclosures

	(RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Attachments: # 1 Exhibit 1.Patrick Declaration # 2 2.Transcript, June 8, 2021 Hearing, Excerpts # 3 Exhibit 3.Structure Chart # 4 Exhibit 4.Kenneth K. Bebozo Memorandum # 5 Exhibit 5.Certificate of Incorporation − CLO HoldCo, Ltd. # 6 Exhibit 6.Memorandum of Association of CLO HoldCo, Ltd. # 7 Exhibit 7.Ordinary Share Registery− CLO HoldCo # 8 Exhibit 8.Certificate of Registration of Exempted Limited Partnership − DAF Fund # 9 Exhibit 9.DAF Fund LP Agreement # 10 Exhibit 10.DAF Fund General Partner Register # 11 Exhibit 11.Amended and Restated Memorandum of Association of DAF Holdco # 12 Exhibit 12.Register of Management Shares DAF Holdco # 13 Exhibit 13.Register of Participating Shares DAF Holdco # 14 Exhibit 14.Certificate of Formation of DAF GP # 15 Exhibit 15.Assignment and Assumption of Membership Interests Agreement Dated March 24, 2021 # 16 Exhibit 16.HDF Certificate of Incorporation # 17 Exhibit 17.IRS Determination − HDF # 18 Exhibit 18.Narrative Description of Activities # 19 19.RESERVED FOR POSSIBLE SUPPLEMENTION # 20 Exhibit 20.HDF Bylaws # 21 Exhibit 21.HSBF Certificate of Incorporation # 22 Exhibit 22.IRS Determination − HSBF # 23 Exhibit 23.SBF Overview Letter # 24 Exhibit 24.GKCCF Certificate of Formation # 25 Exhibit 25.GKCCF Letter # 26 Exhibit 26.Bylaws HKCF # 27 Exhibit 27.Share Transfer Form # 28 Exhibit 28.March 25 Resolution − DAF Holdco # 29 Exhibit 29.April 2 Resolution − CLO HoldCo # 30 Exhibit 30.Written Resolution − Murphy # 31 Exhibit 31.Charitable Giving Overview, Grant Summary: 2012−2020 # 32 Exhibit 32.The Family Place Letter # 33 Exhibit 33.Cristo Rey Letter # 34 Exhibit 34.DCAC Letter # 35 Exhibit 35.Complaint # 36 Exhibit 36.CLO HoldCo − Register of Directors # 37 Exhibit 37.DAF Holdco − Register of Directors # 38 Exhibit 38.Register of Directors − Liberty CLO Holdco, Ltd. # 39 Exhibit 39.Share Register − Liberty CLO Holdco, Ltd. # 40 Exhibit 40.Register of Directors − MGM Studios Holdco, Ltd # 41 Exhibit 41.Share Register − MGM Studios Holdco, Ltd # 42 Exhibit 42.Register of Directors − HCT Holdco 2 − Ltd. # 43 Exhibit 43.Share Register − HCT Holdco 2, Ltd.) (Phillips, Louis)
07/09/2021	2548 Certificate of service re: *(Supplemental) 1) First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims; and 2) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No−Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). filed by Debtor Highland Capital Management, L.P., 2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.), 2478 Certificate of service re: *1) Order Requiring Disclosures; 2) Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020; and 3) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), 2461 Application for compensation *(Twelfth Monthly Application for Compensation and*

	Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020) for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: $43,270.00, Expenses: $1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, 2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No−Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, 2479 Certificate of service re: *First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
07/09/2021	2549 Amended Notice *Second Amended Response of Dugaboy Investment Trust to Order Requiring Disclosures* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2541 Notice *of Disclosures* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.))., 2545 Amended Notice *of Disclosures* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)).). (Draper, Douglas)
07/09/2021	2550 Certificate of service re: *Nineteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2021 Through May 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2526 Application for compensation *Sidley Austin LLP's Nineteenth Monthly Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 5/1/2021 to 5/31/2021, Fee: $432,748.80, Expenses: $4,983.88. Filed by Attorney Juliana Hoffman Objections due by 7/27/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/12/2021	2551 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B), 2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* Fee amount $188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E)). Hearing to be held on 8/4/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2537 and for 2535, (Annable, Zachery)

07/12/2021	2552 Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s)2461 Application for compensation *(Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020)* for Hayward PLLC, Debtor). (Annable, Zachery)
07/12/2021	2553 Amended appellant designation of contents for inclusion in record on appeal *pursuant to Fed. R. Bankr. P. 8009* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2452 Appellant designation). (Draper, Douglas)
07/12/2021	2554 Application for compensation *(Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: $83,450.00, Expenses: $5,939.09. Filed by Other Professional Hayward PLLC (Annable, Zachery)
07/12/2021	2555 Certificate of service re: *Order Granting Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2527 Order granting Debtor's motion to supplement the record in the Contempt Hearing held on June 8, 2021 (related document 2517) Entered on 7/7/2021. (Okafor, M.)). (Kass, Albert)
07/12/2021	2556 Notice *of Filing of Supplement and Additional Exhibits* filed by Interested Parties CLO Holdco, Ltd., Highland Dallas Foundation, Inc., The Charitable DAF Fund, L.P. (RE: related document(s)2547 Notice *of Response and Disclosures related to sua sponte Order Requiring Disclosures* filed by Interested Parties Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, CLO Holdco, Ltd. (RE: related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Attachments: # 1 Exhibit 1.Patrick Declaration # 2 2.Transcript, June 8, 2021 Hearing, Excerpts # 3 Exhibit 3.Structure Chart # 4 Exhibit 4.Kenneth K. Bebozo Memorandum # 5 Exhibit 5.Certificate of Incorporation − CLO HoldCo, Ltd. # 6 Exhibit 6.Memorandum of Association of CLO HoldCo, Ltd. # 7 Exhibit 7.Ordinary Share Registery− CLO HoldCo # 8 Exhibit 8.Certificate of Registration of Exempted Limited Partnership − DAF Fund # 9 Exhibit 9.DAF Fund LP Agreement # 10 Exhibit 10.DAF Fund General Partner Register # 11 Exhibit 11.Amended and Restated Memorandum of Association of DAF Holdco # 12 Exhibit 12.Register of Management Shares DAF Holdco # 13 Exhibit 13.Register of Participating Shares DAF Holdco # 14 Exhibit 14.Certificate of Formation of DAF GP # 15 Exhibit 15.Assignment and Assumption of Membership Interests Agreement Dated March 24, 2021 # 16 Exhibit 16.HDF Certificate of Incorporation # 17 Exhibit 17.IRS Determination − HDF # 18 Exhibit 18.Narrative Description of Activities # 19 19.RESERVED FOR POSSIBLE SUPPLEMENTION # 20 Exhibit 20.HDF Bylaws # 21 Exhibit 21.HSBF Certificate of Incorporation # 22 Exhibit 22.IRS Determination − HSBF # 23 Exhibit 23.SBF Overview Letter # 24 Exhibit 24.GKCCF Certificate of Formation # 25 Exhibit 25.GKCCF Letter # 26 Exhibit 26.Bylaws HKCF # 27 Exhibit 27.Share Transfer Form # 28 Exhibit 28.March 25 Resolution − DAF Holdco # 29 Exhibit 29.April 2 Resolution − CLO HoldCo # 30 Exhibit 30.Written Resolution − Murphy # 31 Exhibit 31.Charitable Giving Overview, Grant Summary: 2012−2020 # 32 Exhibit 32.The Family Place Letter # 33 Exhibit 33.Cristo Rey Letter # 34 Exhibit 34.DCAC Letter # 35 Exhibit 35.Complaint # 36 Exhibit 36.CLO HoldCo − Register of Directors # 37 Exhibit 37.DAF Holdco − Register of Directors # 38 Exhibit 38.Register of Directors − Liberty CLO Holdco, Ltd. # 39 Exhibit 39.Share Register − Liberty CLO Holdco, Ltd. # 40 Exhibit 40.Register of Directors − MGM Studios Holdco, Ltd # 41 Exhibit 41.Share Register −

	MGM Studios Holdco, Ltd # 42 Exhibit 42.Register of Directors − HCT Holdco 2 − Ltd. # 43 Exhibit 43.Share Register − HCT Holdco 2, Ltd.)). (Attachments: # 1 Supplement # 2 Exhibit 19. Letter From The Dallas Foundation # 3 Exhibit Exhibit 44. Baltimore Sun Article re: Nonprofit Offshore Structures) (Phillips, Louis)
07/13/2021	2558 Certificate of service re: *Documents Served on or Before July 9, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2533 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., 2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., 2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* Fee amount $188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E) filed by Debtor Highland Capital Management, L.P., 2538 Motion to file document under seal. *(Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/14/2021	2559 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
07/14/2021	2560 PDF with attached Audio File. Court Date & Time [05/18/2021 09:37:03 AM]. File Size [4798 KB]. Run Time [00:20:29]. (admin).
07/14/2021	2561 PDF with attached Audio File. Court Date & Time [06/08/2021 02:03:12 PM]. File Size [26321 KB]. Run Time [01:52:35]. (admin).
07/14/2021	2562 PDF with attached Audio File. Court Date & Time [06/08/2021 04:04:27 PM]. File Size [27205 KB]. Run Time [01:56:13]. (admin).
07/14/2021	2563 Objection to (related document(s): 2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust. (Taylor, Clay)
07/14/2021	2564 PDF with attached Audio File. Court Date & Time [06/08/2021 09:34:21 AM]. File Size [26132 KB]. Run Time [01:51:38]. (admin).

07/14/2021	2565 PDF with attached Audio File. Court Date & Time [06/08/2021 11:30:55 AM]. File Size [23135 KB]. Run Time [01:38:51]. (admin).
07/14/2021	2566 PDF with attached Audio File. Court Date & Time [06/10/2021 09:44:23 AM]. File Size [31458 KB]. Run Time [02:14:19]. (admin).
07/14/2021	2567 PDF with attached Audio File. Court Date & Time [06/25/2021 08:48:05 AM]. File Size [77915 KB]. Run Time [05:33:38]. (admin).
07/14/2021	2568 Certificate of service re: *Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2540 Support/supplemental document *(Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
07/14/2021	2569 Certificate of service re: *(Supplemental) 1) Motion of the Debtor for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief; and 2) Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., 2540 Support/supplemental document *(Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). filed by Debtor Highland Capital Management, L.P., 2558 Certificate of service re: Documents Served on or Before July 9, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2533 Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., 2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., 2537 Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief) Fee amount $188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E) filed by Debtor Highland Capital Management, L.P., 2538 Motion to file document under seal. (Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, 2568 Certificate of service re: Notice of Filing of Exhibit C to the Motion of the Debtor for Entry*

	of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2540 Support/supplemental document (Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property ***NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.*** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)*
07/14/2021	2570 Amended application for compensation *Sidley Austin LLP's Amended 19th Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 5/1/2021 to 5/31/2021, Fee: $432,748.80, Expenses: $4,983.88. Filed by Attorney Juliana Hoffman Objections due by 8/4/2021. (Hoffman, Juliana)
07/15/2021	2571 Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/15/2021	2572 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) (Annable, Zachery)
07/15/2021	2573 Certificate of service re: *1) Notice of Hearing; and 2) Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2551 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B), 2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* Fee amount $188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E)). Hearing to be held on 8/4/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2537 and for 2535, filed by Debtor Highland Capital Management, L.P., 2554 Application for compensation *(Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: $83,450.00, Expenses: $5,939.09. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC). (Kass, Albert)
07/16/2021	2574 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2480 Application for compensation *Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30,). (Pomerantz, Jeffrey)*
07/16/2021	2575 Witness and Exhibit List filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s)2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)*). (Attachments: # 1

	Objectors Ex. A # 2 Objectors Ex. B # 3 Objectors Ex. C # 4 Objectors Ex. D # 5 Objectors Ex. E # 6 Objectors Ex. F # 7 Objectors Ex. G # 8 Objectors Ex. H # 9 Objectors Ex. I # 10 Objectors Ex. J # 11 Objectors Ex. K # 12 Objectors Ex. L # 13 Objectors Ex. M # 14 Objectors Ex. N # 15 Objectors Ex. O) (Taylor, Clay)
07/16/2021	2576 Reply to (related document(s): 2563 Objection filed by Interested Party James Dondero, Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust) *(Debtor's Reply in Support of Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Annable, Zachery)
07/16/2021	2577 Joinder by filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2576 Reply). (Hoffman, Juliana)
07/16/2021	2578 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s)2532 Notice of docketing notice of appeal/record). Appellee designation due by 07/30/2021. (Sbaiti, Mazin)
07/16/2021	2579 Certificate of service re: *Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2559 Notice *(Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTH0RIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/19/2021	2580 Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s)2578 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s)2532 Notice of docketing notice of appeal/record). Appellee designation due by 07/30/2021.) Responses due by 7/21/2021. (Blanco, J.)
07/19/2021	2581 PDF with attached Audio File. Court Date & Time [07/19/2021 09:30:44 AM]. File Size [19741 KB]. Run Time [01:24:28]. (admin).
07/19/2021	2582 Court admitted exhibits date of hearing July 19, 2021 (RE: related document(s)2491 Motion for leave (Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (COURT ADMITTED PLAINTIFF'S/DEBTOR'S EXHIBITS #1, #2, #3, #4, #5 & #6 BY JOHN MORRIS AND DEFENDANT/RESPONDENT EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N & #O BY DAVOR RUKAVINA) (Edmond, Michael)
07/19/2021	2583 Hearing held on 7/19/2021. (RE: related document(s)2480 Application for compensation Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, filed by Attorney Jeffrey Nathan Pomerantz). (Appearances: J. Pomeranz and J. Morris for Debtor; C. Taylor for J.

	Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.) (Edmond, Michael)
07/19/2021	2584 Hearing held on 7/19/2021. (RE: related document(s)2491 Motion for leave (Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael)
07/19/2021	2585 Application for compensation *Sidley Austin LLP's Sixth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2021 to 5/31/2021, Fee: $1,527,522.75, Expenses: $32,957.78. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Hoffman, Juliana)
07/19/2021	2586 Application for compensation *of Teneo Capital, LLC as Litigation Advisor* for Official Committee of Unsecured Creditors, Other Professional, Period: 4/15/2021 to 6/30/2021, Fee: $80,000.00, Expenses: $118.89. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) (Hoffman, Juliana)
07/19/2021	2587 Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)2578 Appellant designation). (Sbaiti, Mazin)
07/20/2021	2588 Order granting fourth interim application for compensation (related document # 2480) granting for Jeffrey Nathan Pomerantz of Pachulski Stang Ziehl & Jones LLP , fees awarded: $7527021.50, expenses awarded: $80299.92 Entered on 7/20/2021. (Okafor, M.)
07/20/2021	2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21−3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
07/20/2021	2590 Declaration re: *(Declaration of John A. Morris in Support of Debtor's Motion for Entry of an Order Approving Settlement Pursuant to Bankruptcy Rule 9019 and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21−3000. Related defendan). (Attachments: # 1 Exhibit 1−−Settlement Agreement) (Annable, Zachery)
07/20/2021	2592 Notice of docketing APPELLANT SUPPLEMENTAL record on appeal. 3:21−CV−00879−K (RE: related document(s)2149 Notice of appeal filed by Interested Party James Dondero (RE: related document(s)2083 Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # 1 Exhibit)) (Blanco, J.)
07/20/2021	2593 Request for transcript regarding a hearing held on 7/19/2021. The requested turn−around time is hourly. (Edmond, Michael)
07/20/2021	2594 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic

	Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21−3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 9/13/2021 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 2589, (Annable, Zachery)
07/20/2021	2595 Application for compensation *(Fourteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from February 1, 2021 through February 28, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: $55,885.00, Expenses: $3,218.35. Filed by Other Professional Hayward PLLC (Annable, Zachery)
07/20/2021	2596 Declaration re: *(Declaration of Alexander McGeoch in Support of Proposed Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)604 Application to employ Hunton Andrews Kurth LLP as Special Counsel *(Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)*). (Annable, Zachery)
07/20/2021	2597 Certificate of service re: *1) Nineteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2021 Through May 31, 2021; 2) Debtor's Reply to Plaintiffs' Post−Hearing Brief Regarding Motion for Modification of Order; and 3) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on July 19, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2570 Amended application for compensation *Sidley Austin LLP's Amended 19th Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 5/1/2021 to 5/31/2021, Fee: $432,748.80, Expenses: $4,983.88. Filed by Attorney Juliana Hoffman Objections due by 8/4/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 2571 Response opposed to (related document(s): 2534 Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2572 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2491 Motion for leave *(Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/21/2021	2598 Transcript regarding Hearing Held 07/19/2021 (59 pages) RE: Debtor's Motion for Entry of Order Authorizing Creation of Indemnity Sub−Trust (2491); Pachulski Stang Fourth Interim Fee Application (2480). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2583 Hearing held on 7/19/2021. (RE: related document(s)2480 Application for compensation Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, filed by Attorney Jeffrey Nathan Pomerantz). (Appearances: J. Pomeranz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.), 2584 Hearing held on 7/19/2021. (RE: related document(s)2491 Motion for leave (Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related

	Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 10/19/2021. (Rehling, Kathy)
07/21/2021	2599 Order granting Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief (related document # 2491) Entered on 7/21/2021. (Okafor, M.)
07/21/2021	2600 Certificate of service re: *1) Debtor's Reply in Support of Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief; and 2) The Official Committee of Unsecured Creditors' Response and Joinder to the Debtor's Response to the Objection to Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2576 Reply to (related document(s): 2563 Objection filed by Interested Party James Dondero, Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust) *(Debtor's Reply in Support of Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., 2577 Joinder by filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2576 Reply). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/22/2021	2601 Certificate of service re: *1) Sixth Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2021 Through and Including May 31, 2021; and 2) First Consolidated Monthly Fee Application of Teneo Capital, LLC as Litigation Advisor for the Official Committee of Unsecured Creditors for the Period from April 15, 2021 to and Including June 30, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2585 Application for compensation *Sidley Austin LLP's Sixth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2021 to 5/31/2021, Fee: $1,527,522.75, Expenses: $32,957.78. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 2586 Application for compensation *of Teneo Capital, LLC as Litigation Advisor* for Official Committee of Unsecured Creditors, Other Professional, Period: 4/15/2021 to 6/30/2021, Fee: $80,000.00, Expenses: $118.89. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/22/2021	2602 Certificate of service re: *(Supplemental) 1) Debtor's Third Omnibus Objection to Certain No Liability Claims; 2) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims; and 3) First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P., 2091 Certificate of service re: *Debtor's Third*

	Omnibus Objection to Certain No Liability Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021. filed by Claims Agent Kurtzman Carson Consultants LLC, 2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No−Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). filed by Debtor Highland Capital Management, L.P., 2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.), 2478 Certificate of service re: *1) Order Requiring Disclosures; 2) Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020; and 3) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount $1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non−Debtor Dondero−Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non−Debtor Dondero−Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), 2461 Application for compensation *(Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020)* for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: $43,270.00, Expenses: $1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, 2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No−Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, 2479 Certificate of service re: *First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
07/23/2021	2603 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2502 Application for compensation *Twentieth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021,). (Pomerantz, Jeffrey)
07/23/2021	2604 Order granting motion to seal exhibits (related document # 2538) Entered on 7/23/2021. (Okafor, M.)
07/23/2021	2605 Certificate of service re: *Documents Served on July 20, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2588 Order granting fourth interim

	application for compensation (related document 2480) granting for Jeffrey Nathan Pomerantz of Pachulski Stang Ziehl & Jones LLP, fees awarded: $7527021.50, expenses awarded: $80299.92 Entered on 7/20/2021. (Okafor, M.), 2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21−3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 2590 Declaration re: *(Declaration of John A. Morris in Support of Debtor's Motion for Entry of an Order Approving Settlement Pursuant to Bankruptcy Rule 9019 and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21−3000. Related defendan). (Attachments: # 1 Exhibit 1−−Settlement Agreement) filed by Debtor Highland Capital Management, L.P., 2594 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21−3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 9/13/2021 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 2589, filed by Debtor Highland Capital Management, L.P., 2595 Application for compensation *(Fourteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from February 1, 2021 through February 28, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: $55,885.00, Expenses: $3,218.35. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, 2596 Declaration re: *(Declaration of Alexander McGeoch in Support of Proposed Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)604 Application to employ Hunton Andrews Kurth LLP as Special Counsel *(Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)*). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/23/2021	2606 Certificate of service re: *Order Approving Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2599 Order granting Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief (related document 2491) Entered on 7/21/2021. (Okafor, M.)). (Kass, Albert)
07/26/2021	2607 Stipulation by Highland Capital Management, L.P. and Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2345 Order to set hearing). (Annable, Zachery)
07/26/2021	2608 Notice to take deposition of Wick Phillips Gould & Martin, LLP filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/27/2021	2609 Application for compensation *(Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 through January 31, 2021)* for Deloitte Tax LLP, Other Professional, Period: 1/1/2021 to 1/31/2021, Fee: $11,549.20, Expenses: $0.00. Filed by Other

	Professional Deloitte Tax LLP (Annable, Zachery)
07/27/2021	2610 Application for compensation *(Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 through February 28, 2021)* for Deloitte Tax LLP, Other Professional, Period: 2/1/2021 to 2/28/2021, Fee: $4,933.20, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
07/27/2021	2611 Application for compensation *Sixth Interim Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2021 to 5/31/2021, Fee: $339,167.25, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 8/17/2021. (Hoffman, Juliana)
07/27/2021	2612 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)2514 Application for compensation *Nineteenth Monthly Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: to, Fee: $88,932.60, Expenses: $0.). (Hoffman, Juliana)
07/27/2021	2613 Motion for leave *to File a Brief in Excess of Twenty−Five Pages* Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/17/2021. (Attachments: # 1 Proposed Order) (Montgomery, Paige)
07/27/2021	2614 Motion for expedited hearing(related documents 2613 Motion for leave) *Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty−Five Pages* Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
07/28/2021	2615 Objection to (related document(s): 2613 Motion for leave *to File a Brief in Excess of Twenty−Five Pages* filed by Creditor Committee Official Committee of Unsecured Creditors, 2614 Motion for expedited hearing(related documents 2613 Motion for leave) *Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty−Five Pages* filed by Creditor Committee Official Committee of Unsecured Creditors)*Initial Objection To Motion For Leave And To Emergency Consideration Of The Motion For Leave* filed by Interested Party Highland Dallas Foundation, Inc., Respondent Mark Patrick. (Phillips, Louis)
07/28/2021	2616 Support/supplemental document *(Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief). (Attachments: # 1 Exhibit B−−Redacted PetroCap Partnership Agreement # 2 Exhibit C−−Redacted SLP Partnership Agreement) (Annable, Zachery)*
07/28/2021	2617 **SEALED document regarding: Exhibit B: PetroCap Partnership Agreement per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2604 Order on motion to seal). (Annable, Zachery)
07/28/2021	2618 **SEALED document regarding: Exhibit C: SLP Partnership Agreement per court order** filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2604 Order on motion to seal). (Annable, Zachery)
07/28/2021	2619 Certificate of service re: *Order Granting Debtor's Motion for Entry of an Order Authorizing the Filing Under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson

	Consultants LLC (related document(s)2604 Order granting motion to seal exhibits (related document 2538) Entered on 7/23/2021. (Okafor, M.)). (Kass, Albert)
07/29/2021	2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15) (Montgomery, Paige)
07/29/2021	2621 Objection to (related document(s): 2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property filed by Debtor Highland Capital Management, L.P.) filed by Interested Party NexPoint Advisors, L.P.. (Attachments: # 1 Exhibit A − NexPoint PSA # 2 Exhibit B − PSA Redline) (Berghman, Thomas)*
07/29/2021	2623 Addendum to record on appeal. Reason for supplemental record: United States Court of Appeals Order 00515933197. Circuit Case 21−10449, Civil Case Number: 3:21−cv−00538−N (RE: related document(s)1957 Notice of appeal . (Whitaker, Sheniqua)
07/29/2021	2624 Transmittal of addendum to record on appeal to U.S. District Court . Number of appellee records: 5 Sealed Documents (RE: related document(s) 2623 Addendum to record on appeal. Reason for supplemental record: United States Court of Appeals Order 00515933197. Circuit Case 21−10449, Civil Case Number: 3:21−cv−00538−N (RE: related document(s)1957 Notice of appeal .) (Whitaker, Sheniqua)
07/29/2021	2625 Notice of docketing supplemental record on appeal. (RE: related document(s)1957 Notice of appeal . (RE: related document(s)1943 Order confirming chapter 11 plan). Civil Case 3:21−CV−00538−N, Circuit Court Case 21−10449 (Whitaker, Sheniqua)
07/29/2021	2626 Objection to (related document(s): 2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief filed by Debtor Highland Capital Management, L.P.) filed by Interested Party NexPoint Advisors, L.P.. (Attachments: # 1 Exhibit A − PSA # 2 Exhibit B − PSA Redline) (Berghman, Thomas)*
07/29/2021	2627 Order Granting The Official Committee of Unsecured Creditors' Motion for Leave to File a Brief in Excess of Twenty−Five Page (related document # 2613) Entered on 7/29/2021. (Okafor, M.)
07/29/2021	2628 Notice *of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2021* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Hayward, Melissa)
07/29/2021	2629 Chapter 11 Post−Confirmation Report for the Quarter Ending: June 30, 2021 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
07/29/2021	2630 Certificate of service re: *1) Stipulation (A) Amending Scheduling Order and (B) Consolidating and Resolving Certain Matters; and 2) Debtors Amended Notice of Rule 30(b)(6) Deposition to Wick Phillips Gould & Martin, LLP* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2607 Stipulation by Highland Capital Management, L.P. and Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2345 Order to set hearing). filed by Debtor Highland Capital Management, L.P., 2608 Notice to take deposition of Wick Phillips Gould & Martin, LLP filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/30/2021	

	2631 Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/30/2021	2632 Application for compensation *Twenty−First Monthly Application for Compensation and for Reimbursement of Expenses for the Period from June 1, 2021 through June 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2021 to 6/30/2021, Fee: $1,200,401.75, Expenses: $19,123.23. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/20/2021. (Pomerantz, Jeffrey)
07/30/2021	2633 Witness and Exhibit List filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property, 2537 Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief). (Berghman, Thomas)*
07/30/2021	2634 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15) (Annable, Zachery)*
07/30/2021	2635 Witness and Exhibit List filed by Interested Party PetroCap, LLC (RE: related document(s)2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief). (Schultz, Sarah)*
07/30/2021	2636 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15) (Annable, Zachery)*
07/30/2021	2637 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2620, (Montgomery, Paige)
07/30/2021	2638 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s 2513 Notice of appeal, (Annable, Zachery).
07/30/2021	2639 Certificate of service re: *[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket No. 2263]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2263 Assignment/Transfer of Claim. Fee Amount $156. Transfer Agreement 3001 (e) 2 Transferors: HarbourVest 2017 Global Fund L.P. (Claim No. 143); HarbourVest 2017 Global AIF L.P. (Claim No. 147); HarbourVest Dover Street IX Investment L.P. (Claim No. 150); HV International VIII Secondary L.P. (Claim No. 153); HarbourVest Skew Base AIF

	L.P. (Claim No. 154); HarbourVest Partners L.P. (Claim No. 149) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). (Kass, Albert)
07/30/2021	2640 Certificate of service re: *1) Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 Through January 31, 2021; 2) Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 Through February 28, 2021; and 3) Sixth Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2021 Through and Including May 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2609 Application for compensation *(Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 through January 31, 2021)* for Deloitte Tax LLP, Other Professional, Period: 1/1/2021 to 1/31/2021, Fee: $11,549.20, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, 2610 Application for compensation *(Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 through February 28, 2021)* for Deloitte Tax LLP, Other Professional, Period: 2/1/2021 to 2/28/2021, Fee: $4,933.20, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, 2611 Application for compensation *Sixth Interim Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2021 to 5/31/2021, Fee: $339,167.25, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 8/17/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
08/01/2021	2641 Motion to compel Mediation. Filed by Interested Party James Dondero (Taylor, Clay)
08/02/2021	2642 Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2620, (Attachments: # 1 Exhibit) (Hoffman, Juliana)
08/02/2021	2643 Application for compensation *(Fourth Monthly Fee Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 3/1/2021 to 3/31/2021, Fee: $37153.08, Expenses: $30.90. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	2644 Application for compensation *(Fifth Monthly Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 4/1/2021 to 4/30/2021, Fee: $41,936.40, Expenses: $573.69. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	2645 Application for compensation *(Sixth Monthly Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 5/1/2021 to 5/31/2021, Fee: $35,841.24, Expenses: $0.00. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	2646 Application for compensation *(Seventh Monthly Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 6/1/2021 to 6/30/2021, Fee: $78,401.16, Expenses: $0.00. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	

	2647 Certificate of service re: *1) The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty−Five Pages; 2) Motion for Expedited Consideration on the Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty−Five Pages; and 3) Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2613 Motion for leave *to File a Brief in Excess of Twenty−Five Pages* Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/17/2021. (Attachments: # 1 Proposed Order) filed by Creditor Committee Official Committee of Unsecured Creditors, 2614 Motion for expedited hearing(related documents 2613 Motion for leave) *Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty−Five Pages* Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, 2616 Support/supplemental document *(Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2537 Motion to sell property free and clear of liens under Section 363(f) *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief). (Attachments: # 1 Exhibit B−−Redacted PetroCap Partnership Agreement # 2 Exhibit C−−Redacted SLP Partnership Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
08/02/2021	2648 Reply to (related document(s): 2621 Objection filed by Interested Party NexPoint Advisors, L.P.) *(Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Real Property and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Annable, Zachery)
08/02/2021	2649 Reply to (related document(s): 2626 Objection filed by Interested Party NexPoint Advisors, L.P.) *(Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Annable, Zachery)
08/02/2021	2650 Joinder by *the Official Committee of Unsecured Creditors to the Debtor's Reply and Response* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2648 Reply, 2649 Reply). (Hoffman, Juliana)
08/02/2021	2651 Application for compensation *Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2021 to 6/30/2021, Fee: $464,954.40, Expenses: $12,211.68. Filed by Attorney Juliana Hoffman Objections due by 8/23/2021. (Hoffman, Juliana)
08/02/2021	2652 Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s)2620 Motion for examination) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/23/2021. (Attachments: # 1 Proposed Order) (Reid, Penny)
08/02/2021	2653 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2636 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 18) (Annable, Zachery)
08/02/2021	2654 Motion for expedited hearing(related documents 2652 Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order) (Reid, Penny)

08/03/2021	2655 Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s)2554 Application for compensation *(Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021)* for Hayward PLLC, Debto). (Annable, Zachery)
08/03/2021	2656 Amended Reply to (related document(s): 2621 Objection filed by Interested Party NexPoint Advisors, L.P., 2648 Reply filed by Debtor Highland Capital Management, L.P.) *(Debtor's Amended Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Annable, Zachery)
08/03/2021	2657 Amended Motion to compel Mediation. (related document: 2641) Filed by Interested Party James Dondero (Attachments: # 1 Exhibit UST Questionnaire and Information Sheet (Ex A) # 2 Exhibit Proposed Order (Ex B)) (Taylor, Clay)
08/03/2021	2658 Certificate of service re: *Documents Served on July 29, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15) filed by Creditor Committee Official Committee of Unsecured Creditors, 2627 Order Granting The Official Committee of Unsecured Creditors' Motion for Leave to File a Brief in Excess of Twenty−Five Page (related document 2613) Entered on 7/29/2021. (Okafor, M.), 2628 Notice *of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2021* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., 2629 Chapter 11 Post−Confirmation Report for the Quarter Ending: June 30, 2021 filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/03/2021	2659 Objection to (related document(s): 1888 Application for administrative expenses filed by Interested Party NexBank, Interested Party NexBank Capital Inc., Interested Party NexBank Securities Inc., Interested Party NexBank Title Inc.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/04/2021	2660 Memorandum Opinion And Order Holding Certain Parties And Their Attorneys In Civil Contempt of Court For Violation Of Bankruptcy Court Orders (RE: related document(s)2247 Motion for order to show cause filed by Debtor Highland Capital Management, L.P.). Entered on 8/4/2021 (Okafor, M.)
08/04/2021	2661 Motion to appear pro hac vice for Thomas P. Cimino. Fee Amount $100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	2662 Motion to appear pro hac vice for Michael M. Eidelman. Fee Amount $100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	2663 Motion to appear pro hac vice for David L. Kane. Fee Amount $100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	2664 Motion to appear pro hac vice for William W. Thorsness. Fee Amount $100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	2665 Motion to appear pro hac vice for Douglas J. Lipke. Fee Amount $100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28893951, amount $ 100.00 (re: Doc# 2661). (U.S. Treasury)

08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28893951, amount $ 100.00 (re: Doc# 2662). (U.S. Treasury)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28893951, amount $ 100.00 (re: Doc# 2663). (U.S. Treasury)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28893951, amount $ 100.00 (re: Doc# 2664). (U.S. Treasury)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28893951, amount $ 100.00 (re: Doc# 2665). (U.S. Treasury)
08/04/2021	2666 PDF with attached Audio File. Court Date & Time [08/04/2021 08:49:40 AM]. File Size [28979 KB]. Run Time [02:03:57]. (admin).
08/04/2021	2667 Court admitted exhibits date of hearing August 4, 2021 (RE: related document(s)2535 Motion to sell Property: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14 & #15 THAT APPEAR AT DEOC. 2634 IN REGARDS TO MAPLE HOLDINGS BY JOHN MORRIS) (Edmond, Michael)
08/04/2021	2668 Court admitted exhibits date of hearing August 4, 2021 (RE: related document(s)2537 Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17 THAT APPEAR AT DOC. #2636 AND EXHIBIT #18 THAT APPEAR AT DOC. #2653 FOR PETROCAP III; BY JOHN MORRIS) (Edmond, Michael)
08/04/2021	2669 Hearing held on 8/4/2021. (RE: related document(s)1888 Application for administrative expenses, filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Nonevidentiary status conference. Parties expect to submit an agreed scheduling order shortly.) (Edmond, Michael)
08/04/2021	2670 Hearing held on 8/4/2021. (RE: related document(s)2535 Motion to sell Property: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter−bids withdrawn. Motion approved. Counsel to upload order.) (Edmond, Michael)
08/04/2021	2671 Hearing held on 8/4/2021. (RE: related document(s)2537 Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief), filed by Debtor Highland Capital Management,

	L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter−bids withdrawn. Motion approved. Counsel to upload order.) (Edmond, Michael)
08/04/2021	2672 Request for transcript regarding a hearing held on 8/4/2021. The requested turn−around time is hourly. (Edmond, Michael)
08/04/2021	2673 Notice of appeal . Fee Amount $298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s)2599 Order on motion for leave). Appellant Designation due by 08/18/2021. (Attachments: # 1 Exhibit A)(Vasek, Julian)
08/04/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28895617, amount $ 298.00 (re: Doc# 2673). (U.S. Treasury)
08/04/2021	2674 Certificate of service re: *Documents Served on July 30, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2631 Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2632 Application for compensation *Twenty−First Monthly Application for Compensation and for Reimbursement of Expenses for the Period from June 1, 2021 through June 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2021 to 6/30/2021, Fee: $1,200,401.75, Expenses: $19,123.23. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/20/2021. filed by Debtor Highland Capital Management, L.P., 2634 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property **NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.** *(Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15) filed by Debtor Highland Capital Management, L.P., 2636 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2537 Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15) filed by Debtor Highland Capital Management, L.P., 2637 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2620, filed by Creditor Committee Official Committee of Unsecured Creditors, 2638 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s 2513 Notice of appeal,. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
08/05/2021	2675 Transcript regarding Hearing Held 08/04/2021 (83 pages) RE: Status Conference re: Application for Administrative Expenses; Motions to Sell. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/3/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2669 Hearing held on 8/4/2021. (RE: related document(s)1888 Application for administrative expenses, filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) (Appearances: J. Pomeranz, J. Morris, and G.

	Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Nonevidentiary status conference. Parties expect to submit an agreed scheduling order shortly.), 2670 Hearing held on 8/4/2021. (RE: related document(s)2535 Motion to sell Property: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter−bids withdrawn. Motion approved. Counsel to upload order.), 2671 Hearing held on 8/4/2021. (RE: related document(s)2537 Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter−bids withdrawn. Motion approved. Counsel to upload order.)). Transcript to be made available to the public on 11/3/2021. (Rehling, Kathy)
08/05/2021	2676 Certificate of service re: *Documents Served on August 2, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2642 Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2620, (Attachments: # 1 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors, 2648 Reply to (related document(s): 2621 Objection filed by Interested Party NexPoint Advisors, L.P.) *(Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Real Property and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., 2649 Reply to (related document(s): 2626 Objection filed by Interested Party NexPoint Advisors, L.P.) *(Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., 2650 Joinder by *the Official Committee of Unsecured Creditors to the Debtor's Reply and Response* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2648 Reply, 2649 Reply). filed by Creditor Committee Official Committee of Unsecured Creditors, 2651 Application for compensation *Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2021 to 6/30/2021, Fee: $464,954.40, Expenses: $12,211.68. Filed by Attorney Juliana Hoffman Objections due by 8/23/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 2652 Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s)2620 Motion for examination) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/23/2021. (Attachments: # 1 Proposed Order) filed by Creditor Committee Official Committee of Unsecured Creditors, 2653 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2636 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 18) filed by Debtor Highland Capital Management, L.P., 2654 Motion for expedited hearing(related documents 2652 Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
08/06/2021	

	2678 Order approving stipulation (A) amending schedule and (B) consolidating and resolving certain matters (RE: related document(s)2607 Stipulation filed by Debtor Highland Capital Management, L.P.). Trial in the Adversary Proceeding (including on the Advisors Admin Claim) is set for December 7 and 8, 2021 at 9:30 a.m. (Central Time), Entered on 8/6/2021 (Okafor, M.)
08/06/2021	2679 Certificate Certificate of Conference filed by Interested Party James Dondero (RE: related document(s)2657 Amended Motion to compel Mediation. (related document: 2641)). (Taylor, Clay)
08/06/2021	2680 Certificate of service re: *1) Debtor's Amended Reply in Support of its Motion for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief; and 2) Debtor's Objection to Application for Administrative Claim of NexBank Capital Inc., NexBank Securities, Inc., NexBank Title, Inc., and NexBank* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2656 Amended Reply to (related document(s): 2621 Objection filed by Interested Party NexPoint Advisors, L.P., 2648 Reply filed by Debtor Highland Capital Management, L.P.) *(Debtor's Amended Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., 2659 Objection to (related document(s): 1888 Application for administrative expenses filed by Interested Party NexBank, Interested Party NexBank Capital Inc., Interested Party NexBank Securities Inc., Interested Party NexBank Title Inc.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/06/2021	2681 Order granting motion to appear pro hac vice adding Thomas P. Cimino for James Dondero (related document # 2661) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	2682 Order granting motion to appear pro hac vice adding Michael E. Eidelman for James Dondero (related document # 2662) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	2683 Order granting motion to appear pro hac vice adding David L. Kane for James Dondero (related document # 2663) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	2684 Order granting motion to appear pro hac vice adding William W. Thorsness for James Dondero (related document # 2664) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	2685 Order granting motion to appear pro hac vice adding Douglas J. Lipke for James Dondero (related document # 2665) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	2686 Second Agreed Supplemental Order authorizing the retention and employment of Hunt Andrews Kurth LLP as special counsel nunc pro tunc to the petition date (RE: related document(s)1169 Agreed Supplemental Order authorizing the retention and employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (RE: related document(s)763 Order on application to employ). Entered on 8/6/2021 (Okafor, M.)
08/06/2021	2687 Order approving Debtors Motion for Entry of an Order (i)Authorizing the Sale of Certain Property and (ii) Granting Related Relief (related document # 2535) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	2688 Order granting the Committee's Emergency Motion to Set Briefing Schedule for Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (Re: related document(s) 2652 Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s)2620 Motion for examination)) Entered on 8/6/2021. (Okafor, M.)

08/06/2021	2689 Certificate of service re: *Memorandum Opinion and Order Holding Certain Parties and Their Attorneys in Civil Contempt of Court for Violation of Bankruptcy Court Orders* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2660 Memorandum Opinion And Order Holding Certain Parties And Their Attorneys In Civil Contempt of Court For Violation Of Bankruptcy Court Orders (RE: related document(s)2247 Motion for order to show cause filed by Debtor Highland Capital Management, L.P.). Entered on 8/4/2021 (Okafor, M.)). (Kass, Albert)
08/06/2021	2690 BNC certificate of mailing − PDF document. (RE: related document(s)2660 Memorandum Opinion And Order Holding Certain Parties And Their Attorneys In Civil Contempt of Court For Violation Of Bankruptcy Court Orders (RE: related document(s)2247 Motion for order to show cause filed by Debtor Highland Capital Management, L.P.). Entered on 8/4/2021 (Okafor, M.)) No. of Notices: 3. Notice Date 08/06/2021. (Admin.)
08/08/2021	2691 BNC certificate of mailing − PDF document. (RE: related document(s)2681 Order granting motion to appear pro hac vice adding Thomas P. Cimino for James Dondero (related document 2661) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/08/2021	2692 BNC certificate of mailing − PDF document. (RE: related document(s)2682 Order granting motion to appear pro hac vice adding Michael E. Eidelman for James Dondero (related document 2662) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/08/2021	2693 BNC certificate of mailing − PDF document. (RE: related document(s)2683 Order granting motion to appear pro hac vice adding David L. Kane for James Dondero (related document 2663) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/08/2021	2694 BNC certificate of mailing − PDF document. (RE: related document(s)2684 Order granting motion to appear pro hac vice adding William W. Thorsness for James Dondero (related document 2664) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/09/2021	2695 Application for compensation *Twentieth Monthly Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2021 to 6/30/2021, Fee: $80,105.04, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 8/30/2021. (Hoffman, Juliana)
08/09/2021	2696 Adversary case 21−03051. Complaint by James Dondero against Alvarez & Marsal CRF Management, LLC and Farallon Capital Management, L.L.C.. Fee Amount $350 (Attachments: # 1 Appendix # 2 Adversary Cover Sheet). Nature(s) of suit: 01 (Determination of removed claim or cause). (Rosenthal, Michael)
08/09/2021	2697 Assignment/Transfer of Claim. Fee Amount $52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount $32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount $18,000,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. (Leen, Edward)
08/09/2021	2698 Assignment/Transfer of Claim. Fee Amount $52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount $32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount $18,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. (Leen, Edward)
08/09/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (52.00). Receipt number 28905213, amount $ 52.00 (re: Doc# 2697).

	(U.S. Treasury)
08/09/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (52.00). Receipt number 28905213, amount $ 52.00 (re: Doc# 2698). (U.S. Treasury)
08/10/2021	2699 Order granting motion of the Debtor for entry of an order (i) Authorizing the sale and/or forfeiture of certain limited partnership interests and other rights and (ii) Granting related relief (related document # 2537) Entered on 8/10/2021. (Rielly, Bill)
08/11/2021	2700 Notice *(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). (Annable, Zachery)
08/11/2021	2701 Certificate of No Objection filed by Other Professional Teneo Capital, LLC (RE: related document(s)2586 Application for compensation *of Teneo Capital, LLC as Litigation Advisor* for Official Committee of Unsecured Creditors, Other Professional, Period: 4/15/2021 to 6/30/2021, Fee: $80,000.00, Expenses: $118.89.). (Hoffman, Juliana)
08/11/2021	2702 Certificate of service re: *Documents Served on August 6, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2678 Order approving stipulation (A) amending schedule and (B) consolidating and resolving certain matters (RE: related document(s)2607 Stipulation filed by Debtor Highland Capital Management, L.P.). Trial in the Adversary Proceeding (including on the Advisors Admin Claim) is set for December 7 and 8, 2021 at 9:30 a.m. (Central Time), Entered on 8/6/2021 (Okafor, M.), 2686 Second Agreed Supplemental Order authorizing the retention and employment of Hunt Andrews Kurth LLP as special counsel nunc pro tunc to the petition date (RE: related document(s)1169 Agreed Supplemental Order authorizing the retention and employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (RE: related document(s)763 Order on application to employ). Entered on 8/6/2021 (Okafor, M.), 2687 Order approving Debtors Motion for Entry of an Order (i)Authorizing the Sale of Certain Property and (ii) Granting Related Relief (related document 2535) Entered on 8/6/2021. (Okafor, M.), 2688 Order granting the Committee's Emergency Motion to Set Briefing Schedule for Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (Re: related document(s) 2652 Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s)2620 Motion for examination)) Entered on 8/6/2021. (Okafor, M.)). (Kass, Albert)
08/12/2021	2703 Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s)2595 Application for compensation *(Fourteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from February 1, 2021 through February 28, 2021)* for Hayward PLLC, Deb). (Annable, Zachery)
08/12/2021	2704 Certificate of service re: *Twentieth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from June 1, 2021 to and Including June 30, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2695 Application for compensation *Twentieth Monthly Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2021 to 6/30/2021, Fee: $80,105.04, Expenses: $0. Filed by Attorney Juliana Hoffman Objections due by 8/30/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
08/13/2021	

	2706 Certificate of mailing regarding appeal (RE: related document(s)2673 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s)2599 Order on motion for leave). (Attachments: # 1 Service List) (Whitaker, Sheniqua)
08/13/2021	2707 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2673 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s)2599 Order on motion for leave). Appellant Designation due by 08/18/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
08/13/2021	2708 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−01895−D. (RE: related document(s)2673 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s)2599 Order on motion for leave). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
08/13/2021	2709 Certificate of service re: *Order Approving Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2699 Order granting motion of the Debtor for entry of an order (i) Authorizing the sale and/or forfeiture of certain limited partnership interests and other rights and (ii) Granting related relief (related document 2537) Entered on 8/10/2021.). (Kass, Albert)
08/16/2021	2710 Application for compensation − *Eighth Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2021 to 7/31/2021, Fee: $161,981.82, Expenses: $1,100.68. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 9/7/2021. (Hesse, Gregory)
08/16/2021	2711 Motion to appear pro hac vice for Blaire Cahn. Fee Amount $100 Filed by Interested Party Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (Smith, Frances)
08/16/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28921283, amount $ 100.00 (re: Doc# 2711). (U.S. Treasury)
08/16/2021	2712 Notice of appeal . Fee Amount $298 filed by Interested Party James Dondero (RE: related document(s)2660 Memorandum of opinion). Appellant Designation due by 08/30/2021. (Attachments: # 1 Ex. 1 − Order)(Assink, Bryan)
08/16/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28921379, amount $ 298.00 (re: Doc# 2712). (U.S. Treasury)
08/16/2021	2713 Notice of appeal *by The Charitable DAF Fund, L.P., CLO Holdco, Ltd., Mark Patrick, Sbaiti & Company PLLC, Mazin A. Sbaiti, Jonathan Bridges*. Fee Amount $298 filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP. Appellant Designation due by 08/30/2021. (Sbaiti, Mazin). Related document(s) 2660 Memorandum of opinion. Modified LINKAGE on 9/17/2021 (Blanco, J.).
08/16/2021	2714 Objection to (related document(s): 2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Attachments: # 1 Ex. A − Transcript) (Taylor, Clay)
08/16/2021	

	2715 Objection to (related document(s): 2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Dolomiti LLC, Dana Scott Breault, SLHC Trust, The Get Good Non Exempt Trust No 2, Get Good Non Exempt Trust No 1, The Dondero Insurance Rabbi Trust, Get Better Trust, Canis Minor Trust, Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
08/16/2021	2716 Objection to (related document(s): 2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Parties NexPoint Advisors GP, LLC, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. (Vasek, Julian)
08/16/2021	2717 Objection to (related document(s): 2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party NexPoint Strategic Opportunities Fund. (Hogewood, A.)
08/16/2021	2718 Objection to (related document(s): 2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors)*Objection To The Motion Of The Official Committee Of Unsecured Creditors And The Litigation Advisor For Entry Of An Order* filed by Highland Dallas Foundation, Inc., Charitable DAF GP, L.P., Charitable DAF HoldCo, Ltd., Interested Party Charitable DAF Fund, LP. (Phillips, Louis)
08/16/2021	2719 Notice of Appearance and Request for Notice by Cortney C. Thomas filed by Interested Parties Okada Family Foundation, Inc., The Okada Insurance Rabbi Trust, The Mark & Pamela Okada Family Trust − Exempt Trust #2, The Mark & Pamela Okada Family Trust − Exempt Trust #1, Mark Okada. (Thomas, Cortney)
08/16/2021	2720 Motion to appear pro hac vice for Brian Glueckstein. Fee Amount $100 Filed by Interested Parties Mark Okada, Okada Family Foundation, Inc., The Mark & Pamela Okada Family Trust − Exempt Trust #1, The Mark & Pamela Okada Family Trust − Exempt Trust #2, The Okada Insurance Rabbi Trust (Thomas, Cortney)
08/16/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28921800, amount $ 100.00 (re: Doc# 2720). (U.S. Treasury)
08/16/2021	2721 Objection to (related document(s): 2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Parties Mark Okada, Okada Family Foundation, Inc., The Mark & Pamela Okada Family Trust − Exempt Trust #1, The Mark & Pamela Okada Family Trust − Exempt Trust #2, The Okada Insurance Rabbi Trust. (Thomas, Cortney)
08/16/2021	2722 Joinder by *NexPoint RE Entities' to Objections to 2004 Motion* filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc., Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion., 2714 Objection, 2715 Objection, 2716 Objection). (Drawhorn, Lauren)
08/16/2021	2723 Objection to (related document(s): 2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official

	Committee of Unsecured Creditors)*and Reservation of Rights* filed by Witness Nancy Dondero. (Attachments: # 1 Exhibit A) (Deitsch−Perez, Deborah)
08/16/2021	2724 Objection to (related document(s): 2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors)*Objection To The Motion Of The Official Committee Of Unsecured Creditors And The Litigation Advisor For Entry Of An Order* filed by Interested Parties Mary Jalonick, Highland Kansas City Foundation, Inc., Highland Santa Barbara Foundation, Inc., The Greater Kansas City Community Foundation, The Santa Barbara Foundation, The Dallas Foundation. (Attachments: # 1 Publication Regarding Ms. Jalonicks Service) (Phillips, Louis)
08/16/2021	2725 Objection to (related document(s): 2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse. (Smith, Frances)
08/16/2021	2726 Objection to (related document(s): 2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor Grant James Scott III. (Kane, John)
08/17/2021	2727 Certificate of service re: Reservation of Rights Regarding Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure filed by Interested Party Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (RE: related document(s)2725 Objection). (Soderlund, Eric)
08/17/2021	2728 Motion to appear pro hac vice for Susheel Kirpalani. Fee Amount $100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige) MODIFIED attorney name on 8/19/2021 (Okafor, M.).
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28924194, amount $ 100.00 (re: Doc# 2728). (U.S. Treasury)
08/17/2021	2729 Motion to appear pro hac vice for Benjamin Finestone. Fee Amount $100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28924291, amount $ 100.00 (re: Doc# 2729). (U.S. Treasury)
08/17/2021	2730 Motion to appear pro hac vice for Deborah Newman. Fee Amount $100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28924312, amount $ 100.00 (re: Doc# 2730). (U.S. Treasury)
08/17/2021	2731 Motion to appear pro hac vice for Jordan Harap. Fee Amount $100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28924326, amount $ 100.00 (re: Doc# 2731). (U.S. Treasury)

08/17/2021	2732 Witness and Exhibit List *for August 19, 2021 Hearing* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Montgomery, Paige)
08/17/2021	2733 Witness and Exhibit List filed by Creditor Grant James Scott III (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Kane, John)
08/17/2021	2734 Application for compensation − *Ninth Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 8/1/2021 to 8/11/2021, Fee: $59,205.24, Expenses: $169.36. Filed by Attorney Gregory Getty Hesse, Spec. Counsel Hunton Andrews Kurth LLP Objections due by 9/7/2021. (Hesse, Gregory)
08/17/2021	2735 Witness and Exhibit List filed by Interested Party Highland Dallas Foundation, Inc. (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 27 # 16 28 # 17 Exhibit 36 # 18 Exhibit 37) (Phillips, Louis)
08/17/2021	2736 Certificate of service re: Motion for Order on Rule 2004 Parties, Notice of Hearing on Motion for Order on Rule 2004 Parties, Amended Notice of Hearing on Motion for Order on Rule 2004 Parties, Motion to Set Briefing Schedule on Motion for Order on Rule 2004 Parties, Motion for Expedited Consideration on Motion to Set Briefing Schedule on Motion for Order on Rule 2004 Parties, Order Granting Emergency Motion to Set Briefing Schedule, Motion for Leave to File Brief in Excess of 25−pages, Motion for Expediated Consideration of Motion for Leave, Order Granting Leave to File Brief in Excess of 25−pages filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2613 Motion for leave *to File a Brief in Excess of Twenty−Five Pages*, 2614 Motion for expedited hearing(related documents 2613 Motion for leave) *Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty−Five Pages*, 2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion., 2627 Order on motion for leave, 2637 Notice of hearing, 2642 Notice of hearing, 2652 Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s)2620 Motion for examination), 2654 Motion for expedited hearing(related documents 2652 Motion to extend/shorten time) , 2688 Order on motion to extend/shorten time). (Montgomery, Paige)
08/18/2021	2737 Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Attachments: # 1 Dondero Ex. A # 2 Dondero Ex. B # 3 Dondero Ex. C # 4 Dondero Ex. D # 5 Dondero Ex. E # 6 Dondero Ex. F # 7 Dondero Ex. G # 8 Dondero Ex. H # 9 Dondero Ex. I # 10 Dondero Ex. J # 11 Dondero Ex. K # 12 Dondero Ex. L # 13 Dondero Ex. M # 14 Dondero Ex. N # 15 Dondero Ex. O # 16 Dondero Ex. P # 17 Dondero Ex. Q # 18 Dondero Ex. R # 19 Dondero Ex. S # 20 Dondero Ex. T # 21 Dondero Ex. U # 22 Dondero Ex. V # 23 Dondero Ex. W # 24 Dondero Ex. X # 25 Dondero Ex. Y # 26 Dondero Ex. Z # 27 Dondero Ex. AA # 28 Dondero Ex. BB # 29 Dondero Ex. CC # 30 Dondero Ex. DD # 31 Dondero Ex. EE # 32 Dondero Ex. FF # 33 Dondero Ex. GG # 34 Dondero Ex. HH # 35 Dondero Ex. II # 36 Dondero Ex. JJ) (Assink, Bryan)
08/18/2021	2738 Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s)2673 Notice of appeal). Appellee designation due by 09/1/2021. (Vasek, Julian)
08/18/2021	2739 Statement of issues on appeal, filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s)2673 Notice of appeal). (Vasek, Julian)

08/18/2021	2740 Witness and Exhibit List filed by Witness Nancy Dondero (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Deitsch−Perez, Deborah)
08/18/2021	2741 Omnibus Reply to (related document(s): 2714 Objection filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. (Attachments: # 1 Proposed Order) (Montgomery, Paige)
08/18/2021	2742 Application for compensation *Twenty−Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2021 to 7/31/2021, Fee: $1,275,026.00, Expenses: $25,276.19. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/8/2021. (Pomerantz, Jeffrey)
08/18/2021	2743 Notice *of Agreed Order* filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). (Attachments: # 1 Exhibit A−Proposed Order) (Montgomery, Paige)
08/19/2021	2744 Order granting motion to appear pro hac vice adding Blaire Cahn for Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (related document # 2711) Entered on 8/19/2021. (Okafor, M.)
08/19/2021	2745 Order granting motion to appear pro hac vice adding Brian D. Glueckstein for The Mark & Pamela Okada Family Trust − Exempt Trust #1; The Mark & Pamela Okada Family Trust − Exempt Trust #2; The Okada Insurance Rabbi Trust; Mark Okada and Okada Family Foundation, Inc. (related document # 2720) Entered on 8/19/2021. (Okafor, M.)
08/19/2021	2746 Hearing held on 8/19/2021. (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion, filed by Creditor Committee Official Committee of Unsecured Creditors; (Appearances: J. Pomeranz for Debtor; P. Montgomery and D. Newman for Litigation Trustee, M. Kirschner; L. Phillips for CLO Holdco. Nonevidentiary announcement of an agreed order. Counsel to upload order.) (Edmond, Michael)
08/19/2021	2747 Certificate of service re: *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2700 Notice *(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/19/2021	2748 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2453 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/19/2021	2749 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2748 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2453

	Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/13/2021 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 2748, (Annable, Zachery)
08/20/2021	2750 Agreed Order granting motion for 2004 examination of various entities/persons as set forth fully in the Motion (related doc # 2620) Entered on 8/20/2021. (Okafor, M.)
08/20/2021	2751 Certificate of service re: *The Litigation Trustees Witness and Exhibit List for August 19, 2021 Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2732 Witness and Exhibit List *for August 19, 2021 Hearing* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
08/20/2021	2752 Certificate of service re: *1) Omnibus Reply of the Litigation Trustee in Support of Motion for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure; and 2) Twenty−Second Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 Through July 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2741 Omnibus Reply to (related document(s): 2714 Objection filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. (Attachments: # 1 Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust, 2742 Application for compensation *Twenty−Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2021 to 7/31/2021, Fee: $1,275,026.00, Expenses: $25,276.19. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/8/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/21/2021	2753 BNC certificate of mailing − PDF document. (RE: related document(s)2744 Order granting motion to appear pro hac vice adding Blaire Cahn for Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (related document 2711) Entered on 8/19/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/21/2021. (Admin.)
08/21/2021	2754 BNC certificate of mailing − PDF document. (RE: related document(s)2745 Order granting motion to appear pro hac vice adding Brian D. Glueckstein for The Mark & Pamela Okada Family Trust − Exempt Trust #1; The Mark & Pamela Okada Family Trust − Exempt Trust #2; The Okada Insurance Rabbi Trust; Mark Okada and Okada Family Foundation, Inc. (related document 2720) Entered on 8/19/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/21/2021. (Admin.)
08/23/2021	2755 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2632 Application for compensation *Twenty−First Monthly Application for Compensation and for Reimbursement of Expenses for the Period from June 1, 2021 through June 30, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2021 to 6/30/). (Pomerantz, Jeffrey)
08/23/2021	2756 Response opposed to (related document(s): 2657 Amended Motion to compel Mediation. (related document: 2641) filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Annable, Zachery)
08/23/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28936978, amount $ 298.00 (re: Doc# 2713). (U.S. Treasury)
08/23/2021	

	2757 Agreed first amended scheduling order (RE: related document(s)2196 Motion to disqualify Wick Phillips Gould & Martin, LLP as counsel to HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/15/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2196, Entered on 8/23/2021 (Okafor, M.)
08/23/2021	2758 Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s)2713 Notice of appeal). (Sbaiti, Mazin)
08/23/2021	2760 Certificate of mailing regarding appeal (RE: related document(s)2758 Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s)2713 Notice of appeal).) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
08/23/2021	2761 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2758 Amended Notice of appeal *by The Charitable DAF Fund, L.P., CLO Holdco, Ltd., Mark Patrick, Sbaiti & Company PLLC, Mazin A. Sbaiti, Jonathan Bridges*. (Whitaker, Sheniqua)
08/23/2021	2762 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−01974−X. (RE: related document(s)2758 Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s)2713 Notice of appeal).) (Whitaker, Sheniqua) MODIFIED text on 8/24/2021 (Whitaker, Sheniqua).
08/24/2021	2763 Withdrawal *(Notice of Withdrawal of Amended Motion to Compel Mediation)* filed by Interested Party James Dondero (RE: related document(s)2657 Amended Motion to compel Mediation. (related document: 2641)). (Assink, Bryan)
08/24/2021	2765 Certificate of mailing regarding appeal (RE: related document(s)2712 Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)2660 Memorandum of opinion). Appellant Designation due by 08/30/2021. (Attachments: # 1 Ex. 1 − Order)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
08/24/2021	2766 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2712 Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)2660 Memorandum of opinion). (Attachments: # 1 Ex. 1 − Order)) (Whitaker, Sheniqua)
08/24/2021	2767 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−01979−S. (RE: related document(s)2712 Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)2660 Memorandum of opinion). (Whitaker, Sheniqua)
08/24/2021	2768 Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document 2226 and 2267). Hearing to be held on 12/15/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2059, Entered on 8/24/2021. (Okafor, M.).
08/24/2021	2769 Order granting motion to appear pro hac vice adding Susheel Kirpalani for Litigation Sub−Trust (related document # 2728) Entered on 8/24/2021. (Okafor, M.)
08/24/2021	2770 Order granting motion to appear pro hac vice adding Benjamin I. Finestone for Litigation Sub−Trust (related document # 2729) Entered on 8/24/2021. (Okafor, M.)
08/24/2021	2771 Order granting motion to appear pro hac vice adding Deborah J. Newman for Litigation Sub−Trust (related document # 2730) Entered on 8/24/2021. (Okafor, M.)
08/24/2021	2772 Order granting motion to appear pro hac vice adding Jordan A. Harap for Litigation Sub−Trust (related document # 2731) Entered on 8/24/2021. (Okafor, M.)

08/24/2021	2773 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
08/24/2021	2774 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
08/24/2021	2775 Certificate of service re: *1) Notice of Proposed Agreed Order Granting the Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure; 2) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 3) Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2743 Notice *of Agreed Order* filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). (Attachments: # 1 Exhibit A−Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust, 2748 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2453 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2749 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2748 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2453 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/13/2021 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 2748, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/24/2021	2776 Certificate of service re: *(Supplemental) 1) The Litigation Trustees Witness and Exhibit List for August 19, 2021 Hearing; and 2) Omnibus Reply of the Litigation Trustee in Support of Motion for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2732 Witness and Exhibit List *for August 19, 2021 Hearing* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). filed by Creditor Committee Official Committee of Unsecured Creditors, 2741 Omnibus Reply to (related document(s): 2714 Objection filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. (Attachments: # 1 Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust, 2751 Certificate of service re: *The Litigation Trustees Witness and Exhibit List for August 19, 2021 Hearing* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2732 Witness and Exhibit List *for August 19, 2021 Hearing* filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). filed by Creditor Committee Official Committee of Unsecured Creditors). filed by Claims Agent Kurtzman Carson Consultants LLC, 2752 Certificate of service re: *1) Omnibus Reply of the Litigation Trustee in Support of Motion for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure; and 2) Twenty−Second Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 Through July 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related

	document(s)2741 Omnibus Reply to (related document(s): 2714 Objection filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. (Attachments: # 1 Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust, 2742 Application for compensation *Twenty−Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2021 to 7/31/2021, Fee: $1,275,026.00, Expenses: $25,276.19. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/8/2021. filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
08/25/2021	2777 Certificate of service re: *Agreed Order Granting the Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2750 Agreed Order granting motion for 2004 examination of various entities/persons as set forth fully in the Motion (related doc 2620) Entered on 8/20/2021. (Okafor, M.)). (Kass, Albert)
08/26/2021	2778 Notice *of Authority to Clerk of Bankruptcy Court* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2553 Amended appellant designation of contents for inclusion in record on appeal *pursuant to Fed. R. Bankr. P. 8009* filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2452 Appellant designation).). (Attachments: # 1 Exhibit A) (Draper, Douglas)
08/26/2021	2779 Certificate of service re: *1) Debtors Response to James Donderos First Amended Motion for Entry of an Order (I) Compelling Mediation and (II) Granting Related Relief; and 2) Agreed First Amended Scheduling Order with Respect to Debtors Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2756 Response opposed to (related document(s): 2657 Amended Motion to compel Mediation. (related document: 2641) filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., 2757 Agreed first amended scheduling order (RE: related document(s)2196 Motion to disqualify Wick Phillips Gould & Martin, LLP as counsel to HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/15/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2196, Entered on 8/23/2021 (Okafor, M.)). (Kass, Albert)
08/26/2021	2780 Application for compensation *(Fifteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: $52,302.50, Expenses: $1,131.65. Filed by Other Professional Hayward PLLC (Annable, Zachery)
08/26/2021	2781 Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)2643 Application for compensation *(Fourth Monthly Fee Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 3/1/2021 to 3/31/2021, Fee: $37153.08, Expenses: $30.90.). (Hesse, Gregory)
08/26/2021	2782 Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)2644 Application for compensation *(Fifth Monthly Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 4/1/2021 to 4/30/2021, Fee: $41,936.40, Expenses: $573.69.). (Hesse, Gregory)
08/26/2021	2783 Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)2645 Application for compensation *(Sixth Monthly Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 5/1/2021 to 5/31/2021, Fee: $35,841.24, Expenses: $0.00.). (Hesse, Gregory)

08/26/2021	2784 Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)2646 Application for compensation *(Seventh Monthly Application)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 6/1/2021 to 6/30/2021, Fee: $78,401.16, Expenses: $0.00.). (Hesse, Gregory)
08/26/2021	2785 BNC certificate of mailing. (RE: related document(s)2761 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2758 Amended Notice of appeal *by The Charitable DAF Fund, L.P., CLO Holdco, Ltd., Mark Patrick, Sbaiti & Company PLLC, Mazin A. Sbaiti, Jonathan Bridges*.) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/26/2021	2786 BNC certificate of mailing. (RE: related document(s)2766 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2712 Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)2660 Memorandum of opinion). (Attachments: # 1 Ex. 1 − Order))) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/26/2021	2787 BNC certificate of mailing − PDF document. (RE: related document(s)2770 Order granting motion to appear pro hac vice adding Benjamin I. Finestone for Litigation Sub−Trust (related document 2729) Entered on 8/24/2021. (Okafor, M.)) No. of Notices: 0. Notice Date 08/26/2021. (Admin.)
08/26/2021	2788 BNC certificate of mailing − PDF document. (RE: related document(s)2771 Order granting motion to appear pro hac vice adding Deborah J. Newman for Litigation Sub−Trust (related document 2730) Entered on 8/24/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/26/2021	2789 BNC certificate of mailing − PDF document. (RE: related document(s)2772 Order granting motion to appear pro hac vice adding Jordan A. Harap for Litigation Sub−Trust (related document 2731) Entered on 8/24/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/27/2021	2790 Motion to appear pro hac vice for Kenneth H. Brown. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/27/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number 28948918, amount $ 100.00 (re: Doc# 2790). (U.S. Treasury)
08/27/2021	2791 Certificate of service re: *1) Agreed Scheduling Order on Debtors Third Omnibus Objection to Certain No Liability Claims; 2) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021; and 3) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2768 Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document 2226 and 2267). Hearing to be held on 12/15/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2059, Entered on 8/24/2021. (Okafor, M.)., 2773 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., 2774 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

08/27/2021	2792 Certificate of service re: *Fifteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2780 Application for compensation *(Fifteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: $52,302.50, Expenses: $1,131.65. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC). (Kass, Albert)
08/27/2021	2793 Certificate of service re: *(Supplemental) Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2700 Notice *(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 2747 Certificate of service re: *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2700 Notice *(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
08/28/2021	2794 Transcript regarding Hearing Held 08/19/2021 (52 pages) RE: Motion for 2004 Exam (#2620). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/26/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 2746 Hearing held on 8/19/2021. (RE: related document(s)2620 Motion for 2004 examination of Various entities/persons as set forth fully in the Motion, filed by Creditor Committee Official Committee of Unsecured Creditors; (Appearances: J. Pomeranz for Debtor; P. Montgomery and D. Newman for Litigation Trustee, M. Kirschner; L. Phillips for CLO Holdco. Nonevidentiary announcement of an agreed order. Counsel to upload order.)). Transcript to be made available to the public on 11/26/2021. (Rehling, Kathy)
08/30/2021	2795 Notice *(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 75 and 197)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/30/2021	2796 Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery)
08/30/2021	2797 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party James Dondero (RE: related document(s)2712 Notice of appeal). Appellee designation due by 09/13/2021. (Assink, Bryan)
08/30/2021	2798 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s)2713 Notice of appeal). Appellee designation due by 09/13/2021. (Sbaiti, Mazin)

08/31/2021	2799 Order granting motion to appear pro hac vice adding Kenneth H. Brown for Highland Capital Management, L.P. (related document # 2790) Entered on 8/31/2021. (Okafor, M.)
09/01/2021	2800 Certificate of service re: *Motion for Admission Pro Hac Vice of Kenneth H. Brown to Represent Highland Capital Management, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2790 Motion to appear pro hac vice for Kenneth H. Brown. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/02/2021	2801 Notice *(Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/02/2021	2802 Certificate of service re: *1) Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 75 and 197; and 2) Objection to Proof of Claim Number 131 Filed by The Dugaboy Investment Trust on April 8, 2020* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2795 Notice *(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 75 and 197)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2796 Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/02/2021	2803 BNC certificate of mailing − PDF document. (RE: related document(s)2799 Order granting motion to appear pro hac vice adding Kenneth H. Brown for Highland Capital Management, L.P. (related document 2790) Entered on 8/31/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 09/02/2021. (Admin.)
09/03/2021	2804 Certificate of service re: *1) Order for Admission Pro Hac Vice of Kenneth H. Brown to Represent Highland Capital Management, L.P.; and 2) Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2799 Order granting motion to appear pro hac vice adding Kenneth H. Brown for Highland Capital Management, L.P. (related document 2790) Entered on 8/31/2021. (Okafor, M.), 2801 Notice *(Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/03/2021	2805 Certificate of service re: *[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2697 and 2698]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2697 Assignment/Transfer of Claim. Fee Amount $52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount $32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount $18,000,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. filed by Creditor Jessup Holdings LLC, 2698 Assignment/Transfer of Claim. Fee Amount $52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount $32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount $18,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). (Kass, Albert)
09/03/2021	2806 Certificate of service re: *(Supplemental) Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2700 Notice *(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)).

	filed by Debtor Highland Capital Management, L.P., 2747 Certificate of service re: *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2700 Notice *(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
09/03/2021	2807 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2570 Amended application for compensation *Sidley Austin LLP's Amended 19th Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 5/1/2021 to 5/31/2021, Fee: $432,748.80, Expenses: &#036). (Hoffman, Juliana)
09/03/2021	2808 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2651 Application for compensation *Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 6/1/2021 to 6/30/2021, Fee: $464,954.40, E). (Hoffman, Juliana)
09/03/2021	2809 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)2585 Application for compensation *Sidley Austin LLP's Sixth Interim Application for Compensation* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2021 to 5/31/2021, Fee: $1,527,522.75, Expenses: $32,9). (Hoffman, Juliana)
09/07/2021	2811 Notice of Transmittal; 3:21−CV−01590−N − Appellant Supplemental Record Vol. 1 and 2 per District Court order entered 8/24/2021 . (Blanco, J.) Modified TEXT on 9/7/2021 (Blanco, J.).
09/07/2021	2812 Order denying as moot motion to compel compliance with Bankruptcy Rule 2015.3 (related document # 2256) Entered on 9/7/2021. (Okafor, M.)
09/08/2021	2813 Notice *(Notice of Removal of Matter from September 13, 2021 Hearing Docket)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21−3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). (Annable, Zachery)
09/08/2021	2815 Transmittal of record on appeal to U.S. District Court . Deficient record on appeal: Appellee failed to provide court admitted exhibits for hearings: January 9, 2020 (doc 335); AND July 14, 2020 (doc 836). ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 21 Number of appellee volumes: 2. Civil Case Number: 3:21−CV−01585−S (RE: related document(s)2513 Notice of appeal) (Blanco, J.)
09/08/2021	2816 Notice of docketing DEFICIENT record on appeal. 3:21−CV−01585−S (RE: related document(s)2513 Notice of appeal (RE: related document(s)2506 Order on motion to reconsider). (Blanco, J.)
09/09/2021	2817 Order approving stipulation and agreed order authorizing withdrawal of proof of claims 75 and 197 (RE: related document(s)2795 Notice (generic) filed by Debtor Highland

	Capital Management, L.P.). Entered on 9/9/2021 (Okafor, M.)
09/09/2021	2818 Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2742 Application for compensation *Twenty−Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021* for Jeffrey). (Pomerantz, Jeffrey)
09/09/2021	2819 Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) (Annable, Zachery)
09/09/2021	2820 Notice to take deposition of Robert L. Kehr filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
09/09/2021	2821 Notice to take deposition of Ben Selman filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/09/2021	2822 Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)2710 Application for compensation − *Eighth Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2021 to 7/31/2021, Fee: $161,981.82, Expenses: $1,100.68.). (Hesse, Gregory)
09/09/2021	2823 Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)2734 Application for compensation − *Ninth Monthly Fee Application* for Hunton Andrews Kurth LLP, Special Counsel, Period: 8/1/2021 to 8/11/2021, Fee: $59,205.24, Expenses: $169.36.). (Hesse, Gregory)
09/09/2021	2824 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2796 Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C), 2819 Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 10/25/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2819 and for 2796, (Annable, Zachery)
09/10/2021	2825 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2748 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2453 Order on motion to extend/shorten time)). (Annable, Zachery)
09/10/2021	2826 Certificate of service re: *(Supplemental) 1) Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.; and 2) Agreed Scheduling Order on Debtors Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2700 Notice *(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 2747 Certificate of service re: *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2700 Notice *(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as

	modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, 2768 Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document 2226 and 2267). Hearing to be held on 12/15/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2059, Entered on 8/24/2021. (Okafor, M.)., 2791 Certificate of service re: *1) Agreed Scheduling Order on Debtors Third Omnibus Objection to Certain No Liability Claims; 2) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021; and 3) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2768 Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document 2226 and 2267). Hearing to be held on 12/15/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2059, Entered on 8/24/2021. (Okafor, M.)., 2773 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., 2774 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
09/13/2021	2827 Notice *(Notice of Removal of Matter from September 13, 2021 Hearing Docket)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2748 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2453 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). (Annable, Zachery)
09/13/2021	2828 Order Further Extending Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (Related document #2748) Entered on 9/13/2021. (Okafor, M.)
09/13/2021	2829 Order granting Debtor's motion to compromise controversy with Highland Capital Management Fund Advisors, Nexpoint Advisors, Highland Income Fund, Nexpoint Strategic Opportunities Fund, and Nexpoint Capital (related document # 2589) Entered on 9/13/2021. (Okafor, M.)
09/13/2021	2831 Certificate of service re: *Notice of Removal of Matter from September 13, 2021 Hearing Docket* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2813 Notice *(Notice of Removal of Matter from September 13, 2021 Hearing Docket)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2589 Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21−3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/13/2021	2832 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2713 Notice of appeal, 2758 Amended notice of appeal). (Annable, Zachery).

09/13/2021	2833 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2712 Notice of appeal). (Annable, Zachery)
09/14/2021	2834 Notice of change of address filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/14/2021	2835 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 21 . Civil Case Number: 3:21−CV−01295−X (RE: related document(s)2398 Notice of appeal) (Blanco, J.)
09/14/2021	2837 Notice of docketing COMPLETE record on appeal. 3:21−CV−01295−X (RE: related document(s)2398 Notice of appeal (RE: related document(s)2389 Order on motion to compromise controversy).) (Blanco, J.)
09/14/2021	2838 Notice of transmittal: 13 SEALED DOCS (RE: related document(s)2837 Notice of docketing COMPLETE record on appeal. 3:21−CV−01295−X (RE: related document(s)2398 Notice of appeal (RE: related document(s)2389 Order on motion to compromise controversy).) (Blanco, J.)). (Blanco, J.)
09/14/2021	2839 Certificate of service re: *Documents Served on or Before September 9, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2817 Order approving stipulation and agreed order authorizing withdrawal of proof of claims 75 and 197 (RE: related document(s)2795 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 9/9/2021 (Okafor, M.), 2819 Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P., 2821 Notice to take deposition of Ben Selman filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2824 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2796 Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C), 2819 Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 10/25/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2819 and for 2796, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/14/2021	2840 Notice of appeal *Order Denying Motion to Compel Compliance With Bankruptcy Rule 2015.3*. Fee Amount $298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2812 Order on motion to compel). Appellant Designation due by 09/28/2021. (Attachments: # 1 Exhibit A)(Draper, Douglas)
09/14/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number 28984191, amount $ 298.00 (re: Doc# 2840). (U.S. Treasury)
09/15/2021	2841 First Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2840 Notice of appeal). (Attachments: # 1 Exhibit A)(Draper, Douglas)
09/15/2021	2842 BNC certificate of mailing − PDF document. (RE: related document(s)2829 Order granting Debtor's motion to compromise controversy with Highland Capital Management Fund Advisors, Nexpoint Advisors, Highland Income Fund, Nexpoint Strategic Opportunities Fund, and Nexpoint Capital (related document 2589) Entered on 9/13/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 09/15/2021. (Admin.)
09/16/2021	2844 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)2611 Application for compensation *Sixth Interim Application for*

	Compensation for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2021 to 5/31/2021, Fee: $339,167.25, Expenses: $0.). (Hoffman, Juliana)
09/16/2021	2845 Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)2695 Application for compensation *Twentieth Monthly Application for Compensation* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2021 to 6/30/2021, Fee: $80,105.04, Expenses: $0.). (Hoffman, Juliana)
09/16/2021	2846 Certificate of service re: *Documents Served on September 13, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2827 Notice *(Notice of Removal of Matter from September 13, 2021 Hearing Docket)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2748 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2453 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). filed by Debtor Highland Capital Management, L.P., 2828 Order Further Extending Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (Related document #2748) Entered on 9/13/2021. (Okafor, M.), 2829 Order granting Debtor's motion to compromise controversy with Highland Capital Management Fund Advisors, Nexpoint Advisors, Highland Income Fund, Nexpoint Strategic Opportunities Fund, and Nexpoint Capital (related document 2589) Entered on 9/13/2021. (Okafor, M.), 2832 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2713 Notice of appeal, 2758 Amended notice of appeal).. filed by Debtor Highland Capital Management, L.P., 2833 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2712 Notice of appeal). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/17/2021	2847 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 13 . Civil Case Number: 3:21−CV−1895−D (RE: related document(s)2673 Notice of appeal Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s)2599 Order on motion for leave).) (Blanco, J.)
09/17/2021	2848 Notice of docketing COMPLETE record on appeal. 3:21−CV−01895−D (RE: related document(s)2673 Notice of appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s)2599 Order on motion for leave). (Blanco, J.)
09/17/2021	2849 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2609 Application for compensation *(Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 through January 31, 2021)* for Deloitte Tax LLP,). (Annable, Zachery)
09/17/2021	2850 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2610 Application for compensation *(Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 through February 28, 2021)* for Deloitte Tax LLP). (Annable, Zachery)
09/17/2021	2851 Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s)2780 Application for compensation *(Fifteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021)* for Hayward PLLC, Debtor's A). (Annable, Zachery)
09/17/2021	

	2852 Application for compensation for Eastern Point Trust Company, Inc. , Administrator of non−qualified executive compensation and the Trustee for the Associated Rabi Trust for Highland Capital Management, L.P., Fee: $203423.00, Expenses: $0.00. Filed by Eastern Point Trust Company, Inc. (Attachments: # 1 Exhibit 1) (Okafor, M.)
09/17/2021	2853 Certificate of service re: *Notice of Reorganized Debtors Change of Address* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2834 Notice of change of address filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/20/2021	2854 Stipulation by Highland Capital Management, L.P. and The Pension Benefit Guaranty Corporation. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Annable, Zachery)
09/21/2021	2855 Order approving stipulation and agreed order authorizing withdrawal of proofs of claims 49, 50, and 51 filed by The Pension Benefit Guaranty Corporation (RE: related document(s)2854 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/21/2021 (Okafor, M.)
09/21/2021	2856 Motion for leave *(Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Annable, Zachery)
09/21/2021	2857 Motion to disallow claims *(Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) (Annable, Zachery)
09/22/2021	2858 Application for compensation *(Sixteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from April 1, 2021 through April 30, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 4/1/2021 to 4/30/2021, Fee: $55,665.00, Expenses: $2,879.41. Filed by Attorney Zachery Z. Annable, Other Professional Hayward PLLC (Annable, Zachery)
09/22/2021	2859 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from July 1, 2021 through July 31, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
09/22/2021	2861 Certificate of mailing regarding appeal (RE: related document(s)2841 First Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2840 Notice of appeal). (Attachments: # 1 Exhibit A)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
09/22/2021	2862 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2841 Amended Notice of appeal *Order Denying Motion to Compel Compliance With Bankruptcy Rule 2015.3*. Fee Amount $298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2812 Order on motion to compel). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
09/22/2021	2863 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−02268S. (RE: related document(s)2841 First Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2840 Notice of appeal). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
09/22/2021	2864 Omnibus Objection to claim(s) of Creditor(s) Chubb National Insurance Company; Contrarian Funds, LLC; Duff & Phelps, LLP; Federal Insurance Company; Great Northern Insurance Company; Great Northern Insurance Company, Chubb National Insurance

	Company, and Federal Insurance Company; Markit WSO Corp; Markit WSO Corp; A. Dean Jenkins; Amit Walia.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 10/22/2021. (Annable, Zachery)
09/22/2021	2865 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2864 Omnibus Objection to claim(s) of Creditor(s) Chubb National Insurance Company; Contrarian Funds, LLC; Duff & Phelps, LLP; Federal Insurance Company; Great Northern Insurance Company; Great Northern Insurance Company, Chubb National Insurance Company, and Federal Insurance Company; Markit WSO Corp; Markit WSO Corp; A. Dean Jenkins; Amit Walia.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 10/22/2021.). Hearing to be held on 11/3/2021 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 2864, (Annable, Zachery)
09/23/2021	2866 Certificate of service re: *Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 49, 50, and 51 Filed by the Pension Benefit Guaranty Corporation* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2854 Stipulation by Highland Capital Management, L.P. and The Pension Benefit Guaranty Corporation. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/24/2021	2868 Application for administrative expenses *for rank−and−file employees* Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order) (Soderlund, Eric)
09/24/2021	2869 WITHDRAWN at # 3288. Application for administrative expenses Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order) (Soderlund, Eric) Modified on 3/4/2022 (Ecker, C.).
09/24/2021	2870 Notice *(First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/24/2021	2871 Application for compensation *(Seventeenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from May 1, 2021 through May 31, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021, Fee: $51,697.50, Expenses: $3,556.31. Filed by Other Professional Hayward PLLC (Annable, Zachery)
09/24/2021	2872 Application for compensation *(FINAL)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: $1,147,059.42, Expenses: $2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021. (Hesse, Gregory)
09/24/2021	2873 Certificate of service re: *1) Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 49, 50, and 51 Filed by the Pension Benefit Guaranty Corporation; 2) Motion of the Reorganized Debtor for an Order Authorizing Entry Into an Amended and Restated Employee Stipulation; and 3) Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2855 Order approving stipulation and agreed order authorizing withdrawal of proofs of claims 49, 50, and 51 filed by The Pension Benefit Guaranty Corporation (RE: related document(s)2854 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/21/2021 (Okafor, M.), 2856 Motion for leave *(Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., 2857 Motion to disallow claims *(Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

09/24/2021	2874 BNC certificate of mailing. (RE: related document(s)2862 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)2841 Amended Notice of appeal *Order Denying Motion to Compel Compliance With Bankruptcy Rule 2015.3*. Fee Amount $298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2812 Order on motion to compel). (Attachments: # 1 Exhibit A))) No. of Notices: 1. Notice Date 09/24/2021. (Admin.)
09/27/2021	2875 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 43 Number of appellee volumes: 2. Civil Case Number: 3:21−CV−01974−X (RE: related document(s)2713 Notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP. Related document(s) 2660 Memorandum of opinion. Modified LINKAGE on 9/17/2021 (Blanco, J.)., 2758 Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s)2713 Notice of appeal).) (Blanco, J.)
09/27/2021	2876 Notice of docketing COMPLETE record on appeal. 3:21−CV−01974−X (RE: related document(s)2713 Notice of appeal 2660 Memorandum of opinion. 2758 Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s)2713 Notice of appeal).) (Blanco, J.)
09/27/2021	2877 Certificate of service re: *(Supplemental) Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2700 Notice *(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 2747 Certificate of service re: *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2700 Notice *(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
09/27/2021	2888 Request for Removal from 2002 Service List filed by Creditor Patrick Daugherty . (Tello, Chris) (Entered: 09/29/2021)
09/27/2021	2889 Motion to Strike (related document(s) 2852 Application for compensation) Filed by Other Professional Eastern Point Trust Company, Inc. (Tello, Chris) (Entered: 09/29/2021)
09/27/2021	2890 INCORRECT ENTRY: Docketed in this Case In Error − Notice of change of address filed by Creditor Georganna L. Simpson, P.C. . (Tello, Chris) Modified on 12/27/2021 (Okafor, Marcey). (Entered: 09/29/2021)
09/28/2021	2878 Certificate of service re: *Documents Served on September 22, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2858 Application for compensation *(Sixteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from April 1, 2021 through April 30, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 4/1/2021 to 4/30/2021, Fee: $55,665.00, Expenses: $2,879.41. Filed by Attorney Zachery Z. Annable, Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, 2859 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the*

	Period from July 1, 2021 through July 31, 2021) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., 2864 Omnibus Objection to claim(s) of Creditor(s) Chubb National Insurance Company; Contrarian Funds, LLC; Duff & Phelps, LLP; Federal Insurance Company; Great Northern Insurance Company; Great Northern Insurance Company, Chubb National Insurance Company, and Federal Insurance Company; Markit WSO Corp; Markit WSO Corp; A. Dean Jenkins; Amit Walia.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 10/22/2021. filed by Debtor Highland Capital Management, L.P., 2865 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2864 Omnibus Objection to claim(s) of Creditor(s) Chubb National Insurance Company; Contrarian Funds, LLC; Duff & Phelps, LLP; Federal Insurance Company; Great Northern Insurance Company; Great Northern Insurance Company, Chubb National Insurance Company, and Federal Insurance Company; Markit WSO Corp; Markit WSO Corp; A. Dean Jenkins; Amit Walia.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 10/22/2021.). Hearing to be held on 11/3/2021 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 2864, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/28/2021	2879 Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2812 Order on motion to compel). (Draper, Douglas)
09/28/2021	2880 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2879 Statement of issues on appeal). Appellee designation due by 10/12/2021. (Draper, Douglas)
09/29/2021	2882 Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s)2880 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2879 Statement of issues on appeal). Appellee designation due by 10/12/2021.) Responses due by 10/1/2021. (Blanco, J.)
09/29/2021	2883 Certificate of service re: Motion of CPCM, LLC for Allowance and Payment of Administrative Expenses of Rank−and−File Employees, CPCM, LLC for Allowance and Payment of Administrative Expense Claims, and Amended Proof of Claim for Scott Ellington [Claim No. 251] filed by Interested Party CPCM, LLC (RE: related document(s)2868 Application for administrative expenses *for rank−and−file employees*, 2869 Application for administrative expenses). (Smith, Frances)
09/29/2021	2884 Certificate of service re: *1) First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.; and 2) Seventeenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from May 1, 2021 Through May 31, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2870 Notice *(First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2871 Application for compensation *(Seventeenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from May 1, 2021 through May 31, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021, Fee: $51,697.50, Expenses: $3,556.31. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC). (Kass, Albert)
09/29/2021	2885 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 61 Number of appellee volumes: 1. Civil Case Number: 3:21−CV−01979−S (RE: related document(s)2712 Notice of appeal filed by Interested Party James Dondero (RE: related document(s)2660 Memorandum of opinion). (Blanco, J.)

09/29/2021	2886 Notice of docketing COMPLETE record on appeal. 3:21−CV−01979−S (RE: related document(s)2712 Notice of appeal filed by Interested Party James Dondero (RE: related document(s)2660 Memorandum of opinion). (Blanco, J.)
09/29/2021	2887 Adversary case 21−03067. ORDER REFERRING CASE NUMBER 21−CV−0842−B from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division. Complaint by Charitable DAF Fund, LP , CLO Holdco, Ltd. against Highland Capital Management, LP , Highland HCF Advisor Ltd , Highland CLO Funding, Ltd. . Fee Amount $350 (Attachments: # 1 Original Complaint # 2 Docket Sheet from 3:20−cv−0842−B). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, M.)
09/30/2021	2891 Clerk's correspondence requesting an order from attorney for interested party. (RE: related document(s)1888 Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) Responses due by 10/14/2021. (Ecker, C.)
09/30/2021	2892 Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2880 Appellant designation). (Draper, Douglas)
10/01/2021	2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
10/01/2021	2894 Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and). (Annable, Zachery)*
10/01/2021	2895 Declaration re: *(Declaration of Kenneth H. Brown in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery)*
10/01/2021	2896 BNC certificate of mailing. (RE: related document(s)2882 Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s)2880 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2879 Statement of issues on appeal). Appellee designation due by 10/12/2021.) Responses due by 10/1/2021. (Blanco, J.)) No. of Notices: 1. Notice Date 10/01/2021. (Admin.) (Entered: 10/02/2021)
10/05/2021	2897 Certificate of service re: (Supplemental) Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2700 Notice *(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)).

	filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/05/2021	2898 Motion to withdraw as attorney (Vedder Price P.C. and its attorneys) Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order) (Taylor, Clay)
10/06/2021	2899 Certificate of service re: 1) Highlands Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; 2) Highlands Memorandum of Law in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 3) Declaration of Kenneth H. Brown in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2894 Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and). filed by Debtor Highland Capital Management, L.P., 2895 Declaration re: (Declaration of Kenneth H. Brown in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. (Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
10/06/2021	3661 DISTRICT COURT ORDER: It is therefore ORDERED that the above−styled appeal shall be ABATED and ADMINISTRATIVELY CLOSED pending the resolution of NexPoint Advisors, L.P. et al. v. Highland Capital Management, L.P., No. 21−10449 (5th Cir. 2021), without prejudice to it being reopened upon a motion by any party or to enter a judgment. (Ordered by Judge Karen Gren Scholer on 10/6/2021) (RE: related document(s)2532 Notice of docketing notice of appeal/record). 3:21−cv−01585−S Entered on 10/6/2021 (Whitaker, Sheniqua) MODIFIED text on 9/12/2023 (Whitaker, Sheniqua). (Entered: 02/02/2023)
10/07/2021	2900 Motion to continue hearing on (related documents 2893 Motion to compel) *(Unopposed Motion to Continue the Hearing on Highland's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
10/07/2021	2901 Order granting motion to continue hearing on (related document # 2900) (related documents Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and) Hearing to be held on 11/30/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2893, Entered on 10/7/2021. (Nunns, Tracy)*
10/08/2021	2902 Application for compensation *The Twenty−First and Final Fee Application* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: $6,176,551.20, Expenses: $39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021. (Hoffman, Juliana)
10/08/2021	2903 Application for compensation *Second Consolidated Monthly and Final Fee Application* for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: $1,358,565.52, Expenses: $6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021. (Hoffman, Juliana)

10/08/2021	2904 Application for compensation *Twenty−First Monthly and Final Fee Application of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, Fee: $13,134,805.2, Expenses: $211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021. (Hoffman, Juliana)
10/08/2021	2905 Application for compensation *(Eighteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from June 1, 2021 through June 30, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 6/1/2021 to 6/30/2021, Fee: $53,145.00, Expenses: $7,788.92. Filed by Other Professional Hayward PLLC (Annable, Zachery)
10/08/2021	2906 Application for compensation *Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: $23978627.25, Expenses: $334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021. (Pomerantz, Jeffrey)
10/08/2021	2907 Application for compensation *Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021* for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $2,645,729.72, Expenses: $5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021. (Pomerantz, Jeffrey)
10/08/2021	2908 Application for compensation *Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: $202,317.65, Expenses: $2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021. (Pomerantz, Jeffrey)
10/08/2021	2909 Application for compensation *(Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from July 1, 2021 through August 11, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 7/1/2021 to 8/11/2021, Fee: $49,947.50, Expenses: $3,965.32. Filed by Other Professional Hayward PLLC (Annable, Zachery)
10/08/2021	2910 Application for compensation *(Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: $825,629.50, Expenses: $46,482.92. Filed by Other Professional Hayward PLLC (Annable, Zachery)
10/11/2021	2911 Application for compensation *(Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021)* for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $553,412.60, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
10/11/2021	2912 Certificate of service re: (Supplemental) re First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2870 Notice *(First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/12/2021	

	2913 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/30/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2893, (Annable, Zachery)
10/12/2021	2914 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2840 Notice of appeal, 2841 Amended notice of appeal, 2879 Statement of issues on appeal). (Annable, Zachery)
10/12/2021	2915 Omnibus Notice of hearing *(Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2872 Application for compensation *(FINAL)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: $1,147,059.42, Expenses: $2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., 2902 Application for compensation *The Twenty−First and Final Fee Application* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: $6,176,551.20, Expenses: $39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., 2903 Application for compensation *Second Consolidated Monthly and Final Fee Application* for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: $1,358,565.52, Expenses: $6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., 2904 Application for compensation *Twenty−First Monthly and Final Fee Application of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, Fee: $13,134,805.2, Expenses: $211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., 2906 Application for compensation *Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: $23978627.25, Expenses: $334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., 2907 Application for compensation *Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021* for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $2,645,729.72, Expenses: $5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., 2908 Application for compensation *Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: $202,317.65, Expenses: $2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., 2910 Application for compensation *(Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: $825,629.50, Expenses: $46,482.92. Filed by Other Professional Hayward PLLC, 2911 Application for compensation *(Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021)* for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $553,412.60, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2903 and for 2904 and for 2907 and for 2910 and for 2872 and for 2911 and for 2908 and for 2906 and for 2902, (Annable, Zachery)
10/12/2021	2916 Clerk's correspondence requesting File an amended appellee designation from attorney for appellee. (RE: related document(s)2914 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2840 Notice of appeal, 2841 Amended notice of appeal, 2879 Statement

	of issues on appeal).) Responses due by 10/14/2021. (Blanco, J.)
10/12/2021	2917 Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2914 Appellee designation). (Annable, Zachery)
10/13/2021	2918 Order granting sixth interim application for compensation (related document # 2611) granting for FTI Consulting, Inc., fees awarded: $339167.25, expenses awarded: $0.00 Entered on 10/13/2021. (Nunns, Tracy)
10/13/2021	2919 Order granting unopposed motion to withdraw as attorneys (attorney David L. Kane; Douglas J. Lipke; William W. Thorsness; Thomas P. Cimino and Michael E. Eidelman terminated). (related document # 2898) Entered on 10/13/2021. (Nunns, Tracy)
10/13/2021	2921 Certificate of service re: 1) Unopposed Motion to Continue the Hearing on Highlands Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Order Granting Unopposed Motion to Continue the Hearing on Highland's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2900 Motion to continue hearing on (related documents 2893 Motion to compel) *(Unopposed Motion to Continue the Hearing on Highland's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 2901 Order granting motion to continue hearing on (related document 2900) (related documents Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and) Hearing to be held on 11/30/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2893, Entered on 10/7/2021.). (Kass, Albert)*
10/13/2021	2922 Certificate of service re: Documents Served on October 8, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2902 Application for compensation *The Twenty−First and Final Fee Application* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: $6,176,551.20, Expenses: $39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021. filed by Financial Advisor FTI Consulting, Inc., 2903 Application for compensation *Second Consolidated Monthly and Final Fee Application* for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: $1,358,565.52, Expenses: $6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021. filed by Other Professional Teneo Capital, LLC, 2904 Application for compensation *Twenty−First Monthly and Final Fee Application of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, Fee: $13,134,805.2, Expenses: $211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, 2905 Application for compensation *(Eighteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from June 1, 2021 through June 30, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 6/1/2021 to 6/30/2021, Fee: $53,145.00, Expenses: $7,788.92. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, 2906 Application for compensation *Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: $23978627.25, Expenses: $334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021. filed by Debtor Highland Capital Management, L.P., 2907 Application for compensation *Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11,*

	2021 for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $2,645,729.72, Expenses: $5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021. filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, 2908 Application for compensation *Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: $202,317.65, Expenses: $2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021. filed by Consultant Mercer (US) Inc., 2909 Application for compensation *(Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from July 1, 2021 through August 11, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 7/1/2021 to 8/11/2021, Fee: $49,947.50, Expenses: $3,965.32. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, 2910 Application for compensation *(Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: $825,629.50, Expenses: $46,482.92. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC). (Kass, Albert)
10/14/2021	2923 Notice *of Case Status* filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s)2891 Clerk's correspondence requesting an order from attorney for interested party. (RE: related document(s)1888 Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) Responses due by 10/14/2021. (Ecker, C.)). (Drawhorn, Lauren)
10/15/2021	2924 Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s)2858 Application for compensation *(Sixteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from April 1, 2021 through April 30, 2021)* for Hayward PLLC, Debtor's A). (Annable, Zachery)
10/15/2021	2925 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 4 Number of appellee volumes: 2. Civil Case Number: 3:21−CV−02268−S (RE: related document(s)2841 First Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2840 Notice of appeal) (Blanco, J.)
10/15/2021	2926 **SEALED document regarding: Appendix in Support of HCRE Partners, LLC Brief in Opposition to Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP per court order** filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)2505 Order on motion to seal). (Drawhorn, Lauren)
10/15/2021	2927 Response opposed to (related document(s): 2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)*
10/15/2021	2928 Support/supplemental document *Supplemental Appendix ISO NREP Response and Brief in Opposition to Debtor's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)2927 Response). (Drawhorn, Lauren)
10/15/2021	2929 Notice of docketing COMPLETE record on appeal. (RE: related document(s)2841 First Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2840 Notice of appeal). (Attachments: # 1 Exhibit A)) Civil case 3:21−cv−02268−S (Whitaker, Sheniqua)

10/15/2021	2930 Motion to appear pro hac vice for Robert Loigman. Fee Amount $100 Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (Montgomery, Paige)
10/15/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A29058450, amount $ 100.00 (re: Doc# 2930). (U.S. Treasury)
10/15/2021	2931 Motion to appear pro hac vice for Alexandre J. Tschumi. Fee Amount $100 Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (Montgomery, Paige)
10/15/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A29058482, amount $ 100.00 (re: Doc# 2931). (U.S. Treasury)
10/15/2021	2932 Response unopposed to (related document(s): 2819 Objection to claim filed by Debtor Highland Capital Management, L.P.) *No Opposition to Granting Objection to Proof of Claim Number 177 Filed by the Dugaboy Investment Trust on April 23, 2020 [Dkt. 2819]* filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
10/15/2021	2933 Response unopposed to (related document(s): 2796 Objection to claim filed by Debtor Highland Capital Management, L.P.) *Limited Response and Consent to Objection to Proof of Claim 131 Filed by The Dugaboy Investment Trust on April 8, 2020* filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
10/15/2021	2934 Adversary case 21−03076. Complaint by Marc Kirschner against James D. Dondero, Mark Okada, Scott Ellington, Isaac Leventon, Grant James Scott III, Frank Waterhouse, STRAND ADVISORS, INC, NexPoint Advisors, L.P., Highland Capital Management Fund Advisors, L.P., DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST, GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST, Hunter Mountain Investment Trust, MARK & PAMELA OKADA FAMILY TRUST EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST EXEMPT TRUST #1, MARK & PAMELA OKADA FAMILY TRUST EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST EXEMPT TRUST #2, CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD., Charitable DAF Fund, LP, Highland Dallas Foundation, Inc., RAND PE FUND I, LP, SERIES 1, MASSAND CAPITAL, LLC, MASSAND CAPITAL, INC., SAS ASSET RECOVERY, LTD, CPCM, LLC. Fee Amount $350. Nature(s) of suit: 13 (Recovery of money/property §548 fraudulent transfer. 14 (Recovery of money/property − other). 91 (Declaratory judgment). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 81 (Subordination of claim or interest). (Montgomery, Paige) MODIFIED TO ADD NATURE OS SUIT AND CORRECT DEFENDANT NAME on 10/18/2021 (Ecker, C.). Modified on 10/18/2021 (Ecker, C.).
10/18/2021	2935 Motion to appear pro hac vice for Frank Grese. Fee Amount $100 Filed by Interested Party CPCM, LLC (Smith, Frances)
10/18/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A29061543, amount $ 100.00 (re: Doc# 2935). (U.S. Treasury)
10/18/2021	2936 Certificate of no Objection filed by Other Professional Hayward PLLC (RE: related document(s)2871 Application for compensation *(Seventeenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from May 1, 2021 through May 31, 2021)* for Hayward PLLC, Debtor's Att). (Annable, Zachery)

10/18/2021	Adversary case 3:20−ap−3195 closed Pursuant to LBR 9070−1, any exhibits that were admitted by the Court may be claimed and removed from the Clerks Office during the 60−day period following final disposition of a case by the attorney or party who introduced the exhibits. Any exhibit not removed within the 60−day period may be destroyed or otherwise disposed of by the Bankruptcy Clerk. (Ecker, C.)
10/18/2021	2937 Certificate of service re: Documents Served on October 12, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2911 Application for compensation *(Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021)* for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $553,412.60, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, 2913 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/30/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2893, filed by Debtor Highland Capital Management, L.P., 2914 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2840 Notice of appeal, 2841 Amended notice of appeal, 2879 Statement of issues on appeal). filed by Debtor Highland Capital Management, L.P., 2917 Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2914 Appellee designation). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/18/2021	2938 Certificate of service re: Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2915 Omnibus Notice of hearing *(Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2872 Application for compensation *(FINAL)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: $1,147,059.42, Expenses: $2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., 2902 Application for compensation *The Twenty−First and Final Fee Application* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: $6,176,551.20, Expenses: $39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., 2903 Application for compensation *Second Consolidated Monthly and Final Fee Application* for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: $1,358,565.52, Expenses: $6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., 2904 Application for compensation *Twenty−First Monthly and Final Fee Application of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, Fee: $13,134,805.2, Expenses: $211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., 2906 Application for compensation *Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: $23978627.25, Expenses: $334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., 2907 Application for compensation *Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021* for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $2,645,729.72, Expenses: $5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., 2908 Application for compensation *Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021* for Mercer (US)

	Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: $202,317.65, Expenses: $2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., 2910 Application for compensation *(Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: $825,629.50, Expenses: $46,482.92. Filed by Other Professional Hayward PLLC, 2911 Application for compensation *(Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021)* for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $553,412.60, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2903 and for 2904 and for 2907 and for 2910 and for 2872 and for 2911 and for 2908 and for 2906 and for 2902, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/19/2021	2939 Motion for leave *(Amended Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation)* (related document(s) 2856 Motion for leave) Filed by Debtor Highland Capital Management, L.P. Objections due by 11/9/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Annable, Zachery)
10/19/2021	2940 WITHDRAWN at # 3340. Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* (related document(s):2857) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) (Annable, Zachery) MODIFIED and terminated on 5/17/2022 (Ecker, C.).
10/20/2021	2941 Order granting application for compensation (related document # 2585) granting for Official Committee of Unsecured Creditors, fees awarded: $1527522.75, expenses awarded: $32957.78 Entered on 10/20/2021. (Okafor, Marcey)
10/20/2021	2942 Order granting motion to appear pro hac vice adding Frank Grese for CPCM, LLC (related document # 2935) Entered on 10/20/2021. (Okafor, Marcey)
10/20/2021	2943 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2021 through August 11, 2021)* filed by Development Specialists, Inc.(RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery) MODIFIED TO CORRECT PARTY FILER on 10/21/2021 (Ecker, C.).
10/21/2021	2944 Agreed Motion for ex parte relief*effectuating Stipulation and Order and Disbursing Registry Funds to CLO HoldCo* Filed by Interested Party CLO Holdco, Ltd. (Attachments: # 1 Proposed Order) (Phillips, Louis)
10/21/2021	2945 Certificate of service re: (Supplemental) re 1) Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals; and 2) Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2700 Notice *(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 2915 Omnibus Notice of hearing *(Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2872 Application for compensation *(FINAL)* for Hunton Andrews Kurth LLP,

	Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: $1,147,059.42, Expenses: $2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., 2902 Application for compensation *The Twenty−First and Final Fee Application* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: $6,176,551.20, Expenses: $39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., 2903 Application for compensation *Second Consolidated Monthly and Final Fee Application* for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: $1,358,565.52, Expenses: $6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., 2904 Application for compensation *Twenty−First Monthly and Final Fee Application of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, Fee: $13,134,805.2, Expenses: $211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., 2906 Application for compensation *Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: $23978627.25, Expenses: $334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., 2907 Application for compensation *Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021* for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $2,645,729.72, Expenses: $5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., 2908 Application for compensation *Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: $202,317.65, Expenses: $2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., 2910 Application for compensation *(Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: $825,629.50, Expenses: $46,482.92. Filed by Other Professional Hayward PLLC, 2911 Application for compensation *(Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021)* for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $553,412.60, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2903 and for 2904 and for 2907 and for 2910 and for 2872 and for 2911 and for 2908 and for 2906 and for 2902, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/21/2021	2946 Order effectuating stipulation and order and disbursing registry funds to CLO Holdco (related document # 2944) Entered on 10/21/2021. (Okafor, Marcey)
10/21/2021	2947 Reply to (related document(s): 2933 Response to objection to claim filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/21/2021	2948 Reply to (related document(s): 2932 Response to objection to claim filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/21/2021	2949 Chapter 11 Post−Confirmation Report for the Quarter Ending: 09/30/2021 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
10/22/2021	2950 Order granting motion to appear pro hac vice adding Robert S. Loigman for Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (related

	document # 2930) Entered on 10/22/2021. (Rielly, Bill)
10/22/2021	2951 Order granting motion to appear pro hac vice adding Alexandre J. Tschumi for Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (related document # 2931) Entered on 10/22/2021. (Rielly, Bill)
10/22/2021	2952 Reply to (related document(s): 2927 Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/22/2021	2953 Certificate of service re: 1) Amended Motion of the Reorganized Debtor for an Order Authorizing Entry Into an Amended and Restated Employee Stipulation; and 2) Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2939 Motion for leave *(Amended Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation)* (related document(s) 2856 Motion for leave) Filed by Debtor Highland Capital Management, L.P. Objections due by 11/9/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., 2940 Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* (related document(s):2857) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/22/2021	2954 Witness and Exhibit List *(Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on October 25, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2819 Objection to claim). (Attachments: # 1 Exhibit 1) (Annable, Zachery)
10/22/2021	2955 BNC certificate of mailing − PDF document. (RE: related document(s)2942 Order granting motion to appear pro hac vice adding Frank Grese for CPCM, LLC (related document 2935) Entered on 10/20/2021.) No. of Notices: 1. Notice Date 10/22/2021. (Admin.)
10/24/2021	2956 BNC certificate of mailing − PDF document. (RE: related document(s)2950 Order granting motion to appear pro hac vice adding Robert S. Loigman for Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (related document 2930) Entered on 10/22/2021.) No. of Notices: 1. Notice Date 10/24/2021. (Admin.)
10/24/2021	2957 BNC certificate of mailing − PDF document. (RE: related document(s)2951 Order granting motion to appear pro hac vice adding Alexandre J. Tschumi for Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (related document 2931) Entered on 10/22/2021.) No. of Notices: 1. Notice Date 10/24/2021. (Admin.)
10/25/2021	2958 Reply to (related document(s): 2947 Reply filed by Debtor Highland Capital Management, L.P.) *Resonse to Highland Capital Management, L.P.'s Reply in Support of its Objection to Proof of Claim Number 131 filed by The Dugaboy Investment Trust on April 8, 2020 with Certificate of Service* filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
10/25/2021	2959 Reply to (related document(s): 2948 Reply filed by Debtor Highland Capital Management, L.P.) *Response to Highland Capital Management, L.P.'s Reply in Support of its Objection to Proof of Claim Number 177 filed by The Dugaboy Investment Trust on April 23, 2020 with Certificate of Service* filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
10/25/2021	2960 Hearing held on 10/25/2021. (RE: related document(s)2796 Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust filed by Debtor Highland Capital Management, L.P., (Appearances: G. Demo and J. Pomeranz for Reorganized Debtor; D. Draper for

	Dugaboy (with N. Dondero). Nonevidentiary hearing. Agreed Order disallowing claim will be submitted.) (Edmond, Michael)
10/25/2021	2961 Hearing held on 10/25/2021. (RE: related document(s)2819 Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust filed by Debtor Highland Capital Management, L.P., (Appearances: G. Demo and J. Pomeranz for Reorganized Debtor; D. Draper for Dugaboy (with N. Dondero). Nonevidentiary hearing. Agreed Order disallowing claim will be submitted.) (Edmond, Michael)
10/25/2021	2962 PDF with attached Audio File. Court Date & Time [10/25/2021 01:27:43 PM]. File Size [2701 KB]. Run Time [00:11:36]. (admin).
10/25/2021	2963 Certificate of service re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2021 Through August 11, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2943 Notice *(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2021 through August 11, 2021)* filed by Development Specialists, Inc.(RE: related document(s)853 Order granting application to employ Development Specialists, Inc. as Other Professional (related document 775) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery) MODIFIED TO CORRECT PARTY FILER on 10/21/2021 (Ecker, C.). filed by Financial Advisor Development Specialists, Inc.). (Kass, Albert)
10/25/2021	3660 DISTRICT COURT Order consolidating cases: Member case(s) 3:21−CV−01979−S consolidated with lead case 3:21−CV−01974−X. James Dondero added to case pursuant to consolidation. (RE: related document(s)2762 Notice of docketing notice of appeal/record, 2767 Notice of docketing notice of appeal/record). Entered on 10/25/2021 (Whitaker, Sheniqua) (Entered: 02/02/2023)
10/27/2021	2964 Certificate of service re: 1) Highland Capital Management, L.P.'s Reply in Support of its Objection to Proof of Claim Number 131 Filed by The Dugaboy Investment Trust on April 8, 2020; and 2) Highland Capital Management, L.P.'s Reply in Support of its Objection to Proof of Claim Number 177 Filed by The Dugaboy Investment Trust on April 23, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2947 Reply to (related document(s): 2933 Response to objection to claim filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2948 Reply to (related document(s): 2932 Response to objection to claim filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/27/2021	2965 Order regarding objection to claim #177 filed by The Dugaboy Investment Trust (RE: related document(s)2819 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/27/2021 (Okafor, Marcey) Modified text on 10/27/2021 (Okafor, Marcey).
10/27/2021	2966 Order regarding objection to claim #131 filed by The Dugaboy Investment Trust (RE: related document(s)2796 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/27/2021 (Okafor, Marcey)
10/27/2021	2967 Certificate of service re: 1) Highland's Reply in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on October 25, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2952 Reply to (related document(s): 2927 Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2954 Witness and Exhibit List *(Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on October 25, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related

	document(s)2819 Objection to claim). (Attachments: # 1 Exhibit 1) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/28/2021	2968 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2864 Objection to claim). (Annable, Zachery)
11/01/2021	2969 Order sustaining reorganized debtor's fourth omnibus objection to certain amended and superseded claims; and no−liability claims (RE: related document(s)2864 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/1/2021 (Okafor, Marcey)
11/01/2021	2970 Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s)2905 Application for compensation *(Eighteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from June 1, 2021 through June 30, 2021)* for Hayward PLLC, Debtor's At). (Annable, Zachery)
11/01/2021	2971 Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s)2909 Application for compensation *(Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from July 1, 2021 through August 11, 2021)* for Hayward PLLC, Debtor's). (Annable, Zachery)
11/01/2021	2972 Certificate of service re: 1) Order re: Objection to Proof of Claim Number 177 Filed by The Dugaboy Investment Trust on April 23, 2020; and 2) Order re: Objection to Proof of Claim Number 131 Filed by The Dugaboy Investment Trust on April 8, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2965 Order regarding objection to claim #177 filed by The Dugaboy Investment Trust (RE: related document(s)2819 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/27/2021 (Okafor, Marcey) Modified text on 10/27/2021., 2966 Order regarding objection to claim #131 filed by The Dugaboy Investment Trust (RE: related document(s)2796 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/27/2021). (Kass, Albert)
11/01/2021	2973 Certificate of service re: (Supplemental) re Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2915 Omnibus Notice of hearing *(Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2872 Application for compensation *(FINAL)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: $1,147,059.42, Expenses: $2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., 2902 Application for compensation *The Twenty−First and Final Fee Application* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: $6,176,551.20, Expenses: $39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., 2903 Application for compensation *Second Consolidated Monthly and Final Fee Application* for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: $1,358,565.52, Expenses: $6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., 2904 Application for compensation *Twenty−First Monthly and Final Fee Application of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, Fee: $13,134,805.2, Expenses: $211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., 2906 Application for compensation *Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: $23978627.25, Expenses: $334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., 2907 Application for compensation *Consolidated Monthly, Third Interim, and Final Application*

	of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021 for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $2,645,729.72, Expenses: $5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., 2908 Application for compensation *Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: $202,317.65, Expenses: $2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., 2910 Application for compensation *(Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: $825,629.50, Expenses: $46,482.92. Filed by Other Professional Hayward PLLC, 2911 Application for compensation *(Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021)* for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $553,412.60, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2903 and for 2904 and for 2907 and for 2910 and for 2872 and for 2911 and for 2908 and for 2906 and for 2902, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/01/2021	2974 Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Annable, Zachery)
11/02/2021	2975 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)2889 Motion to Strike (related document(s) 2852 Application for compensation) Filed by Other Professional Eastern Point Trust Company, Inc.) Responses due by 11/9/2021. (Ecker, C.)
11/02/2021	2976 AmendedSupplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P., 2974 Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios;

	Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Appendix A # 2 Appendix B # 3 Exhibit A # 4 Exhibit B # 5 Exhibit C) (Annable, Zachery). Modified on 11/3/2021 (Rielly, Bill).
11/02/2021	2977 Omnibus Objection to (related document(s): 2872 Application for compensation *(FINAL)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: $1,147,059.42, Expenses: $2,747.84. filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, 2902 Application for compensation *The Twenty−First and Final Fee Application* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: $6,176,551.20, Expenses: $39,122.91. filed by Financial Advisor FTI Consulting, Inc., 2903 Application for compensation *Second Consolidated Monthly and Final Fee Application* for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: $1,358,565.52, Expenses: $6,257.07. filed by Other Professional Teneo Capital, LLC, 2904 Application for compensation *Twenty−First Monthly and Final Fee Application of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, Fee: $13,134,805.2, Expenses: $21 filed by Creditor Committee Official Committee of Unsecured Creditors, 2906 Application for compensation *Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 1 filed by Debtor Highland Capital Management, L.P., 2907 Application for compensation Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Couns filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, 2908 Application for compensation Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Merc filed by Consultant Mercer (US) Inc., 2910 Application for compensation (Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/1 filed by Other Professional Hayward PLLC, 2911 Application for compensation (Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021) for Deloitte Tax LLP, Other filed by Other Professional Deloitte Tax LLP) filed by Interested Party NexPoint Advisors, L.P.. (Attachments: # 1 Exhibit A: Declaration of Bruce A. Markell) (Jain, Kristin)*
11/03/2021	2978 Motion to appear pro hac vice for Samuel A. Schwartz. Fee Amount $100 Filed by Interested Party NexPoint Advisors, L.P. (Jain, Kristin)
11/03/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A29100285, amount $ 100.00 (re: Doc# 2978). (U.S. Treasury)
11/03/2021	2979 Motion to appear pro hac vice for Athanasios E. Agelakopoulos. Fee Amount $100 Filed by Interested Party NexPoint Advisors, L.P. (Jain, Kristin)
11/03/2021	2980 Motion to appear pro hac vice for Emily D. Anderson. Fee Amount $100 Filed by Interested Party NexPoint Real Estate Advisors, L.P. (Jain, Kristin)
11/03/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A29100347, amount $ 100.00 (re: Doc# 2979). (U.S. Treasury)
11/03/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A29100347, amount $ 100.00 (re: Doc#

	2980). (U.S. Treasury)
11/03/2021	2981 Motion to appear pro hac vice for Jordan A. Kroop. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Hayward, Melissa)
11/03/2021	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A29100707, amount $ 100.00 (re: Doc# 2981). (U.S. Treasury)
11/04/2021	2982 Certificate of service re: Order Sustaining Reorganized Debtors Fourth Omnibus Objection to Certain (A) Amended and Superseded Claims; and (B) No−Liability Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2969 Order sustaining reorganized debtor's fourth omnibus objection to certain amended and superseded claims; and no−liability claims (RE: related document(s)2864 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/1/2021). (Kass, Albert)
11/04/2021	2983 Certificate of service re: Reorganized Debtor's Amended Supplemental Omnibus Objection to Certain Employee Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2976 AmendedSupplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P., 2974 Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Appendix A # 2 Appendix B # 3 Exhibit A # 4 Exhibit B # 5 Exhibit C) (Annable, Zachery). Modified on 11/3/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/04/2021	2984 BNC certificate of mailing. (RE: related document(s)2975 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)2889 Motion to Strike (related document(s) 2852 Application for compensation) Filed by Other Professional Eastern Point Trust Company, Inc.) Responses due by 11/9/2021. (Ecker, C.)) No. of Notices: 1. Notice Date 11/04/2021. (Admin.)
11/05/2021	2985 Order granting motion to appear pro hac vice adding Samuel A. Schwartz for NexPoint Advisors, L.P. (related document # 2978) Entered on 11/5/2021. (Okafor, Marcey)
11/05/2021	2986 Order granting motion to appear pro hac vice adding Athanasios E. Agelakopoulos for NexPoint Advisors, L.P. (related document # 2979) Entered on 11/5/2021. (Okafor, Marcey)

11/05/2021	2987 Order granting motion to appear pro hac vice adding Emily D. Anderson for NexPoint Advisors, L.P. (related document # 2980) Entered on 11/5/2021. (Okafor, Marcey)
11/05/2021	2988 Reply to (related document(s): 2977 Objection filed by Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/05/2021	2989 Order granting motion to appear pro hac vice adding Jordan A. Kroop for Highland Capital Management, L.P. (related document # 2981) Entered on 11/5/2021. (Okafor, Marcey)
11/05/2021	2990 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 113 Filed by The Dugaboy Investment Trust as Successor−in−Interest to The Canis Major Trust)* Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/05/2021	2991 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 120 Filed by The Get Good Trust)* Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/05/2021	2992 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 128 Filed by The Get Good Non−Exempt Trust No. 1 Individually and as Successor−in−Interest to The Canis Major Trust)* Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/05/2021	2993 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 129 Filed by The Get Good Non−Exempt Trust No. 2 Individually and as Successor−in−Interest to The Canis Major Trust)* Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/05/2021	2994 Response opposed to (related document(s): 2977 Objection filed by Interested Party NexPoint Advisors, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
11/07/2021	2995 BNC certificate of mailing − PDF document. (RE: related document(s)2985 Order granting motion to appear pro hac vice adding Samuel A. Schwartz for NexPoint Advisors, L.P. (related document 2978) Entered on 11/5/2021.) No. of Notices: 1. Notice Date 11/07/2021. (Admin.)
11/07/2021	2996 BNC certificate of mailing − PDF document. (RE: related document(s)2986 Order granting motion to appear pro hac vice adding Athanasios E. Agelakopoulos for NexPoint Advisors, L.P. (related document 2979) Entered on 11/5/2021.) No. of Notices: 1. Notice Date 11/07/2021. (Admin.)
11/07/2021	2997 BNC certificate of mailing − PDF document. (RE: related document(s)2987 Order granting motion to appear pro hac vice adding Emily D. Anderson for NexPoint Advisors, L.P. (related document 2980) Entered on 11/5/2021.) No. of Notices: 1. Notice Date 11/07/2021. (Admin.)
11/09/2021	2998 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)2868 Application for administrative expenses *for rank−and−file employees* Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order), 2869 Application for administrative expenses Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order)) Responses due by 11/23/2021. (Ecker, C.)
11/09/2021	2999 Adversary case 21−03082. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P.. Fee Amount $350 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Adversary Cover Sheet). Nature(s) of

	suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property − 542 turnover of property). (Annable, Zachery)
11/09/2021	3000 Objection to claim(s) of Creditor(s) Jean−Paul Sevilla.. Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Montgomery, Paige)
11/09/2021	3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A) (Montgomery, Paige)
11/09/2021	3002 Objection to claim(s) of Creditor(s) Hunter Covitz.. Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) (Montgomery, Paige)
11/10/2021	3003 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2939 Motion for leave *(Amended Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation)* (related document(s) 2856 Motion for leave)). (Annable, Zachery)
11/10/2021	3004 Chapter 11 Post−Confirmation Report for the Quarter Ending: 09/30/2021 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
11/10/2021	3005 Chapter 11 Post−Confirmation Report for the Quarter Ending: 09/30/2021 filed by Other Professional Highland Claimant Trust. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
11/10/2021	3006 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2828 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 12/1/2021. (Annable, Zachery)
11/10/2021	3007 Order approving stipulation and agreed order authorizing withdrawal of proof of claim 113 filed by The Dugaboy Investment Trust as Successor−in−Interest to The Canis Major Trust (RE: related document(s)2990 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021 (Okafor, Marcey)
11/10/2021	3008 Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 120 Filed by The Get Good Trust(RE: related document(s)2991 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021 (Okafor, Marcey)
11/10/2021	3009 Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 128 Filed by The Get Good Non−Exempt Trust No. 1 Individually and as Successor−in−Interest to The Canis Major Trust (RE: related document(s)2992 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021 (Okafor, Marcey)
11/10/2021	3010 Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 129 Filed by The Get Good Non−Exempt Trust No. 2 Individually and as Successor−in−Interest to The Canis Major Trust (RE: related document(s)2993 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021 (Okafor, Marcey)

11/10/2021	3011 INCORRECT ENTRY: Filed in AP at docket #69. Motion to stay pending appeal *Amended* (related documents 1943 Order confirming chapter 11 plan) Filed by Creditor CLO Holdco, Ltd., Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (Attachments: # 1 Exhibit A−Motion to Withdraw Reference) (Bridges, Jonathan) MODIFIED and terminated on 1/10/2022 (Ecker, C.).
11/11/2021	3012 Certificate of service re: Various Documents Served on November 5, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2988 Reply to (related document(s): 2977 Objection filed by Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2990 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 113 Filed by The Dugaboy Investment Trust as Successor−in−Interest to The Canis Major Trust)* Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2991 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 120 Filed by The Get Good Trust)* Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2992 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 128 Filed by The Get Good Non−Exempt Trust No. 1 Individually and as Successor−in−Interest to The Canis Major Trust)* Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2993 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 129 Filed by The Get Good Non−Exempt Trust No. 2 Individually and as Successor−in−Interest to The Canis Major Trust)* Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/11/2021	3013 Certificate of service re: (Supplemental) re 1) First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.; 2) Agreed Scheduling Order on Debtors Third Omnibus Objection to Certain No Liability Claims; and 3) Reorganized Debtor's Amended Supplemental Omnibus Objection to Certain Employee Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2768 Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document 2226 and 2267). Hearing to be held on 12/15/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2059, Entered on 8/24/2021. (Okafor, M.)., 2870 Notice *(First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2976 AmendedSupplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P., 2974 Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.).

	(Attachments: # 1 Appendix A # 2 Appendix B # 3 Exhibit A # 4 Exhibit B # 5 Exhibit C) (Annable, Zachery). Modified on 11/3/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/12/2021	3014 Certificate of service re: (Supplemental) Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2915 Omnibus Notice of hearing *(Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2872 Application for compensation *(FINAL)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: $1,147,059.42, Expenses: $2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., 2902 Application for compensation *The Twenty−First and Final Fee Application* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: $6,176,551.20, Expenses: $39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., 2903 Application for compensation *Second Consolidated Monthly and Final Fee Application* for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: $1,358,565.52, Expenses: $6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., 2904 Application for compensation *Twenty−First Monthly and Final Fee Application of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, Fee: $13,134,805.2, Expenses: $211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., 2906 Application for compensation *Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: $23978627.25, Expenses: $334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., 2907 Application for compensation *Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021* for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $2,645,729.72, Expenses: $5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., 2908 Application for compensation *Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: $202,317.65, Expenses: $2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., 2910 Application for compensation *(Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: $825,629.50, Expenses: $46,482.92. Filed by Other Professional Hayward PLLC, 2911 Application for compensation *(Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021)* for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $553,412.60, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2903 and for 2904 and for 2907 and for 2910 and for 2872 and for 2911 and for 2908 and for 2906 and for 2902, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/12/2021	3015 Supplemental Response opposed to (related document(s): 2872 Application for compensation *(FINAL)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: $1,147,059.42, Expenses: $2,747.84. filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, 2902 Application for compensation *The Twenty−First and Final Fee Application* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: $6,176,551.20, Expenses: $39,122.91. filed by Financial Advisor FTI Consulting, Inc., 2903 Application for compensation *Second Consolidated Monthly and Final Fee Application* for Teneo

	Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: $1,358,565.52, Expenses: $6,257.07. filed by Other Professional Teneo Capital, LLC, 2904 Application for compensation *Twenty−First Monthly and Final Fee Application of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, Fee: $13,134,805.2, Expenses: $21 filed by Creditor Committee Official Committee of Unsecured Creditors, 2906 Application for compensation *Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 1 filed by Debtor Highland Capital Management, L.P., 2907 Application for compensation Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Couns filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, 2908 Application for compensation Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Merc filed by Consultant Mercer (US) Inc., 2910 Application for compensation (Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/1 filed by Other Professional Hayward PLLC, 2911 Application for compensation (Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021) for Deloitte Tax LLP, Other filed by Other Professional Deloitte Tax LLP) filed by Interested Party NexPoint Advisors, L.P.. (Attachments: # 1 Exhibit Declaration of Joseph Tiano, Chief Executive Officer of Legal Decoder) (Jain, Kristin)*
11/12/2021	3016 Certificate of service re: (Supplemental) 1) Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.; and 2) Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2700 Notice *(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 2915 Omnibus Notice of hearing *(Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2872 Application for compensation *(FINAL)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: $1,147,059.42, Expenses: $2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., 2902 Application for compensation *The Twenty−First and Final Fee Application* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: $6,176,551.20, Expenses: $39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., 2903 Application for compensation *Second Consolidated Monthly and Final Fee Application* for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: $1,358,565.52, Expenses: $6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., 2904 Application for compensation *Twenty−First Monthly and Final Fee Application of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, Fee: $13,134,805.2, Expenses: $211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., 2906 Application for compensation *Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: $23978627.25, Expenses: $334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., 2907 Application for compensation *Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for*

	Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021 for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $2,645,729.72, Expenses: $5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., 2908 Application for compensation *Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: $202,317.65, Expenses: $2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., 2910 Application for compensation *(Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: $825,629.50, Expenses: $46,482.92. Filed by Other Professional Hayward PLLC, 2911 Application for compensation *(Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021)* for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $553,412.60, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2903 and for 2904 and for 2907 and for 2910 and for 2872 and for 2911 and for 2908 and for 2906 and for 2902, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/13/2021	3017 Witness and Exhibit List *(Reorganized Debtor's Witness and Exhibit List with Respect to Hearing on Final Fee Applications to Be Held on November 17, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2872 Application for compensation *(FINAL)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: $1,147,059.42, Expenses: $2,747.84., 2906 Application for compensation *Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 1, 2907 Application for compensation Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Couns, 2908 Application for compensation Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Merc, 2910 Application for compensation (Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/1, 2911 Application for compensation (Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021) for Deloitte Tax LLP, Other). (Annable, Zachery)*
11/15/2021	3018 Scheduling Order continuing hearing (RE: related document(s)2872 Application for compensation filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, 2902 Application for compensation filed by Financial Advisor FTI Consulting, Inc., 2903 Application for compensation filed by Other Professional Teneo Capital, LLC, 2904 Application for compensation filed by Creditor Committee Official Committee of Unsecured Creditors, 2906 Application for compensation filed by Debtor Highland Capital Management, L.P., 2907 Application for compensation filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, 2908 Application for compensation filed by Consultant Mercer (US) Inc., 2910 Application for compensation filed by Other Professional Hayward PLLC, 2911 Application for compensation filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/17/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2904 and for 2872 and for 2911 and for 2908 and for 2902 and for 2903 and for 2907 and for 2910 and for 2906, Entered on 11/15/2021 (Okafor, Marcey)
11/15/2021	3019 Order Granting Amended Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation (related document #

	2939) Entered on 11/15/2021. (Okafor, Marcey)
11/16/2021	3020 Supplemental Reply to (related document(s): 2977 Objection filed by Interested Party NexPoint Advisors, L.P., 3015 Response filed by Interested Party NexPoint Advisors, L.P.) *(Supplemental Reply of Debtor Professionals to Supplemental Omnibus Response of NexPoint Advisors, L.P., to Final Fee Applications Submitted by Various Estate Professionals)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/16/2021	3023 Notice *(Notice of Agenda of Matters Scheduled for Hearing on November 17, 2021 at 9:30 a.m. (Central Time)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/16/2021	3024 Supplemental Response opposed to (related document(s): 2977 Objection filed by Interested Party NexPoint Advisors, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
11/16/2021	3025 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3006 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2828 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 12/1/2021.). Hearing to be held on 12/7/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3006, (Annable, Zachery)
11/16/2021	3026 Certificate of service re: Various Documents Served on November 10, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3000 Objection to claim(s) of Creditor(s) Jean−Paul Sevilla.. Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust, 3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust, 3002 Objection to claim(s) of Creditor(s) Hunter Covitz.. Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust, 3006 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2828 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 12/1/2021. filed by Debtor Highland Capital Management, L.P., 3007 Order approving stipulation and agreed order authorizing withdrawal of proof of claim 113 filed by The Dugaboy Investment Trust as Successor−in−Interest to The Canis Major Trust (RE: related document(s)2990 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021, 3008 Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 120 Filed by The Get Good Trust(RE: related document(s)2991 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021, 3009 Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 128 Filed by The Get Good Non−Exempt Trust No. 1 Individually and as Successor−in−Interest to The Canis Major Trust (RE: related document(s)2992 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021, 3010 Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 129 Filed by The Get Good Non−Exempt Trust No. 2 Individually and as Successor−in−Interest to The Canis Major Trust (RE: related document(s)2993 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021). (Kass, Albert)
11/16/2021	3027 Certificate of service re: Notice of Agenda of Matters Scheduled for Hearing on November 17, 2021 at 9:30 a.m. (Central Time) Filed by Claims Agent Kurtzman Carson

	Consultants LLC (related document(s)3023 Notice *(Notice of Agenda of Matters Scheduled for Hearing on November 17, 2021 at 9:30 a.m. (Central Time)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/17/2021	3028 BNC certificate of mailing − PDF document. (RE: related document(s)3019 Order Granting Amended Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation (related document 2939) Entered on 11/15/2021.) No. of Notices: 1. Notice Date 11/17/2021. (Admin.)
11/17/2021	3029 Court admitted exhibits date of hearing November 17, 2021 (RE: related document(s)2872 Application for compensation (FINAL) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., 2902 Application for compensation The Twenty−First and Final Fee Application for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., 2903 Application for compensation Second Consolidated Monthly and Final Fee Application for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., 2904 Application for compensation Twenty−First Monthly and Final Fee Application of Sidley Austin LLP for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., 2906 Application for compensation Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., 2907 Application for compensation Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021 for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., 2908 Application for compensation Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Mercer (US) Inc., Consultant, filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., 2910 Application for compensation (Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021) for Hayward PLLC, Debtor's Attorney, filed by Other Professional Hayward PLLC, 2911 Application for compensation (Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021) for Deloitte Tax LLP, Other Professional, filed by Other Professional Deloitte Tax LLP) (COURT ADMITTED ALL OF THE EXHIBIT'S THAT APPEAR ON DOC. #3017 BY JEFFREY POMERANTZ), (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3033 Hearing held on 11/17/2021. (RE: related document(s)2872 Application for compensation (FINAL) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, (Appearances: G. Hesse for Applicant; J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3034 Hearing held on 11/17/2021. (RE: related document(s)2902 Application for compensation The Twenty−First and Final Fee Application for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, filed by Financial Advisor FTI Consulting, Inc., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized

	Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3035 Hearing held on 11/17/2021. (RE: related document(s)2903 Application for compensation Second Consolidated Monthly and Final Fee Application for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, filed by Other Professional Teneo Capital, LLC., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3036 Hearing held on 11/17/2021. (RE: related document(s)2904 Application for compensation Twenty−First Monthly and Final Fee Application of Sidley Austin LLP for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, filed by Creditor Committee Official Committee of Unsecured Creditors.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3037 Hearing held on 11/17/2021. (RE: related document(s)2906 Application for compensation Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, filed by attorney Jeffrey Nathan Pomerantz.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3038 Hearing held on 11/17/2021. (RE: related document(s)2907 Application for compensation Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021 for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP., (Appearances: T. Silva for Applicant; J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3039 Hearing held on 11/17/2021. (RE: related document(s)2908 Application for compensation Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, filed by Consultant Mercer (US) Inc. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3040 Hearing held on 11/17/2021. (RE: related document(s)2910 Application for compensation (Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, filed by Other Professional Hayward PLLC) (Appearances: Z. Annabel for Applicant; J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and

	objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3041 Hearing held on 11/17/2021. (RE: related document(s)2911 Application for compensation (Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, filed by Other Professional Deloitte Tax LLP) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/18/2021	3030 Request for transcript regarding a hearing held on 11/17/2021. The requested turn−around time is hourly. (Edmond, Michael)
11/18/2021	3031 Withdrawal *of Application for Allowance of Administrative Expense Claim* filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s)1888 Application for administrative expenses). (Drawhorn, Lauren)
11/18/2021	3032 Response opposed to (related document(s): 2940 Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* (related document(s):2857) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party CPCM, LLC. (Attachments: # 1 Exhibit A) (Soderlund, Eric)
11/18/2021	3042 Certificate of service re: CPCM, LLCs Objection to Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502 filed by Interested Party CPCM, LLC (RE: related document(s)3032 Response). (Soderlund, Eric)
11/18/2021	3043 Certificate of service re: 1) Reorganized Debtor's Witness and Exhibit List with Respect to Hearing on Final Fee Applications to be Held on November 17, 2021; 2) Scheduling Order; and 3) Order Granting Amended Motion of the Reorganized Debtor for an Order Authorizing Entry Into an Amended and Restated Employee Stipulation Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3017 Witness and Exhibit List *(Reorganized Debtor's Witness and Exhibit List with Respect to Hearing on Final Fee Applications to Be Held on November 17, 2021)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2872 Application for compensation *(FINAL)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: $1,147,059.42, Expenses: $2,747.84., 2906 Application for compensation *Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 1, 2907 Application for compensation Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Couns, 2908 Application for compensation Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Merc, 2910 Application for compensation (Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/1, 2911 Application for compensation (Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021) for Deloitte Tax LLP, Other). filed by Debtor Highland Capital Management, L.P., 3018 Scheduling Order continuing hearing (RE: related document(s)2872 Application for compensation filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, 2902 Application for compensation filed by Financial Advisor FTI Consulting, Inc., 2903 Application for compensation filed by Other Professional Teneo Capital, LLC, 2904*

	Application for compensation filed by Creditor Committee Official Committee of Unsecured Creditors, 2906 Application for compensation filed by Debtor Highland Capital Management, L.P., 2907 Application for compensation filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, 2908 Application for compensation filed by Consultant Mercer (US) Inc., 2910 Application for compensation filed by Other Professional Hayward PLLC, 2911 Application for compensation filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/17/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2904 and for 2872 and for 2911 and for 2908 and for 2902 and for 2903 and for 2907 and for 2910 and for 2906, Entered on 11/15/2021, 3019 Order Granting Amended Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation (related document 2939) Entered on 11/15/2021.). (Kass, Albert)
11/18/2021	3044 Certificate of service re: 1) Supplemental Reply of Debtor Professionals to Supplemental Omnibus Response of NexPoint Advisors, L.P., to Final Fee Applications Submitted by Various Estate Professionals; 2) Supplemental Response of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, to Supplemental Omnibus Response of NexPoint Advisors, L.P., Creditor and Party in Interest Pursuant to 11 U.S.C. § 330(a) and Federal Rule of Bankruptcy Procedure 2016 to Final Fee Applications Submitted by Various Estate Professionals; 3) Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3020 Supplemental Reply to (related document(s): 2977 Objection filed by Interested Party NexPoint Advisors, L.P., 3015 Response filed by Interested Party NexPoint Advisors, L.P.) *(Supplemental Reply of Debtor Professionals to Supplemental Omnibus Response of NexPoint Advisors, L.P., to Final Fee Applications Submitted by Various Estate Professionals)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3024 Supplemental Response opposed to (related document(s): 2977 Objection filed by Interested Party NexPoint Advisors, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, 3025 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3006 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2828 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 12/1/2021.). Hearing to be held on 12/7/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3006, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/19/2021	3045 Transcript regarding Hearing Held 11/17/2021 (68 pages) RE: Final Fee Applications. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/17/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3033 Hearing held on 11/17/2021. (RE: related document(s)2872 Application for compensation (FINAL) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, (Appearances: G. Hesse for Applicant; J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.), 3034 Hearing held on 11/17/2021. (RE: related document(s)2902 Application for compensation The Twenty−First and Final Fee Application for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, filed by Financial Advisor FTI Consulting, Inc., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.), 3035 Hearing held on 11/17/2021. (RE: related document(s)2903 Application for compensation Second Consolidated Monthly and Final Fee Application for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, filed by Other Professional Teneo Capital, LLC., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections

	overruled. Counsel to upload order.), 3036 Hearing held on 11/17/2021. (RE: related document(s)2904 Application for compensation Twenty−First Monthly and Final Fee Application of Sidley Austin LLP for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, filed by Creditor Committee Official Committee of Unsecured Creditors.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.), 3037 Hearing held on 11/17/2021. (RE: related document(s)2906 Application for compensation Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, filed by attorney Jeffrey Nathan Pomerantz.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.), 3038 Hearing held on 11/17/2021. (RE: related document(s)2907 Application for compensation Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021 for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP., (Appearances: T. Silva for Applicant; J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.), 3039 Hearing held on 11/17/2021. (RE: related document(s)2908 Application for compensation Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, filed by Consultant Mercer (US) Inc. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.), 3040 Hearing held on 11/17/2021. (RE: related document(s)2910 Application for compensation (Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, filed by Other Professional Hayward PLLC) (Appearances: Z. Annabel for Applicant; J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.), 3041 Hearing held on 11/17/2021. (RE: related document(s)2911 Application for compensation (Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, filed by Other Professional Deloitte Tax LLP) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.)). Transcript to be made available to the public on 02/17/2022. (Rehling, Kathy)
11/22/2021	3046 Order granting final fee application for compensation (related document # 2872) granting for Hunton Andrews Kurth LLP, fees awarded: $1147059.42, expenses awarded: $2747.84 Entered on 11/22/2021. (Okafor, Marcey)
11/22/2021	3047 Order granting fifth and final application for compensation (related document # 2906) granting for Jeffrey Nathan Pomerantz, fees awarded: $23978627.25, expenses awarded: $334232.95 Entered on 11/22/2021. (Okafor, Marcey)
11/22/2021	3048 Order granting application for compensation (related document # 2907) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: $2645729.72, expenses

	awarded: $5207.53 Entered on 11/22/2021. (Okafor, Marcey)
11/22/2021	3049 Order granting application for compensation (related document # 2910) granting for Hayward PLLC, fees awarded: $825629.50, expenses awarded: $46482.92 Entered on 11/22/2021. (Okafor, Marcey)
11/23/2021	3050 Notice *of CPCM, LLC's Response to Clerk's Correspondence* filed by Interested Party CPCM, LLC (RE: related document(s)2998 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)2868 Application for administrative expenses *for rank−and−file employees* Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order), 2869 Application for administrative expenses Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order)) Responses due by 11/23/2021. (Ecker, C.)). (Smith, Frances)
11/23/2021	3051 Witness and Exhibit List *for Hearing on November 30, 2021* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)*, 2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and). (Attachments: # 1 Exhibits 1−13) (Hayward, Melissa)*
11/23/2021	3052 Witness and Exhibit List filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)2278 Response). (Attachments: # 1 Exhibit Exhibit 1. CONFIDENTIAL Highland246786 − 246818 # 2 Exhibit Exhibit 2. CONFIDENTIAL Highland209134 # 3 Exhibit Exhibit 3. SE Multifamily LLC Agreement # 4 Exhibit Exhibit 4. Bridge Loan Agreement # 5 Exhibit Exhibit 5. CONFIDENTIAL Highland136853 − 136883 # 6 Exhibit Exhibit 6. CONFIDENTIAL Highland136795 − 136822 # 7 Exhibit Exhibit 7. SE Multifamily Amended and Restated LLC Agreement # 8 Exhibit Exhibit 8. POC # 9 Exhibit Exhibit 9. Objection_and_Motion_for_Protective_Order # 10 Exhibit Exhibit 10. Response to Omnibus Objection) (Drawhorn, Lauren)
11/23/2021	3053 Notice of Appearance and Request for Notice *Notice of Appearance of Additional Counsel − Jeffrey W. Hellberg, Jr.* by Lauren Kessler Drawhorn Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
11/24/2021	Adversary case 3:21−ap−3000 closed Pursuant to LBR 9070−1, any exhibits that were admitted by the Court may be claimed and removed from the Clerks Office during the 60−day period following final disposition of a case by the attorney or party who introduced the exhibits. Any exhibit not removed within the 60−day period may be destroyed or otherwise disposed of by the Bankruptcy Clerk. (Ecker, C.)
11/24/2021	3054 Amended Witness and Exhibit List *for Hearing on November 30, 2021* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3051 List (witness/exhibit/generic)). (Attachments: # 1 Exhibits 14 and 15) (Hayward, Melissa)
11/24/2021	3055 BNC certificate of mailing − PDF document. (RE: related document(s)3047 Order granting fifth and final application for compensation (related document 2906) granting for Jeffrey Nathan Pomerantz, fees awarded: $23978627.25, expenses awarded: $334232.95 Entered on 11/22/2021.) No. of Notices: 1. Notice Date 11/24/2021. (Admin.)
11/29/2021	3056 Order granting application for compensation (related document # 2903) granting for Teneo Capital, LLC, fees awarded: $1358565.52, expenses awarded: $6257.07 Entered on 11/29/2021. (Okafor, Marcey)
11/29/2021	3057 Order granting application for compensation (related document 2904) granting for Sidney Austin, LLP, Attorneys for the Official Committee of Unsecured Creditors, fees

	awarded: $13134805.20, expenses awarded: $211841.25 Entered on 11/29/2021. (Okafor, Marcey) Modified text on 11/29/2021 (Okafor, Marcey).
11/29/2021	3058 Order granting application for compensation (related document # 2902) granting for FTI Consulting, Inc., fees awarded: $6176551.20, expenses awarded: $39122.91 Entered on 11/29/2021. (Okafor, Marcey)
11/29/2021	3059 Order granting application for compensation (related document # 2908) granting for Mercer (US) Inc., fees awarded: $202317.65, expenses awarded: $2449.37 Entered on 11/29/2021. (Okafor, Marcey)
11/29/2021	3060 Amended Witness and Exhibit List *for Hearing on November 30, 2021* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)3052 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 11. − Transcript of August 13, 2021 Deposition of Mark Patrick [ECF No. 2928] # 2 Exhibit 12. − Transcript of September 17, 2021 Deposition of Ben Selman # 3 Exhibit 13. − NREP Designation of Expert Witness # 4 Exhibit 14. − Index to Documents Examined by Expert) (Drawhorn, Lauren)
11/29/2021	3061 Certificate of service re: Documents Served on November 23, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3046 Order granting final fee application for compensation (related document 2872) granting for Hunton Andrews Kurth LLP, fees awarded: $1147059.42, expenses awarded: $2747.84 Entered on 11/22/2021., 3047 Order granting fifth and final application for compensation (related document 2906) granting for Jeffrey Nathan Pomerantz, fees awarded: $23978627.25, expenses awarded: $334232.95 Entered on 11/22/2021., 3048 Order granting application for compensation (related document 2907) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: $2645729.72, expenses awarded: $5207.53 Entered on 11/22/2021., 3049 Order granting application for compensation (related document 2910) granting for Hayward PLLC, fees awarded: $825629.50, expenses awarded: $46482.92 Entered on 11/22/2021., 3051 Witness and Exhibit List *for Hearing on November 30, 2021* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2196 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. *(Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)*, 2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and). (Attachments: # 1 Exhibits 1−13) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
11/30/2021	3062 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/30/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2893, (Annable, Zachery)
11/30/2021	3063 Certificate of service re: Various Documents Served on November 29, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3056 Order granting application for compensation (related document 2903) granting for Teneo Capital, LLC, fees awarded: $1358565.52, expenses awarded: $6257.07 Entered on 11/29/2021., 3057 Order granting application for compensation (related document 2904) granting for Sidney Austin, LLP, Attorneys for the Official Committee of Unsecured Creditors, fees awarded: $13134805.20, expenses awarded: $211841.25 Entered on 11/29/2021. (Okafor, Marcey) Modified text on 11/29/2021., 3058 Order granting application for compensation (related document 2902) granting for FTI Consulting, Inc., fees awarded: $6176551.20, expenses awarded: $39122.91 Entered on 11/29/2021., 3059 Order granting application for compensation (related document 2908) granting for Mercer (US) Inc., fees awarded: $202317.65, expenses awarded: $2449.37 Entered on 11/29/2021.). (Kass, Albert)

11/30/2021	3065 Court admitted exhibits date of hearing November 30, 2021 (RE: related document(s)2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief), filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S / RE−ORGANIZED DEBTOR'S EXHIBIT'S #1 THROUGH #13 AT DOC. #3051 & EXHIBIT'S #14 & #15 AT DOC. #3054 BY JOHN A. MORRIS; AND DEFENDANT'S/RESPONDENT'S EXHIBIT'S #1 THROUGH #14 AT AMENDED DOC. 3060 BY JEFFREY W. HELLBERG. JR., (Edmond, Michael) (Entered: 12/01/2021)*
11/30/2021	3071 Hearing held on 11/30/2021. (RE: related document(s)2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief, (Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief), filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris for Reorganized Debtor; J. Hellberg for Wick Phillips and NexPoint Real Estate. Evidentiary hearing. Motion granted for reasons stated on the record. Mr Morris to upload order.) (Edmond, Michael) (Entered: 12/02/2021)
12/01/2021	3064 Order granting application for compensation (related document # 2911) granting for Deloitte Tax LLP, fees awarded: $553412.60, expenses awarded: $0.00 Entered on 12/1/2021. (Okafor, Marcey)
12/01/2021	3066 Motion for leave *to File Lawsuit* Filed by Creditor The Dugaboy Investment Trust Objections due by 12/22/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Draper, Douglas)
12/01/2021	3067 Certificate of service re: Second Amended Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3062 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. *(Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/30/2021 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2893, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/01/2021	3068 Certificate of service re: (Supplemental) re Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3025 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3006 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2828 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 12/1/2021.). Hearing to be held on 12/7/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3006, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/01/2021	3069 BNC certificate of mailing − PDF document. (RE: related document(s)3059 Order granting application for compensation (related document 2908) granting for Mercer (US) Inc., fees awarded: $202317.65, expenses awarded: $2449.37 Entered on 11/29/2021.) No. of Notices: 1. Notice Date 12/01/2021. (Admin.)
12/02/2021	3070 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3006 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2828 Order on motion to extend/shorten time)). (Annable, Zachery)
12/02/2021	3074 ***INCORRECT ENTRY*** Request for transcript regarding a hearing held on 11/30/2021. The requested turn−around time is daily (Jeng, Hawaii) Modified TEXT on 12/3/2021 (Jeng, Hawaii). (Entered: 12/03/2021)

12/03/2021	3072 PDF with attached Audio File. Court Date & Time [11/17/2021 09:01:56 AM]. File Size [27292 KB]. Run Time [01:56:50]. (admin).
12/03/2021	3073 PDF with attached Audio File. Court Date & Time [11/30/2021 08:56:02 AM]. File Size [43946 KB]. Run Time [03:08:47]. (admin).
12/03/2021	3075 Request for transcript regarding a hearing held on 11/30/2021. The requested turn−around time is daily (Jeng, Hawaii) .
12/03/2021	3076 Notice of appeal *of Order Granting Twenty−First and Final Fee Application of FTI Consulting, Inc.*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3058 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit Exh A to Notice of Appeal)(Jain, Kristin)
12/03/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number A29168859, amount $ 298.00 (re: Doc# 3076). (U.S. Treasury)
12/03/2021	3077 Notice of appeal *Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP*. Fee Amount $298 filed by Interested Party NexPoint Real Estate Advisors, L.P. (RE: related document(s)3047 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)(Jain, Kristin)
12/03/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number A29168896, amount $ 298.00 (re: Doc# 3077). (U.S. Treasury)
12/03/2021	3078 Notice of appeal *Order Granting Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dore LLP*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3048 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)(Jain, Kristin)
12/03/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number A29168917, amount $ 298.00 (re: Doc# 3078). (U.S. Treasury)
12/03/2021	3079 Notice of appeal *of Order Granting Second Consolidated Monthly and Final Fee Application of Teneo Capital, LLC*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3056 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)(Jain, Kristin)
12/03/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number A29168940, amount $ 298.00 (re: Doc# 3079). (U.S. Treasury)
12/03/2021	3080 Notice of appeal *of Order Granting Twenty−First Monthly and Final Fee Application of Sidley Austin LLP*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3057 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)(Jain, Kristin)
12/03/2021	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number A29168959, amount $ 298.00 (re: Doc# 3080). (U.S. Treasury)
12/03/2021	3081 Certificate of service re: Highland Capital Management, L.P.'s Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on November 30, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3054 Amended Witness and Exhibit List *for Hearing on November 30, 2021* filed by Debtor

	Highland Capital Management, L.P. (RE: related document(s)3051 List (witness/exhibit/generic)). (Attachments: # 1 Exhibits 14 and 15) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/03/2021	3082 Certificate of service re: Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals *(Supplemental)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2915 Omnibus Notice of hearing *(Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2872 Application for compensation *(FINAL)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: $1,147,059.42, Expenses: $2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., 2902 Application for compensation *The Twenty−First and Final Fee Application* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: $6,176,551.20, Expenses: $39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., 2903 Application for compensation *Second Consolidated Monthly and Final Fee Application* for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: $1,358,565.52, Expenses: $6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., 2904 Application for compensation *Twenty−First Monthly and Final Fee Application of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, Fee: $13,134,805.2, Expenses: $211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., 2906 Application for compensation *Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: $23978627.25, Expenses: $334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., 2907 Application for compensation *Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021* for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $2,645,729.72, Expenses: $5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., 2908 Application for compensation *Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: $202,317.65, Expenses: $2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., 2910 Application for compensation *(Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: $825,629.50, Expenses: $46,482.92. Filed by Other Professional Hayward PLLC, 2911 Application for compensation *(Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021)* for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $553,412.60, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2903 and for 2904 and for 2907 and for 2910 and for 2872 and for 2911 and for 2908 and for 2906 and for 2902, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/03/2021	3083 Certificate of service re: Order Granting Deloitte Tax LLP's Final Fee Application for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 Through August 11, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3064 Order granting application for compensation (related document 2911) granting for Deloitte Tax LLP, fees awarded: $553412.60, expenses awarded: $0.00 Entered on 12/1/2021.). (Kass, Albert)
12/05/2021	

	3084 Transcript regarding Hearing Held 11/30/2021 (77 pages) RE: Motion to Disqualify. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/5/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3071 Hearing held on 11/30/2021. (RE: related document(s)2893 Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief, (Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief), filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris for Reorganized Debtor; J. Hellberg for Wick Phillips and NexPoint Real Estate. Evidentiary hearing. Motion granted for reasons stated on the record. Mr Morris to upload order.)). Transcript to be made available to the public on 03/5/2022. (Rehling, Kathy)
12/06/2021	3085 Order further extending period within which the reorganized debtor may remove actions pursuant to 28 U.S.C. section 1452 and rule 9027 of the federal rules of bankruptcy procedure 3006 Motion to extend time. Entered on 12/6/2021. (Bradden, T.)
12/06/2021	3086 Objection to claim(s) of Creditor(s) Paul N. Adkins.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) (Annable, Zachery)
12/07/2021	3087 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3086 Objection to claim(s) of Creditor(s) Paul N. Adkins.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 1/27/2022 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 3086, (Annable, Zachery)
12/08/2021	3088 Motion to compromise controversy with Patrick Hagaman Daugherty. *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) (Annable, Zachery)
12/08/2021	3089 Declaration re: *(Declaration of John A. Morris in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3088 Motion to compromise controversy with Patrick Hagaman Daugherty. *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith)*). (Attachments: # 1 Exhibit 1−−Settlement Agreement) (Annable, Zachery)
12/08/2021	3090 BNC certificate of mailing − PDF document. (RE: related document(s)3085 Order further extending period within which the reorganized debtor may remove actions pursuant to 28 U.S.C. section 1452 and rule 9027 of the federal rules of bankruptcy procedure 3006 Motion to extend time. Entered on 12/6/2021. (Bradden, T.)) No. of Notices: 1. Notice Date 12/08/2021. (Admin.)
12/09/2021	3091 Stipulation by Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust and Scott Ellington, Isaac Leventon, Frank Waterhouse, and Jean−Paul Sevilla ***Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253. filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Proposed Order) (Montgomery, Paige)

12/09/2021	3092 Certificate of service re: 1) Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Reorganized Debtor's Objection to Proof of Claim No. 65 and No. 66 Filed by Paul N. Adkins Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3085 Order further extending period within which the reorganized debtor may remove actions pursuant to 28 U.S.C. section 1452 and rule 9027 of the federal rules of bankruptcy procedure 3006 Motion to extend time. Entered on 12/6/2021. (Bradden, T.), 3086 Objection to claim(s) of Creditor(s) Paul N. Adkins.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/10/2021	3094 Certificate of mailing regarding appeal (RE: related document(s)3077 Notice of appeal *Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP*. Fee Amount $298 filed by Interested Party NexPoint Real Estate Advisors, L.P. (RE: related document(s)3047 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
12/10/2021	3095 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)3077 Notice of appeal *Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP*. Fee Amount $298 filed by Interested Party NexPoint Real Estate Advisors, L.P. (RE: related document(s)3047 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	3096 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−03086−K. (RE: related document(s)3077 Notice of appeal *Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP*. Fee Amount $298 filed by Interested Party NexPoint Real Estate Advisors, L.P. (RE: related document(s)3047 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	3097 Certificate of mailing regarding appeal (RE: related document(s)3078 Notice of appeal *Order Granting Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dore LLP*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3048 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
12/10/2021	3098 INCORRECT ENTRY. Incomplete Form. Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)3078 Notice of appeal *Order Granting Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dore LLP*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3048 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua) Modified on 12/10/2021 (Whitaker, Sheniqua).
12/10/2021	3099 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)3078 Notice of appeal *Order Granting Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dore LLP*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3048 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	3100 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−03088−X. (RE: related document(s)3078 Notice of appeal *Order Granting Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dore LLP*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3048 Order on application for compensation). Appellant Designation due by

	12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	3101 Certificate of mailing regarding appeal (RE: related document(s)3079 Notice of appeal *of Order Granting Second Consolidated Monthly and Final Fee Application of Teneo Capital, LLC*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3056 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
12/10/2021	3102 Agreed first amended scheduling order on Debtor's third omnibus objection to certain no−liability claims (RE: related document(s) 2059 Third Omnibus objection to certain no−liability claims 2976 Amended Supplemental Omnibus Objection to certain employee claims filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 2/16/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2976, Entered on 12/10/2021 (Okafor, Marcey)
12/10/2021	3103 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)3079 Notice of appeal *of Order Granting Second Consolidated Monthly and Final Fee Application of Teneo Capital, LLC*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3056 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	3104 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−03094−E. (RE: related document(s)3079 Notice of appeal *of Order Granting Second Consolidated Monthly and Final Fee Application of Teneo Capital, LLC*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3056 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	3106 Order granting in part, denying in part Highland's supplemental motion to disqualify Wick Phillips Gould & Martin, LLP as counsel to HCRE Partners, LLC (related document # 2196 and 2893) Entered on 12/10/2021. (Okafor, Marcey)
12/10/2021	3107 Certificate of mailing regarding appeal (RE: related document(s)3080 Notice of appeal *of Order Granting Twenty−First Monthly and Final Fee Application of Sidley Austin LLP*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3057 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
12/10/2021	3108 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)3080 Notice of appeal *of Order Granting Twenty−First Monthly and Final Fee Application of Sidley Austin LLP*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3057 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	3109 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−03096−L. (RE: related document(s)3080 Notice of appeal *of Order Granting Twenty−First Monthly and Final Fee Application of Sidley Austin LLP*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3057 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	3110 Certificate of service re: Notice of Hearing on Reorganized Debtor's Objection to Proof of Claim No. 65 and No. 66 Filed by Paul N. Adkins Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3087 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3086 Objection to

	claim(s) of Creditor(s) Paul N. Adkins.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 1/27/2022 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 3086, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/10/2021	3111 Certificate of service re: 1) Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith; and 2) Declaration of John A. Morris in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3088 Motion to compromise controversy with Patrick Hagaman Daugherty. *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., 3089 Declaration re: *(Declaration of John A. Morris in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3088 Motion to compromise controversy with Patrick Hagaman Daugherty. *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith)*). (Attachments: # 1 Exhibit 1−−Settlement Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/10/2021	3112 Certificate of service re: (Supplemental) re Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2915 Omnibus Notice of hearing *(Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2872 Application for compensation *(FINAL)* for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: $1,147,059.42, Expenses: $2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., 2902 Application for compensation *The Twenty−First and Final Fee Application* for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: $6,176,551.20, Expenses: $39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., 2903 Application for compensation *Second Consolidated Monthly and Final Fee Application* for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: $1,358,565.52, Expenses: $6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., 2904 Application for compensation *Twenty−First Monthly and Final Fee Application of Sidley Austin LLP* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, Fee: $13,134,805.2, Expenses: $211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., 2906 Application for compensation *Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: $23978627.25, Expenses: $334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., 2907 Application for compensation *Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021* for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $2,645,729.72, Expenses: $5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., 2908 Application for compensation *Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee:

	$202,317.65, Expenses: $2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., 2910 Application for compensation *(Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021)* for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: $825,629.50, Expenses: $46,482.92. Filed by Other Professional Hayward PLLC, 2911 Application for compensation *(Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021)* for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: $553,412.60, Expenses: $0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2903 and for 2904 and for 2907 and for 2910 and for 2872 and for 2911 and for 2908 and for 2906 and for 2902, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/12/2021	3113 BNC certificate of mailing. (RE: related document(s)3099 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)3078 Notice of appeal *Order Granting Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dore LLP*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3048 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal))) No. of Notices: 1. Notice Date 12/12/2021. (Admin.)
12/13/2021	3115 INCORRECT ENTRY. Incomplete Form. Certificate of mailing regarding appeal (RE: related document(s)3076 Notice of appeal *of Order Granting Twenty−First and Final Fee Application of FTI Consulting, Inc.*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3058 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit Exh A to Notice of Appeal)) (Attachments: # 1 Service List) (Whitaker, Sheniqua) Modified on 12/13/2021 (Whitaker, Sheniqua).
12/13/2021	3116 Certificate of mailing regarding appeal (RE: related document(s)3076 Notice of appeal *of Order Granting Twenty−First and Final Fee Application of FTI Consulting, Inc.*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3058 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit Exh A to Notice of Appeal)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
12/13/2021	3117 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)3076 Notice of appeal *of Order Granting Twenty−First and Final Fee Application of FTI Consulting, Inc.*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3058 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit Exh A to Notice of Appeal)) (Whitaker, Sheniqua)
12/13/2021	3118 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−03104−G. (RE: related document(s)3076 Notice of appeal *of Order Granting Twenty−First and Final Fee Application of FTI Consulting, Inc.*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3058 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit Exh A to Notice of Appeal)) (Whitaker, Sheniqua)
12/14/2021	3119 Certificate of service re: Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3091 Stipulation by Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust and Scott Ellington, Isaac Leventon, Frank Waterhouse, and Jean−Paul Sevilla ***Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253. filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Proposed Order) filed by Interested Party Litigation

	Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust). (Kass, Albert)
12/15/2021	3120 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3088 Motion to compromise controversy with Patrick Hagaman Daugherty. *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A)). Hearing to be held on 3/1/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3088, (Annable, Zachery)
12/15/2021	3121 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)). Hearing to be held on 2/28/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3001, (Montgomery, Paige)
12/16/2021	3122 Certificate of service re: re 1) Agreed First Amended Scheduling Order on Debtor's Third Omnibus Objection to Certain No−Liability Claims; and 2) Order Granting in Part and Denying in Part Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3102 Agreed first amended scheduling order on Debtor's third omnibus objection to certain no−liability claims (RE: related document(s) 2059 Third Omnibus objection to certain no−liability claims 2976 Amended Supplemental Omnibus Objection to certain employee claims filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 2/16/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2976, Entered on 12/10/2021, 3106 Order granting in part, denying in part Highland's supplemental motion to disqualify Wick Phillips Gould & Martin, LLP as counsel to HCRE Partners, LLC (related document 2196 and 2893) Entered on 12/10/2021.). (Kass, Albert)
12/17/2021	3123 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3077 Notice of appeal, 3095 Notice regarding the record for a bankruptcy appeal, 3096 Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022. (Jain, Kristin)
12/17/2021	3124 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3078 Notice of appeal, 3099 Notice regarding the record for a bankruptcy appeal, 3100 Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022. (Jain, Kristin)
12/17/2021	3125 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3079 Notice of appeal, 3103 Notice regarding the record for a bankruptcy appeal, 3104 Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022. (Jain, Kristin)
12/17/2021	3126 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3080 Notice of appeal, 3108 Notice regarding the record for a bankruptcy appeal, 3109 Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022. (Jain, Kristin)
12/17/2021	3127 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3076 Notice of appeal, 3117 Notice regarding the record for a bankruptcy

	appeal, 3118 Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022. (Jain, Kristin)
12/20/2021	3128 Motion for 2004 examination of Thomas Surgent. Filed by Creditor The Dugaboy Investment Trust (Draper, Douglas)
12/20/2021	3129 Request for Removal from Mailing List filed by Creditor Carpenter Lipps & Leland LLP . (Tello, Chris)
12/20/2021	3130 Certificate of service re: Notice of Hearing on Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3120 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3088 Motion to compromise controversy with Patrick Hagaman Daugherty. *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A)). Hearing to be held on 3/1/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3088, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/21/2021	3131 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School Filed by Debtor Highland Capital Management, L.P and 2976 AmendedSupplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P., 2974 Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Appendix A # 2 Appendix B # 3 Exhibit A # 4 Exhibit B # 5 Exhibit C) (Annable, Zachery). Modified on 11/3/2021.). Hearing to be held on 2/16/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2976 and 2059, (Annable, Zachery). MODIFIED linkage on 12/21/2021 (Okafor, Marcey).

12/21/2021	3133 Notice of hearing filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3128 Motion for 2004 examination of Thomas Surgent. Filed by Creditor The Dugaboy Investment Trust). Hearing to be held on 2/1/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3128, (Attachments: # 1 Hearing Instructions) (Draper, Douglas)
12/22/2021	3134 Response unopposed to (related document(s): 3066 Motion for leave *to File Lawsuit* filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/22/2021	3135 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3088 Motion to compromise controversy with Patrick Hagaman Daugherty. *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A)). Hearing to be held on 3/1/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3088, (Annable, Zachery)
12/27/2021	3136 Certificate of service re: Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3131 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School Filed by Debtor Highland Capital Management, L.P and 2976 AmendedSupplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P., 2974 Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Appendix A # 2 Appendix B # 3 Exhibit A # 4 Exhibit B # 5 Exhibit C) (Annable, Zachery). Modified on 11/3/2021.). Hearing to be held on 2/16/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2976 and 2059, (Annable, Zachery). MODIFIED linkage on 12/21/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

12/28/2021	3137 Clerk's correspondence requesting a notice of hearing from attorney for creditor. (RE: related document(s)3011 Motion to stay pending appeal *Amended* (related documents 1943 Order confirming chapter 11 plan) Filed by Creditor CLO Holdco, Ltd., Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (Attachments: # 1 Exhibit A−Motion to Withdraw Reference)) Responses due by 1/11/2022. (Ecker, C.)
12/28/2021	3138 Clerk's correspondence requesting amended designation from attorney for appellant. (RE: related document(s)3124 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3078 Notice of appeal, 3099 Notice regarding the record for a bankruptcy appeal, 3100 Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022., 3125 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3079 Notice of appeal, 3103 Notice regarding the record for a bankruptcy appeal, 3104 Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022., 3126 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3080 Notice of appeal, 3108 Notice regarding the record for a bankruptcy appeal, 3109 Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022., 3127 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3076 Notice of appeal, 3117 Notice regarding the record for a bankruptcy appeal, 3118 Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022.) Responses due by 1/27/2022. (Blanco, J.)
12/28/2021	3139 Certificate of service re: 1) Reorganized Debtors (I) Response to Motion for Leave to File Lawsuit and (II) Reservation of Rights; and 2) Amended Notice of Hearing on Reorganized Debtors Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3134 Response unopposed to (related document(s): 3066 Motion for leave *to File Lawsuit* filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3135 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3088 Motion to compromise controversy with Patrick Hagaman Daugherty. *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A)). Hearing to be held on 3/1/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3088, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/29/2021	3140 Notice *Regarding Response to Clerk's Correspondence of December 28, 2021* filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3138 Clerk's correspondence requesting amended designation from attorney for appellant. (RE: related document(s)3124 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3078 Notice of appeal, 3099 Notice regarding the record for a bankruptcy appeal, 3100 Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022., 3125 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3079 Notice of appeal, 3103 Notice regarding the record for a bankruptcy appeal, 3104 Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022., 3126 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3080 Notice of appeal, 3108 Notice regarding the record for a bankruptcy appeal, 3109 Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022., 3127 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3076 Notice of appeal, 3117 Notice regarding the record for a bankruptcy appeal, 3118 Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022.) Responses due by 1/27/2022. (Blanco, J.)). (Jain, Kristin)

12/30/2021	3141 Order granting 2889 motion to strike document. (re: document 2852 Application for compensation) Entered on 12/30/2021. (Okafor, Marcey)
12/30/2021	3142 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2940 Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* (related document(s):2857) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A)). Hearing to be held on 2/28/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2940, (Annable, Zachery)
12/31/2021	3143 Certificate of service re: Notice of Hearing on Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3142 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2940 Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* (related document(s):2857) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A)). Hearing to be held on 2/28/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2940, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/01/2022	3144 BNC certificate of mailing − PDF document. (RE: related document(s)3141 Order granting 2889 motion to strike document. (re: document 2852 Application for compensation) Entered on 12/30/2021.) No. of Notices: 1. Notice Date 01/01/2022. (Admin.)
01/03/2022	3145 Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/03/2022	3146 Assignment/Transfer of Claim. Fee Amount $26. Transfer Agreement 3001 (e) 2 Transferors: Hunter Covitz (Claim No. 186) To NexPoint Advisors, L.P.. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
01/03/2022	3147 Response opposed to (related document(s): 3002 Objection to claim filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust) filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian) Filed by Interested Party NexPoint Advisors, L.P. (related document(s)3002 Objection to claim(s) of Creditor(s) Hunter Covitz.. Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust). (Vasek, Julian)
01/03/2022	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19−34054−sgj11) [claims,trclmagt] (26.00). Receipt number A29228864, amount $ 26.00 (re: Doc# 3146). (U.S. Treasury)
01/03/2022	3148 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3145 Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/27/2022 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 3145, (Annable, Zachery)
01/03/2022	3149 Appellee designation of contents for inclusion in record of appeal *Supplemental Designation of Record on Appeal* filed by Creditor Sidley Austin LLP (RE: related document(s)3076 Notice of appeal, 3077 Notice of appeal, 3078 Notice of appeal, 3079 Notice of appeal, 3080 Notice of appeal, 3095 Notice regarding the record for a bankruptcy appeal, 3096 Notice of docketing notice of appeal/record, 3099 Notice regarding the record for a bankruptcy appeal, 3100 Notice of docketing notice of appeal/record, 3103 Notice regarding the record for a bankruptcy appeal, 3104 Notice of docketing notice of

	appeal/record, 3108 Notice regarding the record for a bankruptcy appeal, 3109 Notice of docketing notice of appeal/record, 3117 Notice regarding the record for a bankruptcy appeal, 3118 Notice of docketing notice of appeal/record). (Hoffman, Juliana)
01/03/2022	3150 Appellee designation of contents for inclusion in record of appeal *Supplemental Designation of Record on Appeal* filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)3076 Notice of appeal). (Hoffman, Juliana)
01/03/2022	3151 Appellee designation of contents for inclusion in record of appeal *Suplemental Designation of Record* filed by Other Professional Teneo Capital, LLC (RE: related document(s)3078 Notice of appeal). (Hoffman, Juliana)
01/03/2022	3152 Withdrawal of claim(s): *Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 135, 137 and 139* Filed by Interested Party Mark Okada. (Glueckstein, Brian)
01/03/2022	3153 Appellee designation of contents for inclusion in record of appeal filed by Attorney Pachulski Stang Ziehl & Jones LLP (RE: related document(s)3077 Notice of appeal). (Annable, Zachery)
01/03/2022	3154 Appellee designation of contents for inclusion in record of appeal filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (RE: related document(s)3078 Notice of appeal). (Annable, Zachery)
01/04/2022	3155 Notice to take deposition of Jim Seery filed by Interested Party CPCM, LLC. (Smith, Frances)
01/04/2022	3156 Notice to take deposition of CPCM, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/05/2022	3157 Notice to take deposition of Frank Waterhouse filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/05/2022	3158 Notice to take deposition of Frank Waterhouse filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/05/2022	3159 Motion to appear pro hac vice for Jeffrey M. Dine. Fee Amount $100 Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Certificate of Good Standing) (Hayward, Melissa)
01/05/2022	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A29235722, amount $ 100.00 (re: Doc# 3159). (U.S. Treasury)
01/06/2022	3160 Stipulation by Highland Capital Management, L.P. and NexPoint Advisors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2044 Assignment/Transfer of claim (Claims Agent), 2045 Assignment/Transfer of claim (Claims Agent), 2046 Assignment/Transfer of claim (Claims Agent), 2047 Assignment/Transfer of claim (Claims Agent), 2059 Objection to claim, 2266 Assignment/Transfer of claim (Claims Agent), 2974 Objection to claim, 2976 Objection to claim). (Annable, Zachery)
01/06/2022	3161 Certificate of service re: Documents Served on January 3, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3145 Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3148 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3145 Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/27/2022 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 3145, filed by

	Debtor Highland Capital Management, L.P., 3149 Appellee designation of contents for inclusion in record of appeal *Supplemental Designation of Record on Appeal* filed by Creditor Sidley Austin LLP (RE: related document(s)3076 Notice of appeal, 3077 Notice of appeal, 3078 Notice of appeal, 3079 Notice of appeal, 3080 Notice of appeal, 3095 Notice regarding the record for a bankruptcy appeal, 3096 Notice of docketing notice of appeal/record, 3099 Notice regarding the record for a bankruptcy appeal, 3100 Notice of docketing notice of appeal/record, 3103 Notice regarding the record for a bankruptcy appeal, 3104 Notice of docketing notice of appeal/record, 3108 Notice regarding the record for a bankruptcy appeal, 3109 Notice of docketing notice of appeal/record, 3117 Notice regarding the record for a bankruptcy appeal, 3118 Notice of docketing notice of appeal/record). filed by Creditor Sidley Austin LLP, 3150 Appellee designation of contents for inclusion in record of appeal *Supplemental Designation of Record on Appeal* filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)3076 Notice of appeal). filed by Financial Advisor FTI Consulting, Inc., 3151 Appellee designation of contents for inclusion in record of appeal *Suplemental Designation of Record* filed by Other Professional Teneo Capital, LLC (RE: related document(s)3078 Notice of appeal). filed by Other Professional Teneo Capital, LLC, 3153 Appellee designation of contents for inclusion in record of appeal filed by Attorney Pachulski Stang Ziehl & Jones LLP (RE: related document(s)3077 Notice of appeal). filed by Attorney Pachulski Stang Ziehl & Jones LLP, 3154 Appellee designation of contents for inclusion in record of appeal filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (RE: related document(s)3078 Notice of appeal). filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP). (Kass, Albert)
01/06/2022	3162 Certificate of service re: Highland's Notice of Rule 30(b)(6) Deposition to CPCM, LLC Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3156 Notice to take deposition of CPCM, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/07/2022	3163 Order authorizing withdrawal of proofs of claim nos. 135, 137 and 139 (RE: related document(s)3152 Withdrawal of claim filed by Interested Party Mark Okada). Entered on 1/7/2022 (Bradden, T.)
01/07/2022	3164 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim nos. 182, 184, 185, 187, 192, 214, 215, 242, 245 and 253 (RE: related document(s)3091 Stipulation filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust). Entered on 1/7/2022 (Bradden, T.)
01/07/2022	3165 Order granting motion to appear pro hac vice adding Jeffrey M. Dine for Highland Capital Management, L.P. (related document # 3159) Entered on 1/7/2022. (Bradden, T.)
01/07/2022	3166 Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Claims Transferred to Nexpoint Advisors, L.P. (RE: related document(s)3160 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 1/7/2022 (Dugan, Sue)
01/07/2022	3167 Reply to (related document(s): 3147 Response to objection to claim filed by Interested Party NexPoint Advisors, L.P.) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. (Montgomery, Paige)
01/07/2022	3168 Certificate of service re: Highland's Amended Notice of Deposition to Frank Waterhouse Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3158 Notice to take deposition of Frank Waterhouse filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/08/2022	3169 Subpoena on Frank Waterhouse filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/09/2022	

	3170 BNC certificate of mailing − PDF document. (RE: related document(s)3163 Order authorizing withdrawal of proofs of claim nos. 135, 137 and 139 (RE: related document(s)3152 Withdrawal of claim filed by Interested Party Mark Okada). Entered on 1/7/2022 (Bradden, T.)) No. of Notices: 2. Notice Date 01/09/2022. (Admin.)
01/09/2022	3171 BNC certificate of mailing − PDF document. (RE: related document(s)3164 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim nos. 182, 184, 185, 187, 192, 214, 215, 242, 245 and 253 (RE: related document(s)3091 Stipulation filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust). Entered on 1/7/2022 (Bradden, T.)) No. of Notices: 2. Notice Date 01/09/2022. (Admin.)
01/09/2022	3172 BNC certificate of mailing − PDF document. (RE: related document(s)3165 Order granting motion to appear pro hac vice adding Jeffrey M. Dine for Highland Capital Management, L.P. (related document 3159) Entered on 1/7/2022. (Bradden, T.)) No. of Notices: 2. Notice Date 01/09/2022. (Admin.)
01/10/2022	3173 Motion to extend time to Engage Substitute Counsel (RE: related document(s)3106 Order on motion to compel) Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # 1 Proposed Order) (Drawhorn, Lauren)
01/11/2022	3174 Order granting 3173 Agreed Motion to Continue Deadline Engage Substitute Counsel Entered on 1/11/2022. (Okafor, Marcey)
01/11/2022	3175 Certificate of service re: Stipulation and Agreed Order Authorizing Withdrawal of Claims Transferred to NexPoint Advisors, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3160 Stipulation by Highland Capital Management, L.P. and NexPoint Advisors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2044 Assignment/Transfer of claim (Claims Agent), 2045 Assignment/Transfer of claim (Claims Agent), 2046 Assignment/Transfer of claim (Claims Agent), 2047 Assignment/Transfer of claim (Claims Agent), 2059 Objection to claim, 2266 Assignment/Transfer of claim (Claims Agent), 2974 Objection to claim, 2976 Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/11/2022	3176 Certificate of service re: Reorganized Debtor's Notice of Service of a Subpoena to Frank Waterhouse in Connection with Amended Motion to Disallow Claim Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3169 Subpoena on Frank Waterhouse filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/11/2022	3177 Response opposed to (related document(s): 3001 Objection to claim filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust) *and Motion to Ratify Second Amendment to Proof of Claim* filed by Creditor CLO Holdco, Ltd.. (Phillips, Louis)
01/11/2022	3178 Motion to ratify second amended proof of claim No. 198 by CLO Holdco, Ltd. . (RE: related document(s)3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)) (Ecker, C.) (Entered: 01/12/2022)
01/11/2022	3266 DISTRICT COURT ORDER CONSOLIDATING CASES: Member case(s) 3:21−CV−3088, 3:21−CV−3094, 3:21−CV−3096, 3:21−CV−3104 consolidated with lead case 3:21−CV−3086−K. Wilmer Cutler Pickering Hale and Dorr LLP, Teneo Capital LLC, Sidley Austin LLP and FTI Consulting Inc, added to case pursuant to consolidation. (Ordered by Judge Ed Kinkeade on 1/11/2022) (RE: related document(s)3076 Notice of appeal filed by Interested Party NexPoint Advisors, L.P., 3077 Notice of appeal filed by Interested Party NexPoint Real Estate Advisors, L.P., 3078 Notice of appeal filed by

	Interested Party NexPoint Advisors, L.P., 3079 Notice of appeal filed by Interested Party NexPoint Advisors, L.P., 3080 Notice of appeal filed by Interested Party NexPoint Advisors, L.P.). Entered on 1/11/2022 (Whitaker, Sheniqua) (Entered: 02/25/2022)
01/11/2022	3374 DISTRICT COURT ORDER CONSOLIDATING CASES: Member case(s) 3:21−CV−3088, 3:21−CV−3094, 3:21−CV−3096, 3:21−CV−3104 consolidated with lead case 3:21−CV−3086−K. Wilmer Cutler Pickering Hale and Dorr LLP, Teneo Capital LLC, Sidley Austin LLP and FTI Consulting Inc, added to case pursuant to consolidation. (Ordered by Judge Ed Kinkeade on 1/11/2022) (RE: related document(s)3096 Notice of docketing notice of appeal/record, 3100 Notice of docketing notice of appeal/record, 3104 Notice of docketing notice of appeal/record, 3109 Notice of docketing notice of appeal/record, 3118 Notice of docketing notice of appeal/record). Entered on 1/11/2022 (Whitaker, Sheniqua) (Entered: 06/23/2022)
01/12/2022	3179 Certificate of service re: 1) Order Authorizing Withdrawal of Proofs of Claim Nos. 135, 137 and 139; 2) Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253; and 3) Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Claims Transferred to NexPoint Advisors, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3163 Order authorizing withdrawal of proofs of claim nos. 135, 137 and 139 (RE: related document(s)3152 Withdrawal of claim filed by Interested Party Mark Okada). Entered on 1/7/2022 (Bradden, T.), 3164 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim nos. 182, 184, 185, 187, 192, 214, 215, 242, 245 and 253 (RE: related document(s)3091 Stipulation filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust). Entered on 1/7/2022 (Bradden, T.), 3166 Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Claims Transferred to Nexpoint Advisors, L.P. (RE: related document(s)3160 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 1/7/2022). (Kass, Albert)
01/13/2022	3180 Order sustaining Litigation Trustee's objection to claim of Hunter Covitz (RE: related document(s)3002 Objection to claim filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust). Entered on 1/13/2022 (Okafor, Marcey)
01/14/2022	3181 Notice of Appearance and Request for Notice by Charles W. Gameros Jr. filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
01/14/2022	3182 Witness and Exhibit List (unsigned) filed by Creditor Paul N. Adkins (RE: related document(s)3086 Objection to claim). (Whitaker, Sheniqua)
01/14/2022	3183 Certificate of service re: (Supplemental) re Agreed First Amended Scheduling Order on Debtor's Third Omnibus Objection to Certain No−Liability Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3102 Agreed first amended scheduling order on Debtor's third omnibus objection to certain no−liability claims (RE: related document(s) 2059 Third Omnibus objection to certain no−liability claims 2976 Amended Supplemental Omnibus Objection to certain employee claims filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 2/16/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2976, Entered on 12/10/2021). (Kass, Albert)
01/17/2022	3184 Response opposed to (related document(s): 3128 Motion for 2004 examination of Thomas Surgent. filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/18/2022	3185 Adversary case 22−03003. Complaint by Scott Byron Ellington against Patrick Daugherty. Fee Amount $350 (Attachments: # 1 Appendix to Notice of Removal # 2 Adversary Proceeding Cover Sheet). Nature(s) of suit: 01 (Determination of removed claim or cause). (Brookner, Jason)

01/18/2022	3186 Certificate of service re: Order Sustaining the Litigation Trustee's Objection to Proof of Claim Filed by Hunter Covitz (Claim No. 186) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3180 Order sustaining Litigation Trustee's objection to claim of Hunter Covitz (RE: related document(s)3002 Objection to claim filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust). Entered on 1/13/2022). (Kass, Albert)
01/18/2022	3187 Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. *Consolidated Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented* filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3123 Appellant designation, 3124 Appellant designation, 3125 Appellant designation, 3126 Appellant designation, 3127 Appellant designation). (Jain, Kristin)
01/19/2022	3188 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)3066 Motion for leave *to File Lawsuit* Filed by Creditor The Dugaboy Investment Trust Objections due by 12/22/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)) Responses due by 1/26/2022. (Ecker, C.)
01/19/2022	3189 Certificate of service re: Reorganized Debtors Objection to Motion to Produce Documents and to Sit for a Rule 2004 Examination Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3184 Response opposed to (related document(s): 3128 Motion for 2004 examination of Thomas Surgent. filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/21/2022	3190 Stipulation by James Dondero and Marc S. Kirschner, Litigation Trustee. filed by Interested Party James Dondero (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Proposed Order) (Assink, Bryan)
01/24/2022	3191 Motion to quash (related documents 2940 Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* (related document(s):2857) filed by Debtor Highland Capital Management, L.P., 3169 Subpoena filed by Debtor Highland Capital Management, L.P.) Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order) (Smith, Frances)
01/24/2022	3192 Amended Motion to quash (related documents 3191 Motion to quash (related documents 2940 Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* (related document(s):2857) filed b filed by Interested Party CPCM, LLC) Filed by Interested Party CPCM, LLC (Attachments: # 1 Exhibit A # 2 Proposed Order) (Smith, Frances)
01/25/2022	3193 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3086 Objection to claim). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11) (Annable, Zachery)
01/25/2022	3194 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3145 Motion to extend time to object to claims). (Annable, Zachery)
01/25/2022	3195 Amended appellee designation of contents for inclusion in record of appeal *(Appellees' Consolidated Supplemental Designation of Record on Appeal)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3149 Appellee designation, 3150 Appellee designation, 3151 Appellee designation, 3153 Appellee designation, 3154 Appellee designation). (Annable, Zachery)
01/26/2022	

	3196 Notice of appeal . Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3180 Order regarding objection). Appellant Designation due by 02/9/2022. (Attachments: # 1 Exhibit A)(Vasek, Julian)
01/26/2022	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number A29283544, amount $ 298.00 (re: Doc# 3196). (U.S. Treasury)
01/26/2022	3197 Certificate of service re: 1) Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on January 27, 2022; and 2) Appellees' Consolidated Supplemental Designation of Record on Appeal Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3193 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3086 Objection to claim). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11) filed by Debtor Highland Capital Management, L.P., 3195 Amended appellee designation of contents for inclusion in record of appeal *(Appellees' Consolidated Supplemental Designation of Record on Appeal)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3149 Appellee designation, 3150 Appellee designation, 3151 Appellee designation, 3153 Appellee designation, 3154 Appellee designation). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/27/2022	Adversary case 3:21−ap−3051 closed (Ecker, C.)
01/27/2022	3198 Order granting 3145 Joint Motion extending the claims objection deadline pursuant to confirmed Chapter 11 Plan by which Debtor may object to claims Entered on 1/27/2022. (Okafor, Marcey)
01/27/2022	3199 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3085 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/27/2022	3200 Amended Chapter 11 Post−Confirmation Report for the Quarter Ending: 09/30/2021 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2949 Chapter 11 Post−Confirmation Report, 3004 Chapter 11 Post−Confirmation Report). (Attachments: # 1 Global Notes to Amended Post−Confirmation Report) (Annable, Zachery)
01/27/2022	3201 Chapter 11 Post−Confirmation Report for the Quarter Ending: 12/31/2021 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
01/27/2022	3202 Chapter 11 Post−Confirmation Report for the Quarter Ending: 12/31/2021 filed by Other Professional Highland Claimant Trust. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
01/27/2022	3203 Witness and Exhibit List *for Hearing on Motion to Produce Documents & to Sit for a Rule 2004 Examination* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3128 Motion for 2004 examination of Thomas Surgent.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 3A # 3 Exhibit 3B # 4 Exhibit 3C # 5 Exhibit 4 # 6 Exhibit 5 # 7 Exhibit 6 # 8 Exhibit 7 # 9 Exhibit 8 # 10 Exhibit 9 # 11 Exhibit 10 # 12 Exhibit 11 # 13 Exhibit 12 # 14 Exhibit 13 # 15 Exhibit 14 # 16 Exhibit 15 # 17 Exhibit 16 # 18 Exhibit 17 # 19 Exhibit 18 # 20 Exhibit 19 # 21 Exhibit 20 # 22 Exhibit 2 A−E) (Draper, Douglas)
01/27/2022	3204 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3199 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3085 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 3/1/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3199, (Annable, Zachery)

01/27/2022	3205 Response opposed to (related document(s): 2059 Objection to claim filed by Debtor Highland Capital Management, L.P., 2976 Objection to claim filed by Debtor Highland Capital Management, L.P.) *CPCM's Response to Debtor's Third Omnibus Objection* filed by Interested Party CPCM, LLC. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) (Soderlund, Eric) Filed by Interested Party CPCM, LLC (related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P., 2976 AmendedSupplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P., 2974 Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Appendix A # 2 Appendix B # 3 Exhibit A # 4 Exhibit B # 5 Exhibit C) (Annable, Zachery). Modified on 11/3/2021. filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) (Soderlund, Eric)
01/27/2022	3206 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3193 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 12 # 2 Exhibit 13 # 3 Exhibit 14 # 4 Exhibit 15 # 5 Exhibit 16) (Annable, Zachery)
01/27/2022	3208 Hearing held on 1/27/2022. (RE: related document(s)3086 Objection to claim(s) of Creditor(s) Paul N. Adkins, filed by Debtor Highland Capital Management, L.P., (Appearances: G. Demo, J. Morris, and Z. Annabel for Reorganized Debtor; P. Adkins, pro se. Evidentiary hearing. Objection sustained. Counsel to upload order.) (Edmond, Michael) (Entered: 01/28/2022)
01/27/2022	3224 Court admitted exhibits date of hearing January 27, 2022 (RE: related document(s)3086 Objection to claim(s) of Creditor(s) Paul N. Adkins, filed by Debtor Highland Capital Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15 & #16 BY JOHN MORRIS & ADKINS EXHIBITS #A, #B, #C, #D, #E, #F, #G, #H, #I & #J BY PAUL N. ADKINS) (Edmond, Michael) (Entered: 02/08/2022)

01/28/2022	3207 Request for transcript regarding a hearing held on 1/27/2022. The requested turn−around time is hourly. (Edmond, Michael)
01/28/2022	3209 PDF with attached Audio File. Court Date & Time [01/27/2022 02:39:06 PM]. File Size [19203 KB]. Run Time [01:22:03]. (admin).
01/28/2022	3261 DISTRICT COURT OPINION. This appeal is DISMISSED in part, and the bankruptcy court's July 21, 2021 order approving the debtor's motion for entry of an order (I) authorizing the (A) creation of an indemnity subtrust and (B) entry into an indemnity trust agreement and (II) granting related relief is AFFIRMED. (Ordered by Senior Judge Sidney A Fitzwater on 1/28/2022. Civil Action number:3:21−cv−01895−D, DISMISSED in PART and AFFIRMED in part (RE: related document(s)2599 Order on motion for leave). Entered on 1/28/2022 (Whitaker, Sheniqua) (Entered: 02/25/2022)
01/28/2022	3262 DISTRICT COURT JUDGMENT: This appeal is DISMISSED in part, and the bankruptcy court's 7/21/2021 Order Approving Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief is AFFIRMED. Civil Action number:3:21−cv−01895−D, DISMISSED in part and AFFIRMED in part (RE: related document(s)2599 Order on motion for leave). Entered on 2/25/2022 (Whitaker, Sheniqua) (Entered: 02/25/2022)
01/30/2022	3210 Transcript regarding Hearing Held 01/27/2022 (60 pages) RE: Objections to Claims 65 and 66 of Paul N. Akdins 3086. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3208 Hearing held on 1/27/2022. (RE: related document(s)3086 Objection to claim(s) of Creditor(s) Paul N. Adkins, filed by Debtor Highland Capital Management, L.P., (Appearances: G. Demo, J. Morris, and Z. Annabel for Reorganized Debtor; P. Adkins, pro se. Evidentiary hearing. Objection sustained. Counsel to upload order.)). Transcript to be made available to the public on 05/2/2022. (Rehling, Kathy)
01/31/2022	3211 Subpoena on Alexander McGeoch filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
01/31/2022	3212 Subpoena on Mark Patrick filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
01/31/2022	3213 Notice of hearing filed by Interested Party CPCM, LLC (RE: related document(s)3192 Amended Motion to quash (related documents 3191 Motion to quash (related documents 2940 Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* (related document(s):2857) filed b filed by Interested Party CPCM, LLC) Filed by Interested Party CPCM, LLC (Attachments: # 1 Exhibit A # 2 Proposed Order)). Hearing to be held on 2/28/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3192, (Smith, Frances)
01/31/2022	3214 Certificate of service re: Notice of Hearing filed by Interested Party CPCM, LLC (RE: related document(s)3213 Notice of hearing). (Smith, Frances)
02/01/2022	3215 Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust, Mark S. Kirschner, as Litigation Trustee of the Highland Litigation Sub−Trust, and Thomas Surgent. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3128 Motion for 2004 examination of Thomas Surgent.). (Annable, Zachery)

02/01/2022	3216 Order regarding objection to claim number(s) 65 and 66 filed by Paul N. Adkins (RE: related document(s)3086 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 2/1/2022 (Okafor, Marcey)
02/01/2022	3217 Hearing held on 2/1/2022. (RE: related document(s)3128 Motion for 2004 examination of Thomas Surgent, filed by Creditor The Dugaboy Investment Trust) (Appearances: D. Draper for Dugaboy; J. Kroop for Highland. Nonevidentiary hearing. Announcement of agreed order to be uploaded.) (Edmond, Michael)
02/01/2022	3218 Order approving stipulation and agreed order authorizing withdrawal of proofs of claims nos. 141, 142, and 145 (RE: related document(s)3190 Stipulation filed by Interested Party James Dondero). Entered on 2/1/2022 (Okafor, Marcey)
02/01/2022	3219 Order approving stipulation and agreed order authorizing service of a subpoena duces tecum and ad testificandum in the pending adversary proceeding (RE: related document(s)3215 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/1/2022 (Okafor, Marcey)
02/01/2022	3220 Response opposed to (related document(s): 3178 Motion by CLO Holdco, Ltd.. filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. (Attachments: # 1 Exhibit 1 − Newman Declaration) (Montgomery, Paige)
02/01/2022	3221 Certificate of service re: Various Documents Served on January 27, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3198 Order granting 3145 Joint Motion extending the claims objection deadline pursuant to confirmed Chapter 11 Plan by which Debtor may object to claims Entered on 1/27/2022., 3199 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3085 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3204 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3199 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3085 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 3/1/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3199, filed by Debtor Highland Capital Management, L.P., 3206 Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3193 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 12 # 2 Exhibit 13 # 3 Exhibit 14 # 4 Exhibit 15 # 5 Exhibit 16) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/04/2022	3222 Certificate of service re: Various Documents Served on February 1, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3215 Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust, Mark S. Kirschner, as Litigation Trustee of the Highland Litigation Sub−Trust, and Thomas Surgent. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3128 Motion for 2004 examination of Thomas Surgent.). filed by Debtor Highland Capital Management, L.P., 3216 Order regarding objection to claim number(s) 65 and 66 filed by Paul N. Adkins (RE: related document(s)3086 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 2/1/2022, 3219 Order approving stipulation and agreed order authorizing service of a subpoena duces tecum and ad testificandum in the pending adversary proceeding (RE: related document(s)3215 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/1/2022). (Kass, Albert)
02/08/2022	3223 Reply to (related document(s): 3177 Response to objection to claim filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., 3220 Response filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust) filed by Creditor CLO Holdco, Ltd.. (Phillips, Louis)

02/08/2022	3225 PDF with attached Audio File. Court Date & Time [02/01/2022 08:45:14 AM]. File Size [3669 KB]. Run Time [00:15:48]. (admin).
02/08/2022	3226 Statement of issues on appeal, filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3196 Notice of appeal). (Vasek, Julian)
02/08/2022	3227 Appellant designation of contents for inclusion in record on appeal filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3196 Notice of appeal). Appellee designation due by 02/22/2022. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D)(Vasek, Julian)
02/09/2022	3228 Amended appellant designation of contents for inclusion in record on appeal filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3227 Appellant designation). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E)(Vasek, Julian)
02/09/2022	3264 DISTRICT COURT MEMORANDUM OPINION AND ORDER − The Recusal Order is not a final, appealable order, is not subject to the collateral order doctrine, and is not an appealable interlocutory order under § 1292(a) and the Court is without jurisdiction over this appeal of the Bankruptcy Court's Recusal Order. The Court further denies Appellants leave to appeal the Recusal Order under § 1292(b), denies Appellants' request to withdraw the reference of their motion to recuse, and denies Appellants' request to construe their appeal as a petition for writ of mandamus. Accordingly, the Court dismisses this appeal for lack of jurisdiction. (Ordered by Judge Ed Kinkeade on 2/9/2022). Civil Action number:3:21−cv−00879−K, DISMISSED for lack of jurisdiction (RE: related document(s)2083 Order on motion to recuse Judge). Entered on 2/9/2022 (Whitaker, Sheniqua) Modified on 2/25/2022 (Whitaker, Sheniqua). (Entered: 02/25/2022)
02/10/2022	3230 Reply to (related document(s): 3205 Response to objection to claim filed by Interested Party CPCM, LLC) *(Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to Certain No−Liability Claims, as Supplemented)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Appendix A) (Annable, Zachery)
02/10/2022	3231 Notice of docketing notice of appeal. Civil Action Number: 3:22−CV−00335−L. (RE: related document(s)3196 Notice of appeal filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3180 Order regarding objection). (Blanco, J.)
02/10/2022	3232 Declaration re: *(Declaration of Gregory V. Demo in Support of Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to Certain No−Liability Claims, as Supplemented)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3230 Reply). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16) (Annable, Zachery)
02/11/2022	3233 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)3196 Notice of appeal filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3180 Order regarding objection). (Blanco, J.)
02/11/2022	3234 Certificate of mailing regarding appeal (RE: related document(s)3196 Notice of appeal filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3180 Order regarding objection). (Blanco, J.)
02/11/2022	3236 Certificate of service re: 1) Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to Certain No−Liability Claims, as Supplemented; and 2) Declaration of Gregory V. Demo in Support of Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to

	Certain No−Liability Claims, as Supplemented Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3230 Reply to (related document(s): 3205 Response to objection to claim filed by Interested Party CPCM, LLC) *(Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to Certain No−Liability Claims, as Supplemented)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Appendix A) filed by Debtor Highland Capital Management, L.P., 3232 Declaration re: *(Declaration of Gregory V. Demo in Support of Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to Certain No−Liability Claims, as Supplemented)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3230 Reply). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/15/2022	3237 Notice of hearing filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3177 Response opposed to (related document(s): 3001 Objection to claim filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust) *and Motion to Ratify Second Amendment to Proof of Claim* filed by Creditor CLO Holdco, Ltd.., 3178 Motion to ratify second amended proof of claim No. 198 by CLO Holdco, Ltd.. (RE: related document(s)3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)) (Ecker, C.)). Hearing to be held on 3/10/2022 at 10:30 AM at https://us−courts.webex.com/meet/jerniga for 3178 and for 3177, (Phillips, Louis)
02/15/2022	3238 Stipulation by Highland Capital Management, L.P. and CPCM, LLC, Isaac Leventon, Scott Ellington, and Highgate Consulting, Inc. d/b/a Skyview Group. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim, 2976 Objection to claim). (Annable, Zachery)
02/16/2022	3239 Response opposed to (related document(s): 3192 Amended Motion to quash (related documents 3191 Motion to quash (related documents 2940 Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy filed by Interested Party CPCM, LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)*
02/16/2022	3240 Hearing held on 2/16/2022. (RE: related document(s)2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School, filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo and R. Feinstein for Reorganized Debtor; F. Smith for Claimants. Nonevidentiary announcement of a Stipulation and Agreed Order accepted. Counsel to upload order.) (Edmond, Michael)
02/16/2022	3241 Hearing held on 2/16/2022. (RE: related document(s)2976 AmendedSupplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal

	Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P., 2974 Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School, filed by Debtor Highland Capital Management, L.P. (Appearances: G. Demo and R. Feinstein for Reorganized Debtor; F. Smith for Claimants. Nonevidentiary announcement of a Stipulation and Agreed Order accepted. Counsel to upload order.) (Edmond, Michael)
02/16/2022	3242 Objection to (related document(s): 3088 Motion to compromise controversy with Patrick Hagaman Daugherty. *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P.) filed by Creditor Scott Ellington. (Smith, Frances)
02/16/2022	3243 Certificate of service re: Scott Ellingtons Objection to the Reorganized Debtors Motion for Entry of an Order Approving Settlement with Patrick Daugherty filed by Creditor Scott Ellington (RE: related document(s)3242 Objection). (Smith, Frances)
02/17/2022	3244 Order approving stipulation and agreed order resolving third omnibus objection and certain other claims (RE: related document(s)3238 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/17/2022 (Okafor, Marcey). Related document(s) 2868 Application for administrative expenses *for rank−and−file employees* filed by Interested Party CPCM, LLC. MODIFIED linkage on 7/6/2022 (Ecker, C.).
02/17/2022	3245 Certificate of service re: Stipulation and Agreed Order Resolving Third Omnibus Objection and Certain Other Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3238 Stipulation by Highland Capital Management, L.P. and CPCM, LLC, Isaac Leventon, Scott Ellington, and Highgate Consulting, Inc. d/b/a Skyview Group. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim, 2976 Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/18/2022	3246 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3199 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3085 Order on motion to extend/shorten time)). (Annable, Zachery)
02/18/2022	3247 Certificate of service re: (Supplemental) re Order Granting Reorganized Debtor's and Claimant Trustee's Joint Motion and Extending the Claims Objection Deadline Pursuant to Confirmed Chapter 11 Plan by Which Debtor May Object to Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3198 Order granting 3145 Joint Motion extending the claims objection deadline pursuant to confirmed Chapter 11 Plan by which Debtor may object to claims Entered on 1/27/2022.). (Kass, Albert)
02/18/2022	3248 Certificate of service re: Reorganized Debtor's Opposition to Motion to Quash Subpoena Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3239 Response opposed to (related document(s): 3192 Amended Motion to quash (related documents 3191 Motion to quash (related documents 2940 Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank*

	Waterhouse Pursuant to Bankruptcy filed by Interested Party CPCM, LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/18/2022	3249 Certificate of service re: Order Approving Stipulation and Agreed Order Resolving Third Omnibus Objection and Certain Other Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3244 Order approving stipulation and agreed order resolving third omnibus objection and certain other claims (RE: related document(s)3238 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/17/2022). (Kass, Albert)
02/22/2022	3250 Appellee designation of contents for inclusion in record of appeal filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (RE: related document(s)3196 Notice of appeal). (Attachments: # 1 Exhibit A # 2 Exhibit B)(Montgomery, Paige)
02/23/2022	3251 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)3128 Motion for 2004 examination of Thomas Surgent. Filed by Creditor The Dugaboy Investment Trust) Responses due by 3/2/2022. (Ecker, C.)
02/24/2022	3252 Witness and Exhibit List filed by Creditor Frank Waterhouse, Interested Party CPCM, LLC (RE: related document(s)3192 Amended Motion to quash (related documents 3191 Motion to quash (related documents 2940 Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Smith, Frances)*
02/24/2022	3253 Certificate of service re: Frank Waterhouse and CPCM, LLCs Witness & Exhibit List filed by Interested Party CPCM, LLC, Creditor Frank Waterhouse (RE: related document(s)3252 List (witness/exhibit/generic)). (Smith, Frances)
02/24/2022	3254 Witness and Exhibit List filed by Creditor Scott Ellington (RE: related document(s)3088 Motion to compromise controversy with Patrick Hagaman Daugherty. *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith)*). (Attachments: # 1 Exhibit 1) (Smith, Frances)
02/24/2022	3255 Certificate of service re: Scott Ellingtons Witness & Exhibit List filed by Creditor Scott Ellington (RE: related document(s)3254 List (witness/exhibit/generic)). (Smith, Frances)
02/24/2022	3256 Order Further Extending Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related document #3199. Entered on 2/24/2022. (Okafor, Marcey)
02/24/2022	3257 Reply to (related document(s): 3242 Objection filed by Creditor Scott Ellington) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/24/2022	3258 Joinder by *Joinder in Reply* filed by Creditor Patrick Daugherty (RE: related document(s)3257 Reply). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) (Brookner, Jason)
02/24/2022	3259 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3192 Amended Motion to quash (related documents 3191 Motion to quash (related documents 2940 Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy). (Annable, Zachery)*
02/24/2022	

	3263 DISTRICT COURT NOTICE OF APPEAL as to 45 Judgment, 44 Memorandum Opinion and Order, to the Fifth Circuit by Highland Capital Management Fund Advisors LP, NexPoint Advisors LP, The Dugaboy Investment Trust. Civil Case 3:21−cv−01895−D (RE: related document(s)2673 Notice of appeal . Fee Amount $298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s)2599 Order on motion for leave). Appellant Designation due by 08/18/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua) MODIFIED to add USCA Case 22−10189 on 5/12/2022 (Whitaker, Sheniqua). (Entered: 02/25/2022)
02/24/2022	3397 DISTRICT COURT NOTICE OF APPEAL as to 45 Judgment, 44 Memorandum Opinion and Order, to the Fifth Circuit by Highland Capital Management Fund Advisors LP, NexPoint Advisors LP, The Dugaboy Investment Trust (RE: related document(s)2673 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s)2599 Order on motion for leave). (Whitaker, Sheniqua) (Entered: 07/08/2022)
02/25/2022	3260 Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)). Hearing to be held on 3/10/2022 at 10:30 AM https://uscourts.webex.com/meet/jerniga. 3001, (Montgomery, Paige) MODIFIED to correct hearing location on 2/25/2022 (Ecker, C.).
02/25/2022	3265 Amended Witness and Exhibit List filed by Creditor Scott Ellington (RE: related document(s)3254 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SE−1 Plaintiff's Original Petition # 2 Exhibit SE−2 Claimant Trust Agreement # 3 Exhibit SE−3 Revisions to Claimant Trust Agreement # 4 Exhibit SE−4 Transcript) (Smith, Frances)
02/25/2022	3267 Amended Witness and Exhibit List *(Highland Capital Management, L.P.'s Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on February 28, 2022)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3259 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1) (Annable, Zachery)
02/25/2022	3268 Certificate of service re: (Supplemental) re Various Documents Served on February 23, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2768 Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document 2226 and 2267). Hearing to be held on 12/15/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2059, Entered on 8/24/2021. (Okafor, M.)., 2870 Notice *(First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2976 AmendedSupplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P., 2974 Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul

	Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Appendix A # 2 Appendix B # 3 Exhibit A # 4 Exhibit B # 5 Exhibit C) (Annable, Zachery). Modified on 11/3/2021. filed by Debtor Highland Capital Management, L.P., 3006 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2828 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 12/1/2021. filed by Debtor Highland Capital Management, L.P., 3025 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3006 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)2828 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 12/1/2021.). Hearing to be held on 12/7/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3006, filed by Debtor Highland Capital Management, L.P., 3145 Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3148 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3145 Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/27/2022 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 3145, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/25/2022	3269 Certificate of service re: Highland Capital Management, L.P.'s Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on February 28, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3267 Amended Witness and Exhibit List *(Highland Capital Management, L.P.'s Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on February 28, 2022)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3259 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/26/2022	3270 Witness and Exhibit List *(Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held March 1, 2022)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3088 Motion to compromise controversy with Patrick Hagaman Daugherty. *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) (Annable, Zachery)
02/28/2022	3271 Clerk's correspondence requesting an order (RE: related document(s)1154 Motion for leave *to Amend Certain Proofs of Claim* Filed by Creditor The Dugaboy Investment Trust Objections due by 10/30/2020. (Attachments: # 1 Proposed Order)) Responses due by 3/7/2022. (Ecker, C.)
02/28/2022	3272 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)2868 Application for administrative expenses *for rank−and−file employees* Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order), 2869 Application for administrative expenses Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order)) Responses due by 3/15/2022. (Ecker, C.)
02/28/2022	3273 Motion to continue hearing on (related documents 2940 Motion to disallow claims) *(Motion to Continue Hearing on the Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)

02/28/2022	3274 INCORRECT EVENT: Attorney to refile. Motion to file document under seal.*CPCM, LLC's Unopposed Motion to Seal Exhibits* Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order) (Smith, Frances) Modified on 3/1/2022 (Ecker, C.).
02/28/2022	3275 Certificate of service re: Unopposed Motion to Seal Exhibits filed by Interested Party CPCM, LLC (RE: related document(s)3274 Motion to file document under seal.*CPCM, LLC's Unopposed Motion to Seal Exhibits*). (Attachments: # 1 Exhibit Service List) (Smith, Frances)
02/28/2022	3276 Certificate of service re: Witness & Exhibit List *for hearings scheduled March 1, 2022 at 1:30 PM* filed by Creditor Scott Ellington (RE: related document(s)3265 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit Service List) (Smith, Frances)
02/28/2022	3277 Motion to appear pro hac vice for Leah M. Ray. Fee Amount $100 Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (Montgomery, Paige)
02/28/2022	3278 Certificate of service re: 1) Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; 2) Reorganized Debtor's Reply in Further Support of Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205); and 3) Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on February 28, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3256 Order Further Extending Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related document #3199. Entered on 2/24/2022., 3257 Reply to (related document(s): 3242 Objection filed by Creditor Scott Ellington) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3259 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3192 Amended Motion to quash (related documents 3191 Motion to quash (related documents 2940 Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
02/28/2022	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A29357887, amount $ 100.00 (re: Doc# 3277). (U.S. Treasury)
02/28/2022	3279 Hearing held on 2/28/2022. (RE: related document(s)3192 Amended Motion to quash (related documents 3191 Motion to quash (related documents 2940 Amended Motion to disallow claims (Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502) (related document(s):2857) filed b filed by Interested Party CPCM, LLC) Filed by Interested Party CPCM, LLC., (Appearances: G. Demo for Reorganized Debtor; D. Dandeneau for F. Waterhouse and CPCM. Evidentiary hearing. Motion denied. Counsel to upload order.) (Edmond, Michael) (Entered: 03/01/2022)
02/28/2022	Hearing NOT held on 2/28/2022. (RE: related document(s)2940 Amended Motion to disallow claims (Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502) (related document(s):2857) Filed by Debtor Highland Capital Management, L.P. (NOTE* Continued to date TBD) (Edmond, Michael) (Entered: 03/01/2022)
02/28/2022	3302 Court admitted exhibits date of hearing February 28, 2022 (RE: related document(s)3192 Amended Motion to quash (related documents 3191 Motion to quash (related documents 2940 Amended Motion to disallow claims (Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code

	Section 502) (related document(s):2857) filed b filed by Interested Party CPCM, LLC) Filed by Interested Party CPCM, LLC., (COURT ADMITTED FRANK WATERHOUSE & CPCM, LLC EXHIBIT #FWCPCM−2 OFFERED BY DEBRA A. DANDENEAU) (Edmond, Michael) (Entered: 03/08/2022)
03/01/2022	3280 Request for transcript regarding a hearing held on 2/28/2022. The requested turn−around time is hourly. (Edmond, Michael)
03/01/2022	3281 Motion to redact/restrict Redact (related document(s):3205, 3232) (Fee Amount $26) Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order) (Smith, Frances)
03/01/2022	Receipt of filing fee for Motion to Redact/Restrict From Public View(19−34054−sgj11) [motion,mredact] (26.00). Receipt number A29362549, amount $ 26.00 (re: Doc# 3281). (U.S. Treasury)
03/01/2022	3282 Order granting motion to continue hearing on (related document # 3273) (related documents Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* (related document(s):2857)) The Hearing on the Waterhouse Motion is hereby continued from February 28, 2022 at 1:30 p.m. (Central Time) to a date that is mutually agreeable to HCMLP, CPCM, and this Court and that comes after an order is entered resolving the Motion to Quash. Entered on 3/1/2022. (Okafor, Marcey)
03/01/2022	3283 Hearing held on 3/1/2022. (RE: related document(s)3088 Motion to compromise controversy with Patrick Hagaman Daugherty, (Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Morris for Debtor; T. Uebler for P. Daugherty; D. Dandeneau for S. Ellington. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 03/02/2022)
03/01/2022	3301 Court admitted exhibits date of hearing March 1, 2022 (RE: related document(s)3088 Motion to compromise controversy with Patrick Hagaman Daugherty. Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith), filed by Debtor Highland Capital Management, L.P., (COURT ADMITTED REORGANIZED DEBTOR/HIGHLAND CAPITAL MANAGEMENT, L.P., EXHIBITS #1, #2, #3, #4 & #5 OFFERED BY JOHN A. MORRIS AND SCOTT ELLINGTON'S EXHIBIT #SE−2; OFFERED BY DEBRA A. DANDENEAU). (Edmond, Michael) (Entered: 03/08/2022)
03/02/2022	3284 Transcript regarding Hearing Held 02/28/2022 (49 pages) RE: Debtor's Amended Motion to Disallow Claim of Frank Waterhouse (2940) and Amended Motion to Quash Subpoena filed by Frank Waterhouse (3192). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/31/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3279 Hearing held on 2/28/2022. (RE: related document(s)3192 Amended Motion to quash (related documents 3191 Motion to quash (related documents 2940 Amended Motion to disallow claims (Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502) (related document(s):2857) filed b filed by Interested Party CPCM, LLC) Filed by Interested Party CPCM, LLC., (Appearances: G. Demo for Reorganized Debtor; D. Dandeneau for F. Waterhouse and CPCM. Evidentiary hearing. Motion denied. Counsel to upload order.)). Transcript to be made available to the public on 05/31/2022. (Rehling, Kathy)
03/02/2022	3285 Request for transcript regarding a hearing held on 3/1/2022. The requested turn−around time is 7−day expedited. (Edmond, Michael)

03/02/2022	3286 Order granting motion to appear pro hac vice adding Leah M. "Calli" Ray for Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (related document 3277) Entered on 3/2/2022. (Okafor, Marcey) MODIFIED attorney name on 3/2/2022 (Okafor, Marcey).
03/02/2022	3287 PDF with attached Audio File. Court Date & Time [02/16/2022 12:48:46 PM]. File Size [3441 KB]. Run Time [00:14:46]. (admin).
03/03/2022	3288 Withdrawal *Notice of Withdrawal of Motion of CPCM, LLC for Allowance and Payment of Administrative Expense Claims* filed by Interested Party CPCM, LLC (RE: related document(s)2869 Application for administrative expenses, 3272 Clerk's correspondence). (Attachments: # 1 Exhibit A & B Service Lists) (Smith, Frances)
03/03/2022	3289 PDF with attached Audio File. Court Date & Time [02/28/2022 01:34:24 PM]. File Size [29688 KB]. Run Time [02:09:23]. (admin).
03/03/2022	3290 Trustee's Objection to *Motion to Redact/Restrict from Public View* (RE: related document(s)3281 Motion to Redact/Restrict From Public View) (Lambert, Lisa)
03/03/2022	3291 Order denying amended Frank Waterhouse's opposed motion to quash (related document # 3192) Entered on 3/3/2022. (Okafor, Marcey)
03/03/2022	3292 Certificate of service re: 1) Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to be Held March 1, 2022; and 2) Motion to Continue Hearing on the Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3270 Witness and Exhibit List *(Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held March 1, 2022)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3088 Motion to compromise controversy with Patrick Hagaman Daugherty. *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) filed by Debtor Highland Capital Management, L.P., 3273 Motion to continue hearing on (related documents 2940 Motion to disallow claims) *(Motion to Continue Hearing on the Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/04/2022	3293 PDF with attached Audio File. Court Date & Time [03/01/2022 01:32:46 PM]. File Size [29688 KB]. Run Time [02:09:23]. (admin).
03/04/2022	3294 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)3128 Motion for 2004 examination of Thomas Surgent. Filed by Creditor The Dugaboy Investment Trust) Responses due by 3/18/2022. (Ecker, C.)
03/04/2022	3295 BNC certificate of mailing − PDF document. (RE: related document(s)3286 Order granting motion to appear pro hac vice adding Leah M. "Calli" Ray for Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (related document 3277) Entered on 3/2/2022. (Okafor, Marcey) MODIFIED attorney name on 3/2/2022 .) No. of Notices: 1. Notice Date 03/04/2022. (Admin.)
03/07/2022	3296 Witness and Exhibit List *With Respect To Hearing To Be Held On March 10, 2022* filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3178 Motion by CLO Holdco, Ltd..). (Attachments: # 1 Exhibit 1 − POC 133 # 2 Exhibit 2 − POC 198 # 3 Exhibit 3 − POC 254 # 4 Exhibit 4 − Second Amended and Restated Service Agreement, Dated January 1, 2017 # 5 Exhibit 5 − Second Amended and Restated Investment Advisory Agreement # 6 Exhibit 6 − Registration of Members of CLO HoldCo, Ltd. # 7 Exhibit 7 − Termination of

	Second Amended and Restated Investment Advisory # 8 Exhibit 8 − Termination of Second Amended and Restated Service Agreement # 9 Exhibit 9 − Dkt. No. 2700) (Phillips, Louis)
03/07/2022	3297 Certificate of service re: Order Continuing Hearing on Motion to Continue Hearing on the Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3282 Order granting motion to continue hearing on (related document 3273) (related documents Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* (related document(s):2857)) The Hearing on the Waterhouse Motion is hereby continued from February 28, 2022 at 1:30 p.m. (Central Time) to a date that is mutually agreeable to HCMLP, CPCM, and this Court and that comes after an order is entered resolving the Motion to Quash. Entered on 3/1/2022.). (Kass, Albert)
03/08/2022	3298 Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith Filed by Debtor Highland Capital Management, L.P. ((related document # 3088) Entered on 3/8/2022. (Okafor, Marcey)
03/08/2022	3299 DUPLICATE ENTRY: See #3298 − Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith Filed by Debtor Highland Capital Management, L.P. ((related document 3088) Entered on 3/8/2022. (Okafor, Marcey) Modified on 3/8/2022 (Okafor, Marcey).
03/08/2022	3300 Order Denying Motion to Redact or Restrict Access (Related Doc # 3281) Entered on 3/8/2022. (Okafor, Marcey)
03/09/2022	3304 Emergency Motion to continue hearing on (related documents 3178 Generic motion) Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
03/09/2022	3305 Order granting motion to continue hearing on (related document # 3304) (related documents Motion to ratify second amended proof of claim No. 198 by CLO Holdco, Ltd.) Hearing to be held on 5/2/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3178, Entered on 3/9/2022. (Okafor, Marcey)
03/09/2022	3306 Transcript regarding Hearing Held 03/01/2022 (86 pages) RE: Motion to Compromise Controversy with Patrick Hagaman Daugherty (#3088). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 06/7/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3283 Hearing held on 3/1/2022. (RE: related document(s)3088 Motion to compromise controversy with Patrick Hagaman Daugherty, (Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Morris for Debtor; T. Uebler for P. Daugherty; D. Dandeneau for S. Ellington. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 06/7/2022. (Rehling, Kathy)
03/09/2022	3307 Notice *(Second Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/09/2022	3308 Certificate of service re: Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3298 Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith Filed by Debtor Highland Capital Management, L.P. ((related

	document 3088) Entered on 3/8/2022.). (Kass, Albert)
03/10/2022	3309 Certificate of service re: Second Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3307 Notice *(Second Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/15/2022	3310 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: 2 Volume 1, Mini Record. Number of appellant volumes: 72 Number of appellee volumes: 5. Civil Case Number: 3:21−CV−03086−K Consolidated (RE: related document(s)3077 Notice of appeal *Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP (RE: related document(s)3047 Order on application for compensation). (Blanco, J.)*
03/15/2022	3311 Notice of docketing COMPLETE record on appeal. 3:21−CV−03086−K Consolidated (RE: related document(s)3077 Notice of appeal (RE: related document(s)3047 Order on application for compensation) (Blanco, J.)
03/15/2022	3312 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 1 Number of appellee volumes: 1. Civil Case Number: 3:22−cv−00335−L (RE: related document(s)3196 Notice of appeal (RE: related document(s)3180 Order regarding objection). (Blanco, J.)
03/15/2022	3314 Notice of docketing record on appeal. 3:22−CV−00335L (RE: related document(s)3196 Notice of appeal (RE: related document(s)3180 Order regarding objection). (Blanco, J.)
03/17/2022	3315 Certificate of service re: (Supplemental) re Documents Served on March 14, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust, 3102 Agreed first amended scheduling order on Debtor's third omnibus objection to certain no−liability claims (RE: related document(s) 2059 Third Omnibus objection to certain no−liability claims 2976 Amended Supplemental Omnibus Objection to certain employee claims filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 2/16/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2976, Entered on 12/10/2021, 3131 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 2059 Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School Filed by Debtor Highland Capital Management, L.P and 2976 AmendedSupplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy;

	Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P., 2974 Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Appendix A # 2 Appendix B # 3 Exhibit A # 4 Exhibit B # 5 Exhibit C) (Annable, Zachery). Modified on 11/3/2021.). Hearing to be held on 2/16/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 2976 and 2059, (Annable, Zachery). MODIFIED linkage on 12/21/2021. filed by Debtor Highland Capital Management, L.P., 3230 Reply to (related document(s): 3205 Response to objection to claim filed by Interested Party CPCM, LLC) *(Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to Certain No−Liability Claims, as Supplemented)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Appendix A) filed by Debtor Highland Capital Management, L.P., 3232 Declaration re: *(Declaration of Gregory V. Demo in Support of Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to Certain No−Liability Claims, as Supplemented)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3230 Reply). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/18/2022	3316 Certificate of service re: (Supplemental) re Stipulation and Agreed Order Resolving Third Omnibus Objection and Certain Other Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3238 Stipulation by Highland Capital Management, L.P. and CPCM, LLC, Isaac Leventon, Scott Ellington, and Highgate Consulting, Inc. d/b/a Skyview Group. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim, 2976 Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/18/2022	3338 DISTRICT COURT Memorandum Opinion and Order in re: appeal on Civil Action number:3:20−cv−3390, Dismissed (RE: related document(s)1302 Order on motion to compromise controversy). Entered on 3/18/2022 (Whitaker, Sheniqua) (Entered: 05/12/2022)
03/24/2022	3317 Motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218). *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery)
03/24/2022	3318 Declaration re: *(Declaration of Gregory V. Demo in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3317 Motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218). *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218)). (Attachments: # 1 Exhibit 1) (Annable, Zachery)*

03/28/2022	3319 Certificate of service re: 1) Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith; and 2) Declaration of Gregory V. Demo in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3317 Motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218). *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 3318 Declaration re: *(Declaration of Gregory V. Demo in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3317 Motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218). *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218)). (Attachments: # 1 Exhibit 1) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
03/29/2022	3320 Certificate of service re: (Supplemental) re Various Documents Served on March 22, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2768 Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document 2226 and 2267). Hearing to be held on 12/15/2021 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 2059, Entered on 8/24/2021. (Okafor, M.)., 3145 Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3148 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3145 Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/27/2022 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 3145, filed by Debtor Highland Capital Management, L.P., 3198 Order granting 3145 Joint Motion extending the claims objection deadline pursuant to confirmed Chapter 11 Plan by which Debtor may object to claims Entered on 1/27/2022.). (Kass, Albert)
03/30/2022	Adversary case 3:20−ap−3107 closed (Ecker, C.)
03/31/2022	3321 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3317 Motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218). *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 5/2/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3317, (Annable, Zachery)
03/31/2022	3322 Withdrawal *of Attorney James A. Wright, III* filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small−Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) Credit Card Receipt, 866 Order on motion to appear pro hac vice). (Hogewood, A.)
04/07/2022	3323 Certificate of service re: Notice of Hearing on Reorganized Debtors Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith Filed by

	Claims Agent Kurtzman Carson Consultants LLC (related document(s)3321 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3317 Motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218). *(Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Proposed Order)). Hearing to be held on 5/2/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3317, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/08/2022	3324 Certificate of service re: (Supplemental) re Order Granting Reorganized Debtor's and Claimant Trustee's Joint Motion and Extending the Claims Objection Deadline Pursuant to Confirmed Chapter 11 Plan by Which Debtor May Object to Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3198 Order granting 3145 Joint Motion extending the claims objection deadline pursuant to confirmed Chapter 11 Plan by which Debtor may object to claims Entered on 1/27/2022.). (Kass, Albert)
04/11/2022	Adversary case 3:22−ap−3003 closed Pursuant to LBR 9070−1, any exhibits that were admitted by the Court may be claimed and removed from the Clerks Office during the 60−day period following final disposition of a case by the attorney or party who introduced the exhibits. Any exhibit not removed within the 60−day period may be destroyed or otherwise disposed of by the Bankruptcy Clerk. (Okafor, Marcey)
04/21/2022	3325 Chapter 11 Post−Confirmation Report for the Quarter Ending: 03/31/2022 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/21/2022	3326 Chapter 11 Post−Confirmation Report for the Quarter Ending: 03/31/2022 filed by Other Professional Highland Claimant Trust. (Annable, Zachery)
04/28/2022	3327 Agreed Motion to continue hearing on (related documents 3001 Objection to claim, 3178 Generic motion) Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (Montgomery, Paige)
04/28/2022	3328 Order granting motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith (related document # 3317) Entered on 4/28/2022. (Okafor, Marcey)
04/29/2022	3329 Order granting #3327 motion to continue hearing on (RE: 3178 Motion to ratify second amended proof of claim No. 198 by CLO Holdco, Ltd. (related document(s) 3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust.) Hearing to be held on 6/28/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3178, Entered on 4/29/2022. (Okafor, Marcey)
05/03/2022	3330 Order denying motion for leave to file lawsuit (related document 3066) Entered on 5/3/2022. (Okafor, Marcey)
05/03/2022	3331 Order denying motion for leave to Amend Certain Proofs of Claim Filed by Creditor The Dugaboy Investment Trust(related document # 1154) Entered on 5/3/2022. (Okafor, Marcey)
05/03/2022	3332 Certificate of service re: Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3328 Order granting motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith (related document 3317) Entered on 4/28/2022.). (Kass, Albert)

05/04/2022	3333 Motion for leave *to File a Lawsuit* (related document(s) 3066 Motion for leave, 3134 Response) Filed by Creditor The Dugaboy Investment Trust Objections due by 5/25/2022. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Draper, Douglas)
05/09/2022	3334 Memorandum of Opinion and Order from District court Judge Kinkeade, re: appeal on Civil Action number:3:21−cv−03086−K, Dismissed (RE: related document(s)3047 Order on application for compensation, 3048 Order on application for compensation, 3056 Order on application for compensation, 3057 Order on application for compensation, 3058 Order on application for compensation). Entered on 5/9/2022 (Whitaker, Sheniqua)
05/09/2022	3335 Judgment/Final order from District court Judge Kinkeade, re: appeal on Civil Action number:3:21−cv−03086−K, Dismissed (RE: related document(s)3047 Order on application for compensation, 3048 Order on application for compensation, 3056 Order on application for compensation, 3057 Order on application for compensation, 3058 Order on application for compensation). Entered on 5/9/2022 (Whitaker, Sheniqua)
05/09/2022	3336 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Claim Number 84)* Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/09/2022	3375 Memorandum of Opinion and Order from District court Judge Kinkeade, re: appeal on Civil Action number:3:21−cv−03086−K, Dismiss Appeals as Constitutionally Moot (RE: related document(s)3047 Order on application for compensation, 3048 Order on application for compensation, 3056 Order on application for compensation, 3057 Order on application for compensation, 3058 Order on application for compensation). Entered on 5/9/2022 (Whitaker, Sheniqua) (Entered: 06/23/2022)
05/09/2022	3376 Judgment/Order from District court Judge Kinkeade, re: appeal on Civil Action number:3:21−CV−03086−K, DISMISSED (RE: related document(s)3047 Order on application for compensation, 3048 Order on application for compensation, 3056 Order on application for compensation, 3057 Order on application for compensation, 3058 Order on application for compensation). Entered on 5/9/2022 (Whitaker, Sheniqua) (Entered: 06/23/2022)
05/10/2022	3337 Certificate of service re: Stipulation and [Proposed] Agreed Order Authorizing Withdrawal of Claim Number 84 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3336 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Claim Number 84)* Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/12/2022	3339 Order approving stipulation and agreed order authorizing withdrawal of claim #84 (RE: related document(s)3336 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/12/2022 (Okafor, Marcey)
05/16/2022	3340 Withdrawal *(Notice of Withdrawal of the Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2940 Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* (related document(s):2857)). (Annable, Zachery)
05/16/2022	3341 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3256 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/16/2022	3342 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3341 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3256

	Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/9/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3341, (Annable, Zachery)
05/17/2022	3343 Certificate of service re: 1) Notice of Withdrawal of the Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502; 2) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 3) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3340 Withdrawal *(Notice of Withdrawal of the Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2940 Amended Motion to disallow claims *(Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502)* (related document(s):2857)). filed by Debtor Highland Capital Management, L.P., 3341 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3256 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3342 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3341 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3256 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/9/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3341, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/20/2022	3344 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Claim Number 136)* Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2022	3345 Certificate of service re: Stipulation and [Proposed] Agreed Order Authorizing Withdrawal of Claim Number 136 (Filed by Debtor Highland Capital Management, L.P.) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3344 Withdrawal of claim(s): *(Stipulation and Agreed Order Authorizing Withdrawal of Claim Number 136)* Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/25/2022	3346 Response unopposed to (related document(s): 3333 Motion for leave *to File a Lawsuit* (related document(s) 3066 Motion for leave, 3134 Response) filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/25/2022	3347 Adversary case 22−03052. ORDER REFERRING CASE 3:21−CV−1710−N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. . Fee Amount $350 (Attachments: # 1 Original Complaint # 2 Civil Cover Sheet # 3 Docket Sheet from 21−CV−1710). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
05/26/2022	3348 AMENDED Transcript regarding Hearing Held 01/14/2021 (173 pages) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 1753 Hearing held on 1/14/2021. (RE:

	related document(s)1590 Motion to pay Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) filed by Debtor Highland Capital Management, L.P. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Nonevidentiary hearing. Motion granted. Counsel to upload order.), 1754 Hearing held on 1/14/2021. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.), 1755 Hearing held on 1/14/2021. (RE: related document(s)1207 Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion resolved by approval of compromise and settlement. Counsel to upload order.)). Transcript to be made available to the public on 08/24/2022. (Rehling, Kathy) Modified to edit text on 5/26/2022 (Tello, Chris).
05/26/2022	3349 Certificate of service re: Reorganized Debtors (I) Response to Motion for Leave to File Lawsuit and (II) Reservation of Rights Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3346 Response unopposed to (related document(s): 3333 Motion for leave *to File a Lawsuit* (related document(s) 3066 Motion for leave, 3134 Response) filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/27/2022	3350 Subpoena on BH Equities, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
06/01/2022	3351 Order approving stipulation and agreed order authorizing withdrawal of claim # 136 (RE: related document(s)3344 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/1/2022 (Okafor, Marcey)
06/01/2022	3352 Certificate of service re: Highland Capital Management L.P.s Notice of Subpoena Directed to BH Equities, LLC Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3350 Subpoena on BH Equities, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/07/2022	3353 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3341 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3256 Order on motion to extend/shorten time)). (Hayward, Melissa)
06/07/2022	3354 Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related doc. # 3341) Entered on 6/7/2022. (Okafor, Marcey)
06/07/2022	3377 DISTRICT COURT NOTICE OF APPEAL as to 37 Memorandum Opinion and Order,,, 38 Judgment, to the Fifth Circuit by NextPoint Advisors LP. (RE: related document(s)3076 Notice of appeal *of Order Granting Twenty−First and Final Fee Application of FTI Consulting, Inc.*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3058 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit Exh A to Notice of

	Appeal), 3077 Notice of appeal *Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP*. Fee Amount $298 filed by Interested Party NexPoint Real Estate Advisors, L.P. (RE: related document(s)3047 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal), 3078 Notice of appeal *Order Granting Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dore LLP*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3048 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal), 3079 Notice of appeal *of Order Granting Second Consolidated Monthly and Final Fee Application of Teneo Capital, LLC*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3056 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal), 3080 Notice of appeal *of Order Granting Twenty−First Monthly and Final Fee Application of Sidley Austin LLP*. Fee Amount $298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)3057 Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) USCA Case Number 22−10575 (Whitaker, Sheniqua) (Entered: 06/23/2022)
06/08/2022	3355 Withdrawal of claim(s): 172 and 203 Filed by Creditor Davis Deadman . (Rielly, Bill)
06/09/2022	3356 Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1568 Order (generic)). (Annable, Zachery)
06/09/2022	3357 Certificate of service re: Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3354 Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related doc. 3341) Entered on 6/7/2022.). (Kass, Albert)
06/10/2022	3358 Adversary case 22−03062. ORDER REFERRING CASE 3:21−CV−1169−N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by PCMG Trading Partners XXIII LP against Highland Capital Management, L.P. . Fee Amount $350 (Attachments: # 1 Original Complaint # 2 Civil Cover Sheet # 3 Docket Sheet from 21−CV−1169). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
06/10/2022	3359 Certificate of service re: Amended Stipulation and Proposed Scheduling Order Concerning Proof of Claim No. 146 Filed by HCRE Partners, LLC Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3356 Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1568 Order (generic)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/10/2022	3360 WITHDRAWN at #3421, Motion to allow claims *of Todd Travers as Timely Filed, or Alternatively, to Allow Late−Filed Proof of Claim* Filed by Creditor Todd Travers Objections due by 7/5/2022. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Proposed Order # 5 Service List) (Clontz, Megan) Modified on 7/29/2022 (Ecker, C.).
06/13/2022	3361 Stipulation by Highland Capital Management, L.P. and Todd Travers. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3360 Motion to allow claims *of Todd Travers as Timely Filed, or Alternatively, to Allow Late−Filed Proof of Claim*). (Annable, Zachery)

06/15/2022	3362 Certificate of service re: Certificate of Service *re: Stipulation Amending Response Date* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3361 Stipulation by Highland Capital Management, L.P. and Todd Travers. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3360 Motion to allow claims *of Todd Travers as Timely Filed, or Alternatively, to Allow Late−Filed Proof of Claim*). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/16/2022	3363 Subpoena on BH Equities, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
06/16/2022	3364 WITHDRAWN at #3413. Objection to claim(s) of Creditor(s) John F. Yang.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/18/2022. (Attachments: # 1 Exhibit A−−Proposed Order) (Annable, Zachery) MODIFIED text on 7/25/2022 (Ecker, C.).
06/16/2022	3365 Declaration re: *(Declaration of Gregory V. Demo in Support of the Reorganized Debtor's Objection to Proof of Claim No. 213 and Proof of Claim No. 144 Filed by John F. Yang)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3364 Objection to claim). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) (Annable, Zachery)
06/17/2022	3367 Stipulation by Highland Capital Management, L.P. and John F. Yang. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3364 Objection to claim). (Annable, Zachery)
06/21/2022	3368 Order approving amended stipulation and proposed scheduling order concerning proof of claim no. 146 filed by HCRE Partners, LLC (RE: related document(s)3356 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2022 (Okafor, Marcey)
06/21/2022	3369 Order approving stipulation amending response date between Debtor and Todd Travers (RE: related document(s)3361 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2022 (Okafor, Marcey) Modified text on 6/21/2022 (Okafor, Marcey).
06/21/2022	3370 Order approving stipulation amending response date betweend debtor and John F. Yang (RE: related document(s)3367 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2022 (Okafor, Marcey)
06/21/2022	3585 Hearing set (RE: related document(s)906 Objection to claim Hearing to be held on 11/1/2022 at 09:30 AM Dallas Judge Jernigan Ctrm for 906 Hearing on merits of HCRE claim. (Ellison, T.) (Entered: 10/26/2022)
06/22/2022	3371 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)3333 Motion for leave *to File a Lawsuit* (related document(s) 3066 Motion for leave, 3134 Response) Filed by Creditor The Dugaboy Investment Trust Objections due by 5/25/2022. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)) Responses due by 7/6/2022. (Ecker, C.)
06/22/2022	3372 Certificate of service re: Notice of Amended Subpoena, Objection to Proofs of Claim, and Declaration Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s)3363 Subpoena on BH Equities, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3364 Objection to claim(s) of Creditor(s) John F. Yang.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/18/2022. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P., 3365 Declaration re: *(Declaration of Gregory V. Demo in Support of the Reorganized Debtor's Objection to Proof of Claim No. 213 and Proof of Claim No. 144 Filed by John F. Yang)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3364 Objection to claim). (Attachments: # 1

	Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/22/2022	3373 Order authorizing the filing of a lawsuit by Dugaboy Investments Trust in New York (related document # 3333) Entered on 6/22/2022. (Okafor, Marcey)
06/24/2022	3378 Amended Notice of hearing filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (RE: related document(s)3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)). Hearing to be held on 8/4/2022 at 02:30 PM VIDEO CONFERENCE for 3001, (Montgomery, Paige)
06/24/2022	3379 Certificate of service re: Stipulation Amending Response Date Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3367 Stipulation by Highland Capital Management, L.P. and John F. Yang. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3364 Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/24/2022	3380 Certificate of service re: 1) Order Approving Amended Stipulation and Proposed Scheduling Order Concerning Proof of Claim No. 146 Filed by HCRE Partners, LLC; 2) Order Approving Stipulation Amending Response Date; and 3) Order Approving Stipulation Amending Response Date Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3368 Order approving amended stipulation and proposed scheduling order concerning proof of claim no. 146 filed by HCRE Partners, LLC (RE: related document(s)3356 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2022, 3369 Order approving stipulation amending response date between Debtor and Todd Travers (RE: related document(s)3361 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2022 (Okafor, Marcey) Modified text on 6/21/2022., 3370 Order approving stipulation amending response date betweend debtor and John F. Yang (RE: related document(s)3367 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2022). (Kass, Albert)
06/30/2022	3382 Motion for valuation*Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* Filed by Creditor The Dugaboy Investment Trust (Attachments: # 1 Exhibit A) (Draper, Douglas)
07/01/2022	3383 Subpoena on Barker Viggato LLP filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/05/2022	3384 Order denying application for administrative expenses filed by CPCM LLC (related document # 2868) Entered on 7/5/2022. (Okafor, Marcey)
07/05/2022	3385 Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/06/2022	3386 Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/06/2022	3387 Motion to extend time to Object to Claims Pursuant to Confirmed Chapter 11 Plan Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (Annable, Zachery)
07/06/2022	3388 Notice of hearing filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3387 Motion to extend time to Object to Claims Pursuant to Confirmed Chapter 11 Plan Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). Hearing to be held

	on 8/3/2022 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 3387, (Annable, Zachery)
07/06/2022	3389 Certificate of service re: Highland Capital Management L.P.s Notice of Subpoena Directed to Barker Viggato LLP Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3383 Subpoena on Barker Viggato LLP filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/06/2022	3390 Certificate of service re: Highland Capital Management, L.P.'s Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3385 Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/07/2022	3391 Notice *(Third Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/07/2022	3392 Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/07/2022	3393 Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/07/2022	3394 Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/07/2022	3395 Certificate of service re: (Amended) re Highland Capital Management, L.P.'s Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s)3385 Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3390 Certificate of service re: Highland Capital Management, L.P.'s Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3385 Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
07/07/2022	3396 Certificate of service re: 1) Highland Capital Management, L.P.s Amended Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC; 2) Reorganized Debtor and Claimant Trustee Joint Motion for Entry of an Order Further Extending the Claims Objection Deadline Pursuant to Confirmed Chapter 11 Plan by Which Reorganized Debtor May Object to Certain Claims; and 3) Notice of Hearing on Reorganized Debtor and Claimant Trustee Joint Motion for Entry of an Order Further Extending the Claims Objection Deadline Pursuant to Confirmed Chapter 11 Plan by Which Reorganized Debtor May Object to Certain Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3386 Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3387 Motion to extend time to Object to Claims Pursuant to Confirmed Chapter 11 Plan Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, 3388 Notice of hearing filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3387 Motion to extend time to Object to Claims Pursuant to Confirmed Chapter 11 Plan Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). Hearing to be held on 8/3/2022 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 3387, filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). (Kass, Albert)

07/08/2022	3398 Certificate of service re: Third Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3391 Notice *(Third Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/12/2022	3399 Certificate of service re: 1) Highland Capital Management L.P.s Notice of Subpoena to James Dondero; 2) Highland Capital Management L.P.s Notice of Subpoena to Matt McGraner; and 3) Highland Capital Management L.P.s Notice of Subpoena to Mark Patrick Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3392 Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3393 Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3394 Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/12/2022	3895 DISTRICT COURT Order: On 5/4/2021, the Fifth Circuit granted direct appeal in 21cv538. On 6/2/2021, direct appeal was also granted in 21cv539, 21cv546 and 21cv550 and the cases were consolidated for appeal purposes (see 5th Circuit Case No. 21−10449). Since the appeal to this Court is no longer relevant, these cases are administratively closed for statistical purposes without prejudice. (Ordered by Judge David C Godbey on 7/12/2022) (RE: related document(s)2000 Notice of docketing notice of appeal/record, 2001 Notice of docketing notice of appeal/record, 2002 Notice of docketing notice of appeal/record, 2008 Notice of docketing notice of appeal/record). Entered on 7/12/2022 (Whitaker, Sheniqua) (Entered: 07/28/2023)
07/13/2022	3400 Certificate of service re: Subpoena to Testify at a Deposition in Bankruptcy Case (or Adversary Proceeding) with Exhibit A filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3383 Subpoena). (Annable, Zachery)
07/14/2022	3401 Order vacating order denying motion for want of prosecution (RE: related document(s)3384 Order on application for administrative expenses). Entered on 7/14/2022 (Okafor, Marcey)
07/15/2022	3402 Motion to extend time to Respond to Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust (RE: related document(s)3382 Motion for valuation) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
07/18/2022	3403 Certificate of service re: Reorganized Debtors Unopposed Motion to Extend Time to Respond to Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3402 Motion to extend time to Respond to Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust (RE: related document(s)3382 Motion for valuation) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/19/2022	3404 Order granting Reorganized Debtor's 3402 Unopposed Motion and Extending Time Motion To Respond To Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust Entered on 7/19/2022. (Okafor, Marcey)
07/19/2022	3405 INCORRECT EVENT: Attorney to refile Support/supplemental document*Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support* filed by Interested Party James Dondero (RE: related document(s)2061 Brief). (Attachments: # 1 Appendix) (Lang, Michael) Modified on 7/20/2022 (Ecker, C.).
07/20/2022	3406 Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support Filed by Interested Party James Dondero (Attachments: # 1 Appendix Appendix) (Lang, Michael) Modified text on 7/21/2022

	(Ecker, C.).
07/21/2022	3407 Stipulation by Highland Capital Management, L.P. and Todd Travers. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3360 Motion to allow claims *of Todd Travers as Timely Filed, or Alternatively, to Allow Late−Filed Proof of Claim*). (Annable, Zachery)
07/21/2022	3408 WITHDRAWN at #3420. Motion to quash *depositions (Motion for Protection)* Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Gameros, Charles) MODIFIED text and terminated document on 7/28/2022 (Ecker, C.).
07/21/2022	3409 Chapter 11 Post−Confirmation Report for the Quarter Ending: 06/30/2022 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Global Notes to Post Confirmation Report) (Annable, Zachery)
07/21/2022	3410 Chapter 11 Post−Confirmation Report for the Quarter Ending: 06/30/2022 filed by Other Professional Highland Claimant Trust. (Attachments: # 1 Global Notes to Post Confirmation Report) (Annable, Zachery)
07/21/2022	3411 Certificate of service re: Order Granting Reorganized Debtors Unopposed Motion and Extending Time to Respond to Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3404 Order granting Reorganized Debtor's 3402 Unopposed Motion and Extending Time Motion To Respond To Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust Entered on 7/19/2022.). (Kass, Albert)
07/25/2022	3412 Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/25/2022	3413 Withdrawal *(Notice of Withdrawal of Reorganized Debtor's Objection to Proof of Claim No. 213 and Proof of Claim No. 144 Filed by John F. Yang)* Filed by Debtor Highland Capital Management, L.P. (related document(s)3364 Objection to claim(s) of Creditor(s) John F. Yang.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/18/2022. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Annable, Zachery)
07/25/2022	3414 Certificate of service re: Stipulation Further Amending Response Date Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3407 Stipulation by Highland Capital Management, L.P. and Todd Travers. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3360 Motion to allow claims *of Todd Travers as Timely Filed, or Alternatively, to Allow Late−Filed Proof of Claim*). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/27/2022	3415 Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/27/2022	3416 Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/27/2022	3417 Subpoena on Barker Viggato LLP filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/27/2022	3418 Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/27/2022	3419 Certificate of service re: 1) Highland Capital Management L.P.s Amended Notice of Subpoena to Mark Patrick; and 2) Notice of Withdrawal of Reorganized Debtors Objection to Proof of Claim No. 213 and Proof of Claim No. 144 Filed by John F. Yang Filed by

	Claims Agent Kurtzman Carson Consultants LLC (related document(s)3412 Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3413 Withdrawal *(Notice of Withdrawal of Reorganized Debtor's Objection to Proof of Claim No. 213 and Proof of Claim No. 144 Filed by John F. Yang)* Filed by Debtor Highland Capital Management, L.P. (related document(s)3364 Objection to claim(s) of Creditor(s) John F. Yang.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/18/2022. (Attachments: # 1 Exhibit A−−Proposed Order) filed by Debtor Highland Capital Management, L.P.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/27/2022	3420 Withdrawal *OF MOTION FOR PROTECTION* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)3408 Motion to quash *depositions (Motion for Protection)*). (Gameros, Charles)
07/28/2022	3421 Withdrawal filed by Creditor Todd Travers (RE: related document(s)3360 Motion to allow claims *of Todd Travers as Timely Filed, or Alternatively, to Allow Late−Filed Proof of Claim*). (Clontz, Megan)
08/01/2022	3422 Notice of hearing *on Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support* filed by Interested Party James Dondero (RE: related document(s)3406 Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support Filed by Interested Party James Dondero (Attachments: # 1 Appendix Appendix) (Lang, Michael) Modified text on 7/21/2022 (Ecker, C.).). Hearing to be held on 8/31/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3406, (Lang, Michael)
08/01/2022	3423 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3387 Motion to extend time to Object to Claims Pursuant to Confirmed Chapter 11 Plan). (Annable, Zachery)
08/01/2022	3424 Order granting 3387 Motion to extend to extend the claims objection deadline. Entered on 8/1/2022. (Ecker, C.)
08/01/2022	3425 Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3178 Motion by CLO Holdco, Ltd..). (Attachments: # 1 Exhibit 1 − Claim #133 # 2 Exhibit 2 − Claim #198 # 3 Exhibit 3 − Claim #254 # 4 Exhibit 4 − Second Amended and Restated Service Agreement, Dated January 1, 2017 between Highland Capital Management, L.P., and Charitable DAF Fund, L.P., Charitable DAF GP # 5 Exhibit 5 − Second Amended and Restated Advisory Agreement − # 6 Exhibit 6 − CLO HoldCo, Ltd. Register of Members # 7 Exhibit 7 − Highland Termination Letters − Services Agreement. # 8 Exhibit 8 − Highland Termination Letters − Advisory Agreement # 9 Exhibit 9 − Notice of Occurrence of Effective Date # 10 Exhibit 10 − John Morris Declaration in Support. # 11 Exhibit 11 − Motion for Entry of Order Approving Settlement) (Phillips, Louis)
08/02/2022	Adversary case 3:22−ap−3062 closed (Ecker, C.)
08/02/2022	3426 Certificate of service re: Various Documents Served on July 27, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3415 Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3416 Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3417 Subpoena on Barker Viggato LLP filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3418 Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/02/2022	3427 Certificate of service re: Order Granting Reorganized Debtor and Claimant Trustee Joint Motion and Further Extending the Claims Objection Deadline Pursuant to Confirmed

	Chapter 11 Plan by Which Reorganized Debtor May Object to Certain Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3424 Order granting 3387 Motion to extend to extend the claims objection deadline. Entered on 8/1/2022. (Ecker, C.)). (Kass, Albert)
08/03/2022	3428 Amended Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3425 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 − Claim #133 # 2 Exhibit 2 − Claim #198 # 3 Exhibit 3 − Claim #254 # 4 Exhibit 4 − Second Amended and Restated Service Agreement, Dated January 1, 2017 between Highland Capital Management, L.P., and Charitable DAF Fund, L.P., Charitable DAF GP # 5 Exhibit 5 − Second Amended and Restated Advisory Agreement # 6 Exhibit 6 − CLO HoldCo, Ltd. Register of Members # 7 Exhibit 7 − Highland Termination Letters − Services Agreement # 8 Exhibit 8 − Highland Termination Letters − Advisory Agreement # 9 Exhibit 9 − Notice of Occurrence of Effective Date # 10 Exhibit 10 − Declaration in Support of Motion for Entry of Order Approving Settlement with Exhibits # 11 Exhibit 11 − Motion for Entry of Order Approving Settlement) (Phillips, Louis)
08/03/2022	3429 BNC certificate of mailing − PDF document. (RE: related document(s)3424 Order granting 3387 Motion to extend to extend the claims objection deadline. Entered on 8/1/2022. (Ecker, C.)) No. of Notices: 1. Notice Date 08/03/2022. (Admin.)
08/04/2022	3431 Hearing held on 8/4/2022. (RE: related document(s)3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A),(APPEARANCES: L. Phillips and A. Hurt for CLO Holdco; R. Loigman, D. Newman, and A Lawrence for Litigation Trustee. Evidentiary hearing. Objection sustained. Mr. Loigman to submit order consistent with the courts ruling)3178 Motion to ratify second amended proof of claim No. 198 by CLO Holdco, Ltd. . (RE: related document(s)3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)) (Ecker, C.)) (APPEARANCES: L. Phillips and A. Hurt for Movant/CLO Holdco; R. Loigman, D. Newman, and A Lawrence for Litigation Trustee. Evidentiary hearing. Motion denied. Mr. Loigman to submit order consistent with the courts ruling.) (Smith, C) (Entered: 08/05/2022)
08/05/2022	3430 Request for transcript regarding a hearing held on 8/4/2022. The requested turn−around time is daily (Jeng, Hawaii)
08/05/2022	3432 Omnibus Objection to claim(s) of Creditor(s) Internal Revenue Service.. Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/05/2022	3433 Notice of hearing *(Notice of Hearing on Reorganized Debtor's Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No−Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3432 Omnibus Objection to claim(s) of Creditor(s) Internal Revenue Service.. Filed by Debtor Highland Capital Management, L.P..). Hearing to be held on 10/11/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3432, (Annable, Zachery)
08/05/2022	3434 Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3368 Order (generic)). (Annable, Zachery)
08/07/2022	3435 Transcript regarding Hearing Held 08/04/2022 (71 pages) RE: Omnibus Objection to Claims (3001); Motion to Ratify (3178). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/7/2022. Until that time

	the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3431 Hearing held on 8/4/2022. (RE: related document(s)3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A),(APPEARANCES: L. Phillips and A. Hurt for CLO Holdco; R. Loigman, D. Newman, and A Lawrence for Litigation Trustee. Evidentiary hearing. Objection sustained. Mr. Loigman to submit order consistent with the courts ruling)3178 Motion to ratify second amended proof of claim No. 198 by CLO Holdco, Ltd.. (RE: related document(s)3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)) (Ecker, C.)) (APPEARANCES: L. Phillips and A. Hurt for Movant/CLO Holdco; R. Loigman, D. Newman, and A Lawrence for Litigation Trustee. Evidentiary hearing. Motion denied. Mr. Loigman to submit order consistent with the courts ruling.)). Transcript to be made available to the public on 11/7/2022. (Rehling, Kathy)
08/08/2022	3436 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3354 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/08/2022	3437 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3436 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3354 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/8/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3436, (Annable, Zachery)
08/08/2022	3710 DISTRICT COURT ORDER granting 12 Motion to Dismiss Appeal as Moot. This appeal is DISMISSED for lack of jurisdiction. (Ordered by Judge Karen Gren Scholer on 8/8/2022) re: appeal on Civil Action number:3:21−cv−02268−S, DISMISSED (RE: related document(s)2812 Order on motion to compel). Entered on 8/8/2022 (Whitaker, Sheniqua) (Entered: 03/31/2023)
08/09/2022	3438 Order approving second amended stipulation and proposed scheduling order concerning proof of claim no. 146 (RE: related document(s)3434 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/9/2022 (Ecker, C.)
08/09/2022	3439 Certificate of service re: 1) Reorganized Debtors Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No−Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service ; 2) Notice of Hearing on Reorganized Debtors Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No−Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service; and 3) Second Amended Stipulation and Proposed Scheduling Order Concerning Proof of Claim No. 146 Filed by HCRE Partners, LLC Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3432 Omnibus Objection to claim(s) of Creditor(s) Internal Revenue Service.. Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3433 Notice of hearing *(Notice of Hearing on Reorganized Debtor's Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No−Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3432 Omnibus Objection to claim(s) of Creditor(s) Internal Revenue Service.. Filed by Debtor Highland Capital Management, L.P..). Hearing to be held on 10/11/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3432, filed by Debtor Highland Capital Management, L.P., 3434 Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital

	Management, L.P. (RE: related document(s)3368 Order (generic)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/09/2022	3440 Certificate of service re: 1) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3436 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3354 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3437 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3436 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3354 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/8/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3436, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/10/2022	3441 Certificate of service re: Order Approving Second Amended Stipulation and Proposed Scheduling Order Concerning Proof of Claim No. 146 Filed by HCRE Partners, LLC Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3438 Order approving second amended stipulation and proposed scheduling order concerning proof of claim no. 146 (RE: related document(s)3434 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/9/2022 (Ecker, C.)). (Kass, Albert)
08/12/2022	3442 INCORRECT EVENT: See #344 for correction 3Withdrawal *(Motion to Withdraw Proof of Claim 146)* filed by Creditor HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) (RE: related document(s)906 Objection to claim). (Gameros, Charles) Modified on 8/15/2022 (Ecker, C.).
08/12/2022	3443 Motion to withdraw proof of claim #146 by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) . (Ecker, C.) (Entered: 08/15/2022)
08/15/2022	3444 Response opposed to (related document(s): 3406 Motion for leave *Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support* filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Annable, Zachery)
08/15/2022	3445 Exhibit List *(Appendix in Support of Highland Capital Management, L.P.'s Objection to Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 USC 455 and Brief in Support)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3444 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73 # 74 Exhibit 74 # 75 Exhibit 75 # 76 Exhibit 76 # 77 Exhibit 77 # 78 Exhibit 78 # 79 Exhibit 79 # 80 Exhibit 80 # 81 Exhibit 81 # 82 Exhibit 82 # 83 Index 83 # 84 Exhibit 84 # 85 Exhibit 85 # 86 Exhibit

	86) (Annable, Zachery)
08/15/2022	3446 Motion to strike (related document(s): 3406 Motion for leave *Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support* filed by Interested Party James Dondero) *(Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties' Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers' Depositions)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/15/2022	3447 Declaration re: *(Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties' Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers' Depositions)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3446 Motion to strike (related document(s): 3406 Motion for leave *Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support* filed by Interested Party James Dondero) *(Highland Capi). (Annable, Zachery)*
08/15/2022	3448 Notice of hearing filed by Creditor HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) (RE: related document(s)3443 Motion to withdraw proof of claim #146 by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). (Ecker, C.)). Hearing to be held on 9/12/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3443, (Gameros, Charles)
08/15/2022	3449 Motion to compel Lawyers' Depositions. Filed by Debtor Highland Capital Management, L.P. (Ecker, C.) (Entered: 08/16/2022)
08/16/2022	3450 Motion to withdraw as attorney (Bonds Ellis Eppich Schafer Jones LLP as attorneys for Mr. Dondero) Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order) (Taylor, Clay)
08/16/2022	3451 Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/16/2022	3452 Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/16/2022	3453 Notice to take deposition of NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/16/2022	3454 Motion for expedited hearing(related documents 3446 Motion to strike document, 3449 Motion to compel) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/16/2022	3455 Certificate of service re: Various Documents Served on August 15, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3444 Response opposed to (related document(s): 3406 Motion for leave *Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support* filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., 3445 Exhibit List *(Appendix in Support of Highland Capital Management, L.P.'s Objection to Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 USC 455 and Brief in Support)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3444 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26

	# 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73 # 74 Exhibit 74 # 75 Exhibit 75 # 76 Exhibit 76 # 77 Exhibit 77 # 78 Exhibit 78 # 79 Exhibit 79 # 80 Exhibit 80 # 81 Exhibit 81 # 82 Exhibit 82 # 83 Index 83 # 84 Exhibit 84 # 85 Exhibit 85 # 86 Exhibit 86) filed by Debtor Highland Capital Management, L.P., 3446 Motion to strike (related document(s): 3406 Motion for leave *Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support* filed by Interested Party James Dondero) *(Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties' Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers' Depositions)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3447 Declaration re: *(Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties' Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers' Depositions)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3446 Motion to strike (related document(s): 3406 Motion for leave *Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support* filed by Interested Party James Dondero) *(Highland Capi). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*
08/17/2022	3456 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3446 Motion to strike (related document(s): 3406 Motion for leave *Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support* filed by Interested Party James Dondero) *(Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties' Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers' Depositions)* Filed by Debtor Highland Capital Management, L.P., 3449 Motion to compel Lawyers' Depositions. Filed by Debtor Highland Capital Management, L.P. (Ecker, C.)). Hearing to be held on 8/31/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3446 and for 3449, (Annable, Zachery)
08/17/2022	3457 Order denying motion motion to ratify second amended proof of claim and expunging claim (related document # 3178) Entered on 8/17/2022. (Ecker, C.)
08/17/2022	3458 Order granting motion to withdraw as attorney (attorney Clay M. Taylor; Bryan C. Assink; James Robertson Clarke; William R. Howell, Jr. and John Y. Bonds, III terminated). (related document 3450) Entered on 8/17/2022. (Ecker, C.) MODIFIED on 8/17/2022 (Ecker, C.).
08/17/2022	3459 Order granting motion for expedited hearing (Related Doc# 3454)(document set for hearing: 3446 Motion to strike document, 3449 Motion to compel) Hearing to be held on 8/31/2022 at 09:30 AM Dallas Judge Jernigan Ctrm for 3446 and for 3449, Entered on 8/17/2022. (Ecker, C.)
08/17/2022	3460 Certificate of service re: Various Documents Served on August 16, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3451 Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3452 Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3453 Notice to take deposition of NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3454 Motion for expedited hearing(related documents 3446 Motion to strike document, 3449 Motion to compel) Filed by Debtor Highland Capital

	Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/18/2022	3461 Certificate of service re: 1) Notice of Hearing re: 1) Highland Capital Management, L.P.s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers Depositions; and 2) Highland Capital Management, L.P.s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers Depositions; and 2) Order Granting Highland Capital Management, L.P.s Unopposed Motion to Expedite Hearings on Motions to (A) Strike Certain Letters from the Record [Docket No. 3446], or, (B) Alternatively, to Compel the Lawyers Depositions [Docket No. 3449] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3456 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3446 Motion to strike (related document(s): 3406 Motion for leave *Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support* filed by Interested Party James Dondero) *(Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties' Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers' Depositions)* Filed by Debtor Highland Capital Management, L.P., 3449 Motion to compel Lawyers' Depositions. Filed by Debtor Highland Capital Management, L.P. (Ecker, C.)). Hearing to be held on 8/31/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3446 and for 3449, filed by Debtor Highland Capital Management, L.P., 3459 Order granting motion for expedited hearing (Related Doc3454)(document set for hearing: 3446 Motion to strike document, 3449 Motion to compel) Hearing to be held on 8/31/2022 at 09:30 AM Dallas Judge Jernigan Ctrm for 3446 and for 3449, Entered on 8/17/2022. (Ecker, C.)). (Kass, Albert)
08/19/2022	3462 Order converting the August 31, 2022 at 9:30 AM Hearing on (A) The motion for final appealable order and supplement to motion to recuse and (B) related motions to strike and compel to a preliminary status/scheduling conference (RE: related document(s)3406 Motion for leave filed by Interested Party James Dondero, 3446 Motion to strike document filed by Debtor Highland Capital Management, L.P., 3449 Motion to compel filed by Debtor Highland Capital Management, L.P.). Entered on 8/19/2022 (Ecker, C.)
08/22/2022	3463 Reply to (related document(s): 3444 Response filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Lang, Michael)
08/23/2022	3464 Motion to quash *and for Protection* (related documents 3451 Subpoena filed by Debtor Highland Capital Management, L.P., 3452 Subpoena filed by Debtor Highland Capital Management, L.P., 3453 Notice to take deposition filed by Debtor Highland Capital Management, L.P.) Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Gameros, Charles)
08/24/2022	3465 Response opposed to (related document(s): 3382 Motion for valuation*Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Annable, Zachery)
08/24/2022	3466 Amended Notice of hearing filed by Interested Party James Dondero (RE: related document(s)3406 Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support Filed by Interested Party James Dondero (Attachments: # 1 Appendix Appendix) (Lang, Michael) Modified text on 7/21/2022 (Ecker, C.)., 3446 Motion to strike (related document(s): 3406 Motion for leave *Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support* filed by Interested Party James Dondero) *(Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties' Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers' Depositions)* Filed by Debtor Highland Capital Management, L.P., 3449 Motion to compel Lawyers' Depositions. Filed by Debtor Highland Capital Management, L.P. (Ecker, C.), 3462 Order converting the August 31, 2022 at 9:30 AM

	Hearing on (A) The motion for final appealable order and supplement to motion to recuse and (B) related motions to strike and compel to a preliminary status/scheduling conference (RE: related document(s)3406 Motion for leave filed by Interested Party James Dondero, 3446 Motion to strike document filed by Debtor Highland Capital Management, L.P., 3449 Motion to compel filed by Debtor Highland Capital Management, L.P.). Entered on 8/19/2022 (Ecker, C.)). Status Conference to be held on 8/31/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga. (Lang, Michael)
08/24/2022	3467 Response unopposed to (related document(s): 3382 Motion for valuation*Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* filed by Creditor The Dugaboy Investment Trust) filed by Creditor Hunter Mountain Investment Trust. (Phillips, Louis)
08/24/2022	3711 DISTRICT COURT NOTICE OF APPEAL as to 21 Order on Motion to Dismiss to the Fifth Circuit by The Dugaboy Investment Trust. (RE: related document(s)2841 First Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2840 Notice of appeal). (Attachments: # 1 Exhibit A)). USCA Case Number 22−10831. Civil case 3:21−cv−02268−S (Whitaker, Sheniqua) (Entered: 03/31/2023)
08/25/2022	3468 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)) Responses due by 9/1/2022. (Ecker, C.)
08/25/2022	3469 Certificate of service re: Reorganized Debtors Objection to Motion for Determination of Value Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3465 Response opposed to (related document(s): 3382 Motion for valuation*Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/26/2022	3470 Amended motion for final appealable order and proposed supplement to the record filed by Interested Party James Dondero (RE: related document(s)3406 Motion for leave *Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support*). (Attachments: # 1 Appendix) (Lang, Michael) MODIFIED text to match PDF on 9/1/2022 (Ecker, C.).
08/26/2022	3471 Stipulation by James Dondero and Highland Capital Management, L.P.. filed by Interested Party James Dondero (RE: related document(s)3446 Motion to strike (related document(s): 3406 Motion for leave *Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support* filed by Interested Party James Dondero) *(Highland Capi, 3449 Motion to compel Lawyers' Depositions.). (Lang, Michael)*
08/27/2022	3472 BNC certificate of mailing. (RE: related document(s)3468 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)3001 Omnibus Objection to claim(s) of Creditor(s) Jean−Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)) Responses due by 9/1/2022. (Ecker, C.)) No. of Notices: 1. Notice Date 08/27/2022. (Admin.)
08/30/2022	3473 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3436 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related

	document(s)3354 Order on motion to extend/shorten time)). (Annable, Zachery)
08/30/2022	3474 Order granting 3436 Motion Further Extending the Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3354 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery Entered on 8/30/2022. (Okafor, Marcey)
08/31/2022	3475 Notice of appeal . Fee Amount $298 filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3457 Order on motion (generic)). Appellant Designation due by 09/14/2022. (Phillips, Louis)
08/31/2022	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number A29787221, amount $ 298.00 (re: Doc# 3475). (U.S. Treasury)
08/31/2022	3476 Request for transcript regarding a hearing held on 8/31/2022. The requested turn−around time is 7−day expedited. (Edmond, Michael)
08/31/2022	3477 Request for transcript, regarding a hearing held on 8/31/2022. The requested turn−around time is hourly. (Edmond, Michael) Modified on 8/31/2022 (Edmond, Michael).
08/31/2022	3478 Hearing held on 8/31/2022. (RE: related document(s)3406 Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support, filed by Interested Party James Dondero.) (Appearances: M. Lang for Movants; J. Pomeranz for Reorganized Debtor. Nonevidentiary status conference. Based on discussions with counsel at status conference as to what actual relief is being sought, the motion (even as currently amended) will be denied as procedurally defective. This is without prejudice to movants filing a new motion pursuant to Rule 54 seeking the simple relief of having the last sentence of this courts 3/23/21 order deleted, or a new motion to recuse, if Movants have any desire to supplement the record. Court to issue order.) (Edmond, Michael)
09/01/2022	3479 Order denying amended motion of James Dondero, Highland Capital Management Fund Advisors, L.P., Nexpoint Advisors, L.P. The Dugaboy Investment Trust Get Good Trust and, Nexpoint Real Estate Partners, LLC, F/K/A HCRE Partners, A Delaware Limited Liability Company for final appealable order and supplement to motion to recuse pursuant to 28 U.S.C. Section 455 (RE: related document(s)3470 Brief filed by Interested Party James Dondero). Entered on 9/1/2022 (Okafor, Marcey)
09/01/2022	3480 Transcript regarding Hearing Held 08/31/2022 (27 pages) RE: Status Conference Re: Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 (#3406). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/30/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3478 Hearing held on 8/31/2022. (RE: related document(s)3406 Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support, filed by Interested Party James Dondero.) (Appearances: M. Lang for Movants; J. Pomeranz for Reorganized Debtor. Nonevidentiary status conference. Based on discussions with counsel at status conference as to what actual relief is being sought, the motion (even as currently amended) will be denied as procedurally defective. This is without prejudice to movants filing a new motion pursuant to Rule 54 seeking the simple relief of having the last sentence of this courts 3/23/21 order deleted, or a new motion to recuse, if Movants have any desire to supplement the record. Court to issue order.)). Transcript to be made available to the public on 11/30/2022. (Rehling, Kathy)
09/01/2022	

	3481 Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/01/2022	3482 Declaration re: *(Declaration of John A. Morris in Support of Motion for an Order Approving Highland's Entry into a Settlement Agreement and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3481 Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd..). (Attachments: # 1 Exhibit 1−−Settlement Agreement) (Annable, Zachery)
09/02/2022	3483 Response opposed to (related document(s): 3464 Motion to quash *and for Protection* (related documents 3451 Subpoena filed by Debtor Highland Capital Management, L.P., 3452 Subpoena filed by Debtor Highland Capital Management, L.P., 3453 Notice to take deposition filed by Debtor filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/02/2022	3484 Motion to compel re: discovery Depositions *(Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/02/2022	3485 Declaration re: *(Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3483 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) (Annable, Zachery)
09/02/2022	3486 Declaration re: *(Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3484 Motion to compel re: discovery Depositions *(Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) (Annable, Zachery)
09/02/2022	3487 Response opposed to (related document(s): 3443 Motion by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). filed by Creditor HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/02/2022	3488 Declaration re: *(Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3487 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16) (Annable, Zachery)
09/02/2022	3489 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3481 Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/4/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3481, (Annable, Zachery)

09/02/2022	3490 Motion for expedited hearing(related documents 3484 Motion to compel re: discovery) *(Unopposed Motion for Expedited Hearing on Reorganized Debtor's Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/06/2022	3491 Clerk's correspondence requesting to amend notice of appeal from attorney for creditor. (RE: related document(s)3475 Notice of appeal . Fee Amount $298 filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3457 Order on motion (generic)). Appellant Designation due by 09/14/2022.) Responses due by 9/8/2022. (Whitaker, Sheniqua)
09/06/2022	3492 Certificate of service re: Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3474 Order granting 3436 Motion Further Extending the Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3354 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery Entered on 8/30/2022.). (Kass, Albert)
09/06/2022	3493 Certificate of service re: 1) Motion for an Order Approving Highlands Entry Into a Settlement Agreement and Authorizing Actions Consistent Therewith ; and 2) Declaration of John A. Morris in Support of Motion for an Order Approving Highlands Entry Into a Settlement Agreement and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3481 Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd.. Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3482 Declaration re: *(Declaration of John A. Morris in Support of Motion for an Order Approving Highland's Entry into a Settlement Agreement and Authorizing Actions Consistent Therewith)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3481 Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd..). (Attachments: # 1 Exhibit 1−−Settlement Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/06/2022	3494 Certificate of service re: Various Documents Served on September 2, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3483 Response opposed to (related document(s): 3464 Motion to quash *and for Protection* (related documents 3451 Subpoena filed by Debtor Highland Capital Management, L.P., 3452 Subpoena filed by Debtor Highland Capital Management, L.P., 3453 Notice to take deposition filed by Debtor filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3484 Motion to compel re: discovery Depositions *(Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3485 Declaration re: *(Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3483 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., 3486 Declaration re: *(Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3484 Motion to compel re: discovery Depositions *(Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)*).

	(Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., 3487 Response opposed to (related document(s): 3443 Motion by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). filed by Creditor HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3488 Declaration re: *(Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3487 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16) filed by Debtor Highland Capital Management, L.P., 3489 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3481 Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/4/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3481, filed by Debtor Highland Capital Management, L.P., 3490 Motion for expedited hearing(related documents 3484 Motion to compel re: discovery) *(Unopposed Motion for Expedited Hearing on Reorganized Debtor's Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/07/2022	3495 Amended notice of appeal filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3475 Notice of appeal). (Attachments: # 1 Exhibit A − Order Denying Motion to Ratify Second Amended Proof of Claim and Expunging Claim # 2 Exhibit B Notice of Appeal)(Phillips, Louis)
09/07/2022	3497 Certificate of mailing regarding appeal (RE: related document(s)3495 Amended notice of appeal filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3475 Notice of appeal). (Attachments: # 1 Exhibit A − Order Denying Motion to Ratify Second Amended Proof of Claim and Expunging Claim # 2 Exhibit B Notice of Appeal)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
09/07/2022	3498 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)3475 Notice of appeal .filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3457 Order on motion (generic)). (Whitaker, Sheniqua)
09/07/2022	3499 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3484 Motion to compel re: discovery Depositions *(Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/12/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3484, (Annable, Zachery)
09/07/2022	3500 Certificate of service re: (Amended) re Various Documents Served on September 2, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3483 Response opposed to (related document(s): 3464 Motion to quash *and for Protection* (related documents 3451 Subpoena filed by Debtor Highland Capital Management, L.P., 3452 Subpoena filed by Debtor Highland Capital Management, L.P., 3453 Notice to take deposition filed by Debtor filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3484 Motion to compel re: discovery Depositions *(Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3485 Declaration re: *(Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3483 Response).

(Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., 3486 Declaration re: *(Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3484 Motion to compel re: discovery Depositions *(Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., 3487 Response opposed to (related document(s): 3443 Motion by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). filed by Creditor HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3488 Declaration re: *(Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3487 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16) filed by Debtor Highland Capital Management, L.P., 3489 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3481 Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/4/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3481, filed by Debtor Highland Capital Management, L.P., 3490 Motion for expedited hearing(related documents 3484 Motion to compel re: discovery) *(Unopposed Motion for Expedited Hearing on Reorganized Debtor's Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3494 Certificate of service re: Various Documents Served on September 2, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3483 Response opposed to (related document(s): 3464 Motion to quash *and for Protection* (related documents 3451 Subpoena filed by Debtor Highland Capital Management, L.P., 3452 Subpoena filed by Debtor Highland Capital Management, L.P., 3453 Notice to take deposition filed by Debtor filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3484 Motion to compel re: discovery Depositions *(Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3485 Declaration re: *(Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3483 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., 3486 Declaration re: *(Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3484 Motion to compel re: discovery Depositions *(Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., 3487 Response opposed to (related document(s): 3443 Motion by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). filed by Creditor HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3488 Declaration re: *(Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3487 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit

	10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16) filed by Debtor Highland Capital Management, L.P., 3489 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3481 Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/4/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3481, filed by Debtor Highland Capital Management, L.P., 3490 Motion for expedited hearing(related documents 3484 Motion to compel re: discovery) *(Unopposed Motion for Expedited Hearing on Reorganized Debtor's Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
09/07/2022	3501 Order granting unopposed motion for expedited hearing on Reorganized Debtor's cross−motion to enforce subpoenas and to compel a deposition (Related Doc# 3490)(document set for hearing: 3484 Motion to compel re: discovery) Hearing to be held on 9/12/2022 at 09:30 AM Dallas Judge Jernigan Ctrm for 3484, Entered on 9/7/2022. (Okafor, Marcey)
09/08/2022	3502 Certificate of service re: Notice of Hearing re: Motion to Compel re: Discovery Depositions Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3499 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3484 Motion to compel re: discovery Depositions *(Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)* Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/12/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3484, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/09/2022	3503 Motion for leave *(Motion to Conform Plan)* (related document(s) 1943 Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/09/2022	3504 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3503 Motion for leave *(Motion to Conform Plan)* (related document(s) 1943 Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2022 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 3503, (Annable, Zachery)
09/09/2022	3505 Reply to (related document(s): 3487 Response filed by Debtor Highland Capital Management, L.P.) *MOTION TO WITHDRAW PROOF OF CLAIM* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
09/09/2022	3506 Reply to (related document(s): 3483 Response filed by Debtor Highland Capital Management, L.P.) *MOTION TO QUASH AND FOR PROTECTION* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
09/09/2022	3507 Motion for leave *to File Proceeding* Filed by Creditor CLO Holdco, Ltd. Objections due by 9/30/2022. (Attachments: # 1 Exhibit A − Affidavit in support of the Application with Exhibits (1 of 2) # 2 Exhibit A − Affidavit in support of the Application with Exhibits (2 of 2)) (Phillips, Louis)
09/09/2022	3508 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3443 Motion by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)., 3484 Motion to compel re: discovery Depositions *(Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) (Annable, Zachery)

09/12/2022	3509 Request for transcript regarding a hearing held on 9/12/2022. The requested turn−around time is hourly. (Edmond, Michael)
09/12/2022	3510 Hearing held on 9/12/2022. (RE: related document(s)3443 Motion to withdraw proof of claim #146 by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). (Appearances: C. Gameros for HCRE; J. Morris for Reorganized Debtor. Evidentiary hearing. Motion denied. Counsel to upload order.) (Edmond, Michael)
09/12/2022	3511 Hearing held on 9/12/2022. (RE: related document(s)3484 Motion to compel re: discovery Depositions, (Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition), filed by Debtor Highland Capital Management, L.P.) (Appearances: C. Gameros for HCRE; J. Morris for Reorganized Debtor. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael)
09/12/2022	3512 Court admitted exhibits date of hearing September 12, 2022 (RE: related document(s)3484 Motion to compel re: discovery Depositions (Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition), filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEFENDANT'S EXHIBIT'S #1 THROUGH #6 THAT APPEAR AT DOC. #3485 & #3486, OFFERED BY JOHN A. MORRIS.) (Edmond, Michael)
09/12/2022	3513 Court admitted exhibits date of hearing September 12, 2022 (RE: related document(s)3443 Motion to withdraw proof of claim #146 by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), (COURT ADMITTED DEFENDANT'S EXHIBIT'S #1 THROUGH #6 THAT APPEAR AT DOC. #3485 & #3486, OFFERED BY JOHN A. MORRIS.) (Edmond, Michael).
09/12/2022	3514 Court admitted exhibits date of hearing September 12, 2022 (RE: related document(s)3484 Motion to compel re: discovery Depositions, (Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition), filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DECLARATION OF JOHN A. MORRIS; & PLAINTIFF'S EXHIBIT'S #1 THROUGH #16, THAT APPEAR AT DOC. #3488; OFFERED BY JOHN A. MORRIS) (Edmond, Michael)
09/13/2022	3515 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3503 Motion for leave *(Motion to Conform Plan)* (related document(s) 1943 Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/26/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3503, (Annable, Zachery)
09/13/2022	3516 Certificate of service re: 1) Motion to Conform Plan; 2) Notice of Hearing re: Motion to Conform Plan; and 3) Highland Capital Management, L.P.s Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on September 12, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3503 Motion for leave *(Motion to Conform Plan)* (related document(s) 1943 Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3504 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3503 Motion for leave *(Motion to Conform Plan)* (related document(s) 1943 Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2022 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 3503, filed by Debtor Highland Capital Management, L.P., 3508 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3443 Motion by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)., 3484 Motion to compel re: discovery Depositions *(Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) filed by Debtor Highland Capital

	Management, L.P.). (Kass, Albert)
09/13/2022	3517 Certificate of service re: Amended Notice of Hearing re: Motion to Conform Plan Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3515 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3503 Motion for leave *(Motion to Conform Plan)* (related document(s) 1943 Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/26/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3503, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/14/2022	3518 Order denying motion to withdraw proof of claim as moot (related document # 3443) Entered on 9/14/2022. (Okafor, Marcey)
09/14/2022	3519 Transcript regarding Hearing Held 9/12/22 RE: MOTION TO WITHDRAW PROOF OF CLAIM #146 BY HCRE PARTNERS, LLC (3443) AND REORGANIZED DEBTOR'S (A) OBJECTION TO MOTION TO QUASH AND FOR PROTECTION [DOCKET NO. 3464] AND (B) CROSS−MOTION TO ENFORCE SUBPOENAS TO ENFORCE SUBPOENAS AND TO COMPEL A DEPOSITION (3484). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 12/13/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Dipti Patel/Liberty Transcripts, Telephone number 847−848−4907. (RE: related document(s) 3510 Hearing held on 9/12/2022. (RE: related document(s)3443 Motion to withdraw proof of claim #146 by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). (Appearances: C. Gameros for HCRE; J. Morris for Reorganized Debtor. Evidentiary hearing. Motion denied. Counsel to upload order.), 3511 Hearing held on 9/12/2022. (RE: related document(s)3484 Motion to compel re: discovery Depositions, (Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition), filed by Debtor Highland Capital Management, L.P.) (Appearances: C. Gameros for HCRE; J. Morris for Reorganized Debtor. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 12/13/2022. (Patel, Dipti)
09/14/2022	3520 Motion to quash *(The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order)* Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/14/2022	3521 Declaration re: *(Declaration of John A. Morris in Support of the Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3520 Motion to quash *(The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) (Annable, Zachery)
09/14/2022	3522 Order denying motion to quash and for protection as moot (related document # 3464) Entered on 9/14/2022. (Okafor, Marcey)
09/14/2022	3523 Order denying cross−motion to enforce subpoenas and compel a deposition as moot (related document # 3484) Entered on 9/14/2022. (Okafor, Marcey)
09/14/2022	3524 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3475 Notice of appeal, 3495 Amended notice of appeal). Appellee designation due by 09/28/2022. (Phillips, Louis)
09/15/2022	3525 Amended Order denying motion to withdraw proof of claim (related document # 3443) Entered on 9/15/2022. (Okafor, Marcey)

09/15/2022	3526 Certificate of service re: 1) The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order; and 2) Declaration of John A. Morris in Support of the Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3520 Motion to quash *(The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order)* Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3521 Declaration re: *(Declaration of John A. Morris in Support of the Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3520 Motion to quash *(The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/15/2022	3527 Notice of docketing notice of appeal. Civil Action Number: 3:22−cv−02051−B. (RE: related document(s)3495 Amended notice of appeal filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3475 Notice of appeal). (Attachments: # 1 Exhibit A − Order Denying Motion to Ratify Second Amended Proof of Claim and Expunging Claim # 2 Exhibit B Notice of Appeal)) (Whitaker, Sheniqua) (Entered: 09/16/2022)
09/19/2022	3528 Notice to take deposition of Representative of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
09/19/2022	3529 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
09/19/2022	3530 Notice to take deposition of Matt McGraner filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
09/20/2022	3531 Stipulation by Highland Capital Management, L.P. and Department of the Treasury, Internal Revenue Service. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3432 Objection to claim). (Annable, Zachery)
09/20/2022	3532 Order approving stipulation authorizing the resolution of proofs of claim 32, 173, 179, 195, 248, 250, 252, and 255 filed by The Department of the Treasury, Internal Revenue Service (RE: related document(s)3531 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/20/2022 (Okafor, Marcey)
09/21/2022	3533 Amended Motion for valuation*Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* Filed by Creditor The Dugaboy Investment Trust (Draper, Douglas) Related document(s) 3382 Motion for valuation*Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* filed by Creditor The Dugaboy Investment Trust. Modified to create linkage on 9/22/2022 (Ecker, C.).
09/21/2022	3534 Certificate of service re: Various Documents Served on September 20, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3528 Notice to take deposition of Representative of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3529 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3530 Notice to take deposition of Matt McGraner filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3531 Stipulation by Highland Capital Management, L.P. and Department of the Treasury, Internal Revenue Service. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3432 Objection to claim). filed by Debtor Highland Capital Management, L.P., 3532 Order approving stipulation authorizing the resolution of proofs of claim 32, 173, 179, 195, 248,

	250, 252, and 255 filed by The Department of the Treasury, Internal Revenue Service (RE: related document(s)3531 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/20/2022). (Kass, Albert)
09/22/2022	3535 Support/supplemental document*Exhibit A* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3533 Supplemental Motion for valuation*Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust*). (Draper, Douglas)
09/22/2022	3563 DISTRICT COURT Memorandum of Opinion and Order from District court Judge Starr, re: appeal on Civil Action number:3:21−cv−01295−X, AFFIRMED (RE: related document(s)2389 Order on motion to compromise controversy). Entered on 9/22/2022 (Whitaker, Sheniqua) (Entered: 10/13/2022)
09/26/2022	3536 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3481 Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd..). (Annable, Zachery)
09/26/2022	3537 Order granting motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd. Filed by Debtor Highland Capital Management, L.P (related document # 3481) Entered on 9/26/2022. (Okafor, Marcey)
09/26/2022	3560 DISTRICT COURT Final order from District court Judge Lindsay, re: appeal on Civil Action number:3:21−CV−00261−L, DISMISSED (RE: related document(s)1788 Order on motion to compromise controversy). Entered on 9/26/2022 (Whitaker, Sheniqua) (Entered: 10/13/2022)
09/26/2022	3561 DISTRICT COURT Judgment from District court Judge Lindsay, re: notice of appeal Civil Action number:3:21−CV−00261−L, DISMISSED (RE: related document(s)1788 Order on motion to compromise controversy). Entered on 9/26/2022 (Whitaker, Sheniqua) (Entered: 10/13/2022)
09/27/2022	3538 Clerk's correspondence requesting amended designation from attorney for appellant. (RE: related document(s)3524 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3475 Notice of appeal, 3495 Amended notice of appeal). Appellee designation due by 09/28/2022.) Responses due by 9/30/2022. (Blanco, J.)
09/27/2022	3539 Response opposed to (related document(s): 3503 Motion for leave *(Motion to Conform Plan)* (related document(s) 1943 Order confirming chapter 11 plan) filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) (Varshosaz, Artoush)
09/27/2022	3540 Joinder by *Joinder to Funds Response to the Motion to Conform Plan* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3539 Response). (Draper, Douglas)
09/27/2022	3541 Motion to recuse Judge Stacey G. C. Jernigan Filed by Interested Party James Dondero (Lang, Michael)
09/27/2022	3542 Brief in support filed by Interested Party James Dondero (RE: related document(s)3541 Motion to recuse Judge Stacey G. C. Jernigan). (Attachments: # 1 Appendix) (Lang, Michael)

09/28/2022	3543 Notice of hearing *(Notice of Status Conference and Briefing Schedule)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3382 Motion for valuation*Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* Filed by Creditor The Dugaboy Investment Trust (Attachments: # 1 Exhibit A), 3520 Motion to quash *(The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order)* Filed by Debtor Highland Capital Management, L.P., 3533 Amended Motion for valuation*Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* Filed by Creditor The Dugaboy Investment Trust (Draper, Douglas) Related document(s) 3382 Motion for valuation*Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* filed by Creditor The Dugaboy Investment Trust. Modified to create linkage on 9/22/2022 (Ecker, C.).). Status Conference to be held on 11/15/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga. (Annable, Zachery)
09/28/2022	3544 Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3524 Appellant designation). (Phillips, Louis)
09/28/2022	3545 Certificate of service re: Order Approving Highlands Entry Into a Settlement Agreement and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3537 Order granting motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd. Filed by Debtor Highland Capital Management, L.P (related document 3481) Entered on 9/26/2022.). (Kass, Albert)
09/28/2022	3546 Support/supplemental document *APPELLEES SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL PURSUANT TO FED. R. BANKR. P. 8009(a)(2)* filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (RE: related document(s)3495 Amended notice of appeal). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) (Montgomery, Paige)
09/28/2022	3565 DISTRICT COURT Memorandum of Opinion and order from District court Judge Starr, re: appeal on Civil Action number:3:21−cv−01974−X, AFFIRMS in part and VACATES in part (RE: related document(s)2660 Memorandum of opinion). Entered on 9/28/2022 (Whitaker, Sheniqua) (Entered: 10/13/2022)
09/29/2022	3547 (Baird, Michael) has withdrawn from the case filed by Creditor Pension Benefit Guaranty Corporation. (Baird, Michael)
09/29/2022	3548 (Mahmooth, Faheem) has withdrawn from the case filed by Creditor Pension Benefit Guaranty Corporation. (Mahmooth, Faheem)
09/29/2022	3549 Notice *(Notice of Cancellation of Hearing on Reorganized Debtor's Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No−Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3433 Notice of hearing *(Notice of Hearing on Reorganized Debtor's Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No−Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3432 Omnibus Objection to claim(s) of Creditor(s) Internal Revenue Service.. Filed by Debtor Highland Capital Management, L.P..). Hearing to be held on 10/11/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3432,). (Annable, Zachery)
09/30/2022	3550 Response opposed to (related document(s): 3507 Motion for leave *to File Proceeding* filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/30/2022	

	3551 Objection to (related document(s): 3503 Motion for leave *(Motion to Conform Plan)* (related document(s) 1943 Order confirming chapter 11 plan) filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. (Rukavina, Davor)
10/03/2022	3552 Certificate of service re: Notice of Status Conference and Briefing Schedule Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3543 Notice of hearing *(Notice of Status Conference and Briefing Schedule)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3382 Motion for valuation*Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* Filed by Creditor The Dugaboy Investment Trust (Attachments: # 1 Exhibit A), 3520 Motion to quash *(The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order)* Filed by Debtor Highland Capital Management, L.P., 3533 Amended Motion for valuation*Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* Filed by Creditor The Dugaboy Investment Trust (Draper, Douglas) Related document(s) 3382 Motion for valuation*Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* filed by Creditor The Dugaboy Investment Trust. Modified to create linkage on 9/22/2022 (Ecker, C.).). Status Conference to be held on 11/15/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/03/2022	3553 Certificate of service re: Notice of Cancellation of Hearing on Reorganized Debtors Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No−Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s)3549 Notice *(Notice of Cancellation of Hearing on Reorganized Debtor's Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No−Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3433 Notice of hearing *(Notice of Hearing on Reorganized Debtor's Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No−Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3432 Omnibus Objection to claim(s) of Creditor(s) Internal Revenue Service.. Filed by Debtor Highland Capital Management, L.P..). Hearing to be held on 10/11/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3432,). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/03/2022	3564 DISTRICT COURT NOTICE OF APPEAL as to 34 Memorandum Opinion and Order to the Fifth Circuit by The Dugaboy Investment Trust. (RE: related document(s)2398 Notice of appeal *and Statement of Election*. Fee Amount $298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)2389 Order on motion to compromise controversy). Civil Case 3:21−cv−01295−X, USCA Case Number 22−10983 (Whitaker, Sheniqua) (Entered: 10/13/2022)
10/04/2022	3555 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 10 . Civil Case Number: 3:22−CV−02051−B (RE: related document(s)3475 Notice of appeal 3495 Amended notice of appeal filed by Creditor CLO Holdco, Ltd.) (Blanco, J.)
10/04/2022	3556 Notice of docketing COMPLETE record on appeal. 3:22−cv−02051−B (RE: related document(s)3475 Notice of appeal)) (Blanco, J.)
10/04/2022	3557 Certificate of service re: Highlands Response to Motion for Leave to File Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3550 Response opposed to (related document(s): 3507 Motion for leave *to File Proceeding* filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

10/04/2022	3562 DISTRICT COURT NOTICE OF APPEAL as to 39 Judgment, to the Fifth Circuit by The Dugaboy Investment Trust (RE: related document(s)1889 Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1870 Notice of appeal).) USCA Case Number 22−10960, 3:21−cv−00261−L (Whitaker, Sheniqua) (Entered: 10/13/2022)
10/11/2022	3558 Reply to (related document(s): 3550 Response filed by Debtor Highland Capital Management, L.P.) *In Support Of Motion For Leave To File Proceeding [Dkt. No. 3507]* filed by Creditor CLO Holdco, Ltd.. (Phillips, Louis)
10/12/2022	3559 Notice of hearing filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3507 Motion for leave *to File Proceeding* Filed by Creditor CLO Holdco, Ltd. Objections due by 9/30/2022. (Attachments: # 1 Exhibit A − Affidavit in support of the Application with Exhibits (1 of 2) # 2 Exhibit A − Affidavit in support of the Application with Exhibits (2 of 2))). Hearing to be held on 10/26/2022 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3507, (Attachments: # 1 Exhibit A) (Phillips, Louis)
10/14/2022	3566 Reply to (related document(s): 3539 Response filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, 3551 Objection filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/14/2022	3567 Agreed Scheduling Order on renewed motion to recuse (related document #3541) Entered on 10/14/2022. (Okafor, Marcey)
10/14/2022	3568 Notice of service recreation (RE: related document(s)3567 Agreed Scheduling Order on renewed motion to recuse (related document #3541) Entered on 10/14/2022.) (Okafor, Marcey)
10/17/2022	3569 Amended Reply to (related document(s): 3550 Response filed by Debtor Highland Capital Management, L.P.) *to Amend and Replace Dkt. No. 3558* filed by Creditor CLO Holdco, Ltd.. (Phillips, Louis)
10/17/2022	3570 Motion to recuse Judge Stacey G. C. Jernigan − AMENDED Filed by Interested Party James Dondero (Lang, Michael)
10/17/2022	3571 Brief in support filed by Interested Party James Dondero (RE: related document(s)3570 Motion to recuse Judge Stacey G. C. Jernigan − AMENDED). (Attachments: # 1 Appendix) (Lang, Michael)
10/17/2022	3572 Certificate of service re: Reply in Support of Motion to Conform Plan Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s)3566 Reply to (related document(s): 3539 Response filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, 3551 Objection filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/17/2022	3573 Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/17/2022	3574 Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

10/17/2022	3575 Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/17/2022	3576 Appellee designation of contents for inclusion in record of appeal **Originally filed at Docket 3546** filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (RE: related document(s)3475 Notice of appeal, 3495 Amended notice of appeal). (Montgomery, Paige)
10/17/2022	3577 Support/supplemental document *to Appellee designation of contents for inclusion in record of appeal **Originally filed at Docket 3546*** filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (RE: related document(s)3576 Appellee designation). (Attachments: # 1 Exhibit 2 # 2 Exhibit 3) (Montgomery, Paige)
10/18/2022	3578 Clerk's correspondence requesting Amended Support/supplemental document to include a case caption from attorney for creditor. (RE: related document(s)3577 Support/supplemental document *to Appellee designation of contents for inclusion in record of appeal **Originally filed at Docket 3546*** filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (RE: related document(s)3576 Appellee designation). (Attachments: # 1 Exhibit 2 # 2 Exhibit 3)) Responses due by 10/25/2022. (Ecker, C.)
10/18/2022	3579 Transmittal of COMPLETE APPELLEE record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellee volumes: 4. Civil Case Number: 3:22−CV−02051−B (RE: related document(s)3495 Amended notice of appeal filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3475 Notice of appeal).) (Blanco, J.)
10/18/2022	3580 Notice of docketing COMPLETE APPELLEE record on appeal. 3:22−CV−02051−B (RE: related document(s)3495 Amended notice of appeal filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3475 Notice of appeal).) (Blanco, J.)
10/19/2022	3581 Certificate of service re: Various Documents Served on October 17, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3567 Agreed Scheduling Order on renewed motion to recuse (related document #3541) Entered on 10/14/2022., 3573 Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3574 Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3575 Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/20/2022	3610 DISTRICT COURT NOTICE OF APPEAL as to 49 Memorandum Opinion and Order to the Fifth Circuit by Jonathan Bridges, CLO Holdco Ltd, Mark Patrick, Mazin A Sbaiti, Sbaiti & Company PLLC, The Charitable DAF Fund LP. (RE: related document(s)2876 Notice of docketing COMPLETE record on appeal. 3:21−CV−01974−X (RE: related document(s)2713 Notice of appeal 2660 Memorandum of opinion. 2758 Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s)2713 Notice of appeal).) (Blanco, J.)) USCA Case Number 22−11036 (Whitaker, Sheniqua) (Entered: 11/03/2022)
10/21/2022	3582 Chapter 11 Post−Confirmation Report for the Quarter Ending: 09/30/2022 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
10/21/2022	3583 Chapter 11 Post−Confirmation Report for the Quarter Ending: 09/30/2022 filed by Other Professional Highland Claimant Trust. (Attachments: # 1 Global Notes to Post−Confirmation Repor) (Annable, Zachery)

10/25/2022	3584 Agreed order on motion for leave to file proceeding (related document # 3507) (Attachments: # 1 Redline Application and Affidavit (without exhibits)) Entered on 10/25/2022. (Okafor, Marcey)
10/26/2022	3586 Hearing held on 10/26/2022. (RE: related document(s)3503 Motion for leave, (Motion to Conform Plan) (related document(s) 1943 Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz for Reorganized Debtor; L. Hogewood for 5 Funds; J. Ong for NexPoint Advisors and HCMFA; D. Draper for Dugaboy. Nonevidentiary haring. Motion granted. Court to issue opinion explaining ruling.) (Edmond, Michael)
10/26/2022	3587 Notice *of Service of Trial Subpoena on Tim Cournoyer* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
10/26/2022	3588 Notice *of Service of Trial Subpoena on David Klos* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
10/26/2022	3592 Request for transcript regarding a hearing held on 10/26/2022. The requested turn−around time is hourly. (Edmond, Michael) (Entered: 10/28/2022)
10/27/2022	3589 DISTRICT COURT NOTICE OF APPEAL as to 49 Memorandum Opinion and Order to the Fifth Circuit by Jonathan Bridges, CLO Holdco Ltd, Mark Patrick, Mazin A Sbaiti, Sbaiti & Company PLLC, The Charitable DAF Fund LP. (RE: related document(s)2762 Notice of docketing notice of appeal. Civil Action Number: 3:21−cv−01974−X. (RE: related document(s)2758 Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s)2713 Notice of appeal).) (Whitaker, Sheniqua) MODIFIED text on 8/24/2021 .)USCA Case Number 22−11036 (Whitaker, Sheniqua)
10/27/2022	3590 Witness and Exhibit List *(Reorganized Debtor's Witness and Exhibit List with Respect to Trial to Be Held on November 1, 2022)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)906 Objection to claim). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73 # 74 Exhibit 74 # 75 Exhibit 75 # 76 Exhibit 76 # 77 Exhibit 77 # 78 Exhibit 78 # 79 Exhibit 79 # 80 Exhibit 80 # 81 Exhibit 81 # 82 Exhibit 82 # 83 Exhibit 83 # 84 Exhibit 84 # 85 Exhibit 85 # 86 Exhibit 86 # 87 Exhibit 87 # 88 Exhibit 88 # 89 Exhibit 89 # 90 Exhibit 90 # 91 Exhibit 91 # 92 Exhibit 92 # 93 Exhibit 93 # 94 Exhibit 94 # 95 Exhibit 95 # 96 Exhibit 96 # 97 Exhibit 97 # 98 Exhibit 98 # 99 Exhibit 99 # 100 Exhibit 100 # 101 Exhibit 101 # 102 Exhibit 102) (Annable, Zachery)
10/27/2022	3591 Witness and Exhibit List *(NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC Witness and Exhibit List with respect to Evidentiary Hearing to be Held on November 1 and 2, 2022)* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)906 Objection to claim, 1212 Response to objection to claim). (Gameros, Charles)
10/29/2022	

	3593 Objection to (related document(s): 3590 List (witness/exhibit/generic) filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
10/31/2022	3595 Response opposed to (related document(s): 3541 Motion to recuse Judge Stacey G. C. Jernigan filed by Interested Party James Dondero, 3570 Motion to recuse Judge Stacey G. C. Jernigan − AMENDED filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/31/2022	3596 Support/supplemental document *(Appendix in Support of Highland's Objection to Renewed Motion to Recuse Pursuant to 28 U.S.C. 455 and Brief in Support)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3595 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36) (Annable, Zachery)
10/31/2022	3597 Amended Witness and Exhibit List *(Reorganized Debtor's Amended Witness and Exhibit List with Respect to Trial to Be Held on November 1, 2022)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3590 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 103) (Annable, Zachery)
10/31/2022	3598 Certificate of service re: Reorganized Debtors Witness and Exhibit List with Respect to Trial to be Held on November 1, 202 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3590 Witness and Exhibit List *(Reorganized Debtor's Witness and Exhibit List with Respect to Trial to Be Held on November 1, 2022)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)906 Objection to claim). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73 # 74 Exhibit 74 # 75 Exhibit 75 # 76 Exhibit 76 # 77 Exhibit 77 # 78 Exhibit 78 # 79 Exhibit 79 # 80 Exhibit 80 # 81 Exhibit 81 # 82 Exhibit 82 # 83 Exhibit 83 # 84 Exhibit 84 # 85 Exhibit 85 # 86 Exhibit 86 # 87 Exhibit 87 # 88 Exhibit 88 # 89 Exhibit 89 # 90 Exhibit 90 # 91 Exhibit 91 # 92 Exhibit 92 # 93 Exhibit 93 # 94 Exhibit 94 # 95 Exhibit 95 # 96 Exhibit 96 # 97 Exhibit 97 # 98 Exhibit 98 # 99 Exhibit 99 # 100 Exhibit 100 # 101 Exhibit 101 # 102 Exhibit 102) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/31/2022	3599 Amended Witness and Exhibit List *(NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC Witness and Exhibit List with respect to Evidentiary Hearing to be Held on November 1 and 2, 2022)* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)3591 List (witness/exhibit/generic)). (Gameros, Charles)
10/31/2022	3600 Certificate of service re: 1) Highlands Objection to Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support ; 2) Appendix in Support of Highlands Objection to Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support ;

	and 3) Reorganized Debtors Amended Witness and Exhibit List with Respect to Trial to be Held on November 1, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3595 Response opposed to (related document(s): 3541 Motion to recuse Judge Stacey G. C. Jernigan filed by Interested Party James Dondero, 3570 Motion to recuse Judge Stacey G. C. Jernigan − AMENDED filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3596 Support/supplemental document *(Appendix in Support of Highland's Objection to Renewed Motion to Recuse Pursuant to 28 U.S.C. 455 and Brief in Support)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3595 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36) filed by Debtor Highland Capital Management, L.P., 3597 Amended Witness and Exhibit List *(Reorganized Debtor's Amended Witness and Exhibit List with Respect to Trial to Be Held on November 1, 2022)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3590 List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 103) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/01/2022	3601 Transcript regarding Hearing Held 10/26/2022 (50 Pages) RE: AMENDED TRANSCRIPT Re: Motion to Conform Plan (#3503) (Replaces ECF #3594). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/30/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3586 Hearing held on 10/26/2022. (RE: related document(s)3503 Motion for leave, (Motion to Conform Plan) (related document(s) 1943 Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz for Reorganized Debtor; L. Hogewood for 5 Funds; J. Ong for NexPoint Advisors and HCMFA; D. Draper for Dugaboy. Nonevidentiary haring. Motion granted. Court to issue opinion explaining ruling.)). Transcript to be made available to the public on 01/30/2023. (Rehling, Kathy)
11/01/2022	3602 Objection to (related document(s): 3520 Motion to quash *(The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order)* filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
11/01/2022	3603 INCORRECT EVENT: attorney to refile. Motion for valuation*Reply in Support of Its Motion for Determination of Value* Filed by Creditor The Dugaboy Investment Trust (Draper, Douglas) Modified on 11/2/2022 (Ecker, C.).
11/01/2022	3604 Hearing held on 11/1/2022. (RE: related document(s)906 Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger

	Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax−Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event−Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce−Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris and H. Winograd for Reorganized Debtor; C. Gamores and W. Carvell for Claimant, HCRE. Evidentiary hearing. Matter taken under advisement.) (Edmond, Michael)
11/01/2022	3605 Objection to (related document(s): 3520 Motion to quash *(The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order)* filed by Debtor Highland Capital Management, L.P.) filed by Creditor Hunter Mountain Investment Trust. (Phillips, Louis)
11/01/2022	3606 Reply to (related document(s): 3465 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor Hunter Mountain Investment Trust. (Phillips, Louis)
11/01/2022	3611 Court admitted exhibits date of hearing November 1, 2022 (RE: related document(s)906 Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax−Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event−Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce−Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor

	Highland Capital Management, L.P., (COURT ADMITTED EXHIBITS OF HCRE'S CLAIM; EXHIBITS #1 THROUGH #6 & #17 THROUGH #20; ADMITTED BY DOUGLAS WADE CARVELL AND CHARLES W. GAMEROS; AND COURT ADMITTED EXHIBITS OF THE DEBTOR HIHGLAND CAPITAL MGM., L.P., EXHIBITS #1 THROUGH #65, #71, #71, 73, #74 & #75 THROUGH #96 WITH THE EXCEPTION OF #93; EXHIBIT #103 OFFERED BY JOHN MORRIS). (Edmond, Michael) (Entered: 11/07/2022)
11/02/2022	3607 Reply to (related document(s): 3465 Response filed by Debtor Highland Capital Management, L.P.) *Reply in support of its Motion for Determination of Value* filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
11/03/2022	3609 Request for transcript regarding a hearing held on 11/1/2022. The requested turn−around time is 3−day expedited (Jeng, Hawaii)
11/07/2022	3612 PDF with attached Audio File. Court Date & Time [11/01/2022 08:43:54 AM]. File Size [141382 KB]. Run Time [10:06:02]. (admin).
11/07/2022	3613 PDF with attached Audio File. Court Date & Time [11/01/2022 08:43:54 AM]. File Size [141382 KB]. Run Time [10:06:02]. (admin).
11/08/2022	3614 Reply to (related document(s): 3467 Response filed by Creditor Hunter Mountain Investment Trust, 3606 Reply filed by Creditor Hunter Mountain Investment Trust, 3607 Reply filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/08/2022	3615 Reply to (related document(s): 3602 Objection filed by Creditor The Dugaboy Investment Trust, 3605 Objection filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/08/2022	3616 Transcript regarding Hearing Held 11/01/22 RE: Debtor's objection to HCRE's proof of claim. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/6/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Susan Palmer, Palmer Reporting Services, Telephone number palmerrptg@aol.com, (209) 915−3065. (RE: related document(s) 3604 Hearing held on 11/1/2022. (RE: related document(s)906 Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small−Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax−Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event−Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point

	Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce−Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris and H. Winograd for Reorganized Debtor; C. Gamores and W. Carvell for Claimant, HCRE. Evidentiary hearing. Matter taken under advisement.)). Transcript to be made available to the public on 02/6/2023. (Palmer, Susan)
11/09/2022	3617 Certificate of service re: 1) Reply in Further Opposition to Valuation Motion; and 2) The Highland Parties Reply in Further Support of Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3614 Reply to (related document(s): 3467 Response filed by Creditor Hunter Mountain Investment Trust, 3606 Reply filed by Creditor Hunter Mountain Investment Trust, 3607 Reply filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3615 Reply to (related document(s): 3602 Objection filed by Creditor The Dugaboy Investment Trust, 3605 Objection filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/10/2022	3618 Motion for leave *to File a Reply Brief in Excess of Page Limit* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order Order Granting Unopposed Motion for Leave to File Reply Brief in Excess of Page Limit) (Lang, Michael)
11/10/2022	3619 Motion for leave *(Highland Capital Management, L.P.'s Motion for Leave to File Post−Trial Brief and for Related Relief)* (related document(s) 3604 Hearing held) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Post−Trial Brief) (Annable, Zachery)
11/11/2022	3620 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3474 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/11/2022	3621 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3620 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3474 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/8/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3620, (Annable, Zachery)
11/11/2022	3622 Certificate of service re: Highland Capital Management, L.P.s Motion for Leave to File Post−Trial Brief and for Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3619 Motion for leave *(Highland Capital Management, L.P.'s Motion for Leave to File Post−Trial Brief and for Related Relief)* (related document(s) 3604 Hearing held) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A−−Post−Trial Brief) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/15/2022	3624 Request for transcript regarding a hearing held on 11/15/2022. The requested turn−around time is hourly. (Edmond, Michael)
11/15/2022	

	3625 Hearing held on 11/15/2022. (RE: related document(s)3382 Motion for valuation; Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust, filed by Creditor The Dugaboy Investment Trust; (Appearances: D. Draper for Movant; L. Phillips for Hunter Mountain; J. Pomeranz and J. Morris for Reorganized Debtor. Nonevidentiary status conference. Court expressed concerns whether the valuation request requires an adversary proceeding. Parties have through 11:59 pm on 11/29/22 to submit one 20−page (maximum) brief solely dealing with the issue of whether an adversary proceeding is required for the valuation motion. Court will rule on the pleadings by mid−December. If court determines that no adversary proceeding is required, courtroom deputy will reach out to lawyers in mid−December to set valuation motion and motion to quash for hearing in mid−January.) (Edmond, Michael)
11/15/2022	3626 Hearing held on 11/15/2022. (RE: related document(s)3520 Motion to quash (The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order), filed by Debtor Highland Capital Management, L.P.) (Appearances: D. Draper for Movant; L. Phillips for Hunter Mountain; J. Pomeranz and J. Morris for Reorganized Debtor. Nonevidentiary status conference. Court expressed concerns whether the valuation request requires an adversary proceeding. Parties have through 11:59 pm on 11/29/22 to submit one 20−page (maximum) brief solely dealing with the issue of whether an adversary proceeding is required for the related valuation motion. Court will rule on the pleadings by mid−December. If court determines that no adversary proceeding is required, courtroom deputy will reach out to lawyers in mid−December to set valuation motion and motion to quash for hearing in mid−January.) (Edmond, Michael)
11/16/2022	3627 Transcript regarding Hearing Held 11/15/2022 (31 pages) RE: Status Conferences Re: Valuation Motion (#3382) and Motion to Quash (#3520). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/14/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3625 Hearing held on 11/15/2022. (RE: related document(s)3382 Motion for valuation; Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust, filed by Creditor The Dugaboy Investment Trust; (Appearances: D. Draper for Movant; L. Phillips for Hunter Mountain; J. Pomeranz and J. Morris for Reorganized Debtor. Nonevidentiary status conference. Court expressed concerns whether the valuation request requires an adversary proceeding. Parties have through 11:59 pm on 11/29/22 to submit one 20−page (maximum) brief solely dealing with the issue of whether an adversary proceeding is required for the valuation motion. Court will rule on the pleadings by mid−December. If court determines that no adversary proceeding is required, courtroom deputy will reach out to lawyers in mid−December to set valuation motion and motion to quash for hearing in mid−January.), 3626 Hearing held on 11/15/2022. (RE: related document(s)3520 Motion to quash (The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order), filed by Debtor Highland Capital Management, L.P.) (Appearances: D. Draper for Movant; L. Phillips for Hunter Mountain; J. Pomeranz and J. Morris for Reorganized Debtor. Nonevidentiary status conference. Court expressed concerns whether the valuation request requires an adversary proceeding. Parties have through 11:59 pm on 11/29/22 to submit one 20−page (maximum) brief solely dealing with the issue of whether an adversary proceeding is required for the related valuation motion. Court will rule on the pleadings by mid−December. If court determines that no adversary proceeding is required, courtroom deputy will reach out to lawyers in mid−December to set valuation motion and motion to quash for hearing in mid−January.)). Transcript to be made available to the public on 02/14/2023. (Rehling, Kathy)
11/16/2022	3628 Certificate of service re: 1) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure ; and 2) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson

	Consultants LLC (related document(s)3620 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3474 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3621 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3620 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3474 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/8/2022 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3620, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/17/2022	3629 WITHDRAWN at docket 3840. Motion to redact/restrict Redact (related document(s):3623) (Fee Amount $26) filed by Interested Party James Dondero (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Lang, Michael) Modified on 6/13/2023 (Ecker, C.).
11/17/2022	3630 INCORRECT EVENT: Attorney to refile. Motion for leave *to File Reply in Support of Amended Renewed Motion to Recuse Under Seal* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order) (Lang, Michael) Modified on 11/18/2022 (Ecker, C.).
11/18/2022	3631 Clerk's correspondence requesting please refile using the ECF event: Motion "Motion to Seal" from attorney for interested party. (RE: related document(s)3630 INCORRECT EVENT: Attorney to refile. Motion for leave *to File Reply in Support of Amended Renewed Motion to Recuse Under Seal* Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order) (Lang, Michael) Modified on 11/18/2022 (Ecker, C.).) Responses due by 11/25/2022. (Ecker, C.)
11/18/2022	3632 WITHDRAWN at #3840 Motion to file document under seal. Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order) (Lang, Michael) Modified on 6/13/2023 (Ecker, C.).
11/18/2022	Receipt of filing fee for Motion to Redact/Restrict From Public View(19−34054−sgj11) [motion,mredact] (26.00). Receipt number A29973922, amount $ 26.00 (re: Doc# 3629). (U.S. Treasury)
11/22/2022	3633 Order granting Interested Party James Dondero's unopposed motion for leave to file reply brief in excess of page limit (related document # 3618) Entered on 11/22/2022. (Okafor, Marcey)
11/22/2022	3634 Order granting Highland Capital Management, L.P.'s Motion for Leave to File Post−Trial Brief and for Related Relief (related document # 3619) Entered on 11/22/2022. (Okafor, Marcey)
11/22/2022	3635 Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s)906 Objection to claim). (Annable, Zachery)
11/23/2022	3636 Certificate of service re: 1) Order Granting Highland Capital Management, L.P.s Motion for Leave to File Post−Trial Brief and for Related Relief; and 2) Highland Capital Management, L.P.s Post−Trial Brief Addressing HCREs Executory Contract Defense Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3634 Order granting Highland Capital Management, L.P.'s Motion for Leave to File Post−Trial Brief and for Related Relief (related document 3619) Entered on 11/22/2022., 3635 Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s)906 Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/29/2022	3637 Brief in support filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3382 Motion for valuation*Motion for Determination of the Value of the Estate*

	and Assets Held by the Claimant Trust). (Draper, Douglas)
11/29/2022	3638 Brief in support filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3382 Motion for valuation*Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust*). (Phillips, Louis)
11/29/2022	3639 Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3382 Motion for valuation*Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust*, 3533 Supplemental Motion for valuation*Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust*). (Annable, Zachery)
12/01/2022	3640 Certificate of service re: Highland Capital Management, L.P.s Brief Establishing the Need for an Adversary Proceeding to Obtain the Relief Sought in Valuation Motion Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3639 Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3382 Motion for valuation*Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust*, 3533 Supplemental Motion for valuation*Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust*). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/02/2022	3641 Response opposed to (related document(s): 3635 Brief filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
12/05/2022	3642 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3620 Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3474 Order on motion to extend/shorten time)). (Annable, Zachery)
12/06/2022	3643 Order further extending period within which the Reorganized Debtor may remove actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure # 3620 Motion to extend time. Entered on 12/6/2022. (Okafor, Marcey)
12/07/2022	3644 Reply to (related document(s): 3641 Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/07/2022	3645 Order denying motion for determination of the value of the estate and assets held by the claimant trust (related document # 3382), denying supplemental and amended motion for determination of the value of the estate and assets held by claimant trust (related document # 3533) Entered on 12/7/2022. (Okafor, Marcey)
12/07/2022	3646 Certificate of service re: Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s)3643 Order further extending period within which the Reorganized Debtor may remove actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure 3620 Motion to extend time. Entered on 12/6/2022.). (Kass, Albert)
12/08/2022	3647 Certificate of service re: Highland Capital Management, L.P.s Reply to HCREs Post−Trial Brief [Docket No. 3641] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3644 Reply to (related document(s): 3641 Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

12/15/2022	3648 Reply to (related document(s): 3595 Response filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Lang, Michael)
01/04/2023	3649 Clerk's correspondence requesting an order from attorney for interested party. (RE: related document(s)3629 Motion to redact/restrict Redact (related document(s):3623) (Fee Amount $26) filed by Interested Party James Dondero (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) Responses due by 1/11/2023. (Ecker, C.)
01/04/2023	3650 Clerk's correspondence requesting an order from attorney for interested party. (RE: related document(s)3632 Motion to file document under seal. Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)) Responses due by 1/11/2023. (Ecker, C.)
01/13/2023	3651 Notice of firm name change from Ross & Smith, PC to Ross, Smith & Binford, PC. (Smith, Frances)
01/23/2023	3652 Chapter 11 Post−Confirmation Report for the Quarter Ending: 12/31/2022 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
01/23/2023	3653 Chapter 11 Post−Confirmation Report for the Quarter Ending: 12/31/2022 filed by Other Professional Highland Claimant Trust. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
01/31/2023	3654 Clerk's correspondence **Second Request** requesting an order from attorney for interested party. (RE: related document(s)3629 Motion to redact/restrict Redact (related document(s):3623) (Fee Amount $26) filed by Interested Party James Dondero (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) Responses due by 2/14/2023. (Ecker, C.)
01/31/2023	3655 Clerk's correspondence **Second Request** requesting an order from attorney for interested party. (RE: related document(s)3632 Motion to file document under seal. Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)) Responses due by 2/14/2023. (Ecker, C.)
02/01/2023	3656 Order denying as moot The Highland Parties' motion to quash subpoena served by The Dugaboy Investment Trust or for a protective order (related document # 3520) Entered on 2/1/2023. (Okafor, Marcey)
02/02/2023	3657 Objection to claim(s) of Creditor(s) Highland CLO Management, Ltd... Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Proposed Order) (Annable, Zachery)
02/02/2023	3658 DISTRICT COURT Opinion of USCA in accordance with USCA judgment re 47 Notice of Appeal filed by The Dugaboy Investment Trust, NexPoint Advisors LP, Highland Capital Management Fund Advisors LP. We DISMISS IN PART the appeal and AFFIRM the district courts judgment. re: appeal on appellate case number: 22−10189, DISMISSED IN PART and the judgment of the district court is AFFIRMED (RE: related document(s)2673 Notice of appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust). Civil case 3:21−cv−01895−D. Entered on 2/2/2023 (Whitaker, Sheniqua)
02/02/2023	3659 DISTRICT COURT Order from circuit court re: appeal on appellate case number: 22−10189, AFFIRMED IN PART AND DISMISSED IN PART (RE: related document(s)2673 Notice of appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust). Civil case 3:21−cv−01895−D Entered on 2/2/2023 (Whitaker, Sheniqua)

02/06/2023	3662 Motion for leave *to File Proceeding* Filed by Creditor The Dugaboy Investment Trust Objections due by 2/27/2023. (Attachments: # 1 Exhibit Exhibit A) (Deitsch−Perez, Deborah)
02/07/2023	3663 Certificate of service re: Highland Capital Management, L.P.s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3657 Objection to claim(s) of Creditor(s) Highland CLO Management, Ltd... Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/10/2023	3664 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3643 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
02/10/2023	3665 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3664 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3643 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 3/7/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3664, (Annable, Zachery)
02/13/2023	3666 Notice of hearing filed by Hunter Mountain Investment Trust, The Dugaboy Investment Trust (RE: related document(s)3662 Motion for leave *to File Proceeding* Filed by Creditor The Dugaboy Investment Trust Objections due by 2/27/2023. (Attachments: # 1 Exhibit Exhibit A)). Hearing to be held on 4/24/2023 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3662, (Deitsch−Perez, Deborah)
02/14/2023	3667 Certificate of service re: 1) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3664 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3643 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3665 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3664 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3643 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 3/7/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3664, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/16/2023	3668 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3657 Objection to claim(s) of Creditor(s) Highland CLO Management, Ltd... Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Proposed Order)). Hearing to be held on 3/29/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3657, (Annable, Zachery)
02/22/2023	3669 Certificate of service re: Notice of Hearing re: Highland Capital Management, L.P.s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3668 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3657 Objection to claim(s) of Creditor(s) Highland CLO Management, Ltd... Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Proposed Order)). Hearing to be held on 3/29/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3657, filed

	by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/22/2023	3670 Certificate of service re: (Amended) re 1) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3664 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3643 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3665 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3664 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3643 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 3/7/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3664, filed by Debtor Highland Capital Management, L.P., 3667 Certificate of service re: 1) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3664 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3643 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3665 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3664 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3643 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 3/7/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3664, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
02/27/2023	3671 Memorandum of Opinion and Order on Reorganized Debtor's Motion to Conform Plan (RE: related document(s)3503 Motion for leave filed by Debtor Highland Capital Management, L.P.). Entered on 2/27/2023 (Okafor, Marcey)
02/27/2023	3672 Order Granting Motion to Conform Plan and Orders that one change be made to the Plan to conform it to the mandate of the Fifth Circuit: revise the definition of Exculpated Parties as proposed in the Motion and no more. (related document # 3503) Entered on 2/27/2023. (Okafor, Marcey)
03/03/2023	3673 Brief in support filed by Interested Party James Dondero (RE: related document(s)3570 Motion to recuse Judge Stacey G. C. Jernigan − AMENDED). (Lang, Michael)
03/04/2023	3674 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3664 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3643 Order on motion to extend/shorten time)). (Annable, Zachery)
03/06/2023	3675 Memorandum of Opinion and Order Denying Amended Renewed Motion to Recuse Pursuant to 28 U.S.C. Section 455 (RE: related document(s)3570 Motion to recuse Judge filed by Interested Party James Dondero). Entered on 3/6/2023 (Okafor, Marcey)
03/06/2023	

	3676 Order Denying Amended Renewed Motion to Recuse Pursuant to U.S.C. Section 455 (related document #3570) Entered on 3/6/2023. (Okafor, Marcey)
03/06/2023	Adversary case 3:22−ap−3052 closed Pursuant to LBR 9070−1, any exhibits that were admitted by the Court may be claimed and removed from the Clerks Office during the 60−day period following final disposition of a case by the attorney or party who introduced the exhibits. Any exhibit not removed within the 60−day period may be destroyed or otherwise disposed of by the Bankruptcy Clerk. (Ecker, C.)
03/07/2023	3677 Order further extending period within which the Reorganized Debtor may remove actions pursuant to 28 U.S.C. Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related doc. #3664 Motion to extend time.) Entered on 3/7/2023. (Okafor, Marcey)
03/08/2023	3678 Certificate of service re: Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3677 Order further extending period within which the Reorganized Debtor may remove actions pursuant to 28 U.S.C. Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related doc. #3664 Motion to extend time.) Entered on 3/7/2023.). (Kass, Albert)
03/10/2023	Adversary case 3:21−ap−3020 closed Pursuant to LBR 9070−1, any exhibits that were admitted by the Court may be claimed and removed from the Clerks Office during the 60−day period following final disposition of a case by the attorney or party who introduced the exhibits. Any exhibit not removed within the 60−day period may be destroyed or otherwise disposed of by the Bankruptcy Clerk. (Ecker, C.)
03/10/2023	3679 Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Hunter Mountain Investment Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3662 Motion for leave *to File Proceeding*). (Aigen, Michael)
03/10/2023	3680 Notice of Appearance and Request for Notice by John Kendrick Turner filed by Creditor Dallas County COLEMAN COUNTY TAD KAUFMAN COUNTY UPSHUR COUNTY FANNIN CAD ROCKWALL CAD TARRANT COUNTY ALLEN ISD CITY OF ALLEN CITY OF RICHARDSON IRVING ISD GRAYSON COUNTY. (Turner, John) Modified on 3/14/2023 (Ecker, C.).
03/10/2023	3681 Stipulation by Highland Capital Management, L.P. and Highland CLO Management, Ltd.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3657 Objection to claim). (Annable, Zachery)
03/13/2023	3682 Notice of appeal . Fee Amount $298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3671 Memorandum of opinion, 3672 Order on motion for leave). Appellant Designation due by 03/27/2023. (Attachments: # 1 Exhibit A)(Rukavina, Davor)
03/13/2023	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number A30244459, amount $ 298.00 (re: Doc# 3682). (U.S. Treasury)
03/14/2023	3683 Certificate of service re: Stipulation Extending Deadlines Related to Highland Capital Management, L.P.s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd. Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s)3681 Stipulation by Highland Capital Management, L.P. and Highland CLO Management, Ltd.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3657 Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

03/15/2023	3685 Notice of docketing notice of appeal. Civil Action Number: 3:23−cv−00573−E. (RE: related document(s)3682 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3671 Memorandum of opinion, 3672 Order on motion for leave). Appellant Designation due by 03/27/2023. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
03/21/2023	3686 Order approving stipulation extending deadlines related to Highland Capital Management L.P.'s objection to scheduled claims 3.65 and 3.66 of Highland CLO Management, Ltd. (RE: related document(s)3681 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/21/2023 (Okafor, Marcey)
03/21/2023	3687 Order approving stipulation to extend Reorganized Debtor's response date and Movants' reply date with respect to motion for leave to file proceeding (RE: related document(s)3679 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/21/2023 (Okafor, Marcey)
03/22/2023	3688 Motion for Certification to Court of Appeals *(Joint Motion)* Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Berghman, Thomas)
03/22/2023	3689 Certificate of service re: re 1) Order Approving Stipulation Extending Deadlines Related to Highland Capital Management, L.P.'s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd.; and 2) Order Approving Stipulation to Extend Reorganized Debtor's Response Date and Movants' Reply Date with Respect to Motion for Leave to File Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3686 Order approving stipulation extending deadlines related to Highland Capital Management L.P.'s objection to scheduled claims 3.65 and 3.66 of Highland CLO Management, Ltd. (RE: related document(s)3681 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/21/2023, 3687 Order approving stipulation to extend Reorganized Debtor's response date and Movants' reply date with respect to motion for leave to file proceeding (RE: related document(s)3679 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/21/2023). (Kass, Albert)
03/22/2023	3723 DISTRICT COURT Opinion of USCA in accordance with USCA judgment re 22 Notice of Appeal filed by The Dugaboy Investment Trust.t re: appeal on appellate case number: 22−10831, AFFIRMED (RE: related document(s)2840 Notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust). Civil case 3:21−cv−02268−S Entered on 3/22/2023 (Whitaker, Sheniqua) (Entered: 04/06/2023)
03/22/2023	3724 DISTRICT COURT JUDGMENT from circuit court re: appeal on appellate case number: 22−10831, AFFIRMED (RE: related document(s)2840 Notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust). Civil case 3:21−cv−02268−S Entered on 3/22/2023 (Whitaker, Sheniqua) (Entered: 04/06/2023)
03/23/2023	3690 Certificate of service re: re Joint Motion for Certification of Direct Appeal to the Fifth Circuit of Order on Reorganized Debtors Motion to Conform Plan Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3688 Motion for Certification to Court of Appeals *(Joint Motion)* Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.). (Kass, Albert)
03/25/2023	3691 INCORRECT EVENT: Attorney to refile. Support/supplemental document*ACIS CAPITAL MANAGEMENT, L.P.'S MOTION TO INTERVENE AND BRIEF IN SUPPORT* filed by Creditor Acis Capital Management, L.P. (RE: related document(s)247 Schedules). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Bates, Shawn) Modified on 3/27/2023 (Ecker, C.).

03/27/2023	3692 Response opposed to (related document(s): 3662 Motion for leave *to File Proceeding* filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Annable, Zachery)
03/27/2023	3693 Statement of issues on appeal, filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3682 Notice of appeal, 3685 Notice of docketing notice of appeal/record). (Berghman, Thomas)
03/27/2023	3694 Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3682 Notice of appeal, 3685 Notice of docketing notice of appeal/record, 3693 Statement of issues on appeal). Appellee designation due by 04/10/2023. (Berghman, Thomas)
03/27/2023	3695 Motion to intervene*and Brief in Support* filed by Creditor Acis Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Bates, Shawn)
03/28/2023	3696 Order of certification of direct appeal to the circuit court (RE: related document(s)3682 Notice of appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P. and 3688 Motion for Certification to Court of Appeals *(Joint Motion)) Entered on 3/28/2023 (Okafor, Marcey). MODIFIED linkage on 3/28/2023 (Okafor, Marcey).*
03/28/2023	3697 Certificate of service re: Response to Motion for Leave to File Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3692 Response opposed to (related document(s): 3662 Motion for leave *to File Proceeding* filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/28/2023	3698 Clerk's correspondence requesting file an amended designation from attorney for appellant . (RE: related document(s)3694 Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3682 Notice of appeal, 3685 Notice of docketing notice of appeal/record, 3693 Statement of issues on appeal). Appellee designation due by 04/10/2023.) Responses due by 3/31/2023. (Blanco, J.)
03/28/2023	3699 Motion for leave *to File Verified Adversary Proceeding* Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order) (McEntire, Sawnie)
03/28/2023	3700 Motion for expedited hearing(related documents 3699 Motion for leave) Filed by Creditor Hunter Mountain Investment Trust (Attachments: # 1 Proposed Order Proposed Order) (McEntire, Sawnie)
03/28/2023	3701 Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3694 Appellant designation). (Berghman, Thomas)
03/29/2023	3702 INCORRECT ENTY; Notice *of Motion to Stay and Response Plaintiff's Motion to Stay* filed by Interested Party James Dondero, Get Good Trust, The Dugaboy Investment Trust. (Attachments: # 1 Proposed Order) (Hopkins, Jason) Modified on 3/30/2023 (Chambers, Deanna).
03/29/2023	3703 INCORRECT ENTRY. Filed in error. Motion for expedited hearing(related documents 3702 Notice (generic)) *The Dondero Defendants' Motion to Stay and Response to Plaintiff's Motion to Stay* Filed by Interested Party James Dondero, Get Good Trust, The

	Dugaboy Investment Trust (Attachments: # 1 Proposed Order) (Hopkins, Jason) Modified on 3/30/2023 (Spelmon, T).
03/30/2023	3704 Objection to (related document(s): 3700 Motion for expedited hearing(related documents 3699 Motion for leave) filed by Creditor Hunter Mountain Investment Trust) filed by Farallon Capital Management, LLC, Stonehill Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC. (Bailey, Christopher)
03/30/2023	3705 Certificate AMENDED CERTIFICATE OF CONFERENCE filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3699 Motion for leave *to File Verified Adversary Proceeding*). (McEntire, Sawnie)
03/30/2023	3706 Certificate AMENDED CERTIFICATE OF CONFERENCE filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3704 Objection). (McEntire, Sawnie)
03/30/2023	3707 Response opposed to (related document(s): 3700 Motion for expedited hearing(related documents 3699 Motion for leave) filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/30/2023	3708 Declaration re: *(Declaration of John A. Morris in Support of the Highland Parties' Objection to Hunter Mountain Investment Trust's Opposed Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3707 Response). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (Annable, Zachery)
03/30/2023	3709 BNC certificate of mailing. (RE: related document(s)3698 Clerk's correspondence requesting file an amended designation from attorney for appellant . (RE: related document(s)3694 Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3682 Notice of appeal, 3685 Notice of docketing notice of appeal/record, 3693 Statement of issues on appeal). Appellee designation due by 04/10/2023.) Responses due by 3/31/2023. (Blanco, J.)) No. of Notices: 1. Notice Date 03/30/2023. (Admin.)
03/31/2023	3712 Reply to (related document(s): 3704 Objection filed by Creditor Muck Holdings LLC, Creditor Jessup Holdings LLC, Creditor Stonehill Capital Management LLC, Creditor Farallon Capital Management, LLC, 3707 Response filed by Debtor Highland Capital Management, L.P.) *and in Support of Application for Expedited Hearing* filed by Creditor Hunter Mountain Investment Trust. (McEntire, Sawnie)
03/31/2023	3713 Order denying motion for expedited hearing (Related Doc# 3700) Entered on 3/31/2023. (Okafor, Marcey)
04/03/2023	3714 INCORRECT ENTRY: REFILED WITH CORRECT LINKAGE AS DOC. 3715. Response opposed to (related document(s): 3704 Objection filed by Creditor Muck Holdings LLC, Creditor Jessup Holdings LLC, Creditor Stonehill Capital Management LLC, Creditor Farallon Capital Management, LLC) filed by Interested Party Highland CLO Management Ltd. (Deitsch−Perez, Deborah) Modified on 4/4/2023 (Tello, Chris).
04/03/2023	3715 Response opposed to (related document(s): 3657 Objection to claim filed by Debtor Highland Capital Management, L.P.) *HCLOM Response to HCMLP Objection to Scheduled Claims 3.65 and 3.66* filed by Interested Party Highland CLO Management Ltd. (Deitsch−Perez, Deborah)
04/03/2023	3716 Support/supplemental document*Appendix in Support of HCLOM Response to HCMLP Objection to Scheduled Claims 3.65 and 3.66* filed by Interested Party Highland

	CLO Management Ltd (RE: related document(s)3715 Response to objection to claim). (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Exhibit Exhibit 5 # 6 Exhibit Exhibit 6 # 7 Exhibit Exhibit 7 # 8 Exhibit Exhibit 8 # 9 Exhibit Exhibit 9 # 10 Exhibit Exhibit 10 # 11 Exhibit Exhibit 11 # 12 Exhibit Exhibit 12 # 13 Exhibit Exhibit 13 # 14 Exhibit Exhibit 14 # 15 Exhibit Exhibit 15 # 16 Exhibit Exhibit 16 # 17 Exhibit Exhibit 17 # 18 Exhibit Exhibit 18 # 19 Exhibit Exhibit 19) (Deitsch−Perez, Deborah)
04/03/2023	3717 Response unopposed to (related document(s): 3657 Objection to claim filed by Debtor Highland Capital Management, L.P.) *ACIS CAPITAL MANAGEMENT, L.P.S RESPONSE TO SCHEDULED CLAIMS 3.65 AND 3.66 OF HIGHLAND CLO MANAGEMENT, LTD. SUBJECT TO PENDING MOTION TO INTERVENE* filed by Creditor Acis Capital Management, L.P.. (Attachments: # 1 Exhibit Ex. A # 2 Exhibit Ex. B # 3 Exhibit Ex. C # 4 Exhibit Ex. D # 5 Ex. E # 6 Exhibit Ex. G # 7 Exhibit Ex. H # 8 Exhibit Ex. I # 9 Exhibit Ex. J # 10 Exhibit Ex. L) (Cooke, Thomas)
04/04/2023	3718 Motion for leave to appeal (related document(s): 3713 Order on motion for expedited hearing) Filed by Interested Party Hunter Mountain Trust Objections due by 4/7/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex 2 # 3 Exhibit Ex 3 # 4 Proposed Order Prop Order) (McEntire, Sawnie)
04/04/2023	3719 Motion for expedited hearing(related documents 3718 Motion for leave to appeal) Filed by Interested Party Hunter Mountain Trust (Attachments: # 1 Proposed Order Prop Order) (McEntire, Sawnie)
04/05/2023	3720 Order denying Hunter Mountain Investment Trust's opposed motion for expedited hearing (Related Doc# 3719) Entered on 4/5/2023. (Okafor, Marcey)
04/05/2023	3721 Notice of appeal . Fee Amount $298 filed by Interested Party Hunter Mountain Trust (RE: related document(s)3713 Order on motion for expedited hearing). Appellant Designation due by 04/19/2023. (Attachments: # 1 Exhibit Order Denying Application for Expedited Hearing # 2 Exhibit HMIT Emergency Motion for Leave to File Interlocutory Appeal)(McEntire, Sawnie)
04/05/2023	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number A30302491, amount $ 298.00 (re: Doc# 3721). (U.S. Treasury)
04/05/2023	3722 Motion to file document under seal.*ACIS CAPITAL MANAGEMENT, L.P.S MOTION FOR LEAVE TO FILE UNDER SEAL EXHIBITS F AND K TO ITS RESPONSE* Filed by Creditor Acis Capital Management, L.P. (Cooke, Thomas)
04/06/2023	3726 Certificate of mailing regarding appeal (RE: related document(s)3721 Notice of appeal . filed by Interested Party Hunter Mountain Trust (RE: related document(s)3713 Order on motion for expedited hearing). Appellant Designation due by 04/19/2023. (Attachments: # 1 Exhibit Order Denying Application for Expedited Hearing # 2 Exhibit HMIT Emergency Motion for Leave to File Interlocutory Appeal)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
04/06/2023	3730 Certificate of service re: 1) The Highland Parties Objection to Hunter Mountain Investment Trusts Opposed Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding; and 2) Declaration of John A. Morris in Support of the Highland Parties Objection to Hunter Mountain Investment Trusts Opposed Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3707 Response opposed to (related document(s): 3700 Motion for expedited hearing(related documents 3699 Motion for leave) filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3708 Declaration re: *(Declaration of John A. Morris in Support of the Highland Parties' Objection to Hunter Mountain Investment Trust's Opposed*

	Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3707 Response). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/07/2023	3731 Notice of docketing transmittal of notice of appeal. Civil Action Number: 3:23−cv−00737−N. (RE: related document(s)3721 Notice of appeal . filed by Interested Party Hunter Mountain Trust (RE: related document(s)3713 Order on motion for expedited hearing). Appellant Designation due by 04/19/2023. (Attachments: # 1 Exhibit Order Denying Application for Expedited Hearing # 2 Exhibit HMIT Emergency Motion for Leave to File Interlocutory Appeal)) (Whitaker, Sheniqua)
04/10/2023	3732 Stipulation by Acis Capital Management GP, LLC, Acis Capital Management, L.P., Highland CLO Management Ltd and Highland CLO Managemet, LTD.. filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P., Interested Party Highland CLO Management Ltd (RE: related document(s)3717 Response to objection to claim). (Attachments: # 1 Proposed Order) (Aigen, Michael)
04/10/2023	3733 Omnibus Reply to (related document(s): 3715 Response to objection to claim filed by Interested Party Highland CLO Management Ltd, 3717 Response to objection to claim filed by Creditor Acis Capital Management, L.P.) *(Omnibus Reply in Further Support of Highland Capital Management, L.P.'s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd.)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/10/2023	3734 INCORRECT ENTRY: Attorney to refile. Brief in support filed by Creditor Acis Capital Management, L.P. (RE: related document(s)3722 Motion to file document under seal.*ACIS CAPITAL MANAGEMENT, L.P.S MOTION FOR LEAVE TO FILE UNDER SEAL EXHIBITS F AND K TO ITS RESPONSE*). (Cooke, Thomas) Modified on 4/11/2023 (Ecker, C.).
04/11/2023	3779 DISTRICT COURT Order denying motion for leave to appeal (related document # 3718) Entered on 4/11/2023. Civil Action No. 3:23−CV−737−N (Whitaker, Sheniqua) (Entered: 05/11/2023)
04/12/2023	3735 Stipulation by Highland Capital Management, L.P. and Highland CLO Management, Ltd. and Acis Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3657 Objection to claim and 3695 Motion to intervene *and Brief in Support* filed by Creditor Acis Capital Management, L.P..). (Annable, Zachery). MODIFIED linkage on 4/12/2023 (Okafor, Marcey).
04/13/2023	3736 Order approving Stipulation staying contested matter concerning Highland Capital Management L.P.'s objection to schedule claims 3.65 and 3.66 of Highland CLO Management, LTD and related matters (RE: related document(s)3695 Motion to intervene filed by Creditor Acis Capital Management, L.P.). Entered on 4/13/2023 (Okafor, Marcey)
04/13/2023	3737 Certificate of service re: Omnibus Reply in Further Support of Highland Capital Management. L.P.s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3733 Omnibus Reply to (related document(s): 3715 Response to objection to claim filed by Interested Party Highland CLO Management Ltd, 3717 Response to objection to claim filed by Creditor Acis Capital Management, L.P.) *(Omnibus Reply in Further Support of Highland Capital Management, L.P.'s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd.)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/13/2023	3738 Motion to set hearing(related documents 3699 Motion for leave) *(Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date*

	with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Annable, Zachery)
04/13/2023	3739 Motion for expedited hearing(related documents 3738 Motion to set hearing) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/13/2023	3740 Joinder by *Joinder to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date With Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding* filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC (RE: related document(s)3738 Motion to set hearing(related documents 3699 Motion for leave) *(Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leav, 3739 Motion for expedited hearing(related documents 3738 Motion to set hearing)). (Bailey, Christopher)*
04/13/2023	3741 Notice of hearing filed by Interested Party Hunter Mountain Trust (RE: related document(s)3699 Motion for leave *to File Verified Adversary Proceeding* Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order)). Hearing to be held on 4/24/2023 at 01:30 PM Dallas Judge Jernigan Ctrm for 3699, (McEntire, Sawnie)
04/13/2023	3742 Amended Notice of hearing filed by Interested Party Hunter Mountain Trust (RE: related document(s)3699 Motion for leave *to File Verified Adversary Proceeding* Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order)). Hearing to be held on 4/24/2023 at 01:30 PM Dallas Judge Jernigan Ctrm for 3699, (McEntire, Sawnie)
04/13/2023	3743 Motion to appear pro hac vice for Mark T. Stancil. Fee Amount $100 Filed by Creditor James P. Seery Jr. (Robin, Lindsey)
04/13/2023	3744 Motion to appear pro hac vice for Joshua S. Levy. Fee Amount $100 Filed by Other Professional James P. Seery Jr. (Robin, Lindsey)
04/13/2023	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A30323645, amount $ 100.00 (re: Doc# 3743). (U.S. Treasury)
04/13/2023	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A30323645, amount $ 100.00 (re: Doc# 3744). (U.S. Treasury)
04/13/2023	3745 Notice of Appearance and Request for Notice by Omar Jesus Alaniz filed by Other Professional James P. Seery Jr.. (Alaniz, Omar)
04/14/2023	3746 Brief in support filed by Creditor Acis Capital Management, L.P. (RE: related document(s)3722 Motion to file document under seal.*ACIS CAPITAL MANAGEMENT, L.P.S MOTION FOR LEAVE TO FILE UNDER SEAL EXHIBITS F AND K TO ITS RESPONSE*). (Cooke, Thomas)
04/15/2023	3747 Joinder by *James P. Seery Jr. to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date with Respect to Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Proceeding* filed by Other Professional James P. Seery Jr. (RE: related document(s)3738 Motion to set hearing(related documents 3699 Motion for leave) *(Highland's Opposed Emergency Motion to Modify and*

	Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leav, 3739 Motion for expedited hearing(related documents 3738 Motion to set hearing)). (Robin, Lindsey)
04/17/2023	3748 Response unopposed to (related document(s): 3738 Motion to set hearing(related documents 3699 Motion for leave) *(Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leav filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Hunter Mountain Trust. (McEntire, Sawnie)*
04/17/2023	3749 Certificate of service re: re Stipulation Staying Contested Matter Concerning Highland Capital Management, L.P.s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd. [DE # 3657] and Related Matters [DE # 3691] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3735 Stipulation by Highland Capital Management, L.P. and Highland CLO Management, Ltd. and Acis Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3657 Objection to claim and 3695 Motion to intervene *and Brief in Support* filed by Creditor Acis Capital Management, L.P..). (Annable, Zachery). MODIFIED linkage on 4/12/2023. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/17/2023	3750 Certificate of service re: 1) Highlands Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Proceeding; and 2) Highlands Emergency Motion to Expedite Hearing on Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3738 Motion to set hearing(related documents 3699 Motion for leave) *(Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., 3739 Motion for expedited hearing(related documents 3738 Motion to set hearing) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/19/2023	3751 Notice *of Status Conference* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3699 Motion for leave *to File Verified Adversary Proceeding* Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order)). (McEntire, Sawnie)
04/20/2023	3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Hopkins, Jason)
04/20/2023	3753 Declaration re: *of Davor Rukavina in Support of The Dondero Defendants' Motion to Stay and to Compel Mediation* filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation*). (Hopkins, Jason)
04/20/2023	3754 Order granting motion to appear pro hac vice adding Mark Stancil for James P. Seery, Jr. (related document # 3743) Entered on 4/20/2023. (Rielly, Bill)
04/20/2023	3755 Order granting motion to appear pro hac vice adding Joshua Seth Levy for James P. Seery, Jr. (related document # 3744) Entered on 4/20/2023. (Rielly, Bill)
04/21/2023	

	3756 Chapter 11 Post−Confirmation Report for the Quarter Ending: 03/31/2023 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/21/2023	3757 Chapter 11 Post−Confirmation Report for the Quarter Ending: 03/31/2023 filed by Other Professional Highland Claimant Trust. (Annable, Zachery)
04/21/2023	3758 Brief in support filed by Interested Party Hunter Mountain Trust (RE: related document(s)3751 Notice (generic)). (McEntire, Sawnie)
04/21/2023	3759 Notice *of Rescheduling of Hearing* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3699 Motion for leave *to File Verified Adversary Proceeding* Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order)). (McEntire, Sawnie)
04/21/2023	3761 Objection to (related document(s): 3751 Notice (generic) filed by Interested Party Hunter Mountain Trust) filed by Interested Party Hunter Mountain Trust . (Ecker, C.) (Entered: 04/24/2023)
04/23/2023	3760 Support/supplemental document *to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3699 Motion for leave *to File Verified Adversary Proceeding*). (Attachments: # 1 Exhibit Verified Adversary Complaint) (McEntire, Sawnie)
04/24/2023	3762 Request for transcript regarding a hearing held on 4/24/2023. The requested turn−around time is hourly. (Edmond, Michael)
04/24/2023	3763 Hearing held on 4/24/2023. (RE: related document(s)3662 Motion for leave to File Proceeding, filed by Creditor The Dugaboy Investment Trust.) (Appearances: D. Deitsch−Perez for Movants; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Motion will either be withdrawn or resolved with an agreed order (Reorganized Debtor has provided documentation to Movants which was filed on docket 4/21/23; parties agree no leave of court is necessary for a declaratory judgment regarding valuation). (Edmond, Michael)
04/24/2023	3764 Hearing held on 4/24/2023. (RE: related document(s)3699 Motion for leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust.) (Appearances: S. McEntire and R. McClary for Movant; J. Morris for Reorganized Debtor; M. Stancil and O. Alaniz for J. Seery; B. McIlwaine for claims purchasers. Nonevidentiary status conference. Court announced scheduling order that contemplates a May 11 deadline for objections with briefs; a May 18 deadline for a reply with briefing; and a hearing June 8 at 9:30 am (court to notify parties shortly after May 18 whether evidence will be allowed). No other pleadings should be filed except witness and exhibit lists (3 days before hearing) if evidence is allowed. Parties should upload a scheduling order that reflects this.) (Edmond, Michael)
04/25/2023	3765 Transcript regarding Hearing Held 04/24/2023 before Judge Stacey G.C. Jernigan (62 pages) RE: Dugaboy Investment Trust and Hunter Mountain Investment Trust's Motion for Leave to File Proceeding (3662) and Status Conference re: Motion for Leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust (3699). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 07/24/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3763 Hearing held on 4/24/2023. (RE: related document(s)3662 Motion for leave to File Proceeding, filed by Creditor The Dugaboy Investment Trust.) (Appearances: D. Deitsch−Perez for Movants; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Motion will either be withdrawn or resolved

	with an agreed order (Reorganized Debtor has provided documentation to Movants which was filed on docket 4/21/23; parties agree no leave of court is necessary for a declaratory judgment regarding valuation)., 3764 Hearing held on 4/24/2023. (RE: related document(s)3699 Motion for leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust.) (Appearances: S. McEntire and R. McClary for Movant; J. Morris for Reorganized Debtor; M. Stancil and O. Alaniz for J. Seery; B. McIlwaine for claims purchasers. Nonevidentiary status conference. Court announced scheduling order that contemplates a May 11 deadline for objections with briefs; a May 18 deadline for a reply with briefing; and a hearing June 8 at 9:30 am (court to notify parties shortly after May 18 whether evidence will be allowed). No other pleadings should be filed except witness and exhibit lists (3 days before hearing) if evidence is allowed. Parties should upload a scheduling order that reflects this.)). Transcript to be made available to the public on 07/24/2023. (Rehling, Kathy)
04/28/2023	3766 Memorandum of opinion regarding Debtor's objection to proof of claim #146 (RE: related document(s)906 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/28/2023 (Okafor, Marcey)
04/28/2023	3767 Order sustaining Debter's objection to, and disallowing, proof of claim number 146 (RE: related document(s)906 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/28/2023 (Okafor, Marcey)
05/02/2023	3769 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 3 . Civil Case Number: 3:23−CV−00573E (RE: related document(s)3682 Notice of appeal *(RE: related document(s)3671 Memorandum of opinion, 3672 Order on motion for leave). (Blanco, J.)*
05/02/2023	3770 Notice of docketing COMPLETE record on appeal. 3:23−cv−00573−E (RE: related document(s)3682 Notice of appeal < (RE: related document(s)3671 Memorandum of opinion, 3672 Order on motion for leave).) (Blanco, J.)
05/04/2023	3771 Notice *of Withdrawal of Motion for Leave to File Proceeding* filed by Hunter Mountain Investment Trust, The Dugaboy Investment Trust (RE: related document(s)3662 Motion for leave *to File Proceeding* Filed by Creditor The Dugaboy Investment Trust Objections due by 2/27/2023. (Attachments: # 1 Exhibit Exhibit A)). (Deitsch−Perez, Deborah)
05/10/2023	3772 PDF with attached Audio File. Court Date & Time [04/24/2023 02:23:07 PM]. File Size [10249 KB]. Run Time [01:32:41]. (admin).
05/10/2023	3773 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3677 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/10/2023	3774 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3773 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3677 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3773, (Annable, Zachery)
05/10/2023	3775 Stipulation by Hunter Mountain Investment Trust, The Dugaboy Investment Trust and Highland Capital Management, L.P.. filed by Hunter Mountain Investment Trust, The Dugaboy Investment Trust (RE: related document(s)3662 Motion for leave *to File Proceeding*). (Attachments: # 1 Proposed Order Granting Stipulation Withdrawing Movants' Motion for Leave to File Proceeding [Dkt. No. 3662]) (Aigen, Michael)

05/10/2023	3776 Stipulation by James Dondero, Get Good Trust, Strand Advisors, Inc. and Highland Capital Management, L.P.. filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc. (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation*). (Hopkins, Jason)
05/10/2023	3777 Notice of hearing filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc. (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 6/26/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3752, (Attachments: # 1 Exhibit A) (Hopkins, Jason)
05/10/2023	3778 Adversary case 23−03038. Complaint by Dugaboy Investment Trust, Hunter Mountain Investment Trust against Highland Capital Management, L.P. and Highland Claimant Trust. Fee Amount $350. Nature(s) of suit: 91 (Declaratory judgment). (Deitsch−Perez, Deborah) Modified to add Defendant Highland Claimant Trust on 5/11/2023 (Okafor, Marcey).
05/11/2023	3780 Objection to (related document(s): 3699 Motion for leave *to File Verified Adversary Proceeding* filed by Creditor Hunter Mountain Investment Trust) *Objection to Hunter Mountain Investment Trusts (i) Emergency Motion for Leave to File Verified Adversary Proceeding; and (ii) Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC. (Bailey, Christopher)
05/11/2023	3781 Order granting motion to set hearing (related document # 3738) Hearing to be held on 6/8/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3699 Emergency Motion for Leave to File Verified Adversary Proceeding and 3670 Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding. Entered on 5/11/2023. (Okafor, Marcey)
05/11/2023	3782 Certificate of service re: 1) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3773 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3677 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3774 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3773 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3677 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3773, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/11/2023	3783 Joint Response opposed to (related document(s): 3699 Motion for leave *to File Verified Adversary Proceeding* filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. (Annable, Zachery)
05/11/2023	3784 Declaration re: *(Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding)* filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s)3783 Response).

	(Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 (part 1) # 6 Exhibit 5 (part 2) # 7 Exhibit 6 # 8 Exhibit 7 # 9 Exhibit 8 # 10 Exhibit 9 # 11 Exhibit 10 # 12 Exhibit 11 # 13 Exhibit 12 # 14 Exhibit 13 # 15 Exhibit 14 # 16 Exhibit 15 # 17 Exhibit 16 # 18 Exhibit 17 # 19 Exhibit 18 # 20 Exhibit 19 # 21 Exhibit 20 # 22 Exhibit 21 # 23 Exhibit 22 # 24 Exhibit 23 # 25 Exhibit 24 # 26 Exhibit 25 # 27 Exhibit 26 # 28 Exhibit 27 # 29 Exhibit 28 # 30 Exhibit 29 # 31 Exhibit 30 # 32 Exhibit 31 # 33 Exhibit 31a # 34 Exhibit 32 # 35 Exhibit 33 # 36 Exhibit 34 # 37 Exhibit 35 # 38 Exhibit 36 # 39 Exhibit 37 # 40 Exhibit 38 # 41 Exhibit 39 # 42 Exhibit 40 # 43 Exhibit 41 # 44 Exhibit 42 # 45 Exhibit 43 # 46 Exhibit 44) (Annable, Zachery)
05/18/2023	3785 Reply to (related document(s): 3780 Objection filed by Creditor Muck Holdings LLC, Creditor Jessup Holdings LLC, Creditor Stonehill Capital Management LLC, Creditor Farallon Capital Management, LLC, 3783 Response filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) *in Support of Emergency Motion for Leave to File Adversary Proceeding* filed by Interested Party Hunter Mountain Trust. (McEntire, Sawnie)
05/18/2023	3829 DISTRICT COURT MEMORANDUM OPINION AND ORDER: The Court finds that the bankruptcy court did not abuse its discretion in denying CLO Holdco's amendment to its proof of claim. Accordingly, the bankruptcy court's denial of CLO Holdco's Motion to Ratify is AFFIRMED. The appeal is DISMISSED WITH PREJUDICE. (Ordered by Judge Jane J Boyle on 5/18/2023) re: appeal on Civil Action number: 3:22−cv−02051−B, AFFIRMED and DISMISSED with prejudice (RE: related document(s)3457 Order on motion (generic)). Entered on 5/18/2023 (Whitaker, Sheniqua) (Entered: 06/08/2023)
05/22/2023	3786 Certificate of service re: 1) Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.s Joint Opposition to Hunter Mountain Investment Trusts Motion for Leave to File Verified Adversary Proceeding; and 2) Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.s Joint Opposition to Hunter Mountain Investment Trusts Motion for Leave to File Verified Adversary Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3783 Joint Response opposed to (related document(s): 3699 Motion for leave *to File Verified Adversary Proceeding* filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust, 3784 Declaration re: *(Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding)* filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s)3783 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 (part 1) # 6 Exhibit 5 (part 2) # 7 Exhibit 6 # 8 Exhibit 7 # 9 Exhibit 8 # 10 Exhibit 9 # 11 Exhibit 10 # 12 Exhibit 11 # 13 Exhibit 12 # 14 Exhibit 13 # 15 Exhibit 14 # 16 Exhibit 15 # 17 Exhibit 16 # 18 Exhibit 17 # 19 Exhibit 18 # 20 Exhibit 19 # 21 Exhibit 20 # 22 Exhibit 21 # 23 Exhibit 22 # 24 Exhibit 23 # 25 Exhibit 24 # 26 Exhibit 25 # 27 Exhibit 26 # 28 Exhibit 27 # 29 Exhibit 28 # 30 Exhibit 29 # 31 Exhibit 30 # 32 Exhibit 31 # 33 Exhibit 31a # 34 Exhibit 32 # 35 Exhibit 33 # 36 Exhibit 34 # 37 Exhibit 35 # 38 Exhibit 36 # 39 Exhibit 37 # 40 Exhibit 38 # 41 Exhibit 39 # 42 Exhibit 40 # 43 Exhibit 41 # 44 Exhibit 42 # 45 Exhibit 43 # 46 Exhibit 44) filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust). (Kass, Albert)
05/22/2023	3787 Order pertaining to the hearing on motion for leave to file adversary proceeding (RE: related document(s)3699 Motion for leave filed by Creditor Hunter Mountain Investment Trust, 3760 Support/supplemental document filed by Interested Party Hunter Mountain Trust). Entered on 5/22/2023 (Rielly, Bill)
05/24/2023	3788 Motion to shorten time to Expedited Discovery Filed by Interested Party Hunter Mountain Trust (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit)

	(McEntire, Sawnie)
05/24/2023	3789 Motion for expedited hearing(related documents 3788 Motion to extend/shorten time) Filed by Interested Party Hunter Mountain Trust (McEntire, Sawnie)
05/24/2023	3790 BNC certificate of mailing − PDF document. (RE: related document(s)3787 Order pertaining to the hearing on motion for leave to file adversary proceeding (RE: related document(s)3699 Motion for leave filed by Creditor Hunter Mountain Investment Trust, 3760 Support/supplemental document filed by Interested Party Hunter Mountain Trust). Entered on 5/22/2023) No. of Notices: 1. Notice Date 05/24/2023. (Admin.)
05/25/2023	3791 Motion to continue hearing on (related documents 3760 Support/supplemental document)*in the Alternative* Filed by Interested Party Hunter Mountain Trust (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit) (McEntire, Sawnie)
05/25/2023	3792 Order setting expedited hearing (RE: related document(s)3788 Motion to extend/shorten time filed by Interested Party Hunter Mountain Trust, 3789 Motion for expedited hearing filed by Interested Party Hunter Mountain Trust, 3791 Motion to continue filed by Interested Party Hunter Mountain Trust). Hearing to be held on 5/26/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3788 and for 3791 and for 3789, Entered on 5/25/2023 (Rielly, Bill)
05/25/2023	3795 Objection to (related document(s): 3788 Motion to shorten time to Expedited Discovery filed by Interested Party Hunter Mountain Trust, 3791 Motion to continue hearing on (related documents 3760 Support/supplemental document)*in the Alternative* filed by Interested Party Hunter Mountain Trust) *Objection to Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing* filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC. (Bailey, Christopher)
05/25/2023	3796 Response opposed to (related document(s): 3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust. (Annable, Zachery)
05/25/2023	3797 Declaration re: *(Declaration of John A. Morris in Support of Highland Parties' Objection to Motion to Stay and Motion to Compel Mediation)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3796 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) (Annable, Zachery)
05/25/2023	3798 Joint Response opposed to (related document(s): 3788 Motion to shorten time to Expedited Discovery filed by Interested Party Hunter Mountain Trust, 3791 Motion to continue hearing on (related documents 3760 Support/supplemental document)*in the Alternative* filed by Interested Party Hunter Mountain Trust) filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. (Attachments: # 1 Exhibit 1) (Stancil, Mark)
05/26/2023	3799 Request for transcript regarding a hearing held on 5/26/2023. The requested turn−around time is hourly. (Edmond, Michael)
05/26/2023	3800 Order Granting In Part Hunter Mountain Investment Trust's Emergency motion for Expedited Discovery (related document #3788) and Denying Motion to Continue June 8, 2023 Hearing (related document # 3791) Entered on 5/26/2023. (Okafor, Marcey)
05/26/2023	3825 Hearing held on 5/26/2023. (RE: related document(s)3789 Motion for expedited hearing(related documents 3788 Motion to extend/shorten time) filed by Interested Party

	Hunter Mountain Trust), (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Court issued parameters for 6/8/23 hearing.) (Edmond, Michael) (Entered: 06/08/2023)
05/26/2023	3826 Hearing held on 5/26/2023. (RE: related document(s)3791 Motion to continue hearing on (related documents 3760 Support/supplemental document) in the Alternative filed by Interested Party Hunter Mountain Trust (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Motion denied.) (Edmond, Michael) (Entered: 06/08/2023)
05/26/2023	3827 Hearing held on 5/26/2023. (RE: related document(s)3788 Motion to shorten time to Expedited Discovery Filed by Interested Party Hunter Mountain Trust, (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Motion granted in part.) (Edmond, Michael) (Entered: 06/08/2023)
05/28/2023	3801 BNC certificate of mailing − PDF document. (RE: related document(s)3800 Order Granting In Part Hunter Mountain Investment Trust's Emergency motion for Expedited Discovery (related document #3788) and Denying Motion to Continue June 8, 2023 Hearing (related document 3791) Entered on 5/26/2023.) No. of Notices: 1. Notice Date 05/28/2023. (Admin.)
05/31/2023	3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone. Filed by Creditor The Dugaboy Investment Trust Objections due by 6/21/2023. (Aigen, Michael)
05/31/2023	3803 Declaration re: *Declaration of Hartmann in Support of Motion to Compel* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone.). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit) (Aigen, Michael)
05/31/2023	3804 Declaration re: *Declaration of Laykin in Support of Motion to Compel* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone.). (Attachments: # 1 Exhibit) (Aigen, Michael)
05/31/2023	3805 Declaration re: *Declaration of Smith in Support of Motion to Compel* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone.). (Attachments: # 1 Exhibit) (Aigen, Michael)
05/31/2023	3806 Declaration re: *Declaration of Aigen in Support of Motion to Compel* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone.). (Aigen, Michael)
05/31/2023	3807 Support/supplemental document*Appendix in Support of Motion to Compel* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone.). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit # 9 Exhibit # 10 Exhibit # 11 Exhibit # 12 Exhibit # 13 Exhibit # 14 Exhibit # 15 Exhibit # 16 Exhibit # 17 Exhibit # 18 Exhibit # 19 Exhibit # 20 Exhibit # 21 Exhibit # 22 Exhibit # 23 Exhibit # 24 Exhibit # 25 Exhibit # 26 Exhibit # 27 Exhibit # 28 Exhibit # 29 Exhibit # 30 Exhibit # 31 Exhibit # 32 Exhibit # 33 Exhibit) (Aigen, Michael)
05/31/2023	3808 CIRCUIT COURT letter in re: Order granting motion for leave to appeal. Circuit Court Case 23−10534 (RE: related document(s)3685 Notice of docketing notice of appeal. Civil Action Number: 3:23−cv−00573−E. (RE: related document(s)3682 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint

	Advisors, L.P. (RE: related document(s)3671 Memorandum of opinion, 3672 Order on motion for leave). (Whitaker, Sheniqua)
05/31/2023	3809 Order granting motion to seal exhibits F and K (related document # 3722) Entered on 5/31/2023. (Okafor, Marcey)
05/31/2023	3810 DUPLICATE ENTRY: See #3809 − Order granting motion to seal exhibits F and K (related document 3722) Entered on 5/31/2023. (Okafor, Marcey) Modified on 6/1/2023 (Okafor, Marcey).
05/31/2023	3811 Certificate of service re: *1) Highland Parties' Objection to Motion to Stay and Motion to Compel Mediation; and 2) Declaration of John A. Morris in Support of Highland Parties' Objection to Motion to Stay and Motion to Compel Mediation* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3796 Response opposed to (related document(s): 3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust. filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, 3797 Declaration re: *(Declaration of John A. Morris in Support of Highland Parties' Objection to Motion to Stay and Motion to Compel Mediation)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3796 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). (Kass, Albert)
06/01/2023	3812 Certificate of no objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3773 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3677 Order on motion to extend/shorten time)). (Annable, Zachery)
06/01/2023	3813 Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. (Annable, Zachery)
06/01/2023	3814 Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. (Annable, Zachery)
06/01/2023	Receipt Number 339719, Fee Amount $207.00 (RE: related document(s)3808 CIRCUIT COURT letter in re: Order granting motion for leave to appeal. Circuit Court Case 23−10534 (RE: related document(s)3685 Notice of docketing notice of appeal. Civil Action Number: 3:23−cv−00573−E. (RE: related document(s)3682 Notice of appeal. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3671 Memorandum of opinion, 3672 Order on motion for leave). (Whitaker, Sheniqua)) (Okafor, Marcey). (Entered: 06/02/2023)
06/05/2023	3815 Support/supplemental document*Doc 3699 − Emergency Motion for Leave to File Verified Adversary Proceeding with Redaction* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3760 Support/supplemental document). (Attachments: # 1 Exhibit) (McEntire, Sawnie)
06/05/2023	3816 Support/supplemental document*to Doc 3699 − Emergency Motion for Leave to File Verified Adversary Proceeding with Redaction* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3760 Support/supplemental document, 3815 Support/supplemental document). (Attachments: # 1 Exhibit) (McEntire, Sawnie)
06/05/2023	3817 Witness and Exhibit List *for hearing on June 8, 2023 on Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Petition [Docket No. 3699] and Hunter Mountain Investment Trusts Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3760]* filed by Debtor Highland

	Capital Management, L.P. (RE: related document(s)3783 Response). (Attachments: # 1 Exhibits 1−4 # 2 Exhibit 5 part 1 # 3 Exhibit 5 part 2 # 4 Exhibits 6−42 # 5 Exhibits 43−60) (Annable, Zachery)
06/05/2023	3818 Witness and Exhibit List *in Connection with HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3783 Response). (Attachments: # 1 Exhibit Exhibits 1−10 # 2 Exhibit Exhibits 11−30 # 3 Exhibit Exhibits 31−52 # 4 Exhibit Exhibits 53−58 # 5 Exhibit Exhibits 59 # 6 Exhibit Exhibits 60 # 7 Exhibit Exhibits 61−72 # 8 Exhibit Exhibit 73 # 9 Exhibit Exhibits 74−80) (McEntire, Sawnie)
06/07/2023	3819 Order further extending period within which the Reorganized Debtor may remove actions pursuant to 28 U.S.C. Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure. (re: 3773 Motion to extend time.) Entered on 6/7/2023. (Okafor, Marcey)
06/07/2023	3820 Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully Filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. Objections due by 6/8/2023. (Stancil, Mark) Modified text on 6/8/2023 (Tello, Chris).
06/07/2023	3821 Declaration re: *Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully* filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s)3820 Motion for leave */ Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully*). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Levy, Joshua)
06/07/2023	3822 WITHDRAWN at docket #3901. Motion to file document under seal.*Exhibit* Filed by Interested Party Hunter Mountain Trust (Attachments: # 1 Proposed Order) (McEntire, Sawnie) Modified on 8/18/2023 (Ecker, C.).
06/07/2023	3823 Joinder by *Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully* filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC (RE: related document(s)3820 Motion for leave */ Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully*). (Bailey, Christopher)
06/07/2023	3824 Objection to (related document(s): 3817 List (witness/exhibit/generic) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Hunter Mountain Trust. (McEntire, Sawnie)
06/08/2023	3828 Response opposed to (related document(s): 3820 Motion for leave */ Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully* filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) filed by Creditor Hunter Mountain Investment Trust. (McEntire, Sawnie)
06/08/2023	3830 Certificate of service re: 1) The Highland Parties Notice of Service of a Subpoena for James Dondero to Appear and Testify at a Hearing in a Bankruptcy Case; and 2) The Highland Parties Notice of Service of a Subpoena for Mark Patrick to Appear and Testify at a Hearing in a Bankruptcy Case Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3813 Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust, 3814 Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust). (Kass, Albert)

06/08/2023	3839 Hearing held on 6/8/2023. (RE: related document(s)3699 Motion for leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust) (Appearances: S. McIntire, R. McCleary, and T. Miller for Movant; J. Morris and J. Pomeranz for Reorganized Debtor; M. Stancil and J. Levy for J. Seery; B. McIlwaine for Claims Purchasers. Evidentiary hearing. Court took matter under advisement. Court will review motion to exclude and response and reply (the latter of which is due 6/12/23) and decide whether a second day of evidence (30 minutes each side) will be permitted for expert testimony. Court will notify parties of ruling on this through CRD as soon as possible after 6/12/23.) (Edmond, Michael) (Entered: 06/12/2023)
06/09/2023	3831 PDF with attached Audio File. Court Date & Time [05/26/2023 12:53:45 PM]. File Size [12260 KB]. Run Time [01:52:51]. (admin).
06/09/2023	3832 PDF with attached Audio File. Court Date & Time [06/08/2023 02:01:09 PM]. File Size [10250 KB]. Run Time [01:32:41]. (admin).
06/09/2023	3833 PDF with attached Audio File. Court Date & Time [06/08/2023 02:02:00 PM]. File Size [53640 KB]. Run Time [03:49:59]. (admin).
06/09/2023	3834 PDF with attached Audio File. Court Date & Time [06/08/2023 02:02:56 PM]. File Size [76934 KB]. Run Time [05:29:29]. (admin).
06/09/2023	3835 PDF with attached Audio File. Court Date & Time [06/08/2023 02:03:54 PM]. File Size [36710 KB]. Run Time [02:37:00]. (admin).
06/09/2023	3836 PDF with attached Audio File. Court Date & Time [06/08/2023 02:04:32 PM]. File Size [36702 KB]. Run Time [02:36:58]. (admin).
06/09/2023	3837 Request for transcript regarding a hearing held on 6/8/2023. The requested turn−around time is hourly. (Edmond, Michael)
06/12/2023	3838 Court admitted exhibits date of hearing June 8, 2023 (RE: related document(s)3699 Motion for leave to File Verified Adversary Proceeding, filed by Creditor Hunter Mountain Investment Trust; (COURT ADMITTED THE FOLLOWING MOVANT/HUNTER MOUNTAIN INVESTMENT TRUST EXHIBITS; EXHIBITS #3, #4, #7, #8, #9, 10, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, #26 Through #38, #53 Through #75, #77 Through #80; Exhibits #24 & #25 Were Not Admitted; Exhibits #29 Through #52 Were Carried & Exhibit #76 Carried/BY ATTY SAWNIE A. MCINTIRE; COURT ADMITTED DEFENDANT/HIGHLAND CAPITAL MANAGEMENT, L.P., AND THE HIGHLAND CLAIMANT TRUST FOLLOWING EXHIBITS: EXHIBITS #1 THROUGH #16, EXHIBITS #25 THROUGH #31A, EXHIBITS #32, #33, 34, #36, #39, #40, #41, #45, #51, #59, & #60, BY ATTY JOHN MORRIS) (Edmond, Michael)
06/12/2023	3840 Notice *to Withdraw Certain Filings* filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Get Good Trust, NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC, The Dugaboy Investment Trust (RE: related document(s)3629 Motion to redact/restrict Redact (related document(s): 3623) (Fee Amount $26) filed by Interested Party James Dondero (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order), 3632 Motion to file document under seal. Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). (Lang, Michael)
06/12/2023	3841 Reply to (related document(s): 3828 Response filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, Creditor James P. Seery Jr.. (Stancil, Mark)
06/12/2023	

	3842 Joinder by *Claim Purchasers' Joinder to Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery Jr.'s Reply in Further Support of Their Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully* filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC (RE: related document(s)3841 Reply). (Bailey, Christopher)
06/13/2023	3843 Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/11/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3839 Hearing held on 6/8/2023. (RE: related document(s)3699 Motion for leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust) (Appearances: S. McIntire, R. McCleary, and T. Miller for Movant; J. Morris and J. Pomeranz for Reorganized Debtor; M. Stancil and J. Levy for J. Seery; B. McIlwaine for Claims Purchasers. Evidentiary hearing. Court took matter under advisement. Court will review motion to exclude and response and reply (the latter of which is due 6/12/23) and decide whether a second day of evidence (30 minutes each side) will be permitted for expert testimony. Court will notify parties of ruling on this through CRD as soon as possible after 6/12/23.)). Transcript to be made available to the public on 09/11/2023. (Rehling, Kathy)
06/13/2023	3844 Transcript regarding Hearing Held 05/26/2023 Before Judge Stacey G.C. Jernigan (54 Pages) RE: Motion for Expedited Hearing filed by Interested Party Hunter Mountain Trust (3789); Motion to Continue Hearing filed by Interested Party Hunter Mountain Trust (3791); and Motion for Expedited Discovery filed by Interested Party Hunter Mountain Trust (3788). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/11/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3825 Hearing held on 5/26/2023. (RE: related document(s)3789 Motion for expedited hearing(related documents 3788 Motion to extend/shorten time) filed by Interested Party Hunter Mountain Trust), (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Court issued parameters for 6/8/23 hearing.), 3826 Hearing held on 5/26/2023. (RE: related document(s)3791 Motion to continue hearing on (related documents 3760 Support/supplemental document) in the Alternative filed by Interested Party Hunter Mountain Trust (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Motion denied.), 3827 Hearing held on 5/26/2023. (RE: related document(s)3788 Motion to shorten time to Expedited Discovery Filed by Interested Party Hunter Mountain Trust, (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Motion granted in part.)). Transcript to be made available to the public on 09/11/2023. (Rehling, Kathy)
06/13/2023	3845 Request for hearing filed by Interested Party Hunter Mountain Trust (RE: related document(s)3820 Motion for leave */ Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully*). (McEntire, Sawnie)
06/13/2023	3846 Support/supplemental document*/ Response in Opposition to Hunter Mountain Investment Trust's Request for Oral Argument or, Alternatively, a Schedule for Evidentiary Proffer* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, Creditor James P. Seery Jr. (RE: related document(s)3845 Request for hearing). (Stancil, Mark)
06/14/2023	

	3847 Support/supplemental document*Reply to Highland Parties Response in Opposition [Doc. 3846]* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3845 Request for hearing, 3846 Support/supplemental document). (McEntire, Sawnie)
06/15/2023	3848 Notice of hearing filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone. Filed by Creditor The Dugaboy Investment Trust Objections due by 6/21/2023.). Hearing to be held on 8/14/2023 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 3802, (Aigen, Michael)
06/15/2023	3849 Stipulation by James P. Seery Jr.and The Dugaboy Investment Trust. filed by Creditor James P. Seery Jr. (RE: related document(s)3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone.). (Alaniz, Omar)
06/15/2023	3850 Certificate of service re: Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3819 Order further extending period within which the Reorganized Debtor may remove actions pursuant to 28 U.S.C. Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure. (re: 3773 Motion to extend time.) Entered on 6/7/2023.). (Kass, Albert)
06/16/2023	3851 Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Annable, Zachery)
06/16/2023	3852 Declaration re: *(Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3851 Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I) (Annable, Zachery)
06/16/2023	3853 Memorandum of opinion regarding joint motion to exclude expert evidence (RE: related document(s)3820 Motion for leave filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust). Entered on 6/16/2023 (Okafor, Marcey)
06/16/2023	3854 Order granting joint motion to exclude testimony and documents of Scott Van Meter and Steve Pully filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (related document # 3820) Entered on 6/16/2023. (Okafor, Marcey)
06/16/2023	3855 Order approving stipulation extending James P. Seery, Jr.'s deadline to file a response to The Dugaboy Investment Trust's Motion to preserve evidence and compel forensic imaging (RE: related document(s)3849 Stipulation filed by Creditor James P. Seery, Other Professional James P. Seery). Entered on 6/16/2023 (Okafor, Marcey)
06/16/2023	3856 DUPLICATE ENTRY: See #3855 − Order approving stipulation extending James P. Seery, Jr.'s deadline to file a response to The Dugaboy Investment Trust's Motion to preserve evidence and compel forensic imaging (RE: related document(s)3849 Stipulation filed by Creditor James P. Seery, Other Professional James P. Seery). Entered on 6/16/2023 (Okafor, Marcey) Modified on 6/16/2023 (Okafor, Marcey).
06/16/2023	

	3857 Reply to (related document(s): 3796 Response filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust) filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Proposed Order) (Hopkins, Jason)
06/19/2023	3858 PUBLIC ACCESS RESTRICTED PER ORDER #3689 STRIKING FROM DOCKET: Support/supplemental document*Evidentiary Proffer Pursuant to Rule 103(a)(2)* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3760 Support/supplemental document, 3854 Order on motion for leave). (Attachments: # 1 Exhibit Declaration of Scott Van Meter # 2 Exhibit Declaration of Steven Pully) (McEntire, Sawnie) Modified on 7/6/2023 (Okafor, Marcey).
06/19/2023	3859 DISTRICT COURT NOTICE OF APPEAL as to 18 Memorandum Opinion and Order, to the Fifth Circuit by CLO Holdco Ltd (RE: related document(s)3527 Notice of docketing notice of appeal. Civil Action Number: 3:22−cv−02051−B. (RE: related document(s)3495 Amended notice of appeal filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3475 Notice of appeal). (Attachments: # 1 Exhibit A − Order Denying Motion to Ratify Second Amended Proof of Claim and Expunging Claim # 2 Exhibit B Notice of Appeal))) (Whitaker, Sheniqua) (Entered: 06/21/2023)
06/23/2023	3860 Motion to strike (related document(s): 3858 Support/supplemental document filed by Interested Party Hunter Mountain Trust) *The Highland Parties' Objections to and Motion to Strike Hunter Mountain Investment Trust's Purported Proffer* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, Creditor James P. Seery Jr. (Stancil, Mark)
06/23/2023	3861 Joinder by filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC (RE: related document(s)3860 Motion to strike (related document(s): 3858 Support/supplemental document filed by Interested Party Hunter Mountain Trust) *The Highland Parties' Objections to and Motion to Strike Hunter Mountain Investment Trust's Purported Proffer*
06/23/2023	3862 Joinder by filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation*). (Deitsch−Perez, Deborah)
06/26/2023	3863 Request for transcript regarding a hearing held on 6/26/2023. The requested turn−around time is hourly (Smith, C)
06/26/2023	3864 Hearing held on 6/26/2023. (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)) Appearances: A. Ruhland for Movants; D. Deitsch−Perez for Hunter Mountain Trust; J. Morris for Reorganized Debtor. Nonevidentiary hearing (written evidence only). Court continued matter to 7/7/23 at 1:00 pm and directed submission of list of all pending litigation in any court involving the Reorganized Debtor in some capacity and a balance sheet for trust assets before next hearing. Court also directed Movants/Mr. Dondero to make a good faith starting offer to Reorganized Debtor before then. Court will decide at next hearing whether to order mediation. (Ellison, Traci) (Entered: 06/28/2023)
06/26/2023	3865 Hearing continued (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)) Hearing to be held on 7/7/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, (Ellison, Traci) (Entered: 06/28/2023)

06/28/2023	3866 Certificate of service re: 1) Highland Capital Management, L.P.s Motion for (A) Bad Faith Finding and (B) Attorneys Fees Against Nexpoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146; and 2) Declaration of John A. Morris in Support of Highland Capital Management, L.P.s Motion for (A) Bad Faith Finding and (B) Attorneys Fees Against Nexpoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3851 Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., 3852 Declaration re: *(Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3851 Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/29/2023	3867 Order granting stipulation withdrawing Movants' motion for leave to file proceeding (RE: related document(s)3775 Stipulation filed by Creditor Hunter Mountain Investment Trust, Creditor The Dugaboy Investment Trust). Entered on 6/29/2023 (Okafor, Marcey)
06/29/2023	3868 Motion to continue hearing on (related documents 3752 Motion to compel)*(Unopposed Motion to Continue)* Filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (Hopkins, Jason)
07/05/2023	3869 Order granting(document # 3860) motion to strike(regarding document:3858 HMIT's Evidentiary Proffer filed by Interested Party Hunter Mountain Trust) Entered on 7/5/2023. (Okafor, Marcey)
07/05/2023	3870 Order granting motion to continue hearing on (related document # 3868) (related documents Motion to compel Mediation. *Motion to Stay and to Compel Mediation*) Hearing to be held on 7/21/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, Entered on 7/5/2023. (Okafor, Marcey)
07/05/2023	3871 DUPLICATE ENTRY: SEE #3870− Order granting motion to continue hearing on (related document 3868) (related documents Motion to compel Mediation. *Motion to Stay and to Compel Mediation*) Hearing to be held on 7/21/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, Entered on 7/5/2023. (Okafor, Marcey) Modified on 7/5/2023 (Okafor, Marcey).
07/06/2023	3872 Notice *(Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3870 Order granting motion to continue hearing on (related document 3868) (related documents Motion to compel Mediation. *Motion to Stay and to Compel Mediation*) Hearing to be held on 7/21/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, Entered on 7/5/2023.). (Annable, Zachery)
07/06/2023	3873 Notice *(Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3870 Order granting motion to continue hearing on (related document 3868) (related documents Motion to compel Mediation. *Motion to Stay and to Compel Mediation*) Hearing to be held on 7/21/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, Entered on 7/5/2023.). (Annable, Zachery)

07/06/2023	3874 Stipulation by James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust and Highland Capital Management, L.P.. filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation*). (Attachments: # 1 Proposed Order) (Hopkins, Jason)
07/07/2023	3875 PDF with attached Audio File. Court Date & Time [06/26/2023 03:52:42 PM]. File Size [32789 KB]. Run Time [02:20:26]. (admin).
07/12/2023	3876 Order approving joint stipulation of the parties suspending certain deadlines until the Bankruptcy Court determines the Mediaition Motion (RE: related document(s)3874 Stipulation filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.). Entered on 7/12/2023 (Okafor, Marcey)
07/12/2023	3877 DUPLICATE ENTRY: SEE #3876 − Order approving joint stipulation of the parties suspending certain deadlines until the Bankruptcy Court determines the Mediaition Motion (RE: related document(s)3874 Stipulation filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.). Entered on 7/12/2023 (Okafor, Marcey) Modified on 7/13/2023 (Okafor, Marcey).
07/13/2023	3878 Notice *(Notice of Filing of Order Adopting Report and Recommendation and Final Judgment Against James Dondero and Certain Affiliates)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/13/2023	3879 Notice *(Notice of Filing of Order Adopting Report and Recommendation and Final Judgment Against NexPoint Asset Management, L.P.)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/14/2023	3880 Amended Notice *(Amended Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3873 Notice *(Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3870 Order granting motion to continue hearing on (related document 3868) (related documents Motion to compel Mediation. *Motion to Stay and to Compel Mediation*) Hearing to be held on 7/21/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, Entered on 7/5/2023.).). (Annable, Zachery)
07/18/2023	3881 INCORRECT EVENT: Amended Notice *of Hearing* filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)). (Attachments: # 1 Exhibit A) (Hopkins, Jason) Modified on 7/19/2023 (Ecker, C.).
07/19/2023	3882 Amended Notice of hearing filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/21/2023 at 12:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, (Attachments: # 1 Exhibit A) (Hopkins, Jason)
07/19/2023	3883 Amended Notice of hearing*Correcting Hearing Day Listed on Previous Hearing Notice 3882* filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s)3752 Motion to compel

	Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/21/2023 at 12:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, (Attachments: # 1 Exhibit A) (Hopkins, Jason)
07/19/2023	3884 Notice *(Notice of Filing of Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Annable, Zachery)
07/20/2023	3885 Notice *of Change of Firm Affiliation* filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust. (Hopkins, Jason)
07/21/2023	3886 PDF with attached Audio File. Court Date & Time [07/21/2023 03:54:16 PM]. File Size [14727 KB]. Run Time [01:03:18]. (admin).
07/21/2023	3887 Order approving joint stipulation of the parties suspending certain deadlines until The Bankruptcy Court determines the mediation motion (RE: related document(s)3874 Stipulation filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.). Entered on 7/21/2023 (Okafor, Marcey)
07/21/2023	3888 Chapter 11 Post−Confirmation Report for the Quarter Ending: 06/30/2023 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
07/21/2023	3889 Chapter 11 Post−Confirmation Report for the Quarter Ending: 06/30/2023 filed by Other Professional Highland Claimant Trust. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
07/21/2023	3891 Hearing held on 7/21/2023. (RE: related document(s)3752 Motion to compel Mediation / Motion to Stay and to Compel Mediation, filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero; (Appearances: A. Ruhland for Movants; D. Deitsche−Perez for HMIT; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Mediation will be ordered (and stay of pending bankruptcy matters for 90 days), as announced orally. Counsel to upload order.) (Edmond, Michael) (Entered: 07/25/2023)
07/24/2023	3890 Request for transcript regarding a hearing held on 7/21/2023. The requested turn−around time is ordinary 30 day (Jeng, Hawaii)
07/27/2023	3892 Transcript regarding Hearing Held 6/26/2023 RE: Motions Hearing. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/25/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Dipti Patel/Liberty Transcripts, Telephone number (847) 848−4907. (RE: related document(s) 3864 Hearing held on 6/26/2023. (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)) Appearances: A. Ruhland for Movants; D. Deitsch−Perez for Hunter Mountain Trust; J. Morris for Reorganized Debtor. Nonevidentiary hearing (written evidence only). Court continued matter to 7/7/23 at 1:00 pm and directed submission of list of all pending litigation in any court involving the Reorganized Debtor in some capacity and a balance sheet for trust assets before next hearing. Court also directed Movants/Mr. Dondero to make a good faith starting offer to Reorganized Debtor before then. Court will decide at next hearing whether to order mediation., 3865 Hearing continued (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand

	Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)) Hearing to be held on 7/7/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752,). Transcript to be made available to the public on 10/25/2023. (Patel, Dipti)
07/28/2023	3894 Hearing held on 7/28/2023. (RE: related document(s)3752 Motion to compel Mediation. Motion to Stay and to Compel Mediation filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero.) (Appearances: A. Ruhland for Movants; D. Deitsch−Perez for HMIT; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Court accepted announcement of an agreed order regarding mediation. Order will be submitted electronically when parties selection of mediator has been finalized.) (Edmond, Michael)
07/31/2023	3896 PDF with attached Audio File. Court Date & Time [07/28/2023 09:36:01 AM]. File Size [4616 KB]. Run Time [00:19:45]. (admin).
08/02/2023	3897 Order granting in part, denying in part motion to stay and to compel mediation (related document # 3752) Entered on 8/2/2023. (Okafor, Marcey)
08/10/2023	3899 DISTRICT COURT Opinion of USCA in accordance with USCA judgment re 39 Notice of Appeal filed by NexPoint Advisors LP. re: appeal on appellate case number: 22−10575, AFFIRMED (RE: related document(s)3077 Notice of appeal filed by Interested Party NexPoint Real Estate Advisors, L.P.). Civil case 3:21−cv−03086−K Entered on 8/10/2023 (Whitaker, Sheniqua) (Entered: 08/16/2023)
08/10/2023	3900 DISTRICT COURT JUDGMENT/MANDATE of USCA as to 39 Notice of Appeal filed by NexPoint Advisors LP. IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED re: appeal on appellate case number: 22−10575, AFFIRMED (RE: related document(s)3077 Notice of appeal filed by Interested Party NexPoint Real Estate Advisors, L.P.). Civil case 3:21−cv−03086−K Entered on 8/10/2023 (Whitaker, Sheniqua) (Entered: 08/16/2023)
08/10/2023	4092 DISTRICT COURT Order from circuit court re: appeal on appellate case number: 22−10575, AFFIRMED (RE: related document(s)3077 Notice of appeal filed by Interested Party NexPoint Real Estate Advisors, L.P.). 3:21−cv−03086−K Entered on 8/10/2023 (Whitaker, Sheniqua) (Entered: 06/13/2024)
08/10/2023	4093 DISTRICT COURT Order from circuit court re: appeal on appellate case number: 22−10575, AFFIRMED (RE: related document(s)3077 Notice of appeal filed by Interested Party NexPoint Real Estate Advisors, L.P.). Entered on 8/10/2023 (Whitaker, Sheniqua) (Entered: 06/13/2024)
08/15/2023	3898 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)3822 Motion to file document under seal.*Exhibit* Filed by Interested Party Hunter Mountain Trust (Attachments: # 1 Proposed Order)) Responses due by 8/22/2023. (Ecker, C.)
08/17/2023	3901 Withdrawal *of HMIT's Unopposed Motion to File Exhibit Under Seal* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3822 Motion to file document under seal.*Exhibit*). (McEntire, Sawnie)
08/21/2023	3921 DISCTRICT COURT Opinion from circuit court re: appeal on appellate case number: 22−10983, AFFIRMED (RE: related document(s)2398 Notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust). Civil Case 3:21−cv−01295−X Entered on 8/21/2023 (Whitaker, Sheniqua) (Entered: 09/20/2023)
08/21/2023	3922 DISTRICT COURT Order from circuit court re: appeal on appellate case number: 22−10983, AFFIRMED (RE: related document(s)2398 Notice of appeal filed by Creditor

	The Dugaboy Investment Trust, Creditor Get Good Trust). Civil Case 3:21−cv−01295−X Entered on 8/21/2023 (Whitaker, Sheniqua) (Entered: 09/20/2023)
08/22/2023	3902 Transcript regarding Hearing Held 07/21/2023 Before Judge Stacey G.C. Jernigan (26 pages) RE: Motion to Stay and to Compel Mediation (#3752). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/20/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3891 Hearing held on 7/21/2023. (RE: related document(s)3752 Motion to compel Mediation / Motion to Stay and to Compel Mediation, filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero; (Appearances: A. Ruhland for Movants; D. Deitsche−Perez for HMIT; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Mediation will be ordered (and stay of pending bankruptcy matters for 90 days), as announced orally. Counsel to upload order.)). Transcript to be made available to the public on 11/20/2023. (Rehling, Kathy)
08/22/2023	3919 DISTRICT COURT Opinion from circuit court re: appeal on appellate case number: 22−10960, AFFIRMED (RE: related document(s) 1889 Amended notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust. Civil Case 3:21−cv−00261−L Entered on 8/22/2023 (Whitaker, Sheniqua). (Entered: 09/20/2023)
08/22/2023	3920 DISTRICT COURT Order from circuit court re: appeal on appellate case number: 22−10960, AFFIRMED (RE: related document(s) 1889 Amended notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust. Civil Case 3:21−cv−00261− Entered on 8/22/2023 (Whitaker, Sheniqua). (Entered: 09/20/2023)
08/25/2023	3903 Memorandum of Opinion Pursuant to Plan "Gatekeeper Provision" and Pre−Confirmation "Gatekeeper Orders"; Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding (RE: related document(s)3699 Motion for leave filed by Creditor Hunter Mountain Investment Trust and Supplemental documents #3760, 3815,3816). Entered on 8/25/2023 (Okafor, Marcey)
08/25/2023	3904 Order Pursuant to Plan "Gatekeeper Provision" and Pre−Confirmation "Gatekeeper Orders" Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding (RE: related document(s)3699 Motion for leave filed by Creditor Hunter Mountain Investment Trust and Supplemental documents #3760, 3815,3816) Entered on 8/25/2023. (Okafor, Marcey)
09/08/2023	3905 Motion to Reconsider(related documents 3903 Memorandum of opinion, 3904 Order on motion for leave)*to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Relief* Filed by Creditor Hunter Mountain Investment Trust (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Proposed Order) (McEntire, Sawnie)
09/08/2023	3906 Notice of appeal *of Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre−Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding*. Fee Amount $298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3904 Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)(McEntire, Sawnie)
09/08/2023	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number C30715984, amount $ 298.00 (re: Doc# 3906). (U.S. Treasury)
09/11/2023	

	3907 Clerk's correspondence requesting to amend notice of appeal from attorney for creditor. (RE: related document(s)3906 Notice of appeal *of Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre−Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding*. Fee Amount $298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3904 Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)) Responses due by 9/13/2023. (Whitaker, Sheniqua)
09/12/2023	3908 Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)(McEntire, Sawnie)
09/13/2023	3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders Filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (Attachments: # 1 Exhibit A − Proposed Order) (Stancil, Mark)
09/13/2023	3911 Trustee's motion *to be included in mediation (Order Doc. No. 3897). Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P.* (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4)(Seidel, Scott)
09/13/2023	3912 Declaration re: *Motion for Contempt* filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s)3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14) (Levy, Joshua)
09/13/2023	3913 Notice of Appearance and Request for Notice by Scott M. Seidel filed by Attorney Scott M. Seidel. (Seidel, Scott)
09/13/2023	3914 Declaration re: *Motion for Contempt* filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s)3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9) (Stancil, Mark)
09/15/2023	3915 Certificate of mailing regarding appeal (RE: related document(s)3908 Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
09/15/2023	3916 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)3908 Amended Notice of appeal *of Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre−Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding*. Fee Amount $298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3904 Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)) (Whitaker, Sheniqua) (Entered: 09/19/2023)
09/15/2023	3917 Notice of docketing notice of appeal. Civil Action Number: 3:23−cv−02071−E. (RE: related document(s)3908 Amended notice of appeal filed by Creditor Hunter Mountain

	Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)) (Whitaker, Sheniqua) (Entered: 09/19/2023)
09/20/2023	3918 Notice of Appearance and Request for Notice *Hogan Lovells US LLP* by Susan B. Hersh filed by Interested Parties John S. Dubel, Hon.Russell F. Nelms (Ret.). (Hersh, Susan)
09/21/2023	3923 Notice of Appearance and Request for Notice by Jerry C. Alexander filed by Attorney Scott M. Seidel. (Alexander, Jerry)
09/21/2023	3924 Motion for ex parte relief *Request for Hearing on Trustee Scott Seidel's Motion to Be Included in Mediation* Filed by Attorney Scott M. Seidel (Attachments: # 1 Exhibit A # 2 Exhibit B) (Alexander, Jerry)
09/21/2023	3925 BNC certificate of mailing. (RE: related document(s)3916 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)3908 Amended Notice of appeal *of Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre−Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding*. Fee Amount $298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3904 Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit))) No. of Notices: 1. Notice Date 09/21/2023. (Admin.)
09/22/2023	3926 Notice of hearing filed by Attorney Scott M. Seidel (RE: related document(s)3911 Trustee's motion *to be included in mediation (Order Doc. No. 3897). Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P.* (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4)). Hearing to be held on 10/2/2023 at 02:30 PM Dallas Judge Jernigan Ctrm for 3911, (Alexander, Jerry)
09/22/2023	3927 Response unopposed to (related document(s): 3911 Trustee's motion *to be included in mediation (Order Doc. No. 3897). Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P.*) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust. (Annable, Zachery)
09/22/2023	3928 Notice *Regarding Appeal and Pending Post−Judgment Motion* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3905 Motion to Reconsider(related documents 3903 Memorandum of opinion, 3904 Order on motion for leave)*to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Relief* Filed by Creditor Hunter Mountain Investment Trust (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Proposed Order), 3906 Notice of appeal *of Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre−Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding*. Fee Amount $298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3904 Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit), 3908 Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit), 3917 Notice of docketing notice of appeal. Civil Action Number: 3:23−cv−02071−E. (RE: related document(s)3908 Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit))). (McEntire, Sawnie)

09/25/2023	3929 Order setting hearing (RE: related document(s)3924 Motion for ex parte relief filed by Attorney Scott M. Seidel). Hearing to be held on 10/2/2023 at 02:30 PM Dallas Judge Jernigan Ctrm for 3924, Entered on 9/25/2023 (Okafor, Marcey)
09/27/2023	3930 Response unopposed to (related document(s): 3911 Trustee's motion *to be included in mediation (Order Doc. No. 3897). Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P.*) filed by Interested Party James Dondero, Get Good Trust, Hunter Mountain Investment Trust, Strand Advisors, Inc., The Dugaboy Investment Trust. (Deitsch−Perez, Deborah)
09/28/2023	3931 Certificate of service re: The Highland Parties Response to Trustees Motion to Be Included in Mediation Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3927 Response unopposed to (related document(s): 3911 Trustee's motion *to be included in mediation (Order Doc. No. 3897). Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P.*) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust. filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). (Kass, Albert)
10/02/2023	3932 Hearing held on 10/2/2023. (RE: related document(s) 3911 Trustee's motion to be included in mediation (Order Doc. No. 3897), filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P., (Appearances: J. Alexander, for and with S. Seidel, Chapter 7 Trustee, G. Demo for Highland parties; D. Deitsche−Perez for Dugaboy and other Respondants. Nonevidentiary hearing. Motoin denied. Counsel to upload order.) (Edmond, Michael)
10/03/2023	3933 Request for transcript regarding a hearing held on 10/2/2023. The requested turn−around time is hourly. (Edmond, Michael)
10/03/2023	3934 Order on Trustee's motion to be included in mediation (related document # 3911) Entered on 10/3/2023. (Okafor, Marcey)
10/03/2023	3935 Transcript regarding Hearing Held 10/02/2023 Before Judge Stacey G.C. Jernigan (34 Pages) RE: Trustee's Motion to be Included in Mediation (#3911). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/1/2024. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3932 Hearing held on 10/2/2023. (RE: related document(s) 3911 Trustee's motion to be included in mediation (Order Doc. No. 3897), filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P., (Appearances: J. Alexander, for and with S. Seidel, Chapter 7 Trustee, G. Demo for Highland parties; D. Deitsche−Perez for Dugaboy and other Respondants. Nonevidentiary hearing. Motoin denied. Counsel to upload order.)). Transcript to be made available to the public on 01/1/2024. (Rehling, Kathy)
10/05/2023	3936 Order denying motion of Hunter Mountain Investment Trust seeking relief pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Proposed Order) (related document # 3905) Entered on 10/5/2023. (Okafor, Marcey)
10/05/2023	3937 BNC certificate of mailing − PDF document. (RE: related document(s)3934 Order on Trustee's motion to be included in mediation (related document 3911) Entered on 10/3/2023.) No. of Notices: 0. Notice Date 10/05/2023. (Admin.)
10/09/2023	3938 Motion to appear pro hac vice for Richard L. Wynne. Fee Amount $100 Filed by Interested Parties John S. Dubel, Hon.Russell F. Nelms (Ret.) (Wynne, Richard)

10/10/2023	3939 Motion to appear pro hac vice for Edward J. McNeilly. Fee Amount $100 Filed by Interested Parties John S. Dubel , Hon.Russell F. Nelms (Ret.) (Ecker, C.) Additional attachment(s) added on 10/11/2023 (Ecker, C.).
10/10/2023	Receipt of Pro Hac Vice Filing Fee − $100.00 by CE. Receipt Number 339899. (admin)
10/16/2023	3940 Order granting motion to appear pro hac vice adding Richard L. Wynne for John S. Dubel and Hon.Russell F. Nelms (Ret.) (related document # 3938) Entered on 10/16/2023. (Okafor, Marcey)
10/16/2023	3941 Order granting motion to appear pro hac vice adding Edward J. McNeilly for John S. Dubel and Hon.Russell F. Nelms (Ret.) (related document 3939) Entered on 10/16/2023. (Okafor, Marcey) Modified to add party on 10/16/2023 (Okafor, Marcey).
10/17/2023	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A30817329, amount $ 100.00 (re: Doc# 3938). (U.S. Treasury)
10/18/2023	3942 BNC certificate of mailing − PDF document. (RE: related document(s)3940 Order granting motion to appear pro hac vice adding Richard L. Wynne for John S. Dubel and Hon.Russell F. Nelms (Ret.) (related document 3938) Entered on 10/16/2023.) No. of Notices: 1. Notice Date 10/18/2023. (Admin.)
10/18/2023	3943 BNC certificate of mailing − PDF document. (RE: related document(s)3941 Order granting motion to appear pro hac vice adding Edward J. McNeilly for John S. Dubel and Hon.Russell F. Nelms (Ret.) (related document 3939) Entered on 10/16/2023. (Okafor, Marcey) Modified to add party on 10/16/2023 .) No. of Notices: 1. Notice Date 10/18/2023. (Admin.)
10/19/2023	3944 PDF with attached Audio File. Court Date & Time [10/02/2023 02:02:15 PM]. File Size [13137 KB]. Run Time [00:56:07]. (admin).
10/19/2023	3945 Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit Ex. 3 # 4 Exhibit Ex. 4 # 5 Exhibit Ex. 5 # 6 Exhibit Ex. 5a # 7 Exhibit Ex. 6 # 8 Exhibit Ex. 7 # 9 Exhibit Ex. 8 # 10 Exhibit Ex. 9)(McEntire, Sawnie)
10/19/2023	3946 INCORRECT ENTRY. Incorrect event code. Statement of issues on appeal, *and Designation of Items for Inclusion in the Appellate Record* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal, 3945 Amended notice of appeal). (McEntire, Sawnie) Modified on 10/20/2023 (Whitaker, Sheniqua).
10/20/2023	3947 INCORRECT ENTRY. Incomplete Form. Clerk's correspondence regarding second amended notice of appeal from attorney for appellant. (RE: related document(s)3945 Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit Ex. 3 # 4 Exhibit Ex. 4 # 5 Exhibit Ex. 5 # 6 Exhibit Ex. 5a # 7 Exhibit Ex. 6 # 8 Exhibit Ex. 7 # 9 Exhibit Ex. 8 # 10 Exhibit Ex. 9)) Responses due by 10/23/2023. (Whitaker, Sheniqua)
10/20/2023	3948 INCORRECT ENTRY. Clerk's correspondence submitted incorrectly. (RE: related document(s)3945 Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit Ex. 3 # 4 Exhibit Ex. 4 # 5 Exhibit Ex. 5 # 6 Exhibit Ex. 5a # 7 Exhibit Ex. 6 # 8 Exhibit Ex. 7 # 9 Exhibit Ex. 8 # 10 Exhibit Ex. 9)) Responses due by 10/23/2023. (Whitaker, Sheniqua) Modified on 10/20/2023 (Whitaker, Sheniqua).

10/20/2023	3949 Clerk's correspondence requesting to refile document from attorney for appellant. (RE: related document(s)3946 INCORRECT ENTRY. Incorrect event code. Statement of issues on appeal, *and Designation of Items for Inclusion in the Appellate Record* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal, 3945 Amended notice of appeal). (McEntire, Sawnie) Modified on 10/20/2023 .) Responses due by 10/23/2023. (Whitaker, Sheniqua)
10/20/2023	3950 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. *Supplemental* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal, 3908 Amended notice of appeal, 3945 Amended notice of appeal). Appellee designation due by 11/3/2023. (McEntire, Sawnie)
10/23/2023	3951 Amended Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. *Second Supplemental* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal, 3908 Amended notice of appeal, 3945 Amended notice of appeal). Appellee designation due by 11/6/2023. (McEntire, Sawnie) Modified TEXT on 10/24/2023 (Blanco, J.).
10/23/2023	3952 Notice of Appearance and Request for Notice by James Jay Lee filed by Interested Parties The Pettit Law Firm, Lynn Pinker Hurst & Schwegmann, LLP. (Lee, James)
10/23/2023	3953 Chapter 11 Post−Confirmation Report for the Quarter Ending: 09/30/2023 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit Global Notes to Post−Confirmation Report) (Annable, Zachery)
10/23/2023	3954 Chapter 11 Post−Confirmation Report for the Quarter Ending: 09/30/2023 filed by Other Professional Highland Claimant Trust. (Attachments: # 1 Exhibit Global Notes to Post−Confirmation Report) (Annable, Zachery)
10/23/2023	3955 Amended Chapter 11 Post−Confirmation Report for the Quarter Ending: 09/30/2023 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3953 Chapter 11 Post−Confirmation Report). (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
10/23/2023	3956 Amended Chapter 11 Post−Confirmation Report for the Quarter Ending: 09/30/2023 filed by Other Professional Highland Claimant Trust (RE: related document(s)3954 Chapter 11 Post−Confirmation Report). (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
10/24/2023	3957 Motion to strike (related document(s): 3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) *and Response Subject Thereto Opposing the Movants' Motion Requesting an Order Requiring Lynn Pinker and Pettit to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders* Filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm Objections due by 11/10/2023. (Attachments: # 1 Exhibit 1 − Proposed Order # 2 Exhibit A − Declaration of Julie Pettit # 3 Exhibit B − Declaration of Michael K. Hurst) (Lee, James)
10/24/2023	3958 Response opposed to (related document(s): 3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) filed by Creditor Scott Ellington. (Hartmann, Margaret)
10/24/2023	3959 Declaration re: *Ellington's Response in Opposition to the Joint Motion of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr. for an Order Requiring Ellington and His Counsel to Show Cause Why They Should Not Be Held in Civil*

	Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders filed by Creditor Scott Ellington (RE: related document(s)3958 Response). (Attachments: # 1 Exhibit 2 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) (Hartmann, Margaret)
10/25/2023	3960 Support/supplemental document*Notice of Filing Exhibit "1" to Declaration of Michelle Hartmann in Support of Ellington's Response in Opposition to the Joint Motion of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr. for an Order Requiring Ellington and His Counsel to Show Cause Why They Should Not Be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders* filed by Creditor Scott Ellington (RE: related document(s)3959 Declaration). (Hartmann, Margaret)
10/30/2023	3961 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders Filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (Attachments: # 1 Exhibit A − Proposed Order)). Hearing to be held on 12/4/2023 at 01:30 PM Dallas Judge Jernigan Ctrm for 3910, (Annable, Zachery)
10/31/2023	3962 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3819 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/01/2023	3963 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3962 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3819 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/4/2023 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3962, (Annable, Zachery)
11/07/2023	3964 Joint Notice *of Mediation Report* filed by Interested Party James Dondero, Get Good Trust, Hunter Mountain Investment Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s)3897 Order granting in part, denying in part motion to stay and to compel mediation (related document 3752) Entered on 8/2/2023.). (Attachments: # 1 Exhibit A) (Deitsch−Perez, Deborah)
11/08/2023	3965 Certificate of service re: Notice of Hearing re: Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.s Joint Motion for an Order Requiring Scott Byron Ellington and His Counsel to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3961 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders Filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (Attachments: # 1 Exhibit A − Proposed Order)). Hearing to be held on 12/4/2023 at 01:30 PM Dallas Judge Jernigan Ctrm for 3910, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/08/2023	3966 Certificate of service re: Reorganized Debtor's Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3962 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3819 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

11/08/2023	3967 Certificate of service re: Notice of Hearing re: Reorganized Debtor's Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3963 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3962 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3819 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/4/2023 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3962, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/09/2023	3968 Certificate of service re: Motion and Notice filed by Creditor James P. Seery Jr. (RE: related document(s)3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders, 3961 Notice of hearing). (Robin, Lindsey)
11/10/2023	3969 Reply to (related document(s): 3958 Response filed by Creditor Scott Ellington) *(Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.s Reply in Further Support of Their Joint Motion for Civil Contempt and in Opposition to Ellingtons Counsels Motion to Strike)* filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. (Stancil, Mark)
11/15/2023	3970 Notice of hearing filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm (RE: related document(s)3957 Motion to strike (related document(s): 3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) *and Response Subject Thereto Opposing the Movants' Motion Requesting an Order Requiring Lynn Pinker and Pettit to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders* Filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm Objections due by 11/10/2023. (Attachments: # 1 Exhibit 1 − Proposed Order # 2 Exhibit A − Declaration of Julie Pettit # 3 Exhibit B − Declaration of Michael K. Hurst)). Hearing to be held on 12/4/2023 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 3957, (Lee, James)
11/16/2023	3971 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3851 Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/24/2024 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3851, (Annable, Zachery)
11/22/2023	3972 Notice *(Highland Capital Management, L.P.'s Notice of Intent to Lift the Stay for Purpose of Prosecuting Claim Objection)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3736 Order approving Stipulation staying contested matter concerning Highland Capital Management L.P.'s objection to schedule claims 3.65 and 3.66 of Highland CLO Management, LTD and related matters (RE: related document(s)3695 Motion to intervene filed by Creditor Acis Capital Management, L.P.). Entered on 4/13/2023). (Annable, Zachery)
11/27/2023	3973 Certificate of no objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3962 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3819 Order on motion to extend/shorten time)). (Annable, Zachery)
11/27/2023	3974 Joinder by filed by Interested Parties John S. Dubel, Hon.Russell F. Nelms (Ret.) (RE: related document(s)3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders, 3969

	Reply). (Hersh, Susan)
11/28/2023	3975 Joinder by *Patrick Daugherty* filed by Creditor Patrick Daugherty (RE: related document(s)3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders, 3969 Reply). (Attachments: # 1 Exhibit A) (Brookner, Jason)
11/30/2023	3976 Witness and Exhibit List *for December 4, 2023 Hearing Wherein Movants' Seek an Order to Show Cause* filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm (RE: related document(s)3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders, 3957 Motion to strike (related document(s): 3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor). (Attachments: # 1 Exhibit A # 2 Exhibit A−1 # 3 Exhibit A−2 # 4 Exhibit A−3 # 5 Exhibit A−4 # 6 Exhibit A−5 # 7 Exhibit A−6 # 8 Exhibit A−7 # 9 Exhibit A−8 # 10 Exhibit A−9 # 11 Exhibit A−10 # 12 Exhibit A−11 # 13 Exhibit A−12 # 14 Exhibit B) (Lee, James)
11/30/2023	3977 Witness and Exhibit List *(Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Witness and Exhibit List with Respect to Hearing to Be Held on December 4, 2023)* filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s)3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39) (Annable, Zachery)
11/30/2023	3978 Witness and Exhibit List *Ellington's Witness and Exhibit List for the hearing scheduled on December 4, 2023* filed by Creditor Scott Ellington (RE: related document(s)3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders). (Attachments: # 1 Exhibit SE−1 # 2 Exhibit SE−2 # 3 Exhibit SE−3 # 4 Exhibit SE−4 # 5 Exhibit SE−5 # 6 Exhibit SE−6 # 7 Exhibit SE−7 # 8 Exhibit SE−8 # 9 Exhibit SE−9 # 10 Exhibit SE−10) (Hartmann, Margaret)
12/01/2023	3979 Objection to (related document(s): 3975 Joinder filed by Creditor Patrick Daugherty. Filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm. (Lee, James) Modified to correct linkage on 12/4/2023 (Ecker, C.).
12/01/2023	3980 Joinder by *Scott Ellington in Lynn Pinker Hurst & Schwegmann, LLP and The Pettit Law Firm's Objection to the Joinder of Patrick Daugherty* filed by Creditor Scott Ellington (RE: related document(s)3979 Objection). (Hartmann, Margaret)
12/04/2023	3981 Motion for leave *to File Adversary Complaint* Filed by Interested Party James Dondero, Creditor Strand Advisors, Inc. (Attachments: # 1 Exhibit Exhibit A # 2 Exhibit Exhibit B # 3 Proposed Order Proposed Order) (Ruhland, Amy)
12/04/2023	3983 Court admitted exhibits date of hearing December 4, 2023 (RE: related document(s)3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (Attachments: # 1 Exhibit A − Proposed Order), 3957 Motion to strike (related document(s): 3910 Motion for contempt against Scott Byron Ellington and His Counsel

	regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) and Response Subject Thereto Opposing the Movants' Motion Requesting an Order Requiring Lynn Pinker and Pettit to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm Objections due by 11/10/2023. (The Court Admitted All Exhibits that Appear at Doc. #3976, #3977 & #3978 Announced in Court) (Edmond, Michael) (Entered: 12/05/2023)
12/04/2023	3985 Hearing held on 12/4/2023. (RE: related document(s) 3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (Attachments: # 1 Exhibit A − Proposed Order), (Appearances: J. Morris and H. Winograd for Debtor; J. Levy and M. Stancil for J. Seery; M. Hartman and D. Dandeneau for S. Ellington; R. Wynne and S. Hersch for R. Nelms and J. Dubel; J. Lee and M. Lee for State Court Lawyers; L. Lambert for U.S. Trustee. Evidentiary hearing (documents admitted; no live witness testimony). Parties reached agreed resolution of this matter during break of hearing. Agreed Order will be electronically submitted.) (Edmond, Michael) (Entered: 12/06/2023)
12/04/2023	3986 Hearing held on 12/4/2023. (RE: related document(s)3957 Motion to strike (related document(s): 3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) and Response Subject Thereto Opposing the Movants' Motion Requesting an Order Requiring Lynn Pinker and Pettit to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders Filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm, (Appearances: J. Morris and H. Winograd for Debtor; J. Levy and M. Stancil for J. Seery; M. Hartman and D. Dandeneau for S. Ellington; R. Wynne and S. Hersch for R. Nelms and J. Dubel; J. Lee and M. Lee for State Court Lawyers; L. Lambert for U.S. Trustee. Evidentiary hearing (documents admitted; no live witness testimony). Parties reached agreed resolution of this matter during break of hearing. Agreed Order will be electronically submitted.) (Edmond, Michael) (Entered: 12/06/2023)
12/05/2023	3984 Request for transcript regarding a hearing held on 12/4/2023. The requested turn−around time is hourly. (Edmond, Michael)
12/06/2023	3987 Transcript regarding Hearing Held 12/04/2023 Before Judge Stacey G.C. Jernigan (101 Pages) RE: Motion for Order to Show Cause, Motion to Strike. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/5/2024. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3985 Hearing held on 12/4/2023. (RE: related document(s) 3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (Attachments: # 1 Exhibit A − Proposed Order), (Appearances: J. Morris and H. Winograd for Debtor; J. Levy and M. Stancil for J. Seery; M. Hartman and D. Dandeneau for S. Ellington; R. Wynne and S. Hersch for R. Nelms and J. Dubel; J. Lee and M. Lee for State Court Lawyers; L. Lambert for U.S. Trustee. Evidentiary hearing (documents admitted; no live witness testimony). Parties reached agreed resolution of this matter during break of hearing. Agreed Order will be electronically submitted.), 3986 Hearing held on 12/4/2023. (RE: related document(s)3957 Motion to strike (related document(s): 3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other

	Professional Highland Claimant Trust) and Response Subject Thereto Opposing the Movants' Motion Requesting an Order Requiring Lynn Pinker and Pettit to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders Filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm, (Appearances: J. Morris and H. Winograd for Debtor; J. Levy and M. Stancil for J. Seery; M. Hartman and D. Dandeneau for S. Ellington; R. Wynne and S. Hersch for R. Nelms and J. Dubel; J. Lee and M. Lee for State Court Lawyers; L. Lambert for U.S. Trustee. Evidentiary hearing (documents admitted; no live witness testimony). Parties reached agreed resolution of this matter during break of hearing. Agreed Order will be electronically submitted.)). Transcript to be made available to the public on 03/5/2024. (Rehling, Kathy)
12/07/2023	3988 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 42 . Civil Case Number: 3:23−CV−2071−E (RE: related document(s)3906 Notice of appeal 3908 Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust 3945 Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust) (Blanco, J.)
12/07/2023	3989 Notice of docketing COMPLETE record on appeal. 3:23−CV−02071−E (RE: related document(s)3906 Notice of appeal 3908 Amended notice of appeal 3945 Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit Ex.) (Blanco, J.)
12/08/2023	3990 Order Further Extending Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 USC Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related doc. 3962 Motion to extend time.) Entered on 12/8/2023. (Okafor, Marcey)
12/12/2023	3991 Order Denying Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders (related document # 3910) Entered on 12/12/2023. (Okafor, Marcey)
12/18/2023	3993 Notice of Transmittal to correct and attach Mini Record to DC docket 23−CV−02071−E (RE: related document(s)3989 Notice of docketing COMPLETE record on appeal. 3:23−CV−02071−E (RE: related document(s)3906 Notice of appeal 3908 Amended notice of appeal 3945 Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit Ex.) (Blanco, J.)). (Blanco, J.)
12/18/2023	3994 Certificate of service re: re: Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3990 Order Further Extending Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 USC Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related doc. 3962 Motion to extend time.) Entered on 12/8/2023.). (Kass, Albert)
12/22/2023	3995 Response opposed to (related document(s): 3851 Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
12/26/2023	3996 Response opposed to (related document(s): 3981 Motion for leave *to File Adversary Complaint* filed by Interested Party James Dondero, Creditor Strand Advisors, Inc.) filed by Attorney Pachulski Stang Ziehl & Jones LLP. (Annable, Zachery)
12/26/2023	

	3997 Amended Response opposed to (related document(s): 3981 Motion for leave *to File Adversary Complaint* filed by Interested Party James Dondero, Creditor Strand Advisors, Inc.) filed by Attorney Pachulski Stang Ziehl & Jones LLP. (Annable, Zachery)
12/26/2023	3998 Declaration re: *(Declaration of Hayley R. Winograd in Support of PSZJ's Amended Opposition to Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint)* filed by Attorney Pachulski Stang Ziehl & Jones LLP (RE: related document(s)3997 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11) (Annable, Zachery)
12/27/2023	3999 Clerk's correspondence requesting an order (RE: related document(s)3957 Motion to strike (related document(s): 3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) *and Response Subject Thereto Opposing the Movants' Motion Requesting an Order Requiring Lynn Pinker and Pettit to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders* Filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm Objections due by 11/10/2023. (Attachments: # 1 Exhibit 1 − Proposed Order # 2 Exhibit A − Declaration of Julie Pettit # 3 Exhibit B − Declaration of Michael K. Hurst)) Responses due by 1/3/2024. (Ecker, C.)
01/01/2024	4000 Motion for leave *to File a Delaware Complaint* Filed by Creditor Hunter Mountain Investment Trust Objections due by 1/22/2024. (Attachments: # 1 Exhibit 1) (Deitsch−Perez, Deborah)
01/01/2024	4001 Support/supplemental document*Appendix in Support of Motion for Leave to File a Delaware Complaint* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)4000 Motion for leave *to File a Delaware Complaint*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16) (Deitsch−Perez, Deborah)
01/05/2024	4002 Order denying as moot (document # 3957) motion to strike. Entered on 1/5/2024. (Okafor, Marcey)
01/06/2024	4003 Certificate of service re: re: Highland Capital Management, L.P.s Notice of Intent to Lift the Stay for the Purpose of Prosecuting Claim Objection Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3972 Notice *(Highland Capital Management, L.P.'s Notice of Intent to Lift the Stay for Purpose of Prosecuting Claim Objection)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3736 Order approving Stipulation staying contested matter concerning Highland Capital Management L.P.'s objection to schedule claims 3.65 and 3.66 of Highland CLO Management, LTD and related matters (RE: related document(s)3695 Motion to intervene filed by Creditor Acis Capital Management, L.P.). Entered on 4/13/2023). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/09/2024	4005 Notice of Transmittal of Appellant Record for the 5th Circuit Court of Appeals, 23−10911. District Court docket entires 176−180 in 3:21−CV−00881−X . 233 Appellant Volumes. (Blanco, J.)
01/15/2024	4006 Certificate of service re: 1) PSZJs Amended Opposition to Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint; 2) Declaration of Hayley R. Winograd in Support of PSZJs Amended Opposition to Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3997 Amended Response opposed to (related document(s): 3981 Motion for leave *to File Adversary Complaint* filed by Interested Party James Dondero, Creditor Strand Advisors, Inc.) filed by Attorney

	Pachulski Stang Ziehl & Jones LLP. filed by Attorney Pachulski Stang Ziehl & Jones LLP, 3998 Declaration re: *(Declaration of Hayley R. Winograd in Support of PSZJ's Amended Opposition to Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint)* filed by Attorney Pachulski Stang Ziehl & Jones LLP (RE: related document(s)3997 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11) filed by Attorney Pachulski Stang Ziehl & Jones LLP). (Kass, Albert)
01/15/2024	4007 Certificate of service re: 1) Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust; 2) Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3872 Notice *(Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3870 Order granting motion to continue hearing on (related document 3868) (related documents Motion to compel Mediation. *Motion to Stay and to Compel Mediation*) Hearing to be held on 7/21/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, Entered on 7/5/2023.). filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, 3873 Notice *(Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3870 Order granting motion to continue hearing on (related document 3868) (related documents Motion to compel Mediation. *Motion to Stay and to Compel Mediation*) Hearing to be held on 7/21/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, Entered on 7/5/2023.). filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). (Kass, Albert)
01/15/2024	4008 Certificate of service re: 1) Notice of Filing of Order Adopting Report and Recommendation and Final Judgment Against James Dondero and Certain Affiliates; 2) Notice of Filing of Order Adopting Report and Recommendation and Final Judgment Against NexPoint Asset Management, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3878 Notice *(Notice of Filing of Order Adopting Report and Recommendation and Final Judgment Against James Dondero and Certain Affiliates)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3879 Notice *(Notice of Filing of Order Adopting Report and Recommendation and Final Judgment Against NexPoint Asset Management, L.P.)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/15/2024	4009 Certificate of service re: Amended Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3880 Amended Notice *(Amended Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3873 Notice *(Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3870 Order granting motion to continue hearing on (related document 3868) (related documents Motion to compel Mediation. *Motion to Stay and to Compel Mediation*) Hearing to be held on 7/21/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, Entered on 7/5/2023.).). filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). (Kass, Albert)
01/15/2024	4010 Certificate of service re: 1) Notice of Briefing Schedule and Hearing re: Highland Capital Management, L.P.s Motion for (A) Bad Faith Finding and (B) Attorneys Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146; and 2) Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.s Witness and Exhibit List with Respect to Hearing to be Held on December 4, 2023 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3971 Notice of hearing filed by Debtor Highland Capital Management, L.P.

	(RE: related document(s)3851 Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/24/2024 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3851, filed by Debtor Highland Capital Management, L.P., 3977 Witness and Exhibit List *(Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Witness and Exhibit List with Respect to Hearing to Be Held on December 4, 2023)* filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s)3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39) filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust). (Kass, Albert)
01/16/2024	4011 Motion to compromise controversy with Okada Parties. Related AP case numbers: 21−03076. Related defendants: Mark K. Okada, Mark & Pamela Okada Family Trust Exempt Trust #1, Mark & Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order) (Loigman, Robert)
01/16/2024	4012 Declaration re: *Declaration of Robert S. Loigman in Support of the Litigation Trustee's Motion to Compromise Controversy with the Okada Parties* filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust (RE: related document(s)4011 Motion to compromise controversy with Okada Parties. Related AP case numbers: 21−03076. Related defendants: Mark K. Okada, Mark & Pamela Okada Family Trust Exempt Trust #1, Mark & Pamela Okada Family Trust Exempt Trust #2, and Lawrence Ton). (Attachments: # 1 Exhibit 1: Okada Highland Settlement Agreement (Fully Executed)) (Loigman, Robert)
01/16/2024	4013 Motion to abate *(Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief)* (related document(s)4000 Motion for leave *to File a Delaware Complaint*) Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (Annable, Zachery)
01/16/2024	4014 Motion for expedited hearing(related documents 4013 Motion to abate) *(Highland's Emergency Motion to Expedite Hearing on Motion for Stay)* Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (Annable, Zachery)
01/16/2024	4015 Withdrawal filed by Interested Party James Dondero, Creditor Strand Advisors, Inc. (RE: related document(s)3981 Motion for leave *to File Adversary Complaint*). (Ruhland, Amy)
01/17/2024	4016 Notice of hearing*(Notice of Briefing Schedule and Hearing)* filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust (RE: related document(s)4011 Motion to compromise controversy with Okada Parties. Related AP case numbers: 21−03076. Related defendants: Mark K. Okada, Mark & Pamela Okada Family Trust Exempt Trust #1, Mark & Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order)). Hearing to be held on 2/14/2024 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 4011, (Loigman, Robert)

01/17/2024	4017 Notice of hearing filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)4013 Motion to abate *(Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief)* (related document(s)4000 Motion for leave *to File a Delaware Complaint*) Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). Hearing to be held on 1/24/2024 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 4013, (Annable, Zachery)
01/19/2024	4018 Reply to (related document(s): 3995 Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) *(Highland Capital Management, L.P.'s Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/22/2024	4019 Joinder by *James P. Seery, Jr.* filed by Other Professional James P. Seery Jr., Creditor James P. Seery Jr. (RE: related document(s)4013 Motion to abate *(Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief)* (related document(s)4000 Motion for leave *to File a Delaware Complaint*)). (Levy, Joshua)
01/22/2024	4020 Chapter 11 Post−Confirmation Report for the Quarter Ending: 12/31/2023 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
01/22/2024	4021 Chapter 11 Post−Confirmation Report for the Quarter Ending: 12/31/2023 filed by Other Professional Highland Claimant Trust. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
01/23/2024	4022 Response opposed to (related document(s): 4013 Motion to abate *(Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief)* (related document(s)4000 Motion for leave *to File a Delaware Complaint*) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust) filed by Creditor Hunter Mountain Investment Trust. (Deitsch−Perez, Deborah)
01/23/2024	4023 Amended Reply to (related document(s): 3995 Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/24/2024	4024 Request for transcript regarding a hearing held on 1/24/2024. The requested turn−around time is hourly (Jeng, Hawaii)
01/24/2024	4025 PDF with attached Audio File. Court Date & Time [01/24/2024 01:33:27 PM]. File Size [34225 KB]. Run Time [02:26:01]. (admin).
01/24/2024	4026 Hearing held on 1/24/2024. (RE: related document(s) 3851 Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Appearances: All via Webex. Attendee list to be separately filed. Nonevidentiary (declaration and attachments only). Court took matter under advisement.) (Edmond, Michael)
01/24/2024	4027 Hearing held on 1/24/2024. (RE: related document(s) 4013 Motion to abate Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) (related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust) (Appearances: All appearances were via Webex. Attendee list to be separately filed on docket. Nonevidentiary hearing. Motion grantedstaying Hunter Mountain Investment Trusts

	latest Motion for Leave to Sue James Seery in Delaware (Proposed Delaware Complaint)until at least after the court rules on the pending Motion to Dismiss Valuation Complaint (Valuation Complaint), which alleges the same or similar issues regarding the standing of Hunter Mountain Investment Trust. Court will hear oral arguments on the Valuation Complaint on 2/14/24 and anticipates taking such matter under advisement thereafter to prepare a written ruling. Court will further consider the stay of Proposed Delaware Complaint at a Status Conference to be set after the courts ruling on the Valuation Complaint. Mr. Morris to submit an order reflecting this ruling.) (Edmond, Michael)
01/24/2024	4028 Certificate of service re: 1) Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief; and 2) Highlands Emergency Motion to Expedite Hearing on Motion for Stay Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)4013 Motion to abate *(Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief)* (related document(s)4000 Motion for leave *to File a Delaware Complaint*) Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, 4014 Motion for expedited hearing(related documents 4013 Motion to abate) *(Highland's Emergency Motion to Expedite Hearing on Motion for Stay)* Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). (Kass, Albert)
01/24/2024	4029 Certificate of service re: 1) Litigation Trustees Motion for Entry of an Order Approving Settlement with the Okada Parties and Authorizing Actions Consistent Therewith; 2) Declaration of Robert S. Loigman in Support of the Litigation Trustees Motion for Entry of an Order Approving Settlement with the Okada Parties and Authorizing Actions Consistent Therewith; 3) Notice of Briefing Schedule and Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)4011 Motion to compromise controversy with Okada Parties. Related AP case numbers: 21−03076. Related defendants: Mark K. Okada, Mark & Pamela Okada Family Trust Exempt Trust #1, Mark & Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust, 4012 Declaration re: *Declaration of Robert S. Loigman in Support of the Litigation Trustee's Motion to Compromise Controversy with the Okada Parties* filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust (RE: related document(s)4011 Motion to compromise controversy with Okada Parties. Related AP case numbers: 21−03076. Related defendants: Mark K. Okada, Mark & Pamela Okada Family Trust Exempt Trust #1, Mark & Pamela Okada Family Trust Exempt Trust #2, and Lawrence Ton). (Attachments: # 1 Exhibit 1: Okada Highland Settlement Agreement (Fully Executed)) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust, 4016 Notice of hearing*(Notice of Briefing Schedule and Hearing)* filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust (RE: related document(s)4011 Motion to compromise controversy with Okada Parties. Related AP case numbers: 21−03076. Related defendants: Mark K. Okada, Mark & Pamela Okada Family Trust Exempt Trust #1, Mark & Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order)). Hearing to be held on 2/14/2024 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 4011, filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust). (Kass, Albert)
01/24/2024	4083 DISTRICT COURT Order granting motion to abate: This proceeding and all deadlines herein are ABATED pending further order of the Court. (Ordered by Judge Ada Brown on 1/24/2024) (sxf) (Entered: 01/24/2024)(RE: related document(s)3685 Notice of docketing notice of appeal/record). Civil case 3:23−cv−00573 Entered on 1/24/2024 (Whitaker, Sheniqua) (Entered: 06/07/2024)

01/25/2024	4030 Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/24/2024. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 4026 Hearing held on 1/24/2024. (RE: related document(s) 3851 Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Appearances: All via Webex. Attendee list to be separately filed. Nonevidentiary (declaration and attachments only). Court took matter under advisement.), 4027 Hearing held on 1/24/2024. (RE: related document(s) 4013 Motion to abate Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) (related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust) (Appearances: All appearances were via Webex. Attendee list to be separately filed on docket. Nonevidentiary hearing. Motion grantedstaying Hunter Mountain Investment Trusts latest Motion for Leave to Sue James Seery in Delaware (Proposed Delaware Complaint)until at least after the court rules on the pending Motion to Dismiss Valuation Complaint (Valuation Complaint), which alleges the same or similar issues regarding the standing of Hunter Mountain Investment Trust. Court will hear oral arguments on the Valuation Complaint on 2/14/24 and anticipates taking such matter under advisement thereafter to prepare a written ruling. Court will further consider the stay of Proposed Delaware Complaint at a Status Conference to be set after the courts ruling on the Valuation Complaint. Mr. Morris to submit an order reflecting this ruling.)). Transcript to be made available to the public on 04/24/2024. (Rehling, Kathy)
01/26/2024	4031 Order granting motion for expedited hearing (Related Doc# 4014)(document set for hearing: 4000 Motion to stay contested matter, 4013 Motion to abate) Hearing to be held on 1/24/2024 at 09:30 AM Dallas Judge Jernigan Ctrm for 4013, Entered on 1/26/2024. (Okafor, Marcey)
01/26/2024	4032 Certificate of service re: Highland Capital Management L.P.'s Reply in Further Support of its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146 Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s)4018 Reply to (related document(s): 3995 Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) *(Highland Capital Management, L.P.'s Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/31/2024	4033 Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.).
02/06/2024	4034 Certificate of service re: 1) Litigation Trustee's Motion for Entry of an Order Approving Settlement with the Okada Parties and Authorizing Actions Consistent Therewith; 2) Declaration of Robert S. Loigman in Support of the Litigation Trustee's Motion for Entry of an Order Approving Settlement with the Okada Parties and Authorizing Actions Consistent Therewith; and 3) Notice of Briefing Schedule and Hearing *(Amended)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)4011 Motion to compromise controversy with Okada Parties. Related AP case numbers: 21−03076. Related defendants: Mark K. Okada, Mark & Pamela Okada Family Trust Exempt Trust #1, Mark & Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the

	Litigation Trustee of the Highland Litigation Sub−Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust, 4012 Declaration re: *Declaration of Robert S. Loigman in Support of the Litigation Trustee's Motion to Compromise Controversy with the Okada Parties* filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust (RE: related document(s)4011 Motion to compromise controversy with Okada Parties. Related AP case numbers: 21−03076. Related defendants: Mark K. Okada, Mark & Pamela Okada Family Trust Exempt Trust #1, Mark & Pamela Okada Family Trust Exempt Trust #2, and Lawrence Ton). (Attachments: # 1 Exhibit 1: Okada Highland Settlement Agreement (Fully Executed)) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust, 4016 Notice of hearing*(Notice of Briefing Schedule and Hearing)* filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust (RE: related document(s)4011 Motion to compromise controversy with Okada Parties. Related AP case numbers: 21−03076. Related defendants: Mark K. Okada, Mark & Pamela Okada Family Trust Exempt Trust #1, Mark & Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order)). Hearing to be held on 2/14/2024 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 4011, filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust, 4029 Certificate of service re: 1) Litigation Trustees Motion for Entry of an Order Approving Settlement with the Okada Parties and Authorizing Actions Consistent Therewith; 2) Declaration of Robert S. Loigman in Support of the Litigation Trustees Motion for Entry of an Order Approving Settlement with the Okada Parties and Authorizing Actions Consistent Therewith; 3) Notice of Briefing Schedule and Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)4011 Motion to compromise controversy with Okada Parties. Related AP case numbers: 21−03076. Related defendants: Mark K. Okada, Mark & Pamela Okada Family Trust Exempt Trust #1, Mark & Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust, 4012 Declaration re: *Declaration of Robert S. Loigman in Support of the Litigation Trustee's Motion to Compromise Controversy with the Okada Parties* filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust (RE: related document(s)4011 Motion to compromise controversy with Okada Parties. Related AP case numbers: 21−03076. Related defendants: Mark K. Okada, Mark & Pamela Okada Family Trust Exempt Trust #1, Mark & Pamela Okada Family Trust Exempt Trust #2, and Lawrence Ton). (Attachments: # 1 Exhibit 1: Okada Highland Settlement Agreement (Fully Executed)) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust, 4016 Notice of hearing*(Notice of Briefing Schedule and Hearing)* filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust (RE: related document(s)4011 Motion to compromise controversy with Okada Parties. Related AP case numbers: 21−03076. Related defendants: Mark K. Okada, Mark & Pamela Okada Family Trust Exempt Trust #1, Mark & Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order)). Hearing to be held on 2/14/2024 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 4011, filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
02/07/2024	4035 Certificate of no objection filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub−Trust. (Loigman, Robert)
02/08/2024	4036 Order granting The Litigation Trustee's motion to compromise controversy with the Okada Parties. Related AP case numbers: 21−03076. (related document # 4011) Entered on 2/8/2024. (Okafor, Marcey)

03/03/2024	4037 (Hersh, Susan) has withdrawn from the case filed by Interested Parties John S. Dubel, Hon.Russell F. Nelms (Ret.). (Hersh, Susan)
03/05/2024	4038 Memorandum of opinion and order granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim #146 (RE: related document(s)3851 Motion for sanctions filed by Debtor Highland Capital Management, L.P.). Entered on 3/5/2024 (Okafor, Marcey)
03/05/2024	4039 Order granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim #146 (related document # 3851) Entered on 3/5/2024. (Okafor, Marcey)
03/18/2024	4040 Motion to Reconsider(related documents 4038 Memorandum of opinion) Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # 1 Proposed Order) (Ruhland, Amy)
03/18/2024	4041 Brief in support filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)4040 Motion to Reconsider(related documents 4038 Memorandum of opinion)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Ruhland, Amy)
03/18/2024	4042 Notice of appeal . Fee Amount $298 filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)4038 Memorandum of opinion). Appellant Designation due within 14 days of entering the Bankruptcy Court's order on the motion to reconsider. (Ruhland, Amy) MODIFIED text on 03/20/2024 (Whitaker, Sheniqua).
03/18/2024	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number A31245002, amount $ 298.00 (re: Doc# 4042). (U.S. Treasury)
03/20/2024	4043 Certificate of mailing regarding appeal (RE: related document(s)4042 Notice of appeal . filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)4038 Memorandum of opinion). Appellant Designation due within 14 days of the Bankruptcy Court's order on the motion to reconsider.) (Whitaker, Sheniqua)
03/20/2024	4044 Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)4042 Notice of appeal). (Attachments: # 1 Exhibit A # 2 Exhibit B)(Ruhland, Amy)
04/02/2024	4046 Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC). filed by Debtor Highland Capital Management, L.P. (RE: related document(s)4040 Motion to Reconsider(related documents 4038 Memorandum of opinion)). (Annable, Zachery)
04/09/2024	4047 Certificate of service re: Stipulation Regarding Briefing Schedule [Docket No. 4040] Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s)4046 Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC). filed by Debtor Highland Capital Management, L.P. (RE: related document(s)4040 Motion to Reconsider(related documents 4038 Memorandum of opinion)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/19/2024	4048 Motion to withdraw as attorney (Leah McCallister Ray) Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub−Trust (Attachments: # 1 Proposed Order) (Montgomery, Paige)
04/20/2024	

	4049 Chapter 11 Post−Confirmation Report for the Quarter Ending: 03/31/2024 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
04/20/2024	4050 Chapter 11 Post−Confirmation Report for the Quarter Ending: 03/31/2024 filed by Other Professional Highland Claimant Trust. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
04/22/2024	4051 Order granting motion to withdraw as attorney (attorney Leah M. "Calli" Ray terminated). (related document # 4048) Entered on 4/22/2024. (Okafor, Marcey)
04/22/2024	4052 Response opposed to (related document(s): 4040 Motion to Reconsider(related documents 4038 Memorandum of opinion) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/29/2024	4053 Certificate of service re: *Highlands Opposition to Motion for Relief from Order* Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s)4052 Response opposed to (related document(s): 4040 Motion to Reconsider(related documents 4038 Memorandum of opinion) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/29/2024	4054 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)4040 Motion to Reconsider(related documents 4038 Memorandum of opinion) Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # 1 Proposed Order)). Hearing to be held on 5/16/2024 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 4040, (Annable, Zachery)
05/01/2024	4055 Reply to (related document(s): 4052 Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Attachments: # 1 Exhibit E # 2 Exhibit F) (Ruhland, Amy)
05/03/2024	4056 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3990 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/03/2024	4057 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)4056 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3990 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/5/2024 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 4056, (Annable, Zachery)
05/06/2024	4058 Certificate of service re: *Notice of Hearing on Motion for Relief from Order* Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s)4054 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)4040 Motion to Reconsider(related documents 4038 Memorandum of opinion) Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # 1 Proposed Order)). Hearing to be held on 5/16/2024 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 4040, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/06/2024	4063 DISTRICT COURT order from Judge Starr, re: appeal on Civil Action number:3:21−cv−01974−X, REMANDED to the Bankruptcy Court (RE: related document(s)3660 Order (generic)). Entered on 5/6/2024 (Whitaker, Sheniqua) (Entered: 05/13/2024)

05/07/2024	4059 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)4056 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3990 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/5/2024 at 02:30 PM Dallas Judge Jernigan Ctrm for 4056, (Annable, Zachery)
05/09/2024	4060 Certificate of service re: *1) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing* Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s)4056 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3990 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 4057 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)4056 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3990 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/5/2024 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 4056, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/10/2024	4061 Certificate of service re: *Amended Notice of Hearing on Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure* Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s)4059 Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)4056 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3990 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/5/2024 at 02:30 PM Dallas Judge Jernigan Ctrm for 4056, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2024	4062 Notice of hearing filed by Creditor Acis Capital Management GP, LLC (RE: related document(s)3695 Motion to intervene filed by Creditor Acis Capital Management, L.P.). Hearing to be held on 7/10/2024 at 01:30 PM Dallas Judge Jernigan Ctrm for 3695, (Ahmad, Joseph)
05/14/2024	4064 Amended Notice of hearing filed by Creditor Acis Capital Management GP, LLC (RE: related document(s)3695 Motion to intervene filed by Creditor Acis Capital Management, L.P.). Hearing to be held on 7/10/2024 at 01:30 PM Dallas Judge Jernigan Ctrm for 3695, (Ahmad, Joseph)
05/14/2024	4065 NOTICE OF CHANGE IN JUDGE JERNIGAN'S WEBEX ACCESS CODE PER CLERK'S NOTICE 24−01, (RE: related document(s)4054 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)4040 Motion to Reconsider(related documents 4038 Memorandum of opinion) Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # 1 Proposed Order)). Hearing to be held on 5/16/2024 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 4040,). NOTE: THE NEW WEBEX ACCESS CODE FOR JUDGE JERNIGAN'S VIRTUAL COURTROOM IS 2304−154−2638. (Ellison, Traci)
05/15/2024	4066 Notice *of Updated Access to Webex Hearings* (Ellison, Traci)
05/16/2024	4067 Hearing held on 5/16/2024. (RE: related document(s) 4040 Motion to Reconsider (related documents 4038 Memorandum of opinion) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Appearances: A. Ruhland and W. Carvell for movant; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Court took matter under advisement and hopes to rule in next few days). (Edmond, Michael)

05/17/2024	4068 PDF with attached Audio File. Court Date & Time [05/16/2024 09:15:47 AM]. File Size [26034 KB]. Run Time [01:51:04]. (admin).
05/21/2024	4069 Order denying motion of NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) seeking relief from Order (related document # 4040) Entered on 5/21/2024. (Okafor, Marcey)
05/21/2024	4070 Order in Response to District Court's and Fifth Circuit's Remand Regarding Bankruptcy Court's August 4, 2021 Sanction Order (RE: related document(s)4063 Order from District court re: appeal). Entered on 5/21/2024 (Okafor, Marcey)
05/23/2024	4071 BNC certificate of mailing – PDF document. (RE: related document(s)4070 Order in Response to District Court's and Fifth Circuit's Remand Regarding Bankruptcy Court's August 4, 2021 Sanction Order (RE: related document(s)4063 Order from District court re: appeal). Entered on 5/21/2024) No. of Notices: 2. Notice Date 05/23/2024. (Admin.)
05/29/2024	4072 Certificate of no objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)4056 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3990 Order on motion to extend/shorten time)). (Annable, Zachery)
06/03/2024	4073 Order further 4056 extending period within which the Reorganized Debtor may Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Entered on 6/3/2024. (Okafor, Marcey)
06/04/2024	4074 Second Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)4042 Notice of appeal). (Ruhland, Amy)
06/04/2024	4075 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)4074 Amended notice of appeal). Appellee designation due by 06/18/2024. (Ruhland, Amy)
06/05/2024	4076 Request for transcript regarding a hearing held on 5/16/2024. The requested turn–around time is 3–day expedited (Jeng, Hawaii)
06/06/2024	4077 Clerk's correspondence requesting Status of Motion from attorney for creditor. (RE: related document(s)4000 Motion for leave *to File a Delaware Complaint* Filed by Creditor Hunter Mountain Investment Trust Objections due by 1/22/2024. (Attachments: # 1 Exhibit 1)) Responses due by 6/13/2024. (Ecker, C.)
06/07/2024	4078 Stipulation by Highland Capital Management, L.P. and Highland CLO Management, Ltd. and Acis Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3657 Objection to claim, 3695 Motion to intervene*and Brief in Support*). (Attachments: # 1 Proposed Order) (Hayward, Melissa)
06/07/2024	4080 Objection to (related document(s): 3695 Motion to intervene*and Brief in Support* filed by Creditor Acis Capital Management, L.P.) filed by Interested Party Highland CLO Management Ltd. (Deitsch–Perez, Deborah)
06/07/2024	4081 Support/supplemental document*Appendix in Support of Objection to Motion to Intervene* filed by Interested Party Highland CLO Management Ltd (RE: related document(s)3695 Motion to intervene*and Brief in Support*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11) (Deitsch–Perez, Deborah)

06/07/2024	4082 Notice of hearing*Status Conference* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)4000 Motion for leave *to File a Delaware Complaint* Filed by Creditor Hunter Mountain Investment Trust Objections due by 1/22/2024. (Attachments: # 1 Exhibit 1)). Status Conference to be held on 6/12/2024 at 10:00 AM at https://us−courts.webex.com/meet/jerniga. (Attachments: # 1 Exhibit 1) (Deitsch−Perez, Deborah)
06/10/2024	4084 Transcript regarding Hearing Held 05/16/2024 Before Judge Stacey G.C. Jernigan (58 Pages) RE: Motion for Relief from Order 4040. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/9/2024. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 4067 Hearing held on 5/16/2024. (RE: related document(s) 4040 Motion to Reconsider (related documents 4038 Memorandum of opinion) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Appearances: A. Ruhland and W. Carvell for movant; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Court took matter under advisement and hopes to rule in next few days).). Transcript to be made available to the public on 09/9/2024. (Rehling, Kathy)
06/10/2024	4085 INCORRECT ENTRY: Notice *of Supplemental Authority* filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery Jr., Stonehill Capital Management LLC, Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust. (Robin, Lindsey) Modified on 6/11/2024 (Ecker, C.).
06/11/2024	4086 Order approving stipulation concerning the litigation of HCMLP's objection to scheduled claims 3.65 and 3.66 of Highland CLO Management, LTD and related matters (RE: related document(s)3657 Stipulation and 3695 Motion to intervene filed by Creditor Acis Capital Management, L.P.). Hearing to be held on 7/10/2024 at 01:30 PM Dallas Judge Jernigan Ctrm for 3695, Entered on 6/11/2024 (Okafor, Marcey)
06/11/2024	4087 Support/supplemental document*Supplement to Response to Motion to Stay [Dkt 4022]* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)4000 Motion for leave *to File a Delaware Complaint*). (Attachments: # 1 Exhibit A # 2 Exhibit B) (Deitsch−Perez, Deborah). Related document(s) 4022 Response filed by Creditor Hunter Mountain Investment Trust. Modified linkage on 6/12/2024 (Ecker, C.).
06/12/2024	4088 Request for transcript regarding a hearing held on 6/12/2024. The requested turn−around time is daily. (Edmond, Michael)
06/12/2024	4089 Hearing held on 6/12/2024. (RE: related document(s) 4000 Motion for leave to file a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust Objections due by 1/22/2024. (Appearances: D. Deitsch−Perez and M. Aigen for HMIT; J. Morris for Reorganized Debtor; M. Stancil J. Levy for J. Seery. Nonevidentiary hearing. Court heard arguments regarding whether HMITs motion for leave to file Delaware action against J. Seery should remain subject to a stay, pending HMITs appeals of orders on other HMIT motions seeking leave to file actionssince all matters involve standing of HMIT. Court ruled stay should remain in effect pending resolution of all appeals regarding HMITs standing. Counsel to upload order.) (Edmond, Michael)
06/12/2024	4090 Certificate of service re: *Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)4073 Order further 4056 extending period within which the Reorganized Debtor may Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Entered on 6/3/2024.). (Kass, Albert)
06/13/2024	

	4091 Transcript regarding Hearing Held 06/12/2024 Before Judge Stacey G.C. Jernigan (48 Pages) RE: Status Conference re Highland's Motion to Stay Contested Matter. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/11/2024. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 4089 Hearing held on 6/12/2024. (RE: related document(s) 4000 Motion for leave to file a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust Objections due by 1/22/2024. (Appearances: D. Deitsch−Perez and M. Aigen for HMIT; J. Morris for Reorganized Debtor; M. Stancil J. Levy for J. Seery. Nonevidentiary hearing. Court heard arguments regarding whether HMITs motion for leave to file Delaware action against J. Seery should remain subject to a stay, pending HMITs appeals of orders on other HMIT motions seeking leave to file actionssince all matters involve standing of HMIT. Court ruled stay should remain in effect pending resolution of all appeals regarding HMITs standing. Counsel to upload order.)). Transcript to be made available to the public on 09/11/2024. (Rehling, Kathy)
06/13/2024	4094 BNC certificate of mailing − PDF document. (RE: related document(s)4086 Order approving stipulation concerning the litigation of HCMLP's objection to scheduled claims 3.65 and 3.66 of Highland CLO Management, LTD and related matters (RE: related document(s)3657 Stipulation and 3695 Motion to intervene filed by Creditor Acis Capital Management, L.P.). Hearing to be held on 7/10/2024 at 01:30 PM Dallas Judge Jernigan Ctrm for 3695, Entered on 6/11/2024) No. of Notices: 1. Notice Date 06/13/2024. (Admin.)
06/14/2024	4095 Certificate of mailing regarding appeal (RE: related document(s)4074 Second Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)4042 Notice of appeal).) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
06/14/2024	4096 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) 4074 Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. MODIFIED linkage 6/14/2024 (Whitaker, Sheniqua).
06/14/2024	4099 Notice of docketing notice of appeal. Civil Action Number: 3:24−cv−01479−S. (RE: related document(s)4074 Second Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)4042 Notice of appeal).) (Whitaker, Sheniqua) (Entered: 06/18/2024)
06/16/2024	4097 BNC certificate of mailing. (RE: related document(s)4096 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) 4074 Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. MODIFIED linkage 6/14/2024 .) No. of Notices: 1. Notice Date 06/16/2024. (Admin.)
06/17/2024	4098 PDF with attached Audio File. Court Date & Time [06/12/2024 10:01:45 AM]. File Size [18047 KB]. Run Time [01:16:59]. (admin).
06/19/2024	4100 Motion to extend time to (Highland Claimant Trust's Motion for an Order Extending Duration of Trust) Filed by Other Professional Highland Claimant Trust (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Litigation Chart) (Annable, Zachery)
06/20/2024	4101 Statement of issues on appeal,*and Amended Designation of Record on Appeal* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)4038 Memorandum of opinion, 4039 Order on motion for sanctions, 4069 Order on motion to reconsider). (Ruhland, Amy)
06/21/2024	

	4102 Notice of hearing filed by Other Professional Highland Claimant Trust (RE: related document(s)4100 Motion to extend time to (Highland Claimant Trust's Motion for an Order Extending Duration of Trust) Filed by Other Professional Highland Claimant Trust (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Litigation Chart)). Hearing to be held on 7/29/2024 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 4100, (Annable, Zachery)
06/24/2024	4103 Stipulation by Highland Capital Management, L.P. and The Charitable DAF Fund LP; CLO Holdco Ltd.; Sbaiti & Company PLLC; Mazin Sbaiti; Jonathan Bridges; Mark Patrick; and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2660 Memorandum of opinion, 4070 Order (generic)). (Annable, Zachery)
06/24/2024	4104 Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024. (Okafor, Marcey)
06/26/2024	4105 Clerk's correspondence requesting submit items for appeal from attorney for appellant. (RE: related document(s)4101 Statement of issues on appeal,*and Amended Designation of Record on Appeal* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)4038 Memorandum of opinion, 4039 Order on motion for sanctions, 4069 Order on motion to reconsider).) Responses due by 6/26/2024. (Blanco, J.)
06/26/2024	4106 Clerk's correspondence requesting request items for appeal record from attorney for appellant. (RE: related document(s)4101 Statement of issues on appeal,*and Amended Designation of Record on Appeal* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)4038 Memorandum of opinion, 4039 Order on motion for sanctions, 4069 Order on motion to reconsider).) Responses due by 6/28/2024. (Blanco, J.)
06/27/2024	4107 Order approving stipulation finally resolving all litigation concerning a prior contempt order dkt, 2660 and related proceedings (RE: related document(s)4103 Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/27/2024 (Okafor, Marcey)
06/27/2024	4142 DISTRICT COURT Opinion from circuit court re: appeal on appellate case number: 23−10660 _____, AFFIRMED (RE: related document(s)3475 Notice of appeal filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/27/2024 (Whitaker, Sheniqua) (Entered: 07/25/2024)
06/27/2024	4143 DISTRICT COURT Judgment from circuit court re: appeal on appellate case number: 23−10660 _____, AFFIRMED (RE: related document(s)3475 Notice of appeal filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/27/2024 (Whitaker, Sheniqua) (Entered: 07/25/2024)
06/28/2024	4108 Reply to (related document(s): 4080 Objection filed by Interested Party Highland CLO Management Ltd) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Ahmad, Joseph)
06/28/2024	4140 DISTRICT COURT Memorandum Opinion and Order from District court Judge Lindsay, re: appeal on Civil Action number:3:22−cv−00335, AFFIRMED (RE: related document(s)3180 Order regarding objection). Entered on 6/28/2024 (Whitaker, Sheniqua) (Entered: 07/25/2024)
06/28/2024	4141 DISTRICT COURT Judgment from Judge Lindsay, re: appeal on Civil Action number:3:22−cv−00335−L, AFFIRMED (RE: related document(s)3180 Order regarding objection). Entered on 6/28/2024 (Whitaker, Sheniqua) (Entered: 07/25/2024)

07/01/2024	4109 Amended Motion to (RE: related document(s)4100 Motion to extend/shorten time) Filed by Other Professional Highland Claimant Trust (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery)
07/01/2024	4110 Notice of hearing filed by Other Professional Highland Claimant Trust (RE: related document(s)4109 Amended Motion to (RE: related document(s)4100 Motion to extend/shorten time) Filed by Other Professional Highland Claimant Trust (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 7/29/2024 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 4109, (Annable, Zachery)
07/08/2024	4111 Notice of appeal . Fee Amount $298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)4104 Order on motion for leave). Appellant Designation due by 07/22/2024. (Attachments: # 1 Exhibit A)(Deitsch−Perez, Deborah)
07/08/2024	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number A31573187, amount $ 298.00 (re: Doc# 4111). (U.S. Treasury)
07/08/2024	4112 Certificate of service re: *Highland Claimant Trusts Motion for an Order Extending Duration of Trust* Filed by Claims Agent Kurtzman Carson Consultants, LLC dba Verita Global (related document(s)4100 Motion to extend time to (Highland Claimant Trust's Motion for an Order Extending Duration of Trust) Filed by Other Professional Highland Claimant Trust (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Litigation Chart) filed by Other Professional Highland Claimant Trust). (Kass, Albert)
07/08/2024	4113 Certificate of service re: *Notice of Hearing on Highland Claimant Trusts Motion for an Order Extending Duration of Trust* Filed by Claims Agent Kurtzman Carson Consultants, LLC dba Verita Global (related document(s)4102 Notice of hearing filed by Other Professional Highland Claimant Trust (RE: related document(s)4100 Motion to extend time to (Highland Claimant Trust's Motion for an Order Extending Duration of Trust) Filed by Other Professional Highland Claimant Trust (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Litigation Chart)). Hearing to be held on 7/29/2024 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 4100, filed by Other Professional Highland Claimant Trust). (Kass, Albert)
07/08/2024	4114 Certificate of service re: *Stipulation Finally Resolving All Litigation Concerning a Prior Contempt Order and Related Proceedings* Filed by Claims Agent Kurtzman Carson Consultants, LLC dba Verita Global (related document(s)4103 Stipulation by Highland Capital Management, L.P. and The Charitable DAF Fund LP; CLO Holdco Ltd.; Sbaiti & Company PLLC; Mazin Sbaiti; Jonathan Bridges; Mark Patrick; and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2660 Memorandum of opinion, 4070 Order (generic)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/08/2024	4115 Notice of appeal . Fee Amount $298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)4104 Order on motion for leave). Appellant Designation due by 07/22/2024. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C Part 1 # 4 Exhibit C Part 2)(Deitsch−Perez, Deborah)
07/08/2024	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number A31573284, amount $ 298.00 (re: Doc# 4115). (U.S. Treasury)
07/08/2024	4116 Motion for leave to appeal (related document(s): 4104 Order on motion for leave) Filed by Creditor Hunter Mountain Investment Trust Objections due by 7/22/2024. (Deitsch−Perez, Deborah)
07/08/2024	4117 Support/supplemental document*Appendix in Support of Motion for Leave to File Interlocutory Appeal* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)4116 Motion for leave to appeal (related document(s): 4104 Order on motion for leave)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit

	5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12) (Deitsch−Perez, Deborah)
07/08/2024	4118 Certificate of service re: *1) Amended Motion for an Order Extending Duration of Trusts; and 2) Notice of Hearing on Amended Motion for an Order Extending Duration of Trusts* Filed by Claims Agent Kurtzman Carson Consultants, LLC dba Verita Global (related document(s)4109 Amended Motion to (RE: related document(s)4100 Motion to extend/shorten time) Filed by Other Professional Highland Claimant Trust (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Other Professional Highland Claimant Trust, 4110 Notice of hearing filed by Other Professional Highland Claimant Trust (RE: related document(s)4109 Amended Motion to (RE: related document(s)4100 Motion to extend/shorten time) Filed by Other Professional Highland Claimant Trust (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 7/29/2024 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 4109, filed by Other Professional Highland Claimant Trust). (Kass, Albert)
07/10/2024	4119 Hearing held on 7/10/2024. (RE: related document(s) 3695 Motion to intervene and Brief in Support filed by Creditor Acis Capital Management, L.P. (Appearances: T. Cooke and S Bates for Acis; M. Aigen and D. Deitsch−Perez for Highland CLO Management, Ltd.; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Motion denied, subject to proviso that nothing that happens in the contested matter regarding the allowance/disallowance of the HCLOM claim prejudices any partys rights in the Acis adversary proceeding. Counsel to submit order.) (Edmond, Michael)
07/10/2024	4120 Response unopposed to (related document(s): 4100 Motion to extend time to (Highland Claimant Trust's Motion for an Order Extending Duration of Trust) filed by Other Professional Highland Claimant Trust) filed by Creditor Hunter Mountain Investment Trust. (Deitsch−Perez, Deborah)
07/11/2024	4121 Request for transcript regarding a hearing held on 7/10/2024. The requested turn−around time is daily. NOTE* Request arrived at 4:58 pm. (Edmond, Michael)
07/12/2024	4122 Transcript regarding Hearing Held 07/10/2024 Before Judge Stacey G.C. Jernigan (44 Pages) RE: Motion to Intervene (3695). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/10/2024. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 4119 Hearing held on 7/10/2024. (RE: related document(s) 3695 Motion to intervene and Brief in Support filed by Creditor Acis Capital Management, L.P. (Appearances: T. Cooke and S Bates for Acis; M. Aigen and D. Deitsch−Perez for Highland CLO Management, Ltd.; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Motion denied, subject to proviso that nothing that happens in the contested matter regarding the allowance/disallowance of the HCLOM claim prejudices any partys rights in the Acis adversary proceeding. Counsel to submit order.)). Transcript to be made available to the public on 10/10/2024. (Rehling, Kathy)
07/12/2024	4125 DISTRICT COURT Notice of docketing notice of appeal. Civil Action Number: 3:24−cv−01786−L. (RE: related document(s)4111 Notice of appeal . filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)4104 Order on motion for leave). (Whitaker, Sheniqua)
07/12/2024	4126 DISTRICT COURT Notice of docketing notice of appeal. Civil Action Number: 3:24−cv−01787−L. (RE: related document(s)4115 Notice of appeal . filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)4104 Order on motion for leave). (Whitaker, Sheniqua)
07/15/2024	

	4127 PDF with attached Audio File. Court Date & Time [07/10/2024 01:37:36 PM]. File Size [15077 KB]. Run Time [01:04:16]. (19−34054). (admin).
07/15/2024	4128 Notice of change of address filed by Interested Party James Dondero, Get Good Trust, NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC, Strand Advisors, Inc., The Dugaboy Investment Trust. (Ruhland, Amy)
07/18/2024	4130 Chapter 11 Post−Confirmation Report for the Quarter Ending: 06/30/2024 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
07/18/2024	4131 Chapter 11 Post−Confirmation Report for the Quarter Ending: 06/30/2024 filed by Other Professional Highland Claimant Trust. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
07/19/2024	4132 Order denying ACIS Capital Management's motion to intervene (related document # 3695) Entered on 7/19/2024. (Okafor, Marcey)
07/22/2024	4133 INCORRECT ENTRY: FILED IN WRONG CASE. REFILED IN CORRECT CASE 20−3060 AS DOCUMENT 133. Motion to compel re: discovery Responses filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit) (Ahmad, Joseph) Modified on 7/23/2024 (Tello, Chris).
07/22/2024	4134 Response unopposed to (related document(s): 4109 Amended Motion to (RE: related document(s)4100 Motion to extend/shorten time) filed by Other Professional Highland Claimant Trust) filed by Creditor Hunter Mountain Investment Trust. (Deitsch−Perez, Deborah)
07/22/2024	4135 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. *by Right* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)4111 Notice of appeal). Appellee designation due by 08/5/2024. (Deitsch−Perez, Deborah)
07/22/2024	4136 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. *by Leave* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)4115 Notice of appeal). Appellee designation due by 08/5/2024. (Deitsch−Perez, Deborah)
07/24/2024	4138 Certificate of no objection filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)4109 Amended Motion to (RE: related document(s)4100 Motion to extend/shorten time)). (Annable, Zachery)
07/24/2024	4139 DISRICT COURT Amended Notice of docketing notice of appeal. Civil Action Number: 3:24−cv−01787−L. (RE: related document(s)4115 Notice of appeal . filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)4104 Order on motion for leave). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C Part 1 # 4 Exhibit C Part 2)) (Whitaker, Sheniqua)
07/26/2024	4144 Order granting 4109 Motion to extend duration of Trusts. Entered on 7/26/2024. (Okafor, Marcey)
08/05/2024	4145 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3685 Notice of docketing notice of appeal/record, 3693 Statement of issues on appeal, 3906 Notice of appeal, 3908 Amended notice of appeal, 3917 Notice of docketing notice of appeal/record, 3945 Amended notice of appeal, 4074 Amended notice of appeal, 4111 Notice of appeal, 4115

	Notice of appeal). (Annable, Zachery)
08/05/2024	4146 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)4115 Notice of appeal). (Annable, Zachery)
08/06/2024	4147 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 65 . Civil Case Number: 3:24−cv−01479−S (RE: related document(s)4042 Notice of appeal (Ruhland, Amy) MODIFIED text on 03/20/2024 ., 4044 Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)4042 Notice of appeal). (Blanco, J.)
08/06/2024	4148 Notice of docketing COMPLETE record on appeal. 3:24−cv−01479−S (RE: related document(s)4042 Notice of appeal 4044 Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Blanco, J.)
08/08/2024	4149 Certificate of service re: 1) Appellee's Supplemental Designation of Record on Appeal; and 2) Appellee's Supplemental Designation of Record on Appeal Filed by Claims Agent Kurtzman Carson Consultants, LLC dba Verita Global (related document(s)4145 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3685 Notice of docketing notice of appeal/record, 3693 Statement of issues on appeal, 3906 Notice of appeal, 3908 Amended notice of appeal, 3917 Notice of docketing notice of appeal/record, 3945 Amended notice of appeal, 4074 Amended notice of appeal, 4111 Notice of appeal, 4115 Notice of appeal). filed by Debtor Highland Capital Management, L.P., 4146 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)4115 Notice of appeal). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/08/2024	4150 Certificate of service re: (Supplemental) re: Notice of Hearing on Highland Claimant Trusts Motion for an Order Extending Duration of Trust Filed by Claims Agent Kurtzman Carson Consultants, LLC dba Verita Global (related document(s)4102 Notice of hearing filed by Other Professional Highland Claimant Trust (RE: related document(s)4100 Motion to extend time to (Highland Claimant Trust's Motion for an Order Extending Duration of Trust) Filed by Other Professional Highland Claimant Trust (Attachments: # 1 Exhibit A−−Proposed Order # 2 Exhibit B−−Litigation Chart)). Hearing to be held on 7/29/2024 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 4100, filed by Other Professional Highland Claimant Trust). (Kass, Albert)
08/08/2024	4151 Certificate of service re: (Supplemental) re: 1) Amended Motion for an Order Extending Duration of Trusts; and 2) Notice of Hearing on Amended Motion for an Order Extending Duration of Trusts Filed by Claims Agent Kurtzman Carson Consultants, LLC dba Verita Global (related document(s)4109 Amended Motion to (RE: related document(s)4100 Motion to extend/shorten time) Filed by Other Professional Highland Claimant Trust (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Other Professional Highland Claimant Trust, 4110 Notice of hearing filed by Other Professional Highland Claimant Trust (RE: related document(s)4109 Amended Motion to (RE: related document(s)4100 Motion to extend/shorten time) Filed by Other Professional Highland Claimant Trust (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 7/29/2024 at 01:30 PM at https://us−courts.webex.com/meet/jerniga for 4109, filed by Other Professional Highland Claimant Trust). (Kass, Albert)

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

Volume 2

APPELLANT RECORD

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Counsel for Hunter Mountain Investment Trust

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

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

INDEX

APPELLANT'S STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL BY RIGHT

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, Appellant Hunter Mountain Investment Trust ("HMIT") hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal by right of the "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt. 4104] that was signed June 22, 2024, and entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024.[1]

[1] Given the lack of clarity in the law about the appropriate mechanism for obtaining review, HMIT filed a Notice of Appeal by Right and a Notice of Appeal by Leave (along with a motion for leave to file an interlocutory appeal) and a petition for writ of mandamus (which will be filed shortly thereafter).

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court abused its discretion in granting Appellees' motion for an indefinite stay of Appellant's gatekeeper motion seeking permission to bring suit in Delaware to remove the trustee of a Delaware statutory trust when (1) Appellees failed to meet the required standard for obtaining a stay; (2) the Bankruptcy Court erroneously concluded that the issue of Appellant's standing to seek removal of the Claimant Trustee would be decided in other cases pending before the Court; and (3) an indefinite or unduly lengthy stay of litigation of the type ordered by the Bankruptcy Court is expressly disfavored by the Fifth Circuit.

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Vol. 1

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Dkt. 4111]. — 00001

2. The judgment, order, or decree appealed from: "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt. 4104] — 000009

3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held June 12, 2024 before Judge Stacey G.C. Jernigan re: Motion to Stay Contested Matter [Dkt. 4091]. — SEE Vol. 17 - 001988

4. Docket Sheet for Bankruptcy Case No. 19-34054-sgj11 kept by the Bankruptcy Clerk. — 000012

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

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DATE	CASE NO.	DKT. NO.	DESCRIPTION
01/09/2020	19-34054-sgj-11	399	Order Approving Settlement with Official Committee of Unsecured Creditors regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course — 000578
02/22/2021	19-34054-sgj-11	1943	Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) — 000586
03/28/2023	19-34054-sgj-11	3699	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding — Vol 3 000747
04/21/2023	19-34054-sgj-11	3756	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 3/31/23 — Vol. 4 001134

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001149	04/21/2023	19-34054-sgj-11	3757	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 3/31/23
001164	04/23/2023	19-34054-sgj-11	3760	Hunter Mountain Investment Trust's Supplement to Emergency motion for Leave to File Verified Adversary Proceeding
001209	06/05/2023	19-34054-sgj-11	3815	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
001274	06/05/2023	19-34054-sgj-11	3816	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
001339	07/21/2023	19-34054-sgj-11	3888	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 6/30/23
001351	07/21/2023	19-34054-sgj-11	3889	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 6/30/23

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001363	08/25/2023	19-34054-sgj-11	3903	Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trusts' Emergency Motion for Leave to File Verified Adversary Proceeding
001468	01/01/2024	19-34054-sgj-11	4000	Motion for Leave to File a Delaware Complaint

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001606	10/23/2023	19-34054-sgj-11	3955	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 9/30/23
001618	10/23/2023	19-34054-sgj-11	3956	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 9/30/23
001630	01/16/2024	19-34054-sgj-11	4013	Highland's Motion to Stay Contested Matter [Dk No. 4000] or for Alternative Relief
001638	01/22/2024	19-34054-sgj-11	4019	James P. Seery, Jr.'s Joinder to Highland Capital Management L.P.'s Motion to Stay Contested Matter [Dk No. 4000] or for Alternative Relief and Emergency Motion to Expedite Hearing on Motion for Stay
001640	06/11/2024	19-34054-sgj-11	4087	Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay
001669	01/22/2024	19-34054-sgj-11	4020	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 12/31/23
001681	01/22/2024	19-34054-sgj-11	4021	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 12/31/23

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06/24/2024	19-34054-sgj-11	4104	Order Extending Stay of Contested Matter [Docket No. 4000]
01/22/2024	19-34054-sgj-11	4049	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 3/31/24
01/22/2024	19-34054-sgj-11	4050	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 3/31/24
07/18/2024	19-34054-sgj-11	4130	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 6/30/24, dated July 18, 2024
07/18/2024	19-34054-sgj-11	4131	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 6/30/24, dated July 18, 2024

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
05/10/2023	23-03038	0001	Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0013	The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0014	Memorandum of Law in Support of Highland Capital Management L.P. and the Highland Claimant Trust's Motion to Dismiss Complaint

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DATE	CASE NO.	DKT. NO.	DESCRIPTION
12/29/2023	23-03038	0017	The Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

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12/29/2023	23-03038	0018	Appendix in Support of the Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

001839

01/19/2024	23-03038	0021	The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint

001863

05/24/2024	23-03038	0026	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets

001875

05/24/2024	23-03038	0027	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets

001911

06/07/2024	23-03038	0030	Notice of Appeal [Appellant Designation due by 06/21/2024] (Filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust)

001947

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

001988

DATE	CASE NO.	DKT. NO.	DESCRIPTION

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06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript

Dated: July 22, 2024

STINSON LLP

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez
Texas Bar No. 24036072
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Counsel for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 22, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 21, 2020

United States Bankruptcy Judge

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	Related to Docket Nos. 7 & 259

FINAL ORDER AUTHORIZING (A) CONTINUANCE OF EXISTING CASH MANAGEMENT SYSTEM, (B) CONTINUED USE OF THE PRIME ACCOUNT AND MAXIM PRIME ACCOUNT, (C) LIMITED WAIVER OF SECTION 345(b) DEPOSIT AND INVESTMENT REQUIREMENTS, AND (D) GRANTING RELATED RELIEF

Upon consideration of the *Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

(D) Granting Related Relief (the "Motion") filed by the above-captioned debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 case (the "Case"), the *Supplement to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief* (the "Supplement")[2] filed by the Debtor in this Case, the *Interim Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief* [Docket No. 42] (the "Interim Order") entered on October 18, 2019, and the omnibus objection of the Official Committee of Unsecured Creditors (the "Committee") [Docket No. 130] (the "Objection"); and this Court finding that (a) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and (c) due and adequate notice of the Motion was given under the circumstances; and after due deliberation and cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** on a final basis as set forth herein.

2. The Debtor is authorized to continue operating the Cash Management System as described in and in a manner consistent with the Motion as modified by this Order and the order approving the settlement between the Debtor and the Committee [Docket No. 339] (the "Settlement").

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion or the Supplement, as applicable.

3. The Debtor is authorized to maintain the Certificate of Deposit with NexBank, SSB; *provided that* the Debtor must provide five (5) business days' written notice to the Committee before engaging in any activity in this or any other account with NexBank, SSB.

4. The Debtor is authorized to transfer all of its Bank Accounts, with the exception of the Certificate of Deposit, to East West Bank and is authorized, but not directed, in the reasonable exercise of its business judgment, to: (a) designate, maintain and continue to use the Bank Accounts as transferred to East West Bank; (b) designate, maintain and continue to use the Certificate of Deposit, the Prime Account, and the Maxim Prime Account with the same account numbers in existence as of the Petition Date; (c) treat the Bank Accounts, the Prime Account, and the Maxim Prime Account for all purposes as debtor in possession accounts; and (c) use all existing Business Forms without reference to the Debtor's status as "debtor in possession" until such supply is depleted, after which the Debtor will use new Business Forms with the "debtor in possession" reference and the corresponding bankruptcy case number; provided that, with respect to checks which the Debtor or its agents print themselves, the Debtor shall begin printing the "Debtor in Possession" legend and the bankruptcy case number on such items within ten (10) days of the date of entry of this Order.

5. East West Bank and NexBank, SSB (solely as the depository for the Certificate of Deposit) are authorized to continue to service and administer the Bank Accounts as debtor in possession accounts without interruption and in the usual and ordinary course of business, and to receive, process, honor, and pay any and all checks and drafts drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; *provided, however*,

that any check that the Debtor advises to have been drawn or issued by the Debtor before the Petition Date may be honored only if specifically authorized by order of this Court.

6. Except as modified by this Order, the Debtor's existing agreements with the Banks and with respect to the transfers to and from the Bank Accounts shall continue to govern the postpetition cash management relationship between the Debtor and the Banks. In the course of providing cash management services to the Debtor, the Banks are authorized, without further order of this Court, to continue to deduct from the appropriate accounts of the Debtor, their routine and ordinary course fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtor.

7. The Debtor shall maintain detailed records reflecting all transfers of funds under the terms and conditions provided for by the existing agreements with the institutions participating in the Cash Management System. In connection with the ongoing utilization of its Cash Management System, the Debtor shall continue to maintain accurate and detailed records in the ordinary course of business with respect to all transfers including any permitted intercompany transfers so that all transactions may be readily ascertained, traced and recorded properly on the applicable accounts and distinguished between prepetition and postpetition transactions.

8. Nothing contained herein shall prevent the Debtor from closing any Accounts as they may deem necessary, and any relevant Bank is authorized to honor the Debtor's request to close such Accounts, and the Debtor shall give notice of the closure of any Accounts to the U.S. Trustee and to the Committee.

9. The Debtor is authorized to open new bank accounts; provided, however, that all accounts opened by the Debtor on or after the Petition Date at any bank shall, for purposes of this Order, be deemed a Bank Account as if it had been listed in the Motion; provided, further, that (a) any such new bank account shall be opened at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee for the Northern District of Texas, or at a bank that is willing to immediately execute such an agreement, (b) any such new bank account shall be designated as a "debtor in possession" account by the relevant bank, and (c) such opening shall be timely indicated on the Debtor's monthly operating report and notice of such opening shall be provided within 14 days to the U.S. Trustee and counsel to the Committee.

10. The Debtor shall comply with all reporting and other requirements relating to the Cash Management System as set forth in the Settlement.

11. Any Intercompany Transactions made by the Debtor, through and including the date of this Order, in a manner consistent with the Motion and the Interim Order entered on October 18, 2019 [Docket No. 42] are hereby approved on a final basis.

12. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion.

13. Nothing herein shall, or is intended to, (i) create any rights in favor of or enhance the status of any claim held by any party or (ii) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

14. With the exception of the Certificate of Deposit, the Prime Account, and the Maxim Prime Account, the Bank Accounts comply with the requirements imposed under Section 345(b) of the Bankruptcy Code. The requirements of Section 345(b) are deemed satisfied.

15. The requirements of Section 345(b) are waived with respect to the Certificate of Deposit, the Prime Account, and the Maxim Prime Account.

16. The notice requirements under Bankruptcy Rule 6004(a) and the stay under Bankruptcy Rule 6004(h) are hereby waived, to the extent that they apply.

17. This Order shall be served promptly by the Debtor on the Banks and all parties in interest who were served by the Motion and all other parties who file a request for notice under Bankruptcy Rule 2002.

18. This Court shall retain jurisdiction to hear and determine all matters arising from the enforcement, implementation, or interpretation of this Order.

END OF ORDER # #

United States Bankruptcy Court
Northern District of Texas

In re:
Highland Capital Management, L.P.
Debtor

Case No. 19-34054-sgj
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0539-3 User: mmathews Page 1 of 2 Date Rcvd: Jan 22, 2020
Form ID: pdf025 Total Noticed: 45

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jan 24, 2020.

db +Highland Capital Management, L.P., 300 Crescent Court, Suite 700, Dallas, TX 75201-7849
aty +Alan A. Moskowitz, GIBSON, DUNN & CRUTCHER LLP, 200 Park Avenue, New York, NY 10166-4799
aty +Andrew Clubok, Latham & Watkins lLP, 555 Eleventh St., NW, Suite 1000, Washington, DC 20004-1359
aty +Asif Attarwala, LATHAM & WATKINS LLP, 330 N. Wabash Avenue, Ste. 2800, Chicago, IL 60611-3695
aty +Candace C. Carlyon, CARLYON CICA CHTD., 265 e. Warm Springs Road., Ste 107, Las Vegas, NV 89119-4230
aty +Curtis S. Miller, MORRIS, NICHOLS, ARSHT & TUNNELL LLP, 1201 North Market Street, Suite 1600, 1000 North King Street, Wilmington, DE 19801-3335
aty +D. Ryan Slaugh, POTTER ANDERSON & CORROON LLP, 1313 North Market Street, 6th Fl, Wilmington, DE 19801-6108
aty +Ira D Kharasch, 10100 Santa Monica Boulevard, 13th Floor, Los Angeles, CA 90067-4003
aty +James E. O'Neill, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Fl., Wilmington, DE 19801-3034
aty +James T. Bentley, Schulte Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022-3921
aty +Jeffrey E. Bjork, LATHAM & WATKINS LLP, 355 South Grand Avenue, Ste. 100, Los Angeles, CA 90071-3104
aty +Jeffrey N. Pomerantz, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067-4003
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aty +Kuan Huang, Latham & Watkins LLP, 855 Third Avenue, New York, NY 10022-6601
aty +Lauren Macksoud, 1221 Avenue of the Americas, New York, NY 10020-1001
aty +Louis J. Cisz, Nixon Peabody LLP, One Embarcadero Center, 32nd Fl, 15th Floor, San Francisco, CA 94111-3602
aty +Marc B. Hankin, Jenner & Block LLP, 919 Third Avenue, New York, NY 10022-3915
aty +Mark. L. Desgrosseilliers, Chipman, Brown, Cicero & Cole, LLP, Hercules Plaza, 1313 North Market Street, Suite 5400, Wilmington, DE 19801-6114
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aty +Matthew G. Bouslog, GIBSON, DUNN & CRUTCHER LLP, 3161 Michelson Drive, Irvine, CA 92612-4412
aty +Maxim B Litvak, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15th Floor, San Francisco, CA 94111-4554
aty +Michael A. Rosenthal, GIBSON, DUNN & CRUTCHER LLP, 200 Park Avenue, New York, NY 10166-4799
aty +Michael J. Merchant, RICHARDS, LAYTON & FINGER, P.A., one Rodney Square, 920 North King Street, Wilmington, DE 19801-3300
aty +Michael L. Vild, CROSS & SIMON, LLC, 1105 N. Market Street, Suite 901, 1000 North King Street, Wilmington, DE 19801-3335
aty +Patrick C. Maxcy, DENTONS US LLP, 233 South Wacker Drive, Suite 5900, Chicago, IL 60606-6404
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aty +Tracy M. O'Steen, CARLYON CICA CHTD., 265 E. Warm Springs Road., Ste 107, Las Vegas, NV 89119-4230
aty +William A. Hazeltine, Sullivan Hazeltine Allinson LLC, 901 North Market Street, Suite 1300, Wilmington, DE 19801-3079
aty +William P. Bowden, Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19899-1150
cr +City of Allen, Linebarger Goggan Blair & Sampson LLP, c/o Laruie A Spindler, 2777 N Stemmons Frwy Ste 1000, Dallas, TX 75207-2328
cr +City of Garland, c/o Perdue Brandon Fielder et al, 1919 S Shiloh Rd, Suite 310, LB 40, Garland, TX 75042-8234
cr +Garland ISD, % Perdue Brandon Fielder Et Al, 1919 S. Shiloh Rd, Suite 310, LB 40, Garland, TX 75042-8234
cr +Issuer Group, c/o Jones Walker LLP, 811 Main St., Suite 2900, Houston, TX 77002-6116
cr +PensionDanmark Pensionsforsikringsaktieselskab, Fox Rothschild LLP c/o David Grant Crook, 5420 LBJ Freeway, Suite 1200, Dallas, TX 75240-6215
cr +Siepe, LLC, Condon Tobin Sladek Thornton, PLLC, 8080 Park Lane, Suite 700, Dallas, TX 75231-5920

District/off: 0539-3 User: mmathews Page 2 of 2 Date Rcvd: Jan 22, 2020
Form ID: pdf025 Total Noticed: 45

cr +Wylie ISD, c/o Perdue Brandon Fielder et al, 1919 S Shiloh Rd, Suite 310, LB 40, Garland, TX 75042-8234

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
cr E-mail/Text: bncctnotifications@pbgc.gov Jan 22 2020 23:03:51 Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street, N.W., Washington, DC 20005-4026
TOTAL: 1

***** BYPASSED RECIPIENTS (undeliverable, * duplicate) *****
aty* +James T. Bentley, Schulte Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022-3921
aty* +Jeffrey N. Pomerantz, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067-4003
TOTALS: 0, * 2, ## 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Jan 24, 2020 Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on January 22, 2020 at the address(es) listed below:
NONE. TOTAL: 0

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

United States Bankruptcy Judge

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

ORDER (I) CONFIRMING THE FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF

The Bankruptcy Court[2] having:

a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the "Disclosure Statement Order"), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.

Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. 1473] (the "Disclosure Statement") under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the "Objection Deadline"), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (*As Modified*) [Docket No. 1808] (as amended, supplemented or modified, the "Plan");

c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the "Voting Deadline") in accordance with the Disclosure Statement Order;

d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;

e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the "Confirmation Hearing Notice"), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;

f. reviewed: (i) the *Debtor's Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)t* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the "Plan Supplements");

g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as "List of Assumed Contracts");

h. reviewed: (i) the *Debtor's Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the "Confirmation Brief"); (ii) the *Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the "Voting Certifications").

i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

Certificate of Service dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021[Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the "Affidavits of Service and Publication");

j. reviewed all filed[3] pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;

k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the "Confirmation Hearing");

l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and

m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;[4] (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. ("Strand"), the Debtor's general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the "Witnesses"); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

[3] Unless otherwise indicated, use of the term "filed" herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

[4] The Court admitted the following exhibits into evidence: (a) all of the Debtor's exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor's exhibits lodged at Docket No. 1866; (c) all of the Debtor's exhibits lodged at Docket No. 1877; (d) all of the Debtor's exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor's Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an "asset monetization plan" because it involves the orderly wind-down of the Debtor's estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under $1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor**. The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the "Petition Date"). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor**. The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor's general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles ("CLOs"), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor's affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee**. The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a "serial litigator." The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

a. **The Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee").** This Committee member obtained an arbitration award against the Debtor in the amount of $190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor's claim was settled during this Chapter 11 Case in the amount of approximately $137,696,610 (subject to other adjustments and details not relevant for this purpose).

b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC ("Acis").** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately $8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland's alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately $23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

c. **UBS Securities LLC and UBS AG London Branch ("UBS").** UBS is a Committee member that filed a proof of claim in the amount of $1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.

d. **Meta-E Discovery ("Meta-E").** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than $779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for $40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive $750,000 in cash on the Effective Date of the Plan, an $8.25 million general unsecured claim, and a $2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than $70 million with an entity in the Highland complex and asserted a $300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a $45 million general unsecured claim and a $35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure**. Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.[5] As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,[6] and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as "gatekeeper" prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor's restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the "gatekeeper" provision to those alleging willful misconduct and gross negligence.

[5] This order is hereinafter referred to as the "January 9 Order" and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the "Settlement Motion").

[6] *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the "Stipulation").

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court's order authorizing the appointment of Mr. Seery as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.[7] The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called "Barton Doctrine" (first articulated in an old Supreme Court case captioned *Barton v. Barbour,* 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

[7] *See Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the "July 16 Order")

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a $300 million claim) and Patrick Daugherty (who asserted a $40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain)**. Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase "not your garden variety", which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];

b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund)* [Docket No. 1670];

c. A *Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];

d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC)* [Docket No. 1673]; and

e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank)* [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

17. **Questionability of Good Faith as to Outstanding Confirmation Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;

b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;

c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;

d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;

e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and

f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the "Plan Supplement Documents").

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the $13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an "opt out" mechanism to allow holders of liquidated Class 8 Claims at or below a $1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm's-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.

b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

c. **The Reorganized Debtor**. The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of $250,000 for his first year of service, and $150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid $150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid $40,000 per month for the first three months and $20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

46. **Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).** Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

47. **Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the "Liquidation Analysis") to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.

c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.

d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.

e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].

f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of* Reorganization *of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.

g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.

h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.

i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).** Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The "best interests" test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery's deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor's projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as "HCLOF" that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at $22.5 million; (2) an increase in the value of certain of the Debtor's assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor's continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.

b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.

c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced "fire sale" of assets; and

e. The Debtor's employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors' argument that the Claimant Trust Agreement's disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee's liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides "retiree benefits" and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the "Contingent Interests"), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapuetics* 429 B.R 570 (Bankr. W.D. Tex. 2010).

b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3))**. The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the "Assumed Contracts"). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.[8] Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

[8] *See Notice of Withdrawal of James Dondero's Objection Debtor's Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith* [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the "Release Conditions"). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery's testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor's efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties' significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately $200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the "Exculpation Provision"). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co*., 584 F.3d 229 (5th Cir. 2009), for several reasons:

a. First, the statutory basis for *Pacific Lumber*'s denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties…. [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15th Ed. 2008]). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber's* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.[9]

b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumbe*r, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

[9] The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan inunction to implement and enforce the Plan's release, discharge and release provisions (the "Injunction Provision"). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor's assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor's assets and those assets could be monetized for less money to the detriment of the Debtor's creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a "third-party release." The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms "implementation" and "consummation" are neither vague nor ambiguous

76. **Gatekeeper Provision**. Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the "Gatekeeper Provision"). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr, Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour,* 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5th Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P'Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5th Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court's jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall.* The Bankruptcy Court's determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon**. Each of Scott Ellington ("Mr. Ellington") and Isaac Leventon ("Mr. Leventon") (each, a "Senior Employee Claimant") has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669] (the "Senior Employees' Objection") (for each of Mr. Ellington and Mr. Leventon, the "Liquidated Bonus Claims").

a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of $1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of $598,198.00. Mr. Ellington received two Ballots[10] – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees' Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be $1,000,000.

b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.

c. The Senior Employees' Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon's entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

[10] As defined in the Plan, "Ballot" means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").

e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive $701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive $413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.

f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be $600,000 and in Mr. Leventon's case, would be $358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.

h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.

i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.

j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).

k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

A. Confirmation of the Plan. The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.[11]

B. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

C. Objections. Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

D. Plan Supplements and Plan Modifications. The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

[11] The Plan is attached hereto as **Exhibit A**.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

E. Deemed Acceptance of Plan. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

F. Vesting of Assets in the Reorganized Debtor. Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

G. Effectiveness of All Actions. All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

H. Restructuring Transactions. The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

I. Preservation of Causes of Action. Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

J. Independent Board of Directors of Strand. The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

K. Cancellation of Equity Interests and Issuance of New Partnership Interests. On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

L. Transfer of Assets to Claimant Trust. On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

M. Transfer of Estate Claims to Litigation Sub-Trust. On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

N. Compromise of Controversies. In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

O. Objections to Claims. The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

P. Assumption of Contracts and Leases. Effective as of the date of this Confirmation Order, each of the Assumed Contacts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

Q. Rejection of Contracts and Leases. Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

R. Assumption of Issuer Executory Contracts. On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the "Issuer Executory Contracts") pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the "Portfolio Manager") will pay to the Issuers[12] a cumulative amount of $525,000 (the "Cure Amount") as follows:

a. $200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP ("SRZ") in the amount of $85,714.29, Jones Walker LLP ("JW") in the amount of $72,380.95, and Maples Group ("Maples" and collectively with SRZ and JW, the "Issuers' Counsel") in the amount of $41,904.76 as reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case; and

b. $325,000 in four equal quarterly payments of $81,250.00 (each, a "Payment"), which amounts shall be paid to SRZ in the amount of $34,821.43, JW in the amount of $29,404.76, and Maples in the amount of $17,023.81 as additional reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the "Management Fees"), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the "Payment Dates"), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers' Counsel, allocated in the proportion set forth in such agreement; *provided, however,* that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor's liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers' Counsel to the Debtor, in the event of any failure to make any Payment.

S. Release of Issuer Claims. Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

[12] The "Issuers" are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

T. Release of Debtor Claims against Issuer Released Parties. Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Ferona Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the "Issuer Released Parties"),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however,* that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

U. Authorization to Consummate. The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

V. Professional Compensation. All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

W. Release, Exculpation, Discharge, and Injunction Provisions. The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

X. Discharge of Claims and Termination of Interests. To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

Y. Exculpation. Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

provided, however, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

Z. Releases by the Debtor. On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

AA. Injunction. Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

BB. Duration of Injunction and Stays. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

CC. Continuance of January 9 Order and July 16 Order. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, entered by the Bankruptcy Court on January 9, 2020* [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

DD. No Governmental Releases. Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

EE. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

FF. Cancellation of Notes, Certificates and Instruments. Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

GG. Documents, Mortgages, and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

HH. Post-Confirmation Modifications. Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

II. Applicable Nonbankruptcy Law. The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

JJ. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

KK. Notice of Effective Date. As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked "undeliverable as addressed," "moved, left no forwarding address" or "forwarding order expired," or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity's new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

LL. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

MM. Waiver of Stay. For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

NN. References to and Omissions of Plan Provisions. References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

OO. Headings. Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

PP. Effect of Conflict. This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

QQ. Resolution of Objection of Texas Taxing Authorities. Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the "Tax Authorities") assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.

b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

RR. Resolution of Objections of Scott Ellington and Isaac Leventon. Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.

b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.

c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.

d. The Senior Employees' Objection is deemed withdrawn.

SS. No Release of Claims Against Senior Employee Claimants. For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a "Released Party" under the Plan.

TT. Resolution of Objection of Internal Revenue Service. Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service ("IRS") and all of its claims, including any administrative claim (the "IRS Claim"):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor's, the Reorganized Debtor's and/ or any successor- in-interest's obligations under the Plan, then entire prepetition liability of an IRS' Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term "any payment required to be made on federal taxes," as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term "any required tax return," as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

UU. IRS Proof of Claim. Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS's proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS' assessment of the Debtor's unpaid priority and general unsecured taxes, penalties and interest.

VV. CLO Holdco, Ltd. Settlement Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25,2021* [Docket No. 1838-1] (the "CLOH Settlement Agreement"). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

WW. Retention of Jurisdiction. The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

XX. Payment of Statutory Fees; Filing of Quarterly Reports. All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

YY. Dissolution of the Committee. On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

ZZ. Miscellaneous. After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided*, *however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

###END OF ORDER###

Exhibit A

Fifth Amended Plan (as Modified)

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED)

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Counsel for the Debtor and Debtor-in-Possession

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however,* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or Equity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. "*Business Day*" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however,* the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*Claimant Trust Assets*" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided*, *however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust Oversight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation Order*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. *"Convenience Claim"* means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests"* means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. *"Delaware Bankruptcy Court"* means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. "*Employees*" means the employees of the Debtor set forth in the Plan Supplement.

56. "*Enjoined Parties*" means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero ("Dondero"), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. "*Entity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. "*Equity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

60. "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

63. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. "*Final Order*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

70. "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

72. "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

78. "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. "*Litigation Sub-Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. "*Litigation Sub-Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. "*New Frontier Note*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. "*New GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. "*New GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

88. "*Ordinary Course Professionals Order*" means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. "*Other Unsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. *"Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. "Petition *Date*" means October 16, 2019.

92. "*Plan*" means this *Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. "*Priority Non-Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. "*Professional Fee Claims Objection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

106. "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. "*Reduced Employee Claims*" has the meaning set forth in ARTICLE IX.D.

108. "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. "*Rejection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. "*Related Entity*" means, without duplication, (a) Dondero, (b) Mark Okada ("Okada"), (c) Grant Scott ("Scott"), (d) Hunter Covitz ("Covitz"), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. "*Related Entity List*" means that list of Entities filed with the Plan Supplement.

112. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. "*Reorganized Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. "*Reorganized Debtor Assets*" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. "*Reorganized Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

123. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

126. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

127. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. "*Subordinated Claim*" means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

133. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

134. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. "*Voting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however,* that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. *Class 1 – Jefferies Secured Claim*

- *Classification*: Class 1 consists of the Jefferies Secured Claim.
- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

  Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. *Class 11 – Class A Limited Partnership Interests*

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. *Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however,* that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. *Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. *Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,

ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided*, *however,* the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. *Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. *Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however,* the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

G. Duration of Injunctions and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

ARTICLE X.
BINDING NATURE OF PLAN

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided*, *however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof*; provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however,* that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

Prepared by:

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ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

Exhibit B

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.

20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.

21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.

22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.

23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al

24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd

25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd

26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association

27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.

28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company

29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company

30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company

32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association

33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.

34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company

35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association

37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company

38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.

44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association

45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust

46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.

47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.

48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.

49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association

50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.

53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association

54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company

55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association

56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street

57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank

58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.

59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company

60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

Volume 3

APPELLANT RECORD

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

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

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APPELLANT'S STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL BY RIGHT

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, Appellant Hunter Mountain Investment Trust ("HMIT") hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal by right of the "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt. 4104] that was signed June 22, 2024, and entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024.[1]

[1] Given the lack of clarity in the law about the appropriate mechanism for obtaining review, HMIT filed a Notice of Appeal by Right and a Notice of Appeal by Leave (along with a motion for leave to file an interlocutory appeal) and a petition for writ of mandamus (which will be filed shortly thereafter).

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court abused its discretion in granting Appellees' motion for an indefinite stay of Appellant's gatekeeper motion seeking permission to bring suit in Delaware to remove the trustee of a Delaware statutory trust when (1) Appellees failed to meet the required standard for obtaining a stay; (2) the Bankruptcy Court erroneously concluded that the issue of Appellant's standing to seek removal of the Claimant Trustee would be decided in other cases pending before the Court; and (3) an indefinite or unduly lengthy stay of litigation of the type ordered by the Bankruptcy Court is expressly disfavored by the Fifth Circuit.

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Vol. 1

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Dkt. 4111]. — 00001

2. The judgment, order, or decree appealed from: "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt. 4104] — 000009

3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held June 12, 2024 before Judge Stacey G.C. Jernigan re: Motion to Stay Contested Matter [Dkt. 4091]. — SEE Vol. 17 - 001988

4. Docket Sheet for Bankruptcy Case No. 19-34054-sgj11 kept by the Bankruptcy Clerk. — 000012

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

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DATE	CASE NO.	DKT. NO.	DESCRIPTION
01/09/2020	19-34054-sgj-11	399	Order Approving Settlement with Official Committee of Unsecured Creditors regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course — 000578
02/22/2021	19-34054-sgj-11	1943	Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) — 000586
03/28/2023	19-34054-sgj-11	3699	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding — Vol 3 000747
04/21/2023	19-34054-sgj-11	3756	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 3/31/23 — Vol. 4 001134

Vol 4 001149	04/21/2023	19-34054-sgj-11	3757	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 3/31/23
001164	04/23/2023	19-34054-sgj-11	3760	Hunter Mountain Investment Trust's Supplement to Emergency motion for Leave to File Verified Adversary Proceeding
001209	06/05/2023	19-34054-sgj-11	3815	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
001274	06/05/2023	19-34054-sgj-11	3816	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
001339	07/21/2023	19-34054-sgj-11	3888	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 6/30/23
001351	07/21/2023	19-34054-sgj-11	3889	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 6/30/23
Vol. 5 001363	08/25/2023	19-34054-sgj-11	3903	Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trusts' Emergency Motion for Leave to File Verified Adversary Proceeding
001468	01/01/2024	19-34054-sgj-11	4000	Motion for Leave to File a Delaware Complaint
Vol. 6 001606	10/23/2023	19-34054-sgj-11	3955	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 9/30/23
001618	10/23/2023	19-34054-sgj-11	3956	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 9/30/23
001630	01/16/2024	19-34054-sgj-11	4013	Highland's Motion to Stay Contested Matter [Dk No. 4000] or for Alternative Relief
001638	01/22/2024	19-34054-sgj-11	4019	James P. Seery, Jr.'s Joinder to Highland Capital Management L.P.'s Motion to Stay Contested Matter [Dk No. 4000] or for Alternative Relief and Emergency Motion to Expedite Hearing on Motion for Stay
001640	06/11/2024	19-34054-sgj-11	4087	Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay
001669	01/22/2024	19-34054-sgj-11	4020	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 12/31/23
001681	01/22/2024	19-34054-sgj-11	4021	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 12/31/23

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06/24/2024	19-34054-sgj-11	4104	Order Extending Stay of Contested Matter [Docket No. 4000]
01/22/2024	19-34054-sgj-11	4049	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 3/31/24
01/22/2024	19-34054-sgj-11	4050	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 3/31/24
07/18/2024	19-34054-sgj-11	4130	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 6/30/24, dated July 18, 2024
07/18/2024	19-34054-sgj-11	4131	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 6/30/24, dated July 18, 2024

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
05/10/2023	23-03038	0001	Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0013	The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0014	Memorandum of Law in Support of Highland Capital Management L.P. and the Highland Claimant Trust's Motion to Dismiss Complaint

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DATE	CASE NO.	DKT. NO.	DESCRIPTION
12/29/2023	23-03038	0017	The Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

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12/29/2023	23-03038	0018	Appendix in Support of the Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

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01/19/2024	23-03038	0021	The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint

001863

05/24/2024	23-03038	0026	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets

001875

05/24/2024	23-03038	0027	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets

001911

06/07/2024	23-03038	0030	Notice of Appeal [Appellant Designation due by 06/21/2024] (Filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust)

001947

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

001988

DATE	CASE NO.	DKT. NO.	DESCRIPTION

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06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript

Dated: July 22, 2024

STINSON LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 22, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

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

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

HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERARY PROCEEDING

Hunter Mountain Investment Trust ("HMIT"), Movant, files this Emergency Motion for Leave to File Verified Adversary Proceeding ("Motion"), both in its individual capacity and as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management, L.P. ("HCM" or "Reorganized Debtor") and the Highland Claimant Trust against Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup"), Farallon

Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), James P. Seery, Jr. ("Seery") and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendant Nos. 11-10 are collectively "Respondents" or "Proposed Defendants").

I. Good Cause for Expedited Relief

1. HMIT seeks leave to file an Adversary Proceeding pursuant to the Court's "gatekeeping" orders, as well as the injunction and exculpation provisions in the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (Doc. 1943), as modified (the "Plan").[1] A copy of HMIT's proposed Verified Adversary Proceeding ("Adversary Proceeding") is attached as Exhibit 1 to this Motion. This Motion is separately supported by objective evidence derived from historical filings in the bankruptcy proceedings,[2] as well as the declarations of James Dondero, dated May 2022 (Ex. 2), James Dondero, dated February 2023 (Ex. 3), and Sawnie A. McEntire with attached evidence (Ex. 4). [3]

[1] The exculpation provisions were recently modified by a decision of the Fifth Circuit. Such provisions apply to James P. Seery, Jr. only and are limited to his capacity as an Independent Director. *Matter of Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 438 (5th Cir. 2022).

[2] Unless otherwise referenced, all references to evidence involving documents filed in the Debtor's bankruptcy proceedings (Case No. 19-34054-sgj11 (Bankr. N.D. Tex.)) are cited by "Doc." reference. HMIT asks the Court to take judicial notice of the documents identified by such entries.

[3] The supporting declarations will be cited as Dondero 2022 Dec. (Ex. 2), Dondero 2023 Dec. (Ex. 3), and McEntire Dec. (Ex. 4).

2. The expedited nature of this Motion is permitted under Fed. R. Bank P. 9006 (c)(1), which authorizes a shortened time for a response and hearing for good cause. For the reasons set forth herein, HMIT has shown good cause and requests that the Court schedule a hearing on this Motion on three (3) days' notice, and that any responses be filed no later than twenty-four hours before the scheduled hearing.[4]

3. HMIT brings this Motion on behalf of itself and derivatively on behalf of the Reorganized Debtor and the Highland Claimant Trust ("Claimant Trust"), as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").[5] Upon the Plan's Effective Date, Highland Capital Management, LP, as the original Debtor ("Original Debtor"), transferred its assets, including its causes of action, to the Claimant Trust, including the causes of action set forth in the attached Adversary Proceeding. The attached Adversary Proceeding alleges claims which are substantially more than "colorable" based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud,[6] including a fraud upon innocent stakeholders, as well as breaches of fiduciary

[4] Expedited action on this Motion is also warranted to hasten Movants' opportunity to file suit, pursue prompt relevant discovery, and reduce the threat of loss of potentially key evidence. Upon information and belief, Seery has been deleting text messages on his personal iPhone via a rolling, automatic deletion setting.

[5] Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate.

[6] Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the

duties and knowing participation in (or aiding and abetting) breaches of fiduciary duty. The Adversary Proceeding also alleges that the Proposed Defendants did so collectively by falsely representing the value of the Debtor's Estate, failing to timely disclose accurate values of the Debtor's Estate, and trading on material non-public information regarding such values. HMIT also alleges that the Proposed Defendants colluded to manipulate the Debtor's Estate—providing Seery the opportunity to plant close business allies into positions of control to approve Seery's compensation demands following the Effective Date.

4. Emergency relief is needed because of a fast-approaching date (April 16, 2023) that one or more of the Proposed Defendants *may* argue, depending upon choice of law, constitutes the expiration of the statute of limitations concerning some of the common law claims available to the Claimant Trust, as well as to HMIT.[7] Although HMIT offered to enter tolling agreements from each of the Proposed Defendants, they either rejected HMIT's requests or have not confirmed their willingness to do so, thereby necessitating the expedited nature of this Motion.[8] Because this Motion is subject to the

proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement.

[7] The first insider trade at issue involved the sale and transfer of Claim 23 in the amount of $23 million held by ACMLD Claim, LLC to Muck on April 16, 2021 (Doc. 2215).

[8] HMIT has been diligent in its efforts to investigate the claims described in this Motion, including the filing of a Tex. R. Civ. P. Rule 202 proceeding in January 2023, which was not adjudicated until recently in March 2023. Those proceeding were conducted in the 191st Judicial District Court in Dallas County, Texas, under Cause DC-23-01004. *See* McEntire Dec. Ex. 4 and the attached Ex. 4-A. Farallon and Stonehill defended those proceedings by aggressively arguing, in significant part, that the discovery issues were better undertaken in this Court.[8] The Rule 202 Petition was recently dismissed (**necessarily without prejudice**)

Court's "gatekeeping" orders and the injunction provisions of the Plan, emergency leave is required.

5. This Motion will come as no surprise to the Proposed Defendants. Farallon and Stonehill were involved in recent pre-suit discovery proceedings under Rule 202 of the Texas Rules of Civil Procedure relating to the same insider trading allegations described in this Motion. Muck and Jessup, special purpose entities created and ostensibly controlled by Farallon and Stonehill, respectively, also were provided notice of these Rule 202 Proceedings in February 2023.[9] Like this Motion, the Rule 202 Proceedings focused on Muck, Jessup, Farallon, and Stonehill and their wrongful purchase of large, allowed claims in the Original Debtor's bankruptcy based upon material non-public information. Seery is also aware of these insider trading allegations because of a prior written demand.

6. In light of the Proposed Defendants' apparent refusal to enter tolling agreements, or their failure to fully affirm their willingness to do so, HMIT is forced to seek emergency relief from this Court to proceed timely with the proposed Adversary Proceeding before the expiration of any *arguable* limitations period.[10]

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on March 8, 2023, ostensibly based on such arguments. However, it is telling that Stonehill and Farallon admitted during the Rule 202 Proceedings to their "affiliation" with Muck and Jessup and that they bought the Claims through these entities.

[9] *See* Dec. of Sawnie McEntire, Ex. 4.

[10] HMIT respectfully requests that this Motion be addressed and decided on an expedited basis that provides HMIT sufficient time to bring the proposed action timely. In the event the Court denies the requested relief, HMIT respectfully requests prompt notice of the Court's ruling to allow HMIT sufficient

II. Summary of Claims

7. HMIT requests leave to commence the proposed Adversary Proceeding, attached as Exhibit 1, seeking redress for breaches of duty owed to HMIT, breaches of duties owed to the Original Debtor's Estate, aiding and abetting breaches of those fiduciary duties, conspiracy, unjust enrichment, and fraud. HMIT also alleges several viable remedies, including (i) imposition of a constructive trust; (ii) equitable disallowance of any unpaid balance on the claims at issue;[11] (iii) disgorgement of ill-gotten profits (received by Farallon, Stonehill, Muck and Jessup) to be restituted to the Claimant Trust; (iv) disgorgement of ill-gotten compensation (received by Seery) to be restituted to the Claimant Trust; (v) declaratory judgment relief; (vi) actual damages; and (vii) punitive damages.

III. Standing

8. **HMIT.** Prior to the Plan's Effective Date, HMIT was the largest equity holder in the Original Debtor and held a 99.5% limited partnership interest. HMIT currently holds a Class 10 Claim as a contingent Claimant Trust Interest under the CTA

time to seek, if necessary, appropriate relief in the United States District Court. In order to have a fair opportunity to seek such relief on a timely basis and protect HMIT's rights and the rights of the Reorganized Debtor, HMIT will need to seek such relief on or before Wednesday, April 5, 2023, if this Motion has not been resolved.

[11] In the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

(Doc. 3521-5). Upon information and belief, all conditions precedent to HMIT's certification as a vested Claimant Trust Beneficiary would be readily satisfied but for the Defendants' wrongful actions and conduct described in this Motion and the attached Adversary Proceeding.

9. **Reorganized Debtor.** Although HMIT has standing as a former Class B/C Equity Holder, Class 10 claimant, and now contingent Claimant Trust Interest under the CTA,[12] this Motion separately seeks authorization to prosecute the Adversary Proceeding derivatively on behalf of the Reorganized Debtor and Claimant Trust. All conditions precedent to bringing a derivative action are satisfied.

10. Fed. R. Civ. P. 23.1 provides the procedural steps for "derivative actions," and applies to this proceeding pursuant to Fed. R. Bank. P. 7023.1. Applying Rule 7023.1, the Proposed Defendants' wrongful conduct occurred, and the improper trades consummated, in the spring and early summer of 2021, before the Effective Date in August 2021. During this period, HMIT was the 99.5% Class B/C limited partner in the original Debtor. As such, HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time, and the other Proposed Defendants aided and abetted breaches of those duties at that time.

[12] The last transaction at issue involved Claim 190, the Notice for which was filed on August 9, 2021. (Doc. 2698).

11. The derivative nature of this proceeding is also appropriate because any demand on Seery would be futile.[13] Seery is the Claimant Trustee under the terms of the CTA. Furthermore, any demand on the Oversight Board to prosecute these claims would be equally futile because Muck and Jessup, both of whom are Proposed Defendants, dominate the Oversight Board.[14]

12. The "classic example" of a proper derivative action is when a debtor-in-possession is "unable or unwilling to fulfill its obligations" to prosecute an otherwise colorable claim where a conflict of interest exists. *Cooper*, 405 B.R. at 815 (quoting *Louisiana World*, 858 F.2d at 252). Here, because HMIT's proposed Adversary Proceeding includes claims against Seery, Muck, and Jessup, the conflicts of interest are undeniable. Seery is the Trustee of the Claimant Trust Assets under the CTA, and he also serves as the "Estate Representative."[15] Muck and Jessup, as successors to Acis, the Redeemer Committee and UBS, effectively control the Oversight Board, with the responsibility to "monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance . . . ."[16]

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[13] Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed herein, since the Litigation Trustee serves at the direction of the Oversight Board.

[14] *See* Footnote 8, *infra.* In December 2021, several stakeholders made a demand on the Debtor through James Seery, in his capacity as Trustee to the Claimant Trust, to pursue claims related to these insider trades.

[15] *See* Claimant Trust Agreement (Doc. 3521-5), Sec. 3.11.

[16] *Id.* at Sec. 4.2(a) and (b).

13. Creditors' committees frequently bring suit on behalf of bankruptcy estates. Yet, it is clear that any ***appropriately designated party*** also may bring derivative claims. *In re Reserve Prod., Inc.*, 232 B.R. 899, 902 (Bankr. E.D. Tex. 1999) (citations omitted); *see In re Enron Corp.*, 319 B.R. 128, 131 (Bankr. S.D. Tex. 2004). As this Court has held in *In Re Cooper*:

> In Chapter 11 [cases], there is both a textual basis . . . and, frequently, a non-textual, equitable rationale for granting a creditor or creditors committee derivative standing to pursue estate actions (*i.e.*, the equitable rationale coming into play when the debtor-in-possession has a conflict of interest in pursuing an action, such as in the situation of an insider-defendant).

In re Cooper, 405 B.R. 801, 803 (Bankr. N.D. Tex. 2009) (also noting that "[c]onflicts of interest are, of course, frequently encountered in Chapter 11, where the metaphor of the 'fox guarding the hen house' is often apropos"); *see also In re McConnell*, 122 B.R. 41, 43-44 (Bankr. S.D. Tex. 1989) ("[I]ndividual creditors can also act in lieu of the trustee or debtor-in-possession . . . ."). Here, the Proposed Defendants are the "*foxes guarding the hen house*," and their conflicts of interest abound.[17] Proceeding in a derivative capacity is necessary, if not critical.

[17] *See Citicorp Venture Cap., Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 987 (3d Cir. 1998) (settlement noteholders purchased Debtors' securities with "the benefit of non-public information acquired as a fiduciary" for the "dual purpose of making a profit and influenc[ing] the reorganization in [their] own self-interest."), *see also, Wolf v. Weinstein*, 372 U.S. 633, 642, 83 S.Ct. 969, 10 L.Ed.2d 33 (1963) ("Access to inside information or strategic position in a corporate reorganization renders the temptation to profit by trading in the Debtor's stock particularly pernicious.").

14. The proposed Adversary Proceeding also sets forth claims that readily satisfy the Court's threshold standards requiring "colorable" claims, as well as the requirements for a derivative action. This Motion, which is supported by objective evidence contained in historical filings in the bankruptcy proceedings, also incorporates sworn declarations. At the very least, this additional evidence satisfies the Court's threshold requirements of willful misconduct and fraud set forth in the "gatekeeping" orders, as well as the injunction and exculpation provisions in the Plan.[18] This evidence also supports well-pleaded allegations exempted from the scope of the releases included in the Plan.

15. HMIT is an appropriate party to bring this action on behalf of the Reorganized Debtor and the Claimant Trust. If successful, the Adversary Proceeding will likely recover well over $100 million for the Claimant Trust, thereby enabling the Reorganized Debtor and Claimant Trust to pay off any remaining innocent creditors and make significant distributions to HMIT as a vested Claimant Trust Beneficiary.

16. As of December 31, 2022, the Claimant Trust had distributed 64.2% of the total $397,485,568 par value of all Class 8 and Class 9 unsecured creditor claims. The

[18] HMIT recognizes that it is an "Enjoined Party" under the Plan. The Plan requires a showing, *inter alia*, of bad faith, willful misconduct, or fraud against a "Protected Party." Seery is a "Protected Party" and an "Exculpated Party" in his capacity as an Independent Director. Muck and Jessup *may* be "Protected Parties" as members of the Oversight Committee, but they were not "protected" when they purchased the Claims before the Effective Date. While it is HMIT's position that Farallon and Stonehill do not qualify as "Protected Parties," they are included in this Motion in the interest of judicial economy.

Claims acquired by Muck and Jessup have an allowed par value of $365,000,000. Based on these numbers, the innocent unsecured creditors hold approximately $32 million in allowed claims.[19]

17. As of December 31, 2022, the Claimant Trust has distributed $255,201,228.[20] On a *pro rata* basis, that means that innocent creditors have received approximately $22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately $9,627,000.

18. Muck and Jessup already have received approximately $232.8 million on their Claims. Assuming and original investment of approximately $160 million, this represents over $72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary. The benefits to the Reorganized Debtor, the Claimant Trust and innocent stakeholders are undeniable.[21]

19. Seery and the Oversight Board should be estopped from challenging HMIT's status to bring this derivative action on behalf of the Claimant Trust. Seery, Muck and Jessup have committed fraud, acted in bad faith and have unclean hands, and they should not be allowed to undermine the proposed Adversary Proceeding - which seeks

[19] Doc. 3653.

[20] *Id.*

[21] Further, under the present circumstances and time constraints, this Motion should be granted to avoid the prospect of the loss of some of HMIT's and the Claimant Trust's claims and denial of due process.

to rectify significant wrongdoing. To hold otherwise would allow Seery, Muck, Jessup, Stonehill, and Farallon the opportunity to not just "guard the hen house," but to also open the door and take what they want.[22] HMIT seeks a declaratory judgment of its rights, accordingly.

IV. The Proposed Defendants

20. Seery acted in several capacities during relevant times. He served as the Debtor's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"). He also served as member of the Debtor's Independent Board.[23] He currently serves as Claimant Trustee under the CTA and remains the CEO of the Reorganized Debtor.

21. There is no doubt Seery owed the Original Debtor's Estate, as well as equity, fiduciary duties, including the duty of loyalty and the duty to avoid conflicts of interest. *See In re Xtreme Power Inc.*, 563 B.R. 614, 632-33 (Bankr. W.D. Tex. 2016) (detailing fiduciary duties owed by corporate officers and directors under Delaware law); *Louisiana World*, 858 F.2d at 245-46 (detailing duties owed by debtors-in-possession).[24]

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[22] "The doctrine of 'unclean hands' provides that "a litigant who engages in reprehensible conduct in relation to the matter in controversy ... forfeits his right to have the court hear his claim, regardless of its merit. [T]he purpose of the clean hands maxim is to protect the court against misuse by one who, because of his conduct, has forfeited his right to have the court consider his claims, regardless of their merit. As such it is not a matter of defense to be applied on behalf of a litigant; rather it is a rule of public policy." *Portnoy v. Cryo-Cell Int'l, Inc.*, 940 A.2d 43, 80–81 (Del. Ch. 2008) (citations omitted) (internal quotations omitted for clarity).

[23] Seery is the beneficiary of the Court's "gatekeeping" orders and is an "exculpated" party in his capacity as an Independent Director. He is also a "Protected Party."

[24] The Internal Affairs Doctrine dictates choice of law. Here, the Debtor, Highland Capital Management, was organized under the law of Delaware. As much, Seery's fiduciary duties and claims involving breaches of those duties will be governed by Delaware law.

22. Farallon and Stonehill are capital management companies which manage hedge funds; they are also Seery's close business allies with a long history of business ventures and close affiliation. Although they were strangers to the Original Debtor's bankruptcy on the petition date, and were not original creditors, they became entangled in this bankruptcy at Seery's invitation and encouragement—and then knowingly participated in the wrongful insider trades at issue. By doing so, Seery was able to plant friendly allies onto the Oversight Board to rubber stamp compensation demands. The proposed Adversary Proceeding alleges that Farallon and Stonehill bargained to receive handsome pay days in exchange.

23. Muck and Jessup are special purpose entities, admittedly created by Farallon and Stonehill on the eve of the alleged insider trades, and they were used as vehicles to assume ownership of the purchased claims.[25] The record is clear that Muck and Jessup ***did not exist*** before confirmation of the Plan in February 2021.[26] Now, however, Muck and Jessup serve on the Oversight Board with immense powers under the CTA.[27] When they purchased the claims at issue, Muck and Jessup were ***not*** acting in their official capacities on the Oversight Committee and, therefore, they were not "Protected Persons" under the Plan.

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[25] *See* Ex. 4-B, Rule 202 Transcript at 55:22-25.

[26] *See* McEntire Dec., Ex. 4, Ex. 4-D, Ex. 4-E. Muck was created on March 9, 2021 before the Effective Date. Jessup was created on April 8, 2021, before the Effective Date.

[27] *See* Doc. 3521-5, Sec. 4(a) and 4(b).

24. By trading on the alleged material non-public information, Farallon, Stonehill, Muck, and Jessup became non-statutory "insiders" with duties owed directly to HMIT at a time when HMIT was the largest equity holder.[28] *See S.E.C. v. Cuban*, 620 F.3d 551, 554 (5th Cir. 2010) ("The corporate insider is under a duty to 'disclose or abstain'—he must tell the shareholders of his knowledge and intention to trade or abstain from trading altogether."). In this context, there is no credible doubt that Farallon's and Stonehill's dealings with Seery were ***not*** arms-length. Again, Farallon and Stonehill were Seery's past business partners and close allies.[29] By virtue of the insider trades at issue, Farallon and Stonehill acquired control (acting through Muck and Jessup) over the Original Debtor and Reorganized Debtor through Seery's compensation agreement and awards, as well as supervisory powers over the Claimant Trust. This makes Farallon and Stonehill paradigm non-statutory insiders.

25. HMIT also seeks recovery against John Doe Defendant Nos. 1 through 10.[30] It is clear Farallon and Stonehill refuse to disclose the precise details of their legal

[28] Because of their "insider" status, this Court should closely scrutinize the transactions at issue.

[29] Farallon and Stonehill are two capital management firms (similar to HCM) with whom Seery has had substantial business relationships. Also, Seery previously served as legal counsel to Farallon. Seery also has a long-standing relationship with Stonehill. GCM Grosvenor, a global asset management firm, held four seats on the Redeemer Committee (an original member of the Unsecured Creditors Committee in HCM's bankruptcy). Upon information and belief, GCM Grosvenor is a significant investor in Stonehill and Farallon. GCM Grosvenor, through Redeemer, also played a large part in appointing Seery as a director of Strand Advisors and approved his appointment as HCM's CEO and CRO.

[30] Farallon and Stonehill consummated their trades concealing their actual involvement through Muck and Jessup as shell companies. Farallon's and Stonehill's identities were not discovered until much later after the fact.

relationships with Muck and Jessup. They resisted such discovery in the prior Rule 202 Proceedings in state district court.[31] They also refused to disclose such details in response to a prior inquiry to their counsel.[32] Furthermore, the corporate filings of both Muck and Farallon conspicuously omit the identity of their respective members or managing members.[33] Accordingly, HMIT intends to prosecute claims against John Doe Defendant Nos. 1 -- 10 seeking equitable tolling pending further discovery whether Farallon and Stonehill inserted intermediate corporate layers between themselves and the special purpose entities (Muck and Jessup) they created. *See In re ATP Oil & Gas Corp.*, No. 12-36187, 2017 WL 2123867, *4 (Bankr. S.D. Tex. May 16, 2017) (lsgur .J.); *see also In re IFS Fin. Corp.* No. 02-39553, 2010 WL 4614293, *3 (Bankr. S.D. Tex. No. 2, 2010) ("The identity of the party concealing the fraud is immaterial, the critical factor is whether any of the parties involved concealed property of the estate." "In either case, the trustee must demonstrate that despite exercising diligence, he could not have discovered the identity of the [unnamed] defendants prior to the expiration of the limitations period.") *ATP Oil*, 2017 WL 2123867 at *4. That burden is easily satisfied here.

[31] *See* McEntire Dec., Ex. 4.

[32] *See* McEntire Dec., Ex. 4, *see also*, Ex. 4-F.

[33] *See* Ex. 4-D, Ex. 4-E.

V. Background

26. As part of this Court's Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditor's Committee—was appointed to the Board of Directors (the "Board") of Strand Advisors, Inc., ("Strand Advisors"), the Original Debtor's general partner. Following approval of the Governance Order, the Board then appointed Seery as the Original Debtor's CEO and CRO. [34] Following the Effective Date of the Plan, Seery now serves as Trustee of the Claimant Trust (the Reorganized Debtor's sole post-reorganization limited partner), and continues to serve as the Reorganized Debtor's CEO. [35]

27. Imbued with his powers as CEO and CRO, Seery negotiated and obtained bankruptcy court approval of several settlements prior to the Effective Date, resulting in the following approximate allowed claims (hereinafter "Claims"):[36]

Creditor	**Class 8**	**Class 9**
Redeemer	$137 mm	$0 mm
Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm
UBS	$65 mm	$60 mm
(Totals)	$270 mm	$95 mm

[34] Doc. 854, Order Approving Retention of Seery as CEO/CRO.

[35] *See* Doc. 1943, Order Approving Plan, p. 34.

[36] Orders Approving Settlements [Doc. 1273, Doc. 1302, Doc. 1788, Doc. 2389].

Each of the settling parties curiously sold their Claims to Farallon or Stonehill (or their affiliated special purpose entities) shortly after they obtained court approval of their settlements. One of these "trades" occurred within just a few weeks before the Effective Date. Farallon and Stonehill coordinated and controlled the purchase of these Claims through Muck and Jessup, and they admitted in open court that Muck and Jessup were created to allow their purchase of the Claims.[37]

28. HMIT alleges that Seery filed (or caused to be filed) deflated, misleading projections regarding the value of the Debtor's Estate,[38] while inducing unsecured creditors to discount and sell their Claims to Farallon and Stonehill. But as reflected in the attached declarations, it is now known that Seery provided material, non-public information to Farallon. The circumstantial evidence is also clear that both Farallon and Stonehill had access to and used this non-public information in connection with their purchase decisions.

29. Farallon and Stonehill are registered investment advisors who have their own fiduciary duties to their investors, and they are acutely aware of what these duties entail. Yet, upon information and belief, they collectively invested over $160 million dollars to purchase the Claims in the absence of any publicly available information that

[37] *See* Ex. 4-B, Rule 202 Transcript at 55:22-25.

[38] The pessimistic projections were issued as part of the Plan Analysis on February 2, 2021. [Doc. 1875-1]. The Debtor projected 0% return on Class 9 claims and only 71.32% return on Class 8 Claims.

could rationally justify such investments. These "trades" become even more suspect because, at the time of confirmation, the Plan provided pessimistic projections advising stakeholders that the Claim holders would never receive full satisfaction:

- From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the valuation of HCM's assets dropped over $200 million from $566 million to $328.3 million.[39]
- HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11;[40]
    - This meant that Farallon and Stonehill invested more than $103 million in Claims ***when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims***.
- In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% *to 54%*;[41]

30. In the third financial quarter of 2021, just over $6 million of the projected $205 million available to satisfy general unsecured creditors was disbursed.[42] No additional distributions were made to the unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—**$45 million more than was *ever* projected**.[43]

[39] Doc. 1473, Disclosure Statement, p. 18.

[40] Doc. 1875-1, Plan Supplement, p. 4.

[41] Doc 2949.

[42] Doc 3200.

[43] Doc 3582.

31. According to Highland Capital's Motion for Exit Financing,[44] and a recent motion filed by Dugaboy Investment Trust,[45] there remain ***substantial*** assets to be monetized for the benefit of the Reorganized Debtor's creditors. Thus, upon information and belief, Stonehill and Farallon, stand to realize significant profits on their wrongful investments. In turn, Stonehill and Farallon will garner (and already have garnered) substantial fees – both base fees and performance fees – as the result of their acquiring and/or managing the Claims. Upon information and belief, HMIT also alleges that Seery has received excessive compensation and bonuses approved by Farallon (Muck) and Stonehill (Jessup) as members of the Oversight Board.

32. As evidenced in the supporting declarations (Exs. 2 and 3):

- Farallon admitted it conducted no due diligence and relied upon Seery in making its multi-million-dollar investment decisions at issue.[46]
- Farallon admitted it was unwilling to sell its stake in these Claims at any price because Seery assured Farallon that the Claims were tremendously valuable.[47]
- Farallon bragged about the value of its investment referencing non-public information regarding Amazon, Inc.'s ("Amazon") interest in acquiring Metro-Goldwyn-Mayer Studios Inc. ("MGM").[48]

[44] Doc 2229.

[45] Doc 3382.

[46] *See* Ex. 2, 2022 Dondero Declaration.

[47] *See* Ex. 2, 2022 Dondero Declaration, Ex. 3, 2023 Dondero Declaration.

[48] *See* Ex. 3, 2023 Dondero Declaration.

- Farallon was unwilling to sell its stake in the newly acquired Claims even though publicly available information suggested that Farallon would lose millions of dollars on its investment.[49]

Farallon can offer ***no credible explanation*** to explain its significant investment, and its refusal to sell at any price, ***except*** Farallon's access to material non-public information. In essence, Seery became the guarantor of Farallon's significant investment. Farallon admitted as much in its statements to James Dondero.

33. The same holds true for Stonehill. Given the negative, publicly available information, Stonehill's multi-million-dollar investments make no rational sense unless Stonehill had access to material non-public information.

34. Fed. R. Bank. P. 2015.3 requires debtors to "file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." However, no public reports required by Rule 2015.3 were filed. Seery testified they simply "fell through the cracks." [50]

35. Six days prior to the filing of the motion seeking approval of the HarbourVest Settlement, Seery acquired material non-public information regarding Amazon's interest in acquiring MGM.[51] Upon receipt of this material non-public

[49] *See* Ex. 3, 2023 Dondero Declaration, *see also* Doc. 1875-1.

[50] Doc. 1905, February 3, 2021, Hearing Transcript, 49:5-21.

[51] *See* Adversary No. 20-3190-sgj11, Doc. 150-1.

information, MGM should have been placed on the Original Debtor's "restricted list," but Seery continued to move forward with deals that involved MGM stock and notes.[52] Because the Original Debtor additionally held direct interests in MGM,[53] the value of MGM was of paramount importance to the value of the estate.

36. Armed with this and other insider information, Farallon—through Muck—proceeded to invest in the Claims and, acting through Muck, acceded to a powerful position on the Oversight Board to oversee future distributions to Muck and itself. It is no coincidence Seery invited his business allies into these bankruptcy proceedings with promises of great profits. Seery's allies now oversee his compensation.[54]

37. The Court also should be aware that the Texas States Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation

[52] As part of the HarbourVest Settlement, Seery negotiated the purchase of HarbourVest's interest in HCLOF for approximately $22.5 million as part of the transaction. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM. The HCLOF interest was not to be transferred to the Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements. Doc. 1625, p. 9, n. 5. Doc. 1625.

[53] *See* Doc. 2229, Motion for Exit Financing.

[54] Amazon closed on its acquisition of MGM in March 2022, but the evidence strongly suggests that agreements for the trades already had been reached - while announcement of the trades occurred strategically after the MGM news became public. Now, as a result of their wrongful conduct, Stonehill and Farallon profited significantly on their investments, and they stand to gain substantially more profits.

underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely "colorable."

VI. Argument

A. HMIT has asserted Colorable Claims against Seery, Stonehill, Farallon, Muck, and Jessup.

38. Unlike the terms "Enjoined Party," "Protected Party," or "Exculpated Party," the Plan does not define what constitutes a "colorable" claim. Nor does the Bankruptcy Code define the term. However, relevant authorities suggest that a Rule 12(b)(6) standard is an appropriate analogue.

39. The Fifth Circuit has held that a "colorable" claim standard is met if a [movant], such as HMIT, has asserted claims for relief that, on appropriate proof, would allow a recovery. A court need not and should not conduct an evidentiary hearing but must ensure that the claims do not lack any merit whatsoever. *Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 248 (5th Cir. 1988). Stated differently, the Court need not be satisfied there is an evidentiary basis for the asserted claims but instead should allow the claims if they ***appear*** to have ***some*** merit.

40. Other federal appellate courts have reached similar conclusions. For example, the Eighth Circuit holds that "creditors' claims are colorable if they would survive a motion to dismiss." *In re Racing Services, Inc.*, 540 F.3d 892, 900 (8th Cir. 2008); *accord In Re Foster*, 516 B.R. 537, 542 (B.A.P. 8th Cir. 2014), aff'd 602 Fed. Appx. 356 (8th Cir. 2015) (*per curiam*). The Sixth Circuit has adopted a similar test requiring that the court

look ***only*** to the face of the complaint to determine if claims are colorable. *In re The Gibson Group, Inc.*, 66 F.3d 1436, 1446 (6th Cir. 1995) (emphasis added).

41. Although there is a dearth of federal court authorities in Texas, other federal courts have adopted the same standard—*i.e.*, a claim is colorable if it is "plausible" and could survive a motion to dismiss. *See In re America's Hobby Center, Inc.*, 223 B.R. 273, 282 (S.D.N.Y 1998). In addition, in the non-bankruptcy context, the District Court for the Northern District of Texas explained that "[t]he requirement of a 'colorable claim' means only that the plaintiff must have an '*arguable* claim' and not that the plaintiff must be able to succeed on that claim." *Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (Emphasis added).

42. Thus, in this instance, this Court's gatekeeping inquiry is properly limited to whether HMIT has stated a plausible claim on the face of the proposed pleadings involving "bad faith," "willful misconduct," or "fraud." Because the face of the Adversary Complaint alleges plausible facts, HMIT's Motion is properly granted. Clearly, the attached Adversary Proceeding would survive a Rule 12(b)(6) challenge. Furthermore, the supporting declarations and documentary evidence provide additional support, and the circumstantial evidence proves that Farallon and Stonehill, strangers to the bankruptcy on the petition date, would not have leaped into these proceedings without undisclosed assurances of profit.

B. Fraud

43. As set forth in the proposed Adversary Proceeding, HMIT alleges a colorable claim for fraud—both fraud by knowing misrepresentation and fraud by omission of material fact. Here, these allegations of fraud are appropriately governed by Texas law under appropriate choice of law principals.[55]

44. Seery had a duty to not provide material inside information to his business allies. But, he did so. At the latest, Seery became aware of the potential sale of MGM in December 2020 when he received an email from Jim Dondero.[56] Thus, Seery knew at that time that this potential sale would likely yield significant value to the Original Debtor's Estate. Yet, the financial disclosures associated with the Plan's confirmation, which were provided only a month later, presented an entirely different outlook for both Class 8 and Class 9 unsecured creditors.[57] Seery knew at that time that these pessimistic disclosures were misleading, if not inaccurate.

45. There is no credible doubt Seery intended that innocent stakeholders would rely upon the pessimistic projections set forth in the Plan Analysis. Indeed, the singular purpose of the Plan Analysis was to advise stakeholders. As such, HMIT alleges that Seery knowingly made misrepresentations with the intention that innocent stakeholders

[55] However, Delaware law is substantially similar on the elements of fraud. *See Malinals v. Kramer*, No. CIV.A. CPU 6-11002145, 2012 WL 174958, at 2 (Del. Com. PI. Jan. 5, 2012)

[56] *See*, Dondero 2022 Dec., Ex. 2-1.

[57] *See* Doc. 1875-1, Plan Analysis, February 1, 2021.

would rely, and that he failed to disclose material information concerning his entanglements with Farallon and Stonehill, as well as the related negotiations that were chock full of conflicts of interest.

46. On the flip side of this conspiracy coin, Farallon and Stonehill were engaged in negotiations to acquire the Claims at discounted prices; and, they successfully did so. HMIT alleges that their success was based on knowledge that the financial disclosures associated with the Plan Analysis were significantly understated. Otherwise, it would make no financial sense for Farallon and Stonehill to do the deals at issue. Indeed, Farallon admitted that it would not sell the Claims at any price, expressing great confidence in the substantial profits it expected even in the absence of any supporting, publicly available information.[58]

47. All of the Proposed Defendants had a duty of affirmative disclosure under these circumstances. Seery always had this duty. Muck, Jessup, Farallon, and Stonehill assumed this duty when they became non-statutory "insiders." Thus, all of the Proposed Defendants are liable for conspiring to perpetrate a fraud by omission of material facts.

48. HMIT also claims that Seery and the other Proposed Defendants failed to disclose material information concerning Seery's involvement in brokering the Claims in exchange for *quid pro quo* assurances of enhanced compensation. Seery's compensation

[58] Ex. 3, 2023 Dondero Declaration.

should be disgorged or, alternatively, such compensation constitutes a damage recoverable by the Reorganized Debtor and Claimant Trust as assignees (or transferees) of the Original Debtor's causes of action. This compensation was the product of the alleged self-dealing, breaches of fiduciary duty, and fraud.

C. Breaches and Aiding and Abetting Breaches of Fiduciary Duties

49. It is beyond dispute Seery owed fiduciary duties to the Estate. *See Xtreme Power*, 563 B.R. at 632-33 (detailing fiduciary duties owed by corporate officers and directors under Delaware law);[59] *Louisiana World*, 858 F.2d at 245-46 (5th Cir. 1988) (detailing duties owed by debtors-in-possession). Although Seery did not buy the Claims at issue, he stood to profit from these sales because his close business allies would do his bidding after they had acceded to positions of power and control on the Oversight Board. Muck and Jessup were essentially stepping into the shoes of three of the largest unsecured creditors who were already slated to serve on the Oversight Board. Thus, by acquiring their Claims, all of the Proposed Defendants knew that Muck and Jessup would occupy these powerful oversight positions after the Effective Date.

50. Thus, the alleged conspiracy was successfully implemented before the Effective Date. Farallon and Stonehill now occupy control positions through the shell

[59] The *Xtreme* case also notes that "several Delaware courts have recognized that 'directors who are corporate employees lack independence because of their substantial interest in retaining their employment." 563 B.R. at 633-34. Because Muck and Jessup are now in control of Seery's compensation, it follows that Seery is beholden to them, and Seery's disclosure of inside information to Stonehill and Farallon confirms his conflict of interest.

entities (Muck and Jessup) overseeing large compensation packages for Seery. Of course, this control (and the opportunity to control) presented a patent conflict of interest which Seery should have avoided, but instead knowingly created, fostered, and encouraged. HMIT alleges that Seery breached his duty to avoid this conflict or otherwise disclose this conflict and Farallon and Stonehill aided and abetted this breach.

51. The Original Debtor, as an investment adviser registered with the SEC, is also required to make public disclosures on its Form ADV, the uniform registration form for investment advisers required by the SEC. These Form ADV disclosures, which were in effect at the time of the insider trades at issue, explicitly forbade "any access person from trading either personally or on behalf of others . . . on material non-public information or communicating material non-public information to others in violation of the law or duty owed to another party."[60] It now appears these representations were false when made. Seery's alleged conduct also violated, at minimum, the duties Seery owed in his various capacities with the Original Debtor under the Form ADV disclosures.

52. Although initially strangers to the original bankruptcy, by accepting and using inside information, Farallon and Stonehill became "temporary insiders" and thus owed separate duties to the Estate. *See S.E.C. v. Cuban*, 620 F.3d 551 (5th Cir. 2010) ("[E]ven

[60] *See, e.g.*, https://files.adviserinfo.sec.gov/IAPD/Content/Common/crd_iapd_Brochure.aspx?BRCHR_VRSN_ID=777026.

an individual who does not qualify as a traditional insider may become a 'temporary insider' if by entering 'into a special confidential relationship in the conduct of the business of the enterprise [they] are given access to information solely for corporate purposes." *In re Washington Mut., Inc.*, 461 B.R. 200 (Bankr. D. Del. 2011), *vacated in part*, 08-12229 MFW, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (finding that equity committee stated colorable claim for equitable disallowance against creditors who "became temporary insiders of the Debtors when the Debtors gave them confidential information and allowed them to participate in negotiations with JPMC for the shared goal of reaching a settlement that would form the basis of a consensual plan of reorganization"; vacated in part as a condition of settlement only);[61] *See also, In re Smith*, 415 B.R. 222, 232-33 (Bankr. N.D. Tex. 2009) ("[a]n insider is an entity or person with 'a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arm's length with the debtor.' 'Thus, the term "insider" is viewed to encompass two classes: (1) per se insiders as listed in the Code and (2) extra-statutory insiders that do not deal at arm's length.'" (citations omitted)). Farallon, Stonehill, Muck, and Jessup clearly fall into this latter category.

[61] Although the *Washington Mutual* case was subsequently vacated, the Court's intellectual reasoning remains valid because the vacatur was mandated by a mediated settlement, not because the court's logic was flawed or changed, and the court expressly noted that the parties' settlement was conditioned on vacatur. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, *8 (Bankr. D. Del. Feb. 24, 2012) ("grant[ing] partial vacatur . . . *in furtherance of the settlement embodied in the Plan*," and noting that "absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement." (emphasis added)).

53. Because Farallon and Stonehill (acting through Muck and Jessup) now hold the majority of the seats on the Oversight Board, they, along with Seery, exercise control of the reorganization proceedings. At no time were Farallon, Stonehill, or Seery's plans disclosed to the other creditors or equity. In fact, the only inference that can be reasonably drawn is that Farallon and Stonehill brazenly sought to conceal their involvement by establishing shell entities—Muck and Jessup—to nominally hold the Claims and create an opaque barrier to any effort to identify the "*Oz behind the curtain*." Such conduct aligns precisely with the inequitable conduct detailed in *Citicorp* and *Adelphia* (discussed below).

54. In sum, the proposed Adversary Proceeding sets forth plausible allegations that Stonehill and Farallon were aware of Seery's fiduciary duties. Indeed, as registered investment advisors, both Farallon and Stonehill were acutely aware of Seery's fiduciary obligations, including, without limitation, the duty to act in the best interests of the Original Debtor's Estate and the duty not to engage in insider trading that would benefit Seery, as an insider, and themselves, as non-statutory insiders. By accepting and then acting on material non-public information, Farallon and Stonehill (as well as Muck and Jessup) aided and abetted breaches of these fiduciary duties. By placing themselves in positions to control Seery's compensation, Farallon and Stonehill (acting through Muck and Jessup) induced, encouraged, aided and abetted Seery's self-dealing.

D. Equitable Disallowance is an Appropriate Remedy

55. HMIT also seeks equitable disallowance. Although the Fifth Circuit in *Matter of Mobile Steel Co.* generally limited the court's equitable powers to subordination rather than disallowance,[62] the Fifth Circuit **did *not* foreclose** the viability of equitable disallowance as a potential remedy. *See* 563 F.2d 692, 699 n. 10 (5th Cir. 1977). Binding U.S. Supreme Court precedent in *Pepper v. Litton* also permits bankruptcy courts to fashion disallowance remedies. 308 U.S. 295, 304-11 (1939). Bankruptcy Code § 510, which supplies the authority for equitable subordination, was "intended to codify case law, such as *Pepper v. Litton . . . and is not intended to limit the court's power in any way…. Nor does [it] preclude a bankruptcy court from completely disallowing a claim in appropriate circumstances*." *In re Adelphia Commun. Corp.*, 365 B.R. 24, 71-72 (Bankr. S.D.N.Y. 2007), *aff'd in part sub nom. Adelphia Recovery Tr. v. Bank of Am., N.A.*, 390 B.R. 64 (S.D.N.Y. 2008), *adhered to on reconsideration*, 05 CIV. 9050 (LMM), 2008 WL 1959542 (S.D.N.Y. May 5, 2008) (emphasis and omissions in original).[63]

56. The Fifth Circuit's decision in *Mobile Steel* also was premised on the notion that disallowance would not add to the quiver of defenses to fight unfairness because

[62] Equitable subordination is an inadequate remedy in this instance.

[63] In *Washington Mutual*, the Court's intellectual reasoning when imposing disallowance is instructive. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, *8 (Bankr. D. Del. Feb. 24, 2012) ("grant[ing] partial vacatur . . . *in furtherance of the settlement embodied in the Plan*," and noting that "absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement." (emphasis added)).

creditors "are fully protected by subordination" and "[i]f the misconduct directed against the bankrupt is so extreme that disallowance might appear to be warranted, then *surely* the claim is either invalid or the bankrupt possesses a clear defense against it." *Mobile Steel*, 563 F.2d at 699 n. 10 (emphasis added). Importantly, however, the factual scenarios considered in *Mobile Steel* do not exist here.

57. Here, Muck and Jessup purchased both Class 8 and Class 9 Claims, and they now effectively occupy more than 90% of the entire field of unsecured creditors in these two claimant tiers. Thus, subordination cannot effectively address the current facts where the Original Debtor's CEO and CRO conspired directly with close business allies who acquired the largest unsecured claims to the detriment of other innocent creditors and *former equity*. The reasoning in published cases from other circuits supports this conclusion. *See Adelphia*, 365 B.R. at 71-73; *Citicorp Venture Capital, Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 991 n. 7 (3d Cir. 1998).

58. The purpose of equitable subordination is to assure that the wrongdoer does not profit from bad conduct. In the typical case, subordination to other creditors will achieve this deterrence. But, it is clear that the Third Circuit's decision in *Citicorp* was structured to use subordination as just one tool in a larger tool box to make sure "at a minimum, the remedy here should deprive – [the fiduciary] of its profit on the purchase of the notes." *Id* at 991. In *Adelphia*, the Southern District of New York also used equitable

subordination as a remedy to address wrongs of non-insiders who aided and abetted breaches a fiduciary duty by the debtor's management. 365 B.R. at 32.

59. But subordination cannot adequately address the wrongful conduct at issue. This is because subordination is typically limited to instances where one creditor is subordinated to other creditors, not equity. Here, for all practical purposes, there are only a few other unsecured creditors with relatively small stakes. Therefore, subordination as a weapon of deterrence is neutered.

60. In sum, by engaging in the alleged wrongful acts, including aiding and abetting Seery's breaches of fiduciary duty, Farallon, Stonehill, Muck, and Jessup should not be rewarded. The Proposed Defendants engaged in alleged conduct which damaged the Original Debtor's estate, including improper agreements to compensate Seery under the terms of the CTA. Equitable disallowance is an appropriate remedy which, when combined with disgorgement of all ill-gotten profits, will deprive the Proposed Defendants of their ill-gotten gains.

E. Disgorgement and Unjust Enrichment

61. The law is clear that disgorgement is an available remedy for breach of fiduciary duty both under Texas Law, see *Kinzbach Tool Co. v. Corbett-Wallace Corporation*, 160 S.W. 2d 509 (Tex. 1942), and under Delaware law, see *Metro Storage International, LLC v. Harron*, 275 A.3d 810 (Del. Ch. 2022). Disgorgement is also an appropriate remedy for unjust enrichment under Texas law, *Hunter v. Shell Oil Co.*, 198 F.2d 485 (5th Cir. 1952),

and under Delaware law, *In re Tyson Foods, Inc. Consolidated Shareholder Litigation*, 919 A.2d 563 (Del. Ch. 2007).[64]

62. Likewise, the imposition of a constructive trust is proper for addressing unjust enrichment under both Delaware and Texas law, see *Teacher's Retirement System of Louisiana v. Aidinoff*, 900 A.2d 654 (Del. Ch. 2006) and *Hsin-Chi-Su v. Vantage Drilling Company*, 474 S.W. 3d 384 (Tex. App. – 14th Dist. 2015), pet. denied. The elements of unjust enrichment are: (1) the defendant must have gained a benefit (2) at the expense of plaintiff, (3) and retention of that benefit must be shown to be unjust. *See Restatement (Third) of Restitution and Unjust Enrichment* §321, cmt. e (2011).

63. Here, the imposition of a constructive trust and disgorgement are clearly appropriate to provide redress for the alleged breaches of fiduciary duty and the knowing participation in (or aiding and abetting) those breaches. Furthermore, the imposition of a constructive trust and disgorgement are appropriate to disgorge the improper benefits that all of the Proposed Defendants received by virtue of collusion and insider trading.

64. As set forth in the proposed Adversary Proceeding, Seery gained the opportunity to have his compensation demands rubber stamped. The other Defendants gained the opportunity to purchase valuable claims at a discount knowing that

[64] It is likely that the Internal Affairs Doctrine will dictate that Delaware choice of law governs the breach of fiduciary duty claims.

pessimistic financial projections were false and that the upside investment potential was great. Retention of the benefits they received would be unjust and inequitable.

65. Clearly, the Debtor's Estate was damaged by virtue of the claimed conduct. Seery obtained profits and compensation to the detriment of that estate as well as the estate of the Reorganized Debtor, other innocent creditors and HMIT, as former equity and as a contingent Claimant Trust Beneficiary.

F. Declaratory Relief

66. HMIT also seeks declaratory relief pursuant to Fed. R. Bank P. 7001(9). Specifically, HMIT seeks a declaratory judgment that: (a) there is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement; (b) as a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered "contingent;" (c) HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill; (d) HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments; (e) Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of fraudulent conduct, bad faith, willful misconduct, and unclean hands; (f) Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized

Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct, and unclean hands; and (g) all of the Proposed Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct, and unclean hands.

G. HMIT has Direct Standing.

67. The Texas Supreme Court recently held that "a partner or other stakeholder in a business organization has constitutional standing to sue for an alleged loss in the value of its interest in the organization." *Pike v. Texas EMC Mgt., LLC*, 610 S.W.3d 763, 778 (Tex. 2020). In so holding, the Court considered federal law and found that the traditional "incantation that a shareholder may not sue for the corporation's injury" is really a question of capacity, which goes to the merits of a claim, rather than an issue of standing that would impact subject matter jurisdiction. *Id.* at 777 (noting that the 5th Circuit and "[o]ther federal circuits agree that a plaintiff has standing to sue for the lost value of its investment in a corporation"). Because Seery, Muck, Jessup, Stonehill, Farallon's alleged actions devalued HMIT's interest in the Debtor's Estate, including, without limitation, payment of excessive compensation to Seery, HMIT has standing to pursue its common law claims directly. HMIT also has direct standing to seek declaratory relief as set forth in the proposed Adversary Proceeding.

VII. Prayer

WHEREFORE, PREMISES CONSIDERED, Hunter Mountain Investment Trust respectfully requests this Court grant HMIT leave authorizing it to file the Adversary Complaint, attached as Exhibit 1, as an Adversary Proceeding in this United States Bankruptcy Court for the Northern District of Texas, in its own name and as a derivative action on behalf of the Debtor Highland Capital Management, L.P., against Muck Holdings, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, Stonehill Capital Management, LLC, James P. Seery, Jr., and John Doe Defendants Nos. 1 – 10, and further grant HMIT all such other and further relief to which HMIT may be justly entitled.

Dated: March 28, 2023

Respectfully Submitted,
PARSONS MCENTIRE MCCLEARY PLLC

By: */s/ Sawnie A. McEntire*

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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF CONFERENCE

Beginning on March 24, 2023, and also on March 27, 2023, the undersigned counsel conferred either by telephone or via email with all counsel for all Respondents regarding the relief requested in the foregoing Motion, including John A. Morris on behalf of James P. Seery, and Brent McIlwain on behalf of Muck Holdings LLC, Jessup Holdings LLC, Stonehill Capital Management, and Farallon Capital Management. Mr. Seery is opposed to this Motion. Based upon all communications with Mr. McIlwain, it is reasonably believed his clients are also opposed and we advised him that this recitation would be placed in the certificate of conference.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

CERTIFICATE OF SERVICE

I certify that on the 28th day of March 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

Exhibit 1

Exhibit 1 to Emergency Motion

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

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Case No. 19-34054-sgj11**
Debtor.	§	
HUNTER MOUNTAIN INVESTMENT TRUST, INDIVIDUALLY, AND ON BEHALF OF THE DEBTOR HIGHLAND CAPITAL MANAGEMENT, L.P. AND THE HIGHLAND CLAIMANT TRUST	§	**Adversary Proceeding No. _____**
PLAINTIFFS,	§	

v.	§
	§
MUCK HOLDINGS, LLC, JESSUP HOLDINGS, LLC, FARALLON CAPITAL MANAGEMENT, LLC, STONEHILL CAPITAL MANAGEMENT, LLC, JAMES P. SEERY, JR., AND JOHN DOE DEFENDANTS NOS. 1-10	§
DEFENDANTS.	§

VERIFIED ADVERSARY COMPLAINT

Hunter Mountain Investment Trust ("HMIT") files this Verified Adversary Complaint in its individual capacity and, as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management L.P. ("HCM" or "Reorganized Debtor") and the Highland Claimant Trust (collectively "Plaintiffs"), complaining of Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup"), Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), James P. Seery, Jr., ("Seery") and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendants Nos. 1-10 are collectively "Defendants"), and would show:

I. Introduction

1. HMIT brings this Verified Adversary Complaint ("Complaint") on behalf of itself, individually, and as a derivative action benefitting the Reorganized Debtor and

on behalf of the Highland Claimant Trust ("Claimant Trust"), as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").[1] This derivative action is specifically brought pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and B. R. Rule 7023.1. At the time of the transactions at issue, HMIT held a 99.5% limited partnership in Highland Capital Management, LP, the Original Debtor, as described herein. This derivative action is not a collusive effort to confer jurisdiction that the Court would otherwise lack.

2. Upon the Effective Date, the assets of the bankruptcy estate of Highland Capital Management, L.P., as the Original Debtor (the "Debtor's Estate") were transferred to the Highland Claimant Trust under the terms of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Doc. 1943, Exhibit A] (the "Plan") and as defined in the CTA. These assets include all "causes of action" that the Debtor's Estate had before the Effective Date including, without limitation, the causes of action set forth in this Adversary Proceeding. Furthermore, the Claimant Trust is managed by the Claimant Trustee, Seery. Therefore, any demand upon Seery to prosecute the claims set forth in this Complaint would be futile because Seery is a Defendant. Similarly, the Oversight Board exercises supervision over Seery as Claimant

[1] Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate. Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed in HMIT's Emergency Motion for Leave (Doc. __).

Trustee, and Muck and Jessup are members of the Oversight Board. Any demand upon Muck and Jessup to prosecute these claims would be equally futile. All conditions precedent to bringing this derivative action have otherwise been satisfied.

3. This action has become necessary because of Defendants' tortious conduct. This tortious conduct occurred before the Effective Date of the Plan, but its effects have caused damage both before and after the Effective Date. Prior to the Effective Date, HMIT owned 99.5% of the limited partnership interest in the Original Debtor and was the beneficiary of fiduciary duties owed by Seery.

4. Seery, the Original Debtor's CEO and former Chief Restructuring Officer ("CRO"), wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends, Farallon and Stonehill. He did so by providing material non-public information to them concerning the value of the Original Debtor's Estate that other stakeholders did not know. Farallon and Stonehill, who were otherwise strangers to the bankruptcy proceedings, wrongfully purchased the claims through their special purpose entities, Muck and Jessup, based upon this inside information, and they are now profiting from their misconduct. Seery's dealings with the other Defendants were not arm's length, but instead were covert, undisclosed, and collusive.

5. Motivated by corporate greed, the other Defendants aided and abetted or, alternatively, knowingly participated in Seery's wrongful conduct. They also breached their own duties as "non-statutory insiders." Because of their long-standing, historical

relationships with Seery, and their use of material non-public information, Farallon, Stonehill, Muck, and Jessup assumed positions of control over the affairs of the Debtor's bankruptcy, including compensation awards to Seery. As such, they became non-statutory insiders.

6. HMIT was formerly the largest equity holder in the Debtor, holding a 99.5% limited partnership interest. HMIT now holds an Allowed Class 10 Class B/C Limited Partnership Interest and a Contingent Trust Interest under the CTA. Given HMIT's' position as former equity, HMIT's right to recover from the Claimant Trust is junior to the Reorganized Debtor's unsecured creditors, now known as Claimant Trust Beneficiaries. However, the vast majority of the approved unsecured claims superior to HMIT's interest are the claims wrongfully acquired by insider trading and the breaches of duty at issue in this proceeding.

7. By wrongfully soliciting, fostering, and encouraging the wrongful insider trades, Seery violated his fiduciary duties to the Debtor's Estate, specifically his duty of loyalty and his duty to maximize the value of the Estate with corresponding recovery by legitimate creditors and former equity. Seery was motivated out of self-interest to garner personal benefit (to the detriment of the Debtor's Estate) by strategically benefitting his business allies with non-public information. He then successfully "planted" his allies onto the Oversight Board, which, as a consequence does not act as an independent board in the exercise of its responsibilities. Rather, imbued with powers to oversee Seery's

future compensation, the other Defendants are postured to reward Seery financially regarding Defendants' illicit dealings and, upon information and belief, they have done so.

8. By receiving and acting upon material non-public information concerning the financial condition of the Debtor's Estate, Stonehill and Farallon, acting individually and through special purpose shell entities they created and controlled, directly or indirectly, are also liable for aiding and abetting Seery's breaches of fiduciary duties. By acquiring the claims at issue, Muck and Jessup, the shell entities created and controlled by Stonehill and Farallon, also became non-statutory insiders owing duties of disclosure which they also breached.

9. HMIT separately seeks recovery against John Doe Defendant Nos. 1-10. Farallon actively concealed the precise legal relationship between Farallon and Muck. Stonehill actively concealed the precise legal relationship between Stonehill and Jessup. What is known, however, is that Farallon and Stonehill created these special purpose shell entities on the eve of the insider trades to acquire ownership of the claims and to otherwise control the affairs of the Oversight Board. Both Farallon and Stonehill rejected inquiries concerning the exact nature of their relationship with these special purpose entities. Accordingly, HMIT seeks equitable tolling of any statute of limitations concerning claims against unknown business entities that Farallon and Stonehill may have created and inserted as intermediate corporate layers in the transactions at issue.

10. HMIT seeks to disgorge all Defendants' ill-gotten profits and equitable disallowance of the remaining unpaid balances on the following allowed claims: Claim Nos. 23, 72, 81, 143, 147, 149, 150, 153, 154, 190, and 191 (the "Claims") currently held by Muck and Jessup. Because Defendants received substantial distributions from the Claimant Trust in connection with these Claims, HMIT seeks to disgorge all such distributions above Defendants' initial investment—compelling restitution of such funds to the Claimant Trust for the benefit of innocent creditors and former equity pursuant to the waterfall established under the Plan and the CTA. HMIT also seeks to disgorge Seery's compensation from the date his collusive conduct first occurred. Alternatively, HMIT seeks damages on behalf of the Claimant Trust in an amount equal to all compensation paid to Seery from the onset of his collusive conduct to present.

II. Jurisdiction and Venue

11. Pursuant to *Misc. Order No. 33 Order of Reference of Bankruptcy Cases, U.S. District Court for N.D. Texas* (the "Order of Reference"), this Complaint is commenced in the Bankruptcy Court because it is "related to a case under Title 11." The filing of this Complaint is expressly subject to and without waiver of Plaintiff' rights and ability to seek withdrawal of the reference pursuant to 28 U.S.C. § 157(d), FED. R. BANKR. P. 5011, and Local Bankruptcy Rule 5011-1. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein and nothing in this Complaint, nor Plaintiffs' compliance with the Order of Reference, shall be deemed a waiver of this right.

12. This Court has jurisdiction of the subject matter and the parties as a "related to" proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and Articles IX.F, and XI. of the Plan.

13. Pursuant to Rule 7008 of the Bankruptcy Rules, Plaintiffs do **not** consent to the entry of final orders or judgment by the bankruptcy court.

14. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 1408 and 1409, and Articles IX.F, and XI. of the Plan.

III. Parties

15. HMIT is a Delaware statutory trust that was the largest equity holder in the Original Debtor, holding a 99.5% limited partnership interest. HMIT is also the holder of a Contingent Trust Interest in the Claimant Trust, but should be treated as a vested Claimant Trust Beneficiary due to Defendants' wrongful conduct.

16. Pursuant to the Plan and the CTA, the Claimant Trust holds the assets of the Reorganized Debtor, including the causes of action that accrued to the Original Debtor before the Effective Date. The Claimant Trust is established in accordance with the Delaware Statutory Trust Act and Treasury Regulatory Section 301.7701-4(d).

17. Muck is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Muck has made prior appearances in the Debtor's bankruptcy.

18. Jessup is a Delaware limited liability company, with its principal office in New York, and may be served with process via its registered agent, Vcorp Services, LLC, at 108 W. 13th Street Suite 100, Wilmington, Delaware 19801. Jessup has made prior appearances in the Debtor's bankruptcy.

19. Farallon is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Farallon is a capital management company that manages hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Farallon because Farallon's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts requirements and due process considerations.

20. Stonehill is a Delaware limited liability company, with its principal office in New York, and may be served with process at 320 Park Avenue, 26th Floor, New York, NY 10022. Stonehill is a capital management company managing hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Stonehill because Stonehill's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts and all due process considerations.

21. Seery is an individual citizen and resident of the State of New York. Mr. Seery may be served with process at 100 Crescent Court, Suite 1805, Dallas, Texas 75201.

22. John Doe Defendant Nos. 1-10 are currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.

IV. Facts

A. *Procedural Background*

23. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court,[2] which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.[3]

24. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee of the Highland Crusader Fund ("Redeemer"); Acis Capital Management, L.P. and Acis Capital Management GP, LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS")—and an unpaid vendor, Meta-E Discovery.

25. Following the venue transfer to Texas, on December 27, 2019, the Debtor filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of*

[2] Doc. 3. Unless otherwise referenced, all documents referencing "Doc." refer to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

[3] Doc. 1.

Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ("Governance Motion").[4] On January 9, 2020, the Court signed a Governance Order granting the Governance Motion.[5]

26. As part of the Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditors Committee—was appointed to the Board of Directors (the "Board") of Strand, the Original Debtor's general partner. The Board then appointed Seery as the Chief Executive Officer in place of the previous CEO, Mr. James Dondero, as well as the CRO.[6] Seery currently serves as Trustee of the Claimant Trust under the terms of the CTA and the CEO of the Reorganized Debtor.[7]

B. *The Targeted Claims*

27. In his capacity as the Original Debtor's CEO and CRO, Seery negotiated and obtained court approval for settlements with several large unsecured creditors including Redeemer, Acis, UBS, and another major unsecured creditor, HarbourVest (Redeemer, Acis, UBS, and HarbourVest are collectively the "Settling Parties"), resulting in the following allowed Claims:

Creditor	**Class 8**	**Class 9**
Redeemer	$137 mm	$0 mm

[4] Doc. 281.

[5] Doc. 339.

[6] Doc. 854, Order Approving Retention of Seery as CEO/CRO.

[7] *See* Doc. 1943, Order Approving Plan, p. 34.

Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm
UBS	$65 mm	$60 mm
(Totals)	$270 mm	$95 mm

As reflected in these settlements, HarbourVest and UBS owned Class 9 claims in addition to Class 8 Claims. Class 9 Claims were subordinated to Class 8 Claims in the distribution waterfall in the Plan.

28. Each of the Settling Parties sold their Claims to Farallon and Stonehill (or affiliated special purpose entities) shortly after receiving court approval of the settlements. One of these "trades" took place within just a few weeks before the Plan's Effective Date.[8] All of these trades occurred when HMIT held its 99.5% equity stake in the Debtor. Notice of these trades was first provided in filings in the records of the Original Debtor's bankruptcy proceedings, as follows: Claim No. 23 (Doc. 2211, 2212, and 2215), Claim Nos. 190 and 191 (Doc. 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (Doc. 2263), Claim No. 81 (Doc. 2262), Claim No. 72 (Doc. 2261).

29. Farallon and Stonehill, both of whom are registered investment advisors that manage hedge funds, have fiduciary duties to their own investors. As such, they are acutely aware of their duties and obligation as fiduciaries. Yet, they both invested many tens of millions of dollars, directly or indirectly, to acquire the Claims in the absence of

[8] Docs. 2697, 2698.

any publicly available information that could provide any economic justification for their investment decisions.

30. Upon information and belief, Stonehill and Farallon collectively invested an estimated $160 million to acquire the Claims with a face amount of $365 million, and they did so in the absence of any meaningful due diligence. Indeed, Farallon has admitted that it conducted no due diligence but relied on Seery's guarantees.

31. Stonehill and Farallon's investments become even more suspicious because the Plan provided the ***only*** publicly available information, which, at the time, included pessimistic projections that the Claims would ever receive full payment:

a. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the projected value of HCM's assets dropped over $200 million from $566 million to $364 million.[9]

b. HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11.[10]

- This meant that Farallon and Stonehill invested more than $163 million in Claims when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims.

c. In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% to 54%.

[9] Doc. 1473, Disclosure Statement, p. 18.

[10] Doc. 1875-1, Plan Supplement, Ex. A, p. 4.

d. Despite the stark decline in the value of the estate and in the midst of substantial reductions in the percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively, again, the "Claims") in April and August of 2021 in the combined amount of $163 million.[11]

32. Upon information and belief, Stonehill, through its special purpose entity, Jessup, acquired the Redeemer Committee's claim for $78 million.[12] Upon information and belief, the $23 million Acis claim[13] was sold to Farallon/Muck for $8 million. Upon information and belief, HarbourVest sold its combined $80 million in claims to Farallon/Muck for $27 million. UBS sold its combined $125 million in claims for $50 million to both Stonehill/Jessup and Farallon/Muck. In the instance of UBS, ***the total projected payout was only $35 million***. Indeed, as part of these transactions, both Farallon and Stonehill purchased Class 9 Claims at a time when the Debtor's Estate projected a zero dollar return on all such Claims.

[11] Notices of Transfers [Docs. 2212, 2215, 2261, 2262, 2263, 2215, 2297, 2298]. The Acis claim was transferred on April 16, 2021; the Redeemer, Crusader, and HarbourVest claims were transferred on April 30, 2021; and the UBS claims were transferred on August 9, 2021.

[12] July 6, 2021, letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

[13] Seery/HCM have argued that $10 million of the Acis claim is self-funding.

C. *Material Non-Public Information is Disclosed to Seery's Affiliates at Stonehill and Farallon.*

33. One of the significant assets of the Debtor's Estate was the Debtor's direct and indirect holdings in Metro-Goldwyn-Mayer Studios, Inc. ("MGM").[14]

34. On December 17, 2020, James Dondero, sent an email to Seery. At that time, Dondero was a member of the MGM board, and the email contained material non-public information regarding Amazon and Apple's interest in acquiring MGM.[15] Of course, any such sale would significantly enhance the value of the Original Debtor's estate.

35. Upon receipt of this material non-public information, Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in this Court seeking approval of the Original Debtor's settlement with HarbourVest - resulting in a transfer to the Original Debtor of HarbourVest's interest in a Debtor-advised fund, Highland CLO Funding, Ltd. ("HCLOF"), which held substantial MGM debt and equity.[16] Conspicuously, the HCLOF interest was not transferred to the Original Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements.[17]

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[14] *See* Doc. 2229, p. 6.

[15] *See* Adversary Case No. 20-3190-sgj11, Doc. 150-1, p. 1674.

[16] Doc. 1625. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM.

[17] Doc. 1625.

36. Upon information and belief, aware that the Debtor's stake in MGM afforded a new profit center, Seery saw an opportunity to increase his own compensation and enlisted the help of Stonehill and Farallon to extract further value from the Original Debtor's Estate at the expense of other innocent creditors and equity. This *quid pro quo* included, at a minimum, a tacit, if not express, understanding that Seery would be well-compensated.

37. Until 2009, Seery was the Global Head of Fixed Income Loans at Lehman Brothers[18] where, on information and belief, he conducted substantial business with Farallon. Following the collapse of Lehman Brothers, Seery continued to work with, and indeed represented Farallon as its legal counsel. Seery ultimately joined a hedge fund, River Birch Capital,[19] which, along with Stonehill, served on the creditors committee in other bankruptcy proceedings. GCM Grovesnor, a global asset management firm, held four seats on the Redeemer Committee[20] and, upon information and belief, is a significant investor in Stonehill and Farallon. Grovesnor, through Redeemer, played a large part in appointing Seery as a director of Strand Advisors. Seery was beholden to Grovesnor from the outset, and, by extension, Grovesnor's affiliates Stonehill and Farallon.

[18] Seery Resume [Doc. 281-2].

[19] *Id*.

[20] Declaration of John A. Morris [Doc. 1090], Ex. 1, pp. 15.

38. As successful capital management firms, with advisory and fiduciary duties to their own clients, Stonehill and Farallon typically engage in robust due diligence before making significant investments. Yet, in this case, it would have been *impossible* for Stonehill and Farallon to forecast *any* profit at the time of their multi-million-dollar investments given the negative financial information disclosed by the Original Debtor's Estate. Seery, as the CEO, was aware of and involved in approving these negative financial projections. In doing so, Seery intentionally caused the publication of misleading, false information.

39. Seery shared with Stonehill and Farallon *non-public* information concerning the value of the Original Debtor's Estate which was higher than publicly available information. Thus, the only logical conclusion is that all Defendants knew that the publicly available projections, which accompanied the Plan, were understated, false, and misleading. Otherwise, Farallon, Muck, Stonehill and Jessup would not have made their multi-million-dollar investments. None of the Defendants disclosed their knowledge of the misleading nature of these financial projections when they had a duty to do so. None of the Defendants disclosed the nature of their dealings in acquiring the Claims.

40. By wrongfully exploiting non-public insider information, Stonehill and Farallon—acting through Muck and Jessup—became the largest holders of unsecured claims in the Debtor's Estate with resulting control over the Oversight Board and a front row seat to the reorganization and distribution of Claimant Trust Assets. As such, they

were given control (through Muck and Jessup) to approve discretionary bonuses and success fees for Seery from these assets.

D. ***Distributions***

41. The MGM sale was ultimately consummated in March 2022 for $6.1 billion in cash, plus $2.5 billion in debt that Amazon assumed and immediately repaid.[21]

42. By the end of Q3 2021, just over $6 million of the projected $205 million available for general unsecured claimants had been disbursed.[22] No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—$45 million more than was *ever* projected.[23] Thus, Stonehill (Jessup) and Farallon (Muck) have already received returns that far eclipse their investment. They also stand to make further significant profits on their investments, including payments on Class 9 Claims.

43. As of December 31, 2022, the Claimant Trust has distributed $255,201,228. On a pro rata basis, that means that innocent creditors have received approximately $22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately $9,627,000.

[21] Amazon Q1 2022 10-Q.

[22] Doc. 3200.

[23] Doc. 3582.

44. Muck and Jessup already have received approximately $232.8 million on their Claims. Assuming and original investment of approximately $160 million, this represents over $72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary.

45. It is clear Seery facilitated the sale of the Claims to Stonehill (Jessup) and Farallon (Muck) at discounted prices and used misleading financial projections to facilitate these trades. This was part of a larger strategy to install Stonehill (Jessup) and Farallon (Muck), his business allies, onto the Oversight Board where they would oversee lucrative bonuses and other compensation for Seery in exchange for hefty profits they expected to receive.

V. Causes of Action

A. Count I (against Seery): Breach of Fiduciary Duty

46. The allegations in paragraphs 1-45 above are incorporated herein as if set forth verbatim.

47. As CEO and CRO of a debtor-in-possession, Seery owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate, including, without limitation, the duty of loyalty. Seery also was under a duty to avoid conflicts of interests, but Seery willfully and knowingly engaged in conduct which conflicted with his fiduciary duties—and he did so out of financial self-interest.

48. By fraudulently providing and/or approving negative projections of the Debtor's Estate when he knew otherwise, Seery willfully and knowingly breached his fiduciary duties.

49. By misusing and disclosing confidential, material non-public information to Stonehill and Farallon, Seery willfully and knowingly breached his fiduciary duties.

50. By failing to disclose his role in the inside trades at issue, Seery willfully and knowingly breached his fiduciary duties.

51. As a result of his willful misconduct, Seery was unfairly advantaged by receiving additional undisclosed compensation and bonuses from the assets of the Debtor's Estate and from the Claimant Trust Assets—to the detriment of other innocent stakeholders, including HMIT, as former equity and a contingent Claimant Trust Beneficiary.

52. To remedy these breaches, Seery is liable for disgorgement of all compensation he received since his collusion with Farallon and Stonehill first began. Alternatively, Seery should be disgorged of all compensation paid to him under the terms of the CTA since the Effective Date of the Plan in August 2021.

53. Alternatively, Plaintiffs are entitled to recover damages measured by all ill-gotten compensation which Seery has received since his first collusive conduct began.

B. Count II (against Stonehill, Farallon, Jessup and Muck): Breaches of Fiduciary Duty and Knowing Participation in Breach of Fiduciary Duty

54. The allegations in paragraphs 1-53 above are incorporated herein as if set forth verbatim.

55. Seery owed fiduciary duties to HMIT and the Debtor's Estate, and he willfully and knowingly breached these duties. Without limiting the foregoing, Seery owed a duty of loyalty which he willfully and knowingly breached. Seery also owed a duty to not engage in self-interested conduct to the detriment of the Debtor's Estate and innocent stakeholders. Seery also willfully and knowingly breached this duty.

56. Stonehill and Farallon were aware of Seery's fiduciary duties and, by purchasing the Claims and approving bonuses and other compensation for Seery, Stonehill (acting through Jessup) and Farallon (acting through Muck), willfully and knowingly participated in Seery's breaches or, alternatively, willfully aided and abetted such breaches.

57. Stonehill (Jessup) and Farallon (Muck) unfairly received many millions of dollars in profits and fees—and stand to earn even more profits and fees—to the detriment of innocent stakeholders, including HMIT.

58. Stonehill and Farallon are liable for disgorgement of all profits earned from their purchase of the Claims. In addition, they are liable in damages for excessive compensation paid to Seery as part of the covert *quid pro quo* with Seery.

C. Count III (against all Defendants): Fraud by Misrepresentation and Material Nondisclosure

59. The allegations in paragraphs 1-58 above are incorporated herein as if set forth verbatim.

60. Based on Seery's duties as CEO and CRO of a debtor-in-possession, and the other Defendants' duties as non-statutory insiders, Seery, Stonehill (Jessup), and Farallon (Muck) had a duty to disclose Stonehill and Farallon's plans to purchase the Claims, but they deliberately failed to do so. Seery also had a duty to disclose correct financial projections but, rather, misrepresented such values or failed to correct false and misleading projections. These factual misrepresentations and omissions were material.

61. The withheld financial information was material because it has had an adverse impact on control over the eventual distributions to creditors and former equity, as well as the right to control Seery's compensation. By withholding such information, Seery was able to plant friendly business allies on the Oversight Board to the detriment of innocent stakeholders.

62. Defendants knew that HMIT and other creditors were ignorant of their plans, and HMIT and other stakeholders did not have an equal opportunity to discover their scheme. HMIT and the other innocent stakeholders justifiably relied on misleading information relating to the value of the Original Debtor's Estate.

63. By failing to disclose material information, and by making or aiding and abetting material misrepresentations, Seery, Stonehill, Farallon, Muck, and Jessup intended to induce HMIT to take no affirmative action.

64. HMIT justifiably relied on Seery, Stonehill, Farallon, Muck, and Jessup's nondisclosures and representations, and HMIT was injured as a result and the Debtor's Estate was also injured.

65. As a result of their frauds, all Defendants should be disgorged of all profits and ill-gotten compensation derived from their fraudulent scheme. Seery is also liable for damages measured by excessive compensation he has received since he first engaged in willful misconduct.

D. Count IV (against all Defendants): Conspiracy

66. The allegations in paragraphs 1-65 above are incorporated herein as if incorporated herein verbatim.

67. Defendants conspired with each other to unlawfully breach fiduciary duties to HMIT and the Debtor's Estate, to conceal their fraudulent trades, and to interfere with HMIT's entitlement to the residual of the Claimant Trust Asset.

68. Seery's disclosure of material non-public information to Stonehill and Farallon, and Muck and Jessup's purchase of the Claims, are each overt acts in furtherance of the conspiracy.

69. HMIT's interest in the residual of the Claimant Trust Assets has been adversely impacted by this conspiracy. The assets have been depleted by virtue of Seery's compensation awards.

E. Count V (against Muck and Jessup): Equitable Disallowance

70. The allegations in paragraphs 1-69 above are incorporated herein as if set forth verbatim.

71. By purchasing the Claims based on material non-public information, Stonehill and Farallon, through Jessup and Muck, engaged in inequitable conduct.

72. By earning significant profits on their purchases, Muck and Jessup have been unfairly advantaged to the detriment of the remaining stakeholders, including HMIT.

73. Given this inequitable conduct, equitable disallowance of Muck's and Jessup's Claims to the extent over and above their initial investment is appropriate and consistent with the purposes of the Bankruptcy Code.

74. Pleading in the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

***F. Count VI (against all Defendants): Unjust Enrichment and Constructive* Trust**

75. The allegations in paragraphs 1-74 above are incorporated herein as if set forth verbatim.

76. By acquiring the Claims using material non-public information, Stonehill and Farallon breached a relationship of trust with the Original Debtor's Estate and other innocent stakeholders and were unjustly enriched and gained an undue advantage over other creditors and former equity.

77. Allowing Stonehill, Farallon, Muck and Jessup to retain their ill-gotten benefits at the expense of other innocent stakeholders and HMIT, as former equity, would be unconscionable.

78. Stonehill, Farallon, Muck, and Jessup should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment.

79. The proceeds Stonehill, Farallon, Muck, and Jessup have received from the Claimant Trust are traceable and identifiable. A constructive trust should be imposed on such proceeds to secure the restitution of these improperly retained benefits.

F. Count VI (Against all Defendants): Declaratory Relief

80. The allegations in paragraphs 1-79 are incorporated herein as if set forth verbatim.

81. HMIT seeks declaratory relief. The Court has jurisdiction to provide declaratory judgment relief when there is an actual controversy that has arisen and exists relating to the rights and duties of the parties.

82. Bankruptcy Rule 7001 provides that "a proceeding to recover property or money," may include declaratory relief. *See*, Fed. R. Bank P. 7001(1), (9).

83. The Claimant Trust Agreement is governed under Delaware law. The Claimant Trust Agreement incorporates and is subject to Delaware trust law. HMIT seeks a declaration, as follows:

a. There is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement;

b. As a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered contingent;

c. HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill;

d. HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments. Alternatively, HMIT's status as a Claimant Trust Beneficiary is fully vested when all of Muck's and Jessup's trust interests are subordinated to the trust interests held by HMIT;

e. Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of Seery's fraudulent conduct, bad faith, willful misconduct and unclean hands;

f. Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct and unclean hands;

g. All Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct and unclean hands.

VI. Punitive Damages

84. The allegations in paragraphs 1-74 are incorporated herein as if set forth verbatim.

85. The Defendants' misconduct was intentional, knowing, willful and fraudulent and in total disregard of the rights of others. An award of punitive damages is appropriate and necessary under the facts of this case.

86. All conditions precedent to recovery herein have been satisfied.

VII. Prayer

WHEREFORE, HMIT prays for judgment as follows:

1. Equitable disallowance of the Claims over and above Muck's and Jessup's original investments (or, alternatively, subordination of their Claimant Trust Interests, as addressed herein);

2. Disgorgement of all funds distributed from the Claimant Trust to Muck and/or Jessup over and above their original investments;

3. Disgorgement of compensation paid to Seery in managing or administering the Original and Reorganized Debtor's Estate;

4. Imposition of a constructive trust;

5. Declaratory relief as described herein;

6. An award of actual damages as described herein;

7. An award of exemplary damages as allowed by law;

8. Pre- and post-judgment interest; and,

9. All such other and further relief to which HMIT may be justly entitled.

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: /s/

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Attorneys for Hunter Mountain Investment Trust

Exhibit 2

CAUSE NO. DC-21-09534

IN RE JAMES DONDERO,	§	**IN THE DISTRICT COURT**
	§	
Petitioner.	§	**95th JUDICIAL DISTRICT**
	§	
	§	**DALLAS COUNTY, TEXAS**

DECLARATION OF JAMES DONDERO

COUNTY OF DALLAS §
§
STATE OF TEXAS §

Mr. James Dondero provides this unsworn declaration under TEXAS CIVIL PRACTICE & REMEDIES CODE § 132.001.

1. My name is James Dondero. I declare under penalty of perjury that I am over the age of 18 and of sound mind and competent to make this declaration.

2. Earlier this year I retained investigators to look into certain activities involving the respondents in the above-styled case and the related bankruptcy proceedings. Last year, I called Farallon's Michael Lin about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Mr. Seery had testified in court, it made no sense to me that Mr. Lin would think that the claims were worth more than what Mr. Seery testified under oath was the value of the bankruptcy claims.

3. In addition to my role as equity holder in the Crusader Funds, I have an interest in ensuring that the claims purchased by Respondents are not used as a means to deprive the equity holders of their share of the funds. It has become obvious that despite the fact that the bankrupt estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights.

4. Accordingly, I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee. True and correct copies of the reports, which were created in the ordinary course, and their attachments, are attached hereto as Exhibits A and B. A true and correct copy of the letter I received from Alverez and Marsal is attached as Exhibit C hereto.

My name is James Dondero, my birthday is on June 29, 1962. My address is 300 Crescent Court, Suite 700, Dallas, Texas 75201. I declare under penalty of perjury that the foregoing testimony is true and correct and is within my personal knowledge.

James Dondero

May 31, 2022

Date

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EDWARD M. HELLER
(1926-2013)

October 5, 2021

Mrs. Nan R. Eitel
Office of the General Counsel
Executive Office for U.S. Trustees
20 Massachusetts Avenue, NW
8th Floor
Washington, DC 20530

Re: Highland Capital Management, L.P. – USBC Case No. 19-34054sgj11

Dear Nan,

The purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the Official Committee of Unsecured Creditors ("Creditors' Committee") in the bankruptcy of Highland Capital Management, L.P. ("Highland" or "Debtor"). As described in detail below, there is sufficient evidence to warrant an immediate investigation into whether non-public inside information was furnished to claims purchasers. Further, there is reason to suspect that selling Creditors' Committee members may have violated their fiduciary duties to the estate by tying themselves to claims sales at a time when they should have been considering meaningful offers to resolve the bankruptcy. Indeed, three of four Committee members sold their claims without advance disclosure, in violation of applicable guidelines from the U.S. Trustee's Office. This letter contains a description of information and evidence we have been able to gather, and which we hope your office will take seriously.

By way of background, Highland, an SEC-registered investment adviser, filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Delaware on October 16, 2019, listing over $550 million in assets and net $110 million in liabilities. The case eventually was transferred to the Northern District of Texas, to Judge Stacey G.C. Jernigan. Highland's decision to seek bankruptcy protection primarily was driven by an expected net $110 million arbitration award in favor of the "Redeemer Committee."[1] After nearly 30 years of successful operations, Highland and its co-founder, James Dondero, were advised by Debtor's counsel that a court-approved restructuring of the award in Delaware was in Highland's best interest.

[1] The "Redeemer Committee" was a group of investors in a Debtor-managed fund called the "Crusader Fund" that sought to redeem their interests during the global financial crisis. To avoid a run on the fund at low-watermark prices, the fund manager temporarily suspended redemptions, which resulted in a dispute between the investors and the fund manager. The ultimate resolution involved the formation of the "Redeemer Committee" and an orderly liquidation of the fund, which resulted in the investors receiving their investment plus a return versus the 20 cents on the dollar they would have received had the fund been liquidated when the redemption requests were made.

I became involved in Highland's bankruptcy through my representation of The Dugaboy Investment Trust ("Dugaboy"), an irrevocable trust of which Mr. Dondero is the primary beneficiary. Although there were many issues raised by Dugaboy and others in the case where we disagreed with the Court's rulings, we will address those issues through the appeals process.

From the outset of the case, the Creditors' Committee and the U.S. Trustee's Office in Dallas pushed to replace the existing management of the Debtor. To avoid a protracted dispute and to facilitate the restructuring, on January 9, 2020, Mr. Dondero reached an agreement with the Creditors' Committee to resign as the sole director of the Debtor's general partner, on the condition that he would be replaced by three independent directors who would act as fiduciaries of the estate and work to restructure Highland's business so it could continue operating and emerge from bankruptcy as a going concern. The agreement approved by the Bankruptcy Court allowed Mr. Dondero, UBS (which held one of the largest claims against the estate), and the Redeemer Committee each to choose one director and also established protocols for operations going forward. Mr. Dondero chose The Honorable Former Judge Russell F. Nelms, UBS chose John Dubel, and the Redeemer Committee chose James Seery.[2] It was expected that the new, independent management would not only preserve Highland's business but would also preserve jobs and enable continued collaboration with charitable causes supported by Highland and Mr. Dondero.

Judge Jernigan confirmed Highland's Fifth Amended Plan of Reorganization on February 22, 2021 (the "Plan"). We have appealed certain aspects of the Plan and will rely upon the Fifth Circuit Court of Appeals to determine whether our arguments have merit. I write instead to call to your attention the possible disclosure of non-public information by Committee members and other insiders and to seek review of actions by Committee members that may have breached their fiduciary duties—both serious abuses of process.

1. The Bankruptcy Proceedings Lacked The Required Transparency, Due In Part To the Debtor's Failure To File Rule 2015.3 Reports

Congress, when it drafted the Bankruptcy Code and created the Office of the United States Trustee, intended to ensure that an impartial party oversaw the enforcement of all rules and guidelines in bankruptcy. Since that time, the Executive Office for United States Trustees (the "EOUST") has issued guidance and published rules designed to effectuate that purpose. To that end, EOUST recently published a final rule entitled "*Procedures for Completing Uniform Periodic Reports in Non-Small Business Cases Filed Under Chapter 11 of Title 11*" (the "Periodic Reporting Requirements"). The Periodic Reporting Requirements reaffirmed the EOUST's commitment to maintaining "uniformity and transparency regarding a debtor's financial condition and business activities" and "to inform creditors and other interested parties of the debtor's financial affairs." 85 Fed. Reg. 82906. The goal of the Periodic Reporting Requirements is to "assist the court and parties in interest in ascertaining, [among other things], the following: (1) Whether there is a substantial or continuing loss to or diminution of the bankruptcy estate; . . . (3) whether there exists gross mismanagement of the bankruptcy estate; . . . [and] (6) whether the debtor is engaging in the unauthorized disposition of assets through sales or otherwise . . . ." *Id.*

Transparency has long been an important feature of federal bankruptcy proceedings. The EOUST instructs that "Debtors-in-possession and trustees must account for the receipt, administration, and disposition of all property; provide information concerning the estate and the estate's administration as parties in interest request; and file periodic reports and summaries of a debtor's business, including a statement of receipts and disbursements, and such other

[2] *See* Appendix, pp. A-3 - A-14.

information as the United States Trustee or the United States Bankruptcy Court requires." *See* http://justice.gov/ust/chapter-11-information (citing 11 U.S.C. § 1106(a)(1), 1107(a)). And Federal Rule of Bankruptcy Procedure 2015.3(a) states that "the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." This rule requires the trustee or a debtor in possession to file a report for each non-debtor affiliate prior to the first meeting of creditors and every six months thereafter until the effective date of a plan of reorganization. Fed R. Bankr. P. 2015.3(b). Importantly, the rule does not absolve a debtor from filing reports due prior to the effective date merely because a plan has become effective.[3] Notably, the U.S. Trustee has the duty to ensure that debtors in possession properly and timely file all required reports. 28 U.S.C. § 1112(b)(4)(F), (H).

The entire purpose of these guidelines and rules is to ensure that external stakeholders can fairly evaluate the progress of bankruptcy proceedings, including compliance with legal requirements. In fact, 11 U.S.C. § 1102(b)(3) requires a creditors' committee to share information it receives with those who "hold claims of the kind represented by the committee" but who are not appointed to the committee. In the case of the Highland bankruptcy, the transparency that the EOUST mandates and that creditors' committees are supposed to facilitate has been conspicuously absent. I have been involved in a number of bankruptcy cases representing publicly-traded debtors with affiliated non-debtor entities, much akin to Highland's structure here. In those cases, when asked by third parties (shareholders or potential claims purchasers) for information, I directed them to the schedules, monthly reports, and Rule 2015.3 reports. In this case, however, no Rule 2015.3 reports were filed, and financial information that might otherwise be gleaned from the Bankruptcy Court record is unavailable because a large number of documents were filed under seal or heavily redacted. As a result, the only means to make an informed decision as to whether to purchase creditor claims and what to pay for those claims had to be obtained from non-public sources.

It bears repeating that the Debtor and its related and affiliated entities failed to file *any* of the reports required under Bankruptcy Rule 2015.3. There should have been at least four such reports filed on behalf of the Debtor and its affiliates during the bankruptcy proceedings. The U.S. Trustee's Office in Dallas did nothing to compel compliance with the rule.

The Debtor's failure to file the required Rule 2015.3 reports was brought to the attention of the Debtor, the Bankruptcy Court, and the U.S. Trustee's Office. During the hearing on Plan confirmation, the Debtor was questioned about the failure to file the reports. The sole excuse offered by the Debtor's Chief Restructuring Officer and Chief Executive Officer, Mr. Seery, was that the task "fell through the cracks."[4] This excuse makes no sense in light of the years of bankruptcy experience of the Debtor's counsel and financial advisors. Nor did the Debtor or its counsel ever attempt to show "cause" to gain exemption from the reporting requirement. That is because there was no good reason for the Debtor's failure to file the required reports. In fact, although the Debtor and the Creditors' Committee often refer to the Debtor's structure as a "byzantine empire," the assets of the estate fall into a handful of discrete investments, most of which have audited financials and/or are required to make monthly or quarterly net-asset-value or fair-value determinations.[5] Rather than disclose financial information that was readily

[3] After notice and a hearing, the bankruptcy court may grant relief from the Rule 2015.3 disclosure requirement "for cause," including that "the trustee or debtor in possession is not able, after a good faith effort, to comply with th[e] reporting requirements, or that the information required by subdivision (a) is publicly available." Fed. R. Bankr. 2015.3(d).

[4] *See* Doc. 1905 (Feb. 3, 2021 Hr'g Tr. at 49:5-21).

[5] During a deposition, the Debtor's Chief Restructuring Officer, Mr. Seery, identified most of the Debtor's assets "[o]ff the top of [his] head" and acknowledged that he had a subsidiary ledger that detailed the assets held by entities

available, the Debtor appears to have taken deliberate and strategic steps to avoid transparency, and the U.S. Trustee's Office did nothing to rectify the problem.

By contrast, the Debtor provided the Creditors' Committee with robust weekly information regarding (i) transactions involving assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly owned subsidiaries, (ii) transactions involving entities managed by the Debtor and in which the Debtor holds a direct or indirect interest, (iii) transactions involving entities managed by the Debtor but in which the Debtor does not hold a direct or indirect interest, (iv) transactions involving entities not managed by the Debtor but in which the Debtor holds a direct or indirect interest, (v) transactions involving entities not managed by the Debtor and in which the Debtor does not hold a direct or indirect interest, (vi) transactions involving non-discretionary accounts, and (vii) weekly budget-to-actuals reports referencing non-Debtor affiliates' 13-week cash flow budget. In other words, the Committee had real-time, actual information with respect to the financial affairs of non-debtor affiliates, and this is precisely the type of information that should have been disclosed to the public pursuant to Rule 2015.3.

After the claims at issue were sold, I filed a Motion to Compel compliance with the reporting requirement. Judge Jernigan held a hearing on the motion on June 10, 2021. Astoundingly, the U.S. Trustee's Office took no position on the Motion and did not even bother to attend the hearing. Ultimately, on September 7, 2021, the Court denied the Motion as "moot" because the Plan had by then gone effective. I have appealed that ruling because, again, the Plan becoming effective does not alleviate the Debtor's burden of filing the requisite reports.

The U.S. Trustee's Office also failed to object to the Court's order confirming the Debtor's Plan, in which the Court appears to have released the Debtor from its obligation to file any reports after the effective date of the Plan that were due for any period prior to the effective date, an order that likewise defeats any effort to demand transparency from the Debtor. The U.S. Trustee's failure to object to this portion of the Court's order is directly at odds with the spirit and mandate of the Periodic Reporting Requirements, which recognize the U.S. Trustee's duty to ensure that debtors timely file all required reports.

2. There Was No Transparency Regarding The Financial Affairs Of Non-Debtor Affiliates Or Transactions Between The Debtor And Its Affiliates

The Debtor's failure to file Rule 2015.3 reports for affiliate entities created additional transparency problems for interested parties and creditors wishing to evaluate assets held in non-Debtor subsidiaries. In making an investment decision, it would be important to know if the assets of a subsidiary consisted of cash, marketable securities, other liquid assets, or operating businesses/other illiquid assets. The Debtor's failure to file Rule 2015.3 reports hid from public view the composition of the assets and the corresponding liabilities at the subsidiary level. During the course of proceedings, the Debtor sold $172 million in assets, which altered the asset mix and liabilities of the Debtor's affiliates and controlled entities. Although Judge Jernigan held that such sales did not require Court approval, a Rule 2015.3 report would have revealed the mix of assets and the corresponding reduction in liabilities of the affiliated or controlled entity. In the Appendix, I have included a schedule of such sales.

Of particular note, the Court authorized the Debtor to place assets that it acquired with "allowed claim dollars" from HarbourVest (a creditor with a contested claim against the estate) into a specially-created non-debtor entity ("SPE").[6] The Debtor's motion to settle the

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below the Debtor. *See* Appendix, p. A-19 (Jan. 29, 2021 Dep. Tr. at 22:4-10; 23:1-29:10).

[6] Prior to Highland's bankruptcy, HarbourVest had invested $80 million into a Highland fund called Acis Loan Funding, later rebranded as Highland CLO Funding, Ltd. ("HCLOF"). A dispute later arose between HarbourVest

HarbourVest claim valued the asset acquired (HarbourVest's interest in HCLOF) at $22 million. In reality, that asset had a value of $40 million, and had the asset been placed in the Debtor entity, its true value would have been reflected in the Debtor's subsequent reporting. By instead placing the asset into an SPE, the Debtor hid from public view the true value of the asset as well as information relating to its disposition; all the public saw was the filed valuation of the asset. The U.S. Trustee did not object to the Debtor's placement of the HarbourVest assets into an SPE and apparently just deferred to the judgment of the Creditors' Committee about whether this was appropriate.[7] Again, when the U.S. Trustee's Office does not require transparency, lack of transparency significantly increases the need for non-public information. Because the HarbourVest assets were placed in a non-reporting entity, no potential claims buyer without insider information could possibly ascertain how the acquisition would impact the estate.

3. The Plan's Improper Releases And Exculpation Provisions Destroyed Third-Party Rights

In addition, the Debtor's Plan contains sweeping release, exculpation provisions, and a channeling injunction requiring that any permitted causes of action to be vetted and resolved by the Bankruptcy Court. On their face, these provisions violate *Pacific Lumber*, in with the United States Court of Appeals for the Fifth Circuit rejected similarly broad exculpation clauses. The U.S. Trustee's Office in Dallas has, in all cases but this one, vigorously protected the rights of third parties against such exculpation clauses. In this case, the U.S. Trustee's Office objected to the Plan, but it did not pursue that objection at the confirmation hearing (nor even bother to attend the first day of the hearing),[8] nor did it appeal the order of the Bankruptcy Court approving the Plan and its exculpation clauses.

As a result of this failure, third-party investors in entities managed by the Debtor are now barred from asserting or channeled into the Bankruptcy Court to assert any claim against the Debtor or its management for transactions that occurred at the non-debtor affiliate level. Those investors' claims are barred notwithstanding that they were not notified of the releases and have never been given any information with which to evaluate their potential claims, nor given the opportunity to "opt out." Conversely, the releases insulate claims purchasers from the risk of potential actions by investors in funds managed by the Debtor (for breach of fiduciary duty, diminution in value, or otherwise). These releases are directly at odds with investors' expectations when they invest in managed funds—i.e., that fund managers will act in a fiduciary capacity to maximize investors' returns and that investors will have recourse for any failure to do so. While the agreements executed by investors may limit the exposure of fund managers, typically those provisions require the fund manager to obtain a third-party fairness opinion where there is a conflict between the manager's duty to the estate and his duty to fund investors.

As an example, the Court approved the settlement of UBS's claim against the Debtor and two funds managed by the Debtor (collectively referred to as "MultiStrat"). Pursuant to that settlement, MultiStrat agreed to pay UBS $18.5 million and represented that it was advised by "independent legal counsel" in the negotiation of the settlement.[9] That representation is untrue;

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and Highland, and HarbourVest filed claims in the Highland bankruptcy approximating $300 million in relation to damages allegedly due to HarbourVest as a result of that dispute. Although the Debtor initially placed no value on HarbourVest's claim (the Debtor's monthly operating report for December 2020 indicated that HarbourVest's allowed claims would be $0), eventually the Debtor entered into a settlement with HarbourVest—approved by the Bankruptcy Court—which entitled HarbourVest to $80 million in claims. In return, HarbourVest agreed to convey its interest in HCLOF to the SPE designated by the Debtor and to vote in favor of the Debtor's Plan.

[7] Dugaboy has appealed the Bankruptcy Court's ruling approving the placement of the HarbourVest assets into a non-reporting SPE.

[8] *See* Doc. 1894 (Feb. 2, 2021 Hr'g Tr. at 10:7-14).

[9] *See* Doc. 2389 (Order Approving Debtor's Settlement With UBS Securities LLC and UBS AG London Branch) at

MultiStrat did not have separate legal counsel and instead was represented only by the Debtor's counsel.[10] If that representation and/or the terms of the UBS/MultiStrat settlement in some way unfairly impacted MultiStrat's investors, they now have no recourse against the Debtor. The release and exculpation provisions in Highland's Plan do not afford third parties any meaningful recourse to third parties, even when they are negatively impacted by misrepresentations of the type contained in the UBS/MultiStrat settlement or when their interests are impaired by fund managers' failure to obtain fairness opinions to resolve conflicts of interest.

The U.S. Trustee's Office recently has argued in the context of the bankruptcy of Purdue Pharmaceuticals that release and exculpations clauses akin to those contained in Highland's Plan violate both the Bankruptcy Code and the Due Process Clause of the United States Constitution.[11] It has been the U.S. Trustee's position that where, as here, third parties whose claims are being released did not receive notice of the releases and had no way of knowing, based on the Plan's language, what claims were extinguished, third-party releases are contrary to law.[12] This position comports with Fifth Circuit case law, which makes clear that releases must be consensual, and that the released party must make a substantial contribution in exchange for any release. Highland's Plan does not provide for consent by third parties (or an opt-out provision), nor does it require that released parties provide value for their releases. Under these circumstances, it is difficult to understand why the U.S. Trustee's Office in Dallas did not lodge an objection to the Plan's release and exculpation provisions. Several parties have appealed this issue to the Fifth Circuit.

4. The Lack Of Transparency Facilitated Potential Insider Trading

The biggest problem with the lack of transparency at every step is that it created a need for access to non-public confidential information. The Debtor (as well as its advisors and professionals) and the Creditors' Committee (and its counsel) were the only parties with access to critical information upon which any reasonable investor would rely. But the public did not.

In the context of this non-transparency, it is notable that three of the four members of the Creditors' Committee and one non-committee member sold their claims to two buyers, Muck Holdings LLC ("Muck") and Jessup Holdings LLC ("Jessup"). The four claims that were sold comprise the largest four claims in the Highland bankruptcy by a substantial margin,[13] collectively totaling almost $270 million in Class 8 claims and $95 million in Class 9 claims[14]:

Claimant	Class 8 Claim	Class 9 Claims	Date Claim Settled
Redeemer Committee	$136,696,610	N/A	October 28, 2020
Acis Capital	$23,000,000	N/A	October 28, 2020
HarbourVest	$45,000,000	$35,000,000	January 21, 2021
UBS	$65,000,000	$60,000,000	May 27, 2021
TOTAL:	**$269,6969,610**	**$95,000,000**	

Muck is owned and controlled by Farallon Capital Management ("Farallon"), and we have reason to believe that Jessup is owned and controlled by Stonehill Capital Management ("Stonehill"). As the purchasers of the four largest claims in the bankruptcy, Muck (Farallon)

Ex. 1, §§ 1(b), 11; *see* Appendix, p. A-57.

[10] The Court's order approving the UBS settlement is under appeal in part based on MultiStrat's lack of independent legal counsel.

[11] *See* Memorandum of Law in Support of United States Trustee's Expedited Motion for Stay of Confirmation Order, *In re Purdue Pharma, L.P.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y.), Doc. 3778 at 17-25.

[12] *See id.* at 22.

[13] *See* Appendix, p. A-25.

[14] Class 8 consists of general unsecured claims; Class 9 consists of subordinated claims.

and Jessup (Stonehill) will oversee the liquidation of the Reorganized Debtor and the payment over time to creditors who have not sold their claims.

This is concerning because there is substantial evidence that Farallon and Stonehill may have been provided material, non-public information to induce their purchase of these claims.[15] In particular, there are three primary reasons we believe that non-public information was made available to facilitate these claims purchases:

- The scant publicly-available information regarding the Debtor's estate ordinarily would have dissuaded sizeable investment in purchases of creditors' claims;
- The information that actually was publicly available ordinarily would have compelled a prudent investor to conduct robust due diligence prior to purchasing the claims;
- Yet these claims purchasers spent in excess of $100 million (and likely closer to $150 million) on claims, ostensibly without any idea of what they were purchasing.

We believe the claims purchases of Stonehill and Farallon can be summarized as follows:

Creditor	Class 8	Class 9	Purchaser	Purchase Price
Redeemer	$137.0	$0.0	Stonehill	$78.0[16]
ACIS	$23.0	$0.0	Farallon	$8.0
HarbourVest	$45.0	$35.0	Farallon	$27.0
UBS	$65.0	$60.0	Stonehill and Farallon	$50.0[17]

To elaborate on our reasons for suspicion, an analysis of publicly-available information would have revealed to any potential investor that:

- There was a $200 million dissipation in the estate's asset value, which started at a scheduled amount of $556 million on October 16, 2019, then plummeted to $328 million as of September 30, 2020, and then increased only slightly to $364 million as of January 31, 2021.[18]

[15] A timeline of relevant events can be found at Appendix, p. A-26.

[16] *See* Appendix, pp. A-70 – A-71. Because the transaction included "the majority of the remaining investments held by the Crusader Funds," the net amount paid by Stonehill for the Claims was approximately $65 million.

[17] Based on the publicly-available information at the time Stonehill and Farallon purchased the UBS claim, the purchase made no economic sense. At the time, the publicly-disclosed Plan Analysis estimated that there would be a 71.32% distribution to Class 8 creditors and a 0.00% distribution to Class 9 creditors, which would mean that Stonehill and Farallon paid $50 million for claims worth only $46.4 million. *See* Appendix, p. A-28. If, however, Stonehill and Farallon had access to information that only came to light later—i.e., that the estate was actually worth much, much more (between $472-600 million as opposed to $364 million)—then it makes sense that they would pay what they did to buy the UBS claim.

[18] *Compare* Jan. 31, 2021 Monthly Operating Report [Doc. 2030], *with* Disclosure Statement (approved on Nov. 24, 2020) [Doc. 1473]. The increase in value between September 2020 and January 2021 is attributable to the Debtor's settlement with HarbourVest, which granted HarbourVest a Class 8 claim of $45 million and a Class 9 Claim of $35 million, and in exchange the Debtor received HarbourVest's interest in HCLOF, which we believe was worth approximately $44.3 million as of January 31, 2021. *See* Appendix, p. A-25. It is also notable that the January 2021

- The total amount of allowed claims against the estate increased by $236 million; indeed, just between the time the Debtor's disclosure statement was approved on November 24, 2020, and the time the Debtor's exhibits were introduced at the confirmation hearing, the amount of allowed claims increased by $100 million.

- Due to the decrease in the value of the Debtor's assets and the increase in the allowed claims amount, the ultimate projected recovery for creditors in bankruptcy went from 87.44% to 62.99% in just a matter of months.[19]

No prudent investor or hedge fund investing third-party money would purchase substantial claims out of the Highland estate based on this publicly-available information without conducting thorough due diligence to be satisfied that the assets of the estate would not continue to deteriorate or that the allowed claims against the estate would not continue to grow.

There are other good reasons to investigate whether Muck and Jessup (through Farallon and Stonehill) had access to material, non-public information that influenced their claims purchasing. In particular, there are close relationships between the claims purchasers, on the one hand, and the selling Creditors' Committee members and the Debtor's management, on the other hand. What follows is our understanding of those relationships:

- Farallon and Stonehill have long-standing, material, undisclosed relationships with the members of the Creditors' Committee and Mr. Seery.[20] Mr. Seery formerly was the Global Head of Fixed Income Loans at Lehman Bros. until its collapse in 2009. While at Lehman, Mr. Seery did a substantial amount of business with Farallon. After the Lehman collapse, Mr. Seery joined Sidley & Austin as co-head of the corporate restructuring and bankruptcy group, where he worked with Matt Clemente, counsel to the Creditors' Committee in these bankruptcy proceedings.

- In addition, Grovesnor, one of the lead investors in the Crusader Fund from the Redeemer Committee (which appointed Seery as its independent director) both played a substantial role on the Creditors' Committee and is a large investor in Farallon and Stonehill.

- According to Farallon principals Raj Patel and Michael Linn, while at Sidley, Mr. Seery represented Farallon in its acquisition of claims in the Lehman estate.

- Also while at Sidley, Mr. Seery represented the Steering Committee in the Blockbuster Video bankruptcy; Stonehill (through its Managing Member, John Motulsky) was one of the five members of the Steering Committee.

- Mr. Seery left Sidley in 2013 to become the President and Senior Investment Partner of River Birch Capital, a hedge fund founded by his former Lehman colleagues. He left River Birch in October 2017 just before the fund imploded. In 2017, River Birch and Stonehill Capital were two of the biggest note holders in the Toys R Us bankruptcy and were members of the Toys R Us creditors'

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monthly financial report values Class 8 claims at $267 million, an exponential increase over their estimated value of $74 million in December 2020.

19 *See* Appendix, pp. A-25, A-28.

20 *See* Appendix, pp. A-2; A-62 – A-69.

committee.

It does not seem a coincidence that two firms with such significant ties to Mr. Seery have purchased $365 million in claims. The nature of the relationships and the absence of public data warrants an investigation into whether the claims purchasers may have had access to non-public information.

Other transactions occurring during the Highland bankruptcy also reinforce the suspicion that insider trading occurred. In particular, it appears that one of the claims buyers, Stonehill, used non-public information obtained incident to the bankruptcy to purchase stock in NexPoint Strategic Opportunities Fund (NYSE: NHF), a publicly traded, closed-end '40 Act fund with many holdings in common with assets held in the Highland estate outlined above. Stonehill is a registered investment adviser with $3 billion under management that has historically owned very few equity interests, particularly equity interests in a closed-end fund. As disclosed in SEC filings, Stonehill acquired enough stock in NHF during the second quarter of 2021 to make it Stonehill's eighth largest equity position.

The timing of the acquisitions of claims by Farallon and Stonehill also warrants investigation. In particular, although notices of the transfer of the claims were filed immediately after the confirmation of the Debtor's Plan and prior to the effective date of the Plan, it seems likely that negotiations began much earlier. Transactions of this magnitude do not take place overnight and typically require robust due diligence. We know, for example, that Muck was formed on March 9, 2021, more than a month before it filed notice that it was purchasing the Acis claim. If the negotiation or execution of a definitive agreement for the purchase began before or contemporaneously with Muck's formation, then there is every reason to investigate whether selling Creditors' Committee members and/or Debtor management provided Farallon with critical non-public information well before the Creditors' Committee members sold their claims and withdrew from the Committee. Indeed, Mr. Patel and Mr. Linn have stated to others that they purchased the Acis and HarbourVest claims in late January or early February. We believe an investigation will reveal whether negotiations of the sale and the purchase of claims from Creditors' Committee members preceded the confirmation of the Debtor's Plan and the resignation of those members from the Committee.

Likewise, correspondence from the fund adviser to the Crusader Fund indicates that the Crusader Fund and the Redeemer Committee had "consummated" the sale of the Redeemer Committee's claims and other assets on April 30, 2021, "for $78 million in cash, which was paid in full to the Crusader Funds at closing."[21] We also know that there was a written agreement among Stonehill, the Crusader Fund, and the Redeemer Committee that potentially dates back to the fourth quarter of 2020. Presumably such an agreement, if it existed, would impose affirmative and negative covenants upon the seller and grant the purchaser discretionary approval rights during the pendency of the sale. An investigation by your office is necessary to determine whether there were any such agreement, which would necessarily conflict with the Creditors' Committee members' fiduciary obligations.

The sale of the claims by the members of the Creditors' Committee also violates the guidelines provided to committee members that require a selling committee member to obtain approval from the Bankruptcy Court prior to any sale of such member's claim. The instructions provided by the U.S. Trustee's Office (in this instance the Delaware Office) state:

[21] *See* Appendix, pp. A-70 – A-71.

> **In the event you are appointed to an official committee of creditors, the United States Trustee may require periodic certifications of your claims while the bankruptcy case is pending. Creditors wishing to serve as fiduciaries on any official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court. By submitting the enclosed Questionnaire and accepting membership on an official committee of creditors, you agree to this prohibition. The United States Trustee reserves the right to take appropriate action, including removing a creditor from any committee, if the information provided in the Questionnaire is inaccurate, if the foregoing prohibition is violated, or for any other reason the United States Trustee believes is proper in the exercise of her discretion. You are hereby notified that the United States Trustee may share this information with the Securities and Exchange Commission if deemed appropriate.**

In this case, no Court approval was ever sought or obtained, and the Dallas U.S. Trustee's Office took no action to enforce this guideline. The Creditors' Committee members were sophisticated entities, and they were privy to inside information that was not available to other unsecured creditors. For example, valuations of assets placed into a specially-created affiliated entities, such as the assets acquired in the HarbourVest settlement, and valuations of assets held by other entities owned or controlled by the Debtor, were available to the selling Creditors' Committee members, but not other creditors or parties-in-interest.

While claims trading itself is not necessarily prohibited, the circumstances surrounding claims trading often times prompt investigation due to the potential for abuse. This case warrants such an investigation due to the following:

a) The selling parties were *three* of the four Creditors' Committee members, and each one had access to information they received in a fiduciary capacity;

b) Some of the information they received would have been available to other parties-in-interest if Rule 2015.3 had been enforced;

c) The sales allegedly occurred after the Plan was confirmed, and certain other matters immediately thereafter came to light, such as the Debtor's need for an exit loan (although the Debtor testified at the confirmation hearing that no loan was needed) and the inability of the Debtor to obtain Directors and Officer insurance;

d) The Debtor settled a dispute with UBS and obligated itself (using estate assets) to pursue claims and transfers and to transfer certain recoveries to UBS, as opposed to distributing those recoveries to creditors, and the Debtor used third-party assets as consideration for the settlement[22];

e) The projected recovery to creditors changed significantly between the approval of the Disclosure Statement and the confirmation of the Debtor's Plan; and

f) There was a suspicious purchase of stock by Stonehill in NHF, a closed-end fund that is publicly traded on the New York stock exchange. The Debtor's assets and the positions held by the closed-end fund are similar.

Further, there is reason to believe that insider claims-trading negatively impacted the estate's ultimate recovery. Immediately prior to the Plan confirmation hearing, Judge Jernigan suggested that the Creditors' Committee and Mr. Dondero attempt to reach a settlement. Mr. Dondero, through counsel, made numerous offers of settlement that would have maximized the estate's recovery, even going so far as to file a proposed Plan of Reorganization. The Creditors' Committee did not timely respond to these efforts. It was not until The Honorable Former Judge D. Michael Lynn, counsel for Mr. Dondero, reminded the Creditors' Committee counsel that its

members had a fiduciary duty to respond that a response was forthcoming. Mr. Dondero's proposed plan offered a greater recovery than what the Debtor had reported would be the expected Plan recovery. The Creditors' Committee's failure to timely respond to that offer suggests that some members may have been contractually constrained from doing so, which itself warrants investigation.

We encourage the EOUST to question and explore whether, at the time that Mr. Dondero's proposed plan was filed, the Creditors' Committee members already had committed to sell their claims and therefore were contractually restricted from accepting Mr. Dondero's materially better offer. If that were the case, the contractual tie-up would have been a violation of the Committee members' fiduciary duties. The reason for the U.S. Trustee's guideline concerning the sale of claims by Committee members was to allow a public hearing on whether Committee members were acting within the bounds of their fiduciary duties to the estate incident to the sale of any claim. The failure to enforce this guideline has left open questions about sale of Committee members' claims that should have been disclosed and vetted in open court.

In summary, the failure of the U.S. Trustee's Office to demand appropriate reporting and transparency created an environment where parties needed to obtain and use non-public information to facilitate claims trading and potential violations of the fiduciary duties owed by Creditors' Committee members. At the very least, there is enough credible evidence to warrant an investigation. It is up to the bankruptcy bar to alert your office to any perceived abuses to ensure that the system is fair and transparent. The Bankruptcy Code is not written for those who hold the largest claims but, rather, it is designed to protect all stakeholders. A second Neiman Marcus should not be allowed to occur.

We would appreciate a meeting with your office at your earliest possible convenience to discuss the contents of this letter and to provide additional information and color that we believe will be valuable in making a determination about whether and what to investigate. In the interim, if you need any additional information or copies of any particular pleading, we would be happy to provide those at your request.

Very truly yours,

/s/Douglas S. Draper

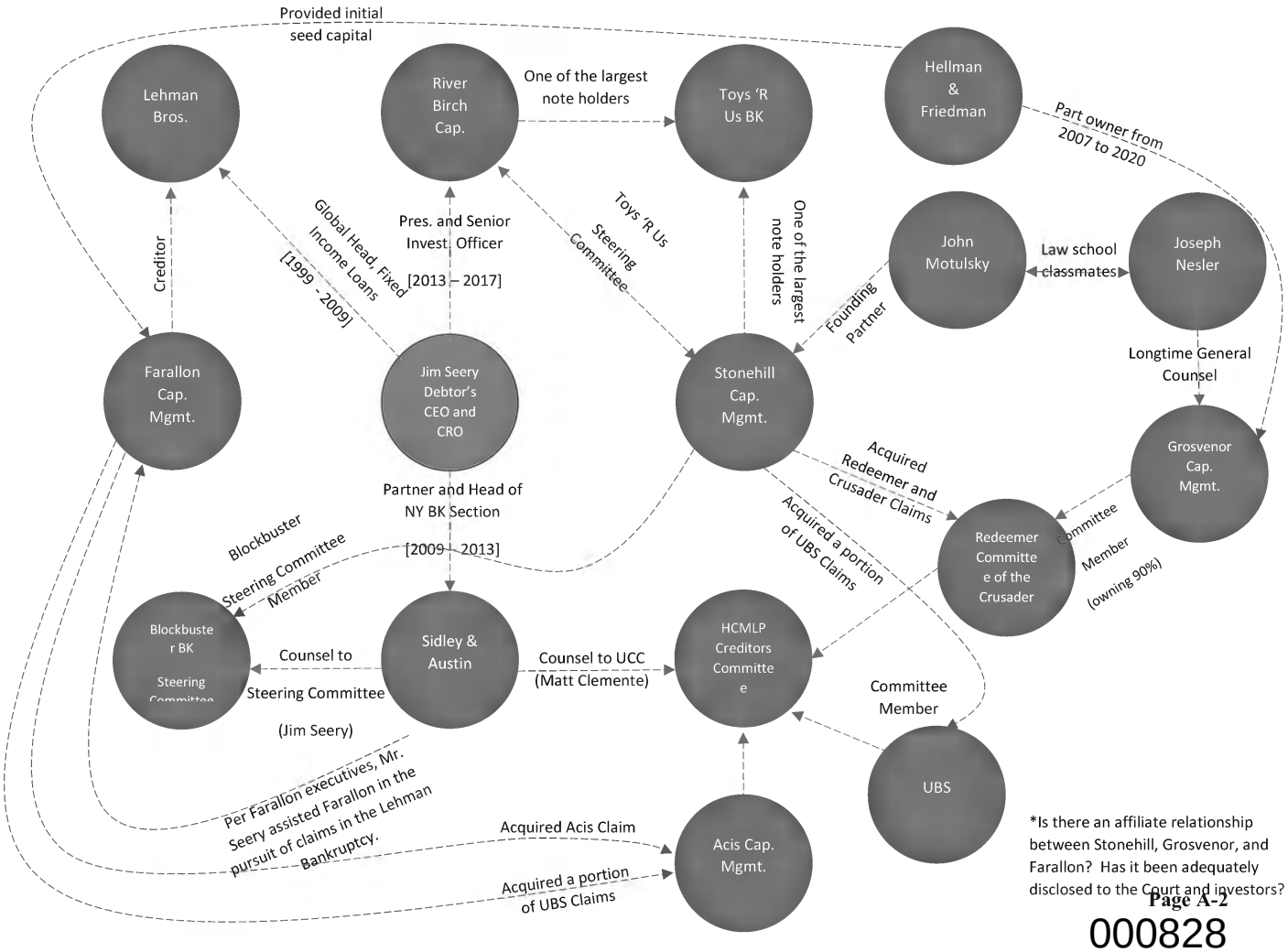
Douglas S. Draper

DSD:dh

Appendix

Table of Contents

Relationships Among Debtor's CEO/CRO, the UCC, and Claims Purchasers



*Is there an affiliate relationship between Stonehill, Grosvenor, and Farallon? Has it been adequately disclosed to the Court and investors?

Debtor Protocols [Doc. 466-1]

I. **Definitions**

A. "Court" means the United States Bankruptcy Court for the Northern District of Texas.

B. "NAV" means (A) with respect to an entity that is not a CLO, the value of such entity's assets less the value of its liabilities calculated as of the month end prior to any Transaction; and (B) with respect to a CLO, the CLO's gross assets less expenses calculated as of the quarter end prior to any Transaction.

C. "Non-Discretionary Account" means an account that is managed by the Debtor pursuant to the terms of an agreement providing, among other things, that the ultimate investment discretion does not rest with the Debtor but with the entity whose assets are being managed through the account.

D. "Related Entity" means collectively (A)(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor) has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor); (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative (as defined in Section 101 of the Bankruptcy Code) of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, including any "non-statutory" insider; and (viii) to the extent not included in (A)(i)-(vii), any entity included in the listing of related entities in **Schedule B** hereto (the "Related Entities Listing"); and (B) the following Transactions, (x) any intercompany Transactions with certain affiliates referred to in paragraphs 16.a through 16.e of the Debtor's cash management motion [Del. Docket No. 7]; and (y) any Transactions with Charitable DAF Fund, L.P. (provided, however, that additional parties may be added to this subclause (y) with the mutual consent of the Debtor and the Committee, such consent not to be unreasonably withheld).

E. "Stage 1" means the time period from the date of execution of a term sheet incorporating the protocols contained below the ("Term Sheet") by all applicable parties until approval of the Term Sheet by the Court.

F. "Stage 2" means the date from the appointment of a Board of Independent Directors at Strand Advisors, Inc. until 45 days after such appointment, such appointment being effective upon Court approval.

G. "Stage 3" means any date after Stage 2 while there is a Board of Independent Directors at Strand Advisors, Inc.

H. "Transaction" means (i) any purchase, sale, or exchange of assets, (ii) any lending or borrowing of money, including the direct payment of any obligations of another entity, (iii) the satisfaction of any capital call or other contractual

requirement to pay money, including the satisfaction of any redemption requests, (iv) funding of affiliates and (v) the creation of any lien or encumbrance.

I. "Ordinary Course Transaction" means any transaction with any third party which is not a Related Entity and that would otherwise constitute an "ordinary course transaction" under section 363(c) of the Bankruptcy Code.

J. "Notice" means notification or communication in a written format and shall include supporting documents necessary to evaluate the propriety of the proposed transaction.

K. "Specified Entity" means any of the following entities: ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

II. Transactions involving the (i) assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly-owned subsidiaries, including Jefferies Prime Account, and (ii) the Highland Select Equity Fund, L.P., Highland Multi Strategy Credit Fund, L.P., and Highland Restoration Capital Partners

A. **Covered Entities**: N/A (See entities above).

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

III. Transactions involving entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above)

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above).[1]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

[1] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

IV. Transactions involving entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest.[2]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

   a) Stage 1 and Stage 2: ordinary course determined by the CRO.

   b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

   a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

   b) Stage 3:

      (1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

      (2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages):

   a) Except (x) as set forth in (b) and (c) below and (y) for any Transaction involving a Specified Entity and the sale or purchase by such Specified Entity of an asset that is not an obligation or security issued or guaranteed by any of the Debtor, a Related Entity or a fund, account, portfolio company owned, controlled or managed by the Debtor or a Related Entity, where such Transaction is effected in compliance with the collateral management agreement to which such Specified Entity is party, any Transaction that decreases the NAV of an entity managed by the Debtor in excess of the greater of (i) 10% of NAV or (ii) $3,000,000 requires five business days advance notice to

[2] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may take such steps as may be reasonably necessary to winddown any managed entity and make distributions as may be required in connection with such winddown to any required parties. The Debtor will provide the Committee with five business days advance notice of any distributions to be made to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category. Such reports will include Transactions involving a Specified Entity unless the Debtor is prohibited from doing so under applicable law or regulation or any agreement governing the Debtor's relationship with such Specified Entity.

V. Transactions involving entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest.[3]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

[3] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

VI. **Transactions involving entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest**

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest.[4]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VII. **Transactions involving Non-Discretionary Accounts**

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all non-discretionary accounts.[5]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VIII. **Additional Reporting Requirements – All Stages (to the extent applicable)**

A. DSI will provide detailed lists and descriptions of internal financial and operational controls being applied on a daily basis for a full understanding by the Committee and its professional advisors three (3) business days in advance of the hearing on the approval of the Term Sheet and details of proposed amendments to said financial and operational controls no later than seven (7) days prior to their implementation.

B. The Debtor will continue to provide weekly budget to actuals reports referencing their 13-week cash flow budget, such reports to be inclusive of all Transactions with Related Entities.

IX. **Shared Services**

A. The Debtor shall not modify any shared services agreement without approval of the CRO and Independent Directors and seven business days' advance notice to counsel for the Committee.

B. The Debtor may otherwise continue satisfying its obligations under the shared services agreements.

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[4] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

[5] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

X. Representations and Warranties

A. The Debtor represents that the Related Entities Listing included as **Schedule B** attached hereto lists all known persons and entities other than natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

B. The Debtor represents that the list included as **Schedule C** attached hereto lists all known natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

C. The Debtor represents that, if at any time the Debtor becomes aware of any person or entity, including natural persons, meeting the definition of Related Entities covered by Section I.D parts A(1)-(vii) above that is not included in the Related Entities Listing or Schedule C, the Debtor shall update the Related Entities Listing or Schedule C, as appropriate, to include such entity or person and shall give notice to the Committee thereof.

Schedule A[6]

Entities the Debtor manages and in which the Debtor holds a direct or indirect interest

1. Highland CLO Funding, Ltd. (0.63% Ownership Interest)
2. Dynamic Income Fund (0.26% Ownership Interest)

Entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

1. Highland Prometheus Master Fund L.P.
2. NexAnnuity Life Insurance Company
3. PensionDanmark
4. Highland Argentina Regional Opportunity Fund
5. Longhorn A
6. Longhorn B
7. Collateralized Loan Obligations
   a) Rockwall II CDO Ltd.
   b) Grayson CLO Ltd.
   c) Eastland CLO Ltd.
   d) Westchester CLO, Ltd.
   e) Brentwood CLO Ltd.
   f) Greenbriar CLO Ltd.
   g) Highland Park CDO Ltd.
   h) Liberty CLO Ltd.
   i) Gleneagles CLO Ltd.
   j) Stratford CLO Ltd.
   k) Jasper CLO Ltd.
   l) Rockwall DCO Ltd.
   m) Red River CLO Ltd.
   n) Hi V CLO Ltd.
   o) Valhalla CLO Ltd.
   p) Aberdeen CLO Ltd.
   q) South Fork CLO Ltd.
   r) Legacy CLO Ltd.
   s) Pam Capital
   t) Pamco Cayman

Entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

1. Highland Opportunistic Credit Fund
2. Highland Healthcare Opportunities Fund f/k/a Highland Long/Short Healthcare Fund
3. NexPoint Real Estate Strategies Fund
4. Highland Merger Arbitrage Fund
5. NexPoint Strategic Opportunities Fund
6. Highland Small Cap Equity Fund
7. Highland Global Allocation Fund

[6] NTD: Schedule A is work in process and may be supplemented or amended.

8. Highland Socially Responsible Equity Fund
9. Highland Income Fund
10. Stonebridge-Highland Healthcare Private Equity Fund ("Korean Fund")
11. SE Multifamily, LLC

Entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

1. The Dugaboy Investment Trust
2. NexPoint Capital LLC
3. NexPoint Capital, Inc.
4. Highland IBoxx Senior Loan ETF
5. Highland Long/Short Equity Fund
6. Highland Energy MLP Fund
7. Highland Fixed Income Fund
8. Highland Total Return Fund
9. NexPoint Advisors, L.P.
10. Highland Capital Management Services, Inc.
11. Highland Capital Management Fund Advisors L.P.
12. ACIS CLO Management LLC
13. Governance RE Ltd
14. PCMG Trading Partners XXIII LP
15. NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC
16. NexPoint Real Estate Advisors II LP
17. NexPoint Healthcare Opportunities Fund
18. NexPoint Securities
19. Highland Diversified Credit Fund
20. BB Votorantim Highland Infrastructure LLC
21. ACIS CLO 2017 Ltd.

Transactions involving Non-Discretionary Accounts

1. NexBank SSB Account
2. Charitable DAF Fund LP

Schedule B

Related Entities Listing (other than natural persons)

Schedule C

1. James Dondero
2. Mark Okada
3. Grant Scott
4. John Honis
5. Nancy Dondero
6. Pamela Okada
7. Thomas Surgent
8. Scott Ellington
9. Frank Waterhouse
10. Lee (Trey) Parker

Seery Jan. 29, 2021 Testimony

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

In Re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, LP,	Case No. 19-34054-SGJ 11
Debtor	

REMOTE DEPOSITION OF JAMES P. SEERY, JR.

January 29, 2021

10:11 a.m. EST

Reported by:
Debra Stevens, RPR-CRR
JOB NO. 189212

January 29, 2021
9:00 a.m. EST

Remote Deposition of JAMES P. SEERY, JR., held via Zoom conference, before Debra Stevens, RPR/CRR and a Notary Public of the State of New York.

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EXAMINATIONS

EXHIBITS

SEERY DYD

INFORMATION/PRODUCTION REQUESTS

MARKED FOR RULING

COURT REPORTER: My name is Debra Stevens, court reporter for TSG Reporting and notary public of the State of New York. Due to the severity of the COVID-19 pandemic and following the practice of social distancing, I will not be in the same room with the witness but will report this deposition remotely and will swear the witness in remotely. If any party has any objection, please so state before we proceed.

Whereupon,

JAMES SEERY,

having been first duly sworn/affirmed, was examined and testified as follows:

EXAMINATION BY
MR. DRAPER:

Q. Mr. Seery, my name is Douglas Draper, representing the Dugaboy Trust. I have series of questions today in connection with the 30(b) Notice that we filed. The first question I have for you, have you seen the Notice of Deposition

J. SEERY

the screen, please?
A. Page what?
Q. I think it is page 174.
A. Of the PDF or of the document?
Q. Of the disclosure statement that was filed. It is up on the screen right now.
COURT REPORTER: Do you intend this as another exhibit for today's deposition?
MR. DRAPER: We'll mark this Exhibit 2.
(So marked for identification as Seery Exhibit 2.)
Q. If you look to the recovery to Class 8 creditors in the November 2020 disclosure statement was a recovery of 87.44 percent?
A. That actually says the percent distribution to general unsecured creditors was 87.44 percent. Yes.
Q. And in the new document that was filed, given to us yesterday, the recovery is 62.5 percent?

J. SEERY

A. It says the percent distribution to general unsecured creditors is 62.14 percent.
Q. Have you communicated the reduced recovery to anybody prior to the date -- to yesterday?
MR. MORRIS: Objection to the form of the question.
A. I believe generally, yes. I don't know if we have a specific number, but generally yes.
Q. And would that be members of the Creditors' Committee who you gave that information to?
A. Yes.
Q. Did you give it to anybody other than members of the Creditors' Committee?
A. Yes.
Q. Who?
A. HarbourVest.
Q. And when was that?
A. Within the last two months.
Q. You did not feel the need to communicate the change in recovery to

J. SEERY

anybody else?
A. I said Mr. Doherty.
Q. In looking at the two elements, and what I have asked you to look at is the claims pool. If you look at the November disclosure statement, if you look down Class 8, unsecured claims?
A. Yes.
Q. You have 176,000 roughly?
A. Million.
Q. 176 million. I am sorry. And the number in the new document is 313 million?
A. Correct.
Q. What accounts for the difference?
A. An increase in claims.
Q. When did those increases occur? Were they yesterday? A month ago? Two months ago?
A. Over the last couple months.
Q. So in fact over the last couple months you knew in fact that the recovery in the November disclosure statement was

J. SEERY

not accurate?
A. Yes. We secretly disclosed it to the Bankruptcy Court in open court hearings.
Q. But you never did bother to calculate the reduced recovery; you just increased --
(Reporter interruption.)
Q. You just advised as to the increased claims pool. Correct?
MR. MORRIS: Objection to the form of the question.
A. I don't understand your question.
Q. What I am trying to get at is, as you increase the claims pool, the recovery reduces. Correct?
A. No. That is not how a fraction works.
Q. Well, if the denominator increases, doesn't the recovery ultimately decrease if --
A. No.
Q. -- if the numerator stays the

J. SEERY

were amended without consideration a few years ago. So, for our purposes we didn't make the assumption, which I am sure will happen, a fraudulent conveyance claim on those notes, that a fraudulent conveyance action would be brought. We just assumed that we'd have to discount the notes heavily to sell them because nobody would respect the ability of the counterparties to fairly pay.

Q. And the same discount was applied in the liquidation analysis to those notes?

A. Yes.

Q. Now --

A. The difference -- there would be a difference, though, because they would pay for a while because they wouldn't want to accelerate them. So there would be some collections on the notes for P and I.

Q. But in fact as of January you have accelerated those notes?

A. Just one of them, I believe.

Q. Which note was that?

J. SEERY

A. NexPoint, I said. They defaulted on the note and we accelerated it.

Q. So there is no need to file a fraudulent conveyance suit with respect to that note. Correct, Mr. Seery?

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

A. Disagree. Since it was likely intentional fraud, there may be other recoveries on it. But to collect on the note, no.

Q. My question was with respect to that note. Since you have accelerated it, you don't need to deal with the issue of when it's due?

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

A. That wasn't your question. But to that question, yes, I don't need to deal with when it's due.

Q. Let me go over certain assets. I am not going to ask you for the valuation of them but I am going to ask

J. SEERY

you whether they are included in the asset portion of your $257 million number, all right? Mr. Morris didn't want me to go into specific asset value, and I don't intend to do that.

The first question I have for you is, the equity in Trustway Highland Holdings, is that included in the $257 million number?

A. There is no such entity.

Q. Then I will do it in a different way. In connection with the sale of the hard assets, what assets are included in there specifically?

A. Off the top of my head -- it is [redacted] Trustway Holdings and all the value that flows up from Trustway Holdings. It [redacted] flows up from Targa. It includes CCS [redacted] to the Debtor from CCS Medical. It includes Cornerstone and all the value that would flow from Cornerstone. It

J. SEERY

includes any other securities and all the value that would flow from Cornerstone. It includes HCLOF and all the value that would flow up from HCLOF. It includes [redacted] from Korea.

There may be others off the top of my head. I don't recall them. I don't have a list in front of me.

Q. Now, with respect to those assets, have you started the sale process of those assets?

A. No. Well, each asset is different. So, the answer is, with respect to any securities, we do seek to sell those regularly and we do seek to monetize those assets where we can depending on whether there is a restriction or not and whether there is liquidity in the market.

With respect to the PE assets or the companies I described -- Targa, CCS, Cornerstone, JHT -- we have not -- Trustway. We have not sought to sell

J. SEERY

A. I don't recall the specific limitation on the trust. But if there was a reason to hold on to the asset, if there is a limitation, we can seek an extension.

Q. Let me ask a question. With respect to these businesses, the Debtor merely owns an equity interest in them. Correct?

A. Which business?

Q. The ones you have identified as operating businesses earlier?

A. It depends on the business.

Q. Well, let me -- again, let's try to be specific. With respect to SSP, it was your position that you did not need to get court approval for the sale. Correct?

A. That's correct.

Q. Which one of the operating businesses that are here, that you have identified, do you need court authority for a sale?

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

A. [redacted]

J. SEERY

different analysis that we'll undertake with bankruptcy counsel to determine what we would need depending on when it is [redacted] either under the code are or under the plan.

Q. Is there anything that would stop you from selling these businesses if the Chapter 11 went on for a year or two years?

MR. MORRIS: Objection to form of the question.

A. Is there anything that would stop me? We'd have to follow the strictures of the code and the protocols, but there would be no prohibition -- let me finish, please.

There would be no prohibition that I am aware of.

Q. Now, in connection with your differential between the liquidation of what I will call the operating businesses under the liquidation analysis and the plan analysis, who arrived at the discount

J. SEERY

or determined the discount that has been placed between the two, plan analysis versus liquidation analysis?

MR. MORRIS: Objection to form of the question.

A. To which document are you referring?

Q. Both the June -- the January and the November analysis has a different estimated proceeds for monetization for the plan analysis versus the liquidation analysis. Do you see that?

A. Yes.

Q. And there is a note under there. "Assumes Chapter 7 trustee will not be able to achieve the same sales proceeds as Claimant trustee."

A. I see that, yes.

Q. Do you see that note?

A. Yes.

Q. Who arrived at that discount?

A. I did.

Q. What percentage did you use?

A. Depended on the asset. Each one

J. SEERY

is different.

Q. Is the discount a function of capability of a trustee versus your capability, or is the discount a function of timing?

MR. MORRIS: Objection to form.

A. It could be a combination.

Q. So, let's -- let me walk through this. Your plan analysis has an assumption that everything is sold by December 2022. Correct?

A. Correct.

Q. And the valuations that you have used here for the monetization assume a sale between -- a sale prior to December of 2022. Correct?

A. Sorry. I don't quite understand your question.

Q. The 257 number, and then let's take out the notes. Let's use the 210 number.

MR. MORRIS: Can we put the document back on the screen, please? Sorry, Douglas, to interrupt, but it

J. SEERY

would be helpful.

MR. DRAPER: That is fine, John.

(Pause.)

MR. MORRIS: Thank you very much.

Q. Mr. Seery, do you see the 257?

A. In the one from yesterday?

Q. Yes.

A. Second line, 257,941. Yes.

Q. That assumes a monetization of all assets by December of 2022?

A. Correct.

Q. And so everything has been sold by that time; correct?

A. Yes.

Q. So, what I am trying to get at is, there is both the capability between you and a trustee, and then the second issue is timing. So, what discount was put on for timing, Mr. Seery, between when a trustee would sell it versus when you would sell it?

MR. MORRIS: Objection.

Q. What is the percentage you

J. SEERY

applied?

A. Each of the assets is different.

Q. Is there a general discount that you used?

A. Not a general discount, no. We looked at each individual asset and went through and made an assessment.

Q. Did you apply a discount for your capability versus the capability of a trustee?

A. No.

Q. So a trustee would be as capable as you are in monetizing these assets?

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

Q. Excuse me? The answer is?

A. The answer is maybe.

Q. Couldn't a trustee hire somebody as capable as you are?

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

A. Perhaps.

Q. Sir, that is a yes or no question. Could the trustee hire somebody

J. SEERY

as capable as you are?

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

A. I don't know.

Q. Is there anybody as capable as you are?

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

A. Certainly.

Q. And they could be hired. Correct?

A. Perhaps. I don't know.

Q. And if you go back to the November 2020 liquidation analysis versus plan analysis, it is also the same note about that a trustee would bring less, and there is the same sort of discount between the estimated proceeds under the plan and under the liquidation analysis.

MR. MORRIS: If that is a question, I object.

Q. Is that correct, Mr. Seery, looking at the document?

A. There are discounts, yes.

J. SEERY

Q. Again, the discounts are applied for timing and capability?

A. Yes.

Q. Now, in looking at the November plan analysis number of $190 million and the January number of $257 million, what accounts for the increase between the two dates? What assets specifically?

A. There are a number of assets. Firstly, the HCLOF assets are added.

Q. How much are those?

A. Approximately 22 and a half million dollars.

Q. Okay.

A. Secondly, there is a significant [redacted] assets over this time period.

Q. Which assets, Mr. Seery?

A. There are a number. They include MGM stock, they include Trustway, they include Targa.

Q. And what is the percentage increase from November to January, November of 2020 to January of 2021?

J. SEERY

A. Do you mean what is the percentage increase from 190 to 257?

Q. No. You just identified three assets. MGM stock, we can go look at the exchange and figure out what the price increase is; correct?

A. No.

Q. Why not? Is the MGM stock publicly traded?

A. Yes. It doesn't trade on --

Q. Excuse me?

A. It doesn't trade on an exchange.

Q. Is there a public market for the MGM stock that we could calculate the increase?

A. There is a semipublic market; yes.

Q. So it is a number that is readily available between the two dates?

A. It's available.

Q. Now, you identified Targa and Trustway. Correct?

A. Yes.

Q. Those are not readily available

J. SEERY

markets; correct?

A. No.

Q. Those are operating businesses?

A. Correct.

Q. [redacted] the November 2020 liquidation analysis?

A. We use a combination of the value that we get from Houlihan Lokey for [redacted]

Q. And the adjustment was up or down?

A. When?

Q. [redacted] adjusted it. Did you adjust it up or did you adjust it down?

MR. MORRIS: Objection to form of the question.

A. [redacted] adjusted it down, and for January we adjusted it down. I don't recall off the [redacted]

J. SEERY

Q. [redacted] valuation for those two businesses showed a significant increase between November of [redacted]

MR. MORRIS: Objection to form of the question.

A. I didn't say that.

Q. I am trying to account for the [redacted] identified three assets. You identified MGM stock, which has, I can guess, as you [redacted] Then you identified two others that the valuation is based upon something Houlihan Lokey provided you. Correct?

A. I gave you three examples. I never said "readily." That is your word, [redacted] had a significant change in their valuation.

Q. So let's now go back to the question. There is an increase in value [redacted]

J. SEERY

of 2021, the magnitude being roughly 60 some odd million dollars. Correct?

A. Correct.

Q. We can account for $22 million [redacted]

MR. MORRIS: Objection to form.

A. Correct.

Q. [redacted] settlement, so that leaves roughly [redacted]

MR. MORRIS: Objection to the form of the question if that is a question. It is accounted for.

Q. What makes up that difference, Mr. Seery?

A. A change in the plan value of the assets.

Q. Okay. Which assets? Let's sort [redacted]

A. There are numerous assets in the plan formulation. I gave you three examples of the operating businesses. The securities, I believe, have increased in [redacted]

J. SEERY

for one. On the operating businesses, we looked at each of them and made an assessment based upon where the market is [redacted] have moved those valuations.

Q. Let me look at some numbers again. In the liquidation analysis in November of 2020, the liquidation value is $149 million. Correct?

A. Yes.

Q. And in the liquidation analysis in January of 2021, you have $191 million?

A. Yes.

Q. You see that number. So there is $51 million there, right?

A. No.

Q. What is the difference between 191 and -- sorry. My math may be a little off. What is the difference between the two numbers, Mr. Seery?

A. Your math is off.

Q. Sorry. It is 41 million?

A. Correct.

Q. $22 million of that is the

J. SEERY

HarbourVest settlement, right?

A. I believe that's correct.

Q. Is that fair, Mr. Seery?

A. I believe that is correct, yes.

Q. And part of that differential are publicly traded or ascertainable securities. Correct?

A. Yes.

Q. And basically you can get, or under the plan analysis or trustee analysis, if it is a marketable security or where there is a market, the liquidation number should be the same for both. Is that fair?

A. No.

Q. And why not?

A. We might have a different price target for a particular security than the current trading value.

Q. I understand that, but I mean that is based upon the capability of the person making the decision as to when to sell. Correct?

MR. MORRIS: Objection to form

J. SEERY

of the question.

Q. Mr. Seery, yes or no?

A. I said no.

Q. What is that based on, then?

A. The person's ability to assess the market and timing.

Q. Okay. And again, couldn't a trustee hire somebody as capable as you to both, A, assess the market and, B, make a determination as to when to sell?

MR. MORRIS: Objection to form of the question.

A. I suppose a trustee could.

Q. And there are better people or people equally or better than you at assessing a market. Correct?

A. Yes.

MR. MORRIS: Objection to form of the question.

Q. So, again, let's go back to that. We have accounted for, out of $41 million where the liquidation analysis increases between the two dates, $22 million of it. That leaves

J. SEERY

$18 million. How much of that is publicly traded or ascertainable assets versus operating businesses?

A. I don't know off the top of my head the percentages.

Q. All right. The same question for the plan analysis where you have the differential between the November number and the January number. How much of it is marketable securities versus an operating business?

A. I don't recall off the top of my head.

MR. DRAPER: Let me take a few-minute break. Can we take a ten-minute break here?

THE WITNESS: Sure.

(Recess.)

BY MR. DRAPER:

Q. Mr. Seery, what I am going to show you and what I would ask you to look at is in the note E, in the statement of assumptions for the November 2020 disclosure statement. It discusses fixed

Sale of Assets of Affiliates or Controlled Entities

Asset	Sales Price
Structural Steel Products	$50 million
Life Settlements	$35 million
OmniMax	$50 million
Targa	$37 million

- These assets were sold over the contemporaneous objections of James Dondero, who was the Portfolio Manager and key-man on the funds.
- Mr. Seery admitted[1] that he must comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Protocols for the sale of major assets of the estate. We believe that a competitive bid process and court approval should have been required for the sale of each of these assets (as was done for the sale of the building at 2817 Maple Ave. [a $9 million asset] and the sale of the interest in PetroCap [a $3 million asset]).

[1] *See* Mr. Seery's Jan. 29, 2021 deposition testimony, Appendix p. A-20.

20 Largest Unsecured Creditors

Name of Claimant	Allowed Class 8	Allowed Class 9
Redeemer Committee of the Highland Crusader Fund	$136,696,610.00	
UBS AG, London Branch and UBS Securities LLC	$65,000,000.00	$60,000,000
HarbourVest entities	$45,000,000.00	$35,000,000
Acis Capital Management, L.P. and Acis Capital Management GP, LLC	$23,000,000.00	
CLO Holdco Ltd	$11,340,751.26	
Patrick Daugherty	$8,250,000.00	$2,750,000 (+$750,000 cash payment on Effective Date of Plan)
Todd Travers (Claim based on unpaid bonus due for Feb 2009)	$2,618,480.48	
McKool Smith PC	$2,163,976.00	
Davis Deadman (Claim based on unpaid bonus due for Feb 2009)	$1,749,836.44	
Jack Yang (Claim based on unpaid bonus due for Feb 2009)	$1,731,813.00	
Paul Kauffman (Claim based on unpaid bonus due for Feb 2009)	$1,715,369.73	
Kurtis Plumer (Claim based on unpaid bonus due for Feb 2009)	$1,470,219.80	
Foley Gardere	$1,446,136.66	
DLA Piper	$1,318,730.36	
Brad Borud (Claim based on unpaid bonus due for Feb 2009)	$1,252,250.00	
Stinson LLP (successor to Lackey Hershman LLP)	$895,714.90	
Meta-E Discovery LLC	$779,969.87	
Andrews Kurth LLP	$677,075.65	
Markit WSO Corp	$572,874.53	
Duff & Phelps, LLC	$449,285.00	
Lynn Pinker Cox Hurst	$436,538.06	
Joshua and Jennifer Terry	$425,000.00	
Joshua Terry	$355,000.00	
CPCM LLC (bought claims of certain former HCMLP employees)	Several million	
TOTAL:	**$309,345,631.74**	**$95,000,000**

Timeline of Relevant Events

Date	Description
10/29/2019	UCC appointed; members agree to fiduciary duties and not sell claims.
9/23/2020	Acis 9019 filed
9/23/2020	Redeemer 9019 filed
10/28/2020	Redeemer settlement approved
10/28/2020	Acis settlement approved
12/24/2020	HarbourVest 9019 filed
1/14/2021	Motion to appoint examiner filed
1/21/2021	HarbourVest settlement approved; transferred its interest in HCLOF to HCMLP assignee, valued at $22 million per Seery
1/28/2021	Debtor discloses that it has reached an agreement in principle with UBS
2/3/2021	Failure to comply with Rule 2015.3 raised
2/24/2021	Plan confirmed
3/9/2021	Farallon Cap. Mgmt. forms "Muck Holdings LLC" in Delaware
3/15/2021	Debtor files Jan. '21 monthly operating report indicating assets of $364 million, liabilities of $335 million (**inclusive of $267,607,000 in Class 8 claims, but exclusive of any Class 9 claims**), the last publicly filed summary of the Debtor's assets. The MOR states that no Class 9 distributions are anticipated at this time and Class 9 recoveries are not expected.
3/31/2021	UBS files friendly suit against HCMLP under seal
4/8/2021	Stonehill Cap. Mgmt. forms "Jessup Holdings LLC" in Delaware
4/15/2021	UBS 9019 filed
4/16/2021	Notice of Transfer of Claim - Acis to Muck (Farallon Capital)
4/29/2021	Motion to Compel Compliance with Rule 2015.3 Filed
4/30/2021	Notice of Transfer of Claim - Redeemer to Jessup (Stonehill Capital)
4/30/2021	Notice of Transfer of Claim - HarbourVest to Muck (Farallon Capital)
4/30/2021	Sale of Redeemer claim to Jessup (Stonehill Capital) "consummated"
5/27/2021	UBS settlement approved; included $18.5 million in cash from Multi-Strat
6/14/2021	UBS dismisses appeal of Redeemer award
8/9/2021	Notice of Transfer of Claim - UBS to Jessup (Stonehill Capital)
8/9/2021	Notice of Transfer of Claim - UBS to Muck (Farallon Capital)

Critical unknown dates and information:

- The date on which Muck entered into agreements with HarbourVest and Acis to acquire their claims and what negative and affirmative covenants those agreements contained.
- The date on which Jessup entered into an agreement with the Redeemer Committee and the Crusader Fund to acquire their claim and what negative and affirmative covenants the agreement contained.
- The date on which the sales actually closed versus the date on which notice of the transfer was filed (i.e., did UCC members continue to serve on the committee after they had sold their claims).

Debtor's October 15, 2020 Liquidation Analysis [Doc. 1173-1]

	Plan Analysis		**Liquidation Analysis**
Estimated cash on hand at 12/31/2020	$26,496		$26,496
Estimated proceeds from monetization of assets [1][2]	198,662		154,618
Estimated expenses through final distribution [1][3]	(29,864)		(33,804)
Total estimated $ available for distribution	**195,294**		**147,309**
Less: Claims paid in full			
Administrative claims [4]	(10,533)		(10,533)
Priority Tax/Settled Amount [10]	(1,237)		(1,237)
Class 1 – Jefferies Secured Claim	-		-
Class 2 – Frontier Secured Claim [5]	(5,560)		(5,560)
Class 3 – Priority non-tax claims [10]	(16)		(16)
Class 4 – Retained employee claims	-		-
Class 5 – Convenience claims [6][10]	(13,455)		-
Class 6 – Unpaid employee claims [7]	(2,955)		-
Subtotal	(33,756)		(17,346)
Estimated amount remaining for distribution to general unsecured claims	161,538		129,962
Class 5 – Convenience claims [8]	-		17,940
Class 6 – Unpaid employee claims	-		3,940
Class 7 – General unsecured claims [9]	174,609		174,609
Subtotal	174,609		196,489
% Distribution to general unsecured claims	92.51%		66.14%
Estimated amount remaining for distribution	-		-
Class 8 – Subordinated claims	*no distribution*		*no distribution*
Class 9 – Class B/C limited partnership interests	*no distribution*		*no distribution*
Class 10 – Class A limited partnership interests	*no distribution*		*no distribution*

Notable notations/disclosures in the Oct. 15, 2020 liquidation analysis include:

- Note [9]: General unsecured claims estimated using $0 allowed claims for HarbourVest and UBS. Ultimately, those two creditors were awarded $105 million of general unsecured claims and $95 million of subordinated claims.

Updated Liquidation Analysis (Feb. 1, 2021)[2]

	Plan Analysis		**Liquidation Analysis**
Estimated cash on hand at 1/31/2020 [sic]	$24,290		$24,290
Estimated proceeds from monetization of assets [1][2]	257,941		191,946
Estimated expenses through final distribution [1][3]	(59,573)		(41,488)
Total estimated $ available for distribution	**222,658**		**174,178**
Less: Claims paid in full			
Unclassified [4]	(1,080)		(1,080)
Administrative claims [5]	(10,574)		(10,574)
Class 1 – Jefferies Secured Claim	-		-
Class 2 – Frontier Secured Claim [6]	(5,781)		(5,781)
Class 3 – Other Secured Claims	(62)		(62)
Class 4 – Priority non-tax claims	(16)		(16)
Class 5 – Retained employee claims	-		-
Class 6 – PTO Claims [5]	-		-
Class 7 – Convenience claims [7][8]	(10,280)		-
Subtotal	**(27,793)**		**(17,514)**
Estimated amount remaining for distribution to general unsecured claims	194,865		157,235
% Distribution to Class 7 (Class 7 claims including in Class 8 in Liquidation scenario)	85.00%		0.00%
Class 8 – General unsecured claims [8] [10]	273,219		286,100
Subtotal	273,219		286,100
% Distribution to general unsecured claims	71.32%		54.96%
Estimated amount remaining for distribution	-		-
Class 9 – Subordinated claims	*no distribution*		*no distribution*
Class 10 – Class B/C limited partnership interests	*no distribution*		*no distribution*
Class 11 – Class A limited partnership interests	*no distribution*		*no distribution*

Notable notations/disclosures in the Feb. 1, 2021 liquidation analysis include:

- claim amounts in Class 8 assume $0 for IFA and HM, $50.0 million for UBS and $45 million HV.
- Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets

[2] Doc. 1895.

Summary of Debtor's January 31, 2021 Monthly Operating Report[3]

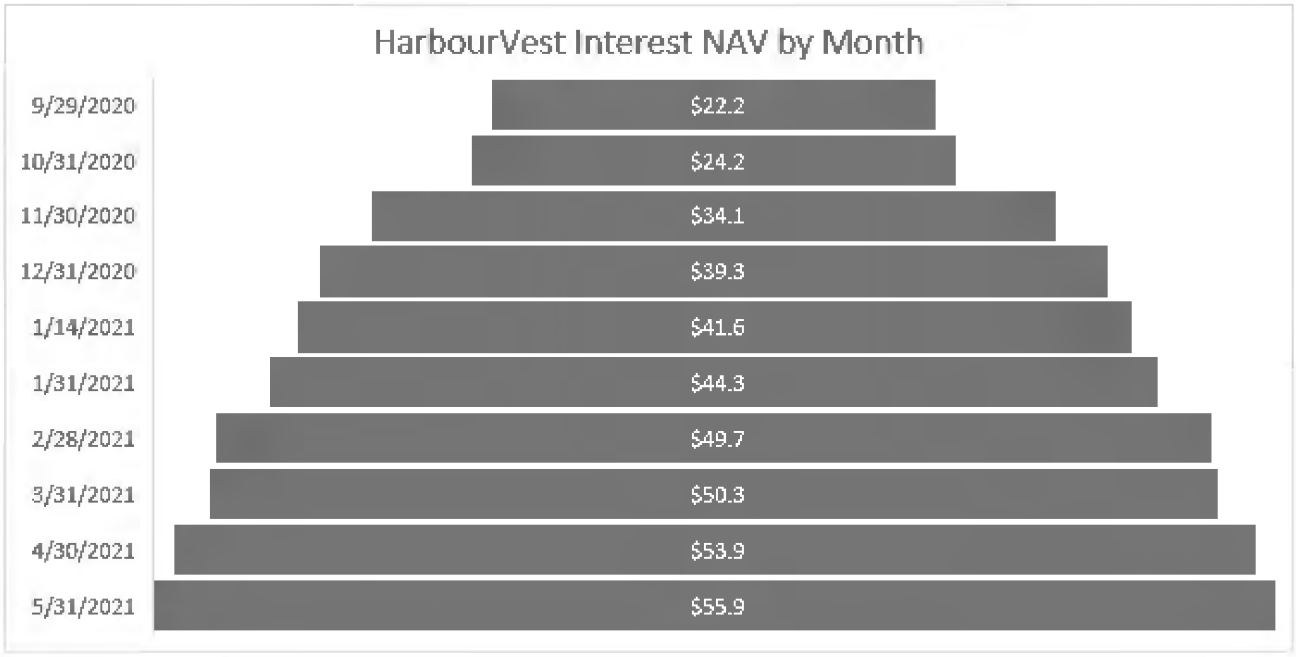
	10/15/2019	12/31/2020	1/31/2021
Assets			
Cash and cash equivalents	$2,529,000	$12,651,000	$10,651,000
Investments, at fair value	$232,620,000	$109,211,000	$142,976,000
Equity method investees	$161,819,000	$103,174,000	$105,293,000
mgmt and incentive fee receivable	$2,579,000	$2,461,000	$2,857,000
fixed assets, net	$3,754,000	$2,594,000	$2,518,000
due from affiliates	$151,901,000	$152,449,000	$152,538,000
reserve against notices receivable		($61,039,000)	($61,167,000)
other assets	$11,311,000	$8,258,000	$8,651,000
Total Assets	**$566,513,000**	**$329,759,000**	**$364,317,000**
Liabilities and Partners' Capital			
pre-petition accounts payable	$1,176,000	$1,077,000	$1,077,000
post-petition accounts payable		$900,000	$3,010,000
Secured debt			
Frontier	$5,195,000	$5,195,000	$5,195,000
Jefferies	$30,328,000	$0	$0
Accrued expenses and other liabilities	$59,203,000	$60,446,000	$49,445,000
Accrued re-organization related fees		$5,795,000	$8,944,000
Class 8 general unsecured claims	$73,997,000	$73,997,000	$267,607,000
Partners' Capital	$396,614,000	$182,347,000	$29,039,000
Total liabilities and partners' capital	**$566,513,000**	**$329,757,000**	**$364,317,000**

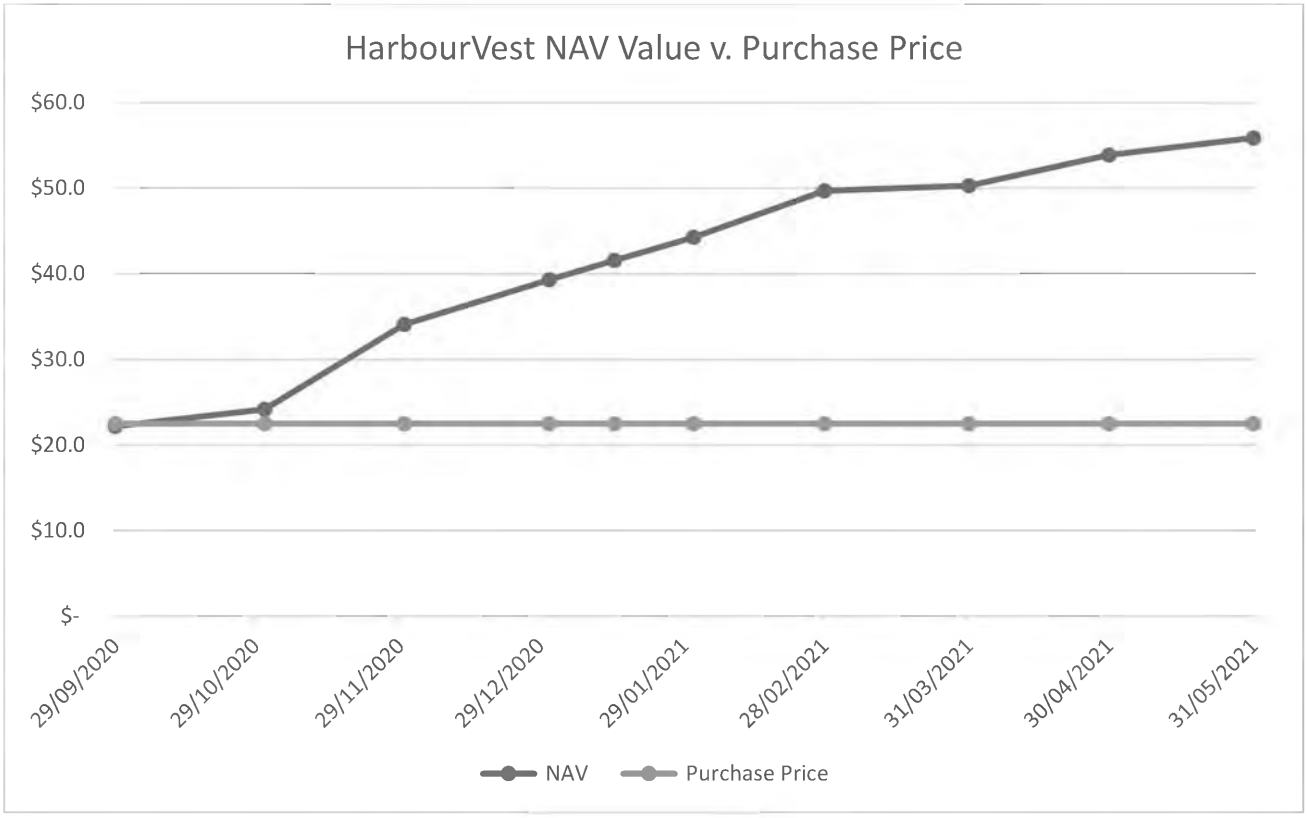
Notable notations/disclosures in the Jan. 31, 2021 MOR include:

- Class 8 claims totaled $267 million, a jump from $74 million in the prior month's MOR
- The MOR stated that no Class 9 recovery was expected, which was based on the then existing $267 million in Class 8 Claims.
- Currently, there are roughly $310 million of Allowed Class 8 Claims.

[3] [Doc. 2030] Filed on March 15, 2021, the last publicly disclosed information regarding the value of assets in the estate.

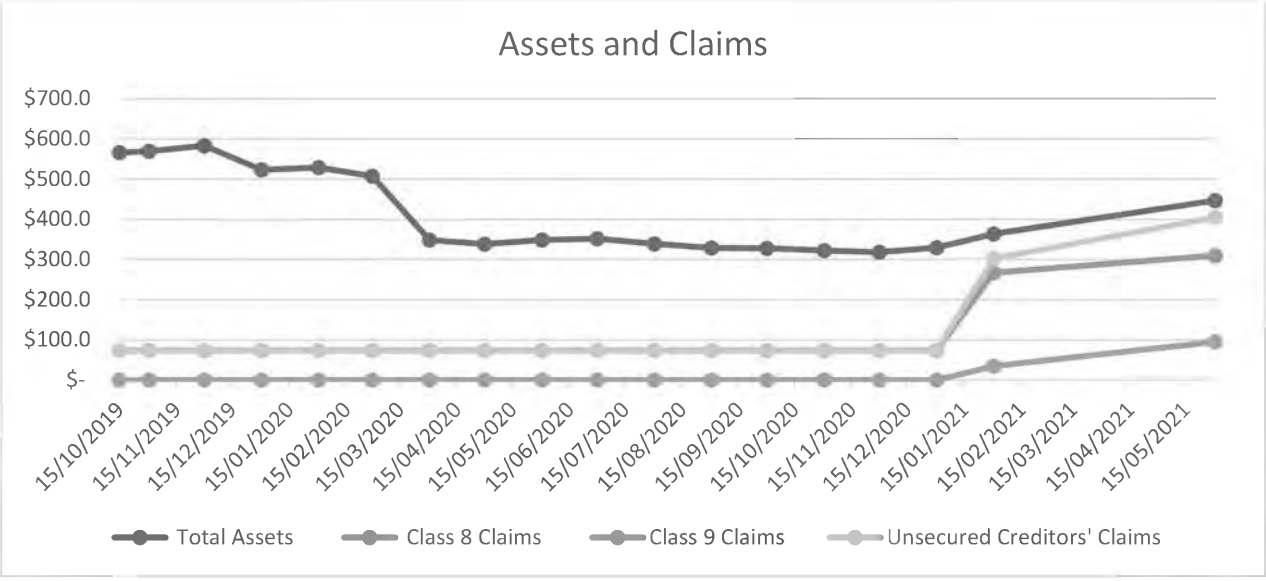
Value of HarbourVest Claim





Estate Value as of August 1, 2021 (in millions)[4]

Asset	Low	High
Cash as of 6/30/2021	$17.9	$17.9
Targa Sale	$37.0	$37.0
8/1 CLO Flows	$10.0	$10.0
Uchi Bldg. Sale	$9.0	$9.0
Siepe Sale	$3.5	$3.5
PetroCap Sale	$3.2	$3.2
HarbourVest trapped cash	$25.0	$25.0
Total Cash	**$105.6**	**$105.6**
Trussway	$180.0	$180.0
Cornerstone (125mm; 16%)	$18.0	$18.0
HarbourVest CLOs	$40.0	$40.0
CCS Medical (in CLOs and Highland Restoration)	$20.0	$20.0
MGM (direct ownership)	$32.0	$32.0
Multi-Strat (45% of 100mm; MGM; CCS)	$45.0	$45.0
Korea Fund	$18.0	$18.0
Celtic (in Credit-Strat)	$12.0	$40.0
SE Multifamily	$0.0	$20.0
Affiliate Notes	$0.0	$70.0
Other	$2.0	$10.0
TOTAL	**$472.6**	**$598.6**



[4] Values are based upon historical knowledge of the Debtor's assets (including cross-holdings) and publicly filed information.

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Counsel for the Debtor and Debtor-in-Possession

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	

DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154) AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

[1] The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession ("Highland" or the "Debtor"), files this motion (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement agreement (the "Settlement Agreement"),[2] a copy of which is attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* being filed simultaneously with this Motion ("Morris Dec."), that, among other things, fully and finally resolves the proofs of claim filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, "HarbourVest"). In support of this Motion, the Debtor represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code"), and Rule 9019 of the Bankruptcy Rules.

[2] All capitalized terms used but not defined herein shall have the meanings given to them in the Settlement Agreement.

RELEVANT BACKGROUND

A. Procedural Background

3. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

4. On October 29, 2019, the official committee of unsecured creditors (the "Committee") was appointed by the U.S. Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's case to this Court [Docket No. 186].[3]

6. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

7. In connection with the Settlement Order, an independent board of directors was constituted at the Debtor's general partner, Strand Advisors, Inc., and certain operating protocols were instituted.

8. On July 16, 2020, this Court entered an order appointing James P. Seery, Jr., as the Debtor's chief executive officer and chief restructuring officer [Docket No. 854].

9. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

[3] All docket numbers refer to the docket maintained by this Court.

B. Overview of HarbourVest's Claims

10. HarbourVest's claims against the Debtor's estate arise from its $80 million investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. ("HCLOF"), pursuant to which HarbourVest obtained a 49 percent interest in HCLOF (the "Investment").

11. In brief, HarbourVest contends that it was fraudulently induced into entering into the Investment based on the Debtor's misrepresentations and omissions concerning certain material facts, including that the Debtor: (1) failed to disclose that it never intended to pay an arbitration award obtained by a former portfolio manager, (2) failed to disclose that it engaged in a series of fraudulent transfers for the purpose of preventing the former portfolio manager from collecting on his arbitration award and misrepresented the reasons changing the portfolio manager for HCLOF immediately prior to the Investment, (3) indicated that the dispute with the former portfolio manager would not impact investment activities, and (4) expressed confidence in the ability of HCLOF to reset or redeem the collateralized loan obligations ("CLOs") under its control.

12. HarbourVest seeks to rescind its Investment and claims damages in excess of $300 million based on theories of fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, and breach of fiduciary duty (under Guernsey law), and on alleged violations of state securities laws and the Racketeer Influenced Corrupt Organization Act ("RICO").

13. HarbourVest's allegations are summarized below.[4]

[4] Solely for purposes of this Motion, and not for any other reason, the facts set forth herein are adopted largely from the *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "Response").

C. Summary of HarbourVest's Factual Allegations

14. At the time HarbourVest made its Investment, the Debtor was embroiled in an arbitration against Joshua Terry ("Mr. Terry"), a former employee of the Debtor and limited partner of Acis Capital Management, L.P. ("Acis LP"). Through Acis LP, Mr. Terry managed Highland's CLO business, including CLO-related investments held by Acis Loan Funding, Ltd. ("Acis Funding").

15. The litigation between Mr. Terry and the Debtor began in 2016, after the Debtor terminated Mr. Terry and commenced an action against him in Texas state court. Mr. Terry asserted counterclaims for wrongful termination and for the wrongful taking of his ownership interest in Acis LP and subsequently had certain claims referred to arbitration where he obtained an award of approximately $8 million (the "Arbitration Award") on October 20, 2017.

16. HarbourVest alleges that the Debtor responded to the Arbitration Award by engaging in a series of fraudulent transfers and corporate restructurings, the true purposes of which were fraudulently concealed from HarbourVest.

17. For example, according to HarbourVest, the Debtor changed the name of the target fund from Acis Funding to "Highland CLO Funding, Ltd." ("HCLOF") and "swapped out" Acis LP for Highland HCF Advisor, Ltd. as portfolio manager (the "Structural Changes"). The Debtor allegedly told HarbourVest that it made these changes because of the "reputational harm" to Acis LP resulting from the Arbitration Award. The Debtor further told HarbourVest that in lieu of redemptions, resetting the CLOs was necessary, and that it would be easier to reset them under the "Highland" CLO brand instead of the Acis CLO brand.

18. In addition, HarbourVest also alleges that the Debtor had no intention of allowing Mr. Terry to collect on his Arbitration Award, and orchestrated a scheme to "denude"

Acis of assets by fraudulently transferring virtually all of its assets and attempting to transfer its profitable portfolio management contracts to non-Acis, Debtor-related entities.

19. Unaware of the fraudulent transfers or the true purposes of the Structural Changes, and in reliance on representations made by the Debtor, HarbourVest closed on its Investment in HCLOF on November 15, 2017.

20. After discovering the transfers that occurred between Highland and Acis between October and December 2017 following the Arbitration Award (the "Transfers"), on January 24, 2018, Terry moved for a temporary restraining order (the "TRO") from the Texas state court on the grounds that the Transfers were pursued for the purpose of rendering Acis LP judgment-proof. The state court granted the TRO, enjoining the Debtor from transferring any CLO management contracts or other assets away from Acis LP.

21. On January 30, 2018, Mr. Terry filed involuntary bankruptcy petitions against Acis LP and its general partner, Acis Capital Management GP, LLC. *See In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018) and *In re Acis Capital Management GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018) (collectively, the "Acis Bankruptcy Case"). The Bankruptcy Court overruled the Debtor's objection, granted the involuntary petitions, and appointed a chapter 11 trustee (the "Acis Trustee"). A long sequence of events subsequently transpired, all of which relate to HarbourVest's claims, including:

- On May 31, 2018, the Court issued a *sua sponte* TRO preventing any actions in furtherance of the optional redemptions or other liquidation of the Acis CLOs.
- On June 14, 2018, HCLOF withdrew optional redemption notices.
- The TRO expired on June 15, 2018, and HCLOF noticed the Acis Trustee that it was requesting an optional redemption.

- HCLOF's request was withdrawn on July 6, 2018, and on June 21, 2018, the Acis Trustee sought an injunction preventing Highland/HCLOF from seeking further redemptions (the "Preliminary Injunction").

- The Court granted the Preliminary Injunction on July 10, 2018, pending the Acis Trustee's attempts to confirm a plan or resolve the Acis Bankruptcy.

- On August 30, 2018, the Court denied confirmation of the First Amended Joint Plan for Acis, and held that the Preliminary Injunction must stay in place on the ground that the "evidence thus far has been compelling that numerous transfers after the Josh Terry judgment denuded Acis of value."

- After the Debtor made various statements implicating HarbourVest in the Transfers, the Acis Trustee investigated HarbourVest's involvement in such Transfers, including extensive discovery and taking a 30(b)(6) deposition of HarbourVest's managing director, Michael Pugatch, on November 17, 2018.

- On March 20, 2019, HCLOF sent a letter to Acis LP stating that it was not interested in pursuing, or able to pursue, a CLO reset transaction.

D. The Parties' Pleadings and Positions Concerning HarbourVest's Proofs of Claim

22. On April 8, 2020, HarbourVest filed proofs of claim against Highland that were subsequently denoted by the Debtor's claims agents as claim numbers 143, 147, 149, 150, 153, and 154, respectively (collectively, the "Proofs of Claim"). Morris Dec. Exhibits 2-7.

23. The Proofs of Claim assert, among other things, that HarbourVest suffered significant harm due to conduct undertaken by the Debtor and the Debtor's employees, including "financial harm resulting from (i) court orders in the Acis Bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise relegated the activity of HCLOF [*i.e.*, the Preliminary Injunction]; and (ii) significant fees and expenses related to the Acis Bankruptcy that were charged to HCLOF." *See, e.g.*, Morris Dec. Exhibit 2 ¶3.

24. HarbourVest also asserted "any and all of its right to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the forgoing harm, including for any amounts due or owed under the various

agreements with the Debtor in connection with relating to" the Operative Documents "and any and all legal and equitable claims or causes of action relating to the forgoing harm." *See, e.g.*, Morris Dec. Exhibit 2 ¶4.

25. Highland subsequently objected to HarbourVest's Proofs of Claim on the grounds that they were no-liability claims. [Docket No. 906] (the "Claim Objection").

26. On September 11, 2020, HarbourVest filed its Response. The Response articulated specified claims under U.S. federal and state and Guernsey law, including claims for fraud, fraudulent concealment, fraudulent inducement, fraudulent misrepresentation, negligent misrepresentation (collectively, the "Fraud Claims"), U.S. State and Federal Securities Law Claims (the "Securities Claims"), violations of the Federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), breach of fiduciary duty and misuse of fund assets, and an unfair prejudice claim under Guernsey law (collectively, with the Proofs of Claim, the "HarbourVest Claims").

27. On October 18, 2020, HarbourVest filed its *Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the "3018 Motion"). In its 3018 Motion, HarbourVest sought for its Claims to be temporarily allowed for voting purposes in the amount of more than $300 million (based largely on a theory of treble damages).

E. Settlement Discussions

28. In October, the parties discussed the possibility of resolving the Rule 3018 Motion.

29. In November, the parties broadened the discussions in an attempt to reach a global resolution of the HarbourVest Claims. In the pursuit thereof, the parties and their

counsel participated in several conference calls where they engaged in a spirited exchange of perspectives concerning the facts and the law.

30. During follow up meetings, the parties' interests became more defined. Specifically, HarbourVest sought to maximize its recovery while fully extracting itself from the Investment, while the Debtor sought to minimize the HarbourVest Claims consistent with its perceptions of the facts and law.

31. After the parties' interests became more defined, the principals engaged in a series of direct, arm's-length, telephonic negotiations that ultimately lead to the settlement, whose terms are summarized below.

F. Summary of Settlement Terms

32. The Settlement Agreement contains the following material terms, among others:

- HarbourVest shall transfer its entire interest in HCLOF to an entity to be designated by the Debtor;[5]
- HarbourVest shall receive an allowed, general unsecured, non-priority claim in the amount of $45 million and shall vote its Class 8 claim in that amount to support the Plan;
- HarbourVest shall receive a subordinated, allowed, general unsecured, non-priority claim in the amount of $35 million and shall vote its Class 9 claim in that amount to support the Plan;
- HarbourVest will support confirmation of the Debtor's Plan, including, but not limited to, voting its claims in support of the Plan;
- The HarbourVest Claims shall be allowed in the aggregate amount of $45 million for voting purposes;
- HarbourVest will support the Debtor's pursuit of its pending Plan of Reorganization; and
- The parties shall exchange mutual releases.

[5] The NAV for HarbourVest's 49.98% interest in HCLOF was estimated to be approximately $22 million as of December 1, 2020.

See generally Morris Dec. Exhibit 1.

BASIS FOR RELIEF REQUESTED

33. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

> On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

34. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, "approval of a compromise is within the sound discretion of the bankruptcy court." *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

35. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test, "with a focus on comparing 'the terms of the compromise with the rewards of litigation.'" *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*, 624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: "(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any

attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise." *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider "the paramount interest of creditors with proper deference to their reasonable views." *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the "extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

36. There is ample basis to approve the proposed Settlement Agreement based on the Rule 9019 factors set forth by the Fifth Circuit.

37. First, although the Debtor believes that it has valid defenses to the HarbourVest Claims, there is no guarantee that the Debtor would succeed in its litigation with HarbourVest. Indeed, to establish its defenses, the Debtor would be required to rely, at least in part, on the credibility of witnesses whose veracity has already been called into question by this Court. Moreover, it will be difficult to dispute that the Transfers precipitated the Acis Bankruptcy, and, ultimately, the imposition of the Bankruptcy Court's TRO that restricted HCLOF's ability to reset or redeem the CLOs and that is at the core of the HarbourVest Claims.

38. The second factor—the complexity, duration, and costs of litigation—also weighs heavily in favor of approving the Settlement Agreement. As this Court is aware, the events forming the basis of the HarbourVest Claims—including the Terry Litigation and Acis Bankruptcy—proceeded *for years* in this Court and in multiple other forums, and has already cost the Debtor's estate millions of dollars in legal fees. If the Settlement Agreement is not approved, then the parties will expend significant resources litigating a host of fact-intensive

issues including, among other things, the substance and materiality of the Debtor's alleged fraudulent statements and omissions and whether HarbourVest reasonably relied on those statements and omissions.

39. Third, approval of the Settlement Agreement is justified by the paramount interest of creditors. Specifically, the settlement will enable the Debtor to: (a) avoid incurring substantial litigation costs; (b) avoid the litigation risk associated with HarbourVest's $300 million claim; and (c) through the plan support provisions, increase the likelihood that the Debtor's pending plan of reorganization will be confirmed.

40. Finally, the Settlement Agreement was unquestionably negotiated at arm's-length. The terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and their counsel and represent neither party's "best case scenario." Indeed, the Settlement Agreement should be approved as a rational exercise of the Debtor's business judgment made after due deliberation of the facts and circumstances concerning HarbourVest's Claims.

NO PRIOR REQUEST

41. No previous request for the relief sought herein has been made to this, or any other, Court.

NOTICE

42. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for HarbourVest; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; (d) the Debtor's principal secured parties; (e) counsel to the Committee; and (f) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: December 23, 2020.

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Counsel for the Debtor and Debtor-in-Possession

Exhibit 1

Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of March 30, 2021, by and among (i) Highland Capital Management, L.P. ("HCMLP" or the "Debtor"), (ii) Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) ("Multi-Strat," and together with its general partner and its direct and indirect wholly-owned subsidiaries, the "MSCF Parties"), (iii) Strand Advisors, Inc. ("Strand"), and (iv) UBS Securities LLC and UBS AG London Branch (collectively, "UBS").

Each of HCMLP, the MSCF Parties, Strand, and UBS are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, in 2007, UBS entered into certain contracts with HCMLP and two funds managed by HCMLP—Highland CDO Opportunity Master Fund, L.P. ("CDO Fund") and Highland Special Opportunities Holding Company ("SOHC," and together with CDO Fund, the "Funds") related to a securitization transaction (the "Knox Agreement");

WHEREAS, in 2008, the parties to the Knox Agreement restructured the Knox Agreement;

WHEREAS, UBS terminated the Knox Agreement and, on February 24, 2009, UBS filed a complaint in the Supreme Court of the State of New York, County of New York (the "State Court") against HCMLP and the Funds seeking to recover damages related to the Knox Agreement, in an action captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) (the "2009 Action");

WHEREAS, UBS's lone claim against HCMLP in the 2009 Action for indemnification was dismissed in early 2010, and thereafter UBS amended its complaint in the 2009 Action to add five new defendants, Highland Financial Partners, L.P. ("HFP"), Highland Credit Strategies Master Funds, L.P. ("Credit-Strat"), Highland Crusader Offshore Partners, L.P. ("Crusader"), Multi-Strat, and Strand, and to add new claims for fraudulent inducement, fraudulent conveyance, tortious interference with contract, alter ego, and general partner liability;

WHEREAS, UBS filed a new, separate action against HCMLP on June 28, 2010, for, *inter alia*, fraudulent conveyance and breach of the implied covenant of good faith and fair dealing, captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.) (the "2010 Action");

WHEREAS, in November 2010, the State Court consolidated the 2009 Action and the 2010 Action (hereafter referred to as the "State Court Action"), and on May 11, 2011, UBS filed a Second Amended Complaint in the 2009 Action;

WHEREAS, in 2015, UBS entered into settlement agreements with Crusader and Credit-Strat, and thereafter UBS filed notices with the State Court in the State Court Action dismissing its claims against Crusader and Credit-Strat;

WHEREAS, the State Court bifurcated claims asserted in the State Court Action for purposes of trial, with the Phase I bench trial deciding UBS's breach of contract claims against the Funds and HCMLP's counterclaims against UBS;

WHEREAS, on August 7, 2017, the Funds, along with Highland CDO Opportunity Fund, Ltd., Highland CDO Holding Company, Highland Financial Corp., and HFP, purportedly sold assets with a purported collective fair market value of $105,647,679 (the "Transferred Assets") and purported face value of over $300,000,000 to Sentinel Reinsurance, Ltd. ("Sentinel") pursuant to a purported asset purchase agreement (the "Purchase Agreement");

WHEREAS, Sentinel treated the Transferred Assets as payment for a $25,000,000 premium on a document entitled "Legal Liability Insurance Policy" (the "Insurance Policy");

WHEREAS, the Insurance Policy purports to provide coverage to the Funds for up to $100,000,000 for any legal liability resulting from the State Court Action (the "Insurance Proceeds");

WHEREAS, one of the Transferred Assets CDO Fund transferred to Sentinel was CDO Fund's limited partnership interests in Multi-Strat (the "CDOF Interests");

WHEREAS, Sentinel had also received from HCMLP limited partnership interests in Multi-Strat for certain cash consideration (together with the CDOF Interests, the "MSCF Interests");

WHEREAS, the existence of the Purchase Agreement and Insurance Policy were unknown to Strand's independent directors and the Debtor's bankruptcy advisors prior to late January 2021;

WHEREAS, in early February 2021, the Debtor disclosed the existence of the Purchase Agreement and Insurance Policy to UBS;

WHEREAS, prior to such disclosure, the Purchase Agreement and Insurance Policy were unknown to UBS;

WHEREAS, on November 14, 2019, following the Phase I trial, the State Court issued its decision determining that the Funds breached the Knox Agreement on December 5, 2008 and dismissing HCMLP's counterclaims;

WHEREAS, Sentinel purportedly redeemed the MSCF Interests in November 2019 and the redeemed MSCF Interests are currently valued at approximately $32,823,423.50 (the "Sentinel Redemption");

WHEREAS, on February 10, 2020, the State Court entered a Phase I trial judgment against the Funds in the amount of $1,039,957,799.44 as of January 22, 2020 (the "Phase I Judgment");

WHEREAS, Phase II of the trial of the State Court Action, includes, *inter alia*, UBS's claim for breach of implied covenant of good faith and fair dealing against HCMLP, UBS's

fraudulent transfer claims against HCMLP, HFP, and Multi-Strat, and UBS's general partner claim against Strand;

WHEREAS, on October 16, 2019, HCMLP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Case"). The Bankruptcy Case was transferred to the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") on December 4, 2019;

WHEREAS, Phase II of the trial of the State Court Action was automatically stayed as to HCMLP by HCMLP's bankruptcy filing;

WHEREAS, on May 11, 2020, UBS, Multi-Strat, Highland Credit Opportunities CDO, Ltd., and Highland Credit Opportunities CDO Asset Holdings, L.P. (collectively, the "May Settlement Parties"), entered into a Settlement Agreement (the "May Settlement") pursuant to which the May Settlement Parties agreed to the allocation of the proceeds of certain sales of assets held by Multi-Strat, including escrowing a portion of such funds, and restrictions on Multi-Strat's actions;

WHEREAS, on June 26, 2020, UBS timely filed two substantively identical claims in the Bankruptcy Case: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch (hereinafter collectively referred to as the "UBS Claim"). The UBS Claim asserts a general unsecured claim against HCMLP for $1,039,957,799.40;

WHEREAS, on August 3, 2020, the Bankruptcy Court entered an *Order Directing Mediation* [Docket No. 912] pursuant to which HCMLP, UBS, and several other parties were directed to mediate their Bankruptcy Case disputes before two experienced third-party mediators, Retired Judge Allan Gropper and Sylvia Mayer (together, the "Mediators"). HCMLP and UBS formally met with the Mediators together and separately on numerous occasions, including on August 27, September 2, 3, and 4, and December 17, 2020, and had numerous other informal discussions outside of the presence of the Mediators, in an attempt to resolve the UBS Claim;

WHEREAS, on August 7, 2020, HCMLP filed an objection to the UBS Claim [Docket No. 928]. Also on August 7, 2020, the Redeemer Committee of the Highland Crusader Fund, and Crusader, Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Redeemer Committee"), objected to the UBS Claim [Docket No. 933]. On September 25, 2020, UBS filed its response to these objections [Docket No. 1105];

WHEREAS, on October 16, 2020, HCMLP and the Redeemer Committee each moved for partial summary judgment on the UBS Claim [Docket Nos. 1180 and 1183, respectively], and on November 6, 2020, UBS opposed these motions [Docket No. 1337];

WHEREAS, by Order dated December 9, 2020, the Bankruptcy Court granted, as set forth therein, the motions for partial summary judgment filed by HCMLP and the Redeemer Committee and denied UBS's request for leave to file an amended proof of claim [Docket No. 1526];

WHEREAS, on November 6, 2020, UBS filed *UBS's Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Docket No. 1338] (the "3018 Motion"), and on November 16, 2020, HCMLP and the Redeemer Committee each opposed the 3018 Motion [Docket Nos. 1404 and 1409, respectively];

WHEREAS, by Order dated December 8, 2020, the Bankruptcy Court granted the 3018 Motion and allowed the UBS Claim, on a temporary basis and for voting purposes only, in the amount of $94,761,076 [Docket No. 1518];

WHEREAS, on January 22, 2021, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, and as may be further amended, supplemented, or otherwise modified, the "Plan");

WHEREAS, on March 29, 2021, the Debtor caused CDO Fund to make a claim on the Insurance Policy to collect the Insurance Proceeds pursuant to the Phase I Judgment;

WHEREAS, on March 29, 2021, UBS filed an adversary proceeding seeking injunctive relief and a motion for a temporary restraining order and preliminary injunction to, among other things, enjoin the Debtor from allowing Multi-Strat to distribute the Sentinel Redemption to Sentinel or any transferee of Sentinel (the "Multi-Strat Proceeding"), which relief the Debtor, in its capacity as Multi-Strat's investment manager and general partner, does not oppose;

WHEREAS, the Parties wish to enter into this Agreement to settle all claims and disputes between and among them, to the extent and on the terms and conditions set forth herein, and to exchange the mutual releases set forth herein, without any admission of fault, liability, or wrongdoing on the part of any Party; and

WHEREAS, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Rule 9019") and section 363 of the Bankruptcy Code;

NOW THEREFORE, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Settlement of Claims. In full and complete satisfaction of the UBS Released Claims (as defined below):

(a) The UBS Claim will be allowed as (i) a single, general unsecured claim in the amount of $65,000,000 against HCMLP, which shall be treated as a Class 8 General Unsecured Claim under the Plan;[1] and (ii) a single, subordinated unsecured claim in the amount of $60,000,000 against HCMLP, which shall be treated as a Class 9 Subordinated General Unsecured Claim under the Plan.

[1] Capitalized terms used but not defined herein shall have the meanings attributed to them in the Plan.

(b) Multi-Strat will pay UBS the sum of $18,500,000 (the "Multi-Strat Payment") as follows: (i) within two (2) business days after the Order Date, the May Settlement Parties will submit a Joint Release Instruction (as defined in the May Settlement) for the release of the amounts held in the Escrow Account (as defined in the May Settlement) to be paid to UBS in partial satisfaction of the Multi-Strat Payment on the date that is ten (10) business days following the Order Date; and (ii) Multi-Strat will pay UBS the remainder of the Multi-Strat Payment in immediately available funds on the date that is ten (10) business days following the Order Date, provided that, for the avoidance of doubt, the amounts held in the Escrow Account will not be paid to UBS until and unless the remainder of the Multi-Strat Payment is made.

(c) Subject to applicable law, HCMLP will use reasonable efforts to (i) cause CDO Fund to pay the Insurance Proceeds in full to UBS as soon as practicable, but no later than within 5 business days of CDO Fund actually receiving the Insurance Proceeds from or on behalf of Sentinel; (ii) if Sentinel refuses to pay the Insurance Proceeds, take legal action reasonably designed to recover the Insurance Proceeds or the MSCF Interests or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment and in addition shall provide reasonable assistance to UBS in connection with any legal action UBS takes to recover the Insurance Proceeds or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment or obtain rights to the MSCF interests, including but not limited to the redemption payments in connection with the MSCF Interests; (iii) cooperate with UBS and participate (as applicable) in the investigation or prosecution of claims or requests for injunctive relief against the Funds, Multi-Strat, Sentinel, James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, Transferred Assets, the transfer of the MSCF Interests, or any potentially fraudulent transfer of assets from the Funds to Sentinel, excluding the individuals listed on the schedule provided to UBS on March 25, 2021 (the "HCMLP Excluded Employees"); (iv) as soon as reasonably practicable, provide UBS with all business and trustee contacts at the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, if any, that are actually known by the Debtor after reasonable inquiry; (v) as soon as reasonably practicable, provide UBS with a copy of the governing documents, prospectuses, and indenture agreements for the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, as applicable, that are in the Debtor's actual possession, custody, or control, (vi) as soon as reasonably practicable, provide, to the extent possible, any CUSIP numbers of the securities of the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd., as applicable, including information regarding the location and amount of any cash related to those entities' holdings, in each case only to the extent actually known by the Debtor after reasonable inquiry; (vii) cooperate with UBS to assign or convey any such assets described in Section 1(c)(vi) or any other assets owned or controlled by the Funds and/or HFP, including for avoidance of doubt any additional assets currently unknown to the Debtor that the Debtor discovers in the future after the Agreement Effective Date; (viii) respond as promptly as reasonably possible to requests by UBS for access to relevant documents and approve as promptly as reasonably possible requests for access to relevant documents from third parties as needed with respect to the Transferred Assets, the Purchase Agreement, the Insurance Policy, the

MSCF Interests and any other assets currently or formerly held by the Funds or HFP, including without limitation the requests listed in **Appendix A** (provided, however, that the provision of any such documents or access will be subject to the common interest privilege and will not constitute a waiver of any attorney-client or other privilege in favor of HCMLP) that are in the Debtor's actual possession, custody, or control; (ix) preserve all documents in HCMLP's possession, custody, or control regarding or relating to the Purchase Agreement, the Insurance Policy, the MSCF Interests, or any transfer of assets from the Funds to Sentinel, including but not limited to the documents requested in Appendix A, from 2016 to present, and issue a litigation hold to all individuals deemed reasonably necessary regarding the same; and (x) otherwise use reasonable efforts to assist UBS to collect its Phase I Judgment against the Funds and HFP and assets the Funds and/or HFP may own, or have a claim to under applicable law ahead of all other creditors of the Funds and HFP; provided, however, that, from and after the date hereof, HCMLP shall not be required to incur any out-of-pocket fees or expenses, including, but not limited to, those fees and expenses for outside consultants and professionals (the "Reimbursable Expenses"), in connection with any provision of this Section 1(c) in excess of $3,000,000 (the "Expense Cap"), and provided further that, for every dollar UBS recovers from the Funds (other than the assets related to Greenbriar CLO Ltd. or Greenbriar CLO Corp.), Sentinel, Multi-Strat (other than the amounts set forth in Section 1(b) hereof), or any other person or entity described in Section 1(c)(iii) in connection with any claims UBS has that arise out of or relate to the Phase I Judgment, the Purchase Agreement, the Insurance Policy, the Transferred Assets, the MSCF Interests, or the Insurance Proceeds (the "UBS Recovery"), UBS will reimburse HCMLP ten percent of the UBS Recovery for the Reimbursable Expenses incurred by HCMLP, subject to: (1) the occurrence of the Agreement Effective Date and (2) UBS's receipt and review of invoices and time records (which may be redacted as reasonably necessary) for outside consultants and professionals in connection with such efforts described in this Section 1(c), up to but not exceeding the Expense Cap after any disputes regarding the Reimbursable Expenses have been resolved pursuant to procedures to be agreed upon, or absent an agreement, in a manner directed by the Bankruptcy Court; and provided further that in any proceeding over the reasonableness of the Reimbursable Expenses, the losing party shall be obligated to pay the reasonable fees and expenses of the prevailing party; and provided further that any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c) shall be conducted in consultation with UBS, including but not limited to the selection of necessary outside consultants and professionals to assist in such litigation; and provided further that UBS shall have the right to approve HCMLP's selection of outside consultants and professionals to assist in any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c).

(d) Redeemer Appeal.

(i) On the Agreement Effective Date, provided that neither the Redeemer Committee nor any entities acting on its behalf or with any assistance from or coordination with the Redeemer Committee have objected to this Agreement or the 9019 Motion (as defined below), UBS shall withdraw with prejudice its appeal of the *Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Docket No. 1273] (the "Redeemer Appeal"); and

(ii) The Parties have stipulated to extend the deadline for the filing of any briefs in the Redeemer Appeal to June 30, 2021 and will agree to such further extensions as necessary to facilitate this Settlement Agreement.

(e) As of the Agreement Effective Date, the restrictions and obligations set forth in the May Settlement, other than those in Section 7 thereof, shall be extinguished in their entirety and be of no further force or effect.

(f) On the Agreement Effective Date, the Debtor shall instruct the claims agent in the Bankruptcy Case to adjust the claims register in accordance with this Agreement.

(g) On the Agreement Effective Date, any claim the Debtor may have against Sentinel or any other party, and any recovery related thereto, with respect to the MSCF Interests shall be automatically transferred to UBS, without any further action required by the Debtor. For the avoidance of doubt, the Debtor shall retain any and all other claims it may have against Sentinel or any other party, and the recovery related thereto, unrelated to the MSCF Interests.

2. Definitions.

(a) "Agreement Effective Date" shall mean the date the full amount of the Multi-Strat Payment defined in Section 1(b) above, including without limitation the amounts held in the Escrow Account (as defined in the May Settlement), is actually paid to UBS.

(b) "HCMLP Parties" shall mean (a) HCMLP, in its individual capacity; (b) HCMLP, as manager of Multi-Strat; and (c) Strand.

(c) "Order Date" shall mean the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019 and section 363 of the Bankruptcy Code.

(d) "UBS Parties" shall mean UBS Securities LLC and UBS AG London Branch.

3. Releases.

(a) UBS Releases. Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the UBS Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue (A) the HCMLP Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, and (B) the MSCF Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known

or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "UBS Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to (1) the obligations of the HCMLP Parties and MSCF Parties under this Agreement, including without limitation the allowance of or distributions on account of the UBS Claim or the settlement terms described in Sections 1(a)-(g) above; (2) the Funds or HFP, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy, or such prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy by UBS; (3) James Dondero or Mark Okada, or any entities, including without limitation Hunter Mountain Investment Trust, Dugaboy Investment Trust, and NexBank, SSB, owned or controlled by either of them, other than the HCMLP Parties and MSCF Parties (but for the avoidance of doubt, such releases of the HCMLP Parties and MSCF Parties shall be solely with respect to such entities and shall not extend in any way to James Dondero or Mark Okada in their individual capacity or in any other capacity, including but not limited to as an investor, officer, trustee, or director in the HCMLP Parties or MSCF Parties); (4) Sentinel or its subsidiaries, parents, affiliates, successors, designees, assigns, employees, or directors, including James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, MSCF Interests, or Transferred Assets, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, the MSCF Interests, any potentially fraudulent transfer of assets from the Funds to Sentinel and/or Insurance Policy, excluding the HCMLP Excluded Employees; (5) the economic rights or interests of UBS in its capacity as an investor, directly or indirectly (including in its capacity as an investment manager and/or investment advisor), in any HCMLP-affiliated entity, including without limitation in the Redeemer Committee and Credit Strat, and/or in such entities' past, present or future subsidiaries and feeders funds (the "UBS Unrelated Investments"); and (6) any actions taken by UBS against any person or entity, including any HCMLP Party or MSCF Party, to enjoin a distribution on the Sentinel Redemption or the transfer of any assets currently held by or within the control of CDO Fund to Sentinel or a subsequent transferee or to seek to compel any action that only such person or entity has standing to pursue or authorize in order to permit UBS to recover the Insurance Proceeds, Transferred Assets, the Phase I Judgment or any recovery against HFP; provided, however, that, from and after the date hereof, any out-of-pocket fees or expenses incurred by HCMLP in connection with this Section 3(a)(6) will be considered Reimbursable Expenses and shall be subject to, and applied against, the Expense Cap as if they were incurred by HCMLP pursuant to Section 1(c) subject to the occurrence of the Agreement Effective Date and after any disputes regarding such Reimbursable Expenses have been resolved in the manner described in Section 1(c).

(b) **HCMLP Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the HCMLP Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of

their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "HCMLP Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement; and (b) the obligations of the UBS Parties in connection with the UBS Unrelated Investments.

(c) **Multi-Strat Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the MSCF Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "Multi-Strat Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement.

4. **No Third Party Beneficiaries.** Except for the parties released by this Agreement, no other person or entity shall be deemed a third-party beneficiary of this Agreement.

5. **UBS Covenant Not to Sue.** Subject to the occurrence of the Agreement Effective date, if UBS ever controls any HCMLP-affiliated defendant in the State Court Action by virtue of the prosecution, enforcement, or collection of the Phase I Judgment (collectively, the "Controlled State Court Defendants"), UBS covenants on behalf of itself and the Controlled State Court Defendants, if any, that neither UBS nor the Controlled State Court Defendants will assert or pursue any claims that any Controlled State Court Defendant has or may have against any of the HCMLP Parties; provided, however, that nothing shall prohibit UBS or a Controlled State Court Defendant from taking any of the actions set forth in Section 3(a)(1)-(6); provided further, however, if and to the extent UBS receives any distribution from any Controlled State Court Defendant that is derived from a claim by a Controlled State Court Defendant against the Debtor, subject to the exceptions set forth in Section 3(a), which distribution is directly

attributable to any property the Controlled State Court Defendant receives from the Debtor and separate and distinct from property owned or controlled by CDO Fund, SOHC, or Multi-Strat, then such recovery shall be credited against all amounts due from the Debtor's estate on account of the UBS Claim allowed pursuant to Section 1(a) of this Agreement, or if such claim has been paid in full, shall be promptly turned over to the Debtor or its successors or assigns.

6. Agreement Subject to Bankruptcy Court Approval.

(a) The force and effect of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement and the releases herein by the Bankruptcy Court. The Parties agree to use reasonable efforts to have this Agreement expeditiously approved by the Bankruptcy Court by cooperating in the preparation and prosecution of a mutually agreeable motion and proposed order (the "9019 Motion") to be filed by the Debtor no later than five business days after execution of this Agreement by all Parties unless an extension is agreed to by both parties.

7. Representations and Warranties.

(a) Each UBS Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the UBS Released Claims and has not sold, transferred, or assigned any UBS Released Claim to any other person or entity, and (ii) no person or entity other than such UBS Party has been, is, or will be authorized to bring, pursue, or enforce any UBS Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such UBS Party.

(b) Each HCMLP Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HCMLP Released Claims and has not sold, transferred, or assigned any HCMLP Released Claim to any other person or entity, and (ii) no person or entity other than such HCMLP Party has been, is, or will be authorized to bring, pursue, or enforce any HCMLP Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such HCMLP Party.

(c) Each MSCF Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the Multi-Strat Released Claims and has not sold, transferred, or assigned any Multi-Strat Released Claim to any other person or entity, and (ii) no person or entity other than such MSCF Party has been, is, or will be authorized to bring, pursue, or enforce any Multi-Strat Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such MSCF Party.

8. **No Admission of Liability**. The Parties acknowledge that there is a bona fide dispute with respect to the UBS Claim. Nothing in this Agreement shall be construed, expressly or by implication, as an admission of liability, fault, or wrongdoing by HCMLP, the MSCF Parties, Strand, UBS, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of HCMLP, the MSCF Parties, Strand, UBS, or any other person.

9. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their representatives, successors, and assigns.

10. **Notice**. Each notice and other communication hereunder shall be in writing and will, unless otherwise subsequently directed in writing, be delivered by email and overnight delivery, as set forth below, and will be deemed to have been given on the date following such mailing.

HCMLP Parties or the MSCF Parties

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Telephone No.: 972-628-4100
E-mail: notices@HighlandCapital.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP
Attention: Jeffrey Pomerantz, Esq.
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone No.: 310-277-6910
E-mail: jpomerantz@pszjlaw.com

UBS

UBS Securities LLC
UBS AG London Branch
Attention: Elizabeth Kozlowski, Executive Director and Counsel
1285 Avenue of the Americas
New York, NY 10019
Telephone No.: 212-713-9007
E-mail: elizabeth.kozlowski@ubs.com

UBS Securities LLC
UBS AG London Branch
Attention: John Lantz, Executive Director
1285 Avenue of the Americas
New York, NY 10019

Telephone No.: 212-713-1371
E-mail: john.lantz@ubs.com

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP
Attention: Andrew Clubok
Sarah Tomkowiak
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004-1304
Telephone No.: 202-637-3323
Email: andrew.clubok@lw.com
sarah.tomkowiak@lw.com

11. **Advice of Counsel**. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

12. **Entire Agreement**. This Agreement contains the entire agreement and understanding concerning the subject matter of this Agreement, and supersedes and replaces all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation, or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation, or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

13. **No Party Deemed Drafter**. The Parties acknowledge that the terms of this Agreement are contractual and are the result of arm's-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

14. **Future Cooperation**. The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

15. **Counterparts**. This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement.

Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

16. Governing Law; Venue; Attorneys' Fees and Costs. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of New York without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan, New York, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

[Remainder of Page Intentionally Blank]

IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: James P. Seery, Jr.
Its: Authorized Signatory

HIGHLAND MULTI STRATEGY CREDIT FUND, L.P. (f/k/a Highland Credit Opportunities CDO, L.P.)

By: _____
Name: James P. Seery, Jr
Its: Authorized Signatory

HIGHLAND CREDIT OPPORTUNITIES CDO, Ltd.

By: _____
Name: James P. Seery, Jr
Its: Authorized Signatory

HIGHLAND CREDIT OPPORTUNITIES CDO ASSET HOLDINGS, L.P.

By: _____
Name: James P. Seery, Jr
Its: Authorized Signatory

STRAND ADVISORS, INC.

By: _____
Name: James P. Seery, Jr.
Its: Authorized Signatory

EXECUTION VERSION

UBS SECURITIES LLC

By: _____
Name: John Lantz
Its: Authorized Signatory

By: _____
Name: Elizabeth Kozlowski
Its: Authorized Signatory

UBS AG LONDON BRANCH

By: _____
Name: William Chandler
Its: Authorized Signatory

By: _____
Name: Elizabeth Kozlowski
Its: Authorized Signatory

EXECUTION VERSION

APPENDIX A

- The search parameters (custodians, date ranges, search terms) used to locate the documents produced to UBS on February 27, 2021 (and any additional parameters used for the previous requests from UBS);
- Identity of counsel to, and trustees of, CDO Fund or SOHC;
- Current or last effective investment manager agreements for CDO Fund and SOHC, including any management fee schedule, and any documentation regarding the termination of those agreements;
- The tax returns for the CDO Fund and SOHC from 2017-present;
- Communications between any employees of Sentinel (or its affiliates) and any employees of the HCMLP Parties, CDO Fund, SOHC, or any of Dondero, Leventon, or Ellington from 2017-present;
- Documents or communications regarding or relating to the Purchase Agreement, Insurance Policy, or June 30, 2018 Memorandum entitled "Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets" (the "Tax Memo"), including without limitation (i) amendments to these documents, (ii) transfer of assets pursuant to these documents, (iii) board minutes or resolutions regarding or relating to these documents, (iv) claims made on the Insurance Policy; (v) communications with the IRS regarding the asset transfer pursuant to these documents; and (vi) any similar asset purchase agreements, capital transfer agreements, or similar agreements;
- Documents or communications regarding or relating to the value of any assets transferred pursuant to the Insurance Policy or Purchase Agreement, including without limitation those assets listed in Schedule A to the Purchase Agreement, from 2017 to present, including documentation supporting the $105,647,679 value of those assets as listed in the Tax Memo;
- Documents showing the organizational structure of Sentinel and its affiliated entities, including information on Dondero's relationship to Sentinel;
- Any factual information provided by current or former employees of the HCMLP Parties, CDO Fund, SOHC, or Sentinel regarding or relating to the Purchase Agreement, Insurance Policy, Tax Memo, and/or transfer of assets pursuant to those documents;
- Debtor's settlement agreements with Ellington and Leventon;
- Copies of all prior and future Monthly Reports and Valuation Reports (as defined in the Indenture, dated as of December 20, 2007, among Greenbriar CLO Ltd., Greenbriar CLO Corp., and State Street Bank and Trust Company); and
- Identity of any creditors of CDO Fund, SOHC, or HFP and amount of debts owed to those creditors by CDO Fund, SOHC, or HFP, including without limitation any debts owed to the Debtor.

Hellman & Friedman Seeded Farallon Capital Management

OUR FOUNDER

RETURN TO ABOUT (/ABOUT/)

Warren Hellman: One of the good guys

Warren Hellman was a devoted family man, highly successful businessman, active philanthropist, dedicated musician, arts patron, endurance athlete and all-around good guy. Born in New York City in 1934, he grew up in the Bay Area, graduating from the University of California at Berkeley. After serving in the U.S. Army and attending Harvard Business School, Warren began his finance career at Lehman Brothers, becoming the youngest partner in the firm's history at age 26 and subsequently serving as President. After a distinguished career on Wall Street, Warren moved back west and co-founded Hellman & Friedman, building it into one of the industry's leading private equity firms.

Warren deeply believed in the power of people to accomplish incredible things and used his success to improve and enrich the lives of countless people. Throughout his career, Warren helped found or seed many successful businesses including Matrix Partners, Jordan Management Company, Farallon Capital Management and Hall Capital Partners.

Within the community, Warren and his family were generous supporters of dozens of organizations and causes in the arts, public education, civic life, and public health, including creating and running the San Francisco Free Clinic. Later in life, Warren became an accomplished 5-string banjo player and found great joy in sharing the love of music with others. In true form, he made something larger of this avocation to benefit others by founding the Hardly Strictly Bluegrass Festival, an annual three-day, free music festival that draws hundreds of thousands of people together from around the Bay Area.

An accomplished endurance athlete, Warren regularly completed 100-mile runs, horseback rides and combinations of the two. He also was an avid skier and national caliber master ski racer and served as president of the U.S. Ski Team in the late 1970s, and is credited with helping revitalize the Sugar Bowl ski resort in the California Sierras.

In short, Warren Hellman embodied the ideal of living life to the fullest. He had an active mind and body, and a huge heart. We are lucky to call him our founder. **Read more about Warren. (https://hf.com/wp-content/uploads/2015/09/Warren-Hellman-News-Release.pdf)**

SFChronicle/SFGate/Liz Hafalia

Robert Holmgren

no caption

Hellman & Friedman Owned a Portion of Grosvenor until 2020

GCM GROSVENOR

Grosvenor Capital Management

In 2007, H&F invested in Grosvenor, one of the world's largest and most diversified independent alternative asset management firms. The Company offers comprehensive public and private markets solutions and a broad suite of investment and advisory choices that span hedge funds, private equity, and various credit and specialty strategies. Grosvenor specializes in developing customized investment programs tailored to each client's specific investment goals.

SECTOR

Financial Services

STATUS

Past

www.gcmlp.com (http://www.gcmlp.com)

CORNER OFFICE

GCM Grosvenor to Go Public

Julie Segal

The $57 billion alternatives manager will become a public company after merging with a SPAC backed by Cantor Fitzgerald.

August 03, 2020

Chicago, IL (Tim Boyle/Bloomberg)

In a sign of the times, GCM Grosvenor will become a public company through a SPAC.

The Chicago-based alternative investments firm is planning to go public by merging with a special purpose acquisition company in a deal valued at $2 billion. The 50-year-old firm has $57 billion in assets in private equity, infrastructure, real estate, credit, and absolute return investments.

"We have long valued having external shareholders and we wanted to preserve the accountability and focus that comes with that," Michael Sacks, GCM Grosvenor's chairman and CEO, said in a statement.

GCM Grosvenor will combine with CF Finance Special Acquisition Corp, a SPAC backed by Cantor Fitzgerald, according to an announcement from both companies on Monday. After the company goes public, Sacks will continue to lead GCM Grosvenor, which is owned by management and Hellman & Friedman, a private equity firm. Hellman & Friedman, which has owned a minority stake of the Chicago asset manager since 2007, will sell its equity as

Farallon was a Significant Borrower for Lehman

Case Study – Large Loan Origination

Debt origination for an affiliate of Simon Property Group Inc. and Farallon Capital Management

Date	June 2007
Asset Class	Retail
Asset Size	1,808,506 Sq. Ft.
Sponsor	Simon Property Group Inc. / Farallon Capital Management
Transaction Type	Refinance
Total Debt Amount	Lehman Brothers: $121 million JP Morgan: $200 million

Transaction Overview

- In June 2007, Lehman Brothers co-originated a loan in the aggregate amount of $321 million (Lehman portion: $121 million) with JP Morgan to a special purpose affiliate of a joint venture between Simon Property Group Inc ("Simon") and Farallon Capital Management ("Farallon") secured by the shopping center known as Gurnee Mills Mall (the "Property") located in Gurnee, IL .
- The Property consists of a one-story, 200 store discount mega-mall comprised of 1,808,506 square feet anchored by Burlington Coat Factory, Marshalls, Bed Bath & Beyond and Kohls among other national retailers. Built in 1991, the Property underwent a $5 million interior renovation in addition to a $71 million redevelopment between 2004 and 2005. As of March 2007, the Property had a in-line occupancy of 99.5%.

Lehman Brothers Role

- Simon and Farallon comprised the sponsorship which eventually merged with The Mills Corporation in early 2007 for $25.25 per common share in cash. The total value of the transaction was approximately $1.64 billion for all of the outstanding common stock, and approximately $7.9 billion including assumed debt and preferred equity.
- Lehman and JP Morgan subsequently co-originated $321 million loan at 79.2% LTV based on an appraisal completed in March by Cushman & Wakefield. The Loan was used to refinance the indebtedness secured by the Property.

Sponsorship Overview

- The Mills Corporation, based in Chevy Chase MD is a developer owner and manager of a diversified portfolio of retail destinations including regional shopping malls and entertainment centers. They currently own 38 properties in the United States totaling 47 million square feet.

LEHMAN BROTHERS 32

Mr. Seery Represented Stonehill While at Sidley

James P. Seery, Jr.
John G. Hutchinson
John J. Lavelle
Martin B. Jackson
Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
(212) 839-5300 (tel)
(212) 839-5599 (fax)

Attorneys for the Steering Group

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
BLOCKBUSTER INC., *et al.*,	:	Case No. 10-14997 (BRL)
Debtors.	:	(Jointly Administered)

THE BACKSTOP LENDERS' OBJECTION TO THE MOTION OF LYME REGIS TO ABANDON CERTAIN CAUSES OF ACTION OR, IN THE ALTERNATIVE, TO GRANT STANDING TO LYME REGIS TO PURSUE CLAIMS ON BEHALF OF THE ESTATE

1. The Steering Group of Senior Secured Noteholders who are Backstop Lenders -- Icahn Capital LP, Monarch Alternative Capital LP, Owl Creek Asset Management, L.P., Stonehill Capital Management LLC, and Värde Partners, Inc. (collectively, the "Backstop Lenders") -- hereby file this objection (the "Objection") to the Motion of Lyme Regis Partners, LLC ("Lyme Regis") to Abandon Certain Causes of Action or, in the Alternative, to Grant Standing to Lyme Regis to Pursue Claims on Behalf of the Estate (the "Motion") [Docket No. 593].

Stonehill Founder (Motulsky) and Grosvenor's G.C. (Nesler) Were Law School Classmates

Over 25 years earlier, here is a group at a party. From the left, Bob Zinn, Dave Lowenthal, Rory Little, Joe Nesler, Jon Polonsky (in front of Joe), John Motulsky and Mark Windfeld-Hansen (behind bottle!) Motulsky circulated this photo at the reunion. Thanks John!

Joseph H. Nesler (He/Him)
General Counsel

More Message

Joseph H. Nesler (He/Him) ·

Yale Law School

3rd

General Counsel

Winnetka, Illinois, United States ·

Contact info

500+ connections

Message More

Open to work
Chief Compliance Officer and General Counsel roles
See all details

About

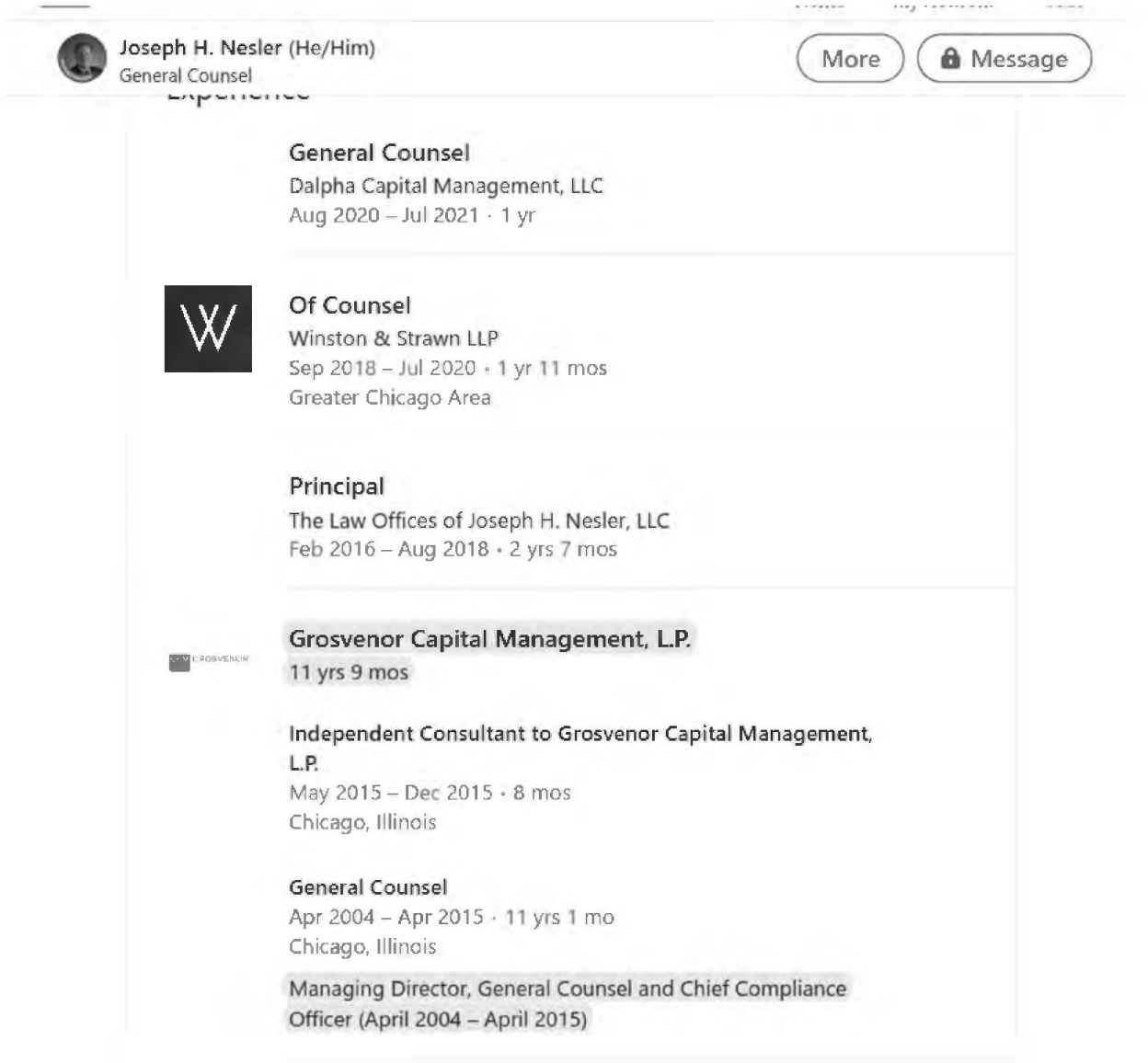
I have over 38 years of experience representing participants in the investment management industry with respect to a wide range of legal and regulatory matters, including SEC, DOL, FINRA, and NFA regulations and examinations. ... see more

Activity

522 followers

Posts Joseph H. created, shared, or commented on in the last 90 days are displayed here.

https://www.linkedin.com/in/josephnesler/



Joseph H. Nesler (He/Him)
General Counsel

More | Message

General Counsel
Dalpha Capital Management, LLC
Aug 2020 – Jul 2021 · 1 yr

Of Counsel
Winston & Strawn LLP
Sep 2018 – Jul 2020 · 1 yr 11 mos
Greater Chicago Area

Principal
The Law Offices of Joseph H. Nesler, LLC
Feb 2016 – Aug 2018 · 2 yrs 7 mos

Grosvenor Capital Management, L.P.
11 yrs 9 mos

Independent Consultant to Grosvenor Capital Management, L.P.
May 2015 – Dec 2015 · 8 mos
Chicago, Illinois

General Counsel
Apr 2004 – Apr 2015 · 11 yrs 1 mo
Chicago, Illinois

Managing Director, General Counsel and Chief Compliance Officer (April 2004 – April 2015)

Investor Communication to Highland Crusader Funds Stakeholders

Alvarez & Marsal
Management, LLC 2029 Ce
Park East Suite 2060
Angeles, CA 9

July 6, 2021

Re: Update & Notice of Distribution

Dear Highland Crusader Funds Stakeholder,

As you know, in October 2020, the Bankruptcy Court approved a settlement of the Redeemer Committee's and the Crusader Funds' claims against Highland Capital Management L.P. ("HCM"), as a result of which the Redeemer Committee was allowed a general unsecured claim of $137,696,610 against HCM and the Crusader Funds were allowed a general unsecured claim of $50,000 against HCM (collectively, the "Claims"). In addition, as part of the settlement, various interests in the Crusader Funds held by HCM and certain of its affiliates are to be extinguished (the "Extinguished Interests"), and the Redeemer Committee and the Crusader Funds received a general release from HCM and a waiver by HCM of any claim to distributions or fees that it might otherwise receive from the Crusader Funds (the "Released Claims" and, collectively with the Extinguished Interests, the "Retained Rights").

A timely appeal of the settlement was taken by UBS (the "UBS Appeal) in the United States District Court for the Northern District of Texas, Dallas Division. However, the Bankruptcy Court subsequently approved a settlement between HCM and UBS, resulting in dismissal of the UBS Appeal with prejudice on June 14, 2021.

On April 30, 2021, the Crusader Funds and the Redeemer Committee consummated the sale of the Claims against HCM and the majority of the remaining investments held by the Crusader Funds to Jessup Holdings LLC ("Jessup") for $78 million in cash, which was paid in full to the Crusader Funds at closing. The sale specifically excluded the Crusader Funds' investment in Cornerstone Healthcare Group Holding Inc. and excluded certain specified provisions of the settlement agreement with HCM (the "Settlement Agreement"), including, but not limited to, the Retained Rights. The sale of the Claims and investments was made with no holdbacks or escrows.

The sale to Jessup resulted from a solicitation of offers to purchase the Claims commenced by Alvarez & Marsal CRF Management LLC ("A&M CRF"), as Investment Manager of the Crusader Funds, in consultation with the Redeemer Committee. Ultimately, the Crusader Funds and the Redeemer Committee entered exclusive negotiations with Jessup, culminating in the sale to Jessup.

A&M CRF, pursuant to the Plan and Scheme and with the approval of House Hanover, the Redeemer Committee and the Board of the Master Fund, now intends to distribute the proceeds from the Jessup transaction ($78 million), net of any applicable tax withholdings and with no reserves for the Extinguished Claims or the Released Claims. In addition, the distribution will include approximately $9.4 million in proceeds that have been redistributed due to the cancellation

and extinguishment of the interests and shares in the Crusader Funds held by HCM, Charitable DAF and Eames in connection with the Settlement Agreement, resulting in a total gross distribution of $87.4 million. Distributions will be based on net asset value as of June 30, 2021.

Please note that A&M CRF intends to make the distributions by wire transfer no later than July 31, 2021. Please confirm your wire instructions on or before **July 20, 2021.** If there are any revisions to your wire information, please use the attached template to provide SEI and A&M CRF your updated information on investor letterhead. This information should be sent on or before **July 20, 2021** to Alvarez & Marsal CRF and SEI at CRFInvestor@alvarezandmarsal.com and AIFS-IS_Crusader@seic.com, respectively.

The wire payments will be made to the investor bank account on file with an effective and record date of July 1, 2021. Should you have any questions, please contact SEI or A&M CRF at the e-mail addresses listed above.

Sincerely,

Alvarez & Marsal CRF Management, LLC

By: _____
Steven Varner
Managing Director

MUNSCH HARDT
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November 3, 2021

Via E-Mail and Federal Express
Ms. Nan R. Eitel
Office of the General Counsel
Executive Office for U.S. Trustees
20 Massachusetts Avenue, NW
8th Floor
Washington, DC 20530
Nan.r.Eitel@usdoj.gov

Re: Highland Capital Management, L.P. Bankruptcy Case
Case No. 19-34054 (SGJ) Bankr. N.D. Tex.

Dear Ms. Eitel:

I am a senior bankruptcy practitioner who has worked closely with Douglas Draper (representing separate, albeit aligned, clients) in the above-referenced Chapter 11 case. I have represented debtors-in-possession on multiple occasions, have served as an adjunct professor of law teaching advanced corporate restructuring, and consider myself not only a bankruptcy expert, but an expert on the practicalities and realities of how estates and cases are administered and, therefore, how they could be manipulated for personal interests. I write to follow up on the letter that Douglas sent to your offices on October 4, 2021, on account of additional information my clients have learned in this matter. So that you understand, my clients in the case are NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P., both of whom are affiliated with and controlled by James Dondero, and I write this letter on their behalf and based on information they have obtained.

I share Douglas' view that serious abuses of the bankruptcy process occurred during the bankruptcy of Texas-headquartered Highland Capital Management, L.P. ("Highland" or the "Debtor") which, left uninvestigated and unaddressed, may represent a systemic issue that I believe would be of concern to your office and within your office's sphere of authority. Those abuses include potential insider trading and breaches of fiduciary duty by those charged with protecting creditors, understated estimations of estate value seemingly designed to benefit insiders and management, gross mistreatment of employees who were key to the bankruptcy process, and ultimately a plan aimed at liquidating an otherwise viable estate, to the detriment of third-party investors in Debtor-managed funds. To be clear, I recognize that the Bankruptcy Court has ruled the way that it has and I am not criticizing the Bankruptcy Court or seeking to attack any of its orders. Rather, as has been and will be shown, the Bankruptcy Court acted on misinformation presented to it, intentional lack of transparency, and manipulation of the facts and circumstances by the fiduciaries of the estate. I therefore wish to add my voice to Douglas' aforementioned letter, provide additional information, encourage your investigation, and offer whatever information or assistance I can.

The abuses here are akin to the type of systemic abuse of process that took place in the bankruptcy of Neiman Marcus (in which a core member of the creditors' committee admittedly attempted to perpetrate a massive fraud on creditors), and which is something that lawmakers should be concerned

about, particularly to the extent that debtor management and creditors' committee members are using the federal bankruptcy process to shield themselves from liability for otherwise harmful, illegal, or fraudulent acts.

BACKGROUND

Highland Capital Management and its Founder, James Dondero

Highland Capital Management, L.P. is an SEC-registered investment advisor co-founded by James Dondero in 1993. A graduate of the University of Virginia with highest honors, Mr. Dondero has over thirty years of experience successfully overseeing investment and business activities across a range of investment platforms. Of note, Mr. Dondero is chiefly responsible for ensuring that Highland weathered the global financial crisis, evolving the firm's focus from high-yield credit to other areas, including real estate, private equity, and alternative investments. Prior to its bankruptcy, Highland served as advisor to a suite of registered funds, including open-end mutual funds, closed-end funds, and an exchange-traded fund.

In addition to managing Highland, Mr. Dondero is a dedicated philanthropist who has actively supported initiatives in education, veterans' affairs, and public policy. He currently serves as a member of the Executive Board of the Southern Methodist University Cox School of Business and sits on the Executive Advisory Council of the George W. Bush Presidential Center.

Circumstances Precipitating Bankruptcy

Notwithstanding Highland's historical success with Mr. Dondero at the helm, Highland's funds—like many other investment platforms—suffered losses during the financial crisis, leading to myriad lawsuits by investors. One of the most contentious disputes involved a group of investors who had invested in Highland-managed funds collectively termed the "Crusader Funds." During the financial crisis, to avoid a run on the Crusader Funds at low-watermark prices, the funds' manager temporarily suspended redemptions, leading investors to sue. That dispute resolved with the formation of an investor committee self-named the "Redeemer Committee" and the orderly liquidation of the Crusader Funds, which resulted in investors' receiving a return of their investments plus a return, as opposed to the 20 cents on the dollar they would have received had their redemption requests been honored when made.

Despite this successful liquidation, the Redeemer Committee sued Highland again several years later, claiming that Highland had improperly delayed the liquidation and paid itself fees not authorized under the parties' earlier settlement agreement. The dispute went to arbitration, ultimately resulting in an arbitration award against Highland of $189 million (of which Highland expected to make a net payment of $110 million once the award was confirmed).

Believing that a restructuring of its judgment liabilities was in Highland's best interest, on October 16, 2019, Highland—a Delaware limited partnership—filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware.[1]

On October 29, 2019, the Bankruptcy Court appointed the Official Committee of Unsecured Creditors ("Creditors' Committee"). The Creditors' Committee Members (and the contact individuals for those members) are: (1) The Redeemer Committee of the Highland Crusader Fund (Eric Felton), (2) Meta e-Discovery (Paul McVoy), (3) UBS Securities LLC and UBS AG London Branch (Elizabeth

[1] *In re Highland Capital Mgmt., L.P.*, Case No. 19-12239-CSS (Bankr. D. Del.) ("Del. Case"), Dkt. 1.

Kozlowski), and (4) Acis Capital Management, L.P. and Acis Capital Management GP, LLP (Joshua Terry).[2] At the time of their appointment, creditors agreeing to serve on the Creditors' Committee were given an Instruction Sheet by the Office of the United States Trustee, instructing as follows:

> **Creditors wishing to serve as fiduciaries on any official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court. By submitting the enclosed Questionnaire and accepting membership on an official committee of creditors, you agree to this prohibition. The United States Trustee reserves the right to take appropriate action, including removing the creditor from any committee, if the information provided in the Questionnaire is inaccurate, if the foregoing prohibition is violated, or for any other reason the United States Trustee believes is proper in the exercise of her discretion.**

See Instruction Sheet, Ex. A (emphasis in original).

In response to a motion by the Creditors' Committee, on December 4, 2019, the Delaware Bankruptcy Court unexpectedly transferred the bankruptcy case to the Northern District of Texas, to Judge Stacey G.C. Jernigan's court.[3]

SYSTEMIC PROBLEMS OCCURRING IN THE CONTEXT OF HIGHLAND'S COURT-ADMINISTERED BANKRUPTCY

Mr. Dondero Gets Pushed Out of Management and New Debtor Management Announces Plans to Liquidate the Estate

From the outset of the case, the Creditors' Committee and the U.S. Trustee's Office in Dallas pushed to replace Mr. Dondero as the sole director of the Debtor's general partner, Strand Advisors, Inc. ("Strand"). To avoid a protracted dispute and to facilitate the restructuring, on January 9, 2020, Mr. Dondero agreed to resign as the sole director, on the condition that he would be replaced by three independent directors who would act as fiduciaries of the estate and work to restructure Highland's business so it could continue operating and emerge from bankruptcy as a going concern. As Mr. Draper previously has explained, the agreement approved by the Bankruptcy Court allowed Mr. Dondero, UBS (which held one of the largest claims against the estate), and the Redeemer Committee each to choose one director, and also established protocols for operations going forward. Mr. Dondero chose The Honorable Former Judge Russell F. Nelms, UBS chose John Dubel, and the Redeemer Committee chose James Seery.[4]

In brokering the agreement, Mr. Dondero made clear his expectations that new, independent management would not only preserve Highland's business by expediting an exit from bankruptcy in three to six months, but would also preserve jobs and enable continued collaboration with charitable causes supported by Highland and Mr. Dondero. Unfortunately, those expectations did not materialize. Rather, it quickly became clear that Strand's and Highland's management was being dominated by one of the

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[2] Del. Case, Dkt. 65.

[3] *See In re Highland Capital Mgmt., L.P.*, Case No. 19-34054 (Bankr. N.D. Tex.), Dkt. 186. All subsequent docket references are to the docket of the Bankruptcy Court for the Northern District of Texas.

[4] *See* Stipulation in Support of Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, Dkt. 338; Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, Dkt. 339.

independent directors, Mr. Seery (as will be seen, for his self-gain). Shortly after his placement on the Board, on March 15, 2020, Mr. Seery became de facto Chief Executive Officer, after which he immediately took steps to freeze Mr. Dondero out of operations completely, to the detriment of Highland's business and its employees. The Bankruptcy Court formally approved Mr. Seery's appointment as CEO and Chief Restructuring Officer on July 14, 2020.[5] Although Mr. Seery publicly represented that his goal was to restructure the Debtor's business and enable it to emerge as a going concern, privately he was engineering a much different plan. Less than two months after Mr. Seery's appointment as CEO/CRO, the Debtor filed its initial plan of reorganization, disclosing for the first time its intention to terminate substantially all employees by the end of 2020 and to liquidate Highland's assets by 2022.[6]

Over objections by Mr. Dondero and numerous other stakeholders, the Bankruptcy Court confirmed Highland's Fifth Amended Plan of Reorganization on February 22, 2021 (the "Plan").[7] There are appeals of that Plan, as well as many of the other rulings made by the Bankruptcy Court, currently pending before the United States District Court and the Court of Appeals for the Fifth Circuit.

Transparency Problems Pervade the Bankruptcy Proceedings

The Regulatory Framework

As you are aware, one of the most important features of federal bankruptcy proceedings is transparency. The EOUST instructs that "Debtors-in-possession and trustees must account for the receipt, administration, and disposition of all property; provide information concerning the estate and the estate's administration as parties in interest request; and file periodic reports and summaries of a debtor's business, including a statement of receipts and disbursements, and such other information as the United States Trustee or the United States Bankruptcy Court requires." *See* http://justice.gov/ust/chapter-11-information (citing 11 U.S.C. § 1106(a)(1), 1107(a)). And Federal Rule of Bankruptcy Procedure 2015.3(a) states that "the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." This rule requires the trustee or a debtor in possession to file a report for each non-debtor affiliate prior to the first meeting of creditors and every six months thereafter until the effective date of a plan of reorganization. Fed R. Bankr. P. 2015.3(b). Importantly, the rule does not absolve a debtor from filing reports due prior to the effective date merely because a plan has become effective.[8] Notably, the U.S. Trustee has the duty to ensure that debtors in possession properly and timely file all required reports. 28 U.S.C. § 1112(b)(4)(F), (H).

The entire purpose of these guidelines and rules is to ensure that external stakeholders can fairly evaluate the progress of bankruptcy proceedings, including compliance with legal requirements. Particularly in large bankruptcies, creditors and investors alike should expect that debtors, their

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[5] *See* Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020, Dkt. 854.

[6] *See* Plan of Reorganization of Highland Capital Management, L.P. dated August 12, 2020, Dkt. 944.

[7] *See* Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified); and (II) Granting Related Relief, Dkt. 1943.

[8] After notice and a hearing, the bankruptcy court may grant relief from the Rule 2015.3 disclosure requirement "for cause," including that "the trustee or debtor in possession is not able, after a good faith effort, to comply with th[e] reporting requirements, or that the information required by subdivision (a) is publicly available." Fed. R. Bankr. 2015.3(d).

management, and representatives on creditors' committees abide by their reporting obligations and all other legal requirements. Bankruptcy is not meant to be a safe haven for lawlessness, nor is it designed to obfuscate the operations of the debtor. Instead, transparency is mandatory so that the debtor is accountable to stakeholders and so that stakeholders can ensure that all insiders are operating for the benefit of the estate.

In Highland's Bankruptcy, the Regulatory Framework Is Ignored

Against this regulatory backdrop, and on the heels of high-profile bankruptcy abuses like those that occurred in the context of the Neiman Marcus bankruptcy, the Highland bankruptcy offered almost no transparency to stakeholders. Traditional reporting requirements were ignored. This opened the door to numerous abuses of process and potential violations of federal law, as detailed below.

As Mr. Draper already has highlighted, one significant problem in Highland's bankruptcy was the Debtor's failure to file *any* of the reports required under Bankruptcy Rule 2015.3, either on behalf of itself or its affiliated entities. Typically, such reports would include information like asset value, income from financial operations, profits, and losses for each non-publicly traded entity in which the estate has a substantial or controlling interest. This was very important here, where the Debtor held the bulk of its value—hundreds of millions of dollars—in non-debtor subsidiaries. The Debtor's failure to file the required Rule 2015.3 reports was brought to the attention of the Debtor, the Bankruptcy Court, and the U.S. Trustee's Office. During the hearing on Plan confirmation, the Debtor was questioned about the failure to file the reports. The sole excuse offered by the Debtor's Chief Restructuring Officer and Chief Executive Officer, Mr. Seery, was that the task "fell through the cracks."[9] Nor did the Debtor or its counsel ever attempt to show "cause" to gain exemption from the reporting requirement. That is because there was no good reason for the Debtor's failure to file the required reports. In fact, although the Debtor and the Creditors' Committee often refer to the Debtor's structure as a "byzantine empire," the assets of the estate fall into a handful of discrete investments, most of which have audited financials and/or are required to make monthly or quarterly net-asset-value or fair-value determinations.[10] Rather than disclose financial information that was readily available, the Debtor appears to have taken deliberate and strategic steps to avoid transparency.

In stark contrast to its non-existent public disclosures, the Debtor provided the Creditors' Committee with robust weekly information regarding transactions involving assets held by the Debtor or its wholly-owned subsidiaries, transactions involving managed entities and non-managed entities in which the Debtor held an interest, transactions involving non-discretionary accounts, and weekly budget-to-actuals reports referencing non-Debtor affiliates' 13-week cash flow budget. In other words, the Committee member had real-time financial information with respect to the affairs of non-debtor affiliates, which is precisely the type of information that should have been disclosed to the public pursuant to Rule 2015.3. Yet, the fact that the Committee members alone had this information enabled some of them to trade on it, for their personal benefit.

The Debtor's management failed and refused to make other critical disclosures as well. As explained in detail below, during the bankruptcy proceedings, the Debtor sold off sizeable assets without any notice and without seeking Bankruptcy Court approval. The Debtor characterized these transactions as the "ordinary course of business" (allowing it to avoid the Bankruptcy Court approval process), but

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[9] *See* Dkt. 1905 (Feb. 3, 2021 Hr'g Tr. at 49:5-21).

[10] During a deposition, Mr. Seery identified most of the Debtor's assets "[o]ff the top of [his] head" and acknowledged that he had a subsidiary ledger that detailed the assets held by entities below the Debtor. *See* Exh. A (Jan. 29, 2021 Dep. Tr. at 22:4-10; 23:1-29:10).

they were anything but ordinary. In addition, the Debtor settled the claims of at least one creditor—former Highland employee Patrick Daugherty—without seeking court approval of the settlement pursuant to Federal Rule of Bankruptcy Procedure 9019. We understand that the Debtor paid Mr. Daugherty $750,000 in cash as part of that settlement, done as a "settlement" to obtain Mr. Daugherty's withdrawal of his objection to the Debtor's plan.

Despite all of these transparency problems, the Debtor's confirmed Plan contains provisions that effectively release the Debtor from its obligation to file *any* of the reports due for *any* period prior to the effective date—thereby sanctioning the Debtor's failure and refusal to follow the rules. The U.S. Trustee also failed to object to this portion of the Court's order of confirmation, which is directly at odds with the spirit and mandate of the Periodic Reporting Requirements recently adopted by the EOUST and historical rules mandating transparency.[11]

As will become apparent, because neither the federal Bankruptcy Court nor the U.S. Trustee advocated or demanded compliance with the rules, the Debtor, its newly-appointed management, and the Creditors' Committee charged with protecting the interests of all creditors were able to manipulate the estate for the benefit of a handful of insiders, seemingly in contravention of law.

Debtor And Debtor-Affiliate Assets Were Deliberately Hidden and Mischaracterized

Largely because of the Debtor's failure to file Rule 2015.3 reports for affiliate entities, interested parties and creditors wishing to evaluate the worth and mix of assets held in non-Debtor affiliates could not do so. This is particularly problematic, because during proceedings, the Debtor sold $172 million in assets, which altered the mix of assets and liabilities of the Debtor's affiliates and controlled entities. In addition, the estate's asset value decreased by approximately $200 million in a matter of months. Absent financial reporting, it was impossible for stakeholders to determine whether the $200 impairment in asset value reflected actual realized losses or merely temporary mark-downs precipitated by problems experienced by certain assets during the pandemic (including labor shortages, supply-chain issues, travel interruptions, and the like). Although the Bankruptcy Court held that such sales did not require Court approval, a Rule 2015.3 report would have revealed the mix of assets and the corresponding reduction in liabilities of the affiliated or controlled entity—information that was critical in evaluating the worth of claims against the estate or future investments into it.

One transaction that was particularly problematic involved alleged creditor HarbourVest, a private equity fund with approximately $75 billion under management. Prior to Highland's bankruptcy, HarbourVest had invested $80 million into (and obtained 49.98% of the outstanding shares of) a Highland fund called Acis Loan Funding, later rebranded as Highland CLO Funding, Ltd. ("HCLOF"). A charitable fund called Charitable DAF Fund, L.P. ("DAF") held 49.02% member interests in HCLOF, and the remaining □2.00% was held by Highland and certain of its employees. Prior to Highland's bankruptcy proceedings, a dispute arose between HarbourVest and Highland, in which HarbourVest claimed it was duped into making the investment because Highland allegedly failed to disclose key facts relating to the investment (namely, that Highland was engaged in ongoing litigation with former employee, Josh Terry,

[11] *See "Procedures for Completing Uniform Periodic Reports in Non-Small Business Cases Filed Under Chapter 11 of Title 11"* (the "Periodic Reporting Requirements"). The Periodic Reporting Requirements reaffirmed the EOUST's commitment to maintaining "uniformity and transparency regarding a debtor's financial condition and business activities" and "to inform creditors and other interested parties of the debtor's financial affairs." 85 Fed. Reg. 82906.

which would result in HCLOF's incurring legal fees and costs). HarbourVest alleged that, as a result of the Terry lawsuit, HCLOF incurred approximately $15 million in legal fees and costs.[12]

In the context of Highland's bankruptcy, however, HarbourVest filed a proof of claim alleging that it was due over $300 million in damages in the dispute, a claim that bore no relationship to economic reality. As a result, Debtor management initially valued HarbourVest's claims at $0, a value consistently reflected in the Debtor's publicly-filed financial statements, up through and including its December 2020 Monthly Operating Report.[13] Eventually, however, the Debtor announced a settlement with HarbourVest which entitled HarbourVest to $45 million in Class 8 claims and $35 million in Class 9 claims.[14] At the time, the Debtor's public disclosures reflected that Class 8 creditors could expect to receive approximately 70% payout on their claims, and Class 9 creditors could expect 0.00%. In other words, HarbourVest's total $80 million in allowed claims would allow HarbourVest to realize a $31.5 million return.[15]

As consideration for this potential payout, HarbourVest agreed to convey its interest in HCLOF to a special-purpose entity ("SPE") designated by the Debtor (a transaction that involved a trade of securities) and to vote in favor of the Debtor's Plan. In its pleadings and testimony in support of the settlement, the Debtor represented that the value of HarbourVest's interest in HCLOF was $22.5 million. It later came to light, however, that the actual value of that asset was at least $44 million.

There are numerous problems with this transaction which may not have occurred with the requisite transparency. As a registered investment advisor, the Debtor had a fiduciary obligation to disclose the true value of HarbourVest's interest in HCLOF to investors in that fund. The Debtor also had a fiduciary obligation to offer the investment opportunity to the other investors prior to purchasing HarbourVest's interest for itself. Mr. Seery has acknowledged that his fiduciary duties to the Debtor's managed funds and investors supersedes any fiduciary duties owed to the Debtor and its creditors in bankruptcy. Nevertheless, the Debtor and its management appear to have misrepresented the value of the HarbourVest asset, brokered a purchase of the asset without disclosure to investors, and thereafter placed the HarbourVest interest into a non-reporting SPE.[16] This meant that no outside stakeholder had any ability to assess the value of that interest, nor could any outsider possibly ascertain how the acquisition of that interest impacted the bankruptcy estate. In the absence of Rule 2015.3 reports or listing of the HCLOF interest on the Debtor's balance sheet, it was impossible to determine at the time of the HarbourVest settlement (or thereafter) whether the Debtor properly accounted for the asset on its balance sheet.

Highland engaged in several other asset sales in bankruptcy without disclosing those sales in advance to outside stakeholders or investors, and without offering investors in funds impacted by the sales the opportunity to purchase the assets. For example:

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[12] Assuming that HarbourVest were entitled to fraud damages as it claimed, the true amount of its damages was less than $7.5 million (because HarbourVest only would have borne 49.98% of the $15 million in legal fees).
[13] *See* Monthly Operating Report for Highland Capital Management for the Month Ending December 2020, Dkt. 1949.
[14] Class 8 consists of general unsecured claims; Class 9 consists of subordinated claims.
[15] We have reason to believe that HarbourVest's Class 8 and Class 9 claims were contemporaneously sold to Farallon Capital Management—an SEC-registered investment advisor—for approximately $28 million.
[16] Even former Highland employee Patrick Daugherty recognized the problematic nature of asset dispositions like the one involving HarbourVest, commenting that such transactions "have left [Mr. Seery] and Highland vulnerable to a counter-attack under the [Investment] Advisors Act." *See* Ex. B.

- The Debtor sold approximately $25 million of NexPoint Residential Trust shares that today are valued at over $70 million; the Debtor likewise sold $6 million of PTLA shares that were taken over less than 60 days later for $18 million.

- The Debtor divested interests worth $145 million held in certain life settlements (which paid on the death of the individuals covered, whose average age was 90) for $35 million rather than continuing to pay premiums on the policies, and did so without obtaining updated estimates of the life settlements' value, to the detriment of the fund and investors (today two of the covered individuals have a life expectancy of less than one year);

- The Debtor sold interests in OmniMax without informing the Bankruptcy Court, without engaging in a competitive bidding process, and without cooperating with other funds managed by Mr. Dondero, resulting in what we believe is substantially lesser value to investors;

- The Debtor sold interests in Structural Steel Products (worth $50 million) and Targa (worth $37 million), again without any process or notice to the Bankruptcy Court or outside stakeholders, resulting in what we believe is diminished value for the estate and investors.

Because the Bankruptcy Code does not define what constitutes a transaction in the "ordinary course of business," the Debtor's management was able to characterize these massive sales as ordinary course transactions when they were anything but ordinary, resulting in diminution in value to the estate and its creditors.

In summary, the consistent lack of transparency throughout bankruptcy proceedings facilitated sales and deal-making that failed to maximize value for the estate and precluded outside stakeholders from evaluating or participating in asset purchases or claims trading that might have benefitted the estate and outside investors in Debtor-managed funds.

The Debtor Reneged on Its Promise to Pay Key Employees, Contrary to Sworn Testimony

Highland's bankruptcy also diverges from the norm in its treatment of key employees, who usually can expect to be fairly compensated for pre-petition work and post-petition work done for the benefit of the estate. That did not happen here, despite the Debtor's representation to the Bankruptcy Court that it would.

By way of background, prior to its bankruptcy, Highland offered employees two bonus plans: an Annual Bonus Plan and a Deferred Bonus Plan. Under the Annual Bonus Plan, all of Highland's employees were eligible for a yearly bonus payable in up to four equal installments, at six-month intervals, on the last business day of each February and August. Under the Deferred Bonus Plan, Highland's employees were awarded shares of a designated publicly traded stock, the right to which vested 39 months later. Under both bonus plans, the only condition to payment was that the employee be employed by Highland at the time the award (or any portion of it) vested.

At the outset of the bankruptcy proceedings, the Debtor promised that pre-petition bonus plans would be honored. Specifically, in its Motion For Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief, the Debtor informed the Court that employee bonuses "continue[d] to be earned on a post-petition basis," and that "employee compensation under the Bonus Plans [was] critical to the Debtor's ongoing

operations and that any threat of nonpayment under such plans *would have a potentially catastrophic impact on the Debtor's reorganization efforts.*"[17] Significantly, the Debtor explained to the Court that its operations were leanly staffed, such that all employees were critical to ongoing operations and such that it expected to compensate all employees. As a result of these representations, key employees continued to work for the Debtor, some of whom invested significant hours at work ensuring that the Debtor's new management had access to critical information for purposes of reorganizing the estate.

Having induced Highland's employees to continue their employment, the Debtor abruptly changed course, refusing to pay key employees awards earned pre-petition under the Annual Bonus Plan and bonuses earned pre-petition under the Deferred Bonus Plan that vested post-petition. In fact, Mr. Seery chose to terminate four key employees just before the vesting date in an effort to avoid payment, despite his repeated assurances to the employees that they would be "made whole." Worse still, notwithstanding the Debtor's failure and refusal to pay bonuses earned and promised to these terminated employees, in Monthly Operating Reports signed by Mr. Seery under penalty of perjury, the Debtor continued to treat the amounts owed to the employees as post-petition obligations, which the Debtor continued to accrue as post-petition liabilities even after termination of their employment.

The Debtor's misrepresentations to the Bankruptcy Court and to the employees themselves fly in the face of usual bankruptcy procedure. As the Fifth Circuit has explained, administrative expenses like key employee salaries are an "'actual and necessary cost'" that provides a "benefit to the state and its creditors."[18] It is undisputed that these employees continued to work for the Debtor, providing an unquestionable benefit to the estate post-petition, but were not provided the promised compensation, for reasons known only to the Debtor.

Again, this is not business as usual in bankruptcy proceedings, and if we are to ensure the continued success of debtors in reorganization proceedings, it is important that key employees be paid in the ordinary course for their efforts in assisting debtors and that debtor management be made to live up to promises made under penalty of perjury to the bankruptcy courts.

There Is Substantial Evidence that Insider Trading Occurred

Perhaps one of the biggest problems with the lack of transparency at every step is that it facilitated potential insider trading. The Debtor (as well as its advisors and professionals) and the Creditors' Committee (and its counsel) had access to critical information upon which any reasonable investor would rely. But because of the lack of reporting, the public did not.

Mr. Draper's October 4, 2021 letter sets forth in detail the reasons for suspecting that insider trading occurred, but his explanation bears repeating here. In the context of a non-transparent bankruptcy proceeding, three of the four members of the Creditors' Committee and one non-committee member sold their claims to two buyers, Muck Holdings LLC ("Muck") and Jessup Holdings LLC ("Jessup"). The four claims sold comprise the largest four claims in the Highland bankruptcy by a substantial margin,[19] collectively totaling almost $270 million in Class 8 claims and $95 million in Class 9 claims:

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[17] *See* Dkt. 177, ¶ 25 (emphasis added).
[18] *Texas v. Lowe (In re H.L.S. Energy Co.)*, 151 F.3d 434, 437 (5th Cir. 1998) (quoting *Transamerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992)).
[19] *See* Ex. C.

Claimant	Class 8 Claim	Class 9 Claims	Date Claim Settled
Redeemer Committee	$136,696,610	N/A	October 28, 2020
Acis Capital	$23,000,000	N/A	October 28, 2020
HarbourVest	$45,000,000	$35,000,000	January 21, 2021
UBS	$65,000,000	$60,000,000	May 27, 2021
TOTAL:	**$269,6969,610**	**$95,000,000**	

Muck is owned and controlled by Farallon Capital Management ("Farallon"), and we believe Jessup is owned and controlled by Stonehill Capital Management ("Stonehill"). As the purchasers of the four largest claims in the bankruptcy, Muck (Farallon) and Jessup (Stonehill) will oversee the liquidation of the reorganized Debtor and the payment over time to creditors who have not sold their claims. These two hedge funds also will determine the performance bonus due to Mr. Seery for liquidating the estate. As set forth in the attached balance sheet dated August 31, 2021, we estimate that the estate today is worth nearly $600 million,[20] which could result in Mr. Seery's receipt of a performance bonus approximating $50 million.

This is concerning because there is substantial evidence that Farallon and Stonehill may have been provided material, non-public information to induce their purchase of these claims. We agree with Mr. Draper that there are three primary reasons to believe that non-public information was made available to facilitate these claims purchases:

- The scant publicly-available information regarding the Debtor's estate ordinarily would have dissuaded sizeable investment in purchases of creditors' claims;
- The information that actually was publicly available ordinarily would have compelled a prudent investor to conduct robust due diligence prior to purchasing the claims;
- Yet these claims purchasers spent in excess of $100 million (and likely closer to $150 million) on claims, ostensibly without any idea of what they were purchasing.

Credible information indicates that the claims purchases of Stonehill and Farallon can be summarized as follows:

Creditor	Class 8	Class 9	Purchaser	Purchase Price
Redeemer	$137.0	$0.0	Stonehill	$78.0[21]
ACIS	$23.0	$0.0	Farallon	$8.0
HarbourVest	$45.0	$35.0	Farallon	$27.0
UBS	$65.0	$60.0	Stonehill and Farallon	$50.0

[20] *See* Ex. D.
[21] *See* Ex. E. Because the transaction included "the majority of the remaining investments held by the Crusader Funds," the net amount paid by Stonehill for the Claims was approximately $65 million.

An analysis of publicly-available information would have revealed to any potential investor that:

- The estate's asset value had decreased by $200 million, from $556 million on October 16, 2019, to $328 million as of September 30, 2020 (increasing only slightly to $364 million as of January 31, 2021).[22]

- Allowed claims against the estate increased by a total amount of $236 million.

- Due to the decrease in the value of the Debtor's assets and the increase in the allowed claims amount, the ultimate projected recovery for creditors in bankruptcy decreased from 87.44% to 62.99% in just a matter of months.[23]

No prudent investor or hedge fund investing third-party money would purchase substantial claims out of the Highland estate based on this publicly-available information absent robust due diligence demonstrating that the investment was sound.

As discussed by Mr. Draper, the very close relationships between the claims purchasers, on the one hand, and the selling Creditors' Committee members and the Debtor's management, on the other hand also raise red flags. In particular:

- Farallon and Stonehill have long-standing, material relationships with the members of the Creditors' Committee and Mr. Seery. Mr. Seery formerly was the Global Head of Fixed Income Loans at Lehman Bros. until its collapse in 2009. While Mr. Seery was Global Head, Lehman Bros. did substantial business with Farallon. After Lehman's collapse, Mr. Seery joined Sidley & Austin as co-head of the corporate restructuring and bankruptcy group, where he worked with Matt Clemente, counsel to the Creditors' Committee in Highland's bankruptcy proceedings.

- In addition, Grovesnor, one of the lead investors in the Crusader Funds from the Redeemer Committee (which appointed Seery as its independent director) both played a substantial role on the Creditors' Committee and is a large investor in Farallon and Stonehill. It is unclear whether Grovesnor, a registered investment advisor, notified minority investors in the Crusader Funds or Farallon and Stonehill of these facts.

- According to Farallon principals Raj Patel and Michael Linn, while at Sidley, Mr. Seery assisted Farallon in its acquisition of claims in the Lehman estate, and Farallon realized more than $100 million in claims on those trades.

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[22] *Compare* Jan. 31, 2021 Monthly Operating Report [Dkt. 2030], *with* Disclosure Statement (approved on Nov. 24, 2020) [Dkt. 1473]. The increase in value between September 2020 and January 2021 is attributable to the Debtor's settlement with HarbourVest, which granted HarbourVest a Class 8 claim of $45 million and a Class 9 Claim of $35 million, and in exchange the Debtor received HarbourVest's interest in HCLOF, which in reality was worth approximately $44.3 million as of January 31, 2021. *See* Ex. C. It is also notable that the January 2021 monthly financial report values Class 8 claims at $267 million, an exponential increase over their estimated value of $74 million in December 2020.

[23] *See* Ex. F.

- Also while at Sidley, Mr. Seery represented the Steering Committee in the Blockbuster Video bankruptcy; Stonehill (through its Managing Member, John Motulsky) was one of the five members of the Steering Committee.

- Mr. Seery left Sidley in 2013 to become the President and Senior Investment Partner of River Birch Capital, a hedge fund founded by his former Lehman colleagues. He left River Birch in October 2017 just before the fund imploded. In 2017, River Birch and Stonehill Capital were two of the biggest note holders in the Toys R Us bankruptcy and were members of the Toys R Us creditors' committee.

I strongly agree with Mr. Draper that it is suspicious that two firms with such significant ties to Mr. Seery have purchased $365 million in claims. The aggregate $150 million purchase price paid by Farallon and Stonehill is 56% of all Class 8 claims, virtually the full plan value expected to be realized after two years. We believe it is worth investigating whether these claims buyers had access to material, non-public information regarding the actual value of the estate.

Other transactions occurring during the Highland bankruptcy also reinforce the suspicion that insider trading occurred. In particular, it appears that one of the claims buyers, Stonehill, used non-public information obtained incident to the bankruptcy to purchase stock in NexPoint Strategic Opportunities Fund (NYSE: NHF), a publicly traded, closed-end '40 Act fund with many holdings in common with assets held in the Highland estate outlined above. Stonehill is a registered investment adviser with $3 billion under management that has historically owned very few equity interests, particularly equity interests in a closed-end fund. As disclosed in SEC filings, Stonehill acquired enough stock in NHF during the second quarter of 2021 to make it Stonehill's eighth largest equity position.

The timing of the acquisitions of claims by Farallon and Stonehill also raises suspicion. For example, although notices of the transfer of the claims were filed immediately after the confirmation of the Debtor's Plan and prior to the effective date of the Plan, it seems likely that negotiations began much earlier. Transactions of this magnitude do not take place overnight and typically require robust due diligence. Muck was formed on March 9, 2021, more than a month before it filed notice that it was purchasing the Acis claim. If the negotiation or execution of a definitive agreement for the purchase began before or contemporaneously with Muck's formation, then there is every reason to believe that selling Creditors' Committee members and/or Debtor management provided Farallon with critical non-public information well before the Creditors' Committee members sold their claims and withdrew from the Committee. Indeed, Mr. Patel and Mr. Linn have stated to others that they purchased the Acis and HarbourVest claims in late January or early February. This is strong evidence that negotiation and/or agreements relating to the purchase of claims from Creditors' Committee members preceded the confirmation of the Debtor's Plan and the resignation of those members from the Committee.

Likewise, correspondence from the fund adviser to the Crusader Funds indicates that the Crusader Funds and the Redeemer Committee had "consummated" the sale of the Redeemer Committee's claims and other assets on April 30, 2021, "for $78 million in cash, which was paid in full to the Crusader Funds at closing."[24] In addition, that there was a written agreement among Stonehill, the Crusader Funds, and the Redeemer Committee that sources indicate dates back to the fourth quarter of 2020. That agreement presumably imposed affirmative and negative covenants upon the seller and granted the purchaser discretionary approval rights during the pendency of the sale. Such an agreement would necessarily conflict with the Creditors' Committee members' fiduciary obligations.

[24] *See* Ex. E.

The sale of the claims by the members of the Creditors' Committee also violates the instructions provided to committee members by the U.S. Trustee that required a selling committee member to obtain approval from the Bankruptcy Court prior to any sale of such member's claim. No such Court approval was ever sought or obtained, and the Dallas U.S. Trustee's Office took no action to enforce this guideline. The Creditors' Committee members were sophisticated entities, and they were privy to inside information that was not available to other unsecured creditors. For example, valuations of assets placed into a specially-created affiliated entities, such as the assets acquired in the HarbourVest settlement, and valuations of assets held by other entities owned or controlled by the Debtor, were available to the selling Creditors' Committee members, but not to other creditors or parties-in-interest.

While claims trading itself is not prohibited, there is reason to believe that the claims trading that occurred in the Highland bankruptcy violated federal law:

a) The selling parties were *three* of the four Creditors' Committee members, and each one had access to information they received in a fiduciary capacity;

b) Some of the information they received would have been available to other parties-in-interest if Rule 2015.3 had been enforced;

c) The projected recovery to creditors decreased significantly between the approval of the Disclosure Statement and the confirmation of the Debtor's Plan; and

d) There was a suspicious purchase of stock by Stonehill in NHF, a closed-end fund previously affiliated with Highland (and now managed by NexPoint Advisors, L.P.) that is publicly traded on the New York stock exchange.The Debtor's assets and the positions held by the closed-end fund are similar.

Mr. Seery's Compensation Structure Encouraged Misrepresentations Regarding the Value of the Estate and Assets of the Estate

An additional problem in Highland's bankruptcy is that Mr. Seery, as an Independent Director as well as the Debtor's CEO and CRO, received financial incentives that encouraged claims trading and dealing in insider information.

Mr. Seery received sizeable compensation for his heavy-handed role in Highland's bankruptcy. Upon his appointment as an Independent Director in January 2020, Mr. Seery received compensation from the Debtor of $60,000 per month for the first three months, $50,000 per month for the following three months, and $30,000 per month for remaining months, subject to adjustment by agreement with the Debtor.[25] When Mr. Seery subsequently was appointed the Debtor's CEO and CRO in July 2020, he received additional compensation, including base compensation of $150,000 per month retroactive to March 2020 and for so long as he served in those roles, as well as a "Restructuring Fee."[26] Mr. Seery's employment agreement contemplated that the Restructuring Fee could be calculated in one of two ways:

(1) If Mr. Seery were able to resolve a material amount of outstanding claims against the estate, he would be entitled to $1 million on confirmation of what the Debtor termed a

[25] *See* Dkt. 339, ¶ 3.
[26] *See* Dkt. 854, Ex. 1.

"Case Resolution Plan," $500,000 at the effective date of the Case Resolution Plan, and $750,000 upon completion of distributions to creditors under the plan.

(2) If, by contrast, Mr. Seery were not able to resolve the estate and instead achieved a "Monetization Vehicle Plan," he would be entitled to $500,000 on confirmation of the Monetization Vehicle Plan, $250,000 at the effective date of that plan, and—most importantly—a to-be-determined "contingent restructuring fee" based on "performance under the plan after all material distributions" were made.

The Restructuring Fee owed for a Case Resolution Plan was materially higher than that payable under the Monetization Vehicle Plan and provided a powerful economic incentive for Mr. Seery to resolve creditor claims in any way possible. Notably, at the time of Mr. Seery's formal appointment as CEO/CRO, he had already negotiated settlements in principle with Acis and the Redeemer Committee, leaving only the HarbourVest and UBS claims to resolve.

Further, after the Plan's effective date, as appointed Claimant Trustee, Mr. Seery was promised compensation of $150,000 per month (termed his "Base Salary"), subject to the negotiation of additional "go-forward" compensation, including a "success fee" and severance pay.[27] Mr. Seery's success fee presumably will be based on whether the Plan outperforms what was disclosed in the Plan Analysis. In other words, Mr. Seery had a financial incentive to grossly understate the value of the estate in public disclosures, not only to facilitate claims trading and resolution of the biggest claims in bankruptcy (for purposes of obtaining the larger Case Resolution Fee) but also to ensure that he eventually receives a large "success fee." Again, we estimate that, based on the estate's nearly $600 million value today, Mr. Seery's success fee could approximate $50 million.

One excellent example of the way in which Mr. Seery facilitated claims trading and thereby lined his own pockets is the sale of UBS's claim. Based on the publicly-available information at the time Stonehill and Farallon purchased the UBS claim, the purchase made no economic sense. At the time, the publicly-disclosed Plan Analysis estimated that there would be a 71.32% distribution to Class 8 creditors and a 0.00% distribution to Class 9 creditors, which would mean believe is that, at the time of their claims purchase, the estate actually was worth much, much more (between $472-$600 million). If, prior to their claims purchases, Mr. Seery (or others in the Debtor's management) apprised Stonehill and Farallon of the true estate value (which was material, non-public information at the time), then the value they paid for the UBS claim made sense, because they would have known they were likely to recover close to 100% on Class 8 and Class 9 claims.

But perhaps the most important evidence of mismanagement of this bankruptcy proceeding and misalignment of financial incentives is the Debtor's repeated refusal to resolve the estate in full despite dozens of opportunities to do so. Immediately prior to the Plan confirmation hearing, Judge Jernigan suggested that the Creditors' Committee and Mr. Dondero attempt to reach a settlement. Mr. Dondero, through counsel, already had made 35 offers of settlement that would have maximized the estate's recovery, even going so far as to file a proposed plan of reorganization. Some of these offers were valued between $150 and $232 million. And we now believe that as of August 1, 2020, the Debtor's estate had an actual value of at least $460 million, including $105 million in cash and a $50 million revolving credit facility. With Mr. Dondero's offer, the Debtor's cash and the credit facility could have resolved the estate, which would have enabled the Debtor to pay all proofs of claim, leave a residual estate intact for equity holders, and allow the company to continue to operate as a going concern.

[27] *See* Plan Supplement, Dkt. 1875, § 3.13(a)(i).

Nonetheless, neither the Debtor nor the Creditors' Committee responded to Mr. Dondero's offers. It was not until The Honorable Former Judge D. Michael Lynn, counsel for Mr. Dondero, reminded the Creditors' Committee counsel that its members had a fiduciary duty to respond that a response was forthcoming. We believe Mr. Dondero's proposed plan offered a materially greater recovery than what the Debtor had reported would be the expected Plan recovery. The Creditors' Committee's failure to timely respond to that offer suggests that Debtor management, the Creditors' Committee, or both were financially disincentivized from accepting a case resolution offer and that some members of the Creditors' Committee were contractually constrained from doing so.

What happened instead was that the Debtor, its management, and the Creditors' Committee brokered deals that allowed grossly inflated claims and sales of those claims to a small group of investors with significant ties to Debtor management. In a transparent bankruptcy proceeding, we question whether any of this could have happened. What we do know is that the Debtor's non-transparent bankruptcy has ensured there will be nothing left for residual stakeholders, while enriching a handful of intimately connected individuals and investors.

The Debtor's Management and Advisors Are Almost Totally Insulated From Liability

Despite the mismanagement of bankruptcy proceedings, the Bankruptcy Court has issued a series of orders ensuring that the Debtor and its management cannot not be held liable for their actions in bankruptcy.

In particular, the Court issued a series of orders protecting Mr. Seery from potential liability for any act undertaken in the management of the Debtor or the disposition of its assets:

- In its order approving the settlement between the Creditors' Committee and Mr. Dondero, the Court barred any Debtor entity "from commenc[ing] or pursu[ing] a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director" unless the Court first (1) determined the claim was a "colorable" claim for willful misconduct or gross negligence, and (2) authorized an entity to bring the claim. The Court also retained "sole jurisdiction" over any such claim.[28]

- In its order approving the Debtor's retention of Mr. Seery as its Chief Executive Officer and Chief Restructuring Officer, the Court issued an identical injunction barring any claims against Mr. Seery in his capacity as CEO/CRO without prior court approval.[29] The same order authorized the Debtor to indemnify Mr. Seery for any claims or losses arising out of his engagement as CEO/CRO.[30]

Worse still, the Plan approved by the Bankruptcy Court contains sweeping release and exculpation provisions that make it virtually impossible for third parties, including investors in the Debtor's managed funds, to file claims against the Debtor, its related entities, or their management. The Plan's exculpation provisions contain also contain a requirement that any potential claims be vetted and approved by the Bankruptcy Court. As Mr. Draper already explained, these provisions violate the holding

[28] Dkt. 339, ¶ 10.
[29] Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr. as Chief Executive Office, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020, Dkt. 854, ¶ 5.
[30] Dkt. 854, ¶ 4 & Exh. 1.

of *In re Pacific Lumber Co.*, in which the United States Court of Appeals for the Fifth Circuit rejected similarly broad exculpation clauses.[31]

The fundamental problem with the Plan's broad exculpation and release provisions has been brought into sharp focus in recent days, with the filing of a lawsuit by the Litigation Trustee against Mr. Dondero, other individuals formerly affiliated with Highland, and several trusts and entities affiliated with Mr. Dondero.[32] Among other false accusations, that lawsuit alleges that the aggregate amount of allowed claims in bankruptcy was high because the Debtor and its management were forced to settle with various purported judgment creditors who had engaged in pre-petition litigation with Mr. Dondero and Highland. But it was Mr. Seery and Debtor's management, not Mr. Dondero and the other defendants, who negotiated those settlements with creditors in bankruptcy and who decided what value to assign to their claims. Ordinarily, Mr. Dondero and the other defendants could and would file compulsory counterclaims against the Debtor and its management for their role in brokering and settling claims in bankruptcy. But the Bankruptcy Court has effectively precluded such counterclaims (absent the defendants obtaining the Court's advance permission to assert them) by releasing the Debtor and its management from virtually all liability in relation to their roles in the bankruptcy case. That is a violation of due process.

Notably, the U.S. Trustee's Office recently has argued in the context of the bankruptcy of Purdue Pharma that release and exculpations clauses akin to those contained in Highland's Plan violate both the Bankruptcy Code and the Due Process Clause of the United States Constitution.[33] In addition, the U.S. Trustee explained that the bankruptcy courts lack constitutional authority to release state-law causes of action against debtor management and non-debtor entities.[34] Indeed, it has been the U.S. Trustee's position that where, as here, third parties whose claims are being released did not receive notice of the releases and had no way of knowing, based on the applicable plan's language, what claims were extinguished, third-party releases are contrary to law.[35] This position comports with Fifth Circuit case law, which makes clear that releases must be consensual, and that the released party must make a substantial contribution in exchange for any release.

As a result of the release and exculpation provisions of the Plan, employees and third-party investors in entities managed by the Debtor who are harmed by actions taken by the Debtor and its management in bankruptcy are barred from asserting their claims without prior Bankruptcy Court approval. Those third parties' claims are barred notwithstanding that they were not notified of the releases and have never been given any information with which to evaluate their potential claims (as mentioned, the Debtor has not disclosed several major assets sales, nor does the Plan require the Debtor to disclose post-confirmation asset sales). Conversely, the releases insulate claims purchasers from the risk of potential actions by investors in funds managed by the Debtor (for breach of fiduciary duty, diminution in value, or otherwise). These releases are directly at odds with investors' expectations and the written documents delivered to and approved by investors when they invest in managed funds—i.e., that fund managers will act in a fiduciary capacity to maximize investors' returns and that investors will have recourse for any failure to do so.

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[31] 584 F.3d 229 (5th Cir. 2009).
[32] The Plan created a Litigation Sub-Trust to be managed by a Litigation Trustee, whose sole mandate is to file lawsuits in an effort to realize additional value for the estate.
[33] *See* Memorandum of Law in Support of United States Trustee's Expedited Motion for Stay of Confirmation Order, *In re Purdue Pharma, L.P.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y.), Doc. 3778 at 17-25.
[34] *Id.* at 26-28.
[35] *See id.* at 22.

As an example, the Court approved the settlement of UBS's claim against the Debtor and two funds managed by the Debtor (collectively referred to as "MultiStrat"). Pursuant to that settlement, MultiStrat agreed to pay UBS $18.5 million. But the settlement made no sense for several reasons. First, Highland owns approximately 48% of MultiStrat, so causing MultiStrat to make such a substantial payment to settle a claim in Highland's bankruptcy necessarily negatively impacted its other non-Debtor investors. Second, in its lawsuit, UBS alleged that MultiStrat wrongfully received a $6 million payment, but MultiStrat paid more than three times this amount to settle allegations against it—a deal that made little economic sense. Finally, as part of the settlement, MultiStrat represented that it was advised by "independent legal counsel" in the negotiation of the settlement, a representation that was patently untrue.[36] In reality, the only legal counsel advising MultiStrat was the Debtor's counsel, who had economic incentives to broker the deal in a manner that benefited the Debtor rather than MultiStrat and its investors.[37] If (as it seems) that representation and/or the terms of the UBS/MultiStrat settlement unfairly impacted MultiStrat's investors, they now have no recourse against the Debtor. The release and exculpation provisions in Highland's Plan do not afford third parties any meaningful recourse, even when they are negatively impacted by misrepresentations of the type contained in the UBS/MultiStrat settlement or when their interests are impaired by fund managers' failure to obtain fairness opinions to resolve conflicts of interest.

Bankruptcy Proceedings Are Used As an End-Run Around Applicable Legal Duties

The UBS deal is but one example of how Highland's bankruptcy proceedings, including the settlement of claims and claims trading that occurred, seemingly provided a safe harbor for violations of multiple state and federal laws. For example, the Investment Advisors Act of 1940 requires registered investment advisors like the Debtor to act as fiduciaries of the funds that they manage. Indeed, the Act imposes an "affirmative duty of 'utmost good faith' and full and fair disclosure of material facts" as part of advisors' duties of loyalty and care to investors. *See* 17 C.F.R. Part 275. Adherence to these duties means that investment advisors cannot buy securities for their account prior to buying them for a client, cannot make trades that may result in higher commissions for the advisor or their investment firm, and cannot trade using material, non-public information. In addition, investment advisors must ensure that they provide investors with full and accurate information regarding the assets managed.

State blue sky laws similarly prohibit firms holding themselves out as investment advisors from breaching these core fiduciary duties to investors. For example, the Texas Securities Act prohibits any registered investment advisor from trading on material, non-public information. The Act also conveys a private right of action to investors harmed by breaches of an investment advisor's fiduciary duties.

As explained above, Highland executed numerous transactions during its bankruptcy that may have violated the Investment Advisors Act and state blue sky laws. Among other things:

- Highland facilitated the purchase of HarbourVest's interest in HCLOF (placing that interest in an SPE designated by the Debtor) without disclosing the true value of the interest and without first offering it to other investors in the fund;

[36] *See* Doc. 2389 (Order Approving Debtor's Settlement With UBS Securities LLC and UBS AG London Branch) at Ex. 1, §§ 1(b), 11; *see* Appendix, p. A-57.
[37] The Court's order approving the UBS settlement is under appeal in part based on MultiStrat's lack of independent legal counsel.

- Highland concealed the estate's true value from investors in its managed funds, making it impossible for those investors to fairly evaluate the estate or its assets during bankruptcy;

- Highland facilitated the settlement of UBS's claim by causing MultiStrat, a non-Debtor managed entity, to pay $18.5 million to the Debtor, to the detriment of MultiStrat's investors; and

- Highland and its CEO/CRO, Mr. Seery, brokered deals between three of four Creditors' Committee members and Farallon and Stonehill—deals that made no sense unless Farallon and Stonehill were supplied material, non-public information regarding the true value of the estate.

In short, Mr. Seery effectuated trades that seemingly lined his own pockets, in transactions that we believe detrimentally impacted investors in the Debtor's managed funds.

CONCLUSION

The Highland bankruptcy is an example of the abuses that can occur if the Bankruptcy Code and Bankruptcy Rules are not enforced and are allowed to be manipulated, and if federal law enforcement and federal lawmakers abdicate their responsibilities. Bankruptcy should not be a safe haven for perjury, breaches of fiduciary duty, and insider trading, with a plan containing third-party releases and sweeping exculpation sweeping everything under the rug. Nor should it be an avenue for opportunistic venturers to prey upon companies, their investors, and their creditors to the detriment of third-party stakeholders and the bankruptcy estate. My clients and I join Mr. Draper in encouraging your office to investigate, fight, and ultimately eliminate this type of abuse, now and in the future.

Best regards,

MUNSCH HARDT KOPF & HARR, P.C.

By: _____
Davor Rukavina, Esq.

DR:pdm

Appendix

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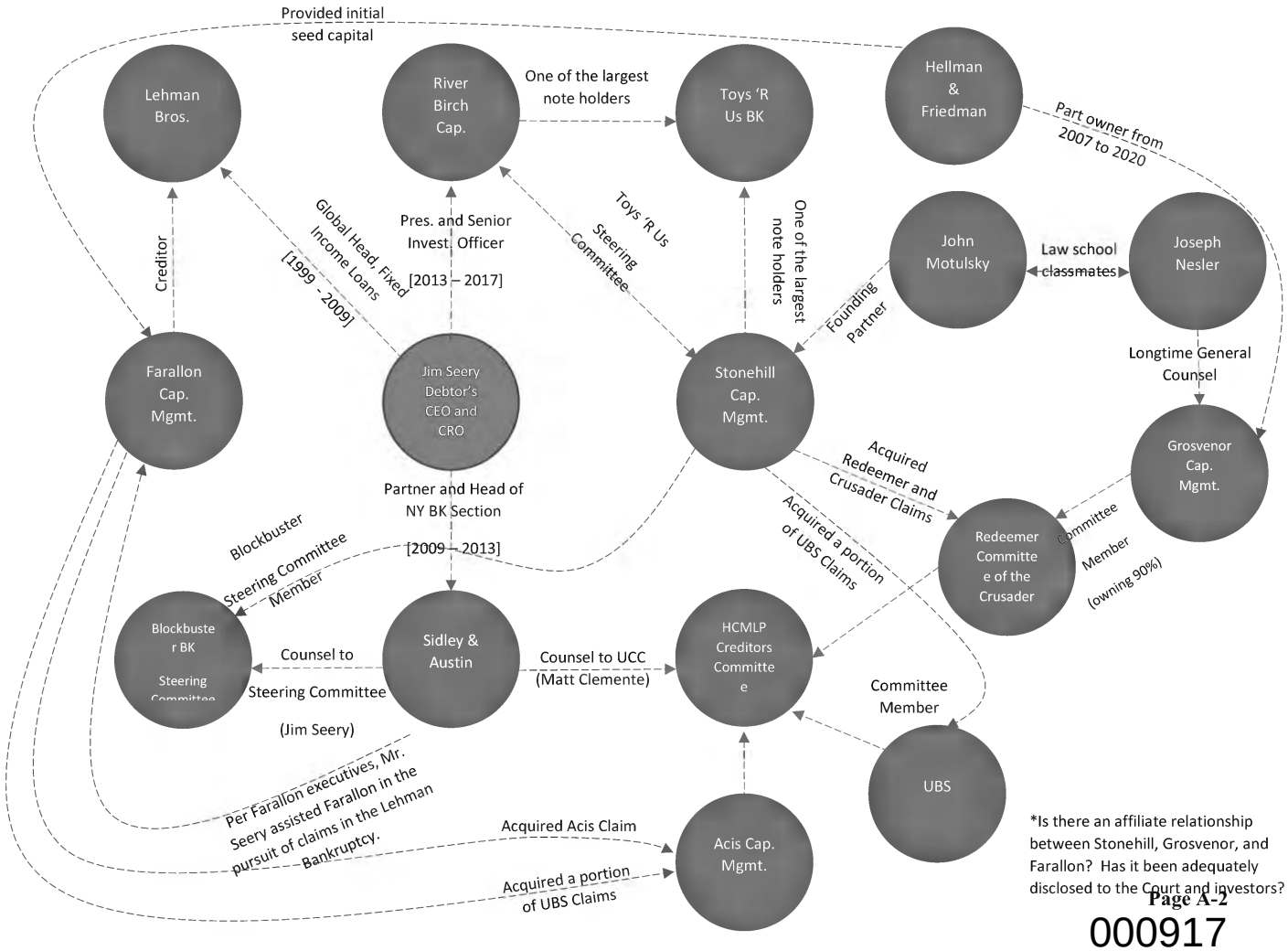
Relationships Among Debtor's CEO/CRO, the UCC, and Claims Purchasers



*Is there an affiliate relationship between Stonehill, Grosvenor, and Farallon? Has it been adequately disclosed to the Court and investors?

Debtor Protocols [Doc. 466-1]

I. **Definitions**

A. "Court" means the United States Bankruptcy Court for the Northern District of Texas.

B. "NAV" means (A) with respect to an entity that is not a CLO, the value of such entity's assets less the value of its liabilities calculated as of the month end prior to any Transaction; and (B) with respect to a CLO, the CLO's gross assets less expenses calculated as of the quarter end prior to any Transaction.

C. "Non-Discretionary Account" means an account that is managed by the Debtor pursuant to the terms of an agreement providing, among other things, that the ultimate investment discretion does not rest with the Debtor but with the entity whose assets are being managed through the account.

D. "Related Entity" means collectively (A)(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor) has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor); (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative (as defined in Section 101 of the Bankruptcy Code) of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, including any "non-statutory" insider; and (viii) to the extent not included in (A)(i)-(vii), any entity included in the listing of related entities in **Schedule B** hereto (the "Related Entities Listing"); and (B) the following Transactions, (x) any intercompany Transactions with certain affiliates referred to in paragraphs 16.a through 16.e of the Debtor's cash management motion [Del. Docket No. 7]; and (y) any Transactions with Charitable DAF Fund, L.P. (provided, however, that additional parties may be added to this subclause (y) with the mutual consent of the Debtor and the Committee, such consent not to be unreasonably withheld).

E. "Stage 1" means the time period from the date of execution of a term sheet incorporating the protocols contained below the ("Term Sheet") by all applicable parties until approval of the Term Sheet by the Court.

F. "Stage 2" means the date from the appointment of a Board of Independent Directors at Strand Advisors, Inc. until 45 days after such appointment, such appointment being effective upon Court approval.

G. "Stage 3" means any date after Stage 2 while there is a Board of Independent Directors at Strand Advisors, Inc.

H. "Transaction" means (i) any purchase, sale, or exchange of assets, (ii) any lending or borrowing of money, including the direct payment of any obligations of another entity, (iii) the satisfaction of any capital call or other contractual

requirement to pay money, including the satisfaction of any redemption requests, (iv) funding of affiliates and (v) the creation of any lien or encumbrance.

I. "Ordinary Course Transaction" means any transaction with any third party which is not a Related Entity and that would otherwise constitute an "ordinary course transaction" under section 363(c) of the Bankruptcy Code.

J. "Notice" means notification or communication in a written format and shall include supporting documents necessary to evaluate the propriety of the proposed transaction.

K. "Specified Entity" means any of the following entities: ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

II. Transactions involving the (i) assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly-owned subsidiaries, including Jefferies Prime Account, and (ii) the Highland Select Equity Fund, L.P., Highland Multi Strategy Credit Fund, L.P., and Highland Restoration Capital Partners

A. **Covered Entities**: N/A (See entities above).

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

III. Transactions involving entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above)

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above).[1]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

[1] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

IV. Transactions involving entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest.[2]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

   a) Stage 1 and Stage 2: ordinary course determined by the CRO.

   b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

   a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

   b) Stage 3:

      (1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

      (2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages):

   a) Except (x) as set forth in (b) and (c) below and (y) for any Transaction involving a Specified Entity and the sale or purchase by such Specified Entity of an asset that is not an obligation or security issued or guaranteed by any of the Debtor, a Related Entity or a fund, account, portfolio company owned, controlled or managed by the Debtor or a Related Entity, where such Transaction is effected in compliance with the collateral management agreement to which such Specified Entity is party, any Transaction that decreases the NAV of an entity managed by the Debtor in excess of the greater of (i) 10% of NAV or (ii) $3,000,000 requires five business days advance notice to

[2] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may take such steps as may be reasonably necessary to winddown any managed entity and make distributions as may be required in connection with such winddown to any required parties. The Debtor will provide the Committee with five business days advance notice of any distributions to be made to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category. Such reports will include Transactions involving a Specified Entity unless the Debtor is prohibited from doing so under applicable law or regulation or any agreement governing the Debtor's relationship with such Specified Entity.

V. Transactions involving entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest.[3]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

[3] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

VI. **Transactions involving entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest**

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest.[4]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VII. **Transactions involving Non-Discretionary Accounts**

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all non-discretionary accounts.[5]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VIII. **Additional Reporting Requirements – All Stages (to the extent applicable)**

A. DSI will provide detailed lists and descriptions of internal financial and operational controls being applied on a daily basis for a full understanding by the Committee and its professional advisors three (3) business days in advance of the hearing on the approval of the Term Sheet and details of proposed amendments to said financial and operational controls no later than seven (7) days prior to their implementation.

B. The Debtor will continue to provide weekly budget to actuals reports referencing their 13-week cash flow budget, such reports to be inclusive of all Transactions with Related Entities.

IX. **Shared Services**

A. The Debtor shall not modify any shared services agreement without approval of the CRO and Independent Directors and seven business days' advance notice to counsel for the Committee.

B. The Debtor may otherwise continue satisfying its obligations under the shared services agreements.

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[4] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

[5] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

X. Representations and Warranties

A. The Debtor represents that the Related Entities Listing included as **Schedule B** attached hereto lists all known persons and entities other than natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

B. The Debtor represents that the list included as **Schedule C** attached hereto lists all known natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

C. The Debtor represents that, if at any time the Debtor becomes aware of any person or entity, including natural persons, meeting the definition of Related Entities covered by Section I.D parts A(1)-(vii) above that is not included in the Related Entities Listing or Schedule C, the Debtor shall update the Related Entities Listing or Schedule C, as appropriate, to include such entity or person and shall give notice to the Committee thereof.

Schedule A[6]

Entities the Debtor manages and in which the Debtor holds a direct or indirect interest

1. Highland CLO Funding, Ltd. (0.63% Ownership Interest)
2. Dynamic Income Fund (0.26% Ownership Interest)

Entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

1. Highland Prometheus Master Fund L.P.
2. NexAnnuity Life Insurance Company
3. PensionDanmark
4. Highland Argentina Regional Opportunity Fund
5. Longhorn A
6. Longhorn B
7. Collateralized Loan Obligations
   a) Rockwall II CDO Ltd.
   b) Grayson CLO Ltd.
   c) Eastland CLO Ltd.
   d) Westchester CLO, Ltd.
   e) Brentwood CLO Ltd.
   f) Greenbriar CLO Ltd.
   g) Highland Park CDO Ltd.
   h) Liberty CLO Ltd.
   i) Gleneagles CLO Ltd.
   j) Stratford CLO Ltd.
   k) Jasper CLO Ltd.
   l) Rockwall DCO Ltd.
   m) Red River CLO Ltd.
   n) Hi V CLO Ltd.
   o) Valhalla CLO Ltd.
   p) Aberdeen CLO Ltd.
   q) South Fork CLO Ltd.
   r) Legacy CLO Ltd.
   s) Pam Capital
   t) Pamco Cayman

Entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

1. Highland Opportunistic Credit Fund
2. Highland Healthcare Opportunities Fund f/k/a Highland Long/Short Healthcare Fund
3. NexPoint Real Estate Strategies Fund
4. Highland Merger Arbitrage Fund
5. NexPoint Strategic Opportunities Fund
6. Highland Small Cap Equity Fund
7. Highland Global Allocation Fund

[6] NTD: Schedule A is work in process and may be supplemented or amended.

8. Highland Socially Responsible Equity Fund
9. Highland Income Fund
10. Stonebridge-Highland Healthcare Private Equity Fund ("Korean Fund")
11. SE Multifamily, LLC

Entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

1. The Dugaboy Investment Trust
2. NexPoint Capital LLC
3. NexPoint Capital, Inc.
4. Highland IBoxx Senior Loan ETF
5. Highland Long/Short Equity Fund
6. Highland Energy MLP Fund
7. Highland Fixed Income Fund
8. Highland Total Return Fund
9. NexPoint Advisors, L.P.
10. Highland Capital Management Services, Inc.
11. Highland Capital Management Fund Advisors L.P.
12. ACIS CLO Management LLC
13. Governance RE Ltd
14. PCMG Trading Partners XXIII LP
15. NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC
16. NexPoint Real Estate Advisors II LP
17. NexPoint Healthcare Opportunities Fund
18. NexPoint Securities
19. Highland Diversified Credit Fund
20. BB Votorantim Highland Infrastructure LLC
21. ACIS CLO 2017 Ltd.

Transactions involving Non-Discretionary Accounts

1. NexBank SSB Account
2. Charitable DAF Fund LP

Schedule B

Related Entities Listing (other than natural persons)

Schedule C

1. James Dondero
2. Mark Okada
3. Grant Scott
4. John Honis
5. Nancy Dondero
6. Pamela Okada
7. Thomas Surgent
8. Scott Ellington
9. Frank Waterhouse
10. Lee (Trey) Parker

Seery Jan. 29, 2021 Testimony

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

In Re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, LP,	Case No. 19-34054-SGJ 11
Debtor	

REMOTE DEPOSITION OF JAMES P. SEERY, JR.

January 29, 2021

10:11 a.m. EST

Reported by:
Debra Stevens, RPR-CRR
JOB NO. 189212

January 29, 2021
9:00 a.m. EST

Remote Deposition of JAMES P. SEERY, JR., held via Zoom conference, before Debra Stevens, RPR/CRR and a Notary Public of the State of New York.

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EXAMINATIONS

EXHIBITS

SEERY DYD

INFORMATION/PRODUCTION REQUESTS

MARKED FOR RULING

COURT REPORTER: My name is Debra Stevens, court reporter for TSG Reporting and notary public of the State of New York. Due to the severity of the COVID-19 pandemic and following the practice of social distancing, I will not be in the same room with the witness but will report this deposition remotely and will swear the witness in remotely. If any party has any objection, please so state before we proceed.

Whereupon,

JAMES SEERY,

having been first duly sworn/affirmed, was examined and testified as follows:

EXAMINATION BY
MR. DRAPER:

Q. Mr. Seery, my name is Douglas Draper, representing the Dugaboy Trust. I have series of questions today in connection with the 30(b) Notice that we filed. The first question I have for you, have you seen the Notice of Deposition

J. SEERY

the screen, please?
A. Page what?
Q. I think it is page 174.
A. Of the PDF or of the document?
Q. Of the disclosure statement that was filed. It is up on the screen right now.
COURT REPORTER: Do you intend this as another exhibit for today's deposition?
MR. DRAPER: We'll mark this Exhibit 2.
(So marked for identification as Seery Exhibit 2.)
Q. If you look to the recovery to Class 8 creditors in the November 2020 disclosure statement was a recovery of 87.44 percent?
A. That actually says the percent distribution to general unsecured creditors was 87.44 percent. Yes.
Q. And in the new document that was filed, given to us yesterday, the recovery is 62.5 percent?

J. SEERY

A. It says the percent distribution to general unsecured creditors is 62.14 percent.
Q. Have you communicated the reduced recovery to anybody prior to the date -- to yesterday?
MR. MORRIS: Objection to the form of the question.
A. I believe generally, yes. I don't know if we have a specific number, but generally yes.
Q. And would that be members of the Creditors' Committee who you gave that information to?
A. Yes.
Q. Did you give it to anybody other than members of the Creditors' Committee?
A. Yes.
Q. Who?
A. HarbourVest.
Q. And when was that?
A. Within the last two months.
Q. You did not feel the need to communicate the change in recovery to

J. SEERY

anybody else?
A. I said Mr. Doherty.
Q. In looking at the two elements, and what I have asked you to look at is the claims pool. If you look at the November disclosure statement, if you look down Class 8, unsecured claims?
A. Yes.
Q. You have 176,000 roughly?
A. Million.
Q. 176 million. I am sorry. And the number in the new document is 313 million?
A. Correct.
Q. What accounts for the difference?
A. An increase in claims.
Q. When did those increases occur? Were they yesterday? A month ago? Two months ago?
A. Over the last couple months.
Q. So in fact over the last couple months you knew in fact that the recovery in the November disclosure statement was

J. SEERY

not accurate?
A. Yes. We secretly disclosed it to the Bankruptcy Court in open court hearings.
Q. But you never did bother to calculate the reduced recovery; you just increased --
(Reporter interruption.)
Q. You just advised as to the increased claims pool. Correct?
MR. MORRIS: Objection to the form of the question.
A. I don't understand your question.
Q. What I am trying to get at is, as you increase the claims pool, the recovery reduces. Correct?
A. No. That is not how a fraction works.
Q. Well, if the denominator increases, doesn't the recovery ultimately decrease if --
A. No.
Q. -- if the numerator stays the

J. SEERY

were amended without consideration a few years ago. So, for our purposes we didn't make the assumption, which I am sure will happen, a fraudulent conveyance claim on those notes, that a fraudulent conveyance action would be brought. We just assumed that we'd have to discount the notes heavily to sell them because nobody would respect the ability of the counterparties to fairly pay.

Q. And the same discount was applied in the liquidation analysis to those notes?

A. Yes.

Q. Now --

A. The difference -- there would be a difference, though, because they would pay for a while because they wouldn't want to accelerate them. So there would be some collections on the notes for P and I.

Q. But in fact as of January you have accelerated those notes?

A. Just one of them, I believe.

Q. Which note was that?

J. SEERY

A. NexPoint, I said. They defaulted on the note and we accelerated it.

Q. So there is no need to file a fraudulent conveyance suit with respect to that note. Correct, Mr. Seery?

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

A. Disagree. Since it was likely intentional fraud, there may be other recoveries on it. But to collect on the note, no.

Q. My question was with respect to that note. Since you have accelerated it, you don't need to deal with the issue of when it's due?

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

A. That wasn't your question. But to that question, yes, I don't need to deal with when it's due.

Q. Let me go over certain assets. I am not going to ask you for the valuation of them but I am going to ask

J. SEERY

you whether they are included in the asset portion of your $257 million number, all right? Mr. Morris didn't want me to go into specific asset value, and I don't intend to do that.

The first question I have for you is, the equity in Trustway Highland Holdings, is that included in the $257 million number?

A. There is no such entity.

Q. Then I will do it in a different way. In connection with the sale of the hard assets, what assets are included in there specifically?

A. Off the top of my head -- it is all of the assets, but it includes Trustway Holdings and all the value that flows up from Trustway Holdings. It includes Targa and all the value that flows up from Targa. It includes CCS Medical and all the value that would flow to the Debtor from CCS Medical. It includes Cornerstone and all the value that would flow from Cornerstone. It

J. SEERY

includes any other securities and all the value that would flow from Cornerstone. It includes HCLOF and all the value that would flow up from HCLOF. It includes Korea and all the value that would flow up from Korea.

There may be others off the top of my head. I don't recall them. I don't have a list in front of me.

Q. Now, with respect to those assets, have you started the sale process of those assets?

A. No. Well, each asset is different. So, the answer is, with respect to any securities, we do seek to sell those regularly and we do seek to monetize those assets where we can depending on whether there is a restriction or not and whether there is liquidity in the market.

With respect to the PE assets or the companies I described -- Targa, CCS, Cornerstone, JHT -- we have not -- Trustway. We have not sought to sell

J. SEERY

A. I don't recall the specific limitation on the trust. But if there was a reason to hold on to the asset, if there is a limitation, we can seek an extension.

Q. Let me ask a question. With respect to these businesses, the Debtor merely owns an equity interest in them. Correct?

A. Which business?

Q. The ones you have identified as operating businesses earlier?

A. It depends on the business.

Q. Well, let me -- again, let's try to be specific. With respect to SSP, it was your position that you did not need to get court approval for the sale. Correct?

A. That's correct.

Q. Which one of the operating businesses that are here, that you have identified, do you need court authority for a sale?

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

A. [illegible]

J. SEERY

different analysis that we'll undertake with bankruptcy counsel to determine what we would need depending [illegible] going to happen and what the restrictions either under the code are or under the plan.

Q. Is there anything that would stop you from selling these businesses if the Chapter 11 went on for a year or two years?

MR. MORRIS: Objection to form of the question.

A. Is there anything that would stop me? We'd have to follow the strictures of the code and the protocols, but there would be no prohibition -- let [illegible], please.

There would be no prohibition that I am aware of.

Q. Now, in connection with your differential between the liquidation of what I will call the operating businesses under the liquidation analysis and the plan analysis, who arrived at the discount

J. SEERY

or determined the discount that has been placed between the two, plan analysis versus liquidation analysis?

MR. MORRIS: Objection to form of the question.

A. To which document are you referring?

Q. Both the June -- the January and the November analysis has a different estimated proceeds for monetization for the plan analysis versus the liquidation analysis. Do you see that?

A. Yes.

Q. And there is a note under there. "Assumes Chapter 7 trustee will not be able to achieve the same sales proceeds as Claimant trustee."

A. I see that, yes.

Q. Do you see that note?

A. Yes.

Q. Who arrived at that discount?

A. I did.

Q. What percentage did you use?

A. Depended on the asset. Each one

J. SEERY

is different.

Q. Is the discount a function of capability of a trustee versus your capability, or is the discount a function of timing?

MR. MORRIS: Objection to form.

A. It could be a combination.

Q. So, let's -- let me walk through this. Your plan analysis has an assumption that everything is sold by December 2022. Correct?

A. Correct.

Q. And the valuations that you have used here for the monetization assume a sale between -- a sale prior to December of 2022. Correct?

A. Sorry. I don't quite understand your question.

Q. The 257 number, and then let's take out the notes. Let's use the 210 number.

MR. MORRIS: Can we put the document back on the screen, please? Sorry, Douglas, to interrupt, but it

J. SEERY

would be helpful.

MR. DRAPER: That is fine, John.

(Pause.)

MR. MORRIS: Thank you very much.

Q. Mr. Seery, do you see the 257?

A. In the one from yesterday?

Q. Yes.

A. Second line, 257,941. Yes.

Q. That assumes a monetization of all assets by December of 2022?

A. Correct.

Q. And so everything has been sold by that time; correct?

A. Yes.

Q. So, what I am trying to get at is, there is both the capability between you and a trustee, and then the second issue is timing. So, what discount was put on for timing, Mr. Seery, between when a trustee would sell it versus when you would sell it?

MR. MORRIS: Objection.

Q. What is the percentage you

J. SEERY

applied?

A. Each of the assets is different.

Q. Is there a general discount that you used?

A. Not a general discount, no. We looked at each individual asset and went through and made an assessment.

Q. Did you apply a discount for your capability versus the capability of a trustee?

A. No.

Q. So a trustee would be as capable as you are in monetizing these assets?

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

Q. Excuse me? The answer is?

A. The answer is maybe.

Q. Couldn't a trustee hire somebody as capable as you are?

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

A. Perhaps.

Q. Sir, that is a yes or no question. Could the trustee hire somebody

J. SEERY

as capable as you are?

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

A. I don't know.

Q. Is there anybody as capable as you are?

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

A. Certainly.

Q. And they could be hired. Correct?

A. Perhaps. I don't know.

Q. And if you go back to the November 2020 liquidation analysis versus plan analysis, it is also the same note about that a trustee would bring less, and there is the same sort of discount between the estimated proceeds under the plan and under the liquidation analysis.

MR. MORRIS: If that is a question, I object.

Q. Is that correct, Mr. Seery, looking at the document?

A. There are discounts, yes.

J. SEERY

Q. Again, the discounts are applied for timing and capability?

A. Yes.

Q. Now, in looking at the November plan analysis number of $190 million and the January number of $257 million, what accounts for the increase between the two dates? What assets specifically?

A. There are a number of assets. Firstly, the HCLOF assets are added.

Q. How much are those?

A. Approximately 22 and a half million dollars.

Q. Okay.

A. Secondly, there is a significant increase in the value of certain of the assets over this time period.

Q. Which assets, Mr. Seery?

A. There are a number. They include MGM stock, they include Trustway, they include Targa.

Q. And what is the percentage increase from November to January, November of 2020 to January of 2021?

J. SEERY

A. Do you mean what is the percentage increase from 190 to 257?

Q. No. You just identified three assets. MGM stock, we can go look at the exchange and figure out what the price increase is; correct?

A. No.

Q. Why not? Is the MGM stock publicly traded?

A. Yes. It doesn't trade on --

Q. Excuse me?

A. It doesn't trade on an exchange.

Q. Is there a public market for the MGM stock that we could calculate the increase?

A. There is a semipublic market; yes.

Q. So it is a number that is readily available between the two dates?

A. It's available.

Q. Now, you identified Targa and Trustway. Correct?

A. Yes.

Q. Those are not readily available

J. SEERY

markets; correct?

A. No.

Q. Those are operating businesses?

A. Correct.

Q. Who provided the valuation for the November 2020 liquidation analysis?

A. We use a combination of the value that we get from Houlihan Lokey for mark purposes and then we adjust it for plan purposes.

Q. And the adjustment was up or down?

A. When?

Q. For both November and January. You got a number from Houlihan Lokey. You adjusted it. Did you adjust it up or did you adjust it down?

MR. MORRIS: Objection to form of the question.

A. I believe that for November we adjusted it down, and for January we adjusted it down. I don't recall off the top of my head but I believe both of them were adjusted down.

J. SEERY

Q. And if I understand what you just said, it is that the Houlihan Lokey valuation for those two businesses showed a significant increase between November of 2020 and January of 2021?

MR. MORRIS: Objection to form of the question.

A. I didn't say that.

Q. I am trying to account for the increase between the two dates, and you identified three assets. You identified MGM stock, which has, I can guess, as you have said, a readily ascertainable value. Then you identified two others that the valuation is based upon something Houlihan Lokey provided you. Correct?

A. I gave you three examples. I never said "readily." That is your word, not mine. And I didn't say that Houlihan had a significant change in their valuation.

Q. So let's now go back to the question. There is an increase in value from November 24th of 2020 to January 28th

J. SEERY

of 2021, the magnitude being roughly 60 some odd million dollars. Correct?

A. Correct.

Q. We can account for $22 million of it easily, right?

MR. MORRIS: Objection to form.

A. Correct.

Q. That is the Harbourvest settlement, so that leaves roughly $40 million unaccounted for?

MR. MORRIS: Objection to the form of the question if that is a question. It is accounted for.

Q. What makes up that difference, Mr. Seery?

A. A change in the plan value of the assets.

Q. Okay. Which assets? Let's sort of go back to where we were.

A. There are numerous assets in the plan formulation. I gave you three examples of the operating businesses. The securities, I believe, have increased in value since the plan, so those would go up

J. SEERY

for one. On the operating businesses, we looked at each of them and made an assessment based upon where the market is and what we believe the values are, and we have moved those valuations.

Q. Let me look at some numbers again. In the liquidation analysis in November of 2020, the liquidation value is $149 million. Correct?

A. Yes.

Q. And in the liquidation analysis in January of 2021, you have $191 million?

A. Yes.

Q. You see that number. So there is $51 million there, right?

A. No.

Q. What is the difference between 191 and -- sorry. My math may be a little off. What is the difference between the two numbers, Mr. Seery?

A. Your math is off.

Q. Sorry. It is 41 million?

A. Correct.

Q. $22 million of that is the

J. SEERY

HarbourVest settlement, right?

A. I believe that's correct.

Q. Is that fair, Mr. Seery?

A. I believe that is correct, yes.

Q. And part of that differential are publicly traded or ascertainable securities. Correct?

A. Yes.

Q. And basically you can get, or under the plan analysis or trustee analysis, if it is a marketable security or where there is a market, the liquidation number should be the same for both. Is that fair?

A. No.

Q. And why not?

A. We might have a different price target for a particular security than the current trading value.

Q. I understand that, but I mean that is based upon the capability of the person making the decision as to when to sell. Correct?

MR. MORRIS: Objection to form

J. SEERY

of the question.

Q. Mr. Seery, yes or no?

A. I said no.

Q. What is that based on, then?

A. The person's ability to assess the market and timing.

Q. Okay. And again, couldn't a trustee hire somebody as capable as you to both, A, assess the market and, B, make a determination as to when to sell?

MR. MORRIS: Objection to form of the question.

A. I suppose a trustee could.

Q. And there are better people or people equally or better than you at assessing a market. Correct?

A. Yes.

MR. MORRIS: Objection to form of the question.

Q. So, again, let's go back to that. We have accounted for, out of $41 million where the liquidation analysis increases between the two dates, $22 million of it. That leaves

J. SEERY

$18 million. How much of that is publicly traded or ascertainable assets versus operating businesses?

A. I don't know off the top of my head the percentages.

Q. All right. The same question for the plan analysis where you have the differential between the November number and the January number. How much of it is marketable securities versus an operating business?

A. I don't recall off the top of my head.

MR. DRAPER: Let me take a few-minute break. Can we take a ten-minute break here?

THE WITNESS: Sure.

(Recess.)

BY MR. DRAPER:

Q. Mr. Seery, what I am going to show you and what I would ask you to look at is in the note E, in the statement of assumptions for the November 2020 disclosure statement. It discusses fixed

Sale of Assets of Affiliates or Controlled Entities

Asset	Sales Price
Structural Steel Products	$50 million
Life Settlements	$35 million
OmniMax	$50 million
Targa	$37 million

- These assets were sold over the contemporaneous objections of James Dondero, who was the Portfolio Manager and key-man on the funds.
- Mr. Seery admitted[1] that he must comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Protocols for the sale of major assets of the estate. We believe that a competitive bid process and court approval should have been required for the sale of each of these assets (as was done for the sale of the building at 2817 Maple Ave. [a $9 million asset] and the sale of the interest in PetroCap [a $3 million asset]).

[1] *See* Mr. Seery's Jan. 29, 2021 deposition testimony, Appendix p. A-20.

20 Largest Unsecured Creditors

Name of Claimant	Allowed Class 8	Allowed Class 9
Redeemer Committee of the Highland Crusader Fund	$136,696,610.00	
UBS AG, London Branch and UBS Securities LLC	$65,000,000.00	$60,000,000
HarbourVest entities	$45,000,000.00	$35,000,000
Acis Capital Management, L.P. and Acis Capital Management GP, LLC	$23,000,000.00	
CLO Holdco Ltd	$11,340,751.26	
Patrick Daugherty	$8,250,000.00	$2,750,000 (+$750,000 cash payment on Effective Date of Plan)
Todd Travers (Claim based on unpaid bonus due for Feb 2009)	$2,618,480.48	
McKool Smith PC	$2,163,976.00	
Davis Deadman (Claim based on unpaid bonus due for Feb 2009)	$1,749,836.44	
Jack Yang (Claim based on unpaid bonus due for Feb 2009)	$1,731,813.00	
Paul Kauffman (Claim based on unpaid bonus due for Feb 2009)	$1,715,369.73	
Kurtis Plumer (Claim based on unpaid bonus due for Feb 2009)	$1,470,219.80	
Foley Gardere	$1,446,136.66	
DLA Piper	$1,318,730.36	
Brad Borud (Claim based on unpaid bonus due for Feb 2009)	$1,252,250.00	
Stinson LLP (successor to Lackey Hershman LLP)	$895,714.90	
Meta-E Discovery LLC	$779,969.87	
Andrews Kurth LLP	$677,075.65	
Markit WSO Corp	$572,874.53	
Duff & Phelps, LLC	$449,285.00	
Lynn Pinker Cox Hurst	$436,538.06	
Joshua and Jennifer Terry	$425,000.00	
Joshua Terry	$355,000.00	
CPCM LLC (bought claims of certain former HCMLP employees)	Several million	
TOTAL:	**$309,345,631.74**	**$95,000,000**

Timeline of Relevant Events

Date	Description
10/29/2019	UCC appointed; members agree to fiduciary duties and not sell claims.
9/23/2020	Acis 9019 filed
9/23/2020	Redeemer 9019 filed
10/28/2020	Redeemer settlement approved
10/28/2020	Acis settlement approved
12/24/2020	HarbourVest 9019 filed
1/14/2021	Motion to appoint examiner filed
1/21/2021	HarbourVest settlement approved; transferred its interest in HCLOF to HCMLP assignee, valued at $22 million per Seery
1/28/2021	Debtor discloses that it has reached an agreement in principle with UBS
2/3/2021	Failure to comply with Rule 2015.3 raised
2/24/2021	Plan confirmed
3/9/2021	Farallon Cap. Mgmt. forms "Muck Holdings LLC" in Delaware
3/15/2021	Debtor files Jan. '21 monthly operating report indicating assets of $364 million, liabilities of $335 million (**inclusive of $267,607,000 in Class 8 claims, but exclusive of any Class 9 claims**), the last publicly filed summary of the Debtor's assets. The MOR states that no Class 9 distributions are anticipated at this time and Class 9 recoveries are not expected.
3/31/2021	UBS files friendly suit against HCMLP under seal
4/8/2021	Stonehill Cap. Mgmt. forms "Jessup Holdings LLC" in Delaware
4/15/2021	UBS 9019 filed
4/16/2021	Notice of Transfer of Claim - Acis to Muck (Farallon Capital)
4/29/2021	Motion to Compel Compliance with Rule 2015.3 Filed
4/30/2021	Notice of Transfer of Claim - Redeemer to Jessup (Stonehill Capital)
4/30/2021	Notice of Transfer of Claim - HarbourVest to Muck (Farallon Capital)
4/30/2021	Sale of Redeemer claim to Jessup (Stonehill Capital) "consummated"
5/27/2021	UBS settlement approved; included $18.5 million in cash from Multi-Strat
6/14/2021	UBS dismisses appeal of Redeemer award
8/9/2021	Notice of Transfer of Claim - UBS to Jessup (Stonehill Capital)
8/9/2021	Notice of Transfer of Claim - UBS to Muck (Farallon Capital)

Critical unknown dates and information:

- The date on which Muck entered into agreements with HarbourVest and Acis to acquire their claims and what negative and affirmative covenants those agreements contained.
- The date on which Jessup entered into an agreement with the Redeemer Committee and the Crusader Fund to acquire their claim and what negative and affirmative covenants the agreement contained.
- The date on which the sales actually closed versus the date on which notice of the transfer was filed (i.e., did UCC members continue to serve on the committee after they had sold their claims).

Debtor's October 15, 2020 Liquidation Analysis [Doc. 1173-1]

	Plan Analysis		**Liquidation Analysis**
Estimated cash on hand at 12/31/2020	$26,496		$26,496
Estimated proceeds from monetization of assets [1][2]	198,662		154,618
Estimated expenses through final distribution [1][3]	(29,864)		(33,804)
Total estimated $ available for distribution	**195,294**		**147,309**
Less: Claims paid in full			
Administrative claims [4]	(10,533)		(10,533)
Priority Tax/Settled Amount [10]	(1,237)		(1,237)
Class 1 – Jefferies Secured Claim	-		-
Class 2 – Frontier Secured Claim [5]	(5,560)		(5,560)
Class 3 – Priority non-tax claims [10]	(16)		(16)
Class 4 – Retained employee claims	-		-
Class 5 – Convenience claims [6][10]	(13,455)		-
Class 6 – Unpaid employee claims [7]	(2,955)		-
Subtotal	(33,756)		(17,346)
Estimated amount remaining for distribution to general unsecured claims	161,538		129,962
Class 5 – Convenience claims [8]	-		17,940
Class 6 – Unpaid employee claims	-		3,940
Class 7 – General unsecured claims [9]	174,609		174,609
Subtotal	174,609		196,489
% Distribution to general unsecured claims	92.51%		66.14%
Estimated amount remaining for distribution	-		-
Class 8 – Subordinated claims	*no distribution*		*no distribution*
Class 9 – Class B/C limited partnership interests	*no distribution*		*no distribution*
Class 10 – Class A limited partnership interests	*no distribution*		*no distribution*

Notable notations/disclosures in the Oct. 15, 2020 liquidation analysis include:

- Note [9]: General unsecured claims estimated using $0 allowed claims for HarbourVest and UBS. Ultimately, those two creditors were awarded $105 million of general unsecured claims and $95 million of subordinated claims.

Updated Liquidation Analysis (Feb. 1, 2021)[2]

	Plan Analysis		**Liquidation Analysis**
Estimated cash on hand at 1/31/2020 [sic]	$24,290		$24,290
Estimated proceeds from monetization of assets [1][2]	257,941		191,946
Estimated expenses through final distribution [1][3]	(59,573)		(41,488)
Total estimated $ available for distribution	**222,658**		**174,178**
Less: Claims paid in full			
Unclassified [4]	(1,080)		(1,080)
Administrative claims [5]	(10,574)		(10,574)
Class 1 – Jefferies Secured Claim	-		-
Class 2 – Frontier Secured Claim [6]	(5,781)		(5,781)
Class 3 – Other Secured Claims	(62)		(62)
Class 4 – Priority non-tax claims	(16)		(16)
Class 5 – Retained employee claims	-		-
Class 6 – PTO Claims [5]	-		-
Class 7 – Convenience claims [7][8]	(10,280)		-
Subtotal	**(27,793)**		**(17,514)**
Estimated amount remaining for distribution to general unsecured claims	194,865		157,235
% Distribution to Class 7 (Class 7 claims including in Class 8 in Liquidation scenario)	85.00%		0.00%
Class 8 – General unsecured claims [8] [10]	273,219		286,100
Subtotal	273,219		286,100
% Distribution to general unsecured claims	71.32%		54.96%
Estimated amount remaining for distribution	-		-
Class 9 – Subordinated claims	*no distribution*		*no distribution*
Class 10 – Class B/C limited partnership interests	*no distribution*		*no distribution*
Class 11 – Class A limited partnership interests	*no distribution*		*no distribution*

Notable notations/disclosures in the Feb. 1, 2021 liquidation analysis include:

- claim amounts in Class 8 assume $0 for IFA and HM, $50.0 million for UBS and $45 million HV.
- Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets

[2] Doc. 1895.

Summary of Debtor's January 31, 2021 Monthly Operating Report[3]

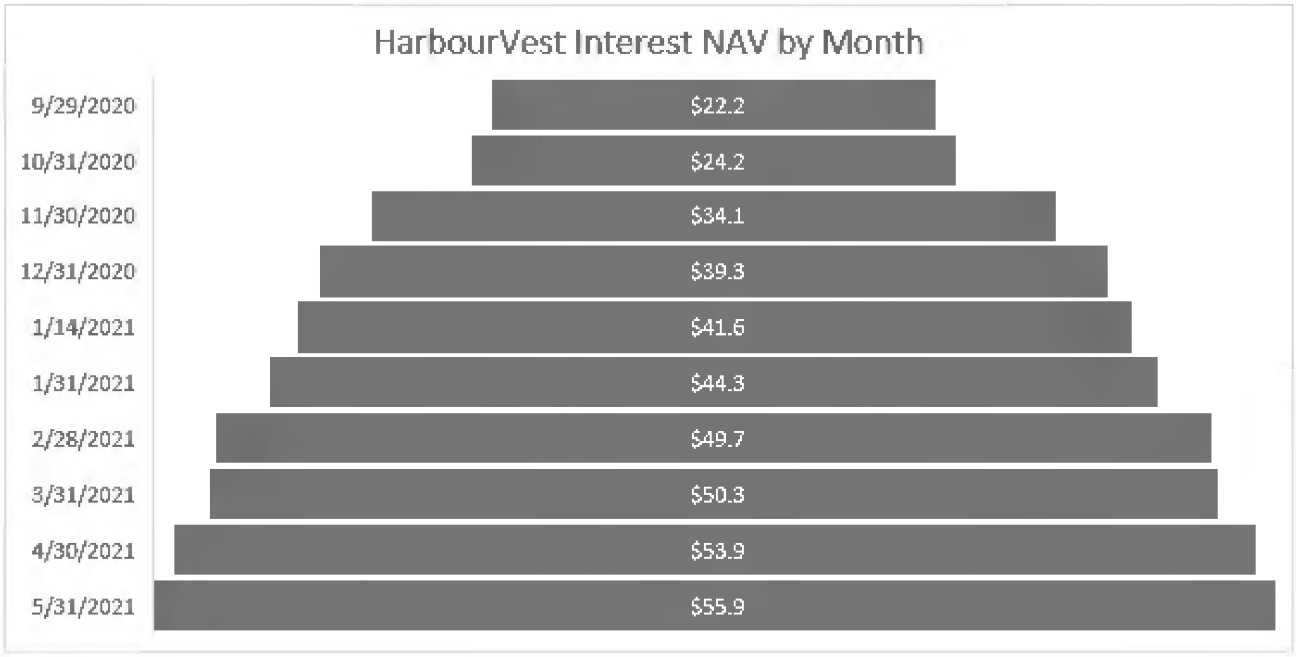
	10/15/2019	12/31/2020	1/31/2021
Assets			
Cash and cash equivalents	$2,529,000	$12,651,000	$10,651,000
Investments, at fair value	$232,620,000	$109,211,000	$142,976,000
Equity method investees	$161,819,000	$103,174,000	$105,293,000
mgmt and incentive fee receivable	$2,579,000	$2,461,000	$2,857,000
fixed assets, net	$3,754,000	$2,594,000	$2,518,000
due from affiliates	$151,901,000	$152,449,000	$152,538,000
reserve against notices receivable		($61,039,000)	($61,167,000)
other assets	$11,311,000	$8,258,000	$8,651,000
Total Assets	**$566,513,000**	**$329,759,000**	**$364,317,000**
Liabilities and Partners' Capital			
pre-petition accounts payable	$1,176,000	$1,077,000	$1,077,000
post-petition accounts payable		$900,000	$3,010,000
Secured debt			
Frontier	$5,195,000	$5,195,000	$5,195,000
Jefferies	$30,328,000	$0	$0
Accrued expenses and other liabilities	$59,203,000	$60,446,000	$49,445,000
Accrued re-organization related fees		$5,795,000	$8,944,000
Class 8 general unsecured claims	$73,997,000	$73,997,000	$267,607,000
Partners' Capital	$396,614,000	$182,347,000	$29,039,000
Total liabilities and partners' capital	**$566,513,000**	**$329,757,000**	**$364,317,000**

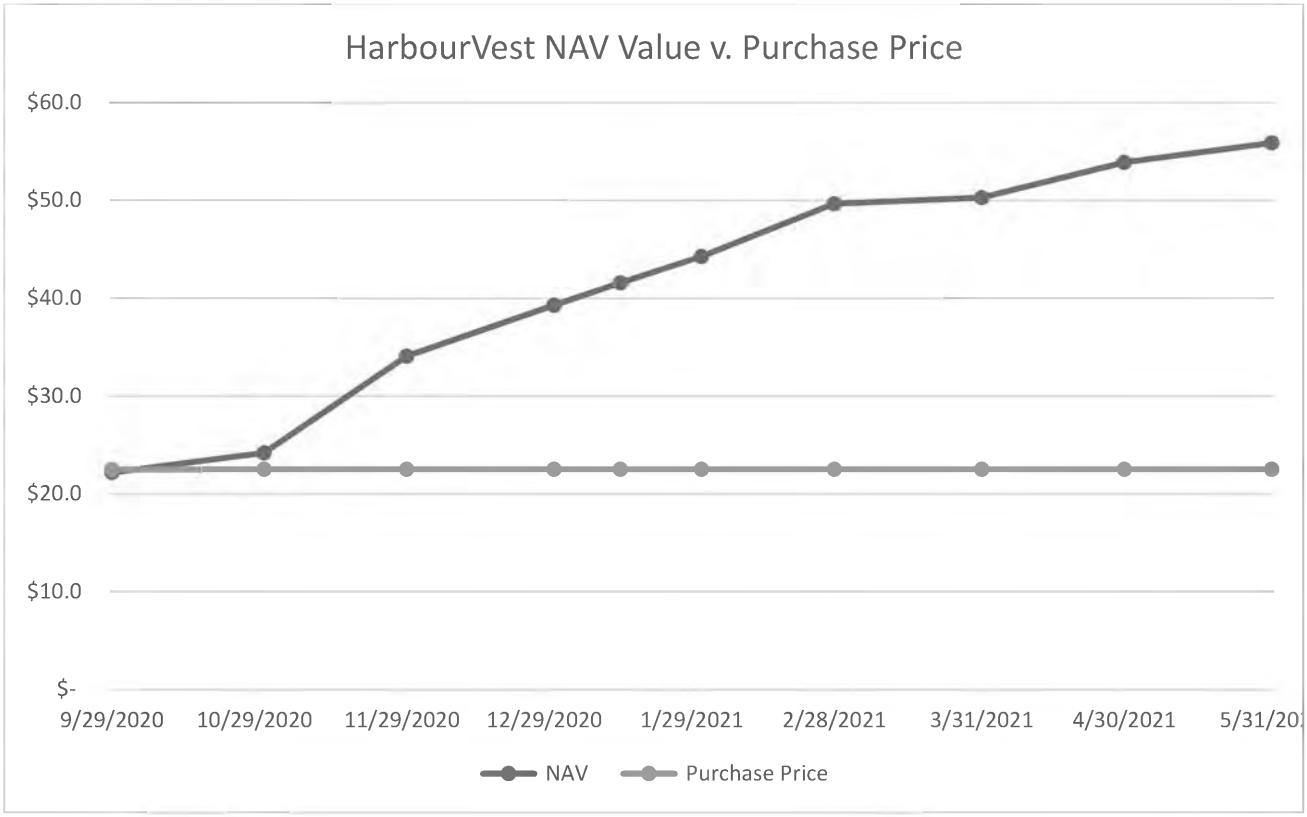
Notable notations/disclosures in the Jan. 31, 2021 MOR include:

- Class 8 claims totaled $267 million, a jump from $74 million in the prior month's MOR
- The MOR stated that no Class 9 recovery was expected, which was based on the then existing $267 million in Class 8 Claims.
- Currently, there are roughly $310 million of Allowed Class 8 Claims.

[3] [Doc. 2030] Filed on March 15, 2021, the last publicly disclosed information regarding the value of assets in the estate.

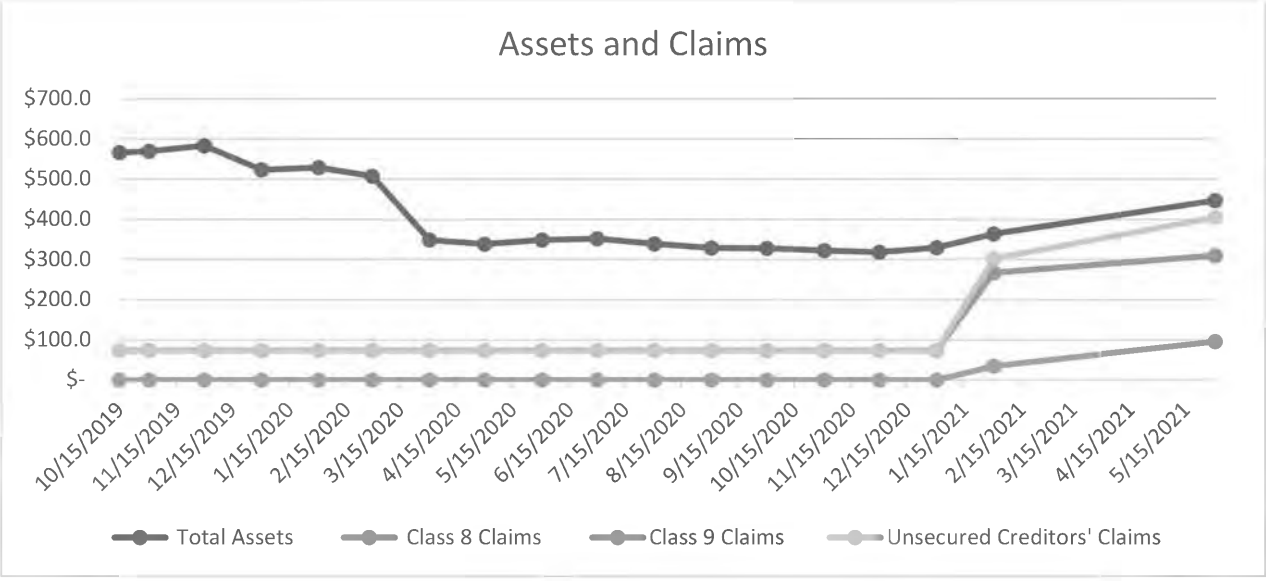
Value of HarbourVest Claim





Estate Value as of August 1, 2021 (in millions)[4]

Asset	Low	High
Cash as of 6/30/2021	$17.9	$17.9
Targa Sale	$37.0	$37.0
8/1 CLO Flows	$10.0	$10.0
Uchi Bldg. Sale	$9.0	$9.0
Siepe Sale	$3.5	$3.5
PetroCap Sale	$3.2	$3.2
HarbourVest trapped cash	$25.0	$25.0
Total Cash	**$105.6**	**$105.6**
Trussway	$180.0	$180.0
Cornerstone (125mm; 16%)	$18.0	$18.0
HarbourVest CLOs	$40.0	$40.0
CCS Medical (in CLOs and Highland Restoration)	$20.0	$20.0
MGM (direct ownership)	$32.0	$32.0
Multi-Strat (45% of 100mm; MGM; CCS)	$45.0	$45.0
Korea Fund	$18.0	$18.0
Celtic (in Credit-Strat)	$12.0	$40.0
SE Multifamily	$0.0	$20.0
Affiliate Notes	$0.0	$70.0
Other	$2.0	$10.0
TOTAL	**$472.6**	**$598.6**



[4] Values are based upon historical knowledge of the Debtor's assets (including cross-holdings) and publicly filed information.

HarbourVest Motion to Approve Settlement [Doc. 1625]

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	

DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154) AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

[1] The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession ("Highland" or the "Debtor"), files this motion (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement agreement (the "Settlement Agreement"),[2] a copy of which is attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* being filed simultaneously with this Motion ("Morris Dec."), that, among other things, fully and finally resolves the proofs of claim filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, "HarbourVest"). In support of this Motion, the Debtor represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code"), and Rule 9019 of the Bankruptcy Rules.

[2] All capitalized terms used but not defined herein shall have the meanings given to them in the Settlement Agreement.

RELEVANT BACKGROUND

A. Procedural Background

3. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

4. On October 29, 2019, the official committee of unsecured creditors (the "Committee") was appointed by the U.S. Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's case to this Court [Docket No. 186].[3]

6. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

7. In connection with the Settlement Order, an independent board of directors was constituted at the Debtor's general partner, Strand Advisors, Inc., and certain operating protocols were instituted.

8. On July 16, 2020, this Court entered an order appointing James P. Seery, Jr., as the Debtor's chief executive officer and chief restructuring officer [Docket No. 854].

9. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

[3] All docket numbers refer to the docket maintained by this Court.

B. Overview of HarbourVest's Claims

10. HarbourVest's claims against the Debtor's estate arise from its $80 million investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. ("HCLOF"), pursuant to which HarbourVest obtained a 49 percent interest in HCLOF (the "Investment").

11. In brief, HarbourVest contends that it was fraudulently induced into entering into the Investment based on the Debtor's misrepresentations and omissions concerning certain material facts, including that the Debtor: (1) failed to disclose that it never intended to pay an arbitration award obtained by a former portfolio manager, (2) failed to disclose that it engaged in a series of fraudulent transfers for the purpose of preventing the former portfolio manager from collecting on his arbitration award and misrepresented the reasons changing the portfolio manager for HCLOF immediately prior to the Investment, (3) indicated that the dispute with the former portfolio manager would not impact investment activities, and (4) expressed confidence in the ability of HCLOF to reset or redeem the collateralized loan obligations ("CLOs") under its control.

12. HarbourVest seeks to rescind its Investment and claims damages in excess of $300 million based on theories of fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, and breach of fiduciary duty (under Guernsey law), and on alleged violations of state securities laws and the Racketeer Influenced Corrupt Organization Act ("RICO").

13. HarbourVest's allegations are summarized below.[4]

[4] Solely for purposes of this Motion, and not for any other reason, the facts set forth herein are adopted largely from the *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "Response").

C. Summary of HarbourVest's Factual Allegations

14. At the time HarbourVest made its Investment, the Debtor was embroiled in an arbitration against Joshua Terry ("Mr. Terry"), a former employee of the Debtor and limited partner of Acis Capital Management, L.P. ("Acis LP"). Through Acis LP, Mr. Terry managed Highland's CLO business, including CLO-related investments held by Acis Loan Funding, Ltd. ("Acis Funding").

15. The litigation between Mr. Terry and the Debtor began in 2016, after the Debtor terminated Mr. Terry and commenced an action against him in Texas state court. Mr. Terry asserted counterclaims for wrongful termination and for the wrongful taking of his ownership interest in Acis LP and subsequently had certain claims referred to arbitration where he obtained an award of approximately $8 million (the "Arbitration Award") on October 20, 2017.

16. HarbourVest alleges that the Debtor responded to the Arbitration Award by engaging in a series of fraudulent transfers and corporate restructurings, the true purposes of which were fraudulently concealed from HarbourVest.

17. For example, according to HarbourVest, the Debtor changed the name of the target fund from Acis Funding to "Highland CLO Funding, Ltd." ("HCLOF") and "swapped out" Acis LP for Highland HCF Advisor, Ltd. as portfolio manager (the "Structural Changes"). The Debtor allegedly told HarbourVest that it made these changes because of the "reputational harm" to Acis LP resulting from the Arbitration Award. The Debtor further told HarbourVest that in lieu of redemptions, resetting the CLOs was necessary, and that it would be easier to reset them under the "Highland" CLO brand instead of the Acis CLO brand.

18. In addition, HarbourVest also alleges that the Debtor had no intention of allowing Mr. Terry to collect on his Arbitration Award, and orchestrated a scheme to "denude"

Acis of assets by fraudulently transferring virtually all of its assets and attempting to transfer its profitable portfolio management contracts to non-Acis, Debtor-related entities.

19. Unaware of the fraudulent transfers or the true purposes of the Structural Changes, and in reliance on representations made by the Debtor, HarbourVest closed on its Investment in HCLOF on November 15, 2017.

20. After discovering the transfers that occurred between Highland and Acis between October and December 2017 following the Arbitration Award (the "Transfers"), on January 24, 2018, Terry moved for a temporary restraining order (the "TRO") from the Texas state court on the grounds that the Transfers were pursued for the purpose of rendering Acis LP judgment-proof. The state court granted the TRO, enjoining the Debtor from transferring any CLO management contracts or other assets away from Acis LP.

21. On January 30, 2018, Mr. Terry filed involuntary bankruptcy petitions against Acis LP and its general partner, Acis Capital Management GP, LLC. *See In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018) and *In re Acis Capital Management GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018) (collectively, the "Acis Bankruptcy Case"). The Bankruptcy Court overruled the Debtor's objection, granted the involuntary petitions, and appointed a chapter 11 trustee (the "Acis Trustee"). A long sequence of events subsequently transpired, all of which relate to HarbourVest's claims, including:

- On May 31, 2018, the Court issued a *sua sponte* TRO preventing any actions in furtherance of the optional redemptions or other liquidation of the Acis CLOs.
- On June 14, 2018, HCLOF withdrew optional redemption notices.
- The TRO expired on June 15, 2018, and HCLOF noticed the Acis Trustee that it was requesting an optional redemption.

- HCLOF's request was withdrawn on July 6, 2018, and on June 21, 2018, the Acis Trustee sought an injunction preventing Highland/HCLOF from seeking further redemptions (the "Preliminary Injunction").

- The Court granted the Preliminary Injunction on July 10, 2018, pending the Acis Trustee's attempts to confirm a plan or resolve the Acis Bankruptcy.

- On August 30, 2018, the Court denied confirmation of the First Amended Joint Plan for Acis, and held that the Preliminary Injunction must stay in place on the ground that the "evidence thus far has been compelling that numerous transfers after the Josh Terry judgment denuded Acis of value."

- After the Debtor made various statements implicating HarbourVest in the Transfers, the Acis Trustee investigated HarbourVest's involvement in such Transfers, including extensive discovery and taking a 30(b)(6) deposition of HarbourVest's managing director, Michael Pugatch, on November 17, 2018.

- On March 20, 2019, HCLOF sent a letter to Acis LP stating that it was not interested in pursuing, or able to pursue, a CLO reset transaction.

D. The Parties' Pleadings and Positions Concerning HarbourVest's Proofs of Claim

22. On April 8, 2020, HarbourVest filed proofs of claim against Highland that were subsequently denoted by the Debtor's claims agents as claim numbers 143, 147, 149, 150, 153, and 154, respectively (collectively, the "Proofs of Claim"). Morris Dec. Exhibits 2-7.

23. The Proofs of Claim assert, among other things, that HarbourVest suffered significant harm due to conduct undertaken by the Debtor and the Debtor's employees, including "financial harm resulting from (i) court orders in the Acis Bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise relegated the activity of HCLOF [*i.e.*, the Preliminary Injunction]; and (ii) significant fees and expenses related to the Acis Bankruptcy that were charged to HCLOF." *See, e.g.*, Morris Dec. Exhibit 2 ¶3.

24. HarbourVest also asserted "any and all of its right to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the forgoing harm, including for any amounts due or owed under the various

agreements with the Debtor in connection with relating to" the Operative Documents "and any and all legal and equitable claims or causes of action relating to the forgoing harm." *See, e.g.*, Morris Dec. Exhibit 2 ¶4.

25. Highland subsequently objected to HarbourVest's Proofs of Claim on the grounds that they were no-liability claims. [Docket No. 906] (the "Claim Objection").

26. On September 11, 2020, HarbourVest filed its Response. The Response articulated specified claims under U.S. federal and state and Guernsey law, including claims for fraud, fraudulent concealment, fraudulent inducement, fraudulent misrepresentation, negligent misrepresentation (collectively, the "Fraud Claims"), U.S. State and Federal Securities Law Claims (the "Securities Claims"), violations of the Federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), breach of fiduciary duty and misuse of fund assets, and an unfair prejudice claim under Guernsey law (collectively, with the Proofs of Claim, the "HarbourVest Claims").

27. On October 18, 2020, HarbourVest filed its *Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the "3018 Motion"). In its 3018 Motion, HarbourVest sought for its Claims to be temporarily allowed for voting purposes in the amount of more than $300 million (based largely on a theory of treble damages).

E. Settlement Discussions

28. In October, the parties discussed the possibility of resolving the Rule 3018 Motion.

29. In November, the parties broadened the discussions in an attempt to reach a global resolution of the HarbourVest Claims. In the pursuit thereof, the parties and their

counsel participated in several conference calls where they engaged in a spirited exchange of perspectives concerning the facts and the law.

30. During follow up meetings, the parties' interests became more defined. Specifically, HarbourVest sought to maximize its recovery while fully extracting itself from the Investment, while the Debtor sought to minimize the HarbourVest Claims consistent with its perceptions of the facts and law.

31. After the parties' interests became more defined, the principals engaged in a series of direct, arm's-length, telephonic negotiations that ultimately lead to the settlement, whose terms are summarized below.

F. Summary of Settlement Terms

32. The Settlement Agreement contains the following material terms, among others:

- HarbourVest shall transfer its entire interest in HCLOF to an entity to be designated by the Debtor;[5]
- HarbourVest shall receive an allowed, general unsecured, non-priority claim in the amount of $45 million and shall vote its Class 8 claim in that amount to support the Plan;
- HarbourVest shall receive a subordinated, allowed, general unsecured, non-priority claim in the amount of $35 million and shall vote its Class 9 claim in that amount to support the Plan;
- HarbourVest will support confirmation of the Debtor's Plan, including, but not limited to, voting its claims in support of the Plan;
- The HarbourVest Claims shall be allowed in the aggregate amount of $45 million for voting purposes;
- HarbourVest will support the Debtor's pursuit of its pending Plan of Reorganization; and
- The parties shall exchange mutual releases.

[5] The NAV for HarbourVest's 49.98% interest in HCLOF was estimated to be approximately $22 million as of December 1, 2020.

See generally Morris Dec. Exhibit 1.

BASIS FOR RELIEF REQUESTED

33. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

> On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

34. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, "approval of a compromise is within the sound discretion of the bankruptcy court." *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

35. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test, "with a focus on comparing 'the terms of the compromise with the rewards of litigation.'" *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*, 624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: "(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any

attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise." *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider "the paramount interest of creditors with proper deference to their reasonable views." *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the "extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

36. There is ample basis to approve the proposed Settlement Agreement based on the Rule 9019 factors set forth by the Fifth Circuit.

37. First, although the Debtor believes that it has valid defenses to the HarbourVest Claims, there is no guarantee that the Debtor would succeed in its litigation with HarbourVest. Indeed, to establish its defenses, the Debtor would be required to rely, at least in part, on the credibility of witnesses whose veracity has already been called into question by this Court. Moreover, it will be difficult to dispute that the Transfers precipitated the Acis Bankruptcy, and, ultimately, the imposition of the Bankruptcy Court's TRO that restricted HCLOF's ability to reset or redeem the CLOs and that is at the core of the HarbourVest Claims.

38. The second factor—the complexity, duration, and costs of litigation—also weighs heavily in favor of approving the Settlement Agreement. As this Court is aware, the events forming the basis of the HarbourVest Claims—including the Terry Litigation and Acis Bankruptcy—proceeded *for years* in this Court and in multiple other forums, and has already cost the Debtor's estate millions of dollars in legal fees. If the Settlement Agreement is not approved, then the parties will expend significant resources litigating a host of fact-intensive

issues including, among other things, the substance and materiality of the Debtor's alleged fraudulent statements and omissions and whether HarbourVest reasonably relied on those statements and omissions.

39. Third, approval of the Settlement Agreement is justified by the paramount interest of creditors. Specifically, the settlement will enable the Debtor to: (a) avoid incurring substantial litigation costs; (b) avoid the litigation risk associated with HarbourVest's $300 million claim; and (c) through the plan support provisions, increase the likelihood that the Debtor's pending plan of reorganization will be confirmed.

40. Finally, the Settlement Agreement was unquestionably negotiated at arm's-length. The terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and their counsel and represent neither party's "best case scenario." Indeed, the Settlement Agreement should be approved as a rational exercise of the Debtor's business judgment made after due deliberation of the facts and circumstances concerning HarbourVest's Claims.

NO PRIOR REQUEST

41. No previous request for the relief sought herein has been made to this, or any other, Court.

NOTICE

42. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for HarbourVest; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; (d) the Debtor's principal secured parties; (e) counsel to the Committee; and (f) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: December 23, 2020.

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Counsel for the Debtor and Debtor-in-Possession

Exhibit 1

Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of March 30, 2021, by and among (i) Highland Capital Management, L.P. ("HCMLP" or the "Debtor"), (ii) Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) ("Multi-Strat," and together with its general partner and its direct and indirect wholly-owned subsidiaries, the "MSCF Parties"), (iii) Strand Advisors, Inc. ("Strand"), and (iv) UBS Securities LLC and UBS AG London Branch (collectively, "UBS").

Each of HCMLP, the MSCF Parties, Strand, and UBS are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, in 2007, UBS entered into certain contracts with HCMLP and two funds managed by HCMLP—Highland CDO Opportunity Master Fund, L.P. ("CDO Fund") and Highland Special Opportunities Holding Company ("SOHC," and together with CDO Fund, the "Funds") related to a securitization transaction (the "Knox Agreement");

WHEREAS, in 2008, the parties to the Knox Agreement restructured the Knox Agreement;

WHEREAS, UBS terminated the Knox Agreement and, on February 24, 2009, UBS filed a complaint in the Supreme Court of the State of New York, County of New York (the "State Court") against HCMLP and the Funds seeking to recover damages related to the Knox Agreement, in an action captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) (the "2009 Action");

WHEREAS, UBS's lone claim against HCMLP in the 2009 Action for indemnification was dismissed in early 2010, and thereafter UBS amended its complaint in the 2009 Action to add five new defendants, Highland Financial Partners, L.P. ("HFP"), Highland Credit Strategies Master Funds, L.P. ("Credit-Strat"), Highland Crusader Offshore Partners, L.P. ("Crusader"), Multi-Strat, and Strand, and to add new claims for fraudulent inducement, fraudulent conveyance, tortious interference with contract, alter ego, and general partner liability;

WHEREAS, UBS filed a new, separate action against HCMLP on June 28, 2010, for, *inter alia*, fraudulent conveyance and breach of the implied covenant of good faith and fair dealing, captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.) (the "2010 Action");

WHEREAS, in November 2010, the State Court consolidated the 2009 Action and the 2010 Action (hereafter referred to as the "State Court Action"), and on May 11, 2011, UBS filed a Second Amended Complaint in the 2009 Action;

WHEREAS, in 2015, UBS entered into settlement agreements with Crusader and Credit-Strat, and thereafter UBS filed notices with the State Court in the State Court Action dismissing its claims against Crusader and Credit-Strat;

WHEREAS, the State Court bifurcated claims asserted in the State Court Action for purposes of trial, with the Phase I bench trial deciding UBS's breach of contract claims against the Funds and HCMLP's counterclaims against UBS;

WHEREAS, on August 7, 2017, the Funds, along with Highland CDO Opportunity Fund, Ltd., Highland CDO Holding Company, Highland Financial Corp., and HFP, purportedly sold assets with a purported collective fair market value of $105,647,679 (the "Transferred Assets") and purported face value of over $300,000,000 to Sentinel Reinsurance, Ltd. ("Sentinel") pursuant to a purported asset purchase agreement (the "Purchase Agreement");

WHEREAS, Sentinel treated the Transferred Assets as payment for a $25,000,000 premium on a document entitled "Legal Liability Insurance Policy" (the "Insurance Policy");

WHEREAS, the Insurance Policy purports to provide coverage to the Funds for up to $100,000,000 for any legal liability resulting from the State Court Action (the "Insurance Proceeds");

WHEREAS, one of the Transferred Assets CDO Fund transferred to Sentinel was CDO Fund's limited partnership interests in Multi-Strat (the "CDOF Interests");

WHEREAS, Sentinel had also received from HCMLP limited partnership interests in Multi-Strat for certain cash consideration (together with the CDOF Interests, the "MSCF Interests");

WHEREAS, the existence of the Purchase Agreement and Insurance Policy were unknown to Strand's independent directors and the Debtor's bankruptcy advisors prior to late January 2021;

WHEREAS, in early February 2021, the Debtor disclosed the existence of the Purchase Agreement and Insurance Policy to UBS;

WHEREAS, prior to such disclosure, the Purchase Agreement and Insurance Policy were unknown to UBS;

WHEREAS, on November 14, 2019, following the Phase I trial, the State Court issued its decision determining that the Funds breached the Knox Agreement on December 5, 2008 and dismissing HCMLP's counterclaims;

WHEREAS, Sentinel purportedly redeemed the MSCF Interests in November 2019 and the redeemed MSCF Interests are currently valued at approximately $32,823,423.50 (the "Sentinel Redemption");

WHEREAS, on February 10, 2020, the State Court entered a Phase I trial judgment against the Funds in the amount of $1,039,957,799.44 as of January 22, 2020 (the "Phase I Judgment");

WHEREAS, Phase II of the trial of the State Court Action, includes, *inter alia*, UBS's claim for breach of implied covenant of good faith and fair dealing against HCMLP, UBS's

fraudulent transfer claims against HCMLP, HFP, and Multi-Strat, and UBS's general partner claim against Strand;

WHEREAS, on October 16, 2019, HCMLP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Case"). The Bankruptcy Case was transferred to the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") on December 4, 2019;

WHEREAS, Phase II of the trial of the State Court Action was automatically stayed as to HCMLP by HCMLP's bankruptcy filing;

WHEREAS, on May 11, 2020, UBS, Multi-Strat, Highland Credit Opportunities CDO, Ltd., and Highland Credit Opportunities CDO Asset Holdings, L.P. (collectively, the "May Settlement Parties"), entered into a Settlement Agreement (the "May Settlement") pursuant to which the May Settlement Parties agreed to the allocation of the proceeds of certain sales of assets held by Multi-Strat, including escrowing a portion of such funds, and restrictions on Multi-Strat's actions;

WHEREAS, on June 26, 2020, UBS timely filed two substantively identical claims in the Bankruptcy Case: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch (hereinafter collectively referred to as the "UBS Claim"). The UBS Claim asserts a general unsecured claim against HCMLP for $1,039,957,799.40;

WHEREAS, on August 3, 2020, the Bankruptcy Court entered an *Order Directing Mediation* [Docket No. 912] pursuant to which HCMLP, UBS, and several other parties were directed to mediate their Bankruptcy Case disputes before two experienced third-party mediators, Retired Judge Allan Gropper and Sylvia Mayer (together, the "Mediators"). HCMLP and UBS formally met with the Mediators together and separately on numerous occasions, including on August 27, September 2, 3, and 4, and December 17, 2020, and had numerous other informal discussions outside of the presence of the Mediators, in an attempt to resolve the UBS Claim;

WHEREAS, on August 7, 2020, HCMLP filed an objection to the UBS Claim [Docket No. 928]. Also on August 7, 2020, the Redeemer Committee of the Highland Crusader Fund, and Crusader, Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Redeemer Committee"), objected to the UBS Claim [Docket No. 933]. On September 25, 2020, UBS filed its response to these objections [Docket No. 1105];

WHEREAS, on October 16, 2020, HCMLP and the Redeemer Committee each moved for partial summary judgment on the UBS Claim [Docket Nos. 1180 and 1183, respectively], and on November 6, 2020, UBS opposed these motions [Docket No. 1337];

WHEREAS, by Order dated December 9, 2020, the Bankruptcy Court granted, as set forth therein, the motions for partial summary judgment filed by HCMLP and the Redeemer Committee and denied UBS's request for leave to file an amended proof of claim [Docket No. 1526];

WHEREAS, on November 6, 2020, UBS filed *UBS's Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Docket No. 1338] (the "3018 Motion"), and on November 16, 2020, HCMLP and the Redeemer Committee each opposed the 3018 Motion [Docket Nos. 1404 and 1409, respectively];

WHEREAS, by Order dated December 8, 2020, the Bankruptcy Court granted the 3018 Motion and allowed the UBS Claim, on a temporary basis and for voting purposes only, in the amount of $94,761,076 [Docket No. 1518];

WHEREAS, on January 22, 2021, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, and as may be further amended, supplemented, or otherwise modified, the "Plan");

WHEREAS, on March 29, 2021, the Debtor caused CDO Fund to make a claim on the Insurance Policy to collect the Insurance Proceeds pursuant to the Phase I Judgment;

WHEREAS, on March 29, 2021, UBS filed an adversary proceeding seeking injunctive relief and a motion for a temporary restraining order and preliminary injunction to, among other things, enjoin the Debtor from allowing Multi-Strat to distribute the Sentinel Redemption to Sentinel or any transferee of Sentinel (the "Multi-Strat Proceeding"), which relief the Debtor, in its capacity as Multi-Strat's investment manager and general partner, does not oppose;

WHEREAS, the Parties wish to enter into this Agreement to settle all claims and disputes between and among them, to the extent and on the terms and conditions set forth herein, and to exchange the mutual releases set forth herein, without any admission of fault, liability, or wrongdoing on the part of any Party; and

WHEREAS, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Rule 9019") and section 363 of the Bankruptcy Code;

NOW THEREFORE, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Settlement of Claims. In full and complete satisfaction of the UBS Released Claims (as defined below):

(a) The UBS Claim will be allowed as (i) a single, general unsecured claim in the amount of $65,000,000 against HCMLP, which shall be treated as a Class 8 General Unsecured Claim under the Plan;[1] and (ii) a single, subordinated unsecured claim in the amount of $60,000,000 against HCMLP, which shall be treated as a Class 9 Subordinated General Unsecured Claim under the Plan.

[1] Capitalized terms used but not defined herein shall have the meanings attributed to them in the Plan.

(b) Multi-Strat will pay UBS the sum of $18,500,000 (the "Multi-Strat Payment") as follows: (i) within two (2) business days after the Order Date, the May Settlement Parties will submit a Joint Release Instruction (as defined in the May Settlement) for the release of the amounts held in the Escrow Account (as defined in the May Settlement) to be paid to UBS in partial satisfaction of the Multi-Strat Payment on the date that is ten (10) business days following the Order Date; and (ii) Multi-Strat will pay UBS the remainder of the Multi-Strat Payment in immediately available funds on the date that is ten (10) business days following the Order Date, provided that, for the avoidance of doubt, the amounts held in the Escrow Account will not be paid to UBS until and unless the remainder of the Multi-Strat Payment is made.

(c) Subject to applicable law, HCMLP will use reasonable efforts to (i) cause CDO Fund to pay the Insurance Proceeds in full to UBS as soon as practicable, but no later than within 5 business days of CDO Fund actually receiving the Insurance Proceeds from or on behalf of Sentinel; (ii) if Sentinel refuses to pay the Insurance Proceeds, take legal action reasonably designed to recover the Insurance Proceeds or the MSCF Interests or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment and in addition shall provide reasonable assistance to UBS in connection with any legal action UBS takes to recover the Insurance Proceeds or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment or obtain rights to the MSCF interests, including but not limited to the redemption payments in connection with the MSCF Interests; (iii) cooperate with UBS and participate (as applicable) in the investigation or prosecution of claims or requests for injunctive relief against the Funds, Multi-Strat, Sentinel, James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, Transferred Assets, the transfer of the MSCF Interests, or any potentially fraudulent transfer of assets from the Funds to Sentinel, excluding the individuals listed on the schedule provided to UBS on March 25, 2021 (the "HCMLP Excluded Employees"); (iv) as soon as reasonably practicable, provide UBS with all business and trustee contacts at the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, if any, that are actually known by the Debtor after reasonable inquiry; (v) as soon as reasonably practicable, provide UBS with a copy of the governing documents, prospectuses, and indenture agreements for the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, as applicable, that are in the Debtor's actual possession, custody, or control, (vi) as soon as reasonably practicable, provide, to the extent possible, any CUSIP numbers of the securities of the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd., as applicable, including information regarding the location and amount of any cash related to those entities' holdings, in each case only to the extent actually known by the Debtor after reasonable inquiry; (vii) cooperate with UBS to assign or convey any such assets described in Section 1(c)(vi) or any other assets owned or controlled by the Funds and/or HFP, including for avoidance of doubt any additional assets currently unknown to the Debtor that the Debtor discovers in the future after the Agreement Effective Date; (viii) respond as promptly as reasonably possible to requests by UBS for access to relevant documents and approve as promptly as reasonably possible requests for access to relevant documents from third parties as needed with respect to the Transferred Assets, the Purchase Agreement, the Insurance Policy, the

MSCF Interests and any other assets currently or formerly held by the Funds or HFP, including without limitation the requests listed in **Appendix A** (provided, however, that the provision of any such documents or access will be subject to the common interest privilege and will not constitute a waiver of any attorney-client or other privilege in favor of HCMLP) that are in the Debtor's actual possession, custody, or control; (ix) preserve all documents in HCMLP's possession, custody, or control regarding or relating to the Purchase Agreement, the Insurance Policy, the MSCF Interests, or any transfer of assets from the Funds to Sentinel, including but not limited to the documents requested in Appendix A, from 2016 to present, and issue a litigation hold to all individuals deemed reasonably necessary regarding the same; and (x) otherwise use reasonable efforts to assist UBS to collect its Phase I Judgment against the Funds and HFP and assets the Funds and/or HFP may own, or have a claim to under applicable law ahead of all other creditors of the Funds and HFP; provided, however, that, from and after the date hereof, HCMLP shall not be required to incur any out-of-pocket fees or expenses, including, but not limited to, those fees and expenses for outside consultants and professionals (the "Reimbursable Expenses"), in connection with any provision of this Section 1(c) in excess of $3,000,000 (the "Expense Cap"), and provided further that, for every dollar UBS recovers from the Funds (other than the assets related to Greenbriar CLO Ltd. or Greenbriar CLO Corp.), Sentinel, Multi-Strat (other than the amounts set forth in Section 1(b) hereof), or any other person or entity described in Section 1(c)(iii) in connection with any claims UBS has that arise out of or relate to the Phase I Judgment, the Purchase Agreement, the Insurance Policy, the Transferred Assets, the MSCF Interests, or the Insurance Proceeds (the "UBS Recovery"), UBS will reimburse HCMLP ten percent of the UBS Recovery for the Reimbursable Expenses incurred by HCMLP, subject to: (1) the occurrence of the Agreement Effective Date and (2) UBS's receipt and review of invoices and time records (which may be redacted as reasonably necessary) for outside consultants and professionals in connection with such efforts described in this Section 1(c), up to but not exceeding the Expense Cap after any disputes regarding the Reimbursable Expenses have been resolved pursuant to procedures to be agreed upon, or absent an agreement, in a manner directed by the Bankruptcy Court; and provided further that in any proceeding over the reasonableness of the Reimbursable Expenses, the losing party shall be obligated to pay the reasonable fees and expenses of the prevailing party; and provided further that any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c) shall be conducted in consultation with UBS, including but not limited to the selection of necessary outside consultants and professionals to assist in such litigation; and provided further that UBS shall have the right to approve HCMLP's selection of outside consultants and professionals to assist in any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c).

(d) Redeemer Appeal.

(i) On the Agreement Effective Date, provided that neither the Redeemer Committee nor any entities acting on its behalf or with any assistance from or coordination with the Redeemer Committee have objected to this Agreement or the 9019 Motion (as defined below), UBS shall withdraw with prejudice its appeal of the *Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Docket No. 1273] (the "Redeemer Appeal"); and

(ii) The Parties have stipulated to extend the deadline for the filing of any briefs in the Redeemer Appeal to June 30, 2021 and will agree to such further extensions as necessary to facilitate this Settlement Agreement.

(e) As of the Agreement Effective Date, the restrictions and obligations set forth in the May Settlement, other than those in Section 7 thereof, shall be extinguished in their entirety and be of no further force or effect.

(f) On the Agreement Effective Date, the Debtor shall instruct the claims agent in the Bankruptcy Case to adjust the claims register in accordance with this Agreement.

(g) On the Agreement Effective Date, any claim the Debtor may have against Sentinel or any other party, and any recovery related thereto, with respect to the MSCF Interests shall be automatically transferred to UBS, without any further action required by the Debtor. For the avoidance of doubt, the Debtor shall retain any and all other claims it may have against Sentinel or any other party, and the recovery related thereto, unrelated to the MSCF Interests.

2. Definitions.

(a) "Agreement Effective Date" shall mean the date the full amount of the Multi-Strat Payment defined in Section 1(b) above, including without limitation the amounts held in the Escrow Account (as defined in the May Settlement), is actually paid to UBS.

(b) "HCMLP Parties" shall mean (a) HCMLP, in its individual capacity; (b) HCMLP, as manager of Multi-Strat; and (c) Strand.

(c) "Order Date" shall mean the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019 and section 363 of the Bankruptcy Code.

(d) "UBS Parties" shall mean UBS Securities LLC and UBS AG London Branch.

3. Releases.

(a) UBS Releases. Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the UBS Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue (A) the HCMLP Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, and (B) the MSCF Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known

or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "UBS Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to (1) the obligations of the HCMLP Parties and MSCF Parties under this Agreement, including without limitation the allowance of or distributions on account of the UBS Claim or the settlement terms described in Sections 1(a)-(g) above; (2) the Funds or HFP, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy, or such prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy by UBS; (3) James Dondero or Mark Okada, or any entities, including without limitation Hunter Mountain Investment Trust, Dugaboy Investment Trust, and NexBank, SSB, owned or controlled by either of them, other than the HCMLP Parties and MSCF Parties (but for the avoidance of doubt, such releases of the HCMLP Parties and MSCF Parties shall be solely with respect to such entities and shall not extend in any way to James Dondero or Mark Okada in their individual capacity or in any other capacity, including but not limited to as an investor, officer, trustee, or director in the HCMLP Parties or MSCF Parties); (4) Sentinel or its subsidiaries, parents, affiliates, successors, designees, assigns, employees, or directors, including James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, MSCF Interests, or Transferred Assets, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, the MSCF Interests, any potentially fraudulent transfer of assets from the Funds to Sentinel and/or Insurance Policy, excluding the HCMLP Excluded Employees; (5) the economic rights or interests of UBS in its capacity as an investor, directly or indirectly (including in its capacity as an investment manager and/or investment advisor), in any HCMLP-affiliated entity, including without limitation in the Redeemer Committee and Credit Strat, and/or in such entities' past, present or future subsidiaries and feeders funds (the "UBS Unrelated Investments"); and (6) any actions taken by UBS against any person or entity, including any HCMLP Party or MSCF Party, to enjoin a distribution on the Sentinel Redemption or the transfer of any assets currently held by or within the control of CDO Fund to Sentinel or a subsequent transferee or to seek to compel any action that only such person or entity has standing to pursue or authorize in order to permit UBS to recover the Insurance Proceeds, Transferred Assets, the Phase I Judgment or any recovery against HFP; provided, however, that, from and after the date hereof, any out-of-pocket fees or expenses incurred by HCMLP in connection with this Section 3(a)(6) will be considered Reimbursable Expenses and shall be subject to, and applied against, the Expense Cap as if they were incurred by HCMLP pursuant to Section 1(c) subject to the occurrence of the Agreement Effective Date and after any disputes regarding such Reimbursable Expenses have been resolved in the manner described in Section 1(c).

(b) **HCMLP Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the HCMLP Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of

their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "HCMLP Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement; and (b) the obligations of the UBS Parties in connection with the UBS Unrelated Investments.

(c) **Multi-Strat Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the MSCF Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "Multi-Strat Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement.

4. **No Third Party Beneficiaries.** Except for the parties released by this Agreement, no other person or entity shall be deemed a third-party beneficiary of this Agreement.

5. **UBS Covenant Not to Sue.** Subject to the occurrence of the Agreement Effective date, if UBS ever controls any HCMLP-affiliated defendant in the State Court Action by virtue of the prosecution, enforcement, or collection of the Phase I Judgment (collectively, the "Controlled State Court Defendants"), UBS covenants on behalf of itself and the Controlled State Court Defendants, if any, that neither UBS nor the Controlled State Court Defendants will assert or pursue any claims that any Controlled State Court Defendant has or may have against any of the HCMLP Parties; provided, however, that nothing shall prohibit UBS or a Controlled State Court Defendant from taking any of the actions set forth in Section 3(a)(1)-(6); provided further, however, if and to the extent UBS receives any distribution from any Controlled State Court Defendant that is derived from a claim by a Controlled State Court Defendant against the Debtor, subject to the exceptions set forth in Section 3(a), which distribution is directly

attributable to any property the Controlled State Court Defendant receives from the Debtor and separate and distinct from property owned or controlled by CDO Fund, SOHC, or Multi-Strat, then such recovery shall be credited against all amounts due from the Debtor's estate on account of the UBS Claim allowed pursuant to Section 1(a) of this Agreement, or if such claim has been paid in full, shall be promptly turned over to the Debtor or its successors or assigns.

6. **Agreement Subject to Bankruptcy Court Approval.**

(a) The force and effect of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement and the releases herein by the Bankruptcy Court. The Parties agree to use reasonable efforts to have this Agreement expeditiously approved by the Bankruptcy Court by cooperating in the preparation and prosecution of a mutually agreeable motion and proposed order (the "9019 Motion") to be filed by the Debtor no later than five business days after execution of this Agreement by all Parties unless an extension is agreed to by both parties.

7. **Representations and Warranties**.

(a) Each UBS Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the UBS Released Claims and has not sold, transferred, or assigned any UBS Released Claim to any other person or entity, and (ii) no person or entity other than such UBS Party has been, is, or will be authorized to bring, pursue, or enforce any UBS Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such UBS Party.

(b) Each HCMLP Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HCMLP Released Claims and has not sold, transferred, or assigned any HCMLP Released Claim to any other person or entity, and (ii) no person or entity other than such HCMLP Party has been, is, or will be authorized to bring, pursue, or enforce any HCMLP Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such HCMLP Party.

(c) Each MSCF Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the Multi-Strat Released Claims and has not sold, transferred, or assigned any Multi-Strat Released Claim to any other person or entity, and (ii) no person or entity other than such MSCF Party has been, is, or will be authorized to bring, pursue, or enforce any Multi-Strat Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such MSCF Party.

8. **No Admission of Liability**. The Parties acknowledge that there is a bona fide dispute with respect to the UBS Claim. Nothing in this Agreement shall be construed, expressly or by implication, as an admission of liability, fault, or wrongdoing by HCMLP, the MSCF Parties, Strand, UBS, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of HCMLP, the MSCF Parties, Strand, UBS, or any other person.

9. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their representatives, successors, and assigns.

10. **Notice**. Each notice and other communication hereunder shall be in writing and will, unless otherwise subsequently directed in writing, be delivered by email and overnight delivery, as set forth below, and will be deemed to have been given on the date following such mailing.

HCMLP Parties or the MSCF Parties

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Telephone No.: 972-628-4100
E-mail: notices@HighlandCapital.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP
Attention: Jeffrey Pomerantz, Esq.
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone No.: 310-277-6910
E-mail: jpomerantz@pszjlaw.com

UBS

UBS Securities LLC
UBS AG London Branch
Attention: Elizabeth Kozlowski, Executive Director and Counsel
1285 Avenue of the Americas
New York, NY 10019
Telephone No.: 212-713-9007
E-mail: elizabeth.kozlowski@ubs.com

UBS Securities LLC
UBS AG London Branch
Attention: John Lantz, Executive Director
1285 Avenue of the Americas
New York, NY 10019

Telephone No.: 212-713-1371
E-mail: john.lantz@ubs.com

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP
Attention: Andrew Clubok
Sarah Tomkowiak
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004-1304
Telephone No.: 202-637-3323
Email: andrew.clubok@lw.com
sarah.tomkowiak@lw.com

11. **Advice of Counsel**. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

12. **Entire Agreement**. This Agreement contains the entire agreement and understanding concerning the subject matter of this Agreement, and supersedes and replaces all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation, or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation, or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

13. **No Party Deemed Drafter**. The Parties acknowledge that the terms of this Agreement are contractual and are the result of arm's-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

14. **Future Cooperation**. The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

15. **Counterparts**. This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement.

Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

16. Governing Law; Venue; Attorneys' Fees and Costs. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of New York without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan, New York, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

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IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: James P. Seery, Jr.
Its: Authorized Signatory

HIGHLAND MULTI STRATEGY CREDIT FUND, L.P. (f/k/a Highland Credit Opportunities CDO, L.P.)

By: _____
Name: James P. Seery, Jr.
Its: Authorized Signatory

HIGHLAND CREDIT OPPORTUNITIES CDO, Ltd.

By: _____
Name: James P. Seery, Jr.
Its: Authorized Signatory

HIGHLAND CREDIT OPPORTUNITIES CDO ASSET HOLDINGS, L.P.

By: _____
Name: James P. Seery, Jr.
Its: Authorized Signatory

STRAND ADVISORS, INC.

By: _____
Name: James P. Seery, Jr.
Its: Authorized Signatory

EXECUTION VERSION

UBS SECURITIES LLC

By: _____
Name: John Lantz
Its: Authorized Signatory

By: _____
Name: Elizabeth Kozlowski
Its: Authorized Signatory

UBS AG LONDON BRANCH

By: _____
Name: William Chandler
Its: Authorized Signatory

By: _____
Name: Elizabeth Kozlowski
Its: Authorized Signatory

EXECUTION VERSION

APPENDIX A

- The search parameters (custodians, date ranges, search terms) used to locate the documents produced to UBS on February 27, 2021 (and any additional parameters used for the previous requests from UBS);
- Identity of counsel to, and trustees of, CDO Fund or SOHC;
- Current or last effective investment manager agreements for CDO Fund and SOHC, including any management fee schedule, and any documentation regarding the termination of those agreements;
- The tax returns for the CDO Fund and SOHC from 2017-present;
- Communications between any employees of Sentinel (or its affiliates) and any employees of the HCMLP Parties, CDO Fund, SOHC, or any of Dondero, Leventon, or Ellington from 2017-present;
- Documents or communications regarding or relating to the Purchase Agreement, Insurance Policy, or June 30, 2018 Memorandum entitled "Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets" (the "Tax Memo"), including without limitation (i) amendments to these documents, (ii) transfer of assets pursuant to these documents, (iii) board minutes or resolutions regarding or relating to these documents, (iv) claims made on the Insurance Policy; (v) communications with the IRS regarding the asset transfer pursuant to these documents; and (vi) any similar asset purchase agreements, capital transfer agreements, or similar agreements;
- Documents or communications regarding or relating to the value of any assets transferred pursuant to the Insurance Policy or Purchase Agreement, including without limitation those assets listed in Schedule A to the Purchase Agreement, from 2017 to present, including documentation supporting the $105,647,679 value of those assets as listed in the Tax Memo;
- Documents showing the organizational structure of Sentinel and its affiliated entities, including information on Dondero's relationship to Sentinel;
- Any factual information provided by current or former employees of the HCMLP Parties, CDO Fund, SOHC, or Sentinel regarding or relating to the Purchase Agreement, Insurance Policy, Tax Memo, and/or transfer of assets pursuant to those documents;
- Debtor's settlement agreements with Ellington and Leventon;
- Copies of all prior and future Monthly Reports and Valuation Reports (as defined in the Indenture, dated as of December 20, 2007, among Greenbriar CLO Ltd., Greenbriar CLO Corp., and State Street Bank and Trust Company); and
- Identity of any creditors of CDO Fund, SOHC, or HFP and amount of debts owed to those creditors by CDO Fund, SOHC, or HFP, including without limitation any debts owed to the Debtor.

Hellman & Friedman Seeded Farallon Capital Management

OUR FOUNDER

RETURN TO ABOUT (/ABOUT/)

Warren Hellman: One of the good guys

Warren Hellman was a devoted family man, highly successful businessman, active philanthropist, dedicated musician, arts patron, endurance athlete and all-around good guy. Born in New York City in 1934, he grew up in the Bay Area, graduating from the University of California at Berkeley. After serving in the U.S. Army and attending Harvard Business School, Warren began his finance career at Lehman Brothers, becoming the youngest partner in the firm's history at age 26 and subsequently serving as President. After a distinguished career on Wall Street, Warren moved back west and co-founded Hellman & Friedman, building it into one of the industry's leading private equity firms.

Warren deeply believed in the power of people to accomplish incredible things and used his success to improve and enrich the lives of countless people. Throughout his career, Warren helped found or seed many successful businesses including Matrix Partners, Jordan Management Company, Farallon Capital Management and Hall Capital Partners.

Within the community, Warren and his family were generous supporters of dozens of organizations and causes in the arts, public education, civic life, and public health, including creating and running the San Francisco Free Clinic. Later in life, Warren became an accomplished 5-string banjo player and found great joy in sharing the love of music with others. In true form, he made something larger of this avocation to benefit others by founding the Hardly Strictly Bluegrass Festival, an annual three-day, free music festival that draws hundreds of thousands of people together from around the Bay Area.

An accomplished endurance athlete, Warren regularly completed 100-mile runs, horseback rides and combinations of the two. He also was an avid skier and national caliber master ski racer and served as president of the U.S. Ski Team in the late 1970s, and is credited with helping revitalize the Sugar Bowl ski resort in the California Sierras.

In short, Warren Hellman embodied the ideal of living life to the fullest. He had an active mind and body, and a huge heart. We are lucky to call him our founder. **Read more about Warren. (https://hf.com/wp-content/uploads/2015/09/Warren-Hellman-News-Release.pdf)**


SFChronicle/SFGate/Liz Hafalia


Robert Holmgren


no caption

Hellman & Friedman Owned a Portion of Grosvenor until 2020

GCM GROSVENOR

Grosvenor Capital Management

In 2007, H&F invested in Grosvenor, one of the world's largest and most diversified independent alternative asset management firms. The Company offers comprehensive public and private markets solutions and a broad suite of investment and advisory choices that span hedge funds, private equity, and various credit and specialty strategies. Grosvenor specializes in developing customized investment programs tailored to each client's specific investment goals.

SECTOR

Financial Services

STATUS

Past

www.gcmlp.com (http://www.gcmlp.com)

CORNER OFFICE

GCM Grosvenor to Go Public

Julie Segal

The $57 billion alternatives manager will become a public company after merging with a SPAC backed by Cantor Fitzgerald.

August 03, 2020

Chicago, IL (Tim Boyle/Bloomberg)

In a sign of the times, GCM Grosvenor will become a public company through a SPAC.

The Chicago-based alternative investments firm is planning to go public by merging with a special purpose acquisition company in a deal valued at $2 billion. The 50-year-old firm has $57 billion in assets in private equity, infrastructure, real estate, credit, and absolute return investments.

"We have long valued having external shareholders and we wanted to preserve the accountability and focus that comes with that," Michael Sacks, GCM Grosvenor's chairman and CEO, said in a statement.

GCM Grosvenor will combine with CF Finance Special Acquisition Corp, a SPAC backed by Cantor Fitzgerald, according to an announcement from both companies on Monday. After the company goes public, Sacks will continue to lead GCM Grosvenor, which is owned by management and Hellman & Friedman, a private equity firm. Hellman & Friedman, which has owned a minority stake of the Chicago asset manager since 2007, will sell its equity as

Farallon was a Significant Borrower for Lehman

Case Study – Large Loan Origination

Debt origination for an affiliate of Simon Property Group Inc. and Farallon Capital Management

Date	June 2007
Asset Class	Retail
Asset Size	1,808,506 Sq. Ft.
Sponsor	Simon Property Group Inc. / Farallon Capital Management
Transaction Type	Refinance
Total Debt Amount	Lehman Brothers: $121 million JP Morgan: $200 million

Transaction Overview

- In June 2007, Lehman Brothers co-originated a loan in the aggregate amount of $321 million (Lehman portion: $121 million) with JP Morgan to a special purpose affiliate of a joint venture between Simon Property Group Inc ("Simon") and Farallon Capital Management ("Farallon") secured by the shopping center known as Gurnee Mills Mall (the "Property") located in Gurnee, IL .
- The Property consists of a one-story, 200 store discount mega-mall comprised of 1,808,506 square feet anchored by Burlington Coat Factory, Marshalls, Bed Bath & Beyond and Kohls among other national retailers. Built in 1991, the Property underwent a $5 million interior renovation in addition to a $71 million redevelopment between 2004 and 2005. As of March 2007, the Property had a in-line occupancy of 99.5%.

Lehman Brothers Role

- Simon and Farallon comprised the sponsorship which eventually merged with The Mills Corporation in early 2007 for $25.25 per common share in cash. The total value of the transaction was approximately $1.64 billion for all of the outstanding common stock, and approximately $7.9 billion including assumed debt and preferred equity.
- Lehman and JP Morgan subsequently co-originated $321 million loan at 79.2% LTV based on an appraisal completed in March by Cushman & Wakefield. The Loan was used to refinance the indebtedness secured by the Property.

Sponsorship Overview

- The Mills Corporation, based in Chevy Chase MD is a developer owner and manager of a diversified portfolio of retail destinations including regional shopping malls and entertainment centers. They currently own 38 properties in the United States totaling 47 million square feet.

LEHMAN BROTHERS 32

Mr. Seery Represented Stonehill While at Sidley

James P. Seery, Jr.
John G. Hutchinson
John J. Lavelle
Martin B. Jackson
Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
(212) 839-5300 (tel)
(212) 839-5599 (fax)

Attorneys for the Steering Group

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
BLOCKBUSTER INC., *et al.*,	:	Case No. 10-14997 (BRL)
Debtors.	:	(Jointly Administered)

THE BACKSTOP LENDERS' OBJECTION TO THE MOTION OF LYME REGIS TO ABANDON CERTAIN CAUSES OF ACTION OR, IN THE ALTERNATIVE, TO GRANT STANDING TO LYME REGIS TO PURSUE CLAIMS ON BEHALF OF THE ESTATE

1. The Steering Group of Senior Secured Noteholders who are Backstop Lenders -- Icahn Capital LP, Monarch Alternative Capital LP, Owl Creek Asset Management, L.P., Stonehill Capital Management LLC, and Värde Partners, Inc. (collectively, the "Backstop Lenders") -- hereby file this objection (the "Objection") to the Motion of Lyme Regis Partners, LLC ("Lyme Regis") to Abandon Certain Causes of Action or, in the Alternative, to Grant Standing to Lyme Regis to Pursue Claims on Behalf of the Estate (the "Motion") [Docket No. 593].

Stonehill Founder (Motulsky) and Grosvenor's G.C. (Nesler) Were Law School Classmates

Over 25 years earlier, here is a group at a party. From the left, Bob Zinn, Dave Lowenthal, Rory Little, Joe Nesler, Jon Polonsky (in front of Joe), John Motulsky and Mark Windfeld-Hansen (behind bottle!) Motulsky circulated this photo at the reunion. Thanks John!

Joseph H. Nesler (He/Him)
General Counsel

More | Message

Joseph H. Nesler (He/Him) · 3rd

General Counsel

Winnetka, Illinois, United States · Contact info

500+ connections

Yale Law School

Message | More

Open to work
Chief Compliance Officer and General Counsel roles
See all details

About

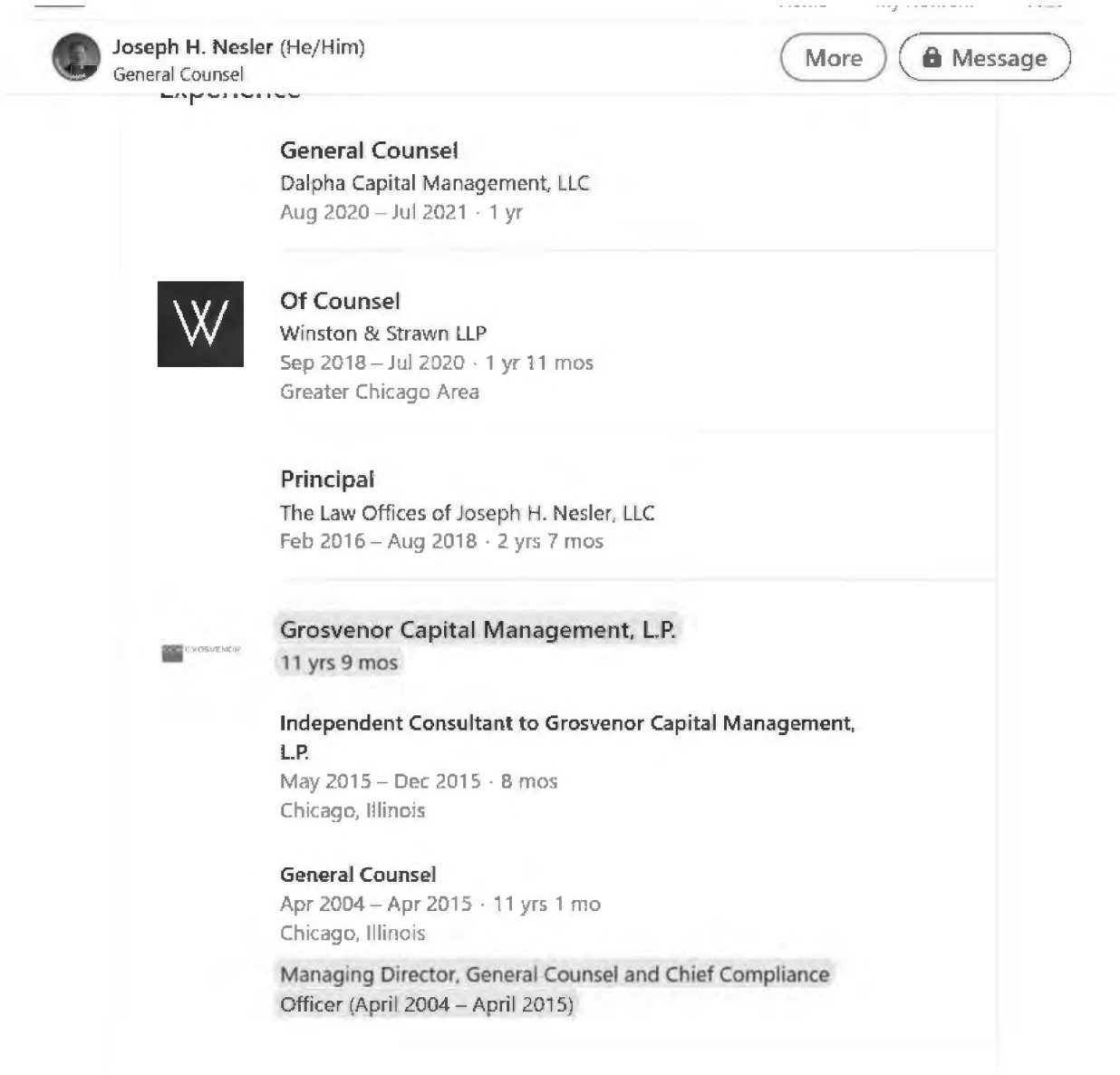
I have over 38 years of experience representing participants in the investment management industry with respect to a wide range of legal and regulatory matters, including SEC, DOL, FINRA, and NFA regulations and examinations. ... see more

Activity

522 followers

Posts Joseph H. created, shared, or commented on in the last 90 days are displayed here.

https://www.linkedin.com/in/josephnesler/


Joseph H. Nesler (He/Him)
General Counsel
More
Message
General Counsel
Dalpha Capital Management, LLC
Aug 2020 – Jul 2021 · 1 yr
Of Counsel
Winston & Strawn LLP
Sep 2018 – Jul 2020 · 1 yr 11 mos
Greater Chicago Area
Principal
The Law Offices of Joseph H. Nesler, LLC
Feb 2016 – Aug 2018 · 2 yrs 7 mos
Grosvenor Capital Management, L.P.
11 yrs 9 mos
Independent Consultant to Grosvenor Capital Management, L.P.
May 2015 – Dec 2015 · 8 mos
Chicago, Illinois
General Counsel
Apr 2004 – Apr 2015 · 11 yrs 1 mo
Chicago, Illinois
Managing Director, General Counsel and Chief Compliance Officer (April 2004 – April 2015)

Investor Communication to Highland Crusader Funds Stakeholders

Alvarez & Marsal
Management, LLC 2029 Ce
Park East Suite 2060
Angeles, CA 9

July 6, 2021

Re: Update & Notice of Distribution

Dear Highland Crusader Funds Stakeholder,

As you know, in October 2020, the Bankruptcy Court approved a settlement of the Redeemer Committee's and the Crusader Funds' claims against Highland Capital Management L.P. ("HCM"), as a result of which the Redeemer Committee was allowed a general unsecured claim of $137,696,610 against HCM and the Crusader Funds were allowed a general unsecured claim of $50,000 against HCM (collectively, the "Claims"). In addition, as part of the settlement, various interests in the Crusader Funds held by HCM and certain of its affiliates are to be extinguished (the "Extinguished Interests"), and the Redeemer Committee and the Crusader Funds received a general release from HCM and a waiver by HCM of any claim to distributions or fees that it might otherwise receive from the Crusader Funds (the "Released Claims" and, collectively with the Extinguished Interests, the "Retained Rights").

A timely appeal of the settlement was taken by UBS (the "UBS Appeal) in the United States District Court for the Northern District of Texas, Dallas Division. However, the Bankruptcy Court subsequently approved a settlement between HCM and UBS, resulting in dismissal of the UBS Appeal with prejudice on June 14, 2021.

On April 30, 2021, the Crusader Funds and the Redeemer Committee consummated the sale of the Claims against HCM and the majority of the remaining investments held by the Crusader Funds to Jessup Holdings LLC ("Jessup") for $78 million in cash, which was paid in full to the Crusader Funds at closing. The sale specifically excluded the Crusader Funds' investment in Cornerstone Healthcare Group Holding Inc. and excluded certain specified provisions of the settlement agreement with HCM (the "Settlement Agreement"), including, but not limited to, the Retained Rights. The sale of the Claims and investments was made with no holdbacks or escrows.

The sale to Jessup resulted from a solicitation of offers to purchase the Claims commenced by Alvarez & Marsal CRF Management LLC ("A&M CRF"), as Investment Manager of the Crusader Funds, in consultation with the Redeemer Committee. Ultimately, the Crusader Funds and the Redeemer Committee entered exclusive negotiations with Jessup, culminating in the sale to Jessup.

A&M CRF, pursuant to the Plan and Scheme and with the approval of House Hanover, the Redeemer Committee and the Board of the Master Fund, now intends to distribute the proceeds from the Jessup transaction ($78 million), net of any applicable tax withholdings and with no reserves for the Extinguished Claims or the Released Claims. In addition, the distribution will include approximately $9.4 million in proceeds that have been redistributed due to the cancellation

and extinguishment of the interests and shares in the Crusader Funds held by HCM, Charitable DAF and Eames in connection with the Settlement Agreement, resulting in a total gross distribution of $87.4 million. Distributions will be based on net asset value as of June 30, 2021.

Please note that A&M CRF intends to make the distributions by wire transfer no later than July 31, 2021. Please confirm your wire instructions on or before **July 20, 2021.** If there are any revisions to your wire information, please use the attached template to provide SEI and A&M CRF your updated information on investor letterhead. This information should be sent on or before **July 20, 2021** to Alvarez & Marsal CRF and SEI at CRFInvestor@alvarezandmarsal.com and AIFS-IS_Crusader@seic.com, respectively.

The wire payments will be made to the investor bank account on file with an effective and record date of July 1, 2021. Should you have any questions, please contact SEI or A&M CRF at the e-mail addresses listed above.

Sincerely,

Alvarez & Marsal CRF Management, LLC

By: _____
Steven Varner
Managing Director

Alvarez & Marsal CRF Management, LLC 2029 Century Park East Suite 2060 Los Angeles, CA 90067

July 6, 2021

Re: Update & Notice of Distribution

Dear Highland Crusader Funds Stakeholder,

As you know, in October 2020, the Bankruptcy Court approved a settlement of the Redeemer Committee's and the Crusader Funds' claims against Highland Capital Management L.P. ("HCM"), as a result of which the Redeemer Committee was allowed a general unsecured claim of $137,696,610 against HCM and the Crusader Funds were allowed a general unsecured claim of $50,000 against HCM (collectively, the "Claims"). In addition, as part of the settlement, various interests in the Crusader Funds held by HCM and certain of its affiliates are to be extinguished (the "Extinguished Interests"), and the Redeemer Committee and the Crusader Funds received a general release from HCM and a waiver by HCM of any claim to distributions or fees that it might otherwise receive from the Crusader Funds (the "Released Claims" and, collectively with the Extinguished Interests, the "Retained Rights").

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The wire payments will be made to the investor bank account on file with an effective and record date of July 1, 2021. Should you have any questions, please contact SEI or A&M CRF at the e-mail addresses listed above.

Sincerely,

Alvarez & Marsal CRF Management, LLC

By: _____
Steven Varner
Managing Director

On investor letterhead, please use the template below to provide Alvarez & Marsal CRF Management, LLC and SEI your updated wire information.

Information Needed	Wire Information Input
Investor name (as it reads on monthly statements) Fund(s) Invested Contact Information (Phone No. and Email) Updated Wire Information • Beneficiary Bank • Bank Address • Beneficiary (Account) Name • ABA/Routing # • Account # • SWIFT Code International Wires • Correspondent Bank • ABA/Routing # • SWIFT Code	

Signed By: _____ Date: _____

Exhibit 3

CAUSE NO. DC-23-01004

IN RE:	§	**IN THE DISTRICT COURT**
	§	
HUNTER MOUNTAIN	§	
INVESTMENT TRUST	§	**191ST JUDICIAL DISTRICT**
	§	
Petitioner,	§	
	§	**DALLAS COUNTY, TEXAS**

DECLARATION OF JAMES DONDERO

STATE OF TEXAS §
§
COUNTY OF DALLAS §

The undersigned provides this Declaration pursuant to Texas Civil Practice & Remedies Code § 132.001 and declares as follows:

1. My name is James Dondero. I am over twenty-one (21) years of age. I am of sound mind and body, and I am competent to make this declaration. The facts stated within this declaration are based upon my personal knowledge and are true and correct.

2. I previously served as the Chief Executive Officer ("CEO") of Highland Capital Management, L.P. ("HCM"). Jim Seery succeeded me in this capacity following the entry of various orders in the bankruptcy proceedings styled *In re Highland Capital Management, L.P.*, Case No. 19-34054 ("HCM Bankruptcy Proceedings").

3. On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple's interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. My purpose was to alert Mr. Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades. A true and correct copy of this email is attached hereto as Exhibit "1".

4. In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC ("Farallon"), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Mr. Seery because they had made significant profits when Mr. Seery told them to purchase other claims in the past. They also stated they were particularly optimistic because of the expected sale of MGM.

5. During one of these calls involving Mr. Linn, I asked whether they would sell the claims for 30% more than they had paid. Mr. Linn said no because Mr. Seery said they were worth a lot more. I asked Mr. Linn if he would sell at any price and he said that he was unwilling to do so. I believe these conversations with Farallon were taped by Farallon.

6. My name is James Dondero, my date of birth is June 29, 1962, and my address is 3807 Miramar Ave., Dallas, Texas 75205, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER DECLARANT SAYETH NOT.

Executed in Dallas County, State of Texas, on the 15th day of February 2023.

JAMES DONDERO

Exhibit 1

From: Jim Dondero <JDondero@highlandcapital.com>

To: Thomas Surgent <TSurgent@HighlandCapital.com>, Jim Seery <jpseeryjr@gmail.com>, Scott Ellington <SEllington@HighlandCapital.com>, "Joe Sowin" <JSowin@HighlandCapital.com>, Jason Post <JPost@NexpointAdvisors.com>

Cc: "D. Lynn (\"Judge Lynn\")" <michael.lynn@bondsellis.com>, Bryan Assink <bryan.assink@bondsellis.com>

Subject: Trading restriction re MGM - material non public information

Date: Thu, 17 Dec 2020 14:14:39 -0600

Importance: Normal

Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest.
Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.

Sent from my iPhone

Exhibit 4

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

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

DECLARATION OF SAWNIE A. MCENTIRE

STATE OF TEXAS §
§
COUNTY OF DALLAS §

The undersigned provides this Declaration pursuant to 28 U.S.C. 1746 and declares as follows:

1. My name is Sawnie A. McEntire. I am over 21 years of age. I am of sound mind and body and I am competent to make this declaration. Unless otherwise, indicated, the facts stated within this declaration are based upon my personal knowledge and are true and correct.

2. I am a licensed attorney in good standing with the State Bar of Texas. I am a Director and Shareholder at the firm Parsons McEntire McCleary PLLC. I serve as lead counsel for Hunter Mountain Investment Trust ("HMIT") in these proceedings in regard to the motion described in Paragraph 3 below. I also served as lead counsel for HMIT in Rule 202 Proceedings filed in the 191st District Court of Dallas County, Texas, Cause No. DC-23-01004 ("Rule 202 Proceedings").

3. I submit this declaration in support of HMIT's Emergency Motion for Leave to File Adversary Proceeding ("Emergency Motion") to which this Declaration is attached.

4. On January 20, 2023, HMIT filed its Verified Rule 202 Petition in the 191st District Court of Dallas County, Texas, Cause No. DC-23-01004. **A true and correct copy of HMIT's Verified Rule 202 Petition, with accompanying exhibits, is attached to this declaration as Exhibit 4-A.**

5. HMIT served notice of the Rule 202 Petition and hearing on Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), Muck Holdings LLC ("Muck"), and Jessup Holdings LLC ("Jessup") in February 2023. Farallon and Stonehill entered an appearance, responded to the proceedings, and were represented by David Shulte of the law firm of Holland & Knight. Among other things, the Rule 202 Petition sought discovery related to Farallon and Stonehill's due diligence, if any, concerning the sale and transfer of four allowed bankruptcy claims in the above-referenced bankruptcy proceedings from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively the "Claims") in April and August of 2021.[1]

6. On February 22, 2023, HMIT's Verified Rule 202 Petition was heard by the Honorable Gena Slaughter of the 191st District Court of Dallas County, Texas. **A true and correct copy of the Hearing Transcript of the Rule 202 Proceedings on February 22, 2023, is attached to this declaration as Exhibit 4-B** ("Transcript'). At this hearing, I argued on behalf of HMIT and Mr. Shulte argued on behalf of Farallon and Stonehill. During this hearing, Farallon and Stonehill admitted they acquired the Claims through their respective "special purpose entities," as reflected in the Transcript. Farallon resisted the requested discovery in the state district court.

7. A true and correct copy of a certified copy of Muck's formation papers in the State of Delaware, showing Muck was created on March 9, 2021, is attached to this Declaration as **Exhibit 4-D**. A true and correct copy of a certified copy of Jessup's formation papers in Delaware, showing Jessup was created on April 8, 2021, is attached to this Declaration as **Exhibit 4-E**. Muck and Jessup's corporate formation documents do not identify their respective members or managing members. *See* Exhibit 4-D and 4-E.

8. On March 8, 2023, the state district court denied and dismissed HMIT's Verified Rule 202 Petition. This ruling was necessarily without prejudice. A true and correct copy of the related Order, dated March 8, 2023, is attached to this declaration as **Exhibit 4-C**.

---

[1] *See* Notices of Transfers [Docs. 2211, 2212, 2261, 2262, 2263, 2215, 2697, 2698].

9. On March 9, 2023, my law partner, Roger McCleary sent correspondence to Mr. Schulte, as Farallon and Stonehill's counsel, requesting disclosure of the details of their respective legal relationships to Muck and Jessup. Farallon and Stonehill never responded to this inquiry. A true and correct copy of this email correspondence, dated March 9, 2023, is attached to this declaration as **Exhibit 4-F**.

10. I declare under the penalty of perjury that the foregoing is true and correct. Executed on March 27, 2023.

FURTHER DECLARANT SAYETH NOT.

Executed in Dallas County, State of Texas, on the 27th day of March 2023.

Dawnie A. McEntire

Exhibit 4-A

DC-23-01004

CAUSE NO. _____

IN RE:	§	**IN THE DISTRICT COURT**
	§	191st
HUNTER MOUNTAIN	§	
INVESTMENT TRUST	§	**____th JUDICIAL DISTRICT**
	§	
Petitioner,	§	
	§	**DALLAS COUNTY, TEXAS**

PETITIONER HUNTER MOUNTAIN INVESTMENT TRUST'S
VERIFIED RULE 202 PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioner, Hunter Mountain Investment Trust ("HMIT"), files this Verified Petition ("Petition") pursuant to Rule 202 of the Texas Rules of Civil Procedure, seeking pre-suit discovery from Respondent Farallon Capital Management, LLC ("Farallon") and Respondent Stonehill Capital Management, LLC ("Stonehill") (collectively "Respondents"), to allow HMIT to investigate potential claims against Respondents and other potentially adverse entities, and would respectfully show:

PARTIES

1. HMIT is a Delaware statutory trust that was the largest equity holder in Highland Capital Management, L.P. ("HCM"), holding a 99.5% limited partnership interest. HCM filed chapter 11 bankruptcy proceedings in 2019 and, as a result of these

proceedings,[1] HMIT held a Class 10 claim which, post-confirmation, was converted to a Contingent Trust Interest in HCM's post-reorganization sole limited partner.

2. Farallon is a Delaware limited liability company with its principal office in California, which is located at One Maritime Plaza, Suite 2100, San Francisco, CA 94111.

3. Stonehill is a Delaware limited liability company with its principal office in New York, which is located at 320 Park Avenue, 26th Floor, New York, NY 10022.

VENUE AND JURISDICTION

4. Venue is proper in Dallas County, Texas, because all or substantially all of the events or omissions giving rise to HMIT's potential common law claims occurred in Dallas County, Texas. In the event HMIT elects to proceed with a lawsuit against Farallon and Stonehill, venue of such proceedings will be proper in Dallas County, Texas.

5. This Court has jurisdiction over the subject matter of this Petition pursuant to Texas Rule of Civil Procedure 202.[2] The amount in controversy of any potential claims against Farallon or Stonehill far exceeds this Court's minimum jurisdictional requirements. Without limitation, HMIT specifically seeks to investigate potentially actionable claims for unjust enrichment, imposition of a constructive trust with

[1] These proceedings were initially filed in Delaware but were ultimately transferred to and with venue in the U.S. Bankruptcy Court for the Northern District of Texas.

[2] The discovery relief requested in this Petition does not implicate the HCM bankruptcy court's jurisdiction. Furthermore, this Rule 202 Petition is not subject to removal because there is no amount in actual controversy and there is no cause of action currently asserted.

disgorgement, knowing participation in breaches of fiduciary duty, and tortious interference with business expectancies.

6. This Court has personal jurisdiction over the Respondents from which discovery is sought because both Farallon and Stonehill are doing business in Texas under Texas law including, without limitation, TEX. CIV. PRAC. & REM. CODE §17.042. Consistent with due process, Respondents have established minimum contacts with Texas, and the assertion of personal jurisdiction over Respondents complies with traditional notions of fair play and substantial justice. HMIT's potential claims against Respondents arise from and/or relate to Farallon's and Stonehill's contacts in Texas. Respondents also purposefully availed themselves of the privilege of conducting business activities within Texas, thus invoking the benefits and protections of Texas law.

SUMMARY

7. HMIT seeks to investigate potential claims relating to the sale and transfer of large, unsecured creditors' claims in HCM's bankruptcy to special purpose entities affiliated with and/or controlled by Farallon and Stonehill (the "Claims"). Upon information and belief, Farallon and Stonehill historically had and benefited from close relationships with James Seery ("Seery"), who was serving as HCM's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO") at the time of the Claims purchases. Furthermore, still upon information and belief, because Farallon and Stonehill acquired or controlled the acquisition of the Claims under highly questionable

circumstances. HMIT seeks to investigate whether Respondents received material non-public information and were involved in insider trading in connection with the acquisition of the Claims.

8. The pre-suit discovery which HMIT seeks is directly relevant to potential claims, and it is clearly appropriate under Rule 202.1(b). HMIT anticipates the institution of a future lawsuit in which it may be a party due to its status as a stakeholder as former equity in HCM or in its current capacity as a Contingent Trust Interest holder, as well as under applicable statutory and common law principles relating to the rights of trust beneficiaries. In this context, HMIT may seek damages on behalf of itself or, alternatively, in a derivative capacity and without limitation, for damages or disgorgement of monies for the benefit of the bankruptcy estate.

9. HMIT currently anticipates a potential lawsuit against Farallon and Stonehill as defendants and, as such, Farallon and Stonehill have adverse interests to HMIT in connection with the anticipated lawsuit. The addresses and telephone numbers are as follows: **Farallon Capital Management LLC**, One Maritime Plaza, Suite 2100, San Francisco, CA 94111, Telephone: 415-421-2132; **Stonehill Capital Management**, LLC, 320 Park Avenue, 26th Floor, New York, NY 10022, 212-739-7474 . Additionally, the following parties also may be parties with adverse interests in any potential lawsuit: **Muck Holdings LLC**, c/o Crowell & Moring LLP, Attn: Paul B. Haskel, 590 Madison Avenue, New York, NY 10022, 212-530-1823; **Jessup Holdings LLC**, c/o Mandel, Katz and Brosnan

LLP, Attn: John J. Mandler, 100 Dutch Hill Road, Suite 390, Orangeburg, NY 10962, 845-6339-7800.

BACKGROUND[3]

A. *Procedural Background*

10. On or about October 16, 2019, HCM filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court, which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.

11. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee, which is a committee of investors in an HCM-affiliated fund known as the Crusader Fund that obtained an arbitration award against HCM in the hundreds of millions of dollars; Acis Capital Management, L.P. and Acis Capital Management GP LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS") - and an unpaid vendor, Meta-E Discovery.

12. Following the venue transfer to Texas on December 27, 2019, HCM filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary*

[3] All footnote references to evidence involve documents filed in the HCM bankruptcy proceedings and are cited by "Dkt." reference. HMIT asks the Court to take judicial notice of the documents identified by these docket entries.

Course ("HCM's Governance Motion").[4] On January 9, 2020, the Court signed an order approving HCM's Settlement Motion (the "Governance Order").[5]

13. As part of the Governance Order, an independent board of directors—which included Seery as one of the UCC's selections—was appointed to the Board of Directors (the "Board") of Strand Advisors, Inc., ("Strand Advisors") HCM's general partner. Following the approval of the Governance Order, the Board then appointed Seery as HCM's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO") in place of the previous CEO.[6] Seery currently serves as Trustee of the Claimant Trust (HCM's sole post-reorganization limited partner) and, upon information and belief, continues to serve as CEO of HCM following the effective date of the HCM bankruptcy reorganization plan ("Plan").[7]

B. Seery's Relationships with Stonehill and Farallon

14. Farallon and Stonehill are two capital management firms (similar to HCM) that, upon information belief, have long-standing relationships with Seery. Upon information and belief, they eventually participated in, directed and/or controlled the acquisition of hundreds of millions of dollars of unsecured Claims in HCM's bankruptcy on behalf of funds which they manage. It appears they did so without any meaningful

[4] Dkt. 281.
[5] Dkt. 339.
[6] Dkt. 854, Order Approving Retention of Seery as CEO/CRO.
[7] *See* Dkt. 1943, Order Approving Plan, p. 34.

due diligence, much less reasonable due diligence, and *ostensibly* based their investment decisions only on Seery's input.

15. Upon information and belief, Seery historically has had a substantial business relationship with Farallon and he previously served as legal counsel to Farallon in other matters. Upon information and belief, Seery also has had a long-standing relationship with Stonehill. GCM Grosvenor, a global asset management firm, held four seats on the Redeemer Committee[8] (an original member of the Unsecured Creditors Committee in HCM's bankruptcy). Upon information and belief, GCM Grosvenor is a significant investor in Stonehill and Farallon. Grosvenor, through Redeemer, also played a large part in appointing Seery as a director of Strand Advisors and approved his appointment as HCM's CEO and CRO.

C. Claims Trading

16. Imbued with his powers as CEO and CRO, Seery negotiated and obtained bankruptcy court approval of settlements with Redeemer, Acis, UBS, and another major creditor, HarbourVest[9] (the "Settlements") (Redeemer, Acis, UBS, and HarbourVest are collectively the "Settling Parties"), resulting in the following allowed claims:[10]

[8] Declaration of John A. Morris [Dkt. 1090], Ex. 1, pp. 15.
[9] "HarbourVest" collectively refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.
[10] Orders Approving Settlements [Dkt. 1273, Dkt. 1302, Dkt. 1788, Dkt. 2389].

Creditor	Class 8	Class 9
Redeemer	$137 mm	$0 mm
Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm
UBS	$65 mm	$60 mm

17. Although these Settlements were achieved after years of hard-fought litigation,[11] each of the Settling Parties ***curiously*** sold their claims to Farallon or Stonehill (or affiliated special purpose entities) shortly after they obtained court approval of their Settlements. One of these "trades" occurred within just a few weeks before the Plan's Effective Date.[12] Upon information and belief, Farallon and Stonehill coordinated and controlled the purchase of these Claims through special purpose entities, Muck Holdings, LLC ("Muck") and Jessup Holdings, LLC ("Jessup") (collectively "SPEs").[13] Upon information and belief, both of these SPEs were created on the eve of the Claims purchases for the ostensible purpose of taking and holding title to the Claims.

18. Upon information and belief, Farallon and Stonehill directed and controlled the investment of over $160 million dollars to acquire the Claims in the absence of any publicly available information that could rationally justify this substantial investment. These "trades" are even more surprising because, at the time of the confirmation of HCM's Plan, the Plan provided only pessimistic estimates that these Claims would ever receive full satisfaction:

[11] Order Confirming Plan, pp. 9-11.
[12] Dkt. 2697, 2698.
[13] *See* Notice of Removal [Dkt 2696], ¶ 4.

a. HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11;[14]

   i. This meant that Farallon and Stonehill invested more than $163 million in Claims ***when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims***.

b. In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% *to 54%* (down approximately $328.3 million);[15]

c. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the valuation of HCM's assets dropped over $200 million from $566 million to $328.3 million;[16]

d. Despite the stark decline in the valuation of the HCM bankruptcy estate and reduction in percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively the "Claims") in April and August of 2021[17] in the combined amount of approximately $163 million; and

e. Upon information and belief:

   i. Stonehill, through an SPE, Jessup, acquired the Redeemer Committee's claim for approximately $78 million;[18]

[14] Dkt. 1875-1, Plan Supplement, Exh. A, p. 4.
[15] Dkt. 2949.
[16] Dkt 1473, Disclosure Statement, p. 18.
[17] Notices of Transfers [Dkt. 2211, 2212, 2261, 2262, 2263, 2215, 2697, 2698].
[18] July 6, 2021 Letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

ii. The $23 million Acis claim[19] was sold to Farallon/Muck for approximately $8 million;

iii. HarbourVest sold its combined approximately $80 million in claims to Farallon/Muck for approximately $27 million; and

iv. UBS sold its combined approximately $125 million in claims for approximately $50 million to both Stonehill/Jessup and Farallon/Muck ***at a time when the total projected payout was only approximately $35 million***.

19. In Q3 2021, just over $6 million of the projected $205 million available to satisfy general unsecured claims was disbursed.[20] No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—$45 million more than was *ever* projected.[21] According to HCM's Motion for Exit Financing,[22] and a recent motion filed by Dugaboy Investment Trust,[23] there remain ***substantial*** assets to be monetized for the benefit of HCM's creditors. Thus, upon information and belief, the funds managed by Stonehill and Farallon stand to realize significant profits on their Claims purchases. In turn, upon information and belief, Stonehill and Farallon will garner (or already have garnered) substantial fees – both base fees and performance fees – as the result of their acquiring and/or managing the purchase of the Claims.

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[19] Seery/HCM have argued that $10 million of the Acis claim is self-funding. Dkt. 1271, Transcript of Hearing on Motions to Compromise Controversy with Acis Capital Management [1087] and the Redeemer Committee of the Highland Crusader Fund [1089], p. 197.
[20] Dkt. 3200.
[21] Dkt. 3582.
[22] Dkt. 2229.
[23] Dkt. 3382.

D. ***Material Information is Not Disclosed***

20. Bankruptcy Rule 2015.3 requires debtors to "file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." No public reports required by Rule 2015.3 were filed. Seery testified they simply "fell through the cracks."[24]

21. As part of the HarbourVest Settlement, Seery negotiated the purchase of HarbourVest's interest in HCLOF for approximately $22.5 million as part of the transaction.[25] Approximately 19.1% of HCLOF's assets were comprised of debt and equity in Metro-Goldwyn-Mayer Studios, Inc. ("MGM"). The HCLOF interest was not to be transferred to HCM for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements.[26]

22. Six days prior to the filing of the motion seeking approval of the HarbourVest Settlement, upon information and belief, it appears that Seery may have acquired material non-public information regarding Amazon's now-consummated interest in acquiring MGM,[27] yet there is no record of Seery's disclosure of such

[24] Dkt. 1905, February 3, 2021 Hearing Transcript, 49:5-21.
[25] Dkt. 1625, p. 9, n. 5.
[26] Dkt. 1625.
[27] Dkt. 150-1.

information to the Court, HCM's creditors, or otherwise. Upon the receipt of this material non-public information, HMIT understands, upon information and belief, that MGM was supposed to be placed on HCM's "restricted list," but Seery nonetheless continued to move forward with deals that involved MGM assets.[28]

23. As HCM additionally held its own direct interest in MGM,[29] the value of MGM was of paramount importance to the value of HCM's bankruptcy estate. HMIT believes, upon information and belief, that Seery conveyed material non-public information regarding MGM to Stonehill and Farallon as inducement to purchase the Claims.

E. ***Seery's Compensation***

24. Upon information and belief, a component of Seery's compensation is a "success fee" that depends on the actual liquidation of HCM's bankruptcy estate assets versus the Plan projections. As current holders of the largest claims against the HCM estate, Muck and Jessup, the SPEs apparently created and controlled by Stonehill and Farallon, were installed as two of the three members of an Oversight Board in charge of monitoring the activities of HCM, as the Reorganized Debtor, and the Claimant Trust.[30] Thus, along with a single independent restructuring professional, Farallon and

[28] *See* Dkt. 1625, Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith, filed December 23, 2020
[29] Motion for Exit Financing.[Dkt.2229]
[30] Dkt. 2801.

Stonehill's affiliates oversee Seery's go-forward compensation, including any "success" fee.[31]

DISCOVERY REQUESTED

25. HMIT seeks to investigate whether Farallon and Stonehill received material non-public information in connection with, and as inducement for, the negotiation and sale of the claims to Farallon and Stonehill or its affiliated SPEs. Discovery is necessary to confirm or deny these allegations and expose potential abuses and unjust enrichment.

26. The requested discovery from Farallon is attached as Exhibit "A", and includes the deposition of one or more of its corporate representatives and the production of documents. The requested discovery from Stonehill is attached as Exhibit "B", and includes the deposition of Stonehill's corporate representative(s) and the production of documents.

27. Pursuant to Rule 202.2(g), the requested discovery will include matters that will allow HMIT to evaluate and determine, among other things:

a. The substance and types of information upon which Stonehill and Farallon relied in making their respective decisions to invest in or acquire the Claims;

b. Whether Farallon and Stonehill conducted due diligence, and the substance of any due diligence when evaluating the Claims;

[31] Claimant Trust Agreement [Dkt. 1656-2].

c. The extent to which Farallon and Stonehill controlled the SPEs, Muck and Jessup, in connection with the acquisition of the Claims;

d. The creation and organizational structure of Farallon, Stonehill, Muck, and Jessup, as well as the purpose of creating Muck and Jessup as SPEs to hold the Claims;

e. Any internal valuations of Muck or Jessup's net asset value (NAV);

f. Any external valuation or audits of the NAV attributable to the Claims;

g. Any documents reflecting expected profits from the purchase of the Claims;

h. All communications between Farallon and Seery concerning the value and purchase of the Claims;

i. All communications between Stonehill and Seery concerning the value and purchase of the Claims;

j. All documents reflecting the expected payout on the Claims;

k. All communications between Farallon or Stonehill and HarbourVest concerning the purchase of the Claims;

l. All communications between Farallon or Stonehill and Acis regarding the purchase of the Claims;

m. All communications between Farallon or Stonehill and UBS regarding the purchase of the Claims;

n. All communications between Farallon or Stonehill and The Redeemer Committee regarding the purchase of the Claims;

o. All communications between Farallon and Stonehill regarding the purchase of the Claims;

p. All communications between Farallon and Stonehill and investors in their respective funds regarding purchase of the Claims or valuation of the Claims;

q. All communications between Seery and Stonehill or Farallon regarding Seery's compensation as the Trustee of the Claimant Trust;

r. All documents relating to, regarding, or reflecting any agreements between Seery and the Oversight Committee regarding compensation;

s. All documents reflecting the base fees and performance fees which Stonehill has received or may receive in connection with management of the Claims;

t. All documents reflecting the base fees and performance fees which Farallon has received or may receive in connection with management of the Claims;

u. All monies received by and distributed by Muck in connection with the Claims;

v. All monies received by and distributed by Jessup in connection with the Claims;

w. All documents reflecting whether Farallon is a co-investor in any fund which holds an interest in Muck; and

x. All documents reflecting whether Stonehill is a co-investor in any fund which holds an interest in Jessup.

BENEFIT OUTWEIGHS THE BURDEN

28. The beneficial value of the requested discovery greatly outweighs any conceivable burden that could be placed on the Respondents. The requested information

also should be readily available because the Respondents have been engaged in the bankruptcy proceedings relating to the matters at issue for several years.

29. The important benefit associated with this requested discovery is also clear – it is reasonably calculated to determine whether the Respondents have unjustly garnered tens of millions of dollars of benefit based upon insider information. If this occurred, the monies received as a result of such conduct are properly subject to a constructive trust and disgorged. This would result in substantial funds available for other creditors, including those creditors in Class 10, which includes HMIT as a beneficiary. This significant benefit, in addition to the value of bringing proper light to the activities of Farallon and Stonehill as discussed in this petition, far outweighs any purported burden associated with requiring Respondents to sit for focused depositions concerning the topics and documents identified in Exhibits A and B.

REQUEST FOR HEARING AND ORDER

30. After service of this Petition and notice, Rule 202.3(a) requires the Court to hold a hearing on this Petition.

PRAYER FOR RELIEF

31. Petitioner Hunter Mountain Investment Trust respectfully requests that the Court issue an order pursuant to Texas Rule of Civil Procedure 202 authorizing HMIT to take a deposition of designated representatives of Farallon Capital Management, LLC and Stonehill Capital Management, LLC. HMIT additionally requests authorization to

issue subpoenas duces tecum compelling the production of documents in connection with the depositions in compliance with Tex. R. Civ. P. 205, and asks that the Court grant HMIT all such other and further relief to which it may be justly entitled.

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: */s/ Sawnie A. McEntire*

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Attorneys for Petitioner Hunter Mountain Investment Trust

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Before me, the undersigned notary, on this day personally appeared Mark Patrick, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

> "My name is Mark Patrick. I am the Administrator of Hunter Mountain Investment Trust, and I am authorized and capable of making this verification. I have read Petitioner Hunter Mountain Investment Trust's Verified Rule 202 Petition ("Petition"). The facts as stated in the Petition are true and correct based on my personal knowledge and review of relevant documents in the proceedings styled *In re Highland Capital Management, L.P.*, Case No. 19-34054, in the United States Bankruptcy Court in the Northern District of Texas, Dallas Division ."

Mark Patrick

Sworn to and subscribed before me by Mark Patrick on January 20, 2023.

Notary Public in and for
the State of Texas

DEBORAH COLE
Notary ID #134079165
My Commission Expires
November 23, 2026

3116424.1

EXHIBIT "A"

CAUSE NO. _____

IN RE:	§	**IN THE DISTRICT COURT**
	§	
HUNTER MOUNTAIN	§	
INVESTMENT TRUST	§	**____th JUDICIAL DISTRICT**
	§	
Petitioner,	§	
	§	**DALLAS COUNTY, TEXAS**

NOTICE OF DEPOSITION OF FARALLON CAPITAL MANAGEMENT, LLC

TO: Farallon Capital Management, LLC, by and through its attorney of record _____.

PLEASE TAKE NOTICE that, pursuant to Tex. R. Civ. P. 199, 202, and 205, Petitioner Hunter Mountain Investment Trust ("HMIT") will take the deposition on oral examination under oath of Farallon Capital Management, LLC ("Farallon") on **_____, 2023 at _____ _.m.** before a notary public or other person authorized to administer a proper oath and will be recorded by stenographic means. The deposition will take place at _____ before a court reporter and videographer and will continue from day to day until completed. The deposition may also be recorded by non-stenographic (videotape) means.

Please take further notice that, pursuant to Tex. R. Civ. P. 199.2(b), Farallon is requested to designate one or more person(s) most knowledgeable and prepared to testify on behalf of Farallon concerning the topics identified on Exhibit "1", and to produce the documents described in Exhibit "2", attached hereto.

Respectfully submitted,

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Attorneys for Petitioner Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I hereby certify that, on January ___, 2023, a true and correct copy of the foregoing document was served on all known counsel of record in accordance with the Texas Rules of Civil Procedure.

Sawnie A. McEntire

EXHIBIT "A"
TO NOTICE OF DEPOSITION OF FARALLON CAPITAL MANAGEMENT, LLC

For purposes of the attached Exhibits "1" and "2", the following rules and definitions shall apply.

RULES OF CONSTRUCTION

1. The terms "all" and "each" shall be construed as all and each.

2. The terms "all" and "any" shall be construed as all and any.

3. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

4. The use of the singular form of any word includes the plural and vice versa.

DEFINITIONS

The terms used herein shall have the following meanings unless the context requires otherwise:

Acis. The term "Acis" refers to Acis Capital Management, L.P. and Acis Capital Management GP LLC, collectively.

Any and *all*. The terms "any" and "all" should be understood in either the most or the least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope. "Any" includes the word "all," and "all" includes the term "any."

Bankruptcy Case. The term "Bankruptcy Case" shall mean the Chapter 11 Bankruptcy of Debtor Highland Capital Management, L.P., Case No. 19-34054 in the United States Bankruptcy Court for the Northern District of Texas.

Claims. The term "Claims" shall mean the claims against Highland's Estate transferred to/acquired by Muck and/or Jessup as evidenced by Bankruptcy Case Dkt. Nos. 2215, 2261, 2262, 2263, 2697, 2698.

Communication. The term "communication" means any manner in which the mental processes of one individual are related to another, including without limitation, any verbal utterance, correspondence, **email, text message**, statement, transmission of information by computer or other device, letters, telegrams, telexes, cables, telephone

conversations, and records or notations made in connection therewith, notes, memoranda, sound recordings, electronic data storage devices, and any other reported, recorded or graphic matter or document relating to any exchange of information.

Concerning. The term "concerning" means reflecting, regarding, relating to, referring to, describing, evidencing, or constituting.

Document or documents. The terms "document" or "documents" shall mean anything that may be considered to be a document or tangible thing within the meaning of the TEXAS RULES OF CIVIL PROCEDURE, including (without limitation) Electronically Stored Information and the originals and all copies of any correspondence, memoranda, handwritten or other notes, letters, files, records, papers, drafts and prior versions, diaries, calendars, telephone or other message slips, invoices, files, statements, books, ledgers, journals, work sheets, inventories, accounts, calculations, computations, studies, reports, indices, summaries, facsimiles, telegrams, telecopied matter, publications, pamphlets, brochures, periodicals, sound recordings, surveys, statistical compilations, work papers, photographs, videos, videotapes, drawings, charts, graphs, models, contracts, illustrations, tabulations, records (including tape recordings and transcriptions thereof) of meetings, conferences and telephone or other conversations or communications, financial statements, photostats, e-mails, microfilm, microfiche, data sheets, data processing cards, computer tapes or printouts, disks, word processing or computer diskettes, computer software, source and object codes, computer programs and other writings, or recorded, transcribed, punched, taped and other written, printed, recorded, digital, or graphic matters and/or electronic data of any kind however produced or reproduced and maintained, prepared, received, or transmitted, including any reproductions or copies of documents which are not identical duplicates of the original and any reproduction or copies of documents of which the originals are not in your possession, custody or control.

Electronically Stored Information or ESI. The terms *"Electronically Stored Information" or "ESI" shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) respect to all such Documents/ESI*

Estate. The term "Estate" means HCM's bankruptcy estate.

Farallon, *you*, and *your*. The terms "Farallon," "you," and "your" shall mean Farallon Capital Management, LLC and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Muck Holdings, LLC. These terms also include any owners, partners, shareholders, agents, employees,

representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which Farallon is a general partner or owns an entities' general partner, or anyone else acting on Farallon's behalf, now or at any time relevant to the response.

Grosvenor. The term "Grosvenor" refers to Grosvenor Capital Management, L.P.

HarbourVest. The term "HarbourVest" refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., collectively.

HCM. The term "HCM" refers to debtor Highland Capital Management, L.P.

Jessup. The term "Jessup" refers to Jessup Holdings, LLC.

MGM. The term "MGM" refers to Metro-Goldwyn-Mayer Studios, Inc.

Muck. The term "Muck" shall refer to Muck Holdings, LLC.

NAV. The term "NAV" means net asset value.

Oversight Board. The term "Oversight Board" refers to the Claimant Trust Oversight Committee (a/k/a the Oversight Board of the Highland Claimant Trust) as identified in Bankruptcy Case Dkt. No. 2801.

Person. The term "person" is defined as any natural person or any business, legal, or governmental entity or association.

Plan. The term "Plan" refers to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified).

Redeemer. The term "Redeemer" means the Redeemer Committee of the Highland Crusader Funds.

Seery. The term "Seery" refers to James P. ("Jim") Seery.

Settling Parties. The term "Settling Parties" refers to Redeemer, Acis, HarbourVest, and UBS, collectively.

Stonehill. The term "Stonehill" refers to Stonehill Capital Management, LLC.

Strand. The term "Strand" refers to Strand Advisors, Inc.

UBS. The term "UBS" refers to UBS Securities LLC and UBS AG London Branch, collectively.

EXHIBIT "1"

TOPIC CATEGORIES

The witness(es) designated by Farallon to testify on its behalf is (are) requested to testify concerning the following Topic Categories:

a. The substance, types, and sources of information Farallon considered in making any decision to invest in any of the Claims on behalf of itself, Muck, and/or any fund with which Farallon is connected;

b. Whether Farallon conducted due diligence, and the substance and identification of any due diligence (including associated documents), when evaluating any of the Claims;

c. Any and all communications with James Dondero;

d. The extent to which Farallon was involved in creating and organizing Muck in connection with the acquisition of any of the Claims;

e. The organizational structure of Muck (including identification of all members, managing members), as well as the purpose for creating Muck, including, but not limited to, regarding holding title to any of the Claims;

f. Any internal valuations of Muck's Net Asset Value (NAV), as well as all assets owned by Muck;

g. Any external valuation or audits of the NAV attributable to any of the Claims;

h. Any documents reflecting profit forecasts relating to any of the Claims;

i. All communications between Farallon and Seery relating to any of the Claims;

j. All forecasted payout(s) on any of the Claims and all documents including or reflecting the same;

k. All communications between Farallon and any of the Settling Parties concerning any of the Claims;

l. Any negotiations between Farallon and any of the Settling Parties concerning any of the Claims;

m. All communications between Farallon and Stonehill regarding any of the Claims;

n. All communications between Farallon and any investors in any fund managed by Farallon regarding any of the Claims or valuation of the Claims;

o. All communications between Seery and Farallon regarding Seery's compensation as Trustee of the Claimant Trust;

p. All agreements and other communications between Seery and the Oversight Committee regarding Seery's compensation and all documents relating to, regarding, or reflecting such agreements and other communications;

q. All base fees and performance fees which Farallon has received or may receive in connection with the Claims and all documents relating to, regarding, or reflecting the same;

r. All monies received by Muck in connection with any of the Claims and any distributions made by Muck to any members of Muck relating to such Claims;

s. Whether Farallon is a co-investor in any fund which holds an interest in Muck or otherwise holds a direct interest in Muck and all documents reflecting the same;

t. All communications between Farallon and any of the following entities concerning any of the Claims:

    i. UCC;

ii. Highland;

iii. Grosvenor;

iv. Muck;

v. the Oversight Board.

u. The sources of funds used by Muck for the acquisition of any of the Claims;

v. The terms and conditions of any agreements governing the transfers of any of the Claims to Muck;

w. Representations made by Farallon, Muck, Seery, and/or the Settling Parties in connection with the transfer of any of the Claims;

x. Farallon's valuation or evaluation of HCM's Estate;

y. Information learned regarding MGM during the pendency of the negotiations relating to the Claims;

z. The appointment of Muck to the Oversight Board;

aa. Farallon's historical relationships and business dealings with Seery and Grovesnor;

bb. Representations made to the bankruptcy court in connection with the transfer of any of the Claims to Muck.

EXHIBIT "2"

DOCUMENT REQUESTS

1. Any and all documents created by, prepared for, or received by Farallon concerning any of the following topics:
    a. the transfer of the Claims;
    b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
    c. valuation of the Claims or the assets underlying the Claims;
    d. promises and representations made in connection with the transfer of the Claims;
    e. any due diligence undertaken by Farallon or Muck prior to acquiring the Claims;
    f. consideration for the transfer of the Claims;
    g. the value of HCM's Estate;
    h. the projected future value of HCM's Estate;
    i. past distributions and projected distributions from HCM's Estate;
    j. compensation earned by or paid to Seery in connection with or relating to the Claims;
    k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and
    l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.
2. Any and all communications between Farallon, on the one hand, and any of the following individuals or entities: (i) Seery, (ii) the UCC, (iii) the Settling Parties, (iv) Stonehill, (vi) Grosvenor, or, (vii) the Oversight Board, concerning any of the following topics:
    a. the transfer of the Claims;
    b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
    c. valuation of the Claims or the assets underlying the Claims;

d. promises and representations made in connection with the transfer of the Claims;

e. any due diligence undertaken by Farallon or Muck prior to acquiring the Claims;

f. consideration for the transfer of the Claims;

g. the value of HCM's Estate;

h. the projected future value of HCM's Estate;

i. past distributions and projected distributions from HCM's Estate;

j. compensation earned by or paid to Seery in connection with or relating to the Claims;

k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and

l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.

3. All correspondence and/or other documents by or between Farallon and/or Muck and any investors in any fund regarding the Claims and/or the acquisition or transfer of the Claims.

4. Any and all documents reflecting the sources of funding used by Muck to acquire any of the Claims.

5. Organizational and formation documents relating to Muck including, but not limited to, Muck's certificate of formation, company agreement, bylaws, and the identification of all members and managing members.

6. Company resolutions prepared by or on behalf of Muck approving the acquisition of any of the Claims.

7. Any and all documents reflecting any internal or external audits regarding Muck's NAV.

8. Agreements between Farallon and Muck regarding management, advisory, or other services provided to Muck by Farallon.

9. Any and all documents reviewed by Farallon as part of its evaluation and due diligence regarding any of the Claims.

10. Any documents reflecting any communications with James Dondero;

11. Annual fund audits relating to Muck.

12. Muck's NAV Statements.

13. Documents reflecting the fees or other compensation earned by Farallon in connection with the investment in, acquisition of, transfer of, and/or management of any of the Claims.

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EXHIBIT "B"

CAUSE NO. _____

IN RE:	§	**IN THE DISTRICT COURT**
	§	
HUNTER MOUNTAIN	§	
INVESTMENT TRUST	§	**____th JUDICIAL DISTRICT**
	§	
Petitioner,	§	
	§	**DALLAS COUNTY, TEXAS**

NOTICE OF DEPOSITION OF STONEHILL CAPITAL MANAGEMENT, LLC

TO: Stonehill Capital Management, LLC, by and through its attorney of record _____.

PLEASE TAKE NOTICE that, pursuant to Tex. R. Civ. P. 199, 202, and 205, Petitioner Hunter Mountain Investment Trust ("HMIT") will take the deposition on oral examination under oath of Stonehill Capital Management, LLC ("Stonehill") on **_____, 2023 at _____ _.m.** before a notary public or other person authorized to administer a proper oath and will be recorded by stenographic means. The deposition will take place at _____ before a court reporter and videographer and will continue from day to day until completed. The deposition may also be recorded by non-stenographic (videotape) means.

Please take further notice that, pursuant to Tex. R. Civ. P. 199.2(b), Stonehill is requested to designate one or more person(s) most knowledgeable and prepared to testify on behalf of Stonehill concerning the topics identified on Exhibit "1", and to produce the documents described in Exhibit "2", attached hereto.

Respectfully submitted,

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Attorneys for Petitioner Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I hereby certify that, on January ___, 2023, a true and correct copy of the foregoing document was served on all known counsel of record in accordance with the Texas Rules of Civil Procedure.

Sawnie A. McEntire

EXHIBIT "A"
TO NOTICE OF DEPOSITION OF STONEHILL CAPITAL MANAGEMENT, LLC

For purposes of the attached Exhibits "1" and "2", the following rules and definitions shall apply.

RULES OF CONSTRUCTION

1. The terms "all" and "each" shall be construed as all and each.

2. The terms "all" and "any" shall be construed as all and any.

3. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

4. The use of the singular form of any word includes the plural and vice versa.

DEFINITIONS

The terms used herein shall have the following meanings unless the context requires otherwise:

Acis. The term "Acis" refers to Acis Capital Management, L.P. and Acis Capital Management GP LLC, collectively.

Any and *all*. The terms "any" and "all" should be understood in either the most or the least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope. "Any" includes the word "all," and "all" includes the term "any."

Bankruptcy Case. The term "Bankruptcy Case" shall mean the Chapter 11 Bankruptcy of Debtor Highland Capital Management, L.P., Case No. 19-34054 in the United States Bankruptcy Court for the Northern District of Texas.

Claims. The term "Claims" shall mean the claims against Highland's Estate transferred to/acquired by Muck and/or Jessup as evidenced by Bankruptcy Case Dkt. Nos. 2215, 2261, 2262, 2263, 2697, 2698.

Communication. The term "communication" means any manner in which the mental processes of one individual are related to another, including without limitation, any verbal utterance, correspondence, **email, text message**, statement, transmission of information by computer or other device, letters, telegrams, telexes, cables, telephone

conversations, and records or notations made in connection therewith, notes, memoranda, sound recordings, electronic data storage devices, and any other reported, recorded or graphic matter or document relating to any exchange of information.

Concerning. The term "concerning" means reflecting, regarding, relating to, referring to, describing, evidencing, or constituting.

Document or documents. The terms "document" or "documents" shall mean anything that may be considered to be a document or tangible thing within the meaning of the TEXAS RULES OF CIVIL PROCEDURE, including (without limitation) Electronically Stored Information and the originals and all copies of any correspondence, memoranda, handwritten or other notes, letters, files, records, papers, drafts and prior versions, diaries, calendars, telephone or other message slips, invoices, files, statements, books, ledgers, journals, work sheets, inventories, accounts, calculations, computations, studies, reports, indices, summaries, facsimiles, telegrams, telecopied matter, publications, pamphlets, brochures, periodicals, sound recordings, surveys, statistical compilations, work papers, photographs, videos, videotapes, drawings, charts, graphs, models, contracts, illustrations, tabulations, records (including tape recordings and transcriptions thereof) of meetings, conferences and telephone or other conversations or communications, financial statements, photostats, e-mails, microfilm, microfiche, data sheets, data processing cards, computer tapes or printouts, disks, word processing or computer diskettes, computer software, source and object codes, computer programs and other writings, or recorded, transcribed, punched, taped and other written, printed, recorded, digital, or graphic matters and/or electronic data of any kind however produced or reproduced and maintained, prepared, received, or transmitted, including any reproductions or copies of documents which are not identical duplicates of the original and any reproduction or copies of documents of which the originals are not in your possession, custody or control.

Electronically Stored Information or ESI. The terms *"Electronically Stored Information" or "ESI" shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) respect to all such Documents/ESI*

Estate. The term "Estate" means HCM's bankruptcy estate.

Farallon. The term "Farallon," refers to Farallon Capital Management, LLC and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Muck Holdings, LLC. These terms also include any owners, partners, shareholders, agents, employees, representatives, attorneys, predecessors, successors,

assigns, related entities, parent companies, subsidiaries, and/or entities in which Farallon is a general partner or owns an entities' general partner, or anyone else acting on Farallon's behalf, now or at any time relevant to the response.

Grosvenor. The term "Grosvenor" refers to Grosvenor Capital Management, L.P.

HarbourVest. The term "HarbourVest" refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., collectively.

HCM. The term "HCM" refers to debtor Highland Capital Management, L.P.

Jessup. The term "Jessup" refers to Jessup Holdings, LLC.

MGM. The term "MGM" refers to Metro-Goldwyn-Mayer Studios, Inc.

Muck. The term "Muck" shall refer to Muck Holdings, LLC.

NAV. The term "NAV" means net asset value.

Oversight Board. The term "Oversight Board" refers to the Claimant Trust Oversight Committee (a/k/a the Oversight Board of the Highland Claimant Trust) as identified in Bankruptcy Case Dkt. No. 2801.

Person. The term "person" is defined as any natural person or any business, legal, or governmental entity or association.

Plan. The term "Plan" refers to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified).

Redeemer. The term "Redeemer" means the Redeemer Committee of the Highland Crusader Funds.

Seery. The term "Seery" refers to James P. ("Jim") Seery.

Settling Parties. The term "Settling Parties" refers to Redeemer, Acis, HarbourVest, and UBS, collectively.

Stonehill," "you," and "your." The terms "Stonehill", "you," and "your" shall mean Stonehill Capital Management, LLC and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to Jessup Holdings, LLC. These terms also include any owners, partners, shareholders, agents, employees,

representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which Stonehill is a general partner or owns an entities' general partner, or anyone else acting on Stonehill's behalf, now or at any time relevant to the response .

Strand. The term "Strand" refers to Strand Advisors, Inc.

UBS. The term "UBS" refers to UBS Securities LLC and UBS AG London Branch, collectively.

EXHIBIT "1"

TOPIC CATEGORIES

The witness(es) designated by Stonehill to testify on its behalf is (are) requested to testify concerning the following Topic Categories:

a. The substance, types, and sources of information Stonehill considered in making any decision to invest in any of the Claims on behalf of itself, Jessup, and/or any fund with which Stonehill is connected;

b. Whether Stonehill conducted due diligence, and the substance and identification of any due diligence (including associated documents), when evaluating any of the Claims;

c. Any and all communications with James Dondero;

d. The extent to which Stonehill was involved in creating and organizing Jessup in connection with the acquisition of any of the Claims;

e. The organizational structure of Jessup (including identification of all members, managing members), as well as the purpose for creating Jessup, including, but not limited to, regarding holding title to any of the Claims;

f. Any internal valuations of Jessup's Net Asset Value (NAV), as well as all assets owned by Jessup;

g. Any external valuation or audits of the NAV attributable to any of the Claims;

h. Any documents reflecting profit forecasts relating to any of the Claims;

i. All communications between Stonehill and Seery relating to any of the Claims;

j. All forecasted payout(s) on any of the Claims and all documents including or reflecting the same;

k. All communications between Stonehill and any of the Settling Parties concerning any of the Claims;

l. Any negotiations between Stonehill and any of the Settling Parties concerning any of the Claims;

m. All communications between Stonehill and Farallon regarding any of the Claims;

n. All communications between Stonehill and any investors in any fund managed by Stonehill regarding any of the Claims or valuation of the Claims;

o. All communications between Seery and Stonehill regarding Seery's compensation as Trustee of the Claimant Trust;

p. All agreements and other communications between Seery and the Oversight Committee regarding Seery's compensation and all documents relating to, regarding, or reflecting such agreements and other communications;

q. All base fees and performance fees which Stonehill has received or may receive in connection with the Claims and all documents relating to, regarding, or reflecting the same;

r. All monies received by Jessup in connection with any of the Claims and any distributions made by Jessup to any members of Jessup relating to such Claims;

s. Whether Stonehill is a co-investor in any fund which holds an interest in Jessup or otherwise holds a direct interest in Jessup and all documents reflecting the same;

t. All communications between Stonehill and any of the following entities concerning any of the Claims:

    i. UCC;

ii. Highland;

iii. Grosvenor;

iv. Jessup;

v. the Oversight Board.

u. The sources of funds used by Jessup for the acquisition of any of the Claims;

v. The terms and conditions of any agreements governing the transfers of any of the Claims to Jessup;

w. Representations made by Stonehill, Jessup, Seery, and/or the Settling Parties in connection with the transfer of any of the Claims;

x. Stonehill's valuation or evaluation of HCM's Estate;

y. Information learned regarding MGM during the pendency of the negotiations relating to the Claims;

z. The appointment of Jessup to the Oversight Board;

aa. Stonehill's historical relationships and business dealings with Seery and Grovesnor;

bb. Representations made to the bankruptcy court in connection with the transfer of any of the Claims to Jessup.

EXHIBIT "2"

DOCUMENT REQUESTS

1. Any and all documents created by, prepared for, or received by Stonehill concerning any of the following topics:
    a. the transfer of the Claims;
    b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
    c. valuation of the Claims or the assets underlying the Claims;
    d. promises and representations made in connection with the transfer of the Claims;
    e. any due diligence undertaken by Stonehill or Jessup prior to acquiring the Claims;
    f. consideration for the transfer of the Claims;
    g. the value of HCM's Estate;
    h. the projected future value of HCM's Estate;
    i. past distributions and projected distributions from HCM's Estate;
    j. compensation earned by or paid to Seery in connection with or relating to the Claims;
    k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and
    l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.
2. Any and all communications between Stonehill, on the one hand, and any of the following individuals or entities: (i) Seery, (ii) the UCC, (iii) the Settling Parties, (iv) Farallon, (vi) Grosvenor, or, (vii) the Oversight Board, concerning any of the following topics:
    a. the transfer of the Claims;
    b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
    c. valuation of the Claims or the assets underlying the Claims;

d. promises and representations made in connection with the transfer of the Claims;

e. any due diligence undertaken by Stonehill or Jessup prior to acquiring the Claims;

f. consideration for the transfer of the Claims;

g. the value of HCM's Estate;

h. the projected future value of HCM's Estate;

i. past distributions and projected distributions from HCM's Estate;

j. compensation earned by or paid to Seery in connection with or relating to the Claims;

k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and

l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.

3. All correspondence and/or other documents by or between Stonehill and/or Jessup and any investors in any fund regarding the Claims and/or the acquisition or transfer of the Claims.

4. Any and all documents reflecting the sources of funding used by Jessup to acquire any of the Claims.

5. Organizational and formation documents relating to Jessup including, but not limited to, Jessup's certificate of formation, company agreement, bylaws, and the identification of all members and managing members.

6. Company resolutions prepared by or on behalf of Jessup approving the acquisition of any of the Claims.

7. Any and all documents reflecting any internal or external audits regarding Jessup's NAV.

8. Agreements between Stonehill and Jessup regarding management, advisory, or other services provided to Jessup by Stonehill.

9. Any and all documents reviewed by Stonehill as part of its evaluation and due diligence regarding any of the Claims.

10. Any documents reflecting any communications with James Dondero;

11. Annual fund audits relating to Jessup.

12. Jessup's NAV Statements.

13. Documents reflecting the fees or other compensation earned by Stonehill in connection with the investment in, acquisition of, transfer of, and/or management of any of the Claims.

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Exhibit 4-B

REPORTER'S RECORD

VOLUME 1 OF 1

COURT OF APPEALS CAUSE NO. 00-00-00000-CV

TRIAL COURT CAUSE NO. DC-23-01004-J

IN RE:	)	IN THE DISTRICT COURT
	)	
	)	
HUNTER MOUNTAIN	)	
INVESTMENT TRUST,	)	OF DALLAS COUNTY, TEXAS
	)	
	)	
Petitioner.	)	191ST JUDICIAL DISTRICT

PETITIONER HUNTER MOUNTAIN INVESTMENT TRUST'S

RULE 202 PETITION

which was heard on

Wednesday, February 22, 2023

On the 22nd day of February 2023, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Gena Slaughter, Judge Presiding, held in Dallas, Dallas County, Texas, and the following proceedings were had, to wit:

Proceedings reported by machine shorthand utilizing computer-assisted realtime transcription.

GINA M. UDALL, CSR, RPR
Official Reporter, 191st District Court

APPEARANCES:

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and

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ATTORNEY FOR RESPONDENTS
Farallon Capital
Management, LLC, and
Stonehill Capital
Management LLC

* * *

VOLUME 1 INDEX

PETITIONER HUNTER MOUNTAIN INVESTMENT TRUST'S

RULE 202 PETITION

which was heard on

Wednesday, February 22, 2023

PETITIONER'S EXHIBITS INDEX

Number	Description	Offered	(Excluded) Admitted	Vol
P-1	Declaration of Mark Patrick	36	42	1
P1-A	Claimant Trust Agreement	36	42	1
P1-B	Division of Corporations - Filing	36	42	1
P1-C	Division of Corporations - Filing	36	42	1
P1-D	Order Approving Debtor's Settlement	36	42	1
P1-E	Order Approving Debtor's Settlement	36	42	1
P1-F	Order Approving Debtor's Settlement	36	42	1
P1-G	Order Approving Debtor's Settlement	36	42	1
P1-H	July 6, 2021, Alvarez & Marsal letter to Highland Crusader Funds Stakeholder	36 --	41 42	1 1
P1-I	United States Bankruptcy Court Case No. 19-34054	36	42	1

PETITIONER'S EXHIBITS INDEX continued

Number	Description	Offered	(Excluded) Admitted	Vol
PI-J	Exhibit A Highland Capital Management, L.P. Disclaimer for Financial Projections	36	42	1
PI-K	United States Bankruptcy Court Case No. 19-34054	36	42	1
P-2	Declaration of James Dondero	36	42	1
P2-1	Jim Dondero email dated Thursday, December 2020	36	(41)	1

RESPONDENT'S EXHIBITS INDEX

Number	Description	Offered	(Excluded) Admitted	Vol
R-1	Cause No. DC-21-09543 Verified Amended Petition	41	44	1
R-2	Cause No. DC-21-09543 Order	41	44	1
R-3	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-4	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-5	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-6	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-7	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-8	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-9	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-10	United States Bankruptcy Court Case No. 19-34054	41	44	1

RESPONDENT'S EXHIBITS INDEX continued

Number	Description	Offered	(Excluded) Admitted	Vol
R-11	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-12	United State Bankruptcy Court Case No. 19-12239	41	44	1
R-13	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-14	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-15	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-16	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-17	United States Bankruptcy Court Case No. 19-34054	41	44	1

P R O C E E D I N G S

THE COURT: Okay. Good morning, Counsel.

We are here in DC-23-01004, In re: Hunter Mountain Investment Trust.

And who is here for the plaintiff?

MR. McENTIRE: For the petitioner, Your Honor, Sawnie McEntire and my partner Roger McCleary.

THE COURT: Okay. And then for Farallon?

MR. SCHULTE: My name is David Schulte and I represent both of the respondents. It's Farallon Capital Management, LLC, and Stonehill Capital Management, LLC.

THE COURT: We are here today on a request for a 202 petition. I know one of the issues is the related suit, but let's just plow into it and we'll go from there.

Okay. Counsel?

MR. McENTIRE: May I approach the bench?

THE COURT: Yes, you may.

MR. McENTIRE: And I've given Mr. Schulte copies of all these materials.

In the interest of time, I have all the key pleadings here, which I will give you a copy of.

THE COURT: Thank you.

MR. McENTIRE: And this is the evidentiary submission that we submitted about a week ago.

THE COURT: Right.

MR. McENTIRE: To the extent you are interested, it is cross-referenced by exhibit number to the references in our petition to the docket in the bankruptcy court.

THE COURT: I appreciate that. Otherwise, I go hunting for stuff.

MR. McENTIRE: This is a PowerPoint.

THE COURT: Okay.

MR. McENTIRE: And, lastly, a proposed order.

THE COURT: Wonderful.

MR. McENTIRE: And Mr. Schulte has copies of it all.

THE COURT: Okay.

MR. McENTIRE: May I proceed, Your Honor?

THE COURT: You may.

MR. McENTIRE: All right. Your Honor, we are here for leave of court to conduct discovery under Rule 202 to investigate potential claims.

The issue before the court is not whether we have an actual claim.

THE COURT: Right.

MR. McENTIRE: We do not even need to state a cause of action. It is simply the investigation of potential claims.

Mr. Mark Patrick is here with us today. He's behind me. Mr. Patrick is the administrator of Hunter Mountain, which is a Delaware trust.

THE COURT: Okay.

MR. McENTIRE: He is the manager of Rand Advisors, which is also an investment manager of the trust. And, in effect, for all intents and purposes, Mr. Patrick manages the assets of the trust on a daily basis.

THE COURT: Okay.

MR. McENTIRE: There are potential claims that we're investigating. And I'll go through some of these because I know opposing counsel has raised standing issues.

THE COURT: Right.

MR. McENTIRE: And I think we can address all those standing issues.

Insider trading is in itself a wrong as recognized by courts. And I'll refer you to the opinions. We believe there's a breach of fiduciary duties, and that may take a little explanation.

At the time that Farallon and Stonehill acquired these claims, through their special purpose entities Muck and Jessup, they were outsiders.

THE COURT: Right.

MR. McENTIRE: But by acquiring the information in the manner in which we believe they did, they became insiders. And when they became insiders, under relevant authorities they owe fiduciary duties.

And at the time they acquired the claims, my client Hunter Mountain Investment Trust was the 99.5 percent interest holder or stakeholder in Highland Capital.

THE COURT: Right.

MR. McENTIRE: We also believe a knowing participation of breach of fiduciary duties under another name, aiding and abetting. But Texas recognizes it as knowing participation. Unjust enrichment, constructive trust, and tortious interference.

THE COURT: Okay.

MR. McENTIRE: Farallon and Stonehill are effectively hedge funds. And so is Highland Capital.

They were created. They actually did create Muck and Jessup. Those are the two entities that actually are titled with the claims. They acquired it literally days before the transfers.

So the reason we're focusing our discovery effort on Farallon and Stonehill, we are confident that any meaningful discovery -- emails, letters, correspondence, document drafts, things of that nature -- probably predated the existence of Muck and Jessup.

THE COURT: Right.

MR. McENTIRE: That's why we're focusing our discovery effort on Farallon and on Stonehill.

But, needless to say, Farallon, Stonehill, Muck and Jessup, having all participated in this acquisition, they're all insiders for purposes of assuming fiduciary duties.

And as I said, outsiders become insiders under the relevant authority. And one key case is the Washington Mutual case --

THE COURT: Right.

MR. McENTIRE: -- which we cited in our materials.

I would also just let you know, this is not something in total isolation. We understand we're not privy to the details. But we understand the Texas State Security Board also has an open investigation that has not been closed.

THE COURT: Okay.

MR. McENTIRE: And that's by way of background.

202 allows presuit discovery for a couple of reasons. And I won't belabor the point. One is to investigate potential claims.

There is no issue of notice or service here. There's no issue of personal jurisdiction. Farallon and Stonehill made a general appearance.

THE COURT: Right.

MR. McENTIRE: There's no issue concerning subject-matter jurisdiction. They actually concede that the court has jurisdiction on page 8 of their response.

The court's inquiry today is a limited judicial inquiry. There are really two avenues which I'll explain, but, first, I think the salient avenue is does the benefit of the discovery outweigh the burden.

And I think as I will hopefully demonstrate, I think that we clearly do.

THE COURT: Okay.

MR. McENTIRE: The merits of a potential claim, the case law is clear, is not before the court.

Much of their brief and their response is devoted to trying to attack the fact that there is no duty or things such as standing.

But the reality of it is we are not required to actually prove up a cause of action to this court although I think I can. In this process, I probably certainly can identify a potential cause of action. That's not our obligation to carry our burden.

There was an issue about timely submission of evidence they raised in a footnote, but I think that was resolved before the court took the bench.

THE COURT: Okay.

MR. McENTIRE: I've handed you a binder with Mr. Mark Patrick's affidavit and Jim Dondero's affidavit.

As I understand it, correct me if I'm wrong, you're not objecting to the submission of that evidence. Is that correct?

MR. SCHULTE: Almost.

THE COURT: Okay.

MR. SCHULTE: Your Honor, I do object to the two declarations that were submitted I believe five days before the hearing.

THE COURT: Okay.

MR. SCHULTE: As Your Honor is aware, Rule 202 contemplates 15 days' notice. The petition itself was required to be verified. It was verified and then new substance was added by way of these

declarations five days before the hearing.

And so we would argue that that has the effect of amending or supplementing the petition within that 15-day notice period.

All that said, I don't have any issue with the majority of the documents attached to Mr. Patrick's declaration.

THE COURT: Okay.

MR. SCHULTE: So I do object on the grounds of hearsay and timeliness to the declarations.

On Exhibit H to Mr. Patrick's declaration, I object to that document on the grounds of hearsay.

THE COURT: Okay. Which one?

MR. SCHULTE: Exhibit H to Mr. Patrick's declaration on the basis of hearsay.

All the other documents are I believe file-stamped copies of the pleadings filed in the bankruptcy, which I don't have any issue with that.

And then the exhibit to Mr. Dondero's declaration is an email that's objected to on the basis of hearsay. And it hasn't been proven up as a business record or any other way that will get past hearsay.

THE COURT: Okay.

MR. SCHULTE: So those are the limited objections I have to what's in that filing, Your Honor.

MR. McENTIRE: And I will address those objections. And we're prepared to put Mr. Patrick on the stand, if necessary.

I would point out that the case law is very clear that there's no 15-day rule here.

THE COURT: Okay.

MR. McENTIRE: We have asked the court to take judicial notice of all of our evidence in our petition itself.

The 15 days is the amount of time you have to give notice before the hearing --

THE COURT: Right.

MR. McENTIRE: -- but the case law is clear that I can put live testimony on, I can put affidavit testimony on.

THE COURT: This is an evidentiary hearing.

MR. McENTIRE: That's correct.

And that includes affidavits. And affidavits are routinely accepted in these types of proceedings and I have the case law I can cite to the court.

MR. SCHULTE: Your Honor, in contrast, I think if this were, for example, an injunction hearing, I don't believe that an affidavit would be

the substitute in an injunction hearing for live testimony.

And so if this is an evidentiary standard, I don't think that these affidavits should come in for the truth of the matter asserted. The witnesses should testify to the facts that they want to prove up.

MR. McENTIRE: I could give the court a cite.

THE COURT: Okay.

MR. McENTIRE: It's Glassdoor, Inc. versus Andra Group.

THE COURT: What was the name of it?

MR. McENTIRE: Glassdoor, Inc. versus Andra Group. It is 560 S.W.3d 281. It specifically addresses the use and relies upon affidavits in the record for purposes of a Rule 202.

So, with that said, I will address it in more detail in a moment. The evidentiary rule, to be clear, is it has to be supported by evidence. Seven days was the date that I picked because it was well in advance. It's the standard rule that's used for discovery issues. It's seven days before a hearing.

So I picked it. He's had it for seven days. He's never filed any written objections to my evidence. None.

And under the Local Rules I would think he would have objected within three business days. He did not do that, and so I'm a little surprised by the objection.

THE COURT: Okay.

MR. McENTIRE: All right. We do have copies of all the certified records, but I gave you the agenda on that. And we talked about the two declarations.

So the limited judicial inquiry is the only issue before the district court. It's whether or not to allow the discovery, not the merits of any claim yea or nay.

THE COURT: Right.

MR. McENTIRE: There's no need for us to even plead a cause of action, although we did.

Mr. Schulte goes to great length in his response to take issue with our cause of action, suggesting we had none. We do. But we're not even under an obligation to plead it; nevertheless, we did.

This is actually a two-part test. The first part was allowing the petitioner -- in this case, Hunter Mountain -- to take the requested deposition may prevent a failure or delay of justice, or the likely benefit outweighs the burden. Both apply here.

These trades took place in April of 2021, three of the four. The fourth I think took place in the summer.

And our goal is to obtain the discovery in a timely manner so we do not have any argument, valid or invalid, that there's a limitations issue.

THE COURT: Okay.

MR. McENTIRE: And so any further delay, such as transferring this to another court or back to the bankruptcy court, which it does not have jurisdiction, would cause tremendous delay.

THE COURT: Okay.

MR. McENTIRE: Hunter Mountain, a little bit of background. It is an investment trust. When it has money, it participates directly in funding the Dallas Foundation --

THE COURT: Okay.

MR. McENTIRE: -- which is a very I think well-respected and recognized charitable foundation.

Certain individuals and pastors from various churches are actually here because Hunter Mountain indirectly, but ultimately, provides a significant source of funding for their outreach programs and their charitable functions and programs.

THE COURT: Okay.

MR. McENTIRE: The empirical evidence in the documents that are before the court, regardless of what's in the affidavits, just screams that there was no due diligence here.

Now, we know in Mr. Dondero's affidavit he had a conversation with representatives of Farallon, which would be admissions against interest. They're admissions basically against interest that they effectively did no due diligence.

Yet we believe, upon information and belief, that they invested over $167 million. There are two sets of claims. There's a Class 8 claim and a Class 9 creditor claim.

THE COURT: Right.

MR. McENTIRE: Their expectations at the time that they acquired these claims was that Class 9 would get zero recovery.

So who spends $167 million when their expectation on return of investment is zero? Who spends $167 million even in Class 8 when the expected return is just 71 percent and is actually declining? And I think it's actually admitted in the affidavit that Mr. Dondero provided.

So without being hyperbolic or exaggerating, the data that was available publicly

was extremely pessimistic and doubtful that there would be any recovery.

We have direct information -- admissions, frankly -- that Farallon had access to non-public material, non-public information. And that was the fact that MGM Studios was up for sale.

Mr. Dondero was on the board of directors.

THE COURT: Okay.

MR. McENTIRE: He communicated, because of his responsibilities, this information to Mr. Seery.

And Mr. Seery, apparently, would have been restricted. He couldn't use it or distribute it.

THE COURT: Right.

And I don't know a lot about securities law but, yeah, that would be insider information. Right?

MR. McENTIRE: Yes.

And it appears from the affidavit that Mr. Dondero submitted that Farallon was aware of the information before the sale closed, before they closed their acquisitions.

And Mr. Dondero asked the question are you willing to even sell your claims and they said no. Or even 30 percent more and they said no. We're told that they're going to be very valuable.

Well, no one else had this information, so we have a problem here that we have two outsiders who are now insiders. They've acquired potentially very valuable claims with the sale of MGM.

They also acquired information concerning the portfolios of these companies over which Highland Capital managed and had ownership interests, so we're talking about having access to information that any other bidder or suitor would not have.

So this is how they were divided up. $270 million in Class 8. Each of the creditors right here are the unsecured creditors who sold. They were the sellers.

THE COURT: Right.

MR. McENTIRE: And these are the claims in the Class 9.

So you have $95 million in Class 9 claims that are being acquired when the expectation is that there will be zero return on investment. You have $270 million where the expectation was extremely low and pessimistic.

And here are the documents. And Mr. Schulte has not objected to these. This particular document is Exhibit 1-J to Mr. Patrick's affidavit.

THE COURT: Okay.

MR. McENTIRE: This came out of the plan. So when the bankruptcy plan was confirmed in February 2021, Farallon, Stonehill, Muck and Jessup, the latter two weren't even in existence.

THE COURT: Right.

MR. McENTIRE: Farallon and Stonehill were complete strangers to the bankruptcy proceedings, yet they come in in the wake of this information and they invest tens if not hundreds of millions of dollars with no apparent due diligence.

The situation gets even worse. And this is Exhibit 1-I to Mr. Patrick's affidavit. And as I understand, Mr. Schulte does not object to these documents. It's declining. And then, suddenly, they're in the money.

And at the end of the third quarter last year, they're already making 255 million bucks. And that's a far cry from the original investment. This is for both Class 8 and Class 9.

So Mr. Patrick states the purpose of this is to seek cancellation. Another word for it in bankruptcy-ese would be disallowance. But the cancellation of these claims and disgorgement.

If these are ill-gotten gains, regardless of the rubric or the monicker that you place on it --

breach of fiduciary duty as insiders, aiding and abetting or knowing participation in fiduciary duties, because a lot of people have fiduciary duties on this stuff. No matter what you call it, disgorgement is a remedy.

Wrongdoers should not be entitled to profit from their wrongdoing.

Mr. Schulte makes a big point that we can't prove damages. Well, first of all, I don't agree with the conclusion.

THE COURT: Right.

MR. McENTIRE: But even if he was right, disgorgement is a proxy for damages. And we have an entitlement and a right to explore how much they have actually received, when did they receive it.

The weathervane is tilting in one direction here, Judge.

Clearly, there is a creditor trust agreement. That's a very important document. It spells out rights and obligations. It's part of the plan.

There's a waterfall. And on page 27 of the creditor trust agreement a waterfall is exactly what it suggests. You have one bucket gets full, you go to the next bucket all the way down.

THE COURT: Class 1 or tier 1.

I can't remember the category. I don't do bankruptcy. But, yeah, those get paid, then the next level, then the next level.

So by the time you get down to level 10, which I think is what Hunter Mountain was, theoretically, there wouldn't have been anything left.

MR. McENTIRE: That's correct.

But here, if Class 8 and Class 9 -- and I will say the big elephant in those two classes are Farallon and Stonehill or their special purpose entity bucket Jessup -- they have 95 percent of that category.

And suddenly they're not entitled to keep what they've got, and suddenly there's a disallowance, or suddenly a cancellation regardless of the theory or the cause of action -- and we have several avenues here -- a lot of money is going to flow into the coffers of Hunter Mountain, and a lot of money will flow into the Dallas Foundation, and a lot of money will flow into the coffers of charities.

So there is standing here. Standing requires the existence of a duty. We think we have duties.

And a concrete injury. And if these claims were manipulated, we have a concrete injury and our proxy is disgorgement.

We've been deprived of an opportunity to share in category 10 or as we just described it in the waterfall under the creditor trust agreement.

THE COURT: Right.

MR. McENTIRE: Their burden is to show that this discovery has no benefit. No. That's my burden to show benefit. But their burden would be to show that it's overly burdensome to them.

And I find that difficult to understand since part of their response is devoted to the fact that, hey, judge in Dallas County, you should turn this over to Judge Jernigan in the bankruptcy court.

THE COURT: Because it's bankruptcy, you know.

MR. McENTIRE: In bankruptcy, that's their invitation.

THE COURT: Right.

MR. McENTIRE: Well, if they're inviting us to go do the discovery in bankruptcy court, it doesn't seem to be that burdensome because it's going to be the same discovery.

And, by the way, Judge Jernigan actually does not have jurisdiction over these proceedings. The other earlier proceeding, as you know, they attempted to remove it to her court and it was remanded.

Clearly, she does not have jurisdiction.

The problem with bankruptcy involved, in addition, if I wanted to do Rule 2004 discovery like they're suggesting, that's their invitation. They would like you to push us down the road.

Well, we can't afford to push it down the road. Because if they push it down the road, I've got to go file a motion with Judge Jernigan, get leave to issue subpoenas.

THE COURT: Right.

MR. McENTIRE: They have 14 days to file a motion to quash, then I have to file another motion. And it's 21 days before their response is even filed. And there's another 14 or 15 days before the reply is filed. We're looking at 60, 70 days. And that's one of the reasons we selected this procedure.

And, by the way, you hear the phrase forum shopping a lot. Well, without engaging in the negative inference that that term suggests, a plaintiff, a petitioner, has the right to select its venue for a variety of reasons.

Our venue is the state district courts of Texas because it has an accelerated procedure. And that's why we're here.

THE COURT: Right.

MR. McENTIRE: I've identified the potential causes of action. Entities or people that breach fiduciary duties and receive ill-gotten gains a constructive trust may be imposed, disgorgement. Then we do run into bankruptcy concepts.

But it's important to know that some of these are not bankruptcy. Some of these are common law.

I suggest to the court, I don't have to go get Judge Jernigan's permission to sue Farallon or Stonehill for breach of fiduciary duties. I don't have to get her permission to sue for knowing participation.

If I'm actually looking for equitable disallowance, probably, maybe. But I can do the discovery here and then make that decision whether I need to go back to bankruptcy court.

I'm not foolish. I'm not going to run afoul of Judge Jernigan's orders. If I have to go back to Judge Jernigan to get permission, I will do it.

THE COURT: Right. Because only an idiot runs afoul of the bankruptcy court.

MR. McENTIRE: Hopefully, I'm not that.

So I clearly understand what both my ethical and lawyer obligations are. And I'm not going to run afoul of any court orders.

But some of these remedies don't require

an overview by Judge Jernigan or the bankruptcy court.

THE COURT: Okay.

MR. McENTIRE: They have a duty not to commit fraud, whether it's commit fraud against us or commit fraud against the estate.

They have a duty not to interfere with the expectancies that we have as a B/C beneficiary. That's a code name for a former Class 10 creditor.

They have a duty not to trade on inside information, and that's the Washington Mutual case.

And I've just already mentioned that because they were outsiders, they're insiders now.

These are their arguments. Our evidence is timely. It's not untimely. It's not speculative. It's not speculative because the events have already taken place. I'm not talking about something hypothetical.

THE COURT: Right.

MR. McENTIRE: My remedy flows from that.

So we're not projecting that I might have a claim later on. I have a claim today. If I have a claim today, I have it today. I have it and I want to confirm it by this discovery. Because their wrongdoing has already taken place, it's not hypothetical, it's not futuristic, it's already occurred.

When they say they have no duty to us, they're just wrong. They have duties not to breach fiduciary duties. We have direct standing I believe to bring a claim in that regard.

We have a right to bring direct standing under the Washington Mutual case, which I'll discuss.

And we also have a right to bring a derivative action.

THE COURT: Right.

MR. McENTIRE: And I notice that they made a comment about that in their response. But I can sue individually.

And I can also bring an action in the alternative as a derivative action for the estate. And these are all valid claims for the estate.

THE COURT: Okay.

MR. McENTIRE: Transfer. This is not a related case because it's not the litigation.

So if you just go to the very first instance and you look at the Local Rule, it talks about litigation and causes of action.

THE COURT: Right.

MR. McENTIRE: We don't have a cause of action. We're not asserting one in this petition. So this is not a related case that falls within the

four corners of the Local Rule.

THE COURT: Well, I guess the thing is it's still a related case. Like if you file a 202 and then you file a lawsuit, that would be considered related.

I looked at it and you're right. Technically, it's different parties. I'll just say it's a grey zone at best.

MR. McENTIRE: That's correct.

This is not a lawsuit in terms of causes of action. It might be a related case if Mr. Dondero had come in and filed a lawsuit. That would be a related case. Mr. Dondero is not involved in this process, other than as a fact witness.

These are all the evidentiary issues that perhaps he's raised. Live testimony, affidavit testimony is admissible.

The court considered numerous affidavits filed with the court. And that's as recently as 2017. These are all good cases, good law.

Equitable disallowance. It's kind of a fuzzy image. This is a bankruptcy court case, but this is simply to underscore the fact that in addition to my common law remedies there is a very substantial remedy in bankruptcy court.

It's not one I necessarily have to pursue, but if I wanted to I could. But what it does do is it helps to find some duties.

And here, the court has the right to disallow a claim on equitable grounds in extreme instances, perhaps very rare, where it is necessary as a remedy. And they did it in this case.

THE COURT: Okay.

MR. McENTIRE: This is simply an analogy to securities fraud and the 10b-5 statute.

Insiders of a corporation are not limited to officers and directors, but may include temporary insiders who have entered into a special confidential relationship in the conduct of the business of the enterprise and are given access to information solely for corporate purposes.

Well, what about the MGM stock? The court finds that the Equity Committee -- so here's the equity -- has stated a colorable claim. We were 99.5 percent equity.

The Equity Committee has stated a colorable claim that the settlement noteholders became temporary insiders because they acquired information that was not of public knowledge in connection with their acquisition.

And allowed them to participate in negotiations with JPMC -- JPMorgan Chase -- for the shared goal of reaching a settlement.

So these were outsiders that suddenly became temporary insiders because of access to inside information.

This is not a new concept. It comes from the United States Supreme Court. Fiduciaries cannot utilize inside information.

THE COURT: Right.

MR. McENTIRE: And we believe we have enough before the court to support and justify a further investigation that this may have occurred.

THE COURT: Okay.

MR. McENTIRE: Now, not a related case. The Jim Dondero case is actually closed.

THE COURT: Right.

MR. McENTIRE: And I'll be frank with you. In all candor, I never thought this was a possible related case.

THE COURT: I mean, we're talking about the same events, but there are differences, I agree.

MR. McENTIRE: We're talking about one similar event dealing with Farallon. Other events are different.

THE COURT: Okay.

MR. McENTIRE: So we have different dates.

THE COURT: Right.

MR. McENTIRE: Different parties on the petitioner's side, different law firms.

The only common party is Farallon. Alvarez & Marsal are not parties to this but Stonehill is. Stonehill was not a party to the prior proceedings.

And the standing is manifest. With no criticism of Mr. Dondero's lawyer, I searched in his argument where he was articulating standing.

And without going further, I will tell you I think our standing is clear. We're in the money.

THE COURT: Okay.

MR. McENTIRE: We are in the money if there's a disgorgement or a disallowance.

THE COURT: Okay.

MR. McENTIRE: We have all types of claims, including insider trading and a creation of fiduciary duties.

Our remedies, as far as I can tell, he didn't identify any. We have several. Disgorgement, disallowance, subordination, a variety. And damages.

So we suggest strongly that it is not a related case.

And I must tell you, the reference to say send this to bankruptcy court or defer to the bankruptcy court or send us over to Judge Purdy, with all due respect to opposing counsel, it's really just a delay mechanism.

And what they're seeking to do through their invective, their criticisms, the references to these other courts, is seeking an opportunity to push us down the road and put us in a bad position potentially and a not enviable position in connection with statute of limitations.

Your Honor, we would offer the binder of exhibits that we submitted on February 15, 2022, including the affidavits and all the attached exhibits.

I would ask the court to take judicial notice of all the exhibits that we referred to in our petition, which I think is appropriate since we were specifying with particularity what we were requesting the court to take judicial notice of. And that's the large index, that's the list.

THE COURT: Obviously, I can take judicial notice of any kind of court pleadings, whether they're state or federal.

MR. McENTIRE: That's correct.

THE COURT: That's clear.

MR. McENTIRE: We would offer both affidavits and all the attachments into evidence at this time.

THE COURT: Okay. Do you have exhibit numbers for them?

MR. McENTIRE: Yes. It's Exhibit 1 with attachments. 1-A, 1-B, 1-C, 1-D, 1-E, 1-F and then Exhibit 1-G, Exhibit 1-H, Exhibit 1-J, Exhibit 1-K.

Everything in the binder, Your Honor. It's Exhibit 1 and Exhibit 2 with the attachments.

THE COURT: Okay.

MR. McENTIRE: I believe they're all identified. I can put a sticker on them, if you'd like.

THE COURT: Yeah. To admit them, it will need a sticker.

So I'm going to hold off on admitting them for just a minute because I do want to hear his objections and then we can go back to it. So just make sure we do that.

I'm not trying to not admit them, but I do want to let him have his objections.

Okay. Anything else, Counsel?

MR. McENTIRE: That's all I have right now, Judge.

THE COURT: Okay. Counsel?

MR. SCHULTE: Should I start with those exhibits, Your Honor?

THE COURT: Why don't you do that. That's probably the easiest way.

MR. SCHULTE: In light of the authorities that Mr. McEntire shared about the affidavits, I'll withdraw the objections to the affidavits or the declarations.

THE COURT: Okay.

MR. SCHULTE: I'm taking Mr. McEntire's word that those cases say what he says they say.

THE COURT: I'll tell you because 202 is not a lawsuit, you don't necessarily have a right to cross-examine, et cetera. So, yeah, affidavits are frequently used on 202s.

MR. SCHULTE: And that's fine, Your Honor. I'll take Mr. McEntire's word what those cases say.

But I will maintain the objection to Exhibit H -- it's the declaration of Mr. Patrick -- on the grounds of hearsay. That is not a court record or a file-stamped pleading from federal or state court. It's just a letter. So that's hearsay. And it hasn't been properly authenticated.

The other issue is the exhibit to Mr. Dondero's declaration. That's just an email

from Mr. Dondero, so I object on the grounds of hearsay.

THE COURT: Mr. McEntire, what's your response specifically to Exhibit H as attached to the Patrick declaration and then the attachment to the Dondero declaration?

MR. McENTIRE: Exhibit H to Mr. Patrick's affidavit would be hearsay, but there's an exception that it's not controversial.

THE COURT: Okay.

MR. McENTIRE: And there's no indication that there's any challenge of the reliability of the document.

THE COURT: What is the exhibit? I'm trying to pull it up. Sorry.

MR. McENTIRE: It's Exhibit 1-H. It is a letter from Alvarez & Marsal simply indicating what they paid for the claim.

THE COURT: Is it the July 6th, 2021, letter?

MR. McENTIRE: Yes, Your Honor.

THE COURT: I've got it.

MR. McENTIRE: And the exhibit to Mr. Dondero's is not being offered for the truth of the matter asserted, just the state of mind of Farallon.

THE COURT: Okay.

MR. McENTIRE: He has proved it up that it's authentic. It's a true and accurate copy.

And it goes to the state of mind of Farallon and it goes to the state of mind of Mr. Seery as well who are basically individuals who are trading on inside information.

And Mr. Seery would not have known about the MGM sale but for that email. And Farallon and Stonehill would not know about MGM but for Mr. Seery.

THE COURT: Okay. So the response to hearsay is that it goes to state of mind.

MR. McENTIRE: It goes to state of mind.

THE COURT: Okay, Counsel. How do you respond to that?

MR. SCHULTE: I'll start with the last one, Your Honor. I think that's the definition of hearsay, is that you're purporting to establish the state of mind of the parties who are not before the court.

It's been emphasized that Mr. Dondero has no relation to HMIT. And none of the recipients of the email are parties to this proceeding.

This purports to establish the state of mind of Mr. Seery, who is not before the court, and the state of mind of Farallon, just based on the say so of

Mr. Dondero in this email. That's hearsay.

And as for the first letter, this is a letter on the letterhead of A&M which, by the way, is one of the parties in the Dondero Rule 202 petition.

And it's not on the letterhead of any of the parties to this case so the letter isn't properly authenticated.

And I'm not aware of the not controversial exception to hearsay.

THE COURT: Well, there is a thing that talks about if you're admitting something that's just not controverted. Right? It's everybody agrees "X" happened. We're just admitting evidence to have that. So what this basically is is just showing the claim of the funds.

And I guess my question is what's the objection. Is there an objection to the substance of it?

MR. SCHULTE: I don't think there's any dispute that Farallon and Stonehill, through their respective special purpose entities, purchased the claims that are at issue here.

And if that's the sole purpose of admitting this letter into evidence, I don't think that's a matter that's genuinely in dispute.

THE COURT: Okay.

MR. SCHULTE: So if that's the only issue as raised by this letter, I don't know that there's a dispute there.

THE COURT: Right. Well, that's the whole thing.

MR. McENTIRE: I think we're almost solving the issue on the fact of how much they paid, $75 million.

THE COURT: Okay. So I will sustain the objection to the email to Mr. Dondero's declaration, Exhibit P 2-1.

I am going to overrule the objection to -- I don't know what the letter is of the attachment.

MR. McENTIRE: It's Exhibit P 1-H to Mr. Patrick's affidavit.

THE COURT: Correct. Sorry.

Okay, Counsel. If you'll proceed.

MR. SCHULTE: May I approach the bench, Your Honor? I have a binder of exhibits also.

THE COURT: Yes, you may.

MR. SCHULTE: These have all been marked with exhibit stickers already. There are tabs for each of the exhibits. They're marked R1 through 17, I believe. And "R," of course, stands for Respondents.

THE COURT: I take the shortcut of calling everybody "Plaintiff" and "Defendant" just because I'm so used to using that language in court.

But I do agree. It's Petitioner and Respondent. You're not technically a defendant.

Okay. So, first of all, I'm going to admit Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2, with the sole exception of the email to Mr. Dondero's declaration that I sustained.

And then are there objections to the respondent's exhibits?

MR. McENTIRE: Very few.

I object to Exhibit No. 1 and Exhibit No. 2 as irrelevant.

THE COURT: What's the objection to 1?

MR. McENTIRE: They're offering the order from Judge Purdy.

THE COURT: Okay. I can take judicial notice of that. I mean, it's a court record from Dallas County. So I don't think that that's particularly relevant.

To be bluntly honest, I looked at it last night. Right? Because of the issue that there's a related case, I pulled that file too and looked at everything.

So I can take judicial notice of that. Whether it's relevant or not, I can look at it. And, obviously, if it's not relevant, I'll disregard it.

MR. McENTIRE: Fair enough.

THE COURT: I'll overrule that objection. What's next?

MR. McENTIRE: The only other objections are Exhibit 12 and 13. I just don't know what they are or for what purpose they would be offered.

THE COURT: Okay. So 12 is a notice of appearance and request for service in the bankruptcy court on behalf of Hunter Mountain Trust.

So what's the issue, Counsel?

MR. SCHULTE: Your Honor, these are notices of appearance filed by Hunter Mountain in the bankruptcy court.

And the purpose of these notices is simply to show -- and maybe this is not genuinely in dispute -- that Hunter Mountain, through its counsel, would have received notice of all the activity that was going on in the bankruptcy court.

THE COURT: It's the same issue I've got with everything that Plaintiff submitted. It's a bankruptcy pleading. I can take notice of it. If it's irrelevant, I'll disregard it.

So I'll overrule that objection.

And then what's 13?

MR. McENTIRE: The same objection.

THE COURT: I'll overrule it because again, I can take judicial notice of those.

MR. McENTIRE: No other objections, Your Honor.

THE COURT: So Respondent's Exhibits 1 through 17 are so admitted.

MR. SCHULTE: May I proceed, Your Honor?

THE COURT: Yes, you may.

MR. SCHULTE: HMIT -- Hunter Mountain -- races into this court seeking extensive and burdensome presuit discovery about claims trading that took place in the Highland bankruptcy two years ago.

Mr. McEntire has talked about the harm that would result from delay if a different court were to consider this request for presuit discovery. That is a function of waiting two years after the subject claims transfers to seek relief in this court.

The exact same allegations of claims trading and misconduct by Jim Seery -- those allegations are not on the slides that you looked at. But those allegations are common in Mr. Dondero's Rule 202 petition and this petition.

THE COURT: Right. They're common.

I know you make the allegation that Dondero is related to Hunter Mountain, but I guess I don't have any evidence of that.

Or do you have evidence of that? Because otherwise, while it involves some of the same issues in the sense of the underlying facts, technically Farallon is the common respondent.

But there's a different respondent and there's a different petitioner in that case.

MR. SCHULTE: Yes. That's true, Your Honor. And we've said that on information and belief.

THE COURT: Okay.

MR. SCHULTE: That's our suspicion.

We believe that to be the case, but I don't have evidence of it. I didn't hear a denial of it, but, nevertheless, that is where things stand.

But what's important about the case is even if this court and Judge Purdy determined that the cases are not related, what is important is that the same allegations related to this claims trading and the same allegations of inside information being shared by Mr. Seery, those were front and center in the July 2021 petition filed by Mr. Dondero.

Even if there are other dissimilarities between the cases, those are issues that are common.

THE COURT: Okay.

MR. SCHULTE: And it's important to note that as HMIT has filed this petition, it has glossed over issues of its own standing and the assertion of viable claims that will justify this discovery.

Now, I know that HMIT has cited these cases that say, Your Honor, I don't have to state a really specific claim right now.

But you do have to articulate some ground for relief, some theory, that would justify the expense and the burden that you're trying to put the respondents to in responding to all this discovery.

And this isn't simple discovery. We're talking about deposition topics with I believe 29 topics each and 13 sets of really broad discovery requests with a bunch of subcategories.

THE COURT: Right.

MR. SCHULTE: We're not talking about some minimal burden here. This is an intrusion into entities that are not parties to a lawsuit, but rather this investigation.

And HMIT has ignored that there is a specific mechanism in the bankruptcy court that's

available to it under federal bankruptcy Rule 2004 and that the substance of HMIT's petition, which is claims trading and bankruptcy, falls squarely within the expertise of Judge Jernigan, the presiding bankruptcy judge.

THE COURT: And I agree. You could do this in federal court. But there's a lot of things that can be done in state court or done in federal court.

They get to choose the method of getting the information, so why should I say, theoretically, yes, this is a good thing, I should do it, but, hey, send it to bankruptcy. Why?

MR. SCHULTE: The bankruptcy judge has actually answered that question directly.

THE COURT: Okay.

MR. SCHULTE: It is true, as HMIT has said, the federal bankruptcy court doesn't have jurisdiction over a Rule 202 proceeding. That's not in dispute.

THE COURT: Right.

MR. SCHULTE: We tried to remove the last case to federal bankruptcy court and it was a state claim.

But what the bankruptcy judge pointed out

when she remanded the case back to Judge Purdy, who ended up dismissing Dondero's petition, is it pointed out, one, there's this mechanism in bankruptcy where they can do the exact same thing, Rule 2004.

And the bankruptcy judge pointed out that it is in the best position to consider Hunter Mountain's request.

It pointed out when it remanded the case that it had grave misgivings about doing so. It confirmed that it is in the best position to consider this presuit discovery.

THE COURT: Okay. This is part of one of the exhibits?

MR. SCHULTE: Yes, Your Honor. This is in one of the opinions that I included in the binder, a courtesy copy of one of those opinions.

THE COURT: Oh, at the back?

MR. SCHULTE: Yes, Your Honor.

THE COURT: Okay.

MR. SCHULTE: It's 2022 Bankruptcy Lexis 5.

THE COURT: Okay. I got it.

And real quick, for the record, it's Dondero versus Alvarez & Marsal. It's 2022 Bankruptcy Lexis 5.

MR. SCHULTE: Right.

And in particular, Your Honor, I'm looking at pages 31 to 32 of that order.

THE COURT: Okay.

MR. SCHULTE: What the judge is pointing out here is it has grave misgivings about remanding the case because it knows a thing or two about the Highland bankruptcy, having presided over the case and all the related litigation for over what's now three years.

And it's familiar with the legal and factual issues. It's familiar with the parties. It's familiar with claims trading in a bankruptcy case, which was the very crux of the Dondero petition. It's also the crux of this petition by Hunter Mountain.

And it observed, the bankruptcy court did, that any case that could be fashioned from the investigation would end up in bankruptcy court anyway because it would be related to the Highland bankruptcy.

So you ask a really good question, Your Honor. Why should I ship it off to the bankruptcy court. The answer is Judge Jernigan is in a position to efficiently and practically deal with this request because she deals with it all the time and she is intimately familiar with the legal and factual issues and with claims trading.

It's not like Hunter Mountain gets poured out if it goes to bankruptcy court. It has a mechanism to seek the exact same discovery from Judge Jernigan who is very familiar with these very particular issues.

Now, Hunter Mountain says, well, bankruptcy court is too time-consuming and cumbersome. It's going to take 60 days to even get this before the bankruptcy court.

Well, we're talking about the fact that they've waited two years to file this proceeding related to these claims transfers that took place in 2021.

So, again, what HMIT is asking this court to do is inefficient and is impractical. This court would need to devote a lot of resources to understand what the proper scope of any discovery should be, whether the claims are cognizable.

And that's just a tall order, Your Honor. The request is more appropriately dealt with by the bankruptcy judge, according to a proper bankruptcy filing.

It's undisputed that while the bankruptcy court doesn't have jurisdiction over a 202 petition, there's no question that it has jurisdiction over a Rule 2004 request for discovery, which is the counterpart for this type of discovery in bankruptcy court.

THE COURT: Right.

MR. SCHULTE: The real issue, Your Honor, and this is the part that Hunter Mountain is dancing around, is that Hunter Mountain doesn't want to be in front of Judge Jernigan.

Judge Jernigan held Mark Patrick -- that is HMIT's principal who verified this petition. She held him along with Dondero and Dondero's counsel and others in civil contempt and sanctioned them nearly $240,000 for trying to join Seery to a lawsuit in violation of Judge Jernigan's gatekeeping orders.

HMIT is trying to dodge the bankruptcy court and its scrutiny of what HMIT is doing as this petition also targets Seery and the inside information that he purportedly gave to Farallon and Stonehill.

This is forum shopping, plain and simple. And the court should dismiss the petition so that HMIT can seek this discovery in bankruptcy court.

Now, I don't want to spend a lot of time on the related case, but I will emphasize just what I've mentioned, which is while some of the parties may be different, we're still talking about the same claims trading activity that took place in 2021 and the same allegations of insider dealing by Seery.

And Judge Purdy, on remand, dismissed

that petition where some of the same arguments were made about judicial efficiency and that the case should be filed in bankruptcy court.

And it bears noting, by the way, that after Judge Purdy dismissed Dondero's Rule 202 petition, where we had argued that this ought to be in the bankruptcy court, Dondero didn't file in the bankruptcy court, which sort of makes the point that they didn't want to be in front of Judge Jernigan on this either.

Okay. Now let's turn to the merits, Your Honor. While Mr. McEntire has gone to great lengths to say we don't have to state claims, he stated five or six on that PowerPoint presentation of claims that he envisions.

But what made it all really crystal clear is in that notice of supplemental evidence, and that includes the declaration of Mr. Patrick, there in paragraphs 15 and 16 it's made clear what Hunter Mountain really wants.

THE COURT: Okay.

MR. SCHULTE: What the goal of this discovery is is to invalidate the claims that Farallon and Stonehill's entities purchased.

So let's unpack what it is they purchased.

THE COURT: Okay.

MR. SCHULTE: These are claims that were not ever held by Hunter Mountain. These are claims that were held by Redeemer, Acis, UBS, and HarbourVest.

THE COURT: Right. They were the Class 8 and 9. Right?

MR. SCHULTE: I believe that's correct.

THE COURT: Okay.

MR. SCHULTE: Those claims were always superior to whatever it was that Hunter Mountain held.

So Redeemer, Acis, UBS, and HarbourVest held those claims. The parties in the bankruptcy had the opportunity to file objections to those claims. And they did.

And Seery, on behalf of the debtor, negotiated with Redeemer, Acis, UBS, and HarbourVest and reached settlements that resolved the priority and amounts of those claims.

THE COURT: Right.

MR. SCHULTE: And then filed what's referred to -- and I'm sure Your Honor knows this -- as a Rule 9019 motion to approve those settlements in the bankruptcy court.

THE COURT: Actually, I don't. I've never done bankruptcy but I read it. I know the general process and I did read it.

MR. SCHULTE: All right.

THE COURT: Just FYI, I've never done bankruptcy law. They've got their own rules.

MR. SCHULTE: Well, the parties in the bankruptcy had the opportunity to object to those settlements and some did so.

And after evidentiary hearings, the bankruptcy court granted those motions and allowed and approved those claims.

That is really important, Your Honor.

THE COURT: Okay.

MR. SCHULTE: That's Exhibits 14 through 17 in the binder that I handed you.

And these are the same exhibits that are referenced in Hunter Mountain's petition. And it bears noting that the U.S. District Court affirmed those orders after appeals were taken.

But the bankruptcy court's approval of the very same claims that Hunter Mountain now seeks to investigate and invalidate is entitled to res judicata.

HMIT can't now second-guess the bankruptcy court's orders approving those very same claims. That's the effect of the investigation that Hunter Mountain seeks, the invalidation of claims that are already bankruptcy court approved.

And it bears noting that each of those four orders, Exhibits 14 through 17, provides the following: quote, "The court" -- the bankruptcy court -- "shall retain exclusive jurisdiction to hear and determine all matters arising from the implementation of this order."

This would include HMIT's stated goal of conducting discovery to try to invalidate these very claims.

This is yet another reason, Your Honor, to answer your question earlier of why this request for discovery should be posed to the bankruptcy court.

Judge Jernigan, I suspect, would have views on whether her own orders authorizing these claims should be overturned.

Okay. So HMIT -- Hunter Mountain -- alleges that after the bankruptcy court approved these claims, Seery disclosed inside information to Farallon and to Stonehill to encourage them to buy these claims from the original claimants. Again, UBS, Redeemer, Acis, and HarbourVest.

Farallon, through Muck, which is its special purpose entity, and Stonehill through Jessup, which is Stonehill's special purpose entity, acquired those transferred claims in 2021.

And there's no magic in bankruptcy court to claims transfers. It's a contractual matter between the transferors and the transferees. It's strictly between them.

THE COURT: Okay.

MR. SCHULTE: And there's no bankruptcy court approval that's even required.

The transferee, so in this case Muck and Jessup, had simply to file under federal bankruptcy Rule 3001(e) a notice saying these claims were transferred to us. And they did so.

Your Honor, that's Exhibit 6 through 11 in the binder that I handed to you.

THE COURT: Okay.

MR. SCHULTE: The filings evidencing those claims transfers were public. And Hunter Mountain received the claims transfer notices.

And that's the exhibits that we were talking about, Exhibits 12 through 13, where Hunter Mountain's lawyers had appeared in the case before those claims transfer notices were filed.

So not surprisingly, Hunter Mountain did not file any objections to those claims transfers. And that's not surprising because under Rule 3001, the only party that could object to the claims transfers were

the transferors themselves.

THE COURT: Right.

MR. SCHULTE: Essentially saying, hold on. We didn't transfer these claims. But of course there's no dispute that the transfers were made.

Here, HMIT was neither the transferor nor the transferee of the claims. It had no interest in these claims. It never did. It didn't before the claims transfers and it didn't after the claims transfers.

The claims originally belonged to Redeemer, Acis, UBS, and HarbourVest, and they were then transferred to Muck and Jessup, which are Farallon's and Stonehill's entities.

THE COURT: Right.

MR. SCHULTE: So why does that matter? That matters because these claims were approved by the bankruptcy court. The claims didn't change or become more valuable after they were transferred. The only difference is who is holding the claims.

So Hunter Mountain says, hold on. What we're alleging here is that the claims that Farallon and Stonehill purchased with the benefit of this purported inside information from Mr. Seery, they're secretly worth more than expected.

Those allegations, they're disputed, to be sure. But let's assume they're true. That situation has zero impact on Hunter Mountain.

THE COURT: Okay.

MR. SCHULTE: And that's because this is a matter that's strictly between the parties to the claims transfers. Again, Redeemer, Acis, UBS, and HarbourVest on the one hand and Farallon and Stonehill on the other.

And the way we know this is let's pretend that Muck and Jessup didn't buy these claims, Your Honor, and that the claims instead have remained with UBS, HarbourVest, Acis, and whatever the other one I'm forgetting. The claims wouldn't have been transferred, and they would have remained with those entities.

In that case, the original claimants would have held those claims for longer than they wanted. And if HMIT is right, then the claims would have ended up being worth more than even they expected.

So why does that matter? Well, that matters because if that is all true, Hunter Mountain would be in the exact same place today. Neither better nor worse off, it would be in the exact same place.

Either Farallon and Stonehill's entities are gaining more on these claims than they expected

or UBS, HarbourVest, Acis, and Redeemer, they are realizing more on these claims than they expected.

But Hunter Mountain never stood to be paid on these claims to which it was a stranger. These are claims in which Hunter Mountain never had any interest.

THE COURT: So presuming that Hunter Mountain had expressed interest in buying these claims and there was insider trading, you don't think that would be a tortious interference in a potential contract?

MR. SCHULTE: If there was insider trading of the type that Hunter Mountain alleges in this case, it would have no impact on the rights of Hunter Mountain.

If that's true, maybe there was a fraud on the bankruptcy court. The bankruptcy court would surely be interested in that. Maybe there was a fraud on the transferors. I mean, maybe UBS, Redeemer, Acis -- why do I always forget the third one? -- and HarbourVest.

THE COURT: Like I said, I had a chart last night of all the names. Obviously, I haven't been involved in this case up until now, and there's a lot of names.

MR. SCHULTE: Yes.

The transferors of the claims might say,

well, wait a minute. I wish I would have known this inside information. I'm the one that was really injured here.

Because if there was really meat on this bone, Your Honor, then the injured parties would be the transferors of the claims: Redeemer, Acis, UBS, and HarbourVest.

Because the crux of HMIT's petition is that those entities, the transferors, were duped into selling their claims for too little when the claims were secretly worth more.

Well, if that's true, you would expect that the transferors would be screaming up and down the hallway, saying we didn't get paid enough.

THE COURT: Right.

MR. SCHULTE: We are the injured parties here, we are the ones with damages, we want to unwind these claims transfers, or we want to be paid more on these claims transfers.

But the rights of those entities, the transferors, to complain about these allegations doesn't mean that Hunter Mountain can also stand up and say, well, I want to complain too. Because Hunter Mountain never stood to be paid on these claims.

The question is if somebody was duped,

if somebody was injured, if anybody it was the transferors, not Hunter Mountain. The transferors would be the only real parties in interest that would have been injured by what Hunter Mountain alleges.

But it's notable that none of those transferors has filed an objection to these transfers.

THE COURT: Right.

MR. SCHULTE: None of them has filed a Rule 202 proceeding. None of them has filed a Rule 2004 proceeding seeking discovery about inside information that Farallon and Stonehill allegedly had. It is Hunter Mountain who is an absolute stranger to these claims trading transactions.

And so HMIT is trying to inject itself into a transaction to which it was never a party and which it never had any interest.

The sellers were entitled to sell those claims to any buyer they wanted to on whatever terms they agreed to.

And if there was some information that they didn't have the benefit of that the buyers did, you would expect the transferors, if anyone at all, to be the ones complaining about it. But that's not what we have here.

THE COURT: Okay.

MR. SCHULTE: All right. Another note that Hunter Mountain glosses over is duty.

So all the claims that were listed on the PowerPoint all require that there must have been some kind of a duty owed by Farallon and Stonehill to Hunter Mountain. But there's no duty owed to a stranger to a claims trading transaction.

Yet again, if anybody were to have a duty owed to it, I guess it would be the transferors of the claims even though that was an arm's length transaction.

But it's not a stranger to the transaction and a stranger that has no interest in the claims that we're talking about here.

THE COURT: Okay.

MR. SCHULTE: Nor has Hunter Mountain identified any authority for a private cause of action belonging to Hunter Mountain related to these claims transfers.

Hunter Mountain doesn't have the right to assert claims on behalf of other parties. It only has the right to assert claims on behalf of itself when it has been personally aggrieved.

I heard Mr. McEntire say several times during his presentation that Hunter Mountain had a

99.5 percent equity interest in Highland Capital.

THE COURT: Right.

MR. SCHULTE: I think it's important to point out that that equity interest was completely extinguished by the confirmed plan in the bankruptcy case.

As Your Honor pointed out, we have the waterfall, and Classes 1 through 9 have to be paid in full. And you know what Classes 8 and 9 are? General unsecured claims and subordinated claims.

And the only way that Hunter Mountain is ever in the money, as Mr. McEntire was saying, with its Class 10 claim is if Seery, the claimant trustee, certifies that all claims in 1 through 9 are paid in full 100 percent with interest and all indemnity claims are satisfied.

There has been no such certification by Mr. Seery, and there may never be such a certification by Mr. Seery.

THE COURT: Okay.

MR. SCHULTE: So that is real important because the idea that Hunter Mountain stands to somehow gain from this transaction is flawed for the reasons we've already talked about.

But it's also flawed because they have

what is, at best, a contingent interest. It's contingent on things that have not yet occurred. And under the case law, they don't have standing conferred on them in that interest.

THE COURT: Okay.

MR. SCHULTE: So for all those reasons why there is no interest in the claims, no legal damages, no duty owed to it, no private cause of action belonging to it and a hypothetical and contingent interest, HMIT lacks standing to investigate or challenge these claims and claims transfers to which it was not a party and in which it had zero interest.

And for any or all of the reasons we've talked about, Your Honor, their petition should be dismissed. I welcome any questions the court may have.

THE COURT: No. My head is kind of spinning. Like I said, I spent all day yesterday reading stuff. As I said, I will admit I've never practiced bankruptcy law.

I mean, my joking statement is I pretty much know enough to not be in contempt of bankruptcy court. Because I have cases where one of the defendants or one of the parties ends up in bankruptcy court and whether or not I can proceed with my case, et cetera. That's my whole goal is not to be in contempt of court.

MR. SCHULTE: That should be the goal, is to not be in contempt of the bankruptcy court.

MR. McENTIRE: May I have just five or ten minutes?

THE COURT: I don't have another hearing, so we're fine on time.

MR. McENTIRE: All right. In all due deference to Mr. Schulte, the last 15 minutes of his argument misstates the law.

THE COURT: Okay.

MR. McENTIRE: The Washington Mutual case addresses almost 90 percent of what he just talked about. Their equity was entitled to bring an action to basically disallow an interest that was acquired by inside information.

Okay. And so he has not addressed the Washington Mutual case at all.

THE COURT: Well, okay. So my question is let's say that the insider trading didn't happen.

I mean, when I was playing with the numbers last night, it doesn't appear that Hunter Mountain, being Class 10, would have gotten anything anyways even if. Right?

Like I said, I did a lot of reading last night, so I want to make sure I understand.

MR. McENTIRE: Fair enough. I think I can address that.

The bottom line is a wrongdoer should not be entitled to profit from his wrong. That's the fundamental premise behind the restatement on restitution. That's the fundamental purpose of the Washington Mutual case.

You have remedies, including disgorgement, disallowance or subordination.

THE COURT: I'm just trying to be devil's advocate because I'm trying to work through this.

So let's say it did happen and the court ordered disgorgement and invalidated these transfers, then the money would just go to the Class 8 and Class 9. Right? To Acis, UBS, HarbourVest, etc.

MR. McENTIRE: No, they would not. Because those claims have already been traded.

THE COURT: Okay. Well, that's what I'm saying.

If the court said there was insider trading and to disallow the transfer and ordered disgorgement, theoretically, back to Highland Capital, then the money is there.

Okay. So then it would just go to Acis and UBS. Right?

MR. McENTIRE: The remedy here is to subordinate their claims. HarbourVest, UBS, Acis, and the Redeemer committee have sold their claims. They can intervene if they want and that's up to them. If they want to take the position that they were defrauded, that's up to them.

THE COURT: Okay.

MR. McENTIRE: Otherwise, the remedy is to disgorge the proceeds and put them back into the coffers of the bankruptcy court in which case Category 8 and 9 would be brimful, overflowing, and flow directly into the coffers in Class 10.

And that's the purpose of 15 and 16 in Mr. Patrick's affidavit.

THE COURT: Okay.

MR. McENTIRE: I find it amazing that he refers to Judge Jernigan's orders where he said anything dealing with these claims must come back to me. I have exclusive jurisdiction. I recall that argument.

THE COURT: Right.

MR. McENTIRE: Well, she could have accepted the removal of Mr. Dondero in that other proceeding. She didn't. She said I don't have jurisdiction over this. I'm sending it back to the state court.

THE COURT: Okay. Because it was filed as a 202. If it had been filed as a Rule 404, then she would have had jurisdiction because you're specifically invoking a state court process. Right?

MR. McENTIRE: I'm invoking exclusively a state court process because of the benefit it provides. That is a strategic choice that this petitioner has elected. It has nothing to do with bankruptcy court, other than bankruptcy court is too slow.

All the invective about the prior contempt order has nothing to do with these proceedings. Mr. Dondero is not involved in these proceedings.

If HarbourVest and UBS want to intervene in some subsequent lawsuit, they have a right to do so. I can't stop them.

But until then, we have stated a cause of action or at least a potential cause of action which is insider trading. That from an outsider makes them an insider that owes fiduciary duties to the equity.

Washington Mutual allowed equity to come in and disallow those claims. And if those claims are disallowed, the Class 10 is going to be overflowing on the waterfall. And that's my client.

A couple of other things. Hunter Mountain

is not a stranger. Hunter Mountain was the big elephant in the room until the effective date of the plan.

We held 99.5 percent of the equity stake and when all of these wrongdoings occurred, Hunter Mountain was still the 99.5 percent equity stakeholder.

It's only after the bankruptcy plan had gone effective, after these claims had already been --

THE COURT: Wait. The insider trading happened after the bankruptcy had been filed but before the bankruptcy was resolved.

So it's during that process. Right?

MR. McENTIRE: You have filing a bankruptcy. You have a bankruptcy plan. You have confirmation of the plan, but it doesn't go effective until six months later.

THE COURT: Right.

MR. McENTIRE: After the bankruptcy plan was confirmed and they had dismal estimates of recovery -- 71 percent on Class 8, zero percent on Class 9 -- that's when Farallon and Stonehill purchased the claims.

But they purchased the claims at a time before the bankruptcy wasn't effective. And so the so-called claimant trust agreement had not gone into effect until several months later.

THE COURT: Okay.

MR. McENTIRE: And during this period of time Hunter Mountain was the very, very largest stakeholder.

THE COURT: Okay.

MR. McENTIRE: And so to call it a stranger is just not right and it's not fair because we're anything but a stranger.

They make an argument that Hunter Mountain didn't object to the settlements. Well, so what? I'm not attacking the underlying settlements. I'm attacking the claims transfers.

And then he says, well, why didn't they object to the claims transfers. Well, he finally conceded that the claims transfers are not actually subject to a judicial scrutiny by the bankruptcy court.

This court is uniquely qualified to review these claims transfers as is Judge Jernigan. Insider information is insider information as a rose is a rose is a rose. And any court of law is qualified to determine whether insider information was used.

Judge Jernigan did not say, okay, Farallon, you can buy this claim. There was no judicial process here.

THE COURT: Right. I mean, it's a motion.

We want to do this, just get approval.

MR. McENTIRE: They don't even have to get approval.

THE COURT: Okay.

MR. McENTIRE: All they have to do is file notice.

THE COURT: Okay. File the notice.

MR. McENTIRE: Judge Jernigan was not involved at all.

We had no reason to object. All we know there's a claims transfer. It's not until later that we discover that inside information was used and that's why we're here.

So we didn't object to the original claims. There was no need to. The original settlements rather. There was no need to. There was no objection to the claims transfers.

There was no mechanism to object, other than what we're doing here today. This is our objection. This is our attempt to object.

Because we believe that they have acquired hundreds of millions of dollars of ill-gotten gain and if that is true, not only will Hunter Mountain be benefited tremendously, but other unsecured creditors. They are very few but they will be also benefited.

Frankly, Judge Jernigan may want that to happen.

THE COURT: Okay.

MR. McENTIRE: But we're here to get the discovery so I can pull it all together within the next 30 days or 40 days. So I can make decisions before somebody might suggest, hey, well, you should have filed this a little bit earlier.

And so, Judge, that's why we're here, in the interest of time. And that was my decision. That was my strategic decision to bring it here.

THE COURT: Right.

MR. McENTIRE: He says that Rule 3001 is the exclusive remedy. Only transferors can complain about transferees or vice versa.

THE COURT: You're not necessarily complaining about the actual transfer. It's how the transfer came about.

MR. McENTIRE: That's right.

And to suggest that that is the governing principle that this court should consider is an absolute contradiction to the Washington Mutual case.

Because if fraud is in play, if inside information is in play, then it impacts everyone who is a stakeholder. Everyone.

THE COURT: Okay.

MR. McENTIRE: And we are one of the largest stakeholders in the bankruptcy proceedings, even today. So that's all I have.

I thank you for your attention, Your Honor. Clearly, the benefit here is we get to uncover some things that need to be uncovered. And we'd like to do it so in a timely fashion.

And if we don't have a claim, we don't have a claim. If we have a claim, then we may file it in a state district court.

And if Judge Jernigan and her gate-keeping orders require us to go there, we'll go there. I'm not going to run afoul of any rule she has, but we need to get this underway.

THE COURT: Okay.

MR. SCHULTE: Your Honor, may I make some rifle-shot responses?

THE COURT: Yeah. That's fine.

MR. SCHULTE: Okay. Mr. McEntire has said that they are one of the largest stakeholders in the Highland bankruptcy based on this 99.5 percent equity. That equity was extinguished in the fifth amended plan.

That's Exhibit 3 that I handed you, Your Honor. That plan was filed in January of 2021

before any of these claims transfers took place. The equity was extinguished by virtue of the plan.

THE COURT: Okay.

MR. SCHULTE: Mr. McEntire was talking about this Washington Mutual case. I read the case.

But what he said repeatedly, and I think it's really important to listen to what Mr. McEntire said about this case, is that that court allowed the equity to come in and talk about these transfers.

Hunter Mountain doesn't have any equity. That equity was extinguished in the plan for reasons I just discussed. So for being the largest stakeholder, according to Mr. McEntire, in the bankruptcy what does Hunter Mountain have to show for that? A Class 10.

As Your Honor pointed out, a Class 10 interest, that is below everybody else. And that's where they've been relegated.

And to answer your question, Your Honor, that you posed to Mr. McEntire that I'm not sure was ever answered, HMIT -- Hunter Mountain -- at Class 10 stood to gain nothing when the plan was put together. So the largest stakeholder stood to gain nothing.

I've pointed to the language in the court's order about how the court has exclusive jurisdiction.

And Your Honor nailed the answer to the concern raised by Mr. McEntire, which is the bankruptcy court didn't have jurisdiction over a 202 proceeding. But it unquestionably has authority over the counterpart, 2004 in bankruptcy court.

THE COURT: Right.

MR. SCHULTE: Finally, I have never argued and if I did say this, I apologize. I have never argued that Hunter Mountain is somehow a stranger to the bankruptcy.

THE COURT: Right. They were obviously involved in the bankruptcy, but they're a stranger to these transfers.

MR. SCHULTE: Exactly. They were a stranger to these transactions. They didn't have any interest in these claims.

They don't stand to gain anything if the claims are either rescinded or if the claims are invalidated or the transfers are invalidated. They don't stand to get anything because they never had any interest in these claims.

The claims are the claims and either UBS, Redeemer, Acis, and HarbourVest stood to gain more than expected or Farallon and Stonehill stand to gain more than expected.

And if anybody is really injured here, it's not Hunter Mountain. It's the transferors who were duped into these transfers, according to Hunter Mountain. And they would be the ones that would have damage and have a claim along the lines of what Hunter Mountain is trying to assert on behalf of all stakeholders.

Your Honor, I have a proposed order, as Mr. McEntire does.

May I bring it up?

THE COURT: Yes, you may.

Okay, Mr. McEntire. Anything else?

MR. McENTIRE: His last few statements are inconsistent with the law, Your Honor.

THE COURT: Okay.

MR. McENTIRE: Because the law clearly, clearly indicates that we are a beneficiary. And that's what the Washington Mutual case stands for.

THE COURT: Okay. Wait. Let me make sure I know which one.

Do you have a cite for that case?

MR. McENTIRE: Yes, ma'am. It's in the PowerPoint.

THE COURT: That's fine. I just wanted to make sure I could find it.

MR. McENTIRE: There's also a Fifth Circuit case that talks about subordination where a Class 8 and Class 9 would actually be subordinated, Your Honor, to our claim.

So that's another approach to this, is subordination.

THE COURT: Okay.

MR. McENTIRE: And that's the In re Mobile Steel case out of the Fifth Circuit. I think there's a cite in our brief.

THE COURT: Okay.

MR. McENTIRE: I acknowledge that we're now classified with a different name. We're a B/C limited partner. And we're, in effect, a Class 10 beneficial interest.

But we're there having been a 99.5. And the lion share of any money, 99.5 percent of any money that overflows into bucket No. 10 is ours.

THE COURT: Right.

Okay. I am processing. Obviously, I need to take this into consideration. I haven't had a chance to go through Respondent's exhibits.

I've looked through the plaintiff's exhibits, but now I have much more of a focus of what I'm doing.

So I will try to get you all a ruling by the end of next week. I apologize. I've got a special setting next week that's going to be kind of crazy, but I will do everything I can.

If you all haven't heard from me by next Friday afternoon, call my coordinator Texxa and tell her to bug me.

MR. McENTIRE: Thank you for your time.

THE COURT: You all are excused. Have a great day.

(This completes the Reporter's Record, Petitioner Hunter Mountain Investment Trust's Rule 202 Petition, which was heard on Wednesday, February 22, 2023.)

STATE OF TEXAS)

COUNTY OF DALLAS)

I, Gina M. Udall, Official Court Reporter in and for the 191st District Court of Dallas County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $750.00 and was paid by the attorney for Respondents.

WITNESS MY OFFICIAL HAND on this the 1st day of March 2023.

/S/ Gina M. Udall
Gina M. Udall, Texas CSR #6807
Certificate Expires: 10-31-2024
Official Reporter, 191st District Court of Dallas County, Texas
George Allen Sr. Courts Building
600 Commerce St., 7th Floor
Dallas, Texas 75202
Telephone: (214) 653-7146

Exhibit 4-C

CAUSE NO. DC-23-01004

IN RE:	§	IN THE DISTRICT COURT
HUNTER MOUNTAIN INVESTMENT TRUST,	§	DALLAS COUNTY, TEXAS
Petitioner.	§	191ST JUDICIAL DISTRICT

ORDER

Came on for consideration *Petitioner Hunter Mountain Investment Trust's Verified Rule 202 Petition* ("Petition") filed by petitioner Hunter Mountain Investment Trust ("HMIT"). The Court, having considered the Petition, the joint verified response in opposition filed by respondents Farallon Capital Management, L.L.C. ("Farallon") and Stonehill Capital Management LLC ("Stonehill"), HMIT's reply, the evidence admitted during the hearing conducted on February 22, 2023, the argument of counsel during that hearing, Farallon's and Stonehill's post-hearing brief, the record, and applicable authorities, concludes that HMIT's Petition should be denied and that this case should be dismissed. Therefore,

The Court ORDERS that HMIT's Petition be, and is hereby, DENIED, and that this case be, and is hereby, DISMISSED.

THE COURT SO ORDERS.

Signed this 1st day of March, 2023.

HONORABLE GENA SLAUGHTER

Exhibit 4-D

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:24 AM 03/09/2021
FILED 09:24 AM 03/09/2021
SR 20210838989 - File Number 5421257

CERTIFICATE OF FORMATION

OF

Muck Holdings, LLC

FIRST: The name of the limited liability company is:

Muck Holdings, LLC

SECOND: Its registered office in the State of Delaware is to be located at 251 Little Falls Drive, in the City of Wilmington, Delaware, 19808, and its registered agent at such address is CORPORATION SERVICE COMPANY.

IN WITNESS WHEREOF, the undersigned, being the individual forming the Company, has executed, signed and acknowledged this Certificate of Formation this 9th day of March, 2021.

By: /s/ Hanchang Sohn
Name: Hanchang Sohn
Title: Authorized Person

Exhibit 4-E

CERTIFICATE OF FORMATION

OF

Jessup Holdings LLC

FIRST: The name of the limited liability company is Jessup Holdings LLC.

SECOND: The address of its registered office in the State of Delaware is 1013 Centre Road, Suite 403-B in the City of Wilmington, Delaware 19805, in the County of New Castle. The name of its registered agent at such address is Vcorp Services, LLC.

THIRD: Members may be admitted in accordance with the terms of the Operating Agreement of the limited liability company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation on April 08, 2021.

/s/Taylor Lolya
Taylor Lolya, Authorized Person

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:10 PM 04/08/2021
FILED 01:10 PM 04/08/2021
SR 20211222936 - File Number 5822640

Exhibit 4-F

From: Roger L. McCleary
To: Schulte, David C (DAL - X59419)
Cc: Sawnie A. McEntire
Subject: HMIT — court's order/HMIT"s request for information
Date: Thursday, March 9, 2023 3:46:00 PM

David,

Thank you. This ruling denies Hunter Mountain Investment Trust ("HMIT") the investigatory discovery sought from Farallon Capital Management, LLC ("Farallon") and Stonehill Capital Management, LLC ("Stonehill") under Tex. R. Civ. P. 202. Accordingly, HMIT requests that Farallon and Stonehill advise whether they will *voluntarily* provide some or all of the information and documents requested in HMIT's Rule 202 Petition and, if so, under what terms. Please let us know by Tuesday, March 14th, whether Farallon and Stonehill will consider doing so. If so, we are available to discuss this at your earliest convenience.

In any event, HMIT also requests that Farallon and Stonehill *voluntarily* respond to the following two specific requests, which they can answer in a matter of minutes:

1. A simple description of the legal relationship: a) between Farallon and Muck Holdings, LLC ("Muck"), and b) between Stonehill and Jessup Holdings, LLC ("Jessup").
2. Whether: a) Farallon is a co-investor in any fund in which Muck holds an interest related to the Claims at issue in the Rule 202 Petition; b) Stonehill is a co-investor in any fund which Jessup holds an interest related to the Claims at issue in the Rule 202 Petition.

We would also appreciate prompt written responses to these two specific requests. To the extent we do not receive written responses to these two requests by close of business on Tuesday, March 14th, this will be taken as Farallon and Stonehill's refusal to provide the requested responses. Similarly, to the extent we do not receive a written confirmation of Farallon and Stonehill's willingness to discuss voluntary production of more of the information and documents requested in HMIT's Rule 202 Petition by then, this will be taken as their refusal to consider doing so.

Please let us know if you or your clients have any questions about this request. Thank you.

Regards, Roger.

Roger L. McCleary
Parsons McEntire McCleary PLLC
One Riverway, Suite 1800
Houston, TX 77056
Tel: (713) 960-7305
Fax: (832) 742-7387
www.pmmlaw.com

are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Schulte, David C (DAL - X59419) <David.Schulte@hklaw.com>
Sent: Wednesday, March 8, 2023 9:08 PM
To: Sawnie A. McEntire <smcentire@pmmlaw.com>; Roger L. McCleary <rmccleary@pmmlaw.com>
Cc: Timothy J. Miller <tmiller@pmmlaw.com>
Subject: [EXTERNAL] HMIT — court's order

Counsel--attached is a copy of the court's order in this case.

Dave

David C. Schulte | **Holland & Knight**
Partner
Holland & Knight LLP
1722 Routh St., Suite 1500 | Dallas, TX 75201
Cell 214-274-4141
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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

ORDER GRANTING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE ADVERSARY PROCEEDING

Upon consideration of the *Emergency Motion for Leave to File Adversary Proceeding* [Dkt. __] (the "Motion") filed by Hunter Mountain Investment Trust ("HMIT"), and having considered any responses thereto, the Court finds that: (1) the claims alleged in HMIT's Proposed Adversary Complaint [Dkt. __-1] against James P. Seery ("Seery"), Stonehill Capital Management, LLC, Farallon Capital Management, LLC, Muck Holdings, LLC, and Jessup Holdings, LLC (the "Claims") are colorable; (2) any demand on any other persons or entities to

prosecute the Claims would be futile; (3) HMIT is an appropriate party to bring the Claims on behalf of the Reorganized Debtor and the Highland Claimant Trust; and (4) HMIT's Motion should be granted.

It is therefore **ORDERED THAT:**

1. The Motion is GRANTED.

2. HMIT is granted leave to file its Proposed Adversary Complaint [Dkt. __-1] as an adversary proceeding in this Court.

###END OF ORDER###

Submitted by:
Parsons McEntire McCleary PLLC

/s/ Sawnie A. McEntire_____
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Facsimile: (713) 960-7347

Counsel for Hunter Mountain Investment Trust

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

Volume 4

APPELLANT RECORD

STINSON LLP
Deborah Deitsch-Perez
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Counsel for Hunter Mountain Investment Trust

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

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

INDEX

APPELLANT'S STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL BY RIGHT

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, Appellant Hunter Mountain Investment Trust ("HMIT") hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal by right of the "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt. 4104] that was signed June 22, 2024, and entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024.[1]

[1] Given the lack of clarity in the law about the appropriate mechanism for obtaining review, HMIT filed a Notice of Appeal by Right and a Notice of Appeal by Leave (along with a motion for leave to file an interlocutory appeal) and a petition for writ of mandamus (which will be filed shortly thereafter).

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court abused its discretion in granting Appellees' motion for an indefinite stay of Appellant's gatekeeper motion seeking permission to bring suit in Delaware to remove the trustee of a Delaware statutory trust when (1) Appellees failed to meet the required standard for obtaining a stay; (2) the Bankruptcy Court erroneously concluded that the issue of Appellant's standing to seek removal of the Claimant Trustee would be decided in other cases pending before the Court; and (3) an indefinite or unduly lengthy stay of litigation of the type ordered by the Bankruptcy Court is expressly disfavored by the Fifth Circuit.

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Vol. 1

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Dkt. 4111]. — 00001

2. The judgment, order, or decree appealed from: "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt. 4104] — 000009

3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held June 12, 2024 before Judge Stacey G.C. Jernigan re: Motion to Stay Contested Matter [Dkt. 4091]. — SEE Vol. 17 - 001988

4. Docket Sheet for Bankruptcy Case No. 19-34054-sgj11 kept by the Bankruptcy Clerk. — 000012

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

Vol. 2

DATE	CASE NO.	DKT. NO.	DESCRIPTION
01/09/2020 — 000578	19-34054-sgj-11	399	Order Approving Settlement with Official Committee of Unsecured Creditors regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course
02/22/2021 — 000586	19-34054-sgj-11	1943	Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)
Vol 3 — 03/28/2023 — 000747	19-34054-sgj-11	3699	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
Vol. 4 — 04/21/2023 — 001134	19-34054-sgj-11	3756	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 3/31/23

Vol 4 001149	04/21/2023	19-34054-sgj-11	3757	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 3/31/23
001164	04/23/2023	19-34054-sgj-11	3760	Hunter Mountain Investment Trust's Supplement to Emergency motion for Leave to File Verified Adversary Proceeding
001209	06/05/2023	19-34054-sgj-11	3815	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
001274	06/05/2023	19-34054-sgj-11	3816	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
001339	07/21/2023	19-34054-sgj-11	3888	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 6/30/23
001351	07/21/2023	19-34054-sgj-11	3889	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 6/30/23
Vol. 5 001363	08/25/2023	19-34054-sgj-11	3903	Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trusts' Emergency Motion for Leave to File Verified Adversary Proceeding
001468	01/01/2024	19-34054-sgj-11	4000	Motion for Leave to File a Delaware Complaint
Vol. 6 001606	10/23/2023	19-34054-sgj-11	3955	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 9/30/23
001618	10/23/2023	19-34054-sgj-11	3956	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 9/30/23
001630	01/16/2024	19-34054-sgj-11	4013	Highland's Motion to Stay Contested Matter [Dk No. 4000] or for Alternative Relief
001638	01/22/2024	19-34054-sgj-11	4019	James P. Seery, Jr.'s Joinder to Highland Capital Management L.P.'s Motion to Stay Contested Matter [Dk No. 4000] or for Alternative Relief and Emergency Motion to Expedite Hearing on Motion for Stay
001640	06/11/2024	19-34054-sgj-11	4087	Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay
001669	01/22/2024	19-34054-sgj-11	4020	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 12/31/23
001681	01/22/2024	19-34054-sgj-11	4021	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 12/31/23

Vol. 6
001693

06/24/2024	19-34054-sgj-11	4104	Order Extending Stay of Contested Matter [Docket No. 4000]
01/22/2024	19-34054-sgj-11	4049	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 3/31/24
01/22/2024	19-34054-sgj-11	4050	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 3/31/24
07/18/2024	19-34054-sgj-11	4130	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 6/30/24, dated July 18, 2024
07/18/2024	19-34054-sgj-11	4131	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 6/30/24, dated July 18, 2024

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001708
001720
001732

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
05/10/2023	23-03038	0001	Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0013	The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0014	Memorandum of Law in Support of Highland Capital Management L.P. and the Highland Claimant Trust's Motion to Dismiss Complaint

001745
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DATE	CASE NO.	DKT. NO.	DESCRIPTION
12/29/2023	23-03038	0017	The Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

001809

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12/29/2023	23-03038	0018	Appendix in Support of the Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

001839

01/19/2024	23-03038	0021	The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint

001863

05/24/2024	23-03038	0026	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets

001875

05/24/2024	23-03038	0027	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets

001911

06/07/2024	23-03038	0030	Notice of Appeal [Appellant Designation due by 06/21/2024] (Filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust)

001947

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

001988

DATE	CASE NO.	DKT. NO.	DESCRIPTION

Vol. 7
001988

06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript

Dated: July 22, 2024

STINSON LLP

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez
Texas Bar No. 24036072
Michael P. Aigen
Texas Bar No. 24012196
2200 Ross Avenue, Suite 2900
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Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

Counsel for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 22, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP
Debtor(s)

Case No. 19-34054

☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 03/31/2023

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:
- (•) Reorganized Debtor
- ( ) Other Authorized Party or Entity: _____
  Name of Authorized Party or Entity

/s/ Zachery Z. Annable
Signature of Responsible Party

04/21/2023
Date

Zachery Z. Annable, Hayward PLLC
Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231
Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$15,817,995	$115,423,961
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$573,888	$5,194,652
d. Total transferred (a+b+c)	$16,391,883	$120,618,613

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor		*Aggregate Total*	$0	$33,005,136	$0	$33,005,136
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i	Pachulski Stang Ziehl & Jones	Lead Counsel	$0	$24,312,860	$0	$24,312,860
	ii	Development Specialists, Inc.	Financial Professional	$0	$5,765,448	$0	$5,765,448
	iii	Kurtzman Carson Consultants	Other	$0	$2,054,716	$0	$2,054,716
	iv	Hayward & Associates PLLC	Local Counsel	$0	$872,112	$0	$872,112
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b.				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor		*Aggregate Total*	$0	$7,604,472	$0	$7,604,472
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i	Hunton Andrews Kurth LLP	Other	$0	$1,149,807	$0	$1,149,807
	ii	Foley Gardere, Foley & Lardne	Other	$0	$629,088	$0	$629,088
	iii	Deloitte	Financial Professional	$0	$553,413	$0	$553,413
	iv	Mercer (US) Inc.	Other	$0	$204,767	$0	$204,767
	v	Teneo Capital, LLC	Financial Professional	$0	$1,364,823	$0	$1,364,823
	vi	Wilmer Cutler Pickering Hale	Other	$0	$2,650,937	$0	$2,650,937

	vii	Carey Olsen	Other	$0	$280,264	$0	$280,264
	viii	ASW Law	Other	$0	$4,976	$0	$4,976
	ix	Houlihan Lokey Financial Advi	Other	$0	$766,397	$0	$766,397
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c.	All professional fees and expenses (debtor & committees)			$0	$60,171,929	$0	$60,171,929

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$15,044,364	$270,205,592	$397,485,568	68%
e. Equity interests	$0	$0	$0		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

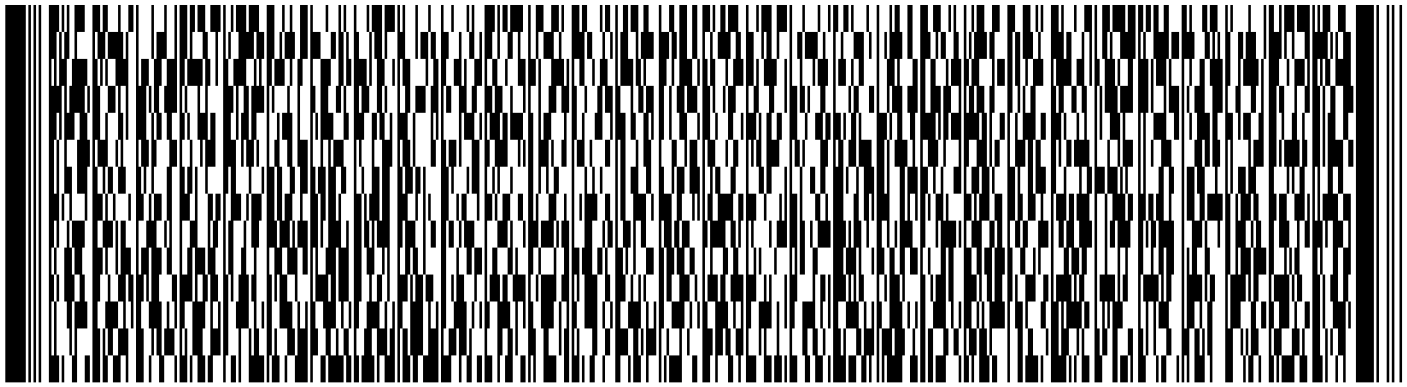
I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

/s/ James Seery
Signature of Responsible Party

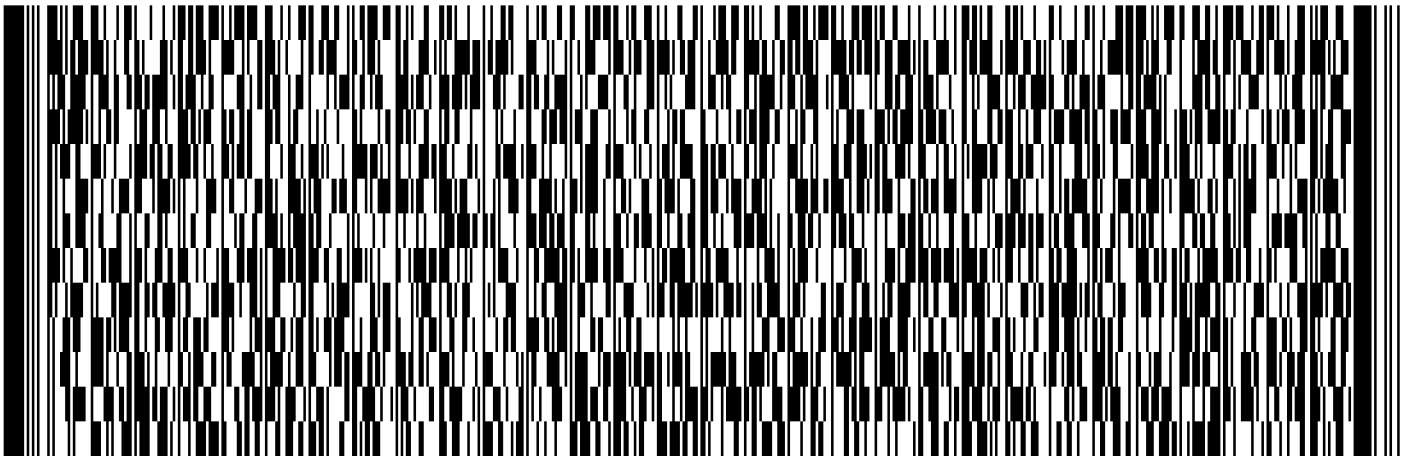
James Seery
Printed Name of Responsible Party

CEO
Title

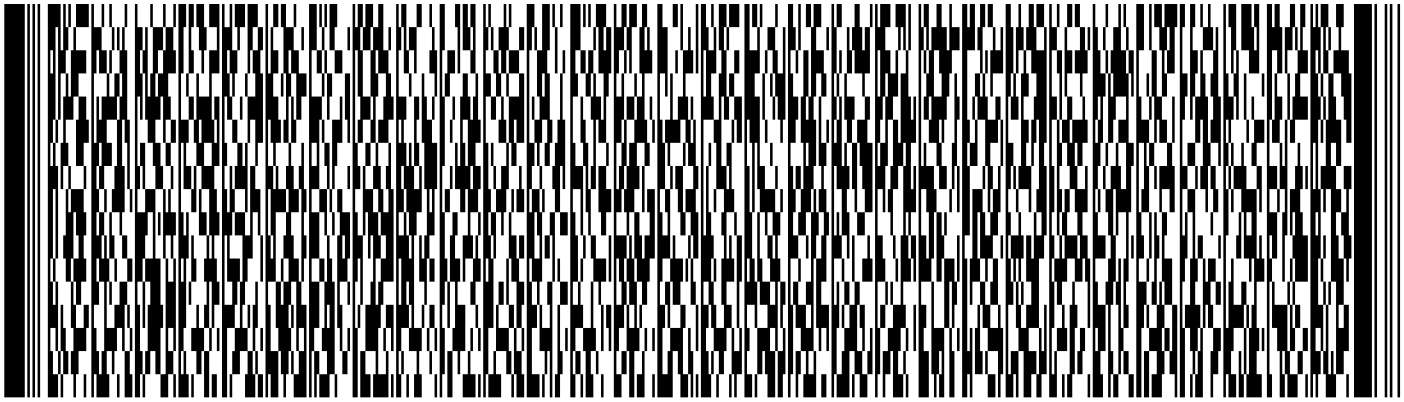
04/21/2023
Date



Page 1



Other Page 1



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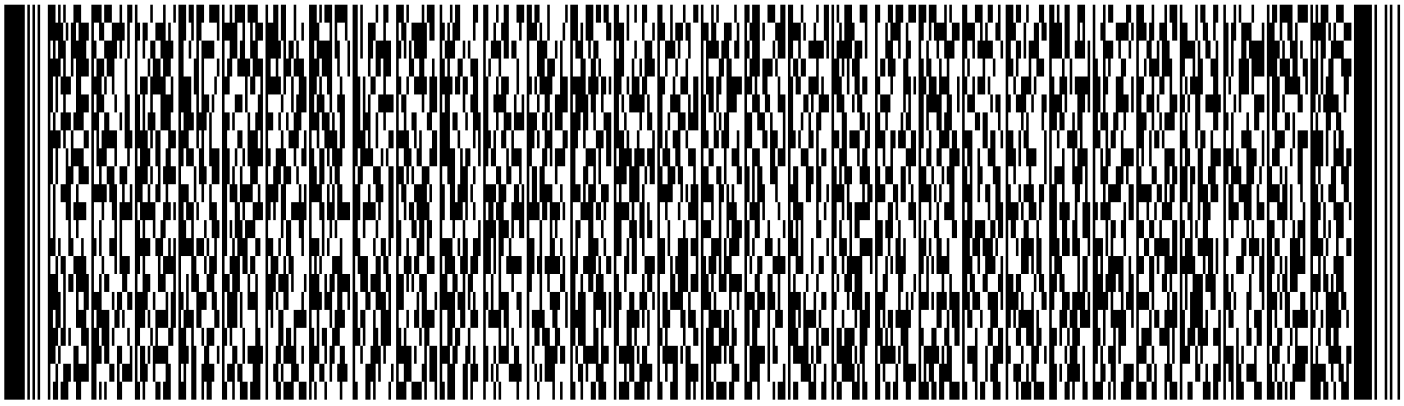
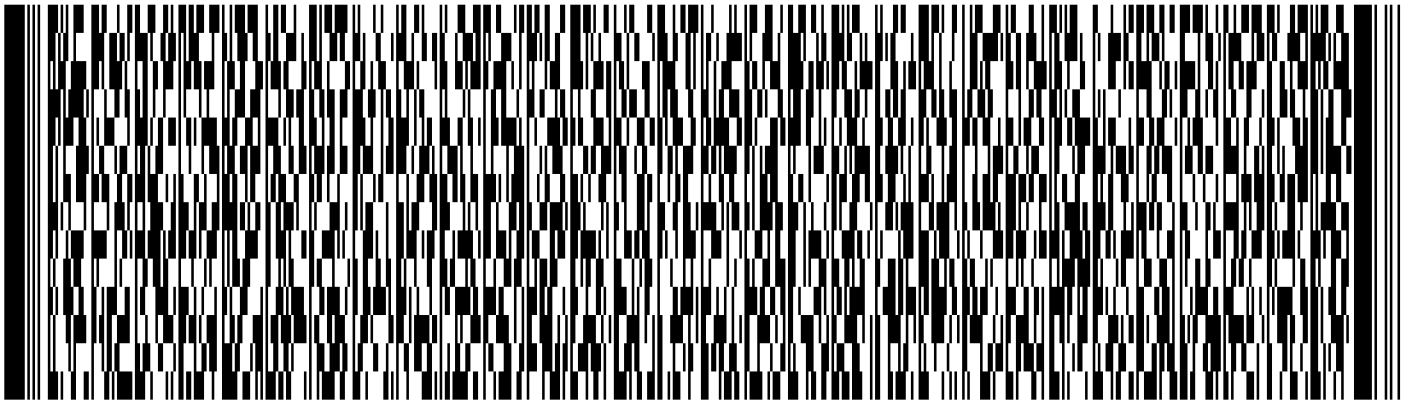
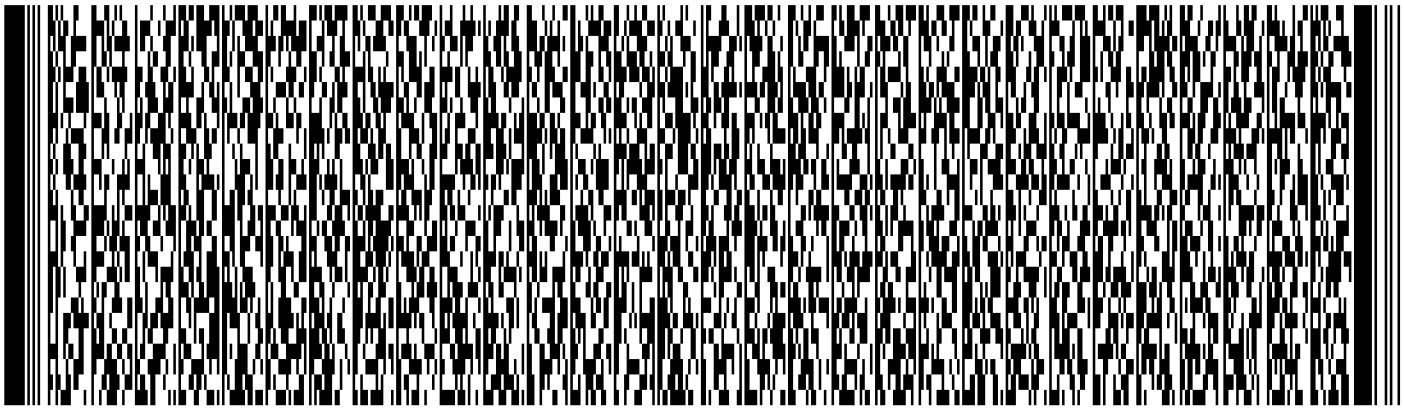


Bankruptcy Table 1-50



Bankruptcy Table 51-100



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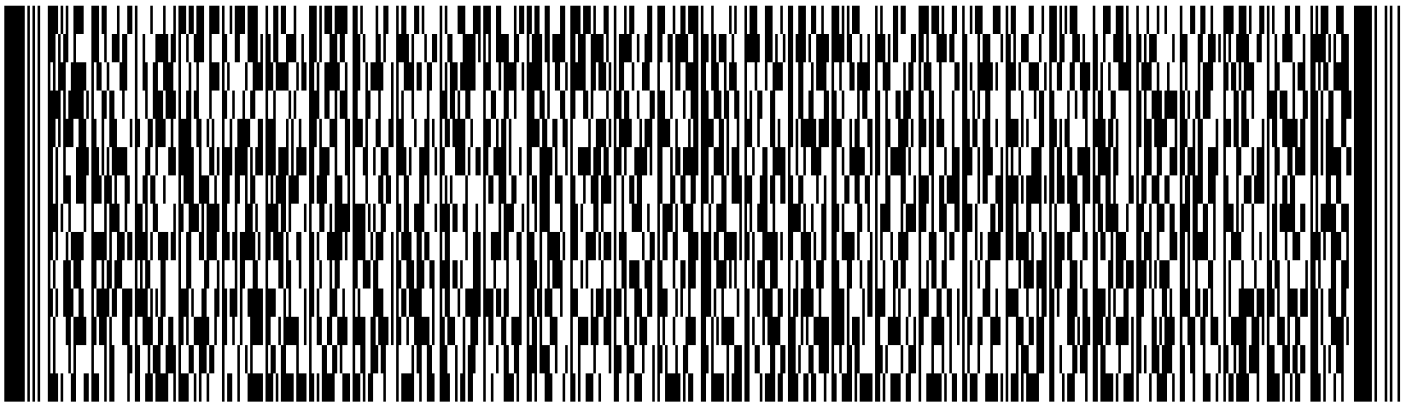

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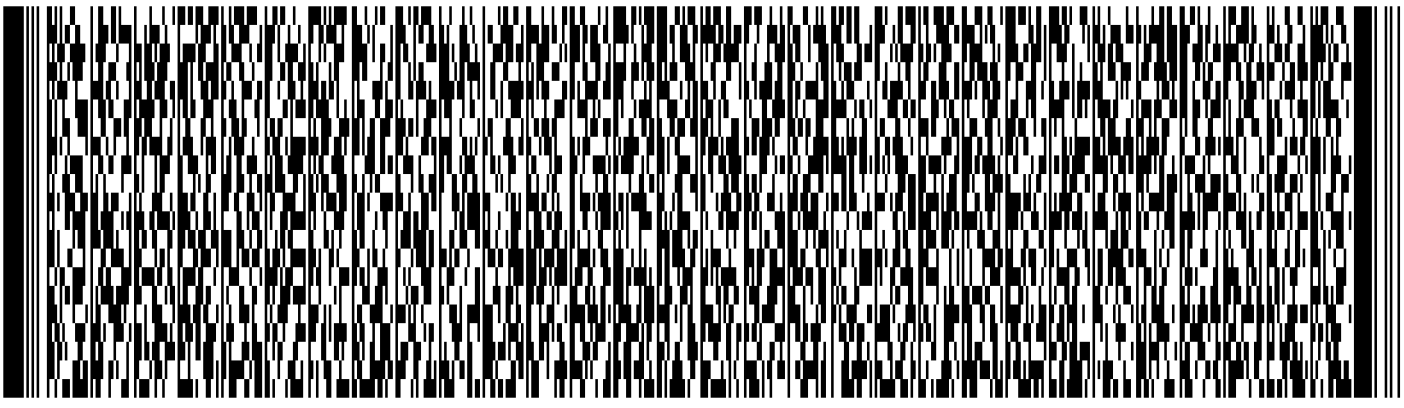

Part 3, Part 4, Last Page

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

DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST CONFIRMATION REPORT

The Reorganized Debtor has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), on behalf of debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Reorganized Debtor prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Reorganized Debtor relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Reorganized Debtor made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Reorganized Debtor reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

In Section A of the PCR, the Reorganized Debtor listed the bankruptcy related professionals employed in connection with the Bankruptcy Case.

In Section B of the PCR, the Reorganized Debtor listed non-bankruptcy professionals, those that would have been retained absent the Bankruptcy Case, and the ordinary course professionals ("OCP"). Hunton Andrews Kurth LLP ("Hunton") and Wilmer Cutler Pickering Hale and Dorr

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

LLP ("Wilmer Hale") were originally ordinary course professionals but were later employed professionals. The amounts listed for Hunton and Wilmer Hale include the OCP payments and employed professional payments.

In Section C of the PCR, the Reorganized Debtor totals all payments included in Sections A and B, along with payments made to professional employed by the official committee of unsecured creditors (the "Committee").

The approved current quarter, approved cumulative, and paid cumulative will have the same amount listed due to approval and payment of final fee applications.

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

The payments made to holders of General Unsecured Claims were disbursed from the Claimant Trust, but for presentation purposes, have been included in Part 3 of the post-confirmation report for the Reorganized Debtor.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with Reorganized Debtor's governing documents and the Plan.

The Debtor reserves all right to object to any claim in accordance with the terms of the Plan.

Addendum to Global Notes for March 31, 2023 Quarterly Operating Report
Summary of Highland Claimant Trust ("Claimant Trust") & Highland Capital Management, L.P. ("HCMLP"), Effectuation of Plan as of March 31, 2023

Item 1: Quarter-ending cash, Disputed Claims Reserve, and Indemnity Trust summary (in $ millions)

Quarter End Date	Quarter End Cash and Equivalents balances [1][2]	Cumulative Funding – Disputed Claims Reserve	Cumulative Funding – Indemnity Trust [2]
3/31/2021	$27.9	n/a	n/a
6/30/2021	$17.9	n/a	n/a
9/30/2021	$33.6	n/a	$2.5
12/31/2021	$19.8	n/a	$2.5
3/31/2022	$21.1	n/a	$2.5
6/30/2022	$85.2	n/a	$2.5
9/30/2022	$31.8	$11.0	$20.0
12/31/2022	$36.6	$11.0	$20.0
3/31/2023	$25.0	$11.6	$32.0

[1] Bank cash for Claimant Trust, HCMLP (debtor up to August 11, 2021; re-organized from August 11, 2021), Highland Litigation Trust Sub-Trust ("Litigation Trust"), HCMLP GP LLC and including cash at brokerage account(s), cash equivalents as well as cash or equivalent reserves for earned operating obligations, if applicable. All amounts herein EXCLUDE the Highland Indemnity Trust ("Indemnity Trust") and the cash held within the Disputed Claims Reserve, which are described separately, as well as any other segregated agency or shareholder representative account(s) for which cash is held solely for the benefit of others.

[2] Based upon the baseless filed motion seeking to litigate against indemnified parties and threats from vexatious parties, the Claimant Trustee expects to fund significant additional amounts into the Indemnity Trust.

Item 2: Class 8 / Class 9 Summary (in $ millions)

Note that payments described within Part 3 of the quarterly operating report include payments to classes 6, 7, 8, and 9, whereas payments below only include payments to classes 8 and 9, as applicable.

Class 8 / 9 Summary (in $ millions)	Cash Payments through March 31, 2023	Disputed Claims Reserve	Remaining [3]
Class 8	$263.4	$11.6	$28.7
Class 9	$0.0	$0.0	$98.8
Classes 8 + 9	$263.4	$11.6	$127.4

[3] Face amount of allowed class 8/9 claims PLUS face amount of pending class 8/9 claims LESS cumulative payments to classes 8/9 LESS cumulative reserves for classes 8/9. Amounts EXCLUDE accrued interest on claim balances as well as amounts of pending admin priority claims, and unliquidated pending class 8/9 claims. Any future distributions to classes 8 and 9 are subject to satisfaction of Claimant Trust senior obligations.

Item 3: Remaining disputed/expunged or pending claims (in $ millions)

Amounts reserved within the Disputed Claims Reserve are in no way indicative of the value or validity of the claim, but rather are simply established based on the face amount of the claim and the proportionate calculation of amounts already distributed to actual allowed claimholders.

Party	Claim number(s)	Face amount	Reserved in Disputed Claims Reserve	Unreserved
Highland CLO Management, Ltd.	Scheduled/Disputed	$10.1	($9.2)	$1.0
Patrick Daugherty [4]	205	$2.7	($2.4)	$0.3
CLO Holdco, Ltd. [5]	254	Unliquidated	$0.0	See note
HCRE Partners, LLC [6]	146	Unliquidated	$0.0	See note
Hunter Covitz [7]	186	Unliquidated	$0.0	See note
Highland Capital Management Fund Advisors, LP and NexPoint Advisors, LP [8]	239	$6.7	$0.0	$6.7
Total		$19.5	($11.6)	$7.9

[4] Proof of claim has been partially settled, with the exception of the Reserved Claim as described in the settlement agreement with Mr. Daugherty [Docket No. 3298]. Claimant may assert additional amounts may be owed.

[5] CLO Holdco, Ltd., initially filed proof of claim 133 and subsequently amended that claim to $0.00 in open court and then by filing proof of claim 198. HCMLP relied on that agreement and amendment. Subsequently, CLO Holdco, Ltd., sought to amend claim 198 to an estimated amount of $3.8 million by filing proof of claim 254. The Litigation Trust objected to the attempted amended claim, and CLO Holdco, Ltd.'s claim was adjudicated at $0.00. CLO HoldCo, Ltd., has appealed.

[6] HCRE Partners, LLC filed a motion to withdraw proof of claim 146. HCMLP contested that the withdrawal of the claim. The matter is sub judice.

[7] Proof of claim 186 was expunged, but alleged transferee of expunged claim has appealed; appeal pending.

[8] Proof of claim 239, which is an administrative priority claim, was expunged and judgment was granted against alleged creditor, but alleged creditor has appealed.

Item 4: Interest-bearing debt outstanding as of March 31, 2023 (in $ millions)

No interest-bearing debt outstanding. Exit Facility retired in 2022. [9]

[9] Encompasses Claimant Trust, HCMLP (re-organized), Litigation Trust, HCMLP GP LLC, but does not look-through to their respective subsidiaries and/or private funds or companies held by private funds.

Item 5: Remaining investments, notes, and other assets [10]

Asset (alphabetic sorting, except "Other misc.")	**Description**
Breach of contract judgment	Direct asset. Bonded judgment against Highland Capital Management Fund Advisors, LP and NexPoint Advisors, LP, pending appeal.
Contempt civil penalty	Direct asset. Civil penalty owed by Mr. Dondero from the first of two contempt orders against him (his second contempt civil penalty was already received from subsidiary of DAF).
Contingent rights, post-sale	Residual contingent rights tied to milestones from a company that was sold Pre-Petition – direct and indirect interests through managed fund(s).
Highland CLO Funding, Ltd. ("HCLOF")	Majority-owned by HCMLP or Claimant Trust (directly or indirectly) but controlled by two independent Guernsey-based directors – investments of this entity are predominantly subordinated notes of Acis-managed CLOs, whose remaining value is predominantly cash. Remaining distributions are held up due to litigation against Acis-related entities and HCLOF by Mr. Dondero's entities.
NHT.U (TSXV exchange)	Direct asset. Hospitality REIT managed by a subsidiary of NexPoint Advisors, LP.
NHT Holdco LLC	Hospitality REIT managed by a subsidiary of NexPoint Advisors, LP. Indirect interests held through a Delaware LLC created for the sole purpose of holding shares of the hospitality REIT. Mr. Dondero is the manager of the entity. HCMLP has demanded shares as provided in the LLC agreement but has yet to receive delivery of the shares.
Note from Hunter Mountain Investment Trust	Direct asset. Defaulted note. Subject to Litigation Trustee collecting.
Note from The Dugaboy Investment Trust ("Dugaboy")	Direct asset. Term note. Last receipt in December 2022. Next scheduled receipt in December 2023.
Notes from Mr. Dondero + his affiliates (except Dugaboy)	Direct asset. Demand notes and accelerated term notes, plus costs of collection. Subject to Claimant Trust collection litigation.
Post-sale escrows	Residual escrow(s) remaining related to the monetizations of two private companies. Direct and indirect interests through managed fund(s).
Private companies	Direct and indirect interests in two privately held companies.
Private equity fund interests	Direct or indirect interests in two private funds that make Oil & Gas and Healthcare-related investments, respectively.
SE Multifamily Holdings LLC	Direct asset. Membership interests. Subject to Claimant Trust litigation.
Other misc.	Future revenue streams; receivables; misc. investments; cash (unrestricted and reserved); litigation claims of the Litigation Trust; indemnification claims.

[10] Listing is not comprehensive, but rather is intended to capture potentially significant asset categories that have yet to be fully monetized. Listing includes assets of the Claimant Trust, HCMLP (re-organized), Litigation Trust, and HCMLP GP LLC. Descriptions herein indicate whether the asset is directly owned by one or more of these entities and/or whether the asset is indirectly beneficially owned.

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP
Debtor(s)

Case No. 19-34054

☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 03/31/2023

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:
○ Reorganized Debtor
◉ Other Authorized Party or Entity: Highland Claimant Trust
Name of Authorized Party or Entity

/s/ Zachery Z. Annable
Signature of Responsible Party

04/21/2023
Date

Zachery Z. Annable, Hayward PLLC
Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231
Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$22,152,786	$318,823,814
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$0	$0
d. Total transferred (a+b+c)	$22,152,786	$318,823,814

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor *Aggregate Total*						
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i						
	ii						
	iii						
	iv						
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	ci						

b.				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor *Aggregate Total*						
	Itemized Breakdown by Firm						
		Firm Name	Role				
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	iii						
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c.	All professional fees and expenses (debtor & committees)						

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$15,004,364	$270,205,592	$397,485,568	68%
e. Equity interests	$0	$0	$0		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

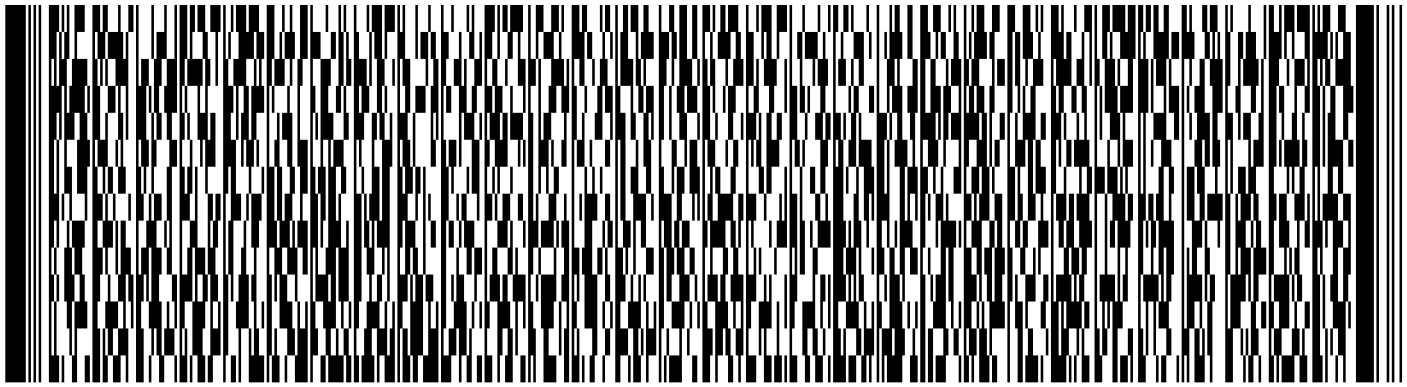
I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

/s/ James Seery
Signature of Responsible Party

James Seery
Printed Name of Responsible Party

Claimant Trustee
Title

04/21/2023
Date



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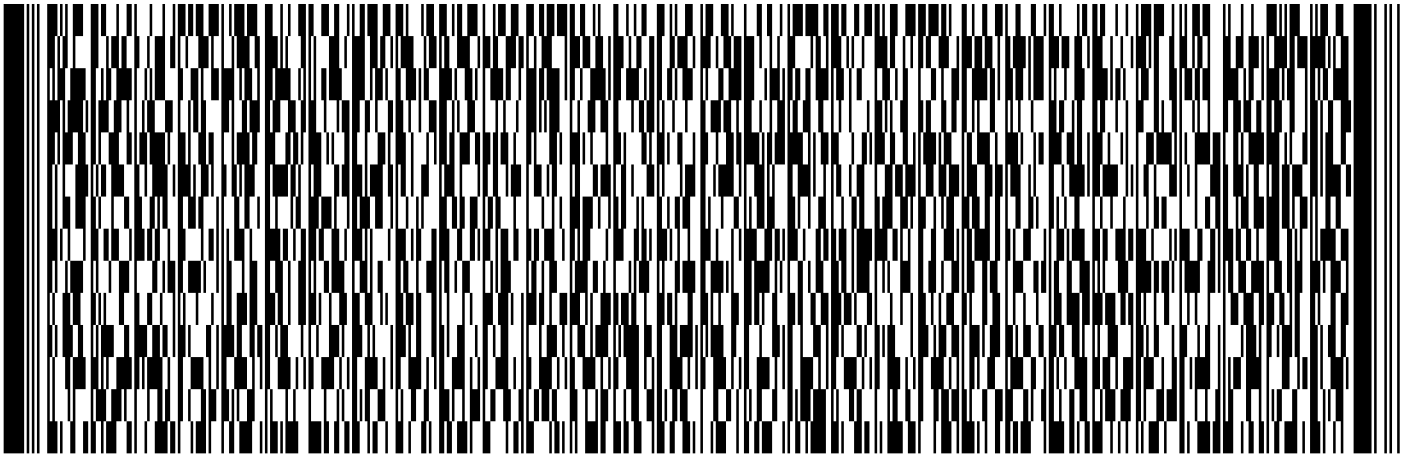

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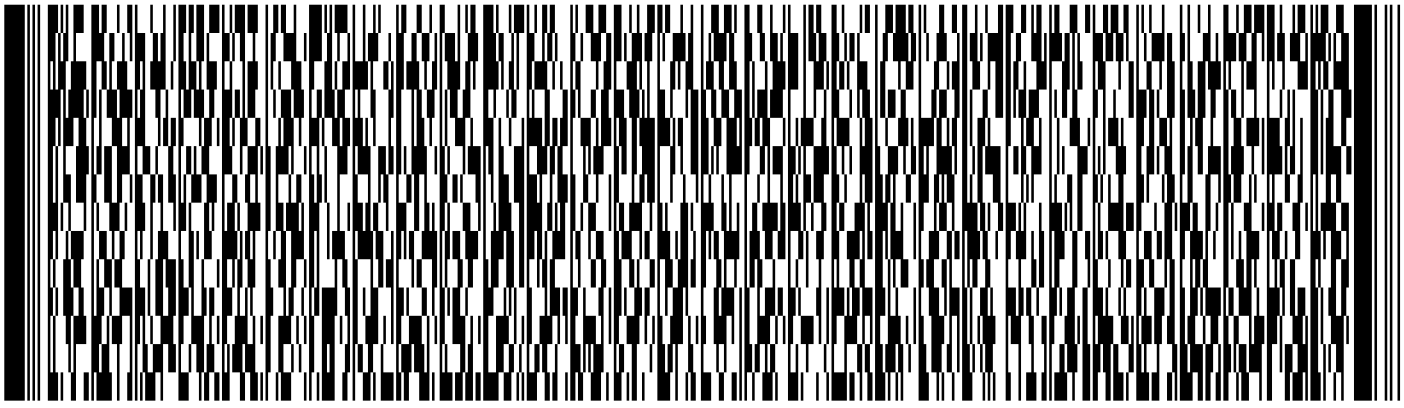

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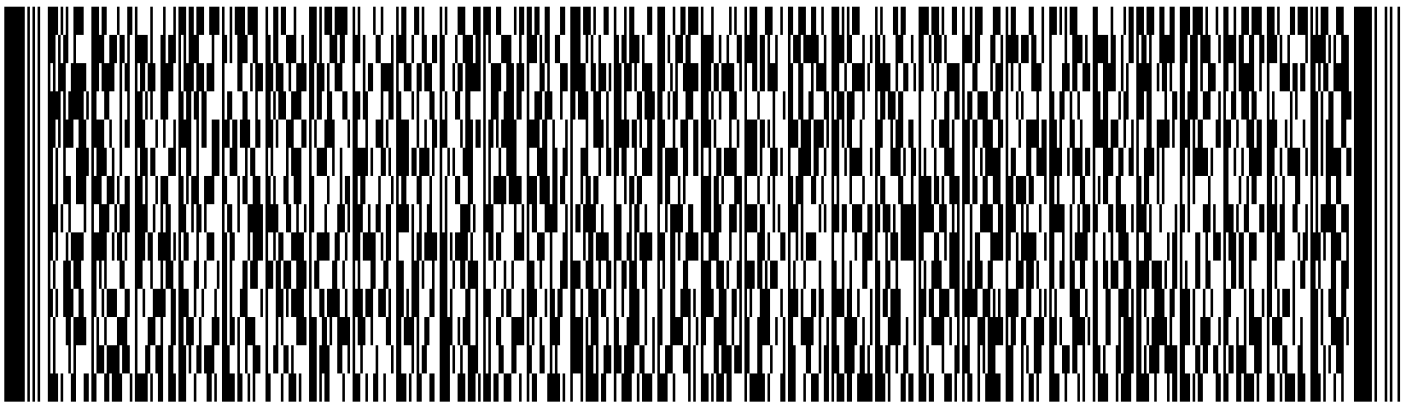
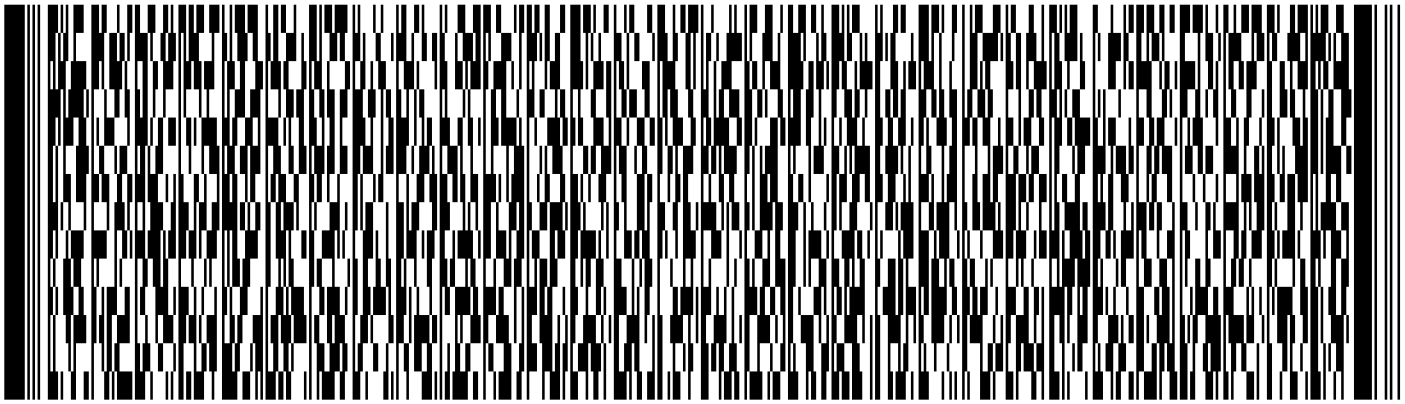
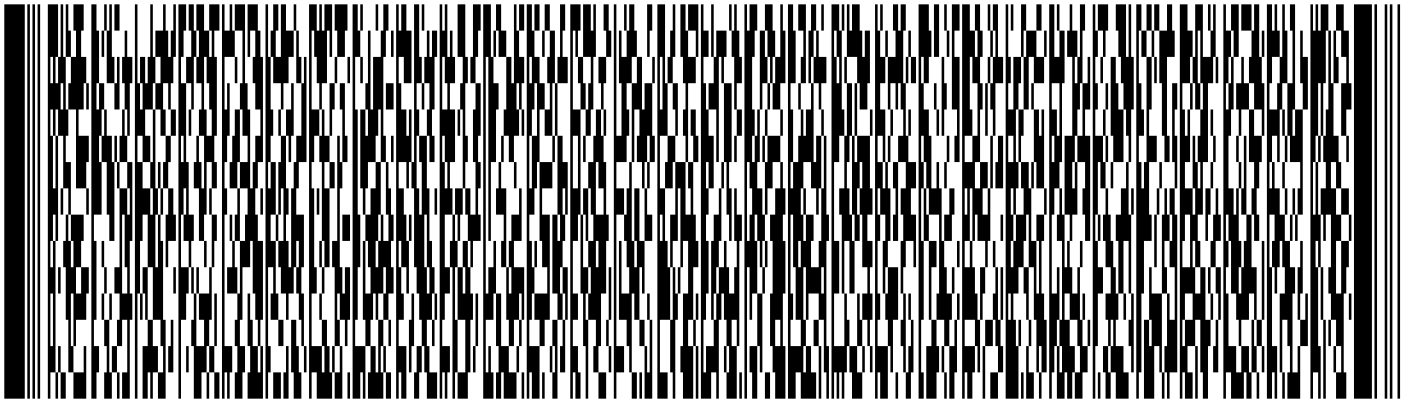


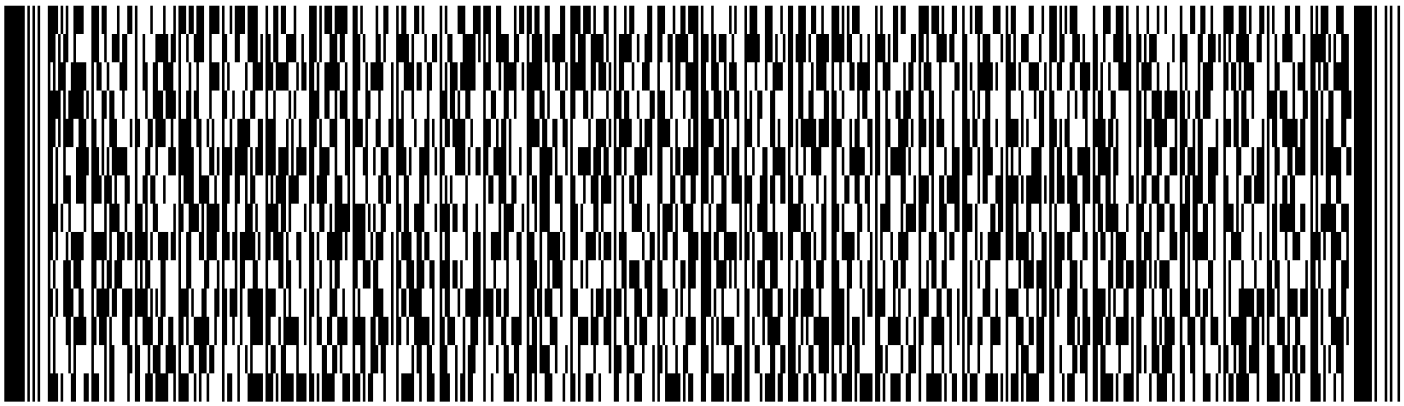
Bankruptcy Table 1-50



Bankruptcy Table 51-100



Non-Bankruptcy Table 1-50



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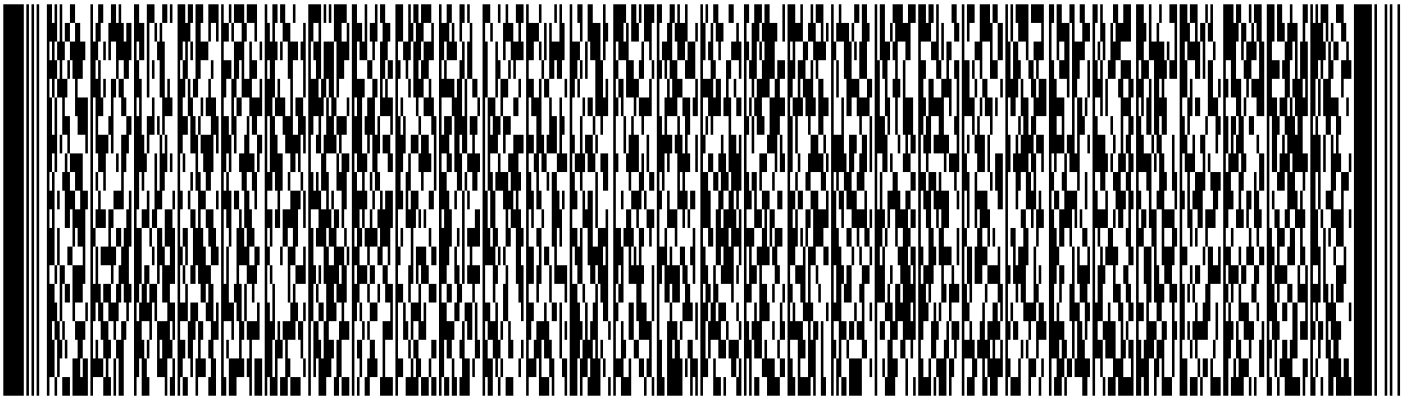

Part 3, Part 4, Last Page

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST CONFIRMATION REPORT

The Highland Claimant Trust has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), with respect to the case of Reorganized Debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Highland Claimant Trust prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Highland Claimant Trust, the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Highland Claimant Trust relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Highland Claimant Trust made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Highland Claimant Trust reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

The Highland Claimant Trust did not make any payment of professional fees prior to Confirmation of the Plan.

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

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

For presentation purposes, the chart showing claims anticipated under the plan, paid claims and allowed claims are reflected in both the Reorganized Debtor and Claimant Trust post-confirmation report under Part 3: Recoveries of the Holders of Claims and Interests under the Confirmed Plan.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with the Claimant Trust's governing documents and the Plan.

Addendum to Global Notes for March 31, 2023 Quarterly Operating Report
Summary of Highland Claimant Trust ("Claimant Trust") & Highland Capital Management, L.P. ("HCMLP"), Effectuation of Plan as of March 31, 2023

Item 1: Quarter-ending cash, Disputed Claims Reserve, and Indemnity Trust summary (in $ millions)

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6/30/2022	$85.2	n/a	$2.5
9/30/2022	$31.8	$11.0	$20.0
12/31/2022	$36.6	$11.0	$20.0
3/31/2023	$25.0	$11.6	$32.0

[1] Bank cash for Claimant Trust, HCMLP (debtor up to August 11, 2021; re-organized from August 11, 2021), Highland Litigation Trust Sub-Trust ("Litigation Trust"), HCMLP GP LLC and including cash at brokerage account(s), cash equivalents as well as cash or equivalent reserves for earned operating obligations, if applicable. All amounts herein EXCLUDE the Highland Indemnity Trust ("Indemnity Trust") and the cash held within the Disputed Claims Reserve, which are described separately, as well as any other segregated agency or shareholder representative account(s) for which cash is held solely for the benefit of others.

[2] Based upon the baseless filed motion seeking to litigate against indemnified parties and threats from vexatious parties, the Claimant Trustee expects to fund significant additional amounts into the Indemnity Trust.

Item 2: Class 8 / Class 9 Summary (in $ millions)

Note that payments described within Part 3 of the quarterly operating report include payments to classes 6, 7, 8, and 9, whereas payments below only include payments to classes 8 and 9, as applicable.

Class 8 / 9 Summary (in $ millions)	Cash Payments through March 31, 2023	Disputed Claims Reserve	Remaining [3]
Class 8	$263.4	$11.6	$28.7
Class 9	$0.0	$0.0	$98.8
Classes 8 + 9	$263.4	$11.6	$127.4

[3] Face amount of allowed class 8/9 claims PLUS face amount of pending class 8/9 claims LESS cumulative payments to classes 8/9 LESS cumulative reserves for classes 8/9. Amounts EXCLUDE accrued interest on claim balances as well as amounts of pending admin priority claims, and unliquidated pending class 8/9 claims. Any future distributions to classes 8 and 9 are subject to satisfaction of Claimant Trust senior obligations.

Item 3: Remaining disputed/expunged or pending claims (in $ millions)

Amounts reserved within the Disputed Claims Reserve are in no way indicative of the value or validity of the claim, but rather are simply established based on the face amount of the claim and the proportionate calculation of amounts already distributed to actual allowed claimholders.

Party	Claim number(s)	Face amount	Reserved in Disputed Claims Reserve	Unreserved
Highland CLO Management, Ltd.	Scheduled/Disputed	$10.1	($9.2)	$1.0
Patrick Daugherty [4]	205	$2.7	($2.4)	$0.3
CLO Holdco, Ltd. [5]	254	Unliquidated	$0.0	See note
HCRE Partners, LLC [6]	146	Unliquidated	$0.0	See note
Hunter Covitz [7]	186	Unliquidated	$0.0	See note
Highland Capital Management Fund Advisors, LP and NexPoint Advisors, LP [8]	239	$6.7	$0.0	$6.7
Total		$19.5	($11.6)	$7.9

[4] Proof of claim has been partially settled, with the exception of the Reserved Claim as described in the settlement agreement with Mr. Daugherty [Docket No. 3298]. Claimant may assert additional amounts may be owed.

[5] CLO Holdco, Ltd., initially filed proof of claim 133 and subsequently amended that claim to $0.00 in open court and then by filing proof of claim 198. HCMLP relied on that agreement and amendment. Subsequently, CLO Holdco, Ltd., sought to amend claim 198 to an estimated amount of $3.8 million by filing proof of claim 254. The Litigation Trust objected to the attempted amended claim, and CLO Holdco, Ltd.'s claim was adjudicated at $0.00. CLO HoldCo, Ltd., has appealed.

[6] HCRE Partners, LLC filed a motion to withdraw proof of claim 146. HCMLP contested that the withdrawal of the claim. The matter is sub judice.

[7] Proof of claim 186 was expunged, but alleged transferee of expunged claim has appealed; appeal pending.

[8] Proof of claim 239, which is an administrative priority claim, was expunged and judgment was granted against alleged creditor, but alleged creditor has appealed.

Item 4: Interest-bearing debt outstanding as of March 31, 2023 (in $ millions)

No interest-bearing debt outstanding. Exit Facility retired in 2022. [9]

[9] Encompasses Claimant Trust, HCMLP (re-organized), Litigation Trust, HCMLP GP LLC, but does not look-through to their respective subsidiaries and/or private funds or companies held by private funds.

Item 5: Remaining investments, notes, and other assets [10]

Asset (alphabetic sorting, except "Other misc.")	**Description**
Breach of contract judgment	Direct asset. Bonded judgment against Highland Capital Management Fund Advisors, LP and NexPoint Advisors, LP, pending appeal.
Contempt civil penalty	Direct asset. Civil penalty owed by Mr. Dondero from the first of two contempt orders against him (his second contempt civil penalty was already received from subsidiary of DAF).
Contingent rights, post-sale	Residual contingent rights tied to milestones from a company that was sold Pre-Petition – direct and indirect interests through managed fund(s).
Highland CLO Funding, Ltd. ("HCLOF")	Majority-owned by HCMLP or Claimant Trust (directly or indirectly) but controlled by two independent Guernsey-based directors – investments of this entity are predominantly subordinated notes of Acis-managed CLOs, whose remaining value is predominantly cash. Remaining distributions are held up due to litigation against Acis-related entities and HCLOF by Mr. Dondero's entities.
NHT.U (TSXV exchange)	Direct asset. Hospitality REIT managed by a subsidiary of NexPoint Advisors, LP.
NHT Holdco LLC	Hospitality REIT managed by a subsidiary of NexPoint Advisors, LP. Indirect interests held through a Delaware LLC created for the sole purpose of holding shares of the hospitality REIT. Mr. Dondero is the manager of the entity. HCMLP has demanded shares as provided in the LLC agreement but has yet to receive delivery of the shares.
Note from Hunter Mountain Investment Trust	Direct asset. Defaulted note. Subject to Litigation Trustee collecting.
Note from The Dugaboy Investment Trust ("Dugaboy")	Direct asset. Term note. Last receipt in December 2022. Next scheduled receipt in December 2023.
Notes from Mr. Dondero + his affiliates (except Dugaboy)	Direct asset. Demand notes and accelerated term notes, plus costs of collection. Subject to Claimant Trust collection litigation.
Post-sale escrows	Residual escrow(s) remaining related to the monetizations of two private companies. Direct and indirect interests through managed fund(s).
Private companies	Direct and indirect interests in two privately held companies.
Private equity fund interests	Direct or indirect interests in two private funds that make Oil & Gas and Healthcare-related investments, respectively.
SE Multifamily Holdings LLC	Direct asset. Membership interests. Subject to Claimant Trust litigation.
Other misc.	Future revenue streams; receivables; misc. investments; cash (unrestricted and reserved); litigation claims of the Litigation Trust; indemnification claims.

[10] Listing is not comprehensive, but rather is intended to capture potentially significant asset categories that have yet to be fully monetized. Listing includes assets of the Claimant Trust, HCMLP (re-organized), Litigation Trust, and HCMLP GP LLC. Descriptions herein indicate whether the asset is directly owned by one or more of these entities and/or whether the asset is indirectly beneficially owned.

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

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

HUNTER MOUNTAIN INVESTMENT TRUST'S SUPPLEMENT TO EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING

Hunter Mountain Investment Trust ("HMIT"), Movant, files this Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding (the "Supplement"), both in its individual capacity and on behalf of the Reorganized Debtor, Highland Capital Management, L.P. ("HCM" or "Reorganized Debtor") and the Highland Claimant Trust

("Claimant Trust") (the Reorganized Debtor and Claimant Trust are collectively the "Highland Parties") against Muck Holdings, LLC ("Muck"), Jessup Holdings LLC ("Jessup"), Farallon Capital Management, L.L.C. ("Farallon"), Stonehill Capital Management LLC ("Stonehill"), James P. Seery, Jr. ("Seery") and John Doe Defendants Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendants Nos. 11-10 are collectively "Respondents" or "Proposed Defendants").[1]

OVERVIEW

1. This Supplement is not intended to amend or supersede the Emergency Motion for Leave to File Verified Adversary Proceeding (Doc. 3699) ("Emergency Motion for Leave"); rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action.

2. Recent events make clear that (1) Seery, as Trustee, has a conflict of interest which precludes him from bringing the proposed claims; and (2) Seery, as Trustee, has abandoned and actively attempted to avoid a merits-based determination of the proposed claims. These facts are set forth in a revised Adversary Complaint attached to this Supplement as Exhibit 1-A.

[1] All capitalized terms not otherwise defined herein have the meaning ascribed to them in HMIT's Emergency Motion for Leave.

3. The revised Adversary Complaint also re-postures the Highland Parties as nominal defendants to address any procedural issues. Although the Court may authorize HMIT to bring the derivative action on behalf of the Highland Parties as Plaintiffs, their joinder as nominal defendants is also a recognized pleading practice. This recharacterization ***does not change*** the substance of the derivative action, which remains for the benefit of the Highland Parties.

4. Additional factual allegations are set forth in the revised Adversary Complaint. These additional allegations do not alter the substantive nature of the proposed causes of actions.

5. This Supplement is timely. The hearing will be scheduled no earlier than May 18, 2023. As such, the Respondents have at least 25 days from the filing of this Supplement before any scheduled hearing.

RECENT EVENTS RELATED TO EMERGENCY MOTION FOR LEAVE

6. On March 28, 2023, HMIT filed its Emergency Motion for Leave, seeking leave to represent the Highland Parties in a derivative capacity and seeking damages and other relief on behalf of itself, individually, as well as on behalf of the Reorganized Debtor and the Claimant Trust.

7. HMIT also filed its Application for Expedited Hearing on its Emergency Motion for Leave ("Application") seeking a hearing prior to April 16, 2022. In its Application, HMIT presented what it believed was good cause under Rule 9006 of the

Federal Rules of Bankruptcy Procedure to authorize a shortened time for a response and hearing.

8. On March 30, 2023, the so-called "Highland Parties," which then also included Seery (Doc. 3707), and separately, Muck, Jessup, Farallon, and Stonehill (Doc. 3704), filed their Objections to the Application. One of the arguments advanced in these Objections by counsel for the "Highland Parties" was that the Court should delay a ruling on HMIT's Application so Seery and other parties could develop a potential statute of limitations defense.

9. Regarding the proposed claims, Seery attempted to avoid the claims to protect his own self-interest ***at the expense of*** the Highland Parties and HMIT. Seery unilaterally characterized the Highland Parties as the "Highland Defendants" and claimed they were opposed to HMIT's Emergency Motion for Leave. To be clear, HMIT seeks to assert its proposed claims ***on behalf of*** the Highland Parties, ***not against*** them.

10. Because recent events clearly establish HMIT's capacity and standing to bring its derivative claims, a revised Adversary Complaint is attached hereto as **Exhibit 1-A**. In addition to new factual allegations, the revised Adversary Complaint also includes allegations regarding fraudulent concealment and the discovery rule because

these recent events make clear that the Proposed Defendants seek to fabricate a limitations argument which otherwise would not exist.

ARGUMENTS & AUTHORITIES

11. Seery has known about HMIT's proposed claims for some time, yet, as Claimant Trustee with a duty to protect the Estate, Seery has made no attempt to prosecute these claims, is possessed of a debilitating conflict of interest and, in fact, has urged this Court to weaponize the gatekeeping protocol to make certain he and the other defendants can better take advantage of a purported statute of limitations defense. *See* Motion, n. 14. (Doc. 3707, ¶¶ 6, 17). Seery has opposed the Emergency Motion for Leave to advance his personal self-interest. Aware that "[t]he Plan does not release . . . Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence," Seery is clearly seeking other means by which to insulate himself.

12. Seery's recent conduct confirms he is disqualified to bring the Proposed Claims due to his manifest conflict of interest. His recent actions are to the detriment of the Highland Parties and HMIT, making it all the more necessary for the Court to grant HMIT leave to bring the proposed claims. *See Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 252-53 (5th Cir. 1988) (granting leave to creditors' committee to bring breach of fiduciary duty claim against bankruptcy estate's officers and directors for mismanagement of the bankruptcy estate due to debtor-in-possession's incapacity to do so due to apparent conflict of interest).

13. In *Louisiana World Expedition*, the Fifth Circuit explained: "In light of our analysis, we find that the debtor-in-possession's refusal to pursue LWE's cause of action against its officers and directors for negligent management was indeed unjustified. The Committee outlined a colorable claim which, if pursued successfully, could have greatly increased the value of the estate. While the debtor-in-possession's refusal was understandable given the grave conflict of interest implications, we cannot ignore the fact that the creditors' interests in seeing the property of the estate collected were not protected. Where the interests of an estate and its creditors are impaired by the refusal of a trustee or a debtor-in-possession to initiate adversary proceedings to recover property of the estate, we must consider that refusal unjustified." *Id*. at 252.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Hunter Mountain Investment Trust respectfully requests this Court:

1. grant HMIT leave authorizing it to file the Adversary Complaint, attached as Exhibit 1-A, as an Adversary Proceeding in this United States Bankruptcy Court for the Northern District of Texas, in its own name and as a derivative action on behalf of the Debtor Highland Capital Management, L.P. and the Highland Claimant Trust, against Muck Holdings, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, Stonehill Capital Management, LLC, James P. Seery, Jr., and John Doe Defendants Nos. 1 – 10 (and against Highland Capital Management, L.P. and the Highland Claimant Trust as nominal defendants to the extent necessary); and

2. further grant HMIT all such other and further relief to which HMIT may be justly entitled.

Dated: April 23, 2023

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: */s/ Sawnie A. McEntire*

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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF CONFERENCE

On April 21, 2023, Hunter Mountain Investment Trust's counsel conferred by telephone, via email, or both with counsel for all Respondents regarding the relief requested in this filing, including John A. Morris, who purports to be representing and acting on behalf of the Reorganized Debtor and the Highland Claimant Trust, Josh Levy and Lindsay Robin on behalf of James P. Seery, and David Schulte on behalf of Muck Holdings, LLC, Jessup Holdings LLC, Stonehill Capital Management LLC, and Farallon Capital Management, L.L.C. Mr. Morris indicated it can be assumed his clients are opposed until he reviews this filed instrument. Mr. Levy and Mr. Schulte indicated that their respective clients are neither opposed nor agreed until their counsel has reviewed the contents of this filing.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

CERTIFICATE OF SERVICE

I certify that on the 23rd day of April 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

Exhibit 1-A to Emergency Motion

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

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Case No. 19-34054-sgj11**
Debtor.	§	
HUNTER MOUNTAIN INVESTMENT TRUST, INDIVIDUALLY, AND ON BEHALF OF THE DEBTOR HIGHLAND CAPITAL MANAGEMENT, L.P., AND THE HIGHLAND CLAIMANT TRUST	§	**Adversary Proceeding No. _____**
PLAINTIFFS,	§	

v.	§
	§
MUCK HOLDINGS, LLC, JESSUP HOLDINGS LLC, FARALLON CAPITAL MANAGEMENT, L.L.C., STONEHILL CAPITAL MANAGEMENT LLC, JAMES P. SEERY, JR., JOHN DOE DEFENDANTS NOS. 1-10,	§
	§
DEFENDANTS	§
	§
and	§
	§
HIGHLAND CAPITAL MANAGEMENT, L.P., AND THE HIGHLAND CLAIMANT TRUST,	§
	§
NOMINAL DEFENDANTS.	§

VERIFIED ADVERSARY COMPLAINT

Hunter Mountain Investment Trust ("HMIT") files this Verified Adversary Complaint ("Complaint") in its individual capacity and as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management, L.P. ("HCM" or "Reorganized Debtor"), and the Highland Claimant Trust ("Claimant Trust") (the Claimant Trust and Reorganized Debtor are collectively referred to as "Nominal Defendants"), (collectively the Nominal Defendants and HMIT, in its various capacities, are referred to as "Plaintiffs") complaining of Muck Holdings, LLC ("Muck"), Jessup Holdings LLC ("Jessup"), Farallon Capital Management, L.L.C. ("Farallon"), Stonehill

Capital Management LLC ("Stonehill"), James P. Seery, Jr., ("Seery"), and John Doe Defendants Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery, and the John Doe Defendants Nos. 1-10 are collectively "Defendants"), and would show:

I. Introduction

A. *Preliminary Statement*

1. HMIT brings this Verified Adversary Complaint ("Complaint") on behalf of itself, individually, and as a derivative action benefitting and on behalf of the Reorganized Debtor and the Highland Claimant Trust, as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").[1] This action has become necessary because of the wrongful conduct of the Defendants, involving self-dealing, breaches of fiduciary duties, and aiding and abetting those breaches of duty.

2. This lawsuit focuses on a scheme involving Seery and his close business associates and allies. Seery held command of the Debtor, Highland Capital Management, L.P., in a complex bankruptcy. The Debtor's business involved hundreds of millions of dollars in assets that were held by the Debtor's Estate in a variety of entities, managed funds, and other investments. It was not and still is not a narrowly focused business with

[1] Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate. Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed in HMIT's Emergency Motion for Leave (Doc. 3699).

the type of uncomplicated, transparent assets that almost any potential claim purchaser could meaningfully evaluate. Seery effectively enjoyed despotic control over how these assets were managed, sold, or monetized, and many of his activities were never subject to judicial scrutiny or accountability. Indeed, Seery failed to cause the Debtor to make the financial disclosures required in such proceedings.

3. Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants ("Defendant Purchasers"), with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims. The Defendant Purchasers paid well over a hundred million dollars to buy these claims without the kind of independent due diligence that would be reasonably expected, if not required, because of their own fiduciary duties to their investors. It made no sense for the Defendant Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk. The counter-intuitive nature of the purchases at issue compels the conclusion that the Defendant Purchasers acted on inside information and Seery's secret assurances of great profits. Indeed, based upon publicly available information, their investment was projected to yield a small return with virtually no margin for error. But as they must have anticipated, they have already recovered the purchase price ***and*** returns far greater than what was publicly projected,

with the expectation of significant more profits if not deterred. These facts fit classic insider trading activity.

4. As part of the scheme, the Defendant Purchasers obtained a position to approve Seery's ongoing compensation - to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT. Initially, Seery's compensation package was composed of a flat monthly pay. Now, however, it is also performance based. This allows the Defendant Purchasers to satisfy the *quid pro quo* at the heart of the scheme. Seery would help the Defendant Purchasers make large profits and they would help enrich Seery with big pay days.

5. To further advance their scheme, the Defendants have participated in the pursuit of contrived litigation against HMIT and others, through litigation sponsored by the Litigation Sub Trust. Upon information and belief, Seery also directed or authorized legal counsel for the Reorganized Debtor and Claimant Trust (who, tellingly, also represented Seery) to oppose HMIT's efforts to obtain leave to file this adversary proceeding. These obstructive tactics are self-serving, with the apparent goals of attempting to: (a) exhaust financial resources in an effort to delay recognition of the vesting of HMIT's interests under the terms of the CTA; (b) reduce the value of HMIT's interests under the CTA; and (c) deprive HMIT of claims relating to breaches of fiduciary duty stemming from the scheme. The Defendants and Litigation Sub Trust have used millions of dollars of assets to finance these obstructive tactics. Every dollar misapplied

by Defendants to further this scheme is damaging to HMIT, the Reorganized Debtor, and the Claimant Trust.

6. This derivative action is brought pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and B. R. Rule 7023.1. At the time of the transactions at issue, HMIT held a 99.5% limited partnership in Highland Capital Management, L.P., the Original Debtor. This derivative action is not a collusive effort to confer jurisdiction that the Court would otherwise lack.

7. This action also is brought subject to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) (Doc. 1943, Exhibit A) (the "Plan") Article IX.F. Consistent with such provisions, this action is ***not*** brought ***against*** the nominal party Reorganized Debtor or the nominal party Claimant Trust, but as a derivative action on their behalf and for their benefit.[2] Additionally, HMIT is a person or party aggrieved by the conduct of the Defendants and, therefore, HMIT has constitutional standing to bring this action.

B. ***The Claimant Trust, the Derivative Action, the Futility of Further Demand, Abandonment of Claims, and Conflict of Interest***

8. Upon the Effective Date, the assets of the bankruptcy estate of Highland Capital Management, L.P., as the Original Debtor (the "Debtor's Estate"), were transferred to the Highland Claimant Trust under the terms of the Plan, and as defined

[2] To the extent the Reorganized Debtor and the Claimant Trust are considered necessary parties for the purposes of this derivative action, they have been included as nominal defendants.

in the CTA. These assets include all "causes of action" that the Debtor's Estate had before the Effective Date including, without limitation, the causes of action set forth in this Adversary Proceeding. Furthermore, the Claimant Trust is also managed by the Claimant Trustee, Seery, who has self-servingly and falsely characterized the claims as allegedly meritless (Doc. 3707).

9. Seery, as Claimant Trustee, breached his fiduciary duties and abandoned the current claims in this Adversary Complaint by objecting to HMIT's Emergency Motion for Leave to File this Adversary Complaint (Doc. 3699) and Application for Emergency Hearing (Doc. 3700). Seery is attempting to weaponize the gatekeeping protocols in the Plan to arm himself and others with potential defense arguments to avoid a merits-based determination of the claims against Seery and the other Defendants. In other words, Seery is attempting to protect his own self-interest ***at the expense of*** the Reorganized Debtor, the Claimant Trust, and HMIT. Therefore, any demand upon Seery to prosecute the claims in this Complaint would be futile because Seery is a Defendant.

10. Similarly, the Oversight Board exercises supervision over Seery as Claimant Trustee, and Muck and Jessup are controlling members of the Oversight Board. Any demand upon Muck and Jessup to prosecute these claims would be equally futile because they also filed objections to the expedited prosecution of these or similar claims (falsely characterizing the claims as an alleged waste of judicial resources) (Doc. 3704). Upon

information and belief, Muck and Jessup are also controlled by Farallon and Stonehill, further evidencing the futility of any such demand on Muck and Jessup.

11. All conditions precedent to bringing this derivative action have otherwise been satisfied or waived, and the Defendants are estopped from asserting otherwise. HMIT is an appropriate party to bring this action on behalf of the Reorganized Debtor and the Claimant Trust.

C. ***Nature of the Action***

12. The insider trading scheme was implemented after confirmation of the Plan, but before the Effective Date. Prior to the Effective Date, HMIT owned 99.5% of the limited partnership interest in the Debtor and was the beneficiary of fiduciary duties owed by Seery.

13. Seery, the Original Debtor's Chief Executive Officer ("CEO") and former Chief Restructuring Officer ("CRO"), wrongfully facilitated and promoted the insider trades by providing material non-public information to Defendant Purchasers concerning the value of assets in the Debtor's Estate. Farallon and Stonehill, who were otherwise strangers to the bankruptcy proceedings, wrongfully purchased the claims through their special purpose entities, Muck and Jessup, based upon this inside information. Seery's dealings with the Defendant Purchasers were not arm's-length, but instead were covert, undisclosed, and collusive.

14. Motivated by corporate greed, the Defendant Purchasers aided and abetted or, alternatively, knowingly participated in Seery's wrongful conduct. They also breached their own duties as "non-statutory insiders." Because of their long-standing, historical relationships with Seery, and their use of material non-public information, the Defendant Purchasers obtained effective control over various affairs of the Debtor's bankruptcy, including compensation awards to Seery. As such, they became non-statutory insiders.

15. HMIT was formerly the largest equity holder in the Debtor, holding a 99.5% limited partnership interest. As part of the scheme, Seery is attempting to delay recognition of HMIT's vesting of its interests under the CTA. As an allowed Class 10 Class B/C Limited Partnership Interest and Contingent Trust Interest holder, HMIT's right to recover from the Claimant Trust would be junior to the Reorganized Debtor's unsecured creditors, now known as Claimant Trust Beneficiaries. However, the vast majority of the approved unsecured claims superior to HMIT's interest are those claims wrongfully acquired by the insider trading and the breaches of duty at issue in this proceeding.

16. By wrongfully soliciting, fostering, and encouraging the wrongful insider trades at issue, Seery violated his fiduciary duties to the Debtor's Estate and to HMIT, including specifically his duty of loyalty and his duty to avoid self-dealing. But Seery was motivated out of self-interest to garner personal benefit by strategically "planting" his allies onto the Oversight Board which, as a consequence, does not act as an independent

board in the exercise of its responsibilities. Rather, imbued with powers to effectively control Seery's compensation, the Defendant Purchasers are postured to reward Seery for their illicit dealings and, upon information and belief, they have done so.

17. By receiving and acting upon material non-public information concerning the financial condition of the Debtor's Estate, Stonehill and Farallon, acting individually and through special purpose shell entities they created and controlled, directly or indirectly, are also liable for aiding and abetting Seery's breaches of fiduciary duties. By acquiring the claims at issue, Muck and Jessup, the shell entities created and controlled by Stonehill and Farallon, also became non-statutory insiders, and also aided and abetted Seery's breaches of fiduciary duties.

18. Because of their willful, inequitable misconduct and bad faith, Plaintiffs ask the Court to require the Defendant Purchasers to disgorge their ill-gotten profits and equitably disallow the remaining unpaid balances on the following allowed claims: Claim Nos. 23, 72, 81, 143, 147, 149, 150, 153, 154, 190, and 191 (the "Claims") currently held by Muck and Jessup. Because the Defendant Purchasers received substantial distributions from the Claimant Trust in connection with these Claims, HMIT seeks to disgorge from Defendant Purchasers all such distributions above the Defendant Purchasers' initial investment—compelling restitution of such funds to the Claimant Trust for the benefit of other creditors and former equity pursuant to the waterfall established under the Plan and the CTA. Plaintiffs also ask the Court to require Seery to

disgorge all compensation from the date his collusive conduct first occurred. Alternatively, Plaintiffs seek damages on behalf of the Claimant Trust in an amount equal to all compensation paid to Seery from the onset of his collusive conduct to present.

19. By this Complaint, Plaintiffs do not seek to challenge the Plan or the Order confirming the Plan.

II. Jurisdiction and Venue

20. Pursuant to *Misc. Order No. 33 Order of Reference of Bankruptcy Cases, U.S. District Court for N.D. Texas* (the "Order of Reference"), this Complaint is commenced in the Bankruptcy Court because it is "related to a case under Title 11." The filing of this Complaint is expressly subject to and without waiver of Plaintiffs' rights and ability to seek withdrawal of the reference pursuant to 28 U.S.C. § 157(d), FED. R. BANKR. P. 5011, and Local Bankruptcy Rule 5011-1. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein and nothing in this Complaint, nor Plaintiffs' compliance with the Order of Reference, shall be deemed a waiver of this right. To the extent necessary, Plaintiffs seek to withdraw the reference at this time.

21. This Court has jurisdiction of the subject matter and the parties as a "related to" proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and Articles IX.F., and XI. of the Plan.

22. Pursuant to Rule 7008 of the Bankruptcy Rules, Plaintiffs do **not** consent to the entry of final orders or judgment by the bankruptcy court.

23. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 1408 and 1409, and Articles IX.F., and XI. of the Plan.

III. Parties

24. HMIT is a Delaware statutory trust that was the largest equity holder in the Original Debtor, holding a 99.5% limited partnership interest. HMIT is also the holder of a Contingent Trust Interest in the Claimant Trust, but HMIT should be treated as a vested Claimant Trust Beneficiary due to Defendants' wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein. Due to Seery's abandonment of the claims asserted herein, and his patent conflict of interest, HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.

25. The Reorganized Debtor, Highland Capital Management, L.P., is a limited partnership formed under the laws of Delaware and may be served at its principal place of business address of 100 Crescent Court, Suite 1850, Dallas, Texas 75201. The Reorganized Debtor is a nominal defendant only, and a primary beneficiary of this lawsuit.

26. Pursuant to the Plan and the CTA, the Claimant Trust holds the assets of the Reorganized Debtor, including the causes of action that accrued to the Debtor's Estate before the Effective Date. The Claimant Trust is established in accordance with the Delaware Statutory Trust Act and Treasury Regulatory Section 301.7701-4(d). The

Claimant Trust may be served at its Principal Office where the Claimant Trust is maintained: 100 Crescent Court, Suite 1850, Dallas, Texas 75201. The Claimant Trust is a nominal defendant only, and a primary beneficiary of this lawsuit.

27. Muck is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Muck has made prior appearances in the Debtor's bankruptcy.

28. Jessup is a Delaware limited liability company, with its principal office in New York, and may be served with process via its registered agent, Vcorp Services, LLC, at 108 W. 13th Street Suite 100, Wilmington, Delaware 19801. Jessup has made prior appearances in the Debtor's bankruptcy.

29. Farallon is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Farallon is a capital management company that manages hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Farallon because Farallon's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts requirements and due process considerations.

30. Stonehill is a Delaware limited liability company, with its principal office in New York, and may be served with process at 320 Park Avenue, 26th Floor, New York, NY 10022. Stonehill is a capital management company managing hedge funds and is a

registered investment advisor. This Court has personal jurisdiction over Stonehill because Stonehill's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts and all due process considerations.

31. Seery is an individual citizen and resident of the State of New York. Mr. Seery may be served with process at 100 Crescent Court, Suite 1805, Dallas, Texas 75201.

32. HMIT separately seeks recovery against John Doe Defendants Nos. 1-10. Farallon has actively concealed the precise legal relationship between itself and Muck. Stonehill also actively concealed the precise legal relationship between itself and Jessup. What is known, however, is that Farallon and Stonehill created these special purpose shell entities, on the eve of the insider trades to acquire ownership of the Claims and to otherwise control the affairs of the Oversight Board. Both Farallon and Stonehill rejected inquiries concerning the exact nature of their relationship with these special purpose entities. Accordingly, HMIT seeks equitable tolling of any statute of limitations concerning claims against unknown business entities or individuals that Farallon and Stonehill may have created and inserted as intermediate corporate layers in the transactions at issue. John Doe Defendants Nos. 1-10 are currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.

IV. Facts

A. *Procedural Background*

33. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court,[3] which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.[4]

34. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee of the Highland Crusader Fund ("Redeemer"); Acis Capital Management, L.P., and Acis Capital Management GP, LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS")—and an unpaid vendor, Meta-E Discovery.

35. Following the venue transfer to Texas on December 27, 2019, the Debtor filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the*

[3] Doc. 3. Unless otherwise referenced, all documents referencing "Doc." refer to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

[4] Doc. 1.

Ordinary Course ("Governance Motion").[5] On January 9, 2020, the Court signed a Governance Order granting the Governance Motion.[6]

36. As part of the Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditors Committee—was appointed to the Board of Directors (the "Board") of Strand, the Original Debtor's general partner. The Board then appointed Seery as the Chief Executive Officer in place of the previous CEO, Mr. James Dondero, as well as the CRO.[7] Seery currently serves as Trustee of the Claimant Trust under the terms of the CTA and as CEO of the Reorganized Debtor.[8]

B. *The Targeted Claims*

37. In his capacity as the Original Debtor's CEO and CRO, Seery negotiated and obtained court approval for settlements with several large unsecured creditors including Redeemer, Acis, UBS, and another major unsecured creditor, HarbourVest (Redeemer, Acis, UBS, and HarbourVest are collectively the "Settling Parties"), resulting in the following allowed Claims:

Creditor	**Class 8**	**Class 9**
Redeemer	$137 mm	$0 mm
Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm

[5] Doc. 281.

[6] Doc. 339.

[7] Doc. 854, Order Approving Retention of Seery as CEO/CRO.

[8] *See* Doc. 1943, Order Approving Plan, p. 34.

UBS	$65 mm	$60 mm
(Totals)	$270 mm	$95 mm

As reflected in these settlements, HarbourVest and UBS owned Class 9 claims in addition to Class 8 claims. Class 9 claims were subordinated to Class 8 claims in the distribution waterfall in the Plan.

38. Each of the Settling Parties sold their Claims to Farallon and Stonehill (or affiliated special purpose entities) shortly after receiving court approval of the settlements. One of these "trades" took place within just a few weeks before the Plan's Effective Date.[9] All of these trades occurred when HMIT held its 99.5% equity stake in the Debtor. Notice of these trades was first provided in filings in the records of the Original Debtor's bankruptcy proceedings, as follows: Claim No. 23 (Doc. 2211, 2212, and 2215), Claim Nos. 190 and 191 (Doc. 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (Doc. 2263), Claim No. 81 (Doc. 2262), Claim No. 72 (Doc. 2261).

39. Farallon and Stonehill, both of whom are registered investment advisors that manage hedge funds, are acutely aware that they owe fiduciary duties to their investors. Yet, they both invested many tens of millions of dollars, directly or indirectly, to acquire the Claims in the absence of any publicly available information that could provide any economic justification for their investment decisions.

[9] Docs. 2697, 2698.

40. Upon information and belief, Stonehill and Farallon collectively invested an estimated amount exceeding $160 million to acquire the Claims with a face amount of $365 million, but a far lower publicly projected value at the time, and they did so in the absence of any meaningful due diligence. Indeed, Farallon has admitted that it conducted no due diligence but relied on Seery's profit guarantees.

41. The Defendant Purchasers' investments become even more suspicious because the Debtor, through Seery, provided the ***only*** publicly available information which, at the time, included pessimistic projections that certain of the Claims would receive partial payment, while the subordinated class of Claims would receive no distribution:

a. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the projected value of HCM's assets dropped over $200 million from $566 million to $364 million.[10]

b. HCM's Disclosure Statement publicly projected payment of only 71.32% of Class 8 claims, and 0% of claims in Classes 9-11.[11]

   - This meant that the Defendant Purchasers invested more than an estimated $160 million in the Claims when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par value on their Class 8 Claims. At best, the Defendant Purchasers would receive a marginal return that could not justify the risk.

[10] Doc. 1473, Disclosure Statement, p. 18.

[11] Doc. 1875-1, Plan Supplement, Ex. A, p. 4.

c. Despite the stark decline in the value of the Debtor's Estate and in the midst of substantial reductions in the percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively, again, the "Claims") in April and August of 2021 in the combined estimated amount of at least $163 million.[12]

42. Upon information and belief, Stonehill, through its special purpose entity, Jessup, acquired the Redeemer Committee's claim for $78 million.[13] Upon information and belief, the $23 million Acis claim[14] was sold to Farallon/Muck for $8 million. Upon information and belief, HarbourVest sold its combined $80 million in claims to Farallon/Muck for $27 million. UBS sold its combined $125 million in claims for $50 million to both Stonehill/Jessup and Farallon/Muck. In the instance of UBS, ***the total projected payout was only $35 million***. Indeed, as part of these transactions, both Farallon and Stonehill purchased Class 9 Claims at a time when the Debtor's Estate projected a zero dollar return on all such Claims.

43. Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment, Farallon, upon information and belief, indicated it would refuse to sell its stake in the Claims for a 40%

[12] Notices of Transfers [Docs. 2212, 2215, 2261, 2262, 2263, 2215, 2297, 2298]. The Acis claim was transferred on April 16, 2021; the Redeemer, Crusader, and HarbourVest claims were transferred on April 30, 2021; and the UBS claims were transferred on August 9, 2021.

[13] July 6, 2021, letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

[14] Seery/HCM have argued that $10 million of the Acis claim is self-funding.

premium or more above its investment—claiming that its stake was far more valuable based upon Seery's assurances. This is a striking admission that Farallon had and used material non-public inside information.

C. *Material Non-Public Information is Disclosed to Seery's Affiliates at Stonehill and Farallon*

44. One of many significant assets of the Debtor's Estate was the Debtor's direct and indirect holdings in Metro-Goldwyn-Mayer Studios, Inc. ("MGM").[15]

45. On December 17, 2020, James Dondero sent an email to Seery. At that time, Dondero was a member of the MGM board, and the email contained material non-public information regarding Amazon and Apple's interest in acquiring MGM.[16] Of course, any such sale would significantly enhance the value of the Debtor's Estate.

46. Upon receipt of this material non-public information, Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in the Bankruptcy Court seeking approval of the Debtor's settlement with HarbourVest - resulting in a transfer to the Debtor's Estate of HarbourVest's interest in a Debtor-advised fund, Highland CLO Funding, Ltd. ("HCLOF"), which held substantial MGM debt and equity.[17] Conspicuously, the HCLOF interest was not transferred to the Debtor's Estate for distribution as part of the bankruptcy estate, but rather to "to an entity to be

[15] *See* Doc. 2229, p. 6.

[16] *See* Adversary Case No. 20-3190-sgj11, Doc. 150-1, p. 1674.

[17] Doc. 1625. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM.

designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements.[18]

47. Upon information and belief, aware that the Debtor's stake in MGM afforded a new profit center, Seery saw this and the value of other assets as an opportunity to increase his own compensation. He then enlisted the help of Stonehill and Farallon to extract further value from the Debtor's Estate. This *quid pro quo* included, at a minimum, an understanding that Seery would be well-compensated for the scheme once the Defendant Purchasers, acting through Muck and Jessup, obtained control of the Oversight Board following the Effective Date.

48. Until 2009, Seery was the Global Head of Fixed Income Loans at Lehman Brothers[19] where, upon information and belief, he conducted substantial business with Farallon. Following the collapse of Lehman Brothers, Seery continued to work with, and indeed represented Farallon as its legal counsel. Seery ultimately joined a hedge fund, River Birch Capital,[20] which, along with Stonehill, served on the creditors committee in other bankruptcy proceedings. GCM Grovesnor, a global asset management firm, held four seats on the Redeemer Committee[21] and, upon information and belief, is a significant investor in Stonehill and Farallon. Grovesnor, through Redeemer, played a large part in

[18] Doc. 1625.

[19] Seery Resume [Doc. 281-2].

[20] *Id*.

[21] Declaration of John A. Morris [Doc. 1090], Ex. 1, pp. 15.

appointing Seery as a director of Strand Advisors. Seery was beholden to Grovesnor from the outset, and, by extension, Grovesnor's affiliates Stonehill and Farallon.

49. As successful capital management firms, with advisory and fiduciary duties to their own clients, Stonehill and Farallon typically engage in robust due diligence before making significant investments. Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* significant profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.

50. Seery shared with Stonehill and Farallon material *non-public* information concerning certain assets of the Debtor's Estate. Otherwise, it makes no sense that the Defendant Purchasers would have made their multi-million-dollar investments under these circumstances.

51. Fed. R. Bank. P. 2015.3(a) requires "periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or debtor . . . in which the estate holds a substantial of controlling interest." The purpose of Rule 2015.3 is "to assist parties in interest taking steps to ensure that the debtor's interest in any entity . . . is used for payment of allowed claims against the debtor." Pub. L. 109-8 § 419(b) (2005). However, these reports were not provided, thereby giving the Defendant Purchasers the added benefit of being insiders having access to information that was not made publicly available to other stakeholders.

52. When questioned at the confirmation hearing regarding the failure to file these reports, Seery explained that he "did not get it done and it fell through the cracks" (Doc. 1905 at 49:18-21). Yet even now—two years later—complete reports identifying the asset values and profitability of each non-publicly traded entity (in which the Reorganized Debtor has or held interests) have not been disclosed. Upon information and belief, this includes several entities including, but not limited to: Highland Select Equity Fund; Highland Select Entity Fund, L.P., Highland Restoration Capital Partners, L.P.; Highland CLO Funding, Ltd.; Highland Multi Strategy Credit Fund, L.P.; Highland Capital Management Korea Limited; Cornerstone Healthcare; Trussway Industries, LLC; Trussway Holdings, LLC; OmniMax International; Targa; CCS Medical; JHT Holdings; and other entities.[22] Upon information and belief, the Reorganized Debtors' interest in some of these entities has been sold,[23] but the sales prices have not been fully disclosed (except as reported by certain purchasers in public SEC filings).

53. Rather than providing the required reports, only generic information was provided (by way of examples, as "private security," "private portfolio company," and "private equity fund") with a total reported value of $224,267,777.21.[24] Entities were sold

[22] *See* Doc. 2229, pp. 6-7; January 29, 2021, Deposition of James P. Seery, Jr., 28:7-29:25.

[23] *See, e.g.*, https://trussway.com/2022/09/01/trussway-joins-builders-firstsource/ (sale of Trussway); https://www.prnewswire.com/news-releases/scionhealth-completes-acquisition-of-cornerstone-healthcare-group-301728275.html (sale of Cornerstone; unsurprisingly, Sidley Austin served as counsel for the purchaser); https://www.prnewswire.com/news-releases/svpglobal-completes-acquisition-of-omnimax-international-301151365.html (sale of OmniMax).

[24] Doc. 247 at p. 12.

without Court approval and without any 2015.3 report filings. In sum, upon information and belief, the Debtor had and the Reorganized Debtor has significant assets in a variety of funds and investments that were not publicly disclosed.

54. By wrongfully exploiting such material non-public insider information, Stonehill and Farallon—acting through Muck and Jessup—became the largest holders of unsecured claims in the Debtor's Estate with resulting control over the Oversight Board and a front row seat to the reorganization and distribution of Claimant Trust Assets. As such, they were given control (through Muck and Jessup) to approve discretionary bonuses and success fees for Seery from these assets.

D. ***Distributions***

55. The MGM sale was ultimately consummated in March 2022 for $6.1 billion in cash, plus $2.5 billion in debt that Amazon assumed and immediately repaid.[25]

56. HCM and its wholly owned subsidiary, HCMLP Investments, own 50.612% of HCLOF, which, as of December 31, 2021, had a total net asset value of $76.1 million, a substantial amount of which has been monetized.[26] Upon information and belief, HCM's interest in HCLOF was worth at least $38 million.

[25] Amazon Q1 2022 10-Q.

[26] Doc. 3584-1, pp. 2, 9, 13, 21.

57. On or about September 1, 2022, upon information and belief, Trussway was sold to Builder's First Source for $274.8 million, net of cash.[27] Prior to the sale, upon information and belief, Highland Select Equity Fund, L.P. ("HSEF") owned "approximately 90%" of Trussway, and HCM owned 100% of HSEF.[28] Upon information and belief, HCM should have netted at least $247.8 million from the sale of Trussway.

58. According to HCM's most recent Form ADV, filed on March 31, 2023, HCM currently owns at least $127.5 million in Highland Multi Strategy Credit Fund, L.P., Highland Restoration Capital Partners Master, LP, Highland Restoration Capital Partners, L.P., and Stonebridge-Highland Healthcare Private Equity Fund (collectively, the "Private Funds"), in addition to interests in HCM's client-CLOs and other non-regulatory assets.

59. Accordingly, and upon information and belief, and based solely on the Reorganized Debtor's interests in Trussway, HCLOF, and the Private Funds, the Reorganized Debtor has over **$413.3 million** in estimated liquid or monetizable assets—which alone exceeds the $397.5 million in general unsecured claims, and indeed *all* allowed claims[29]—notwithstanding the value realized from the Reorganized Debtor's

[27] BLDR Q3 2022 10-Q.

[28] Doc. 2229, n. 8.

[29] Doc. 3757, p. 7.

interests in MGM, Trussway, Cornerstone, and other substantial assets that may remain to be monetized.[30]

60. By the end of Q3 2021, just over $6 million of the projected $205 million available for general unsecured claimants had been disbursed.[31] No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—$45 million more than was *ever* projected.[32] Thus, Stonehill (Jessup) and Farallon (Muck) already have received returns that far eclipse their estimated investments. They also stand to make further significant profits on their investments, including distributions on their Class 9 Claims.

61. As of March 31, 2023, the Claimant Trust has distributed $270,205,592.[33] On a *pro rata* basis, this means that other creditors (excluding Muck and Jessup) have received an estimated $24,332,361.07 in distributions against the stated value of their allowed claims.[34] That leaves an estimated unpaid balance of only $2,456,596.93.

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[30] See Doc 3662, p. 4 (projecting assets worth at least $663.72 million as of June 1, 2022); *see also* supra, n. 22-23.

[31] Doc. 3200.

[32] Doc. 3582.

[33] Doc. 3757, p. 7.

[34] Stonehill (Jessup) and Farallon (Muck)'s Claims collectively represent an estimated 91% of all Class 8 claims. The other creditors therefore represent an estimated 9%. Upon information and belief, Stonehill (Jessup) and Farallon (Muck) hold 100% of the Class 9 claims.

V. Causes of Action

A. *Count I (against Seery): Breach of Fiduciary Duties*

62. The allegations in paragraphs 1-61 above are incorporated herein as if set forth verbatim.

63. As CEO and CRO of a debtor-in-possession, Seery owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate, including, without limitation, the duty of loyalty and the duty to avoid conflicts of interests, but Seery willfully and knowingly engaged in conduct which conflicted with his fiduciary duties—and he did so out of financial self-interest.

64. By disclosing material non-public information to Stonehill and Farallon in an effort to gain personal financial benefit, Seery willfully and knowingly breached his fiduciary duties. By failing to disclose the inside trades at issue, including his role in those inside trades, Seery willfully and knowingly breached his fiduciary duties.

65. As a result of his willful misconduct, Seery was unfairly advantaged by receiving assurances of additional undisclosed compensation and bonuses from the assets of the Debtor's Estate and from the Claimant Trust Assets—to the detriment of other stakeholders, including HMIT.

66. Seery's misconduct constituted fraud, willful misconduct, and bad faith.

67. Plaintiffs sue for all actual damages caused by Seery's misconduct. Seery should also be held liable for disgorgement of all compensation he received since his

collusion with the Defendant Purchasers first began. Alternatively, Seery should be disgorged of all compensation paid to him under the terms of the CTA since the Effective Date of the Plan in August 2021.

68. Alternatively, Plaintiffs are entitled to recover damages measured by all ill-gotten compensation which Seery has received since his first collusive conduct began.

B. ***Count II (against all Defendant Purchasers and the John Doe Defendants): Knowing Participation in Breach of Fiduciary Duties***

69. The allegations in paragraphs 1-68 above are incorporated herein as if set forth verbatim.

70. Seery owed fiduciary duties to HMIT and the Debtor's Estate, and he willfully and knowingly breached these duties. Without limiting the foregoing, Seery owed a duty of loyalty which he willfully and knowingly breached. Seery also owed a duty to not engage in self-interested conduct to the detriment of the Debtor's Estate and innocent stakeholders. Seery willfully and knowingly breached this duty.

71. The Defendant Purchasers were aware of Seery's fiduciary duties and, by purchasing the Claims and approving bonuses and other compensation for Seery, Stonehill (acting through Jessup) and Farallon (acting through Muck), willfully and knowingly participated in Seery's breaches or, alternatively, willfully aided and abetted such breaches.

72. Stonehill (Jessup) and Farallon (Muck) unfairly received many millions of dollars in profits and fees—and stand to earn even more profits and fees.

73. The Defendant Purchasers' misconduct constitutes bad faith, fraud, and willful misconduct.

74. Plaintiffs sue for all actual damages caused by the Defendant Purchasers' wrongful conduct. The Defendant Purchasers are also liable for disgorgement of all profits Defendant Purchasers earned from their participation in the purchase of the Claims. Plaintiffs also seek damages against the Defendant Purchasers for excessive compensation paid to Seery as part of the covert *quid pro quo* with Seery.

C. *Count III (against all Defendants): Conspiracy*

75. The allegations in paragraphs 1-74 above are incorporated herein as if incorporated herein verbatim.

76. Defendants conspired with each other to unlawfully breach fiduciary duties to HMIT and the Debtor's Estate, and to conceal their wrongful trades.

77. Seery's disclosure of material non-public information to the Defendant Purchasers and Seery's receipt of additional compensation as a *quid pro quo* for the insider-claims trading are overt acts in furtherance of the conspiracy.

78. HMIT's interest in the residual of the Claimant Trust Assets has been adversely impacted by this conspiracy. The assets have been depleted by virtue of Seery's compensation awards.

79. All Defendants' misconduct constitutes bad faith, fraud, and willful misconduct.

80. Plaintiffs sue for all actual damages caused by the Defendants' wrongful conduct. All Defendants should be disgorged of their ill-gotten profits and gains.

81. Plaintiffs sue all Defendants for damages associated with Seery's compensation awards pursuant to the scheme.

D. ***Count IV (against Muck and Jessup): Equitable Disallowance***

82. The allegations in paragraphs 1-81 above are incorporated herein as if set forth verbatim.

83. By purchasing the Claims based on material non-public information, Stonehill and Farallon, through Jessup and Muck, engaged in inequitable conduct.

84. By earning significant profits on their purchases, Muck and Jessup have been unfairly advantaged.

85. Muck and Jessup's misconduct constitutes bad faith, fraud, and willful misconduct.

86. Given this willful, inequitable, and bad faith conduct, equitable disallowance of Muck's and Jessup's Claims to the extent over and above their initial investment is appropriate and consistent with the purposes of the Bankruptcy Code.

87. Pleading in the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is

necessary and appropriate to remedy Muck's and Jessup's wrongful, willful, and bad faith conduct, and is also consistent with the purposes of the Bankruptcy Code.

E. ***Count V (against all Defendants): Unjust Enrichment and Constructive Trust***

88. The allegations in paragraphs 1-87 above are incorporated herein as if set forth verbatim.

89. By acquiring the Claims using material non-public information, Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity.

90. All Defendants' misconduct constitutes bad faith, fraud, and willful misconduct.

91. Allowing Stonehill, Farallon, Muck, and Jessup to retain their ill-gotten benefits would be unconscionable.

92. Stonehill, Farallon, Muck, and Jessup should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment.

93. The proceeds Stonehill, Farallon, Muck, and Jessup have received from the Claimant Trust are traceable and identifiable. A constructive trust should be imposed on such proceeds to secure the restitution of these improperly retained benefits.

94. Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restitute all compensation he has received from the

outset of his collusive activities. Alternatively, he should be required to disgorge and restitute all compensation received since the Effective Date. A constructive trust should be imposed on all such funds to secure the restitution of these improperly obtained benefits.

F. ***Count VI (Against all Defendants): Declaratory Relief***

95. The allegations in paragraphs 1-94 above are incorporated herein as if set forth verbatim.

96. HMIT seeks declaratory relief. The Court has jurisdiction to provide declaratory judgment relief when there is an actual controversy that has arisen and exists relating to the rights and duties of the parties.

97. Bankruptcy Rule 7001 provides that "a proceeding to recover property or money," may include declaratory relief. *See*, Fed. R. Bank P. 7001(1), (9).

98. The CTA is governed under Delaware law. The CTA incorporates and is subject to Delaware trust law.

99. HMIT seeks a declaration, as follows:

a. There is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement;

b. HMIT has standing to bring an action even if its interest is considered contingent and because it is an aggrieved party and enjoys constitutional standing;

c. HMIT has capacity and standing to bring these claims derivatively because Seery, as Trustee, has abandoned the claims;

d. HMIT has capacity and standing to bring these claims derivatively because Seery, as Trustee, and Muck and Jessup have a conflict of interest;

e. HMIT is an appropriate party to bring the derivative action on behalf of the Reorganized Debtor and the Claimant Trust;

f. Alternatively, HMIT's status as a Claimant Trust Beneficiary is fully vested now;

g. HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement by Muck and Jessup, and by extension, Farallon and Stonehill, of their ill-gotten profits;

h. HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments. Alternatively, HMIT's status as a Claimant Trust Beneficiary is fully vested when all of Muck's and Jessup's trust interests are subordinated to the trust interests held by HMIT;

i. Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of Seery's conduct, bad faith, willful misconduct, and unclean hands;

j. Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct, and unclean hands; and

k. All Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct, and unclean hands.

VI. Punitive Damages

100. The allegations in paragraphs 1-99 above are incorporated herein as if set forth verbatim.

101. The Defendants' misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others. An award of punitive damages as allowed by law is appropriate and necessary under the facts of this case.

VII. Conditions Precedent

102. All conditions precedent to recovery herein have been satisfied or have been waived.

VIII. Fraudulent Concealment and Equitable Tolling

103. The allegations in paragraphs 1-102 above are incorporated herein as if set forth verbatim.

104. The illicit conduct of Defendants as described herein was concealed from Plaintiffs, who did not know, and could not reasonably discover, either that conduct of Defendants or the injury that would result. Specifically, as described herein, Defendants conspired to trade on material nonpublic information in breach of duties to the Original Debtors and Debtor's Estate. Defendants used deception to conceal the causes of action alleged herein and continue to refuse formal and informal discovery requests of facts, information, and documents related to the Plaintiffs' claims. HMIT reasonably relied on

Defendants' deceptive representations, and otherwise exercised all diligence in this matter, yet the causes of action were inherently undiscoverable.

105. Defendants continued to engage in the illicit practices described herein, and consequently, Plaintiffs were continually injured by Defendants' illicit conduct. Therefore, Plaintiffs submit that each instance that one or more of the Defendants engaged in the conduct complained of in this action constitutes part of a continuing violation and operates to toll the statutes of limitation applicable to all causes of action in this matter.

106. Defendants' conduct was and is, by its nature, self-concealing. In addition, Defendants, through a series of affirmative acts and omissions, suppressed the dissemination of truthful information regarding their illicit conduct, and have actively foreclosed Plaintiffs from learning of their illicit, unfair, self-dealing, disloyal, and/or deceptive acts.

107. To the extent that one or more of the Defendants asserts a defense of statute of limitations or other time-based defense, they are estopped from doing so and Plaintiffs affirmatively pleads fraudulent concealment should toll or otherwise prevent application of any alleged statute of limitation defense. Plaintiffs further affirmatively plead equitable estoppel.

108. By reason of the foregoing, Plaintiffs' claims on behalf of itself and on behalf of the Highland Parties are timely under any applicable statute of limitations, pursuant

to the discovery rule, pursuant to the equitable tolling doctrine, pursuant to fraudulent concealment, and/or pursuant to any other applicable tolling doctrine.

IX. Jury Demand

109. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein involving triable issues of fact.

X. Prayer

WHEREFORE, Plaintiffs pray for judgment against each of the Defendants as follows:

1. That all Defendants be cited to appear and answer herein;

2. Finding that HMIT has capacity and standing to bring these claims individually and derivatively because Seery, as trustee, has abandoned the claims and has a conflict of interest;

3. Finding that HMIT has capacity and standing to bring these claims individually and derivatively because Muck and Jessup have a conflict of interest;

4. Awarding equitable disallowance of the Claims over and above Muck's and Jessup's original investments (or, alternatively, subordination of their Claimant Trust Interests, as addressed herein);

5. Awarding disgorgement of all funds distributed from the Claimant Trust to the Defendant Purchasers and any John Doe Defendants over and above their original investments;

6. Awarding disgorgement of all compensation paid to Seery from the date of his first collusive activities, or alternatively, from the Effective Date;

7. Imposition of a constructive trust as to all ill-gotten profits received by the Defendant Purchasers and any John Doe Defendants;

8. Awarding declaratory relief as described herein;

9. Awarding actual damages as described herein;

10. Awarding exemplary damages as described herein;

11. Awarding pre-judgment and post-judgment interest at the highest rate allowed by law; and

12. Awarding all such other and further relief to which Plaintiffs may be justly entitled.

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: /s/

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

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

HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERARY PROCEEDING

Hunter Mountain Investment Trust ("HMIT"), Movant, files this Emergency Motion for Leave to File Verified Adversary Proceeding ("Motion"), both in its individual capacity and as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management, L.P. ("HCM" or "Reorganized Debtor") and the Highland Claimant Trust against Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup"), Farallon

Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), James P. Seery, Jr. ("Seery") and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendant Nos. 11-10 are collectively "Respondents" or "Proposed Defendants").

I. Good Cause for Expedited Relief

1. HMIT seeks leave to file an Adversary Proceeding pursuant to the Court's "gatekeeping" orders, as well as the injunction and exculpation provisions in the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (Doc. 1943), as modified (the "Plan").[1] A copy of HMIT's proposed Verified Adversary Proceeding ("Adversary Proceeding") is attached as Exhibit 1 to this Motion. This Motion is separately supported by objective evidence derived from historical filings in the bankruptcy proceedings.[2] WITHDRAWN

WITHDRAWN

WITHDRAWN .

[1] The exculpation provisions were recently modified by a decision of the Fifth Circuit. Such provisions apply to James P. Seery, Jr. only and are limited to his capacity as an Independent Director. *Matter of Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 438 (5th Cir. 2022).

[2] Unless otherwise referenced, all references to evidence involving documents filed in the Debtor's bankruptcy proceedings (Case No. 19-34054-sgj11 (Bankr. N.D. Tex.)) are cited by "Doc." reference. HMIT asks the Court to take judicial notice of the documents identified by such entries.

WITHDRAWN

WITHDRAWN

2. The expedited nature of this Motion is permitted under Fed. R. Bank P. 9006 (c)(1), which authorizes a shortened time for a response and hearing for good cause. For the reasons set forth herein, HMIT has shown good cause and requests that the Court schedule a hearing on this Motion on three (3) days' notice, and that any responses be filed no later than twenty-four hours before the scheduled hearing.[4]

3. HMIT brings this Motion on behalf of itself and derivatively on behalf of the Reorganized Debtor and the Highland Claimant Trust ("Claimant Trust"), as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").[5] Upon the Plan's Effective Date, Highland Capital Management, LP, as the original Debtor ("Original Debtor"), transferred its assets, including its causes of action, to the Claimant Trust, including the causes of action set forth in the attached Adversary Proceeding. The attached Adversary Proceeding alleges claims which are substantially more than "colorable" based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud,[6] including a fraud upon innocent stakeholders, as well as breaches of fiduciary

[4] Expedited action on this Motion is also warranted to hasten Movants' opportunity to file suit, pursue prompt relevant discovery, and reduce the threat of loss of potentially key evidence. Upon information and belief, Seery has been deleting text messages on his personal iPhone via a rolling, automatic deletion setting.

[5] Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate.

[6] Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the

duties and knowing participation in (or aiding and abetting) breaches of fiduciary duty. The Adversary Proceeding also alleges that the Proposed Defendants did so collectively by falsely representing the value of the Debtor's Estate, failing to timely disclose accurate values of the Debtor's Estate, and trading on material non-public information regarding such values. HMIT also alleges that the Proposed Defendants colluded to manipulate the Debtor's Estate—providing Seery the opportunity to plant close business allies into positions of control to approve Seery's compensation demands following the Effective Date.

4. Emergency relief is needed because of a fast-approaching date (April 16, 2023) that one or more of the Proposed Defendants *may* argue, depending upon choice of law, constitutes the expiration of the statute of limitations concerning some of the common law claims available to the Claimant Trust, as well as to HMIT.[7] Although HMIT offered to enter tolling agreements from each of the Proposed Defendants, they either rejected HMIT's requests or have not confirmed their willingness to do so, thereby necessitating the expedited nature of this Motion.[8] Because this Motion is subject to the

proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement.

[7] The first insider trade at issue involved the sale and transfer of Claim 23 in the amount of $23 million held by ACMLD Claim, LLC to Muck on April 16, 2021 (Doc. 2215).

[8] HMIT has been diligent in its efforts to investigate the claims described in this Motion, including the filing of a Tex. R. Civ. P. Rule 202 proceeding in January 2023, which was not adjudicated until recently in March 2023. Those proceeding were conducted in the 191st Judicial District Court in Dallas County, Texas, under Cause DC-23-01004. [redacted] Farallon and Stonehill defended those proceedings by aggressively arguing, in significant part, that the discovery issues were better undertaken in this Court.[8] The Rule 202 Petition was recently dismissed (**necessarily without prejudice**)

Court's "gatekeeping" orders and the injunction provisions of the Plan, emergency leave is required.

5. This Motion will come as no surprise to the Proposed Defendants. Farallon and Stonehill were involved in recent pre-suit discovery proceedings under Rule 202 of the Texas Rules of Civil Procedure relating to the same insider trading allegations described in this Motion. Muck and Jessup, special purpose entities created and ostensibly controlled by Farallon and Stonehill, respectively, also were provided notice of these Rule 202 Proceedings in February 2023. Like this Motion, the Rule 202 Proceedings focused on Muck, Jessup, Farallon, and Stonehill and their wrongful purchase of large, allowed claims in the Original Debtor's bankruptcy based upon material non-public information. Seery is also aware of these insider trading allegations because of a prior written demand.

6. In light of the Proposed Defendants' apparent refusal to enter tolling agreements, or their failure to fully affirm their willingness to do so, HMIT is forced to seek emergency relief from this Court to proceed timely with the proposed Adversary Proceeding before the expiration of any *arguable* limitations period.[10]

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on March 8, 2023, ostensibly based on such arguments. However, it is telling that Stonehill and Farallon admitted during the Rule 202 Proceedings to their "affiliation" with Muck and Jessup and that they bought the Claims through these entities.

WITHDRAWN

[10] HMIT respectfully requests that this Motion be addressed and decided on an expedited basis that provides HMIT sufficient time to bring the proposed action timely. In the event the Court denies the requested relief, HMIT respectfully requests prompt notice of the Court's ruling to allow HMIT sufficient

II. Summary of Claims

7. HMIT requests leave to commence the proposed Adversary Proceeding, attached as Exhibit 1, seeking redress for breaches of duty owed to HMIT, breaches of duties owed to the Original Debtor's Estate, aiding and abetting breaches of those fiduciary duties, conspiracy, unjust enrichment, and fraud. HMIT also alleges several viable remedies, including (i) imposition of a constructive trust; (ii) equitable disallowance of any unpaid balance on the claims at issue;[11] (iii) disgorgement of ill-gotten profits (received by Farallon, Stonehill, Muck and Jessup) to be restituted to the Claimant Trust; (iv) disgorgement of ill-gotten compensation (received by Seery) to be restituted to the Claimant Trust; (v) declaratory judgment relief; (vi) actual damages; and (vii) punitive damages.

III. Standing

8. **HMIT.** Prior to the Plan's Effective Date, HMIT was the largest equity holder in the Original Debtor and held a 99.5% limited partnership interest. HMIT currently holds a Class 10 Claim as a contingent Claimant Trust Interest under the CTA

time to seek, if necessary, appropriate relief in the United States District Court. In order to have a fair opportunity to seek such relief on a timely basis and protect HMIT's rights and the rights of the Reorganized Debtor, HMIT will need to seek such relief on or before Wednesday, April 5, 2023, if this Motion has not been resolved.

[11] In the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

(Doc. 3521-5). Upon information and belief, all conditions precedent to HMIT's certification as a vested Claimant Trust Beneficiary would be readily satisfied but for the Defendants' wrongful actions and conduct described in this Motion and the attached Adversary Proceeding.

9. **Reorganized Debtor.** Although HMIT has standing as a former Class B/C Equity Holder, Class 10 claimant, and now contingent Claimant Trust Interest under the CTA,[12] this Motion separately seeks authorization to prosecute the Adversary Proceeding derivatively on behalf of the Reorganized Debtor and Claimant Trust. All conditions precedent to bringing a derivative action are satisfied.

10. Fed. R. Civ. P. 23.1 provides the procedural steps for "derivative actions," and applies to this proceeding pursuant to Fed. R. Bank. P. 7023.1. Applying Rule 7023.1, the Proposed Defendants' wrongful conduct occurred, and the improper trades consummated, in the spring and early summer of 2021, before the Effective Date in August 2021. During this period, HMIT was the 99.5% Class B/C limited partner in the original Debtor. As such, HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time, and the other Proposed Defendants aided and abetted breaches of those duties at that time.

[12] The last transaction at issue involved Claim 190, the Notice for which was filed on August 9, 2021. (Doc. 2698).

11. The derivative nature of this proceeding is also appropriate because any demand on Seery would be futile.[13] Seery is the Claimant Trustee under the terms of the CTA. Furthermore, any demand on the Oversight Board to prosecute these claims would be equally futile because Muck and Jessup, both of whom are Proposed Defendants, dominate the Oversight Board.[14]

12. The "classic example" of a proper derivative action is when a debtor-in-possession is "unable or unwilling to fulfill its obligations" to prosecute an otherwise colorable claim where a conflict of interest exists. *Cooper*, 405 B.R. at 815 (quoting *Louisiana World*, 858 F.2d at 252). Here, because HMIT's proposed Adversary Proceeding includes claims against Seery, Muck, and Jessup, the conflicts of interest are undeniable. Seery is the Trustee of the Claimant Trust Assets under the CTA, and he also serves as the "Estate Representative."[15] Muck and Jessup, as successors to Acis, the Redeemer Committee and UBS, effectively control the Oversight Board, with the responsibility to "monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance . . . ."[16]

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[13] Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed herein, since the Litigation Trustee serves at the direction of the Oversight Board.

[14] *See* Footnote 8, *infra.* In December 2021, several stakeholders made a demand on the Debtor through James Seery, in his capacity as Trustee to the Claimant Trust, to pursue claims related to these insider trades.

[15] *See* Claimant Trust Agreement (Doc. 3521-5), Sec. 3.11.

[16] *Id.* at Sec. 4.2(a) and (b).

13. Creditors' committees frequently bring suit on behalf of bankruptcy estates. Yet, it is clear that any ***appropriately designated party*** also may bring derivative claims. *In re Reserve Prod., Inc.*, 232 B.R. 899, 902 (Bankr. E.D. Tex. 1999) (citations omitted); *see In re Enron Corp.*, 319 B.R. 128, 131 (Bankr. S.D. Tex. 2004). As this Court has held in *In Re Cooper*:

> In Chapter 11 [cases], there is both a textual basis . . . and, frequently, a non-textual, equitable rationale for granting a creditor or creditors committee derivative standing to pursue estate actions (*i.e.*, the equitable rationale coming into play when the debtor-in-possession has a conflict of interest in pursuing an action, such as in the situation of an insider-defendant).

In re Cooper, 405 B.R. 801, 803 (Bankr. N.D. Tex. 2009) (also noting that "[c]onflicts of interest are, of course, frequently encountered in Chapter 11, where the metaphor of the 'fox guarding the hen house' is often apropos"); *see also In re McConnell*, 122 B.R. 41, 43-44 (Bankr. S.D. Tex. 1989) ("[I]ndividual creditors can also act in lieu of the trustee or debtor-in-possession . . . ."). Here, the Proposed Defendants are the "*foxes guarding the hen house*," and their conflicts of interest abound.[17] Proceeding in a derivative capacity is necessary, if not critical.

[17] *See Citicorp Venture Cap., Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 987 (3d Cir. 1998) (settlement noteholders purchased Debtors' securities with "the benefit of non-public information acquired as a fiduciary" for the "dual purpose of making a profit and influenc[ing] the reorganization in [their] own self-interest."), *see also, Wolf v. Weinstein*, 372 U.S. 633, 642, 83 S.Ct. 969, 10 L.Ed.2d 33 (1963) ("Access to inside information or strategic position in a corporate reorganization renders the temptation to profit by trading in the Debtor's stock particularly pernicious.").

14. The proposed Adversary Proceeding also sets forth claims that readily satisfy the Court's threshold standards requiring "colorable" claims, as well as the requirements for a derivative action. This Motion, which is supported by objective evidence contained in historical filings in the bankruptcy proceedings, also incorporates sworn declarations. At the very least, this additional evidence satisfies the Court's threshold requirements of willful misconduct and fraud set forth in the "gatekeeping" orders, as well as the injunction and exculpation provisions in the Plan.[18] This evidence also supports well-pleaded allegations exempted from the scope of the releases included in the Plan.

15. HMIT is an appropriate party to bring this action on behalf of the Reorganized Debtor and the Claimant Trust. If successful, the Adversary Proceeding will likely recover well over $100 million for the Claimant Trust, thereby enabling the Reorganized Debtor and Claimant Trust to pay off any remaining innocent creditors and make significant distributions to HMIT as a vested Claimant Trust Beneficiary.

16. As of December 31, 2022, the Claimant Trust had distributed 64.2% of the total $397,485,568 par value of all Class 8 and Class 9 unsecured creditor claims. The

[18] HMIT recognizes that it is an "Enjoined Party" under the Plan. The Plan requires a showing, *inter alia*, of bad faith, willful misconduct, or fraud against a "Protected Party." Seery is a "Protected Party" and an "Exculpated Party" in his capacity as an Independent Director. Muck and Jessup *may* be "Protected Parties" as members of the Oversight Committee, but they were not "protected" when they purchased the Claims before the Effective Date. While it is HMIT's position that Farallon and Stonehill do not qualify as "Protected Parties," they are included in this Motion in the interest of judicial economy.

Claims acquired by Muck and Jessup have an allowed par value of $365,000,000. Based on these numbers, the innocent unsecured creditors hold approximately $32 million in allowed claims.[19]

17. As of December 31, 2022, the Claimant Trust has distributed $255,201,228.[20] On a *pro rata* basis, that means that innocent creditors have received approximately $22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately $9,627,000.

18. Muck and Jessup already have received approximately $232.8 million on their Claims. Assuming and original investment of approximately $160 million, this represents over $72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary. The benefits to the Reorganized Debtor, the Claimant Trust and innocent stakeholders are undeniable.[21]

19. Seery and the Oversight Board should be estopped from challenging HMIT's status to bring this derivative action on behalf of the Claimant Trust. Seery, Muck and Jessup have committed fraud, acted in bad faith and have unclean hands, and they should not be allowed to undermine the proposed Adversary Proceeding - which seeks

[19] Doc. 3653.

[20] *Id.*

[21] Further, under the present circumstances and time constraints, this Motion should be granted to avoid the prospect of the loss of some of HMIT's and the Claimant Trust's claims and denial of due process.

to rectify significant wrongdoing. To hold otherwise would allow Seery, Muck, Jessup, Stonehill, and Farallon the opportunity to not just "guard the hen house," but to also open the door and take what they want.[22] HMIT seeks a declaratory judgment of its rights, accordingly.

IV. The Proposed Defendants

20. Seery acted in several capacities during relevant times. He served as the Debtor's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"). He also served as member of the Debtor's Independent Board.[23] He currently serves as Claimant Trustee under the CTA and remains the CEO of the Reorganized Debtor.

21. There is no doubt Seery owed the Original Debtor's Estate, as well as equity, fiduciary duties, including the duty of loyalty and the duty to avoid conflicts of interest. *See In re Xtreme Power Inc.*, 563 B.R. 614, 632-33 (Bankr. W.D. Tex. 2016) (detailing fiduciary duties owed by corporate officers and directors under Delaware law); *Louisiana World*, 858 F.2d at 245-46 (detailing duties owed by debtors-in-possession).[24]

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[22] "The doctrine of 'unclean hands' provides that "a litigant who engages in reprehensible conduct in relation to the matter in controversy ... forfeits his right to have the court hear his claim, regardless of its merit. [T]he purpose of the clean hands maxim is to protect the court against misuse by one who, because of his conduct, has forfeited his right to have the court consider his claims, regardless of their merit. As such it is not a matter of defense to be applied on behalf of a litigant; rather it is a rule of public policy." *Portnoy v. Cryo-Cell Int'l, Inc.*, 940 A.2d 43, 80–81 (Del. Ch. 2008) (citations omitted) (internal quotations omitted for clarity).

[23] Seery is the beneficiary of the Court's "gatekeeping" orders and is an "exculpated" party in his capacity as an Independent Director. He is also a "Protected Party."

[24] The Internal Affairs Doctrine dictates choice of law. Here, the Debtor, Highland Capital Management, was organized under the law of Delaware. As much, Seery's fiduciary duties and claims involving breaches of those duties will be governed by Delaware law.

22. Farallon and Stonehill are capital management companies which manage hedge funds; they are also Seery's close business allies with a long history of business ventures and close affiliation. Although they were strangers to the Original Debtor's bankruptcy on the petition date, and were not original creditors, they became entangled in this bankruptcy at Seery's invitation and encouragement—and then knowingly participated in the wrongful insider trades at issue. By doing so, Seery was able to plant friendly allies onto the Oversight Board to rubber stamp compensation demands. The proposed Adversary Proceeding alleges that Farallon and Stonehill bargained to receive handsome pay days in exchange.

23. Muck and Jessup are special purpose entities, admittedly created by Farallon and Stonehill on the eve of the alleged insider trades, and they were used as vehicles to assume ownership of the purchased claims.[WITHDRAWN] The record is clear that Muck and Jessup ***did not exist*** before confirmation of the Plan in February 2021.[26] Now, however, Muck and Jessup serve on the Oversight Board with immense powers under the CTA.[27] When they purchased the claims at issue, Muck and Jessup were ***not*** acting in their official capacities on the Oversight Committee and, therefore, they were not "Protected Persons" under the Plan.

[WITHDRAWN]

[26] [WITHDRAWN] Muck was created on March 9, 2021 before the Effective Date. Jessup was created on April 8, 2021, before the Effective Date.

[27] *See* Doc. 3521-5, Sec. 4(a) and 4(b).

24. By trading on the alleged material non-public information, Farallon, Stonehill, Muck, and Jessup became non-statutory "insiders" with duties owed directly to HMIT at a time when HMIT was the largest equity holder.[28] *See S.E.C. v. Cuban*, 620 F.3d 551, 554 (5th Cir. 2010) ("The corporate insider is under a duty to 'disclose or abstain'—he must tell the shareholders of his knowledge and intention to trade or abstain from trading altogether."). In this context, there is no credible doubt that Farallon's and Stonehill's dealings with Seery were ***not*** arms-length. Again, Farallon and Stonehill were Seery's past business partners and close allies.[29] By virtue of the insider trades at issue, Farallon and Stonehill acquired control (acting through Muck and Jessup) over the Original Debtor and Reorganized Debtor through Seery's compensation agreement and awards, as well as supervisory powers over the Claimant Trust. This makes Farallon and Stonehill paradigm non-statutory insiders.

25. HMIT also seeks recovery against John Doe Defendant Nos. 1 through 10.[30] It is clear Farallon and Stonehill refuse to disclose the precise details of their legal

[28] Because of their "insider" status, this Court should closely scrutinize the transactions at issue.

[29] Farallon and Stonehill are two capital management firms (similar to HCM) with whom Seery has had substantial business relationships. Also, Seery previously served as legal counsel to Farallon. Seery also has a long-standing relationship with Stonehill. GCM Grosvenor, a global asset management firm, held four seats on the Redeemer Committee (an original member of the Unsecured Creditors Committee in HCM's bankruptcy). Upon information and belief, GCM Grosvenor is a significant investor in Stonehill and Farallon. GCM Grosvenor, through Redeemer, also played a large part in appointing Seery as a director of Strand Advisors and approved his appointment as HCM's CEO and CRO.

[30] Farallon and Stonehill consummated their trades concealing their actual involvement through Muck and Jessup as shell companies. Farallon's and Stonehill's identities were not discovered until much later after the fact.

relationships with Muck and Jessup. They resisted such discovery in the prior Rule 202 Proceedings in state district court.[WITHDRAWN] They also refused to disclose such details in response to a prior inquiry to their counsel.[WITHDRAWN] Furthermore, the corporate filings of both Muck and Farallon conspicuously omit the identity of their respective members or managing members.[WITHDRAWN] Accordingly, HMIT intends to prosecute claims against John Doe Defendant Nos. 1 -- 10 seeking equitable tolling pending further discovery whether Farallon and Stonehill inserted intermediate corporate layers between themselves and the special purpose entities (Muck and Jessup) they created. *See In re ATP Oil & Gas Corp.*, No. 12-36187, 2017 WL 2123867, *4 (Bankr. S.D. Tex. May 16, 2017) (lsgur .J.); *see also In re IFS Fin. Corp.* No. 02-39553, 2010 WL 4614293, *3 (Bankr. S.D. Tex. No. 2, 2010) ("The identity of the party concealing the fraud is immaterial, the critical factor is whether any of the parties involved concealed property of the estate." "In either case, the trustee must demonstrate that despite exercising diligence, he could not have discovered the identity of the [unnamed] defendants prior to the expiration of the limitations period.") *ATP Oil*, 2017 WL 2123867 at *4. That burden is easily satisfied here.

[WITHDRAWN]
[WITHDRAWN]
[WITHDRAWN]

V. Background

26. As part of this Court's Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditor's Committee—was appointed to the Board of Directors (the "Board") of Strand Advisors, Inc., ("Strand Advisors"), the Original Debtor's general partner. Following approval of the Governance Order, the Board then appointed Seery as the Original Debtor's CEO and CRO. [34] Following the Effective Date of the Plan, Seery now serves as Trustee of the Claimant Trust (the Reorganized Debtor's sole post-reorganization limited partner), and continues to serve as the Reorganized Debtor's CEO. [35]

27. Imbued with his powers as CEO and CRO, Seery negotiated and obtained bankruptcy court approval of several settlements prior to the Effective Date, resulting in the following approximate allowed claims (hereinafter "Claims"):[36]

Creditor	**Class 8**	**Class 9**
Redeemer	$137 mm	$0 mm
Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm
UBS	$65 mm	$60 mm
(Totals)	$270 mm	$95 mm

[34] Doc. 854, Order Approving Retention of Seery as CEO/CRO.

[35] *See* Doc. 1943, Order Approving Plan, p. 34.

[36] Orders Approving Settlements [Doc. 1273, Doc. 1302, Doc. 1788, Doc. 2389].

Each of the settling parties curiously sold their Claims to Farallon or Stonehill (or their affiliated special purpose entities) shortly after they obtained court approval of their settlements. One of these "trades" occurred within just a few weeks before the Effective Date. Farallon and Stonehill coordinated and controlled the purchase of these Claims through Muck and Jessup, and they admitted in open court that Muck and Jessup were created to allow their purchase of the Claims.[WITHDRAWN]

28. HMIT alleges that Seery filed (or caused to be filed) deflated, misleading projections regarding the value of the Debtor's Estate,[38] while inducing unsecured creditors to discount and sell their Claims to Farallon and Stonehill. But as reflected in the attached declarations, it is now known that Seery provided material, non-public information to Farallon. The circumstantial evidence is also clear that both Farallon and Stonehill had access to and used this non-public information in connection with their purchase decisions.

29. Farallon and Stonehill are registered investment advisors who have their own fiduciary duties to their investors, and they are acutely aware of what these duties entail. Yet, upon information and belief, they collectively invested over $160 million dollars to purchase the Claims in the absence of any publicly available information that

[WITHDRAWN]

[38] The pessimistic projections were issued as part of the Plan Analysis on February 2, 2021. [Doc. 1875-1]. The Debtor projected 0% return on Class 9 claims and only 71.32% return on Class 8 Claims.

could rationally justify such investments. These "trades" become even more suspect because, at the time of confirmation, the Plan provided pessimistic projections advising stakeholders that the Claim holders would never receive full satisfaction:

- From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the valuation of HCM's assets dropped over $200 million from $566 million to $328.3 million.[39]
- HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11;[40]
    - This meant that Farallon and Stonehill invested more than $103 million in Claims ***when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims***.
- In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% *to 54%*;[41]

30. In the third financial quarter of 2021, just over $6 million of the projected $205 million available to satisfy general unsecured creditors was disbursed.[42] No additional distributions were made to the unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—**$45 million more than was *ever* projected**.[43]

[39] Doc. 1473, Disclosure Statement, p. 18.

[40] Doc. 1875-1, Plan Supplement, p. 4.

[41] Doc 2949.

[42] Doc 3200.

[43] Doc 3582.

31. According to Highland Capital's Motion for Exit Financing,[44] and a recent motion filed by Dugaboy Investment Trust,[45] there remain ***substantial*** assets to be monetized for the benefit of the Reorganized Debtor's creditors. Thus, upon information and belief, Stonehill and Farallon, stand to realize significant profits on their wrongful investments. In turn, Stonehill and Farallon will garner (and already have garnered) substantial fees – both base fees and performance fees – as the result of their acquiring and/or managing the Claims. Upon information and belief, HMIT also alleges that Seery has received excessive compensation and bonuses approved by Farallon (Muck) and Stonehill (Jessup) as members of the Oversight Board.

32. WITHDRAWN

- Farallon admitted it conducted no due diligence and relied upon Seery in making its multi-million-dollar investment decisions at issue.[WD]
- Farallon admitted it was unwilling to sell its stake in these Claims at any price because Seery assured Farallon that the Claims were tremendously valuable.[WD]
- Farallon bragged about the value of its investment referencing non-public information regarding Amazon, Inc.'s ("Amazon") interest in acquiring Metro-Goldwyn-Mayer Studios Inc. ("MGM").[WD]

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[44] Doc 2229.

[45] Doc 3382.

- WITHDRAWN
- WITHDRAWN
- WITHDRAWN

- Farallon was unwilling to sell its stake in the newly acquired Claims even though publicly available information suggested that Farallon would lose millions of dollars on its investment.[49]

Farallon can offer ***no credible explanation*** to explain its significant investment, and its refusal to sell at any price, ***except*** Farallon's access to material non-public information. In essence, Seery became the guarantor of Farallon's significant investment. Farallon admitted as much in its statements to James Dondero.

33. The same holds true for Stonehill. Given the negative, publicly available information, Stonehill's multi-million-dollar investments make no rational sense unless Stonehill had access to material non-public information.

34. Fed. R. Bank. P. 2015.3 requires debtors to "file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." However, no public reports required by Rule 2015.3 were filed. Seery testified they simply "fell through the cracks." [50]

35. Six days prior to the filing of the motion seeking approval of the HarbourVest Settlement, Seery acquired material non-public information regarding Amazon's interest in acquiring MGM.[51] Upon receipt of this material non-public

[49] *See* WITHDRAWN Doc. 1875-1.

[50] Doc. 1905, February 3, 2021, Hearing Transcript, 49:5-21.

[51] *See* Adversary No. 20-3190-sgj11, Doc. 150-1.

information, MGM should have been placed on the Original Debtor's "restricted list," but Seery continued to move forward with deals that involved MGM stock and notes.[52] Because the Original Debtor additionally held direct interests in MGM,[53] the value of MGM was of paramount importance to the value of the estate.

36. Armed with this and other insider information, Farallon—through Muck—proceeded to invest in the Claims and, acting through Muck, acceded to a powerful position on the Oversight Board to oversee future distributions to Muck and itself. It is no coincidence Seery invited his business allies into these bankruptcy proceedings with promises of great profits. Seery's allies now oversee his compensation.[54]

37. The Court also should be aware that the Texas States Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation

[52] As part of the HarbourVest Settlement, Seery negotiated the purchase of HarbourVest's interest in HCLOF for approximately $22.5 million as part of the transaction. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM. The HCLOF interest was not to be transferred to the Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements. Doc. 1625, p. 9, n. 5. Doc. 1625.

[53] *See* Doc. 2229, Motion for Exit Financing.

[54] Amazon closed on its acquisition of MGM in March 2022, but the evidence strongly suggests that agreements for the trades already had been reached - while announcement of the trades occurred strategically after the MGM news became public. Now, as a result of their wrongful conduct, Stonehill and Farallon profited significantly on their investments, and they stand to gain substantially more profits.

underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely "colorable."

VI. Argument

A. HMIT has asserted Colorable Claims against Seery, Stonehill, Farallon, Muck, and Jessup.

38. Unlike the terms "Enjoined Party," "Protected Party," or "Exculpated Party," the Plan does not define what constitutes a "colorable" claim. Nor does the Bankruptcy Code define the term. However, relevant authorities suggest that a Rule 12(b)(6) standard is an appropriate analogue.

39. The Fifth Circuit has held that a "colorable" claim standard is met if a [movant], such as HMIT, has asserted claims for relief that, on appropriate proof, would allow a recovery. A court need not and should not conduct an evidentiary hearing but must ensure that the claims do not lack any merit whatsoever. *Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 248 (5th Cir. 1988). Stated differently, the Court need not be satisfied there is an evidentiary basis for the asserted claims but instead should allow the claims if they ***appear*** to have ***some*** merit.

40. Other federal appellate courts have reached similar conclusions. For example, the Eighth Circuit holds that "creditors' claims are colorable if they would survive a motion to dismiss." *In re Racing Services, Inc.*, 540 F.3d 892, 900 (8th Cir. 2008); *accord In Re Foster*, 516 B.R. 537, 542 (B.A.P. 8th Cir. 2014), aff'd 602 Fed. Appx. 356 (8th Cir. 2015) (*per curiam*). The Sixth Circuit has adopted a similar test requiring that the court

look ***only*** to the face of the complaint to determine if claims are colorable. *In re The Gibson Group, Inc.*, 66 F.3d 1436, 1446 (6th Cir. 1995) (emphasis added).

41. Although there is a dearth of federal court authorities in Texas, other federal courts have adopted the same standard—*i.e.*, a claim is colorable if it is "plausible" and could survive a motion to dismiss. *See In re America's Hobby Center, Inc.*, 223 B.R. 273, 282 (S.D.N.Y 1998). In addition, in the non-bankruptcy context, the District Court for the Northern District of Texas explained that "[t]he requirement of a 'colorable claim' means only that the plaintiff must have an '*arguable* claim' and not that the plaintiff must be able to succeed on that claim." *Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (Emphasis added).

42. Thus, in this instance, this Court's gatekeeping inquiry is properly limited to whether HMIT has stated a plausible claim on the face of the proposed pleadings involving "bad faith," "willful misconduct," or "fraud." Because the face of the Adversary Complaint alleges plausible facts, HMIT's Motion is properly granted. Clearly, the attached Adversary Proceeding would survive a Rule 12(b)(6) challenge. Furthermore, the supporting declarations and documentary evidence provide additional support, and the circumstantial evidence proves that Farallon and Stonehill, strangers to the bankruptcy on the petition date, would not have leaped into these proceedings without undisclosed assurances of profit.

B. Fraud

43. As set forth in the proposed Adversary Proceeding, HMIT alleges a colorable claim for fraud—both fraud by knowing misrepresentation and fraud by omission of material fact. Here, these allegations of fraud are appropriately governed by Texas law under appropriate choice of law principals.[55]

44. Seery had a duty to not provide material inside information to his business allies. But, he did so. At the latest, Seery became aware of the potential sale of MGM in December 2020 when he received an email from Jim Dondero. WITHDRAWN Thus, Seery knew at that time that this potential sale would likely yield significant value to the Original Debtor's Estate. Yet, the financial disclosures associated with the Plan's confirmation, which were provided only a month later, presented an entirely different outlook for both Class 8 and Class 9 unsecured creditors.[57] Seery knew at that time that these pessimistic disclosures were misleading, if not inaccurate.

45. There is no credible doubt Seery intended that innocent stakeholders would rely upon the pessimistic projections set forth in the Plan Analysis. Indeed, the singular purpose of the Plan Analysis was to advise stakeholders. As such, HMIT alleges that Seery knowingly made misrepresentations with the intention that innocent stakeholders

[55] However, Delaware law is substantially similar on the elements of fraud. *See Malinals v. Kramer*, No. CIV.A. CPU 6-11002145, 2012 WL 174958, at 2 (Del. Com. PI. Jan. 5, 2012)

[57] *See* Doc. 1875-1, Plan Analysis, February 1, 2021.

would rely, and that he failed to disclose material information concerning his entanglements with Farallon and Stonehill, as well as the related negotiations that were chock full of conflicts of interest.

46. On the flip side of this conspiracy coin, Farallon and Stonehill were engaged in negotiations to acquire the Claims at discounted prices; and, they successfully did so. HMIT alleges that their success was based on knowledge that the financial disclosures associated with the Plan Analysis were significantly understated. Otherwise, it would make no financial sense for Farallon and Stonehill to do the deals at issue. Indeed, Farallon admitted that it would not sell the Claims at any price, expressing great confidence in the substantial profits it expected even in the absence of any supporting, publicly available information.[WH]

47. All of the Proposed Defendants had a duty of affirmative disclosure under these circumstances. Seery always had this duty. Muck, Jessup, Farallon, and Stonehill assumed this duty when they became non-statutory "insiders." Thus, all of the Proposed Defendants are liable for conspiring to perpetrate a fraud by omission of material facts.

48. HMIT also claims that Seery and the other Proposed Defendants failed to disclose material information concerning Seery's involvement in brokering the Claims in exchange for *quid pro quo* assurances of enhanced compensation. Seery's compensation

[WH] WITHDRAWN

should be disgorged or, alternatively, such compensation constitutes a damage recoverable by the Reorganized Debtor and Claimant Trust as assignees (or transferees) of the Original Debtor's causes of action. This compensation was the product of the alleged self-dealing, breaches of fiduciary duty, and fraud.

C. Breaches and Aiding and Abetting Breaches of Fiduciary Duties

49. It is beyond dispute Seery owed fiduciary duties to the Estate. *See Xtreme Power*, 563 B.R. at 632-33 (detailing fiduciary duties owed by corporate officers and directors under Delaware law);[59] *Louisiana World*, 858 F.2d at 245-46 (5th Cir. 1988) (detailing duties owed by debtors-in-possession). Although Seery did not buy the Claims at issue, he stood to profit from these sales because his close business allies would do his bidding after they had acceded to positions of power and control on the Oversight Board. Muck and Jessup were essentially stepping into the shoes of three of the largest unsecured creditors who were already slated to serve on the Oversight Board. Thus, by acquiring their Claims, all of the Proposed Defendants knew that Muck and Jessup would occupy these powerful oversight positions after the Effective Date.

50. Thus, the alleged conspiracy was successfully implemented before the Effective Date. Farallon and Stonehill now occupy control positions through the shell

[59] The *Xtreme* case also notes that "several Delaware courts have recognized that 'directors who are corporate employees lack independence because of their substantial interest in retaining their employment." 563 B.R. at 633-34. Because Muck and Jessup are now in control of Seery's compensation, it follows that Seery is beholden to them, and Seery's disclosure of inside information to Stonehill and Farallon confirms his conflict of interest.

entities (Muck and Jessup) overseeing large compensation packages for Seery. Of course, this control (and the opportunity to control) presented a patent conflict of interest which Seery should have avoided, but instead knowingly created, fostered, and encouraged. HMIT alleges that Seery breached his duty to avoid this conflict or otherwise disclose this conflict and Farallon and Stonehill aided and abetted this breach.

51. The Original Debtor, as an investment adviser registered with the SEC, is also required to make public disclosures on its Form ADV, the uniform registration form for investment advisers required by the SEC. These Form ADV disclosures, which were in effect at the time of the insider trades at issue, explicitly forbade "any access person from trading either personally or on behalf of others . . . on material non-public information or communicating material non-public information to others in violation of the law or duty owed to another party."[60] It now appears these representations were false when made. Seery's alleged conduct also violated, at minimum, the duties Seery owed in his various capacities with the Original Debtor under the Form ADV disclosures.

52. Although initially strangers to the original bankruptcy, by accepting and using inside information, Farallon and Stonehill became "temporary insiders" and thus owed separate duties to the Estate. *See S.E.C. v. Cuban*, 620 F.3d 551 (5th Cir. 2010) ("[E]ven

[60] *See, e.g.*, https://files.adviserinfo.sec.gov/IAPD/Content/Common/crd_iapd_Brochure.aspx?BRCHR_VRSN_ID=777026.

an individual who does not qualify as a traditional insider may become a 'temporary insider' if by entering 'into a special confidential relationship in the conduct of the business of the enterprise [they] are given access to information solely for corporate purposes." *In re Washington Mut., Inc.*, 461 B.R. 200 (Bankr. D. Del. 2011), *vacated in part*, 08-12229 MFW, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (finding that equity committee stated colorable claim for equitable disallowance against creditors who "became temporary insiders of the Debtors when the Debtors gave them confidential information and allowed them to participate in negotiations with JPMC for the shared goal of reaching a settlement that would form the basis of a consensual plan of reorganization"; vacated in part as a condition of settlement only);[61] *See also, In re Smith*, 415 B.R. 222, 232-33 (Bankr. N.D. Tex. 2009) ("[a]n insider is an entity or person with 'a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arm's length with the debtor.' 'Thus, the term "insider" is viewed to encompass two classes: (1) per se insiders as listed in the Code and (2) extra-statutory insiders that do not deal at arm's length.'" (citations omitted)). Farallon, Stonehill, Muck, and Jessup clearly fall into this latter category.

[61] Although the *Washington Mutual* case was subsequently vacated, the Court's intellectual reasoning remains valid because the vacatur was mandated by a mediated settlement, not because the court's logic was flawed or changed, and the court expressly noted that the parties' settlement was conditioned on vacatur. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, *8 (Bankr. D. Del. Feb. 24, 2012) ("grant[ing] partial vacatur . . . *in furtherance of the settlement embodied in the Plan*," and noting that "absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement." (emphasis added)).

53. Because Farallon and Stonehill (acting through Muck and Jessup) now hold the majority of the seats on the Oversight Board, they, along with Seery, exercise control of the reorganization proceedings. At no time were Farallon, Stonehill, or Seery's plans disclosed to the other creditors or equity. In fact, the only inference that can be reasonably drawn is that Farallon and Stonehill brazenly sought to conceal their involvement by establishing shell entities—Muck and Jessup—to nominally hold the Claims and create an opaque barrier to any effort to identify the "*Oz behind the curtain*." Such conduct aligns precisely with the inequitable conduct detailed in *Citicorp* and *Adelphia* (discussed below).

54. In sum, the proposed Adversary Proceeding sets forth plausible allegations that Stonehill and Farallon were aware of Seery's fiduciary duties. Indeed, as registered investment advisors, both Farallon and Stonehill were acutely aware of Seery's fiduciary obligations, including, without limitation, the duty to act in the best interests of the Original Debtor's Estate and the duty not to engage in insider trading that would benefit Seery, as an insider, and themselves, as non-statutory insiders. By accepting and then acting on material non-public information, Farallon and Stonehill (as well as Muck and Jessup) aided and abetted breaches of these fiduciary duties. By placing themselves in positions to control Seery's compensation, Farallon and Stonehill (acting through Muck and Jessup) induced, encouraged, aided and abetted Seery's self-dealing.

D. Equitable Disallowance is an Appropriate Remedy

55. HMIT also seeks equitable disallowance. Although the Fifth Circuit in *Matter of Mobile Steel Co.* generally limited the court's equitable powers to subordination rather than disallowance,[62] the Fifth Circuit **did *not* foreclose** the viability of equitable disallowance as a potential remedy. *See* 563 F.2d 692, 699 n. 10 (5th Cir. 1977). Binding U.S. Supreme Court precedent in *Pepper v. Litton* also permits bankruptcy courts to fashion disallowance remedies. 308 U.S. 295, 304-11 (1939). Bankruptcy Code § 510, which supplies the authority for equitable subordination, was "intended to codify case law, such as *Pepper v. Litton . . . and is not intended to limit the court's power in any way…. Nor does [it] preclude a bankruptcy court from completely disallowing a claim in appropriate circumstances*." *In re Adelphia Commun. Corp.*, 365 B.R. 24, 71-72 (Bankr. S.D.N.Y. 2007), *aff'd in part sub nom. Adelphia Recovery Tr. v. Bank of Am., N.A.*, 390 B.R. 64 (S.D.N.Y. 2008), *adhered to on reconsideration*, 05 CIV. 9050 (LMM), 2008 WL 1959542 (S.D.N.Y. May 5, 2008) (emphasis and omissions in original).[63]

56. The Fifth Circuit's decision in *Mobile Steel* also was premised on the notion that disallowance would not add to the quiver of defenses to fight unfairness because

[62] Equitable subordination is an inadequate remedy in this instance.

[63] In *Washington Mutual*, the Court's intellectual reasoning when imposing disallowance is instructive. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, *8 (Bankr. D. Del. Feb. 24, 2012) ("grant[ing] partial vacatur . . . *in furtherance of the settlement embodied in the Plan*," and noting that "absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement." (emphasis added)).

creditors "are fully protected by subordination" and "[i]f the misconduct directed against the bankrupt is so extreme that disallowance might appear to be warranted, then *surely* the claim is either invalid or the bankrupt possesses a clear defense against it." *Mobile Steel*, 563 F.2d at 699 n. 10 (emphasis added). Importantly, however, the factual scenarios considered in *Mobile Steel* do not exist here.

57. Here, Muck and Jessup purchased both Class 8 and Class 9 Claims, and they now effectively occupy more than 90% of the entire field of unsecured creditors in these two claimant tiers. Thus, subordination cannot effectively address the current facts where the Original Debtor's CEO and CRO conspired directly with close business allies who acquired the largest unsecured claims to the detriment of other innocent creditors and *former equity*. The reasoning in published cases from other circuits supports this conclusion. *See Adelphia*, 365 B.R. at 71-73; *Citicorp Venture Capital, Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 991 n. 7 (3d Cir. 1998).

58. The purpose of equitable subordination is to assure that the wrongdoer does not profit from bad conduct. In the typical case, subordination to other creditors will achieve this deterrence. But, it is clear that the Third Circuit's decision in *Citicorp* was structured to use subordination as just one tool in a larger tool box to make sure "at a minimum, the remedy here should deprive – [the fiduciary] of its profit on the purchase of the notes." *Id* at 991. In *Adelphia*, the Southern District of New York also used equitable

subordination as a remedy to address wrongs of non-insiders who aided and abetted breaches a fiduciary duty by the debtor's management. 365 B.R. at 32.

59. But subordination cannot adequately address the wrongful conduct at issue. This is because subordination is typically limited to instances where one creditor is subordinated to other creditors, not equity. Here, for all practical purposes, there are only a few other unsecured creditors with relatively small stakes. Therefore, subordination as a weapon of deterrence is neutered.

60. In sum, by engaging in the alleged wrongful acts, including aiding and abetting Seery's breaches of fiduciary duty, Farallon, Stonehill, Muck, and Jessup should not be rewarded. The Proposed Defendants engaged in alleged conduct which damaged the Original Debtor's estate, including improper agreements to compensate Seery under the terms of the CTA. Equitable disallowance is an appropriate remedy which, when combined with disgorgement of all ill-gotten profits, will deprive the Proposed Defendants of their ill-gotten gains.

E. Disgorgement and Unjust Enrichment

61. The law is clear that disgorgement is an available remedy for breach of fiduciary duty both under Texas Law, see *Kinzbach Tool Co. v. Corbett-Wallace Corporation*, 160 S.W. 2d 509 (Tex. 1942), and under Delaware law, see *Metro Storage International, LLC v. Harron*, 275 A.3d 810 (Del. Ch. 2022). Disgorgement is also an appropriate remedy for unjust enrichment under Texas law, *Hunter v. Shell Oil Co.*, 198 F.2d 485 (5th Cir. 1952),

and under Delaware law, *In re Tyson Foods, Inc. Consolidated Shareholder Litigation*, 919 A.2d 563 (Del. Ch. 2007).[64]

62. Likewise, the imposition of a constructive trust is proper for addressing unjust enrichment under both Delaware and Texas law, see *Teacher's Retirement System of Louisiana v. Aidinoff*, 900 A.2d 654 (Del. Ch. 2006) and *Hsin-Chi-Su v. Vantage Drilling Company*, 474 S.W. 3d 384 (Tex. App. – 14th Dist. 2015), pet. denied. The elements of unjust enrichment are: (1) the defendant must have gained a benefit (2) at the expense of plaintiff, (3) and retention of that benefit must be shown to be unjust. *See Restatement (Third) of Restitution and Unjust Enrichment* §321, cmt. e (2011).

63. Here, the imposition of a constructive trust and disgorgement are clearly appropriate to provide redress for the alleged breaches of fiduciary duty and the knowing participation in (or aiding and abetting) those breaches. Furthermore, the imposition of a constructive trust and disgorgement are appropriate to disgorge the improper benefits that all of the Proposed Defendants received by virtue of collusion and insider trading.

64. As set forth in the proposed Adversary Proceeding, Seery gained the opportunity to have his compensation demands rubber stamped. The other Defendants gained the opportunity to purchase valuable claims at a discount knowing that

[64] It is likely that the Internal Affairs Doctrine will dictate that Delaware choice of law governs the breach of fiduciary duty claims.

pessimistic financial projections were false and that the upside investment potential was great. Retention of the benefits they received would be unjust and inequitable.

65. Clearly, the Debtor's Estate was damaged by virtue of the claimed conduct. Seery obtained profits and compensation to the detriment of that estate as well as the estate of the Reorganized Debtor, other innocent creditors and HMIT, as former equity and as a contingent Claimant Trust Beneficiary.

F. Declaratory Relief

66. HMIT also seeks declaratory relief pursuant to Fed. R. Bank P. 7001(9). Specifically, HMIT seeks a declaratory judgment that: (a) there is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement; (b) as a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered "contingent;" (c) HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill; (d) HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments; (e) Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of fraudulent conduct, bad faith, willful misconduct, and unclean hands; (f) Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized

Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct, and unclean hands; and (g) all of the Proposed Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct, and unclean hands.

G. HMIT has Direct Standing.

67. The Texas Supreme Court recently held that "a partner or other stakeholder in a business organization has constitutional standing to sue for an alleged loss in the value of its interest in the organization." *Pike v. Texas EMC Mgt., LLC*, 610 S.W.3d 763, 778 (Tex. 2020). In so holding, the Court considered federal law and found that the traditional "incantation that a shareholder may not sue for the corporation's injury" is really a question of capacity, which goes to the merits of a claim, rather than an issue of standing that would impact subject matter jurisdiction. *Id.* at 777 (noting that the 5th Circuit and "[o]ther federal circuits agree that a plaintiff has standing to sue for the lost value of its investment in a corporation"). Because Seery, Muck, Jessup, Stonehill, Farallon's alleged actions devalued HMIT's interest in the Debtor's Estate, including, without limitation, payment of excessive compensation to Seery, HMIT has standing to pursue its common law claims directly. HMIT also has direct standing to seek declaratory relief as set forth in the proposed Adversary Proceeding.

VII. Prayer

WHEREFORE, PREMISES CONSIDERED, Hunter Mountain Investment Trust respectfully requests this Court grant HMIT leave authorizing it to file the Adversary Complaint, attached as Exhibit 1, as an Adversary Proceeding in this United States Bankruptcy Court for the Northern District of Texas, in its own name and as a derivative action on behalf of the Debtor Highland Capital Management, L.P., against Muck Holdings, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, Stonehill Capital Management, LLC, James P. Seery, Jr., and John Doe Defendants Nos. 1 – 10, and further grant HMIT all such other and further relief to which HMIT may be justly entitled.

Dated: March 28, 2023

Respectfully Submitted,
PARSONS MCENTIRE MCCLEARY PLLC

By: */s/ Sawnie A. McEntire*

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CERTIFICATE OF CONFERENCE

Beginning on March 24, 2023, and also on March 27, 2023, the undersigned counsel conferred either by telephone or via email with all counsel for all Respondents regarding the relief requested in the foregoing Motion, including John A. Morris on behalf of James P. Seery, and Brent McIlwain on behalf of Muck Holdings LLC, Jessup Holdings LLC, Stonehill Capital Management, and Farallon Capital Management. Mr. Seery is opposed to this Motion. Based upon all communications with Mr. McIlwain, it is reasonably believed his clients are also opposed and we advised him that this recitation would be placed in the certificate of conference.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

CERTIFICATE OF SERVICE

I certify that on the 28th day of March 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

Exhibit 1 to Emergency Motion

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

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Case No. 19-34054-sgj11**
Debtor.	§	
HUNTER MOUNTAIN INVESTMENT TRUST, INDIVIDUALLY, AND ON BEHALF OF THE DEBTOR HIGHLAND CAPITAL MANAGEMENT, L.P. AND THE HIGHLAND CLAIMANT TRUST	§	**Adversary Proceeding No. _____**
PLAINTIFFS,	§	

v.	§
	§
MUCK HOLDINGS, LLC, JESSUP HOLDINGS, LLC, FARALLON CAPITAL MANAGEMENT, LLC, STONEHILL CAPITAL MANAGEMENT, LLC, JAMES P. SEERY, JR., AND JOHN DOE DEFENDANTS NOS. 1-10	§
DEFENDANTS.	§

VERIFIED ADVERSARY COMPLAINT

Hunter Mountain Investment Trust ("HMIT") files this Verified Adversary Complaint in its individual capacity and, as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management L.P. ("HCM" or "Reorganized Debtor") and the Highland Claimant Trust (collectively "Plaintiffs"), complaining of Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup"), Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), James P. Seery, Jr., ("Seery") and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendants Nos. 1-10 are collectively "Defendants"), and would show:

I. Introduction

1. HMIT brings this Verified Adversary Complaint ("Complaint") on behalf of itself, individually, and as a derivative action benefitting the Reorganized Debtor and

on behalf of the Highland Claimant Trust ("Claimant Trust"), as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").[1] This derivative action is specifically brought pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and B. R. Rule 7023.1. At the time of the transactions at issue, HMIT held a 99.5% limited partnership in Highland Capital Management, LP, the Original Debtor, as described herein. This derivative action is not a collusive effort to confer jurisdiction that the Court would otherwise lack.

2. Upon the Effective Date, the assets of the bankruptcy estate of Highland Capital Management, L.P., as the Original Debtor (the "Debtor's Estate") were transferred to the Highland Claimant Trust under the terms of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Doc. 1943, Exhibit A] (the "Plan") and as defined in the CTA. These assets include all "causes of action" that the Debtor's Estate had before the Effective Date including, without limitation, the causes of action set forth in this Adversary Proceeding. Furthermore, the Claimant Trust is managed by the Claimant Trustee, Seery. Therefore, any demand upon Seery to prosecute the claims set forth in this Complaint would be futile because Seery is a Defendant. Similarly, the Oversight Board exercises supervision over Seery as Claimant

[1] Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate. Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed in HMIT's Emergency Motion for Leave (Doc. __).

Trustee, and Muck and Jessup are members of the Oversight Board. Any demand upon Muck and Jessup to prosecute these claims would be equally futile. All conditions precedent to bringing this derivative action have otherwise been satisfied.

3. This action has become necessary because of Defendants' tortious conduct. This tortious conduct occurred before the Effective Date of the Plan, but its effects have caused damage both before and after the Effective Date. Prior to the Effective Date, HMIT owned 99.5% of the limited partnership interest in the Original Debtor and was the beneficiary of fiduciary duties owed by Seery.

4. Seery, the Original Debtor's CEO and former Chief Restructuring Officer ("CRO"), wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends, Farallon and Stonehill. He did so by providing material non-public information to them concerning the value of the Original Debtor's Estate that other stakeholders did not know. Farallon and Stonehill, who were otherwise strangers to the bankruptcy proceedings, wrongfully purchased the claims through their special purpose entities, Muck and Jessup, based upon this inside information, and they are now profiting from their misconduct. Seery's dealings with the other Defendants were not arm's length, but instead were covert, undisclosed, and collusive.

5. Motivated by corporate greed, the other Defendants aided and abetted or, alternatively, knowingly participated in Seery's wrongful conduct. They also breached their own duties as "non-statutory insiders." Because of their long-standing, historical

relationships with Seery, and their use of material non-public information, Farallon, Stonehill, Muck, and Jessup assumed positions of control over the affairs of the Debtor's bankruptcy, including compensation awards to Seery. As such, they became non-statutory insiders.

6. HMIT was formerly the largest equity holder in the Debtor, holding a 99.5% limited partnership interest. HMIT now holds an Allowed Class 10 Class B/C Limited Partnership Interest and a Contingent Trust Interest under the CTA. Given HMIT's' position as former equity, HMIT's right to recover from the Claimant Trust is junior to the Reorganized Debtor's unsecured creditors, now known as Claimant Trust Beneficiaries. However, the vast majority of the approved unsecured claims superior to HMIT's interest are the claims wrongfully acquired by insider trading and the breaches of duty at issue in this proceeding.

7. By wrongfully soliciting, fostering, and encouraging the wrongful insider trades, Seery violated his fiduciary duties to the Debtor's Estate, specifically his duty of loyalty and his duty to maximize the value of the Estate with corresponding recovery by legitimate creditors and former equity. Seery was motivated out of self-interest to garner personal benefit (to the detriment of the Debtor's Estate) by strategically benefitting his business allies with non-public information. He then successfully "planted" his allies onto the Oversight Board, which, as a consequence does not act as an independent board in the exercise of its responsibilities. Rather, imbued with powers to oversee Seery's

future compensation, the other Defendants are postured to reward Seery financially regarding Defendants' illicit dealings and, upon information and belief, they have done so.

8. By receiving and acting upon material non-public information concerning the financial condition of the Debtor's Estate, Stonehill and Farallon, acting individually and through special purpose shell entities they created and controlled, directly or indirectly, are also liable for aiding and abetting Seery's breaches of fiduciary duties. By acquiring the claims at issue, Muck and Jessup, the shell entities created and controlled by Stonehill and Farallon, also became non-statutory insiders owing duties of disclosure which they also breached.

9. HMIT separately seeks recovery against John Doe Defendant Nos. 1-10. Farallon actively concealed the precise legal relationship between Farallon and Muck. Stonehill actively concealed the precise legal relationship between Stonehill and Jessup. What is known, however, is that Farallon and Stonehill created these special purpose shell entities on the eve of the insider trades to acquire ownership of the claims and to otherwise control the affairs of the Oversight Board. Both Farallon and Stonehill rejected inquiries concerning the exact nature of their relationship with these special purpose entities. Accordingly, HMIT seeks equitable tolling of any statute of limitations concerning claims against unknown business entities that Farallon and Stonehill may have created and inserted as intermediate corporate layers in the transactions at issue.

10. HMIT seeks to disgorge all Defendants' ill-gotten profits and equitable disallowance of the remaining unpaid balances on the following allowed claims: Claim Nos. 23, 72, 81, 143, 147, 149, 150, 153, 154, 190, and 191 (the "Claims") currently held by Muck and Jessup. Because Defendants received substantial distributions from the Claimant Trust in connection with these Claims, HMIT seeks to disgorge all such distributions above Defendants' initial investment—compelling restitution of such funds to the Claimant Trust for the benefit of innocent creditors and former equity pursuant to the waterfall established under the Plan and the CTA. HMIT also seeks to disgorge Seery's compensation from the date his collusive conduct first occurred. Alternatively, HMIT seeks damages on behalf of the Claimant Trust in an amount equal to all compensation paid to Seery from the onset of his collusive conduct to present.

II. Jurisdiction and Venue

11. Pursuant to *Misc. Order No. 33 Order of Reference of Bankruptcy Cases, U.S. District Court for N.D. Texas* (the "Order of Reference"), this Complaint is commenced in the Bankruptcy Court because it is "related to a case under Title 11." The filing of this Complaint is expressly subject to and without waiver of Plaintiff' rights and ability to seek withdrawal of the reference pursuant to 28 U.S.C. § 157(d), FED. R. BANKR. P. 5011, and Local Bankruptcy Rule 5011-1. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein and nothing in this Complaint, nor Plaintiffs' compliance with the Order of Reference, shall be deemed a waiver of this right.

12. This Court has jurisdiction of the subject matter and the parties as a "related to" proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and Articles IX.F, and XI. of the Plan.

13. Pursuant to Rule 7008 of the Bankruptcy Rules, Plaintiffs do **not** consent to the entry of final orders or judgment by the bankruptcy court.

14. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 1408 and 1409, and Articles IX.F, and XI. of the Plan.

III. Parties

15. HMIT is a Delaware statutory trust that was the largest equity holder in the Original Debtor, holding a 99.5% limited partnership interest. HMIT is also the holder of a Contingent Trust Interest in the Claimant Trust, but should be treated as a vested Claimant Trust Beneficiary due to Defendants' wrongful conduct.

16. Pursuant to the Plan and the CTA, the Claimant Trust holds the assets of the Reorganized Debtor, including the causes of action that accrued to the Original Debtor before the Effective Date. The Claimant Trust is established in accordance with the Delaware Statutory Trust Act and Treasury Regulatory Section 301.7701-4(d).

17. Muck is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Muck has made prior appearances in the Debtor's bankruptcy.

18. Jessup is a Delaware limited liability company, with its principal office in New York, and may be served with process via its registered agent, Vcorp Services, LLC, at 108 W. 13th Street Suite 100, Wilmington, Delaware 19801. Jessup has made prior appearances in the Debtor's bankruptcy.

19. Farallon is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Farallon is a capital management company that manages hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Farallon because Farallon's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts requirements and due process considerations.

20. Stonehill is a Delaware limited liability company, with its principal office in New York, and may be served with process at 320 Park Avenue, 26th Floor, New York, NY 10022. Stonehill is a capital management company managing hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Stonehill because Stonehill's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts and all due process considerations.

21. Seery is an individual citizen and resident of the State of New York. Mr. Seery may be served with process at 100 Crescent Court, Suite 1805, Dallas, Texas 75201.

22. John Doe Defendant Nos. 1-10 are currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.

IV. Facts

A. *Procedural Background*

23. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court,[2] which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.[3]

24. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee of the Highland Crusader Fund ("Redeemer"); Acis Capital Management, L.P. and Acis Capital Management GP, LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS")—and an unpaid vendor, Meta-E Discovery.

25. Following the venue transfer to Texas, on December 27, 2019, the Debtor filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of*

[2] Doc. 3. Unless otherwise referenced, all documents referencing "Doc." refer to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

[3] Doc. 1.

Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ("Governance Motion").[4] On January 9, 2020, the Court signed a Governance Order granting the Governance Motion.[5]

26. As part of the Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditors Committee—was appointed to the Board of Directors (the "Board") of Strand, the Original Debtor's general partner. The Board then appointed Seery as the Chief Executive Officer in place of the previous CEO, Mr. James Dondero, as well as the CRO.[6] Seery currently serves as Trustee of the Claimant Trust under the terms of the CTA and the CEO of the Reorganized Debtor.[7]

B. *The Targeted Claims*

27. In his capacity as the Original Debtor's CEO and CRO, Seery negotiated and obtained court approval for settlements with several large unsecured creditors including Redeemer, Acis, UBS, and another major unsecured creditor, HarbourVest (Redeemer, Acis, UBS, and HarbourVest are collectively the "Settling Parties"), resulting in the following allowed Claims:

Creditor	**Class 8**	**Class 9**
Redeemer	$137 mm	$0 mm

[4] Doc. 281.

[5] Doc. 339.

[6] Doc. 854, Order Approving Retention of Seery as CEO/CRO.

[7] *See* Doc. 1943, Order Approving Plan, p. 34.

Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm
UBS	$65 mm	$60 mm
(Totals)	$270 mm	$95 mm

As reflected in these settlements, HarbourVest and UBS owned Class 9 claims in addition to Class 8 Claims. Class 9 Claims were subordinated to Class 8 Claims in the distribution waterfall in the Plan.

28. Each of the Settling Parties sold their Claims to Farallon and Stonehill (or affiliated special purpose entities) shortly after receiving court approval of the settlements. One of these "trades" took place within just a few weeks before the Plan's Effective Date.[8] All of these trades occurred when HMIT held its 99.5% equity stake in the Debtor. Notice of these trades was first provided in filings in the records of the Original Debtor's bankruptcy proceedings, as follows: Claim No. 23 (Doc. 2211, 2212, and 2215), Claim Nos. 190 and 191 (Doc. 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (Doc. 2263), Claim No. 81 (Doc. 2262), Claim No. 72 (Doc. 2261).

29. Farallon and Stonehill, both of whom are registered investment advisors that manage hedge funds, have fiduciary duties to their own investors. As such, they are acutely aware of their duties and obligation as fiduciaries. Yet, they both invested many tens of millions of dollars, directly or indirectly, to acquire the Claims in the absence of

[8] Docs. 2697, 2698.

any publicly available information that could provide any economic justification for their investment decisions.

30. Upon information and belief, Stonehill and Farallon collectively invested an estimated $160 million to acquire the Claims with a face amount of $365 million, and they did so in the absence of any meaningful due diligence. Indeed, Farallon has admitted that it conducted no due diligence but relied on Seery's guarantees.

31. Stonehill and Farallon's investments become even more suspicious because the Plan provided the ***only*** publicly available information, which, at the time, included pessimistic projections that the Claims would ever receive full payment:

a. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the projected value of HCM's assets dropped over $200 million from $566 million to $364 million.[9]

b. HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11.[10]

   - This meant that Farallon and Stonehill invested more than $163 million in Claims when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims.

c. In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% to 54%.

[9] Doc. 1473, Disclosure Statement, p. 18.

[10] Doc. 1875-1, Plan Supplement, Ex. A, p. 4.

d. Despite the stark decline in the value of the estate and in the midst of substantial reductions in the percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively, again, the "Claims") in April and August of 2021 in the combined amount of $163 million.[11]

32. Upon information and belief, Stonehill, through its special purpose entity, Jessup, acquired the Redeemer Committee's claim for $78 million.[12] Upon information and belief, the $23 million Acis claim[13] was sold to Farallon/Muck for $8 million. Upon information and belief, HarbourVest sold its combined $80 million in claims to Farallon/Muck for $27 million. UBS sold its combined $125 million in claims for $50 million to both Stonehill/Jessup and Farallon/Muck. In the instance of UBS, ***the total projected payout was only $35 million***. Indeed, as part of these transactions, both Farallon and Stonehill purchased Class 9 Claims at a time when the Debtor's Estate projected a zero dollar return on all such Claims.

[11] Notices of Transfers [Docs. 2212, 2215, 2261, 2262, 2263, 2215, 2297, 2298]. The Acis claim was transferred on April 16, 2021; the Redeemer, Crusader, and HarbourVest claims were transferred on April 30, 2021; and the UBS claims were transferred on August 9, 2021.

[12] July 6, 2021, letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

[13] Seery/HCM have argued that $10 million of the Acis claim is self-funding.

C. *Material Non-Public Information is Disclosed to Seery's Affiliates at Stonehill and Farallon.*

33. One of the significant assets of the Debtor's Estate was the Debtor's direct and indirect holdings in Metro-Goldwyn-Mayer Studios, Inc. ("MGM").[14]

34. On December 17, 2020, James Dondero, sent an email to Seery. At that time, Dondero was a member of the MGM board, and the email contained material non-public information regarding Amazon and Apple's interest in acquiring MGM.[15] Of course, any such sale would significantly enhance the value of the Original Debtor's estate.

35. Upon receipt of this material non-public information, Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in this Court seeking approval of the Original Debtor's settlement with HarbourVest - resulting in a transfer to the Original Debtor of HarbourVest's interest in a Debtor-advised fund, Highland CLO Funding, Ltd. ("HCLOF"), which held substantial MGM debt and equity.[16] Conspicuously, the HCLOF interest was not transferred to the Original Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements.[17]

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[14] *See* Doc. 2229, p. 6.

[15] *See* Adversary Case No. 20-3190-sgj11, Doc. 150-1, p. 1674.

[16] Doc. 1625. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM.

[17] Doc. 1625.

36. Upon information and belief, aware that the Debtor's stake in MGM afforded a new profit center, Seery saw an opportunity to increase his own compensation and enlisted the help of Stonehill and Farallon to extract further value from the Original Debtor's Estate at the expense of other innocent creditors and equity. This *quid pro quo* included, at a minimum, a tacit, if not express, understanding that Seery would be well-compensated.

37. Until 2009, Seery was the Global Head of Fixed Income Loans at Lehman Brothers[18] where, on information and belief, he conducted substantial business with Farallon. Following the collapse of Lehman Brothers, Seery continued to work with, and indeed represented Farallon as its legal counsel. Seery ultimately joined a hedge fund, River Birch Capital,[19] which, along with Stonehill, served on the creditors committee in other bankruptcy proceedings. GCM Grovesnor, a global asset management firm, held four seats on the Redeemer Committee[20] and, upon information and belief, is a significant investor in Stonehill and Farallon. Grovesnor, through Redeemer, played a large part in appointing Seery as a director of Strand Advisors. Seery was beholden to Grovesnor from the outset, and, by extension, Grovesnor's affiliates Stonehill and Farallon.

[18] Seery Resume [Doc. 281-2].

[19] *Id*.

[20] Declaration of John A. Morris [Doc. 1090], Ex. 1, pp. 15.

38. As successful capital management firms, with advisory and fiduciary duties to their own clients, Stonehill and Farallon typically engage in robust due diligence before making significant investments. Yet, in this case, it would have been *impossible* for Stonehill and Farallon to forecast *any* profit at the time of their multi-million-dollar investments given the negative financial information disclosed by the Original Debtor's Estate. Seery, as the CEO, was aware of and involved in approving these negative financial projections. In doing so, Seery intentionally caused the publication of misleading, false information.

39. Seery shared with Stonehill and Farallon *non-public* information concerning the value of the Original Debtor's Estate which was higher than publicly available information. Thus, the only logical conclusion is that all Defendants knew that the publicly available projections, which accompanied the Plan, were understated, false, and misleading. Otherwise, Farallon, Muck, Stonehill and Jessup would not have made their multi-million-dollar investments. None of the Defendants disclosed their knowledge of the misleading nature of these financial projections when they had a duty to do so. None of the Defendants disclosed the nature of their dealings in acquiring the Claims.

40. By wrongfully exploiting non-public insider information, Stonehill and Farallon—acting through Muck and Jessup—became the largest holders of unsecured claims in the Debtor's Estate with resulting control over the Oversight Board and a front row seat to the reorganization and distribution of Claimant Trust Assets. As such, they

were given control (through Muck and Jessup) to approve discretionary bonuses and success fees for Seery from these assets.

D. ***Distributions***

41. The MGM sale was ultimately consummated in March 2022 for $6.1 billion in cash, plus $2.5 billion in debt that Amazon assumed and immediately repaid.[21]

42. By the end of Q3 2021, just over $6 million of the projected $205 million available for general unsecured claimants had been disbursed.[22] No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—$45 million more than was *ever* projected.[23] Thus, Stonehill (Jessup) and Farallon (Muck) have already received returns that far eclipse their investment. They also stand to make further significant profits on their investments, including payments on Class 9 Claims.

43. As of December 31, 2022, the Claimant Trust has distributed $255,201,228. On a pro rata basis, that means that innocent creditors have received approximately $22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately $9,627,000.

[21] Amazon Q1 2022 10-Q.

[22] Doc. 3200.

[23] Doc. 3582.

44. Muck and Jessup already have received approximately $232.8 million on their Claims. Assuming and original investment of approximately $160 million, this represents over $72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary.

45. It is clear Seery facilitated the sale of the Claims to Stonehill (Jessup) and Farallon (Muck) at discounted prices and used misleading financial projections to facilitate these trades. This was part of a larger strategy to install Stonehill (Jessup) and Farallon (Muck), his business allies, onto the Oversight Board where they would oversee lucrative bonuses and other compensation for Seery in exchange for hefty profits they expected to receive.

V. Causes of Action

A. Count I (against Seery): Breach of Fiduciary Duty

46. The allegations in paragraphs 1-45 above are incorporated herein as if set forth verbatim.

47. As CEO and CRO of a debtor-in-possession, Seery owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate, including, without limitation, the duty of loyalty. Seery also was under a duty to avoid conflicts of interests, but Seery willfully and knowingly engaged in conduct which conflicted with his fiduciary duties—and he did so out of financial self-interest.

48. By fraudulently providing and/or approving negative projections of the Debtor's Estate when he knew otherwise, Seery willfully and knowingly breached his fiduciary duties.

49. By misusing and disclosing confidential, material non-public information to Stonehill and Farallon, Seery willfully and knowingly breached his fiduciary duties.

50. By failing to disclose his role in the inside trades at issue, Seery willfully and knowingly breached his fiduciary duties.

51. As a result of his willful misconduct, Seery was unfairly advantaged by receiving additional undisclosed compensation and bonuses from the assets of the Debtor's Estate and from the Claimant Trust Assets—to the detriment of other innocent stakeholders, including HMIT, as former equity and a contingent Claimant Trust Beneficiary.

52. To remedy these breaches, Seery is liable for disgorgement of all compensation he received since his collusion with Farallon and Stonehill first began. Alternatively, Seery should be disgorged of all compensation paid to him under the terms of the CTA since the Effective Date of the Plan in August 2021.

53. Alternatively, Plaintiffs are entitled to recover damages measured by all ill-gotten compensation which Seery has received since his first collusive conduct began.

B. Count II (against Stonehill, Farallon, Jessup and Muck): Breaches of Fiduciary Duty and Knowing Participation in Breach of Fiduciary Duty

54. The allegations in paragraphs 1-53 above are incorporated herein as if set forth verbatim.

55. Seery owed fiduciary duties to HMIT and the Debtor's Estate, and he willfully and knowingly breached these duties. Without limiting the foregoing, Seery owed a duty of loyalty which he willfully and knowingly breached. Seery also owed a duty to not engage in self-interested conduct to the detriment of the Debtor's Estate and innocent stakeholders. Seery also willfully and knowingly breached this duty.

56. Stonehill and Farallon were aware of Seery's fiduciary duties and, by purchasing the Claims and approving bonuses and other compensation for Seery, Stonehill (acting through Jessup) and Farallon (acting through Muck), willfully and knowingly participated in Seery's breaches or, alternatively, willfully aided and abetted such breaches.

57. Stonehill (Jessup) and Farallon (Muck) unfairly received many millions of dollars in profits and fees—and stand to earn even more profits and fees—to the detriment of innocent stakeholders, including HMIT.

58. Stonehill and Farallon are liable for disgorgement of all profits earned from their purchase of the Claims. In addition, they are liable in damages for excessive compensation paid to Seery as part of the covert *quid pro quo* with Seery.

C. Count III (against all Defendants): Fraud by Misrepresentation and Material Nondisclosure

59. The allegations in paragraphs 1-58 above are incorporated herein as if set forth verbatim.

60. Based on Seery's duties as CEO and CRO of a debtor-in-possession, and the other Defendants' duties as non-statutory insiders, Seery, Stonehill (Jessup), and Farallon (Muck) had a duty to disclose Stonehill and Farallon's plans to purchase the Claims, but they deliberately failed to do so. Seery also had a duty to disclose correct financial projections but, rather, misrepresented such values or failed to correct false and misleading projections. These factual misrepresentations and omissions were material.

61. The withheld financial information was material because it has had an adverse impact on control over the eventual distributions to creditors and former equity, as well as the right to control Seery's compensation. By withholding such information, Seery was able to plant friendly business allies on the Oversight Board to the detriment of innocent stakeholders.

62. Defendants knew that HMIT and other creditors were ignorant of their plans, and HMIT and other stakeholders did not have an equal opportunity to discover their scheme. HMIT and the other innocent stakeholders justifiably relied on misleading information relating to the value of the Original Debtor's Estate.

63. By failing to disclose material information, and by making or aiding and abetting material misrepresentations, Seery, Stonehill, Farallon, Muck, and Jessup intended to induce HMIT to take no affirmative action.

64. HMIT justifiably relied on Seery, Stonehill, Farallon, Muck, and Jessup's nondisclosures and representations, and HMIT was injured as a result and the Debtor's Estate was also injured.

65. As a result of their frauds, all Defendants should be disgorged of all profits and ill-gotten compensation derived from their fraudulent scheme. Seery is also liable for damages measured by excessive compensation he has received since he first engaged in willful misconduct.

D. Count IV (against all Defendants): Conspiracy

66. The allegations in paragraphs 1-65 above are incorporated herein as if incorporated herein verbatim.

67. Defendants conspired with each other to unlawfully breach fiduciary duties to HMIT and the Debtor's Estate, to conceal their fraudulent trades, and to interfere with HMIT's entitlement to the residual of the Claimant Trust Asset.

68. Seery's disclosure of material non-public information to Stonehill and Farallon, and Muck and Jessup's purchase of the Claims, are each overt acts in furtherance of the conspiracy.

69. HMIT's interest in the residual of the Claimant Trust Assets has been adversely impacted by this conspiracy. The assets have been depleted by virtue of Seery's compensation awards.

E. Count V (against Muck and Jessup): Equitable Disallowance

70. The allegations in paragraphs 1-69 above are incorporated herein as if set forth verbatim.

71. By purchasing the Claims based on material non-public information, Stonehill and Farallon, through Jessup and Muck, engaged in inequitable conduct.

72. By earning significant profits on their purchases, Muck and Jessup have been unfairly advantaged to the detriment of the remaining stakeholders, including HMIT.

73. Given this inequitable conduct, equitable disallowance of Muck's and Jessup's Claims to the extent over and above their initial investment is appropriate and consistent with the purposes of the Bankruptcy Code.

74. Pleading in the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

F. Count VI (against all Defendants): Unjust Enrichment and Constructive Trust

75. The allegations in paragraphs 1-74 above are incorporated herein as if set forth verbatim.

76. By acquiring the Claims using material non-public information, Stonehill and Farallon breached a relationship of trust with the Original Debtor's Estate and other innocent stakeholders and were unjustly enriched and gained an undue advantage over other creditors and former equity.

77. Allowing Stonehill, Farallon, Muck and Jessup to retain their ill-gotten benefits at the expense of other innocent stakeholders and HMIT, as former equity, would be unconscionable.

78. Stonehill, Farallon, Muck, and Jessup should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment.

79. The proceeds Stonehill, Farallon, Muck, and Jessup have received from the Claimant Trust are traceable and identifiable. A constructive trust should be imposed on such proceeds to secure the restitution of these improperly retained benefits.

F. Count VI (Against all Defendants): Declaratory Relief

80. The allegations in paragraphs 1-79 are incorporated herein as if set forth verbatim.

81. HMIT seeks declaratory relief. The Court has jurisdiction to provide declaratory judgment relief when there is an actual controversy that has arisen and exists relating to the rights and duties of the parties.

82. Bankruptcy Rule 7001 provides that "a proceeding to recover property or money," may include declaratory relief. *See*, Fed. R. Bank P. 7001(1), (9).

83. The Claimant Trust Agreement is governed under Delaware law. The Claimant Trust Agreement incorporates and is subject to Delaware trust law. HMIT seeks a declaration, as follows:

a. There is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement;

b. As a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered contingent;

c. HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill;

d. HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments. Alternatively, HMIT's status as a Claimant Trust Beneficiary is fully vested when all of Muck's and Jessup's trust interests are subordinated to the trust interests held by HMIT;

e. Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of Seery's fraudulent conduct, bad faith, willful misconduct and unclean hands;

f. Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct and unclean hands;

g. All Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct and unclean hands.

VI. Punitive Damages

84. The allegations in paragraphs 1-74 are incorporated herein as if set forth verbatim.

85. The Defendants' misconduct was intentional, knowing, willful and fraudulent and in total disregard of the rights of others. An award of punitive damages is appropriate and necessary under the facts of this case.

86. All conditions precedent to recovery herein have been satisfied.

VII. Prayer

WHEREFORE, HMIT prays for judgment as follows:

1. Equitable disallowance of the Claims over and above Muck's and Jessup's original investments (or, alternatively, subordination of their Claimant Trust Interests, as addressed herein);

2. Disgorgement of all funds distributed from the Claimant Trust to Muck and/or Jessup over and above their original investments;

3. Disgorgement of compensation paid to Seery in managing or administering the Original and Reorganized Debtor's Estate;

4. Imposition of a constructive trust;

5. Declaratory relief as described herein;

6. An award of actual damages as described herein;

7. An award of exemplary damages as allowed by law;

8. Pre- and post-judgment interest; and,

9. All such other and further relief to which HMIT may be justly entitled.

Respectfully Submitted,

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By: /s/

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

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

HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERARY PROCEEDING

Hunter Mountain Investment Trust ("HMIT"), Movant, files this Emergency Motion for Leave to File Verified Adversary Proceeding ("Motion"), both in its individual capacity and as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management, L.P. ("HCM" or "Reorganized Debtor") and the Highland Claimant Trust against Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup"), Farallon

Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), James P. Seery, Jr. ("Seery") and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendant Nos. 11-10 are collectively "Respondents" or "Proposed Defendants").

I. Good Cause for Expedited Relief

1. HMIT seeks leave to file an Adversary Proceeding pursuant to the Court's "gatekeeping" orders, as well as the injunction and exculpation provisions in the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (Doc. 1943), as modified (the "Plan").[1] A copy of HMIT's proposed Verified Adversary Proceeding ("Adversary Proceeding") is attached as Exhibit 1 to this Motion. This Motion is separately supported by objective evidence derived from historical filings in the bankruptcy proceedings.[2] WITHDRAWN

WITHDRAWN

WITHDRAWN .[3]

[1] The exculpation provisions were recently modified by a decision of the Fifth Circuit. Such provisions apply to James P. Seery, Jr. only and are limited to his capacity as an Independent Director. *Matter of Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 438 (5th Cir. 2022).

[2] Unless otherwise referenced, all references to evidence involving documents filed in the Debtor's bankruptcy proceedings (Case No. 19-34054-sgj11 (Bankr. N.D. Tex.)) are cited by "Doc." reference. HMIT asks the Court to take judicial notice of the documents identified by such entries.

[3] WITHDRAWN
WITHDRAWN

2. The expedited nature of this Motion is permitted under Fed. R. Bank P. 9006 (c)(1), which authorizes a shortened time for a response and hearing for good cause. For the reasons set forth herein, HMIT has shown good cause and requests that the Court schedule a hearing on this Motion on three (3) days' notice, and that any responses be filed no later than twenty-four hours before the scheduled hearing.[4]

3. HMIT brings this Motion on behalf of itself and derivatively on behalf of the Reorganized Debtor and the Highland Claimant Trust ("Claimant Trust"), as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").[5] Upon the Plan's Effective Date, Highland Capital Management, LP, as the original Debtor ("Original Debtor"), transferred its assets, including its causes of action, to the Claimant Trust, including the causes of action set forth in the attached Adversary Proceeding. The attached Adversary Proceeding alleges claims which are substantially more than "colorable" based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud,[6] including a fraud upon innocent stakeholders, as well as breaches of fiduciary

[4] Expedited action on this Motion is also warranted to hasten Movants' opportunity to file suit, pursue prompt relevant discovery, and reduce the threat of loss of potentially key evidence. Upon information and belief, Seery has been deleting text messages on his personal iPhone via a rolling, automatic deletion setting.

[5] Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate.

[6] Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the

duties and knowing participation in (or aiding and abetting) breaches of fiduciary duty. The Adversary Proceeding also alleges that the Proposed Defendants did so collectively by falsely representing the value of the Debtor's Estate, failing to timely disclose accurate values of the Debtor's Estate, and trading on material non-public information regarding such values. HMIT also alleges that the Proposed Defendants colluded to manipulate the Debtor's Estate—providing Seery the opportunity to plant close business allies into positions of control to approve Seery's compensation demands following the Effective Date.

4. Emergency relief is needed because of a fast-approaching date (April 16, 2023) that one or more of the Proposed Defendants *may* argue, depending upon choice of law, constitutes the expiration of the statute of limitations concerning some of the common law claims available to the Claimant Trust, as well as to HMIT.[7] Although HMIT offered to enter tolling agreements from each of the Proposed Defendants, they either rejected HMIT's requests or have not confirmed their willingness to do so, thereby necessitating the expedited nature of this Motion.[8] Because this Motion is subject to the

proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement.

[7] The first insider trade at issue involved the sale and transfer of Claim 23 in the amount of $23 million held by ACMLD Claim, LLC to Muck on April 16, 2021 (Doc. 2215).

[8] HMIT has been diligent in its efforts to investigate the claims described in this Motion, including the filing of a Tex. R. Civ. P. Rule 202 proceeding in January 2023, which was not adjudicated until recently in March 2023. Those proceeding were conducted in the 191st Judicial District Court in Dallas County, Texas, under Cause DC-23-01004. WITHDRAWN Farallon and Stonehill defended those proceedings by aggressively arguing, in significant part, that the discovery issues were better undertaken in this Court.[8] The Rule 202 Petition was recently dismissed (**necessarily without prejudice**)

Court's "gatekeeping" orders and the injunction provisions of the Plan, emergency leave is required.

5. This Motion will come as no surprise to the Proposed Defendants. Farallon and Stonehill were involved in recent pre-suit discovery proceedings under Rule 202 of the Texas Rules of Civil Procedure relating to the same insider trading allegations described in this Motion. Muck and Jessup, special purpose entities created and ostensibly controlled by Farallon and Stonehill, respectively, also were provided notice of these Rule 202 Proceedings in February 2023. Like this Motion, the Rule 202 Proceedings focused on Muck, Jessup, Farallon, and Stonehill and their wrongful purchase of large, allowed claims in the Original Debtor's bankruptcy based upon material non-public information. Seery is also aware of these insider trading allegations because of a prior written demand.

6. In light of the Proposed Defendants' apparent refusal to enter tolling agreements, or their failure to fully affirm their willingness to do so, HMIT is forced to seek emergency relief from this Court to proceed timely with the proposed Adversary Proceeding before the expiration of any *arguable* limitations period.[10]

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on March 8, 2023, ostensibly based on such arguments. However, it is telling that Stonehill and Farallon admitted during the Rule 202 Proceedings to their "affiliation" with Muck and Jessup and that they bought the Claims through these entities.

WITHDRAWN

[10] HMIT respectfully requests that this Motion be addressed and decided on an expedited basis that provides HMIT sufficient time to bring the proposed action timely. In the event the Court denies the requested relief, HMIT respectfully requests prompt notice of the Court's ruling to allow HMIT sufficient

II. Summary of Claims

7. HMIT requests leave to commence the proposed Adversary Proceeding, attached as Exhibit 1, seeking redress for breaches of duty owed to HMIT, breaches of duties owed to the Original Debtor's Estate, aiding and abetting breaches of those fiduciary duties, conspiracy, unjust enrichment, and fraud. HMIT also alleges several viable remedies, including (i) imposition of a constructive trust; (ii) equitable disallowance of any unpaid balance on the claims at issue;[11] (iii) disgorgement of ill-gotten profits (received by Farallon, Stonehill, Muck and Jessup) to be restituted to the Claimant Trust; (iv) disgorgement of ill-gotten compensation (received by Seery) to be restituted to the Claimant Trust; (v) declaratory judgment relief; (vi) actual damages; and (vii) punitive damages.

III. Standing

8. **HMIT.** Prior to the Plan's Effective Date, HMIT was the largest equity holder in the Original Debtor and held a 99.5% limited partnership interest. HMIT currently holds a Class 10 Claim as a contingent Claimant Trust Interest under the CTA

time to seek, if necessary, appropriate relief in the United States District Court. In order to have a fair opportunity to seek such relief on a timely basis and protect HMIT's rights and the rights of the Reorganized Debtor, HMIT will need to seek such relief on or before Wednesday, April 5, 2023, if this Motion has not been resolved.

[11] In the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

(Doc. 3521-5). Upon information and belief, all conditions precedent to HMIT's certification as a vested Claimant Trust Beneficiary would be readily satisfied but for the Defendants' wrongful actions and conduct described in this Motion and the attached Adversary Proceeding.

9. **Reorganized Debtor.** Although HMIT has standing as a former Class B/C Equity Holder, Class 10 claimant, and now contingent Claimant Trust Interest under the CTA,[12] this Motion separately seeks authorization to prosecute the Adversary Proceeding derivatively on behalf of the Reorganized Debtor and Claimant Trust. All conditions precedent to bringing a derivative action are satisfied.

10. Fed. R. Civ. P. 23.1 provides the procedural steps for "derivative actions," and applies to this proceeding pursuant to Fed. R. Bank. P. 7023.1. Applying Rule 7023.1, the Proposed Defendants' wrongful conduct occurred, and the improper trades consummated, in the spring and early summer of 2021, before the Effective Date in August 2021. During this period, HMIT was the 99.5% Class B/C limited partner in the original Debtor. As such, HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time, and the other Proposed Defendants aided and abetted breaches of those duties at that time.

[12] The last transaction at issue involved Claim 190, the Notice for which was filed on August 9, 2021. (Doc. 2698).

11. The derivative nature of this proceeding is also appropriate because any demand on Seery would be futile.[13] Seery is the Claimant Trustee under the terms of the CTA. Furthermore, any demand on the Oversight Board to prosecute these claims would be equally futile because Muck and Jessup, both of whom are Proposed Defendants, dominate the Oversight Board.[14]

12. The "classic example" of a proper derivative action is when a debtor-in-possession is "unable or unwilling to fulfill its obligations" to prosecute an otherwise colorable claim where a conflict of interest exists. *Cooper*, 405 B.R. at 815 (quoting *Louisiana World*, 858 F.2d at 252). Here, because HMIT's proposed Adversary Proceeding includes claims against Seery, Muck, and Jessup, the conflicts of interest are undeniable. Seery is the Trustee of the Claimant Trust Assets under the CTA, and he also serves as the "Estate Representative."[15] Muck and Jessup, as successors to Acis, the Redeemer Committee and UBS, effectively control the Oversight Board, with the responsibility to "monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance . . . ."[16]

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[13] Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed herein, since the Litigation Trustee serves at the direction of the Oversight Board.

[14] *See* Footnote 8, *infra.* In December 2021, several stakeholders made a demand on the Debtor through James Seery, in his capacity as Trustee to the Claimant Trust, to pursue claims related to these insider trades.

[15] *See* Claimant Trust Agreement (Doc. 3521-5), Sec. 3.11.

[16] *Id.* at Sec. 4.2(a) and (b).

13. Creditors' committees frequently bring suit on behalf of bankruptcy estates. Yet, it is clear that any ***appropriately designated party*** also may bring derivative claims. *In re Reserve Prod., Inc.*, 232 B.R. 899, 902 (Bankr. E.D. Tex. 1999) (citations omitted); *see In re Enron Corp.*, 319 B.R. 128, 131 (Bankr. S.D. Tex. 2004). As this Court has held in *In Re Cooper*:

> In Chapter 11 [cases], there is both a textual basis . . . and, frequently, a non-textual, equitable rationale for granting a creditor or creditors committee derivative standing to pursue estate actions (*i.e.*, the equitable rationale coming into play when the debtor-in-possession has a conflict of interest in pursuing an action, such as in the situation of an insider-defendant).

In re Cooper, 405 B.R. 801, 803 (Bankr. N.D. Tex. 2009) (also noting that "[c]onflicts of interest are, of course, frequently encountered in Chapter 11, where the metaphor of the 'fox guarding the hen house' is often apropos"); *see also In re McConnell*, 122 B.R. 41, 43-44 (Bankr. S.D. Tex. 1989) ("[I]ndividual creditors can also act in lieu of the trustee or debtor-in-possession . . . ."). Here, the Proposed Defendants are the "*foxes guarding the hen house*," and their conflicts of interest abound.[17] Proceeding in a derivative capacity is necessary, if not critical.

[17] *See Citicorp Venture Cap., Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 987 (3d Cir. 1998) (settlement noteholders purchased Debtors' securities with "the benefit of non-public information acquired as a fiduciary" for the "dual purpose of making a profit and influenc[ing] the reorganization in [their] own self-interest."), *see also, Wolf v. Weinstein*, 372 U.S. 633, 642, 83 S.Ct. 969, 10 L.Ed.2d 33 (1963) ("Access to inside information or strategic position in a corporate reorganization renders the temptation to profit by trading in the Debtor's stock particularly pernicious.").

14. The proposed Adversary Proceeding also sets forth claims that readily satisfy the Court's threshold standards requiring "colorable" claims, as well as the requirements for a derivative action. This Motion WITHDRAWN is supported by WITHDRAWN WITHDRAWN historical filings in the bankruptcy proceedings WITHDRAWN WITHDRAWN. At the very least, this WITHDRAWN satisfies the Court's threshold requirements of willful misconduct and fraud set forth in the "gatekeeping" orders, as well as the injunction and exculpation provisions in the Plan.[18] This WITHDRAWN also supports well-pleaded allegations exempted from the scope of the releases included in the Plan.

15. HMIT is an appropriate party to bring this action on behalf of the Reorganized Debtor and the Claimant Trust. If successful, the Adversary Proceeding will likely recover well over $100 million for the Claimant Trust, thereby enabling the Reorganized Debtor and Claimant Trust to pay off any remaining innocent creditors and make significant distributions to HMIT as a vested Claimant Trust Beneficiary.

16. As of December 31, 2022, the Claimant Trust had distributed 64.2% of the total $397,485,568 par value of all Class 8 and Class 9 unsecured creditor claims. The

[18] HMIT recognizes that it is an "Enjoined Party" under the Plan. The Plan requires a showing, *inter alia*, of bad faith, willful misconduct, or fraud against a "Protected Party." Seery is a "Protected Party" and an "Exculpated Party" in his capacity as an Independent Director. Muck and Jessup *may* be "Protected Parties" as members of the Oversight Committee, but they were not "protected" when they purchased the Claims before the Effective Date. While it is HMIT's position that Farallon and Stonehill do not qualify as "Protected Parties," they are included in this Motion in the interest of judicial economy.

Claims acquired by Muck and Jessup have an allowed par value of $365,000,000. Based on these numbers, the innocent unsecured creditors hold approximately $32 million in allowed claims.[19]

17. As of December 31, 2022, the Claimant Trust has distributed $255,201,228.[20] On a *pro rata* basis, that means that innocent creditors have received approximately $22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately $9,627,000.

18. Muck and Jessup already have received approximately $232.8 million on their Claims. Assuming and original investment of approximately $160 million, this represents over $72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary. The benefits to the Reorganized Debtor, the Claimant Trust and innocent stakeholders are undeniable.[21]

19. Seery and the Oversight Board should be estopped from challenging HMIT's status to bring this derivative action on behalf of the Claimant Trust. Seery, Muck and Jessup have committed fraud, acted in bad faith and have unclean hands, and they should not be allowed to undermine the proposed Adversary Proceeding - which seeks

[19] Doc. 3653.

[20] *Id.*

[21] Further, under the present circumstances and time constraints, this Motion should be granted to avoid the prospect of the loss of some of HMIT's and the Claimant Trust's claims and denial of due process.

to rectify significant wrongdoing. To hold otherwise would allow Seery, Muck, Jessup, Stonehill, and Farallon the opportunity to not just "guard the hen house," but to also open the door and take what they want.[22] HMIT seeks a declaratory judgment of its rights, accordingly.

IV. The Proposed Defendants

20. Seery acted in several capacities during relevant times. He served as the Debtor's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"). He also served as member of the Debtor's Independent Board.[23] He currently serves as Claimant Trustee under the CTA and remains the CEO of the Reorganized Debtor.

21. There is no doubt Seery owed the Original Debtor's Estate, as well as equity, fiduciary duties, including the duty of loyalty and the duty to avoid conflicts of interest. *See In re Xtreme Power Inc.*, 563 B.R. 614, 632-33 (Bankr. W.D. Tex. 2016) (detailing fiduciary duties owed by corporate officers and directors under Delaware law); *Louisiana World*, 858 F.2d at 245-46 (detailing duties owed by debtors-in-possession).[24]

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[22] "The doctrine of 'unclean hands' provides that "a litigant who engages in reprehensible conduct in relation to the matter in controversy ... forfeits his right to have the court hear his claim, regardless of its merit. [T]he purpose of the clean hands maxim is to protect the court against misuse by one who, because of his conduct, has forfeited his right to have the court consider his claims, regardless of their merit. As such it is not a matter of defense to be applied on behalf of a litigant; rather it is a rule of public policy." *Portnoy v. Cryo-Cell Int'l, Inc.*, 940 A.2d 43, 80–81 (Del. Ch. 2008) (citations omitted) (internal quotations omitted for clarity).

[23] Seery is the beneficiary of the Court's "gatekeeping" orders and is an "exculpated" party in his capacity as an Independent Director. He is also a "Protected Party."

[24] The Internal Affairs Doctrine dictates choice of law. Here, the Debtor, Highland Capital Management, was organized under the law of Delaware. As much, Seery's fiduciary duties and claims involving breaches of those duties will be governed by Delaware law.

22. Farallon and Stonehill are capital management companies which manage hedge funds; they are also Seery's close business allies with a long history of business ventures and close affiliation. Although they were strangers to the Original Debtor's bankruptcy on the petition date, and were not original creditors, they became entangled in this bankruptcy at Seery's invitation and encouragement—and then knowingly participated in the wrongful insider trades at issue. By doing so, Seery was able to plant friendly allies onto the Oversight Board to rubber stamp compensation demands. The proposed Adversary Proceeding alleges that Farallon and Stonehill bargained to receive handsome pay days in exchange.

23. Muck and Jessup are special purpose entities, admittedly created by Farallon and Stonehill on the eve of the alleged insider trades, and they were used as vehicles to assume ownership of the purchased claims.[WITHDRAWN] WITHDRAWN Muck and Jessup ***did not exist*** before confirmation of the Plan in February 2021.[26] Now, however, Muck and Jessup serve on the Oversight Board with immense powers under the CTA.[27] When they purchased the claims at issue, Muck and Jessup were ***not*** acting in their official capacities on the Oversight Committee and, therefore, they were not "Protected Persons" under the Plan.

[WITHDRAWN] WITHDRAWN

[26] WITHDRAWN Muck was created on March 9, 2021 before the Effective Date. Jessup was created on April 8, 2021, before the Effective Date.

[27] *See* Doc. 3521-5, Sec. 4(a) and 4(b).

24. By trading on the alleged material non-public information, Farallon, Stonehill, Muck, and Jessup became non-statutory "insiders" with duties owed directly to HMIT at a time when HMIT was the largest equity holder.[28] *See S.E.C. v. Cuban*, 620 F.3d 551, 554 (5th Cir. 2010) ("The corporate insider is under a duty to 'disclose or abstain'—he must tell the shareholders of his knowledge and intention to trade or abstain from trading altogether."). In this context, there is no credible doubt that Farallon's and Stonehill's dealings with Seery were ***not*** arms-length. Again, Farallon and Stonehill were Seery's past business partners and close allies.[29] By virtue of the insider trades at issue, Farallon and Stonehill acquired control (acting through Muck and Jessup) over the Original Debtor and Reorganized Debtor through Seery's compensation agreement and awards, as well as supervisory powers over the Claimant Trust. This makes Farallon and Stonehill paradigm non-statutory insiders.

25. HMIT also seeks recovery against John Doe Defendant Nos. 1 through 10.[30] It is clear Farallon and Stonehill refuse to disclose the precise details of their legal

[28] Because of their "insider" status, this Court should closely scrutinize the transactions at issue.

[29] Farallon and Stonehill are two capital management firms (similar to HCM) with whom Seery has had substantial business relationships. Also, Seery previously served as legal counsel to Farallon. Seery also has a long-standing relationship with Stonehill. GCM Grosvenor, a global asset management firm, held four seats on the Redeemer Committee (an original member of the Unsecured Creditors Committee in HCM's bankruptcy). Upon information and belief, GCM Grosvenor is a significant investor in Stonehill and Farallon. GCM Grosvenor, through Redeemer, also played a large part in appointing Seery as a director of Strand Advisors and approved his appointment as HCM's CEO and CRO.

[30] Farallon and Stonehill consummated their trades concealing their actual involvement through Muck and Jessup as shell companies. Farallon's and Stonehill's identities were not discovered until much later after the fact.

relationships with Muck and Jessup. They resisted such discovery in the prior Rule 202 Proceedings in state district court.[WITHDRAWN] They also refused to disclose such details in response to a prior inquiry to their counsel.[WITHDRAWN] Furthermore, the corporate filings of both Muck and Farallon conspicuously omit the identity of their respective members or managing members.[WITHDRAWN] Accordingly, HMIT intends to prosecute claims against John Doe Defendant Nos. 1 -- 10 seeking equitable tolling pending further discovery whether Farallon and Stonehill inserted intermediate corporate layers between themselves and the special purpose entities (Muck and Jessup) they created. *See In re ATP Oil & Gas Corp.*, No. 12-36187, 2017 WL 2123867, *4 (Bankr. S.D. Tex. May 16, 2017) (lsgur .J.); *see also In re IFS Fin. Corp.* No. 02-39553, 2010 WL 4614293, *3 (Bankr. S.D. Tex. No. 2, 2010) ("The identity of the party concealing the fraud is immaterial, the critical factor is whether any of the parties involved concealed property of the estate." "In either case, the trustee must demonstrate that despite exercising diligence, he could not have discovered the identity of the [unnamed] defendants prior to the expiration of the limitations period.") *ATP Oil*, 2017 WL 2123867 at *4. That burden is easily satisfied here.

[WITHDRAWN]

[WITHDRAWN]

[WITHDRAWN]

V. Background

26. As part of this Court's Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditor's Committee—was appointed to the Board of Directors (the "Board") of Strand Advisors, Inc., ("Strand Advisors"), the Original Debtor's general partner. Following approval of the Governance Order, the Board then appointed Seery as the Original Debtor's CEO and CRO. [34] Following the Effective Date of the Plan, Seery now serves as Trustee of the Claimant Trust (the Reorganized Debtor's sole post-reorganization limited partner), and continues to serve as the Reorganized Debtor's CEO. [35]

27. Imbued with his powers as CEO and CRO, Seery negotiated and obtained bankruptcy court approval of several settlements prior to the Effective Date, resulting in the following approximate allowed claims (hereinafter "Claims"):[36]

Creditor	**Class 8**	**Class 9**
Redeemer	$137 mm	$0 mm
Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm
UBS	$65 mm	$60 mm
(Totals)	$270 mm	$95 mm

[34] Doc. 854, Order Approving Retention of Seery as CEO/CRO.

[35] *See* Doc. 1943, Order Approving Plan, p. 34.

[36] Orders Approving Settlements [Doc. 1273, Doc. 1302, Doc. 1788, Doc. 2389].

Each of the settling parties curiously sold their Claims to Farallon or Stonehill (or their affiliated special purpose entities) shortly after they obtained court approval of their settlements. One of these "trades" occurred within just a few weeks before the Effective Date. Farallon and Stonehill coordinated and controlled the purchase of these Claims through Muck and Jessup, and they admitted in open court that Muck and Jessup were created to allow their purchase of the Claims.[WT]

28. HMIT alleges that Seery filed (or caused to be filed) deflated, misleading projections regarding the value of the Debtor's Estate,[38] while inducing unsecured creditors to discount and sell their Claims to Farallon and Stonehill. But WITHDRAWN WITHDRAWN it is now known that Seery provided material, non-public information to Farallon. The circumstantial evidence is also clear that both Farallon and Stonehill had access to and used this non-public information in connection with their purchase decisions.

29. Farallon and Stonehill are registered investment advisors who have their own fiduciary duties to their investors, and they are acutely aware of what these duties entail. Yet, upon information and belief, they collectively invested over $160 million dollars to purchase the Claims in the absence of any publicly available information that

[WT] WITHDRAWN

[38] The pessimistic projections were issued as part of the Plan Analysis on February 2, 2021. [Doc. 1875-1]. The Debtor projected 0% return on Class 9 claims and only 71.32% return on Class 8 Claims.

could rationally justify such investments. These "trades" become even more suspect because, at the time of confirmation, the Plan provided pessimistic projections advising stakeholders that the Claim holders would never receive full satisfaction:

- From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the valuation of HCM's assets dropped over $200 million from $566 million to $328.3 million.[39]
- HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11;[40]
    - This meant that Farallon and Stonehill invested more than $103 million in Claims ***when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims***.
- In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% *to 54%*;[41]

30. In the third financial quarter of 2021, just over $6 million of the projected $205 million available to satisfy general unsecured creditors was disbursed.[42] No additional distributions were made to the unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—**$45 million more than was *ever* projected**.[43]

[39] Doc. 1473, Disclosure Statement, p. 18.

[40] Doc. 1875-1, Plan Supplement, p. 4.

[41] Doc 2949.

[42] Doc 3200.

[43] Doc 3582.

31. According to Highland Capital's Motion for Exit Financing,[44] and a recent motion filed by Dugaboy Investment Trust,[45] there remain ***substantial*** assets to be monetized for the benefit of the Reorganized Debtor's creditors. Thus, upon information and belief, Stonehill and Farallon, stand to realize significant profits on their wrongful investments. In turn, Stonehill and Farallon will garner (and already have garnered) substantial fees – both base fees and performance fees – as the result of their acquiring and/or managing the Claims. Upon information and belief, HMIT also alleges that Seery has received excessive compensation and bonuses approved by Farallon (Muck) and Stonehill (Jessup) as members of the Oversight Board.

32. WITHDRAWN

- Farallon admitted it conducted no due diligence and relied upon Seery in making its multi-million-dollar investment decisions at issue.[WD]
- Farallon admitted it was unwilling to sell its stake in these Claims at any price because Seery assured Farallon that the Claims were tremendously valuable.[WD]
- Farallon bragged about the value of its investment referencing non-public information regarding Amazon, Inc.'s ("Amazon") interest in acquiring Metro-Goldwyn-Mayer Studios Inc. ("MGM").[WD]

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[44] Doc 2229.

[45] Doc 3382.

- WITHDRAWN
- WITHDRAWN
- WITHDRAWN

- Farallon was unwilling to sell its stake in the newly acquired Claims even though publicly available information suggested that Farallon would lose millions of dollars on its investment.[49]

Farallon can offer ***no credible explanation*** to explain its significant investment, and its refusal to sell at any price, ***except*** Farallon's access to material non-public information. In essence, Seery became the guarantor of Farallon's significant investment. Farallon admitted as much in its statements to James Dondero.

33. The same holds true for Stonehill. Given the negative, publicly available information, Stonehill's multi-million-dollar investments make no rational sense unless Stonehill had access to material non-public information.

34. Fed. R. Bank. P. 2015.3 requires debtors to "file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." However, no public reports required by Rule 2015.3 were filed. Seery testified they simply "fell through the cracks." [50]

35. Six days prior to the filing of the motion seeking approval of the HarbourVest Settlement, Seery acquired material non-public information regarding Amazon's interest in acquiring MGM.[51] Upon receipt of this material non-public

[49] *See* WITHDRAWN Doc. 1875-1.

[50] Doc. 1905, February 3, 2021, Hearing Transcript, 49:5-21.

[51] *See* Adversary No. 20-3190-sgj11, Doc. 150-1.

information, MGM should have been placed on the Original Debtor's "restricted list," but Seery continued to move forward with deals that involved MGM stock and notes.[52] Because the Original Debtor additionally held direct interests in MGM,[53] the value of MGM was of paramount importance to the value of the estate.

36. Armed with this and other insider information, Farallon—through Muck—proceeded to invest in the Claims and, acting through Muck, acceded to a powerful position on the Oversight Board to oversee future distributions to Muck and itself. It is no coincidence Seery invited his business allies into these bankruptcy proceedings with promises of great profits. Seery's allies now oversee his compensation.[54]

37. The Court also should be aware that the Texas States Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation

[52] As part of the HarbourVest Settlement, Seery negotiated the purchase of HarbourVest's interest in HCLOF for approximately $22.5 million as part of the transaction. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM. The HCLOF interest was not to be transferred to the Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements. Doc. 1625, p. 9, n. 5. Doc. 1625.

[53] *See* Doc. 2229, Motion for Exit Financing.

[54] Amazon closed on its acquisition of MGM in March 2022, but the evidence strongly suggests that agreements for the trades already had been reached - while announcement of the trades occurred strategically after the MGM news became public. Now, as a result of their wrongful conduct, Stonehill and Farallon profited significantly on their investments, and they stand to gain substantially more profits.

underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely "colorable."

VI. Argument

A. HMIT has asserted Colorable Claims against Seery, Stonehill, Farallon, Muck, and Jessup.

38. Unlike the terms "Enjoined Party," "Protected Party," or "Exculpated Party," the Plan does not define what constitutes a "colorable" claim. Nor does the Bankruptcy Code define the term. However, relevant authorities suggest that a Rule 12(b)(6) standard is an appropriate analogue.

39. The Fifth Circuit has held that a "colorable" claim standard is met if a [movant], such as HMIT, has asserted claims for relief that, on appropriate proof, would allow a recovery. A court need not and should not conduct an evidentiary hearing but must ensure that the claims do not lack any merit whatsoever. *Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 248 (5th Cir. 1988). Stated differently, the Court need not be satisfied there is an evidentiary basis for the asserted claims but instead should allow the claims if they ***appear*** to have ***some*** merit.

40. Other federal appellate courts have reached similar conclusions. For example, the Eighth Circuit holds that "creditors' claims are colorable if they would survive a motion to dismiss." *In re Racing Services, Inc.*, 540 F.3d 892, 900 (8th Cir. 2008); *accord In Re Foster*, 516 B.R. 537, 542 (B.A.P. 8th Cir. 2014), aff'd 602 Fed. Appx. 356 (8th Cir. 2015) (*per curiam*). The Sixth Circuit has adopted a similar test requiring that the court

look ***only*** to the face of the complaint to determine if claims are colorable. *In re The Gibson Group, Inc.*, 66 F.3d 1436, 1446 (6th Cir. 1995) (emphasis added).

41. Although there is a dearth of federal court authorities in Texas, other federal courts have adopted the same standard—*i.e.*, a claim is colorable if it is "plausible" and could survive a motion to dismiss. *See In re America's Hobby Center, Inc.*, 223 B.R. 273, 282 (S.D.N.Y 1998). In addition, in the non-bankruptcy context, the District Court for the Northern District of Texas explained that "[t]he requirement of a 'colorable claim' means only that the plaintiff must have an '*arguable* claim' and not that the plaintiff must be able to succeed on that claim." *Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (Emphasis added).

42. Thus, in this instance, this Court's gatekeeping inquiry is properly limited to whether HMIT has stated a plausible claim on the face of the proposed pleadings involving "bad faith," "willful misconduct," or "fraud." Because the face of the Adversary Complaint alleges plausible facts, HMIT's Motion is properly granted. Clearly, the attached Adversary Proceeding would survive a Rule 12(b)(6) challenge. Furthermore, the supporting WITHDRAWN documentary evidence provide additional support, and the circumstantial evidence proves that Farallon and Stonehill, strangers to the bankruptcy on the petition date, would not have leaped into these proceedings without undisclosed assurances of profit.

B. Fraud

43. As set forth in the proposed Adversary Proceeding, HMIT alleges a colorable claim for fraud—both fraud by knowing misrepresentation and fraud by omission of material fact. Here, these allegations of fraud are appropriately governed by Texas law under appropriate choice of law principals.[55]

44. Seery had a duty to not provide material inside information to his business allies. But, he did so. At the latest, Seery became aware of the potential sale of MGM in December 2020 when he received an email from Jim Dondero. [redacted] Thus, Seery knew at that time that this potential sale would likely yield significant value to the Original Debtor's Estate. Yet, the financial disclosures associated with the Plan's confirmation, which were provided only a month later, presented an entirely different outlook for both Class 8 and Class 9 unsecured creditors.[57] Seery knew at that time that these pessimistic disclosures were misleading, if not inaccurate.

45. There is no credible doubt Seery intended that innocent stakeholders would rely upon the pessimistic projections set forth in the Plan Analysis. Indeed, the singular purpose of the Plan Analysis was to advise stakeholders. As such, HMIT alleges that Seery knowingly made misrepresentations with the intention that innocent stakeholders

[55] However, Delaware law is substantially similar on the elements of fraud. *See Malinals v. Kramer*, No. CIV.A. CPU 6-11002145, 2012 WL 174958, at 2 (Del. Com. PI. Jan. 5, 2012)

[redacted] WITHDRAWN

[57] *See* Doc. 1875-1, Plan Analysis, February 1, 2021.

would rely, and that he failed to disclose material information concerning his entanglements with Farallon and Stonehill, as well as the related negotiations that were chock full of conflicts of interest.

46. On the flip side of this conspiracy coin, Farallon and Stonehill were engaged in negotiations to acquire the Claims at discounted prices; and, they successfully did so. HMIT alleges that their success was based on knowledge that the financial disclosures associated with the Plan Analysis were significantly understated. Otherwise, it would make no financial sense for Farallon and Stonehill to do the deals at issue. Indeed, Farallon admitted that it would not sell the Claims at any price, expressing great confidence in the substantial profits it expected even in the absence of any supporting, publicly available information.[WITHDRAWN]

47. All of the Proposed Defendants had a duty of affirmative disclosure under these circumstances. Seery always had this duty. Muck, Jessup, Farallon, and Stonehill assumed this duty when they became non-statutory "insiders." Thus, all of the Proposed Defendants are liable for conspiring to perpetrate a fraud by omission of material facts.

48. HMIT also claims that Seery and the other Proposed Defendants failed to disclose material information concerning Seery's involvement in brokering the Claims in exchange for *quid pro quo* assurances of enhanced compensation. Seery's compensation

[WITHDRAWN]

should be disgorged or, alternatively, such compensation constitutes a damage recoverable by the Reorganized Debtor and Claimant Trust as assignees (or transferees) of the Original Debtor's causes of action. This compensation was the product of the alleged self-dealing, breaches of fiduciary duty, and fraud.

C. Breaches and Aiding and Abetting Breaches of Fiduciary Duties

49. It is beyond dispute Seery owed fiduciary duties to the Estate. *See Xtreme Power*, 563 B.R. at 632-33 (detailing fiduciary duties owed by corporate officers and directors under Delaware law);[59] *Louisiana World*, 858 F.2d at 245-46 (5th Cir. 1988) (detailing duties owed by debtors-in-possession). Although Seery did not buy the Claims at issue, he stood to profit from these sales because his close business allies would do his bidding after they had acceded to positions of power and control on the Oversight Board. Muck and Jessup were essentially stepping into the shoes of three of the largest unsecured creditors who were already slated to serve on the Oversight Board. Thus, by acquiring their Claims, all of the Proposed Defendants knew that Muck and Jessup would occupy these powerful oversight positions after the Effective Date.

50. Thus, the alleged conspiracy was successfully implemented before the Effective Date. Farallon and Stonehill now occupy control positions through the shell

[59] The *Xtreme* case also notes that "several Delaware courts have recognized that 'directors who are corporate employees lack independence because of their substantial interest in retaining their employment." 563 B.R. at 633-34. Because Muck and Jessup are now in control of Seery's compensation, it follows that Seery is beholden to them, and Seery's disclosure of inside information to Stonehill and Farallon confirms his conflict of interest.

entities (Muck and Jessup) overseeing large compensation packages for Seery. Of course, this control (and the opportunity to control) presented a patent conflict of interest which Seery should have avoided, but instead knowingly created, fostered, and encouraged. HMIT alleges that Seery breached his duty to avoid this conflict or otherwise disclose this conflict and Farallon and Stonehill aided and abetted this breach.

51. The Original Debtor, as an investment adviser registered with the SEC, is also required to make public disclosures on its Form ADV, the uniform registration form for investment advisers required by the SEC. These Form ADV disclosures, which were in effect at the time of the insider trades at issue, explicitly forbade "any access person from trading either personally or on behalf of others . . . on material non-public information or communicating material non-public information to others in violation of the law or duty owed to another party."[60] It now appears these representations were false when made. Seery's alleged conduct also violated, at minimum, the duties Seery owed in his various capacities with the Original Debtor under the Form ADV disclosures.

52. Although initially strangers to the original bankruptcy, by accepting and using inside information, Farallon and Stonehill became "temporary insiders" and thus owed separate duties to the Estate. *See S.E.C. v. Cuban*, 620 F.3d 551 (5th Cir. 2010) ("[E]ven

[60] *See, e.g.*, https://files.adviserinfo.sec.gov/IAPD/Content/Common/crd_iapd_Brochure.aspx?BRCHR_VRSN_ID=777026.

an individual who does not qualify as a traditional insider may become a 'temporary insider' if by entering 'into a special confidential relationship in the conduct of the business of the enterprise [they] are given access to information solely for corporate purposes." *In re Washington Mut., Inc.*, 461 B.R. 200 (Bankr. D. Del. 2011), *vacated in part*, 08-12229 MFW, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (finding that equity committee stated colorable claim for equitable disallowance against creditors who "became temporary insiders of the Debtors when the Debtors gave them confidential information and allowed them to participate in negotiations with JPMC for the shared goal of reaching a settlement that would form the basis of a consensual plan of reorganization"; vacated in part as a condition of settlement only);[61] *See also, In re Smith*, 415 B.R. 222, 232-33 (Bankr. N.D. Tex. 2009) ("[a]n insider is an entity or person with 'a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arm's length with the debtor.' 'Thus, the term "insider" is viewed to encompass two classes: (1) per se insiders as listed in the Code and (2) extra-statutory insiders that do not deal at arm's length.'" (citations omitted)). Farallon, Stonehill, Muck, and Jessup clearly fall into this latter category.

[61] Although the *Washington Mutual* case was subsequently vacated, the Court's intellectual reasoning remains valid because the vacatur was mandated by a mediated settlement, not because the court's logic was flawed or changed, and the court expressly noted that the parties' settlement was conditioned on vacatur. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, *8 (Bankr. D. Del. Feb. 24, 2012) ("grant[ing] partial vacatur . . . *in furtherance of the settlement embodied in the Plan*," and noting that "absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement." (emphasis added)).

53. Because Farallon and Stonehill (acting through Muck and Jessup) now hold the majority of the seats on the Oversight Board, they, along with Seery, exercise control of the reorganization proceedings. At no time were Farallon, Stonehill, or Seery's plans disclosed to the other creditors or equity. In fact, the only inference that can be reasonably drawn is that Farallon and Stonehill brazenly sought to conceal their involvement by establishing shell entities—Muck and Jessup—to nominally hold the Claims and create an opaque barrier to any effort to identify the "*Oz behind the curtain*." Such conduct aligns precisely with the inequitable conduct detailed in *Citicorp* and *Adelphia* (discussed below).

54. In sum, the proposed Adversary Proceeding sets forth plausible allegations that Stonehill and Farallon were aware of Seery's fiduciary duties. Indeed, as registered investment advisors, both Farallon and Stonehill were acutely aware of Seery's fiduciary obligations, including, without limitation, the duty to act in the best interests of the Original Debtor's Estate and the duty not to engage in insider trading that would benefit Seery, as an insider, and themselves, as non-statutory insiders. By accepting and then acting on material non-public information, Farallon and Stonehill (as well as Muck and Jessup) aided and abetted breaches of these fiduciary duties. By placing themselves in positions to control Seery's compensation, Farallon and Stonehill (acting through Muck and Jessup) induced, encouraged, aided and abetted Seery's self-dealing.

D. Equitable Disallowance is an Appropriate Remedy

55. HMIT also seeks equitable disallowance. Although the Fifth Circuit in *Matter of Mobile Steel Co.* generally limited the court's equitable powers to subordination rather than disallowance,[62] the Fifth Circuit **did *not* foreclose** the viability of equitable disallowance as a potential remedy. *See* 563 F.2d 692, 699 n. 10 (5th Cir. 1977). Binding U.S. Supreme Court precedent in *Pepper v. Litton* also permits bankruptcy courts to fashion disallowance remedies. 308 U.S. 295, 304-11 (1939). Bankruptcy Code § 510, which supplies the authority for equitable subordination, was "intended to codify case law, such as *Pepper v. Litton . . . and is not intended to limit the court's power in any way…. Nor does [it] preclude a bankruptcy court from completely disallowing a claim in appropriate circumstances*." *In re Adelphia Commun. Corp.*, 365 B.R. 24, 71-72 (Bankr. S.D.N.Y. 2007), *aff'd in part sub nom. Adelphia Recovery Tr. v. Bank of Am., N.A.*, 390 B.R. 64 (S.D.N.Y. 2008), *adhered to on reconsideration*, 05 CIV. 9050 (LMM), 2008 WL 1959542 (S.D.N.Y. May 5, 2008) (emphasis and omissions in original).[63]

56. The Fifth Circuit's decision in *Mobile Steel* also was premised on the notion that disallowance would not add to the quiver of defenses to fight unfairness because

[62] Equitable subordination is an inadequate remedy in this instance.

[63] In *Washington Mutual*, the Court's intellectual reasoning when imposing disallowance is instructive. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, *8 (Bankr. D. Del. Feb. 24, 2012) ("grant[ing] partial vacatur . . . *in furtherance of the settlement embodied in the Plan*," and noting that "absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement." (emphasis added)).

creditors "are fully protected by subordination" and "[i]f the misconduct directed against the bankrupt is so extreme that disallowance might appear to be warranted, then *surely* the claim is either invalid or the bankrupt possesses a clear defense against it." *Mobile Steel*, 563 F.2d at 699 n. 10 (emphasis added). Importantly, however, the factual scenarios considered in *Mobile Steel* do not exist here.

57. Here, Muck and Jessup purchased both Class 8 and Class 9 Claims, and they now effectively occupy more than 90% of the entire field of unsecured creditors in these two claimant tiers. Thus, subordination cannot effectively address the current facts where the Original Debtor's CEO and CRO conspired directly with close business allies who acquired the largest unsecured claims to the detriment of other innocent creditors and *former equity*. The reasoning in published cases from other circuits supports this conclusion. *See Adelphia*, 365 B.R. at 71-73; *Citicorp Venture Capital, Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 991 n. 7 (3d Cir. 1998).

58. The purpose of equitable subordination is to assure that the wrongdoer does not profit from bad conduct. In the typical case, subordination to other creditors will achieve this deterrence. But, it is clear that the Third Circuit's decision in *Citicorp* was structured to use subordination as just one tool in a larger tool box to make sure "at a minimum, the remedy here should deprive – [the fiduciary] of its profit on the purchase of the notes." *Id* at 991. In *Adelphia*, the Southern District of New York also used equitable

subordination as a remedy to address wrongs of non-insiders who aided and abetted breaches a fiduciary duty by the debtor's management. 365 B.R. at 32.

59. But subordination cannot adequately address the wrongful conduct at issue. This is because subordination is typically limited to instances where one creditor is subordinated to other creditors, not equity. Here, for all practical purposes, there are only a few other unsecured creditors with relatively small stakes. Therefore, subordination as a weapon of deterrence is neutered.

60. In sum, by engaging in the alleged wrongful acts, including aiding and abetting Seery's breaches of fiduciary duty, Farallon, Stonehill, Muck, and Jessup should not be rewarded. The Proposed Defendants engaged in alleged conduct which damaged the Original Debtor's estate, including improper agreements to compensate Seery under the terms of the CTA. Equitable disallowance is an appropriate remedy which, when combined with disgorgement of all ill-gotten profits, will deprive the Proposed Defendants of their ill-gotten gains.

E. Disgorgement and Unjust Enrichment

61. The law is clear that disgorgement is an available remedy for breach of fiduciary duty both under Texas Law, see *Kinzbach Tool Co. v. Corbett-Wallace Corporation*, 160 S.W. 2d 509 (Tex. 1942), and under Delaware law, see *Metro Storage International, LLC v. Harron*, 275 A.3d 810 (Del. Ch. 2022). Disgorgement is also an appropriate remedy for unjust enrichment under Texas law, *Hunter v. Shell Oil Co.*, 198 F.2d 485 (5th Cir. 1952),

and under Delaware law, *In re Tyson Foods, Inc. Consolidated Shareholder Litigation*, 919 A.2d 563 (Del. Ch. 2007).[64]

62. Likewise, the imposition of a constructive trust is proper for addressing unjust enrichment under both Delaware and Texas law, see *Teacher's Retirement System of Louisiana v. Aidinoff*, 900 A.2d 654 (Del. Ch. 2006) and *Hsin-Chi-Su v. Vantage Drilling Company*, 474 S.W. 3d 384 (Tex. App. – 14th Dist. 2015), pet. denied. The elements of unjust enrichment are: (1) the defendant must have gained a benefit (2) at the expense of plaintiff, (3) and retention of that benefit must be shown to be unjust. *See Restatement (Third) of Restitution and Unjust Enrichment* §321, cmt. e (2011).

63. Here, the imposition of a constructive trust and disgorgement are clearly appropriate to provide redress for the alleged breaches of fiduciary duty and the knowing participation in (or aiding and abetting) those breaches. Furthermore, the imposition of a constructive trust and disgorgement are appropriate to disgorge the improper benefits that all of the Proposed Defendants received by virtue of collusion and insider trading.

64. As set forth in the proposed Adversary Proceeding, Seery gained the opportunity to have his compensation demands rubber stamped. The other Defendants gained the opportunity to purchase valuable claims at a discount knowing that

[64] It is likely that the Internal Affairs Doctrine will dictate that Delaware choice of law governs the breach of fiduciary duty claims.

pessimistic financial projections were false and that the upside investment potential was great. Retention of the benefits they received would be unjust and inequitable.

65. Clearly, the Debtor's Estate was damaged by virtue of the claimed conduct. Seery obtained profits and compensation to the detriment of that estate as well as the estate of the Reorganized Debtor, other innocent creditors and HMIT, as former equity and as a contingent Claimant Trust Beneficiary.

F. Declaratory Relief

66. HMIT also seeks declaratory relief pursuant to Fed. R. Bank P. 7001(9). Specifically, HMIT seeks a declaratory judgment that: (a) there is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement; (b) as a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered "contingent;" (c) HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill; (d) HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments; (e) Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of fraudulent conduct, bad faith, willful misconduct, and unclean hands; (f) Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized

Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct, and unclean hands; and (g) all of the Proposed Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct, and unclean hands.

G. HMIT has Direct Standing.

67. The Texas Supreme Court recently held that "a partner or other stakeholder in a business organization has constitutional standing to sue for an alleged loss in the value of its interest in the organization." *Pike v. Texas EMC Mgt., LLC*, 610 S.W.3d 763, 778 (Tex. 2020). In so holding, the Court considered federal law and found that the traditional "incantation that a shareholder may not sue for the corporation's injury" is really a question of capacity, which goes to the merits of a claim, rather than an issue of standing that would impact subject matter jurisdiction. *Id.* at 777 (noting that the 5th Circuit and "[o]ther federal circuits agree that a plaintiff has standing to sue for the lost value of its investment in a corporation"). Because Seery, Muck, Jessup, Stonehill, Farallon's alleged actions devalued HMIT's interest in the Debtor's Estate, including, without limitation, payment of excessive compensation to Seery, HMIT has standing to pursue its common law claims directly. HMIT also has direct standing to seek declaratory relief as set forth in the proposed Adversary Proceeding.

VII. Prayer

WHEREFORE, PREMISES CONSIDERED, Hunter Mountain Investment Trust respectfully requests this Court grant HMIT leave authorizing it to file the Adversary Complaint, attached as Exhibit 1, as an Adversary Proceeding in this United States Bankruptcy Court for the Northern District of Texas, in its own name and as a derivative action on behalf of the Debtor Highland Capital Management, L.P., against Muck Holdings, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, Stonehill Capital Management, LLC, James P. Seery, Jr., and John Doe Defendants Nos. 1 – 10, and further grant HMIT all such other and further relief to which HMIT may be justly entitled.

Dated: March 28, 2023

Respectfully Submitted,
PARSONS MCENTIRE MCCLEARY PLLC

By: */s/ Sawnie A. McEntire*

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CERTIFICATE OF CONFERENCE

Beginning on March 24, 2023, and also on March 27, 2023, the undersigned counsel conferred either by telephone or via email with all counsel for all Respondents regarding the relief requested in the foregoing Motion, including John A. Morris on behalf of James P. Seery, and Brent McIlwain on behalf of Muck Holdings LLC, Jessup Holdings LLC, Stonehill Capital Management, and Farallon Capital Management. Mr. Seery is opposed to this Motion. Based upon all communications with Mr. McIlwain, it is reasonably believed his clients are also opposed and we advised him that this recitation would be placed in the certificate of conference.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

CERTIFICATE OF SERVICE

I certify that on the 28th day of March 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

Exhibit 1 to Emergency Motion

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

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Case No. 19-34054-sgj11**
Debtor.	§	
HUNTER MOUNTAIN INVESTMENT TRUST, INDIVIDUALLY, AND ON BEHALF OF THE DEBTOR HIGHLAND CAPITAL MANAGEMENT, L.P. AND THE HIGHLAND CLAIMANT TRUST	§	**Adversary Proceeding No. _____**
PLAINTIFFS,	§	

v.	§
	§
MUCK HOLDINGS, LLC, JESSUP HOLDINGS, LLC, FARALLON CAPITAL MANAGEMENT, LLC, STONEHILL CAPITAL MANAGEMENT, LLC, JAMES P. SEERY, JR., AND JOHN DOE DEFENDANTS NOS. 1-10	§
DEFENDANTS.	§

VERIFIED ADVERSARY COMPLAINT

Hunter Mountain Investment Trust ("HMIT") files this Verified Adversary Complaint in its individual capacity and, as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management L.P. ("HCM" or "Reorganized Debtor") and the Highland Claimant Trust (collectively "Plaintiffs"), complaining of Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup"), Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), James P. Seery, Jr., ("Seery") and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendants Nos. 1-10 are collectively "Defendants"), and would show:

I. Introduction

1. HMIT brings this Verified Adversary Complaint ("Complaint") on behalf of itself, individually, and as a derivative action benefitting the Reorganized Debtor and

on behalf of the Highland Claimant Trust ("Claimant Trust"), as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").[1] This derivative action is specifically brought pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and B. R. Rule 7023.1. At the time of the transactions at issue, HMIT held a 99.5% limited partnership in Highland Capital Management, LP, the Original Debtor, as described herein. This derivative action is not a collusive effort to confer jurisdiction that the Court would otherwise lack.

2. Upon the Effective Date, the assets of the bankruptcy estate of Highland Capital Management, L.P., as the Original Debtor (the "Debtor's Estate") were transferred to the Highland Claimant Trust under the terms of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Doc. 1943, Exhibit A] (the "Plan") and as defined in the CTA. These assets include all "causes of action" that the Debtor's Estate had before the Effective Date including, without limitation, the causes of action set forth in this Adversary Proceeding. Furthermore, the Claimant Trust is managed by the Claimant Trustee, Seery. Therefore, any demand upon Seery to prosecute the claims set forth in this Complaint would be futile because Seery is a Defendant. Similarly, the Oversight Board exercises supervision over Seery as Claimant

[1] Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate. Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed in HMIT's Emergency Motion for Leave (Doc. __).

Trustee, and Muck and Jessup are members of the Oversight Board. Any demand upon Muck and Jessup to prosecute these claims would be equally futile. All conditions precedent to bringing this derivative action have otherwise been satisfied.

3. This action has become necessary because of Defendants' tortious conduct. This tortious conduct occurred before the Effective Date of the Plan, but its effects have caused damage both before and after the Effective Date. Prior to the Effective Date, HMIT owned 99.5% of the limited partnership interest in the Original Debtor and was the beneficiary of fiduciary duties owed by Seery.

4. Seery, the Original Debtor's CEO and former Chief Restructuring Officer ("CRO"), wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends, Farallon and Stonehill. He did so by providing material non-public information to them concerning the value of the Original Debtor's Estate that other stakeholders did not know. Farallon and Stonehill, who were otherwise strangers to the bankruptcy proceedings, wrongfully purchased the claims through their special purpose entities, Muck and Jessup, based upon this inside information, and they are now profiting from their misconduct. Seery's dealings with the other Defendants were not arm's length, but instead were covert, undisclosed, and collusive.

5. Motivated by corporate greed, the other Defendants aided and abetted or, alternatively, knowingly participated in Seery's wrongful conduct. They also breached their own duties as "non-statutory insiders." Because of their long-standing, historical

relationships with Seery, and their use of material non-public information, Farallon, Stonehill, Muck, and Jessup assumed positions of control over the affairs of the Debtor's bankruptcy, including compensation awards to Seery. As such, they became non-statutory insiders.

6. HMIT was formerly the largest equity holder in the Debtor, holding a 99.5% limited partnership interest. HMIT now holds an Allowed Class 10 Class B/C Limited Partnership Interest and a Contingent Trust Interest under the CTA. Given HMIT's' position as former equity, HMIT's right to recover from the Claimant Trust is junior to the Reorganized Debtor's unsecured creditors, now known as Claimant Trust Beneficiaries. However, the vast majority of the approved unsecured claims superior to HMIT's interest are the claims wrongfully acquired by insider trading and the breaches of duty at issue in this proceeding.

7. By wrongfully soliciting, fostering, and encouraging the wrongful insider trades, Seery violated his fiduciary duties to the Debtor's Estate, specifically his duty of loyalty and his duty to maximize the value of the Estate with corresponding recovery by legitimate creditors and former equity. Seery was motivated out of self-interest to garner personal benefit (to the detriment of the Debtor's Estate) by strategically benefitting his business allies with non-public information. He then successfully "planted" his allies onto the Oversight Board, which, as a consequence does not act as an independent board in the exercise of its responsibilities. Rather, imbued with powers to oversee Seery's

future compensation, the other Defendants are postured to reward Seery financially regarding Defendants' illicit dealings and, upon information and belief, they have done so.

8. By receiving and acting upon material non-public information concerning the financial condition of the Debtor's Estate, Stonehill and Farallon, acting individually and through special purpose shell entities they created and controlled, directly or indirectly, are also liable for aiding and abetting Seery's breaches of fiduciary duties. By acquiring the claims at issue, Muck and Jessup, the shell entities created and controlled by Stonehill and Farallon, also became non-statutory insiders owing duties of disclosure which they also breached.

9. HMIT separately seeks recovery against John Doe Defendant Nos. 1-10. Farallon actively concealed the precise legal relationship between Farallon and Muck. Stonehill actively concealed the precise legal relationship between Stonehill and Jessup. What is known, however, is that Farallon and Stonehill created these special purpose shell entities on the eve of the insider trades to acquire ownership of the claims and to otherwise control the affairs of the Oversight Board. Both Farallon and Stonehill rejected inquiries concerning the exact nature of their relationship with these special purpose entities. Accordingly, HMIT seeks equitable tolling of any statute of limitations concerning claims against unknown business entities that Farallon and Stonehill may have created and inserted as intermediate corporate layers in the transactions at issue.

10. HMIT seeks to disgorge all Defendants' ill-gotten profits and equitable disallowance of the remaining unpaid balances on the following allowed claims: Claim Nos. 23, 72, 81, 143, 147, 149, 150, 153, 154, 190, and 191 (the "Claims") currently held by Muck and Jessup. Because Defendants received substantial distributions from the Claimant Trust in connection with these Claims, HMIT seeks to disgorge all such distributions above Defendants' initial investment—compelling restitution of such funds to the Claimant Trust for the benefit of innocent creditors and former equity pursuant to the waterfall established under the Plan and the CTA. HMIT also seeks to disgorge Seery's compensation from the date his collusive conduct first occurred. Alternatively, HMIT seeks damages on behalf of the Claimant Trust in an amount equal to all compensation paid to Seery from the onset of his collusive conduct to present.

II. Jurisdiction and Venue

11. Pursuant to *Misc. Order No. 33 Order of Reference of Bankruptcy Cases, U.S. District Court for N.D. Texas* (the "Order of Reference"), this Complaint is commenced in the Bankruptcy Court because it is "related to a case under Title 11." The filing of this Complaint is expressly subject to and without waiver of Plaintiff' rights and ability to seek withdrawal of the reference pursuant to 28 U.S.C. § 157(d), FED. R. BANKR. P. 5011, and Local Bankruptcy Rule 5011-1. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein and nothing in this Complaint, nor Plaintiffs' compliance with the Order of Reference, shall be deemed a waiver of this right.

12. This Court has jurisdiction of the subject matter and the parties as a "related to" proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and Articles IX.F, and XI. of the Plan.

13. Pursuant to Rule 7008 of the Bankruptcy Rules, Plaintiffs do **not** consent to the entry of final orders or judgment by the bankruptcy court.

14. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 1408 and 1409, and Articles IX.F, and XI. of the Plan.

III. Parties

15. HMIT is a Delaware statutory trust that was the largest equity holder in the Original Debtor, holding a 99.5% limited partnership interest. HMIT is also the holder of a Contingent Trust Interest in the Claimant Trust, but should be treated as a vested Claimant Trust Beneficiary due to Defendants' wrongful conduct.

16. Pursuant to the Plan and the CTA, the Claimant Trust holds the assets of the Reorganized Debtor, including the causes of action that accrued to the Original Debtor before the Effective Date. The Claimant Trust is established in accordance with the Delaware Statutory Trust Act and Treasury Regulatory Section 301.7701-4(d).

17. Muck is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Muck has made prior appearances in the Debtor's bankruptcy.

18. Jessup is a Delaware limited liability company, with its principal office in New York, and may be served with process via its registered agent, Vcorp Services, LLC, at 108 W. 13th Street Suite 100, Wilmington, Delaware 19801. Jessup has made prior appearances in the Debtor's bankruptcy.

19. Farallon is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Farallon is a capital management company that manages hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Farallon because Farallon's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts requirements and due process considerations.

20. Stonehill is a Delaware limited liability company, with its principal office in New York, and may be served with process at 320 Park Avenue, 26th Floor, New York, NY 10022. Stonehill is a capital management company managing hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Stonehill because Stonehill's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts and all due process considerations.

21. Seery is an individual citizen and resident of the State of New York. Mr. Seery may be served with process at 100 Crescent Court, Suite 1805, Dallas, Texas 75201.

22. John Doe Defendant Nos. 1-10 are currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.

IV. Facts

A. *Procedural Background*

23. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court,[2] which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.[3]

24. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee of the Highland Crusader Fund ("Redeemer"); Acis Capital Management, L.P. and Acis Capital Management GP, LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS")—and an unpaid vendor, Meta-E Discovery.

25. Following the venue transfer to Texas, on December 27, 2019, the Debtor filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of*

[2] Doc. 3. Unless otherwise referenced, all documents referencing "Doc." refer to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

[3] Doc. 1.

Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ("Governance Motion").[4] On January 9, 2020, the Court signed a Governance Order granting the Governance Motion.[5]

26. As part of the Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditors Committee—was appointed to the Board of Directors (the "Board") of Strand, the Original Debtor's general partner. The Board then appointed Seery as the Chief Executive Officer in place of the previous CEO, Mr. James Dondero, as well as the CRO.[6] Seery currently serves as Trustee of the Claimant Trust under the terms of the CTA and the CEO of the Reorganized Debtor.[7]

B. *The Targeted Claims*

27. In his capacity as the Original Debtor's CEO and CRO, Seery negotiated and obtained court approval for settlements with several large unsecured creditors including Redeemer, Acis, UBS, and another major unsecured creditor, HarbourVest (Redeemer, Acis, UBS, and HarbourVest are collectively the "Settling Parties"), resulting in the following allowed Claims:

Creditor	**Class 8**	**Class 9**
Redeemer	$137 mm	$0 mm

[4] Doc. 281.

[5] Doc. 339.

[6] Doc. 854, Order Approving Retention of Seery as CEO/CRO.

[7] *See* Doc. 1943, Order Approving Plan, p. 34.

Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm
UBS	$65 mm	$60 mm
(Totals)	$270 mm	$95 mm

As reflected in these settlements, HarbourVest and UBS owned Class 9 claims in addition to Class 8 Claims. Class 9 Claims were subordinated to Class 8 Claims in the distribution waterfall in the Plan.

28. Each of the Settling Parties sold their Claims to Farallon and Stonehill (or affiliated special purpose entities) shortly after receiving court approval of the settlements. One of these "trades" took place within just a few weeks before the Plan's Effective Date.[8] All of these trades occurred when HMIT held its 99.5% equity stake in the Debtor. Notice of these trades was first provided in filings in the records of the Original Debtor's bankruptcy proceedings, as follows: Claim No. 23 (Doc. 2211, 2212, and 2215), Claim Nos. 190 and 191 (Doc. 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (Doc. 2263), Claim No. 81 (Doc. 2262), Claim No. 72 (Doc. 2261).

29. Farallon and Stonehill, both of whom are registered investment advisors that manage hedge funds, have fiduciary duties to their own investors. As such, they are acutely aware of their duties and obligation as fiduciaries. Yet, they both invested many tens of millions of dollars, directly or indirectly, to acquire the Claims in the absence of

[8] Docs. 2697, 2698.

any publicly available information that could provide any economic justification for their investment decisions.

30. Upon information and belief, Stonehill and Farallon collectively invested an estimated $160 million to acquire the Claims with a face amount of $365 million, and they did so in the absence of any meaningful due diligence. Indeed, Farallon has admitted that it conducted no due diligence but relied on Seery's guarantees.

31. Stonehill and Farallon's investments become even more suspicious because the Plan provided the ***only*** publicly available information, which, at the time, included pessimistic projections that the Claims would ever receive full payment:

a. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the projected value of HCM's assets dropped over $200 million from $566 million to $364 million.[9]

b. HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11.[10]

   - This meant that Farallon and Stonehill invested more than $163 million in Claims when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims.

c. In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% to 54%.

[9] Doc. 1473, Disclosure Statement, p. 18.

[10] Doc. 1875-1, Plan Supplement, Ex. A, p. 4.

d. Despite the stark decline in the value of the estate and in the midst of substantial reductions in the percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively, again, the "Claims") in April and August of 2021 in the combined amount of $163 million.[11]

32. Upon information and belief, Stonehill, through its special purpose entity, Jessup, acquired the Redeemer Committee's claim for $78 million.[12] Upon information and belief, the $23 million Acis claim[13] was sold to Farallon/Muck for $8 million. Upon information and belief, HarbourVest sold its combined $80 million in claims to Farallon/Muck for $27 million. UBS sold its combined $125 million in claims for $50 million to both Stonehill/Jessup and Farallon/Muck. In the instance of UBS, ***the total projected payout was only $35 million***. Indeed, as part of these transactions, both Farallon and Stonehill purchased Class 9 Claims at a time when the Debtor's Estate projected a zero dollar return on all such Claims.

[11] Notices of Transfers [Docs. 2212, 2215, 2261, 2262, 2263, 2215, 2297, 2298]. The Acis claim was transferred on April 16, 2021; the Redeemer, Crusader, and HarbourVest claims were transferred on April 30, 2021; and the UBS claims were transferred on August 9, 2021.

[12] July 6, 2021, letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

[13] Seery/HCM have argued that $10 million of the Acis claim is self-funding.

C. *Material Non-Public Information is Disclosed to Seery's Affiliates at Stonehill and Farallon.*

33. One of the significant assets of the Debtor's Estate was the Debtor's direct and indirect holdings in Metro-Goldwyn-Mayer Studios, Inc. ("MGM").[14]

34. On December 17, 2020, James Dondero, sent an email to Seery. At that time, Dondero was a member of the MGM board, and the email contained material non-public information regarding Amazon and Apple's interest in acquiring MGM.[15] Of course, any such sale would significantly enhance the value of the Original Debtor's estate.

35. Upon receipt of this material non-public information, Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in this Court seeking approval of the Original Debtor's settlement with HarbourVest - resulting in a transfer to the Original Debtor of HarbourVest's interest in a Debtor-advised fund, Highland CLO Funding, Ltd. ("HCLOF"), which held substantial MGM debt and equity.[16] Conspicuously, the HCLOF interest was not transferred to the Original Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements.[17]

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[14] *See* Doc. 2229, p. 6.

[15] *See* Adversary Case No. 20-3190-sgj11, Doc. 150-1, p. 1674.

[16] Doc. 1625. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM.

[17] Doc. 1625.

36. Upon information and belief, aware that the Debtor's stake in MGM afforded a new profit center, Seery saw an opportunity to increase his own compensation and enlisted the help of Stonehill and Farallon to extract further value from the Original Debtor's Estate at the expense of other innocent creditors and equity. This *quid pro quo* included, at a minimum, a tacit, if not express, understanding that Seery would be well-compensated.

37. Until 2009, Seery was the Global Head of Fixed Income Loans at Lehman Brothers[18] where, on information and belief, he conducted substantial business with Farallon. Following the collapse of Lehman Brothers, Seery continued to work with, and indeed represented Farallon as its legal counsel. Seery ultimately joined a hedge fund, River Birch Capital,[19] which, along with Stonehill, served on the creditors committee in other bankruptcy proceedings. GCM Grovesnor, a global asset management firm, held four seats on the Redeemer Committee[20] and, upon information and belief, is a significant investor in Stonehill and Farallon. Grovesnor, through Redeemer, played a large part in appointing Seery as a director of Strand Advisors. Seery was beholden to Grovesnor from the outset, and, by extension, Grovesnor's affiliates Stonehill and Farallon.

[18] Seery Resume [Doc. 281-2].

[19] *Id*.

[20] Declaration of John A. Morris [Doc. 1090], Ex. 1, pp. 15.

38. As successful capital management firms, with advisory and fiduciary duties to their own clients, Stonehill and Farallon typically engage in robust due diligence before making significant investments. Yet, in this case, it would have been *impossible* for Stonehill and Farallon to forecast *any* profit at the time of their multi-million-dollar investments given the negative financial information disclosed by the Original Debtor's Estate. Seery, as the CEO, was aware of and involved in approving these negative financial projections. In doing so, Seery intentionally caused the publication of misleading, false information.

39. Seery shared with Stonehill and Farallon *non-public* information concerning the value of the Original Debtor's Estate which was higher than publicly available information. Thus, the only logical conclusion is that all Defendants knew that the publicly available projections, which accompanied the Plan, were understated, false, and misleading. Otherwise, Farallon, Muck, Stonehill and Jessup would not have made their multi-million-dollar investments. None of the Defendants disclosed their knowledge of the misleading nature of these financial projections when they had a duty to do so. None of the Defendants disclosed the nature of their dealings in acquiring the Claims.

40. By wrongfully exploiting non-public insider information, Stonehill and Farallon—acting through Muck and Jessup—became the largest holders of unsecured claims in the Debtor's Estate with resulting control over the Oversight Board and a front row seat to the reorganization and distribution of Claimant Trust Assets. As such, they

were given control (through Muck and Jessup) to approve discretionary bonuses and success fees for Seery from these assets.

D. ***Distributions***

41. The MGM sale was ultimately consummated in March 2022 for $6.1 billion in cash, plus $2.5 billion in debt that Amazon assumed and immediately repaid.[21]

42. By the end of Q3 2021, just over $6 million of the projected $205 million available for general unsecured claimants had been disbursed.[22] No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—$45 million more than was *ever* projected.[23] Thus, Stonehill (Jessup) and Farallon (Muck) have already received returns that far eclipse their investment. They also stand to make further significant profits on their investments, including payments on Class 9 Claims.

43. As of December 31, 2022, the Claimant Trust has distributed $255,201,228. On a pro rata basis, that means that innocent creditors have received approximately $22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately $9,627,000.

[21] Amazon Q1 2022 10-Q.

[22] Doc. 3200.

[23] Doc. 3582.

44. Muck and Jessup already have received approximately $232.8 million on their Claims. Assuming and original investment of approximately $160 million, this represents over $72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary.

45. It is clear Seery facilitated the sale of the Claims to Stonehill (Jessup) and Farallon (Muck) at discounted prices and used misleading financial projections to facilitate these trades. This was part of a larger strategy to install Stonehill (Jessup) and Farallon (Muck), his business allies, onto the Oversight Board where they would oversee lucrative bonuses and other compensation for Seery in exchange for hefty profits they expected to receive.

V. Causes of Action

A. Count I (against Seery): Breach of Fiduciary Duty

46. The allegations in paragraphs 1-45 above are incorporated herein as if set forth verbatim.

47. As CEO and CRO of a debtor-in-possession, Seery owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate, including, without limitation, the duty of loyalty. Seery also was under a duty to avoid conflicts of interests, but Seery willfully and knowingly engaged in conduct which conflicted with his fiduciary duties—and he did so out of financial self-interest.

48. By fraudulently providing and/or approving negative projections of the Debtor's Estate when he knew otherwise, Seery willfully and knowingly breached his fiduciary duties.

49. By misusing and disclosing confidential, material non-public information to Stonehill and Farallon, Seery willfully and knowingly breached his fiduciary duties.

50. By failing to disclose his role in the inside trades at issue, Seery willfully and knowingly breached his fiduciary duties.

51. As a result of his willful misconduct, Seery was unfairly advantaged by receiving additional undisclosed compensation and bonuses from the assets of the Debtor's Estate and from the Claimant Trust Assets—to the detriment of other innocent stakeholders, including HMIT, as former equity and a contingent Claimant Trust Beneficiary.

52. To remedy these breaches, Seery is liable for disgorgement of all compensation he received since his collusion with Farallon and Stonehill first began. Alternatively, Seery should be disgorged of all compensation paid to him under the terms of the CTA since the Effective Date of the Plan in August 2021.

53. Alternatively, Plaintiffs are entitled to recover damages measured by all ill-gotten compensation which Seery has received since his first collusive conduct began.

B. Count II (against Stonehill, Farallon, Jessup and Muck): Breaches of Fiduciary Duty and Knowing Participation in Breach of Fiduciary Duty

54. The allegations in paragraphs 1-53 above are incorporated herein as if set forth verbatim.

55. Seery owed fiduciary duties to HMIT and the Debtor's Estate, and he willfully and knowingly breached these duties. Without limiting the foregoing, Seery owed a duty of loyalty which he willfully and knowingly breached. Seery also owed a duty to not engage in self-interested conduct to the detriment of the Debtor's Estate and innocent stakeholders. Seery also willfully and knowingly breached this duty.

56. Stonehill and Farallon were aware of Seery's fiduciary duties and, by purchasing the Claims and approving bonuses and other compensation for Seery, Stonehill (acting through Jessup) and Farallon (acting through Muck), willfully and knowingly participated in Seery's breaches or, alternatively, willfully aided and abetted such breaches.

57. Stonehill (Jessup) and Farallon (Muck) unfairly received many millions of dollars in profits and fees—and stand to earn even more profits and fees—to the detriment of innocent stakeholders, including HMIT.

58. Stonehill and Farallon are liable for disgorgement of all profits earned from their purchase of the Claims. In addition, they are liable in damages for excessive compensation paid to Seery as part of the covert *quid pro quo* with Seery.

C. Count III (against all Defendants): Fraud by Misrepresentation and Material Nondisclosure

59. The allegations in paragraphs 1-58 above are incorporated herein as if set forth verbatim.

60. Based on Seery's duties as CEO and CRO of a debtor-in-possession, and the other Defendants' duties as non-statutory insiders, Seery, Stonehill (Jessup), and Farallon (Muck) had a duty to disclose Stonehill and Farallon's plans to purchase the Claims, but they deliberately failed to do so. Seery also had a duty to disclose correct financial projections but, rather, misrepresented such values or failed to correct false and misleading projections. These factual misrepresentations and omissions were material.

61. The withheld financial information was material because it has had an adverse impact on control over the eventual distributions to creditors and former equity, as well as the right to control Seery's compensation. By withholding such information, Seery was able to plant friendly business allies on the Oversight Board to the detriment of innocent stakeholders.

62. Defendants knew that HMIT and other creditors were ignorant of their plans, and HMIT and other stakeholders did not have an equal opportunity to discover their scheme. HMIT and the other innocent stakeholders justifiably relied on misleading information relating to the value of the Original Debtor's Estate.

63. By failing to disclose material information, and by making or aiding and abetting material misrepresentations, Seery, Stonehill, Farallon, Muck, and Jessup intended to induce HMIT to take no affirmative action.

64. HMIT justifiably relied on Seery, Stonehill, Farallon, Muck, and Jessup's nondisclosures and representations, and HMIT was injured as a result and the Debtor's Estate was also injured.

65. As a result of their frauds, all Defendants should be disgorged of all profits and ill-gotten compensation derived from their fraudulent scheme. Seery is also liable for damages measured by excessive compensation he has received since he first engaged in willful misconduct.

D. Count IV (against all Defendants): Conspiracy

66. The allegations in paragraphs 1-65 above are incorporated herein as if incorporated herein verbatim.

67. Defendants conspired with each other to unlawfully breach fiduciary duties to HMIT and the Debtor's Estate, to conceal their fraudulent trades, and to interfere with HMIT's entitlement to the residual of the Claimant Trust Asset.

68. Seery's disclosure of material non-public information to Stonehill and Farallon, and Muck and Jessup's purchase of the Claims, are each overt acts in furtherance of the conspiracy.

69. HMIT's interest in the residual of the Claimant Trust Assets has been adversely impacted by this conspiracy. The assets have been depleted by virtue of Seery's compensation awards.

E. Count V (against Muck and Jessup): Equitable Disallowance

70. The allegations in paragraphs 1-69 above are incorporated herein as if set forth verbatim.

71. By purchasing the Claims based on material non-public information, Stonehill and Farallon, through Jessup and Muck, engaged in inequitable conduct.

72. By earning significant profits on their purchases, Muck and Jessup have been unfairly advantaged to the detriment of the remaining stakeholders, including HMIT.

73. Given this inequitable conduct, equitable disallowance of Muck's and Jessup's Claims to the extent over and above their initial investment is appropriate and consistent with the purposes of the Bankruptcy Code.

74. Pleading in the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

F. Count VI (against all Defendants): Unjust Enrichment and Constructive Trust

75. The allegations in paragraphs 1-74 above are incorporated herein as if set forth verbatim.

76. By acquiring the Claims using material non-public information, Stonehill and Farallon breached a relationship of trust with the Original Debtor's Estate and other innocent stakeholders and were unjustly enriched and gained an undue advantage over other creditors and former equity.

77. Allowing Stonehill, Farallon, Muck and Jessup to retain their ill-gotten benefits at the expense of other innocent stakeholders and HMIT, as former equity, would be unconscionable.

78. Stonehill, Farallon, Muck, and Jessup should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment.

79. The proceeds Stonehill, Farallon, Muck, and Jessup have received from the Claimant Trust are traceable and identifiable. A constructive trust should be imposed on such proceeds to secure the restitution of these improperly retained benefits.

F. Count VI (Against all Defendants): Declaratory Relief

80. The allegations in paragraphs 1-79 are incorporated herein as if set forth verbatim.

81. HMIT seeks declaratory relief. The Court has jurisdiction to provide declaratory judgment relief when there is an actual controversy that has arisen and exists relating to the rights and duties of the parties.

82. Bankruptcy Rule 7001 provides that "a proceeding to recover property or money," may include declaratory relief. *See*, Fed. R. Bank P. 7001(1), (9).

83. The Claimant Trust Agreement is governed under Delaware law. The Claimant Trust Agreement incorporates and is subject to Delaware trust law. HMIT seeks a declaration, as follows:

a. There is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement;

b. As a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered contingent;

c. HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill;

d. HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments. Alternatively, HMIT's status as a Claimant Trust Beneficiary is fully vested when all of Muck's and Jessup's trust interests are subordinated to the trust interests held by HMIT;

e. Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of Seery's fraudulent conduct, bad faith, willful misconduct and unclean hands;

f. Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct and unclean hands;

g. All Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct and unclean hands.

VI. Punitive Damages

84. The allegations in paragraphs 1-74 are incorporated herein as if set forth verbatim.

85. The Defendants' misconduct was intentional, knowing, willful and fraudulent and in total disregard of the rights of others. An award of punitive damages is appropriate and necessary under the facts of this case.

86. All conditions precedent to recovery herein have been satisfied.

VII. Prayer

WHEREFORE, HMIT prays for judgment as follows:

1. Equitable disallowance of the Claims over and above Muck's and Jessup's original investments (or, alternatively, subordination of their Claimant Trust Interests, as addressed herein);

2. Disgorgement of all funds distributed from the Claimant Trust to Muck and/or Jessup over and above their original investments;

3. Disgorgement of compensation paid to Seery in managing or administering the Original and Reorganized Debtor's Estate;

4. Imposition of a constructive trust;

5. Declaratory relief as described herein;

6. An award of actual damages as described herein;

7. An award of exemplary damages as allowed by law;

8. Pre- and post-judgment interest; and,

9. All such other and further relief to which HMIT may be justly entitled.

Respectfully Submitted,

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Attorneys for Hunter Mountain Investment Trust

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP
Debtor(s)

Case No. 19-34054

☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 06/30/2023

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:
- (•) Reorganized Debtor
- ( ) Other Authorized Party or Entity: _____
  Name of Authorized Party or Entity

/s/ Zachery Z. Annable
Signature of Responsible Party

07/21/2023
Date

Zachery Z. Annable, Hayward PLLC
Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231
Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$6,894,640	$122,318,601
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$0	$5,194,652
d. Total transferred (a+b+c)	$6,894,640	$127,513,253

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor		*Aggregate Total*	$0	$33,005,136	$0	$33,005,136
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i	Pachulski Stang Ziehl & Jones	Lead Counsel	$0	$24,312,860	$0	$24,312,860
	ii	Development Specialists, Inc.	Financial Professional	$0	$5,765,448	$0	$5,765,448
	iii	Kurtzman Carson Consultants	Other	$0	$2,054,716	$0	$2,054,716
	iv	Hayward & Associates PLLC	Local Counsel	$0	$872,112	$0	$872,112
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b.				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor *Aggregate Total*			$0	$7,604,472	$0	$7,604,472
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i	Hunton Andrews Kurth LLP	Other	$0	$1,149,807	$0	$1,149,807
	ii	Foley Gardere, Foley & Lardne	Other	$0	$629,088	$0	$629,088
	iii	Deloitte	Financial Professional	$0	$553,413	$0	$553,413
	iv	Mercer (US) Inc.	Other	$0	$204,767	$0	$204,767
	v	Teneo Capital, LLC	Financial Professional	$0	$1,364,823	$0	$1,364,823
	vi	Wilmer Cutler Pickering Hale	Other	$0	$2,650,937	$0	$2,650,937

Debtor's Name Highland Capital Management, LP Case No. 19-34054

	vii	Carey Olsen	Other	$0	$280,264	$0	$280,264
	viii	ASW Law	Other	$0	$4,976	$0	$4,976
	ix	Houlihan Lokey Financial Advi	Other	$0	$766,397	$0	$766,397
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c.	All professional fees and expenses (debtor & committees)			$0	$60,171,929	$0	$60,171,929

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$0	$270,205,592	$397,485,568	68%
e. Equity interests	$0	$0	$0		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

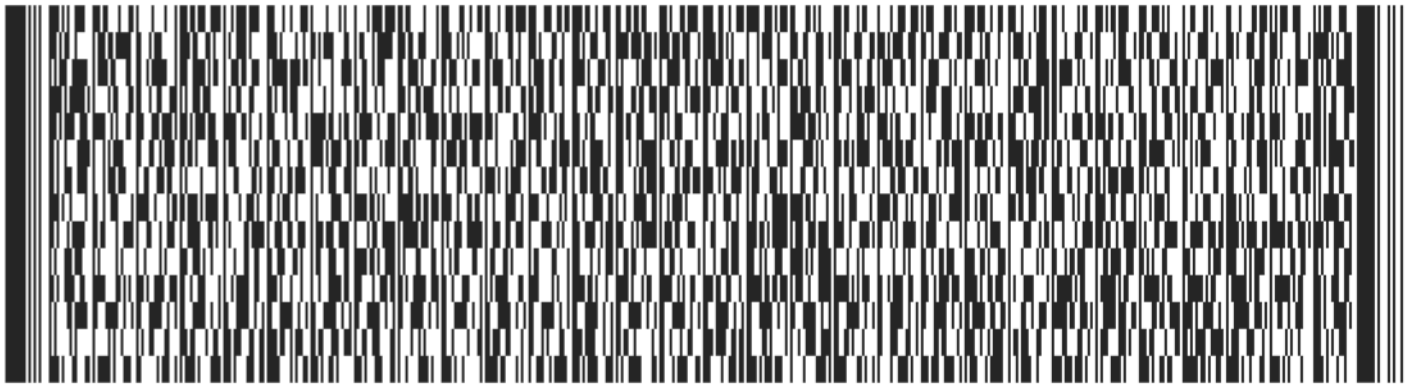
/s/ James Seery
Signature of Responsible Party

James Seery
Printed Name of Responsible Party

CEO
Title

07/21/2023
Date

Debtor's Name Highland Capital Management, LP Case No. 19-34054



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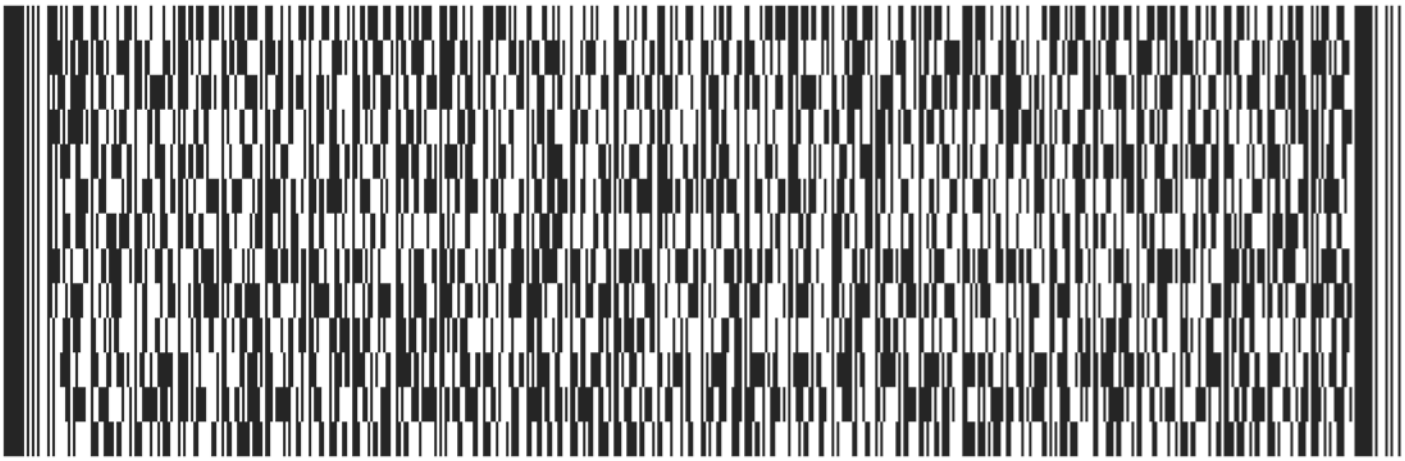

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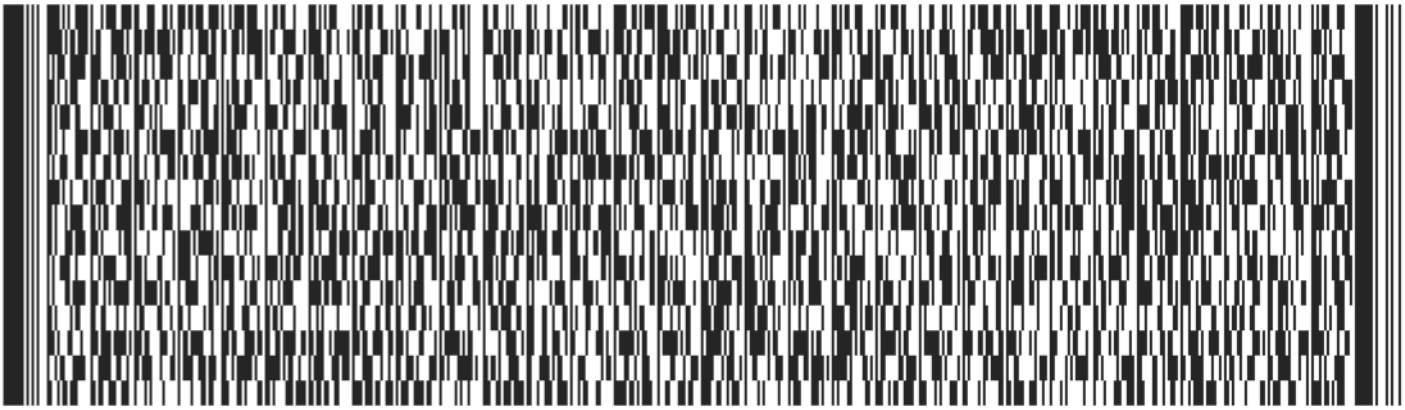

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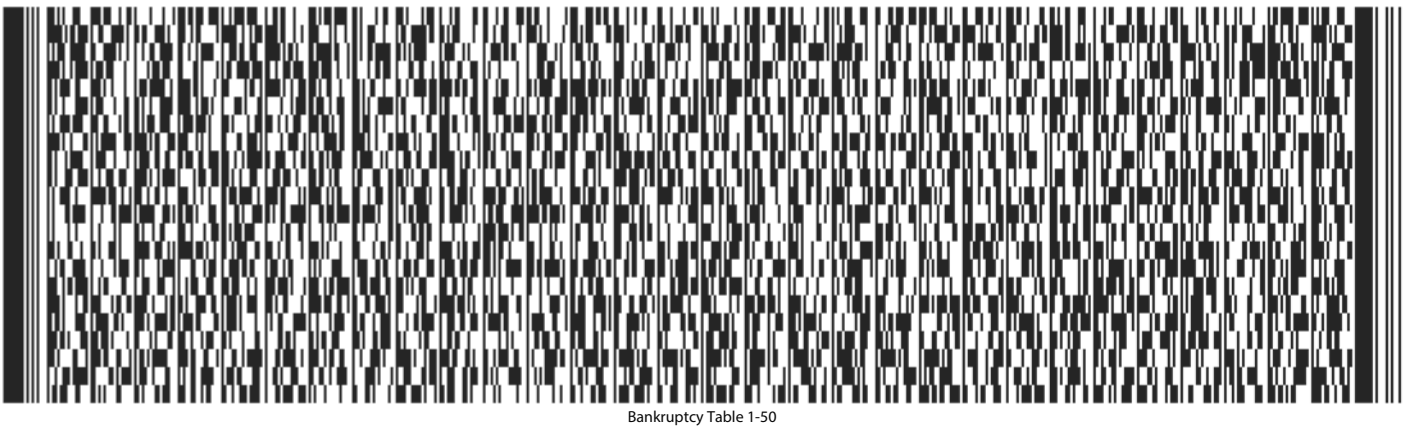
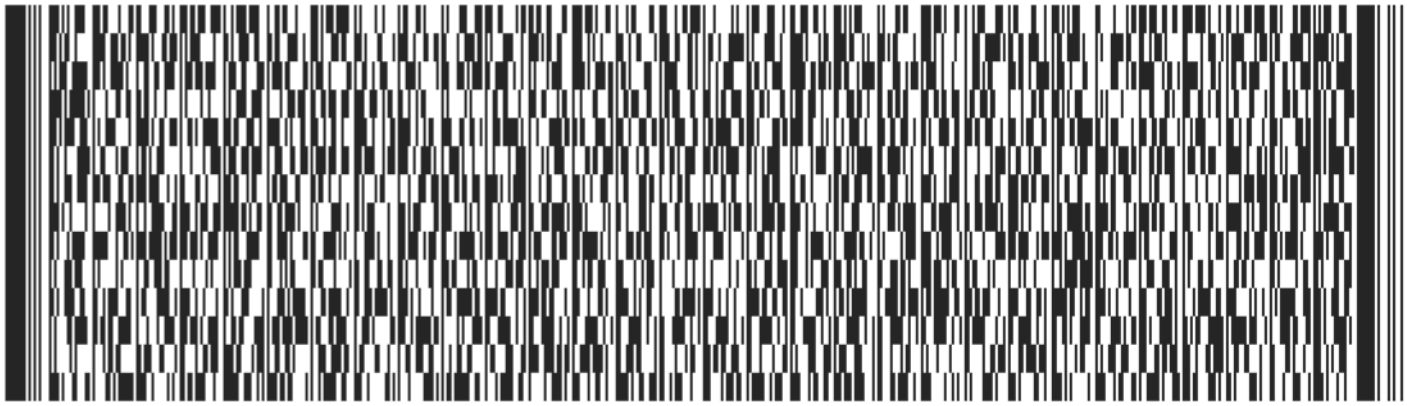
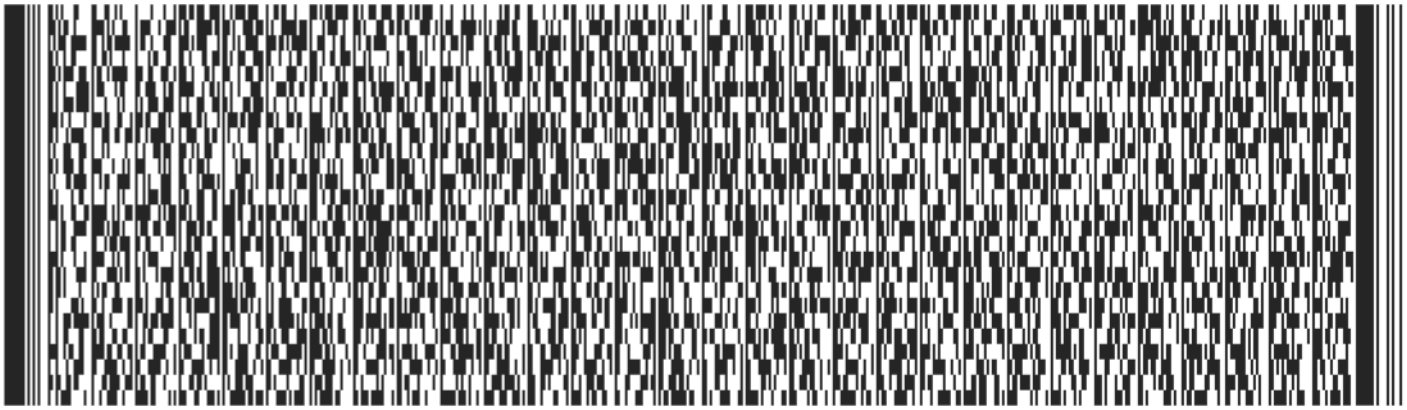


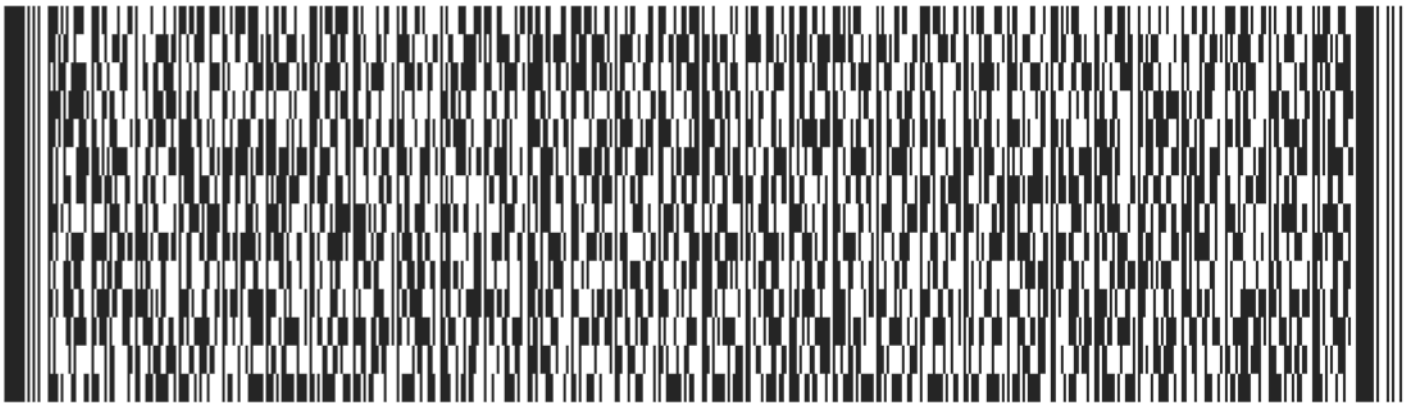
Bankruptcy Table 1-50



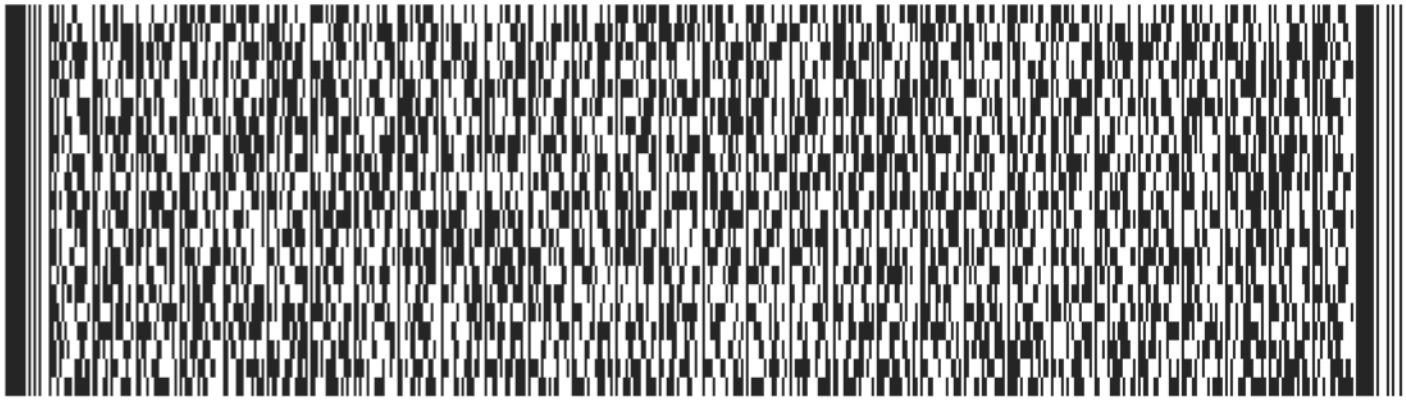
Bankruptcy Table 51-100



Non-Bankruptcy Table 1-50



Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST CONFIRMATION REPORT

The Reorganized Debtor has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), on behalf of debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Reorganized Debtor prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Reorganized Debtor relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Reorganized Debtor made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Reorganized Debtor reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

In Section A of the PCR, the Reorganized Debtor listed the bankruptcy related professionals employed in connection with the Bankruptcy Case.

In Section B of the PCR, the Reorganized Debtor listed non-bankruptcy professionals, those that would have been retained absent the Bankruptcy Case, and the ordinary course professionals ("OCP"). Hunton Andrews Kurth LLP ("Hunton") and Wilmer Cutler Pickering Hale and Dorr LLP ("Wilmer Hale") were originally ordinary course professionals but were later employed

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

professionals. The amounts listed for Hunton and Wilmer Hale include the OCP payments and employed professional payments.

In Section C of the PCR, the Reorganized Debtor totals all payments included in Sections A and B, along with payments made to professional employed by the official committee of unsecured creditors (the "Committee").

The approved current quarter, approved cumulative, and paid cumulative will have the same amount listed due to approval and payment of final fee applications.

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

The payments made to holders of General Unsecured Claims were disbursed from the Claimant Trust, but for presentation purposes, have been included in Part 3 of the post-confirmation report for the Reorganized Debtor.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with Reorganized Debtor's governing documents and the Plan.

The Debtor reserves all right to object to any claim in accordance with the terms of the Plan.

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP
Debtor(s)

Case No. 19-34054

☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 06/30/2023

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:
○ Reorganized Debtor
◉ Other Authorized Party or Entity: Highland Claimant Trust
Name of Authorized Party or Entity

/s/ Zachery Z. Annable
Signature of Responsible Party

07/21/2023
Date

Zachery Z. Annable, Hayward PLLC
Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231
Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$6,969,608	$325,793,422
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$0	$0
d. Total transferred (a+b+c)	$6,969,608	$325,793,422

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor *Aggregate Total*						
	Itemized Breakdown by Firm						
		Firm Name	Role				
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b.				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor *Aggregate Total*						
	Itemized Breakdown by Firm						
		Firm Name	Role				
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c.	All professional fees and expenses (debtor & committees)						

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$0	$270,205,592	$397,485,568	68%
e. Equity interests	$0	$0	$0		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

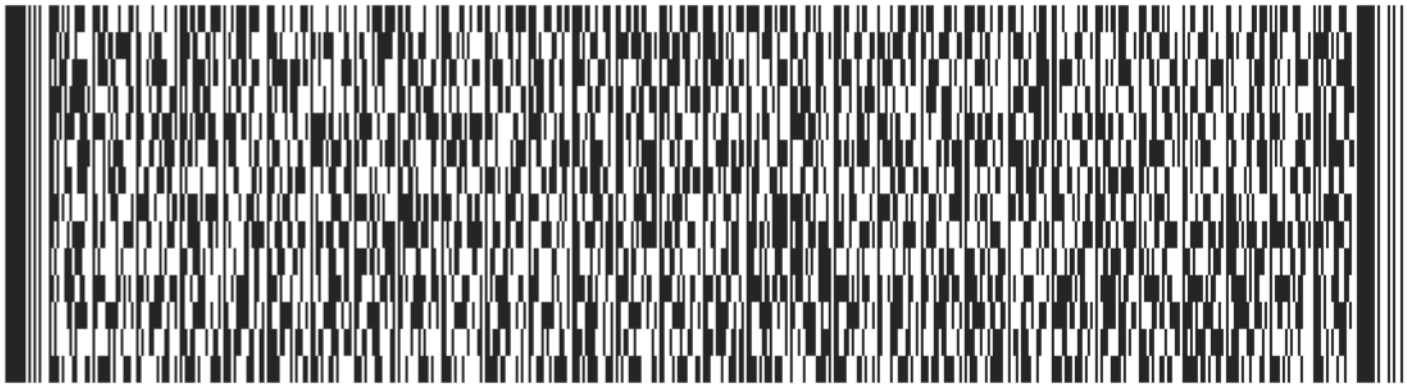
/s/ James Seery
Signature of Responsible Party

James Seery
Printed Name of Responsible Party

Claimant Trustee
Title

07/21/2023
Date

Debtor's Name Highland Capital Management, LP Case No. 19-34054



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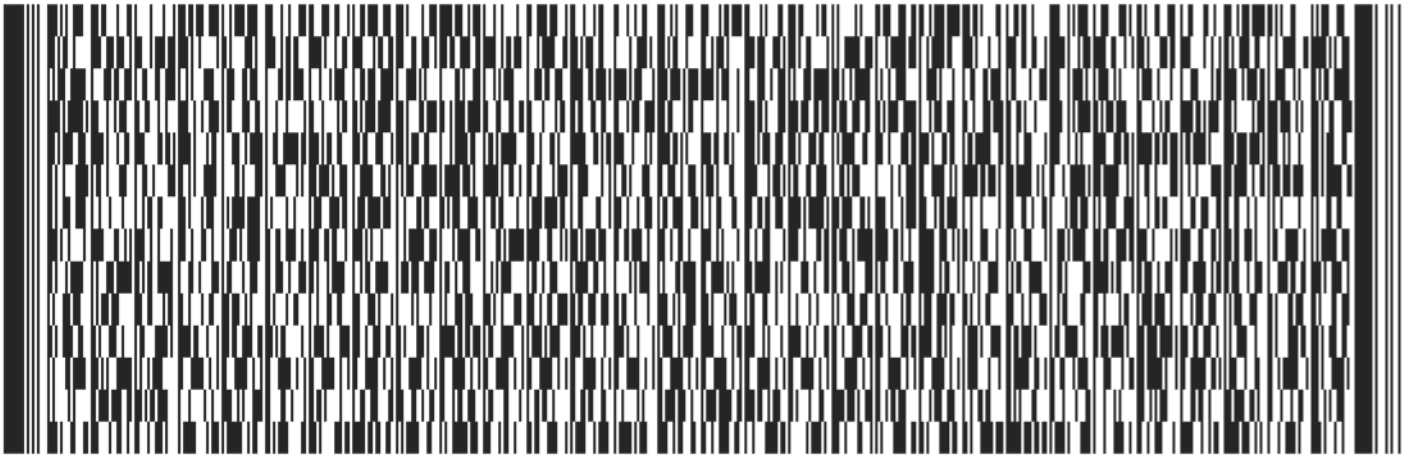

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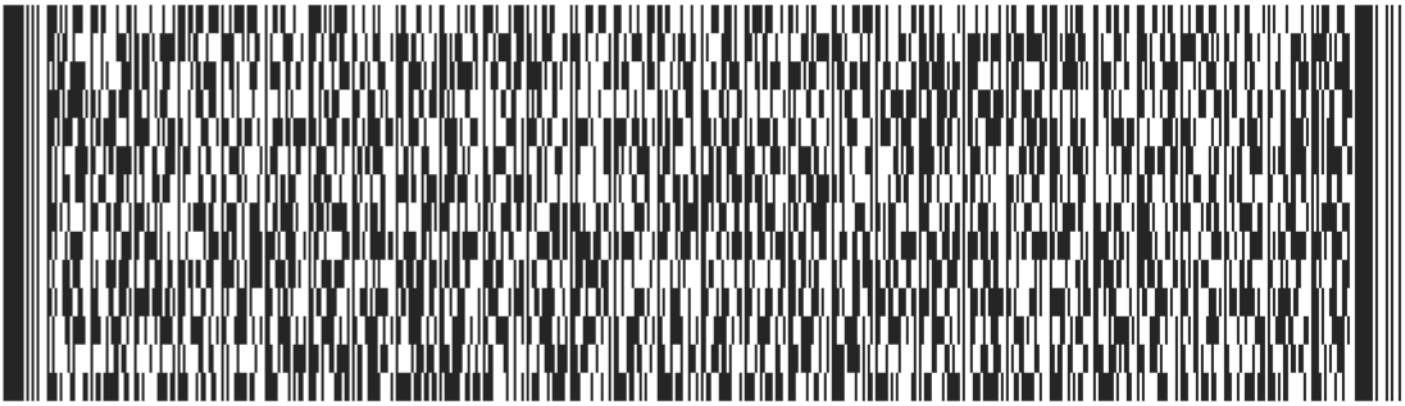
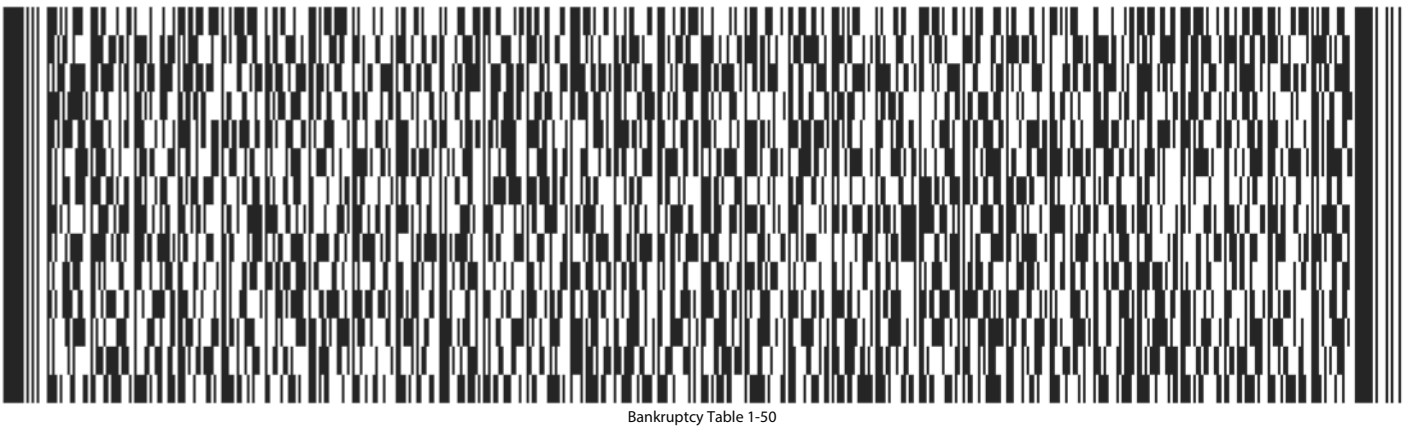
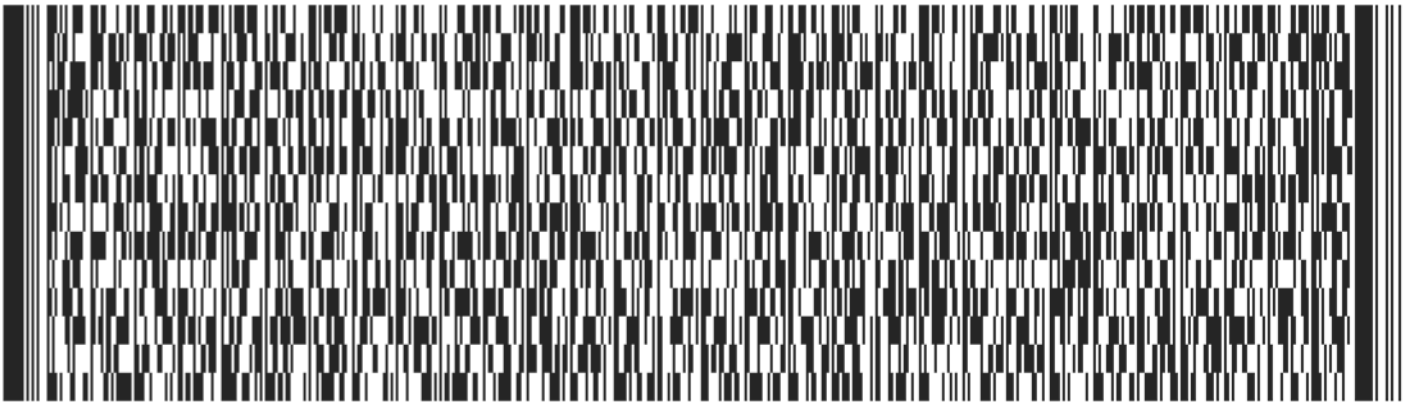


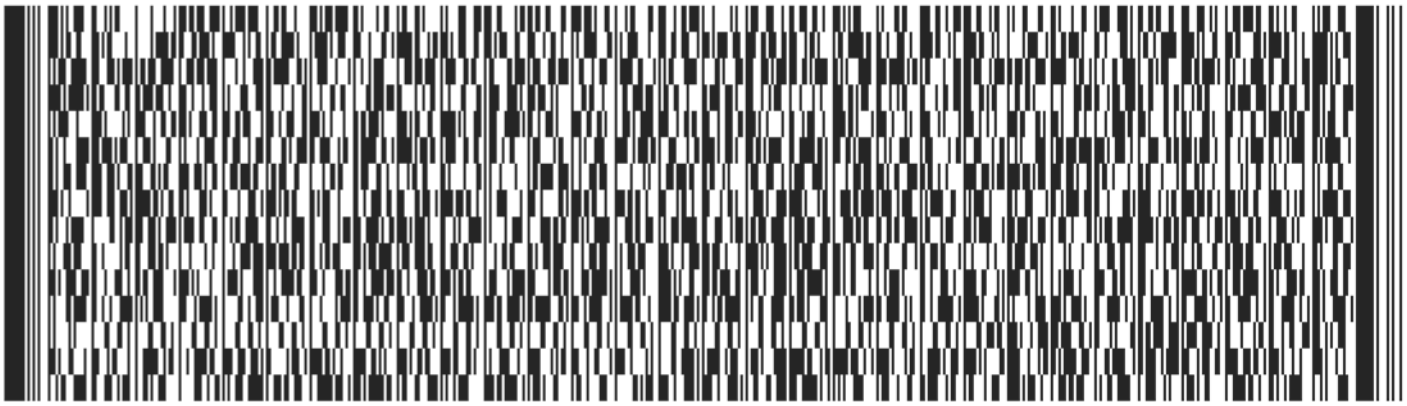
Page 2 Minus Tables



Bankruptcy Table 1-50



Bankruptcy Table 51-100



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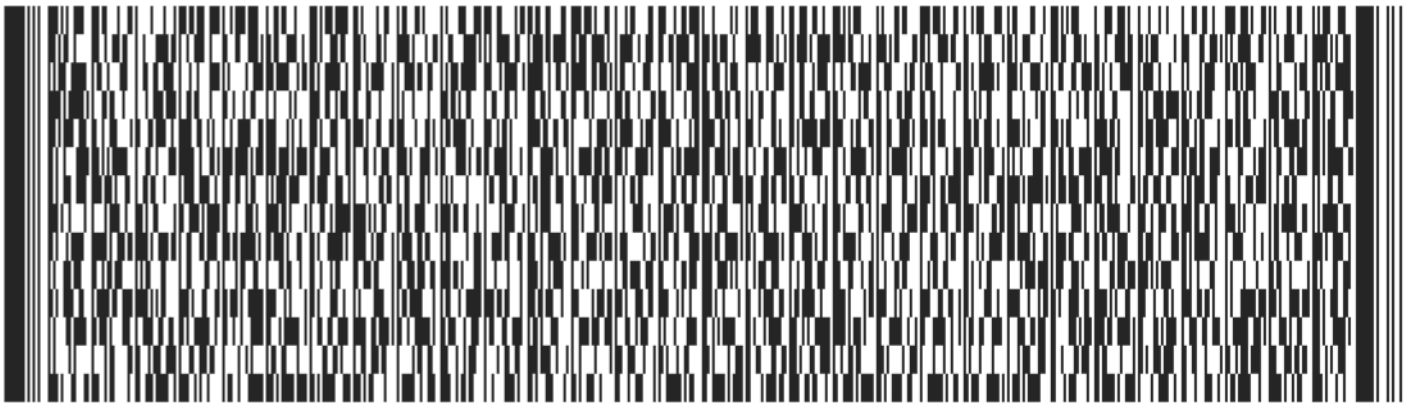
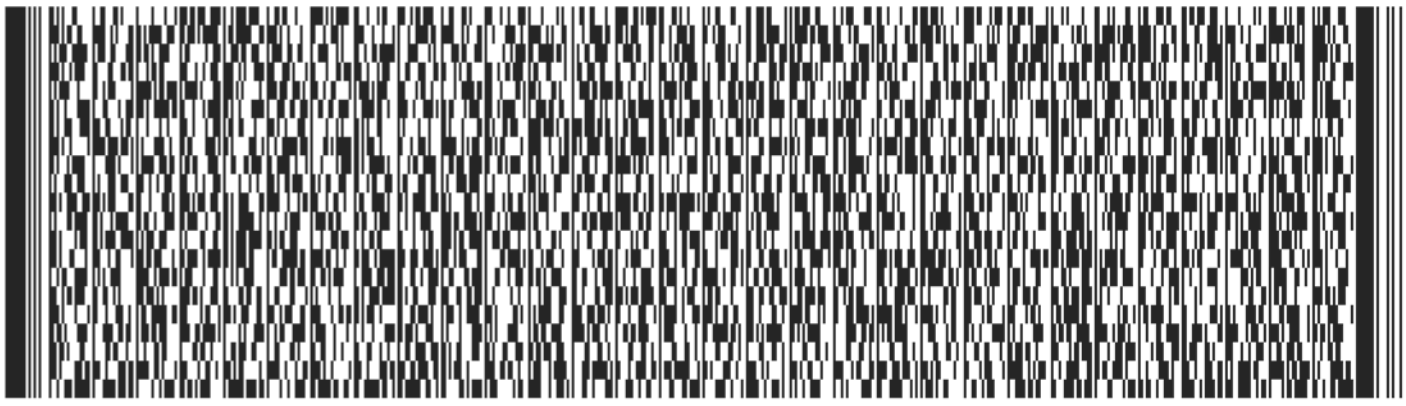


Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST CONFIRMATION REPORT

The Highland Claimant Trust has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), with respect to the case of Reorganized Debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Highland Claimant Trust prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Highland Claimant Trust, the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Highland Claimant Trust relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Highland Claimant Trust made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Highland Claimant Trust reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

The Highland Claimant Trust did not make any payment of professional fees prior to Confirmation of the Plan.

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

For presentation purposes, the chart showing claims anticipated under the plan, paid claims and allowed claims are reflected in both the Reorganized Debtor and Claimant Trust post-confirmation report under Part 3: Recoveries of the Holders of Claims and Interests under the Confirmed Plan.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with the Claimant Trust's governing documents and the Plan.

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

Volume 5

APPELLANT RECORD

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

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

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APPELLANT'S STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL BY RIGHT

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, Appellant Hunter Mountain Investment Trust ("HMIT") hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal by right of the "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt. 4104] that was signed June 22, 2024, and entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024.[1]

[1] Given the lack of clarity in the law about the appropriate mechanism for obtaining review, HMIT filed a Notice of Appeal by Right and a Notice of Appeal by Leave (along with a motion for leave to file an interlocutory appeal) and a petition for writ of mandamus (which will be filed shortly thereafter).

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court abused its discretion in granting Appellees' motion for an indefinite stay of Appellant's gatekeeper motion seeking permission to bring suit in Delaware to remove the trustee of a Delaware statutory trust when (1) Appellees failed to meet the required standard for obtaining a stay; (2) the Bankruptcy Court erroneously concluded that the issue of Appellant's standing to seek removal of the Claimant Trustee would be decided in other cases pending before the Court; and (3) an indefinite or unduly lengthy stay of litigation of the type ordered by the Bankruptcy Court is expressly disfavored by the Fifth Circuit.

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Vol. 1

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Dkt. 4111]. — 00001

2. The judgment, order, or decree appealed from: "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt. 4104] — 000009

3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held June 12, 2024 before Judge Stacey G.C. Jernigan re: Motion to Stay Contested Matter [Dkt. 4091]. — SEE Vol. 17 - 001988

4. Docket Sheet for Bankruptcy Case No. 19-34054-sgj11 kept by the Bankruptcy Clerk. — 000012

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

Vol. 2

DATE	CASE NO.	DKT. NO.	DESCRIPTION
01/09/2020	19-34054-sgj-11	399	Order Approving Settlement with Official Committee of Unsecured Creditors regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course — 000578
02/22/2021	19-34054-sgj-11	1943	Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) — 000586
03/28/2023	19-34054-sgj-11	3699	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding — Vol 3 000747
04/21/2023	19-34054-sgj-11	3756	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 3/31/23 — Vol. 4 001134

Vol 4 001149	04/21/2023	19-34054-sgj-11	3757	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 3/31/23
001164	04/23/2023	19-34054-sgj-11	3760	Hunter Mountain Investment Trust's Supplement to Emergency motion for Leave to File Verified Adversary Proceeding
001209	06/05/2023	19-34054-sgj-11	3815	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
001274	06/05/2023	19-34054-sgj-11	3816	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
001339	07/21/2023	19-34054-sgj-11	3888	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 6/30/23
001351	07/21/2023	19-34054-sgj-11	3889	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 6/30/23
Vol. 5 001363	08/25/2023	19-34054-sgj-11	3903	Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trusts' Emergency Motion for Leave to File Verified Adversary Proceeding
001468	01/01/2024	19-34054-sgj-11	4000	Motion for Leave to File a Delaware Complaint
Vol. 6 001606	10/23/2023	19-34054-sgj-11	3955	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 9/30/23
001618	10/23/2023	19-34054-sgj-11	3956	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 9/30/23
001630	01/16/2024	19-34054-sgj-11	4013	Highland's Motion to Stay Contested Matter [Dk No. 4000] or for Alternative Relief
001638	01/22/2024	19-34054-sgj-11	4019	James P. Seery, Jr.'s Joinder to Highland Capital Management L.P.'s Motion to Stay Contested Matter [Dk No. 4000] or for Alternative Relief and Emergency Motion to Expedite Hearing on Motion for Stay
001640	06/11/2024	19-34054-sgj-11	4087	Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay
001669	01/22/2024	19-34054-sgj-11	4020	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 12/31/23
001681	01/22/2024	19-34054-sgj-11	4021	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 12/31/23

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001693

06/24/2024	19-34054-sgj-11	4104	Order Extending Stay of Contested Matter [Docket No. 4000]
01/22/2024	19-34054-sgj-11	4049	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 3/31/24
01/22/2024	19-34054-sgj-11	4050	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 3/31/24
07/18/2024	19-34054-sgj-11	4130	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 6/30/24, dated July 18, 2024
07/18/2024	19-34054-sgj-11	4131	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 6/30/24, dated July 18, 2024

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001708
001720
001732

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
05/10/2023	23-03038	0001	Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0013	The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0014	Memorandum of Law in Support of Highland Capital Management L.P. and the Highland Claimant Trust's Motion to Dismiss Complaint

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DATE	CASE NO.	DKT. NO.	DESCRIPTION
12/29/2023	23-03038	0017	The Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

001809

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12/29/2023	23-03038	0018	Appendix in Support of the Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

001839

01/19/2024	23-03038	0021	The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint

001863

05/24/2024	23-03038	0026	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets

001875

05/24/2024	23-03038	0027	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets

001911

06/07/2024	23-03038	0030	Notice of Appeal [Appellant Designation due by 06/21/2024] (Filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust)

001947

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

001988

DATE	CASE NO.	DKT. NO.	DESCRIPTION

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001988

06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript

Dated: July 22, 2024

STINSON LLP

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Counsel for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 22, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

The following constitutes the ruling of the court and has the force and effect therein described.

Signed August 25, 2023

United States Bankruptcy Judge

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

IN RE:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-sgj-11**
Reorganized Debtor.	§	

MEMORANDUM OPINION AND ORDER PURSUANT TO PLAN "GATEKEEPER PROVISION" AND PRE-CONFIRMATION "GATEKEEPER ORDERS": DENYING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING[1]
[BANKR. DKT. NOS. 3699, 3760, 3815, and 3816]

I. INTRODUCTION

BEFORE THIS COURT is yet another post-confirmation dispute relating to the Chapter 11 bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor").

[1] On August 2, 2023, this court signed an Order [Bankr. Dkt. No. 3897] that was agreed to among various parties, after the filing of a Motion to Stay and Compel Mediation [Bankr. Dkt. No. 3752] filed by James D. Dondero and related entities. Pursuant to paragraph 7 of that order, certain pending matters in the bankruptcy court are stayed pending mediation. The parties did not agree to stay the matter addressed in this Memorandum Opinion and Order.

It is now more than two and half years since the confirmation of Highland's Plan[2]—the Plan having been confirmed on February 22, 2021.[3] The Plan was never stayed; it went effective on August 11, 2021 ("Effective Date"), and it was affirmed almost in its entirety by the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit"), in late summer 2022, including an approval of the so-called Gatekeeper Provision[4] therein. The Gatekeeper Provision—and how and whether it should now be exercised or interpreted to allow a certain lawsuit to be filed—is at the heart of the current *Emergency Motion for Leave to File Verified Adversary Proceeding* [Bankr. Dkt. Nos. 3699, 3760, 3815, 3816] (collectively, the "Motion for Leave") filed by a movant known as Hunter Mountain Investment Trust ("HMIT").

A. Who is the Movant, HMIT?

Who is HMIT? It is undisputed that it is a former equity owner of Highland. It held 99.5% of Highland's Class B/C limited partnership interests and was classified in a Class 10 under the confirmed Plan, which class treatment provided it with a contingent interest in the Highland Claimant Trust ("Claimant Trust") created under the Plan, and as defined in the Claimant Trust Agreement. This means that HMIT could receive consideration under the Plan if all claims against Highland are ultimately paid in full, with interest. As later further discussed, it is undisputed that

[2] Capitalized terms not defined in this introduction shall have the meaning ascribed to them below.

[3] The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order")[Bankr. Dkt. No. 1943].

[4] In an initial opinion dated August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in large part, "revers[ing] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan's exculpation, and affirm[ing] on all remaining grounds." *In re Highland Capital Management, L.P.*, No. 21-10449, 2022 WL 3571094, at *1 (5th Cir. Aug. 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022, "for the limited purpose of clarifying and confirming one part of its August 19, 2022 opinion," the Fifth Circuit withdrew its original opinion and replaced it with its opinion reported at *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419, 424 (5th Cir. 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section "IV(E)(2) – *Injunction and Gatekeeper Provisions*" of the original opinion: "The injunction and gatekeeper provisions are, on the other hand, perfectly lawful." was replaced with "We now turn to the Plan's injunction and gatekeeper provisions." In all other respects, the Fifth Circuit panel's original ruling remained unchanged. Petitions for writs of certiorari regarding the Confirmation Order have been pending at the United States Supreme Court since January 2023.

HMIT's only asset is its contingent interest in the Claimant Trust. It has no employees or revenue. HMIT's representative has testified that HMIT is liable on more than $62 million of indebtedness owed to The Dugaboy Investment Trust ("Dugaboy"), a family trust of which James Dondero ("Dondero"), the co-founder and former chief executive officer ("CEO") of Highland, and his family members are beneficiaries, and that Dugaboy also is paying HMIT's legal fees. HMIT vehemently disputes the suggestion that it is controlled by Dondero.

B. What Does the Movant HMIT Seek Leave to File?

HMIT seeks leave to file an adversary proceeding ("Proposed Complaint")[5] in the bankruptcy court to bring claims on behalf of itself and, derivatively, on behalf of the Reorganized Debtor and the Claimant Trust for alleged breach of fiduciary duties by the Reorganized Debtor's CEO and Claimant Trustee, James P. Seery, Jr. ("Seery") and conspiracy against: (1) Seery; and (2) purchasers of $365 million face amount of ***allowed*** unsecured claims in this case, who purchased their claims post-confirmation but prior to the occurrence of the Effective Date of the Plan ("Claims Purchasers,"[6] and with Seery, the "Proposed Defendants"). To be clear (and as later further explained), the claims acquired by the Claims Purchasers were acquired by them after extensive litigation, mediation, and settlements were approved by the bankruptcy court and after the original claims-holders had voted on the Plan and after Plan confirmation. As later explained,

[5] In its original Motion for Leave filed at Bankruptcy Docket No. 3699 on March 28, 2023, HMIT sought leave to file the proposed complaint ("Initial Proposed Complaint") attached as Exhibit 1 to the Motion for Leave. Nearly a month later, on April 23, 2023, HMIT filed a *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* ("Supplement") [Bankr. Dkt. No. 3760], a revised proposed complaint as Exhibit 1-A, and stating that "[t]he Supplement is not intended to supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action." Supplement, ¶ 1 and Exhibit 1-A. It is this revised proposed complaint to which this court will refer, when it uses the defined term "Proposed Complaint," even though HMIT filed redacted versions of its Motion for Leave on June 5, 2023 at Bankruptcy Docket Nos. 3815 and 3816 that attached the Initial Proposed Complaint as Exhibit 1.

[6] The Claims Purchasers identified in the Proposed Complaint are Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which is a special purpose entity created by Farallon to purchase allowed unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which is a special purpose entity created by Stonehill to purchase allowed unsecured claims against Highland.

the Claims Purchasers filed notices of their purchases as required by Bankruptcy Rule 3001(e)(2), and no objections were filed thereto. In any event, various damages or remedies are sought against the Proposed Defendants revolving around the Claims Purchasers' claims purchasing activities.

C. Why Does HMIT Need to Seek Leave?

As alluded to above, HMIT filed its Motion for Leave to comply with the provision in the Plan known as a "gatekeeper" provision ("Gatekeeper Provision") and with this court's prior gatekeeper orders entered in January and July 2020, which all require that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain (1) a finding from the bankruptcy court that its proposed claims ("Proposed Claims") are "colorable"; and (2) specific authorization by the bankruptcy court to pursue the Proposed Claims.[7] The Gatekeeper Provision was not included in the Plan *sans raison*. Indeed, as the Fifth Circuit recognized in affirming confirmation of the Plan, the Gatekeeper Provision (along with the other "protection provisions" in the Plan) had been included in the Plan to address the "continued litigiousness" of Mr. James Dondero ("Dondero"), Highland's co-founder and former chief executive officer ("CEO"), that began prepetition and escalated following the post-petition "nasty breakup" between Highland and Dondero, by "screen[ing] and prevent[ing] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[8]

[7] To be clear, the Gatekeeper Provision in the Plan was not the first or even second injunction of its type issued in this bankruptcy case. The Gatekeeper Orders were entered by the bankruptcy court pre-confirmation: (a) in January 2020, just a few months into the case, as part of this court's order approving a corporate governance settlement between Highland and its unsecured creditors committee, in which Dondero, Highland's co-founder and former CEO, was removed from any management role at Highland and three independent directors ("Independent Directors") were appointed in lieu of a chapter 11 trustee being appointed ("January 2020 Order"); and (b) in July 2020, in this court's order authorizing the employment of Seery (one of the three Independent Directors) as the Debtor's new Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative ("July 2020 Order," together with the January 2020 Order, the "Gatekeeper Orders").

[8] *See Highland Capital*, 48 F.4th at 427, 435.

D. Some Further Context Regarding Post-Confirmation Litigation Generally.

Since confirmation of the Plan, hundreds of millions of dollars have been paid out to creditors under the Plan, and there are numerous adversary proceedings and contested matters still pending, at various stages of litigation, in the bankruptcy court, the district court, and the Fifth Circuit, almost exclusively involving Dondero and entities that he owns or controls. To be sure, the post-confirmation litigation in this case does not consist of the usual adversaries and contested matters one typically sees by and against a reorganized debtor and/or litigation trustee, such as preference or other avoidance actions and litigation over objections to claims that are still pending after confirmation of a plan. Indeed, the claims of the largest creditors in this case (with claims asserted in the aggregate of more than one billion dollars) were successfully mediated and incorporated into the Plan—a plan which was ultimately accepted by the votes of an overwhelming majority of Highland's non-insider creditors. Dondero and entities under his control were the only parties who appealed the Confirmation Order, and Dondero and entities under his control have been the appellants in virtually every appeal that has been filed regarding this bankruptcy case. Petitions for writs of mandamus (which have been denied) have been filed in the district court and in the Fifth Circuit by some of these same entities, including one by HMIT, when this court denied setting an ***emergency*** hearing on the instant Motion for Leave (HMIT had sought a setting on three-days' notice).

A recent list of active matters involving Dondero and/or entities and/or individuals affiliated or associated with him, filed in the bankruptcy case by Highland and the Claimant Trust, reveals that there were at least 30 pending and "Active Dondero-Related Litigation" matters as of July 14, 2023: six (6) proceedings in this court; six (6) active appeals or actions are pending in the District Court for the Northern District of Texas; seven (7) appeals in the Fifth Circuit; two (2)

petitions for writs of certiorari in the United States Supreme Court; and nine (9) other proceedings or actions with or affecting the Highland Parties ("Highland," the "Claimant Trust," and "Seery") in various other state, federal, and foreign jurisdictions.[9]

The above-described context is included because the Proposed Defendants assert that the Motion for Leave is just a continuation of Dondero's unrelenting barrage of meritless and harassing litigation, making good on his oft-mentioned alleged threat to "burn down the place" after not achieving the results he wanted in the Highland bankruptcy case. Indeed, the Motion for Leave was filed after two years of unsuccessful attempts by, first, Dondero personally, and then HMIT to obtain pre-suit discovery from the Proposed Defendants (i.e., the Claims Purchasers) through two different Texas state court proceedings, pursuant to Tex. R. Civ. P. 202 ("Rule 202"). In each of these Rule 202 proceedings, Dondero and HMIT espoused the same Seery/Claims

[9] *See* Bankr. Dkt. No. 3880 (filed on July 14, 2023, providing a list of "Active Dondero-Related Litigation" and noting that the list is "a summary of active pending actions only and does not include actions that were resolved by final orders, including actions finally resolved after appeals to the U.S. District Court for the Northern District of Texas and/or the U.S. Court of Appeals for the Fifth Circuit."). Just since the filing by the Highland Parties of the list, ***three*** of the appeals pending in the Fifth Circuit have been decided against the Dondero-related appellants, two of which upheld the district court's dismissal of appeals by Dondero-related entities of bankruptcy court orders based on the lack of bankruptcy appellate standing on behalf of the appellant. On July 19, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by NexPoint Advisors, L.P. ("NexPoint") of bankruptcy court orders approving professional compensation on the basis that NexPoint did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the orders. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, 74 F.4th 361 (5th Cir. 2023). On July 31, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy—the Dondero family trust that, like the movant here in this Motion for Leave, was the holder of a limited partnership interest in Highland, and, as such, now has a contingent interest in the Claimant Trust—which had appealed a bankruptcy court order approving a Rule 9019 settlement on the same basis: Dugaboy did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the settlement order. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10960, 2023 WL 4861770 (5th Cir. July 31, 2023). The July 31, 2023 ruling followed the Fifth Circuit's ruling on February 21, 2023, affirming the district court's dismissal of an appeal by Dugaboy of yet another bankruptcy court order for lack of bankruptcy appellate standing. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023). These rulings by the Fifth Circuit are discussed in greater detail below. The third ruling by the Fifth Circuit since July 14, 2023, was issued by the Fifth Circuit in a per curium opinion not designated for publication on July 26, 2023, this one affirming the district court's affirmance of yet another Rule 9019 settlement order of the bankruptcy court that was appealed by Dugaboy, agreeing with the district court that the bankruptcy court had jurisdiction to approve a settlement among the Debtor, an entity affiliated with the Debtor but not a debtor itself, and UBS (the Debtor's largest prepetition creditor and the seller of its claims to the Claims Purchasers, which is one of the claims trading transactions HMIT complains about in the Proposed Complaint). *See The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P.*, No. 22-10983, 2023 WL 4842320 (5th Cir. July 26, 2023).

Purchasers conspiracy theory espoused in the Motion for Leave—that Seery must have provided one or more of the Claims Purchasers with material nonpublic information to induce them to want to purchase large, allowed, unsecured claims at a discount; a *quid pro quo* is suggested, such that the Claims Purchasers were allegedly told they would make a hefty profit on the claims they purchased and, in return, they would gladly "rubber stamp" Seery's "excessive compensation" as the Claimant Trustee of the Claimant Trust. In sum, HMIT alleges this constituted wrongful "insider trading" of the bankruptcy claims. In addition, certain lawyers for Dondero and Dugaboy sent letters reporting this alleged conspiracy and "insider trading" to the Texas State Securities Board ("TSSB") and the Executive Office of the United States Trustee ("EOUST").

It is against this background and in this context that the court must analyze, in the exercise of its gatekeeping function under the confirmed Plan and its prior Gatekeeping Orders, whether HMIT should be allowed to pursue the Proposed Claims (i.e., whether the Proposed Claims are "colorable" claims as contemplated under the Gatekeeper Orders and the Gatekeeper Provision of the Plan). The court held an evidentiary hearing on the Motion for Leave on June 8, 2023 ("June 8 Hearing"), during which the court admitted exhibits and heard testimony from three witnesses both in support of and in opposition to the Motion for Leave. Having considered the Motion for Leave, the response of the Proposed Defendants thereto, HMIT's reply to the response, and the arguments and evidence presented at the hearing on the Motion for Leave, the court denies HMIT's request for leave to pursue its Proposed Claims. The court's reasoning is set forth below.

II. BACKGROUND

A. Highland's Bankruptcy Case, Dondero's Removal as CEO, and the Plan

Highland was co-founded in Dallas in 1993 by Dondero and Mark Okada ("Okada"). It operated as a global investment adviser that provided investment management and advisory services and managed billions of dollars of assets, both directly and indirectly through numerous

affiliates. Highland's equity interest holders included HMIT (99.5%), Dugaboy (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. ("Strand"), which was wholly owned by Dondero and was the only general partner of Highland (0.25%). On October 16, 2019 (the "Petition Date"), Highland, with Dondero in control[10] and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims – many of which had finally become or were about to be liquidated (after a decade or more of contentious litigation in multiple fora all over the world—filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019. The official committee of unsecured creditors (the "Committee") (and later, the United States Trustee) expressed a desire for the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the specter of a possible appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.[11] As a result of this settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,[12] and three independent directors ("Independent Directors") were

[10] Mark Okada resigned from his role with Highland prior to the Petition Date.

[11] This order is hereinafter referred to as the "January 2020 Order" and was entered by the court on January 9, 2020 [Bankr. Dkt. No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Bankr. Dkt. No. 281].

[12] Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland's motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Bankr. Dkt. No. 338].

chosen to lead Highland through its chapter 11 case: Seery, John S. Dubel, and retired bankruptcy judge Russell Nelms. Given the Debtor's perceived culture of constant litigation while Dondero was at the helm, it was purportedly not easy to get such highly qualified persons to serve as independent board members. At the hearing on the corporate governance settlement motion, the court heard credible testimony that none of the Independent Directors would have taken on the role without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation from mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the Independent Directors without the bankruptcy court's prior authority. The gatekeeper provision approved by the court in its January 9 Order states,[13]

> No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation and did so "subject at all times to the supervision, direction and authority of the Independent Directors" and to his agreement to "resign immediately" "[i]n the event the Independent Directors determine for any reason that the Debtor shall no longer retain Dondero as an employee"[14] and to "not cause any Related Entity to terminate any agreements with the Debtor."[15] The court later

[13] January 2020 Order, 3-4, ¶ 10.

[14] January 2020 Order, 3, ¶ 8.

[15] *Id.* at ¶ 9.

entered, on July 16, 2020, an order approving the appointment of Seery as Highland's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative,[16] which included essentially the same "gatekeeper" language with respect to the pursuit of claims against Seery acting in these roles. The gatekeeper provision in the July 2020 Order was essentially the same as the gatekeeper provision in the January 2020 Order:

> No entity may commence or pursue a claim or cause of action of any kind against Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

July 2020 Order, 3, ¶5. Neither the January 2020 Order nor the July 2020 Order were appealed.

Throughout the summer of 2020, Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Dondero's plans failed to gain support, he and entities under his control engaged in substantial, costly, and time-consuming litigation for Highland.[17] As the Fifth Circuit described the situation, after Dondero's plans failed "he and other creditors began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital's management, threatening employees, and canceling trades between Highland Capital and its clients."[18] On October 9, 2020, Dondero resigned from all positions with the Debtor and its

[16] *See* the July 16, 2020 order approving the retention by Highland of Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020 ("July 2020 Order") [Bankr. Dkt. No. 854].

[17] According to Seery's credible testimony during the hearing on confirmation of the Plan that had been negotiated between the Committee and the Independent Directors, Dondero had threatened to "burn the place down" if his proposed plan was not accepted. *See* Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20. Bankr. Dkt. No. #1894.

[18] *Highland Capital*, 48 F.4th at 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at *1, *26 (Bankr. N.D. Tex.

affiliates in response to a demand by the Independent Directors made after Dondero's purported threats and disruptions to the Debtor's operations.[19]

The Independent Directors and the Committee had negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan") [Bankr. Dkt. No. 1808] on January 22, 2021.[20] Highland had negotiated settlements with most of its major creditors following mediation and had amended its initially proposed plan to address the objections of most of its creditors, leaving only the objections of Dondero and entities under his control (the "Dondero Parties") at the time of the confirmation hearing,[21] which was held over two days in early February 2021. The Plan is essentially an "asset monetization" plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). Highland's various servicing agreements were vested in the Reorganized Debtor, which continues to manage collateralized loan obligation vehicles ("CLOs") and various other investments postconfirmation. The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down the Reorganized Debtor over a three-year period by monetizing its assets and making

June 7, 2021) where this court "h[eld] Dondero in civil contempt, sanctioning him $100,000, and comparing this case to a 'nasty divorce.'").

[19] *See* Highland Ex. 13. The court shall refer to exhibits offered and admitted at the June 8 Hearing on the Motion for Leave by the Highland Parties as "Highland Ex. ___" and to exhibits offered and admitted by HMIT as "HMIT Ex. ___."

[20] The *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* was filed on November 24, 2020 ("Disclosure Statement") [Bankr. Dkt. No. 1473].

[21] The only other objection remaining was the objection of the United States Trustee to the Plan's exculpation, injunction, and release provisions.

distributions to Class 8 and Class 9 creditors as Claimant Trust Beneficiaries. The Claimant Trust is overseen by a Claimant Trust Oversight Board ("CTOB"), and pursuant to the terms of the Plan and the Claimant Trust Agreement ("CTA"),[22] the CTOB approved Seery's compensation package as the CEO of the Reorganized Debtor and the Claimant Trustee. Following their acquisition of their unsecured claims, representatives of Claims Purchasers Muck and Jessup became members of the CTOB.[23] Seery's compensation included the same base salary that he was receiving as CEO and CRO of Highland, plus an added incentive bonus tiered to recoveries and distributions to the creditors under the Plan. The Plan provides for the cancellation of the limited partnership interests in Highland held by HMIT, Dugaboy, and Okada and his family trusts in exchange for each holder's pro rata share of a contingent interest in the Claimant Trust ("Contingent Claimant Trust Interest"), as holders of allowed interests in Class 10 (holders of Class B/C limited partnership interests) or Class 11 (holders of Class A limited partnership interests) under the Plan.

B. Dondero Communicates Alleged Material Non-Public Information ("MNPI") to Seery, and Seery Allegedly Provides the MNPI to the Claims Purchasers in Furtherance of an Alleged Fraudulent Scheme to Have the Claims Purchasers "Rubber Stamp" His Compensation as Claimant Trustee Post-Confirmation

1. The December 17, 2020 MGM Email

Between Dondero's forced resignation from Highland in October 2020 and the confirmation hearing in February 2021, Dondero engaged in what appeared to be attempts to thwart, impede, and otherwise interfere with the Plan being proposed by the Independent Directors and the Committee. In the midst of this, on December 17, 2020, Dondero sent Seery[24] an email

[22] Highland Ex. 38

[23] The CTOB had three members: a representative of Muck (Michael Linn), a representative of Jessup (Christopher Provost), and an independent member (Richard Katz). *See* Joint Opposition ¶ 79.

[24] Dondero sent the email to others as well but did not copy counsel for the Independent Directors (including Seery) in violation of the terms of an existing temporary restraining order that enjoined Dondero from, among other things, "communicating . . . with any Board member" (including Seery) without including Debtor's counsel. Morris Dec. Ex. 23 ¶ 2(a). Citations to "Morris Dec. Ex. _" are to the exhibits attached to the *Declaration of John A. Morris in Support*

(the "MGM Email") that featured prominently in HMIT's Motion for Leave. According to HMIT and Dondero, the MGM Email contained material nonpublic information ("MNPI") regarding the possibility of an imminent acquisition of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"), likely by either Amazon or Apple.[25] At the time Dondero sent the MGM Email, Dondero sat on the board of directors of MGM, and the Debtor owned MGM stock directly. The Debtor also managed and partially owned a couple of other entities that owned MGM stock and managed various CLOs that owned some MGM stock as well. HMIT alleges now that Seery later misused and wrongfully disclosed to the Claims Purchasers this purported MNPI as part of a *quid pro quo* scheme, whereby the Claims Purchasers agreed to approve excessive compensation for Seery in the future (in exchange for him providing this allegedly "insider" information that inspired them to purchase unsecured claims with an alleged expectation of future large profits).[26] A timeline of events (in late 2020) in the weeks leading up to Dondero's MGM Email to Seery, following Dondero's departure from Highland, helps to put the email in full context:

- October 16: Dondero and his affiliates attempt to impede the Debtor's trading activities by demanding—with no legal basis—that Seery cease selling certain assets;[27]

- November 24: Bankruptcy Court enters an Order approving the Debtor's Disclosure Statement, scheduling the confirmation hearing on the Debtor's Plan for January 13, 2021, and granting related relief;[28]

- November 24–27: Dondero personally interferes with the Debtor's

of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding, Bankr. Dkt. No. 3784.

[25] *See* Proposed Complaint ¶ 45.

[26] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the [Claims Purchasers], with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims."); ¶ 4 ("As part of the scheme, the [Claims Purchasers] obtained a position to approve Seery's ongoing compensation – to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT.").

[27] *See* Highland Ex. 14, Dondero-Related Entities' October 16, 2020 Letter; Highland Ex. 15, *Memorandum Opinion and Order Holding Dondero in Contempt for Violation of TRO*, 13-15.

[28] *See* Bankr. Dkt. No. 1476.

implementation of certain securities trades ordered by Seery;[29]

- November 30: The Debtor provides written notice of termination of certain shared services agreements it had with Dondero's two non-debtor affiliates, NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"; together with NexPoint, the "Advisors");[30]

- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes they owed to the Debtor, that had an aggregate face amount of more than $60 million—this was part of creating liquidity for the Debtor's Plan;[31]

- December 3: Dondero responds with what appeared to be a threat of some sort to Seery in a text message: "***Be careful what you do -- last warning***;"[32]

- December 10: Dondero's interference and apparent threat cause the Debtor to seek and obtain a temporary restraining order ("TRO") against Dondero;[33]

- December 16: This court denies as "frivolous" a motion filed by certain affiliates of Dondero, in which they sought "temporary restrictions" on certain asset sales;[34] and

- December 17: Dondero sends the unsolicited MGM Email[35] to Seery, which violates the TRO entered just a week earlier.[36]

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[29] *See* Highland Ex. 15, 30-36.

[30] Morris Decl. Ex. 17; *see also* Transcript of June 8, 2023 Hearing on HMIT's Motion for Leave ("June 8 Hearing Transcript"), 273:23-24.

[31] Morris Decl. Exs. 18-21; *see also* June 8 Hearing Transcript, 273:23-274:1.

[32] Morris Decl. Ex. 22 (emphasis added); *see also* June 8 Hearing Transcript, 273:1-12 (where Seery testified about receiving the threat from Dondero: "A: [T]his came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.").

[33] *See* Morris Decl. Ex. 23, *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* entered December 10, 2020 [Adv. Pro. No. 20-3190 Dkt. No. 10].

[34] *See* Morris Decl. Ex. 24, Transcript of December 16, 2020 Hearing, 63:5-64:15.

[35] Highland Ex. 11.

[36] Seery testified at the June 8 Hearing that Dondero knowingly violated the TRO when he sent the MGM Email:

> [The MGM Email] . . . followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski [Debtor's counsel] being on it. Furthermore, Pachulski had advised Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics. And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

June 8 Hearing Transcript, 273:13-22.

The MGM Email had the subject line "Trading Restriction re MGM – material non public information" and stated:

> Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.[37]

Seery credibly testified at the June 8 Hearing that he was "highly suspicious" when he received the MGM Email. This was because, among other reasons, Dondero sent it ***after***: (i) unsuccessful efforts to impede the Debtor's trading activities (followed by the TRO); (ii) the "be careful what you do" text to Seery by Dondero: (iii) Highland's termination of its shared service arrangements with Dondero's various affiliated entities; (iv) the bankruptcy court's approval of the disclosure statement; and (v) Highland's demand to collect on the demand notes for which Dondero and his entities were liable.[38] Highland's Chapter 11 case was fast approaching the finish line. Moreover, MGM was already on the restricted list at Highland Capital, and had been for a long time, and Dondero would know this.[39] Still further, as of December 17, 2020 (the date Dondero sent the unsolicited MGM Email to Seery), Dondero no longer owed a duty of any kind to the Debtor or any entity controlled by the Debtor, having surrendered in January 2020 direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement[40] and having resigned from all roles at the Debtor and affiliates in October 2020. Still further, Dondero—to the extent he was sharing with Seery MNPI that he obtained as a member of the board of directors of MGM—would have been violating his own fiduciary duties to MGM.

[37] Highland Ex. 11.

[38] June 8 Hearing Transcript, 273:1-274:4.

[39] June 8 Hearing, 215:21-216:9.

[40] *See* Bankr. Dkt. Nos. 339, 354-1 (Term Sheet)).

In any event, in a declaration filed by Dondero in support of HMIT's Rule 202 petition in Texas state court for pre-suit discovery,[41] he indicated that his goal in sending the MGM E-mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

> On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple's interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades***.

It is noteworthy that ***Dondero's labeling of the MGM Email (in the subject line) as a communication containing "material non public information" did not make it so***. In fact, it appears from the credible evidence presented at the June 8, 2023 hearing on HMIT's Motion for Leave that the MGM Email did not disclose information to Seery that was not already made available to the public at the time it was sent. Seery testified that he did not think the MGM Email contained MNPI and that he did not personally "take any steps . . . to make sure that MGM stock was placed on a restricted list at Highland Capital after [he] received [the MGM Email]" because—as earlier noted—"MGM was already on the restricted list at Highland Capital . . . before I got to Highland."[42] Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months[43] and that was officially

[41] Highland Ex. 9 ¶ 3 (emphasis added).

[42] June 8 Hearing Transcript, 215:21-216:9. Seery elaborated upon further questioning from HMIT's counsel that he did not think the indications in the MGM Email (that came from a member of the board of directors of MGM) that "it was probably a first-quarter event" and that "Amazon and Apple were actively diligencing – are diligencing in the data room, both continue to express material interest" were not MNPI. *Id.*, 217:23-218:10. He testified that "it was clear [before he received the MGM Email] from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction would have to take place very quickly. And, in fact, the transaction did not take place in the first quarter." *Id.*, 219:3-7.

[43] *See* Highland Ex. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Ex. 26 (describing prospects of an MGM sale, noting that, among its largest

announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[44] For example, as early as January 2020, Apple and Amazon were identified as being among a new group of "Big 6" global media companies, and MGM was identified as being a leading media acquisition target. Indeed, according to at least one media report on January 26, 2020, "MGM, in particular, seems like a logical candidate to sell this year" having already held "preliminary talks with Apple, Netflix and other larger media companies."[45] In October 2020, the Wall Street Journal reported that MGM's largest shareholder, Anchorage Capital Group ("Anchorage"), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as Chairman of MGM's Board. The article reported that "[i]n recent months, Mr. Ulrich has said he is working toward a deal," and he specifically named Amazon and Apple as being among four possible buyers.[46] Thus, no one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed "material interest" in acquiring MGM. Dondero testified during the June 8 Hearing that, at the time he sent the MGM Email, he "knew with certainty from the board level that Amazon had hit our price, and it was going to close in the next couple of months,"[47] that "as of December 17th, Amazon had made an offer that was acceptable to MGM, [and that] that's what the board meeting was. We were going into exclusive negotiations to culminate the merger with

shareholders, was "Highland Capital Management, LP") (article October 11, 2020). *See also* Highland Exs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for $8.4 billion).

[44] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid.

[45] Highland Ex. 25.

[46] Highland Ex. 26.

[47] June 8 Hearing Transcript, 127:2-4.

them."[48] Notwithstanding this testimony, Dondero eventually admitted (after a lengthy and torturous cross examination) that he did not actually communicate this supposed "inside" information to Seery in the MGM Email. He did not "say anything about Amazon hitting the price." He did not say anything about the MGM board going into exclusive negotiations with Amazon "to culminate the merger with them." Rather, he communicated information that Seery and any member of the public who cared to look could have gleaned from publicly available information as of December 17, 2020, regarding a much-written-about potential MGM transaction that involved interest from numerous companies, including, specifically, Amazon and Apple. When questioned why "[he felt] the need to mention Apple [in the MGM Email] if Amazon had already hit the price," Dondero simply answered, "The only way you generally get something done at attractive levels in business is if two people are interested," suggesting that he specifically ***did not*** communicate the purported inside information he obtained as a MGM board member—that Amazon had met MGM's strike price and that the MGM board was moving forward with exclusive negotiations with Amazon—because he wanted it to appear that there was still a competitive process going on that included both Amazon and Apple.[49]

Even if the MGM Email contained MNPI on the day it was sent (four months prior to the first of the Claim Purchases that occurred in April 2021), the information was fully and publicly disclosed to the market in the days and weeks that followed. For example, on December 21, 2020, just four days later, a Wall Street Journal article titled *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale*, reported that MGM had "tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process," and had "a market value of around $5.5 billion, based on privately traded shares and including debt." The Wall Street Journal Article reiterated

[48] *Id.*, 161:10-14.

[49] June 8 Hearing Transcript, 162:2-6.

that (i) Anchorage "has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks," and (ii) "Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers."[50] (*Id*. Ex. 27.) The Wall Street Journal's reporting was picked up and expanded upon in other publications soon after. For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The world is net enough! Amazon joins other streaming services in £4bn bidding war for Bond films as MGM considers selling back catalogue*, cited the Wall Street Journal article and further reported that MGM "hopes to spark a battle that could interest streaming services such as Amazon Prime";[51]

- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that "it's now become apparent that MGM is actually up on the auction block," noting that the Wall Street Journal was "reporting that the studio has begun a formal sale process" and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder;[52] and

- On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition.[53]

Finally, Highland and entities it controlled did not sell their MGM stock while the MGM-Amazon deal was under discussion and/or not made public but, instead, they tendered their MGM holdings in connection with, and as part of, the ultimate MGM-Amazon transaction after it closed in March 2022.

[50] Highland Ex. 27.

[51] Highland Ex. 28.

[52] Highland Ex. 29.

[53] Highland Ex. 30.

2. No Evidence to Support HMIT/Dondero's Assumptions that Seery Shared Alleged MNPI in the MGM Email with Claims Purchasers

One of HMIT's allegations in the Proposed Complaint it seeks leave to file—which is central to HMIT's and Dondero's conspiracy theory—is that Seery shared the alleged MNPI from the MGM Email with the Claims Purchasers (or at least Farallon—the owner/affiliate of Muck, one of the Claims Purchasers) and that the Claims Purchasers only acquired the purchased claims ("Purchased Claims") based on, and because, of their receipt of the MNPI from Seery. HMIT essentially admits in the original version of its Motion for Leave that it has no direct evidence that Seery communicated the alleged MNPI to any of the Claims Purchasers. Rather, its allegation is based on inferences it wants the court to make based on "circumstantial" evidence and on the Dondero Declarations that were attached to the Motion for Leave, which described communications Dondero purportedly had with one or two representatives of Farallon in the "late spring" of 2021 concerning Farallon's recent acquisition of certain claims in the Highland bankruptcy case.[54] Based on these communications, HMIT and Dondero only assume Seery must have provided the MNPI about MGM to Farallon, which must have caused both Farallon and the other Claims Purchaser, Stonehill, to acquire the Purchased Claims.[55]

At the June 8 Hearing, HMIT offered Dondero's testimony that he had three telephone conversations with two representatives of Farallon, Mike Linn ("Linn") and Raj Patel ("Patel"),

[54] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 1 and Ex. 3; *see also* Highland Ex. 9, *Declaration of James Dondero* (with Exhibit 1) dated February 15, 2023.

[55] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 28. HMIT subsequently filed the final version of the Motion for Leave that was revised to withdraw the Dondero Declarations and delete all references therein to the Dondero Declarations (but, notably, leaving in the allegations that were based on the Dondero Declaration(s)). This was done after the court ruled that it would allow the Proposed Defendants to examine Dondero regarding his Declarations. HMIT contended at that point that the court should consider the Motion for Leave on a no-evidence Rule 12(b)(6) type basis (but could not explain why it had attached the Dondero Declarations as evidence that "supported" the Motion for Leave, if it believed no evidence should be considered). *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 28; *see also infra* pages 45 to 47 regarding the "sideshow" litigation that occurred prior to the June 8 Hearing over whether the hearing on the Motion for Leave would be an evidentiary hearing.

who allegedly told him that they purchased the claims without conducting any due diligence and based solely on Seery's assurances that the claims were valuable. These conversations allegedly took place on May 28, 2021—two days after the MGM-Amazon deal was officially announced to the public (on May 26, 2021). Dondero also testified that a photocopy of handwritten notes ("Dondero Notes")[56] (which were partially cut off) were notes he took contemporaneously with these short telephone conversations he initiated (one with Patel and two follow-up conversations with Linn).[57] He testified that his purpose in taking these notes and in initiating the phone calls was that "[w]e'd been trying nonstop to settle the case for two-plus years. . . . [a]nd when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case . . . [s]o I reached out [to] the Farallon guys,"[58] and further, on *voir dire* from the Proposed Defendants' counsel, that the purpose of taking the notes was so that he had "a written record of the important points that [he] discussed . . . so I know how to address it the next time."[59] The handwritten notes[60] stated:

Raj Patel bought it because of Seery	*1*
50-70¢ not compelling	*2*
Class 8	*3*
Asked what would be compelling	*4*
-- No Offer	*5*
Bought in Feb/March timeframe	*6*
Bought assets w/ Claims	*7*
Offered him 40-50% premium	*8*
130% of cost; "Not Compelling"	*9*
No Counter; Told Discovery coming	*10*

[56] HMIT Ex. 4. The handwritten notes were admitted into evidence after *voir dire*, not for the truth of anything Patel or Linn allegedly said to him during the three telephone conversations, but as Dondero's "present sense impression" of the telephone conversations.

[57] June 8 Hearing Transcript, 133:1-136:3.

[58] *See id.*, 133:13-23.

[59] *See id.* (on *voir dire*), 144:1838-145:4.

[60] HMIT Ex. 4. The court has placed in a table and numbered each line for ease of reference. The table does not include the separate apparent partial date from the top left corner that Dondero testified was the date that he made the initial call to Patel: May 28, 2021.

On direct examination, Dondero testified that line 1 is what he wrote contemporaneously with the short call he initiated to Patel of Farallon in which Patel allegedly told Dondero "that he bought it because Seery told him to buy it and they had made money with Seery before"[61] and that Farallon "bought [the claim] because he was very optimistic regarding MGM"[62] before referring him to Linn, a portfolio manager at Farallon. Dondero testified that the rest of the handwritten notes (reflected in lines 2 through 10 of the table) were notes he took contemporaneously with two telephone conversations he had with Linn following his call to Patel, with lines 2-8 referring to Dondero's first call with Linn and lines 9 and 10 referring to his second call with Linn.[63] Dondero testified that the "50-70¢" in line 2 referred to his offer to Linn to pay 70 cents on the dollar to buy Farallon's[64] claims because "[w]e knew that they had – that the claims had traded around 50 cents" and "[w]e wanted to prevent the $5 million-a-month burn" (referring to attorney's fees in the Highland case) and that "not compelling Class 8" in lines 2-3 referred to Linn's response to him that the offer was not compelling.[65] Dondero testified that lines 4-5 referred to him asking Linn what amount would be compelling and to Linn's response that "he had no offer."[66] Dondero testified that lines 6-8 referred to Linn telling Dondero that Farallon bought the claims in the February, March timeframe and that Dondero told Linn that, given that the estate was spending $5 million a month on legal fees, Farallon should want to sell its claims and Linn's alleged response that "Seery told him it was worth a lot more."[67] Lastly, Dondero testified on direct examination

[61] June 8 Hearing Transcript, 134:7-10, 135:13-22.

[62] *Id.*, 139:3-11.

[63] *Id.*, 136:4-138:16.

[64] As noted above, Farallon did not acquire any of the Purchased Claims; rather, Farallon created a special purpose entity, Muck, to acquire the claims.

[65] June 8 Hearing Transcript, 136:4-16.

[66] *Id.*, 136:17-23.

[67] *Id.*, 137:6-138:7.

that the last two lines referred to a second telephone conversation he had with Linn in which Dondero offered 130 percent of cost for the claims and that Linn told him that the offer was not compelling, and he would not give a price at which he would sell.[68]

On cross-examination, Dondero acknowledged that, though he had testified that the handwritten notes were intended to be a written record of the important points from the telephone conversations he had with Patel and Linn, there was no mention in the notes of: (1) MGM: (2) or that Farallon was very optimistic about MGM; (3) the sharing of MNPI; (4) a *quid pro quo;* or (5) Seery's compensation, and that his last note—"Told Discovery coming"—was a reference to Dondero telling Linn (not Linn telling Dondero) that discovery was coming in response to Dondero's own supposition that Farallon must have traded on MNPI.[69] Cross-examination also revealed that Farallon never told Dondero that Seery gave them MNPI, and that Dondero only ***believed*** Seery ***must have*** given Farallon MNPI, because Farallon (Patel and Linn) had told him that the only reason Farallon bought their claims was because of their prior dealings with Seery, which Dondero took to mean that they had conducted no due diligence on their own prior to acquiring the claims. Dondero also testified that he did not have any personal knowledge as to how Seery's compensation package, as CEO of the Reorganized Debtor and Claimant Trustee, was determined because he was "not involved" in the setting of Seery's compensation pursuant to the Claimant Trust[70] and that he never discussed Seery's compensation with Farallon.[71]

As noted earlier, Dondero attempted to obtain discovery from the Claims Purchasers in a Texas state court pursuant to Rule 202 of the Texas Rules of Civil Procedure. The Texas state

[68] *Id.*, 138:8-22.

[69] *Id.*, 190:14-191:25. Dondero testified that he told Linn that discovery "would be coming in the next few weeks" and noted that "this has been a couple years. . . . [w]e've been trying for two years to get . . . discovery in this."

[70] *Id.*, 200:13-201:1.

[71] *Id.*, 208:23-209:8.

court denied the First Rule 202 petition on June 1, 2022, after having considered the amended petition, the responses, the record, applicable authorities and having conducted a hearing on the petition on June 1, 2022.[72]

3. Dondero Unsuccessfully Seeks Discovery and to Have Various Agencies and Courts Outside of the Bankruptcy Court Acknowledge His Insider Trading Theories

Dondero acknowledged at the June 8 Hearing that the verified petition ("First Rule 202 Petition") he signed and filed on July 22, 2021, in the first Texas Rule 202 proceeding—just weeks after his telephone calls with Linn and Patel—was true and accurate. In it, he swore under oath as to what Linn told him in the telephone call concerning Farallon's purchase of the claims, and the only reason he gave for wanting discovery was that Linn told him Farallon bought the claims "sight unseen—relying entirely on Seery's advice solely because of their prior dealings."[73] Dondero acknowledged, as well, that his sworn statement that he filed in support of an amended verified Rule 202 petition filed in the same Texas Rule 202 proceeding, but nearly ten months later (in May 2022), described the same telephone conversation he had with Linn, and it did not mention MGM at all and did not say that Linn told him that Seery gave him MNPI; rather, the sworn statement stated only that "On a telephone call between Petitioner and Michael Lin[n], a representative of Farallon, Mr. Lin[n] informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Seery's say-so because they had made so much money in the past when Seery told them to purchase claims" and that Linn did not tell him that Seery gave them MNPI, but he concluded that Seery gave Farallon MNPI based on what Linn did tell him.[74]

[72] Highland Ex. 7.

[73] *Id.*, 193:8-194:16; Highland Ex. 3, *Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 21. The first Texas Rule 202 proceeding in which Dondero sought discovery regarding the Farallon acquisition of its claims was brought by Dondero, individually, in the 95th Judicial District, Dallas County, Texas.

[74] *Id.*, 195:11-197:17; Highland Ex. 4, *Amended Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 23.

Nine days later, Dondero filed a declaration in the same proceeding, in which he described the same call with Linn as follows:[75]

> Last year, I called Farallon's Michael Lin[n] about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin[n] of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Seery had testified in court, it made no sense to me that Mr. Lin[n] would think that the claims were worth more than what Seery testified under oath was the value of the bankruptcy claims.

Dondero further stated in his declaration that "I have an interest in ensuring that the claims purchased by [Farallon] are not used as a means to deprive the equity holders of their share of the funds," and that "[i]t has become obvious that despite the fact that the bankruptcy estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights. Accordingly, "I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee."[76] Dondero attached as Exhibit A to his declaration a letter from Douglas Draper ("Draper"), an attorney with the law firm of Heller, Draper & Horn, L.L.C. in New Orleans, to the office of the General Counsel, Executive Office for U.S. Trustees, dated October 5, 2021, in which Draper opens the letter by stating that "[t]he purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the [Creditors' Committee] in the bankruptcy of [Highland]," and later noted that he "became involved in Highland's bankruptcy through my representation of [Dugaboy], an irrevocable trust of which Dondero is the primary beneficiary."[77] Mr. Draper laid out the same allegations of insider claims trading, breach of

[75] Highland Ex. 5, ¶ 2.
[76] *Id.*, ¶¶ 3-4.
[77] *Id.*, Ex. A, 1-2.

fiduciary duties, and conspiracy that HMIT seeks to bring in the Proposed Complaint.[78] The U.S. Trustee's office took no action. Dondero made a second and third attempt to get the U.S. Trustee's office to conduct an investigation into the same allegations laid out in Draper's letter, this time in "follow-up" letters to the Office of the U.S. Trustee on November 3, 2021, and six months later, on May 11, 2022, through another lawyer, Davor Rukavina ("Rukavina"), in which Rukavina wrote "to provide additional information regarding the systemic abuses of bankruptcy process occasioned during the [Highland] bankruptcy."[79] Again, the U.S. Trustee's office took no action.

On February 15, 2023, Dondero filed yet another sworn statement about his alleged conversation with Linn, this time in support of a Verified Rule 202 Petition ***filed by HMIT*** ("Second Rule 202 Petition"), filed in a different Texas state court (Texas District Court, 191st Judicial District, Dallas County, Texas), following Dondero's unsuccessful attempts throughout 2021 and 2022 to obtain discovery in the First Rule 202 proceeding and based on the same allegations of misconduct by Seery and Farallon.[80] In this new sworn statement, Dondero describes for the first time the "call" he had with Linn as having been "phone calls" with Patel and Linn and ***mentions MGM*** and Farallon's alleged optimism about the ***expected sale of MGM***:[81]

> In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC ("Farallon"), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Seery because they had made significant profits when Seery told them to purchase other claims in the past. They also stated that they were particularly optimistic because of the expected sale of MGM.

[78] *Id.*, Ex. A, 6-11.

[79] HMIT Ex. 61.

[80] Highland Ex. 9.

[81] *Id.*, ¶ 4.

The Second Rule 202 Petition was also denied by the second Texas state court on March 8, 2023.[82]

HMIT, in an apparent attempt to provide support for its argument that the Proposed Claims are "colorable," stated in its Motion for Leave that "[t]he Court also should be aware that the Texas States [sic] Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely 'colorable.'"[83] But, two days before opposition briefing was due, on May 9, 2023, the TSSB issued a letter ("TSSB Letter") to Highland, informing it that "[t]he staff of the [TSSB] has completed its review of the complaint received by the Staff against [Highland]. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time."[84] HMIT's counsel (frankly, to the astonishment of the court) objected to the admission of the TSSB Letter at the June 8 Hearing "on the grounds of relevance, 403, hearsay, and authenticity . . . [a]nd I also . . . think it's important that the decision by a regulatory body has no bearing on this cause of action or the colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry."[85] The court overruled HMIT's objection to the relevance of this exhibit—considering, among other things, that HMIT, in its Motion for Leave, specifically mentioned the allegedly open TSSB "investigation" as relevant evidence the court "should be aware" of in making its determination of whether the Proposed Claims were "colorable."[86]

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[82] Highland Ex. 10.

[83] Motion for Leave, ¶ 37.

[84] *See* Highland Ex. 33.

[85] June 8 Hearing Transcript, 323:22-324:3.

[86] *Id.*, 324:4-328:2.

C. Claims Purchasers Purchase Claims and File Notices of Transfers of Claims

To be clear about the time line here, it was after confirmation of the Plan but prior to the Effective Date of the Plan, that the Claims Purchasers: (1) purchased several large unsecured claims that had been allowed following, and as part of, Rule 9019 settlements, each of which were approved by the bankruptcy court, after notice and hearing, prior to the confirmation hearing; and (2) filed notices of the transfers of those claims pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure. The noticing of the claims transfers began on April 16, 2021, with the notice of transfer of the claim held by Acis Capital Management to Muck, and ended on August 9, 2021, with the notices of transfers of the claims held by UBS Securities to Muck and Jessup:

Claimant(s)	**Date Filed/ Claim No.**	**Asserted Amount**	**Claim Settled/Allowed? If so, Amount**	**Date Filed/ Rule 3001 Notice Dkt. No.**
Acis Capital Management LP and Acis Capital Management, GP LLC (together, "Acis")	12/31/2019 Claim No. 23	$23,000,000	Yes[87] $23,000,000	4/16/2021 Bankr. Dkt. No. 2215 (Muck)
Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee")	4/3/2020 Claim No. 72	$190,824,557	Yes[88] $137,696,610	4/30/2021 Bankr. Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (the "HarbourVest Parties")	4/8/2020 Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes[89] $80,000,000 in aggregate ($45,000,000 General Unsecured Claim, and $35,000,000 subordinated claim)	4/30/2021 Bankr. Dkt. No. 2263 (Muck)

[87] Bankr. Dkt. No. 1302. The Debtor's settlement with Acis was approved over the objection of Dondero. Bankr. Dkt. No. 1121.

[88] Bankr. Dkt. No. 1273.

[89] Bankr. Dkt. No. 1788. The Debtor's settlement with the HarbourVest Parties was approved over the objections of Dondero, Bankr. Dkt. No. 1697, and Dugaboy and the Get Good Trust. Bankr. Dkt. No. 1706.

UBS Securities LLC, UBS AG, London Branch (the "UBS Parties")	6/26/2020 Claim Nos. 190, 191	$1,039,957,799.40	Yes[90] $125,000,000 in aggregate ($65,000,000 General	8/9/2021 Bankr. Dkt. No. 2698 (Muck) and Bankr. Dkt. No. 2697 (Jessup)

HMIT insists that it "made no sense" for the Claims Purchasers to buy the Purchased Claims because "the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk," and "their investment was projected to yield a small return with virtually no margin for error."[91] Dondero testified that it was ***his*** view that there was insufficient information in the public to justify the claims purchases.[92] But, HMIT's arguments here are contradicted by the information that was publicly available to Farallon and Stonehill at the time of their purchases and by HMIT's own allegations. In advance of Plan confirmation, Highland projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. In the Proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims.[93] Taking into account the face amount of the allowed claims, the Claims Purchasers' projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value[94]	Purchaser	Purchase Price	Projected Profit
Redeemer	$137.0	$0.0	$97.71	Stonehill	$78.0	$19.71
Acis	$23.0	$0.0	$16.4	Farallon	$8.0	$8.40

[90] Bankr. Dkt. No. 2389. The Debtor's settlement with the UBS Parties was approved over the objections of Dondero, Dkt. No. 2295, and Dugaboy and the Get Good Trust. Bankr. Dkt. Nos. 2268, 2293.

[91] Proposed Complaint, ¶ 3.

[92] June 8 Hearing Transcript, 187:3-7 ("Q: And it's your testimony that there wasn't sufficient information in the public for them to buy – this is your view – that there wasn't sufficient information in the public to justify their purchases. Is that your view? A: Correct.).

[93] *Id.*, ¶ 42.

[94] "Ascribed Value" is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

HarbourVest	$45.0	$35.0	$32.09	Farallon	$27.0	$5.09
UBS	$65.0	$60.0	$46.39	Stonehill & Farallon	$50.0	($3.61)

As HMIT acknowledges, by the time Dondero spoke with Farallon in the "late spring" of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest.[95] Based on an aggregate purchase price of $113 million for these three claims, the Claims Purchasers would have expected to net over $33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections, because they also purchased the Class 9 claims and would therefore capture any upside. In this context, HMIT's and Dondero's assertions that it did not "make any sense" for the Claims Purchasers to purchase their claims when they did does not pass muster—given the publicly available information about potential recoveries under the Plan. Dondero even acknowledged, on cross-examination, that he was prepared to pay ***30 percent more*** than Farallon had paid, even though he did not think there was sufficient public information available to justify Farallon's purchase of the claims.[96] Dondero essentially testified that he wanted to purchase Farallon's claims because he wanted to be in a position of control to force a settlement or resolution of the bankruptcy case, post-confirmation, under terms acceptable to him. He did not want to try to settle by negotiating with Farallon and Stonehill ***as creditors***, but instead he wanted to purchase the claims because "if we owned all the claims, it would settle the case."[97]

[95] *See* Complaint, ¶ 41 n.12. The UBS claims were not acquired until August 2021, long after the alleged "*quid pro quo*" was supposedly agreed upon and the MGM-Amazon deal was announced in the press in late May 2021. *See*, Highland Ex. 34, *Amazon's $8.45 Billion Deal for MGM is Historic But Feels Mundane* (dated May 26, 2021).

[96] June 8 Hearing Transcript, 187:8-11.

[97] *Id.*, 187:12-189:10.

D. Fifth Circuit's Approval of the Gatekeeper Provision in Plan, Recognition of Res Judicata Effect of the Prior Gatekeeper Orders, and the Bankruptcy Court's Order Approving Highland's Motion to Conform Plan

Harkening back to February 22, 2021, after a robust confirmation hearing, this court entered its order confirming the Plan, over the objections of Dondero and Dondero-Related Parties, specifically questioning the good faith of their objections. The court found, after noting "the remoteness of their economic interests" that "[it] has good reason to believe that [the Dondero Parties] are not objecting to protect economic interests they have in the Debtor but to be disruptors. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan."[94] The Plan became effective on August 11, 2021.

Of relevance to the Motion for Leave, the confirmed Plan included certain exculpations, releases, and injunctions designed to protect the Debtor and other bankruptcy participants from bad-faith litigation. These participants included: Highland's employees (with certain exceptions); Seery as Highland's CEO and CRO; Strand (after the appointment of the Independent Directors); the Independent Directors; the successor entities; the CTOB and its members; the Committee and its members; professionals retained in the case; and all "Related Persons." The injunction provisions contained a Gatekeeper Provision which is similar to the gatekeeper provisions in the prior Gatekeeper Orders in that it provided that the bankruptcy court will act as a "gatekeeper" to screen and prevent bad-faith litigation against the Protected Parties. The Gatekeeper Provision in the Plan states, in pertinent part:[98]

> No Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents ***a colorable claim of any kind***, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically

[98] Plan, 50-51 (emphasis added).

> authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

The Plan defines Protected Parties as,

> collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the [CTOB] (in their official capacities), (xiii) [HCMLP GP LLC], (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); [but excluding Dondero and Okada and various entities including HMIT and Dugaboy].

The court notes that the Gatekeeper Provision in the Plan provides protection to a broader number of persons than the persons protected under the January 2020 Order (addressing the Independent Directors and their agents and advisors) and the July 2020 Order (addressing Seery in his role as CEO and CRO of the Debtor). But, at the same time, it is less restrictive than the gatekeeping provisions under the Gatekeeper Orders, in that the gatekeeping provisions in the prior orders shield the protected parties from any claim that is not both "colorable" ***and*** a claim for "willful misconduct or gross negligence," effectively providing the protected parties under the prior orders with a limited immunity from claims of simple negligence or breach of contract that do not rise to the level of "willful misconduct or gross negligence," whereas the Gatekeeping Provision under the Plan does not act as a release or exculpation of the Protected Parties in any way because it does not prohibit any party from bringing ***any kind of claim*** against a Protected Party, provided the proposed claimant first obtains a finding in the bankruptcy court that its proposed claims are "colorable."[99]

[99] It should be noted that--as discussed further below--there are, separately in the Plan, exculpations as to a smaller universe of persons--*e.g.,* the Debtor, the Committee and its members, and the Independent Directors.

Dondero and some of the entities under his control appealed[100] the Confirmation Order directly to the Fifth Circuit, arguing, among other issues, that the Plan's exculpation, release, and injunction provisions, including the Gatekeeper Provision (collectively, the "Protection Provisions") impermissibly provide certain non-debtor bankruptcy participants with a discharge, purportedly in contravention of the provisions of Bankruptcy Code § 524(e)'s statutory bar on non-debtor discharges. As noted above, the Fifth Circuit, "affirm[ed] the confirmation order in large part" and "reverse[d] ***only insofar as the plan exculpates*** certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties ***from the plan's exculpation***, and affirm[ed] on all remaining grounds."[101] The Fifth Circuit specifically found the "injunction and gatekeeping provisions [to be] sound" and found that it was only "the ***exculpation*** of certain non-debtors" that "exceed[ed] the bankruptcy court's authority," agreeing with the bankruptcy court's conclusions that the Protection Provisions were legal, necessary under the circumstances, and in the best interest of all parties" in part, and only disagreeing to the extent that the ***exculpation*** provision improperly extended to certain bankruptcy participants other than Highland, the Committee and its members, and the Independent Directors and "revers[ing] and strik[ing] the few unlawful parts

[100] On appeal, the appellant funds ("Funds"), whom this court found to be "owned and/or controlled" by Dondero despite their purported independence, also asked the Fifth Circuit to vacate this court's factual finding "because it threatens the Funds' compliance with federal law and damages their reputations and values" and because "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him." *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th at 434. Applying the "clear error" standard of review, the Fifth Circuit "le[ft] the bankruptcy court's factual finding undisturbed" because "nothing in this record leaves us with a firm and definite conviction that the bankruptcy court made a mistake in finding that the Funds are 'owned and/or controlled by [Dondero]." *Id.* at 434-35.

[101] *See supra* note 4. The Fifth Circuit replaced its initial opinion with its final opinion a few days after certain appellants had filed a short (four-and-one-half pages) motion for rehearing (the "Motion for Rehearing") on September 2, 2022. The movants had asked the Fifth Circuit to "narrowly amend the [initial] Opinion in order to confirm the Court's holding that the impermissibly exculpated parties are similarly struck from the protections of the injunction and gatekeeper provisions of the plan (in other words, that such parties cannot constitute 'Protected Parties')." In the final Fifth Circuit opinion, same as the initial Fifth Circuit opinion, the Fifth Circuit stated that, with regard to the Confirmation Order, the panel would "reverse only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strike those few parties from the plan's exculpation, and affirm on all remaining grounds." *Highland Capital*, 48 F.4th at 424. No findings, discussion, or rulings regarding the injunction and gatekeeper provisions that were in the initial Fifth Circuit opinion were disturbed.

of the Plan's ***exculpation provision***."[102] The Fifth Circuit then remanded to the Bankruptcy Court "for further proceedings in accordance with the opinion."[103]

In the course of analyzing the Protection Provisions under the Plan, the Fifth Circuit noted that the protection provisions in the January and July 2020 Orders appointing the Independent Directors and Seery as CEO and CRO of Highland were *res judicata* and that "*those* orders have the effect of exculpating the Independent Directors and Seery in his executive capacities" such that "[d]espite removal from the exculpation provision in the confirmation order, the Independent Directors' agents, advisors, and employees, as well as Seery in his official capacities are all exculpated to the extent provided in the January and July 2020 Orders."[104]

The Reorganized Debtor filed a motion in the bankruptcy court to conform the plan to the Fifth Circuit's mandate, proposing that only one change was needed to make the Plan compliant with the Fifth Circuit's ruling: narrow the defined term for "Exculpated Parties" to read as follows:

> "Exculpated Parties" means, collectively, (i) the Debtor, (ii) the Independent Directors, (iii) the Committee, and (iv) members of the Committee (in their official capacities).

The Reorganized Debtor proposed that this one simple revision of this defined term removed the exculpations deemed by the Fifth Circuit to violate section 524(e) of the Bankruptcy Code, and that no other changes would be required to conform the Plan and Confirmation Order to the Fifth Circuit's mandate. Some of the Dondero-related entities objected to the motion to conform, arguing that the Fifth Circuit's ruling required more surgery on the Plan than simply narrowing the defined term "Exculpated Parties." On February 27, 2023, this court entered its order granting

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[102] *Id.* at 435.

[103] *Id.* at 440. The Fifth Circuit's docket reflects that it issued its Judgment and mandate on September 12, 2022.

[104] *Highland Capital*, 48 F.4th at 438 n.15. The Fifth Circuit stated, "To the extent Appellants seek to roll back the protections in the bankruptcy court's January 2020 and July 2020 orders (which is not clear from their briefing), such a collateral attack is precluded." *Id.*

Highland's motion to conform the Plan, ordering that one change be made to the Plan – revising the definition of "Exculpated Parties" – and no more.[105] The objecting parties' direct appeal of this order has been certified to the Fifth Circuit and is one of the numerous currently active appeals by Dondero-related parties pending in the Fifth Circuit.

E. HMIT's Motion for Leave

HMIT filed its emergency Motion for Leave on March 28, 2023, which, with attachments, as first filed, was 387 pages in length, including an initial proposed complaint ("Initial Proposed Complaint") and two sworn declarations of Dondero that were attached as "objective evidence" in "support[ ]" of the Motion for Leave,[106] and with it, an application for an emergency setting on the hearing on the Motion to Leave. On April 23, 2023, HMIT filed a pleading entitled a "supplement" to its Motion to Leave ("Supplement"),[107] to which it attached a revised proposed verified complaint ("Proposed Complaint")[108] as Exhibit 1-A to the Motion for Leave and stated that "[t]he Supplement is not intended to amend or supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action."[109] The HMIT Motion for Leave was later amended to eliminate the Dondero Declarations and references to the same (but not the underlying allegations that were supposedly supported by the Dondero Declarations).[110]

[105] Bankr. Dkt. No. 3672.

[106] Bankr. Dkt. No. 3699.

[107] Bankr. Dkt. No. 3760.

[108] *See supra* note 5.

[109] Supplement ¶ 1.

[110] Bankr. Dkt. Nos. 3815 and 3816. Both of these filings had the Initial Proposed Complaint attached as Exhibit 1 to the Motion for Leave.

As earlier noted, HMIT desires leave to sue the Proposed Defendants regarding ***the post-confirmation, pre-Effective Date purchase of allowed unsecured claims***. The Proposed Defendants would be:

> **Seery,** who was a stranger to Highland until approximately four months following the Petition Date when he was brought in as one of the three Independent Directors, and now serves as the CEO of the Reorganized Debtor and the Trustee of the Claimant Trust (and also was previously Highland's CRO during the case, then CEO, and, also, an Independent Board Member of Highland's general partner during the Highland case). Seery is best understood as the man who took Dondero's place running Highland—per the request of the Committee.
>
> **Claims Purchasers,** who were strangers to Highland until the end of the bankruptcy case. They are identified as Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the "Claims Purchasers"). The Claims Purchasers purchased $240 million face value of already-allowed unsecured claims post-confirmation and pre-Effective Date in the spring of 2021 and another $125 million face value of already-allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk's docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Committee during the Highland bankruptcy case).
>
> **John Doe Defendants Nos. 1-10**, which are described to be "currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue."
>
> **Highland,** as a nominal defendant. HMIT added Highland as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.
>
> **Claimant Trust**, as a nominal defendant. HMIT added the Claimant Trust as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

The proposed plaintiffs would be:

> **HMIT,** which, again, was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited partnership interests). HMIT is the holder of a Class 10 interest under the Plan, pursuant to which HMIT's limited partnership interest in Highland was extinguished as of the Effective Date in exchange for a pro rata share of a contingent interest in the Claimant Trust.

Highland, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

Claimant Trust, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Claimant Trust.

In the Proposed Complaint, HMIT asserts the following six counts: Count I (against Seery) for breach of fiduciary duties; Count II (against the Claims Purchasers and John Doe Defendants) for knowing participation in breach of fiduciary duties; Count III (against all Proposed Defendants) for conspiracy; Count IV (against Muck and Jessup) for equitable disallowance of their claims; Count V (against all Proposed Defendants) for unjust enrichment and constructive trust; and Count VI (against all Proposed Defendants) for declaratory relief.[111] The gist of the Proposed Complaint is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that "wrongful conduct occurred" and "improper trades" were made.[112] HMIT believes the Claims Purchasers paid around $160 million for the $365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland's Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. And, of course, Dondero purports to have concluded from the three phone conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Seery must have given these Claims Purchasers MNPI regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Seery must have shared

[111] In the Initial Proposed Complaint, HMIT proposed to bring claims against the various Proposed Defendants in seven counts, including a count for fraud by misrepresentation and material nondisclosure against all Proposed Defendants. In the Proposed Complaint, HMIT abandons its claim for fraud by misrepresentation and material nondisclosure.

[112] Motion for Leave, 7.

MNPI regarding the likely imminent sale of MGM, in which Highland had, directly and indirectly, substantial holdings. As noted earlier, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[113] In summary, while the Proposed Complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor's estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Seery, and are now happily approving Seery's allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages in the form of equitable disallowance of the Claims Purchasers' claims and disgorgement of distributions on account of those claims, the imposition of a constructive trust over all disgorged funds, and declaratory relief.

HMIT claims that, in seeking to file the Proposed Complaint, it is seeking to protect the rights and interests of the Reorganized Debtor, the Claimant Trust, and "innocent stakeholders" who were allegedly injured by Seery's and the Claims Purchasers' alleged conspiratorial and

[113] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid. Credible testimony from Seery at the June 8 Hearing revealed that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public).

fraudulent scheme to line Seery's pockets with excessive compensation for his role as Claimant Trustee. In its Motion for Leave, HMIT states that "[t]he attached Adversary Proceeding alleges claims which are substantially more than 'colorable' based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud, including a fraud upon innocent stakeholders, as well as breaches of fiduciary duties and knowing participation in (or aiding or abetting) breaches of fiduciary duty."[114]

F. Is HMIT Really Dondero by Another Name?

The Proposed Defendants argue that HMIT's Motion for Leave is nothing more than a continuation of the harassing and bad-faith litigation by Dondero and his related entities that the Gatekeeper Provisions were intended to prevent and, thus, this is one of multiple reasons that the Motion for Leave should be denied.

To be clear, HMIT asserts that it is controlled by Mark Patrick ("Patrick"), who has been HMIT's administrator since August 2022. Patrick asserts that he is not influenced or controlled by Dondero, in general, and specifically not in its efforts to pursue the Proposed Claims against Seery and the Claims Purchasers. However, the testimony elicited at the June 8 Hearing—the hearing at which HMIT had the burden of showing the court that its Proposed Claims were "colorable" such that it should be allowed to pursue them through the filing of the Proposed Complaint—paints a different picture. Somewhat tellingly, HMIT chose not to call Patrick—allegedly HMIT's only representative and control person—as a witness in support of its Motion for Leave. Rather, Dondero was HMIT's first witness called in support of its motion, and the first

[114] *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 3. HMIT notes, in a footnote 6, that "Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement."

questions on direct from HMIT's counsel were aimed at establishing that Dondero was not behind the filing of the Motion for Leave and the pursuit of the Proposed Claims.[115] Dondero testified that he did not (i) "have any current official position" with HMIT, (ii) "attempt to exercise [control] on the business affairs of [HMIT]," (iii) "have any official legal relationship with [HMIT] where [he] can attempt to exercise either direct or indirect control over [HMIT]," or (iv) "participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan."[116] After HMIT rested, Highland and the Claimant Trust called Patrick as a witness, and he testified that he was the administrator of HMIT, that HMIT does not have any employees, operations, or revenues, and, when asked if HMIT owned any assets, Patrick testified, with not a great deal of certainty, that "it's my understanding it has a contingent beneficiary interest in the Claimants [sic] Trust" and that is the only asset HMIT has.[117] Patrick testified that HMIT did not owe any money to Dondero personally, but acknowledged that in 2015, HMIT had issued a secured promissory note in favor of Dondero's family trust, Dugaboy, in the amount of approximately $62.6 million (the "Dugaboy Note") in exchange for Dugaboy transferring a portion of its limited partner interests in Highland to HMIT; the Dugaboy Note was secured in part by the Highland limited partnership interests purchased from Dugaboy.[118] Patrick admitted that, if HMIT's Class 10 interest has no value, HMIT would have no ability to pay the Dugaboy Note.[119] He further testified that neither he nor any representative of HMIT had ever spoken with any representative of Farallon or Stonehill, that he had no personal knowledge about any *quid pro quo*, the amount of due diligence Farallon or Stonehill conducted prior to buying their claims, or the terms of

[115] *See* June 8 Hearing Transcript, 113:10-25.

[116] *Id.*

[117] June 8 Hearing Transcript, 307:7-308:2.

[118] *Id.*, 303:11-305:1; Highland Ex. 51, HMIT's $62,657,647.27 *Secured Promissory Note* dated December 24, 2015, in favor of Dugaboy.

[119] *Id.*, 308:3-16.

Seery's compensation package (until the terms were disclosed to them in opposition to the Motion for Leave).[120] Patrick admitted that Dugaboy was paying HMIT's attorneys' fees pursuant to a settlement agreement between HMIT and Dugaboy.[121]

On cross-examination by HMIT's counsel, Patrick further testified that HMIT has not filed any litigation, as plaintiff, other than its efforts to be a plaintiff in the Motion for Leave and its action as a petitioner in the Texas Rule 202 proceeding filed earlier in 2023 in the Texas state court.[122] HMIT's counsel argued that the point of this questioning was that "they're just trying to draw Dondero into this and – this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed – attempting to file this action and a Rule 202 proceeding.[123] But, Dondero and HMIT's counsel referred during the June 8 Hearing to the First Rule 202 Petition (where Dondero was the petitioner) and the Second Rule 202 Petition (where HMIT was the petitioner) as "our" Rule 202 petitions, and also to the numerous attempts at getting the discovery (that Dondero had warned Linn was coming) in the collective. For example, in objecting to the admission of Highland's Exhibit 10 – the Texas state court order denying and dismissing the Second Rule 202 Petition – on the basis of relevance, HMIT's counsel referred to the order as "an order denying ***our second"*** Rule 202 Petition.[124] And, Dondero testified that his warning to Linn in May 2021 that "discovery was coming" was "my response to I knew they had traded on material nonpublic information" and that "I thought it would be a lot easier to get

[120] *Id.*, 308:18-312:12. This testimony from Patrick came after HMIT's counsel objection to counsel's line of questioning regarding Patrick's personal knowledge of the facts supporting the allegations in the Proposed Complaint on the basis that he was invading the attorney work product privilege, which was overruled by this court; HMIT's counsel argued (311:4-19) that the line of questioning was an "invasion of attorney work product . . . [b]ecause they might – he would have knowledge from the efforts and investigation through attorneys in the case."

[121] *Id.*, 312:24-313:18.

[122] *Id.*, 315:3-9.

[123] *Id.*, 316:6-11.

[124] *Id.*, 58:11-13. The court overruled HMIT's relevance objection and admitted Highland's Exhibit 10 into evidence. *Id.*, 58:14-15.

discovery on a situation like this than it has been for the last two years" and that "***we've*** been trying for two years to get . . . discovery."[125]

Dondero's use of an entity over which he exerts influence and control to pursue his own agenda in the bankruptcy case is not new. Rather, this has been part of Dondero's *modus operandi* since the "nasty breakup" between Dondero and Highland that culminated with Dondero's ouster in October 2020, whereby Dondero, after not getting his way in the bankruptcy court, continued to lob objections and create obstacles to Highland's implementation of the Plan through entities he owns or controls. As noted above, the Fifth Circuit specifically upheld this court's finding in the Confirmation Order that Dondero owned or controlled the various entities that had objected to confirmation of the Plan and appealed the Confirmation Order, where the Dondero-related appellants made similar protestations that they are not owned or controlled by Dondero and asked the Fifth Circuit to vacate this court's factual finding because, among other reasons, "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him."[126] Based on the totality of the evidence in this proceeding, the court finds that, contrary to the protestations of HMIT's counsel and Patrick otherwise, Dondero is the driving force behind HMIT's Motion for Leave and the Proposed Complaint. The Motion for Leave is just one more attempt by Dondero to press his conspiracy theory that he has pressed for over two years now, unsuccessfully, in Texas state court through Rule 202 proceedings, with the Texas State Securities Board, and with the United States Trustee's office.

[125] *Id.*, 191:5-25.

[126] *Highland Capital*, 48 F.4th at 434-435.

G. Opposition to Motion for Leave: Arguing No Standing and No "Colorable" Claims

Highland, the Claimant Trust, and Seery (together, the "Highland Parties") filed a joint opposition ("Joint Opposition") to HMIT's Motion for Leave on May 11, 2023.[127] The Claims Purchasers filed a separate objection ("Claims Purchasers' Objection") to the Motion for Leave on May 11, 2023, as well.[128] In the Joint Opposition, the Highland Parties urge the court to deny HMIT leave to pursue the Proposed Claims because, as a threshold matter, HMIT does not have standing to bring them, directly or derivatively against the Proposed Defendants. They argue, in the alternative, that the Motion for Leave should be denied even if HMIT had standing to pursue the Proposed Claims because none of the Proposed Claims are "colorable" claims as that term is used in the Gatekeeper Provision of the Plan (and Gatekeeper Orders).[129]

The Claims Purchasers likewise argue that HMIT lacks standing to complain about claims trading in the bankruptcy which occurred between sophisticated Claims Purchasers and sophisticated sellers ("Claims Sellers"), represented by skilled bankruptcy and transactional counsel. Moreover, they argue HMIT cannot show that it or the Reorganized Debtor or the Claimant Trust were injured by the claims trading at issue because the Purchased Claims had already been adjudicated as allowed claims in the bankruptcy case—thus, distributions under the Plan on account of the Purchased Claims remain the same, the only difference being who holds the claims. Moreover, even if HMIT could succeed in equitably subordinating the validly transferred ***allowed*** claims, HMIT would still be in the same position it is today: the holder of a

[127] Bankr. Dkt. Nos. 3783. Highland, the Claimant Trust, and Seery also filed on May 11 a *Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding* ("Morris Declaration") that attached 44 Exhibits in support of the Joint Opposition. Bankr. Dkt. No. 3784.

[128] Bankr. Dkt. No. 3780.

[129] *See* Joint Opposition ¶ 139 ("Because HMIT lacks standing, this Court need not reach the merits of HMIT's proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion.").

contingent, speculative Class 10 interest that would only be paid after payment, in full, with interest, of all creditors under the Plan. The Claims Purchasers argue in the alternative that the Proposed Claims are not "colorable."

Finally, the Proposed Defendants argue that the standard of review for assessing whether the Proposed Claims are "colorable" (as such term is used in the Gatekeeper Provision and Gatekeeping Orders) is a standard that is a higher than the "plausibility" standard applied to Rule 12(b)(6). They argue that HMIT should be required to meet a higher bar with respect to colorability that includes making a *prima facie* showing that the Proposed Claims have merit (and/or are not without foundation) which requires HMIT to do more than meet the liberal notice-pleading standards.

H. HMIT's Reply to the Proposed Defendants' Opposition to the Motion for Leave

In its reply brief ("Reply"), filed by HMIT on May 18, 2023,[130] it argues that it has constitutional standing as an "aggrieved party" to bring the Proposed Claims on behalf of itself.[131] HMIT also argues that it has standing under Delaware Trust law to bring a derivative action on behalf of the Claimant Trust and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to bring the claims.[132] Finally, HMIT maintains that the standard of review that the bankruptcy court should apply in assessing the "colorability" of the Proposed Claims is no greater than the standard of review applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), which would require the bankruptcy court to look only to the "four corners" of the Proposed Complaint

[130] Bankr. Dkt. No. 3785.

[131] *See* Reply ¶ 7.

[132] See, Reply ¶ 23 n.5, where HMIT argues "The nature of this injury, in addition to Seery's influence over the Claimant Trust, and the lack of prior action by the Claimant Trust to pursue the claims HMIT seeks to pursue derivatively, among other things, demonstrate that HMIT is not only a proper party to assert its derivative claims – but the best party to do so."

and "not weigh extraneous evidence,"[133] take all allegations as true, and view all allegations and inferences in a light most favorable to HMIT. As discussed in greater length below, HMIT argues that, under this standard, the bankruptcy court should not consider evidence in making its determination as to whether the Proposed Complaint presents "colorable" claims.

I. Litigation within the Litigation: The Pre- June 8 Hearing Skirmishes

Suffice it to say there was significant activity before the Motion for Leave actually was presented at the June 8 hearing. HMIT sought an emergency hearing on its Motion for Leave (wanting a hearing on three days' notice). When the bankruptcy court denied an emergency hearing, HMIT unsuccessfully pursued an interlocutory appeal of the denial of an emergency hearing to the district court. HMIT then petitioned for a writ of mandamus at the Fifth Circuit regarding the emergency hearing denial, which was denied by the Fifth Circuit on April 12, 2023.

Next, there were multiple pleadings and hearings regarding ***what kind of hearing*** the bankruptcy court should or should not hold on the Motion for Leave—particularly focusing on whether or not it would be an evidentiary hearing.[134] The resolution of this issue turned on what standard of review the court should apply in exercising its gatekeeping function and determining the colorability of the Proposed Claims. HMIT (although it had submitted two declarations of Dondero with its original Motion for Leave and approximately 350 pages of total evidentiary support) was adamant that there should be no evidence presented at the hearing on the Motion for Leave, arguing that the standard for review should be the plausibility standard under Rule 12(b)(6)

[133] *See* Reply ¶ 47.

[134] Highland, joined by Seery and the Claims Purchasers, had filed a motion asking the bankruptcy court to set a briefing schedule on the Motion for Leave and to schedule a status conference, indicating that Highland's proposed timetable for same was opposed by HMIT. HMIT subsequently filed a response unopposed to a briefing schedule and status conference, but, before the status conference, HMIT filed a brief, stating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the bankruptcy court did not need evidence to exercise its gatekeeping function and determine if HMIT has a "colorable" claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

motions to dismiss such that "the threshold inquiry is very, very low. Evidence is not allowed. . . . [S]imilar to a 12(b)(6) inquiry, [the court] is limited to the four corners of the principal pleading – in this case, the complaint, or now the revised complaint."[135] Counsel for the Proposed Defendants argued that the standard of review for colorability here, in the specific context of the court exercising its gatekeeping function under the Plan, is more akin to the standards applied under the Supreme Court's *Barton Doctrine*[136] pursuant to which that the bankruptcy court must apply a higher standard than the 12(b)(6) standard, including the consideration of evidence at the hearing on the motion for leave; if the standard of review presents no greater hurdle to the movant than the 12(b)(6) standard applied to every plaintiff in every case, then the gatekeeping provisions mean nothing and do nothing to protect the parties from the harassing, bad-faith litigation they were put in place to prevent.[137] On May 22, 2023, after receipt of post-hearing briefing on the issue, the court entered an order stating that "the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave" and "[t]herefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing [on the Motion to Leave] if they so choose."

Two days later, HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing, seeking expedited depositions of corporate

[135] Transcript of April 24, 2023 Status Conference, Bankr. Dkt. No. 3765 ("April 24 Transcript"), 14:6-11.

[136] The *Barton Doctrine* was established in the 19th century Supreme Court case of *Barton v. Barbour*, 104 U.S. 126 (1881), and states that a party wishing to sue a court-appointed trustee or receiver must first obtain leave of the appointing court by making a *prima facie* case that the claim it wishes to bring is not without foundation.

[137] *See* April 24 Transcript, 36:24-37:4 ("[W]e're exactly today where the Court had predicted in entering [the Confirmation Order], that the costs and distraction of this litigation are substantial. And if all we're doing is replicating a 12(b)(6) hearing on a motion for leave, we're actually not doing anything to reduce, as the Court made clear, the burdens, distractions, of litigation."); 37:5-13 ("The Fifth Circuit likewise cited *Barton* in its order affirming the confirmation order. Specifically, it also explained that the provisions, these gatekeeper provisions requiring advance approval were meant to 'screen and prevent bad-faith litigation.' Well that – if that means only what the Plaintiff[ ] say[s] it does, then it really doesn't do anything at all to screen. There's no gatekeeping because their version of what that means is always policed under 12(b)(6) standards.").

representatives of the Claims Purchasers and of Seery and production of documents pursuant to deposition notices and subpoenas duces tecum that HMIT had attached to the motion. On May 26, 2023, this court held yet another status conference. Following the status conference, the court granted in part and denied in part HMIT's request for expedited discovery by ordering only Seery and Dondero to be made available for depositions prior to the June 8 Hearing. The court reached what seemed like appropriate middle ground by allowing the deposition of Seery and allowing the other parties to depose Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Dondero had been seeking discovery relating to the very claims trades that are the subject of the Revised Proposed Complaint from the Claims Purchasers in Texas state court "Rule 202" proceedings for approximately two years, where their attempts were rebuffed.

Approximately 60 hours before the June 8 Hearing, HMIT filed its Witness and Exhibit List disclosing for the first time two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony). Highland, the Claimant Trust, and Seery filed a joint motion to exclude the expert testimony and documents ("Motion to Exclude"), which the court ultimately granted in a separate order.

During the full-day June 8 Hearing on the Motion to Leave, the court admitted over 50 HMIT exhibits and over 30 Highland/Claimant Trust exhibits. The court heard testimony from HMIT's witnesses Dondero and Seery (as an adverse witness) and from the Highland Parties' witness Mark Patrick, the administrator of HMIT since August 2022 (as an adverse witness). The bankruptcy court allowed HMIT to make a running objection to all evidence—as it continued to argue that evidence was not appropriate.

III. LEGAL ANALYSIS

In determining whether HMIT should be granted leave, pursuant to the Gatekeeper Provision of the Plan and the court's prior Gatekeeper Orders, to pursue the Proposed Claims, the court must address the issue of whether HMIT would have ***standing*** to bring the Proposed Claims in the first instance. If so, the next question is whether the Proposed Claims are "***colorable***." But prior to getting into the weeds on ***standing*** and "***colorability,***" some general discussion regarding the topic of claims trading in the bankruptcy world seems appropriate, given that HMIT's Proposed Claims are based, in large part, on allegations of ***improper*** claims trading.

A. Claims Trading in the Context of Bankruptcy Cases—Can It Be Tortious or Otherwise Actionable?

As noted, at the crux of HMIT's desired lawsuit is what this court will refer to as "claims trading activity" that occurred shortly after the Plan was confirmed, but before the Plan went effective. HMIT believes that the claims trading activity gave rise to various torts: breach of fiduciary duty on the part of Seery; knowing participation in breach of fiduciary duty by the other Proposed Defendants; and conspiracy by all Defendants. HMIT also believes that the following remedies should be imposed: equitable disallowance of the Purchased Claims; disgorgement of the alleged profits the Claims Purchasers made on their purchases; and disgorgement of all Seery's compensation received since the beginning of his "collusion" with the other Defendants. Without a doubt, the Motion for Leave and Proposed Complaint revolve almost entirely around the claims trading activity.

This begs the question: ***When (or under what circumstances) might claims trading activity during a bankruptcy case give rise to a cause of action that either the bankruptcy estate or an economic stakeholder in the case might have standing to bring?*** Here, the claims trading

wasn't even "during a bankruptcy case" really—it was post-confirmation and pre-effective date, and it happened to be: (a) after mediation of the claims, (b) after Rule 9019 settlement motions, (c) after objections by Dondero and certain of his family trusts were lodged, (d) after evidentiary hearings, and (e) after orders were ultimately entered ***allowing*** the claims (and in most cases, such orders were appealed). The further crux of HMIT's desired lawsuit is that Seery allegedly "wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends" by sharing ***material non-public information*** to them regarding the potential value of the claims (i.e., the potential value of the bankruptcy estate), and this is what made the claims trading activity particularly pernicious. The alleged sharing of MNPI allegedly caused the Claims Purchasers to purchase their claims without doing any due diligence and with knowledge that the claims would be worth much more than the Plan's "pessimistic" projections might have suggested, and also allowed Seery to plant friendly allies into the creditor constituency (and on the post-confirmation CTOB) that would "rubber stamp" his generous compensation. This is all referred to as "not arm's-length" and "collusive." Notably, the MNPI mostly pertained to a likely future acquisition of MGM by Amazon (which transaction, indeed, occurred in 2022, after being publicly announced in Spring of 2021); as noted earlier, Highland owned, directly and indirectly, common stock in MGM. Also notably, there had been rumors and media attention regarding a potential sale of MGM for many months.[138] In summary, to be clear, HMIT's desired lawsuit is laced with a theme of "insider trading"—although this isn't a situation of securities trading *per se* (i.e., the unsecured Purchased Claims were not securities), and, as noted earlier, the Texas State Securities Board has not seen fit to investigate the claims trading activity.

So, preliminarily, is claims trading in bankruptcy sinister *per se*? The answer is no.

[138] *E.g.,* Benjamin Mullin, *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale,* THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.).

The activity of investing in distressed debt (which frequently occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and, indeed, has been so for a very long time. As noted by one scholar:

> The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

Adam J. Levitin, *Bankruptcy* Markets*: Making Sense of Claims Trading*, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010) (hereinafter "*Bankruptcy Markets*").[139]

As a pure policy matter, some practitioners have bemoaned this claims trading phenomenon, suggesting that "distressed debt traders may sacrifice the long-term viability of a debtor for the ability to realize substantial and quick returns on their investments."[140] Others suggest that claims trading in bankruptcy is beneficial, in that it allows creditors of a debtor an early exit from a potentially long bankruptcy case, enabling them to save expense and administrative hassles, realize immediate liquidity on their claims (albeit discounted), and may

[139] *See also* Aaron Hammer & Michael Brandess, *Claims Trading: The Wild West of Chapter 11s*, AM. BANKR. INST. JOURNAL 62 (Jul./Aug. 2010); Chaim Fortgang & Thomas Mayer, *Trading Claims and Taking Control of Corporations in Chapter 11,* 12 CARDOZO L. REV. 1, 25 (1990) (noting that "the first recorded instance of American fiduciaries trading claims against insolvent debtors predates all federal bankruptcy laws and goes back to 1790" when the original 13 colonies were insolvent, owing tremendous amounts of debt to various parties in connection with the Revolutionary War; early American investors purchased these debts for approximately 25% of their par value, hoping the claims would be paid at face value by the American government).

[140] Harvey R. Miller, *Chapter 11 Reorganization Cases and the Delaware Myth*, 55 VAND. L. REV. 1987, 2016 (2002). *See also* Harvey R. Miller & Shai Y. Waisman, *Does Chapter 11 Reorganization Remain a Viable Option for Distressed Businesses for the Twenty-First Century?*, 78 AM. BANKR. L.J. 153 (2004); Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129 (2005).

even permit them to take advantage of a tax loss on their own desired timetable.[141] On the flipside, "[c]aims trading permits an entrance to the bankruptcy process for those investors who want to take the time and effort to monitor the debtor and contribute expertise to the reorganization process."[142]

So, what are the "rules of the road" here? What does the Bankruptcy Code dictate regarding claims trading? The answer is nothing. The Bankruptcy Code itself has no provisions whatsoever regarding claims trading. The only thing resembling any regulation of claims trading during a bankruptcy case is found at Federal Rule of Bankruptcy Procedure 3001(e)—the current version of which went into effect in 1991—and it imposes extremely light regulation—if it could even be called that. This rule requires, in pertinent part (at subsection (2)), that "[i]f a claim other than one based on a publicly traded note, bond, or debenture" is traded during the case after a proof of claim is filed, notice/evidence of that trade must be filed with the bankruptcy clerk by the transferee. The transferor shall then be notified and given 21 days to object. If there is an objection, the bankruptcy court will hold a hearing regarding whether a transfer, in fact, took place. If there is no objection, nothing further needs to happen, and the transferee will be considered substituted for the transferor.

There are several things noteworthy about Rule 3001(e)(2). First, the only party given the opportunity to object is the ***transferor*** of the claim (presumably, in the situation of a dispute regarding whether there was truly an agreement regarding the transfer of the claim). Second, there is no need for a bankruptcy court order approving the transfer (except in the event of an objection

[141] *See Bankruptcy Markets*, at 70. *See also In re Kreisler,* 546 F.3d 863, 864 (7th Cir. 2008) ("Claims trading allows creditors to opt out of the bankruptcy system, trading an uncertain future payment for an immediate one, so long as they can find a purchaser.").

[142] *Bankruptcy Markets* at 70 (citing, among other authorities, Edith S. Hotchkiss & Robert M. Mooradian, *Vulture Investors and the Market for Control of Distressed Firms*, 43 J. FIN. ECON. 401, 401 (1997) (finding that "vulture investors add value by disciplining managers of distressed firms").

by the alleged transferor). Third, the ***economic consideration paid need not be disclosed to the court or anyone***. Fourth, there is no requirement or definition of timeliness. Finally, it explicitly does not apply with regard to publicly traded debt. This, alone, means that many claims trades are not even reported in a bankruptcy case. But it is not just publicly traded debt that will not be reflected with a Rule 3001(e) filing. For example, bank debt, in modern times, is often syndicated (i.e., fragmented into many beneficial holders of portions of the debt) and only the administrative agent for the syndicate (or the "lead bank") will file a proof of claim in the bankruptcy—thus, as the syndicated interests (participations) change hands, and they frequently do, there typically will not be a Rule 3001(e) notice filed.[143] To be clear here, this syndication-of-bank-debt fact, along with the fact that there are financial products whereby bank debt might be carved up into economic interests separate and apart from legal title to the loan, means there are many situations in which trading of claims during a bankruptcy case is not necessarily transparent or, for that matter, policed by the bankruptcy court. This is the world of modern bankruptcy. Most of the claims trading that gets reported through a Rule 3001(e) notice is the trading of small vendor claims. And this is all regarded as private sale transactions for the most part.[144]

Suffice it to say that there is not a wealth of case law dealing with claims trading in a bankruptcy context. Perhaps this is not surprising, since it is not prohibited and ***is mostly a matter of private contract between buyer and seller***. The case law that does exist seems to arise in situations of perceived bad faith of a purchaser—for example, when there was an attempt to control voting and/or ultimate control of the debtor through the plan process (not always problematic, but

[143] Anne Marrs Huber & Thomas H. Young, *The Trading of Bank Debt in and Out of Chapter 11*, 15 J. BANKR. L. & PRAC. 1, 1, 3 (2006).

[144] Note that Bankruptcy Rule 3001(e) was very different before 1991. Between 1983-1991, the rule required that parties transferring claims inform the court that a transfer of claims was taking place and also disclose the consideration paid for the transferred claims. A hearing would take place prior to the execution of a trade. Judicial involvement was required and resulted in judicial scrutiny of transactions—something that simply does not exist today.

there are outlier cases where this was found to cross a line and result in consequences such as disallowing votes on a plan or even equitable subordination of a claim).[145] Another type of case that has generated case law is where the purchaser of claims occupied a fiduciary status with the debtor.[146] Still another type of case that has generated case law is where there is an attempt to cleanse claims that might have risks because of a seller's malfeasance, by trading the claim to a new claim holder.[147]

The following is a potpourri of the more notable cases that have addressed claims trading in different contexts. Most of them imposed no adverse consequences on claims traders: *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (where a corporation named Garlin, that was owned by the individual chapter 7 debtors' sister and close friend, purchased a $900,000 bank claim for $16,500, and there was no disclosure of Garlin's connections to debtors and no Rule 3001(e)(2) notice was filed, the Seventh Circuit reversed the bankruptcy court's invocation of the doctrine of equitable subordination to the claim, stating: "Equitable subordination is generally appropriate only if a creditor is guilty of misconduct that causes injury to the interests of other creditors;" the Seventh Circuit further stated that it could "put to one side whether the court's finding of inequitable conduct was correct" because even if there was misconduct, it did not harm the other creditors, who were in the same position whether the original creditor or Garlin happened to own the claim; the Seventh Circuit did note that Garlin's decision to purchase the original bank

[145] *In re Applegate Prop. Ltd.,* 133 B.R. 827, 836 (Bankr. W.D. Tex. 1991) (designating votes of an affiliate of the debtor that purchased a blocking position to thwart a creditor's plan because it was done in bad faith); *In re Allegheny Int'l, Inc.,* 118 B.R. 282, 289–90 (Bankr. W.D. Pa. 1990) (because of bad faith activities, the court designated votes of a claims purchaser who purchased to get a blocking position on a plan). *But see In re First Humanics Corp.,* 124 B.R. 87, 92 (Bankr. W.D. Mo. 1991) (claims purchased by debtor's former management company to gain standing to file a plan to protect interest of the debtor was in good faith).

[146] *See In re Exec. Office Ctrs., Inc.*, 96 B.R. 642, 649-650 (Bankr. E.D. La. 1988) (and numerous old cites therein).

[147] *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 340 B.R. 180 (Bankr. S.D.N.Y. 2006), *vacated, Enron Corp. v. Springfield Assocs., L.L.C. (In re Enron Corp.),* 379 B.R. 425 (S.D.N.Y 2007); *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 333 B.R. 205, 211 (Bankr. S.D.N.Y. 2005).

creditor's claim might have disadvantaged the other creditors if it interfered with the trustee's own potential settlement with the original bank creditor (note that the trustee argued that she had been negotiating a deal with bank under which bank might have reduced its claims); however, the trustee presented no evidence that any deal with the bank was imminent or even likely; thus, whether such a deal could have been reached was speculation; equitable subordination was therefore improper."); *Viking Assocs., L.L.C. v. Drewes (In re Olson),* 120 F.3d 98, 102 (8th Cir. 1997) (case involved the actions of an entity known as Viking in purchasing all of the unsecured claims against the bankruptcy estate of two chapter 7 debtors, Hugo and Jeraldine Olson; Viking was a related entity, owned by the debtors' children, and purchased $525,000 of unsecured claims for $67,000; while the bankruptcy court had discounted the claims down to the purchase amount and subordinated Viking's discounted claims to the claims of the other unsecured creditors, relying on section 105 of the Bankruptcy Code, the Eighth Circuit held that the bankruptcy court lacked the authority to do this, and, thus, reversed and remanded; the Eighth Circuit noted that in 1991, Bankruptcy Rule 3001(e)(2) was amended "to restrict the bankruptcy court's power to inspect the terms of" claims transfers. *Id.* at 101 (citing *In re SPM Mfg. Corp.,* 984 F.2d 1305, 1314 n. 9 (1st Cir. 1993)); the text of the rule makes clear that the existence of a "dispute" depends upon an objection by the ***transferor***; where there is no objection by the ***transferor***, there is no longer any role for the court); *Citicorp. Venture Capital, Ltd. v. Official Committee of Unsecured Creditors (In re Papercraft Corp.),* 160 F.3d 982 (3d Cir. 1998) (large investor who held seat on board of directors of debtor and debtor's parent, and who also had nonpublic information regarding the debtor's value, anonymously purchased 40% of the unsecured claims at a steep discount during the chapter 11 case, and then, having obtained a blocking position for plan voting purposes, proposed a plan to acquire debtor; the claims purchaser's claims were equitably reduced to amount

paid for the claims since investor was a fiduciary who was deemed to have engaged in inequitable conduct); *Figter Ltd. v. Teachers Ins. & Annuity Ass'n of Am. (In re Figter),* 118 F.3d 635 (9th Cir. 1997) (Ninth Circuit affirmed bankruptcy court's ruling that a secured creditor's purchase of 21 out of 34 unsecured claims in the case was in good faith and it would not be prohibited from voting such claims on the debtor's plan, pursuant to Bankruptcy Code section 1126(e)); *In re Lorraine Castle Apartments Bldg. Corp.,* 145 F.2d 55, 57 & 58 (7th Cir. 1945) (in a case under the old Bankruptcy Act, in which there were more restrictions on claims trading, a debtor and two of its stockholders argued that the claims of purchasers of bonds should be limited to the amounts they paid for them; bankruptcy court special master found, "that, though he did not approve generally the ethics reflected by speculation in such bonds," there was no cause for limitation of the amounts of their claims, pointing out that the persons who had dealt in the bonds were not officials, directors, or stockholders of the corporation and owed no fiduciary duty to the estate or its beneficiaries—rather they were investors or speculators who thought the bonds were selling too cheaply and that they might make a legitimate profit upon them; the district court agreed, as did the Seventh Circuit, noting that "[t]o reduce the participation to the amount paid for securities, in the absence of exceptional circumstances which are not present here, would reduce the value of such bonds to those who have them and want to sell them. This would result in unearned, undeserved profit for the debtor, destroy or impair the sales value of securities by abolishing the profit motive, which inspires purchasers."); *In re Washington Mutual, Inc.*, 461 B.R. 200 (Bankr. Del. 2011), *vacated in part*, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (discussion of an equity committee's potential standing to pursue equitable subordination or equitable disallowance of the claims of certain noteholders who had allegedly traded their claims during the chapter 11

case while having material non-public information; while bankruptcy court originally indicating these were viable tools, court later vacated its ruling on this after a settlement was reached).

Suffice it to say that the courts have, more often than not, been unwilling to impose legal consequences, for an actor's involvement with claims trading. At most, in outlier-type situations during a case, courts have taken steps to disallow claims for voting purposes or to subordinate claims to other unsecured creditors for distribution purposes.[148] But the case at bar does not present facts that are typical of any of the situations in reported cases.

For one thing, unlike in the reported cases this court has located, there ***seems to have been complete symmetry of sophistication among the claim sellers and claim purchasers here—and complete symmetry with HMIT for that matter***. All persons involved are highly sophisticated financial institutions, hedge funds, or private equity funds. No one was a "mom-and-pop" type business or vendor that might be vulnerable to chicanery. The claims ranged from being worth $10's of millions of dollars to $100's of millions of dollars in face value. And, of course, the sellers/transferors of the claims have never shown up, subsequent to the claims trading

[148] Note that, while some cases suggest that outright disallowance of an unsecured claim, in the case of "inequitable conduct" might be permitted (not merely equitable subordination to unsecured creditors)—usually citing to *Pepper v. Litton*, 308 U.S. 295 (1939)—the Fifth Circuit has suggested otherwise. *In re Mobile Steel Co., Inc.,* 563 F.2d 692, 699-700 (5th Cir. 1977) (cleaned up) (noting that "equitable considerations can justify only the subordination of claims, not their disallowance" and also noting that "three conditions must be satisfied before exercise of the power of equitable subordination is appropriate[:] (i) The claimant must have engaged in some type of inequitable conduct[;] (ii) The misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant[; and] (iii) Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act." In *Mobile Steel*, the Fifth Circuit held that the bankruptcy judge exceeded the bounds of his equitable jurisdiction by disallowing a group of claims and also reversed the subordination of certain claims, on the grounds that the bankruptcy court had made clearly erroneous findings regarding alleged inequitable conduct and other necessary facts. *Contrast In re Lothian Oil Inc.,* 650 F.3d 539 (5th Cir. 2011) (involving the question of whether a bankruptcy court may ***recharacterize*** a claim as equity rather than debt; the court held yes, but it has nothing to do with inequitable conduct *per se*; rather section 502(b)'s language that a claim should be allowed unless it is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law...." is the relevant authority; unlike equitable subordination, recharacterization is about looking at the true substance of a transaction not the conduct of a party (if it looks like a duck and quacks like a duck, it's a duck—i.e., equity); the court indicated that section 105 is not a basis to recharacterize debt as equity; it's a matter of looking at state law to determine if there is any basis and looking at the nature of the underlying transaction—as either a lending arrangement or equity infusion.

transactions, to complain about anything. Everyone involved here is, essentially, a behemoth and there is literally no sign of innocent creditors getting harmed. Second, the case at bar is unique in that the claims traded here ***had all been allowed after objections, mediation, and Rule 9019 settlements during the bankruptcy case***. Thus, the amounts that would be paid on them were "locked in," so to speak. There was no risk to a hypothetical claims-purchaser of disallowance, offset, or any "claw-back" litigation (or—one might have reasonably assumed—any type of litigation). Third, the terms for distributions on unsecured claims had been established in a confirmed plan (although the claims were purchased before the effective date of the Plan). Thus, there was a degree of certainty regarding return on investment for the Claims Purchasers here that was much higher than if the claims had been purchased early, during, or mid-way through the case.[149] ***This was post-confirmation, pre-effective date claims purchasing.*** Interestingly, all three of these facts might suggest that little due diligence would be undertaken by any hypothetical purchaser. The rules of the road had been set. The court makes this observation because HMIT has suggested there is something highly suspicious about the fact that Farallon allegedly told Dondero that it did no due diligence before purchasing its claims (leading him to conclude that the Claims Purchasers must have purchased their claims based on receiving MNPI from Seery). Not only has there been no colorable evidence suggesting that insider information was shared, but the lack of due diligence in this context does not reasonably seem suspicious. The claims purchases

[149] *See discussion* in BANKRUPTCY MARKETS, at 91:

> Some claims purchasers buy before the bankruptcy petition is filed, some at the beginning of the case, and some towards the end. For example, there are investors who look to purchase at low prices either when a business is failing or early in the bankruptcy and ride through the case until payouts are fairly certain. [Citations omitted.] These investors might be hoping to buy at 30 cents on the dollar and get a payout at 70 cents on the dollar. Perhaps if they waited another six months, the payout would be 74 cents on the dollar, but the additional 4 cents on the dollar for six months might not be a worthwhile return for the time value of the investment. Other investors might not want to assume the risk that exists in the early days of a case when the fate of the debtor is much less certain, but they would gladly purchase at 70 cents on the dollar at the end of the case to get a payout of 74 cents on the dollar six months later.

were almost like passive investments, at this point—there was no risk of a claim objection and there was a confirmed plan, with a lengthy disclosure statement that described not only plan payment terms and projections, but essentially anything that any investor might want to know.

To reiterate, here, HMIT seeks leave to assert the following causes of action:

I. Breach of Fiduciary Duties (Seery)

II. Knowing Participation in Breach of Fiduciary Duties (Claims Purchasers)

III. Conspiracy (all Proposed Defendants)

IV. Equitable Disallowance (Claims Purchasers)

V. Unjust Enrichment and Constructive Trust (all Proposed Defendants)

VI. Declaratory Judgment (all Proposed Defendants)

The court struggles to fathom how any of these proposed causes of action or remedies can be applied in the context of: (a) post-confirmation claims trading; (b) where the claims have all been litigated and allowed.

In reflecting on the case law and various Bankruptcy Code provisions, the court can fathom the following hypotheticals in which claims trading during a bankruptcy case might be somehow actionable:

> **Hypothetical #1**: The most obvious situation would be if a purchaser of a claim files a Rule 3001(e) Notice, and the seller/transferor then files an objection thereto. There would then be a contested hearing between purchaser and seller regarding the validity of the transfer with the bankruptcy court issuing an appropriate order after the hearing on the objection. ***As noted, there was no objection to the Rule 3001(e) notices here***.
>
> **Hypothetical #2:** Alternatively, there could be a breach of contract suit between purchaser and seller if one thinks the other breached the purchase-sale agreement somehow. Perhaps torts might also be alleged in such litigation. ***As noted, there is no dispute between purchasers and sellers here.***
>
> **Hypothetical #3:** If there is believed to be fraud in connection with a plan, a party in interest might, pursuant to section 1144 of the Bankruptcy Code, move for

revocation of the plan "at any time before 180 days after the date of entry of the order for confirmation" and the court "may revoke such order if and only if such order was procured by fraud." ***As noted, here HMIT has suggested that the "pessimistic" plan projections may have been fraudulent or misrepresentations somehow. The time elapsed long ago to seek revocation of the Plan.***

Hypothetical #4: As discussed above, in rare situations (bad faith), during a Chapter 11 case, before a plan is confirmed, a claims purchaser's claim might not be allowed for voting purposes. *See* Sections 1126(e) of the Bankruptcy Code ("the court may designate any entity whose acceptance or rejection of such plan was not in good faith"). ***Obviously, in this case, this is not applicable—the claims were purchased post-confirmation.***

Hypothetical #5: As discussed above, in rare situations (inequitable conduct), a court might equitably subordinate ***claims*** to ***other claims***. *See* Section 510(c) of the Bankruptcy Code. But here**,** HMIT is seeking either: (a) equitable subordination of the ***claims*** of the Claims Purchaser to HMIT's ***Class 10 former equity interest*** (in contravention of the explicit terms of section 510(c)) or, (b) ***equitable disallowance*** of the claims of the Claims Purchasers (in contravention of *Mobile Steel*).

Hypothetical #6: Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case may permit "recharacterization" of a claim from debt to equity in certain circumstances, but not in circumstances like the ones in this case. Here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). The problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). Here there was most definitely "a contest" with regard to all of these purchased claims. ***Thus, it would appear that any effort to have a court reconsider these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.***

Hypothetical #7: If a party believes "insider trading" occurred there are governmental agencies that investigate and police that. ***Here, the purchased claims (which were not based on bonds or certificated equity interests) would not be securities so as to fall under the SEC's purview. Moreover, there was evidence that HMIT or Dondero-Related entities requested that the Texas State Securities Board investigate the claims trading and the board did not find a basis to pursue anyone for wrongdoing***.

Hypothetical #8: The United States Trustee can investigate wrongdoing by a debtor or unsecured creditors committee. While the United States Trustee would naturally have concerns about members of an unsecured creditors committee (or an officer of a debtor-in-possession) adhering to fiduciary duties and not putting their

> own interests above those of the estate, here, there are a couple of points that seem noteworthy. One, the claims trading activity was post-confirmation so—while certain of the claim-sellers may have still been on the unsecured creditors committee, as the effective date of the plan had not yet occurred—the circumstances are very different than if this had all happened during the early, contentious stages of the case. It seems inconceivable that there was somehow a disparity of information that might be troubling—the Plan had been confirmed and it was available for the world to see. The whole notion of "insider information" (just after confirmation here) feels a bit off-point. Bankruptcy practitioners and judges sometimes call bankruptcy a fishbowl or use the "open kimono" metaphor for good reason. It is generally a very open process. And information-sharing on the part of a debtor-in-possession or unsecured creditors committee is intended to be robust. *See, e.g.,* Bankruptcy Code sections 521 and 1102(b)(3). In a way, HMIT here seems to be complaining about this very situation that the Code and Rules have designed.

In summary, claims trading is a highly ***unregulated*** activity in the bankruptcy world. ***HMIT is attempting to pursue causes of action here that, to this court's knowledge, have never been allowed in a context like this***.

B. Back to Standing—Would HMIT Have Standing to Bring the Proposed Claims?

The Proposed Defendants argue that HMIT lacks standing to bring the Proposed Claims, either: (a) derivatively on behalf of the Reorganized Debtor and Claimant Trust, or (b) directly on behalf of itself. Thus, they argue that this is one reason that the Motion for Leave should be denied.

In making their specific standing arguments, the parties analyze things slightly differently:

The Claims Purchasers focus primarily on HMIT's lack of ***constitutional*** standing but also argue that HMIT does not have ***prudential*** standing under Delaware trust law to bring the Proposed Claims either individually or derivatively. Why do they mention Delaware trust law? Because the Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29.[150]

The Highland Parties' standing arguments focus almost entirely on HMIT's lack of ***prudential*** standing under Delaware trust law to bring the Proposed Claims.

HMIT argues that the Proposed Defendants "play fast and loose with standing arguments" and that HMIT has ***constitutional*** standing as a "party aggrieved"[151] to bring the Proposed Claims on behalf of itself. HMIT also argues that it has standing under Delaware trust law to bring a

[150] *See* Proposed Complaint, ¶ 26.

[151] Proposed Complaint, ¶7.

derivative action on behalf of the Claimant Trust, and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to do so.

1. The Different Types of Standing: Constitutional Versus Prudential

The parties are addressing two concepts of standing that can sometimes be confused and misapplied by both attorneys and judges: ***constitutional Article III standing***, which implicates federal court subject matter jurisdiction,[152] and the narrower standing concept of ***prudential standing***, which does not implicate subject matter jurisdiction but nevertheless might prevent a party from having capacity to sue, pursuant to limitations set by courts, statutes or other law.

Article III constitutional standing works as follows: a plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing three elements: (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[153] "If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve."[154] These elements ensure that a plaintiff has "'such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf."[155]

[152] Article III, Section 2 of the U.S. Constitution gives federal courts jurisdiction over enumerated cases and controversies.

[153] *See Thole v. U.S. Bank, N.A.*, 140 S.Ct. 1615, 1618 (2020)(citing the Supreme Court's seminal case on the tripartite test for Article III constitutional standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), where the Supreme Court stated that "the irreducible constitutional minimum of standing contains [the] three elements"); *see also Spokeo*, 578 U.S. at 338; *Abraugh v. Altimus*, 26 F.4th 298, 302 (5th Cir. 2022) (citing *id.*).

[154] *Transunion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021)(cleaned up).

[155] *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Apart from this minimal constitutional mandate, courts and statutes have set other limits on the class of persons who may seek judicial remedies—and this is the concept of prudential standing. In its recent opinion in *Abraugh v. Altimus*,[156] the Fifth Circuit set forth a detailed analysis of the two types of "standing," noting that the term "standing" is often "misused" in our legal system, which has led to confusion for both attorneys and judges.[157] The constitutional standing that is necessary for a court to exercise subject matter jurisdiction is broader than prudential standing and is only the first hurdle a party must clear before pursuing a claim in federal court.

The Fifth Circuit explained that ***in addition to*** Article III constitutional standing, "courts have occasionally articulated other 'standing' requirements that plaintiffs must satisfy under certain conditions, ***beyond those imposed by Article III***,"[158] such as the "standing" requirement that might be imposed by a statute or by jurisprudence. The *Abraugh* case was a perfect example of the latter.

Abraugh involved the civil rights statutes that provide, among other things, that "a party must have standing under the state wrongful death or survival statutes to bring [a § 1983 cause of action]" and noted that these statutes impose additional "standing" requirements that are a matter of prudential standing, not constitutional standing.[159] In *Abraugh*, the Fifth Circuit reversed and remanded a district court's dismissal of a § 1983 civil rights cause of action—noting that the district court had stated that it was dismissing based on a "lack of subject matter jurisdiction" because the plaintiff in that action lacked standing.[160] The plaintiff was the mother of a prisoner

[156] 26 F.4th 298.
[157] *Id.* at 303.
[158] *Id.* at 302 (emphasis added).
[159] *Id.* at 302-303.
[160] *Id.* at 301.

who died by suicide while in custody who brought a § 1983 action against Louisiana correctional officers and officials. After finding that the plaintiff/mother lacked standing under Louisiana's wrongful death and survival statutes (because there had been a surviving child and wife of the prisoner who were the proper parties with capacity to sue), the district court held that it was dismissing for lack of subject matter jurisdiction. The Fifth Circuit pointed out that the plaintiff/mother may have lacked standing under Louisiana's wrongful death and survival statutes to bring the claim under § 1983, but that type of standing was matter of ***prudential*** standing, and the plaintiff/mother actually ***did*** have ***Article III*** constitutional standing ("a constitutionally cognizable interest in the life of her son").[161] Thus, the district court's error was ***not*** in finding that the plaintiff/mother lacked prudential standing but in improperly conflating the two standing concepts when it held that it had lacked ***subject matter jurisdiction*** to consider any of the plaintiff's/mother's amended complaints.[162] The Fifth Circuit noted specifically that[163]

> prudential standing does not present a jurisdictional question, but "a merits question: who, according to the governing substantive law, is entitled to enforce the right?" As the Federal Rules of Civil Procedure make clear, "an action must be prosecuted in the name of the real party in interest." FED. R. CIV. P. 17(a)(1). And a violation of this rule is a failure of "prudential" standing. "Not one of our precedents holds that the inquiry is jurisdictional." It goes only to the validity of the cause of action. And "the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction."

Somewhat relevant to this prudential standing discussion is the fact that, in this bankruptcy case, there have been dozens of appeals of bankruptcy court orders by Dondero and Dondero-related entities. In connection therewith, both the district court and the Fifth Circuit, in evaluating the ***appellate standing*** of the appellants, have taken pains to distinguish between the concepts of:

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[161] *Id.*

[162] *Id.* at 301, 303-304. The Fifth Circuit opined that "the district court did not err in describing [the mother's] inability to sue under Louisiana law as a defect of 'standing[, b]ut it is a defect of prudential standing, not Article III standing" thus technically not implicating the federal court's subject matter jurisdiction. *Id.* at 303.

[163] *Id.* at 304 (cleaned up).

(a) traditional, constitutional standing, and (b) a type of prudential standing known as the "person aggrieved" test, which is applied in the Fifth Circuit in determining whether a party has ***standing to appeal a bankruptcy court order***—which it describes as a narrower and "more exacting" standard than constitutional standing. As explained in a Fifth Circuit opinion addressing the standing of a Dondero-related entity called NexPoint to appeal bankruptcy court orders allowing professional fees, the "person aggrieved" standard that is typically applied to ascertain bankruptcy ***appellate*** standing originated in a statute in the Bankruptcy Act. The Fifth Circuit continued to apply it after Congress removed the provision when it enacted the Bankruptcy Code in 1978.[164] Because it is narrower and "more exacting" than the test for Article III constitutional standing, it involves application of prudential standing considerations.[165] The Fifth Circuit describes the "person aggrieved" test for bankruptcy appellant standing as requiring that an appellant show that it was "*directly and adversely affected pecuniarily* by the order of the bankruptcy court," requiring "a higher causal nexus between act and injury than traditional standing . . . that best deals with the unique posture of bankruptcy actions."[166] In affirming the district court's dismissal of NexPoint's appeal of the bankruptcy court's fee orders, due to NexPoint's lack of prudential standing under the "person aggrieved" test, the court rejected NexPoint's argument that it had standing to appeal

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[164] *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, No. 22-10575, 2023 WL 4621466, *2 (5th Cir. July 19, 2023)(citing *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004)(cleaned up)).

[165] *Id.* at *1, **4-6 (where the Fifth Circuit repeatedly throughout its opinion refers to the "person aggrieved" test for standing in bankruptcy actions as a test for "prudential standing."); *see also Dondero v. Highland Capital Mgt., L.P.*, Civ. Act. No. 3:20-cv-3390-X, 2002 WL 837208 (N.D. Tex. Mar. 18, 2022)(where the district court, in addressing Dondero's standing to appeal a bankruptcy court order approving a Rule 9019 settlement (between Highland and Acis Capital Management GP LLC), notes that "[i]t is substantially more difficult to have standing to appeal a bankruptcy court's order than it is to pursue a typical complaint under Article III of the U.S. Constitution" and that "the Fifth Circuit has long recognized that bankruptcy cases' wide-reaching scope calls for a more stringent standing test.").

[166] *See id.* at *3 (cleaned up). The court quotes its 2018 opinion in *Matter of Technicool Sys., Inc. (In re Technicool)*, 896 F.3d 382, 385 (5th Cir. 2018), which explains why the "person aggrieved" prudential standing standard is applied in bankruptcy actions: "Bankruptcy cases often involve numerous parties with conflicting and overlapping interests. Allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Given the specter of such sclerotic litigation, standing to appeal a bankruptcy court order is, of necessity, *quite limited*." *Id.* (cleaned up).

because "it meets traditional Article III standing requirements [and that the more exacting] prudential standing considerations such as the 'person aggrieved' standard" did not survive the Supreme Court's 2014 *Lexmark*[167] opinion,[168] which addressed standing issues in the context of false advertising claims under the Lanham Act and reminded that courts may not "limit a cause of action that Congress has created merely because 'prudence' dictates."[169] The Fifth Circuit held that the Supreme Court's reminder in *Lexmark* did not nullify the "person aggrieved" test for prudential standing in bankruptcy appeals, citing its own decision in *Superior MRI Services Inc. v. Alliance Healthcare Services, Inc.*[170] (rendered a year after *Lexmark* was decided), in which it held that *Lexmark* applied only to the circumstances of that case, "rather than broadly modifying—or undermining—*all* prudential standing concerns, such as the one animating the 'person aggrieved' standard in bankruptcy appeals."[171]

Similarly, in yet another appeal in this bankruptcy case involving three Dondero-related entities as appellants (NexPoint, Dugaboy, and HCMFA)—this one an appeal of a bankruptcy court order authorizing the creation of an indemnity subtrust and entry into an indemnity trust agreement—the district court noted the parties' confusion about the standing issue, as exemplified in the parties' reference to constitutional standing when they were actually arguing that they had prudential standing under the "person aggrieved" test: "Although the parties frame this issue as one of constitutional standing . . . they cite case law and present arguments about the prudential

[167] *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

[168] *Id.* at *2.

[169] *See id.* at *4 (cleaned up).

[170] 778 F.3d 502 (5th Cir. 2015).

[171] *NexPoint*, 2023 WL 4621466 at *4 (cleaned up). The Fifth Circuit explicitly stated that "*Lexmark* does not expressly reach prudential concerns in bankruptcy appeals and brought no change relevant here." *Id.* at *5 (cleaned up).

standing requirement embodied in the 'person aggrieved' test."[172] The district court noted that it had an "independent obligation to consider constitutional standing before reaching its prudential aspects."[173] The district court dismissed the appeal as to Dugaboy and HCMFA for lack of standing but, upon concluding that NexPoint did have standing, dismissed the appeal as to it on the merits. The Fifth Circuit affirmed.[174] Interestingly, the court noted that, while the parties did not contest the district court's determination that NexPoint had standing to pursue the appeal, it "may consider prudential standing issues *sua sponte*."[175] In doing so, the Fifth Circuit recognized the distinction between constitutional standing and the prudential "person aggrieved" test applied to bankruptcy appeals, which "is, of necessity, quite limited" and "an even more exacting standard than traditional constitutional standing," as it requires an appellant to show that it is "directly, adversely, and financially impacted by a bankruptcy order."[176]

In summary, in analyzing whether HMIT would have standing to bring the Proposed Claims, this court must ***first*** determine whether HMIT would have constitutional standing under Article III (which is a subject matter jurisdiction hurdle) and, assuming it does, then ***additionally*** address whether HMIT would also have prudential standing (i.e., capacity to sue) pursuant to any applicable statutes (e.g., Delaware statutes), jurisprudence, or other substantive law that might ***limit*** who may sue. Notwithstanding HMIT's argument that it has standing under the "person

[172] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2002 WL 270862, *1 (N.D. Tex. Jan. 18, 2022)(cleaned up). The district court dismissed the appeals of two of the appellants, Dugaboy and HCMFA, finding that they lacked both constitutional standing and prudential standing under the "person aggrieved" test and affirmed the bankruptcy court's order after finding the third appellant, NexPoint, to have prudential standing under the "person aggrieved" test. *Id.* at **1-3 and *4.

[173] *Id.* at *1 n.2.

[174] *Highland Capital Mgt. Fund, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 57 F.4th 494 (5th Cir. 2023).

[175] *Id.* at 501 (cleaned up).

[176] *Id.*

aggrieved" test[177]—which, as discussed above, is a matter of prudential standing—this is applied only in the context of bankruptcy ***appellate*** matters.[178] As noted in its most recent opinion discussing standing in an appeal from the Highland bankruptcy case, the Fifth Circuit reiterated that the "person aggrieved" test is a test for bankruptcy ***appellate*** standing, which is narrower than a party in interest's right to be heard in bankruptcy cases in general.[179] The court rejected an argument that Bankruptcy Code § 1109, which provides that "[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter" confers ***appellate*** standing, noting that "one's standing to appear and be heard before the bankruptcy court [is] a concept distinct from standing to appeal the merits of a decision" and that the "person aggrieved" test for bankruptcy appellate standing is narrower than the test for determining one's standing to appear and be heard in a bankruptcy proceeding.[180]

Thus, the court will now analyze whether HMIT would, at a minimum, have constitutional standing to bring the Proposed Claims.

2. HMIT Would Lack Article III Constitutional Standing to Bring the Proposed Claims.

As noted above, the Supreme Court and the Fifth Circuit have made clear that constitutional standing is necessary for a court to exercise subject matter jurisdiction. It is only the first hurdle a party must clear before pursuing a claim in federal court. HMIT, as plaintiff, would bear the

[177] HMIT insists that it has constitutional standing to bring claims on its individual behalf "as an aggrieved party." *See* Reply, ¶ 7.

[178] HMIT's argument in this matter that it has constitutional standing because it is a "party aggrieved" incorrectly conflates the prudential bankruptcy appellate "person aggrieved" test with the broader test that is applied to constitutional standing. The court is not being critical of this mistake. As noted at *supra* note 149, the Fifth Circuit in *Abraugh* pointed out that courts and attorneys alike have created confusion by misusing the term "standing" when they equate a lack of "standing," in all instances, with a lack of subject matter jurisdiction, even when the party is found to lack only prudential standing. Thus, HMIT is not alone in its confusion over the two different concepts of standing.

[179] *See NexPoint*, 2023 WL 4621466 at *6.

[180] *Id.* at *6 (cleaned up)("Because Section 1109(b) expands the right to be heard [in a bankruptcy proceeding] to a wider class than those who qualify under the 'person aggrieved' standard, courts considering the issue have concluded that merely being a party in interest is insufficient to confer ***appellate*** standing.")(emphasis added).

burden of establishing: (1) that it suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[181]

Concrete and Particularized; Actual or Imminent. As the Supreme Court made clear in the *Lujan* case, the injury in fact element requires a showing that the injury was "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."[182] The Supreme Court in the *Spokeo* case expounded on the "concrete and particularized" requirements of the "injury in fact" element. Particularization requires a showing that the injury "must affect the plaintiff in a personal and individual way," but while particularization is necessary, it alone is "not sufficient," because an injury in fact must also be "concrete."[183] And, concreteness is "quite different from particularization."[184] A "concrete" injury must be "real," and "not abstract," though it does not mean that the injury must be "tangible," as the injury can be intangible and nevertheless be concrete.[185] In addition to the concreteness and particularization requirements, an injury in fact must be "actual or imminent" such that "allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing."[186] "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly*

[181] *See supra* note 153.
[182] *Lujan*, 504 U.S. at 560 (cleaned up).
[183] *Spokeo*, 578 U.S. at 339.
[184] *Id.* at 340.
[185] *Id.*
[186] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

impending"; "allegations of *possible* future injury are not sufficient."[187]

Traceability - Causal Connection. As to the second element—that the injury was caused by the defendant—the Supreme Court in *Lujan* further described it as requiring a showing that "the injury has to be fairly traceable to the challenged action of the defendant."[188] The "fairly traceable" test requires an examination of "the causal connection between the assertedly unlawful conduct and the alleged injury."[189]

Redressability. The third element—redressability—requires the court to examine the connection "between the alleged injury and the judicial relief requested."[190] "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court."[191] "[A] court must determine that there is an available remedy which will have a 'substantial probability' of redressing the plaintiff's injury."[192]

The Claims Purchasers argue that HMIT lacks constitutional standing to pursue the claims asserted in the Proposed Complaint because: (i) neither HMIT nor the Bankruptcy Estate was injured by the Claim Purchasers' acquisition of the claims; and (ii) the Proposed Complaint lacks a theory of cognizable damages to the Reorganized Debtor, the Claimant Trust, and/or the beneficiaries of the Claimant Trust.[193]

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[187] *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013)(cleaned up); *see also Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir. 2023)("[Injury] cannot be speculative, conjectural, or hypothetical [and] [a]llegations of only a 'possible' future injury similarly will not suffice.")(cleaned up).

[188] *Lujan*, 504 U.S. at 560-61 (cleaned up).

[189] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

[190] *Id.* (noting "it is important to keep the ['fairly traceable' and 'redressability'] inquiries separate if the 'redressability' component is to focus on the requested relief.").

[191] *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998).

[192] *City of Los Angeles v. Lyons*, 461 U.S. 95, 129 n.20 (1983)(Marshall, J., dissenting)(cleaned up); *see also Ondrusek v. U.S. Army Corps of Engineers*, Civ. Act. No. 3:22-cv-1874-N, 2023 WL 2169908, at *5 ("Plaintiffs have not demonstrated that any available remedy would be sufficiently likely to relieve their alleged economic losses. Without a showing of redressability, those harms also cannot support Plaintiff's Article III standing.").

[193] As noted earlier, certain of the Proposed Defendants—the Highland Parties—do not focus on HMIT's lack of constitutional standing to pursue the Proposed Claims against them, but on its lack of prudential standing under

The court agrees with the Claims Purchasers' argument here. What is HMIT's concrete and particularized injury—that is "real" and is not abstract? That is not conjectural or hypothetical? That is actual or imminent?

Recall that, under the Plan, HMIT holds a Class 10 contingent interest in the Claimant Trust that only realizes value if all creditors are paid in full with interest. HMIT alleges the following injury: it has suffered a devaluation of its unvested Contingent Claimant Trust Interest by virtue of the alleged over-compensation of Seery as the Claimant Trustee—Seery's alleged over-compensation depletes the assets in the Claimant Trust available for distribution to creditors under the Plan, such that there is less likely a chance that HMIT ultimately receives any distributions on account of its Class 10 Contingent Claimant Trust Interest.[194] Yet, HMIT testified, through both witnesses Dondero and Patrick, that it had no personal knowledge of what Seery's actual compensation is under the CTA at the time HMIT filed its Motion for Leave. It was clear that HMIT's allegations regarding Seery's "excessive" compensation were based entirely on Dondero's pure speculation. In reality, Seery's base salary is exactly what the bankruptcy court approved during the bankruptcy case by a court order (after negotiations between Seery and the Committee). The CTA now further governs his compensation. The CTA, which was publicly filed ***in advance of*** the Plan confirmation hearing and approved by this court as part of the Plan

applicable law. Because constitutional standing is a matter of subject matter jurisdiction, the court has an independent duty to determine whether HMIT would have constitutional standing to pursue the Proposed Claims in federal court. The issue cannot be forfeited or waived by a party. *See Abraugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)("[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Moreover, courts . . . have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.")(cleaned up); *Abraugh*, 26 F.4th at 304 ("It is our constitutional duty, of course, to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.")(cleaned up).

[194] At the June 8 Hearing, HMIT's counsel was unable to identify any other injury HMIT has alleged to have suffered. HMIT's counsel acknowledged that claims trades, in and of themselves, would not "involve injury to the Reorganized Debtor and to the Claimant Trust" and that claims trades are "normally outside the purview of the bankruptcy court" but that "[h]ere, we have alleged . . . . injury [that] takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers." June 8 Hearing Transcript, 67:16-68:8. HMIT can only point to Seery's excess compensation as injury.

(which has been affirmed by the Fifth Circuit), specifically provides that Seery's post-Effective Date compensation would include a "Base Salary" (again, same as during the bankruptcy case), a "success fee," and "severance."[195] The CTA discussed the role of the Committee and then the CTOB in setting the success fee and severance and the like. A fully executed copy of the CTA was admitted into evidence at the June 8 Hearing. HMIT is essentially arguing that its injury (i.e., diminished likelihood of realizing value on its Contingent Claimant Trust Interest) stems from a court-sanctioned and creditor-approved process for approving compensation to Seery. Moreover, HMIT has failed to plead facts sufficient to show that, even if Seery received excessive compensation and that compensation is ordered to be returned, HMIT's Contingent Claimant Trust Interest will ever vest. The district court and the Fifth Circuit in various appeals by Dugaboy, another Dondero-related entity that, similar to HMIT, was a holder of a limited partnership interest in Highland whose interests were terminated as of the Effective Date of the Plan in exchange for a Contingent Claimant Trust Interest, have repeatedly rejected Dugaboy's claims to have standing based on the ***speculative nature of its alleged injuries as a contingent beneficiary of the Claimant Trust under the Plan***. For example, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy of the bankruptcy court's order authorizing the creation of an indemnity subtrust, wherein Judge Fitzwater found that, in addition to lacking prudential standing under the

[195] The Disclosure Statement that was approved by this court, after notice and a hearing, on November 24, 2020, provided that "The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement . . . ." The CTA was part of a Plan Supplement (as amended) that was filed in advance of the confirmation hearing and provided:

> Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

See Highland Ex. 38, at § 3.13(a)(i).

"person aggrieved" test to appeal the bankruptcy court's order, Dugaboy lacked constitutional standing "because they have not identified any injury fairly traceable to the Order: ***the injuries identified are speculative at best and nonexistent at worst***."[196] HMIT's allegations of injury are, without a doubt, "merely conjectural or hypothetical" and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests."[197] The court finds that HMIT would not meet the "concrete and particularized" or the "actual or imminent" requirements for an "injury in fact," and, thus, would lack constitutional standing to pursue the Proposed Claims.

With regard to the second requirement of constitutional standing—whether HMIT could show "traceability" with respect to the Claims Purchasers and/or Seery (i.e., a "causal connection between the assertedly unlawful conduct and the alleged injury"[198]), as noted above, there is only a speculative injury. Even if there is unlawful conduct asserted (i.e., sharing of MNPI to Claims Purchasers who then, as a *quid pro quo*, rubber stamped excessive compensation for Seery), there is nothing other than a hypothetical theory of an alleged injury (i.e., an allegedly less likelihood of a distribution on a Contingent Claimant Trust Interest).

With respect to the third requirement of constitutional standing—whether HMIT can show "redressability" (i.e., that it is likely, not speculative, that the injury can be redressed by a favorable

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[196] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, *1 n.2 (N.D. Tex. Jan. 28, 2022), *aff'd* 57 F.4th 494 (5th Cir. 2023)(emphasis added); *see also* Judge Scholer's opinion in *Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-2268-S, 2022 WL 3701720, *3 (N.D. Tex. Aug. 8, 2022)(cleaned up), *aff'd per curium*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023) (where Dugaboy had argued that "***its pecuniary interest is . . . a potential recovery under the Plan as one of Debtor's former equity holders***" and that "it ha[d] standing as a 'contingent beneficiary' under the Plan, or a beneficiary who will be entitled to payment after all creditors are paid in full," and Judge Scholer stated, "This assertion is premised on the assumption that Dugaboy's 0.1866% pre-bankruptcy limited partnership interest in Debtor—which was extinguished under the Plan—makes it a contingent beneficiary of the creditor trust created under the Plan. . . . [S]uch a 'speculative prospect of harm is far from a direct, adverse, pecuniary hit' as required to confer standing."

[197] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

[198] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

decision), there are multiple problems here.[199] The major remedy sought here is the equitable disallowance of the allowed Purchased Claims (and disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims). There is no such remedy available here. As noted earlier, there is a similar concept of ***equitable subordination*** of a claim to another claim, or of an interest to another interest, pursuant to Bankruptcy Code section 510(c). But under the literal terms of section 510(c), ***claims cannot be subordinated to interests***. Moreover, the Fifth Circuit noted in the *Mobile Steel* case,[200] that ***equitable disallowance*** of a claim (as opposed to equitable subordination of a claims) is not an available remedy. Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case might permit "recharacterization" of a claim from debt to equity in certain circumstances—but not based on inequitable conduct but rather on the nature of a financial transaction. In any event, here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). As noted earlier, the problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). As further noted earlier, here there was most definitely a "contest" with regard to all of these purchased claims. ***Thus, it would appear***

[199] *See supra* notes 182-184 and accompanying text. The court will note that, as discussed *supra* note 141 and pages 71-72, the remedy of equitable subordination (as to the Claims Purchasers) would not redress HMIT's alleged injury (because equitable subordination of claims to interests is not an available remedy in the Fifth Circuit and thus subordination of the Purchased Claims to other claims would not change HMIT's distributions from the Claimant Trust, if any), and because outright disallowance of all or part of the already allowed Purchased Claims is not an available remedy either, HMIT would not be able to meet the "redressability" requirement with respect to the Claims Purchasers.

[200] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

that any effort to have a court reconsider and potentially disallow these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.

3. HMIT Would Also Lack Prudential Standing to Bring the Proposed Claims.

Even if HMIT would have constitutional standing to bring the Proposed Claims in an adversary proceeding filed in the bankruptcy court, the Proposed Claims would still be barred if HMIT would lack prudential standing to bring them under applicable state or federal law. HMIT argues that it does have prudential standing under both federal bankruptcy law and Delaware law to pursue the Proposed Claims derivatively and also to bring the Proposed Claims in its individual capacity.

With regard to "federal bankruptcy law," HMIT argues that it has standing pursuant to: (a) Rule 23.1 of the Federal Rules of Civil Procedure, pertaining to derivative actions, which "applies to this proceeding pursuant to" Rule 7023.1 of the Federal Rules of Bankruptcy Procedure, and (b) *Louisiana World Exposition v. Federal Insurance Co. ("LWE")*,[201] the Fifth Circuit's leading case addressing when a creditors committee may be granted standing to bring causes of action on behalf of a bankruptcy estate. But, federal bankruptcy law does not confer standing ***where the plaintiff otherwise lacks standing under applicable state law***. In other words, whether HMIT would have prudential standing to sue under Delaware law is dispositive of the issue, regardless of the forum. Rule 23.1 "speaks only to the adequacy of the . . . pleadings," and "cannot be understood to 'abridge, enlarge, or modify any substantive right,'"[202] including a right (or lack thereof) to bring a derivative action under the substantive law of Delaware. Additionally, HMIT's reliance on *LWE* is misplaced: *LWE* permits creditors, in certain circumstances ***during*** a bankruptcy case, to "file

[201] 858 F.2d 233 (5th Cir. 1988).

[202] *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991)(quoting 28 U.S.C. § 2072(b)).

suit on behalf of a debtor-in-possession or a trustee"[203] and does not apply to a party's right to sue, derivatively, on behalf of the Reorganized Debtor or any entity that is the assignee of the former bankruptcy estate's assets. Upon confirmation of the Plan, the bankruptcy estate of Highland ceased to exist;[204] Highland is no longer a debtor-in-possession but a reorganized debtor, and the Claimant Trust is a new entity created under the Plan and Claimant Trust Agreement. Even if *LWE* did apply in this ***post***-confirmation context, it supports the application of Delaware law to the issue of prudential standing and does not supersede state-law requirements for standing. In *LWE*, before addressing the requirements a creditors' committee must meet to sue derivatively on behalf of a bankruptcy estate as a matter of federal bankruptcy law, the Fifth Circuit conducted a lengthy analysis to determine "as a threshold issue" whether the creditors' committee in that case could assert its claims under Louisiana law.[205] The court specifically addressed whether the creditors' committee could pursue a derivative action under Louisiana law and concluded that "there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions."[206] So, even under *LWE* (which the court does not think applies in this post-confirmation context), if HMIT would be barred from bringing a derivative action on behalf the Reorganized Debtor or Claimant Trust under state law, the analysis stops there.[207] Thus, the court looks to Delaware law to determine if HMIT would have prudential standing to pursue the derivative claims on behalf the Reorganized Debtor and the Claimant Trust.

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[203] *LWE*, 858 F.2d at 247.

[204] *See In re Craig's Stores*, 266 F.3d 388, 390 (5th Cir. 2001).

[205] *LWE*, 858 F.2d at 236-45.

[206] *Id.* at 243.

[207] *See In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 (where the Delaware bankruptcy court denied the creditors' committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act, stating, "To determine that the third party

HMIT acknowledges that both the Reorganized Debtor and the Claimant Trust are organized under Delaware law, and thus the cause of action against Seery alleging breach of fiduciary duties to the Reorganized Debtor and the Claimant Trust are governed by Delaware law under the "Internal Affairs Doctrine."[208] In addition, because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting theory of liability as to the Claims Purchasers is also governed by Delaware law.[209] For the reasons set forth below, the court finds that HMIT would lack prudential standing under Delaware law to bring the claims set forth in the Proposed Complaint, derivatively, on behalf of either the Claimant Trust or the Reorganized Debtor.

a) First, HMIT Would Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Claimant Trust.

The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29,[210] and "to proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement" such that "the plaintiff must be a beneficial owner" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[211] This requirement is "mandatory and exclusive" and only "a beneficial owner" "has standing to bring a derivative claim on behalf of the

may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors' state of incorporation or formation.").

[208] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[209] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

[210] *See* Proposed Complaint, ¶ 26.

[211] *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *19 n.123 (Del. Ch. June 15, 2011), *aff'd* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b).

Trust."[212] The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, would lack standing to bring derivative claims on behalf of the Claimant Trust. HMIT argues to the contrary: that it ***is*** currently, and was at all relevant times, a "beneficial owner" of the Claimant Trust under Delaware trust law such that it would have standing to bring derivative claims on behalf of the Claimant Trust if it were allowed to proceed with the filing of the Proposed Complaint. The disagreement turns on the nature of HMIT's interest under the Plan and the Claimant Trust Agreement and whether HMIT, as a holder of such interest, would be considered a "beneficial owner" of the Claimant Trust under Delaware trust law.

As noted, pursuant to the Plan, HMIT's former limited partnership interest in Highland was cancelled as of the Effective Date in exchange for its pro rata share of a "Contingent Claimant Trust Interest," as defined under the Plan.[213] HMIT argues that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present "beneficial owner" under Delaware trust law.

The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust; rather, the "beneficial owners" of the Claimant Trust are the "Claimant Trust Beneficiaries,"[214] which are defined in the Plan and the CTA as "the Holders of Allowed General Unsecured Claims" (which are in Class 8 under the Plan) and "Holders of Allowed Subordinated Claims" (which are in Class 9 under the Plan); [215] HMIT, a holder of a Class 10 interest under the Plan, is neither.

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[212] *In re Nat'l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)). HMIT acknowledges this requirement in its Reply: "Delaware statutory trust law provides that a plaintiff in a derivative action on behalf of a trust must be a beneficial owner at the time of the action and at the time of the transaction." Reply, ¶ 19 (citing 12 Del C. § 3816).

[213] *See* Plan Art. III.H.10 and Art. I.B.44.

[214] Section 2.8 of the CTA provides, "The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . . ." HMIT Ex. 26, § 2.8.

[215] *See* Plan Art. I.B.44 ("'*Claimant Trust Beneficiaries*' means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the

HMIT, as the holder of a "Contingent Claimant Trust Interest," has only an ***unvested*** contingent interest in the Claimant Trust and, as such, is not a "beneficial owner" of the Claimant Trust for standing purposes under Delaware trust law. HMIT argues that it "should be treated as a vested Claimant Trust Beneficiary due to [the Proposed Defendants'] wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein."[216] The court disagrees.

HMIT's status as a "beneficiary" of the Claimant Trust is defined by the CTA itself, pure and simple. The CTA specifically provides that "Contingent Trust Interests" "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA. It is undisputed that HMIT's Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested based on HMIT's unsupported allegation of wrongdoing on the part of Seery, the Claimant Trustee. Thus, the court finds that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, lacks prudential standing under Delaware law to bring derivative claims on behalf of the Claimant Trust.[217]

Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests."); CTA § 1.1(h). *See also*, CTA, 1 at n.2 ("For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan."). HMIT Ex. 26.

[216] Proposed Complaint ¶ 24.

[217] *See Nat'l Coll.*, 251 A.3d at 190–92 (dismissing creditors' derivative claims because they were not "beneficial owners of the Trusts"); *Hartsel*, 2011 WL 2421003, at *19 n.123 (dismissing derivative claims by investors that "no longer own shares" because "those investors no longer have standing to pursue a derivative claim").

b) HMIT Would Likewise Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Reorganized Debtor.

HMIT acknowledges that the Reorganized Debtor, Highland Capital Management, L.P., is a Delaware limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.*[218] To bring "a derivative action" on behalf of a limited partnership, "the plaintiff must be a partner or an assignee of a partnership interest" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[219]

HMIT is not a partner, general or limited, of the Reorganized Debtor limited partnership. HMIT ***was*** a limited partner in the original debtor (specifically, a holder of Class B/C Limited Partnership interests in Highland), but that limited partnership interest was extinguished on August 11, 2021 (the Effective Date of the Plan) per the terms of the Plan, and HMIT does not own any partnership interest in the newly created Reorganized Debtor limited partnership.[220] Because HMIT would not hold a partnership interest in the Reorganized Debtor at "the time of bringing the action," it "lacks derivative standing" to bring claims "on the partnership's behalf."[221] HMIT likewise cannot satisfy "the continuous ownership requirement"; when HMIT's limited partnership interest in the original Debtor was cancelled on the Plan's Effective Date, HMIT "los[t] standing to continue a derivative suit" on behalf of the Debtor.[222] Finally, to the extent HMIT

[218] Proposed Complaint ¶ 25.

[219] 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) ("The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another party's fiduciary duties to them.") (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff'd* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) ("The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.") (citing 6 Del. C. § 17-211(h)).

[220] *See* Plan Art. IV.A.

[221] *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

[222] *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff's partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re*

seeks to bring a "double derivative" action on behalf of the Claimant Trust based on claims purportedly held by its wholly owned subsidiary, the Reorganized Debtor, HMIT lacks standing. A "double derivative" action is a suit "brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled."[223] And, under Delaware law, "parent level standing is required to enforce a subsidiary's claim derivatively."[224] Because HMIT would lack derivative standing to bring claims on behalf of the parent Claimant Trust,[225] it also would lack standing to bring a double derivative action.

c) Finally, HMIT Would Also Lack Prudential Standing under Applicable Law to Bring the Proposed Claims As ***Direct*** Claims.

HMIT argues that it has "direct" standing to pursue the Proposed Claims on behalf of itself, individually.[226] But just because HMIT asserts that some or even all of the Proposed Claims are direct, not derivative claims, does not make it so: "a claim is not 'direct' simply because it is pleaded that way."[227] Rather, in determining whether claims are direct or derivative, a court must "look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs' characterization."[228] And, under Delaware law, "whether a claim is solely derivative or

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SkyPort Global Commcn's, Inc.), 2011 WL 111427, at *25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders "lack standing to bring a derivative claim" under Delaware law because they "had their equity interests in the company extinguished pursuant to the merger under the Plan"); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) ("[T]he cancellation of WorldCom shares under the Plan … prevents the required continuation of shareholder status through the litigation.") (cleaned up).

[223] *Lambrecht v. O'Neal*, 3 A.3d 277, 282 (Del. 2010).

[224] *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

[225] *See supra* pp. 80-82.

[226] *See e.g.*, Motion for Leave ¶ 10 ("HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . ."); *id.* ¶ 67 (arguing that "HMIT has [d]irect [s]tanding"); Proposed Complaint ¶ 24 ("HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.").

[227] *Schmermerhorn*, 2011 WL 111427, at *26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at *7 (Del. Ch. Nov. 5, 2004)).

[228] *See id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)); *see also Moore v. Simon Enters., Inc.*, 919 F.Supp. 1007, 1009 (N.D. Tex. 1995)("The determination of whether a claim is a derivative claim or a direct claim is made by reference to the nature of the wrongs alleged in the complaint, and is not limited by a [party's] characterization or stated intention.")(cleaned up).

may continue as a dual-natured claim 'must turn ***solely*** on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'"[229] "In addition, to prove that a claim is direct, a plaintiff 'must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.'"[230] Similarly, in the bankruptcy context, whether a creditor can assert a claim directly or whether the claim belongs to the estate turns on the nature of the injury for which relief is sought: "[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate," such that "only the bankruptcy trustee has standing to pursue the claim for the estate . . . ."[231] "To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate."[232]

As a reminder, HMIT argues that the injury it has suffered is a devaluation of its interests in the Claimant Trust by virtue of alleged over-compensation of Seery as the Claimant Trustee. HMIT was unable, when pressed during closing arguments, to identify any other injury. It essentially admitted that the claims trades, in and of themselves, would not have harmed the Claimant Trust, the Reorganized Debtor, or individual stakeholders, including HMIT, ***since the Claims Purchasers acquired already allowed unsecured claims, such that the distributions on those claims pursuant to the Plan would be unchanged in the hands of new holders of the claims***.

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[229] *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original).

[230] *Id.* (quoting *Tooley*, 845 A.2d at 1033); *see also Schmermerhorn*, 2011 WL 111427, at *24 (same).

[231] *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)).

[232] *Id.*; *see also Schertz-Cibolo-Universal City Indep. Sch. Dist. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994)("If a cause of action alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate.")(citations omitted).

Thus, by its own concessions, any alleged harm to HMIT (through devaluation of assets in the Claimant Trust) "comes about only because of harm to the debtor," so the alleged "injury is derivative."[233] The court concludes that all of the claims set forth in the Proposed Complaint allege derivative claims only, and that none would be direct claims against the Proposed Defendants. Thus, HMIT would lack prudential standing to bring any of the Proposed Claims in the Proposed Complaint, so its Motion for Leave should be denied.

d) Some Final Points Regarding Standing.

In this standing discussion, one should not lose sight of the fact that there are both procedural safeguards in place, as well as certain independent individuals in place with fiduciary duties that might act in the event of any shenanigans regarding Claimant Trust activities. Under section 4.1 of the CTA (approved as part of the Plan process), the CTOB, which includes an independent disinterested member in addition to representatives of the Claims Purchasers,[234] oversees the Claimant Trustee's performance of his duties, approves his compensation, and may remove him for cause. Moreover, there is a separate "Litigation Trustee" in this case who was brought in, post-confirmation, as an independent fiduciary to pursue claims and causes of action. These independent persons are checks and balances in the post-confirmation wind down of Highland. This is what creditors voted on in connection with the Plan. Seery and the Claims Purchasers are not in sole control of anything. The CTA, as well as Delaware law, very clearly set forth who can bring an action in the event of some colorable claim. This is the reality of prudential

[233] *Meridian*, 912 F.3d at 293–94 ("The creditors' injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties."); *see also El Paso,* 152 A.3d at 1260–61 & n.60 (holding that claim "claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative") (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at *12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had "not identified any independent harm suffered by the limited partners"; "the partnership suffered all the harm at issue—it paid too much").

[234] *See supra* note 23 and accompanying text.

standing. Just as in the *Abraugh* case, where Louisiana law dictated that a mother could not bring a wrongful death case when the deceased prisoner had a surviving wife and child, Delaware law and the CTA dictate here that a contingent beneficiary cannot bring the Proposed Claims here. This is separate and apart from whether the claims are colorable.

C. Are the Proposed Claims "Colorable"?

1. What is the Proper Standard of Review for a "Colorability" Determination?

Although the court has determined that HMIT would ***not*** have standing (constitutional or prudential) to bring the Proposed Claims, this court will nevertheless evaluate whether the claims—assuming HMIT somehow has standing—might be "colorable." This, in turn, requires the court to assess what the legal standard is to determine if a claim is "colorable." As a reminder, the Plan's Gatekeeper Provision and this court's prior Gatekeeper Orders entered in January and July 2020 each required that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain a finding from the bankruptcy court that its proposed claims are "colorable." The Gatekeeper Provision and Gatekeeper Orders did not specifically define "colorable" or what type of legal standard should apply.

HMIT argues that the standard for review to be applied by this court is the same as a simple "plausibility" standard used in connection with a Rule 12(b)(6) motions to dismiss. In other words, the court should simply assess whether the allegations of the Proposed Complaint, taken as true and with all inferences drawn in favor of the movant, state a ***plausible*** claim for relief (i.e., colorable equals plausible), and that this standard does not allow for the weighing of evidence by the court.[235] The Proposed Defendants, however, argue that the test for colorability should be more

[235] Reply, ¶ 5 ("[T]he determination of 'colorability' does not allow the 'weighing' of evidence. At most, a Rule 12(b)(6) 'plausibility' standard applies.").

akin to the test applied under the *Barton* doctrine,[236] under which a plaintiff must make a *prima facie* case that a proposed claim against a bankruptcy trustee is "not without foundation." In this regard, they argue that the court can and should consider evidence outside of the four corners of the complaint—especially since HMIT attached to its Motion for Leave, as "evidence" to support it, two declarations of Dondero (as part of a 350-page attachment) and only attempted to withdraw those declarations after the Highland Parties urged that they be permitted to cross-examine Dondero on them.

This court ultimately determined that the "colorability" standard was somewhat of a mixed question of fact and law and, therefore, the parties could put on evidence at the June 8 Hearing if they so-chose. The court would not require it. It was up to the parties. But, in any event, the Proposed Defendants should have an opportunity to cross-examine Dondero on the statements made in his declarations since the declarations had been filed on the docket and the court had reviewed them at this point. HMIT attempted to withdraw the declarations and any reference to them in the Motion for Leave, by filing redacted versions of the Motion for Leave,[237] less than 72 hours before the June 8 Hearing; however, the redacted versions did not redact any allegations in the Motion for Leave that were purportedly supported by the Dondero declarations. Also, HMIT called Dondero as a direct witness, in addition to calling Seery as an adverse witness at the June 8 Hearing, albeit subject to its running objection to the evidentiary format of the hearing.[238] HMIT also filed a witness and exhibit list attaching 80 exhibits and over 2850 pages of evidence and

[236] *Barton v. Barbour,* 104 U.S. 126 (1881).

[237] Bankr. Dkt. Nos. 3815 and 3816.

[238] *See* June 8 Hearing Transcript, 7:20-24, 112:11-13.

moved for the admission of those exhibits at the June 8 Hearing (again, subject to its running objection to the evidentiary format of the hearing).[239]

In determining what appropriate legal standard applies here in the "colorability" analysis, the context in which the Gatekeeper Provision of the Plan was approved seems very relevant. In determining that the Gatekeeper Provision was legal, necessary, and in the best interest of all of the parties, this court set forth in the Confirmation Order a lengthy discussion of the factual support for it, and made specific findings relating to Dondero's post-petition litigation and the need for inclusion of the Gatekeeper Provision in the Plan.[240] This court observed that "prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade" and that "[d]uring the last several months, Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor."[241] This court further found that: (1) Dondero's post-petition litigation "was a result of Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Seery's credible testimony, that if Dondero's plan proposal was not accepted, he would 'burn down the place,'"[242] (2) without the Gatekeeper Provision in place, "Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date" and that "the threat of continued litigation by Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result in lower distributions to creditors because of

[239] *See Hunter Mountain Investment Trust's Witness and Exhibit List in Connection with Its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* ("HMIT W&E List")[Bankr. Dkt. No. 3818] and n.1 thereto; *see also* June 8 Hearing Transcript, 33:7-10.

[240] *See* Confirmation Order ¶¶ 76-79.

[241] *Id.* ¶ 77.

[242] *Id.* ¶ 78. *See supra* note 12.

costs and distraction such litigation or the threats of such litigation would cause,"[243] and, (3) "unless the [court] approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance,[244] the absence of which will present unacceptable risks to parties currently willing to serve in such roles." Thus, as set forth in the Confirmation Order, the Gatekeeper Provision (and the Gatekeeper Orders as well, which were approved based on the same concerns regarding the threat of continued litigation by Dondero and his related entities) required Dondero and related entities to make a threshold showing of colorability, noting that the:

> Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC,* 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017)."[245]

The Fifth Circuit, in approving the Gatekeeper Provision on appeal, noted that that the Plan injunction and Gatekeeper Provision "screen and prevent bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[246]

Again, the court believes it is appropriate to consider the context in which—and the purpose for which—the Gatekeeper Orders and Gatekeeper Provision were entered in assessing

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[243] *Id.*

[244] Asd noted at ⁋ 79 of the Confirmation Order, the bankruptcy court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance for the post-confirmation parties implementing the Plan. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so ***without an exclusion for claims asserted by Mr. Dondero and his affiliates*** required that the Confirmation Order approve the Gatekeeper Provision.

[245] *Id.* ¶ 80.

[246] *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.* (*In re Highland Cap. Mgmt., L.P.*), 48 F.4th 419, 435 (5th Cir. 2022).

how "colorability" should work here. It seems that applying HMIT's proposed Rule 12(b)(6) "plausibility" standard would impose no hurdle at all to litigants and would render the threshold for bringing claims under the Gatekeeper Provision and Gatekeeper Orders entirely duplicative of the motion to dismiss standard that every litigant already faces.

The authorities cited by HMIT in support of its argument for applying a Rule 12(b)(6) standard are inapposite. HMIT has cited no authority that addresses the appropriate standard for assessing the "colorability" of claims in the context of a plan gatekeeper provision—specifically, one implemented in response to a demonstrated need to screen and prevent continued bad-faith, harassing litigation against a chapter 11 debtor that would impede the debtor's implementation of a plan, which is what we have here. HMIT relies on a bevy of cases that include benefits coverage disputes under ERISA, Medicare coverage disputes, and constitutional challenges[247]—none of which implicate the *Barton* doctrine and vexatious-litigant concerns that were referenced by the court in the Plan as justifications for the gatekeeping provisions at issue here.

In affirming the Plan's Gatekeeper Provision, the Fifth Circuit stated, "Courts have long recognized bankruptcy courts can perform a gatekeeping function" and noted, by way of example, that "[u]nder the '*Barton* doctrine,' the bankruptcy court may require a party to 'obtain leave of

[247] *See Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has "a colorable claim to vested benefits" such that the employee may be considered a "participant" under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting "claimants [with] no colorable legal claim" to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant's double jeopardy claim was "colorable" such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at *3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a "colorable claim" against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at *3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a "colorable claim" to warrant the district court's exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at *5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at *5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a "colorable constitutional claim" such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

the bankruptcy court before initiating an action in district court when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor's official capacity."[248] As noted above, the Fifth Circuit found that the Gatekeeper Provision, which "requires that, before any lawsuit is filed, the plaintiff must seek the bankruptcy court's approval of the claim as 'colorable'"—*i.e.*, to "screen and prevent bad-faith litigation,"—is "sound."[249]

On balance, the court views jurisprudence applying the *Barton* doctrine and vexatious litigant injunctions—while not specifically addressing the "colorability" standard under gatekeeping provisions in a plan[250]—as more informative on how to approach "colorability" than any of the other authorities presented by the parties. One example is *In re VistaCare Group, LLC*.[251]

In *VistaCare*, the Third Circuit noted that, under the *Barton* doctrine, "[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation," and emphasized that the "not without foundation" standard, while similar to the standard courts apply in evaluating Rule 12(b)(6) motions to dismiss, "involves a greater degree of flexibility" than a Rule 12(b)(6) motion to dismiss because "the bankruptcy court, which given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit," and "is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor's estate."[252] To satisfy the "*prima facie* case standard," "the movant must do more than meet the liberal notice-pleading

[248] *Id.* at 438 (cleaned up).

[249] *Id.* at 435.

[250] The court acknowledges that the *Barton* doctrine itself would not be directly applicable here because HMIT is proposing to bring the Proposed Complaint in the bankruptcy court – the "appointing" court of Seery.

[251] 678 F.3d 218 (3d Cir. 2012).

[252] *Id.* at 232-233 (cleaned up).

requirements of Rule 8."[253] "[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless."[254] This court agrees with the notion, that "[t]o apply a less stringent standard would eviscerate the protections" of the Gatekeeper Provision and Gatekeeper Orders.[255] The court notes, as well, that courts in the *Barton* doctrine context regularly hold evidentiary hearings on motions for leave to determine if the proposed complaint meets the necessary threshold for pursuing litigation. The Third Circuit in *VistaCare* noted that "[w]hether to hold a hearing [on a motion for leave to bring suit against a trustee] is within the sound discretion of the bankruptcy court,"[256] and that "the decision whether to grant leave may involve a 'balancing of the interests of all parties involved,'" which will ordinarily require an evidentiary hearing.[257] The Third Circuit applied "the deferential abuse of discretion standard" in considering whether the bankruptcy court's granting of leave should be affirmed on appeal.[258]

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[253] *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases).

[254] *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at *2 (N.D. Ill. Nov. 30, 2000).

[255] *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at *2).

[256] *VistaCare*, 678 F.3d at 232 n.12.

[257] *Id.* at 233 (quoting *In re Kashani*, 190 B.R. 875, 886–87 (9th Cir. BAP 1995)). The Third Circuit noted that the bankruptcy court's holding of an evidentiary hearing on the motion for leave was appropriate (though not required in every case)). *Id.* at 232 n.12.

[258] *Id.* at 224 ("We review a bankruptcy court's decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard.") (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)). Courts of appeal routinely apply the deferential abuse of discretion standard to a bankruptcy court's decision regarding whether leave should be granted to sue a trustee. Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. *See In re Bednar*, 2021 WL 1625399, at *3 (B.A.P. 10th Cir. Apr. 27, 2021) ("[T]he Bankruptcy Court's decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . . .") (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App'x 969, 973–74 (11th Cir. 2016) ("Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court's ruling on a *Barton* motion for an abuse of discretion.") (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at *3 (B.A.P. 1st Cir. Sept. 17, 2014) ("Appellate courts review a bankruptcy court's decision to deny a motion for leave to sue under the abuse of discretion standard.") (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

The Fifth Circuit has affirmed a bankruptcy court's conducting of an evidentiary hearing, in the context of applying a *Barton* doctrine analysis as to a proposed lawsuit against a trustee, without any concern that the inquiry was somehow improper.[259]

Similarly, courts in the vexatious litigant context, where there was an injunction requiring a movant to seek leave to pursue claims, have required movants to "show that the claims sought to be asserted have sufficient merit," including that "the proposed filing is both procedural and legally sound," and "that the claims are not brought for any improper purpose, such as harassment."[260] "For a prefiling injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review," such as the "plausibility" standard for a Rule 12(b)(6) motion.[261] Rather, courts apply "an additional layer of review," and "may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action" or that the "litigant's allegations are unlikely," especially "when prior cases have shown the litigant to be untrustworthy or not credible . . . ."[262]

In summary, the court rejects HMIT's positions: (a) that it need only show, at most, that the allegations in the Proposed Complaint are "plausible" under the Rule 12(b)(6) standard for motions to dismiss; and (b) that this court improperly conducted an evidentiary hearing on the Motion for Leave (i.e., that consideration of evidence in this context is impermissible). The court notes, again, that HMIT's argument that this court is not permitted to consider evidence in making its "colorability" determination is completely contradictory to HMIT's actions in filing the Motion

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[259] *See Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at *4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after "a close examination" by the bankruptcy court of the evidence regarding the trustee's actions and finding that "the plaintiffs' allegations are not based in fact"), *aff'd* 799 F. App'x 271 (5th Cir. 2020).

[260] *Silver v. City of San Antonio*, 2020 WL 3803922, at *1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); *see also Silver v. Perez*, 2020 WL 3790489, at *1 (W.D. Tex. July 7, 2020) (same).

[261] *Silver*, 2020 WL 3803922, at *6.

[262] *Id.*

for Leave, where it attached two Dondero declarations as part of 350 pages of "objective evidence" that "supported" its motion.

The court concludes that the appropriate standard to be applied in making its "colorability" determination in ***this*** bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in ***this*** Plan, is a broader standard than the "plausibility" standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves ***an additional level of review***—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are ***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***. Additionally, this court may, and should, take into consideration its ***knowledge*** of the ***bankruptcy proceedings*** and ***the parties*** and any additional evidence presented at the hearing on the Motion for Leave. For ease of reference, the court will refer to this standard of "colorability" as the "Gatekeeper Colorability Test." The court considers this test as a sort of hybrid of what the *Barton* doctrine contemplates and what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place.

2. HMIT's Proposed Complaint Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test or Even Under a Rule 12(b)(6) "Plausibility" Standard.

The court finds, in the exercise of its gatekeeping function under the Gatekeeper Orders and the Gatekeeping Provision in the Plan, that the Motion for Leave should be denied as the claims set forth in the Proposed Complaint are not "colorable" claims. The court makes this determination after considering evidence admitted at the June 8 Hearing, including the testimony of Dondero, Patrick, and Seery, and the numerous exhibits offered by HMIT and the Highland Parties. HMIT's Proposed Claims lack foundation, are without merit, and appear to be motivated by the improper purposes of vexatiousness and harassment. But, even under the less stringent

"plausibility" standard under Rule 12(b)(6) motions to dismiss, where all allegations must be accepted as true, HMIT's "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," fail to "[]cross the line from conceivable to plausible."[263]

HMIT makes unsubstantiated and conclusory allegations in its Motion for Leave and Proposed Complaint that the Claims Purchasers purchased the large allowed unsecured claims only because Seery, while he was CEO of Highland prior to the Effective Date of the Plan, provided them with MNPI and assurances that the Purchased Claims were very valuable. This was allegedly in exchange for their agreement to approve, in their future capacities as members of the CTOB, excessive compensation for Seery in his capacity as the Claimant Trustee after the Effective Date of the Plan. This was an alleged *quid pro quo* that HMIT claims establishes Seery's breach of fiduciary duties and the Claims Purchasers' conspiracy to participate in that breach. As discussed below, these allegations are unsubstantiated and conclusory allegations, and they do not support the inferences that HMIT needs the court to make when it analyzes whether the Proposed Claims are "colorable"—or even merely plausible.

a) HMIT's Proposed Breach of Fiduciary Duties Claim Set Forth in Count I of the Proposed Complaint

Based on HMIT's Proposed Complaint and the evidence admitted at the June 8 Hearing, the court finds that HMIT has not pleaded facts that would support a "colorable" breach of fiduciary duties claim against Seery, under this court's Gatekeeper Colorability Test, nor a plausible claim pursuant to the Rule 12(b) standard. HMIT alleges that Seery breached his fiduciary duties (i) "[b]y disclosing material non-public information to Stonehill and Farallon"

[263] *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

before their purchase of certain Highland claims, and (ii) by receiving "compensation paid to him under the terms of the [CTA] since the Effective Date of the Plan in August 2021."[264]

As earlier noted, both the Reorganized Debtor and the Claimant Trust are organized under Delaware law and, thus, its proposed Count I against Seery for breach of fiduciary duties to these entities is governed by Delaware law under the "Internal Affairs Doctrine."[265] Under Delaware law, "[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege '(1) that a fiduciary duty existed and (2) that the defendant breached that duty.'"[266] HMIT fails to plausibly or sufficiently allege either element such that its breach of fiduciary duty claims against Seery could survive.

Under Delaware law, officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders.[267] Because Seery did not owe any "duty" to HMIT directly and individually, the Proposed Complaint fails to state a claim for breach of fiduciary duties to HMIT. HMIT's "legal conclusion[]" that Seery "owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate"[268] "do[es] not suffice" to plausibly allege the existence of any actionable fiduciary relationship.[269] And as discussed earlier in the standing section, HMIT does not have standing to assert a breach of fiduciary claim derivatively on behalf

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[264] Proposed Complaint ¶¶ 64–67.

[265] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[266] *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at *30 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at *8 (Del. Ch. Feb. 28, 2020)).

[267] *See Gilbert v El Paso Co.*, 1988 WL 124325, at *9 (Del. Ch. Nov. 21, 1988) ("[D]irectors' fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.") *aff'd,* 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at *11 (Del. Ch. Nov. 7, 2013) (same).

[268] Proposed Complaint ¶ 63.

[269] *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

of the Claimant Trust or Reorganized Debtor. But even if HMIT had sufficiently alleged the existence of a fiduciary duty by Seery to HMIT—or to the Reorganized Debtor or Claimant Trust that HMIT would have standing to assert—Seery's alleged communications with Farallon would not have breached those duties.

HMIT alleges that Seery ""disclose[d] material non-public information to Stonehill and Farallon," and they "acted on inside information and Seery's secret assurances of great profits."[270] But the Proposed Complaint does not make any factual allegations regarding HMIT's "conclusory allegations," and its "legal conclusions" are "purely speculative, devoid of factual support," and therefore "stop[] short of the line between possibility and plausibility of entitlement to relief"[271] (and certainly stop short of being "colorable"). HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, and what "assurances of great profits" he made to Farallon or to Stonehill. At the June 8 Hearing, Dondero could only clarify that he believed the MGM Email to have been MNPI and that he ***believed*** that Seery ***must have*** communicated that MNPI to Farallon at some point between December 17, 2020 (the date the MGM Email was sent) and May 28, 2021 (the day that Dondero alleges to have had three telephone calls with representatives of Farallon, Messrs. Patel and Linn, regarding Farallon's purchase of the bankruptcy claims). Dondero alleges that, during these phone calls, Patel and Linn gave Dondero no reason for their purchase of the claims that "made [any] sense." Dondero and Patrick also both testified that neither of them had any personal knowledge: (a) of a *quid pro quo* arrangement between Seery and the Claims Purchasers, (b) of Seery having actually communicated any information from the MGM Email to Farallon, or (c) whether Seery's post-Effective Date compensation had or had not been negotiated in an arms' length transaction. Dondero only

[270] Proposed Complaint ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.

[271] *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up).

speculates regarding these things, because it "made no sense" to him that the Claims Purchasers would have acquired the bankruptcy claims without having received the MNPI. But HMIT admits in the Proposed Complaint that Farallon and Stonehill purchased the Highland claims at discounts of 43% to 65% to their allowed amounts. Thus, they would receive at least an 18% return based on publicly available estimates in Highland's court-approved Disclosure Statement.[272] The evidence established that, if the acquisition of the UBS claims is excluded—recall that the UBS claims were not purchased until August 2021, which was after the May 28, 2021 phones calls that Dondero made to Farallon personnel—the Claims Purchasers would have expected to net over $33 million in profits, or nearly a 30% return on their investment, had Highland met its projections (this is based on the aggregate purchase price of $113 million for the non-UBS claims purchased in the Spring 2021).

To be clear, the only purported MNPI identified in HMIT's Proposed Complaint was the MGM Email Dondero sent to Seery containing "information regarding Amazon and Apple's interest in acquiring MGM." But, the evidence showed that this information was widely reported in the financial press at the time. Thus, it could not have constituted MNPI as a matter of law.[273] Moreover, the evidence showed that Dondero ***did not*** communicate in the MGM Email the actual inside information that he claimed to have obtained as a board member of MGM–which was that Amazon had met MGM's "strike price" and that the MGM board was going into exclusive negotiations with Amazon to culminate the merger with them (and, thus, Apple was no longer considered a potential purchaser). Dondero admitted that he included Apple in the MGM Email for the purpose of making it look like there was a competitive process still ongoing. In other

[272] Proposed Complaint ¶¶ 3, 37, 42.

[273] *See, e.g.*, *SEC v. Cuban*, 2013 WL 791405, at *10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not "material, nonpublic information" and "'becomes public when disclosed to achieve a broad dissemination to the investing public'") (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)).

words, the MGM Email, at the very least, did not include MNPI and, at worst, was deceptive regarding the status of the negotiations between MGM and potential purchasers.

As to HMIT's allegations that Seery's post-Effective Date compensation is "excessive" and that the negotiations between Seery and the CTOB "were not arm's-length,"[274] the evidence at the June 8 Hearing reflected that the allegations are completely speculative, without any foundation whatsoever, and lack merit. And they are also simply not plausible. HMIT fails to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty.[275]

b) HMIT's Proposed Claims Set Forth in Counts II (Knowing Participation in Breach of Fiduciaries) and III (Conspiracy)

HMIT seeks to hold the Claims Purchasers secondarily liable for Seery's alleged breach of fiduciaries duties on an aiding and abetting theory in Count II of the Proposed Complaint[276] and, along with Seery, on a civil conspiracy theory of liability in Count III of the Proposed Complaint.[277] Because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting breach of fiduciary duties claim against the Claims Purchasers (Count II) is also governed by Delaware law.[278] HMIT's conspiracy cause of action against the Claims

[274] Proposed Complaint ¶¶ 4, 13, 54, 74.

[275] *See Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]though the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation.").

[276] Proposed Complaint ¶¶ 69-74.

[277] Proposed Complaint ¶¶ 75-81.

[278] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

Purchasers and Seery (Count III), on the other hand, does not involve a matter of "internal affairs" or of corporate governance, so it is governed by Texas law under the Plan.[279]

As an initial matter, because HMIT does not present either a "colorable"—or even plausible claim—that Seery breached his fiduciary duties, it cannot show that it has alleged a "colorable" or plausible claim for secondary liability for the same alleged wrongdoing.[280] In addition, HMIT's civil conspiracy claim against the Claims Purchasers and Seery is based entirely on Dondero's speculation and unsupported inferences and, thus, HMIT has not "colorably" alleged, or even plausibly alleged, its conspiracy claim. Under Texas law, "civil conspiracy is a theory of vicarious liability and not an independent tort."[281] "[T]he elements of civil conspiracy [are] "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result."[282] While HMIT alleges that "Defendants conspired with each other to unlawfully breach fiduciary duties,"[283] it is simply a "legal conclusion" and not the kind of allegation that the court must assume to be true even for purposes of determining plausibility under a motion to dismiss.[284]

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[279] *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M)(which provides for the application of Texas law to "the rights and obligations arising under this Plan" except for "corporate governance matters.")

[280] *See English v. Narang*, 2019 WL 1300855, at *14 (Del. Ch. Mar. 20, 2019) ("As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.") (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at *10 (Tex. App. Jan. 25, 2022) ("[A] defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.") (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)). Because HMIT's breach of fiduciary duty claim is governed by Delaware law, its aiding and abetting theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas). By contrast, "conspiracy is not an internal affair" or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

[281] *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019).

[282] *Id.* at 141 (cleaned up).

[283] Proposed Complaint ¶ 76.

[284] *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66).

HMIT repeats four times that Seery provided MNPI to Farallon and Stonehill as a "as a *quid pro quo*" for "additional compensation,"[285] each time based upon conclusory allegations based "upon information and belief" and, frankly, pure speculation from Dondero that his imagined "scheme," "covert *quid pro quo,*" and secret "conspiracy" between Seery, on the one hand, and Farallon and Stonehill, on the other,[286] ***must have*** occurred because "[i]t made no sense for the [Claims] Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk" (i.e., "[t]he counter-intuitive nature of the purchases at issue compels the conclusion that the [Claims] Purchasers acted on inside information and Seery's assurance of great profits.")[287] Importantly, HMIT admits that the Claims Purchasers would have turned a profit based on the information available to them at the time of their acquisitions of the Purchased Claims.[288] HMIT's allegations about the level of potential profits were contradicted by their own allegations and other evidence admitted at the June 8 Hearing. But Dondero's speculation about what level of projected return would be sufficient to justify the acquisition of the claims by the Claims Purchasers, or any other third-party investor, does not give rise to a plausible inference that they acted improperly.[289] Thus, HMIT cannot meet

[285] Proposed Complaint ¶ 77; *see also id.* ¶¶ 4, 47, 74.

[286] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.").

[287] *Id.*

[288] *See, e.g.*, *id.* ¶ 3 (alleging that acquiring the claims "did not offer a ***sufficient*** potential profit to justify the publicly disclosed risk")(emphasis added); ¶ 43 ("Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . ."); ¶ 49 ("Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* ***significant*** profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.") (third emphasis added).

[289] In fact, the court did not allow Mr. Dondero to testify regarding what kind of information a hypothetical investor in bankruptcy claims would require or what level of potential profits would justify the purchase of bankruptcy claims by investors in the bankruptcy claims trading market because he was testifying as a fact witness, not an expert. Thus, the court only allowed Dondero to testify as to what data ***he*** (or entities he controls or controlled) would rely on, what ***his*** risk tolerance would have been, and what level of potential profits ***he*** would have required to purchase an allowed unsecured bankruptcy claim in a post-confirmation situation. June 8 Hearing Transcript, 129:6-130:4.

its burden, under the Gatekeeper Colorability Test, of making a prima facie showing that its allegations do not lack foundation or merit. Nor can it meet a plausibility standard.

In addition, contrary to the Proposed Complaint's statement that it would have been "***impossible*** for Stonehill and Farallon (in the absence of insider information) to forecast ***any*** significant profit at the time of their multi-million-dollar investments," the evidence showed there were already reports in the financial press that MGM was engaging with Amazon, Apple, and others in selling its media portfolio, and thus the prospect of an MGM transaction increasing the value of, and return on, the Purchased Claims, "at the time of their multi-million-dollar investments" was publicly available information.[290] HMIT's suggestion that the Claims Purchasers were in possession of inside information not publicly available when they acquired the Purchased Claims is simply not plausible. Nor is HMIT's allegation that "[u]pon information and belief" Farallon "conducted no due diligence but relied on Seery's profit guarantees" plausible. The allegations regarding Farallon not conducting any due diligence are based, again, entirely on Dondero's speculation and inferences he made from what Patel and Linn (of Farallon) allegedly told him on May 28, 2021; Dondero did not testify that either Patel or Linn ever told him specifically that they had conducted no due diligence. HMIT's allegations in the Proposed Complaint that ***Farallon*** "conducted no due diligence," are based on Dondero's speculation, unsubstantiated, and contradicted by the testimony of Seery, who testified that emails to him from Linn in June 2020 and later in January 2021 indicated to him that Farallon, at least, had been conducting some level of due diligence in that they had been following and paying attention to the

[290] The court notes, as well, that the Claim Purchasers acquired the UBS claims in August 2021—approximately two and a half months ***after*** the announcement of the MGM-Amazon transaction (which was on May 26, 2021)—a fact that HMIT makes no attempt to harmonize with its conspiracy theory that the Claims Purchasers profited from the misuse of MNPI allegedly given to them by Seery.

Highland case.[291] In addition, there are no allegations in the Proposed Complaint regarding whether Stonehill conducted due diligence or not, and Patrick testified that neither he nor HMIT had any personal knowledge of how much due diligence Farallon or Stonehill did prior to acquiring the Purchased Claims.[292] The court finds and concludes that HMIT's allegations of aiding and abetting and conspiracy in Counts II and III of the Proposed Complaint are based on unsubstantiated inferences and speculation, lack internal consistency, and lack consistency with verifiable public facts. Accordingly, HMIT has failed to show that these claims have a foundation and merit and has also failed to show that they are plausible.

c) HMIT's Proposed Claims Set Forth in Counts IV (Equitable Disallowance), V (Unjust Enrichment and Constructive Trust), and VI (Declaratory Relief) of the Proposed Complaint

i. Count IV (Equitable Disallowance).

In Count IV of its Proposed Complaint, HMIT seeks "equitable disallowance" of the claims acquired by Farallon's and Stonehill's special purpose entities Muck and Jessup, "to the extent over and above their initial investment," and, in the alternative, equitable subordination of their claims to all claims and interests, including HMIT's unvested Class 10 Contingent Claimant Trust Interest, "given [their] willful, inequitable, bad faith conduct" of allegedly "purchasing the Claims based on material non-public information" and being "unfairly advantaged" in "earning significant profits on their purchases."[293] As noted above, these remedies are not available to HMIT.[294]

First, HMIT's request to equitably subordinate the Purchased Claims to all claims and interests is not permitted because Bankruptcy Code § 510(c), by its terms, permits equitable

[291] *See* June 8 Hearing Transcript, 239:6-21.
[292] *See id.*, 310:19-312:2.
[293] Proposed Complaint ¶¶ 83-87.
[294] *See infra* pages 74-75.

subordination of a ***claim to other claims*** or an ***interest to other interests*** but does not permit equitable subordination of a ***claim to interests***.

Second, "equitable" disallowance of claims is not an available remedy in the Fifth Circuit pursuant to the *Mobile Steel* case.[295]

Third, reconsideration of an already-allowed claim in a bankruptcy case can only be accomplished through Bankruptcy Code § 502(j), which, pursuant to Federal Rule of Bankruptcy Procedure 9024, allows reconsideration of allowance of a claim that was allowed following ***a contest*** (which is certainly the case with respect to the Purchased Claims) based on the "equities of the case." But this is only if the request for reconsideration is made within the one-year limitation prescribed in Rule 60(c) of the Federal Rules of Civil Procedure. HMIT's request for disallowance of Muck and Jessup's Purchased Claims (if it could somehow be construed as a request for reconsideration of their claims), is clearly untimely, as it is being made well beyond a year since their allowance by this court following contests and approval of Rule 9019 settlements. Thus, the court finds that HMIT has not alleged a colorable or even plausible claim in Count IV of the Proposed Complaint and, therefore, the Motion for Leave should be denied.

ii. Count V (Unjust Enrichment and Constructive Trust)

In Count V of the Proposed Complaint, HMIT alleges that, "by acquiring the Claims using [MNPI], Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity" and that "[a]llowing [the Claims Purchasers] to retain their ill-gotten benefits would be unconscionable;" thus, HMIT alleges, the Claims Purchasers "should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment" and "a constructive trust should be imposed on such proceeds . . . ."[296]

[295] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

[296] Proposed Complaint ¶¶ 89-93.

HMIT alleges further that "Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restitute all compensation he has received from the outset of his collusive activities" and "[a]lternatively he should be required to disgorge and restitute all compensation received since the Effective Date" over which a constructive trust should be imposed.[297] HMIT has not alleged a colorable or even a plausible claim for unjust enrichment or constructive trust in Count V.

Under Texas law,[298] "[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay."[299] Thus, "when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory."[300] Here, as noted above, HMIT's only alleged injury is a diminution of the value of its unvested Contingent Claimant Trust Interest by virtue of Seery's allegedly having wrongfully obtained excessive compensation, with the help of the Claims Purchasers. ***Yet Seery's compensation is governed by express agreements*** (i.e., the Plan and the CTA). Thus, HMIT's claim based on unjust enrichment is not an available theory of recovery.

iii. Count VI (Declaratory Relief)

HMIT seeks declaratory relief in Count VI of the Proposed Complaint, essentially, that Dondero's conspiracy theory is correct and that HMIT's would succeed on the merits with respect

[297] *Id.* ¶ 94.

[298] Under the Plan, Texas law governs HMIT's "claim" for unjust enrichment because it is not a "corporate governance matter." (Plan Art. XII.M.) It also governs HMIT's "claim" for constructive trust, which "is merely a remedy used to grant relief on the underlying cause of action." *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

[299] *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).

[300] *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)).

to the Proposed Claims if it were permitted leave to bring them in an adversary proceeding.[301] But, a request for declaratory relief is not "an independent cause of action"[302] and "in the absence of any underlying viable claims such relief is unavailable."[303] This court has already found and concluded that HMIT would not have constitutional or prudential standing to bring the underlying causes of action in the Proposed Complaint. This court has also found and concluded that all of the Proposed Claims are without foundation or merit and are not even plausible and are all; being brought for the improper purpose of continuing Dondero's vexatious, harassing, bad-faith litigation. Thus, HMIT would not be entitled to pursue declaratory judgement relief as requested in Count VI of the Proposed Complaint.

d) HMIT Has No Basis to Seek Punitive Damages

HMIT separately alleges that the Claims Purchasers' and Seery's "misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others," thus entitling HMIT to an award of punitive damages under applicable law. But, HMIT abandoned its proposed fraud claim that was in its Original Proposed Complaint, so its sole claim for primary liability is Seery's alleged breach of his fiduciary duties. And under Delaware law, the "court cannot award punitive damages in [a] fiduciary duty action."[304]

[301] Proposed Complaint ¶¶ 96-99.

[302] *See Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 932 (5th Cir. 2023).

[303] *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at *2 (S.D. Tex. June 7, 2016) (citing *Collin Cty. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)); *see also Hopkins v. Cornerstone Am.*

[304] *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff'd* 682 F. App'x 24 (2d Cir. 2017).

3. HMIT Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test Because It Seeks to Bring the Proposed Complaint for Improper Purposes of Harassment and Bad-Faith, Vexatiousness.

Under this court's Gatekeeper Colorability Test, in addition to showing that its allegations and claims are not without foundation or merit, HMIT must also show that the Proposed Claims are not being brought for any improper purpose. Taking into consideration the court's knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, the court finds that HMIT is acting at the behest of, and under the control or influence of, Dondero in continuing to pursue harassing, bad faith, vexatious litigation to achieve his desired result in these bankruptcy proceedings. So, in addition to failing to show that its Proposed Claims have foundation and merit, HMIT cannot show that it is pursuing the Proposed Claims for a proper purpose and, thus, cannot meet the requirements under the Gatekeeper Colorability Test; HMIT's Motion for Leave should be denied.

IV. CONCLUSION

The court concludes, having taken into consideration both its knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, that HMIT's Motion for Leave should be denied for three independent reasons: (1) HMIT would lack constitutional standing to bring the Proposed Claims (and, thus, the federal courts would lack subject matter jurisdiction over the Proposed Claims); (2) even if HMIT would have constitutional standing to pursue the Proposed Claims, it would lack prudential standing to bring the Proposed Claims; and (3) even if HMIT would have both constitutional standing and prudential standing to bring the Proposed Claims, it has not met its burden under the Gatekeeper Colorability Test of showing that its Proposed Claims are "colorable" claims—that the Proposed Claims are not without foundation, not without merit, and not being pursued for an improper purpose. Moreover,

even if this court's Gatekeeper Colorability Test should be replaced with a Rule 12(b)(6) "plausibility" standard, the Proposed Claims are not plausible.

Accordingly,

IT IS ORDERED that HMIT's Motion for Leave be, and hereby is **DENIED**.

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

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

In re	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
Reorganized Debtor.[1]	§	

MOTION FOR LEAVE TO FILE A DELAWARE COMPLAINT

[1] The *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., (As Modified)* [Dkt. No. 1808] (the "***Plan***"), filed by Highland Capital Management, L.P. ("***HCMLP***") became effective on August 11, 2021 (the "***Effective Date***").

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I. PRELIMINARY STATEMENT

1. Movant Hunter Mountain Investment Trust ("Movant") seeks leave to file a complaint in Delaware Chancery Court seeking the removal of James P. Seery, Jr. ("Mr. Seery") as Trustee of the Claimant Trust created pursuant to the plan of reorganization of Highland Capital Management, L.P. ("Highland" or the "Debtor"). Under applicable Delaware law, removal of a trustee is warranted when the trustee commits a breach of trust, substantially impairs the administration of the trust through the Trustee's continued service, is unwilling or unable to perform his duties properly, or has hostility toward one or more beneficiaries that threatens efficient administration of the trust. As set forth below in greater detail, all four of these circumstances exist here.

2. Mr. Seery has breached his duties, including his duty of loyalty by using Claimant Trust assets to fund a separate indemnity sub-trust (to pay his own potential legal expenses – in a blatant conflict of interest) instead of using those assets to pay the claims of Claimant Trust beneficiaries. In addition, Mr. Seery is overtly hostile to Movant—the holder of Class 10 claims and the largest holder of Contingent Trust Interests under the Claimant Trust. Either of these circumstances alone justifies Mr. Seery's removal, but the combination requires it. The attached proposed Delaware complaint states a "colorable" claim, and this Motion should be granted.

II. STATEMENT OF FACTS

A. Highland's Plan Contemplated Orderly "Monetization" of Highland's Assets, Payment of Eleven Classes of Claims, and Winding Up of Highland's Business

3. The Bankruptcy Court entered an order (the "Confirmation Order") confirming the Fifth Amended Plan of Highland Capital Management, L.P. (as Modified) (the "Plan") on February 22, 2021.[2] In broad strokes, the Plan called for "the orderly wind-down of the Debtor's estate,

[2] Confirmation Order, Dkt. 1943.

including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board."[3]

4. The Plan contemplated payment of 11 classes of claims. Classes 1 through 7 have already been paid. The remainder are: Class 8, comprising general unsecured claims, of which 93% of allowed claims have been paid;[4] Class 9, comprising subordinated claims; Class 10, comprising Class B/C limited partnership interest claims; and Class 11, comprising Class A limited partnership interest claims.[5] Highland's former equity holders were assigned Class 10 and 11 claims. Movant Hunter Mountain Investment Trust is the only holder of Class 10 claims and owner of the lion's share of the residual equity in Highland.[6]

5. The Plan contemplated that all of Highland's assets would be managed through three entities: (1) a Claimant Trust, (2) a Litigation Sub-Trust, and (3) the Reorganized Debtor.[7] The Claimant Trust was tasked with administering "Claimant Trust Assets" and serving as the Reorganized Debtor's limited partner.[8] The Litigation Sub-Trust, a sub-trust of the Claimant Trust, was tasked with pursuing "Estate Claims."[9] And the Reorganized Debtor was tasked with

[3] *Id.*, ¶ 2.

[4] *See* Dkts. 3956 at p. 7 and 3757 at p. 13.

[5] *See* Plan, Ex. A to Dkt. 1943, at Art. III, §§ B, H.

[6] *See* Plan at Art. I, § B, ¶¶ 34-36.

[7] *See* Plan at Art. IV, § A.

[8] The Plan defines "Claimant Trust Assets" to mean all assets of the estate that are not "Reorganized Debtor Assets," including all causes of action, available cash, proceeds realized from such assets, any rights of setoff or recoupment and other defenses with respect to such assets, any assets transferred to the Claimant Trust by the Reorganized Debtor, the limited partnership interests in the Reorganized Debtor, and the ownership interests in the Reorganized Debtor's new general partner. *See* Plan at Art. I, § B, ¶ 26.

[9] *See* Plan at Art. IV, § A. The Plan defines "Estate Claims" to mean "any and all estate claims and causes of action against [James] Dondero, [Mark] Okada, other insiders of the Debtor, and any of their related entities, including any promissory notes held by any of the foregoing. Plan at Art. I, § B, ¶ 60; Dkt. 354, Ex. A at p. 4 (defining "Estate Claims" to mean "claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and each of the Related Entities, including any promissory notes held by any of the foregoing.").

administering the "Reorganized Debtor Assets" and managing the wind down of the "Managed Funds."[10]

B. The Confirmation Order and the Plan Contemplated the Creation of a Claimant Trust Managed by Mr. Seery under the Supervision of an Oversight Board

6. The confirmed Plan contemplated the creation of a "Claimant Trust," to be created pursuant to a separate Claimant Trust Agreement, the "CTA."[11] According to the Bankruptcy Court, the whole reason for the Claimant Trust was to "manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders."[12] The Court further observed that, upon full payment of allowed claims, the Claimant Trust contemplated that "any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests)."[13]

7. Beneficiaries of the Claimant Trust are termed "Claimant Trust Beneficiaries," a term defined to mean (1) holders of allowed general unsecured claims, (2) holders of allowed subordinated claims, and upon certification by the Claimant Trustee that holders of allowed general unsecured and allowed subordinated claims have been paid in full with interest, and (3) holders of allowed Class A and B/C limited partnership interests.[14] Notably, the CTA repeatedly instructs that the Claimant Trustee is to act "with a view toward maximizing value in a reasonable time" for the purpose of

[10] *See* Plan at Art. IV, § B. The Plan defines "Reorganized Debtor Assets" to mean "any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust." Plan at Art. I, § B, ¶ 115. The Plan defines "Managed Funds" to mean Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Partners, L.P., and any other investment vehicle managed by Highland pursuant to an executory contract. Plan at Art. I, § B, ¶ 84.

[11] *See* Plan at Art. IV, § B.

[12] *See* Confirmation Order, Dkt. 1943, at ¶ 2.

[13] *Id.* at ¶ 42(c).

[14] *See* CTA, Dkt. 3521-5, at ¶ 1.1(h).

distributing the Claimant Trust assets to Claimant Trust Beneficiaries.[15] Consistent with the Confirmation Order's description of the Plan's waterfall, upon paying the holders of claims in Classes 1-9 in full with interest, the Claimant Trustee is obligated to file with the Bankruptcy Court a certification (called the "GUC Certification" in the CTA) deeming holders of Class A, B, and C limited partnership interests (*i.e.*, Class 10 and 11 claims holders) "Beneficiaries" of the CTA with entitlement to distributions of residual assets under the terms of the CTA.[16]

8. Under the Plan, Mr. Seery is the designated Claimant Trustee tasked with the obligation to oversee the administration and distribution of Claimant Trust Assets to unsecured claims and equity interests represented by Classes 8 through 11.[17] Importantly, both the Confirmation Order and the Plan contemplated that Mr. Seery's management of the Claimant Trust would be supervised by a five-member committee (comprised of at least two disinterested members), referred to in the CTA as the "Oversight Board."[18]

9. In its Confirmation Order, the Bankruptcy Court described the Oversight Board's role and its membership at some length. According to the Court, "[t]he Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor…**will all be managed and overseen by the Claimant Trust Oversight Committee**."[19] In terms of the Board's membership, the Court explained that the members of the Unsecured Creditors Committee ("UCC") had volunteered to serve as the initial members of the

[15] *Id.* at ¶ 2.3(b)(viii); *see also id.* at ¶ 2.3(b)(i) (Claimant Trustee must act "in an expeditious but orderly manner with a view toward maximizing value"), ¶ 3.2(a) ("Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust.").

[16] *Id.* at § 5.1(c).

[17] *See* Plan, Ex. A to Dkt. 1943, at Art. I, § B, ¶ 28 and Art. IV, § B.1.

[18] *See Id* at Art. IV, § B.2; CTA, ¶¶ 1.1(ll), 4.1. Despite the CTA's mandate that the Oversight Board "shall" be comprised of at least two disinterested members, the initial Board's makeup consisted of four members of the UCC and only one disinterested member, David Pauker. *See id.*, ¶ 1.1(ll).

[19] *See* Confirmation Order, Dkt. 1943, at ¶ 42(a) (emphasis added).

Oversight Board.[20] The Confirmation Order goes on to discuss in detail the initial members and their qualifications to serve.[21] In approving their appointment, the Court emphasized Mr. Seery's testimony that "he believe[d] the selection of the . . . members of the Claimant Trust Oversight Board [was] in the best interests of Debtor's economic constituents."[22] Plainly, the Court believed that a five-member Board would oversee Mr. Seery's conduct as Claimant Trustee to ensure that the Plan would be fully performed.

10. The Plan likewise contemplated that the five-member Oversight Board would supervise Mr. Seery's monetization of Claimant Trust assets and his management and distribution of those assets after monetization. Indeed, the Plan expressly stated that the Oversight Board would oversee "the management and monetization of the Claimant Trust Assets, [] the management of the Reorganized Debtor . . . and the Litigation Sub-Trust . . ., subject to the terms of the Claimant Trust Agreement."[23] The CTA, in turn, provides that the Oversight Board "shall," among other things: (1) "consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust;" and (2) "oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee."[24] The CTA further limits the Claimant Trustee's power to undertake certain actions without "vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements" of the Agreement.[25] Thus, the Claimant Trustee should consult the Oversight Board before terminating or extending the term of the Claimant Trust, litigating or settling any "Material Claims," selling or monetizing certain assets, including Reorganized Debtor

[20] *Id.* at ¶ 8.
[21] *Id.* at ¶ 44.
[22] *Id.* at ¶ 42.
[23] *See* Plan, Ex. A to Dkt. 1943, at Art. IV, § B.2.
[24] CTA, Dkt. 3521-5, at ¶ 4.2(a).
[25] *Id.* at ¶ 3.3(b).

assets valued at greater than $3 million, making certain cash distributions to Claimant Trust Beneficiaries, making distributions on "Disputed Claims," reserving cash or cash equivalents to meet contingent liabilities (including indemnification obligations), borrowing, investing Claimant Trust assets, changing the Claimant Trustee's compensation, or retaining certain counsel, experts, advisors, or other professionals.[26] In other words, the Oversight Board, as originally conceived, was contemplated to have a substantial governance role in the day-to-day activities of the Claimant Trust and the Claimant Trustee.

11. In its September 7, 2022 opinion, confirming the Plan in part, the Fifth Circuit likewise observed that, "[t]he whole operation is overseen by a Claimant Trust Oversight Board (the "Oversight Board") comprised of four creditor representatives and one restructuring advisor."[27] Notably, in the same opinion, the Fifth Circuit struck down a provision of the Plan purporting to exculpate from liability parties other than Highland, the UCC and its members, and the three independent directors appointed to manage Highland during bankruptcy, holding that broader exculpation was inconsistent with 11 U.S.C. § 524(e).[28] In short, the Fifth Circuit refused to exculpate Mr. Seery for actions taken in his role as Claimant Trustee and expressed the understanding that his post-confirmation conduct as Trustee of the Claimant Trust would be affirmatively overseen by an independent Oversight Board.

C. The Plan Did Not Contemplate, but the Court Subsequently Approved, the Creation of an Indemnity Subtrust

12. One entity the Plan did not contemplate was an indemnity sub-trust designed to cover potential post-confirmation claims against estate professionals. Instead, Mr. Seery testified

[26] *Id.* at ¶ 3.3(b)(i)-(xii).

[27] *Matter of Highland Capital Management, L.P.*, 48 F.4th 419, 427 (5th Cir. 2022).

[28] *Id.* at 438. Nor is Mr. Seery exculpated for "any acts or omissions…arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct." Confirmation Order, Dkt 1943, at ¶ Y.

extensively during the hearing on Plan confirmation that Highland would obtain director and officer ("D&O") insurance to cover any claims against or liabilities imposed on those individuals charged with implementing the Plan. Indeed, one of the conditions to the Plan becoming effective was "the Debtor obtaining D&O Insurance acceptable to the Debtor, the Committee, the Claimant Trust Oversight Committee, and the Litigation Trustee."[29] Nonetheless, four months after Plan confirmation, Highland filed a motion with the Bankruptcy Court seeking authorization to create a new "Indemnity Subtrust" designed to maintain an indemnity trust account with a balance of "not less than $25 million" that would conditionally indemnify post-confirmation professionals "in lieu of obtaining D&O insurance."[30]

13. The parties to be conditionally indemnified under the Indemnity Subtrust include Mr. Seery as Claimant Trustee, the Oversight Board and its members (described below), their professionals, the Litigation Trustee, the Reorganized Debtor and its partners, members, directors, and officers, and the new general partner of the Reorganized Debtor and its partners, members, directors, and officers (including Mr. Seery).[31] In support of the Subtrust Motion, Mr. Seery testified that he and other post-confirmation management "intend[ed] to look for insurance coverage that would appropriately replace the Indemnity Trust if that's a more efficient vehicle."[32] Over various objections, the Court granted Highland's Subtrust Motion on July 21, 2021.[33]

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[29] *See* Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief (the "Subtrust Motion"), Dkt. 2491 at ¶ 13.

[30] *Id.* at ¶¶ 21, 26.

[31] *See id.* at ¶ 18 n.8; *see also* CTA, Dkt. 3521-5 at § 8.2.

[32] July 19, 2021 Hearing Transcript, Dkt. 2598 at 45:14-25.

[33] Order Approving Debtor's Motion for Entry of an Order (I) Authorizing the (A) creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief, Dkt. 2599.

14. The Subtrust Motion identified Mr. Seery as the "Indemnity Trust Administrator."[34] In his capacity as Administrator, Mr. Seery was given total control of the administration of the Indemnity Subtrust:

> …For any action contemplated or required in connection with the operation of the Indemnity Trust, and for any guidance or instruction to be provided to the Indemnity Trustee, **such function, rights and responsibility shall be vested in the Indemnity Trust Administrator, and the Indemnity Trustee will take written directions from the Indemnity Trust Administrator**, in such form specified in the Indemnity Trust Agreement and otherwise satisfactory to the Indemnity Trustee.[35]

And although Highland's motion assured the Court that **"[b]eneficiaries will not be involved in or have any rights with respect to the administration of the Indemnity Trust** or have any right to direct the actions of the Indemnity Trustee with respect to the Indemnity Trust or the assets held in the Indemnity Trust Account," Highland carved out Mr. Seery (to the extent he is acting in his capacity as Indemnity Trust Administrator) from that exclusion.[36]

D. Despite Governance Protections Contained in the Confirmation Order, the Plan, and the CTA, with Regard to Indemnification Issues, Mr. Seery Operates with Unfettered Discretion and without Supervision of the Contemplated Oversight Board

15. Notwithstanding that creditor constituencies voted to support, and the Bankruptcy Court approved, the Plan, understanding that there would be a partially independent, five-member Oversight Board supervising the monetization and distribution of estate assets, that contemplated governance structure has long since been ignored and has failed to safeguard the Claimant Trust. The representations in the Plan, the findings by this Court, and the belief of the Fifth Circuit that Mr. Seery's conduct as Claimant Trustee would be affirmatively overseen to assure that the Plan would be fully performed, are – at least as to the appropriate use of funds and indemnification -- all false.

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[34] *See* Subtrust Motion, Dkt. 2491, at ¶ 21 under "Indemnity Trust Administrator" on p. 8.

[35] *Id.* (emphasis added) under "Governance of the Indemnity Trust" on p. 9.

[36] *Id.* (emphasis added).

16. The five-member Board no longer exists. Instead, the Board is comprised of two claims buyers (and current Claimant Trust Beneficiaries)—Muck Holdings and Jessup Holdings—and one ostensibly disinterested member, Richard Katz,[37] about whom no information demonstrating independence was provided with his appointment.[38] Although the CTA mandates that the Board includes two disinterested members, there has only ever been Mr. Katz. That contrivance creates potential governance problems. For example, the Board must in many instances approve actions undertaken by the Claimant Trustee by a "majority" vote.[39] But if any Board member has a conflict or *potential* conflict of interest with respect to an issue at hand (including, without limitation, a pecuniary interest in the issue), then the conflicted member cannot vote.[40] In the case of the current three-member Board, any potential conflict of interest thus derails a majority vote and precludes the Board from approving actions contemplated by the Claimant Trustee.

17. Even without this governance problem, contrary to the impression left by the provisions of the Plan discussed above,[41] the Claimant Trust lacks the requisite safeguards to prevent abuse by the Claimant Trustee. That has proven particularly problematic when it comes to the Claimant Trust's indemnity obligations. Specifically, the CTA states:

> Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to the holders of Trust Interests at least annually the Cash on hand net of any amounts that…(d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement **(including, but not limited**

[37] While Movants have little to go on, if Mr. Katz is the Richard Katz of Torque Point Advisors, he may have interacted with Mr. Seery while he was at Lehman Brothers. *See* TORQUE POINT ADVISORS, https://www.torquepointllc.com/ (last visited Dec. 20, 2023) (involved in restructuring of Lehman Brothers Holdings Inc.) and Jim Seery, LINKEDIN, (listing Lehman Brothers, 1999-2009) [App. 110-112]. Furthermore, the Claims Purchasers, Muck and Jessup are proposed defendants, together with Mr. Seery and others, in a separate proposed adversary proceeding involving allegations of use of material non-public information. As such, Movant has alleged that at least two members of the Oversight Board are in an alleged conspiracy with Mr. Seery. *See* Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding, Dkt. 3816.

[38] *See* Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust, Dkt. 2801.

[39] *See* CTA, Dkt. 3521-5 at §§ 3.3(b)(i)-(xii), 3.4, 3.8, 3.9, and 4.6(a).

[40] *See id.* at § 4.6(c).

[41] See notes 18 to 28 *supra* and accompanying text.

> **to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive the termination of the Claimant Trustee)**….[42]

18. In other words, Mr. Seery, both as the Claimant Trustee and as the Indemnity Trust Administrator, effectively has the sole authority to reserve for potential indemnification obligations ***without any*** Oversight Board or other supervision. This is problematic because Mr. Seery (both as claimant Trustee and as the owner of the Reorganized Debtor's general partner) is one of the principal indemnified parties who stand to benefit from the funding of the indemnification reserve. That means Mr. Seery has a vested financial interest in all decisions he makes regarding the indemnification reserve, including how much to reserve and whether to pay out of the reserve to indemnified parties, including himself. Mr. Seery's unfettered right over the Indemnity Sub-Trust is a material deviation from the Plan: while the Plan always contemplated a conditional indemnification right to certain parties, such right was to be supervised by the Oversight Board. Not only has the Oversight Board with its mechanism for independent members been removed from the supervision of the indemnification *res*, but the sole party with authority over the indemnification *res*, Mr. Seery, is conflicted.

E. Mr. Seery Has Used the Indemnification Reserve to Avoid Paying Creditors in Full and to Benefit Himself

19. Mr. Seery has used the Claimant Trust and the Indemnity Subtrust to his own pecuniary advantage. The Claimant Trust now has more than sufficient assets to pay holders of Classes 8 and 9 in full with interest with surplus available to former equity. Yet it has failed to do so, despite the mandate of the CTA that Mr. Seery act expeditiously to maximize value for Claimant Trust Beneficiaries. Instead, he has been funding an increasingly sizeable indemnification reserve

[42] CTA, Dkt. 3521-5 at § 6.1(a) (emphasis added).

without any discernable justification other than as a subterfuge for avoiding certifying that holders of Class 10 and 11 claims (including Movant) are Claimant Trust Beneficiaries.

20. Based on a consolidated balance sheet filed on July 6, 2023, the Claimant Trust has about $250 million in assets (of which an estimated $180 million is cash) and, at that time, only about $126 million in remaining non-Dondero-related Class 8 and 9 claims.[43]

Highland Claimant Trust
Summarized Consolidated Balance Sheet [1]
As of May 31, 2023
The accompanying notes are integral to understanding this balance sheet
(Estimated and unaudited, $ in millions)

	Balance per books	adjustments (see notes)	Adjusted balance
Assets			
Cash and equivalents	$ 13	$ -	$ 13
Disputed claims reserve [2]	12	-	12
Other restricted cash	12	-	12
Investments [3]	118	(12) [6]	106
Notes receivable, net [4]	86	(83) [4]	3
Other assets	6	-	6
Total assets	**$ 247**	**$ (95)**	**$ 152**
Liabilities			
Secured and other debt	$ -	$ -	$ -
Distribution payable [2]	12	-	12
Additional indemnification reserves	-	90 [5]	90
Other liabilities	15	13 [5]	28
Total liabilities [5]	**$ 27**	**$ 103**	**$ 130**
Book/adjusted book equity (see accompanying notes) [5]	**220**	**(198)**	**22**
Total liabilities and book/adjusted book equity	**$ 247**	**$ (95)**	**$ 152**
Supplemental Info: [7]			
Sum of remaining allowed Class 8 Trust Beneficiaries, excluding interest	$ 27		
Sum of remaining allowed Class 9 Trust Beneficiaries, excluding interest	99		
Sum of face amount of pending Class 8/9 potential Trust Beneficiaries, excluding interest	13		
Sub-total	$ 139		

21. Since that time, the Post-Confirmation Reports for the period ending September 30, 2023 reflect that an additional $14,361,077 has been paid to GUCs, with $6,805,592 being paid to GUC Classes 6 and 7, leaving a balance of $119,222,451 remaining in Class 8 and 9 claims (subtracting the total "Paid Cumulative" from the "Total Allowed" amounts as reflected on page 7 of those Reports and adding in the amounts paid to GUC Classes 6 and 7).[44] The Reports do not disclose

[43] Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust, Dkt. 3872 at Ex. A. The Claimant Trust's asset balance is exclusive of any recovery on litigation against dozens of defendants by Marc S. Kirschner, the Trustee of the Litigation Sub-Trust (the "Kirschner Action").

[44] *See* Amended Post-Confirmation Reports of Reorganized Debtor and of the Highland Claimant Trust, Dkts. 3955 and 3956.

the current cash position of the Claimant Trust. Cash may have increased or decreased. But in the worst case, adjusting the cash from amounts shown in the May 31, 2023 Balance Sheet by the amount paid out to Classes 8 and 9, the Trust still has cash of at least $165 million, and remaining Class 8 and 9 claims that now total less than $120 million.

22. Notably, the Claimant Trust's balance sheet assets do not include a fully cash-funded at least $35 million indemnity account (reportedly now $50 million) that presumably may be used to pay creditors in the event it is not consumed by the estate's professionals.[45] In addition, to reduce the Claimant Trust's book value, Highland purports to add "non-book" adjustments to the balance sheet. One such adjustment gives zero asset value to certain notes payable by Mr. Dondero and his alleged affiliates.[46] However, $70 million of those notes are now fully bonded by cash deposited in the registry of the District Court.[47]

23. Another accounting "adjustment" creates a $90 million "additional indemnification reserve," on top of the at least $35 (or $50) million cash indemnity reserve, with no explanation.[48] Indeed, were it not for the at least $125-140 million in inappropriate indemnity reserves—which is $100 million more than Debtor originally proposed it would need in insurance coverage when it sought approval of the Indemnity Subtrust—Highland's creditors could have been paid, the estate closed, and the residual estate returned to equity months if not years ago.

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[45] *See* Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust, Dkt. 3872 at Ex. A, Note 1. The information provided does not make it clear whether the $90 million reserve is reduced by the $15 million increase in the Indemnity Sub-Trust.

[46] *Id.* at Ex. A.

[47] *See* Order Granting Joint Agreed Emergency Motion for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals, Dkt. 149; Notices of Bonding, Case No. 3:21-cv-00881-X (N.D. Tex.), Dkts. 151, 152, 160-162 [App. 039-078].

[48] *See* Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust, Dkt. 3872 at Ex. A.

24. As the Post-Confirmation Reports reveal, all of the administrative claims, secured claims, and priority claims have been paid in full.[49] Thus, as a practical matter, the Claimant Trust could pay the Class 8 and 9 claims in full with interest, Mr. Seery could file the GUC Certification,[50] and Movant (along with other Holders of Class A, B, and C of limited partnership interests) would become a fully vested Claimant Trust Beneficiary under the terms of the CTA.[51] All of these steps could be, and indeed, should have been, completed without any interference from the Indemnity Subtrust Administrator.

25. The failure to pay creditors has had a material impact on the Movant and other Holders of Class A, B, and C of limited partnership interests. In the first nine months of 2023, Debtor and the Claimant Trust accumulated $48,447,234 in (undisclosed) expenses,[52] for an average of $5.4 million per month. Even after the voluntary stay of the *Kirschner* litigation, which appears to have been a significant cost-driver, the Debtor and the Claimant Trust have continued to accumulate $4.6 million per month in expenses. While monies to pay Class 8 and Class 9 Claims remain unimpaired, cash to pay the former equity holders continues to disappear as undisclosed expenses.

26. As explained below in greater detail, the proposed Delaware Complaint sets forth claims that are both plausible under federal pleading standards[53] and "colorable" under this Court's articulated gatekeeping standard.

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[49] *See* Amended Post-Confirmation Reports of Reorganized Debtor and of the Highland Claimant Trust, Dkts. 3955 and 3956.

[50] *See* CTA, Dkt. 3521-5 at §§ 1.1(aa), 5.1(c).

[51] *See id.*, §§ 1.1(h), 5.1.

[52] *See* Dkt. 3756, 3757, 3888, 3889, 3955, and 3956 (showing Claimant Trust expenditures of $60,421,756 and Debtor expenditures of $37,430,919 in Q1 – Q3 2023, then subtracting out $29,405,441 in distributions to creditors and $20 million presumably added to the Indemnity Sub-Trust).

[53] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (holding a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face" in order to survive a motion to dismiss pursuant to Rule 12(b)(6)).

III. ARGUMENT

A. The Proposed Complaint Alleges a Colorable Claim That Mr. Seery Should be Removed as Claimant Trustee

27. According to this Court, to state a "colorable" claim under the gatekeeping provision of the Plan (the "Gatekeeper Provision"), a moving party must do more than allege a "plausible" claim for relief—the standard applied by federal district courts in deciding whether a claim can proceed under Federal Rule of Civil Procedure 12(b)(6).[54] Instead, a movant in this Court must survive an "***additional level of review***."[55] Specifically, the movant bears the "burden of making a prima facie case that its proposed claims are ***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***."[56] And in deciding whether the movant has met this prima facie burden, the Court "may, and should, take into consideration its ***knowledge*** of the ***bankruptcy proceedings*** and ***the parties*** and any additional evidence presented at the hearing on the Motion for Leave."[57] The Court termed this new standard the "Gatekeeper Colorability Test."[58]

28. As set forth below, Movant's Delaware complaint meets the Court's Gatekeeper Colorability Test because it sets forth a *prima facie* case under Delaware law that Mr. Seery should

[54] Movant has objected and continues to object to the Court's ruling with respect to the standard that should be applied under the Gatekeeper Provision. Movant has appealed the Court's rulings regarding this standard. *See* Hunter Mountain Investment Trust's Second Notice of Appeal, Dkt. 3945. No admission is made by or on behalf of Movant in connection with this Motion regarding the "colorability" standard applied by the Court or the Court's related substantive and procedural rulings. Movant expressly reserves all of Movant's substantive and procedural rights and waives none of the same in connection with this Motion, the proposed Complaint, or otherwise. Movant believes the proper standard is set forth in *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007) (holding a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face" in order to survive a motion to dismiss pursuant to Rule 12(b)(6)), and that this standard is also satisfied by this Motion.

[55] Memorandum Opinion, Dkt. 3903 at p. 91 (emphasis in original).

[56] *Id.* (emphases in original).

[57] *Id.* (emphases in original).

[58] Movant disagrees with this new test and is challenging this test on appeal at this time. Nothing in this current Motion should be deemed an admission or an acknowledgment of the propriety of this test. *See* Dkt. 3915.

be removed as Claimant Trustee. Moreover, Movant's Delaware complaint is not brought for any improper purpose but, rather, to protect Movant's sizeable residual interest in the Claimant Trust.

1) Movant's Delaware Complaint Sets Forth a *Prima Facie* Case for Removal of Mr. Seery as Claimant Trustee

29. Under Delaware law, the Court of Chancery may remove the trustee of a Delaware statutory trust "on [its] own initiative or on petition of a trustor, another officeholder, or beneficiary" in any of five circumstances:

> a) *The officeholder has committed a breach of trust*; or
>
> b) *The continued service of the officeholder substantially impairs the administration of the trust*; or
>
> c) The court, having due regard for the expressed intention of the trustor and the best interests of the beneficiaries, determines that notwithstanding the absence of a breach of trust, there exists:
>
> i. A substantial change in circumstances;
>
> ii. *Unfitness, unwillingness or inability of the officeholder to administer the trust or perform its duties properly; or*
>
> iii. *Hostility between the officeholder and beneficiaries or other officeholders that threatens the efficient administration of the trust*.

Del. Code Ann. tit. 12, § 3327 (emphases added). As set forth below in greater detail, Movant is an intended beneficiary of the Claimant Trust and, as such, Movant is entitled to ask a Delaware court to remove Mr. Seery as Claimant Trustee because he has engaged in multiple acts warranting his removal under Delaware statute. Accordingly, Movant's complaint sets forth a *prima facie* case, and the Court should grant its Motion and allow the case to proceed.

2) Movant Has Standing to Seek Mr. Seery's Removal

30. At the outset, in reality, Movant should be recognized as being "in the money" and a vested beneficiary with the associated standing to pursue the proposed Delaware complaint. In any event, however, Movant also has standing to seek removal of Mr. Seery because Movant is an intended (albeit contingent) beneficiary of the Claimant Trust under the CTA. *All* beneficiaries,

including contingent beneficiaries, have standing under Delaware law to seek to remove a trustee. To argue otherwise – that only "vested" beneficiaries under the CTA may bring such an action – is to impermissibly limit the statute.

31. The Delaware Code does not define the term "beneficiary," but Delaware courts follow the RESTATEMENT (THIRD) OF TRUSTS,[59] which defines beneficiaries to include contingent beneficiaries:

> *Persons who are beneficiaries: in general.* The "beneficiaries" of a trust are the persons or classes of persons, or the successors in interest of persons or class members, upon whom the settlor manifested an intention to confer beneficial interests (vested **or contingent**) under the trust, plus persons who hold powers of appointment (special or general) or have reversionary interests by operation of law. Also included are persons who have succeeded to interests of beneficiaries by assignment, inheritance, or otherwise.[60]

32. Further, the RESTATEMENT expressly contemplates that contingent beneficiaries may file suit to enforce a private trust:

> *"Beneficiaries."* A suit to enforce a private trust ordinarily (see Reporter's Note) may be maintained by any beneficiary whose rights are or may be adversely affected by the matter(s) at issue. The beneficiaries of a trust include any person who holds a beneficial interest, present or future, vested or contingent.[61]

And "enforcement" extends to "enforcement proceedings in a more comprehensive sense, such as petitions for removal of a trustee . . . even though no breach-of-trust issue is involved."[62]

33. Delaware courts routinely hold that, in interpreting undefined statutory terms, courts must give those terms a "reasonable and sensible meaning in light of their intent and purpose." *Angstadt v. Red Clay Consol. Sch. Dist.*, 4 A.3d 382, 390 (Del. 2010). In ascertaining the "reasonable

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[59] *See, e.g.*, *In re Tr. Under Will of Flint for the Benefit of Shadek*, 118 A.3d 182, 195 (Del. Ch. 2015); *Tigani v. Tigani*, No. CV 2017-0786-KSJM, 2021 WL 1197576, at *14 (Del. Ch. Mar. 30, 2021), *aff'd,* 271 A.3d 741 (Del. 2022).

[60] RESTATEMENT (THIRD) OF TRUSTS, § 48 cmt. a (2003) (emphasis added).

[61] RESTATEMENT (THIRD) OF TRUSTS, § 94 cmt. b (2012).

[62] *Id.*, § 94, Reporter's Notes, cmt. a(1).

and sensible meaning" of terms, Delaware courts rely on dictionaries as a source of interpretation. *See id.*

34. Black's Law Dictionary defines "beneficiary" as, among other things, "[s]omeone who is designated to receive the advantages from an action or change . . . or to receive something as a result of a legal arrangement or instrument" and includes both "contingent benficiar[ies]" and "direct benficiar[ies]" within the definition without any qualification regarding their rights.[63] By contrast, Black's distinguishes an "incidental beneficiary" as a "third-party beneficiary, who, though benefiting indirectly, is not intended to benefit from a contract and thus does not acquire rights under the contract."[64] Nothing in the CTA indicates that Movants are merely "incidental beneficiaries."

35. In light of the RESTATEMENT and the definition in Black's Law Dictionary, it is reasonable and sensible to interpret the word "beneficiary" used in Section 3327 of the Delaware statute to include contingent beneficiaries. Rules of statutory interpretation support this conclusion. As the Delaware Supreme Court has explained, a court "may not engraft upon a statute language which has been clearly excluded therefrom by the Legislature." *Guiricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982) (citing *Wilmington Trust Co. v. Barry*, 338 A.2d 575, 578 (Del Super. 1975), *aff'd*, 359 A.2d 664 (Del. 1976)). If the Delaware Legislature had intended that only "vested" beneficiaries could bring an action to remove a trustee, as opposed to any beneficiary (whether residual or contingent), it would have so specified. In this case, the relevant statute—Del. Code Ann. tit. 12, § 3327—uses the term "beneficiary" without defining or limiting it. Accordingly, a court may not do what the Delaware Legislature refused to do by engrafting the term "vested" into the statute to qualify the term "beneficiary."

[63] *Black's Law Dictionary* (11th ed. 2019).

[64] *Id.*

36. Delaware courts refuse to read statutory language restrictively to exclude certain classes of beneficiaries. *See Estate of Tigani*, No. CV 7339-ML, 2016 WL 593169, at *14 (Del. Ch. Feb. 12, 2016) (holding that the "statute's use of the general term beneficiary, without any language restricting the class of beneficiary to whom it refers, fairly encompasses a vested beneficiary subject to divestiture"); *Estate of Necastro*, No. C.A. 10,538, 1991 WL 29958, at *1 (Del. Ch. Feb. 28, 1991) (rejecting a "restrictive reading" of "beneficiary" under 12 Del.C. § 2302(d) and instead holding that "Exceptants [whom the parties characterized as "contingent beneficiaries"] have standing . . . based upon their indirect interest in a share of the estate through their status as beneficiaries of a testamentary trust").

37. In short, neither the applicable Delaware statute nor Delaware case law limits the term "beneficiary" to "vested" beneficiaries to the exclusion of contingent ones.

38. The Claimant Trustee will no doubt argue that the language of the CTA purportedly strips Movant of its standing to seek removal of the Trustee. In particular, the CTA states that holders of Contingent Trust Interests (including Movant) "shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the 'GUC Payment Certification')."[65] The Agreement further states that "Equity Holders will only be deemed 'Beneficiaries' under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court."[66] But Delaware law makes clear that a trust agreement, however worded, may

[65] CTA, Dkt. 3521-5 at § 5.1(c).
[66] *Id.*

not strip the trustee's duty of good faith and fair dealing.[67] And in this case, observance of that duty precludes any argument that the language of the CTA undercuts Movant's standing.

39. Under Delaware law, unless the governing trust agreement says otherwise, the trustee of a statutory trust has those duties set forth in common law, including the duties of loyalty, good faith, and due care. *See* Del. Code Ann. tit. 12, § 3809; *Rende v. Rende*, No. 2021-0734-SEM, 2023 WL 2180572, at *11 (Del. Ch. Feb. 23, 2023). And while a governing trust agreement may expressly disclaim these duties (although this one does not), Delaware law prohibits the elimination of the duty of good faith and fair dealing. *In re National Collegiate Student Loan Trusts Litigation*, 251 A.3d 116, 185-86 (Del. Ch. 2020) ("While parties may agree to waive default fiduciary duties, the DSTA forbids parties from eliminating the "implied contractual covenant of good faith and fair dealing.") (citing Del. Code. Ann. tit. 12, § 3806(c)).

40. The duty of good faith and fair dealing is particularly important here, where Movant's status as a "beneficiary" under the CTA is purportedly dependent upon Mr. Seery's discretion to file a GUC Certification declaring Movant's status as such. "Stated in its most general terms, the implied covenant requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain." *Dunlap v. State Farm Fire and Cas. Co.*, 878 A.2d 434, 442 (Del. 2005) (internal quotations omitted). "Thus, parties are liable for breaching the covenant when their conduct frustrates the overarching purpose of the contract by taking advantage of their position to control implementation of the agreement's terms." *Id.* (internal quotations omitted).

41. Given the purpose of the covenant, "it is possible to rest a claim of breach of the implied covenant of good faith and fair dealing on the assertion that defendants have deliberately

[67] The CTA is governed by Delaware law. *Id.* at § 11.10.

prevented the occurrence of conditions precedent." *Injective Labs Inc. v. Wang*, No. CV 22-943-WCB, 2023 WL 3318477, at *7 (D. Del. May 9, 2023) (quoting *Benerofe v. Cha*, No. 14614, 1998WL 83081, at *6 (Del. Ch. Feb. 20, 1998)). *See also Snow Phipps Grp., LLC v. Kcake Acquisition, Inc.*, No. CV 2020-0282-KSJM, 2021 WL 1714202, at *53 (Del. Ch. Apr. 30, 2021) (noting the duty of good faith and fair dealing "requires some cooperation ... either by refraining from conduct that will prevent or hinder the occurrence of that condition or by taking affirmative steps to cause its occurrence") (internal quotes omitted).

42. Mr. Seery's failure and refusal to pay the Class 8 and 9 creditors, in an attempt to prevent the Contingent Interest Holders' interests from vesting under the terms of the CTA, falls squarely within the scope of the duty of good faith and fair dealing. In *Injective Labs Inc. v. Wang*, the defendant asserted a counterclaim for the breach of the implied duty of good faith and fair dealing. The defendant argued that plaintiff breached the implied duty by "sending a belated request that [defendant] satisfy a condition precedent, knowing that it was effectively impossible for him to do so." *Injective Labs Inc. v. Wang*, 2023 WL 3318477, at *7. The court rejected plaintiff's motion to dismiss the counterclaim, holding "[t]hat allegation, and in particular the allegation that [plaintiff] knew that [defendant] would be unable to satisfy the condition precedent . . . is directed to the type of conduct that typically falls within the scope of the implied duty of good faith and fair dealing." *Id.*

43. In another case, the Court of Appeals for the Seventh Circuit affirmed summary judgment against a defendant because the defendant "did not exercise good faith under the contract by attempting to hinder the occurrence of the condition precedent in the contract." *Unit Trainship, Inc. v. Soo Line R. Co.*, 905 F.2d 160, 162-63 (7th Cir. 1990). There, the parties entered a contract for the running of a unit-train between Chicago and Seattle. *Id.* at 161. Because the running of the unit-train required the approval of the Interstate Commerce Commission ("ICC"), the parties filed a joint petition with the ICC seeking approval. *Id.* Thereafter, one party moved to withdraw from the ICC

proceeding and failed to participate in the joint petition, thereby stymieing the condition precedent to the performance of the contract. *Id.* The Seventh Circuit, applying Illinois law, which is similar in this regard to Delaware law, held that "where a party's obligation is subject to a condition precedent, a duty of good faith and fair dealing is imposed upon that party to cooperate and to not hinder the occurrence of the condition." *Id.* at 163.

44. These cases inform the Claimant Trustee's contractual duties under Delaware law. In *Injective Labs Inc.*, the plaintiff/counterclaim defendant prevented the performance of a condition precedent, which violated the duty of good faith and fair dealing. 2023 WL 3318477, at *7. In *Unit Trainship*, one of the parties to the relevant contract prevented the occurrence of a condition precedent, which violated the duty of good faith and fair dealing. 905 F.2d at 163. Similarly, here the Claimant Trustee is deliberately refusing to pay the unsecured creditors in Classes 8 and 9 with interest, thereby breaching his duty to pay Classes 10 and 11. That violates the Trustee's duty of good faith and fair dealing and fatally undermines any argument that Movant lacks standing to seek removal of the Trustee.

45. As other RESTATEMENT jurisdictions have recognized, Mr. Seery's conduct warrants treating those classes as fully vested. "[V]esting cannot be postponed by unreasonable delay in distributing an estate and [] when there is such delay, contingent interests vest at the time distribution ***should*** have been made." *Estate of Cornell v. Johnson*, 367 P.3d 173, 178 (Idaho 2016) (emphasis added) (discussed in RESTATEMENT (SECOND) OF TRUSTS, § 198 (1959)); *see also Edwards v. Gillis*, 146 Cal.Rptr.3d 256, 263 (Cal.App. 4 Dist., 2012) ("when there is [unreasonable] delay contingent interests vest at the time distribution should have been made."). As set forth above, the Claimant Trust had sufficient assets to pay unsecured creditors in Classes 8 and 9 in full with interest at least as early

as July 2023, and in all probability as early as September 2022.[68] And the CTA requires Mr. Seery as Claimant Trustee to "make timely distributions and not unduly prolong the duration of the Claimant Trust."[69] Had Mr. Seery fulfilled that mandate, he could and should have distributed remaining funds to Classes 8 and 9 by July 2023, filed the GUC Certification with the Court, and begun distributing remaining assets to Classes 10 and 11. In short, Movant's interests were properly vested under the CTA many months ago, and Delaware law therefore treats Movant as a Claimant Trust Beneficiary, regardless of the language of the CTA.

46. Indeed, any argument that the CTA precludes Movant from vindicating its rights (including by seeking removal of the Trustee) only underscores why Delaware law is crafted the way it is. Were it not for the duty of good faith and fair dealing imposed by Delaware law, Mr. Seery arguably could increase the funds set aside for indemnification continually, hold final distributions to Class 8 and Class 9 creditors in abeyance, and refuse to file the GUC Certification based on the theoretical possibility that he might in the future need to draw upon more than the originally contemplated indemnity reserve of $25 million to pay his own legal expenses (all while drawing a salary of $150,000 per month). And it appears that, for now, Mr. Seery is content to do just that. This is exactly the kind of conflict that Section 3327 of the Delaware Code was designed to prevent, and the duty of good faith and fair dealing in Delaware precludes the Claimant Trustee from relying on the language of the CTA to prevent the Delaware courts from remedying the conflict. Under these circumstances, Movant has standing to proceed under Delaware law.

[68] Two of the estate's major private equity positions sold in May 2022, and the remaining largest positions sold in September 2022. The May 2022 assets were Cornerstone Healthcare Group [*see* App. 013-017] and MGM [*see* App. 009-012]. The September 2022 positions were CCS Medical [*see* App. 018-022] and Trussway [*see* App. 023-025].

[69] CTA, Dkt. 3521-5 at § 3.2(a).

3) Delaware Law Mandates Movant's Complaint Proceed in Delaware Court

47. Under Delaware law, beneficial owners of a trust are entitled to seek redress in the courts of Delaware, regardless of the language of the relevant trust agreement: "Except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction or in the State, ***a beneficial owner who is not a trustee may not waive its right to maintain a legal action or proceeding in the courts of the State with respect to matters relating to the organization or internal affairs of a statutory trust***." Del. Code Ann. tit. 12, § 3804(e) (emphasis added). This is because the removal of a trustee is a "matter[] relating to the organization or internal affairs of a statutory trust." *United Bhd. of Carpenters Pension Plan v. Fellner*, C.A. No. 9475-VCN, 2015 WL 894810, at *2 n. 13 (Del. Ch. Feb. 26, 2015). Where a company's internal affairs are involved, Delaware law disregards the forum selection clause in the parties' trust agreement. *Id.*

48. Because Movant's Delaware complaint seeks relief relating to the internal affairs of the Claimant Trust, Movant is entitled to have its dispute decided by the courts of Delaware, regardless of any contrary choice of forum clause in the CTA.[70] The Court should permit Movant to file its Delaware complaint in the Delaware Chancery Court.

4) There Are Multiple Grounds for Seery's Removal

49. As set forth in the proposed Delaware Complaint, Mr. Seery's removal as Claimant Trustee is warranted for multiple reasons. Specifically, Mr. Seery has breached his duty of loyalty by failing to pay creditors, failing to file the GUC Certification, and failing to certify that equity holders in Classes 10 and 11 (of which Movant is the largest) are vested under the CTA. Seery has failed to act expeditiously as required under the terms of the CTA,[71] and has failed to maximize the value of the Claimant Trust for the benefit of the Claimant Trust Beneficiaries by filing unnecessary

[70] *See* CTA, Dkt. 3521-5 at § 11.11.

[71] *See, e.g.*, *id.* at §§ 2.2(b), 2.3(b)(i), 3.2(a).

proceedings, including the Kirschner Action, and spending inordinate amounts of cash. Those breaches of duty warrant Mr. Seery's removal under Del. Code Ann. tit. 12, § 3327(1). Further, Mr. Seery's roles as both Claimant Trustee and as Indemnity Subtrust Administrator substantially impairs the administration of the Claimant Trust, warranting his removal under Del. Code Ann. tit. 12, § 3327(2). In addition, Mr. Seery's removal is warranted under Del. Code Ann. tit. 12, § 3327(3)(b) and (c) because he is unwilling to perform his duties as Claimant Trustee, and has manifested a personal hostility toward, and conflict with, Movant and the holders of Contingent Trust Interests.

a) Mr. Seery Has Breached His Duty of Loyalty

50. The facts set forth above demonstrate without doubt that Mr. Seery has breached his duty of loyalty in administering the Claimant Trust. A trustee breaches the duty of loyalty by acting in his own self-interest "[i]nstead of evaluating what was in the best interests of [a] [t]rust." *Paradee v. Paradee*, No. 4988-VCL, 2010 WL 3959604, at *10 (Del. Ch. Oct. 5, 2010). "Self-interested transactions involving a fiduciary or one in a confidential relationship with another are presumptively fraudulent and voidable in equity. If the transaction is challenged, the burden of persuasion to justify upholding the transaction is on the fiduciary." *Hardy v. Hardy*, No. CIV.A. 7531-VCP, 2014 WL 3736331 at *8 (Del. Ch. July 29, 2014) (internal quotations omitted). Significantly, and importantly in this case, an inequitable action taken "does not become permissible simply because it is legally possible" within the letter of the law or the language of an agreement. *Coster v. UIP Companies, Inc.*, 255 A.3d 952, 953 (Del. 2021) (citing *Schnell v. Chris-Craft Indus., Inc.*, 285 A.2d 437, 439 (Del. 1971)). Self-dealing amounts to a breach of duty of loyalty. *See Taglialatela v. Galvin*, No. 5841-MA, 2015 WL 757880, at *4 (Del. Ch. Feb. 23, 2015); *Walls v. Peck*, Civ. A. No. 497, 1979 WL 26236, at *4 (Del. Ch. Oct. 24, 1979); GEORGE GLEASON BOGERT, THE LAW OF TRUSTS AND TRUSTEES, § 543 (3d ed. 2019) ("The trustee must administer the trust with complete loyalty to the

interests of the beneficiary, without consideration of the personal interests of the trustee or the interests of third persons.").

51. Indeed "[u]nlike corporate law, '[u]nder trust law, self-dealing on the part of a trustee is virtually prohibited.'" *Stegemeier v. Magness*, 728 A.2d 557, 563 (Del. 1999) (citing *Oberly v. Kirby*, 592 A.2d 445, 466 (Del. 1991). As a result, the interested trustee bears the burden of persuasion to justify upholding the transaction. *Id.*

52. In this case, as the Delaware Complaint alleges, Mr. Seery has breached his duty of loyalty. That breach was inevitable given the manner in which Mr. Seery and Highland constructed the Claimant Trust and the Indemnity Subtrust. As set forth above, Mr. Seery is the Trustee of the Claimant Trust with an absolute duty to manage and administer that trust for the benefit of the Trust's beneficiaries. But Mr. Seery is also the Indemnity Trust Administrator charged with funding and spending an indemnity reserve for the benefit of Indemnified Parties, including himself. His duties as Claimant Trustee and Indemnity Subtrustee are in hopeless conflict as a result of this arrangement.

53. As now apparent, that conflict has manifested to the detriment of the intended beneficiaries of the Claimant Trust, including Movant. Essentially, Mr. Seery is seeking to hold the assets of the Claimant Trust hostage by reserving an increasing and inexplicably gigantic indemnity reserve to benefit the Indemnified Parties, including himself.

54. But consider the nature of claims potentially triggering indemnification, such as the insider trading claims against Mr. Seery, Muck and Jessop.[72] If the potentially indemnified parties prevail, there can be no judgment to indemnify. If the potentially indemnified parties lose, the nature of the claim is such that there would be no indemnity owed – so how could $125 million in

[72] *See* Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding, Dkt. 3816.

indemnification reserves be needed? That large indemnity reserve is antithetical to the interests of the intended beneficiaries of the Claimant Trust.

55. Moreover, Mr. Seery's conduct in contravention of his duty of loyalty to beneficiaries of the Claimant Trust contravenes the language and intent of the Plan itself. The Plan does not require holders of Class 10 and 11 claims (or parties related thereto) to grant releases of liability to the Claimant Trustee or the Indemnified Parties, but by refusing to pay out Classes 8 and 9 and refusing to issue the required GUC Certification in favor of funding up to $125 million in indemnity reserves, that is functionally what Mr. Seery is seeking to leverage Classes 10 and 11 (and even other non-parties) to provide.[73]

56. Forcing Classes 10 and 11 to bear the cost of Mr. Seery's indemnification reserve also goes beyond what the CTA allows. Paragraph 8.2 of that Agreement expressly allows parties to sue Mr. Seery and other indemnified parties for actions that constitute fraud, willful misconduct, or gross negligence, provided that they seek Bankruptcy Court approval to proceed on such claims. In other words, not even the CTA contemplates that Classes 10 and 11 would grant full, general releases to the Indemnified Parties, much less fund their defense for cognizable claims under the Agreement. By trying to insulate himself from ***all*** claims as a condition of performing his mandatory duties under the CTA, Mr. Seery is putting his personal self-interest ahead of the beneficiaries of the Trust.

57. There is ample case law holding that a trustee may not make a release (or its equivalent) a condition of performing his duties to a trust. Indeed, as the Delaware Chancery Court has explained, "[a]lthough the practice of demanding a release is widespread, a trustee who insists on a release as the price [of] doing what is in the best interests of the trust—and what the trustee's fiduciary duties therefore require—engages in self-interested conduct by extracting a personal benefit

[73] Highland Parties' Objection to Motion to Stay and Motion to Compel Mediation, Dkt. 3796, at fn. 4.

at the expense of the trust and its beneficiaries." *J.P. Morgan Tr. Co. of Delaware, Tr. of Fisher 2006 Tr. v. Fisher*, No. CV 12894-VCL, 2021 WL 2407858, at *22 n.9 (Del. Ch. June 14, 2021), *judgment entered sub nom* (noting that "[t]he trustee's insistence on a release may also fuel the beneficiaries' concern about improper conduct, as it did in this case").

58. Similarly, the Southern District of New York has held that a fiduciary's refusal to distribute assets without getting a release can constitute a breach of fiduciary duty:

> Defendants also argue that the demand for a release was not a breach of fiduciary duty because there is no merit to KeyBank's underlying claims. I have held for the reasons stated above that some of KeyBank's claims have been properly pleaded and survive a motion to dismiss. Even if that were not the case, however, the First Amended Complaint properly alleges that the refusal to deliver stock to which KeyBank was entitled – based on the defendants' self-interested insistence that they be released from KeyBank's claims – was an abuse of defendants' control of the buyer that had nothing to do with the buyer's legitimate business interests and that instead served only the self-interests of the defendants themselves.

Keybank Nat'l Ass'n v. Franklin Advisers, Inc., 616 B.R. 14, 44 (Bankr. S.D.N.Y. 2020).

59. In yet another similar case, the Southern District of New York held that a trustee breached its fiduciary duties by insisting on indemnification before carrying out its contractual obligations. In *FMS Bonds, Inc. v. Bank of New York Mellon*, the plaintiffs, holders of industrial revenue bonds, filed suit for breach of contract and breach of fiduciary duty against the indenture trustee responsible for servicing the bonds. No. 15 CIV. 9375 (ER), 2016 WL 4059155, at *1 (S.D.N.Y. July 28, 2016). The plaintiffs alleged the trustee failed to file a timely proof of claim in the bankruptcy proceedings on behalf of the entities obligated to make payments under the bonds. *Id.* at 7. The trustee offered to file a late proof of claim, but only if the plaintiffs agreed to "further indemnification protection" for the trustee. *Id.* The plaintiffs argued that "where the Trustee's 'gross negligence' prevented bondholders from collecting on the Bonds, the Trustee's inaction and insistence on further indemnification in order to rectify that gross negligence was a breach of the Trustee's fiduciary duties." *Id.* at 13. The trustee moved to dismiss plaintiffs' breach of fiduciary duty

claim, and the court denied the motion, stating that the plaintiffs' allegations "that the Trustee . . . breached its fiduciary duties by insisting on indemnification before taking further action" properly pleaded a breach of fiduciary duty claim. *Id.* at 14.

60. The reasoning of these cases applies with equal force here. Mr. Seery is obligated under the CTA to administer the Claimant Trust expeditiously, with an aim toward maximizing value for the Trust's intended beneficiaries, and to distribute the Claimant Trust's assets to those beneficiaries within a reasonable time. Instead of doing so, Mr. Seery is increasing the indemnity reserve so he can indemnify himself and others against future, unidentified lawsuits, potentially in perpetuity. In other words, like the trustees in *Fisher*, *Keybank National Association*, and *FMS Bonds*, Mr. Seery is refusing to comply with his obligations under the relevant trust agreement to extract some benefit for himself. That is a breach of the duty of loyalty, and that is a sufficient basis for Movant to seek Mr. Seery's removal under Delaware law.

b) Mr. Seery's Continued Service Substantially Impairs the Administration of the Trust

61. Mr. Seery's dual roles as Claimant Trustee and Indemnity Subtrust Administrator create an irreconcilable conflict of interest that substantially impairs the administration of the trust. As Claimant Trustee, Mr. Seery has duties to the Claimant Trust Beneficiaries to timely pay the remaining Class 8 and 9 claims, and file the GUC Certification. However, Mr. Seery, as an Indemnified Party as well as Indemnity Subtrust Administrator, instead is using the assets of the Claimant Trust to fund a $35-50 million cash reserve to the Indemnity Subtrust and create an additional $90 million "indemnity reserve." In other words, Mr. Seery has chosen to pursue creation of an "indemnity wall" rather than perform his duties as Claimant Trustee. Under these circumstances, Mr. Seery's continued service as Claimant Trustee while he also serves as Indemnity Subtrust Administrator impairs the administration of the Claimant Trust, warranting his removal as Trustee.

c) Mr. Seery Is Hostile to Movant, the Largest Class 10 Equity Holder

62. "Removal of a trustee is appropriate where 'there exists . . . hostility between the trustee[] and the beneficiaries that threatens the efficient administration of the trust.'" *Matter of Jeremy Paradise Dynasty Tr.*, No. CV 2021-0354-KSJM, 2021 WL 3625375, at *1 (Del. Ch. Aug. 17, 2021). Where, as here, hostility rises to the point of preventing trust funds from being distributed, removal is appropriate. *See, e.g.*, *Taglialatela v. Galvin*, No. CIV.A. 5841-MA, 2013 WL 2122044, at *3 (Del. Ch. May 14, 2013) ("The ongoing hostility and lack of communication and trust between the Trustee and three of her siblings have prevented the trust funds from being distributed to the six beneficiaries in a reasonable time after the settlor's death. . . . I conclude that it is in the best interest of the beneficiaries here to remove [the Trustee.]").

63. There can be no doubt that Mr. Seery is hostile to Movant and the holders of Class 10 and 11 claims (the holders of Contingent Trust Interests under the CTA). Among other things:

- Mr. Seery has provided testimony on repeated occasions accusing Class 10 and 11 claims holders of "bad faith" and other misconduct;
- Mr. Seery has helped facilitate lawsuits against Class 10 and 11 claims holders, including the *Kirschner* Action;
- Mr. Seery has helped facilitate the filing of motions against Class 10 and 11 claims holders, including a Motion to Deem the Dondero Parties Vexatious Litigants, currently pending in the United States District Court for the Northern District of Texas;
- Mr. Seery not only has failed to communicate with the Class 10 and 11 claim holders about the estate's finances, but opposes their efforts to obtain such information;[74] and
- Mr. Seery has resisted and opposed relief sought by Class 10 and 11 claims holders, even where that relief was reasonable and designed to benefit the estate as a whole.[75]

[74] Memorandum of Law in Support of Highland Capital Management, L.P. and the Highland Claimant Trust's Motion to Dismiss Complaint Case No. 23-03038 (N.D. Tex.) at Dkt. 14 [App. 079-109]. The claim holders have requested this information since at least June 2022 (Dkt. 3382), which was approximately $80 million in estate expenses ago. *See* ¶ 25 *supra.*

[75] *See* Highland Capital Management, L.P.'s Memorandum of Law in Support of its Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief, Case No. 21-00881 (N.D. Tex.), Dkt. 137 [App. 031-038] (wherein the Reorganized Debtor (under the control of the Claimant Trust), defines "Dondero Entities" as including HMIT (Movant herein) at fn. 1; states "The Dondero Entities—all of which are dominated and controlled by or acting in concert with

64. The hostility described herein between Mr. Seery and the beneficiaries of the Claimant Trust is more than sufficient to warrant Mr. Seery's removal. In *Taglialatela*, the court removed the trustee because "ongoing hostility and lack of communication" between the trustee and beneficiaries "prevented the trust funds from being distributed" to the beneficiaries in a reasonable time. 2013 WL 2122044, at *3. Similarly, here, the hostility between Mr. Seery and the beneficiaries is so extreme that Mr. Seery refuses to administer the trust funds without first establishing an indemnity fund with potentially more than one hundred million dollars. That is impermissible under Delaware law.

65. For all the foregoing reasons, Movant's Delaware complaint sets forth a *prima facie* claim for removal of Mr. Seery as Trustee of the Claimant Trust, consistent with the applicable legal standard and also even consistent with this Court's new Gatekeeper Colorability Test.

B. Movant Seeks to File its Delaware Complaint for a Proper Purpose

66. Even though Movant does not agree with the Court's Gatekeeper Colorability Test, Movant can readily satisfy the next element of that test because it has a legitimate and proper reason to seek Mr. Seery's removal under Delaware law. As the allegations above make clear, Movant has no other legal avenue available to protect its sizeable interest in the assets of the Claimant Trust.

67. The latest information from the Highland Parties is that the Indemnity Subtrust now holds reportedly $50 million in cash, and that an additional $90 million of the Claimant Trust assets have been held in an indemnity reserve. That means that at least $140 million is currently being held for indemnity—on the sole authority of Mr. Seery in order to protect himself. Contrary to the

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Dondero, HCMLP's co-founder and ousted Chief Executive Officer—are engaged in a coordinated litigation strategy spanning nearly three years to wear down HCMLP and its management and undermine HCMLP's confirmed Plan." *Id.*, at ¶ 1.; "Thereafter, directly and through the Dondero Entities, he began interfering with the management of the estate, threatening HCMLP employees, challenging nearly every action taken to further HCMLP's reorganization, commencing new (and frivolous) litigation against HCMLP and its management both insider and outside of Bankruptcy Court…" *Id.* at ¶ 4; "Separately, in March 2023, HMIT sought leave to sue HCMLP for allegedly breaching its fiduciary duty and other obligations to HMIT—a prepetition equity holder…. However, HMIT's putative complaint is emblematic of the Dondero Entities' unceasing litigation--…" *Id.* at ¶ 30); Dec. 14, 2020 Depo. Tr. at 37:22-25 [App. 003]; Aug. 4, 2021 Hr'g Tr. At 66:15-18 [App. 007]; June 2, 2023 Depo. Tr. At 113:17-20 [App. 028].

representations in the Subtrust Motion, the amount now held for indemnity is 560% of the original $25 million represented. By comparison, for the pre-effective date period, the entire bankruptcy case only cost approximately $40 million in administrative fees through August 10, 2021.[76]

68. The Plan and Trusts have now turned into nothing more than vehicles for Mr. Seery to leverage to seek to force Class 10 and 11 Equity Holders, and even related party non-equity holders, to deliver releases and other consideration to Mr. Seery and the Indemnified Parties. By his conduct, Mr. Seery seeks the complete exculpation the Fifth Circuit denied him.[77] Under the guise of "indemnity," he holds assets that belong to beneficiaries, vested and contingent, entirely hostage at his sole and unfettered discretion. Meanwhile, Seery continues to collect his monthly compensation of $150,000 per month, plus authorize over $5 million in undisclosed monthly expenses. The present circumstances demonstrate that, if not stopped, Seery will continue to use his position in this manner until the Trusts are exhausted and the Plan is entirely frustrated. The creation of the Trusts and limitless authority of Mr. Seery have resulted in a conflict of interest which cannot be resolved without a court's appropriate, and entirely necessary, equitable resolution.

69. In short, the claims to remove Mr. Seery as Claimant Trustee are not without foundation, not without merit, and not being pursued for an improper purpose. Based on the Delaware law described herein, Movant meets the applicable legal standard, and also even this Court's Gatekeeper Colorability Test, and the Court should allow Movant to proceed with its complaint in Delaware.

IV. CONCLUSION

For all of the forgoing reasons, this Motion should be granted.

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[76] September 30, 2023, Post-confirmation Reports, Dkt. Nos. 3955 and 3956, p.2.

[77] *In re Highland Capital Management, L.P.,* 48 F.4th 419, 435 (5th Cir. 2022).

WHEREFORE, Movant requests the entry of an order i) granting this Motion for Leave; ii) determining that the Gatekeeping Provision is satisfied as applied to the Delaware Proceeding; and iii) authorizing Movant to file the Delaware Complaint.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that on December 21, 2023, counsel for Hunter Mountain Investment Trust conferred with opposing counsel regarding this motion and opposing counsel indicated that the Debtor is opposed.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 1, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

EXHIBIT 1

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

HUNTER MOUNTAIN INVESTMENT TRUST	)	
	)	
Plaintiff,	)	
	)	C.A.No. _____
v.	)	
	)	
JAMES P. SEERY, JR.	)	
	)	
Defendant.	)	

COMPLAINT TO REMOVE THE TRUSTEE

Plaintiff, Hunter Mountain Investment Trust ("HMIT"), by and through its undersigned counsel, hereby brings the following Complaint seeking the removal of Defendant James P. Seery, Jr. as Trustee of the Highland Claimant Trust (the "Claimant Trust") pursuant to 12 *Del. C.* § 3327(1), (3)(b), and/or (3)(c). In support, HMIT respectfully states as follows:

I. PARTIES

1. Plaintiff HMIT is a Delaware statutory trust that was formerly the largest equity holder in Highland Capital Management, L.P. (the "Debtor"), holding a 99.5% limited partnership interest. HMIT is now the largest holder of a Contingent Trust Interest in the Claimant Trust pursuant to the terms of the Claimant Trust Agreement ("**CTA**").[1]

[1] *See* **Exhibit 1**.

2. Defendant James P. Seery, Jr. ("Mr. Seery or Seery") is an individual citizen and resident of the State of New York. Mr. Seery may be served with process at 100 Crescent Court, Suite 1805, Dallas, Texas 75201. Mr. Seery acts as the Claimant Trustee under the CTA and as Trust Administrator of the Indemnity Subtrust as described herein. Mr. Seery may be served with process pursuant to 10 *Del. C.* § 3114 because he serves as the trustee of a Delaware statutory trust.

II. JURISDICTION

3. This Court has jurisdiction over this matter pursuant to 10 *Del. C.* § 341 and 12 *Del. C.* § 3327.

III. STANDING

4. HMIT seeks to have this Court remove Mr. Seery as Claimant Trustee of the Claimant Trust pursuant to 12 *Del. C.* § 3327. HMIT has standing as Plaintiff in this proceeding because it is a beneficiary within the meaning of Delaware trust law and, at a minimum, a contingent beneficiary under the terms of the Claimant Trust.

IV. FACTS

A. The Claimant Trust Agreement

5. In a chapter 11 bankruptcy proceeding in the Bankruptcy Court for the Northern District of Texas, the Debtor filed and the Bankruptcy Court confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as modified)* (*In re Highland Capital Management LP,* Case No. 19-34054-sgj11 in the

United States Bankruptcy Court for the Northern District of Texas, Doc. 1943 at Ex. A) (the "**Plan**").

6. Pursuant to the Plan, assets of the bankruptcy estate of the Debtor were transferred to the Claimant Trust.

7. The CTA identifies different "classes" of trust interests. In particular, Class 8 interests were distributed to Holders of Allowed Class 8 General Unsecured Claims; Class 9 interests were distributed to Holders of Allowed Class 9 Subordinated Claims; Class 10 interests were distributed to Holders of Allowed Class 10 Class B/C Limited Partnership Interests; and Class 11 interests were distributed to Holders of Allowed Class 11 Class A Limited Partnership Interests.

8. The CTA directs Seery, as Claimant Trustee, "to litigate and settle Claims in Class 8 and Class 9." (CTA at ¶ 2.3(b)(ii).)

9. After Class 8 and Class 9 interest holders are paid in full, the CTA directs Seery, as Claimant Trustee, to file with the Bankruptcy Court a "GUC Payment Certification." (CTA at ¶ 5.1(c).)

10. As described in the CTA, Class 10 and Class 11 interests are "Contingent Trust Interests," meaning they will not "vest" under the terms of the CTA until Class 8 and Class 9 interest holders are paid in full and the Claimant Trustee files the GUC Payment Certification. (CTA at ¶ ¶ 1.1(m) and 5.1(c).).

11. Among other things, the CTA requires Mr. Seery to pay the remaining Class 8 and 9 claims in full and file the GUC Certification, thereby "vesting" the Class 10 and 11 Equity Interests under the terms of the CTA. (CTA at ¶¶ 1.1(h), 1.1(aa), and 5.1.) In addition, he has the duty to do so timely and "not unduly prolong the duration of the Claimant Trust." (CTA at ¶ ¶ 2.2(b), 3.2(a), and 3.3(a).)

12. The Claimant Trust expressly does not indemnify parties for acts which are determined by order a court of competent jurisdiction to constitute willful fraud, willful misconduct, or gross negligence. (CTA at ¶ 8.2.)

B. The Indemnity Subtrust

13. Months after confirmation of the chapter 11 Plan and creation of the Claimant Trust, the Bankruptcy Court authorized the creation of the Indemnity Subtrust. The Indemnity Subtrust was created to provide a source of conditional indemnity, in lieu of liability insurance coverage, to parties identified as "Indemnified Parties" in Section 8.2 of the CTA, including Mr. Seery and the Claimant Trust Oversight Board to the extent they otherwise qualify under the terms of the CTA. According to the terms of the motion filed with the bankruptcy court seeking to create the Indemnity Subtrust, Mr. Seery placed himself in the position of Trust Administrator of the Indemnity Subtrust (to whom the trustee of the Indemnity Subtrust answers). Accordingly, Mr. Seery has exercised sole control of both the

Claimant Trust and Indemnity Subtrust with respect to all matters concerning indemnity.

14. Mr. Seery has an irresolvable conflict of interest whereby he has exclusive control over the Indemnity Subtrust—to the detriment of the Class 8 and 9 Claimants, and the Class 10 and 11 Equity Interests. In such position, Mr. Seery enjoys power in his sole and absolute discretion to direct administration of all aspects of the Indemnity Subtrust for his own benefit, and all matters relating to indemnity with respect to the Claimant Trust.

15. The sole conditional beneficiaries of the Indemnity Subtrust are the Indemnified Parties as defined in Section 8.2 of the Claimant Trust Agreement, including Seery himself and the Claimant Trust Oversight Board.

C. The Claimant Trust Has Sufficient Assets to Pay Class 8 and 9 Interest Holders

16. Based on a consolidated balance sheet filed on July 6, 2023, the Claimant Trust has about $250 million in assets (of which $180 million is cash) and only about $126 million in Class 8 and 9 claims.

Highland Claimant Trust
Summarized Consolidated Balance Sheet [1]
As of May 31, 2023
The accompanying notes are integral to understanding this balance sheet
(Estimated and unaudited, $ in millions)

	Balance per books	adjustments (see notes)	Adjusted balance
Assets			
Cash and equivalents	$ 13	$ -	$ 13
Disputed claims reserve [2]	12	-	12
Other restricted cash	12	-	12
Investments [3]	118	(12) [6]	106
Notes receivable, net [4]	86	(83) [4]	3
Other assets	6	-	6
Total assets	$ 247	$ (95)	$ 152
Liabilities			
Secured and other debt	$ -	$ -	$ -
Distribution payable [2]	12	-	12
Additional indemnification reserves	-	90 [5]	90
Other liabilities	15	13 [5]	28
Total liabilities [5]	$ 27	$ 103	$ 130
Book/adjusted book equity (see accompanying notes) [5]	220	(198)	22
Total liabilities and book/adjusted book equity	$ 247	$ (95)	$ 152
Supplemental Info: [7]			
Sum of remaining allowed Class 8 Trust Beneficiaries, excluding interest	$ 27		
Sum of remaining allowed Class 9 Trust Beneficiaries, excluding interest	99		
Sum of face amount of pending Class 8/9 potential Trust Beneficiaries, excluding interest	13		
Sub-total	$ 139		

17. Notably, the Claimant Trust's balance sheet assets do not include a fully cash-funded at least $35 million indemnity account (reportedly now $50 million) that presumably may be used to pay creditors to the extent it is not consumed by the estate's professionals. (*See Notice of Filing of Current Balance Sheet of the Highland Claimant Trust,* Dkt. 3872 at Ex. A, Note 1.)[2] To reduce the Claimant Trust's book value, the Debtor purports to add "non-book" adjustments to the balance sheet. One such adjustment gives zero asset value to the notes payable by alleged affiliates of Jim Dondero. (*See id.* at Ex. A.) However, $70 million of those notes are fully bonded by cash deposited in the registry of the district court. *See* Case No. 3:31-cv-00881-X (N.D. Tex.), *Order Granting Joint Agreed Emergency Motion*

[2] *See* **Exhibit 2**.

for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals [Dkt. 149] and *Notices of Bonding* [Dkts. 151, 152, and 160-162.[3]

18. Additionally, Mr. Seery declared a supplemental "indemnity account" now holding approximately $90 million, on top of the $35 (or $50) million cash indemnity reserve, for the benefit of the Indemnified Parties (including Mr. Seery).

19. Were it not for the inappropriate $125 million (or more) indemnity reserve, Debtor's creditors could and should have been paid, the estate closed and the residual returned to former equity months ago.

20. As a practical matter, the Claimant Trust could pay the Class 8 and 9 claims in full with interest, Mr. Seery could file the GUC Certification, and the Equity interests, including Plaintiff's, would fully "vest" under the terms of the CTA. All of these steps could be, and indeed, should have been, completed without any interference with the Indemnity Sub-Trust or Indemnity Trust.

D. Mr. Seery Refuses to Pay Class 8 and 9 Interest Holders, and thereby Seeks to Prevent HMIT's Class 10 Interests from Vesting, to Advance His Own Self-Interest.

21. As a result of Mr. Seery's roles as both Claimant Trustee and Trust Administrator of the Indemnity Subtrust, Mr. Seery is determined to hold the assets of the Claimant Trust "hostage" by creating an indemnity reserve and/or funding the

[3] *See* **Exhibit 3**.

Indemnity Subtrust to solely benefit the Indemnified Parties, including himself personally.

22. Mr. Seery's use of the Claimant Trust Asset's to build an indemnity "wall" for his own benefit rather than paying off the Class 8 and 9 claims, reflects an attempt to avoid "vesting" of equity Classes 10 and 11 under the CTA, of which HMIT is the largest interest holder. Such conduct is adverse to the interests of the Beneficiaries and the Contingent Beneficiaries of the Claimant Trust, including HMIT.

23. Mr. Seery's serving as both the Claimant Trustee and as the Trust Administrator of the Indemnity Subtrust therefore creates an irresolvable conflict of interest.

24. Seery has duties to the Claimant Trust Beneficiaries which include, without limitation: a) paying the remaining Class 8 and 9 claims in full, b) filing the GUC Certification, and c) vesting the Class 10 and 11 Equity Interests under the terms of the CTA. (CTA at ¶¶ 1.1(h), 1.1(aa), and 5.1.) In addition, Mr. Seery has the duty to do so timely and "not unduly prolong the duration of the Claimant Trust." (CTA at ¶ ¶ 2.2(b), 3.2(a), and 3.3(a).)

25. But, because Mr. Seery is a conditionally Indemnified Party, he self-servingly chooses essentially to use assets of the Claimant Trust to both fund a cash reserve to the Indemnity Subtrust, reportedly now totaling $50 million, and on top

of that, create an additional "indemnity reserve" of some $90 million in cash in the Claimant Trust. Meanwhile, Mr. Seery continues to collect substantial income in his capacity as Claimant Trustee rather than winding up the estate.

26. Simply put, Seery has chosen to dedicate assets of the Claimant Trust to erect an "indemnity wall" in front of himself instead of performing his remaining duties as the Claimant Trustee.

27. *De facto*, but for Mr. Seery's deliberate failure to pay the remaining Class 8 and 9 claims in full with interest from the liquid assets in the Trust, the Class 10 and 11 Equity Holders are Claimant Trust Beneficiaries.

28. Notwithstanding that creditor constituencies voted to support, and the Bankruptcy Court approved, the Plan, understanding that there would be a partially independent, five-member Oversight Board supervising the monetization and distribution of estate assets, that contemplated governance structure has long since been ignored and has failed to safeguard the Claimant Trust. The representations in the Plan, the findings by the Bankruptcy Court, and the belief of the Fifth Circuit that Mr. Seery's conduct as Claimant Trustee would be affirmatively overseen to assure that the Plan would be fully performed, are – at least as to the appropriate use of funds and indemnification -- all false.

E. Mr. Seery's Refusal to Administer the CTA Has Created Hostility between Mr. Seery and the Beneficiaries

29. The Claimant Trust, of which Mr. Seery is Trustee, owns the limited partnership interests in the Reorganized Debtor.[4]

30. In the United States District Court for the Northern District of Texas, Highland Capital Management, L.P. ("HCMLP"), the Reorganized Debtor, filed a *Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief*, (Dist. Ct. Case No. 3:21-cv-00881-X, Dkt. No. 136) and filed a Memorandum of Law (*Id.* at Dkt. No. 137) in support thereof.

31. In the Memorandum of Law, the Reorganized Debtor (under the control of the Claimant Trust), defines "Dondero Entities" as including HMIT (Movant herein) in footnote 1, page 1. The Memorandum of Law declares that, "The Dondero Entities—all of which are dominated and controlled by or acting in concert with Dondero, HCMLP's co-founder and ousted Chief Executive Officer—are engaged in a coordinated litigation strategy spanning nearly three years to wear down HCMLP and its management and undermine HCMLP's confirmed Plan." (*Id.*, p. 1.) The Memorandum further states, "Thereafter, directly and through the Dondero Entities, he began interfering with the management of the estate, threatening HCMLP employees, challenging nearly every action taken to further HCMLP's

[4] *Memorandum Opinion* [Dkt. No. 3903], at page 11.

reorganization, commencing new (and frivolous) litigation against HCMLP and its management both insider and outside of Bankruptcy Court…" (*Id.* at p. 2.)

32. In particular, with respect to HMIT, the reorganized Debtor's, Memorandum states, "[s]eparately, in March 2023, HMIT sought leave to sue HCMLP for allegedly breaching its fiduciary duty and other obligations to HMIT—a prepetition equity holder…. However, HMIT's putative complaint is emblematic of the Dondero Entities' unceasing litigation--…" (*Id.* at ¶ 30, p. 26.) Ironically, the Memorandum was wrong: HMIT's referenced motion sought leave to bring derivative claims ***on behalf of HCMLP***.

33. Mr. Seery's hostility to Dondero is also well documented in hearing testimony, depositions, and declarations Mr. Seery has provided since October of 2020.[5]

[5] *See* Highland Capital Management, L.P.'s Memorandum of Law in Support of its Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief, Case No. 21-00881 (N.D. Tex.), Dkt. 137 (wherein the Reorganized Debtor (under the control of the Claimant Trust), defines "Dondero Entities" as including HMIT (Movant herein) at fn. 1; states "The Dondero Entities—all of which are dominated and controlled by or acting in concert with Dondero, HCMLP's co-founder and ousted Chief Executive Officer—are engaged in a coordinated litigation strategy spanning nearly three years to wear down HCMLP and its management and undermine HCMLP's confirmed Plan." *Id.*, at ¶ 1.; "Thereafter, directly and through the Dondero Entities, he began interfering with the management of the estate, threatening HCMLP employees, challenging nearly every action taken to further HCMLP's reorganization, commencing new (and frivolous) litigation against HCMLP and its management both insider and outside of Bankruptcy Court…" *Id.* at ¶ 4; "Separately, in March 2023, HMIT sought leave to sue HCMLP for allegedly breaching its fiduciary duty and other obligations to HMIT—a prepetition equity holder…. However, HMIT's putative complaint is emblematic of the Dondero Entities' unceasing litigation--…" *Id.* at ¶ 30); Dec. 14, 2020 Depo. Tr. at 37:22-25 ("He has an interest in sticking his fingers in virtually everything but not providing any value. That's pretty consistent."); Aug. 4, 2021 Hr'g Tr. at 66:15-18 ("We wanted to make sure we had a clean, fast transaction. And based upon our dealings with the Dondero entities, we didn't think we could possibly have that."); June 2, 2023 Depo. Tr. at 113:17-20 ("… I don't think this was a complicated case at all. I think this could have been easily resolved. And with normal commercial actors, it would have been.").

34. Based on the above, there can be no question that Mr. Seery (a) is overtly hostile to Dondero, (b) contends that Dondero controls HMIT, and (c) is hostile to HMIT directly. Such hostility is well beyond mere discord.

V. CAUSES OF ACTION

35. Pursuant to 12 *Del. C.* § 3327, an "officeholder," including a trustee "may be removed in accordance with the terms of the governing instrument." 12 *Del. C.* § 3327. Additionally, "the Court of Chancery may remove an officeholder on the Court's own initiative or on petition of a trustor, another officeholder, or beneficiary" in any of five circumstances:

1) ***The officeholder has committed a breach of trust; or***
2) ***The continued service of the officeholder substantially impairs the administration of the trust***; or
3) The court, having due regard for the expressed intention of the trustor and the best interests of the beneficiaries, determines that notwithstanding the absence of a breach of trust, there exists:

a) A substantial change in circumstances;
b) ***Unfitness, unwillingness or inability of the officeholder to administer the trust or perform its duties properly; or***
c) ***Hostility between the officeholder and beneficiaries or other officeholders that threatens the efficient administration of the trust.***

12 Del. C. § 3327 (emphasis added).

Count I
(Removal of Seery for Breach of the Duty of Trust)

36. Plaintiff re-alleges and incorporates the allegations contained in the preceding paragraphs.

37. As Claimant Trustee, Mr. Seery owes duties to the Claimant Trust Beneficiaries to pay the remaining Class 8 and 9 claims in full and file the GUC Certification, thereby vesting the Class 10 and 11 Equity Interests under the terms of the CTA. (CTA at ¶¶ 1.1(h), 1.1(aa), and 5.1.) In addition, he has the duty to do so timely and "not unduly prolong the duration of the Claimant Trust." (CTA at ¶ ¶ 2.2(b), 3.2(a), and 3.3(a).)

38. Mr. Seery also has a duty of loyalty and may not act in his own self-interest to the detriment of the Claimant Trust.

39. Mr. Seery has engaged in self-dealing and otherwise breached his duty of loyalty by refusing to pay the Class 8 and 9 Claims in full with interest and refusing to file the GUC Payment Certification in an effort to prevent Class 10 and 11 equity interests from "vesting" under the terms of the CTA, in order to create a "wall" of indemnity for his own benefit while continuing to collect professional fees.

40. Mr. Seery's conduct constitutes a breach of the duty of loyalty and a breach of trust warranting Mr. Seery's removal.

Count II
(Removal of Mr. Seery for Impairment of the Administration of the Trust)

41. Plaintiff re-alleges and incorporates the allegations contained in the preceding paragraphs.

42. The administration of the CTA requires payment to the remaining Class 8 and 9 creditors and the filing of the GUC Certification.

43. The Claimant Trust has more than sufficient funds to pay the remaining Class 8 and 9 creditors with interest. Nevertheless, Mr. Seery refuses to do so.

44. By refusing to pay the Class 8 and 9 creditors, thereby preventing the Class 10 and 11 equity interests from "vesting" under the terms of the CTA, despite the Claimant Trust having ample money to do so, Mr. Seery is substantially impairing the administration of the Trust, warranting his removal.

Count III

(Removal of Mr. Seery for Unwillingness to Administer the Trust)

45. Plaintiff re-alleges and incorporates the allegations contained in the preceding paragraphs.

46. The administration of the CTA requires payment to the remaining Class 8 and 9 creditors and the filing of the GUC Certification.

47. The Claimant Trust has more than sufficient funds to pay the remaining Class 8 and 9 creditors with interest. Nevertheless, Mr. Seery refuses to do so.

48. By refusing to pay the Class 8 and 9 creditors, thereby preventing the Class 10 and 11 equity interests from "vesting" under the terms of the CTA, despite the Claimant Trust having ample money to do so, Mr. Seery is necessarily unwilling to administer the trust, warranting his removal.

Count IV
(Removal of Mr. Seery because his Continued Services Substantially Impairs the Administration of the Trust)

49. Plaintiff re-alleges and incorporates the allegations contained in the preceding paragraphs.

50. Mr. Seery's dual roles as Claimant Trustee and Indemnity Subtrust Administrator creates an irreconcilable conflict of interest.

51. As Claimant Trustee, Mr. Seery has duties to the Claimant Trust Beneficiaries to timely pay the remaining Class 8 and 9 claims, file the GUC Certification, and "vest" the Class 10 and 11 Equity Interests under the terms of the CTA.

52. However, Mr. Seery, as an Indemnified Party and as Indemnity Subtrust Administrator, is instead using assets of the Claimant Trust to fund a $50 million cash reserve to the Indemnity Subtrust and create an additional $90 million "indemnity reserve."

53. Mr. Seery's choice to pursue creation of an "indemnity wall" as Indemnity Subtrust Administrator rather than perform his duties as Claimant Trustee substantially impairs the administration of the trust, warranting his removal.

Count V

(Removal of Mr. Seery due to Hostility that Threatens Administration of the Trust)

54. Plaintiff re-alleges and incorporates the allegations contained in the preceding paragraphs.

55. The hostility between Mr. Seery and the beneficiaries does not merely "threaten" the efficient administration of the Claimant Trust, it has in fact led to Mr. Seery refusing to administer the Claimant Trust at all, warranting Mr. Seery's removal.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff HMIT respectfully requests that this Court:

(i) remove James P. Seery, Jr. as Claimant Trustee for the Highland Claimant Trust;

(ii) appoint a neutral and professional successor trustee that is not indemnified by the assets of the Claimant Trust;

(iii) award Plaintiff all costs and attorneys' fees against Defendant pursuant to 12 *Del. C.* § 3584; and

(iv) grant Plaintiff any and all other relief, at law or in equity, to which it is entitled.

Dated: January __, 2024	BAYARD, P.A. _____ Stephen B. Brauerman (#4952) 600 N. King St., Suite 400 Wilmington, Delaware 19801 (302) 655-5000 Attorneys for Plaintiff Hunter Mountain Investment Trust

EXHIBIT 1

CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of August 11, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this "Agreement"), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the "Debtor"), as settlor, and James P. Seery, Jr., as trustee (the "Claimant Trustee"), and Wilmington Trust, National Association, a national banking association ("WTNA"), as Delaware trustee (in such capacity hereunder, and not in its individual capacity, the "Delaware Trustee," and together with the Debtor and the Claimant Trustee, the "Parties") for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the "Chapter 11 Case");

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the "Plan"),[1] which was confirmed by the Bankruptcy Court on February 22, 2021, pursuant to the *Findings of Fact and Order Confirming Plan of Reorganization for the Debtor* [Docket No. 1943] (the "Confirmation Order");

WHEREAS, this Agreement, including all exhibits hereto, is the "Claimant Trust Agreement" described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries[2] in accordance with the Plan; (v) the Claimant Trustee can resolve

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan. The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Docket No. 1875, Exh. B.

[2] For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.

Disputed Claims as set forth herein and in the Plan; and (vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

DECLARATION OF TRUST

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

ARTICLE I.
DEFINITION AND TERMS

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the "Definitions," Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) "Acis" means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) "Bankruptcy Court" has the meaning set forth in the Recitals hereof.

(c) "Cause" means (i) a Person's willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person's commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person's conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person's gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(d) "Claimant Trust Agreement" means this Agreement.

(e) "Claimant Trustee" means James P. Seery, Jr., as the initial "Claimant Trustee" hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) "Claimant Trust" means the "Highland Claimant Trust" established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) "Claimant Trust Assets" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

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

(i) "Claimant Trust Expense Cash Reserve" means $[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) "Claimant Trust Expenses" means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with this Agreement.

(k) "Committee Member" means a Member who is/was also a member of the Creditors' Committee.

(l) "Conflicted Member" has the meaning set forth in Section 4.6(c) hereof.

(m) "Contingent Trust Interests" means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

(n) "Creditors' Committee" means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) "Delaware Statutory Trust Act" means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) "Delaware Trustee" has the meaning set forth in the introduction hereof.

(q) "Disability" means as a result of the Claimant Trustee's or a Member's incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) "Disinterested Members" has the meaning set forth in Section 4.1 hereof.

(s) "Disputed Claims Reserve" means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) "Employees" means the employees of the Debtor set forth in the Plan Supplement.

(u) "Employee Claims" means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(v) "Estate Claims" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) "Equity Trust Interests" has the meaning given to it in Section 5.1(c) hereof.

(x) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(y) "General Unsecured Claim Trust Interests" means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) "GUC Beneficiaries" means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) "GUC Payment Certification" has the meaning given to it in Section 5.1(c) hereof.

(bb) "HarbourVest" means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) "Investment Advisers Act" means the Investment Advisers Act of 1940, as amended.

(dd) "Investment Company Act" means the Investment Company Act of 1940, as amended.

(ee) "Litigation Sub-Trust" means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) "Litigation Sub-Trust Agreement" means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) "Litigation Trustee" means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) "Managed Funds" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however,* that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) "Material Claims" means the Claims asserted by UBS, Patrick Hagaman Daugherty, Integrated Financial Associates, Inc., and the Employees.

(jj) "Member" means a Person that is member of the Oversight Board.

(kk) "New GP LLC" means the general partner of the Reorganized Debtor.

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

(mm) "Plan" has the meaning set forth in the Recitals hereof.

(nn) "Privileges" means the Debtor's rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to,

attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that "Privileges" shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(oo) "PSZJ" means Pachulski Stang Ziehl & Jones LLP.

(pp) "Redeemer Committee" means the Redeemer Committee of the Highland Crusader Fund.

(qq) "Registrar" has the meaning given to it in Section 5.3(a) hereof.

(rr) "Reorganized Debtor Assets" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(ss) "Securities Act" means the Securities Act of 1933, as amended.

(tt) "Subordinated Beneficiaries" means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(uu) "Subordinated Claim Trust Interests" means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(vv) "TIA" means the Trust Indenture Act of 1939, as amended.

(ww) "Trust Interests" means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(xx) "Trust Register" has the meaning given to it in Section 5.4(b) hereof.

(yy) "Trustees" means collectively the Claimant Trustee and Delaware Trustee, however, it is expressly understood and agreed that the Delaware Trustee shall have none of the duties or liabilities of the Claimant Trustee.

(zz) "UBS" means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) "WilmerHale" Wilmer Cutler Pickering Hale & Dorr LLP.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all

cases where they would apply. "Includes" and "including" are not limiting and "or" is not exclusive. References to "Articles," "Sections" and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words "herein," "hereafter" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol "$" shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

ARTICLE II.
ESTABLISHMENT OF THE CLAIMANT TRUST

2.1 Creation of Name of Trust.

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the "Highland Claimant Trust." The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

2.2 Objectives.

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment,

make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with "liquidating trust" status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee and (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims, the Employee Claims, and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.

2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession, custody or control, (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee, directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address: 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

ARTICLE III.
THE TRUSTEES

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the Estate Claims transferred to the Litigation Sub-Trust, as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following "[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]".

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(d), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor's Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to $3,000,000 (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust's role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board solely in their capacities as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay,

such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;

(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from

the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xxi) being collectively, the "Authorized Acts").

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee's authority with respect to certain other assets, including certain portfolio company assets (the "Other Assets").

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

(i) terminate or extend the term of the Claimant Trust;

(ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;

(iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than $3,000,000 (over a thirty-day period);

(iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;

(v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder's Claim becomes an Allowed Claim under the Plan;

(vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;

(vii) borrow as may be necessary to fund activities of the Claimant Trust;

(viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;

(ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);

(x) change the compensation of the Claimant Trustee;

(xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and

(xii) retain counsel, experts, advisors, or any other professionals; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and (ii) any other professional whose expected fees and expenses are estimated at less than or equal to $200,000.

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service ("IRS") guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys' fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee's resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause for Cause immediately upon notice thereof, or without Cause upon 60 days' prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the

vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the "Interim Trustee") until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person's appointment as Interim Trustee.

3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee's capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee's obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as "Estate Representative". The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the "Estate Representative") with respect to the Claimant

Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims and the Employee Claims. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

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

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

(b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee.

(a) The Delaware Trustee shall have the limited power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Delaware Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement, in either case as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee and upon which the Delaware Trustee shall be entitled to conclusively and exclusively rely; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust. For the avoidance of doubt, the Delaware Trustee will only have such rights and obligations as expressly provided by reference to the Delaware Trustee hereunder. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Claimant Trustee set forth herein. The Delaware Trustee shall be one of the trustees of the Claimant Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Statutory Trust Act and for taking such actions as are required to be taken by a Delaware Trustee under the Delaware Statutory Trust Act. The duties (including fiduciary duties), liabilities and obligations of the Delaware Trustee shall be limited to those expressly set forth in this Section 3.16 and there shall be no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity, of the Delaware Trustee. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Claimant Trust, the other parties hereto or any beneficiary of the Claimant Trust, it is hereby understood and agreed by the other parties hereto that such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Agreement.

(b) The Delaware Trustee shall serve until such time as the Claimant Trustee removes the Delaware Trustee or the Delaware Trustee resigns and a successor Delaware Trustee is appointed by the Claimant Trustee in accordance with the terms hereof. The Delaware Trustee may resign at any time upon the giving of at least thirty (30) days' advance written notice to the Claimant Trustee; provided, that such resignation shall not become effective unless and until a successor Delaware Trustee shall have been appointed by the Claimant Trustee in accordance with the terms hereof. If the Claimant Trustee does not act within such thirty (30) day period, the Delaware Trustee may apply to the Court of Chancery of the State of Delaware for the appointment of a successor Delaware Trustee.

(c) Upon the resignation or removal of the Delaware Trustee, the Claimant Trustee shall appoint a successor Delaware Trustee by delivering a written instrument to the

outgoing Delaware Trustee. Any successor Delaware Trustee must satisfy the requirements of Section 3807 of the Delaware Statutory Trust Act. Any resignation or removal of the Delaware Trustee and appointment of a successor Delaware Trustee shall not become effective until a written acceptance of appointment is delivered by the successor Delaware Trustee to the outgoing Delaware Trustee and the Claimant Trustee and any undisputed fees, expenses and indemnity due to the outgoing Delaware Trustee are paid. Following compliance with the preceding sentence, the successor Delaware Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Delaware Trustee under this Agreement, with like effect as if originally named as Delaware Trustee, and the outgoing Delaware Trustee shall be discharged of its duties and obligations under this Agreement.

(d) The Delaware Trustee shall be paid such compensation as agreed to pursuant to a separate fee agreement. The Claimant Trust shall promptly advance and reimburse the Delaware Trustee for all reasonable out-of-pocket costs and expenses (including reasonable legal fees and expenses) incurred by the Delaware Trustee in connection with the performance of its duties hereunder.

(e) WTNA shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

(f) Any corporation or association into which WTNA may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Delaware Trustee is a party, will be and become the successor Delaware Trustee under this Agreement and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

ARTICLE IV.
THE OVERSIGHT BOARD

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-

E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof..

4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.8 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate

in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set otherwise forth herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed "Conflicted Members" with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a "Committee Member Claim Matter"). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any

Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article IX hereof. The Members of the Oversight Board will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 4.8 below, or removal pursuant to Section 4.9 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day that is 90 days following the delivery of such notice, (ii) the appointment of a successor in accordance with Section 4.10 below, and (iii) such other date as may be agreed to by the Claimant Trustee and the non-resigning Members of the Oversight Board.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further evidenced by the Claimant Trustee's filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee's website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment

under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member. Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.12.

ARTICLE V.
TRUST INTERESTS

5.1 Claimant Trust Interests.

(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the "GUC Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the "Subordinated Beneficiaries"). The

Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary's Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the "Equity Holders"). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the "GUC Payment Certification"). Equity Holders will only be deemed "Beneficiaries" under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed "Equity Trust Interests." The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary's Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other wright to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or

reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the "Registrar"), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the "Trust Register"), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary's Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be "securities" under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys' fees and other costs; provided, however, that any fees and costs shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.

(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.

ARTICLE VI.
DISTRIBUTIONS

6.1 Distributions.

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive termination of the Claimant Trustee), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within six months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.

6.2 Manner of Payment or Distribution. All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records

of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 *De Minimis* Distributions. Distributions with a value of less than $100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. **After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.**

ARTICLE VII.
TAX MATTERS

7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the

Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

ARTICLE VIII.
STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, Delaware Trustee, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), WTNA in its individual capacity and as Delaware Trustee, the Oversight Board, and all past and present Members (collectively, in their capacities as such, the "Indemnified Parties") shall be

indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party's reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, willful misconduct, or gross negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, WTNA in its individual capacity and as Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense and shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein. The terms of this Section 8.2 shall survive the termination of this Agreement and the resignation or removal of any Indemnified Party.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or

otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

ARTICLE IX.
TERMINATION

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall prepare, execute and file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). If the Delaware Trustee's signature is required for purposes of filing such certificate of cancellation, the Claimant Trustee shall provide the Delaware

Trustee with written direction to execute such certificate of cancellation, and the Delaware Trustee shall be entitled to conclusively and exclusively rely upon such written direction without further inquiry. Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

ARTICLE X.
AMENDMENTS AND WAIVER

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement. No amendment or waiver of this Agreement that adversely affects the Delaware Trustee shall be effective unless the Delaware Trustee has consented thereto in writing in its sole and absolute discretion.

ARTICLE XI.
MISCELLANEOUS

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in

respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee
c/o Highland Capital Management, L.P.
100 Crescent Court, Suite 1850
Dallas, Texas 75201

With a copy to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd, 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)
Ira Kharasch (ikharasch@pszjlaw.com)
Gregory Demo (gdemo@pszjlaw.com)

(b) If to the Delaware Trustee:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, DE 19890
Attn: Corporate Trust Administration/David Young
Email: nmarlett@wilmingtontrust.com
Phone: (302) 636-6728
Fax: (302) 636-4145

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.11 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board. or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however*, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

[Remainder of Page Intentionally Blank]

IN WITNESS HEREOF, the parties hereto have caused this Claimant Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Highland Capital Management, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and
Chief Restructuring Officer

Claimant Trustee

By: _____
James P. Seery, Jr., not individually but solely in his capacity as the Claimant Trustee

Wilmington Trust, National Association,
as Delaware Trustee

By: _____
Name: Neumann Marlett
Title: Bank Officer

EXHIBIT 2

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
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HAYWARD PLLC
Melissa S. Hayward (TX Bar No. 24044908)
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10501 N. Central Expy, Ste. 106
Dallas, TX 75231
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Facsimile: (972) 755-7110

Counsel for the Reorganized Debtor and the Highland Claimant Trust

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

NOTICE OF FILING OF
THE CURRENT BALANCE SHEET OF THE HIGHLAND CLAIMANT TRUST

PLEASE TAKE NOTICE that, pursuant to the Court's *Order (A) Continuing Hearing on Motion to Stay and to Compel Mediation [Dkt. 3752] and (B) Directing Certain Actions in Advance of Continued Hearing* [Docket No. 3870], Highland Capital Management, L.P., the reorganized debtor in the above-captioned bankruptcy case, and the Highland Claimant Trust hereby file the

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are 8357. The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

current balance sheet attached hereto as **Exhibit A** showing the general categories of assets and liabilities of the Highland Claimant Trust, subject to the accompanying notes.

[*Remainder of Page Intentionally Left Blank*]

Dated: July 6, 2023

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
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jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
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Fax: (972) 755-7110

Counsel for the Reorganized Debtor and the Highland Claimant Trust

EXHIBIT A

Highland Claimant Trust
Summarized Consolidated Balance Sheet [1]
As of May 31, 2023
The accompanying notes are integral to understanding this balance sheet
(Estimated and unaudited, $ in millions)

	Balance per books	adjustments (see notes)	Adjusted balance
Assets			
Cash and equivalents	$ 13	$ -	$ 13
Disputed claims reserve [2]	12	-	12
Other restricted cash	12	-	12
Investments [3]	118	(12) [6]	106
Notes receivable, net [4]	86	(83) [4]	3
Other assets	6	-	6
Total assets	**$ 247**	**$ (95)**	**$ 152**
Liabilities			
Secured and other debt	$ -	$ -	$ -
Distribution payable [2]	12	-	12
Additional indemnification reserves	-	90 [5]	90
Other liabilities	15	13 [5]	28
Total liabilities [5]	**$ 27**	**$ 103**	**$ 130**
Book/adjusted book equity (see accompanying notes) [5]	**220**	**(198)**	**22**
Total liabilities and book/adjusted book equity	**$ 247**	**$ (95)**	**$ 152**

Supplemental Info: [7]

Sum of remaining allowed Class 8 Trust Beneficiaries, excluding interest	$ 27
Sum of remaining allowed Class 9 Trust Beneficiaries, excluding interest	99
Sum of face amount of pending Class 8/9 potential Trust Beneficiaries, excluding interest	13
Sub-total	$ 139

{SEE ACCOMPANYING NOTES ON THE FOLLOWING PAGE}

The information contained in this summarized consolidated balance sheet (the "Summary") is based on estimates, and therefore should not be relied upon, as actual results may differ materially from the estimates contained herein.

This Summary is neither an offer nor a solicitation of an offer to buy or sell securities.

Information contained herein is not indicative of, nor does it guarantee, future results. The information contained in this Summary is based on matters as they exist as of the date of preparation and not as of any future date. Valuations do not reflect performance in different economic or market cycles and there can be no assurances that valuations will be achieved. Trust Beneficiaries may experience materially different results and outcomes.

Highland Claimant Trust
Summarized Consolidated Balance Sheet [1]
As of May 31, 2023

Notes:

(1) This presentation is not in accordance with US GAAP and is unaudited, but has nevertheless been prepared in good faith and with the intention of providing the reader with a comprehensible understanding of the remaining assets and liabilities of the Highland Claimant Trust, Highland Capital Management, LP, HCMLP GP LLC, and Highland Litigation Trust (the "Consolidated Entities"). These entities have each been aggregated on a stand-alone basis, with intercompany amounts eliminated. Funds and entities that may otherwise be consolidated by one or more of the Consolidated Entities under US GAAP are not fully consolidated and rather are included solely at their equity value. For example, if Highland Capital Management, LP is a 20% investor in a managed fund with assets of $100 million and liabilities of zero that would normally require consolidation under US GAAP, the presentation contained herein reflects an investment of $20 million as opposed to fully consolidating the $100 million fund and reflecting minority interest of $80 million. The value of the Highland Indemnity Trust is not included herein. As of May 31, 2023, $35 million has been funded to the Highland Indemnity Trust. Highland Indemnity Trust beneficiaries are Claimant Trust Indemnified Parties. Any unused assets remaining after satisfying indemnification obligations will be transferred to the Highland Claimant Trust or otherwise be distributed to the Claimant Trust Beneficiaries in accordance with the Indemnity Trust Agreement. For presentation purposes, it is assumed that outstanding indemnification obligations will consume the entirety of the Highland Indemnity Trust. Further, no current recovery amount has been ascribed to the "Kirschner Adversary" as all such value is considered to be contingent, nor have any liabilities been reserved for various success fees payable to professionals associated with the Kirschner Adversary or any other litigations. Such liabilities are also contingent in nature.

(2) Amounts already authorized for distribution, but reserved in the Disputed Claims Reserve related to resolution of pending disputed claims.

(3) Value reflected herein consists primarily of ownership in private funds and subsidiaries, valued using NAV as the practical expedient, public & private investments (including residual sale escrows), valued at fair value, and SE Multifamily Holdings, LLC, valued using book equity value as of the most recent financials received. See note 6 for further information. There is substantial risk and uncertainty with respect to the timing and ultimate cash value to be received from monetizations of these investments and such value could ultimately be materially impacted by actual monetizations.

(4) Book amounts reflect principal amounts outstanding on various notes, without discount, adjustment, or estimates of future costs of collection, with two exceptions. The first exception is to the note receivable from Hunter Mountain Investment Trust for which over $90 million of principal and interest is currently due, payable, and in default. These notes are a component of the "Kirschner Adversary" which is currently stayed. These principal and interest amounts are fully reserved based on the assumption that Hunter Mountain Investment Trust has no other assets other than a contingent, unvested interest in the Highland Claimant Trust. That assumption is subject to change. The second exception relates to the note receivable from Highland Select Equity Master Fund, LP. This amount is fully reserved based on the pendency of the Ch. 7 proceeding for Highland Select Equity Master Fund, LP and the minimal remaining value of Highland Select Equity Master Fund, LP's assets, which is expected to be further consumed (at least in part) by trustee and professional fees. Aside from these exceptions, approximately $65 million of these principal amounts (further described below) are subject to ongoing litigation with various note counterparties who are contesting the validity of their obligations. These disputed amounts are contained within the "Balance per books" column herein without discount or adjustment. While the makers have asserted defenses, Highland believes they are meritless and is confident that judgments will ultimately be entered in Highland's favor. However, based on Mr. Dondero's history of failing to satisfy judgments entered against his affiliates by others (e.g., UBS, the Redeemer Committee, Joshua Terry, and Patrick Daugherty), the effect of complete non-payment of principal is reflected in the "adjustments" column, which also assumes non-payment of the currently performing $18 million note receivable from The Dugaboy Investment Trust. Ultimate recoveries from these notes could differ materially from the current principal outstanding depending on the outcome of the pending litigation and no recovery can be assured. Accrued interest is captured in the "Other assets" line item, subject to the exceptions discussed within this footnote. While there is currently a report & recommendation from the bankruptcy court for summary judgment, plus costs of collection, no costs of collection are reflected as assets on this balance sheet, so would be incremental. The estimated amount of such costs of collections are over $3 million.

Detail of note principal amounts subject to report & recommendations of the bankruptcy court, currently pending in district court (excludes accrued interest):

Note Maker	Principal O/S	Comments
NexPoint Advisors, LP	$ 25	Consists of a single note
NexPoint Real Estate Partners, LLC	12	fka HCRE Partners, LLC; five underlying notes comprise balance
NexPoint Asset Management, LP	11	fka Highland Capital Management Fund Advisors, LP; four underlying notes comprise balance
James Dondero	10	Three underlying notes comprise balance
Highland Capital Management Services, Inc.	7	Five underlying notes comprise balance
Sub-total	$ 65	

(5) The book equity amount reflects a multitude of estimates including, but not limited to the value of investments and collectability of notes receivable. For book purposes, no contingent liabilities or indemnification reserves have been recorded as liabilities that would reduce book equity, notwithstanding that it is currently expected that there will be a) a need to maintain further highly material indemnification reserves; and b) further incurrance of springing contingent liabilities if distribution milestones are achieved. The amount of further incremental indemnification reserves are currently expected to exceed $90 million, and may ultimately be greater, which will be required to be funded (at least in part) prior to any further material distributions to Trust Beneficiaries. In the absence of a global settlement that, among other things, fully and finally releases all Claimant Trust Indemnified Parties, Highland believes the additional indemnification reserves are required because, among other reasons, (a) based on the so-called "Dondero exclusion," insurance is likely to remain cost-prohibitive and/or unsatisfactory, leaving the Claimant Trust and Indemnity Trust assets as the sole sources of funding for indemnity obligations, (b) approximately twenty (20) matters are being actively litigated in at least 9 different forums; and (c) based on history, new litigation can be expected. Any unused assets remaining after satisfaction of indemnity obligations will be distributed as required by the Indemnity Trust Agreement. The amount of incremental springing contingent liabilities are expected to range from $5 million to $15 million, which are exclusive of various success fees associated with recoveries under the "Kirschner Adversary" and others. No reserves have been accrued for any current, pending, or threatened litigation brought by any Dondero-related parties. Lastly, it is expected that the trust and its subsidiaries will operate at an operating loss prospectively. The corresponding information in the "adjustments" column above is an estimate of the effects of these incremental indemnification reserves and contingent liabilities, but does not assume any expected future operating cash burn, which is expected to be significant.

6) The value of SE Multifamily Holdings LLC maintained on this balance sheet is $15.7 million, which is a component of the "Investments" line item and is based on a several years stale book-basis balance sheet. Notwithstanding Dondero-entities' previous disclosures of this interest at values of $20 million and $12 million, Highland also received interest from Dondero to acquire the interest for $3.8 million, among other assets. The purpose of this adjustment is to assume that the holding could be monetized at the lower $3.8 million level, which would result in a $11.9 million decrease to Highland's book equity if it were hypothetically transacted at that level. Highland has initiated proceedings in Delaware to receive books and records relating to SE Multifamily Holdings LLC, for which it has the contractual right and has been seeking for approximately a year, but for which Dondero-controlled entities have not provided to date.

7) Amounts described herein represent the face amounts of outstanding allowed and pending claims. The pending claim amounts do not include amounts that are the subject of various appeals or that are unliquidated. The allowed and pending claims (along with accrued interest) could ultimately be satisfied in part or in full using 1) the assets of the disputed claims reserve, 2) the residual amount of cash in the indemnity trust after satisfying all indemnification obligations, and 3) the residual amount of cash remaining after monetizing all other non-cash assets and paying liabilities and future expenses.

EXHIBIT 3

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

In re: **HIGHLAND CAPITAL MANAGEMENT, L.P.,** **Debtor.**	§	**Chapter 11** **Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **v.** **NEXPOINT ASSET MANAGEMENT, L.P. (F/K/A HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.), et al.,** **Defendants.**	§	**Civ. Act. No. 3:21-cv-00881-X** **(Consolidated with 3:21-cv-00880-X; 3:21-cv-01010-X; 3:21-cv-01360-X; 3:21-cv-01362-X; 3:21-cv-01378-X; 3:21-cv-01379-X; 3:21-cv-03207-X; 3:22-cv-0789-X)**

ORDER GRANTING JOINT AGREED EMERGENCY MOTION FOR ORDER APPROVING STIPULATION FOR THE BONDING OF JUDGMENTS AND STAYS OF EXECUTIONS PENDING APPEALS

Upon consideration of the Parties' *Joint Agreed Emergency Motion for Order Approving Stipulation for the Bonding of Judgments and Stays of Execution Pending Appeals* (the "Motion"),[1] the Court hereby finds that the Motion should be GRANTED as set forth below. Accordingly,

IT IS HEREBY ORDERED that:

1. The Motion is **GRANTED** in its entirety.

1 Capitalized terms not defined in this Order shall have the meanings ascribed to them in the Motion.

2. The Parties' entry into the Binding Bonding Agreement, a copy of which is attached hereto as **Exhibit A**, is hereby **APPROVED.**

3. The Parties are directed to comply with each and every term of the Binding Bonding Agreement.

4. The deposit of any amounts required by the Binding Bonding Agreement into the Court Registry will be done in each case in accordance with Miscellaneous Order No. 45, entered by the U.S. District Court of the Northern District of Texas on October 7, 1997 (the "Misc. Order"). For the avoidance of doubt, this Order shall constitute the Court's express order authorizing the deposit or transfer of funds into the Court Registry as required by the terms of the Misc. Order, and the Clerk of Court shall accept this Order as the requisite order of the Court permitting the deposit or transfer of funds into the Court Registry.

5. This Court shall have and retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Order.

IT IS SO ORDERED this 3rd day of August, 2023.

THE HONORABLE BRANTLEY STARR
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT A

Binding Bonding Agreement

This Binding Bonding Agreement ("***Agreement***") is entered into by and between Highland Capital Management, L.P. ("***Highland***") and James Dondero, NexPoint Asset Management, L.P., NexPoint Advisors, L.P., NexPoint Real Estate Partners, LLC, and Highland Capital Management Services, Inc. (the "***Judgment Debtors***") (along with Highland, collectively the "***Parties***") with respect to judgments entered in US Dist. Court Case No. 3:21-cv-00881-X and its consolidated cause numbers (the "***Judgments***" in the "***District Court Case***").

RECITALS

WHEREAS, as of July 31, 2023, the Judgments entered in the District Court Case on July 6, 2023, total $68,902,707.24 ("***Combined Judgment Amount***"), inclusive of principal, pre- and post-judgment interest, and awarded fees and expenses;

WHEREAS, Highland and the Judgment Debtors dispute the finality of certain of the Judgments;

WHEREAS, Highland may execute upon the Judgments thirty (30) days after the entry of a final Judgment, unless the United States District Court for the Northern District of Texas (the "***District Court***") orders otherwise;

WHEREAS, the Judgment Debtors may stay execution of such Judgments by providing a supersedeas bond in conformance with the District Court's rules ("***Bond***") for each Judgment Debtor;

WHEREAS, the Parties seek to avoid the motion practice, expense, and harm caused by execution of the Judgments;

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. The Parties will request the District Court to enter separate judgments ("***Individual Judgment Amount***") for each Judgment Debtor against each respective Judgment Debtor as follows (which the parties agree to consolidate for the purposes of appeal). Each Judgment Debtor shall Bond in the amount of 111% of its Individual Judgment Amount ("***Individual Bond Amount***") as set forth below (the Individual Bond Amounts collectively the "***Combined Bond Amount***"):

Party	Individual Judgment Amount	Individual Bond Amount
NexPoint Asset Management, L.P.	$3,628,692.37	$4,027,848.53

NexPoint Asset Management, L.P.	$8,441,524.65	$9,370,092.36
NexPoint Advisors, L.P.	$25,849,816.94	$28,693,296.80
NexPoint Real Estate Partners, LLC	$13,251,661.00	$14,709,343.70
Highland Capital Management Services, Inc.	$7,578,620.41	$8,412,268.66
James Dondero	$10,152,391.87	$11,269,154.90
Total	$68,902,707.24	$76,482,004.95

2. The Judgment Debtors shall Bond the Combined Bond Amount according to the following schedule ("***Bonding Schedule***"):

Date[1]	Additional Bonded Amount	Combined Bonded Amount
August 11, 2023	$30,000,000.00	$30,000,000.00
August 18 2023	$10,000,000.00	$40,000,000.00
August 25, 2023	$10,000,000.00	$50,000,000.00
September 8, 2023	$10,000,000.00	$60,000,000.00
October 11, 2023	$16,482,004.95	$76,482,004.95

3. In substitution for posting Bond, if, and only if, the registry of the District Court is willing to accept USD$ cash in lieu of a Bond conforming with the rules of the District Court, a Judgment Debtor may post cash as security to an interest-bearing account (if the registry maintains such an account) with the Registry of the District Court ("***Cash Security***"). For all purposes under this Agreement, including calculation of the Combined Bonded Amount under the Bonding Schedule, a Judgment Debtor shall be credited as having posted a Bond equivalent to 111% of all amounts posted as Cash Security only if (a) the interest rate payable on such Cash Security by the registry of the District Court is equal to or greater than the 5.35% Federal Judgment Rate applicable to the Judgments (or, if less, the "Top-up Interest" is paid as described in footnote 2 below) and (b) all interest paid on the Cash Security becomes part of the Cash Security and remains in the Registry of the District Court and available to satisfy the Judgments. If the Registry of the District Court is not willing to accept a Cash Security or does not accrue and apply interest to the Cash Security as required by the immediately preceding sentence hereof, the Judgment Debtor must post the required amount in the form of a supersedeas Bond consistent with the Federal Rules of Civil Procedure and the Local Rules for the District Court. Consistent with the foregoing,

[1] For avoidance of doubt, failure to post the required Combined Bond Amount by the calendar dates set forth in the Bonding Schedule will constitute a default permitting the plaintiffs to immediately begin enforcement and collection proceedings for the unbonded amounts then outstanding against each and every Judgment Debtor, unless the parties otherwise agree and adjust the Bonding Schedule, or the District Court extends the stay of execution. If at least $60 million in Bond (or the equivalent required amount in cash) has been posted on or before September 8, 2023, the parties will work in good faith to negotiate a fair and equitable schedule for completing Bonding if it cannot be completed by October 11, 2023; if Highland rejects the proposal of the remaining Judgment Debtors, Highland may begin collection efforts if Judgment Debtors have not obtained a stay of execution within 7 days of such rejection.

interest generated by any acceptable USD$ cash deposit to the Registry of the District Court shall be treated as part of the Bond with respect to the right of collection after finalization of appeals.[2]

4. Upon posting of (a) Bond or (b) if acceptable to the Registry of the District Court, Cash Security in substitution of a Bond, the Judgment Debtors shall notify Highland in writing to counsel of record of the Judgment Debtor(s) on whose behalf such Bond or Cash Security was posted and the amount of Combined Bond Amount posted for the purposes of satisfaction of the Bonding Schedule. Except as set forth in footnote 1, failure to post the required Combined Bond Amount by the calendar date above shall constitute an event of default permitting Highland to immediately begin enforcement and collection proceedings for the unbonded amounts against each Judgment Debtor.

5. Each of the Judgment Debtors hereby represents and warrants on its own behalf that it has not since January 1, 2023, engaged in any Fraudulent Transfers. For the purposes of this Agreement, "Fraudulent Transfer" shall have its meaning as defined in 11 U.S.C. §§ 544, 548.

6. None of the Judgment Debtors shall transfer any of its assets with a value of over $100,000 in one or a series of related transactions (an "***Asset Transfer***"), without providing five days (5) written notice to Highland (the "***Notice***") except that Notice is not required for (i) ordinary and customary payments to vendors, employees, contractors, or consultants, including for any bonuses that are already scheduled in the current compensation schedule, all consistent with recent past practice; (ii) payments made pursuant to the terms of a contract executed and effective prior to January 1, 2023 (payments under paragraph 6(i) and (ii) are referred to as "***Ordinary Course Payments***"), or (iii) transfers and transactions made for the purpose of bonding the Judgments. Notwithstanding the foregoing, other than with respect to Ordinary Course Payments being made pursuant to already existing written agreements, the Judgment Debtors *shall* provide Notice to Highland of all contemplated Asset Transfers between or among any Judgment Debtor, on the one hand, and any of Mr. Dondero or Scott Ellington or either of their immediate families or either of their affiliated entities (including Highgate Consulting Group, Inc., d/b/a Skyview Group ("***Skyview***")), on the other (any such contemplated Asset Transfer, an "***Insider Transaction***"). For the avoidance of doubt, items such as contractual payments to Skyview and its employees, scheduled bonus amounts, and medical reimbursements are not required to be disclosed to Highland so long as they otherwise constitute Ordinary Course Payments. While Notice of all other Insider Transactions is required, the Parties do not intend to restrict Asset

[2] As set forth above, the interest rate for by the deposit of Cash Security must be equal to or greater than the 5.35% statutory post-judgment interest rate applicable to the Judgments. In the event that the Cash Security interest rate available at the Registry of the District Court is less than the statutory 5.35% post-judgment interest rate applicable to the Judgments, each the Judgment Debtor shall post additional Cash Security or post additional Bond in the amount of the dollar difference between the Cash Security interest rate payable at the Registry of the District Court (as applied to the Judgments) and the 5.35% post-judgment statutory interest rate applicable to the Judgments ("***Top-Up Interest***"). Top-Up Interest must be deposited with the Registry of the District Court and added to the Cash Security on the first business day of each month. Failure to timely deposit Top-Up Interest shall be an event of default hereunder permitting Highland to immediately begin enforcement and collection proceedings for the unbonded amounts against each Judgment Debtor.

Transfers made as Ordinary Course Payments. The provisions of this Paragraph 6 shall expire (a) for each Judgment Debtor upon the posting of a Bond or Cash Security for its Individual Bond Amount or (b) upon the complete satisfaction of the Bonding Schedule. If Highland objects in writing to any Asset Transfer or Insider Transaction, the proposed transaction(s) may only be pursued if Highland has not moved on shortened notice and as expedited a basis as the District Court will accommodate for injunctive or other relief within 5 days of written notice of a Judgment Debtor's objection to Highland's objection (the Parties all hereby consent to having a motion under this provision heard on shortened notice or on an emergency basis), and such period has not been extended pursuant to a written agreement between the parties or by the Court upon good cause shown.

7. Prior to completion of the Bonding Schedule, and promptly following execution of this Agreement and entry of an order of the District Court approving this Agreement (and in any event on or before August 11, 2023), the Judgment Debtors shall grant (or cause to be granted) to Highland properly perfected, first-priority security interests (the "***Liens***") in collateral collectively up to the amount of $76.4 million ("***Interim Collateral***"). To the extent the Liens are perfected through the filing of a UCC-1, the Liens will be recorded with UCC-1 filings in Dallas County, Texas, and in the state of incorporation/formation of the debtor listed in the applicable UCC-1. Each Lien shall be released with respect to each Judgment Debtor as each Judgment Debtor posts a Bond or Cash Security equal to its Individual Bond Amount in accordance with this Agreement as follows: upon approval by the District Court of any Bond or Cash Security equal to an Individual Bond Amount, Highland shall release its lien and security interest on Interim Collateral in the amount of such Bond or Cash Security with respect to the asset of the particular Judgment Debtor posting such Bond or Cash Security.

8. So long as the Judgment Debtors are in strict compliance with the Bonding Schedule (time being of the essence), and paragraphs 6 and 7 concerning Interim Collateral, Highland shall take no action to execute upon the Judgments.

9. Upon execution of this Agreement, the Parties agree that they shall immediately submit this Agreement to the District Court as a stipulation to be entered on the District Court Case docket and approved by the Court.

AGREED BY COUNSEL TO THE PARTIES TO THIS AGREEMENT:

Deborah Deitsch-Perez

John A. Morris

Counsel to the Judgement Debtors

Counsel to Highland

Deborah Deitsch-Perez
Michael P. Aigen
STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219-4259
Telephone: (214) 560-2201
Facsimile: (214) 560-2203
Email: Deborah.deitschperez@stinson.com
Email: Michael.aigen@stinson.com

Counsel for Defendants

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

In re: **HIGHLAND CAPITAL MANAGEMENT, L.P.,** **Debtor.**	§ § § § § §	**Chapter 11** **Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **v.** **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.** **Defendants.**	§ § § § § § § § § § § § §	**Civ. Act. No. 3:21-cv-00881-X** **(Consolidated with 3:21-cv-00880-X, 3:21-cv-01010-X, 3:21-cv-01378-X, 3:21-cv-01379-X)**

NOTICE OF BONDING

PLEASE TAKE NOTICE that, on August 8, 2023, in accordance with the terms of the Binding Bonding Agreement attached as Exhibit A to Order Granting Joint Agreed Emergency Motion for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals, as well as the Amended Final Judgments against the Judgment Debtors at Dkts

143-145 and 147, Defendants NexPoint Asset Management, L.P.; NexPoint Advisors, L.P.; and Highland Capital Management Services, Inc., tendered bond to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: August 10, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez
State Bar No. 24036072
Michael P. Aigen
State Bar No. 24012196
STINSON LLP
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(214) 560-2201 telephone
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Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on August 10, 2023, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive electronic notices in this case.

/s/ *Deborah Deitsch-Perez*
Deborah Deitsch-Perez

Exhibit 1

Generated: Aug 8, 2023 3:19PM

U.S. District Court

Texas Northern - Dallas

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AMENDED RECEIPT

Receipt Date: Aug 8, 2023 2:56PM

Rcpt. No: 300007043 Trans. Date: Aug 8, 2023 2:56PM Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321cv000881 /01 **FBO:** Nexpoint Asset Management LP	1	6000000.00	6000000.00

CD	Tender			Amt
CH	Check	#046304	08/8/2023	$6,000,000.00

Total Due Prior to Payment:	$6,000,000.00
Total Tendered:	$6,000,000.00
Total Cash Received:	$0.00
Cash Change Amount:	$0.00

RECEIPT AMENDED by staff #1788 8/8/2023 3:18 PM
AMENDMENT VERIFIED by staff #1774 8/8/2023 3:19 PM
Correction Reason: 03) Incorrect Case/Party Number

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A $53 fee will be charged for a returned check.

Generated: Aug 8, 2023 3:12PM

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Receipt Date: Aug 8, 2023 3:01PM

Rcpt. No: 300007048 Trans. Date: Aug 8, 2023 3:01PM Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	Dtxn321cv000881 /01 **FBO:** Nexpoint Advisors LP	1	18798654.37	18798654.37

CD	Tender			Amt
CH	Check	#046302	08/8/2023	$18,798,654.37

Total Due Prior to Payment:	$18,798,654.37
Total Tendered:	$18,798,654.37
Total Cash Received:	$0.00
Cash Change Amount:	$0.00

RECEIPT AMENDED by staff #1788 8/8/2023 3:12 PM
AMENDMENT VERIFIED by staff #1774 8/8/2023 3:12 PM
Correction Reason: 03) Incorrect Case/Party Number

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A $53 fee will be charged for a returned check.

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Receipt Date: Aug 8, 2023 2:59PM

Rcpt. No: 300007046 Trans. Date: Aug 8, 2023 2:59PM Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	Dtxn321cv000881 /01 **FBO**: Nexpoint Asset Management LP	1	6070217.02	6070217.02

CD	Tender			Amt
CH	Check	#046305	08/8/2023	$6,070,217.02

Total Due Prior to Payment:	$6,070,217.02
Total Tendered:	$6,070,217.02
Total Cash Received:	$0.00
Cash Change Amount:	$0.00

RECEIPT AMENDED by staff #1788 8/8/2023 3:29 PM
AMENDMENT VERIFIED by staff #1774 8/8/2023 3:29 PM
Correction Reason: 04) Incorrect Remitter

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A $53 fee will be charged for a returned check.

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Receipt Date: Aug 8, 2023 3:07PM

Rcpt. No: 300007052 Trans. Date: Aug 8, 2023 3:07PM Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	Dtxn321cv000881 /01 **FBO**: Nexpoint Advisors LP	1	921379.59	921379.59

CD	Tender			Amt
CH	Check	#046303	08/8/2023	$921,379.59
			Total Due Prior to Payment:	$921,379.59
			Total Tendered:	$921,379.59
			Total Cash Received:	$0.00
			Cash Change Amount:	$0.00

RECEIPT AMENDED by staff #1788 8/8/2023 3:31 PM
AMENDMENT VERIFIED by staff #1774 8/8/2023 3:31 PM
Correction Reason: 07) Incorrect FBO 03) Incorrect Case/Party Number

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A $53 fee will be charged for a returned check.

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Receipt Date: Aug 8, 2023 3:04PM

Rcpt. No: 300007050 Trans. Date: Aug 8, 2023 3:04PM Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321cv000881 /01 **FBO:** Nexpoint Advisors LP	1	6129782.98	6129782.98

CD	Tender			Amt
CH	Check	#046306	08/8/2023	$6,129,782.98

Total Due Prior to Payment:	$6,129,782.98
Total Tendered:	$6,129,782.98
Total Cash Received:	$0.00
Cash Change Amount:	$0.00

RECEIPT AMENDED by staff #1788 8/8/2023 3:30 PM
AMENDMENT VERIFIED by staff #1774 8/8/2023 3:30 PM
Correction Reason: 07) Incorrect FBO

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A $53 fee will be charged for a returned check.

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Receipt Date: Aug 8, 2023 2:15PM

Rcpt. No: 300007029 Trans. Date: Aug 8, 2023 2:15PM Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DDTX321cv000881 /01 **FBO**: Highland Capital Management Services Inc	1	7578620.41	7578620.41

CD	Tender			Amt
CH	Check	#046300	08/8/2023	$7,578,620.41

Total Due Prior to Payment:	$7,578,620.41
Total Tendered:	$7,578,620.41
Total Cash Received:	$0.00
Cash Change Amount:	$0.00

RECEIPT AMENDED by staff #1788 8/8/2023 3:21 PM
AMENDMENT VERIFIED by staff #1774 8/8/2023 3:22 PM
Correction Reason: 03) Incorrect Case/Party Number

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A $53 fee will be charged for a returned check.

Deborah Deitsch-Perez
Michael P. Aigen
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Email: Michael.aigen@stinson.com

Counsel for Defendants

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

In re: **HIGHLAND CAPITAL MANAGEMENT, L.P.,** **Debtor.**	§	**Chapter 11** **Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **v.** **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.** **Defendants.**	§	**Civ. Act. No. 3:21-cv-00881-X** **(Consolidated with 3:21-cv-00880-X, 3:21-cv-01010-X, 3:21-cv-01378-X, 3:21-cv-01379-X)**

NOTICE OF BONDING

PLEASE TAKE NOTICE that, on August 24, 2023, in accordance with the terms of the Binding Bonding Agreement attached as Exhibit A to Order Granting Joint Agreed Emergency Motion for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals, as well as the Amended Final Judgments against the Judgment Debtors at Dkts.

146 and 148, Defendants NexPoint Real Estate Partners LLC (f/k/a HCRE Partners LLC) and James Dondero tendered bond to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: August 28, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez
State Bar No. 24036072
Michael P. Aigen
State Bar No. 24012196
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Email: michael.aigen@stinson.com

Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on August 28, 2023, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive electronic notices in this case.

/s/ *Deborah Deitsch-Perez*
Deborah Deitsch-Perez

EXHIBIT 1

Generated: Aug 24, 2023 1:48PM

U.S. District Court

Texas Northern - Dallas

Receipt Date: Aug 24, 2023 1:48PM

Rcpt. No: 300007302 Trans. Date: Aug 24, 2023 1:48PM Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /001 HIGHLAND CAPITAL MGMT SERVICES INC **FBO:** Nextpoint Real Estate Partners LLC	1	13251661.00	13251661.00

CD	Tender			Amt
CH	Check	#046362	08/24/2023	$13,251,661.00

Total Due Prior to Payment:	$13,251,661.00
Total Tendered:	$13,251,661.00
Total Cash Received:	$0.00
Cash Change Amount:	$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A $53 fee will be charged for a returned check.

Generated: Aug 24, 2023 1:51PM

U.S. District Court

Texas Northern - Dallas

Receipt Date: Aug 24, 2023 1:51PM

Rcpt. No: 300007303 Trans. Date: Aug 24, 2023 1:51PM Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /001 HIGHLAND CAPITAL MGMT SERVICES INC **FBO:** James Dondero	1	1248339.00	1248339.00

CD	Tender			Amt
CH	Check	#046361	08/24/2023	$1,248,339.00

Total Due Prior to Payment:	$1,248,339.00
Total Tendered:	$1,248,339.00
Total Cash Received:	$0.00
Cash Change Amount:	$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A $53 fee will be charged for a returned check.

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Counsel for Defendants

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

In re: **HIGHLAND CAPITAL MANAGEMENT, L.P.,** **Debtor.**	§ § § § § §	**Chapter 11** **Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **v.** **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.** **Defendants.**	§ § § § § § § § § § § § §	**Civ. Act. No. 3:21-cv-00881-X** **(Consolidated with 3:21-cv-00880-X, 3:21-cv-01010-X, 3:21-cv-01378-X, 3:21-cv-01379-X)**

NOTICE OF BONDING

PLEASE TAKE NOTICE that, on October 4, 2023, in accordance with the terms of the Binding Bonding Agreement attached as Exhibit A to Order Granting Joint Agreed Emergency Motion for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals [Dkt 149], as well as the Amended Final Judgments against the Judgment

Debtors [Dkts. 143-148], Defendants James Dondero, NexPoint Real Estate Partners LLC (f/k/a HCRE Partners LLC), NexPoint Asset Management LP, NexPoint Advisors LP, and Highland Capital Management Services, Inc. tendered top-up interest payments to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: October 4, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez
State Bar No. 24036072
Michael P. Aigen
State Bar No. 24012196
STINSON LLP
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(214) 560-2201 telephone
(214) 560-2203 facsimile
Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on October 4, 2023, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive electronic notices in this case.

/s/ *Deborah Deitsch-Perez*
Deborah Deitsch-Perez

EXHIBIT 1

Generated: Oct 4, 2023 9:24AM

U.S. District Court

Texas Northern - Dallas

Receipt Date: Oct 4, 2023 9:24AM

Rcpt. No: 300008032 Trans. Date: Oct 4, 2023 9:24AM Cashier ID: #AC

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /005 JAMES DONDERO **FBO:** James Dondero	1	435.76	435.76
701	Treasury Registry	DTXN321CV000881 Nextpoint Real Estate Partners **FBO:** Nextpoint Real Estate Partners	1	4625.75	4625.75
701	Treasury Registry	DTXN321CV000881 /003 NEXPOINT ASSET MGMT LP **FBO:** Nextpoint Asset Management	1	4213.34	4213.34
701	Treasury Registry	DTXN321CV000881 /002 NEXPOINT ADVISORS LP **FBO:** Nextpoint Advisors	1	9023.37	9023.37
701	Treasury Registry	DTXN321CV000881 /001 HIGHLAND CAPITAL MGMT SERVICES INC **FBO:** Highland Capital Management	1	2645.46	2645.46

CD	Tender			Amt
CH	Check	#046437	10/3/2023	$20,943.68
			Total Due Prior to Payment:	$20,943.68
			Total Tendered:	$20,943.68
			Total Cash Received:	$0.00
			Cash Change Amount:	$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A $53 fee will be charged for a returned check.

Deborah Deitsch-Perez
Michael P. Aigen
STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219-4259
Telephone: (214) 560-2201
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Email: Deborah.deitschperez@stinson.com
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Counsel for Defendants

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

In re: **HIGHLAND CAPITAL MANAGEMENT, L.P.,** **Debtor.**	§ § § § § §	**Chapter 11** **Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **v.** **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.** **Defendants.**	§ § § § § § § § § § § § §	**Civ. Act. No. 3:21-cv-00881-X** **(Consolidated with 3:21-cv-00880-X, 3:21-cv-01010-X, 3:21-cv-01378-X, 3:21-cv-01379-X)**

NOTICE OF BONDING

PLEASE TAKE NOTICE that, on October 12, 2023, in accordance with the terms of the Binding Bonding Agreement attached as Exhibit A to Order Granting Joint Agreed Emergency Motion for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals [Dkt 149], as well as the Amended Final Judgments against James Dondero [Dkt.

148], Defendant James Dondero tendered bond to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: October 12, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez
State Bar No. 24036072
Michael P. Aigen
State Bar No. 24012196
STINSON LLP
2200 Ross Avenue, Suite 2900
Dallas, Texas 75201
(214) 560-2201 telephone
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Email: michael.aigen@stinson.com

Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on October 12, 2023, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive electronic notices in this case.

/s/ *Deborah Deitsch-Perez*
Deborah Deitsch-Perez

EXHIBIT 1

Generated: Oct 12, 2023 4:16PM

U.S. District Court

Texas Northern - Dallas

Receipt Date: Oct 12, 2023 4:16PM

James Dondero

Rcpt. No: 300008175 Trans. Date: Oct 12, 2023 4:16PM Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /005 JAMES DONDERO **FBO:** James Dondero	1	8904052.87	8904052.87

CD	Tender			Amt
CH	Check	#046450	10/12/2023	$8,904,052.87
			Total Due Prior to Payment:	$8,904,052.87
			Total Tendered:	$8,904,052.87
			Total Cash Received:	$0.00
			Cash Change Amount:	$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A $53 fee will be charged for a returned check.

Deborah Deitsch-Perez
Michael P. Aigen
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Counsel for Defendants

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

In re: **HIGHLAND CAPITAL MANAGEMENT, L.P.,** **Debtor.**	§ § § § § §	**Chapter 11** **Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **v.** **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.** **Defendants.**	§ § § § § § § § § § § §	**Civ. Act. No. 3:21-cv-00881-X** **(Consolidated with 3:21-cv-00880-X, 3:21-cv-01010-X, 3:21-cv-01378-X, 3:21-cv-01379-X)**

NOTICE OF BONDING

PLEASE TAKE NOTICE that, on November 1, 2023, in accordance with the terms of the Binding Bonding Agreement attached as Exhibit A to Order Granting Joint Agreed Emergency Motion for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals [Dkt 149], as well as the Amended Final Judgments against the Judgment

Debtors [Dkts. 143-148], Defendants James Dondero, NexPoint Real Estate Partners LLC (f/k/a HCRE Partners LLC), NexPoint Asset Management LP, NexPoint Advisors LP, and Highland Capital Management Services, Inc. tendered top-up interest payments to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: November 1, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez
State Bar No. 24036072
Michael P. Aigen
State Bar No. 24012196
STINSON LLP
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Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on November 1, 2023, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive electronic notices in this case.

/s/ *Deborah Deitsch-Perez*
Deborah Deitsch-Perez

EXHIBIT 1

Generated: Nov 1, 2023 1:49PM

U.S. District Court

Texas Northern - Dallas

Receipt Date: Nov 1, 2023 1:49PM

Rcpt. No: 300008516 Trans. Date: Nov 1, 2023 1:49PM Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /005 JAMES DONDERO **FBO:** James Dondero	1	3798.75	3798.75
701	Treasury Registry	DTXN321CV000881 **FBO:** Nextpoint Real Estate Partners LLC	1	5275.40	5275.40
701	Treasury Registry	DTXN321CV000881 /003 NEXPOINT ASSET MGMT LP **FBO:** NexPoint Asset Management LP	1	4701.90	4701.90
701	Treasury Registry	DTXN321CV000881 /002 NEXPOINT ADVISORS LP	1	10069.64	10069.64
701	Treasury Registry	DTXN321CV000881 /001 HIGHLAND CAPITAL MGMT SERVICES INC	1	2952.20	2952.20

CD	Tender			Amt
CH	Check	#046504	11/1/2023	$26,797.89

Total Due Prior to Payment:	$26,797.89
Total Tendered:	$26,797.89
Total Cash Received:	$0.00
Cash Change Amount:	$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A $53 fee will be charged for a returned check.

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

Volume 6

APPELLANT RECORD

STINSON LLP
Deborah Deitsch-Perez
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Counsel for Hunter Mountain Investment Trust

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

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

INDEX

APPELLANT'S STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL BY RIGHT

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, Appellant Hunter Mountain Investment Trust ("HMIT") hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal by right of the "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt. 4104] that was signed June 22, 2024, and entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024.[1]

[1] Given the lack of clarity in the law about the appropriate mechanism for obtaining review, HMIT filed a Notice of Appeal by Right and a Notice of Appeal by Leave (along with a motion for leave to file an interlocutory appeal) and a petition for writ of mandamus (which will be filed shortly thereafter).

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court abused its discretion in granting Appellees' motion for an indefinite stay of Appellant's gatekeeper motion seeking permission to bring suit in Delaware to remove the trustee of a Delaware statutory trust when (1) Appellees failed to meet the required standard for obtaining a stay; (2) the Bankruptcy Court erroneously concluded that the issue of Appellant's standing to seek removal of the Claimant Trustee would be decided in other cases pending before the Court; and (3) an indefinite or unduly lengthy stay of litigation of the type ordered by the Bankruptcy Court is expressly disfavored by the Fifth Circuit.

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Vol. 1

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Dkt. 4111]. — 00001

2. The judgment, order, or decree appealed from: "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt. 4104] — 000009

3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held June 12, 2024 before Judge Stacey G.C. Jernigan re: Motion to Stay Contested Matter [Dkt. 4091]. — SEE Vol. 17 - 001988

4. Docket Sheet for Bankruptcy Case No. 19-34054-sgj11 kept by the Bankruptcy Clerk. — 000012

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

Vol. 2

DATE	CASE NO.	DKT. NO.	DESCRIPTION
01/09/2020 — 000578	19-34054-sgj-11	399	Order Approving Settlement with Official Committee of Unsecured Creditors regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course
02/22/2021 — 000586	19-34054-sgj-11	1943	Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)
Vol 3 — 03/28/2023 — 000747	19-34054-sgj-11	3699	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
Vol. 4 — 04/21/2023 — 001134	19-34054-sgj-11	3756	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 3/31/23

Vol 4 001149	04/21/2023	19-34054-sgj-11	3757	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 3/31/23
001164	04/23/2023	19-34054-sgj-11	3760	Hunter Mountain Investment Trust's Supplement to Emergency motion for Leave to File Verified Adversary Proceeding
001209	06/05/2023	19-34054-sgj-11	3815	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
001274	06/05/2023	19-34054-sgj-11	3816	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
001339	07/21/2023	19-34054-sgj-11	3888	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 6/30/23
001351	07/21/2023	19-34054-sgj-11	3889	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 6/30/23
Vol. 5 001363	08/25/2023	19-34054-sgj-11	3903	Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trusts' Emergency Motion for Leave to File Verified Adversary Proceeding
001468	01/01/2024	19-34054-sgj-11	4000	Motion for Leave to File a Delaware Complaint
Vol. 6 001606	10/23/2023	19-34054-sgj-11	3955	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 9/30/23
001618	10/23/2023	19-34054-sgj-11	3956	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 9/30/23
001630	01/16/2024	19-34054-sgj-11	4013	Highland's Motion to Stay Contested Matter [Dk No. 4000] or for Alternative Relief
001638	01/22/2024	19-34054-sgj-11	4019	James P. Seery, Jr.'s Joinder to Highland Capital Management L.P.'s Motion to Stay Contested Matter [Dk No. 4000] or for Alternative Relief and Emergency Motion to Expedite Hearing on Motion for Stay
001640	06/11/2024	19-34054-sgj-11	4087	Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay
001669	01/22/2024	19-34054-sgj-11	4020	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 12/31/23
001681	01/22/2024	19-34054-sgj-11	4021	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 12/31/23

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001693

06/24/2024	19-34054-sgj-11	4104	Order Extending Stay of Contested Matter [Docket No. 4000]
01/22/2024	19-34054-sgj-11	4049	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 3/31/24
01/22/2024	19-34054-sgj-11	4050	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 3/31/24
07/18/2024	19-34054-sgj-11	4130	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 6/30/24, dated July 18, 2024
07/18/2024	19-34054-sgj-11	4131	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 6/30/24, dated July 18, 2024

001696
001708
001720
001732

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
05/10/2023	23-03038	0001	Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0013	The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0014	Memorandum of Law in Support of Highland Capital Management L.P. and the Highland Claimant Trust's Motion to Dismiss Complaint

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001779

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DATE	CASE NO.	DKT. NO.	DESCRIPTION
12/29/2023	23-03038	0017	The Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust
12/29/2023	23-03038	0018	Appendix in Support of the Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust
01/19/2024	23-03038	0021	The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint
05/24/2024	23-03038	0026	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets
05/24/2024	23-03038	0027	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets
06/07/2024	23-03038	0030	Notice of Appeal [Appellant Designation due by 06/21/2024] (Filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust)

001809

Vol. 7

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001875

001911

001947

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION

001988

Vol. 7
001988

06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript

Dated: July 22, 2024

STINSON LLP

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez
Texas Bar No. 24036072
Michael P. Aigen
Texas Bar No. 24012196
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Email: michael.aigen@stinson.com

Counsel for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 22, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP
Debtor(s)

Case No. 19-34054

☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 09/30/2023

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to: ◉ Reorganized Debtor

○ Other Authorized Party or Entity: _____
Name of Authorized Party or Entity

/s/ Zachery Z. Annable
Signature of Responsible Party

10/20/2023
Date

Zachery Z. Annable, Hayward PLLC
Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231
Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$14,718,284	$137,036,885
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$0	$5,194,652
d. Total transferred (a+b+c)	$14,718,284	$142,231,537

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor		*Aggregate Total*	$0	$33,005,136	$0	$33,005,136
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i	Pachulski Stang Ziehl & Jones	Lead Counsel	$0	$24,312,860	$0	$24,312,860
	ii	Development Specialists, Inc.	Financial Professional	$0	$5,765,448	$0	$5,765,448
	iii	Kurtzman Carson Consultants	Other	$0	$2,054,716	$0	$2,054,716
	iv	Hayward & Associates PLLC	Local Counsel	$0	$872,112	$0	$872,112
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				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
b.	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor *Aggregate Total*			$0	$7,604,472	$0	$7,604,472
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i	Hunton Andrews Kurth LLP	Other	$0	$1,149,807	$0	$1,149,807
	ii	Foley Gardere, Foley & Lardne	Other	$0	$629,088	$0	$629,088
	iii	Deloitte	Financial Professional	$0	$553,413	$0	$553,413
	iv	Mercer (US) Inc.	Other	$0	$204,767	$0	$204,767
	v	Teneo Capital, LLC	Financial Professional	$0	$1,364,823	$0	$1,364,823
	vi	Wilmer Cutler Pickering Hale	Other	$0	$2,650,937	$0	$2,650,937

	vii	Carey Olsen	Other	$0	$280,264	$0	$280,264
	viii	ASW Law	Other	$0	$4,976	$0	$4,976
	ix	Houlihan Lokey Financial Advi	Other	$0	$766,397	$0	$766,397
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c.	All professional fees and expenses (debtor & committees)			$0	$60,171,929	$0	$60,171,929

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$14,361,077	$284,566,669	$397,485,568	72%
e. Equity interests	$0	$0	$0		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

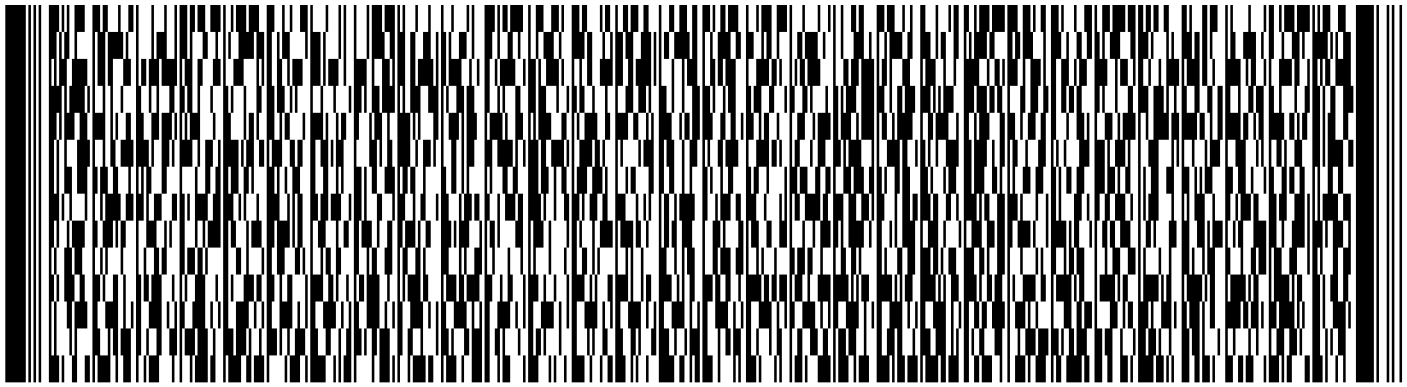
I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

/s/ James Seery
Signature of Responsible Party

James Seery
Printed Name of Responsible Party

CEO
Title

10/20/2023
Date



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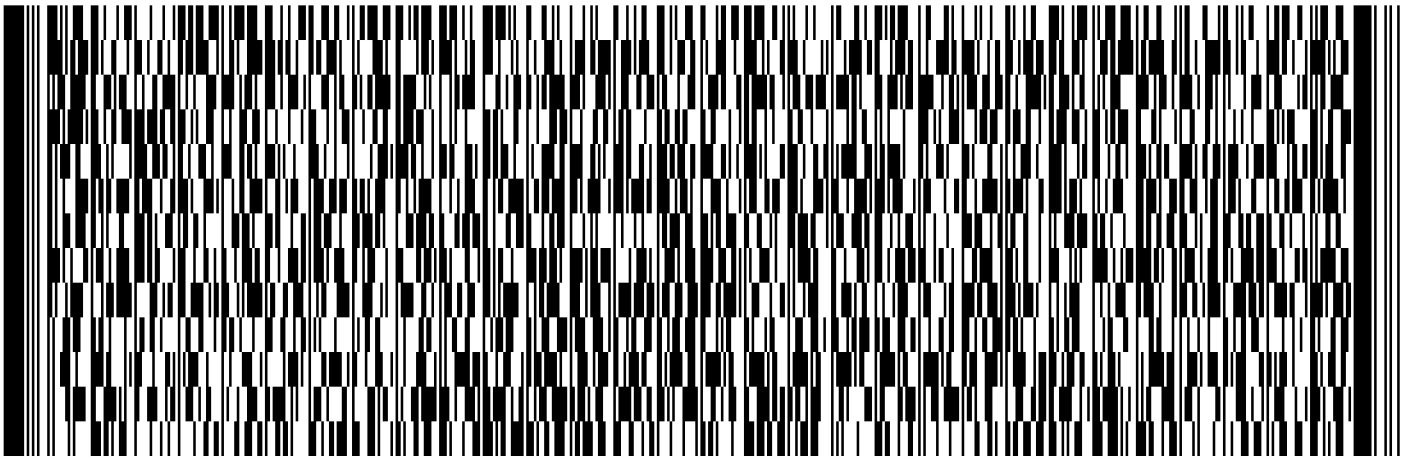

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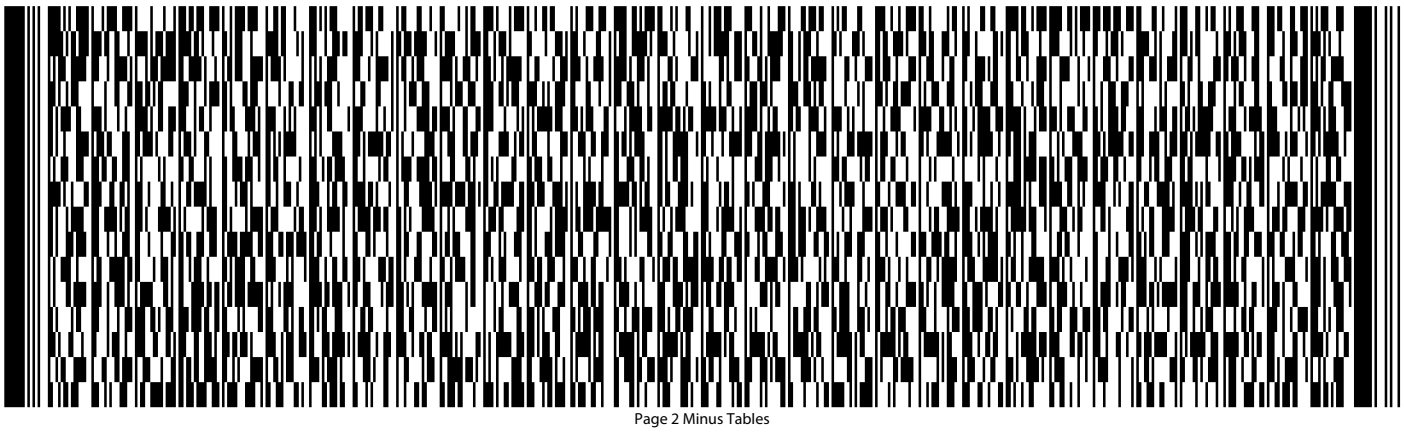

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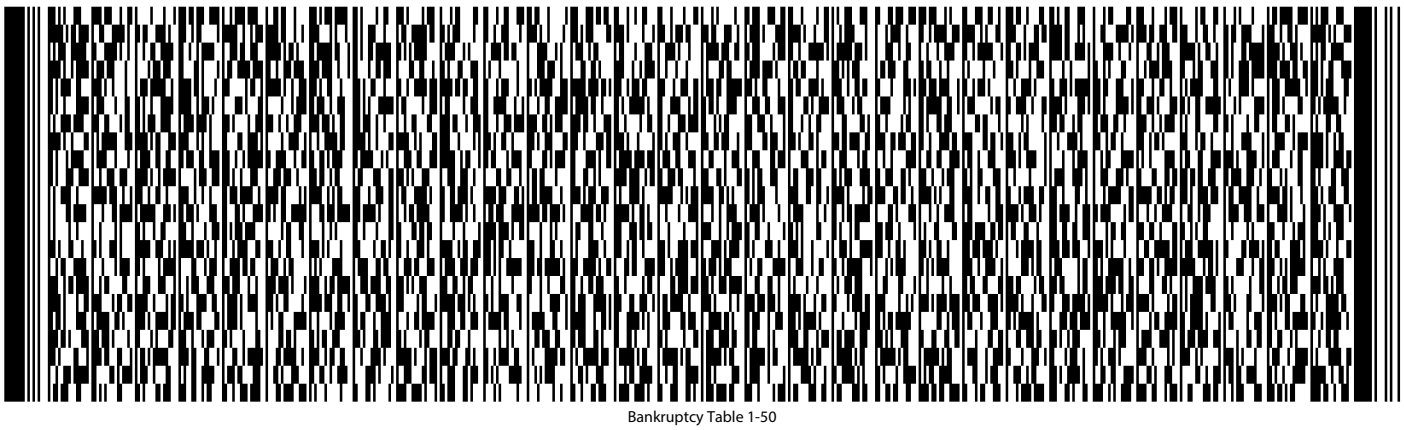
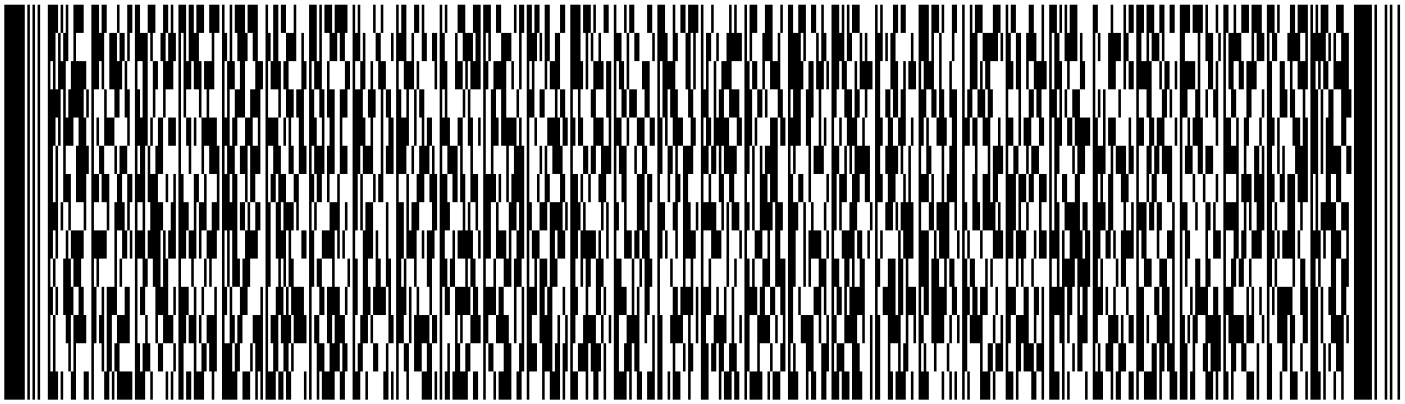
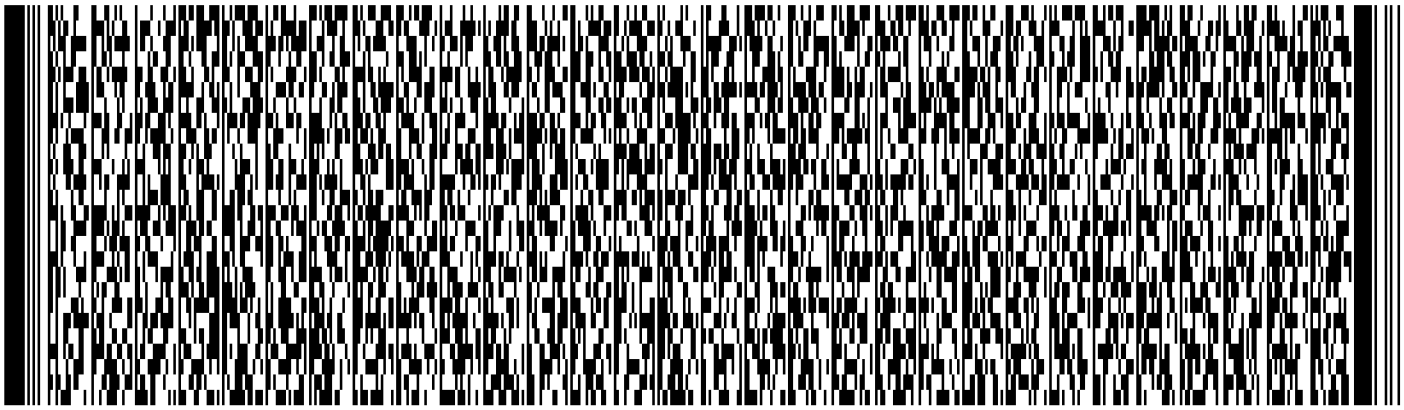


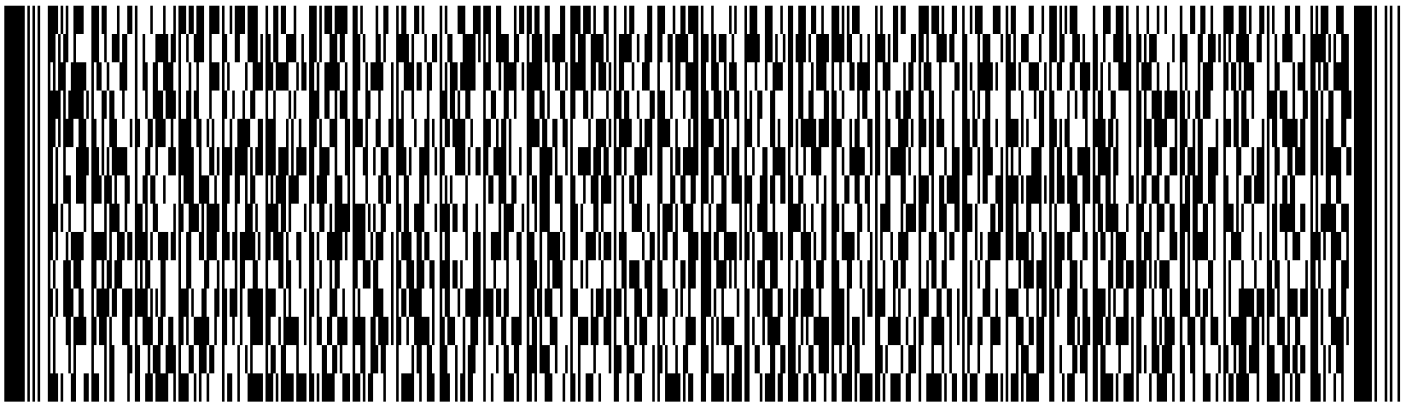
Bankruptcy Table 1-50



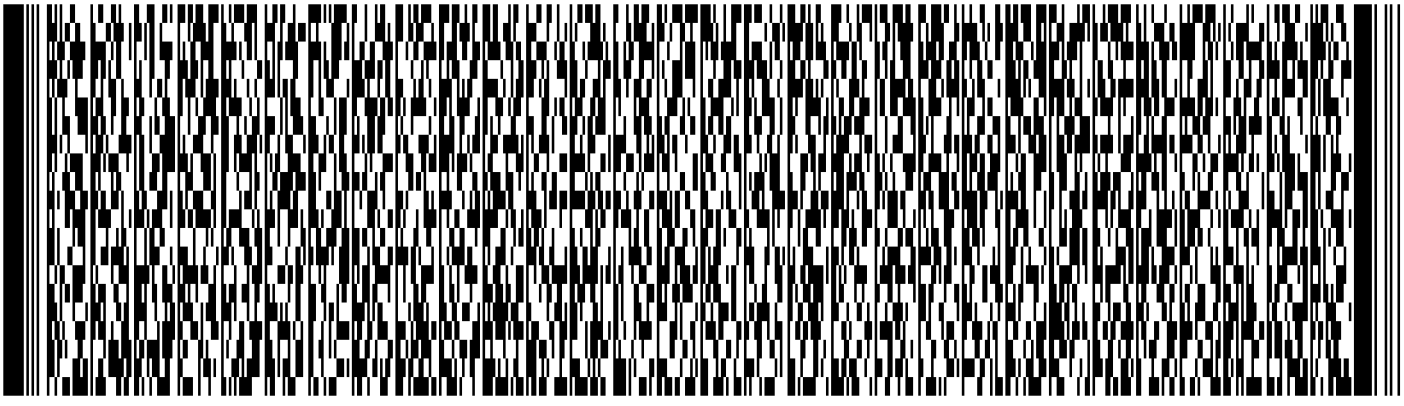
Bankruptcy Table 51-100



Non-Bankruptcy Table 1-50



Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST CONFIRMATION REPORT

The Reorganized Debtor has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), on behalf of debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Reorganized Debtor prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Reorganized Debtor relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Reorganized Debtor made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Reorganized Debtor reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

In Section A of the PCR, the Reorganized Debtor listed the bankruptcy related professionals employed in connection with the Bankruptcy Case.

In Section B of the PCR, the Reorganized Debtor listed non-bankruptcy professionals, those that would have been retained absent the Bankruptcy Case, and the ordinary course professionals ("OCP"). Hunton Andrews Kurth LLP ("Hunton") and Wilmer Cutler Pickering Hale and Dorr LLP ("Wilmer Hale") were originally ordinary course professionals but were later employed

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

professionals. The amounts listed for Hunton and Wilmer Hale include the OCP payments and employed professional payments.

In Section C of the PCR, the Reorganized Debtor totals all payments included in Sections A and B, along with payments made to professional employed by the official committee of unsecured creditors (the "Committee").

The approved current quarter, approved cumulative, and paid cumulative will have the same amount listed due to approval and payment of final fee applications.

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

The payments made to holders of General Unsecured Claims were disbursed from the Claimant Trust, but for presentation purposes, have been included in Part 3 of the post-confirmation report for the Reorganized Debtor.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with Reorganized Debtor's governing documents and the Plan.

The Debtor reserves all right to object to any claim in accordance with the terms of the Plan.

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP
Debtor(s)

Case No. 19-34054

☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 09/30/2023

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:
○ Reorganized Debtor
◉ Other Authorized Party or Entity: Highland Claimant Trust
Name of Authorized Party or Entity

/s/ Zachery Z. Annable
Signature of Responsible Party

10/20/2023
Date

Zachery Z. Annable, Hayward PLLC
Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231
Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$31,299,362	$357,092,784
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$0	$0
d. Total transferred (a+b+c)	$31,299,362	$357,092,784

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor		*Aggregate Total*				
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i						
	ii						
	iii						
	iv						
	v						
	vi						
	vii						
	viii						
	ix						
	x						
	xi						
	xii						
	xiii						
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	xcix						
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b.				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor *Aggregate Total*						
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i						
	ii						
	iii						
	iv						
	v						
	vi						

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	xciii						
	xciv						
	xcv						
	xcvi						
	xcvii						
	xcviii						
	xcix						
	c						
	ci						
c.	All professional fees and expenses (debtor & committees)						

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$14,361,077	$284,566,669	$397,485,568	72%
e. Equity interests	$0	$0	$0		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

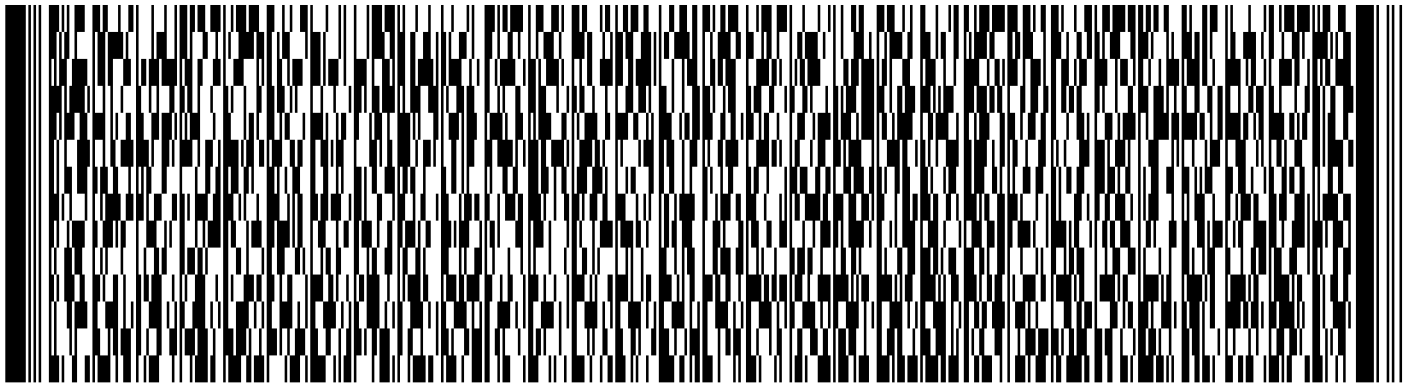
I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

/s/ James Seery
Signature of Responsible Party

James Seery
Printed Name of Responsible Party

Claimant Trustee
Title

10/20/2023
Date



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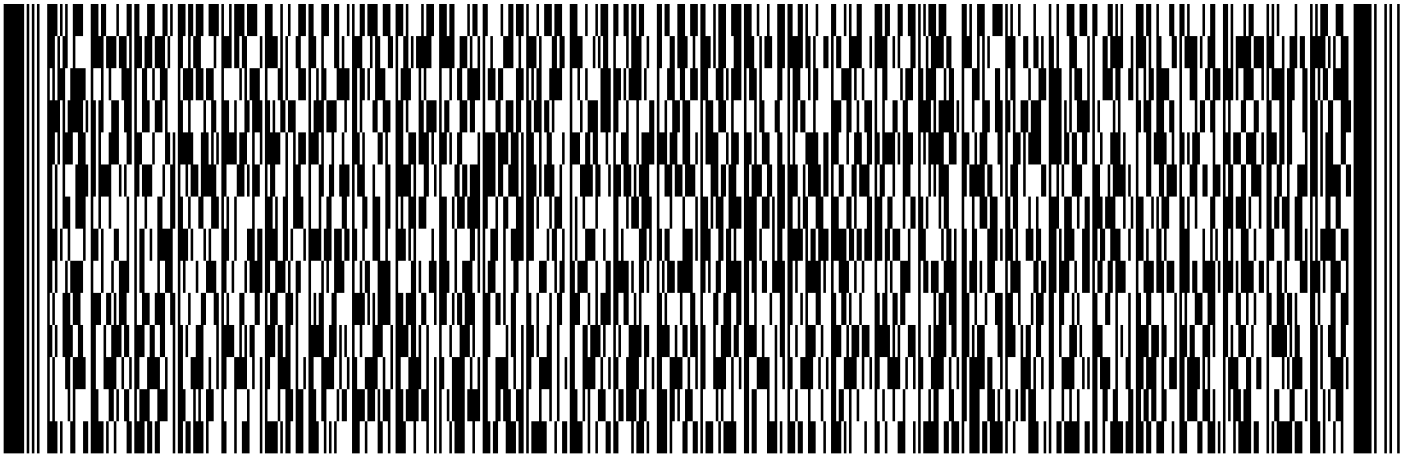

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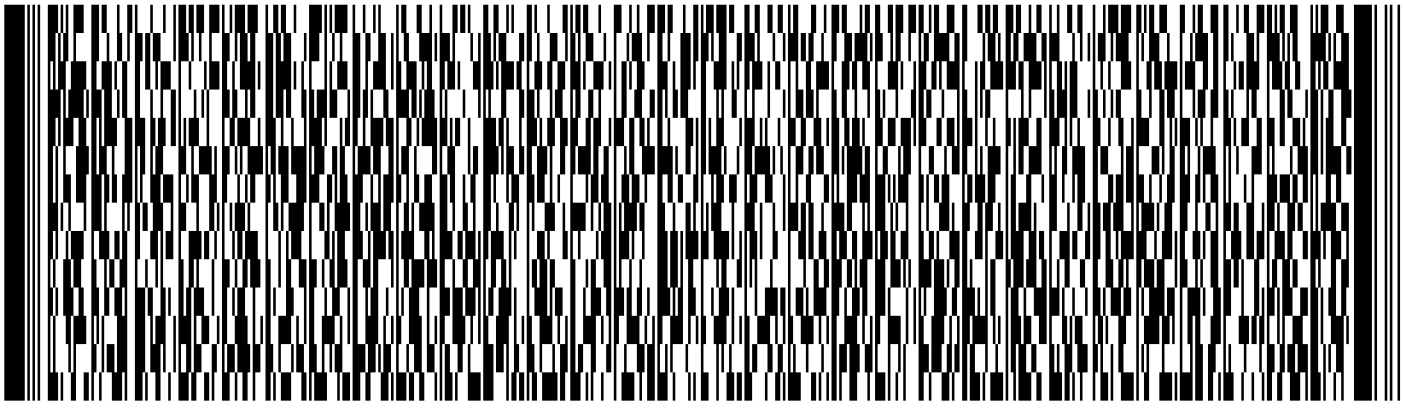

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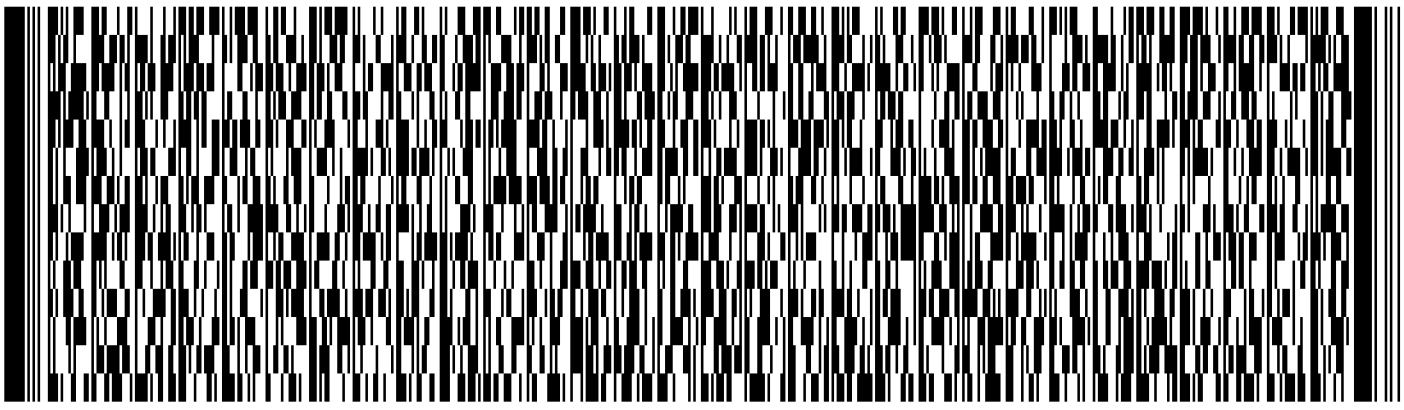
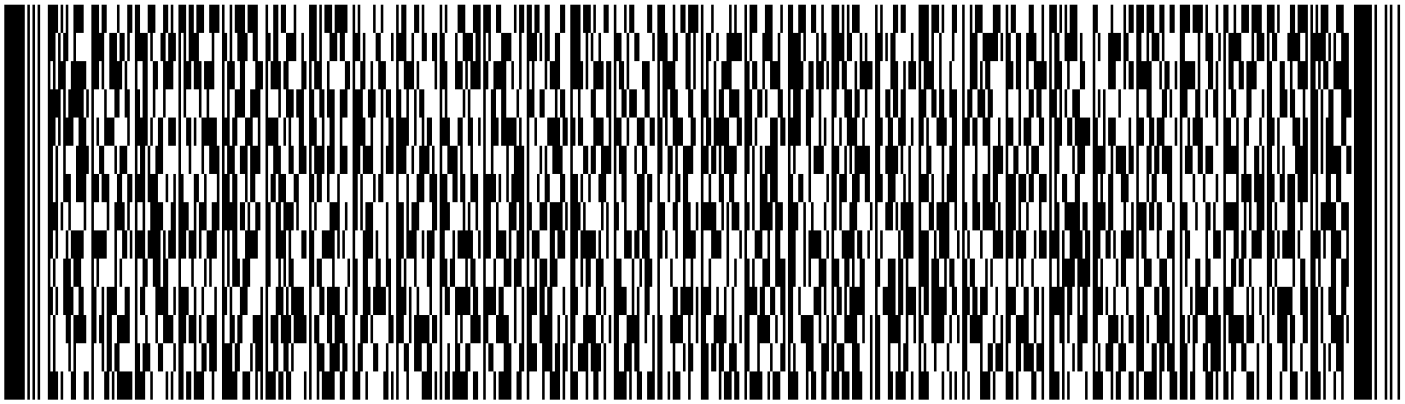
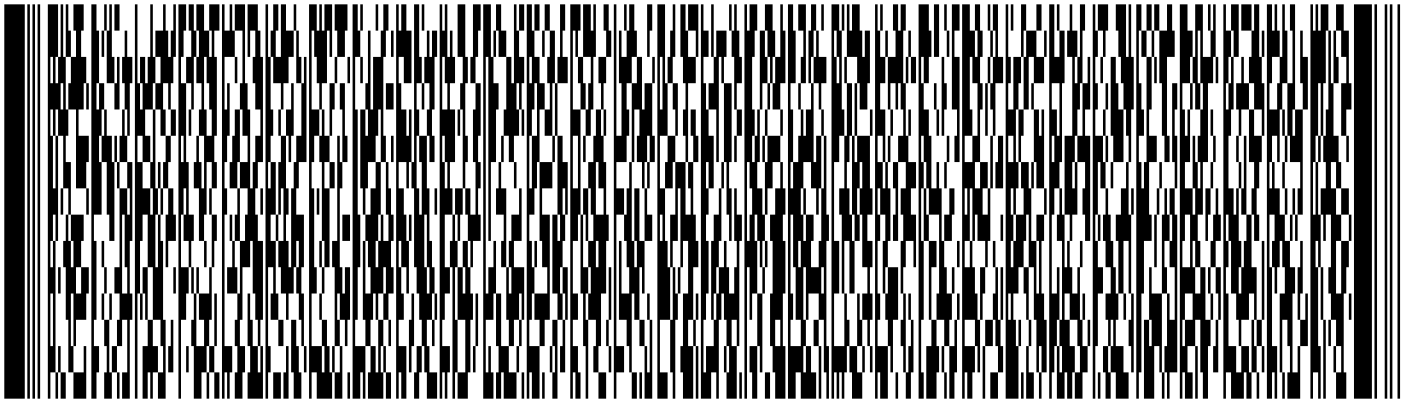


Bankruptcy Table 1-50



Bankruptcy Table 51-100



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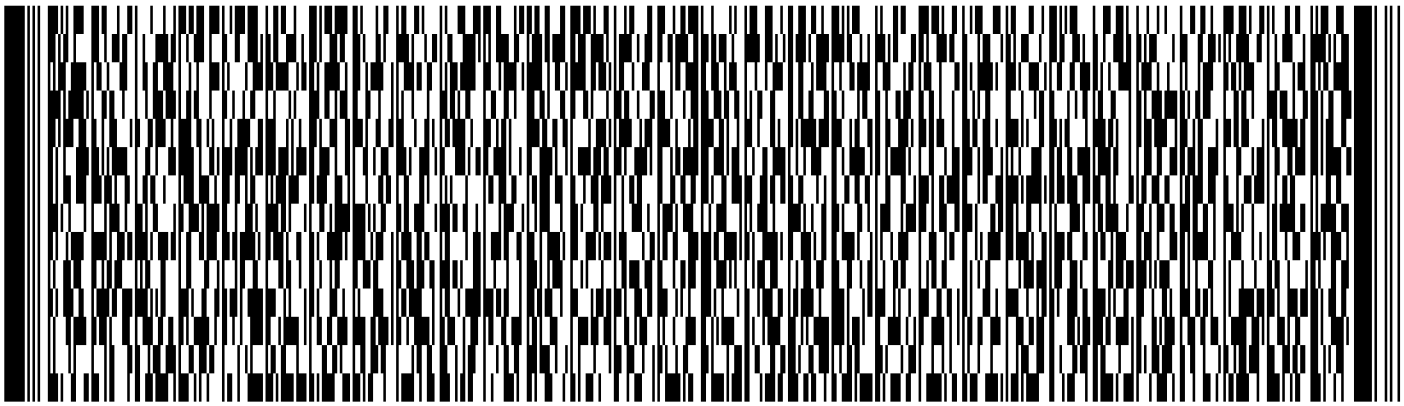

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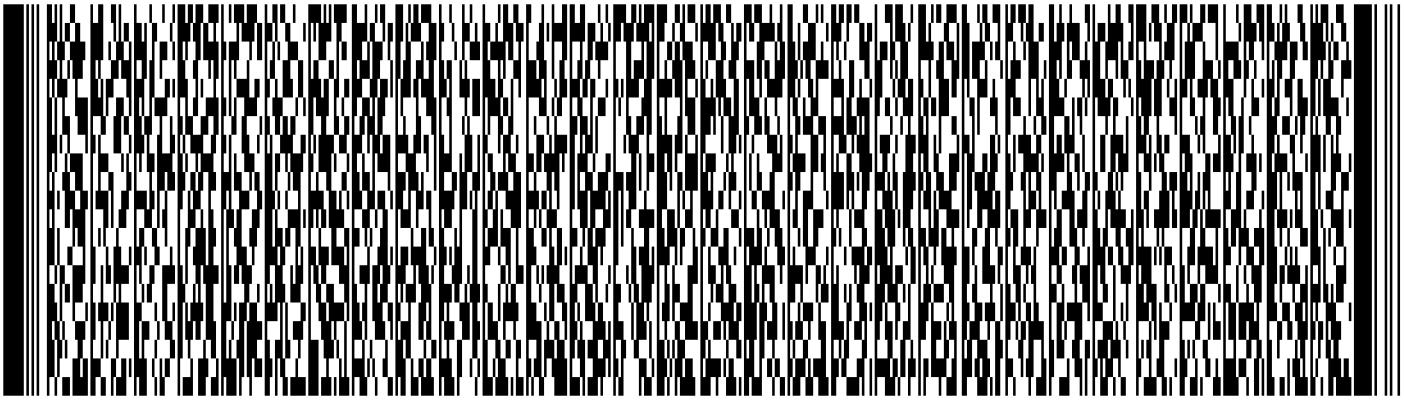

Part 3, Part 4, Last Page

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST CONFIRMATION REPORT

The Highland Claimant Trust has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), with respect to the case of Reorganized Debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Highland Claimant Trust prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Highland Claimant Trust, the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Highland Claimant Trust relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Highland Claimant Trust made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Highland Claimant Trust reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

The Highland Claimant Trust did not make any payment of professional fees prior to Confirmation of the Plan.

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

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

For presentation purposes, the chart showing claims anticipated under the plan, paid claims and allowed claims are reflected in both the Reorganized Debtor and Claimant Trust post-confirmation report under Part 3: Recoveries of the Holders of Claims and Interests under the Confirmed Plan.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with the Claimant Trust's governing documents and the Plan.

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
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Counsel for Highland Capital Management, L.P. and the Highland Claimant Trust

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

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

HIGHLAND'S MOTION TO STAY CONTESTED MATTER [DKT NO. 4000] OR FOR ALTERNATIVE RELIEF

Highland Capital Management, L.P., the reorganized debtor in this chapter 11 case ("**HCMLP**"), and the Highland Claimant Trust (the "**Claimant Trust**" and, together with HCMLP, "**Highland**"), move the Court for an order staying all proceedings (the "**Stay Motion**") in connection with the *Motion for Leave to File a Delaware Complaint* [Docket No. 4000], filed by Hunter Mountain Investment Trust ("**HMIT**") on January 1, 2024 (the "**Delaware Motion for Leave**").

I. PRELIMINARY STATEMENT[1]

1. The relief HMIT seeks in the Delaware Motion for Leave depends on the Court's determination of whether HMIT is a beneficiary of the Plan-created Claimant Trust. That issue is already squarely before this Court in Adversary Proceeding No. 23-03038 (the "**Valuation Proceeding**"), in which HMIT is a plaintiff and in which Highland moved to dismiss HMIT's complaint on the basis that HMIT is not entitled to any of the relief it seeks in the complaint because, among other reasons, HMIT is not a beneficiary of the Claimant Trust under the plain terms of the Plan and Claimant Trust Agreement and under applicable law. Briefing on Highland's motion to dismiss the Valuation Proceeding will be complete by January 19, 2024, and oral argument is scheduled for February 14, 2024, just a month from now.

2. As explained more fully below, if this Court rules that HMIT is not a beneficiary of the Claimant Trust as a matter of law—and if HMIT does not prevail on its likely appeal of such a ruling—then the ruling will necessarily dispose of the Delaware Motion for Leave. It would be needlessly duplicative and wasteful of judicial and estate resources to litigate the same threshold issue in the Valuation Proceeding and again in this matter, particularly since the issue will be *sub judice* in the Valuation Proceeding in several weeks. Accordingly, Highland respectfully requests the Court stay all proceedings in connection with the Delaware Motion for Leave until there is a final, non-appealable determination in the Valuation Proceeding regarding whether or not HMIT

[1] This Court has jurisdiction over this case and this contested matter under 28 U.S.C. §§ 157(b) and 1334. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409 because, among other things, this dispute is a contested matter under the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1943-1] (the "**Plan**") and involves the enforcement and construction of any right or remedy under the Claimant Trust Agreement or any act or omission of the Claimant Trustee acting in his capacity as such. Claimant Trust Agreement § 11.11. Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Plan.

is a beneficiary of the Claimant Trust under the plain terms of the Plan and Claimant Trust Agreement and under applicable law.[2]

II. BACKGROUND

3. On December 7, 2022, the Court issued an order [Docket No. 3645] finding that an adversary proceeding was necessary with regard to the relief sought in a motion filed by The Dugaboy Investment Trust ("**Dugaboy**") [Docket No. 3382 and Docket No. 3533] (the "**Valuation Motion**"), which sought a "determination by this Court of the current value of the estate and an accounting of the assets currently held by the Claimant Trust and available for distribution to creditors."[3]

4. On May 10, 2023, Dugaboy and HMIT commenced the Valuation Proceeding by filing a complaint seeking essentially the same relief originally sought in the Valuation Motion. Highland filed a motion to dismiss the Valuation Proceeding on November 22, 2023 [Adv. Proc. 23-03038, Docket No. 13] (the "**Motion to Dismiss Valuation Complaint**"), asserting, among other arguments, that neither Dugaboy nor HMIT are beneficiaries of the Trust and, therefore, are not entitled to any of the relief sought in the Valuation Proceeding. Briefing on the Motion to Dismiss Valuation Complaint will be completed with the filing of Highland's reply in support on January 19, 2024, and oral argument is scheduled for February 14, 2024 [Adv. Proc. 23-03038, Docket No. 19], after which this Court will determine, among other things, whether HMIT is a beneficiary of the Trust.[4]

---

[2] Alternatively, if the Court denies the Stay Motion (a "**Denial Order**"), Highland respectfully requests that the Court simultaneously enter an order granting Highland an extension of time to respond to the Delaware Motion for Leave equal to 21 days from the date any Denial Order is entered.

[3] HMIT filed various pleadings in support of Dugaboy's Valuation Motion. *See* Docket Nos. 3467, 3605, 3606, and 3638.

[4] On March 28, 2023, HMIT filed a separate *Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3699], which was later supplemented and modified [Docket Nos. 3760, 3815, and 3816] (collectively, the "**First Motion for Leave**"). On August 25, 2023, this Court denied the First Motion for Leave on the ground

5. This Court's ruling on whether HMIT is a Claimant Trust beneficiary in the Valuation Proceeding (and following the inevitably ensuing appeals if HMIT does not prevail in this Court) will necessarily directly affect the viability of the Delaware Motion for Leave.

6. The Delaware Motion for Leave seeks leave under the Plan's gatekeeper provision to file the five-count complaint attached to the Delaware Motion for Leave (the "**Proposed Delaware Complaint**") in the Delaware Court of Chancery, principally to remove James Seery as trustee of the Claimant Trust. HMIT explicitly bases each of the five counts in the Proposed Delaware Complaint on HMIT's allegation that, notwithstanding the plain terms of the Claimant Trust Agreement, it is somehow a beneficiary of the Claimant Trust under Delaware law.[5]

7. But whether HMIT is a Claimant Trust beneficiary under applicable law is already squarely before this Court in the Valuation Proceeding. A determination of HMIT's status vis-à-vis the Claimant Trust is coming, and it is coming undoubtedly sooner than it would come were the Delaware Motion for Leave fully litigated and then appealed. Instead, such a determination in the Valuation Proceeding that HMIT is *not* a beneficiary would necessarily dispose of the Delaware Motion for Leave. This Court should stay all proceedings related to the Delaware Motion for Leave pending a final, non-appealable determination regarding whether or not HMIT is a

(among others) that HMIT lacked standing to assert the claims because it is not a beneficiary under the Claimant Trust. Docket No. 3903; *In re Highland Cap. Mgmt., L.P.*, 2023 Bankr. LEXIS 2104, 2023 WL 5523949 (Bankr. N.D. Tex. Aug. 25, 2023) (the "**Order Denying Leave**"). HMIT has appealed the Order Denying Leave to the United States District Court for the Northern District of Texas (Case No. 3:23-cv-02071-E) along with seven (7) related interlocutory orders entered in connection with the First Motion for Leave. Given the scope of the appeal, it is unclear whether the District Court will address the Bankruptcy Court's determination that HMIT is not a beneficiary under the Claimant Trust.

[5] On January 19, 2024, Highland will file a reply in further support of its motion to dismiss the Valuation Proceeding that will establish conclusively that HMIT—the holder of a mere unvested, contingent interest in the Trust—is not a beneficiary of the Claimant Trust for any purpose under the plain terms of the Plan, the Claimant Trust Agreement, or applicable law.

beneficiary of the Claimant Trust under the plain terms of the Plan, the Claimant Trust Agreement, and applicable law.

III. RELIEF REQUESTED AND BASIS FOR IT

8. Because this Court (or, ultimately, the Fifth Circuit Court of Appeals) will determine conclusively whether HMIT is a beneficiary of the Claimant Trust, and because such a determination—if adverse to HMIT—will dispose of the Delaware Motion for Leave, Highland respectfully urges the Court to conserve judicial resources and the time, effort, and expense of the litigants and stay all proceedings in connection with the Delaware Motion for Leave until a final, non-appealable order determines HMIT's status vis-à-vis the Claimant Trust.[6]

9. Federal courts, including this Court, have the inherent power to control their own dockets and to stay proceedings when appropriate.[7] The Fifth Circuit Court of Appeals has also recognized the power to stay proceedings as part of the court's power to control its own docket and avoid wasting time and effort.[8] Courts are sensitive to the prejudice a stay would have on the non-moving party, such as "the hardship of being forced to wait for an indefinite and … lengthy time before their causes are heard."[9]

10. Here, HMIT will not be harmed by a stay of its latest (third) motion for leave to sue under the gatekeeper provision. HMIT is litigating, right now, the issue of whether it is a beneficiary of the Claimant Trust in the Valuation Proceeding before this Court. Staying the Delaware Motion for Leave will not force HMIT to wait *any* time for that issue to be litigated and

[6] Again, if the Court issues a Denial Order, Highland requests as alternative relief that its deadline to respond to the Delaware Motion for Leave be extended to the date that is 21 days after a Denial Order is entered. *See supra* n.2.

[7] *See, e.g.*, *Clinton v. Jones*, 520 U.S. 681, 706–07 (1997) ("the power to stay proceedings is incidental to the power inherent in every court to control the disposition of causes on its docket with economy of time and effort for itself, for counsel, and for litigants") (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936)).

[8] *See, e.g.*, *United States v. Rainey*, 757 F.3d 234, 241 (5th Cir. 2014).

[9] *Gold v. Johns-Manville Sales Corp.*, 723 F.2d 1068, 1076 (3d Cir. 1983) (citing *Landis*, 299 U.S. at 254–55).

decided, much less an "indefinite" or even "lengthy" time. Staying the Delaware Motion for Leave will have no effect on HMIT's ability to litigate the issue of its contingent, unvested interest in the Claimant Trust. HMIT will not be harmed by a stay.

11. A stay will, however, significantly conserve resources for this Court and for these parties. There is no good reason to require the parties to brief and argue during the course of (likely) months of litigation an issue that will be determined by this Court in the Valuation Proceeding after argument on February 14, 2024. A final, non-appealable order on the fundamental, threshold issue of whether HMIT is a beneficiary under the Claimant Trust will apply to the Delaware Motion for Leave, either by disposing of that motion because HMIT is not a Claimant Trust beneficiary or by precluding Highland from arguing that HMIT is not a Claimant Trust beneficiary in opposing the Delaware Motion for Leave.[10]

12. A stay of the Delaware Motion for Leave serves common sense, is well within this Court's discretion, and will allow HMIT full reign to litigate and appeal and appeal again the issue of whether it is a beneficiary of the Claimant Trust in the Valuation Proceeding already underway and significantly further along than the nascent Delaware Motion for Leave.

IV. CONCLUSION

13. For these reasons, the Court should grant this motion and stay all proceedings on the Delaware Motion for Leave until entry of a final, non-appealable order determining whether HMIT is or is not a beneficiary of the Claimant Trust under the plain terms of the Plan, the Claimant Trust Agreement, and applicable law.

[10] In such case, Highland reserves, and does not waive, all other defenses available to it.

Dated: January 16, 2024

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CERTIFICATE OF CONFERENCE

I hereby certify that, on January 14, 2024, John A. Morris, counsel for Highland Capital Management, L.P., wrote to HMIT's counsel and requested that counsel let Mr. Morris know by January 16, 2024 at 2:00 p.m. Central Time whether HMIT was opposed or unopposed to the relief requested in the foregoing Motion. HMIT is **OPPOSED** to the relief requested in the Motion.

/s/ Zachery Z. Annable
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

JAMES P. SEERY, JR.'S JOINDER TO HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION TO STAY CONTESTED MATTER [DKT NO. 4000] OR FOR ALTERNATIVE RELIEF AND EMERGENCY MOTION TO EXPEDITE HEARING ON MOTION FOR STAY

James P. Seery, Jr. ("**Mr. Seery**") joins and adopts the reorganized debtor Highland Capital Management, L.P.'s *Motion to Stay a Contested Matter [Dkt No. 4000] or for Alternative Relief* [Docket 4013] (the "**Stay Motion**") and *Emergency Motion to Expedite Hearing on Motion for Stay* [Docket 4014] (the "**Emergency Motion**"). For the reasons set forth in the Stay Motion and the Emergency Motion, Mr. Seery respectfully requests that the Court grant the relief requested therein.

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Mr. Seery respectfully requests that this Court enter an order (i) granting the relief requested in the Stay Motion and the Emergency Motion, and (ii) for any such other and further relief this Court deems just and appropriate.

Dated: January 22, 2024

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 22, 2024, a true and correct copy of the foregoing will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in the District.

/s/ Joshua S. Levy
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Counsel for Hunter Mountain Investment Trust

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

In re	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
Reorganized Debtor.[1]	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S SUPPLEMENT TO RESPONSE TO MOTION TO STAY

Hunter Mountain Investment Trust submits the following Supplement to Response to Stay in anticipation of the status conference, currently scheduled for June 12, 2024.

On January 1, 2024, Hunter Mountain Investment Trust ("HMIT") filed its Motion for Leave to File a Delaware Complaint [Dkt. No. 4000] (the "Motion for Leave"). HMIT filed the Motion for Leave, seeking permission to file a complaint in Delaware asking the court to remove James Seery as Clamant Trustee as a result of his breach of his fiduciary duties.

[1] The *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., (As Modified)* [Dkt. No. 1808] ("***Plan***"), filed by Highland Capital Management, L.P. ("***HCMLP***") became effective on August 11, 2021 (the "***Effective Date***").

HCMLP and the Highland Claimant Trust filed a motion ("Motion to Stay") asking the court to indefinitely stay all proceeding in connection with HMIT's Motion for Leave. On January 31, 2024, the court issued an Order Granting in Part Highland's Motion to Stay Contested Matter, in which the court stayed all proceedings until the court issued an order determining The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Adv. Proc. 23-03038-sgj, Dkt. No. 13], and holds a status conference with the parties in connection with the Motion for Leave to consider whether to terminate or extend the stay.

On May 24, 2024, the court issued its opinion on the Motion to Dismiss Complaint and the court scheduled a status conference pursuant to the order for June 12, 2024.

HMIT is filing this supplement to bring additional cases to the court's attention that are relevant to the standing issue. Specifically, attached is Exhibit A is a true and correct copy of the opinion issued by the Delaware Supreme Court in *Morris v. Spectra Energy Partners (DE) GP, LP*, 246 A.3d 121, 136 (Del. 2021).

Morris demonstrates how the Delaware Supreme Court has held that a standing analysis should be more flexible when a defendant controls the facts giving rise to standing. By way of example, although standing to assert derivative claims in the context of mergers typically requires equity ownership, there are exceptions. One of these exceptions includes when “the merger itself is the subject to a fraud claim, perpetrated to deprive shareholders of their standing to bring or maintain a derivative action.” *Morris*, 246 A.3d at 129 (Del. 2021). *Morris* stands for the

proposition that strict adherence to formulaic standing on a motion to dismiss must yield where the defendant's allegedly unfair conduct attempts to destroy standing.[2]

Similarly, HMIT also submits a true and correct copy of the following case: *Shaev v. Wyly*, 1998 WL 13858, at *4 (Del. Ch. Jan. 6, 1998) (equitable standing allowed to challenge excessive compensation of directors because "to deny standing on these facts would insulate defendants from potential liability for their alleged misdeeds"), as Exhibit B.

[2] HCMLP is familiar with each of these cases submitted here as they were cited in Appellant's Reply Brief, *Hunter Mountain Investment Trust v. Highland Capital Management, L.P.*, et al., Case No. 3:23-cv-02071-E, Doc. No. 38. https://www.kccllc.net/hcmlp/document/193405424040400000000000001

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 11, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

EXHIBIT A

HUNTER MOUNTAIN INVESTMENT TRUST'S SUPPLEMENT TO RESPONSE TO MOTION TO STAY

KeyCite Yellow Flag - Negative Treatment
Distinguished by SDF Funding LLC v. Fry, Del.Ch., June 16, 2022

246 A.3d 121
Supreme Court of Delaware.

Paul MORRIS, on behalf of all similarly situated unitholders of Spectra Energy Partners, L.P., Plaintiff Below, Appellant,
v.
SPECTRA ENERGY PARTNERS (DE) GP, LP, Defendant Below, Appellee.

No. 489, 2019
|
Submitted: October 28, 2020
|
Decided: January 22, 2021

Synopsis

Background: Former minority unitholder of acquired master limited partnership brought class action against general partner, alleging that merger exchange ratio was unfair because general partner agreed to merger that did not reflect material value of his derivative claims. The Court of Chancery, Sam Glasscock, Vice Chancellor, 2019 WL 4751521, dismissed the action. Minority unitholder appealed.

Holdings: The Supreme Court, Seitz, C.J., held that:

[1] challenge to fairness of merger itself was preserved for appeal;

[2] arguments about materiality were preserved for appeal; and

[3] derivative claim was material at motion to dismiss stage.

Reversed and remanded.

Procedural Posture(s): On Appeal; Motion to Dismiss for Lack of Standing.

West Headnotes (18)

[1] **Corporations and Business Organizations** Effect of merger, acquisition, reorganization, or dissolution

Corporations and Business Organizations Fairness of transaction

With limited exceptions, a merger extinguishes an equity owner's standing to pursue a derivative claim against the target entity's directors or controller, but the same plaintiff has standing to pursue a post-closing suit if they challenge the validity of the merger itself as unfair because the controller failed to secure the value of a material asset, like derivative claims that pass to the acquirer in the merger.

[2] **Corporations and Business Organizations** Fairness of transaction

To establish standing to pursue a claim challenging a merger because the equity owners are not being fairly compensated for the value of material derivative claims, the plaintiff must allege a viable derivative claim, that is material to the overall transaction, and will not be pursued by the buyer and is not reflected in the merger consideration.

6 Cases that cite this headnote

[3] **Appeal and Error** Corporations and other organizations

De novo review applies to a Court of Chancery's finding that a plaintiff lacked standing to pursue his post-merger claims challenging the fairness of a merger consideration for failure to recoup some or all of the value of the derivative claims.

5 Cases that cite this headnote

[4] **Action** Persons entitled to sue

Standing refers to the right of a party to invoke the jurisdiction of a court to enforce a claim or redress a grievance.

3 Cases that cite this headnote

[5] **Action** Persons entitled to sue

Constitutional Law Advisory Opinions

Standing is required to ensure that the litigation before the tribunal is a "case or controversy" that is appropriate for the exercise of the court's judicial powers; it allows Delaware courts, as a matter of self-restraint, to avoid the rendering of advisory opinions at the behest of parties who are mere intermeddlers.

2 Cases that cite this headnote

[6] **Action** Persons entitled to sue

Standing is properly a threshold question that a court may not avoid.

3 Cases that cite this headnote

[7] **Action** Persons entitled to sue

If a plaintiff alleges a direct claim, it means that the equity owner has alleged that they have suffered the injury, and will receive the benefit of any recovery; thus, at least at the pleading stage, the plaintiff has met the injury-in-fact requirement and properly invoked the court's jurisdiction to redress an injury.

[8] **Corporations and Business Organizations** Derivative action as distinct from direct or individual action in general

For a derivative action, the equity owner acts in a representative capacity on behalf of an entity; in that representative capacity, the plaintiff steps into the shoes of the entity and asserts the injury on its behalf.

1 Case that cites this headnote

[9] **Corporations and Business Organizations** Effect of merger, acquisition, reorganization, or dissolution

An equity owner does not have standing to pursue derivative claims post-merger except when the merger itself is the subject to a fraud claim, perpetrated to deprive shareholders of their standing to bring or maintain a derivative action, and when the merger is essentially a reorganization that does not affect the equity owner's relative ownership in the post-merger enterprise.

1 Case that cites this headnote

[10] **Corporations and Business Organizations** Fairness of transaction

Corporations and Business Organizations Good faith and fiduciary duties

To state a direct claim with respect to a merger, a stockholder must challenge the validity of the merger itself, usually by charging the directors with breaches of fiduciary duty resulting in unfair dealing or unfair price.

2 Cases that cite this headnote

[11] **Corporations and Business Organizations** Purchase or Sale of Stock to or from Director, Officer, or Agent

A cause of action for misuse of confidential corporate information, requires a plaintiff to demonstrate that: (1) the corporate fiduciary possessed material, nonpublic company information, and (2) the corporate fiduciary used that information improperly by making trades because she was motivated, in whole or in part, by the substance of that information.

[12] **Appeal and Error** Nature or Subject-Matter of Issues or Questions

Challenge to fairness of merger itself was preserved for appeal by former minority unitholder of acquired master limited partnership, in action against general partner, where minority unitholder alleged that former public unitholders were harmed because general partner allowed acquiring business to engineer "roll up" of minority-held units involving merger between limited partnership and acquiring business on terms that were patently unfair

and unreasonable to limited partnership and its public unitholders, and that could not have been approved in good faith by new conflicts committee or general partner's board.

[13] **Appeal and Error** Nature or subject-matter in general

Arguments about materiality were preserved for appeal of dismissal of class action that had been brought by former minority unitholder of acquired master limited partnership alleging that merger exchange ratio was unfair because general partner agreed to merger that did not reflect material value of his derivative claims, since general partner disputed how court should consider litigation risk when assessing materiality by arguing that minority unitholder's chance of prevailing on derivative claims was "toss-up" or "one-in-five" chance.

[14] **Partnership** Persons entitled to sue; standing

Derivative claim was material at motion to dismiss stage, and therefore former minority unitholder of acquired master limited partnership had standing to bring class action alleging that merger exchange ratio was unfair because general partner agreed to merger that did not reflect material value of his derivative claims; even if it was proper to discount $660 million in damages alleged in complaint to reflect public unitholders' interest in derivative recovery, $112 million pro rata interest in derivative claim recovery was comparable to public unitholders' 17 percent proportional interest in merger consideration that was valued at $3.3 billion, i.e., $112 million had to be compared to $561 million.

[15] **Corporations and Business Organizations** Fairness of transaction

When the court is faced with a post-merger claim challenging the fairness of a merger based on the defendant's failure to secure value for derivative claims, (1) a court must decide whether the underlying derivative claims were viable; (2) the derivative claim recovery as pled must be material in relation to the merger consideration, and (3) the court should assess whether the complaint alleges that the acquirer would not assert the underlying derivative claim and did not provide value for it.

12 Cases that cite this headnote

[16] **Pretrial Procedure** Parties, Defects as to

Pretrial Procedure Construction of pleadings

When assessing standing at the motion to dismiss stage of the proceedings, a court must accept the plaintiff's factual allegations as true and draw all reasonable inferences in his favor; this does not mean that the court is bound by unreasonable, unsupported, or speculative derivative suit damages claims, but if it is reasonably conceivable that the plaintiff could recover the damages claimed in the complaint, the court must accept that allegation as true for purposes of the motion to dismiss for lack of standing.

[17] **Corporations and Business Organizations** Fairness of transaction

If the plaintiff has alleged a viable derivative claim, where it is reasonably conceivable that the claim is material when compared to the merger consideration and could result in the damages pled in the complaint challenging the merger on fairness grounds, the plaintiff has satisfied the materiality requirement at the motion to dismiss stage for standing purposes; a percentage-based risk reduction should not be applied at the pleading stage of the proceedings.

2 Cases that cite this headnote

[18] **Action** Persons entitled to sue

Standing is concerned only with the question of who is entitled to mount a legal challenge and not with the merits of the subject matter in controversy.

1 Case that cites this headnote

***124** Court Below – Court of Chancery of the State of Delaware, Consolidated C.A. No. 2019-0097

Upon appeal from the Court of Chancery. **REVERSED** and **REMANDED**.

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Before SEITZ, Chief Justice; VALIHURA, VAUGHN, TRAYNOR, and MONTGOMERY-REEVES, Justices, constituting the Court en Banc.

Opinion

SEITZ, Chief Justice:

[1] With limited exceptions, a merger extinguishes an equity owner's standing to pursue a derivative claim against the target entity's directors or controller. But the same plaintiff has standing to pursue a post-closing suit if they challenge the validity of the merger itself as unfair because the controller failed to secure the value of a material asset—like derivative claims that pass to the acquirer in the merger. Given the difficulties of pursuing such claims, not the least of which is proof that the equity owner received an unfair merger price for their ownership interest, the plaintiff might not prevail on the merits, but they have sufficiently alleged a direct claim to survive a motion to dismiss for lack of standing.

After a $3.3 billion "roll up" of minority-held units involving a merger between Enbridge, Inc. ("Enbridge") and Spectra Energy Partners L.P. ("SEP"), Paul Morris, a former SEP minority unitholder, lost standing to litigate an alleged $661 million derivative suit on behalf of SEP against its general partner, Spectra Energy Partners (DE) GP, LP ("SEP GP"). Morris reprised the derivative claim dismissal by filing a new class action complaint that alleged the Enbridge/SEP merger exchange ratio was unfair because SEP GP agreed to a merger ***125** that did not reflect the material value of his derivative claims.

The Court of Chancery granted SEP GP's motion to dismiss the new complaint for lack of standing. The court held that, to have standing to bring a post-merger claim, Morris had to allege a viable and material derivative claim that the buyer would not assert and provided no value for in the merger. Focusing on the materiality requirement, the court first discounted the $661 million recovery to $112 million to reflect the public unitholders' beneficial interest in the derivative litigation recovery. Then, the court discounted the $112 million further to $28 million to reflect what the court estimated was a one in four chance of success in the litigation. After the discounting, the $28 million—less than 1% of the merger consideration—was immaterial to a $3.3 billion merger.

On appeal, Morris argues that the court should not have dismissed the plaintiff's direct claims for lack of standing. We agree with Morris and find that, on a motion to dismiss for lack of standing, he has sufficiently pled a direct claim attacking the fairness of the merger itself for SEP GP's failure to secure value for his pending derivative claims. Thus, we reverse the Court of Chancery's judgment and remand for further proceedings.

I.

The plaintiff, Paul Morris, owned common units of SEP, a master limited partnership that traded on the New York Stock Exchange. [1] Enbridge owned 83% of SEP's outstanding units through a series of wholly-owned subsidiaries, including SEP GP. [2] Spectra Energy Corp ("SE Corp") was Enbridge's predecessor-in-interest.

Prior to selling to Enbridge, SE Corp agreed to a 50-50 joint venture with Phillips 66 whereby Phillips would contribute

$1.5 billion and SE Corp would contribute a one-third interest in two long haul natural gas pipelines, implying a $1.5 billion valuation of the contributed assets. Because SEP owned the assets, the parties proposed a "reverse dropdown" to sell the assets from SEP to SE Corp. To purchase the assets from SEP, SE Corp offered to "(i) surrender 20 million SEP limited partner units to SEP for redemption ... and (ii) waive its right to receive up to $4 million in incentive distribution rights [ ] for twelve consecutive quarters ...."[3] SEP GP authorized a conflicts committee to evaluate the reverse dropdown.

SEP's limited partnership agreement required the general partner's conflicts committee to act in "subjective good faith."[4] According to the complaint's allegations, a financial advisor identified three ways the transaction would provide value to SEP: the redeemed units, the waived distribution rights, and other reduced cash flow due to the loss of assets. Later, however, the adviser included only the first two components as consideration—valued at $946 million—and issued a fairness opinion. The conflicts committee recommended approval, and SEP GP's board approved the reverse dropdown.

After reviewing SEP's books and records, the plaintiff filed a class action derivative ***126** complaint on behalf of all owners of SEP public units against SEP GP and SE Corp. The complaint alleged that SEP only received $946 million in the reverse dropdown when SE Corp valued the assets at $1.5 billion. Morris pleaded three derivative claims, including a claim for breach of the limited partnership agreement's "good faith" obligation in approving the reverse dropdown.[5] The court dismissed two of the claims for failure to state a claim, but declined to dismiss the breach of the "good faith" obligation claim. The court found, after drawing all reasonable inferences in Morris's favor, that the complaint "made adequate allegations showing that under reasonably conceivable circumstances a facially unreasonable gap in consideration exists sufficient to infer subjective bad faith."[6] According to the court, "it was 'reasonably conceivable that the General Partner acted in subjective bad faith.' "[7] The parties conducted discovery and SEP GP moved for summary judgment. During the litigation, and with the motion summary judgment pending, Enbridge acquired SE Corp in a stock-for-stock merger, becoming SEP GP's ultimate parent and controller of SEP.

In March 2018, SEP's stock price declined by twenty percent in reaction to announcements from the Federal Energy Regulatory Commission ("FERC"). SEP recognized in its filings with the U.S. Securities and Exchange Commission that "[t]he change in FERC's policy has had a negative impact on the MLP sector" and that SEP "would attempt to mitigate the impact of the policy change."[8] In May, Enbridge offered a stock-for-stock exchange to buyout SEP's public unitholders. SEP's public unitholders would receive 1.0123 common shares of Enbridge in exchange for each publicly held common unit of SEP based on the SEP common units' and Enbridge common shares' closing price on the NYSE as of May 16, 2018. SEP closed at a unit price of $33.10 and Enbridge common shares closed at $32.70. According to the plaintiff, this was an opportunistic offer to squeeze out the public unitholders due to an artificially depressed trading price. Another three-member SEP GP conflicts committee went to work, two of whom were on the committee that reviewed the reverse dropdown transaction.

Morris's counsel sent a letter to the conflicts committee and told them that the derivative claim was worth more than $500 million and must be taken into account when negotiating the merger exchange ratio. Counsel also noted that the proposed offer was "woefully inadequate" and "fail[ed] to provide SEP and its public unitholders with any value associated with" the derivative claim.[9] After Morris's counsel met with the conflicts committee's legal and financial advisors, the conflicts committee ultimately determined that the value of the derivative claim, net of defense costs, "was less than $0."[10] The conflicts ***127** committee also found the value of the reverse dropdown to SEP to be about $1.5 billion after adding back the reduced distributions its advisor previously excluded.

As the parties negotiated the buyout, the conflicts committee decided to give no value to the derivative claim but attributed $4 million in saved litigation costs. They also agreed to an exchange ratio "whereby Enbridge would acquire all publicly held SEP units at an exchange ratio of 1.111 shares of Enbridge stock for each publicly held unit of SEP."[11] On August 24, 2018, SEP announced a definitive merger agreement with Enbridge and its wholly-owned subsidiaries where Enbridge would acquire all publicly held SEP units at an exchange ratio of 1.111 shares of Enbridge stock for each publicly held unit of SEP. The transaction was not subject to approval by a majority of the minority unitholders. The transaction was approved on December 13, 2018. At that time, Enbridge affiliates held about 83% of the outstanding units. About 39% of publicly held units voted in favor of

the transaction. After the deal closed, the court dismissed the derivative claim by stipulation of the parties. [12]

After another books and records request, Morris filed this class action on February 8, 2019 against SEP GP, as SEP's general partner, for breaching SEP's limited partnership agreement and the implied covenant of good faith and fair dealing. Morris claimed that the conflicts committee and SEP GP's board of directors failed to attribute appropriate value to the pre-merger derivative claim or secure any value for the claim. SEP GP moved to dismiss for lack of standing and failure to state a claim.

[2] The Court of Chancery dismissed Morris's complaint for lack of standing without reaching the arguments for failure to state a claim. The court applied the three-part test from its decision in *In re Primedia, Inc. Shareholders Litigation.* [13] The *Primedia* test applies to claims challenging a merger because the equity owners are not being fairly compensated for the value of material derivative claims. To establish standing the plaintiff must allege a viable derivative claim, that is material to the overall transaction, and will not be pursued by the buyer and is not reflected in the merger consideration. [14]

The court found Morris's derivative claim viable because it had already survived a motion to dismiss. [15] Also, the parties did not dispute that SEP's public unitholders received no value for the derivative claim, Enbridge did not intend to pursue the derivative claims post-merger, and Morris pled damages of $661 million. But the court dismissed Morris's two direct claims. First, the court discounted the $661 potential recovery to $112 million to reflect the public unitholders' proportionate share of the litigation recovery. And second, the court discounted the $112 million further to about $28 million to reflect a one-in-four chance of prevailing in the litigation. Finally, the court compared the $28 million to the $3.3 billion merger transaction and found it immaterial. Thus, the court granted SEP GP's motion to dismiss for lack of standing without reaching SEP GP's alternative ***128** argument that Morris failed to state a claim for relief.

II.

On appeal the parties have focused their attention on the Court of Chancery's application of its *Primedia* decision to assess standing. To reiterate, under *Primedia*'s three-part test, which applies to claims alleging an unfair merger because the price does not reflect the value of derivative claims, the plaintiff must allege a viable derivative claim assessed by a motion to dismiss standard. [16] The plaintiff must also allege that the derivative claim was material to the overall merger transaction, will not be pursued by the buyer, and is not reflected in the merger consideration. [17]

According to Morris, the Court of Chancery should not have dismissed his complaint for lack of standing because he pled in detail a direct claim that satisfied the *Primedia* factors. The parties and the court agreed that the derivative claim was viable because it had survived a motion to dismiss. They also agreed that Enbridge would not assert the claim and provided no value for the claim in the exchange ratio. And, as Morris alleged, the $112 million potential recovery was material to the $3.3 billion transaction. According to Morris, if the Court of Chancery had accepted his well-pleaded factual allegations as true and drawn all reasonable inferences in his favor, it would not have discounted the potential value of the claim such that it became immaterial to the merger value.

The defendants counter that Morris supposedly did not challenge the fairness of the exchange ratio, undermining the claim that SEP GP did not negotiate fair consideration for the public unitholders' SEP units. For the litigation discount issue, the defendants contend that Morris conceded in the Court of Chancery that the derivative claim should be discounted for litigation risk. The defendants also argue that discounting for litigation risk is consistent with prior cases. [18] And, according to the defendants, the "fraud exception to the continuous ownership rule" is the proper method to assess the plaintiff's standing to assert post-merger claims. [19]

[3] We review *de novo* the Court of Chancery's finding that the plaintiff lacked standing to pursue his post-merger claims challenging the fairness of the merger consideration for failure to recoup some or all of the value of the derivative claims. [20]

A.

[4] **[5]** **[6]** The Court of Chancery dismissed Morris's complaint for lack of standing. Standing "refers to the right of a party to invoke the jurisdiction of a court to enforce a

claim or redress a grievance."[21] Standing ***129** is required to "ensure that the litigation before the tribunal is a 'case or controversy' that is appropriate for the exercise of the court's judicial powers."[22] It allows Delaware courts, "as a matter of self-restraint," to "avoid the rendering of advisory opinions at the behest of parties who are mere intermeddlers."[23] "[S]tanding is properly a threshold question that the Court may not avoid."[24]

[7] The standing inquiry "has assumed special significance in the area of corporate law."[25] Classifying a claim as either direct or derivative bears directly on standing and is in many ways outcome-determinative in post-merger litigation.[26] If a plaintiff alleges a direct claim, it means that the equity owner has alleged that they have suffered the injury, and will receive the benefit of any recovery.[27] Thus, at least at the pleading stage, the plaintiff has met the injury-in-fact requirement and properly invoked the court's jurisdiction to redress an injury.

[8] **[9]** In contrast, for a derivative action, the equity owner acts in a representative capacity on behalf of an entity. In that representative capacity, the plaintiff steps into the shoes of the entity and asserts the injury on its behalf.[28] If the equity holder has successfully jumped over 8 *Del. C.* § 327 of the Delaware General Corporation Law, Court of Chancery Rule 23.1, and our decisional law hurdles, standing exists to pursue a derivative claim on behalf of the entity.[29] But, under *Lewis v. Anderson*,[30] the equity owner no longer has standing to pursue derivative claims post-merger except in two instances—when the merger itself is the subject to a fraud claim, perpetrated to deprive shareholders of their standing to bring or maintain a derivative action; and when the merger is essentially a reorganization that does not affect the equity owner's relative ownership in the post-merger enterprise.[31]

The Supreme Court and the Court of Chancery are frequently called upon to ***130** draw the dividing line between direct and derivative claims following a merger. Our recent decision in *El Paso Pipeline GP Co., L.L.C. v. Brinckerhoff*[32] is particularly relevant here, as it addressed standing following a merger in the context of a master limited partnership. In *El Paso*, the plaintiff filed derivative claims on behalf of the limited partnership against the general partner claiming that the limited partnership substantially overpaid for the assets in a transaction. While the derivative suits were pending, the limited partnership was acquired in a merger. Although the Court of Chancery recognized that a merger typically results in the plaintiff losing standing to pursue pending derivative claims, it characterized the plaintiff's claims as both direct and derivative, circumventing the post-merger standing impediment. The court also held that, even if the plaintiff's claims were purely derivative, they survived the merger because dismissal would leave the minority equity owners without a remedy for the general partner's unfair dealing.

On appeal, this Court reversed. First, we noted that standing in corporate cases is a threshold inquiry because it implicates the exercise of the court's jurisdiction.[33] We observed that derivative standing is a "creature of equity" that allows a court of equity to hear claims by equity owners "to prevent a complete failure of justice on behalf of the corporation."[34] We also viewed standing as a fluid concept, that can change as a result of "a myriad of subsequent legal or factual causes that occur while the litigation is in progress" such as the loss of the plaintiff's status as an equity holder.[35] If standing is lost, "the court lacks the power to adjudicate the matter, and the action will be dismissed as moot unless an exception applies."[36]

Second, we held that the plaintiff brought his claims as derivative claims, and his claims remained derivative claims throughout the litigation. Even though the plaintiff's derivative claims involved a limited partnership, where most rights are governed by agreement rather than fiduciary duties, our Court held that *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*,[37] and its two-part test for drawing a line between direct and derivative claims, applied.[38] Under *Tooley*, the court must answer ***131** two questions: "[w]ho suffered the alleged harm—the corporation or the suing stockholder individually," and "who would receive the benefit of the recovery or other remedy?"[39] In *El Paso*, we found under *Tooley* that the limited partnership suffered the harm and would benefit from any recovery. Thus, the plaintiff's claims were purely derivative, and under *Lewis v. Anderson* the derivative claims passed to the buyer following the merger. The plaintiff no longer had standing to pursue the derivative claims.

Finally, and directly relevant to this appeal, we recognized in *El Paso* that, even though the plaintiff lost standing to pursue derivative claims post-merger, a narrow avenue of relief was still available to the plaintiff—a direct claim challenging the

validity of the merger when the general partner failed to secure the value of material derivative claims in the merger for the minority equity owners:

> Under our law, equity holders confronted by a merger in which derivative claims will pass to the buyer have the right to challenge the merger itself as a breach of the duties they are owed. In many cases, it might be difficult to allege that the value they are receiving in the merger is unfair simply as a result of the failure to consider value associated with their derivative suit. But that reality may also suggest that, even according full value to the potential recovery in the derivative suit (rarely a guarantee), the plaintiffs still received fair value in the merger. ... The derivative plaintiff's recourse was to file a money damages challenge to the merger and prove that the failure to accord value to the limited partnership in the merger was somehow violative of his rights. [40]

In reaching this conclusion, we relied on our decision in *Parnes v. Bally Entertainment Corp.* [41] In *Parnes*, the plaintiff alleged that in negotiations between Bally Entertainment Corp. and Hilton Hotels Corp., the CEO's actions—requiring a bribe of "several substantial cash payments and asset transfers" before consenting to a merger—resulted in the stockholders receiving an unfair price. [42] After the merger closed, the Court of Chancery found the claim derivative and dismissed the complaint for lack of standing. We reversed, finding that the complaint "directly challenges the fairness of the process and the price in the Bally/Hilton merger." [43]

We distinguished the direct claim attacking the merger itself from the derivative claim in *Kramer v. Western Pacific Industries*. [44] In *Kramer*, the plaintiff alleged "wrongful transactions associated with the merger (such as the award of golden parachutes) [that] reduced the amount paid to [the target's] stockholders," but "did not allege that the merger ***132** price was unfair or that the merger was obtained through unfair dealing." [45] Our Court held that the complaint stated only a derivative claim for mismanagement. [46] Although the plaintiff alleged that wrongful transactions associated with the merger reduced the amount paid to the target's stockholders, "it did not allege that the merger price was unfair or that the merger was obtained through unfair dealing." [47] That "such a claim is asserted in the context of a merger does not change its fundamental nature." [48]

[10] Thus, in *Kramer* what the plaintiff failed to plead was a challenge to the merger itself rather than attack the side benefits secured by some merger participants. After *Parnes*, "to state a direct claim with respect to a merger, a stockholder must challenge the validity of the merger itself, usually by charging the directors with breaches of fiduciary duty resulting in unfair dealing and/or unfair price." [49] Finally, in *Parnes* we separated the standing inquiry from whether the complaint states a claim for relief. [50] After reversing the court on standing, we also reversed the court's conclusion that the complaint failed to state a claim under Rule 12(b)(6) because the complaint alleged sufficient facts of unfairness to overcome business judgment rule review. [51]

B.

As noted in *Parnes*, "it is often difficult to determine whether a stockholder is challenging the merger itself, or alleged wrongs associated with the merger ...." [52] After *Parnes*, the Court of Chancery was left to fill in the details. It was not an easy assignment. In *Golaine v. Edwards*, [53] the plaintiff challenged a $20 million payment to Kohlberg Kravis Roberts & Co., L.P. ("KKR") made in connection with a merger between The Gillette Company and Duracell International, Inc. KKR's affiliate, KKR Associates, L.P., owned 34% of Duracell's outstanding common stock. The defendants filed a motion to dismiss and claimed that Golaine's challenge to the $20 million payment was a derivative rather than direct claim because the plaintiff failed to allege that the merger terms were tainted by the $20 million fee. In granting the defendants' motion to dismiss,

the court concluded that the fee did not taint the merger negotiation process or the merger terms. Thus, the transaction was not unfair to Duracell's non-KKR stockholders, and the plaintiff failed to state an individual claim. It also held that the complaint failed to plead facts rebutting the business judgment rule's presumptive applicability to the Duracell board's decision to award KKR the fees or plead facts to support a waste claim.

***133** In applying *Parnes*, the court in *Golaine* focused less on standing and more on the merits of a post-merger direct claim, and remarked about how the two inquiries overlap at times:

> the derivative-individual distinction as articulated in *Parnes* is revealed as primarily a way of judging whether a plaintiff has stated a claim on the merits. ... *Parnes* can be straightforwardly read as stating the following basic proposition: a target company stockholder cannot state a claim for breach of fiduciary duty in the merger context unless he adequately pleads that the merger terms were tainted by unfair dealing. If the plaintiff cannot meet that pleading standard, then he has simply not stated a claim under Rule 12(b)(6). This merits focus of *Parnes* is, in my view, a more candid approach that places primary emphasis on whether compensable injury to the target stockholders is alleged rather than on whether the target stockholder's complaint has articulated only a waste or mismanagement claim for which there is likely no proper plaintiff on earth. [54]

In *In re Massey Energy Co. Derivative & Class Action Litigation*, [55] stockholders of a coal mining corporation filed derivative suits against the board and company officers for lack of oversight and to hold them responsible for the financial harm from a tragic mine disaster. While the derivative suits progressed, Massey's board entered into a merger agreement with another mining company. The plaintiffs sought a preliminary injunction to prevent the merger from closing, claiming that the Massey Board should have negotiated to have the derivative claims transferred into a litigation trust for the benefit of Massey stockholders. According to the plaintiffs, the merger was unfair because it allowed the buyer to acquire Massey without paying fair value for the value of the derivative claims.

While the merger had not yet closed and the court viewed the case through a preliminary injunction lens, the court had to grapple with the value of derivative claims and the loss of standing to pursue them once the merger closed. [56] First, the court found the *Caremark* [57] claims against the defendants viable. Second, and fatal to the plaintiffs' preliminary injunction claim, the court found that a best-case successful recovery of $95 million was immaterial to an $8.5 billion merger. Thus, given the relative immateriality of the derivative claims, the court was not persuaded on a preliminary injunction record that the merger would likely be found to be economically unfair to the Massey stockholders for failing to capture the value of the derivative claims. Importantly, the court did not couch its ruling on standing grounds. Instead, ***134** the court found that the plaintiff had failed to demonstrate a likelihood of success on the merits to earn a preliminary injunction enjoining the merger.

[11] After *Golaine* and *Massey*, the Court of Chancery in *Primedia* gathered the strands of these and other post-*Parnes* cases and knitted them together into a three-part test. In *Primedia*, the plaintiffs filed a derivative action on Primedia Inc.'s behalf and alleged that KKR traded on inside information in a 2002 preferred stock purchase. They sought disgorgement of KKR's profits under *Brophy v. Cities Service Co.* [58] While they litigated the derivative case, Primedia, Inc. merged with a private equity entity. The plaintiffs then filed a class action suit and alleged that the merger terms were unfair because the Primedia directors failed to obtain any value for the *Brophy* claim. They also argued that the merger conferred a special benefit on KKR because KKR knew any acquirer was unlikely to pursue the *Brophy* claim post-merger. The special benefit, according

to the plaintiffs, required court review of the merger under entire fairness.

Recognizing that the post-merger class action complaint required application of the *Parnes* decision, on a motion to dismiss the Court of Chancery read *Parnes* to require first an inquiry into standing, and second, an evaluation of the merits of the claims. [59] Drawing from the court's *Golaine* and *Massey* decisions, the court distilled the standing inquiry into a three-part test:

> A plaintiff claiming standing to challenge a merger directly under *Parnes* because of a board's alleged failure to obtain value for an underlying derivative claim must meet a three part test. First, the plaintiff must plead an underlying derivative claim that has survived a motion to dismiss or otherwise could state a claim on which relief could be granted. Second, the value of the derivative claim must be material in the context of the merger. Third, the complaint challenging the merger must support a pleadings-stage inference that the acquirer would not assert the underlying derivative claim and did not provide value for it. [60]

The Court of Chancery found the *Brophy* derivative claim viable because it ***135** would survive a motion to dismiss. For the materiality requirement, the court found potential recoverable damages of $190 million plus substantial prejudgment interest, which was material when compared to the $330 million merger. The court also noted that the amounts were material even if discounted to reflect the minority stockholders' beneficial interest in the litigation recovery. Primedia's minority stockholders owned 42% of its outstanding stock. Their *pro rata* share of the merger consideration was $133 million. Their *pro rata* share of a $190 million recovery on the *Brophy* claim would be $80 million.

In a parting comment illustrating the materiality of the derivative claims, the court risk-adjusted the potential recovery and found it material in relation to the proceeds the minority would receive in the merger:

> Clearly there is risk in the litigation, and to succeed, plaintiffs will have to prove materiality and *scienter*. These challenges, however, are not similar to those that led Chancellor Strine in *Massey Energy* to discount so heavily the value of the derivative claims. If I assume prevailing on the *Brophy* claim was a toss-up, or even a 1–in–5 proposition, the risk-adjusted, pre-interest recoveries for the minority of $40 million and $16 million, respectively, remain material when compared to their $133 million share of the proceeds from the Merger. [61]

After finding that the derivative claims were viable and material, the court also found that the acquirer would not assert the *Brophy* claim post-merger and provided no value for it in the merger consideration. Turning to whether the plaintiffs stated a claim for relief, the court held that it was reasonably conceivable that KKR received a special benefit in the merger because no acquirer likely would have pursued the *Brophy* claim post-merger, and the defendants did not extract value for or take steps to preserve the *Brophy* claim. Thus, the entire fairness standard of review applied to the merger, and the plaintiffs alleged sufficient grounds that the merger was not entirely fair. [62]

C.

[12] **[13]** In this appeal the procedural issues do not warrant lengthy discussion. After a review of the record, we are satisfied that Morris preserved for appeal a challenge to the fairness of the merger itself, and SEP GP disputed how the court should consider litigation risk when assessing materiality. Morris alleged that former public unitholders

were harmed because "SEP GP has allowed Enbridge to engineer the Roll-Up Transaction on terms that were patently unfair and unreasonable to SEP and its public unitholders, and that could not have been approved in good faith by the New Conflicts Committee or the SEP GP Board."[63] Specifically, Morris pled that "the New Conflicts Committee and the SEP GP Board utterly failed to attempt to (i) appropriately value the Derivative Claim, or (ii) secure any value for the Derivative Claim in its negotiations concerning the Roll-Up Transaction."[64] SEP GP also argued that Morris's chance ***136** of prevailing on the derivative claims was a "toss-up" or a "one-in-five" chance, essentially copying the odds from the *Primedia* decision.[65] Thus, the parties preserved their appellate arguments about materiality.

[14] The main issue on appeal is whether the Court of Chancery stayed true to the standard of review on a motion to dismiss for lack of standing. In other words, did the court accept as true all reasonable factual allegations in the complaint and consider whether it was reasonably conceivable that Morris asserted a direct claim that could lead to a $661 million recovery on the derivative claims? After our review of the complaint, we find that the court strayed from the proper standard of review, and Morris had standing to pursue his post-merger complaint.

As discussed earlier, to have standing, the plaintiff must plead a direct claim. Under *Parnes*, to plead a direct claim, the plaintiff must allege that the merger itself was unfair, "by charging the directors with breaches of fiduciary duty resulting in unfair dealing and/or unfair price."[66] When the court is faced with a post-merger claim challenging the fairness of a merger based on the defendant's failure to secure value for derivative claims, we think that the *Primedia* framework provides a reasonable basis to conduct a pleadings-based analysis to evaluate standing on a motion to dismiss.

[15] First, the court must decide whether the underlying derivative claims were viable, meaning they would survive a motion to dismiss. Meritless derivative claims would have no impact on the merger price. Second, the derivative claim recovery as pled must be material in relation to the merger consideration. An immaterial derivative claim would have little or no impact on the merger price. For example, a $10 million derivative claim could not reasonably be expected to be material to a $1 billion merger value. The same derivative claim would be material to a $20 million merger. And finally, the court should also assess whether the complaint alleges that the acquirer would not assert the underlying derivative claim and did not provide value for it.[67]

[16] When assessing standing at the motion to dismiss stage of the proceedings, the court must accept the plaintiff's factual allegations as true and draw all reasonable inferences in his favor. This does not mean that the court is bound by unreasonable, unsupported, or speculative derivative suit damages claims. But if it is reasonably conceivable that the plaintiff could recover the damages claimed in the complaint, the court must accept that allegation as true for purposes of the motion to dismiss for lack of standing.

Here, the parties do not dispute the viability of the derivative claim. Morris's derivative claim survived a motion to dismiss. ***137** The parties also did not dispute that SEP GP secured no value for the derivative claim, and Enbridge would not assert the claim post-merger. Regarding materiality, Morris alleged that his derivative claim could lead to a more than $660 million damages award, including prejudgment interest, which was material when compared to a $3.3 billion merger.[68] The court could reasonably infer that if Morris prevailed on his challenge to the reverse dropdown transaction, Morris could recover at least $660 million.

The court, however, discounted the potential $660 million recovery to $112 million to reflect the minority unitholders' 17% beneficial interest in the derivative litigation recovery. The Court of Chancery then reduced the $112 million further to account for litigation risk because it was still "a litigable question whether Reduced GP Cash Flow represented value to the Partnership in the Reverse Dropdown, which would vindicate the Defendant's approval of the transaction objectively."[69] The court also held that even if SEP GP's valuation was incorrect, it would not breach the limited partnership agreement because Morris would still have to prove "the work of the Defendant's advisor, Simmons, on the Reverse Dropdown did not fit in the parameters of Section 7.10(b) of the Second A & R LPA."[70] The court observed that Morris would have to demonstrate that "SEP GP did not 'reasonably believe' that the valuation of the transaction was within Simmons' competence, negating any 'safe harbor' for the Defendant."[71] Finally, Morris would also "have to demonstrate the Defendant's subjective bad faith to recover damages on behalf of SEP ...."[72] Taking these difficulties into account, the court concluded:

> I find that the chance of success of the Derivative Claim was slim, and certainly less than one-in-four. Twenty-five percent of $112,370,000 is $28,092,500. This represents less than one percent of the total value of the Roll-Up. One percent is not material in the context of the Roll-Up. The Plaintiff consequently does not have standing to pursue his claims. [73]

We see two errors in the court's materiality analysis at the motion to dismiss stage of the proceedings. First, as discussed earlier, the court must accept Morris's factual allegations as true and draw all reasonable inferences in his favor. [74] In its prior decision the court found that Morris's complaint "made adequate allegations showing that under reasonably conceivable circumstances a facially unreasonable gap in consideration exists sufficient to infer subjective bad faith." [75] Thus, "it was 'reasonably conceivable that the General Partner acted in subjective bad faith.' " [76] It was ***138** also reasonably conceivable that, had Morris succeeded in the derivative suit challenging the reverse drop down transaction, the recovery could have been at least $660 million. Applying a further litigation risk discount at the pleading stage was inconsistent with the court's standard of review on a motion to dismiss for lack of standing.

Second, even if it was proper to discount the $660 million in damages alleged in the complaint to reflect the public unitholders' interest in the derivative recovery, to maintain equivalence, the court should have compared the $112 million *pro rata* interest in the derivative claim recovery to the public unitholders' proportional interest in the merger consideration. The public unitholders had a 17% interest in SEP. The merger consideration was valued at $3.3 billion. An apples-to-apples comparison would have compared $112 million to $561 million. [77] Under this calculation, the derivative claim was material at the motion to dismiss stage.

Neither *Massey* nor *Primedia* require a different result. As discussed earlier, in *Massey* the plaintiffs alleged in their complaint *Caremark* damages equal to the damages that the company suffered from the mining disaster—estimated to be $900 million to $1.4 billion. Even though the plaintiffs pled a viable *Caremark* claim, the court refused to equate the value of the *Caremark* claim with the damages suffered from the mine explosion. Unlike here, where Morris is entitled to certain presumptions in his favor, the court made its assessment as part of a preliminary injunction motion, where likelihood of success is one of the requirements. The court properly took into consideration the substantive difficulties confronting the plaintiff in proving and collecting on their *Caremark* claims. On an extensive record before the court, it predicted that the best-case recovery was $95 million, based not on the full damages caused the company by the mine disaster but on the policy limits for directors' and officers' insurance coverage. The plaintiff did not show a likelihood that it would succeed on its challenge to the fairness of the merger for failing to secure value for a $95 million derivative claim recovery as part of a $8.5 billion merger. [78] Importantly, the court did not apply a percentage reduction based on litigation risk. Instead, on a substantial record, the court gave the plaintiffs the benefit of their realistic, best-case recovery.

Primedia is also distinguishable. The court in *Primedia* found that the plaintiffs' *Brophy* claim was material and did not face the same impediments to recovery as the plaintiffs faced in *Massey*. It was only after the court found that the plaintiffs had a strong and material derivative case that the court concluded its analysis with what can be best characterized as confirmation of its materiality conclusion. The court stated that even if the *Brophy* claim "was a toss-up, or even a 1–in–5 proposition, the risk-adjusted, pre-interest recoveries for the minority of $40 million and $16 million, respectively, remain material when compared to their $133 million share of the proceeds from the Merger." [79] As we interpret the court's percentage risk adjustment, ***139** it served only as a hypothetical to illustrate the strength and materiality of the plaintiffs' claims even if there were obstacles to recovery.

[17] In any event, on a motion to dismiss for lack of standing, we are not addressing the likelihood of success on a preliminary injunction record. A percentage-based risk reduction should not be applied at this stage of the proceedings. If the plaintiff has alleged a viable derivative

claim, where it is reasonably conceivable that the claim is material when compared to the merger consideration and could result in the damages pled in the complaint, the plaintiff has satisfied the materiality requirement at the motion to dismiss stage for standing purposes. Morris has met this standard and his claims should not be dismissed for lack of standing.

III.

[18] Standing is concerned "only with the question of *who* is entitled to mount a legal challenge and not with the merits of the subject matter in controversy." [80] If the court finds that the plaintiff has standing, on the defendant's motion the court should also consider a motion to dismiss for failure to state a claim. For the first time on appeal, SEP GP has asked us to consider its motion to dismiss for failure to state a claim. Because the record is complex and it is not clear what has been incorporated by reference, we think that the Court of Chancery should consider the motion first. It also might be a better use of the court's scarce resources to consider a motion for summary judgment, after the completion of discovery, rather than a motion to dismiss. But we leave it to the Court of Chancery's discretion. We reverse the Court of Chancery's judgment and remand for further proceedings. Jurisdiction is not retained.

All Citations

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Footnotes

1 We take the facts from the complaint and the Court of Chancery's decision. *Morris v. Spectra Energy Partners (DE) GP, LP*, 2019 WL 4751521 (Del. Ch. Sept. 30, 2019).

2 Enbridge owned Spectra Energy Partners GP, LLC, which owned SEP GP.

3 *Morris*, 2019 WL 4751521, at *3.

4 *Id.* A "good faith" finding requires that "the person acting 'must believe that the determination or other action is in the best interests of the Partnership.' " *Id.* (citation omitted).

5 The plaintiff also pled breach of the implied covenant of good faith and fair dealing against SEP GP and tortious interference with the limited partnership agreement against SEP Corp.

6 *Morris*, 2019 WL 4751521, at *5 (quoting *Morris v. Spectra Energy Partners (DE) GP, LP*, 2017 WL 2774559, at *16 (Del. Ch. June 27, 2017)).

7 *Id.*

8 *Id.* at *6 (alteration in original). Later, however, and "contrary to initial expectations," "it did not 'meaningfully limit an MLP's ability to recover an income tax allowance in its cost of service.' " *Id.* at *7. (quoting Compl. ¶ 57). "SEP's public units realized a corresponding increase in market price." *Id.*

9 *Id.* at *6 (quoting the record).

10 *Id.* at *8.

11 *Id.* at *9 (citation omitted).

12 The Order dismissing the derivative claim "did not preclude the Plaintiff from prosecuting this Action." *Id.* at *9.

13 67 A.3d 455 (Del. Ch. 2013).

14 *Morris*, 2019 WL 4751521, at *11.

15 *Id.* at *12 ("*Primedia* asks whether the claim has 'survived a motion to dismiss.' The answer for the Derivative Claim is in the affirmative. That is the end of the viability inquiry.").

16 *Primedia*, 67 A.3d at 477 ("First, the plaintiff must plead an underlying derivative claim that has survived a motion to dismiss or otherwise could state a claim on which relief could be granted.").

17 *Id.*

18 As they argue, "the legal principle of whether a court should adjust for risk when valuing a derivative claim does not turn on the nature and degree of that risk. It is either appropriate to risk adjust or it is not." Answering Br. at 32. And they assert Delaware law supports their position in other contexts. *Id.* at 32–33 (citing *ONTI, Inc. v. Integra Bank*, 751 A.2d 904 (Del. Ch. 1999); *Bomarko, Inc. v. Int'l Telecharge, Inc.*, 794 A.2d 1161 (Del. Ch. 1999), ***aff'd***, 766 A.2d 437 (Del. 2000)).

19 Answering Br. at 35.

20 *El Paso Pipeline GP Co., L.L.C. v. Brinckerhoff*, 152 A.3d 1248, 1256 (Del. 2016).

21 *Stuart Kingston, Inc. v. Robinson*, 596 A.2d 1378, 1382 (Del. 1991) (citation omitted).

22 *Dover Historical Soc'y v. City of Dover Planning Comm'n*, 838 A.2d 1103, 1110 (Del. 2003).

23 *Ala. By-Prods. Corp. v. Cede & Co. on Behalf of Shearson Lehman Bros., Inc.*, 657 A.2d 254, 264 (Del. 1995) (quoting *Stuart Kingston*, 596 A.2d at 1382).

24 *Gerber v. EPE Hldgs. LLC*, 2013 WL 209658, at *12 (Del. Ch. Jan. 18, 2013) ("If there is no standing, there is no justiciable substantive controversy.").

25 *Ala. By-Prods.*, 657 A.2d at 264.

26 *See* *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1036 (Del. 2004) ("The decision whether a suit is direct or derivative may be outcome-determinative.").

27 *Parnes v. Bally Entm't Corp.*, 722 A.2d 1243, 1245 (Del. 1999) ("Stockholders may sue on their own behalf (and, in appropriate circumstances, as representatives of a class of stockholders) to seek relief for direct injuries that are independent of any injury to the corporation.").

28 *Id.* ("A derivative claim is one that is brought by a stockholder, on behalf of the corporation, to recover for harms done to the corporation.").

29 *Ala. By-Prods.*, 657 A.2d at 264 ("For example, in order to have standing to initiate a shareholder derivative suit, a plaintiff must have been a shareholder at the time of the challenged transaction, as well as at the commencement of suit. In addition, this Court has held that a plaintiff must also maintain his shareholder status throughout the derivative litigation."); *see also* *Urdan v. WR Capital Partners, LLC*, 244 A.3d 668, 678–80 (Del. 2020) (recognizing that a stockholder who is involuntarily forced to sell their stock in a merger maintains the right to assert post-merger direct claims as an exception to the continuous ownership rule).

30 477 A.2d 1040 (Del. 1984).

31 *Feldman v. Cutaia*, 951 A.2d 727, 731 & n.20 (Del. 2008) ("It is now well established that a plaintiff may avoid dismissal of his derivative claims following a merger in only two distinct circumstances: where the claims asserted are direct, rather than derivative, or where one of the exceptions recognized in *Lewis v. Anderson* applies.").

32 152 A.3d 1248 (Del. 2016).

33 *El Paso*, 152 A.3d at 1256 ("Standing is therefore properly viewed as a threshold issue to 'ensure that the litigation before the tribunal is a "case or controversy" that is appropriate for the exercise of the court's judicial powers.' ") (quoting *Dover Historical Soc'y*, 838 A.2d at 1110).

34 *Id.* (quoting *Schoon v. Smith*, 953 A.2d 196, 202, 208 (Del. 2008)).

35 *Id.* (quoting *Gen. Motors Corp. v. New Castle Cty.*, 701 A.2d 819, 824 (Del. 1997)). As we recognized in *Lewis v. Anderson*, with limited exception, "[a] plaintiff who ceases to be a shareholder, whether by reason of a merger or for any other reason, loses standing to continue a derivative suit." 477 A.2d at 1049; *see also* *El Paso*, 152 A.3d at 1265 ("This rule flows from the fact that, following a merger, 'the derivative claim —originally belonging to the acquired corporation—is transferred to and becomes an asset of the acquiring corporation as a matter of statutory law.' ") (citation omitted).

36 *El Paso*, 152 A.3d at 1256–57.

37 845 A.2d 1031 (Del. 2004).

38 *El Paso*, 152 A.3d at 1260 ("Because Brinckerhoff's claim sounds in breach of a contractual duty owed to the Partnership, we employ the two-pronged *Tooley* analysis to determine whether the claim 'to enforce the [Partnership's] own rights must be asserted derivatively' or is dual in nature such that it can proceed directly.") (alteration in original) (quoting *Loral Space & Commc'ns, Inc. v. Highland Crusader Offshore Partners, L.P.*, 977 A.2d 867, 868 (Del. 2009)).

39 845 A.2d at 1035. It is worth noting that under *Tooley*, a claim can—in certain circumstances—be considered a dual-natured claim, *i.e.*, one that is both direct and derivative. *El Paso*, 152 A.3d at 1262 ("In unique circumstances, this Court has recognized that some claims can be dual-natured—that is, both direct and derivative.").

40 *El Paso*, 152 A.3d at 1251–52.

41 722 A.2d 1243 (Del. 1999).

42 *Id.* at 1246.

43 *Id.* at 1245.

44 546 A.2d 348 (Del. 1988).

45 *Parnes*, 722 A.2d at 1245.

46 *See* *Kramer*, 546 A.2d at 353.

47 *Parnes*, 722 A.2d at 1245.

48 *Id.*

49 *Id.*

50 *See* *id.* at 1246 ("Although we conclude that the Parnes complaint directly challenges the Bally merger, it does not necessarily follow that the complaint adequately states a claim for relief.").

51 *See* *id.* 1247 ("Using [the pleadings stage] standard, we find that the complaint states a claim challenging the fairness of the Bally/Hilton merger and challenging the Bally directors' approval of the merger as having lacked a rational basis.").

52 *Id.* at 1245.

53 1999 WL 1271882 (Del. Ch. Dec. 21, 1999).

54 *Id.* at *7 (footnotes omitted).

55 2011 WL 2176479 (Del. Ch. May 31, 2011).

56 In *Massey*, the plaintiffs sought to enjoin the merger or create a litigation trust pre-closing to hold the derivative claims.

57 *In re Caremark Int'l. Inc. Deriv. Litig.*, 698 A.2d 959 (Del. Ch. 1996). *Caremark* claims govern director oversight liability, which require a plaintiff to show that "(a) the directors utterly failed to implement any reporting or information system or controls; *or* (b) having implemented such a system or controls, consciously

failed to monitor or oversee its operations thus disabling themselves from being informed of risks or problems requiring their attention." *Stone ex rel. AmSouth Bancorp. v. Ritter*, 911 A.2d 362, 370 (Del. 2006) (emphasis in original). "Because of the difficulties in proving bad faith director action, a *Caremark* claim is 'possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment.' " *City of Birmingham Ret. & Relief Sys. v. Good*, 177 A.3d 47, 55 (Del. 2017) (quoting *In re Caremark,* 698 A.2d at 967).

58 70 A.2d 5 (Del. Ch. 1949). *Brophy* and its progeny recognize a cause of action for a plaintiff to recover for misuse of confidential corporate information, which requires a plaintiff to demonstrate that "1) the corporate fiduciary possessed material, nonpublic company information; and 2) the corporate fiduciary used that information improperly by making trades because she was motivated, in whole or in part, by the substance of that information." *In re Oracle Corp. Deriv. Litig.*, 867 A.2d 904, 934 (Del. Ch. 2004), ***aff'd***, 872 A.2d 960 (Del. 2005) (TABLE); ***see also*** *Kahn v. Kolberg Kravis Roberts & Co., L.P.*, 23 A.3d 831, 840 (Del. 2011) ("*Brophy* focused on the public policy of preventing unjust enrichment based on the misuse of confidential corporate information.").

59 *Primedia*, 67 A.3d at 477 ("As I understand the framework established by *Parnes*, a plaintiff wishing to assert such a claim must first establish standing to sue. If standing exists, then the plaintiff must still plead a viable claim."); ***see also*** *In re Straight Path Commc'ns Inc. Consol. S'holder Litig.*, 2018 WL 3120804, at *14 (Del. Ch. June 25, 2018) ("Having held that the Plaintiffs have standing to sue under Parnes, I next consider whether the Complaint states viable claims for breach of fiduciary duty."), ***aff'd sub nom***. *IDT Corp. v. JDS1, LLC*, 206 A.3d 260 (Del. 2019) (TABLE); *In re Ply Gem Indus., Inc. S'holders Litig.*, 2001 WL 755133, at *6 (Del. Ch. June 26, 2001) ("Thus, by putting fairly before the Court the contention that [the plaintiffs] are challenging the fairness of the merger price or the merger process, Plaintiffs can survive the derivative-individual obstacle yet still fail to assert a claim that would allow them to move beyond a Rule 12(b)(6) confrontation.").

60 *Primedia*, 67 A.3d at 477.

61 *Id.* at 483 (emphasis in original).

62 The Court of Chancery has since followed *Primedia* in the context of post-merger challenges. *See* *In re Riverstone Nat'l, Inc. S'holder Litig.*, 2016 WL 4045411, at *8 (Del. Ch. July 28, 2016); *Houseman v. Sagerman*, 2014 WL 1600724, at *10–13 (Del. Ch. Apr. 16, 2014).

63 App. to Opening Br. at A077 (Compl. ¶ 105).

64 *Id.*

65 *See* *id.* at A0122 (Defendant Spectra Energy Partners (DE) GP, LP's Opening Br. in Support of its Mot. to Dismiss the Verified Class Action Compl. at 31 n.12) ("For instance, if the derivative claim were considered a toss-up, a theoretical $47 million recovery (without interest) would represent just 1.4% of the $3.3 billion merger consideration. If instead the claim had a one-in-five shot, the potential recovery of $19 million (without interest) for the unaffiliated unitholders would be just 0.57% of the total merger value.").

66 *Parnes*, 722 A.2d at 1245.

67 *Primedia*, 67 A.3d at 483. The rationale for this prong is that "[w]ithout such allegations and the resulting inferences, the merger consideration logically would incorporate value for the litigation, and the merger would not have harmed the sell-side stockholders." *Id.*

68 App. to Opening Br. at A0023 (Compl. ¶ 1 & n.3) (describing the derivative claim that survived the motion to dismiss as "potentially worth more than $660 million to SEP (and more than $110 million to SEP's public unitholders)").

69 *Morris*, 2019 WL 4751521, at *13.

70 *Id.*

71 *Id.*

72 *Id.* at *14.

73 *Id.* (footnotes omitted).

74 *See* *Parnes*, 722 A.2d at 1247 (finding that, after taking all pleaded facts as true and drawing reasonable inferences in the plaintiff's favor, the plaintiff's claim was direct and withstood dismissal); *Primedia*, 67 A.3d at 479 ("Assuming these allegations are true, as I must at this procedural stage, ...").

75 *Morris*, 2019 WL 4751521, at *5 (quoting *Morris v. Spectra Energy Partners (DE) GP, LP*, 2017 WL 2774559, *16 (Del. Ch. June 27, 2017)).

76 *Id.*

77 *See* *Primedia*, 67 A.3d at 482–83 (after finding the $190 million *Brophy* claim material to the $316 million merger, the court also discounted the *Brophy* claim's recovery to $80 million to reflect the stockholders' beneficial interest in the litigation recovery and compared it to the stockholders' $133 million *pro rata* share of the merger consideration).

78 *In re Massey Energy Co.*, 2011 WL 2176479, at *28–29.

79 *Primedia*, 67 A.3d at 483.

80 *Dover Historical Soc'y*, 838 A.2d at 1110 (emphasis in original) (quoting *Stuart Kingston*, 596 A.2d at 1382).

EXHIBIT B

HUNTER MOUNTAIN INVESTMENT TRUST'S SUPPLEMENT TO RESPONSE TO MOTION TO STAY

KeyCite Yellow Flag - Negative Treatment
Distinguished by In re New Valley Corp. Derivative Litigation, Del.Ch., June 28, 2004

1998 WL 13858
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Chancery of Delaware.

SHAEV
v.
WYLY

No. 15559-NC.
|
Jan. 6, 1998.

Attorneys and Law Firms

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R. Franklin Balotti, Richards, Layton & Finger, Wilmington, DE.

Opinion

STEELE, Vice Chancellor.

***1** On defendants' Motion for Summary Judgment, I find that where plaintiff: (1) currently owns shares in two independent corporations that used to stand in a parent/wholly-owned subsidiary relationship and (2) once had legal standing as a shareholder of the parent to bring a double derivative action on behalf of the former subsidiary for its directors' alleged breach of fiduciary duty but (3) lost that legal standing when the parent "spun-off" the subsidiary, plaintiff nonetheless has equitable standing to bring a derivative action on behalf of the former subsidiary to recover for the alleged breach of fiduciary duty, even though the challenged actions occurred before plaintiff could have owned shares in the subsidiary.

Facts

Plaintiff, David B. Shaev, brings this derivative action on behalf of Sterling Commerce, Inc. ("Commerce"). Commerce was formed in December of 1995 as a wholly-owned subsidiary of Sterling Software, Inc. ("Software"). Plaintiff has owned shares of Software for several years, but he first became a shareholder of Commerce on September 30, 1996, as the result of a spin-off in which he received shares of Commerce as a dividend.

On February 12, 1996, several months before the spin-off, Commerce's directors, Sam Wyly, Charles J. Wyly, Evan A. Wyly, Sterling L. Williams, Warner C. Blow, Honor R. Hill and Robert E. Cook (collectively "defendants"), [1] granted themselves options on 9,000,000 shares of Commerce stock, exercisable at $24 per share. [2] Software's directors, at least four of whom were also directors of Commerce, approved the option plan on the same day. Software announced its approval of the option plan to its shareholders in a prospectus dated March 8, 1996. Software sold 18.4% of its Commerce shares in a public offering on March 13, 1996, and it divested itself of the remaining 81.6% in the spin-off.

Plaintiff alleges that the options, which may extract from Commerce between $139 million and $245 million, constitute excessive compensation to defendants. Plaintiff concedes that because he was a Software shareholder on March 8, 1996, he could have challenged the option plan at that time by filing a double derivative suit on Commerce's behalf. Once the Commerce spin-off was complete, and Software was no longer Commerce's parent, however, plaintiff lost his legal standing to bring a double derivative action on Commerce's behalf. Thus, on February 20, 1997, plaintiff filed suit derivatively on Commerce's behalf, alleging that defendants, "most of [whom] have two or three other full-time jobs ... as their primary occupations" and "cannot reasonably be expected to devote full time attention and service to the business of Commerce," [3] breached their fiduciary duty of loyalty by granting themselves excessive compensation in a self-interested transaction. Plaintiff seeks, *inter alia,* rescission of the option plan.

Defendants filed a Motion for Summary Judgment, arguing that because the board enacted the option plan when Commerce was a wholly-owned subsidiary of Software, they owed fiduciary duties solely to Software and its shareholders. Although plaintiff held Software shares at the time the options were granted, he did not bring suit in his capacity as a Software shareholder, double derivatively. Defendants contend that they owed plaintiff no fiduciary duty as a

"prospective" shareholder of Commerce and that plaintiff lacks standing to sue as a current shareholder of Commerce, because he does not satisfy the contemporaneous ownership requirement of 8 *Del. C.* § 327.

Discussion

2** A motion for summary judgment may be granted when no genuine issue of material fact is in dispute, and the moving party is entitled to judgment as a matter of law.[4] It is undisputed that at the time the option plan was created, Commerce was a wholly-owned subsidiary of Software. Defendants contend that under ***Anadarko Petroleum Corp. v. Panhandle Eastern Corp.,[5] "[t]he directors of a wholly owned subsidiary cannot be held liable to post-spin stockholders for actions taken by those directors prior to the spin-off."[6] Defendants argue that ***Anadarko*** is directly on point and mandates that summary judgment be granted in their favor.

A brief discussion of ***Anadarko'*** s facts will reveal that the case is not on all fours with the instant case. In ***Anadarko,*** the Supreme Court addressed "whether a corporate parent and directors of a wholly-owned subsidiary owe fiduciary duties to the prospective stockholders of the subsidiary *after* the parent declares its intention to spin-off the subsidiary."[7] On August 20, 1986, Panhandle, the parent corporation of Anadarko, announced that on October 1, 1986, it would "distribut[e] one share of Anadarko common stock for each issued and outstanding share of Panhandle stock held of record on September 12, 1986."[8] To increase the value of the spin-off, representatives of the two corporations applied, successfully, to the New York Stock Exchange to create a market in Anadarko stock before the date of distribution. Approximately three million Anadarko shares were traded on a when-issued basis, reflecting the value of Anadarko as an independent entity, before the dividend distribution date.[9] On September 30, 1996, one day before the distribution date, Anadarko's board, by a 3-2 vote, agreed to modify existing contracts between Panhandle and Anadarko in a manner that was favorable to Panhandle and unfavorable to Anadarko.

Anadarko sued Panhandle and the three former Anadarko directors who had approved the contract modifications. On appeal, Anadarko argued that the contracts were voidable because they were "unfair and were approved in violation of fiduciary duties owed to the prospective stockholders of Anadarko."[10] The Supreme Court began its analysis by stating two settled rules of law: (1) "a parent does not owe a fiduciary duty to its wholly[[-]owned subsidiary,"[11] and (2) "in a parent and wholly-owned subsidiary context, the directors of the subsidiary are obligated only to manage the affairs of the subsidiary in the best interests of the parent and its shareholders."[12] Anadarko argued, *inter alia,* that the case at bar presented an exception to these general rules because "by setting a record date for the dividend distribution and by establishing a market for Anadarko shares to be traded on a when-issued basis," Panhandle created a class of beneficial owners of Anadarko stock to whom it and the Anadarko directors owed fiduciary duties.[13] The Supreme Court disagreed and held that even under the unique circumstances presented, no fiduciary duties were owed to the prospective Anadarko shareholders before the date of distribution.

3** ***Anadarko is not controlling in the present case. Software did nothing between the announcement of the spin-off and the distribution date that could arguably suggest it created fiduciary duties where there otherwise were none, and plaintiff does not claim that Commerce's directors owed him a duty as a prospective Commerce shareholder. Unlike ***Anadarko,*** the spin-off in the present action had not been announced, and may not even have been contemplated, at the time the events now challenged as a breach of fiduciary duty took place. While the general fiduciary duty rules of parents and wholly-owned subsidiaries stated in ***Anadarko*** apply, the distinct scenario addressed in ***Anadarko*** is not in issue here. At the time the option plan was enacted, Commerce owed fiduciary duties only to Software and Software's shareholders. That is why, as both parties concede, plaintiff could have filed a double derivative action on Commerce's behalf between March 8 and September 30. Plaintiff never instituted such an action, however. Instead, plaintiff filed a derivative action as a current Commerce shareholder.

This brings us to defendants' second argument. It is undisputed that the option plan was enacted on February 12, 1996, but that plaintiff did not become a Commerce shareholder until September 30, 1996. Thus, defendants contend that plaintiff lacks standing to bring this derivative action, and this Court must grant defendants' Motion for Summary Judgment as a matter of law, because plaintiff was not a Commerce shareholder at the time of the alleged wrong. 8 ***Del. C.*** § 327 states:

> In any derivative suit instituted by a stockholder of a corporation, it shall be averred in the complaint that the plaintiff was a stockholder of the corporation at the time of the transaction of which he complains or that his stock devolved upon him by operation of law.

Plaintiff argues that this presents a catch-22; he alleges that he can make out a case of corporate wrongdoing but, because of the strict application of some technical legal rules, he can sue neither derivatively nor double derivatively, and the alleged wrongdoers are insulated from suit. Plaintiff contends that a court of equity cannot sanction such a result. Indeed, this Court stated as much in ***Helfand v. Gambee.*** [14]

The plaintiff in ***Helfand*** owned shares in Twentieth Century Fox Film Corporation ("Fox of N.Y."). Fox of N.Y. produced and distributed films and, through its wholly-owned subsidiary, National Theaters Corp. ("NTC"), owned and operated movie theatres. In 1951, pursuant to an antitrust consent decree, Fox of N.Y. began a reorganization to separate its film production and distribution assets from its theatre assets. The result of the reorganization, in simplified terms, was that Fox of N.Y. and NTC were dissolved and replaced by two new corporations, respectively, Fox of Delaware and National Theatres, Inc. ("NTI"). The former shareholders of Fox of N.Y., including the plaintiff, held two shares of stock for each share of Fox of N.Y. they had owned, one in Fox of Delaware and one in NTI. The shares in Fox of Delaware represented the shareholders' interest in Fox's film production and distribution business, and the shares in NTI represented the shareholders' interest in Fox's theatre business.

4** The plaintiff later filed a derivative action on behalf of NTI seeking an accounting by its directors, who had also been directors of NTC, for their activities both before and after the reorganization. The director defendants moved to dismiss portions of the complaint on the grounds that, under section 327, the plaintiff had no standing to sue for alleged wrongdoing that occurred before she became a shareholder of NTI. It should be noted, although the ***Helfand Court did not, that before September of 1952, the plaintiff could have filed a double derivative action on behalf of NTC.

This Court allowed the plaintiff to pursue her derivative action, despite the language of section 327 and the fact that the plaintiff had voted in favor the reorganization. The Court found that the purpose of section 327, to prevent the purchasing of shares for the purpose of bringing a derivative action to recover for wrongdoing antedating the purchase, would not be served by preventing the plaintiff's suit because she was not such a purchaser. [15] The Court also noted that section 327 was not enacted "to prevent the correction of corporate wrongdoing." [16] Furthermore, the plaintiff had owned shares in Fox of N.Y. since 1941. Thus, the Court stated: "the fact that she holds two pieces of paper instead of one as evidence of her 1941 investment in Fox of New York should not ... foreclose her from complaining of acts antedating the incorporation of [NTI] when such corporation is in effect a successor to Fox of New York." [17]

This case is analogous to ***Helfand.*** Plaintiff here did not purchase shares in Commerce to bring suit for actions taken before he was a shareholder. Like the plaintiff in ***Helfand,*** plaintiff here "was not a direct party to a transaction which made [him] a stockholder de novo." [18] Rather, plaintiff has owned shares in Software for several years, and he became a shareholder in Commerce only because Software declared the stock dividend. Thus, the sole aim of section 327 would not be served by denying plaintiff standing to sue. [19] To the contrary, to deny standing on these facts would insulate defendants from potential liability for their alleged misdeeds.

Defendants argue that ***Helfand*** is no longer good law, having been implicitly overruled by ***Anadarko.*** Again, I believe defendants' interpretation of ***Anadarko*** misses the mark. The contemporaneous ownership requirement of section 327 was not implicated in ***Anadarko*** because the former subsidiary corporation brought suit on its own behalf; no shareholder sued derivatively. ***Anadarko'*** s holding, that under the circumstances of that case, the parent corporation did not assume fiduciary duties with respect to a class of prospective shareholders the parent created by its own actions, has no applicability to the present case, where plaintiff seeks relief for alleged wrongs that occurred when plaintiff could not have been a prospective shareholder because the impending spin-off had not been announced and may not even have been contemplated.

Conclusion

***5** Plaintiff, as a Software shareholder, had the right to bring a double derivative action on behalf of Commerce for a period of months. Why he did not do so is unclear. I decide only that Software's decision to divest itself of its entire interest in Commerce cannot, as a matter of law, deprive plaintiff of standing to bring a derivative action on behalf of Commerce, even where the challenged actions occurred before plaintiff owned shares in Commerce.

IT IS SO ORDERED.

All Citations

Not Reported in A.2d, 1998 WL 13858

Footnotes

1 Sterling Commerce, Inc., is a nominal defendant.

2 Honor R. Hill and Robert E. Cook did not vote in the original option grant; rather, they received their options automatically upon their election to Commerce's Board of Directors, on March 4, 1996. The right to receive the automatic options was established by the other five individual defendants, on February 12, 1996.

3 Complaint at para. 17.

4 *See, e.g.,* ***Berdel, Inc. v. Berman Real Estate Mgmt. Inc.,*** Del.Ch., C.A. No. 13579, Jacobs, V.C., (Dec. 15, 1997), Mem.Op. at 2.

5 Del.Supr., 545 A.2d 1171 (1988).

6 Defendants' Reply Brief in Support of Motion for Summary Judgment at 1.

7 ***Anadarko,*** 545 A.2d at 1172. (Emphasis added)

8 ***Id.*** at 1173.

9 ***Id.*** Trading also commenced on an “ex-distribution” basis, reflecting only the value of Panhandle, and continued to be traded the “regular way,” reflecting the combined value of both corporations. ***Id.***

10 ***Id.***

11 ***Id.*** at 1174. (Citations omitted)

12 ***Id.***

13 ***Id.***

14 Del.Ch., 136 A.2d 558 (1957).

15 ***Id.*** at 562.

16 ***Id.*** at 561.

17 ***Id.*** at 562.

18 ***Id.***

19 The sole purpose of section 327 is "to prevent what has been considered an evil, namely, the purchasing of shares in order to maintain a derivative action designed to attack a transaction which occurred prior to the purchase of the stock." ***Rosenthal v. Burry Biscuit Corp.,*** Del.Ch., 60 A.2d 106, 111 (1948).

End of Document

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP
Debtor(s)

Case No. 19-34054

☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 12/31/2023

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:
- (•) Reorganized Debtor
- ( ) Other Authorized Party or Entity: _____
  Name of Authorized Party or Entity

/s/ Zachery Z. Annable
Signature of Responsible Party

01/18/2024
Date

Zachery Z. Annable, Hayward PLLC
Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231
Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$4,777,542	$141,814,427
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$0	$5,194,652
d. Total transferred (a+b+c)	$4,777,542	$147,009,079

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor		*Aggregate Total*	$0	$33,005,136	$0	$33,005,136
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i	Pachulski Stang Ziehl & Jones	Lead Counsel	$0	$24,312,860	$0	$24,312,860
	ii	Development Specialists, Inc.	Financial Professional	$0	$5,765,448	$0	$5,765,448
	iii	Kurtzman Carson Consultants	Other	$0	$2,054,716	$0	$2,054,716
	iv	Hayward & Associates PLLC	Local Counsel	$0	$872,112	$0	$872,112
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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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b.				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor		*Aggregate Total*	$0	$7,604,472	$0	$7,604,472
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i	Hunton Andrews Kurth LLP	Other	$0	$1,149,807	$0	$1,149,807
	ii	Foley Gardere, Foley & Lardne	Other	$0	$629,088	$0	$629,088
	iii	Deloitte	Financial Professional	$0	$553,413	$0	$553,413
	iv	Mercer (US) Inc.	Other	$0	$204,767	$0	$204,767
	v	Teneo Capital, LLC	Financial Professional	$0	$1,364,823	$0	$1,364,823
	vi	Wilmer Cutler Pickering Hale	Other	$0	$2,650,937	$0	$2,650,937

Debtor's Name Highland Capital Management, LP Case No. 19-34054

	vii	Carey Olsen	Other	$0	$280,264	$0	$280,264
	viii	ASW Law	Other	$0	$4,976	$0	$4,976
	ix	Houlihan Lokey Financial Advi	Other	$0	$766,397	$0	$766,397
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c.	All professional fees and expenses (debtor & committees)			$0	$60,171,929	$0	$60,171,929

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$0	$284,566,669	$397,485,568	72%
e. Equity interests	$0	$0	$0		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

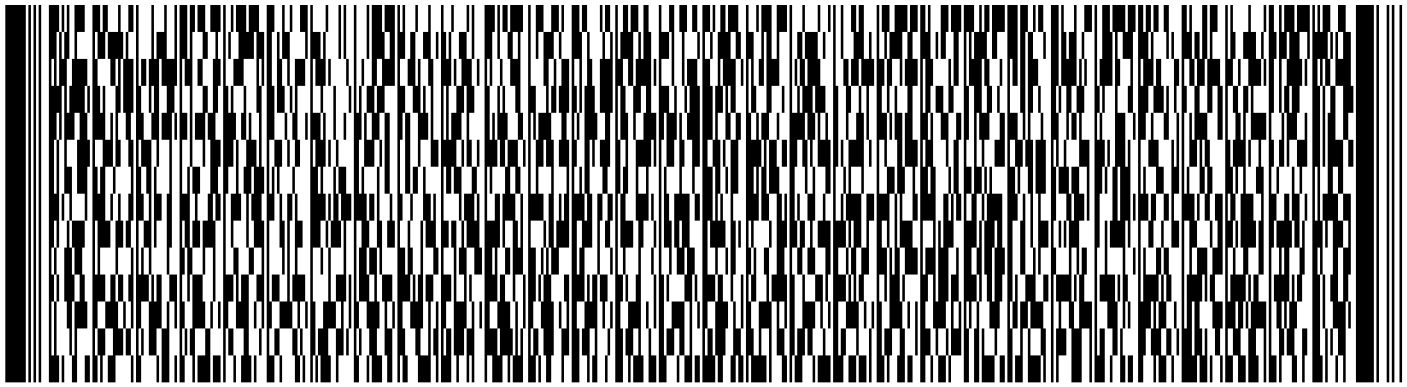
I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

/s/ James Seery
Signature of Responsible Party

James Seery
Printed Name of Responsible Party

CEO
Title

01/18/2024
Date



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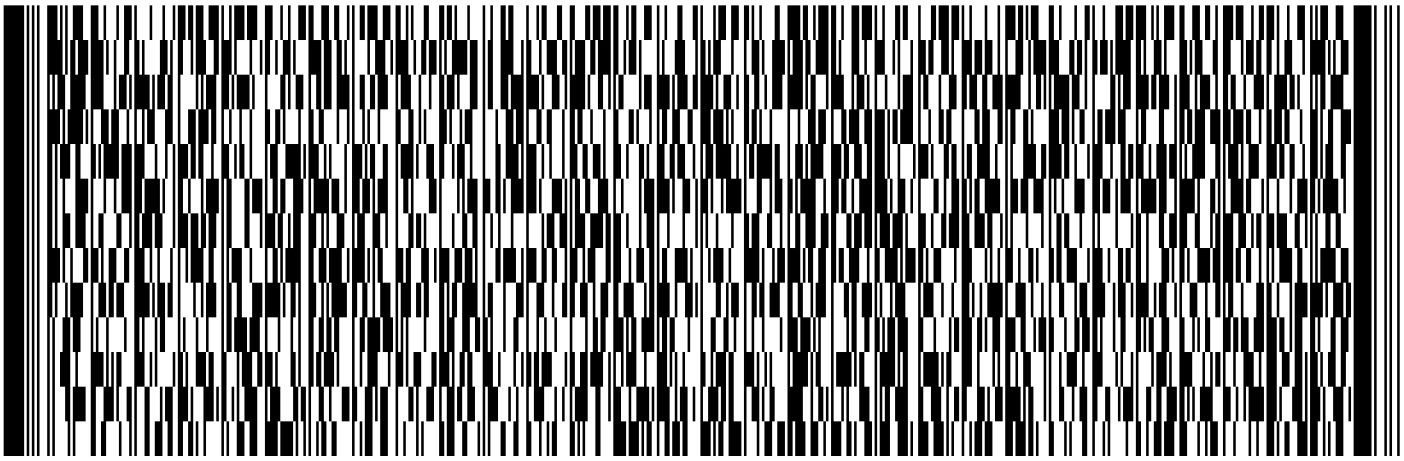

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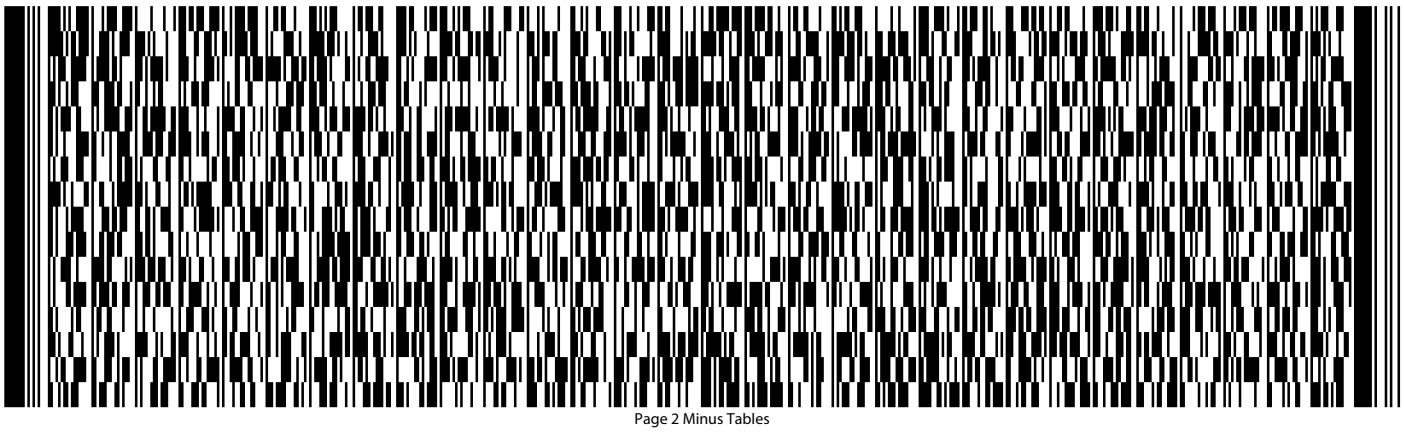

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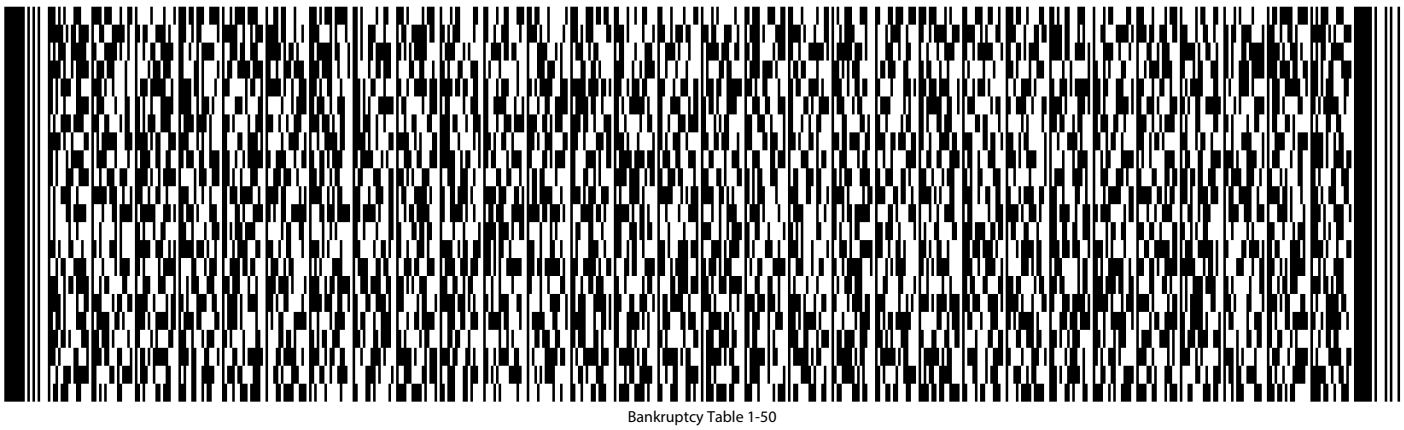
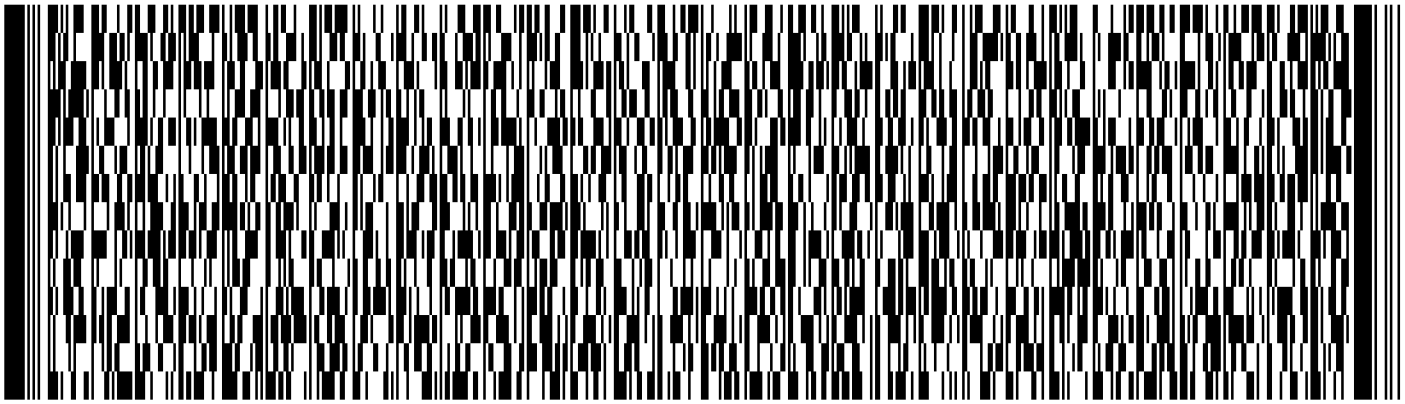
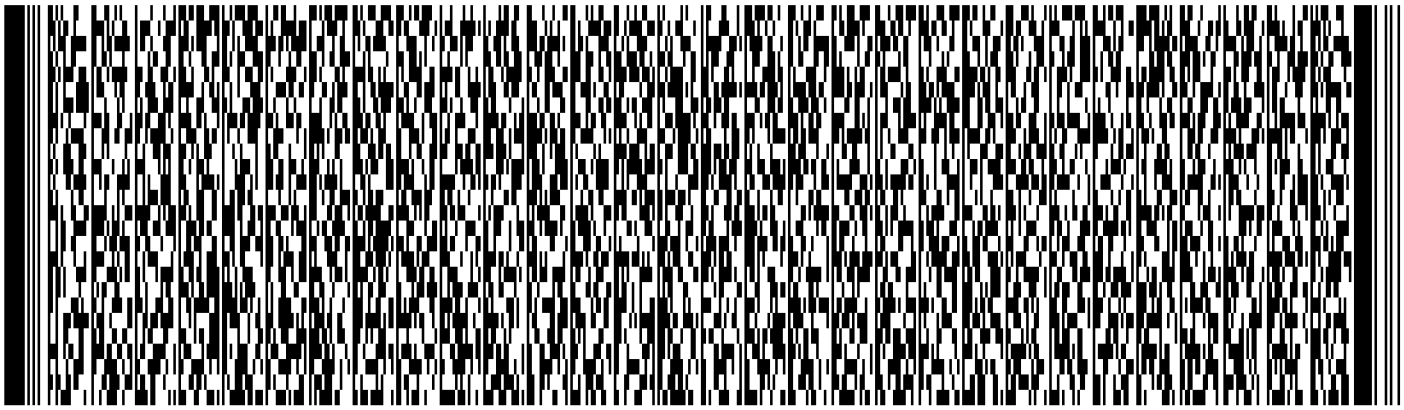


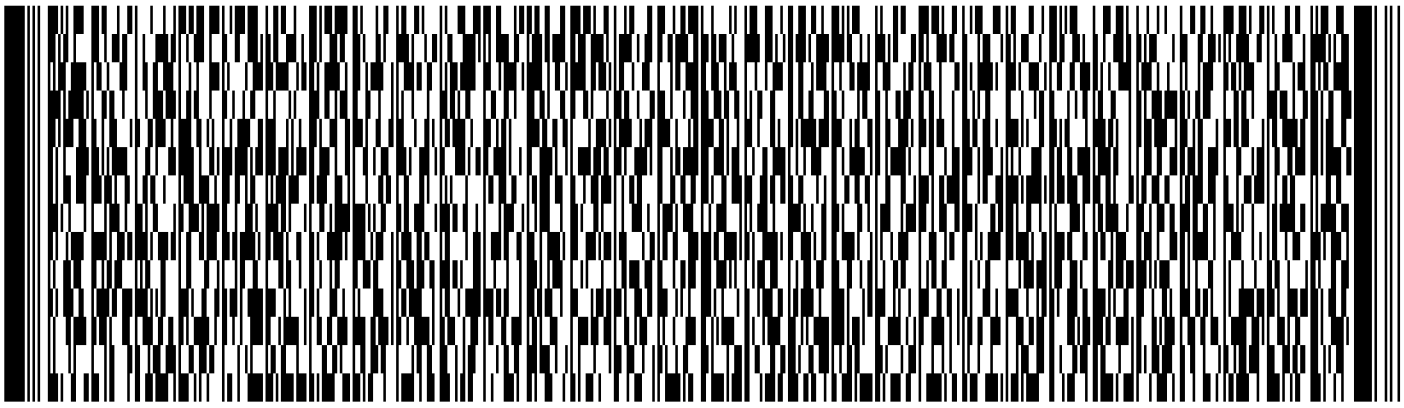
Bankruptcy Table 1-50



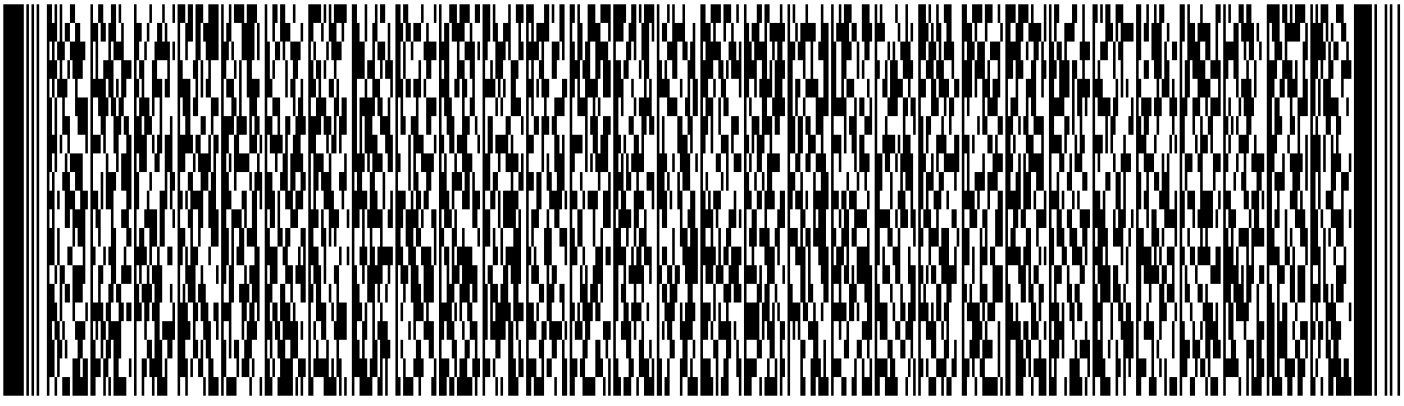
Bankruptcy Table 51-100



Non-Bankruptcy Table 1-50



Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST-CONFIRMATION REPORT

The Reorganized Debtor has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), on behalf of debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Reorganized Debtor prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Reorganized Debtor relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Reorganized Debtor made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Reorganized Debtor reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

In Section A of the PCR, the Reorganized Debtor listed the bankruptcy related professionals employed in connection with the Bankruptcy Case.

In Section B of the PCR, the Reorganized Debtor listed non-bankruptcy professionals, those that would have been retained absent the Bankruptcy Case, and the ordinary course professionals ("OCP"). Hunton Andrews Kurth LLP ("Hunton") and Wilmer Cutler Pickering Hale and Dorr LLP ("Wilmer Hale") were originally ordinary course professionals but were later employed

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

professionals. The amounts listed for Hunton and Wilmer Hale include the OCP payments and employed professional payments.

In Section C of the PCR, the Reorganized Debtor totals all payments included in Sections A and B, along with payments made to professional employed by the official committee of unsecured creditors (the "Committee").

The approved current quarter, approved cumulative, and paid cumulative will have the same amount listed due to approval and payment of final fee applications.

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

The payments made to holders of General Unsecured Claims were disbursed from the Claimant Trust, but for presentation purposes, have been included in Part 3 of the post-confirmation report for the Reorganized Debtor.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with Reorganized Debtor's governing documents and the Plan.

The Debtor reserves all right to object to any claim in accordance with the terms of the Plan.

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP
Debtor(s)

Case No. 19-34054

☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 12/31/2023

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:
○ Reorganized Debtor
◉ Other Authorized Party or Entity: Highland Claimant Trust
Name of Authorized Party or Entity

/s/ Zachery Z. Annable
Signature of Responsible Party

01/18/2024
Date

Zachery Z. Annable, Hayward PLLC
Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231
Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$719,669	$357,812,453
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$0	$0
d. Total transferred (a+b+c)	$719,669	$357,812,453

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor *Aggregate Total*						
	Itemized Breakdown by Firm						
		Firm Name	Role				
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b.				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor *Aggregate Total*						
	Itemized Breakdown by Firm						
		Firm Name	Role				
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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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c.	All professional fees and expenses (debtor & committees)				$0		

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$0	$284,566,669	$397,485,568	72%
e. Equity interests	$0	$0	$0		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

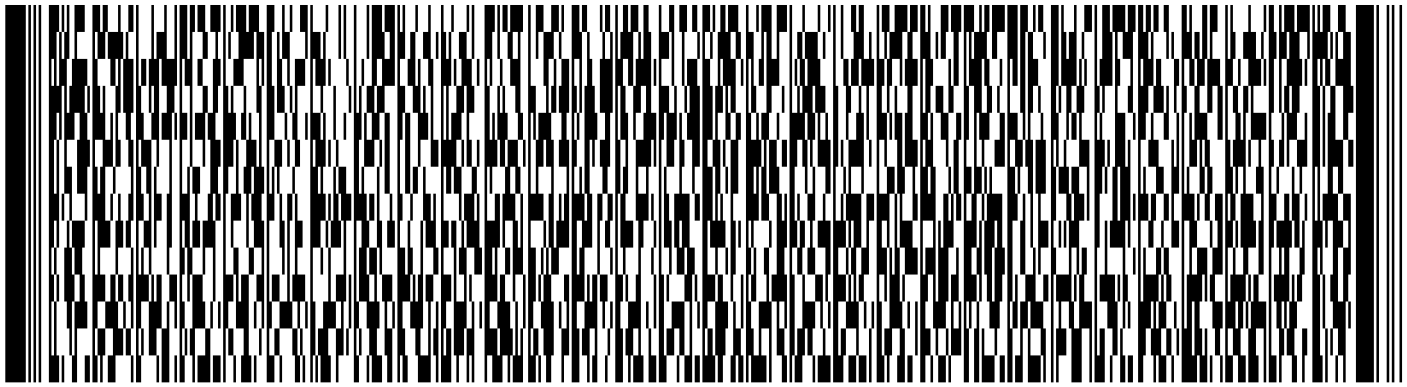
I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

/s/ James Seery
Signature of Responsible Party

James Seery
Printed Name of Responsible Party

Claimant Trustee
Title

01/18/2024
Date



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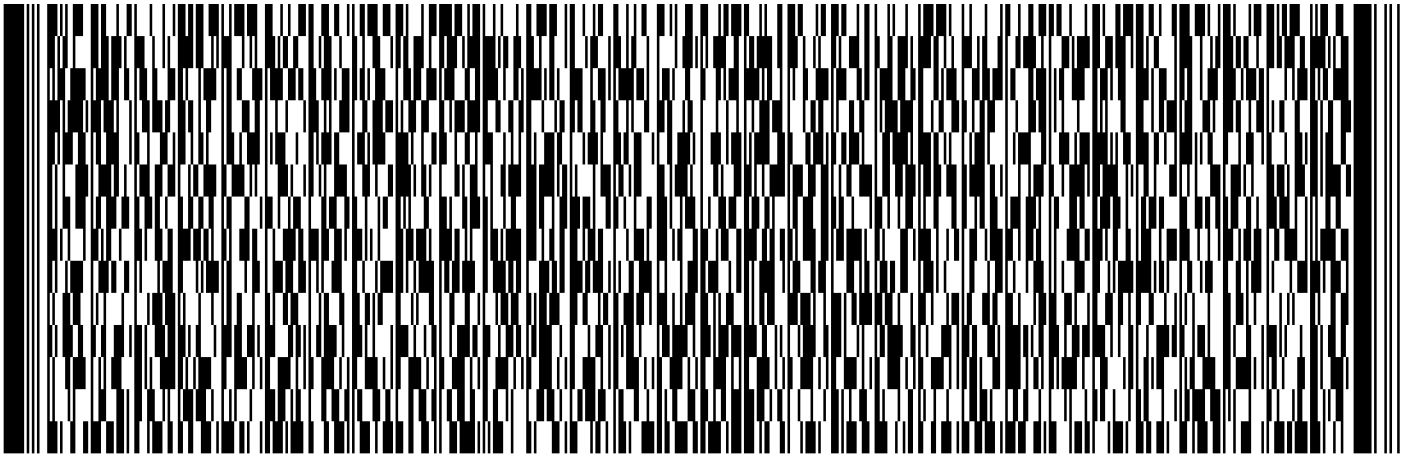

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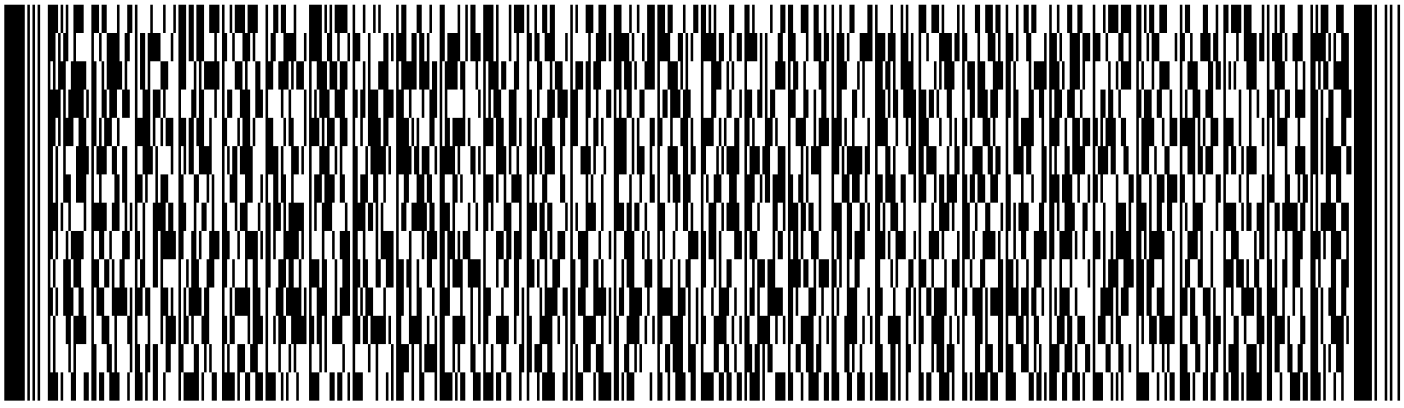

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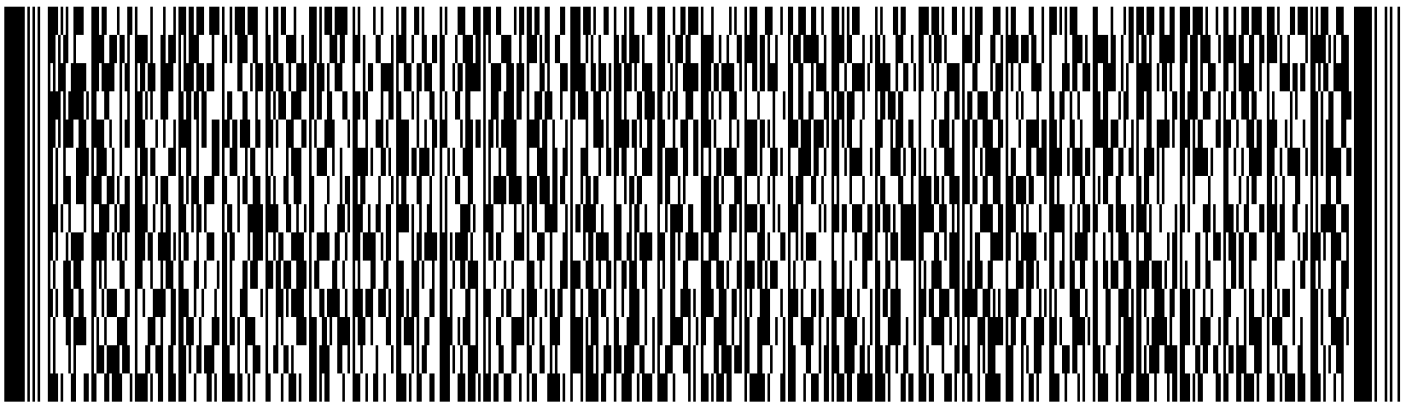
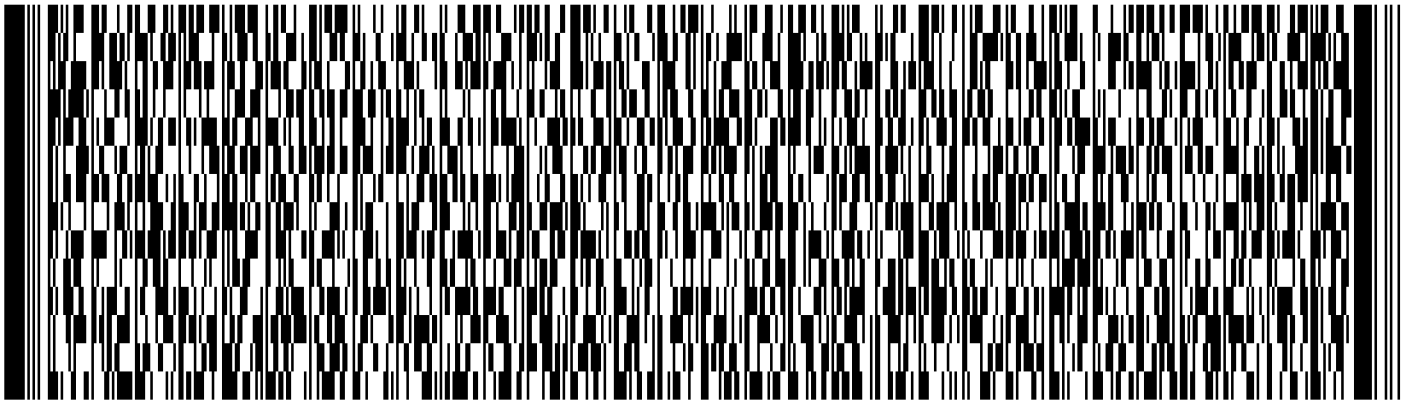
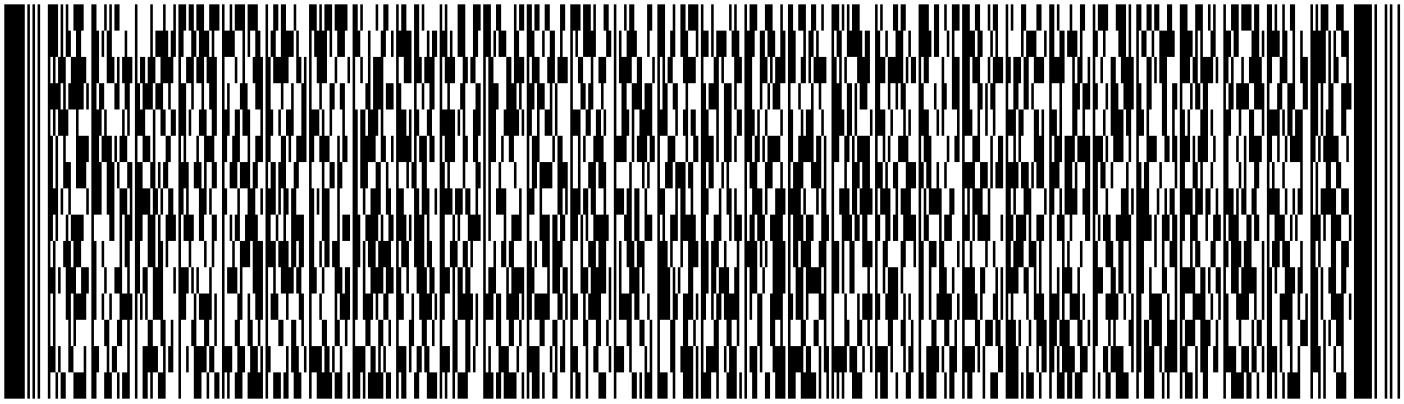


Bankruptcy Table 1-50



Bankruptcy Table 51-100



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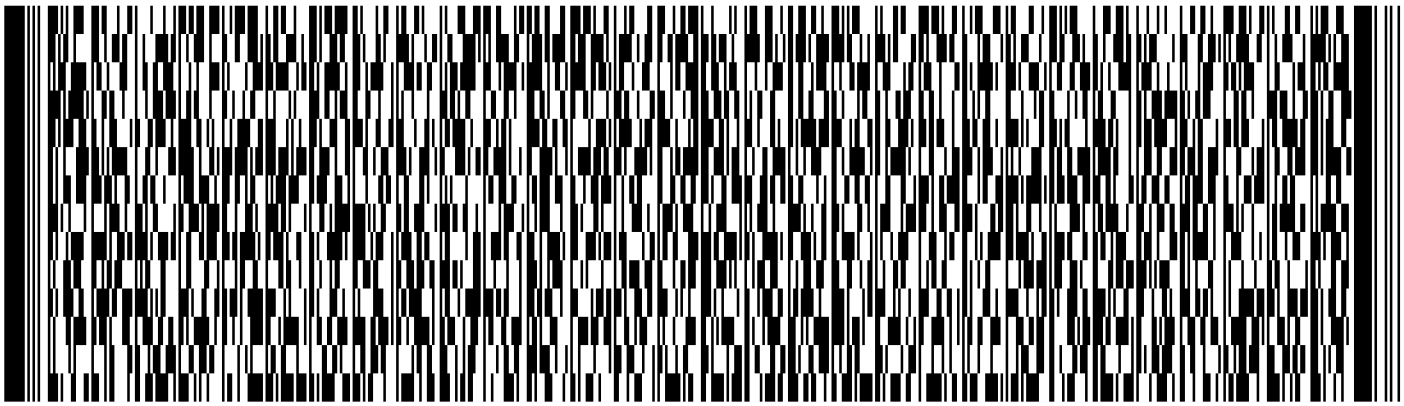
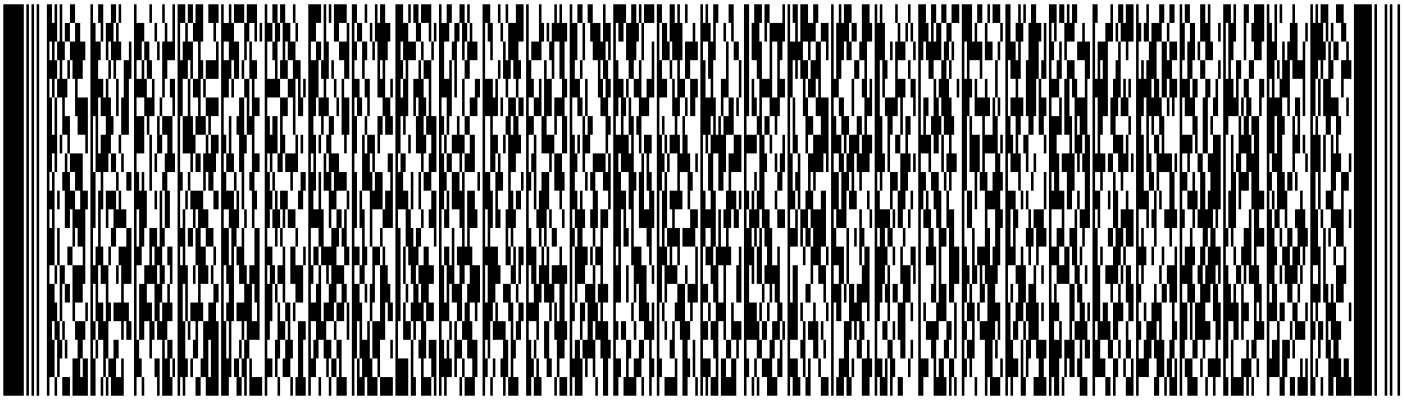


Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST-CONFIRMATION REPORT

The Highland Claimant Trust has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), with respect to the case of Reorganized Debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Highland Claimant Trust prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Highland Claimant Trust, the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Highland Claimant Trust relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Highland Claimant Trust made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Highland Claimant Trust reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

The Highland Claimant Trust did not make any payment of professional fees prior to Confirmation of the Plan.

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

For presentation purposes, the chart showing claims anticipated under the plan, paid claims and allowed claims are reflected in both the Reorganized Debtor and Claimant Trust post-confirmation report under Part 3: Recoveries of the Holders of Claims and Interests under the Confirmed Plan.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with the Claimant Trust's governing documents and the Plan.

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 22, 2024

United States Bankruptcy Judge

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

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

ORDER EXTENDING STAY OF CONTESTED MATTER
[DOCKET NO. 4000]

Having considered (a) *Highland's Motion to Stay Contested Matter [Dkt No. 4000] or for Alternative Relief* [Docket No. 4013] (the "Motion"),[1] filed by Highland Capital Management, L.P. ("HCMLP"), the reorganized debtor in the above-referenced bankruptcy case, and the Highland Claimant Trust (the "Trust," and together with HCMLP, "Highland"); (b) *James P. Seery, Jr.'s Joinder to Highland Capital Management, L.P.'s Motion to Stay Contested Matter [Dkt No. 4000] or for Alternative Relief and Emergency Motion to Expedite Hearing on Motion*

[1] Capitalized terms not defined herein shall take on the meaning ascribed to them in the Motion.

for Stay [Docket No. 4019], filed by James P. Seery, Jr.; (c) *Hunter Mountain Investment Trust's Response in Opposition to Highland's Motion to Stay Contested Matter [Dkt No. 4000] or for Alternative Relief* [Docket No. 4022], filed by Hunter Mountain Investment Trust ("HMIT"); (d) *Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay* [Docket No. 4087], filed by HMIT; (e) the arguments heard at the hearing on the Motion on June 12, 2024 (the "Hearing"); and (f) all prior proceedings relating to this matter, including (i) the *Order Granting in Part Highland's Motion to Stay Contested Matter* [Docket No. 4033] (the "First Stay Order"), pursuant to which all proceedings in connection with the *Motion for Leave to File a Delaware Complaint* [Docket No. 4000] (the "Motion for Leave") were stayed (the "Stay") until the Court issued an order determining *The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust* [Adv. Proc. 23-03038-sgj, Docket No. 13]; (ii) the Court's *Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets* [*id.* at Docket No. 27] (the "Dismissal Order"); (iii) HMIT's pending appeal of the Dismissal Order [*id.* at Docket No. 30] (the "Dismissal Appeal"); and (iv) HMIT's pending appeal of the Court's *Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3903] (the "Order Denying Leave"), [*see* Case 3:23-cv-02071-E] (the "Appeal of Order Denying Leave," and together with the Dismissal Appeal, the "Appeals"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant

to 28 U.S.C. § 1409; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and, this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein for the reasons set forth on the record during the Hearing; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Stay is hereby extended until a court of competent jurisdiction enters final, non-appealable orders resolving the Appeals (the "Resolution Orders");

2. HMIT is directed to seek a further status conference in connection with the Motion for Leave within ten (10) days of the entry of the Resolution Orders;

3. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

###End of Order###

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP
Debtor(s)

Case No. 19-34054

☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 03/31/2024

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:
- (•) Reorganized Debtor
- ( ) Other Authorized Party or Entity: _____
  Name of Authorized Party or Entity

/s/ Zachery Z. Annable
Signature of Responsible Party

04/12/2024
Date

Zachery Z. Annable, Hayward PLLC
Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231
Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$7,082,444	$148,896,871
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$0	$5,194,652
d. Total transferred (a+b+c)	$7,082,444	$154,091,523

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor		*Aggregate Total*	$0	$33,005,136	$0	$33,005,136
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i	Pachulski Stang Ziehl & Jones	Lead Counsel	$0	$24,312,860	$0	$24,312,860
	ii	Development Specialists, Inc.	Financial Professional	$0	$5,765,448	$0	$5,765,448
	iii	Kurtzman Carson Consultants	Other	$0	$2,054,716	$0	$2,054,716
	iv	Hayward & Associates PLLC	Local Counsel	$0	$872,112	$0	$872,112
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				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
b.	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor *Aggregate Total*			$0	$7,604,472	$0	$7,604,472
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i	Hunton Andrews Kurth LLP	Other	$0	$1,149,807	$0	$1,149,807
	ii	Foley Gardere, Foley & Lardne	Other	$0	$629,088	$0	$629,088
	iii	Deloitte	Financial Professional	$0	$553,413	$0	$553,413
	iv	Mercer (US) Inc.	Other	$0	$204,767	$0	$204,767
	v	Teneo Capital, LLC	Financial Professional	$0	$1,364,823	$0	$1,364,823
	vi	Wilmer Cutler Pickering Hale	Other	$0	$2,650,937	$0	$2,650,937

	vii	Carey Olsen	Other	$0	$280,264	$0	$280,264
	viii	ASW Law	Other	$0	$4,976	$0	$4,976
	ix	Houlihan Lokey Financial Advi	Other	$0	$766,397	$0	$766,397
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c.	All professional fees and expenses (debtor & committees)			$0	$60,171,929	$0	$60,171,929

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$13,779,960	$298,346,629	$397,485,568	75%
e. Equity interests	$0	$0	$0		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

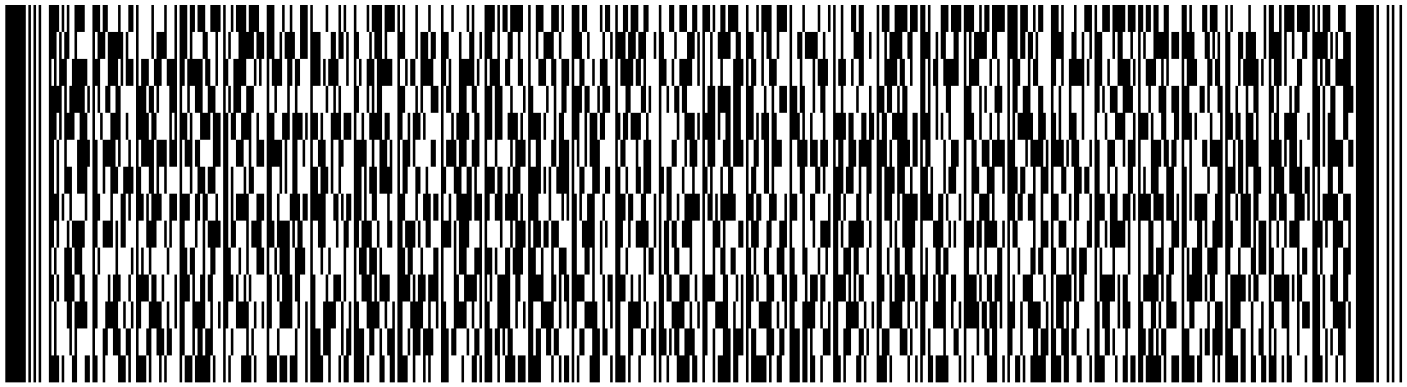
I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

/s/ James Seery
Signature of Responsible Party

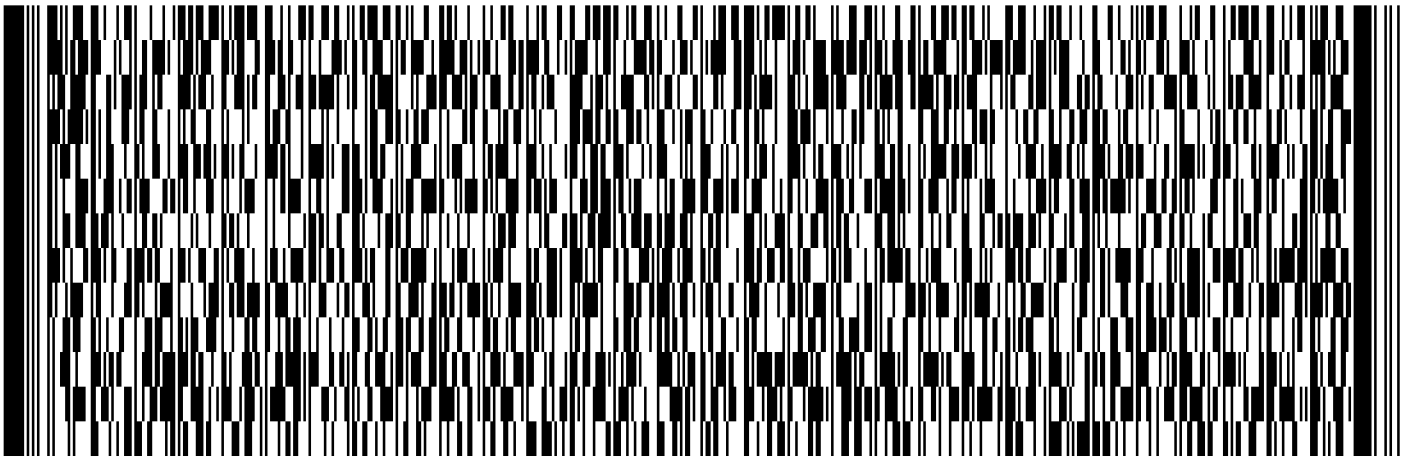
James Seery
Printed Name of Responsible Party

CEO
Title

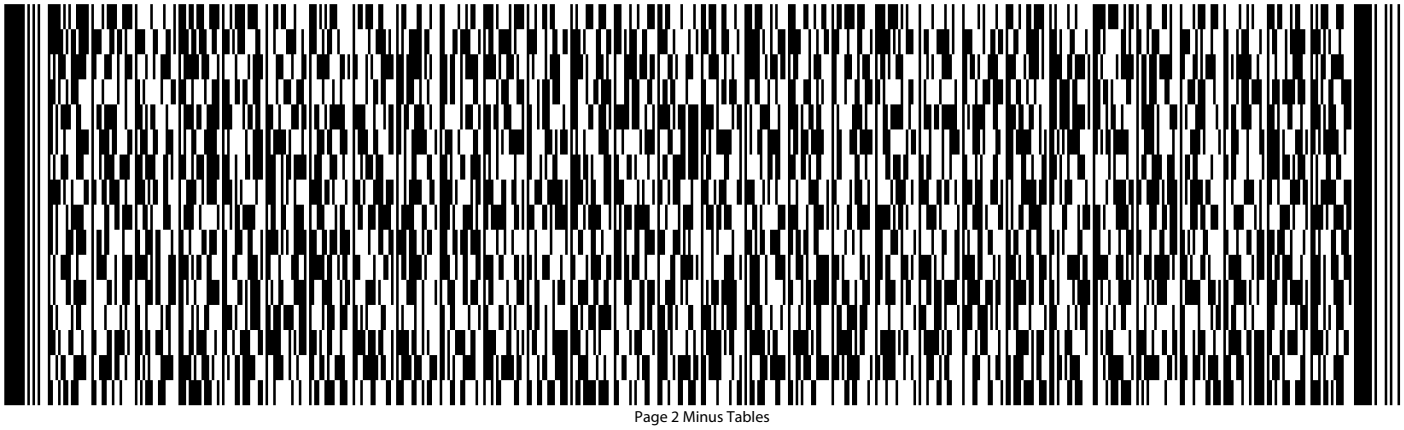
04/12/2024
Date



Page 1



Other Page 1



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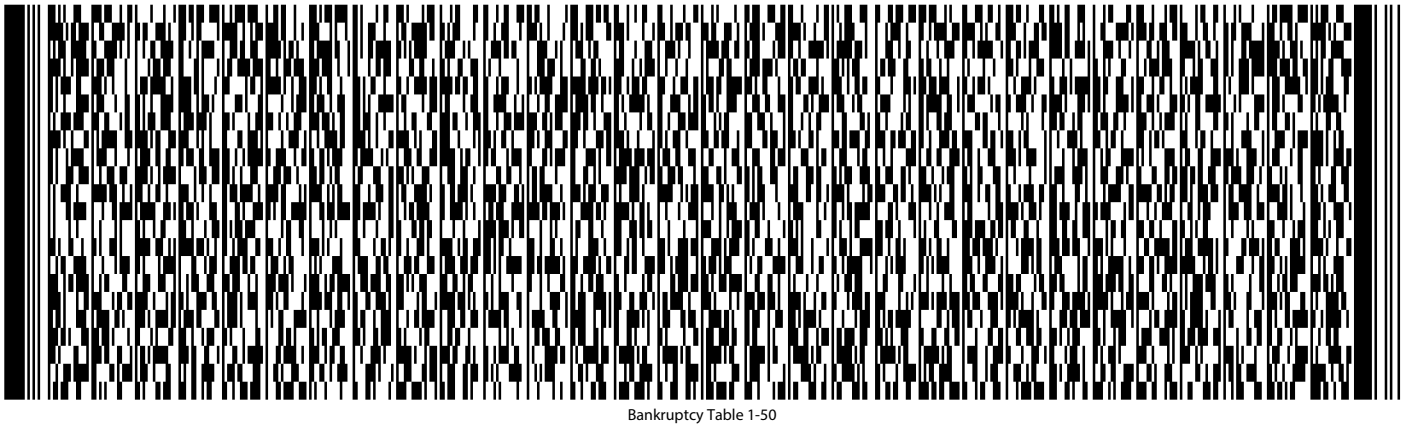
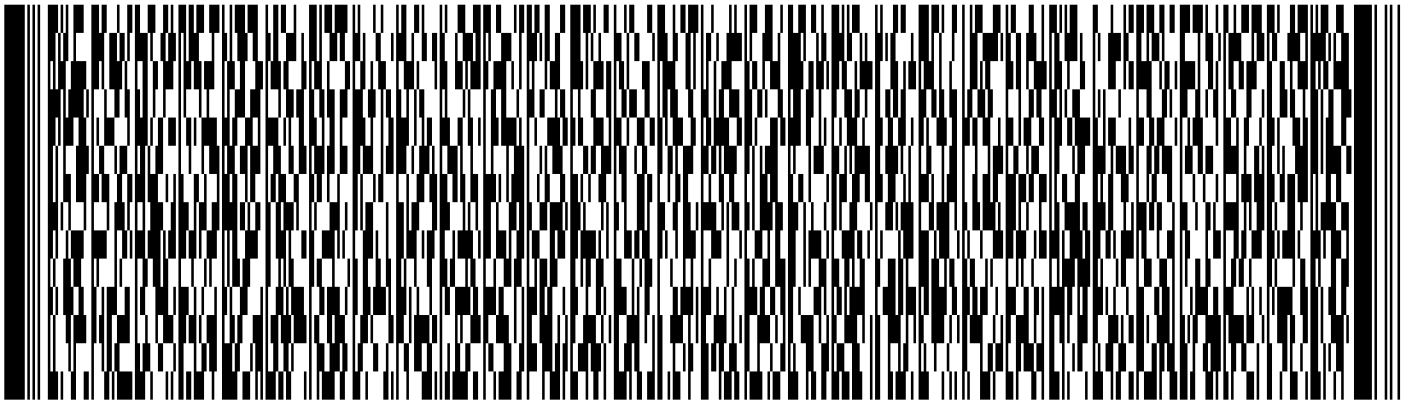
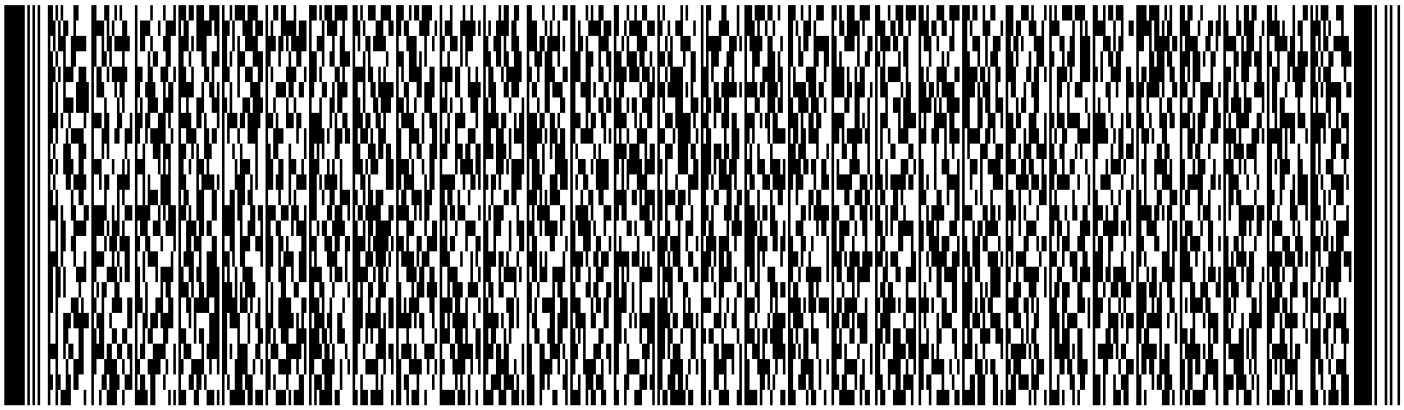


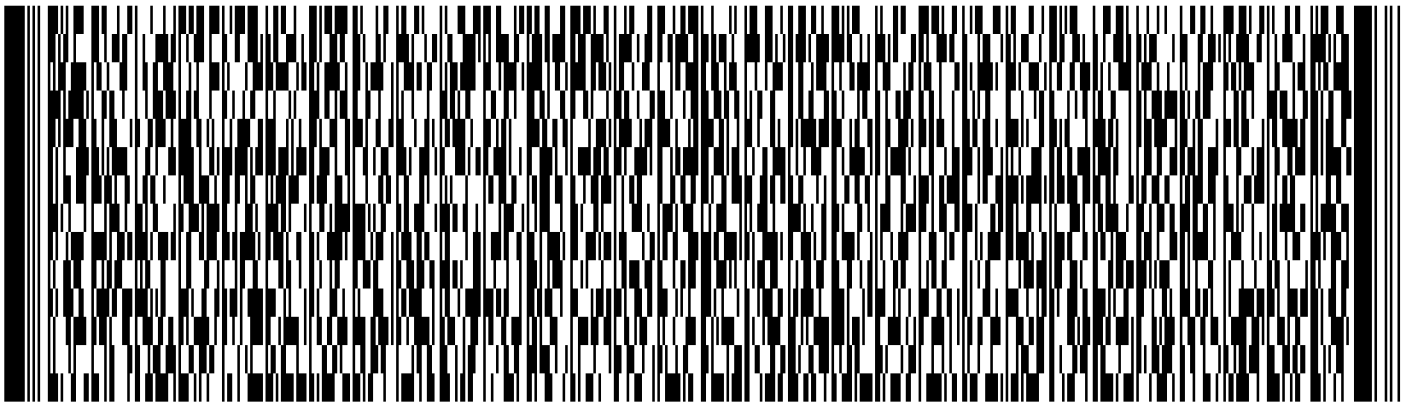
Bankruptcy Table 1-50



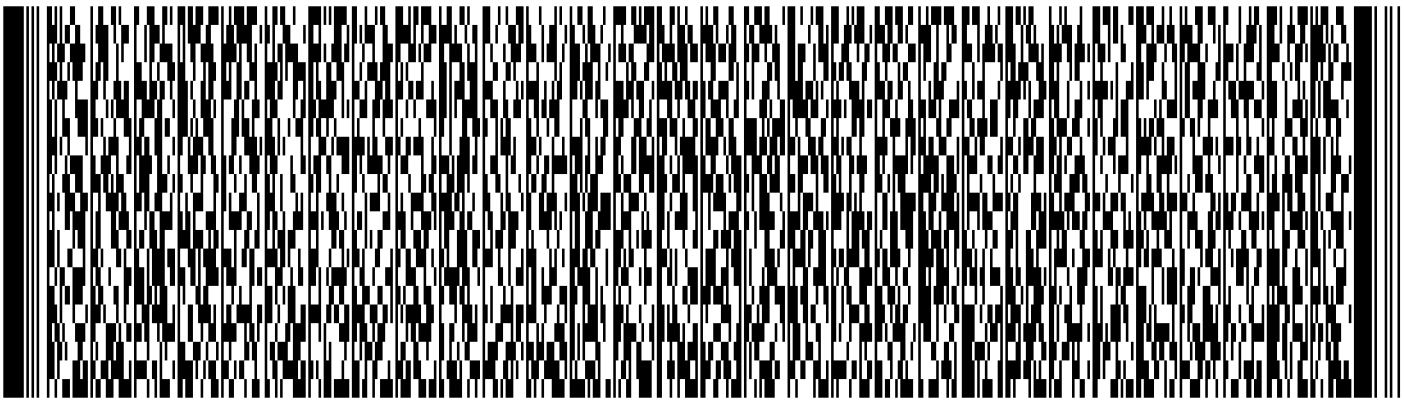
Bankruptcy Table 51-100



Non-Bankruptcy Table 1-50



Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST-CONFIRMATION REPORT

The Reorganized Debtor has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), on behalf of debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Reorganized Debtor prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Reorganized Debtor relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Reorganized Debtor made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Reorganized Debtor reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

In Section A of the PCR, the Reorganized Debtor listed the bankruptcy related professionals employed in connection with the Bankruptcy Case.

In Section B of the PCR, the Reorganized Debtor listed non-bankruptcy professionals, those that would have been retained absent the Bankruptcy Case, and the ordinary course professionals ("OCP"). Hunton Andrews Kurth LLP ("Hunton") and Wilmer Cutler Pickering Hale and Dorr LLP ("Wilmer Hale") were originally ordinary course professionals but were later employed

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

professionals. The amounts listed for Hunton and Wilmer Hale include the OCP payments and employed professional payments.

In Section C of the PCR, the Reorganized Debtor totals all payments included in Sections A and B, along with payments made to professional employed by the official committee of unsecured creditors (the "Committee").

The approved current quarter, approved cumulative, and paid cumulative will have the same amount listed due to approval and payment of final fee applications.

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

The payments made to holders of General Unsecured Claims were disbursed from the Claimant Trust, but for presentation purposes, have been included in Part 3 of the post-confirmation report for the Reorganized Debtor.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with Reorganized Debtor's governing documents and the Plan.

The Debtor reserves all right to object to any claim in accordance with the terms of the Plan.

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP
Debtor(s)

Case No. 19-34054

☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 03/31/2024

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:
○ Reorganized Debtor
◉ Other Authorized Party or Entity: Highland Claimant Trust
Name of Authorized Party or Entity

/s/ Zachery Z. Annable
Signature of Responsible Party

04/12/2024
Date

Zachery Z. Annable, Hayward PLLC
Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231
Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$14,659,817	$372,472,271
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$0	$0
d. Total transferred (a+b+c)	$14,659,817	$372,472,271

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor		*Aggregate Total*				
	Itemized Breakdown by Firm						
		Firm Name	Role				
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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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b.				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor *Aggregate Total*						
	Itemized Breakdown by Firm						
		Firm Name	Role				
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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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c.	All professional fees and expenses (debtor & committees)				$0		

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$13,779,960	$298,346,629	$397,485,568	75%
e. Equity interests	$0	$0	$0		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

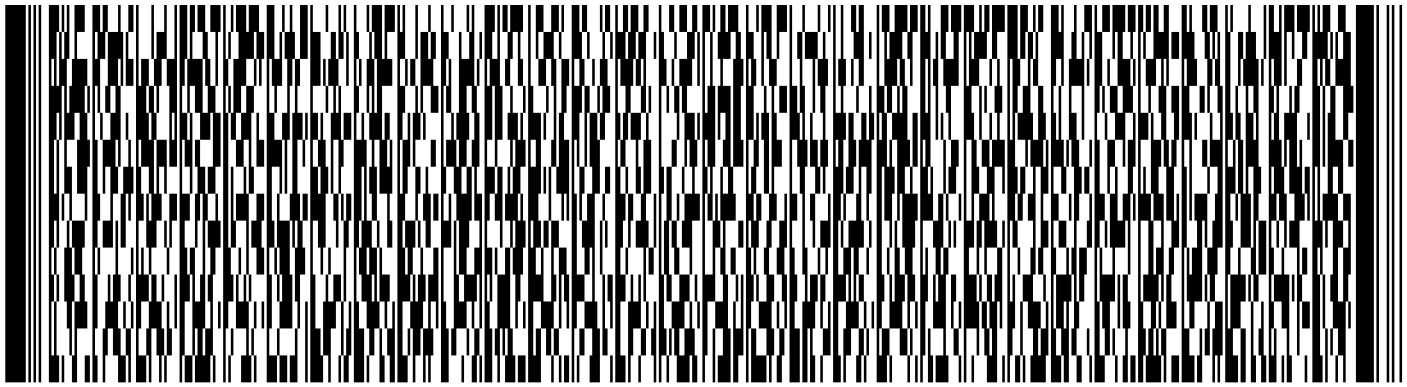
I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

/s/ James Seery
Signature of Responsible Party

James Seery
Printed Name of Responsible Party

Claimant Trustee
Title

04/12/2024
Date



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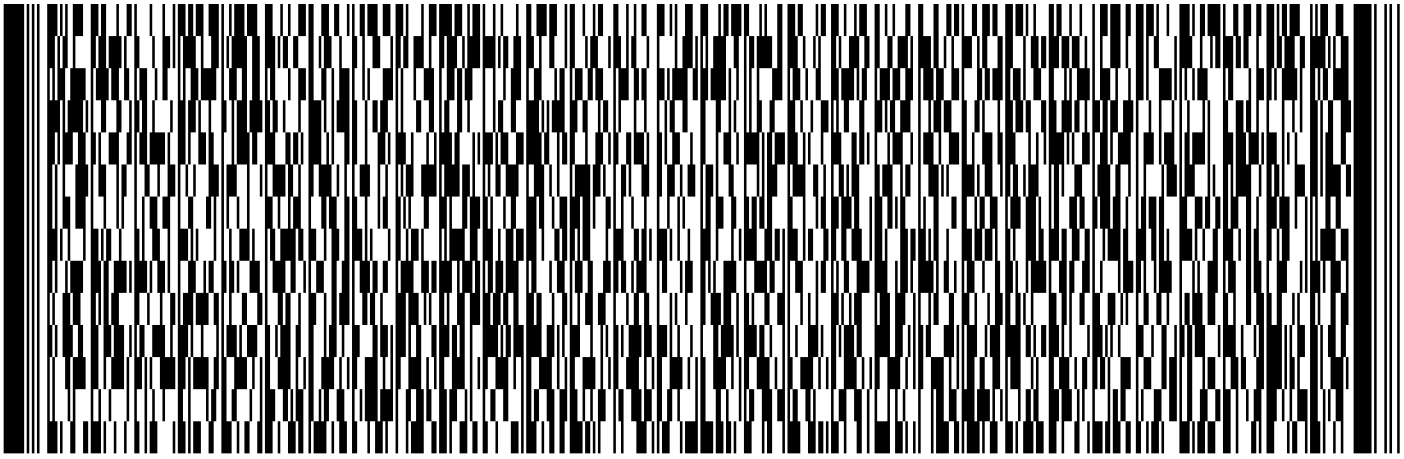

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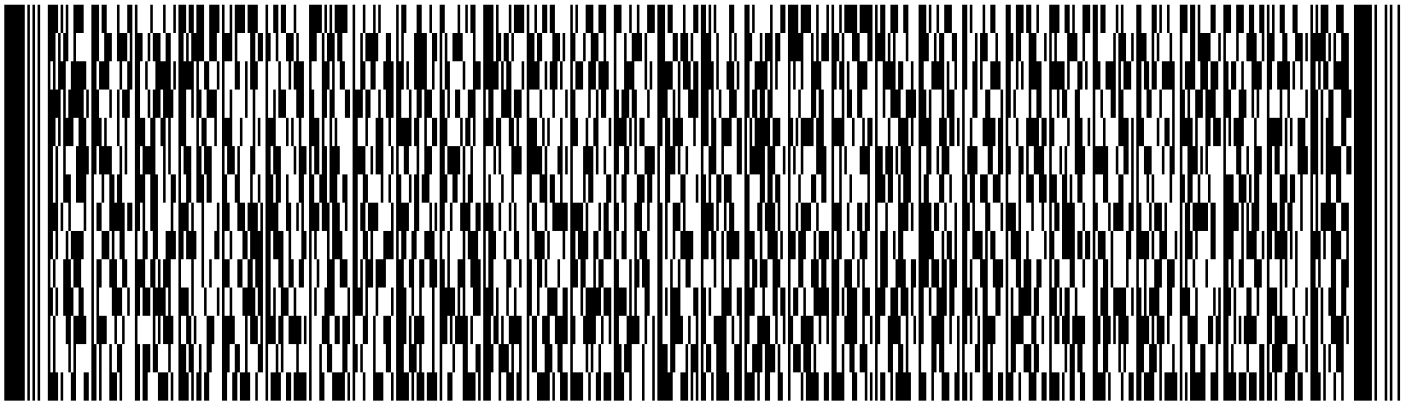

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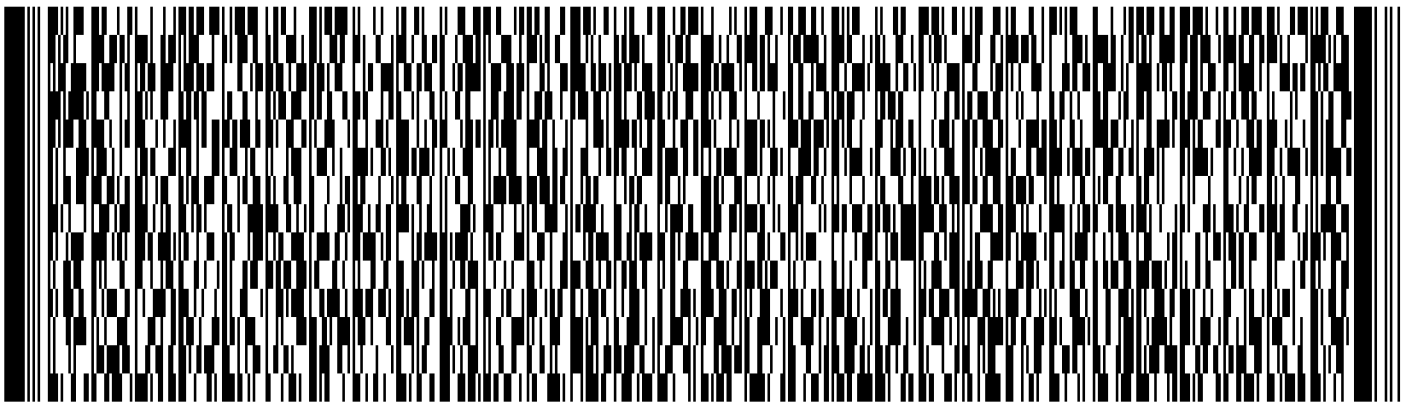
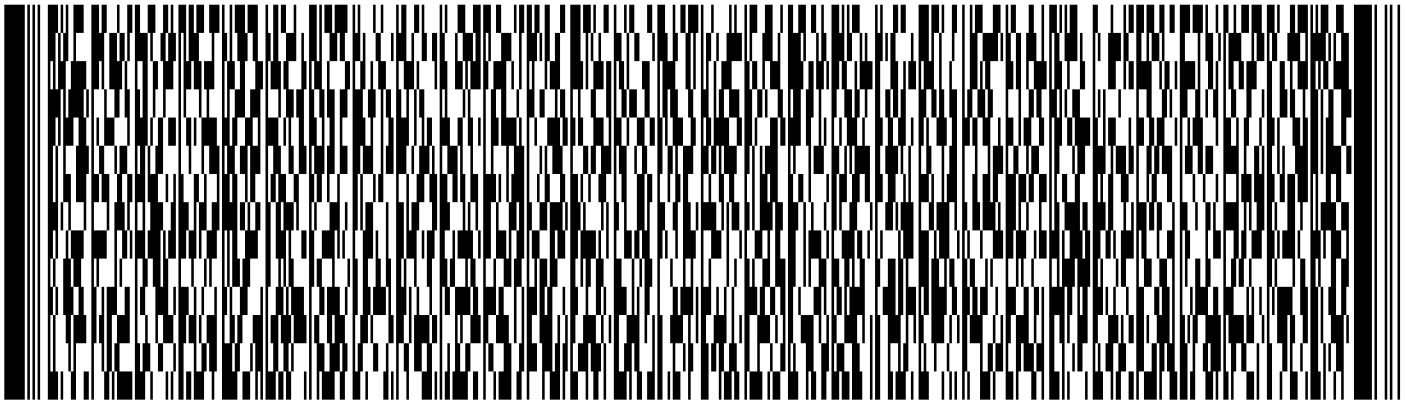
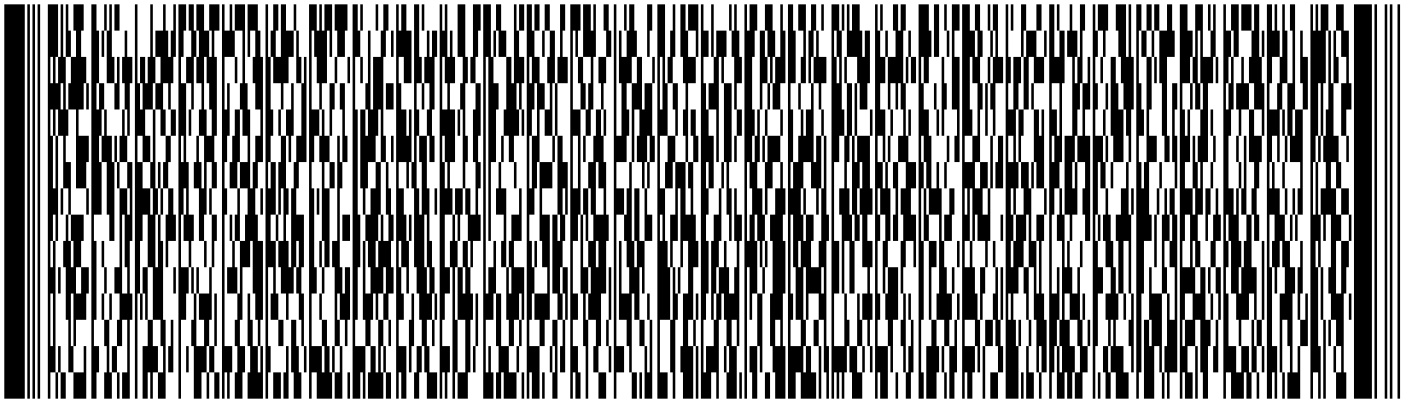


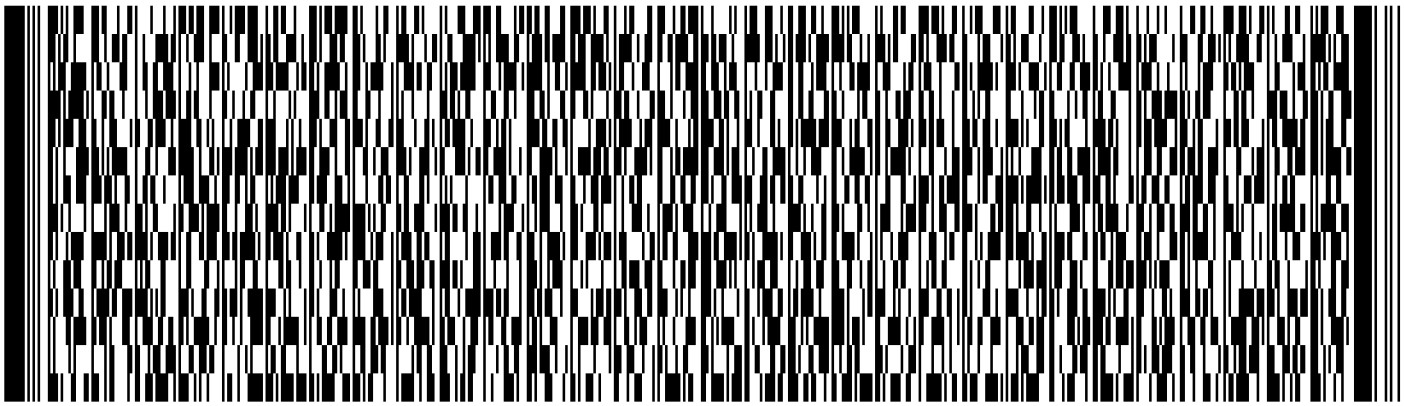
Bankruptcy Table 1-50



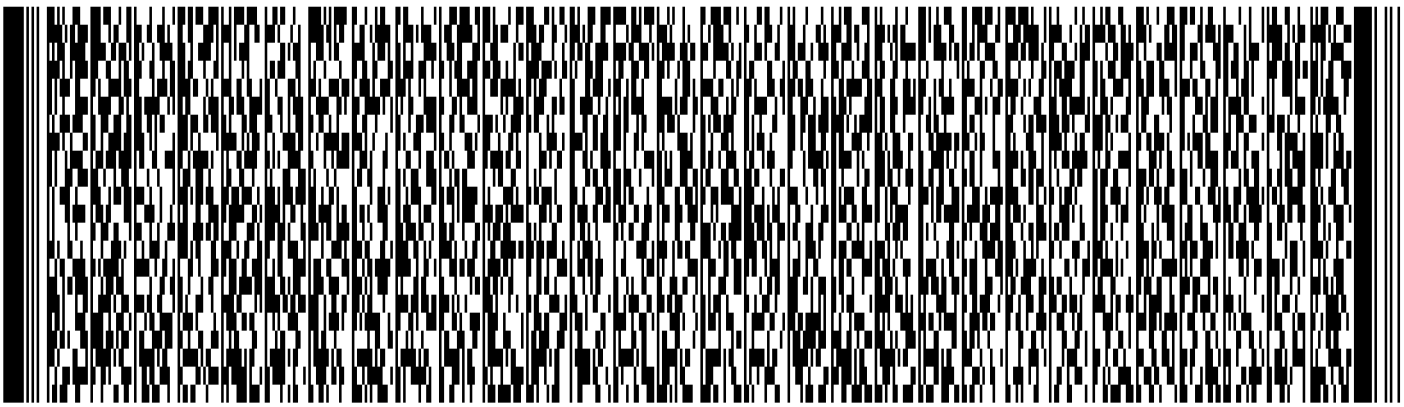
Bankruptcy Table 51-100



Non-Bankruptcy Table 1-50



Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST-CONFIRMATION REPORT

The Highland Claimant Trust has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), with respect to the case of Reorganized Debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Highland Claimant Trust prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Highland Claimant Trust, the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Highland Claimant Trust relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Highland Claimant Trust made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Highland Claimant Trust reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

The Highland Claimant Trust did not make any payment of professional fees prior to Confirmation of the Plan.

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

For presentation purposes, the chart showing claims anticipated under the plan, paid claims and allowed claims are reflected in both the Reorganized Debtor and Claimant Trust post-confirmation report under Part 3: Recoveries of the Holders of Claims and Interests under the Confirmed Plan.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with the Claimant Trust's governing documents and the Plan.

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP
Debtor(s)

Case No. 19-34054

☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 06/30/2024

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:
- (•) Reorganized Debtor
- ( ) Other Authorized Party or Entity: _____
  Name of Authorized Party or Entity

/s/ Zachery Z. Annable
Signature of Responsible Party

07/18/2024
Date

Zachery Z. Annable, Hayward PLLC
Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231
Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$5,138,674	$154,035,544
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$0	$5,194,652
d. Total transferred (a+b+c)	$5,138,674	$159,230,196

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor		*Aggregate Total*	$0	$33,005,136	$0	$33,005,136
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i	Pachulski Stang Ziehl & Jones	Lead Counsel	$0	$24,312,860	$0	$24,312,860
	ii	Development Specialists, Inc.	Financial Professional	$0	$5,765,448	$0	$5,765,448
	iii	Kurtzman Carson Consultants	Other	$0	$2,054,716	$0	$2,054,716
	iv	Hayward & Associates PLLC	Local Counsel	$0	$872,112	$0	$872,112
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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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b.				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor *Aggregate Total*			$0	$7,604,472	$0	$7,604,472
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i	Hunton Andrews Kurth LLP	Other	$0	$1,149,807	$0	$1,149,807
	ii	Foley Gardere, Foley & Lardne	Other	$0	$629,088	$0	$629,088
	iii	Deloitte	Financial Professional	$0	$553,413	$0	$553,413
	iv	Mercer (US) Inc.	Other	$0	$204,767	$0	$204,767
	v	Teneo Capital, LLC	Financial Professional	$0	$1,364,823	$0	$1,364,823
	vi	Wilmer Cutler Pickering Hale	Other	$0	$2,650,937	$0	$2,650,937

Debtor's Name Highland Capital Management, LP Case No. 19-34054

	vii	Carey Olsen	Other	$0	$280,264	$0	$280,264
	viii	ASW Law	Other	$0	$4,976	$0	$4,976
	ix	Houlihan Lokey Financial Advi	Other	$0	$766,397	$0	$766,397
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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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c.	All professional fees and expenses (debtor & committees)			$0	$60,171,929	$0	$60,171,929

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$15,000,000	$313,346,629	$397,485,568	79%
e. Equity interests	$0	$0	$0		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

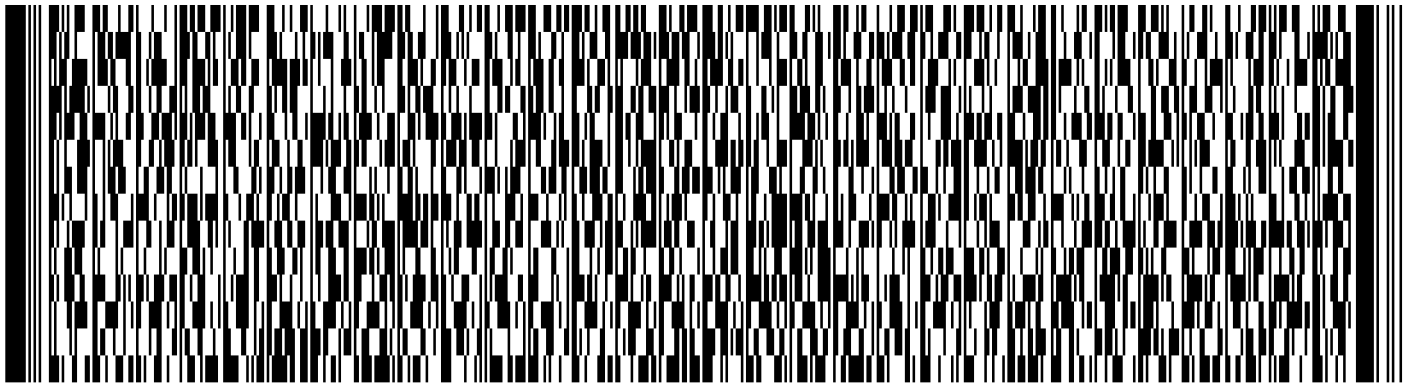
I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

/s/ James Seery
Signature of Responsible Party

James Seery
Printed Name of Responsible Party

CEO
Title

07/18/2024
Date



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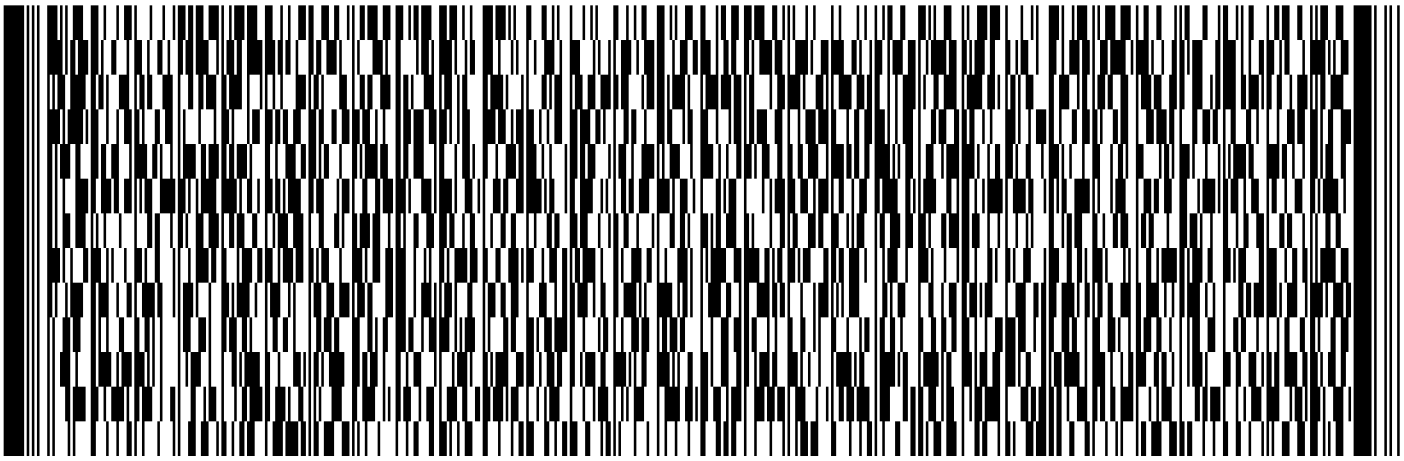

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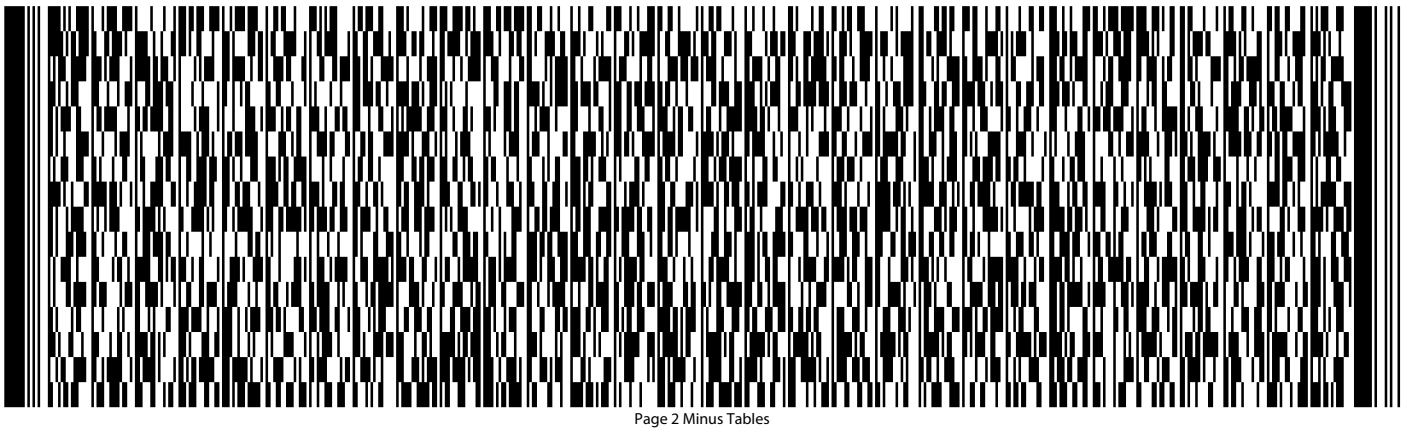

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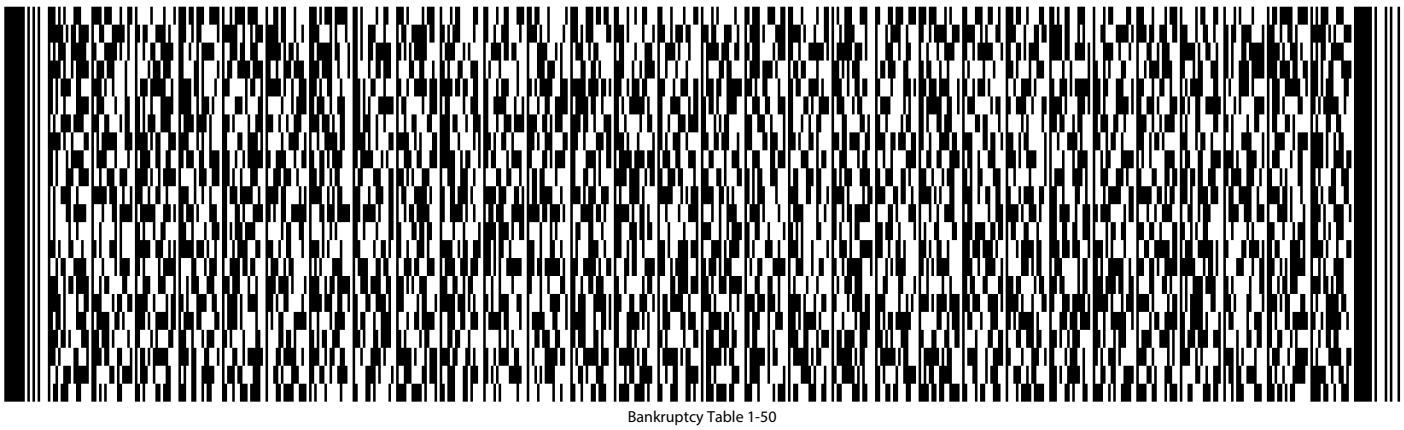
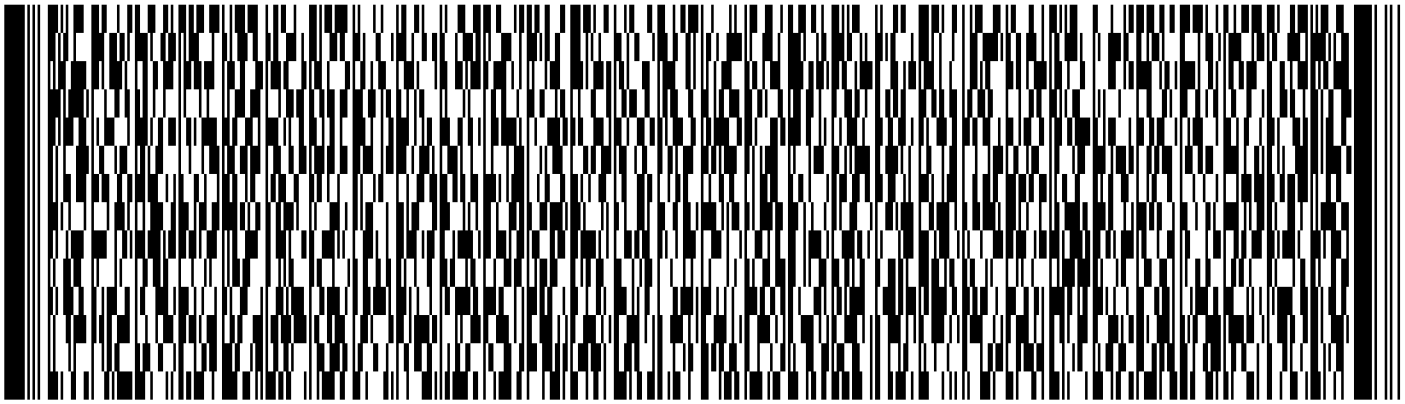
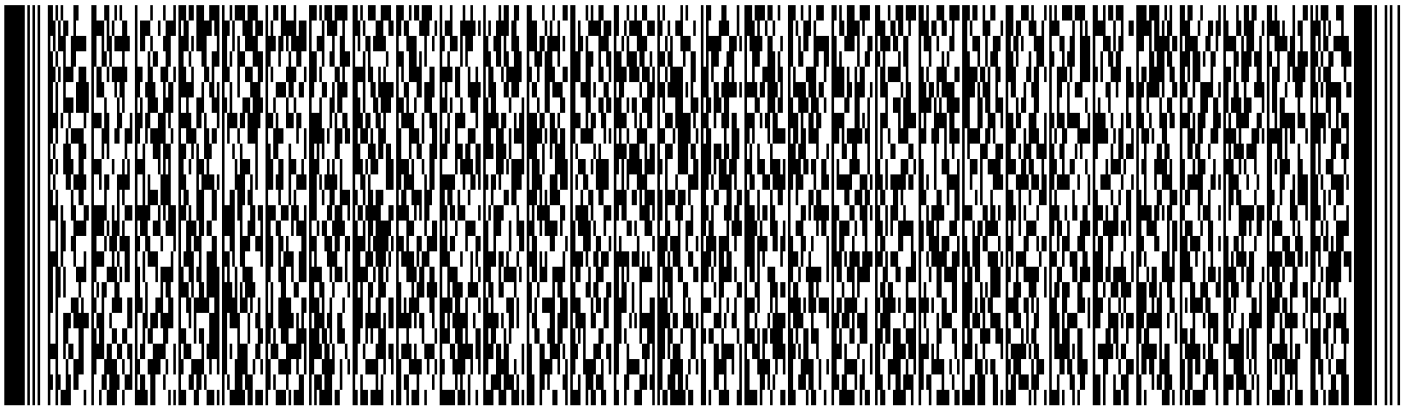


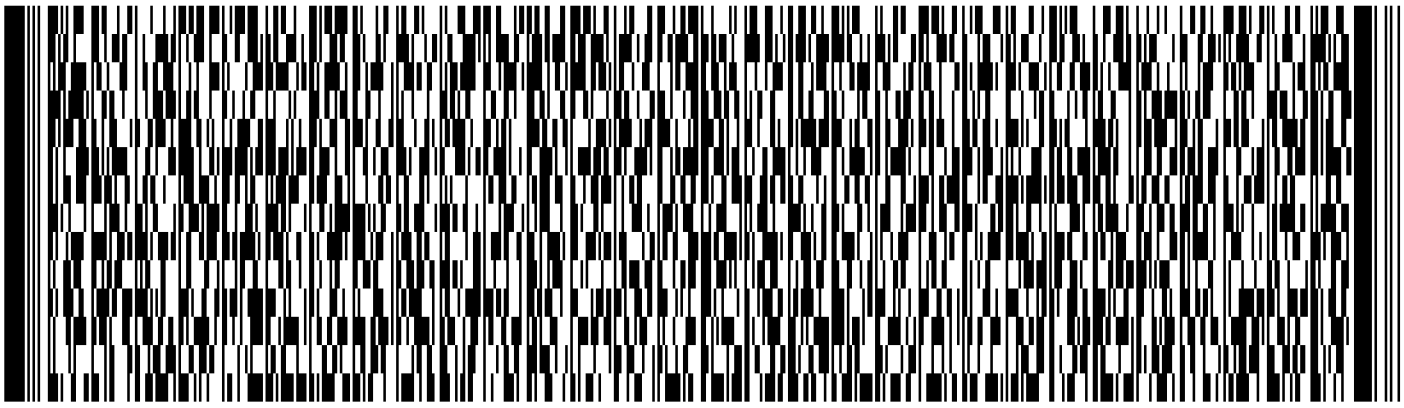
Bankruptcy Table 1-50



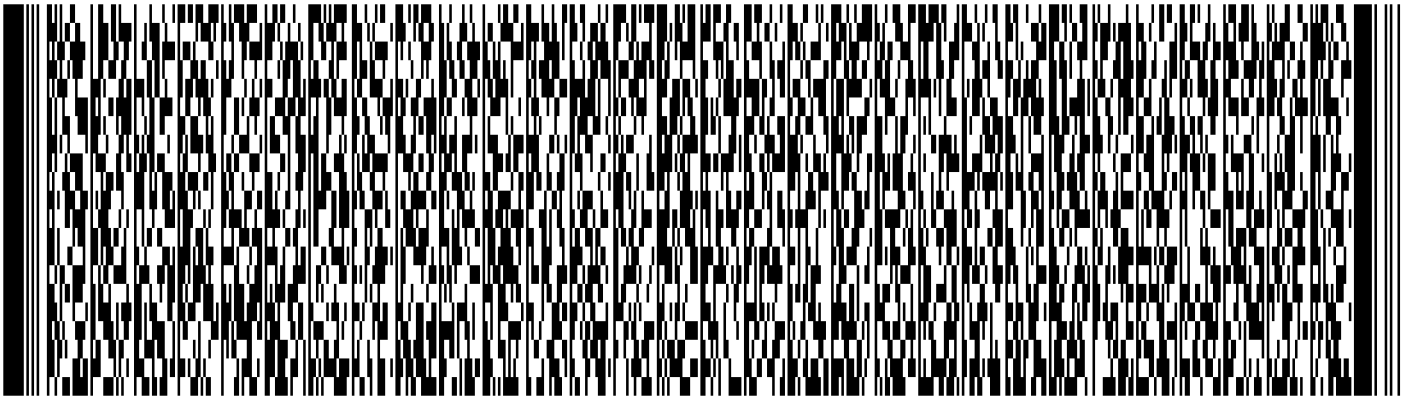
Bankruptcy Table 51-100



Non-Bankruptcy Table 1-50



Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

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

DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST-CONFIRMATION REPORT

The Reorganized Debtor has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), on behalf of debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Reorganized Debtor prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Reorganized Debtor relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Reorganized Debtor made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Reorganized Debtor reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

In Section A of the PCR, the Reorganized Debtor listed the bankruptcy related professionals employed in connection with the Bankruptcy Case.

In Section B of the PCR, the Reorganized Debtor listed non-bankruptcy professionals, those that would have been retained absent the Bankruptcy Case, and the ordinary course professionals ("OCP"). Hunton Andrews Kurth LLP ("Hunton") and Wilmer Cutler Pickering Hale and Dorr

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

LLP ("Wilmer Hale") were originally ordinary course professionals but were later employed professionals. The amounts listed for Hunton and Wilmer Hale include the OCP payments and employed professional payments.

In Section C of the PCR, the Reorganized Debtor totals all payments included in Sections A and B, along with payments made to professional employed by the official committee of unsecured creditors (the "Committee").

The approved current quarter, approved cumulative, and paid cumulative will have the same amount listed due to approval and payment of final fee applications.

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

The payments made to holders of General Unsecured Claims were disbursed from the Claimant Trust, but for presentation purposes, have been included in Part 3 of the post-confirmation report for the Reorganized Debtor.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with Reorganized Debtor's governing documents and the Plan.

The Debtor reserves all right to object to any claim in accordance with the terms of the Plan.

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP
Debtor(s)

Case No. 19-34054

☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 06/30/2024

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:
○ Reorganized Debtor
◉ Other Authorized Party or Entity: Highland Claimant Trust
Name of Authorized Party or Entity

/s/ Zachery Z. Annable
Signature of Responsible Party

07/18/2024
Date

Zachery Z. Annable, Hayward PLLC
Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231
Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$15,812,912	$388,285,182
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$0	$0
d. Total transferred (a+b+c)	$15,812,912	$388,285,182

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor		*Aggregate Total*				
	Itemized Breakdown by Firm						
		Firm Name	Role				
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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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b.				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor *Aggregate Total*						
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i						
	ii						
	iii						
	iv						
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	vi						

Debtor's Name Highland Capital Management, LP Case No. 19-34054

	vii						
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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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	xcviii						
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	ci						
c.	All professional fees and expenses (debtor & committees)				$0		

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$15,000,000	$313,346,629	$397,485,568	79%
e. Equity interests	$0	$0	$0		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

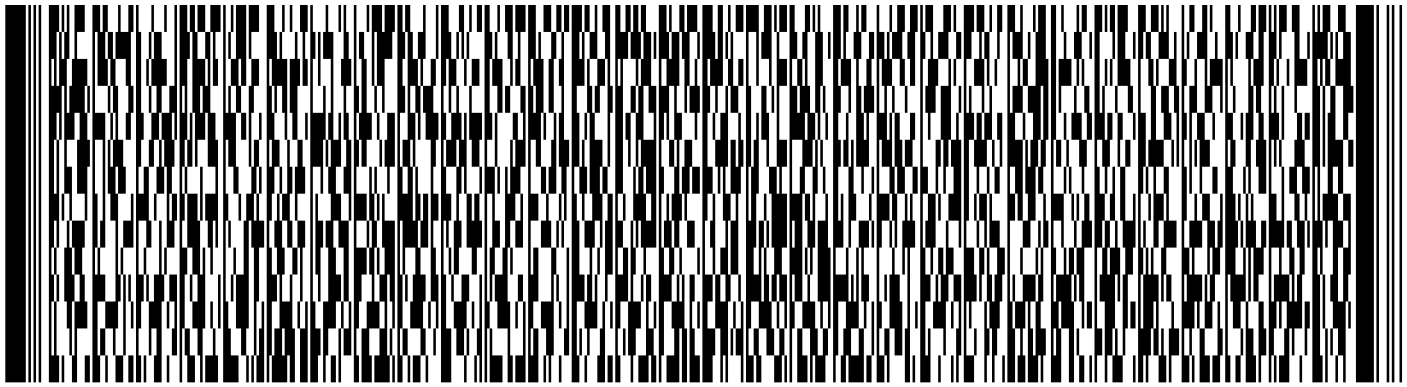
I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

/s/ James Seery
Signature of Responsible Party

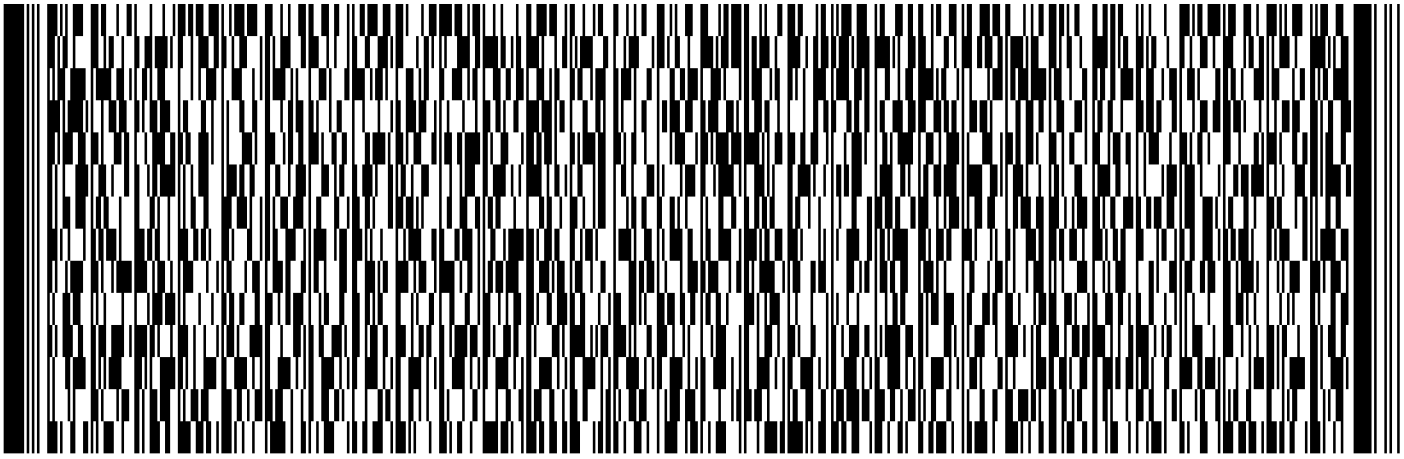
James Seery
Printed Name of Responsible Party

Claimant Trustee
Title

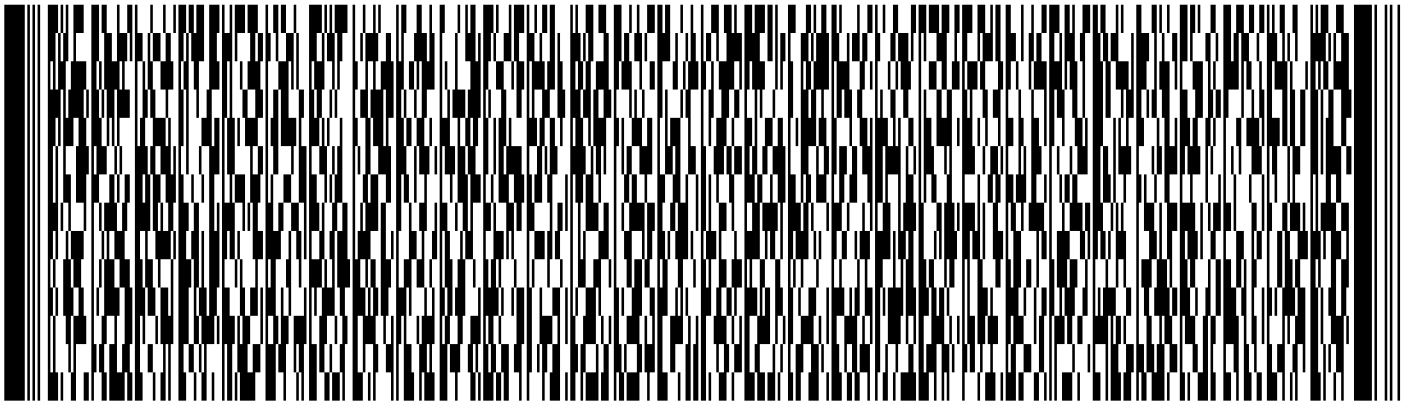
07/18/2024
Date



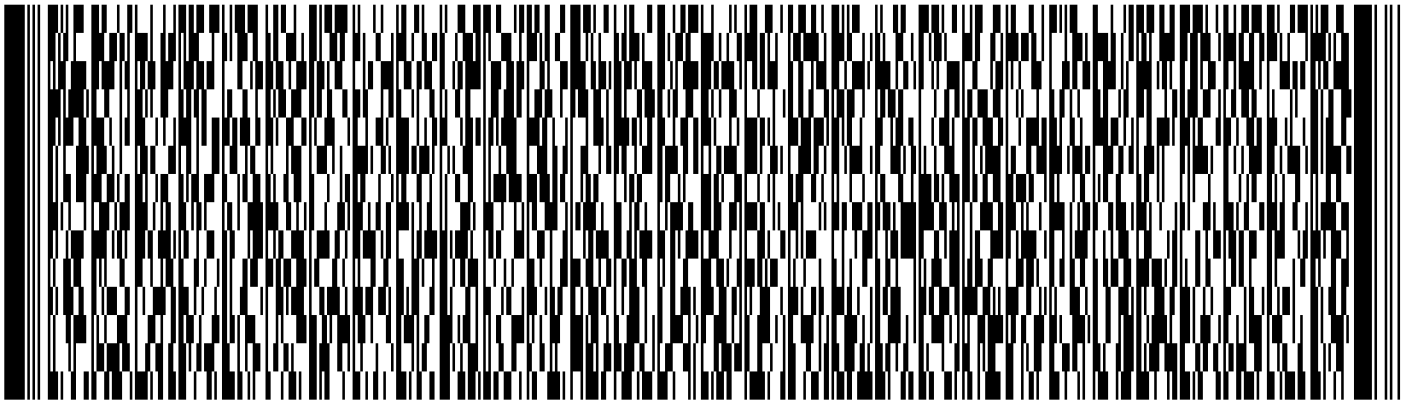
Page 1



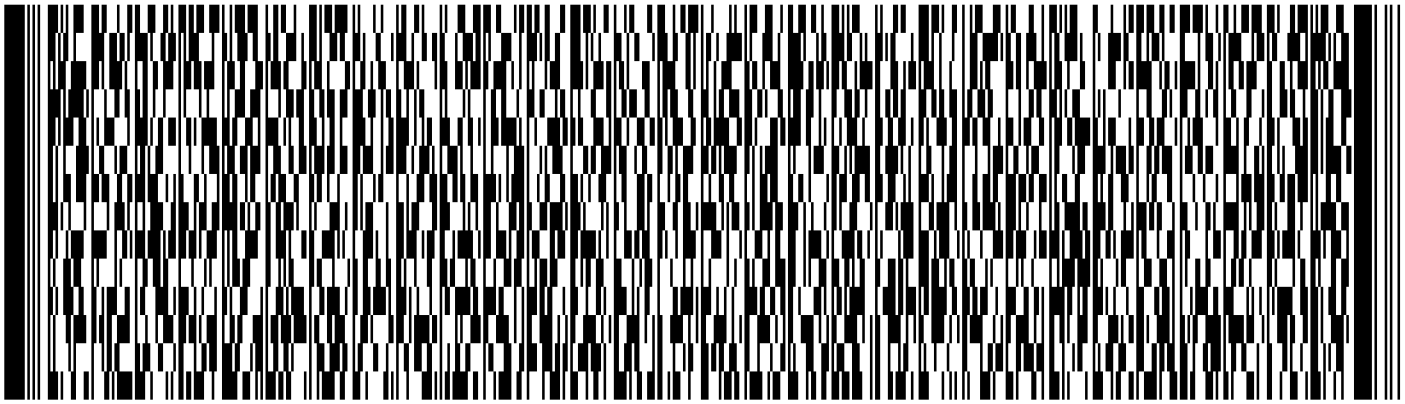
Other Page 1



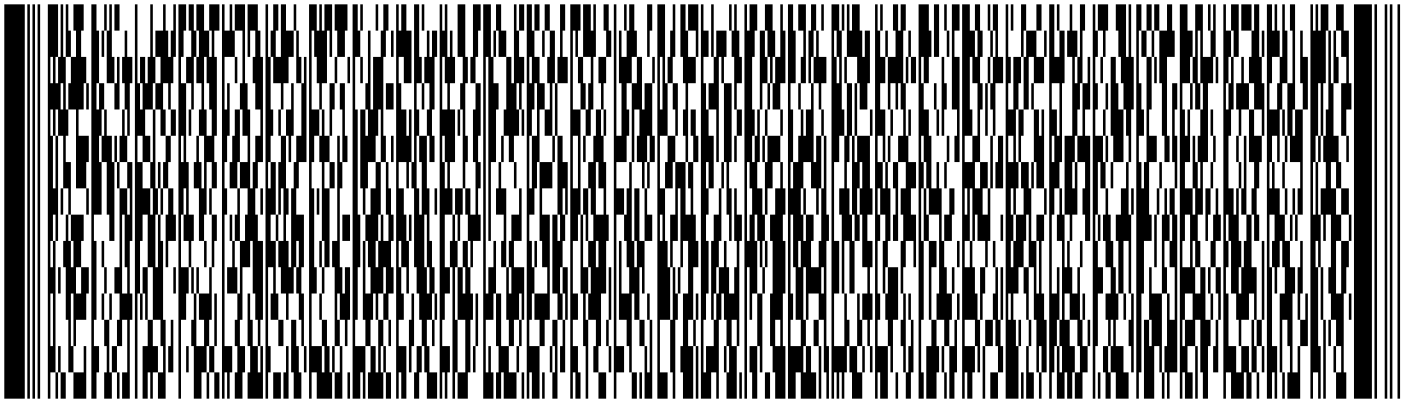
Page 2 Minus Tables



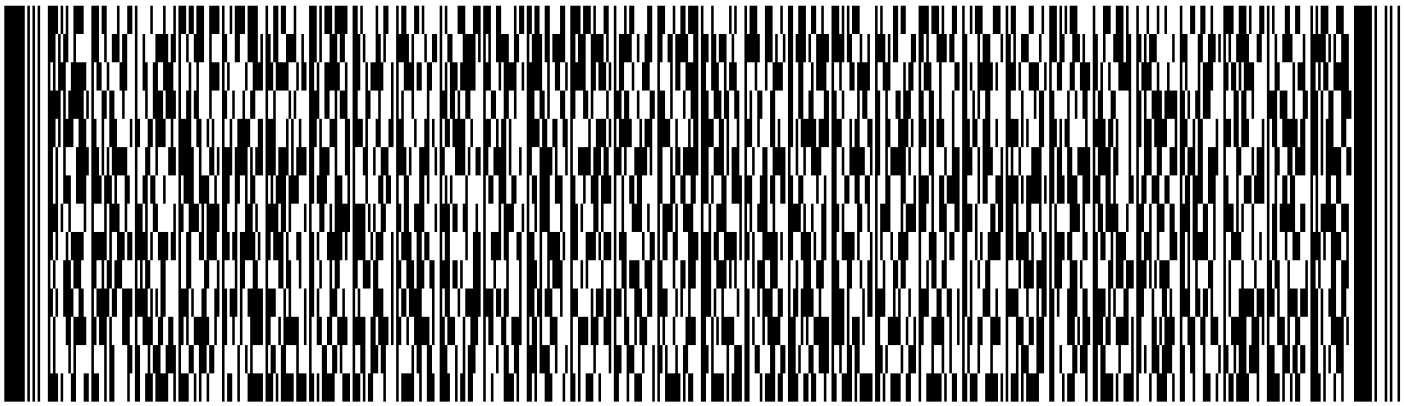
Bankruptcy Table 1-50



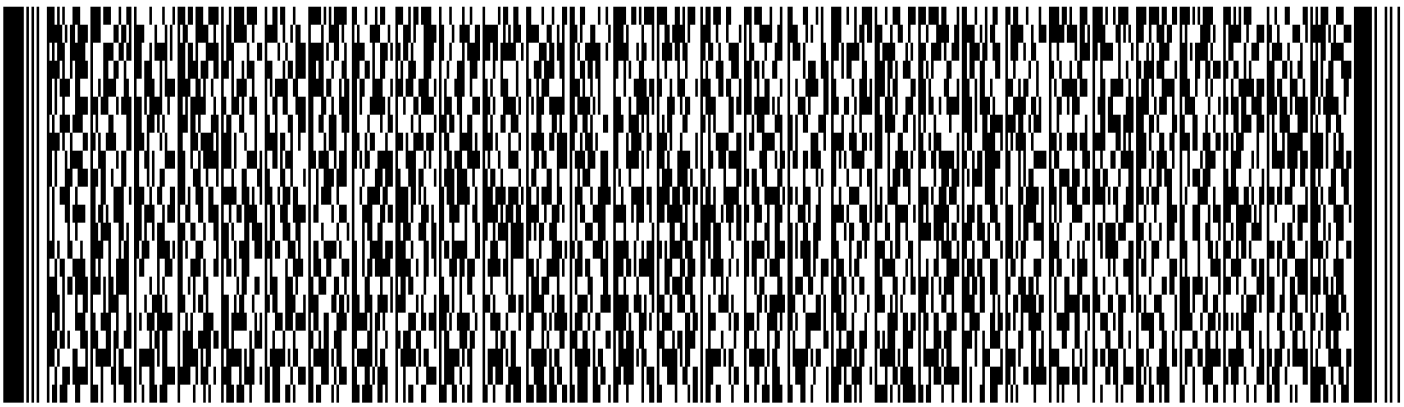
Bankruptcy Table 51-100



Non-Bankruptcy Table 1-50



Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST-CONFIRMATION REPORT

The Highland Claimant Trust has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), with respect to the case of Reorganized Debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Highland Claimant Trust prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Highland Claimant Trust, the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Highland Claimant Trust relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Highland Claimant Trust made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Highland Claimant Trust reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

The Highland Claimant Trust did not make any payment of professional fees prior to Confirmation of the Plan.

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

For presentation purposes, the chart showing claims anticipated under the plan, paid claims and allowed claims are reflected in both the Reorganized Debtor and Claimant Trust post-confirmation report under Part 3: Recoveries of the Holders of Claims and Interests under the Confirmed Plan.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with the Claimant Trust's governing documents and the Plan.

STINSON LLP
Deborah Deitsch-Perez
Michael P. Aigen
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Dallas, Texas 75201
Telephone: (214) 560-2201
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Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

Counsel for Plaintiffs The Dugaboy Investment Trust and the Hunter Mountain Investment Trust

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
DUGABOY INVESTMENT TRUST and HUNTER MOUNTAIN INVESTMENT TRUST,	§	
Plaintiffs,	§	Adversary Proceeding No. _____
vs.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P. and HIGHLAND CLAIMANT TRUST,	§	
Defendants.	§	

COMPLAINT TO (I) COMPEL DISCLOSURES ABOUT THE ASSETS OF THE HIGHLAND CLAIMANT TRUST AND (II) DETERMINE (A) RELATIVE VALUE OF THOSE ASSETS, AND (B) NATURE OF PLAINTIFFS' INTERESTS IN THE CLAIMANT TRUST

Plaintiffs The Dugaboy Investment Trust ("Dugaboy") and Hunter Mountain Investment Trust ("HMIT" and collectively with Dugaboy, the "Plaintiffs") file this adversary complaint (the "Complaint") against Defendants Highland Capital Management, L.P. ("HCM" or the "Debtor") and the Highland Claimant Trust (the "Claimant Trust," and collectively with HCM, the "Defendants"), seeking: (1) disclosures about all distributions and an accounting of the assets and liabilities currently held in the Claimant Trust; (2) a determination of the value of the assets and liabilities; and (3) declaratory relief setting forth the nature of Plaintiffs' interests in the Claimant Trust.

PRELIMINARY STATEMENT

1. As holders of Contingent Claimant Trust Interests[1] that vest into Claimant Trust Interests once all creditors are paid in full, and as defendants in litigation pursued by Marc S. Kirschner ("Kirschner") as Trustee of the Litigation Sub-Trust (which seeks to recover damages on behalf of the Claimant Trust), Plaintiffs file this Complaint to obtain information about the assets and liabilities of the Claimant Trust, which was established to monetize and liquidate the assets of the HCM bankruptcy estate.

2. Defendants' October 21, 2022, January 24, 2023, and April 21, 2023 post-confirmation reports show that even with inflated claims and below-market sales of assets, cash available – if not squandered in self-serving litigation – is more than enough to pay class 8 and class 9 creditors in full. With more than $100 million in assets left to monetize (not even counting related party notes), and almost $550,000 in assets already monetized, even after burning through more than $100 million in professional fees, there is and was more than enough money to pay the inflated $387 million in creditor claims the Debtor allowed. These numbers compel the question

[1] Capitalized terms not defined have the meanings set forth herein. If no meaning is set forth herein, the terms have the meaning set forth in the Fifth Amended Plan of Reorganization (as Modified) [Docket No. 1808].

– "What was all of this for, other than to justify outsize fees and bonuses for the professionals involved?" See paragraphs 17-18 below. And despite repeated and increasingly specific requests, the Debtor has never provided granular enough information to specifically identify all of the monies raised and where all the money has gone, including another hundred million dollars that appears to be unaccounted. *Id*.

3. Accordingly, Plaintiffs and the entire estate would benefit from a close evaluation of current assets and liabilities. Such evaluation will also show whether assets were marked below appraised value during the pandemic and unreasonably held on the books ***at those crisis period values***, along with overstated liabilities, to justify continued litigation. That litigation has served to enable James P. Seery ("Mr. Seery") and other estate professionals to carefully extract nearly every last dollar out of the estate (along with incentive fees), leaving little or nothing for the owners that built the company.

4. Significantly, Kirschner seems to concede the merits of Plaintiffs' position. After Plaintiffs began seeking the relief sought herein (originally by way of motion), Kirschner himself sought a stay of the massive litigation he instituted to evaluate whether the estate actually needed to collect additional funds. Plaintiffs and other defendants in that litigation agreed to the stay but could not convince the Debtor to provide the kind of fulsome disclosure that would allow Plaintiffs to evaluate for themselves the status of the estate, which secrecy continues to leave Plaintiffs with suspicions that prevent an overall resolution of the bankruptcy with no further need for indemnification reserves. Rather, Debtor continues to provide summary information that is not sufficient to enable Plaintiffs to determine the amounts of money being spent on administration and litigation, and not sufficient to determine whether if all litigation ceased, the estate could pay all creditors with money to spare for equity. Plaintiffs are especially concerned because the

information they have gleaned suggests inappropriate self-dealing that undermines confidence in the Debtor's financial reporting, making the relief sought herein all the more important.

5. While grave harm has already been done by the Defendants' excessive litigation and unnecessary secrecy, valuation now would at least enable the Court to put an end to this already long-running case and salvage some value for equity. As this Court observed in *In re ADPT DFW Holdings*, where there is significant uncertainty about insolvency, protections must be put in place so that the conduct of the case itself does not deplete the equity. In some cases, the protection is in the form of an equity committee; here a prompt valuation of the estate is needed.

6. Upon information and belief, during the pendency of HCM's bankruptcy proceedings, creditor claims and estate assets have been sold in a manner that fails to maximize the potential return to the estate, including Plaintiffs. Rather, Mr. Seery, first acting as Chief Executive Officer and Chief Restructuring Officer of the Debtor and then as the Claimant Trustee, facilitated the sale of creditor claims to entities that had undisclosed business relationships with Mr. Seery; entities that Mr. Seery knew would approve inflated compensation to him when the hidden but true value of the estate's assets were realized. Because Mr. Seery and the Debtor have failed to operate the estate in the required transparent manner, they have been able to justify pursuit of unnecessary avoidance actions (for the benefit of the professionals involved), even though the assets of the estate, if managed in good faith, should be sufficient to pay all creditors.

7. Further, by understating the value of the estate and preventing open and robust scrutiny of sales of the estate's assets, Mr. Seery and the Debtor have been able to justify actions to further marginalize equity holders that otherwise would be in the money, such as including plan and trust provisions that disenfranchise equity holders such as Plaintiffs by preventing them from having any input or information unless the Claimant Trustee certifies that all other interest holders

have been paid in full. Because of the lack of transparency to date, unless the relief sought herein is granted, there will be no checks and balances to prevent a wrongful failure to certify, much less any process to ensure that the estate has been managed in good faith so as to enable all interest holders, including the much-maligned equity holders, to receive their due.

8. By demonizing the estate equity holders, withholding information, and manipulating the sales of claims and assets, Mr. Seery and the Claimant Trust have maximized the potential for a grave miscarriage of justice and at this time it appears their underhanded plan is succeeding.

9. By June 30, 2022, the estate had $550 million in cash and approximately $120 million of other assets despite paying what appears in reports to be over $60 million in professional fees and selling assets non-competitively, perhaps as much as $75 million below market price.[2] As detailed below, total pre-confirmation professional fees are now over $100 million.

10. On information and belief, the value of the assets in the estate as of June 1, 2022 was:

Highland Capital Assets		**Value in Millions**	
		Low	**High**
Cash as of Feb 1. 2022		$125.00	$125.00
Recently Liquidated	$246.30		
Highland Select Equity	$55.00		
Highland MultiStrat Credit Fund	$51.44		
MGM Shares	$26.00		
Portion of HCLOF	$37.50		
Total of Recent Liquidations	$416.24	$416.24	$416.24
Current Cash Balance		**$541.24**	**$541.24**
Remaining Assets			
Highland CLO Funding, LTD		$37.50	$37.50
Korea Fund		$18.00	$18.00
SE Multifamily		$11.98	$12.10

[2] Examples of non-competitive sales are set forth in letters to the United States Trustee dated October 5, 2021, November 3, 2021 and May 11, 2022.

Affiliate Notes[3]		$50.00	$60.00
Other (Misc. and legal)		$5.00	$20.00
Total (Current Cash + Remaining Assets)		**$663.72**	**$688.84**

11. By June 2022, Mr. Seery had also engineered settlements making the inflated face amount of the major claims against the estate $365 million, but which traded for significantly less.

Creditor	**Class 8**	**Class 9**	**Beneficiary**	**Purchase Price**
Redeemer	$137.0	$0.0	Claim buyer 1	$65 million
ACIS	$23.0	$0.0	Claim buyer 2	$8.0
HarbourVest	$45.0	$35.0	Claim buyer 2	$27.0
UBS	$65.0	$60.0	Claim buyers 1 & 2	$50.0
TOTAL	**$270.0**	**$95.0**		**$150.0 million**

12. Mr. Seery made no efforts to buy the claims into the estate or resolve the estate efficiently. Mr. Seery never made a proposal to the residual holders or Mr. Dondero and never responded to the many settlement offers from Mr. Dondero with a reorganization (as opposed to liquidation) plan, even though many of Mr. Dondero's offers were in excess of the amounts paid by the claims buyers.

13. Instead, Mr. Seery brokered transactions enabling colleagues with long-standing but undisclosed business relationships to buy the claims without the knowledge or approval of the Court. Because the claims sellers were on the creditors committee, Mr. Seery and those creditors had been notified that "Creditors wishing to serve as fiduciaries on any official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court." These transactions are particularly suspect because, depending on the claim, the claims buyers paid amounts only fractionally higher, equivalent to, or, in some cases, less than the value the Plan estimated would be paid three years later. Sophisticated claims buyers responsible to investors of their own would

[3] Some of the Affiliate Notes should have been forgiven as of the MGM sale and/or have other defenses, but litigation continues over that also.

not pay what appeared to be full price unless they had material non-public information that the claims could and would be monetized for much more than the public estimates made at the time of Plan confirmation – as indeed they have been.

14. On information and belief, Mr. Seery provided such information to claims buyers, rather than buying the claims in to the estate for the roughly $150 million for which they were sold. By May 2021, when the claims transfers were announced to the Court, the estate had over $100 million in cash and access to additional liquidity that could have been used to retire the claims for the sale amounts, leaving an operating business in the hands of its equity owners.

15. Specifically, Mr. Seery could and should have investigated seeking sufficient funds from equity to pay all claims and return the estate to the equity holders. This was an obvious path because the estate had assets sufficient to support a $59 million line of credit, as Mr. Seery eventually obtained. If funds had been raised to pay creditors in the amounts for which claims were sold, much of the massive administrative costs run up by the estate would never have been incurred because the larger amounts would not have been needed. One such avoided cost would be the post-effective date litigation pursued by Mr. Kirschner, as Litigation Trustee for the Litigation Sub-Trust, whose professionals likely charged over $2000 an hour for senior lawyers and over $800 an hour for first year associates (data obtained from other cases because there has been no disclosure in the HCM bankruptcy of the cost of the Kirschner litigation). However, buying the claims to resolve the bankruptcy and enabling equity to resume operations would not have had the critical benefit to Mr. Seery that his scheme contained: placing the decision on his incentive bonus, perhaps as much as $30 million or more, in the hands of grateful business colleagues who received outsized rewards for the claims they were steered into buying. The parameters of Mr. Seery's incentive compensation is yet another item cloaked in secrecy, contrary to the general rule that the

hallmark of the bankruptcy process is transparency. These circumstance show why Plaintiffs are right to be concerned and why it is critical that transparency be achieved.

16. But worse still, even with all of the manipulation that appears to have occurred, Plaintiffs believe that the combination of cash and other assets held by the Claimant Trust in its own name and held in various funds, reserve accounts, and subsidiaries, if not depleted by unnecessary litigation, would still be sufficient to pay all Claimant Trust Beneficiaries in full, with interest now.

17. Set forth below is Plaintiffs' best estimate of the assets of the estate. Plaintiffs have been seeking information to enable to them to confirm the accuracy of their estimates, but the Debtor has refused to provide the necessary information to do so. Indeed, after the last quarterly report, in which Debtor provided some but not all of the information Plaintiffs were seeking, Plaintiffs sent a revised list, more precisely targeting the remaining information sought. Because Debtor failed to respond, it remained necessary to file this adversary proceeding.

18. This is Plaintiffs' best estimate of the assets of the Highland estate and its cash flows. It is obvious that even if off by a significant percent, no further litigation to collect assets for the estate is needed to pay creditors. Moreover, the ample solvency of the estate was or should have been obvious to the estate professionals for quite some time, making the substantial cash burn in the estate utterly unconscionable.

	Assets		Amount	Backup
HCMLP Assets to be Monetized[1]				
As of 3/31/23 (Est.)				
	Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. ("HCLOF")		$ 25,000,000	Debtor Pleading (re ACIS) Dkt 1235 Filed 08/18/21 p.3n.10 ($25 m); 3/31/23 DAF Multi-Strat Statement ($19.5 m est); more value in the 1.0 CLOS (Brentwood – 17%;Gleneagles – 1%;Grayson – 5%;Greenbriar-23%;Liberty-18%;Rockwall-15%)

	Highland Multi Strategy Credit Fund, L.P. ("MS")		30,817,992	ADV 3/31/23 (rev 4/24/2023)
	Highland Restoration Capital Partners Master LP & Highland Restoration Capital Partners, L.P. ("RCP")		24,192,773	ADV 3/31/23 (rev 4/24/2023)
	Stonebridge-Highland Healthcare Private Equity Fund ("Korea Fund")		5,701,330	ADV 3/31/23 (rev 4/24/2023)
	SE Multifamily Holdings LLC ("SE Multifamily")		12,400,000	Communications with Debtor that apparently values it higher
	Other		5,000,000	Other investments on the post-confirmation report
	Assets as of 3/31/21 (Est.)[1]		**$ 103,112,095**	
HCMLP Monetizations & Management Fees (est.)		**Sale date if known**		
10/31/19 - 3/31/23 (Est.)				
	Targa	October ?, 2021	$ 37,500,000	Uptick from COVID; market communications
	Trussway	Sept. 1, 2022	180,000,000	90% of sales price 200MM, net of debt; need confirmation
	Cornerstone	Jan. 23, 2023	132,500,000	Assume 53% of sales price obtained because: HCM owns about 50% of RCP and 60% of Crusader (and assume increase in value of MGM within Cornerstone should have been enough to offset its debt) Sale announced May 12, 2022
	SSP	Month/date/2020	18,000,000	Market communications
	MGM Direct	Mar. 17, 2022	25,000,000	@ $145, **sale announced May 2021**
	Petrocap	Aug. 10, 2021	2,684,886	Dkt, 2537, sale motion
	Uchi	Aug. 6, 2021	9,750,000	Dkt 2687, sale order
	Jefferies Account & DRIP		60,000,000	FV form 206, net of debt, but NXRT moved from $40-$80ish; don't know when monetized, so number could be low
	Terrell (raw land)		500,000	FV Form 206
	Mgmt Fees/Dist/Fund loan repayments (est.)		30,000,000	3 years mgmt fees, misc distributions in MS/RCP/Korea, loan paybacks
	Siepe		3,500,000	Market communications
	HCLOF		35,000,000	Calculated based on DAF distributions
	Total Monetizations & Cash Flows (Est.)		**$ 534,434,886**	
	Total Assets as of 3/31/23 & Prior Monetizations & Management Fees		**$ 637,546,981**	

Cash Roll			
10/31/19 - 3/31/23 (Est.)			
Cash as of 10/31/2019		$ 2,286,000	
Monetizations & Cash Flows (10/31/19 - 3/31/23)		534,434,886	
Less: Cash on Hand as of 3/31/23		(57,000,000)	ADV 3/31/23
Fees, Distributions & Other Receipts (10/31/19 - 3/31/23)[2]		$ 479,720,886	
Administrative Fees Paid		$ 100,781,537	Dkt 3756 filed on 4/21/23 ($33,005,136 for Professional fees (bk); $7,604,472 for Professional fees (nonbk); $60,171,929 for all prof fees and exp (Debtor & UCC). Note: this appears to "Preconfirmation." What are the post confirmation amounts?)
Cumulative Payments to Creditors		276,709,651	Dkt 3756 - Unsecured, priority, secured and admin.
Other Unknown Payments or ?		102,229,698	The $102 million is calculated by subtracting cumulative payments to creditors and known pre conf prof fees and costs from the $479 million determined above. Where are these funds; what were they used for?
Fees & Distributions Paid (10/31/19 - 3/31/23)		$ 479,720,886	
[1]*Does not include approximately $70MM in affiliate notes*			
[2]*Includes $100MM of fees paid during bankruptcy*			

19. In short, it appears that the professionals representing HCM, the Claimant Trust, and the Litigation Sub-Trust have been litigating claims against Plaintiffs and others, even though the only beneficiaries of any recovery from such litigation would be Plaintiffs in this adversary proceeding (and of course the professionals pressing the claims). It is only the cost of the pursuit of those claims that threatens to depress the value of the Claimant Trust sufficiently to justify continued pursuit of the claims, creating a vicious cycle geared only to enrich the professionals, including Mr. Seery, and to strip equity holders of any meaningful recovery. Even with the stay of

the Kirschner litigation, the Debtor continues to pursue litigation, such as its vexatious litigant motion, and presumably opposing this litigation, that unnecessarily depletes the estate.

20. Based upon the restrictions imposed on Plaintiffs, including the unprecedented inability for Plaintiffs, as holders of Contingent Claimant Trust Interests, to access virtually any financial information related to the Claimant Trust, Plaintiffs have little to no insight into the value of the Claimant Trust assets versus the Claimant Trust's obligations and no method to independently ascertain those amounts until Plaintiffs become Claimant Trust Beneficiaries. Because Mr. Seery and the professionals benefiting from Mr. Seery's actions have ensured that Plaintiffs are in the dark regarding the estate's assets and liabilities, as well as the estate's professional and incentive fees that are rapidly depleting the estate, there is a compelling need for the relief sought herein.

21. In bringing this Complaint, Plaintiffs are seeking transparency about the assets currently held in the Claimant Trust and their value—information that would ultimately benefit all creditors and parties-in-interest by moving forward the administration of the Bankruptcy Case.

JURISDICTION AND VENUE

22. This adversary proceeding arises under and relates to the above-captioned Chapter 11 bankruptcy case (the "Bankruptcy Case") pending before the United States Bankruptcy Court for the Northern District of Texas (the "Court").

23. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

24. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(A) and (O).

25. In the event that it is determined that the Court, absent consent of the parties, cannot enter final order or judgments over this matter, Plaintiffs do not consent to the entry of a final order by the Court.

THE PARTIES

26. Dugaboy is a trust formed under the laws of Delaware.

27. HMIT is a trust formed under the laws of Delaware.

28. HCM is a limited partnership formed under the laws of Delaware with a business address of 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

29. The Claimant Trust is a statutory trust formed under the laws of Delaware with a business address of 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

CASE BACKGROUND

30. On October 16, 2019 (the "Petition Date"), HCM, a 25-year Delaware limited partnership in good standing, filed for Chapter 11 restructuring in the United States Bankruptcy Court for the District of Delaware.

31. At the time of its chapter 11 filing, HCM had approximately $400 million in assets (ultimately monetized for much more as a result of market events, such as the sale of HCM's portfolio companies for substantial profits, as was always planned by Mr. Dondero) and had only insignificant debt owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. [Dkt. No. 1943, ¶ 8]. HCM's reason for seeking bankruptcy protection was to restructure judgment debt stemming from an adverse arbitration award of approximately $190 million issued in favor of the Redeemer Committee of the Crusader Funds, which, after offsets and adjustments, would have been resolved for about $110 million. Indeed, the Redeemer Committee sold its claim for about $65 million, well below the expected $110 million,[4] and indeed, even below amounts for which Dondero offered to buy the claim.

[4] Reports that Redeemer Committee was paid $78 million note that in addition to the claim, the Committee sold other assets as well, which on information and belief, amounted to about $13 million.

32. At the urging of the newly-appointed Unsecured Creditors Committee (the "Committee"), and over the objection of HCM and its management, the Delaware Bankruptcy Court transferred the bankruptcy case to this Court on December 4, 2019. It seems likely that the creditors sought this transfer to take advantage of antipathy the Court had exhibited to HCM and its management in the ACIS bankruptcy.[5] Shortly after the transfer, and likewise influenced by the adverse characterizations of HCM management in the ACIS bankruptcy, the U.S. Trustee, notwithstanding the Debtor's apparent solvency, sought appointment of a chapter 11 trustee.

33. To avoid the appointment of a chapter 11 trustee and the potential liquidation of a potentially solvent estate, the Committee and the Debtor agreed that Strand Advisors, Inc., HCM's general partner, would appoint a three-member independent board (the "Independent Board") to manage HCM during its bankruptcy. The three board members were:

a. James P. Seery, Jr. – (who was selected by arbitration awardee and Committee member, the Redeemer Committee);
b. John Dubel – (who was selected by Committee member UBS); and
c. Former Judge Russell Nelms – (who was selected by the Debtor).

34. The Bankruptcy Court almost immediately and then repeatedly let the Debtor's professionals know that its feelings about Mr. Dondero and other equity holders had not changed – a disclosure that led inexorably to the many acts that now threaten to wipe out entirely the value of the equity. For example, at one of the earliest hearings, the Court rejected recommendations by

[5] For example, at a hearing in Delaware Bankruptcy Court on the Motion to Transfer Venue to this Court, Mr. Pomerantz, counsel for Debtor stated, "The debtor filed the case in this district because it wanted a judge to preside over this case that would look at what's going on with this debtor, with this debtor's management, this debtor's post-petition conduct, without the baggage of what happened in a previous case, which contrary to what Acis and the committee says, has very little do with this debtor." [December 2, 2019 Hearing Transcript at 79, Case No. 19012239 (CSS), Docket No. 181]. The taint of the ACIS case can be seen in that, without having read or even seen the supposedly offending complaint, during the ACIS case Judge Jernigan called Mr. Dondero not just vexatious, but "transparently vexatious," for allegedly having sued Moody's for failing to downgrade certain CLOs that ACIS had been manipulating in violation of its indentures and even though the Plaintiff in the supposedly offending case was not Mr. Dondero or any company he controlled [September 23, 2020 Hearing Transcript at 51-52, In re Acis Capital Management, L.P. and Acis Capital Management GP, LLC, Case No. 18-30264-SGJ-11, Docket No. 1186].

Judge Nelms, suggesting he was bamboozled because he was under management's spell. Specifically, Judge Jernigan admitted that normally "Bankruptcy Courts should defer heavily to the reasonable exercise of business judgment by a board… But I'm concerned that Dondero or certain in-house counsel has -- you know, they're smart, they're persuasive… they have exercised their powers of persuasion or whatever to make the Board and the professionals think that there is some valid prospect of benefit to Highland with these [actions], when it's really all about . . . Mr. Dondero." [February 19, 2020 Hearing Transcript at 177.]

35. At around the same time that the Court telegraphed animus towards Mr. Dondero, it also squelched oversight by responsible professionals who could and would have ensured transparency. When the Committee and the Debtor reported to the Court that they had agreed to use Judge Jones and Judge Isgur in Houston as mediators to potentially resolve the bankruptcy case, Judge Jernigan stated that she was "surprised that Judge Jones' or Judge Isgur's staff expressed that they had availability." Debtor's counsel then asked if he could independently follow up with staff for Judges Jones and Isgur regarding their availabilities, and Judge Jernigan said, "I'll take it from here." Six days later, Judge Jernigan simply said, "my continued thought on that [mediation by Judges Jones and Isgur] is that they just don't have meaningful time." [July 14, 2020 Hearing Transcript at 121.] In retrospect, this avoided scrutiny of the case by professionals who would recognize and potentially curtail the Court's unprecedented, immediately biased conduct of the case. This sent a powerful message to Mr. Seery and the other professionals who developed strategies to enrich themselves to the detriment of any possibility of a quick reorganization with equity regaining control.

36. Meanwhile, not realizing the turn the bankruptcy was about to take, Mr. Dondero had agreed to step down as CEO of the Debtor and to the appointment of an Independent Board only

because he was assured that new, independent management would expedite an exit from bankruptcy, preserve the Debtor's business as a going concern, and retain and compensate key employees whose work was critical to ensuring a successful reorganization.

37. None of that happened. Almost immediately, Mr. Seery emerged as the *de facto* leader of the Independent Board. On July 14, 2020, the Court retroactively appointed Mr. Seery Chief Executive Officer and Chief Restructuring Officer, vesting him with the fiduciary responsibilities of a registered advisor to investors and fiduciary responsibilities to the estate. [Dkt. No. 854]. And although Mr. Seery publicly represented that he intended to restructure and preserve HCM's business, privately he was engineering a much different plan.

38. Mr. Seery's public-facing statements stand in stark contrast to what actually happened under his direction and control. For example, Mr. Seery initially reported consistently positive reviews of the Debtor's employees, describing the Debtor's staff as a "lean" and "really good team." He also testified: "My experience with our employees has been excellent. The response when we want to get something done, when I want to get something done, has been first-rate. The skill level is extremely high."

39. Yet, despite these glowing reviews, Mr. Seery failed to put a key employee retention program into place, and although key employees supported Mr. Seery and the Debtor through the plan process, ultimately Mr. Seery fired most of those employees. It was clear that Mr. Seery was firing anyone with perceived loyalty to Mr. Dondero, no doubt leaving remaining staff fearful of challenging Mr. Seery, lest they too be fired.

40. From the start, and before there was much litigation to speak of, the Court regularly referred to Mr. Dondero and related parties as "vexatious litigants," emboldening the Debtor to do the same, even while admitting it had not presented evidence that Mr. Dondero was a vexatious

litigant. This was plainly a carryover from the ACIS case where the Court labelled Mr. Dondero a "transparently" vexatious litigant based on pleadings she had only heard about from parties opposing Dondero and admittedly had not read herself. Ironically, the first time Mr. Dondero was labeled "vexatious" by the Court in the HCM case, he was defending himself from three lawsuits initiated by the Debtor and had commented on proposed settlements in the case, but had not himself initiated any actions in the case. Thereafter, though, the Debtor and its professionals repeated the mantra that Dondero and his companies were vexatious litigants to successfully oppose sharing information about the estate with them.

41. In addition to the Debtor's mistreatment of employees, under the control of the Independent Board, most of the ordinary checks and balances that are the hallmark of bankruptcy were ignored. Despite providing regular and robust financial information to the Committee, the Debtor inexplicably failed and refused to file quarterly 2015.3 reports, leaving stakeholders, including Plaintiffs, in the dark about the value of the estate and the mix of assets it held, bought or sold. Amplifying the lack of transparency, Mr. Seery further engineered transactions that also served to hide the real value of the estate.

42. For example, he authorized the Debtor to settle the claims of HarbourVest (which claims had initially been valued at $0) for $80 million, in order to acquire HarbourVest's interest in Highland CLO Funding, Ltd. ("HCLOF"), gain HarbourVest's vote in favor of its Plan, and hide the value of Debtor's interest in HCLOF by placing it into a non-reporting subsidiary. This created another pocket of non-public information because the pleadings supporting the 9019 settlement valued the HCLOF interest at $22 million, when, on information and belief, it was worth $34.1 million at the time, about $40 million when the settlement was consummated, and over $55 million 90 days later when the MGM sale was announced.

43. At the same time, Mr. Seery and the Independent Board deliberately shut out equity holders from any discussion surrounding the plan of reorganization or HCM's efforts to emerge from bankruptcy as a going concern. Indeed, as noted above, Mr. Seery failed to meaningfully respond to the many proposals made by residual equity holders to resolve the estate and never encouraged any dialogue between creditors and equity holders. These failures only contributed to the difficulty of getting stakeholders' buy-in for a reorganization plan and significantly undermined an efficient exit from bankruptcy.

44. Worse still, while knowing that HCM had sufficient resources to emerge from bankruptcy as a going concern (and, on information and belief, while knowing that the estate was solvent), Mr. Seery and the Independent Board failed to propose any plan of reorganization that contemplated HCM's continued post-confirmation existence. Instead, and inexplicably, the very first plan proposed contemplated liquidation of the company, as did all subsequent plans.

45. While secretly engineering the total destruction of HCM, Mr. Seery also privately settled multiple proofs of claim against the estate at inflated levels that were unreasonable multiples of the Debtor's original estimates. He did this notwithstanding the Debtor's early and vehement objection to many of the claims as baseless. But instead of litigating those objections in a manner that would have exposed the true value of the claims, on information and belief, Mr. Seery settled the claims as a means of brokering sales of the claims at 50-60% of their face values. That is, the inflated values softened up claims sellers to induce them to sell. Had the Debtor instead fought the inflated proofs of claim in open court, it could have settled the claims for closer to true value and ensured that the estate had sufficient resources to pay them.

46. It is also no coincidence that virtually all original proofs of claim were sold to buyers that had prior business relationships with Mr. Seery and/or affiliates of Grosvenor (a

company with which Mr. Seery has a long personal history)—buyers that ultimately would be positioned to approve a favorable compensation and bonus structure for Mr. Seery.

47. That the claims sales happened at all is curious in light of the scant publicly-available information about the value of the estate. It would have been impossible, for example, for any of the claims buyers to conduct even modest due diligence to ascertain whether the purchases made economic sense. In fact, the publicly-available information purported to show a net decrease in the estate's asset value by approximately $200 million in a matter of months during the global pandemic. Dkt. 2949. Given the sophistication of the claims-buyers, their purchases of claims at prices that in some cases exceeded published expected recoveries (according to the schedules then available to the public) would only make sense if they obtained inside information regarding the transactions undertaken by Debtor management that would justify the transfer pricing.

48. And indeed, the claims could and would be monetized for much more than the publicly-available information suggested (as only one with inside information would know). In October 2022, $250 million was paid to Class 8 holders. That is about 85% of the inflated proofs of claim and $90 million more than plan projections. On information and belief, claims buyers have thus had an over 170% annualized return thus far, with more to come. On information and belief, Mr. Seery will use this "success" to justify an incentive bonus estimated in the range of $30 million or more, while engineering the estate to prevent equity holders from objecting or even knowing.

49. At the same time, the Claimant Trust has made no distributions to Contingent Claimant Trust Interest holders and has argued in various proceedings that no such distributions are likely. No wonder. The cost of holding open the estate, including unnecessary litigation costs,

appears to have exceeded $140 million post-confirmation, and seems geared to ensure that no such distributions can occur, even though it can now be projected that the litigation is not needed to pay creditors. *See* Docket No. 3410-1.

50. It is worth noting that it appears that virtually all of the claims trades brokered on behalf of Committee members seem to have occurred while those entities remained on the Committee. Yet at the outset of their service, Committee members were instructed by the United States Trustee that "Creditors wishing to serve as fiduciaries on any official committee are advised that they may *not* purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court." Thus, the claims trades violated Committee members' fiduciary duty to the estate while lining the pockets of Mr. Seery and other Debtor professionals, to the detriment of creditors and residual equity holders.

51. The sales of claims were not the only transactions shrouded in secrecy. As further detailed in other litigation, assets were sold with insufficient disclosures, no competitive bidding, no data room, and without inviting equity (which may have at one time had the knowledge to make the highest bid) to participate in the sales process. Indeed, on occasion assets were sold for amounts less than Mr. Dondero's written offers. This exacerbated the harms caused by the lack of transparency characterized by the Court's indifference to the Debtor's complete failure to abide by its Rule 2015 disclosure obligations.

52. In short, the lack of transparency combined with at least the appearance of bias, if not actual bias of the Bankruptcy Court, emboldened and enabled an opportunistic CRO to manipulate the bankruptcy to enrich himself, his long-time business associates, and the professionals continuing to litigate to collect fees to pay claims that, but for that manipulation, could have been resolved with money left over for equity.

STATEMENT OF FACTS

A. Plaintiffs Hold Contingent Claimant Trust Interests

53. As of the Petition Date, HCM had three classes of limited partnership interests (Class A, Class B, and Class C). *See* Disclosure Statement [Docket No. 1473], ¶ F(4).

54. The Class A interests were held by Dugaboy, Mark Okada ("Okada"), personally and through family trusts, and Strand Advisors, Inc. ("Strand"), HCM's general partner. The Class B and C interests were held by HMIT. *Id.*

55. In the aggregate, HCM's limited partnership interests were held: (a) 99.5% by HMIT; (b) 0.1866% by Dugaboy, (c) 0.0627% by Okada, and (d) 0.25% by Strand.

56. On February 22, 2021, the Court entered the Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief [Docket No. 1943] (the "Confirmation Order") [Docket No. 1808] (the "Plan").

57. In the Plan, General Unsecured Claims are Class 8 and Subordinated Claims are Class 9. *See* Plan, Article III, ¶ H(8) and (9).

58. In the Plan, HCM classified HMIT's Class B Limited Partnership Interest and Class C Limited Partnership Interest (together, Class B/C Limited Partnership Interests) as Class 10, separately from that of the holders of Class A Limited Partnership Interests, which are Class 11 and include Dugaboy's Limited Partnership Interest. *See* Plan, Article III, ¶ H(10) and (11).

59. According to the Plan, Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests are subordinate to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests. *See* Plan, Article I, ¶44.

60. In the Confirmation Order, the Court found that the Plan properly separately classified those equity interests because they represent different types of equity security interests in HCM and

different payment priorities pursuant to that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended (the "Limited Partnership Agreement"). Confirmation Order, ¶36; Limited Partnership Agreement, §3.9 (Liquidation Preference).

61. The Court overruled objections to the Plan lodged by entities it deemed related to Mr. Dondero, including Dugaboy. In doing so, the Court acknowledged that Dugaboy has a residual ownership interest in HCM and therefore "technically" had standing to object to the Plan. *See* Confirmation Order, ¶¶ 17-18.

62. Based on the Debtor's financial projections at the time of confirmation, however, the Court found that the plan objectors' "economic interests in the Debtor appear to be extremely remote." *Id.*, ¶ 19; *see also id.*, ¶ 17 ("the remoteness of their economic interests is noteworthy").

63. The Plan went Effective (as defined in the Plan) on August 11, 2021, and HCM became the Reorganized Debtor (as defined in the Plan) on the Effective Date. *See* Notice of Occurrence of the Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. 2700].

64. The Plan created the Claimant Trust, which was established for the benefit of Claimant Trust Beneficiaries, which is defined to mean:

> the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests

See Plan, Article I, ¶27; *see also* Claimant Trust Agreement, Article I, 1.1(h).

65. Plaintiffs hold Contingent Claimant Trust Interests, which will vest into Claimant Trust Interests upon indefeasible payment of Allowed Claims.

66. Depending on the realization of asset value less debts, Plaintiffs may become Claimant Trust Beneficiaries.

67. The Post Confirmation Quarterly Reports for the First Quarter of 2023 [Docket No. 3756 and 3757], show distributions of $270,205,592 to holders of general unsecured claims, which is 68% of the total allowed general unsecured claims of $397,485,568. This amount is far greater than was anticipated at the time of confirmation of the Plan. About $277 million has been distributed to creditors when secured, priority and administrative creditors are also considered.

B. Debtor Has Failed To Disclose Claimant Trust Assets

68. Upon information and belief, the value of the estate, as held in the Claimant Trust, has changed markedly since Plan confirmation. Not only have many of the assets held by the estate fluctuated in value based on market conditions, with some increasingly in value dramatically, but Plaintiffs are aware that many of the major assets of the estate have been liquidated or sold since Plan confirmation, locking in increased value to the estate.

69. The estate is solvent and has always been solvent. Nonetheless, Mr. Seery has remained committed to maximizing professional fees and incentive fees by increasing the total claims amount to justify litigation to satisfy those inflated claims.

70. As noted above, by June of 2022, starting with $125 million in cash, the estate liquidated other assets of over $416 million, building a cash war chest of over $541 million. Thus, with the remaining less-liquid assets, the total value of the estate's assets as of June 2022 was over $600 million, excluding related party notes.

71. Contrasting those assets with the claims against the estate demonstrates that further collection of assets was (and is) unnecessary.

72. As set forth above, while the inflated face amount of the claims sold was $365 million, the sale price was about $150 million. The estate therefore easily had the resources to retire the claims for the sale amounts, leaving an operating business in the hands of its equity owners.

73. Instead, Mr. Seery liquidated estate assets at less-than-optimal prices, without competitive process, without including residual equity holders, and in all cases required strict non-disclosure agreements from the buyers to prevent any information flowing to the public, the residual equity, or the Court. This uncharacteristic secrecy enabled Mr. Seery and the professionals to maintain the delicate balance of keeping just enough assets to pay professionals and incentive fees but still maintain the pretense that further litigation was needed.

74. Each effort by Plaintiffs, Mr. Dondero and related companies to obtain information to assess whether interference was necessary to stop the continued looting has been vigorously opposed, and ultimately rejected by an apparently biased Court. Plaintiffs were unable to cause the Debtor to provide the most basic of reports, including Rule 2015 statements, and Plaintiffs' efforts to obtain even the most basic details regarding asset sales and professional fees have all been denied. Rather, such details are in the hands of a select few, such as the Oversight Board of the Claimant Trust.

75. The Plan requires the Claimant Trustee to determine the fair market value of the Claimant Trust Assets as of the Effective Date and to notify the applicable Claimant Trust Beneficiaries of such a valuation, as well as distribute tax information to Claimant Trust Beneficiaries as appropriate. *See* Plan, ¶Art. IV(B)(9).

76. But no like information regarding valuation of the Claimant Trust Assets is available to Plaintiffs as holders of Contingent Claimant Trust Interests, even though Plaintiffs, as contingent beneficiaries of a Delaware statutory trust, are entitled to financial information relating to the trust.

C. Plaintiffs Are Kirschner Adversary Proceeding Defendants

77. On October 15, 2021, Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust, commenced the Kirschner Adversary Proceeding against twenty-three defendants, including Plaintiffs, alleging various causes of action. *See Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust vs. James Dondero*, *et al.*, Adv. Pro. No. 21-03076-sgj, Adv. Proc. No. 21-03076, Docket No. 1 (as amended by Docket No. 158).

78. The Litigation Sub-Trust was established within the Claimant Trust as a wholly owned subsidiary of the Claimant Trust for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims, with any proceeds therefrom to be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries. *See* Plan, Article IV, ¶ (B)(4).

79. Any recovery from the Kirschner Adversary Proceeding will be distributed to Claimant Trust Beneficiaries.

80. Depending on the realization of asset value less debts, Plaintiffs may become Claimant Trust Beneficiaries.

81. The Litigation Sub-Trust is pursuing claims against Plaintiffs in the Kirschner Adversary Proceeding, which, if they become Claimant Trust Beneficiaries, would be the recipients of distributions of such recovery (less the cost of litigation). Therefore, Plaintiffs require the requested information in order to properly analyze and evaluate the claims asserted against

them in the Kirschner Adversary Proceeding and to determine whether those claims have any validity.

FIRST CLAIM FOR RELIEF
(Disclosures of Claimant Trust Assets and Request for Accounting)

82. Plaintiffs repeat and re-allege the allegations in each of the foregoing paragraphs as though fully set forth herein.

83. Due to the lack of transparency into the assets of the Claimant Trust, Plaintiffs are unable to determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests.

84. Certain information about the Claimant Trust Assets has already been provided to others, including Claimant Trust Beneficiaries and the Oversight Board for the Claimant Trust.

85. Information about the Claimant Trust Assets would help Plaintiffs evaluate whether settlement of the Kirschner Adversary Proceeding and other proceedings is feasible, which would further the administration of the bankruptcy estate, benefitting all parties in interest.

86. This Court specifically retained jurisdiction to ensure that distributions to Holders of Allowed Equity Interests are accomplished pursuant to the provisions of the Plan. *See* Plan, Article XI.

87. The Plan provides that distributions to Allowed Equity Interests will be accomplished through the Claimant Trust and Contingent Claimant Trust Interests. *See* Plan Article III, (H)(10) and (11).

88. The Defendants should be compelled to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets, and details of all transactions that have occurred since the wall of silence was erected, and all liabilities.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment Regarding Value of Claimant Trust Assets)

89. Plaintiffs repeat and re-allege the allegations in each of the foregoing paragraphs as though fully set forth herein.

90. Once Defendants are compelled to provide information about the Claimant Trust assets, Plaintiffs seek a determination from the Court of the relative value of the Claimant Trust assets compared to the bankruptcy estate obligations.

91. If the value of the Claimant Trust assets exceeds the obligations of the estate, then several pending adversary proceedings aimed at recovering value for HCM's estate can be justly deemed unnecessary to pay creditors in full. As such, the pending adversary proceedings could be brought to a swift close, allowing creditors to be paid and the Bankruptcy Case to be brought to a close, ultimately stopping the bloodshed.

92. In addition, professionals associated with the estate—including but not limited to Mr. Seery, Pachulski, Development Specialists, Inc., Kurtzman Carson Consultants, Quinn Emanuel, Mr. Kirschner, and Hayward & Associates—are continuing to incur and receive millions of dollars a month in professional fees, thereby further eroding an estate that is either solvent or could be bridged by a settlement that would pay the spread between current assets and current allowed creditor claims. Fees for Pachulski range from $460 an hour for associates to $1,265 per hour for partners, and fees for Quinn Emanuel lawyers range from $830 an hour for first year associate to over $2100 per hour for senior partners. At these rates, depletion of the estate will occur rapidly.

THIRD CLAIM FOR RELIEF
(Declaratory Judgment and Determination Regarding Nature of Plaintiff's Interests)

93. Plaintiffs repeat and re-allege the allegations in each of the foregoing paragraphs as though fully set forth herein.

94. In the event that the Court determines that the Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid, Plaintiffs seek a declaration and a determination that the conditions are such that their Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries.[6]

95. Such a declaration and a determination by the Court would further assist parties in interest, such as Plaintiffs, to ascertain whether the estate is capable of paying all creditors in full and also paying some amount to residual interest holders, as contemplated by the Plan and the Claimant Trust Agreement.

WHEREFORE, Plaintiffs pray for judgment as follows:

(i) On the First Claim for Relief, Plaintiffs seek an order compelling Defendants to disclose the assets currently held in the Claimant Trust, transactions completed that affect the Claimant Trust directly or indirectly, and all liabilities of the Claimant Trust;; and

(ii) On the Second Claim for Relief, Plaintiffs seek a determination of the relative value of those assets in comparison to the claims of the Claimant Trust Beneficiaries; and

(iii) On the Third Claim for Relief, Plaintiffs seek a determination that the conditions are such that all current Claimant Trust Beneficiaries could be paid in full, with

[6] To be clear, Plaintiffs do not ask the Court to determine that they are Claimant Trust Beneficiaries or otherwise to convert their contingent interests into non-contingent interests. All of that must be done according to the terms of the Plan and the Claimant Trust Agreement.

such payment causing Plaintiffs' Contingent Claimant Trust Interests to vest into Claimant Trust Interests; and

(iv) Such other and further relief as this Court deems just and proper.

Dated: May 10, 2023

Respectfully submitted,

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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	Case No. 19-34054-sgj11
Reorganized Debtor.	
DUGABOY INVESTMENT TRUST and HUNTER MOUNTAIN INVESTMENT TRUST,	Adv. Pro. No. 23-03038-sgj
Plaintiffs,	
vs.	
HIGHLAND CAPITAL MANAGEMENT, L.P. and HIGHLAND CLAIMANT TRUST,	
Defendants.	

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

THE HIGHLAND PARTIES' MOTION TO DISMISS COMPLAINT TO (I) COMPEL DISCLOSURES ABOUT THE ASSETS OF THE HIGHLAND CLAIMANT TRUST AND (II) DETERMINE (A) RELATIVE VALUE OF THOSE ASSETS, AND (B) NATURE OF PLAINTIFFS' INTERESTS IN THE CLAIMANT TRUST

Highland Capital Management, L.P. ("Highland" or the "Debtor," as applicable), and the Highland Claimant Trust (the "Claimant Trust," and together with Highland, the "Highland Parties"), the defendants in the above-captioned adversary proceeding, by and through their undersigned counsel, file this motion (the "Motion") seeking entry of an order dismissing the *Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust* [Docket No. 1] (the "Complaint") filed by The Dugaboy Investment Trust (Dugaboy") and Hunter Mountain Investment Trust ("HMIT"). In support of its Motion, the Highland Parties state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334.

2. This is a core proceeding pursuant to 28 U.S.C. 157(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

RELIEF REQUESTED

4. The Highland Parties request that the Court issue the proposed form of order attached as **Exhibit A** (the "Proposed Order") pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, made applicable herein by Rule 7012 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

5. For the reasons set forth more fully in the Highland Parties' *Memorandum of Law in Support of Highland Capital Management, L.P. and the Highland Claimant Trust's Motion to Dismiss Complaint* (the "Memorandum of Law") filed contemporaneously with this Motion and in accordance with Rule 7007-1(g) of the *Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas*, the Highland Parties request that the Court: (a) dismiss the Complaint in its entirety and (b) grant the Highland Parties such other and further relief as the Court deems just and proper under the circumstances.

6. Based on the arguments contained in the Memorandum of Law, the Highland Parties are entitled to the relief requested herein as set forth in the Proposed Order.

7. Notice of this Motion has been provided to all parties. The Highland Parties submit that no other or further notice need be provided.

WHEREFORE, the Highland Parties respectfully request that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant the Highland Parties such other and further relief as the Court may deem proper.

Dated: November 22, 2023

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EXHIBIT A

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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	Case No. 19-34054-sgj11
Reorganized Debtor.	
DUGABOY INVESTMENT TRUST and HUNTER MOUNTAIN INVESTMENT TRUST,	Adv. Pro. No. 23-03038-sgj
Plaintiffs,	
vs.	
HIGHLAND CAPITAL MANAGEMENT, L.P. and HIGHLAND CLAIMANT TRUST,	
Defendants.	

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

ORDER GRANTING MOTION TO DISMISS

Before the Court is the *Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust* [Docket No. __] (the "Motion"). Having considered (a) the Motion and (b) the Highland Parties' *Memorandum of Law in Support of Highland Capital Management, L.P. and the Highland Claimant Trust's Motion to Dismiss Complaint* [Docket No. __] (the "Memorandum of Law"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1409; and this Court having found that the Highland Parties' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED**.
2. The Action is **DISMISSED** with prejudice.
3. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

###End of Order###

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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	Case No. 19-34054-sgj11
Reorganized Debtor.	
DUGABOY INVESTMENT TRUST and HUNTER MOUNTAIN INVESTMENT TRUST,	Adv. Pro. No. 23-03038-sgj
Plaintiffs,	
vs.	
HIGHLAND CAPITAL MANAGEMENT, L.P. and HIGHLAND CLAIMANT TRUST,	
Defendants.	

MEMORANDUM OF LAW IN SUPPORT OF HIGHLAND CAPITAL MANAGEMENT L.P. AND THE HIGHLAND CLAIMANT TRUST'S MOTION TO DISMISS COMPLAINT

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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Highland Capital Management, L.P. ("Highland" or the "Debtor," as applicable), and the Highland Claimant Trust (the "Claimant Trust," and together with Highland, the "Highland Parties"), the defendants in the above-captioned adversary proceeding, hereby submit this memorandum of law in support of their *Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust* (the "Motion") seeking to dismiss the above-captioned action (the "Action").

I. PRELIMINARY STATEMENT[2]

1. The Complaint should be dismissed in its entirety. Pursuant to Rule 12(b)(1), this Court lacks subject matter jurisdiction over the Action because the Claims are either moot or seek impermissible advisory opinions. Even if the Court had jurisdiction (and it does not), the Claims should be dismissed under Rule 12(b)(6) because they fail to state claims as a matter of law.

2. Under the express terms of the CTA and the Plan, holders of Contingent Trust Interests are not "Claimant Trust Beneficiaries" and have no rights, including information rights, unless and until their contingent, inchoate interests vest. Despite holding only unvested Contingent Trust Interests with no rights in the Claimant Trust, Plaintiffs stubbornly seek "financial information" regarding the Claimant Trust Assets and specifically request: (a) an accounting of the Claimant Trust Assets, (b) a determination as to the value of those assets compared to liabilities, and (c) a determination whether Plaintiffs' Contingent Trust Interests "will vest."

3. Count One, which seeks an accounting of the assets and liabilities of the Claimant Trust, has been rendered moot by the Pro Forma Adjusted Balance Sheet filed in July 2023 and other publicly-available information, which discloses the very information demanded. The relief

[2] Capitalized terms not defined in this Preliminary Statement shall have the meanings ascribed to them below.

sought in Count Three, namely, a determination as to whether Plaintiffs' Contingent Trust Interests are "likely to vest," is moot, seeks an impermissible advisory opinion, and is barred by collateral estoppel. In September 2023, four months after the Complaint was filed, this Court found that whether the Contingent Trust Interests might someday vest is dependent on a multitude of unknown and unknowable factors, for example, the amount of senior indemnification expenses that must be reserved for and ultimately paid by the Claimant Trust. Based, in part on those unknown senior expenses, this Court determined that the Contingent Trust Interests were "not in the money." This Court lacks jurisdiction to render an opinion on Count Three and, to the extent that it could, it already has and Plaintiffs are collaterally estopped from re-litigating this issue. For the same reasons, there is no declaratory relief available to Plaintiffs that has not already been addressed in the Court's prior ruling.

4. Even if the Court had subject matter jurisdiction over the Claims, the Complaint fails as a matter of law under Rule 12(b)(6). Plaintiffs' equitable claim (Count One) is foreclosed by the plain and unambiguous terms of the CTA, the Plan, and this Court's prior orders. Plaintiffs, as holders of Contingent Trust Interests, have no rights—including information rights—under the CTA. Under the circumstances, equity cannot abrogate the terms of that agreement or be used to create non-existent rights or extra-contractual duties, such as those relating to the disclosure of financial information or an accounting. This is especially so when Plaintiffs and their affiliates have unclean hands as vexatious adversaries to the entity against who they claim to seek equity.[3] Plaintiffs' claims for declaratory relief (Counts Two and Three) also fail as a matter of law because

[3] In addition to the numerous actions in which the Plaintiffs and their affiliates have attacked the Highland Parties or failed to honor their obligations to the Highland Parties, plaintiff HMIT is a defendant in an action on a note owed to Highland with current principal and interest owed in excess of $98 million, discussed *infra*.

there is no cognizable underlying claim. For the reasons herein and discussed further below, the Complaint should be dismissed.

II. RELEVANT BACKGROUND

A. The Bankruptcy Case

5. On October 16, 2019 (the "Petition Date"), Highland filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Case"). As of the Petition Date, Highland had three classes of limited partnership interests (Class A, Class B, and Class C). *See* Disclosure Statement [Docket No. 1473], ¶ F(4). The Class A interests were held by The Dugaboy Investment Trust ("Dugaboy"),[4] Mark Okada's family trusts, and Strand Advisors, Inc. The Class B and C interests were held by Hunter Mountain Investment Trust ("HMIT"). *Id.* On January 9, 2020, an independent board of directors, which included James P. Seery, Jr., was appointed to manage Highland's Bankruptcy Case and estate. [Docket No. 339]. Mr. Seery was appointed Highland's Chief Executive Officer and Chief Restructuring Officer in July 2020. [Docket No. 854].

B. The Plan

6. On February 22, 2021, the Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Bankr. Docket No. 1943] (the "Confirmation Order"), which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Docket No. 1943-1] (the "Plan"). The Plan became effective on August 11, 2021 [Docket No. 2700] (the "Effective Date"). Pursuant to the Plan:

- General Unsecured Claims were classified as Class 8 and Subordinated Claims were classified as Class 9.

[4] Dugaboy is James Dondero's family trust.

- HMIT's Class B Limited Partnership Interest and Class C Limited Partnership Interest were classified as Class 10.

- Class A Limited Partnership Interests, including Dugaboy's, were classified as Class 11.

- The Claimant Trust, a Delaware statutory trust, was established pursuant to that certain *Claimant Trust Agreement*, effective as of August 11, 2021 (the "CTA"),[5] for the benefit of "Claimant Trust Beneficiaries;"[6]

- Holders of allowed general and subordinated unsecured Claims (*i.e.*, Class 8 and 9) received beneficial interests in the Claimant Trust (collectively, the "Trust Interests") and became "Claimant Trust Beneficiaries;" and

- Holders of the Debtor's prepetition partnership interests (*i.e.*, Class 10 and 11) were allocated unvested contingent interests (the "Contingent Trust Interests") in the Claimant Trust that would vest if, and only if, the Claimant Trustee certifies that all Claimant Trust Beneficiaries (*i.e.*, Class 8 and 9) have been paid in full, Class 8 has received post-petition interest, and all disputed claims in Class 8 and 9 have been resolved.

(*See generally* Plan Art. III, IV.)

C. Information Rights Under the CTA

7. By design, the clear terms of the CTA limit information rights. Section 3.12(a) of the CTA provides that the Claimant Trustee has no duty to provide an accounting of the Claimant Trust Assets to any party, including Claimant Trust Beneficiaries. CTA, § 3.12(a) ("Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting ....").

8. Section 3.12(b) of the CTA provides limited information rights solely to "Claimant Trust Beneficiaries":

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

[5] All capitalized terms used but not defined herein have the meanings given to them in the CTA.

[6] The CTA was expressly incorporated into and is a part of the Plan. Confirmation Order ¶ 25; Plan Art. IV, § J. The final form of the CTA was filed with the Court as Docket No. 1811-2 as modified by Docket No. 1875-4.

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

CTA, § 3.12(b).

9. Nothing in the CTA or the Plan grants any other information rights, and, in fact, the CTA is clear that there are no information rights outside those in Section 3.12(b). *See* CTA, § 5.10(a) ("The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein)"). Thus, the only entities with information rights under the Plan are "Claimant Trust Beneficiaries," and those rights (a) are limited, (b) do not include rights to asset or subsidiary level information, and (c) can be further limited by the Claimant Trustee as appropriate to "maintain confidentiality."

10. Under the express terms of the Plan, the CTA, and this Court's prior orders, the "Claimant Trust Beneficiaries"[7] are the holders of Allowed Claims in Class 8 and Class 9. *See* CTA, § 1.1(h); Plan Art. I.B.27.[8] HMIT holds Class 10 interests and Dugaboy holds Class 11 interests, and therefore, neither Plaintiff is a "Claimant Trust Beneficiary." Instead, Plaintiffs hold

[7] "Claimant Trust Beneficiaries" are defined as:

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

See, e.g., CTA, § 1.1(h).

[8] *See also In re Highland Cap. Mgt., L.P.*, 19-34054-SGJ-11, 2023 WL 5523949, at *35 (Bankr. N.D. Tex. Aug. 25, 2023), discussed further *infra*.

unvested "Contingent Trust Interests." *See, e.g.*, Plan, Art. I.B.44; CTA, §§ 1.1(h), 5.1(c). Contingent Trust Interests "shall not have any rights under" the CTA, and holders of such interests will not "be deemed 'Beneficiaries'" "unless and until" they vest in accordance with the Plan and CTA. *Id.* Specifically, under the CTA, Plaintiffs' Contingent Trust Interests in the Claimant Trust will *not* vest and Plaintiffs will have *no* rights under the CTA unless and until (a) all Class 8 and Class 9 Claims are paid indefeasibly in full with interest, (b) all disputed claims are resolved, and (c) the Claimant Trustee certifies as much to this Court. *Id*. Class 8 and Class 9 Claims cannot be paid until indemnification claims are satisfied.[9] It is indisputable that Plaintiffs' Contingent Trust Interests have not vested under the terms of the Plan and the CTA. *See Highland Cap.*, 2023 WL 5523949, at *35. Plaintiffs are not "Claimant Trust Beneficiaries" and have no information rights.

D. Dugaboy Files the Valuation Motion

11. On June 30, 2022, Dugaboy filed its *Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382] (the "Initial Valuation Motion"), seeking "a determination by this Court of the current value of the estate and an accounting of the assets currently held by the Claimant Trust and available for distribution to creditors." Thereafter, on September 21, 2022, Dugaboy filed a supplemental motion [Docket No. 3533] (the "Supp. Valuation Motion" and, together with the Original Valuation Motion, the "Valuation Motion"). Therein, Dugaboy requested that the Court enter "an order: (i) finding that Dugaboy has standing in these bankruptcy proceedings under 11 U.S.C. § 1109(b), Delaware trust law, and Article III of the United States Constitution; and (ii) setting an evidentiary hearing to ascertain the assets

[9] *See, e.g.*, CTA Art. 6.1 (providing that distributions to Claimant Trust Beneficiaries are junior to the Claimant Trust's expenses, including, among other things, amounts "necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses," which include indemnification costs). This priority of payment under the Plan and CTA was upheld by the Fifth Circuit when affirming this Court's order authorizing the creation of the indemnity sub-trust, the purpose of which was to reserve or retain any cash reasonably necessary to satisfy contingent liabilities. *See In the Matter of Highland Cap. Mgt., L.P.*, 57 F4th 494, 502 (5th Cir 2023).

currently available for distribution to allowed claimants, to determine the current value of those assets, and to determine whether there is a potential for settling the estate now ...." The Valuation Motion was supported by HMIT. [Docket No. 3467]. Highland objected to the Valuation Motion. [Docket No. 3465].

12. On November 15, 2022, the Court held a status conference, during which the Court expressed concerns about whether the Valuation Motion should be filed as an adversary proceeding since it sought equitable relief. On December 7, 2022, after the parties submitted briefing on this issue, [*see* Docket Nos. 3637, 3638, 3639], the Court issued its order [Docket No. 3645] (the "Valuation Order"), in which it found that an adversary proceeding was necessary with regard to the relief sought in the Valuation Motion. The Court explained that "the essence of the Dugaboy Value Motions is a request for an accounting," which constitutes "equitable relief that does not appear to be provided for in the confirmed chapter 11 plan." *Id.* at 4. The Court further found that "Dugaboy and HMIT have not pointed to any provision of the CTA that establishes a right to an accounting," and "[i]t would appear that Dugaboy and HMIT may be frustrated that they did not negotiate or obtain the same oversight rights as the actual Claimant Trust Beneficiaries in the Plan and CTA." Valuation Order at 5 (quoting CTA §§ 3.12(a), (b)).

E. Plaintiffs File the Complaint

13. On May 10, 2023, Plaintiffs commenced this Action against Highland and the Claimant Trust by filing their complaint [Adv. Pro. No. 23-03038, Docket No. 1] (the "Complaint"). In their Complaint, Plaintiffs seek an equitable accounting of the Claimant Trust Assets so they can determine if their Contingent Claimant Trust Interests "are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries."

14. In their first count ("Count One"), Plaintiffs request an accounting "regarding the Claimant Trust Assets, including the amount of cash and the remaining non-cash assets, and details

of all transactions that have occurred since the wall of silence was erected, and all liabilities." Plaintiffs maintain, *inter alia*, that "[d]ue to the lack of transparency into the assets of the Claimant Trust, Plaintiffs are unable to determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests." Compl. ¶¶ 82-88.[10]

15. In their second count ("Count Two"), Plaintiffs seek a declaratory judgment regarding the value of the Claimant Trust Assets. Plaintiffs specifically maintain that "[o]nce Defendants are compelled to provide information about the Claimant Trust Assets, Plaintiffs seek a determination from the Court of the relative value of the Claimant Trust Assets compared to the bankruptcy estate obligations." Compl. ¶ 90.

16. In their third count ("Count Three," and collectively with Count One and Count Two, the "Claims"), Plaintiffs seek a declaration and determination that "[i]n the event that the Court determines that the Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid … the conditions are such that their Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries." Compl. ¶ 94.

F. The Court Denies HMIT Leave to File Adversary Proceeding

17. Around the same time, HMIT separately filed its *Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3699], which was later supplemented and

[10] Plaintiffs allege that Highland "failed and refused to file quarterly 2015.3 reports, leaving stakeholders, including Plaintiffs, in the dark about the value of the estate and the mix of assets it held, bought or sold." Compl. ¶ 41. Plaintiffs' allegations about the lack of transparency in the Bankruptcy Case is tired and purposefully misleading. ***Highland has complied with every single pre- and post-Effective Date disclosure obligation***—except for the Rule 2015.3 disclosure. The Fifth Circuit has denied Dugaboy's appeal of the denial of its post-confirmation motion to compel compliance with Rule 2015.3, (*see* Case No. 22-10831, Document No. 46), and this Court has found that "it is not as though the Claimant Trustee is operating 'under the radar'" (Valuation Order at 5). Moreover, as previously disclosed in this Court, the failure to file the 2015.3 reports during the case was a direct result of actions of persons who work for Plaintiffs and their affiliates, and in any event, at all time Plaintiffs' control person had full access to the information they cry about. Nevertheless, Plaintiffs continue with their baseless allegations about the lack of transparency in this case.

modified [Docket Nos. 3760, 3815, and 3816] (collectively, the "Motion for Leave").[11] In the Motion for Leave, HMIT sought leave to sue Highland, Mr. Seery, Stonehill, and Farallon[12] falsely alleging both direct and derivative claims for "insider trading" and breach of fiduciary duty (the "Proposed Claims").

18. On August 25, 2023, this Court issued its order denying the Motion for Leave on multiple grounds. *See Highland Cap.*, 2023 WL 5523949 (the "Order Denying Leave"). In the Order Denying Leave, the Court found that, *inter alia*: (a) HMIT was not a "Claimant Trust Beneficiary" and not a "beneficial owner" of the Claimant Trust; (b) HMIT should not be treated as a "Claimant Trust Beneficiary" after "considering the current value of the Claimant Trust Assets ….''; (c) HMIT held "only an ***unvested*** contingent interest in the Claimant Trust," and "HMIT's status as a 'beneficiary' of the Claimant Trust is defined by the CTA itself, pure and simple;" and (d) the Court "does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested ...." *Id.* at 35.

G. Highland Files the Pro Forma Adjusted Balance Sheet Ahead of Mediation in July 2023

19. On April 20, 2023, James Dondero and certain of his controlled affiliates (collectively, the "Dondero Parties") filed their *Motion to Stay and to Compel Mediation* [Docket No. 3752] (the "Mediation Motion"), which was granted, in part, on August 2, 2023, [Docket No. 3897].[13] On July 6, 2023, in furtherance of mediation and in compliance with an agreed-upon Court order [Docket 3870], Highland filed a *pro forma* adjusted balance sheet [Docket No. 3872] (the "Pro Forma Adjusted Balance Sheet"). The Pro Forma Adjusted Balance Sheet disclosed a

[11] Each version of the Motion for Leave attached a proposed complaint [Docket Nos. 3699-1, 3760-1, 3815-1, 3816-1] (the last version, the "Proposed Complaint").

[12] Stonehill and Farallon refer to, respectively, Stonehill Capital Management, LLC and Farallon Capital Management, LLC.

[13] The mediation did not result in a settlement. *See* Docket No. 3964.

point-in-time $152 million in assets (of which only $37 million was cash or restricted cash) and $130 million in liabilities for a total equity value of $22 million, which, even assuming the equity value could be distributed (and it cannot be), is well short of the $126 million needed to pay Allowed Class 8 and Class 9 claims (exclusive of interest).

20. The information disclosed on the Pro Forma Adjusted Balance Sheet was consistent with information that had already been disclosed in the Bankruptcy Case as of April 2023, [*see* Bankr. Docket Nos. 3756 and 3757] (the "Post-Confirmation Reports"), and through these disclosures should have resolved any good faith dispute around receiving sufficient information with which to make a global settlement offer. These enhanced Post-Confirmation Reports were publicly filed to provide interested parties substantially more information than was required. *See, e.g.*, Docket No. 3757 at 13-15 (Addendum showing (i) "Quarter-ending cash, Disputed Claims Reserve, and Indemnity Trust summary;" (ii) liabilities, including remaining disputed/expunged or pending claims, (iii) disbursements to Classes 8 and 9, and (iv) "Remaining investments, notes, and other assets").

H. HMIT Seeks Reconsideration of Order Denying Leave Based on the Pro Forma Adjusted Balance Sheet

21. On September 8, 2023, HMIT filed its motion for reconsideration of the Order Denying Leave [Docket No. 3905] (the "Motion to Reconsider"), falsely and misleadingly contending that the Pro Forma Adjusted Balance Sheet (a) provided an accounting of the Claimant Trust Assets and (b) proved that (i) the value of the Claimant Trust Assets exceeded liabilities and (ii) HMIT was "in the money" and (c) its interests were likely to vest and that HMIT therefore had standing as a "Claimant Trust Beneficiary." On October 6, 2023, the Court denied the Motion to Reconsider [Docket No. 3936] (the "Order Denying Reconsideration"). The Court found that, in pertinent part, the Balance Sheet did not "demonstrate that HMIT's contingent interest is 'in the

money,'" noting that "HMIT does not give proper attention to the voluminous supplemental notes" in the Balance Sheet that are "integral to understanding the numbers therein." *Id.* at 3 (citing Notes 5 and 6 of the Balance Sheet which show that Highland will operate at an "operating loss prospectively," and that the administrative expenses and legal fees continue to deplete assets, among other things). The Court also found that the Balance Sheet did not constitute "newly discovered evidence" because it did not contain information that was materially different from the information disclosed on the Post-Confirmation Reports, filed three months earlier. *Id.* at 2-3.

III. ARGUMENT

A. The Court Does Not Have Subject Matter Jurisdiction Over Counts One and Three

22. The Court does not have subject matter jurisdiction to adjudicate Counts One and Three. Counts One and Three are moot, and Count Three impermissibly seeks an advisory opinion.

1. Legal Standard

23. A motion under Rule 12(b)(1) must be considered before any motion on the merits because subject matter jurisdiction is required to determine the validity of any claim. *See Moran v. Kingdom of Saudi Arabia*, 27 F.3d 169, 172 (5th Cir. 1994). "Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (per curiam). "The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction." *Id.* "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Mississippi, Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998) (internal quotations omitted).

2. Counts One and Three are Moot

i. Count One is Moot in Light of the Pro Forma Adjusted Balance Sheet

24. Count One is moot in light of the Pro Forma Adjusted Balance Sheet and must be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1). For a court to have subject matter jurisdiction over a suit, a "controversy must remain live throughout the suit's existence." *Bazzrea v. Mayorkas*, 3:22-CV-265, 2023 WL 3958912, at *3 (S.D. Tex. June 12, 2023). "A case becomes moot—and therefore no longer a 'Case' or 'Controversary' for purpose of Article III—when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Yarls v. Bunton*, 905 F.3d 905, 909 (5th Cir. 2018) (internal quotations omitted).

25. Here, the issue presented in Count One is no longer "live." In Count One, Plaintiffs seek (a) "information regarding the Claimant Trust assets," including the amount of assets and liabilities, so that (b) Plaintiffs can "determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests." Compl. ¶¶ 82-88. As discussed *supra*, the Pro Forma Adjusted Balance Sheet provides this very information. It shows the value of the Claimant Trust Assets, the Claimant Trust's liabilities, and the potential equity value available for Claimant Trust Beneficiaries (assuming all Claimant Trust Assets are liquidated at current valuations and liabilities are fixed). HMIT admitted as much in its Motion to Reconsider when it specifically (but incorrectly) maintained that, based on the assets and liabilities shown on the Pro Forma Adjusted Balance Sheet, "***[HMIT's] Contingent Claimant Trust Interest will vest, or put colloquially, [HMIT] is 'in the money.'"*** Motion to Reconsider ¶¶ 5-8 (emphasis added).[14] The Post-

[14] Although Plaintiffs have effectively admitted the Pro Forma Adjusted Balance Sheet moots their requested relief, as this Court is aware, the current value of the Claimant Trust Assets does not dictate when or if Plaintiffs' Contingent Trust Interests will ever vest. Whether and when Contingent Trust Interests may someday vest depends upon the satisfaction of the conditions set forth in the CTA and the Plan, and this Court "does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested ..." regardless of whether the value of the pro forma assets exceeds the pro forma value of the liabilities on a particular date. Order Denying Leave at *35.

Confirmation Reports, filed prior to the Complaint in filed in April 2023, similarly disclose the financial information requested in Count One, including, *inter alia*, the cash and the identification of remaining assets.

26. The Pro Forma Adjusted Balance Sheet and Post-Confirmation Reports have thus eliminated the "actual controversary" at the core of Count One, and there is no conceivable relief available to Plaintiffs through this claim that has not already been provided. Count One is therefore moot. *See Bazzrea*, 2023 WL 3958912, at *4 (finding plaintiffs' claims moot where events that occurred after the complaint was filed "eliminated the actual controversy—the court cannot provide effectual relief and thus the plaintiffs' claims are moot.") Accordingly, Plaintiffs have not met their burden to establish that the Court has subject matter jurisdiction over Count One, and it should be dismissed under Rule 12(b)(1).

ii. Count Three is Moot Because the Court has Already Held that Contingent Claimant Interests are Not "In the Money"

27. Count Three, seeking a declaration regarding whether Plaintiffs' Contingent Trust Interests "are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries," Compl. ¶ 94, is moot because the Court already decided this issue. As discussed above, in its Motion to Reconsider, HMIT incorrectly argued that the Pro Forma Adjusted Balance Sheet showed that HMIT's Contingent Trust Interests were "in the money" and likely to vest, rendering HMIT a "Claimant Trust Beneficiary." In its Order Denying Reconsideration, the Court found that Contingent Trust Interests are not "in the money,"[15] and that HMIT is, therefore, not a Claimant Trust Beneficiary. As the Court explained, Plaintiffs' reliance on the assets and liabilities disclosed on the Pro Forma Adjusted Balance Sheet in support of its argument that its interests

[15] Although the Court's finding related to HMIT's Contingent Trust Interest, this ruling applies equally to Dugaboy, because both Plaintiffs both hold Contingent Trust Interests.

were "likely to vest" demonstrated a fundamental misunderstanding of the Pro Forma Adjusted Balance Sheet and the vesting mechanics in the CTA. Again, under the CTA, Contingent Trust Interests vest only if, among other things, Class 8 and Class 9 are paid in full. And as the Court further stated, the Claimant Trust Assets at any point in time will only be available for distribution to those classes after they are monetized and all fees and expenses, including indemnification obligations, are satisfied. *See* Order Denying Reconsideration at 3. In other words, as this Court found, unless and until such contingent obligations are *known and satisfied* and all Class 8 and Class 9 Claims have been actually paid in full, Contingent Trust Interests are not "in the money" and will not "vest."

28. The Court's finding in its Order Denying Reconsideration, in which the Court determined that Contingent Trust Interests are not "in the money," has thus eliminated any "live" controversy presented by the relief sought in Count Three, namely, a determination whether Plaintiffs' Contingent Trust Interests "are likely to vest into Claimant Trust Interests." For the foregoing reasons, Counts One and Three are moot. The Court does not have subject matter jurisdiction over Counts One and Three under Rule 12(b)(1), and such claims should be dismissed.

3. Count Three Improperly Seeks an Advisory Opinion

29. The Court also does not have subject matter jurisdiction to rule on Count Three because it impermissibly seeks an advisory opinion. Under Article III of the Constitution, "no justiciable controversy is presented when ... the parties are asking for an advisory opinion." *Paragon Asset Co. Ltd v. Gulf Copper & Mfg. Corp.*, 1:17-CV-00203, 2020 WL 1892953, at *1 (S.D. Tex. Feb. 11, 2020) (internal quotations omitted). The "well-established constitutional ban on advisory opinions" seeks to ensure that federal courts determine "specific disputes between parties, rather than hypothetical legal questions, and in doing so, conserve judicial resources." *Texas v. Travis County*, 272 F. Supp. 3d 973, 980 (W.D. Tex. 2017), *aff'd sub nom. Texas v. Travis*

County, Texas, 910 F.3d 809 (5th Cir 2018); *see also Hodgson v. H. Morgan Daniel Seafoods, Inc.*, 433 F.2d 918, 920 (5th Cir. 1970) ("We cannot render an advisory opinion on hypothetical or abstract facts.")

30. In Count Three, Plaintiffs impermissibly ask the Court to determine whether (a) current Claimant Trust Beneficiaries "***may be*** indefeasibly paid" and (b) "Contingent Claimant Trust Interests ***are likely*** to vest." Compl. ¶ 94 (emphasis added). Any such determination is dependent upon several hypothetical future events concerning, among other things, asset values and recoveries (*e.g.*, whether the Fifth Circuit sustains the Dondero Parties' appeal in the Notes Litigation, and the Claimant Trust actually recovers the bonded amounts), actual future Claimant Trust expenses, and the nature and extent of indemnification obligations.[16] As discussed *supra*, indemnification expenses are senior to distributions to the Claimant Trust Beneficiaries, and Claimant Trust Beneficiaries cannot be paid in full unless and until such indemnification expenses are liquidated and satisfied. Contingent Trust Interests therefore cannot vest unless and until indemnification claims are known and paid (and all Class 8 and Class 9 Claims are thereafter paid).

31. In light of the widespread litigation, additional threatened litigation, and continued accrual of related legal fees and expenses, the amount of indemnification obligations remains unknown. Thus, any determination as to whether Plaintiffs' Contingent Trust Interests "are likely to vest" is contingent upon a number of unknown and contingent variables, including (a) the amount of indemnification obligations and (b) and whether sufficient cash remains to pay Classes 8 and 9 in full after those indemnification obligations (and other expenses) are satisfied. Such an abstract determination is precisely the type of relief precluded by the constitutional ban on advisory

[16] The Highland Parties request that the Court take judicial notice of the active litigation in the Bankruptcy Case, as reflected in the *Amended Notice of Filing of Active Litigation Involve and/or Affecting the Highland Parties* [Docket No. 3880].

opinions. *See JPay LLC v. Burton*, 3:22-CV-1492-E, 2023 WL 5253041, at *10 (N.D. Tex. Aug. 15, 2023) (dismissing case for lack of subject matter jurisdiction and declining "to render an advisory opinion on the value of the aggregated claims of a contingent, theoretical class" where such determination is contingent on a "hypothetical facts"). Accordingly, Plaintiffs have failed to show that the Court has subject matter jurisdiction to adjudicate Count Three, and it should be dismissed under Rule 12(b)(1).

B. Count Three is Barred by Collateral Estoppel

32. Count Three is also barred by the doctrine of collateral estoppel. Collateral estoppel is referred to as "issue preclusion" and prevents relitigating the same issues or facts decided in a prior proceeding. Collateral estoppel precludes the re-litigation of issues or facts actually litigated in the original action, whether or not the second suit is based on the same cause of action. *See Houston Professional Towing Ass'n v. City of Houston*, 812 F.3d 443, 447 (5th Cir. 2016). "By precluding parties from contesting matters that they have had a full and fair opportunity to litigate, [collateral estoppel] protect[s] against the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibility of inconsistent decisions." *In re Reddy Ice Holdings, Inc.*, 611 B.R. 802, 808 (Bankr. N.D. Tex. 2020) (internal quotations omitted). Collateral estoppel applies when: "(1) the issue at stake is identical to the one involved in the earlier action; (2) the issue was actually litigated in the prior action; and (3) the determination of the issue in the prior action was a necessary part of the judgment in that action." *Oyekwe v. Research Now Group, Inc.*, 542 F. Supp. 3d 496, 506 (N.D. Tex. 2021), appeal dismissed, 21-10580, 2021 WL 8776378 (5th Cir Dec. 28, 2021). These elements are easily met here.

33. The issue presented by Count Three—whether Plaintiffs' "Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests" (Compl. ¶ 94)—is the same as the

issue at stake, and actually litigated, in connection with the Motion for Leave. In support of its Motion to Reconsider, HMIT argued that it had standing to assert its Proposed Claims because HMIT was "in the money" and its Contingent Trust Interests "will vest." *See* Motion to Reconsider. In adjudicating the Motion to Reconsider, the Court determined that HMIT did not have standing to bring the Proposed Claims because its Contingent Trust Interests were not "in the money." *See* Order Denying Reconsideration at 3. The issue of whether Contingent Trust Interests were "in the money" for purposes of the Motion to Reconsider, and whether Contingent Trust Interests are "likely to vest," for purposes of this Complaint, are one and the same. This issue was, without question, litigated in connection with the Motion for Leave. The issue was raised by HMIT in its Motion to Reconsider, contested by the Highland Parties, submitted to this Court for adjudication, and expressly determined. *See Reddy*, 611 B.R. at 810 ("The requirement that an issue be 'actually litigated' for collateral estoppel purposes simply requires that the issue is raised, contested by the parties, submitted for determination by the court, and determined.") (internal quotations omitted). The first and second elements of collateral estoppel are thus met.

34. The third prong of collateral estoppel—whether the Court's prior ruling on this same issue was necessary or essential to the Order Denying Reconsideration—is likewise satisfied. The Court's finding that Contingent Trust Interests were not "in the money" was necessary to the Court's ultimate determination that HMIT did not have standing to assert the Proposed Claims. In other words, to determine whether HMIT could file the Motion for Leave, and later whether to grant the Motion to Reconsider, the Court was required to consider whether Contingent Trust Interests have vested. This was the only issue underlying the Motion to Reconsider, and it was necessary to the Order Denying Reconsideration. Plaintiffs are therefore collaterally estopped from re-litigating this same issue of whether their Contingent Trust Interests will vest. *See In re*

Derosa-Grund, 567 B.R. 773, 798 (Bankr. S.D. Tex. 2017) (debtor collaterally estopped from re-litigating issue of whether debtor owned film treatment where this same issue "was necessary" to determination on motion to reopen; was determined; and "Debtor cannot now relitigate this issue in an effort to prove that EMG owns the Treatment").[17] Accordingly, Count Three is barred by collateral estoppel, and for this additional reason, this claim should be dismissed.

C. Plaintiffs' Claims Fail as a Matter of Law

35. Even if the Court had subject matter jurisdiction over Counts Two and Three, the Complaint fails to state plausible claims upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6) as to all Counts. To survive a motion to dismiss pursuant to Rule 12(b)(6), a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550 U.S. at 556). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (quoting *Twombly*, 550

[17] Although Dugaboy was not a party in the Motion for Leave, literal identity of the parties is not required as part of the collateral estoppel analysis so long as the party against whom enforcement is sought was in privity with a party involved in the initial decision. Privity exists where a non-party's interests were adequately represented in the first suit. *See Derosa-Grund*, 567 B.R. at 798 n. 21 (Bankr S.D. Tex. 2017) (noting "federal courts will bind a nonparty whose interests were represented adequately by a party in the original suit," and "[t]he Fifth Circuit has found that adequate representation exists between a party and a non-party 'where a party to the original suit is so closely aligned to the non-party's interests as to be his virtual representative.'") (quoting *Terrell v. DeConna*, 877 F.2d 1267, 1270 (5th Cir. 1989)). Here, there can be no question that Dugaboy's interests were sufficiently aligned as to the issue of whether Contingent Trust Interests have vested, where both Dugaboy and HMIT hold those interests and Dugaboy was funding HMIT's litigation. *See Meador v. Oryx Energy Co.*, 87 F. Supp. 2d 658, 665 (E.D. Tex. 2000) (non-party's interests were "sufficiently aligned" with party in previous suit for purposes of claim preclusion where, in both cases, "the plaintiffs' claims derive solely from rights" alleging arising from the same conveyance that was interpreted conclusively in prior suit).

U.S. at 557). "When well-pleaded facts fail to meet th[e] [*Twombly*] standard, the complaint has alleged—but it has not shown—that the pleader is entitled to relief." *Id.* at 679. Dismissal is proper under Rule 12(b)(6) when, taking the facts alleged in the complaint as true, it appears that the plaintiff "cannot prove any set of facts that would entitle it to the relief it seeks." *C.C. Port, Ltd. v. Davis-Penn Mortg. Co.*, 61 F.3d 288, 289 (5th Cir. 1995). "[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record." *Johnson v. Wells Fargo Bank, NA*, 999 F. Supp. 2d 919, 926 (N.D. Tex. 2014) (internal quotations omitted). Courts have "complete discretion" to either accept or exclude such evidence for purposes of the motion to dismiss. *Id*.

1. Plaintiffs' Equitable Accounting Claim Fails as a Matter of Law

36. Count One, which seeks an accounting of the Claimant Trust Assets, fails to state a claim upon which relief can be granted under Rule 12(b)(6).

i. Plaintiffs Have No Rights to Financial Information Because They are Not Claimant Trust Beneficiaries

37. Plaintiffs have no rights to information regarding the Claimant Trust Assets.

38. ***First***, as discussed above and as this Court has found, it is indisputable that Plaintiffs, holding only "Contingent Trust Interests," are not "Beneficiaries" under the CTA.[18] *See* Order Denying Leave at *35. As such, Plaintiffs have *no rights* under the CTA. *See id.* (quoting CTA, § 5.1(c)). Plaintiffs ignore this language and fail to offer any support for their broad request for financial information, other than vaguely asserting that they "are unable to determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests." Compl. ¶ 83. As this Court found, while Plaintiffs may be "frustrated" that they did not negotiate the same rights

[18] As discussed above, the Court may take judicial notice of the CTA. *See Johnson*, 999 F. Supp. 2d at 926 (taking judicial notice of document that is a matter of public record when considering Rule 12(b)(6) motion).

as the "actual Claimant Trust Beneficiaries," (Valuation Order at 5), there is simply no foundation—in law, equity, or otherwise—for Plaintiffs' request for financial information. Plaintiffs acknowledge that they are not "Claimant Trust Beneficiaries" but nevertheless imply, without any supporting facts or authority, that they should not only be treated as such, but should receive information not otherwise available to Claimant Trust Beneficiaries. In so arguing, Plaintiffs blatantly disregard the plain terms of the CTA, the Plan, and this Court's prior orders, which expressly foreclose the relief sought in their Claims.

39. ***Second***, and for largely these same reasons, equitable relief is not available where, as here, the parties' rights and obligations at issue are set forth in the agreement. *See In re Am. Home Mortg. Holdings, Inc.*, 386 Fed. Appx. 209, 212-13 (3d Cir. 2010) (affirming bankruptcy court's denial of equitable relief to distributions under trust documents where, among other things, the trust documents controlled distribution of monthly payments, and the Trust Certificate "cannot be rewritten on equitable grounds," and noting "[i]n interpreting the provisions of the Trust Documents, we apply Delaware law, which instructs that a party is bound by the plain meaning of clear and unequivocal contract terms."); *Grunstein v. Silva*, CIV.A. 3932-VCN, 2009 WL 4698541, at *6 (Del. Ch. Dec. 8, 2009) ("Where those [fiduciary] rights arise from a contract that specifically addresses the matter at issue, the court evaluates the parties' conduct within the framework they themselves crafted, instead of imposing more broadly defined equitable duties.").

40. Here, the CTA expressly provides that (a) Plaintiffs are not Beneficiaries of the Claimant Trust, and, therefore, (b) Plaintiffs have no rights under the CTA. *See supra* ¶¶ 10-13. *supra*. Accordingly, the plain language of the CTA forecloses the notion that Plaintiffs have any right—equitable or otherwise—to financial information on the Claimant Trust Assets. Plaintiffs'

attempt to re-write the CTA on equitable grounds in order to grant non-beneficiaries information rights is entirely without merit.

41. ***Third***, even if Plaintiffs were Claimant Trust Beneficiaries, any information rights would still be limited. Section 3819(a) of the Delaware Statutory Trust Act (the "Trust Act") governs information rights for beneficiaries of Delaware statutory trusts and ascribes primacy to the trust's agreement:

> ***Except to the extent otherwise provided in the governing instrument of a statutory trust***, each beneficial owner of a statutory trust ... has the right, ***subject to such reasonable standards*** ... ***as may be established by the trustees or other persons who have authority to manage the business and affairs of the statutory trust***, to obtain from the statutory trust from time to time upon reasonable demand for any purpose reasonably related to the beneficial owner's interest as a beneficial owner of the statutory trust ....

12 Del. C. § 3819(a) (emphasis added); *see also In re Natl. Coll. Student Loan Trusts Litig.*, 251 A.3d 116, 150 (Del. Ch. 2020) (Trust Agreements "are the governing instruments of the Trusts under the DST Act.") Here, the CTA *does* "otherwise provide." As discussed *supra*, pursuant to the CTA and the Plan, only "Claimant Trust Beneficiaries," by design, have information rights, which are set forth in section 3.12(b) of the CTA. *See* CTA § 3.12(b) (providing that the **only** entities with information rights under the Plan are "Claimant Trust Beneficiaries.") And the Claimant Trust Beneficiaries' rights (a) are limited, (b) do not include rights to asset or subsidiary level information, and (c) can be further limited by the Claimant Trustee as appropriate to "maintain confidentiality."

42. Any duties running from the Claimant Trustee to actual Beneficiaries of the Claimant Trust relating to the disclosure of information are expressly limited by the CTA. 12 Del. C. § 3806(c) ("To the extent that … a trustee … has duties (including fiduciary duties) to a … beneficial owner or to another person that is a party to or is otherwise bound by a governing instrument, the trustee's … duties may be … restricted or eliminated by provisions in the governing

instrument ….") Thus, even the actual Claimant Trust Beneficiaries would not have the broad information rights that Plaintiffs (who, again, are not even Claimant Trust Beneficiaries) seek here. This further undermines Plaintiffs' unsupported allegations that they have any equitable rights to information on the Claimant Trust Assets.

ii. Any Claim for an Equitable Accounting Fails Under Delaware Law

43. To the extent Count One is treated as one for an accounting cognizable in equity, it likewise fails. Under Delaware law,[19] an accounting is not a cause of action sounding in equity. *Williams v. Lester*, 2023-0042-SG, 2023 WL 4883610, at *3 (Del. Ch. Aug. 1, 2023). It is an equitable remedy by which a fiduciary may be caused to account for property subject to trust. *Id.* A claim for an accounting lies only where "(i) there are mutual accounts between parties, (ii) a fiduciary relationship exists and the defendant has a duty to account, or (iii) the accounts are all on one side but there are circumstances of great complication." *Bus. Funding Group, Inc. v. Architectural Renovators, Inc.*, C.A. 12655, 1993 WL 104611, at *2 (Del. Ch. Mar. 31, 1993); *see also McMahon v. New Castle Assoc.*, 532 A2d 601, 605 (Del. Ch. 1987) ("[A] request for an accounting by a *fiduciary* is a recognized basis for chancery jurisdiction," noting "equity shall rarely, if ever, have to be resorted to in order to determine the state of accounts in a purely commercial relationship."); 12 Del. C. § 3806(c). Where, as here, an agreement sets forth the fiduciary relationship between the parties, an extra-contractual relationship cannot be created. *See Grunstein v. Silva*, CIV.A. 3932-VCN, 2009 WL 4698541, at *6 (Del. Ch. Dec. 8, 2009) ("Where those [fiduciary] rights arise from a contract that specifically addresses the matter at issue, the court evaluates the parties' conduct within the framework they themselves crafted, instead of imposing more broadly defined equitable duties.")

[19] There can be no dispute that Delaware law applies to Plaintiffs' Claims. The Claimant Trust is a statutory trust formed under the laws of Delaware and governed by the Trust Act. Trust Act, 12 Del. C. § 3801 *et seq.*

44. The CTA governs the parties' rights and obligations. Pursuant to the CTA, Plaintiffs, as holders of Contingent Trust Interests, "***shall have no rights***" thereunder, and there is no underlying fiduciary relationship between the Claimant Trustee and Plaintiffs. Plaintiffs do not allege as such, nor could they. The Court cannot impose any duties of disclosure other than what is set forth in the CTA. Plaintiffs' equitable accounting claim fails as a matter of law. *See Bus. Funding Group*, 1993 WL 104611, at *2 (denying claim for equitable accounting where "the parties' relationship, which is defined exclusively by the purchase and sale agreements, involves an arm's-length commercial dealing and bears none of the earmarks of a fiduciary relationship," noting the "plaintiff negotiated the protection it needed in the [] agreements," which "does not create a fiduciary relationship"); *Natl. Coll.*, 251 A.3d at 150 ("[T]he plain language of the Trust Agreement forecloses any notion that the Owner Trustee owes any extra-contractual duties (fiduciary or otherwise)" to non-owner deal parties, noting "[i]f the drafters of the Trust Agreement … had intended the Owner Trustee to administer the Trusts in the interests of another deal party, the Trust Agreements would have said so.").[20]

45. Under these circumstances, Plaintiffs fail to show why equity should abrogate the terms of the CTA agreement to create extra-contractual rights relating to the disclosure of financial information or an accounting. This is especially true in light of Plaintiff HMIT's "unclean hands." HMIT is a defendant in an action on a note owed to Highland with current principal and interest owed in excess of $98 million. *See* Adv. Pro. No. 21-03076-sgj, Docket No. 1, Count 24 (breach of contract claim arising out of HMIT note). HMIT cannot seek equitable relief relating to the

[20] *See also Henry v. CitiMortgage, Inc.*, 4:11-CV-83, 2011 WL 2261166, at *8 (E.D. Tex. May 10, 2011), *report and recommendation adopted*, 2011 WL 2214007 (E.D. Tex. June 7, 2011) (dismissing claim for equitable accounting where "Plaintiff does not explain why she is entitled to an accounting, let alone allege any facts to support her requests," noting "an accounting is an equitable remedy and not an independent cause of action."); *Johnson v. Wells Fargo Bank, NA*, 999 F. Supp 2d 919, 935 (N.D. Tex. 2014) (dismissing plaintiff's request for equitable relief because there is a contract between the parties that governs the dispute.")

disclosure of assets of the Claimant Trust when HMIT's own behavior has violated principles of equity and righteous dealing on issues relevant to the instant Action. Plaintiffs' equitable claim for financial information on the Claimant Trust is without foundation or support, blatantly disregards the CTA and other applicable documents, and fails to allege a cognizable claim. For this additional reason, Count One should be dismissed.

2. Plaintiffs' Claims for Declaratory Relief Fail as a Matter of Law

46. Plaintiffs' claims for declaratory relief—Counts Two and Three—also fail to state claims under Rule 12(b)(6). To sustain a claim for declaratory or injunctive relief, a plaintiff must first plead a viable underlying cause of action. *See Collin County, Tex. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 170-71 (5th Cir. 1990)) (the "federal declaratory judgment act is remedial only … it is the defendant's underlying cause of action against the plaintiff that is litigated in a suit under the act"); *see also Henry*, 2011 WL 2261166, at *8 ("The Declaratory Judgment Act is a procedural device that creates no substantive rights and requires the existence of a justiciable controversy."); *Sivertson v. Citibank, N.A. as Tr. for Registered Holders of WAMU Asset-Back Certificates WAMU Series No. 2007-HE2 Tr.*, 390 F. Supp. 3d 769, 794 (E.D. Tex. 2019) (same). "Where all the substantive, underlying claims are subject to dismissal, a claim for declaratory relief cannot survive." *Wallace v. U.S. Bank, N.A.*, No. 4:17-CV-437, 2018 WL 1224508, at *2 (E.D. Tex. Mar. 9, 2018).

47. Plaintiffs' Claims for declaratory relief in Counts Two and Three fail to state plausible claims because there is no underlying controversy. They are premised on Count One, which, as discussed, is not a cognizable claim. *See* Compl. ¶¶ 90 ***("[o]nce Defendants are compelled to provide information about the Claimant Trust Assets***, Plaintiffs seek a determination from the Court of the relative value of the Claimant Trust Assets compared to the bankruptcy estate obligations," and a declaration that "the conditions are such that their Contingent

Claimant Trust Interests are likely to vest into Claimant Trust Interests") (emphasis added). Since there is no basis to "compel" the disclosure of financial information and Count One fails as a matter of law, Plaintiffs' claims for declaratory relief, which are dependent upon such disclosure, likewise fail as a matter of law. *See Johnson*, 999 F. Supp. 2d at 935 ("Because the undersigned has determined that none of Plaintiffs claims can withstand dismissal at this time, Plaintiff's requests for declaratory and injunctive relief as well as an accounting cannot survive.")[21]

48. The value of the Claimant Trust Assets and liabilities at any given point is irrelevant to a determination whether Plaintiffs' Contingent Trust Interests "are likely to vest." Contingent Trust Interests cannot vest until (a) all Claimant Trust Assets are liquidated, (b) all expenses, including indemnification expenses, are known and have been satisfied, and (c) Claimant Trust Beneficiaries are thereafter paid in full. Until these and other critical variables are known, the financial information Plaintiffs seek in their Complaint is meaningless for purposes of determining "vesting." *See supra* ¶¶ 36-27. There is no justiciable controversy underlying Plaintiffs' claims for declaratory relief. Counts Two and Three should be dismissed. The Claims fail as a matter of law, and the Complaint should be dismissed in its entirety.

IV. CONCLUSION

WHEREFORE, Highland respectfully requests that the Court grant the Motion and enter an order in the form annexed to the Motion as **Exhibit A**, and grant such further relief as the Court deems just and proper.

[21] *See also Washington v. JP Morgan Chase Bank, N.A.*, 3:18-CV-1870-K-BN, 2019 WL 587289, at *8 (N.D. Tex. Jan. 18, 2019), *report and recommendation adopted,* 2019 WL 586048 (N.D. Tex. Feb. 12, 2019) ("Because Plaintiff has failed to state a plausible underlying claim, Plaintiff's claims for injunctive and declaratory relief should also be dismissed."); *Henry*, 2011 WL 2261166, at *9 ("As Plaintiff has alleged no facts that would lead to the conclusion that a present controversy exists between her and Defendants, Plaintiff does not have a right to relief under the Declaratory Judgment Act.")

Dated: November 22, 2023

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

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

THE DUGABOY INVESTMENT TRUST AND HUNTER MOUNTAIN INVESTMENT TRUST'S RESPONSE TO THE HIGHLAND PARTIES' MOTION TO DISMISS COMPLAINT TO (I) COMPEL DISCLOSURES ABOUT THE ASSETS OF THE HIGHLAND CLAIMANT TRUST and (II) DETERMINE (A) RELATIVE VALUE OF THOSE ASSETS, and (B) NATURE OF PLAINTIFFS' INTEREST IN THE CLAIMANT TRUST

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Other Authorities

I. PRELIMINARY STATEMENT

1. Plaintiffs filed this adversary proceeding against Defendants Highland Capital Management, L.P. ("HCMLP") and the Highland Claimant Trust (the "Claimant Trust") (collectively, "Defendants") to obtain critical information about the assets and liabilities of the Claimant Trust, which was established under the Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (the "Plan") [Bankr. Dkt. 1943-1] for the benefit of Claimant Trust Beneficiaries to monetize and liquidate the assets of the HCMLP bankruptcy estate.[1] Plaintiffs have sought this information since June 2022, while HCMLP spent the last 18 months exhausting significant resources to keep the financial status of the estate out of the public eye. Ironically, in the interim, the litigation trustee voluntarily stayed his avoidance action, effectively acknowledging what Plaintiffs have been arguing – that there is more than enough money in the estate to pay all creditors with interest. This is consistent with the disclosure of the Pro-Forma Adjusted Balance Sheet ("Balance Sheet")[2] in July 2023 evidencing that Plaintiffs are *in the money*[3] after all creditors have been paid with interest.

2. At the same time, HCMLP and the Claimant Trust have blocked Plaintiffs (and have indicated an intent to continue to block them) from seeking relief to which they would otherwise be entitled, by contending without evidence that Plaintiffs have no standing because they are purportedly not "in the money" – *i.e.*, able or even likely to recover anything from the Claimant Trust.

3. Given Plaintiffs' established interest and Defendants' "heads-I-win, tails-you-lose" arguments, further disclosure of the estate's financial status is warranted and required. As a result,

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[1] Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust ("Complaint"), Dkt. No. 1, at ¶¶ 1, 64.

[2] Bankr. Dkt. 3872 at p.5.

[3] "In the money" is a colloquial term that has been used in this case to mean that the net assets of the Claimant Trust are sufficient to make it certain and/or likely that the Class 10 and/or 11 Claimholders will be entitled to payment from the estate.

Plaintiffs bring three claims in this adversary proceeding: Count One requests an accounting; Count Two requests a declaratory judgment regarding the value of the Claimant Trust assets; and Count Three requests a declaratory judgment and determination regarding the nature of Plaintiffs' interests in the Claimant Trust. These claims are necessary to rebut HCMLP and the Claimant Trust's continued disputation of the financial status of the estate.

4. Although the Balance Sheet disclosed the positive net value of the estate, HCMLP and the Claimant Trust continue to deny the estate's solvency and to block Plaintiffs' efforts to gain further insight into the financial condition of the estate — what assets are being sold and what expenses can be avoided. Plaintiffs are entitled to the information that will enable them to advocate to maximize recovery for former equity who are *in the money*.

5. Defendants' motion to dismiss should be seen in this light, and also viewed with skepticism due to the conflicts of interest, discussed below, that taint the decision-making of the Debtor and Claimant Trustee - who have a vested interest in obscuring the finances of Claimant Trust in order to justify keeping the estate open and maintaining lucrative positions for its administrators.[4]

6. Defendants engage in doublespeak when they argue that the disclosure of the Balance Sheet moots the Plaintiffs' claims, while also arguing that Plaintiffs cannot rely on the Balance Sheet because it reflects nothing more than alleged "estimates" and that market forces will cause variances. They cannot have it both ways.

7. Defendants also claim, albeit mistakenly, that Plaintiffs are collaterally estopped because the Bankruptcy Court already ruled in a separate proceeding that the Balance Sheet did not establish that Plaintiffs were *in the money*.[5] Plaintiffs disagree with Defendants' interpretation of the Balance Sheet, the appealed conclusions and impact of the Court's order, and whether collateral

[4] See paragraph 14 to 16 *infra*.

[5] Dkt. 14 at ¶¶ 32-34; Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024, Bankr. Dkt. 3936.

estoppel applies. The Court's order was not essential to the Court's determination on standing in those other proceedings. Furthermore, The Dugaboy Investment Trust ("Dugaboy") was not a party to those proceedings and, therefore, is not subject to collateral estoppel.

8. Plaintiffs' claims present ripe, justiciable controversies, and this Court has subject matter jurisdiction over Plaintiffs' claims. If Defendants' interpretation is wrong, then Plaintiffs have a right to protect their *in the money* status and to determine how the assets are currently being monetized and maximized for their benefit. If Defendants are correct in their interpretation of the data in the Balance Sheet, which they are not and for the sake of argument only, then Plaintiffs are still entitled to further investigate the current financial condition of the estate in light of continued litigation and monetization of assets. Either way, Plaintiff should be allowed to proceed with this action.

9. Thus, Defendants' Motion to Dismiss should be denied for several reasons. First, neither the Balance Sheet nor the Court's order denying reconsideration moot Counts One or Three. Second, Count Three does not seek an advisory opinion. Third, Count Three is not barred by collateral estoppel. Fourth, Count One sufficiently states a claim for an accounting. Lastly, Counts Two and Three sufficiently state a claim for declaratory judgment.

II. BACKGROUND

10. Dugaboy and Hunter Mountain Investment Trust ("HMIT") (collectively, "Plaintiffs") are documented holders of denominated Contingent Claimant Trust Interests that become Claimant Trust Beneficiaries after all creditors are paid in full.[6] The Claimant Trust Agreement ("CTA")

[6] Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust ("Complaint"), Dkt. No. 1, at ¶ 1, 58, 65.

evidences an intent that Plaintiffs become Claimant Trust Beneficiaries when Claimant Trust assets are sufficient to pay all lower ranked claims in full with interest.[7]

11. Defendants filed post-confirmation reports (dated October 21, 2022, January 24, 2023, and April 21, 2023) ("Post-Confirmation Quarterly Reports") demonstrating that there is more than enough money in the estate to satisfy legitimate indemnity obligations and to otherwise pay Class 8 and 9 creditors in full.[8] With more than $100 million in assets remaining to monetize (not even counting related party notes), and almost $550 million in assets already monetized, there is enough money to pay the $387 million in allowed creditor claims.[9] The Post-Confirmation Quarterly Reports for the first quarter of 2023 also show distributions of $270,205,592 to holders of unsecured claims, which is 68% of the total value of allowed general unsecured claims of $397,485,568.[10] This amount is far greater than what was represented at the time of confirmation of the Plan.[11]

12. Plaintiffs have previously sought additional financial information without success.[12] Specifically, Plaintiffs have asked for more granular information to allow an even more detailed evaluation to specifically identify all of the money raised and how it has been used and distributed, ***including at least a hundred million dollars not clearly accounted for,*** based on the Defendants' financial filings.[13] But Defendants steadfastly refuse to provide this information.[14] Instead,

[7] *Id.* at ¶¶ 65-66.

[8] *Id.* at ¶ 2. Under the Plan, General Unsecured Claims were classified as Class 8 and Subordinated Claims were classified as Class 9. *Id.* at ¶ 57. The Plan also classified HMIT's Class B Limited Partnership Interest and Class C Limited Partnership Interest as Class 10 and Dugaboy's Limited Partnership Interest as Class 11. *Id.* at ¶ 58.

[9] *Id.* at ¶ 2.

[10] *Id.* at ¶ 67.

[11] *Id.* at ¶ 67.

[12] *Id.* at ¶ 17.

[13] *Id.* at ¶ 2.

[14] *Id.* at ¶ 17.

Defendants argue that Plaintiffs are wrong – that Plaintiffs are *not in the money* – but Defendants do so without providing any documentation to support their position.

13. Unquestionably, the value of the estate, as held in the Claimant Trust, has significantly changed since Plan confirmation.[15] Many of the estate's major assets have been liquidated or sold since then, increasing the value of the estate, and many of the assets held by the estate have significantly increased in value, also increasing the value of the estate.[16] But these current proceedings will enable Plaintiffs to further evaluate the current value of the estate, evaluate and protect the distributions to which Plaintiffs are entitled, and evaluate whether those who should be safeguarding the estate's value are doing so rather than enabling continual waste. Meanwhile, the selective financial information that has been provided suggests that inappropriate self-dealing has occurred - which on its own justifies a full accounting.[17]

14. Likewise, Defendants have failed to provide an ongoing portrait of the estate's finances. These current proceedings are therefore warranted so Plaintiffs and the bankruptcy court can know exactly what information is being utilized to stymie Plaintiffs' efforts to challenge Defendants' administration of the estate and Claimant Trust and Defendants' attempts to justify unnecessary litigation by the estate against its own beneficiaries. The refusal to provide access to additional financial information is especially troublesome given the blatant conflict of interest that exists. James Seery is both the Claimant Trustee and the Trust Administrator of the Indemnity Subtrust (to whom the trustee of the Indemnity Subtrust answers).[18] This creates an irresolvable conflict whereby Seery purports to have exclusive control over the Indemnity Subtrust—to the

[15] *Id.* at ¶ 68.

[16] *Id.* at ¶ 68.

[17] *Id.* at ¶ 4.

[18] *See Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust And (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief* [Bankr. Dkt. 2491] (the "Subtrust Motion") at ¶ 21, pp. 8-9; Order approving the Subtrust Motion [Bankr. Dkt. 2599].

detriment of all Claimants and holders of Equity Interests. As the Trust Administrator of the Indemnity Subtrust, Seery directs administration of all aspects of the Indemnity Subtrust in his sole discretion.[19] The sole beneficiaries of the Indemnity Subtrust are the Indemnified Parties as defined in Section 8.2 of the CTA and subject to its terms, including Seery himself.

15. Seery has the following duties under the Claimant Trust: a) pay the remaining Class 8 and 9 claims in full, b) file the GUC Certification, and c) vest the Class 10 and 11 Equity Interests.[20] In addition, he has the legal duty to do so timely and "not unduly prolong the duration of the Claimant Trust."[21] But because he is an Indemnified Party, subject to the terms of the CTA, Seery chooses to use the remaining assets of the Claimant Trust to both fund a cash reserve to the Indemnity Subtrust, reportedly now totaling $50 million and, on top of that, create an additional "indemnity reserve" of some $90 million[22] in the Claimant Trust. Simply put, Seery has chosen (unilaterally and self-servingly) to dedicate the assets of the Claimant Trust to erect an "indemnity wall" in front of himself instead of using available funds consistent with his duties as the Claimant Trustee. These facts justify closer scrutiny of the Claimant Trust's finances.

16. By concealing the details of the Claimant Trust, Seery, as Claimant Trustee, can continue to frustrate the Plan by refusing to pay Class 8 and 9 claims holders, refusing to file the GUC Certification confirming that Plaintiffs are *in the money*, and thereby render the treatment of all remaining constituents under the Plan, both claimants and former equity, illusory. All claimants, including the Plaintiffs, have a right and, given Defendants' positions, a need to understand how the Claimant Trust is currently handling their money and interests.

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[19] *See* Subtrust Motion, Bankr. Dkt. 2491, at ¶ 21, pp. 8-9; CTA ¶ 6.1(a) which states that Claimant Trustee's determinations concerning reserves for indemnification are "**not subject to the consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive the termination of the Claimant Trustee"** (emphasis added).

[20] *See* CTA at ¶¶ 1.1(h), 1.1(aa), and 5.1.

[21] *See* CTA at ¶ ¶ 2.2(b), 3.2(a), and 3.3(a).

[22] Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust, Bankr. Dkt. 3872 at Ex. A.

III. ARGUMENT

A. The Balance Sheet Does Not Moot Count One.

17. Defendants argue in their Motion that "Count one is moot in light of the Balance Sheet and must be dismissed for lack of subject matter jurisdiction under Rule 12(B)(1)." Motion at ¶ 24. Specifically, Defendants argue that the Balance Sheet, which was filed on July 6, 2023, and discloses financial information as of May 31, 2023, "shows the value of the Claimant Trust Assets, the Claimant Trust liabilities, and the potential equity value available for Claimant Trust Beneficiaries (assuming all Claimant Trust Assets are liquidated at current valuations and liabilities are fixed)," and has "thus eliminated the 'actual controversy" between the parties. Motion at ¶¶ 25-26. But they are wrong. The dispute remains ongoing, not the least of which because of *Defendants* contentions and arguments that the Balance Sheet is not conclusive.

18. Defendants themselves argued on April 24, 2023, a month before the as-of date on the Balance Sheet, that "Mr. Dondero and Hunter Mountain and Dugaboy keep telling the Court assets exceed liabilities. Assets exceed liabilities. And you know our position on that, Your Honor. They may; they may not."[23] Defendants' telling observation contradicts their mootness argument and—importantly—reinforces Plaintiffs' claims for further disclosures. If the Balance Sheet provides all necessary information and is accurate, then it should be easy for Defendants to admit that holders of Contingent Claimant Trust Interests have vested into Claimant Trust Interests. If Defendants want to contest the logical conclusion drawn from the Balance Sheet—the only currently-available disclosure of its kind—then Defendants should be compelled to produce the financial information necessary to

[23] Apr. 24, 2023 Hrg. Trans., Bankr. Dkt. 3765, at 29:4 – 7.

support their position.[24] But Defendants refuse to do so. They instead ask this Court to rely on their ambiguous *ipsi dixits* without supporting proof.[25]

19. Additionally, despite disclosing only the Balance Sheet, Defendants have argued that Plaintiffs should not rely on it. Taken as true, the Balance Sheet confirms Plaintiffs' *in the money* status. Nonetheless, Plaintiffs are entitled to more detailed information, particularly in light of Defendants' arguments disclaiming their own Balance Sheet.

20. For example, the information contained in the Balance Sheet provides information as of May 31, 2023, but estate administration is ongoing.[26] Defendants argue as much: the Balance Sheet specifically states that the information contained in it "is based on matters as they exist as of the date of preparation and not as of any future date."[27]

21. Additionally, although the Balance Sheet assigns values to the Claimant Trust's assets and liabilities, it is unaudited and provides no detail regarding what is included in those values or how they were determined.[28] Thus, because there is no description of which assets have been sold or what value was realized as a result of those sales, there is no way to determine the current extent to which asset sales were materially mismanaged, causing Plaintiffs to be damaged. Further, there is no

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[24] *In re Comu*, No. 09-38820-SGJ-7, 2014 WL 3339593, at *51 (Bankr. N.D. Tex. July 8, 2014), *aff'd, appeal dismissed sub nom. Comu v. King Louie Min., LLC*, 534 B.R. 689 (N.D. Tex. 2015), *aff'd sub nom. Matter of Comu*, 653 Fed. Appx. 815 (5th Cir. 2016) *and aff'd sub nom. Matter of Comu*, 653 Fed. Appx. 815 (5th Cir. 2016) (where this Court opined "Moreover, where [Debtor] remained silent about assets and material financial information, and 'chose to disclose material financial information *only* when directly asked or confronted with the truth,' his 'behavior justifies a presumption of fraud, as this is the essence of intent to deceive.' As the bankruptcy court in *In re Henley* pointed out, holding otherwise would send 'a dangerous message: that as long as a debtor eventually discloses his earlier omission, any earlier fraudulent intent is negated. In effect, this would mean that there are no consequences for a debtor's failure to make proper and timely disclosures.'" (citing *In re Henley*, 480 B.R. 708, 796 (Bankr. S.D. Tex. 2012)).

[25] For example, on May 1, 2023, "[t]he debtor's counsel asserted in oral argument that, based on all the [unspecified] record evidence, the debtor's assets would be completely depleted, likely in Class 8 — several classes higher than Dugaboy's priority class …" Matter of Highland Capital Management, L.P., No. 22-10960, 2023 WL 4861770, at *3 (5th Cir. July 31, 2023).

[26] Bankr. Dkt. 3872 at Exhibit A, p.5.

[27] *Id.* at p.6.

[28] *Id.* ("This presentation is not in accordance with US GAAP and is unaudited . . ..").

information that would allow the parties or the Court to determine the reasonableness of all of the administrative costs that have been incurred to date and will be incurred in the future.[29] While the Balance Sheet certainly demonstrates that Plaintiffs are *in the money*, additional information is needed to make sure that the benefits which will flow to Plaintiffs are maximized and not wasted.

22. With respect to assets, there is no detail regarding the "Investments," only a vague estimation that $118 million of Investments exist. The Debtor filed an addendum to its March 31, 2023 Operating Report (Bankr. Dkt. 3757 at Addendum Item 5) ("Addendum")[30] disclosing certain remaining assets, but even that is opaque. For example, the Addendum discloses "[p]ost-sale escrows" from "two private equity companies."[31] But there is no disclosure of which companies it refers to, the amounts of the escrows, the conditions precedent to the release of the escrows, or the anticipated timing.[32] Additionally, the Debtor holds "direct or indirect interest in two private funds."[33] But Debtor has not disclosed which funds. What are their respective liquidity rules? Have they been going up or down in value? The Debtor also lists "other misc.," which includes "future revenue streams and receivables" without detail.[34] With respect to cash, while the Plaintiffs can estimate the estate's cash balance, where that cash is sitting and what structural or accounting restrictions are in place on its use remain unclear. Finally, Plaintiffs do not have a current perspective on future cash flows, their amounts, and their probability of continuing.

23. With respect to liabilities, the Balance Sheet shows $15 million in "[o]ther liabilities" and a purported adjustment of $13 million *additional* "[o]ther liabilities."[35] What is the basis for these

[29] Bankr. Dkt. 3872 at Exhibit A, p.5.
[30] Bankr. Dkt. 3757 at p. 15
[31] *Id*.
[32] *See, generally,* Addendum.
[33] Bankr. Dkt. 3757 at p. 15
[34] *Id*.
[35] Bankr. Dkt. 3872 at Exhibit A, p. 5.

liabilities? Are they owed to estate-affiliated parties that may be subject to negotiation or third-party service providers such as the office lease for which there really is no basis for negotiation? What is the payment deadline on these liabilities and is there interest running? What are the off-balance sheet "springing contingent liabilities" in Note 5 to the Balance Sheet?[36]

24. Further, the Balance Sheet purports to make four "adjustments" totaling $198 million in reduction in the value of the estate. While the notes explain the two asset-related "adjustments," there is no explanation of the basis for and amount of the $90 million "[a]dditional indemnification reserves" and the aforementioned $13 million in "[o]ther liabilities."

25. Financial statements of a company typically are comprised of a balance sheet, income statement, and a cash flow statement (also, if applicable, a Statement of Changes to Shareholder Equity). These collectively give a more detailed perspective of the company's finances, including but not limited to regarding what expenses have been incurred to date and likely will need to be incurred into the future and what revenues likely will be generated. Even with a company in liquidation, it is important to understand what, if any, expenses would need to continue and what, if any, additional cash will be generated. This information is vital to any party seeking to wrap up the estate. Further disclosures are required to facilitate the important decisions necessary to resolve this estate that has been "liquidating" post-Effective Date for over two and a half years—with no end in sight.

26. Notably, Defendants have previously raised the above-stated issues to avoid reliance on the Balance Sheet—the very same document they now incredibly claim "moots" Plaintiffs' Count One. Specifically, Defendants seek to disclaim any reliance on the Balance Sheet by stating that it is merely an estimate and *should not be relied upon by anyone*: "The information contained in this summarized consolidated balance sheet (the "Summary") is based on estimates, and therefore should

[36] *Id.* at p. 6

not be relied upon, as actual results may differ materially from the estimates contained herein."[37] But this is true gamesmanship. Defendants cannot provide estimates to claim that Defendants have received everything they need and then disclaim the reliability of that very same information. This classic doublespeak is precisely the type of "litigation posturing" that the Fifth Circuit warned about in *Fontenot v. McCraw*, 777 F.3d 741, 747-48 (5th Cir. 2015), when it stated that courts must give closer attention when a defendant claims to have mooted a case through the defendant's "voluntary conduct," as opposed to "official acts of third parties."

27. Plainly, Defendants' production of the Balance Sheet does not resolve Plaintiffs' claims. The financial status of the Claimant Trust and whether/when Plaintiffs are entitled to distributions is an ongoing controversy as a result of the ongoing sale of assets and distributions. When there is an ongoing controversy, a case is not moot. *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 377 n.40 (5th Cir. 2022) ("if there is an ongoing dispute giving a plaintiff standing, the case is not moot."); *Laza v. City of Palestine*, No. 6:17-CV-00533-JDK, 2021 WL 2856685, at *7 (E.D. Tex. July 8, 2021) (case is not moot because "[t]his controversy is ongoing and live . . . and Plaintiff has a concrete interest in the matter."); *In re RE Palm Springs II, LLC*, No. 3:20-CV-3486-B, 2021 WL 3213013, at *3 (N.D. Tex. July 29, 2021) ("Thus, under § 363(m), the sale of the Property does not moot SRC's appeal because there is an ongoing issue, which was properly preserved, as to whether HPS acted in good faith."); *Friends of Lydia Ann Channel v. U.S. Army Corps of Engineers*, No. 2:15-CV-514, 2016 WL 6876652, at *6 (S.D. Tex. Nov. 22, 2016) (case is not moot because "[t]here are ongoing controversies"). In sum, Count One should not be dismissed because Defendants' provision of information at one point in time, months ago, (the reliability of which Defendants have expressly disavowed) does not moot this ongoing controversy.

[37] Bankr. Dkt. 8372 at Exhibit A at p.6 (emphasis added).

B. The Court's Order Denying Reconsideration Does Not Moot Count Three.

28. Defendants argue that Count Three, which seeks a declaration regarding that Plaintiffs' Contingent Trust Interests are at least "likely to vest into Claimant Trust Interests, making them Trust Beneficiaries," is moot because the Court purportedly already decided this issue. Motion at ¶ 27. Specifically, Defendants argue that Plaintiff HMIT's Motion to Reconsider filed with respect to the Order Denying Leave, "incorrectly argued that the Pro Forma Adjusted Balance Sheet showed that HMIT's Contingent Trust Interests were 'in the money,' and likely to vest, and that the Court subsequently found that Contingent Trust Interests are not 'in the money.'" Motion at ¶ 27. Defendants claim that this eliminated any live controversy presented by Count Three. Motion at ¶ 28. Defendants are incorrect.

29. A case becomes moot when "an intervening event renders the court unable to grant the litigant any effective relief whatever." *Franciscan All., Inc. v. Becerra*, 553 F. Supp. 3d 361, 368 (N.D. Tex. 2021); *see also DeOtte v. State*, 20 F.4th 1055, 1064 (5th Cir. 2021) (stating a case is moot when "any set of circumstances . . . eliminates [the] actual controversy after the commencement of a lawsuit"). However, "[a]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Franciscan All.*, 553 F. Supp. 3d at 368.

30. As the cases cited above demonstrate, an ongoing controversy, such as the one that exists here, cannot be mooted. This Court's *dicta* that HMIT was not "*in the money*" at the time it issued its order is based on information that Defendants refuse to stand behind. It does not mean that HMIT is not "*in the money*" now nor does it mean that HMIT will never be "*in the money*." And, finally, the order on which Defendants seek to rely is currently on appeal and may be overturned.[38]

31. In sum, Plaintiffs have a concrete interest in a determination that its Contingent Trust Interests are effectively vested and this Court's previous order does not eliminate that interest. Thus,

[38] Hunter Mountain Investment Trust's Second Notice of Appeal, Bankr. Dkt. 3945.

Count Three is not moot and cannot be dismissed. Defendants' Motion should be denied because it is based on flawed legal arguments and misapprehends the nature of Plaintiffs' claims.

C. Count Three Does Not Seek an Advisory Opinion.

32. Defendants next argue that Count Three should be dismissed because it purportedly seeks an impermissible "advisory opinion," and, therefore, the Court does not have subject matter jurisdiction to rule on the claim.[39] Specifically, Defendants argue that Plaintiffs' requests for relief about whether they are or will be entitled to be paid are dependent on a number of unknown and contingent variables, rendering the request an "abstract determination" that is impermissible. Motion at ¶¶ 30-31.

33. "Although [d]eclaratory judgments cannot be used to seek an opinion advising what the law would be on a hypothetical set of facts . . ., declaratory judgment plaintiffs need not actually expose themselves to liability before bringing suit." *Frye v. Anadarko Petroleum Corp.*, 953 F.3d 285, 294 (5th Cir. 2019) (internal quotations omitted). "Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Id.* (quotation omitted).

34. Here, Count Three is not dependent upon hypothetical facts. Count Three is only dependent upon a resolution of whether the "Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid[.]"[40] Contrary to Defendants' argument, this does not require the Court to consider hypothetical future events like the outcome of the appeal in the Notes Litigation,[41] future Claimant Trust expenses, or the

[39] Motion at ¶ 29.

[40] Complaint at ¶ 94.

[41] *Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P.*, et al, Case No. 21-cv-00881 (N.D. Tex.) at Dkt. 158 [App. 18-21].

nature and extent of indemnification obligations. Motion at ¶ 30. Instead, Count Three seeks a declaration that, at the time that this proceeding is decided, the Claimant Trust assets exceed the obligations of the bankruptcy estate such that Plaintiffs' Contingent Trust Interests are effectively vested. There is nothing "abstract" about this request. This is not an advisory opinion and the Court should reject Defendants' request to dismiss Count Three.

D. Count Three Is Not Barred by Collateral Estoppel.

35. Defendants next argue that Count Three should be dismissed because it is barred by the doctrine of collateral estoppel. Specifically, Defendants argue that the issue presented by Count Three, whether Plaintiffs' Contingent Interests are likely to vest, is purportedly the same issue already litigated in connection with HMIT's Motion to Reconsider. Motion at ¶ 33.

36. Collateral estoppel only applies if "(1) the issue at stake [is] ***identical*** to the one involved in the prior action; (2) the issue [was] actually litigated in the prior action; and (3) the determination of the issue in the prior action [was] ***a necessary part of the judgment*** in that earlier action." *Hacienda Records, L.P. v. Ramos*, 718 Fed. App'x 223, 228 (5th Cir. 2018) (emphases added). The Fifth Circuit has held that a previous decision is not "necessary" to the final judgment when it is "incidental, collateral, or immaterial to that judgment." *Hicks v. Quaker Oats Co.*, 662 F.2d 1158, 1168 (5th Cir. 1981) ("it has always been the rule that although an issue was fully litigated and a finding made on the issue in prior litigation, the prior judgment will not act as collateral estoppel as to the issue if the issue was not necessary to the rendering of the prior judgment, and hence was incidental, collateral, or immaterial to that judgment."). *See also OJSC Ukrnafta v. Carpatsky Petroleum Corp.*, No. CV H-09-891, 2018 WL 5921228, at *6-8 (S.D. Tex. Nov. 13, 2018) (same). But the issue raised in Count Three is neither identical to the issues litigated in connection with HMIT's Motion to Reconsider nor was it a necessary part of the Court's resulting order.

37. This Court's prior decision does not address the current issue in dispute and certainly does not mean that HMIT (or somehow Dugaboy, who was not a party in those proceedings) is not "*in the money*" now, nor does it mean that HMIT (or Dugaboy) will never be *"in the money."* Accordingly, the issue at stake (as well as the parties) are not identical and collateral estoppel does not apply.

38. This Court's previous finding was not a necessary part of this Court's decision on HMIT's Motion for Leave or HMIT's Motion to Reconsider. The Court initially denied HMIT's Motion for Leave without any consideration of whether HMIT was "*in the money*." Therefore, the issue of whether HMIT was *"in the money"* cannot have been a "necessary" part of the Court's order. It also cannot be said to have been fully and fairly litigated, another prerequisite for collateral estoppel,[42] because it was only able to be raised in a post judgment motion without discovery or a hearing.[43]

39. Furthermore, the Court conceded that its dicta on whether HMIT was "*in the money*" was not necessary to its decision denying the Motion to Reconsider. Specifically, the Court found that there were no reasonable grounds to reopen the record based on the post-hearing financial disclosures because it believed that they were not materially different than the Post-Confirmation Reports filed by Debtor on April 21, 2023.[44] The Court went on to state that: "[s]o, to the extent HMIT is arguing that the 'post-hearing financial disclosure filings' are something akin to newly discovered evidence or otherwise a ground for a new hearing or altering findings, HMIT's argument lacks merit. Moreover, even if this court were to consider the 'post-hearing financial disclosure filings,' the court disagrees

[42] *In re USAA Gen. Indem. Co.*, 629 S.W.3d 878, 883 (Tex. 2021); *Diminico v. Lehman Bros.*, 84 F.3d 433, at *1 (5th Cir. 1996) (not designated for publication).

[43] *USAA*, 629 S.W.3d at 884.

[44] Order Denying Motion of HMIT Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 (Bankr. Dkt. 3936) at pp. 2-3.

with HMIT's central argument that they demonstrate HMIT's contingent interest is 'in the money….'"[45] In other words, per the Court's words, the finding on which Defendants seek to rely was unnecessary dicta and not a basis for the application of collateral estoppel. *Hicks*, 662 F.2d at 1168. Accordingly, collateral estoppel does not apply and Count Three should not be dismissed.

E. Count One Sufficiently States a Claim for Disclosures of Claimant Trust Assets and Request for Accounting.

1. Plaintiffs have a legal right to obtain the information that they seek in this proceeding.

40. Defendants argue that Plaintiffs have no right to any financial information as a matter of law because they allegedly hold only Contingent Trust Interests and are not beneficiaries under the CTA. Motion at ¶¶ 38-41. According to Defendants, the language of the CTA makes clear that only current beneficiaries have rights to information under the CTA. Defendants are incorrect. Plaintiffs are intended (albeit contingent) beneficiaries of the Claimant Trust.

41. The Delaware Code does not define the term "beneficiary," but Delaware courts follow the RESTATEMENT (THIRD) OF TRUSTS,[46] which defines beneficiaries to include contingent beneficiaries:

> *Persons who are beneficiaries: in general.* The "beneficiaries" of a trust are the persons or classes of persons, or the successors in interest of persons or class members, upon whom the settlor manifested an intention to confer beneficial interests (vested **or contingent**) under the trust, plus persons who hold powers of appointment (special or general) or have reversionary interests by operation of law. Also included are persons who have succeeded to interests of beneficiaries by assignment, inheritance, or otherwise.[47]

42. Delaware courts routinely hold that, when interpreting undefined statutory terms, courts must give those terms a "reasonable and sensible meaning in light of their intent and purpose." *Angstadt v. Red Clay Consol. Sch. Dist.*, 4 A.3d 382, 390 (Del. 2010). In ascertaining the "reasonable

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[45] *Id.* at p. 3.

[46] *See, e.g.*, *In re Tr. Under Will of Flint for the Benefit of Shadek*, 118 A.3d 182, 195 (Del. Ch. 2015); *Tigani v. Tigani*, No. CV 2017-0786-KSJM, 2021 WL 1197576, at *14 (Del. Ch. Mar. 30, 2021), *aff'd,* 271 A.3d 741 (Del. 2022).

[47] RESTATEMENT (THIRD) OF TRUSTS, § 48 cmt. a (2003) (emphasis added).

and sensible meaning" of terms, Delaware courts rely on dictionaries as a source of interpretation. *See id.*

43. Black's Law Dictionary defines "beneficiary" as, among other things, "[s]omeone who is designated to receive the advantages from an action or change . . . or to receive something as a result of a legal arrangement or instrument" and includes both "contingent benficiar[ies]" and "direct benficiar[ies]" within the definition without any qualification regarding their rights.[48] By contrast, Black's distinguishes an "incidental beneficiary" as a "third-party beneficiary, who, though benefiting indirectly, is not intended to benefit from a contract and thus does not acquire rights under the contract."[49] Nothing in the CTA indicates that Plaintiffs are merely "incidental beneficiaries."

44. In light of the RESTATEMENT and the definition in Black's Law Dictionary, it is reasonable and sensible to interpret the word "beneficiary" as used in Section 3327 of the Delaware statute to include contingent beneficiaries. Rules of statutory interpretation support this conclusion.

45. As the Delaware Supreme Court explained, a court "may not engraft upon a statute language which has been clearly excluded therefrom by the Legislature." *Giuiricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982) (citing *Wilmington Trust Co. v. Barry*, 338 A.2d 575, 578 (Del Super. Ct. 1975), *aff'd*, 359 A.2d 664 (Del. 1976)). If the Delaware Legislature had intended that only "vested" beneficiaries could bring an action to remove a trustee, as opposed to any beneficiary (whether residual or contingent), it would have so specified. In this case, the relevant statute—Del. Code Ann. tit. 12, § 3327—uses the term "beneficiary" without defining or limiting it. Accordingly, a court may not do what the Delaware Legislature refused to do by engrafting the term "vested" into the statute to qualify the term "beneficiary."

[48] *Black's Law Dictionary* (11th ed. 2019).

[49] *Id.*

46. Delaware courts refuse to read statutory language restrictively to exclude certain classes of beneficiaries. *See Estate of Tigani*, No. CV 7339-ML, 2016 WL 593169, at *14 (Del. Ch. Feb. 12, 2016) (holding that the "statute's use of the general term beneficiary, without any language restricting the class of beneficiary to whom it refers, fairly encompasses a vested beneficiary subject to divestiture"); *Estate of Necastro*, No. C.A. 10,538, 1991 WL 29958, at *1 (Del. Ch. Feb. 28, 1991) (rejecting a "restrictive reading" of "beneficiary" under 12 Del.C. § 2302(d) and instead holding that "Exceptants [whom the parties characterized as "contingent beneficiaries"] have standing . . . based upon their indirect interest in a share of the estate through their status as beneficiaries of a testamentary trust"). In short, neither the applicable Delaware statute nor Delaware case law limits the term "beneficiary" to vested beneficiaries, to the exclusion of contingent ones.

47. Defendants argue, incorrectly, that the language of the CTA purportedly strips Plaintiffs of standing. In particular, Defendants argue that the CTA provides that holders of Contingent Trust Interests (including Plaintiffs) "shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the 'GUC Payment Certification')."[50] They further argue that the agreement provides that "Equity Holders will be deemed 'Beneficiaries' under this Agreement only upon the filing of a GUC Payment Certification with the Bankruptcy Court."[51] But Delaware law makes clear that a trust agreement, however worded, may not strip the trustee's duty of good faith and fair dealing and, importantly, the

[50] CTA, Bankr. Dkt. 3521-5 at § 5.1(c).
[51] *Id.*

CTA does not disclaim any such duties.[52] Here, observance of that duty precludes the argument that the language of the CTA destroys Plaintiffs' standing.

48. Under Delaware law, unless the governing trust agreement says otherwise, the trustee of a statutory trust has those duties set forth in common law, including the duties of loyalty, good faith, and due care. *See* Del. Code Ann. tit. 12, § 3809; *Rende v. Rende*, No. 2021-0734-SEM, 2023 WL 2180572, at *11 (Del. Ch. Feb. 23, 2023). And while a governing trust agreement may expressly disclaim these duties (although this one does not), Delaware law prohibits the elimination of the duty of good faith and fair dealing. *In re National Collegiate Student Loan Trusts Litigation*, 251 A.3d 116, 185-86 (Del. Ch. 2020) ("While parties may agree to waive default fiduciary duties, the DSTA forbids parties from eliminating the "implied contractual covenant of good faith and fair dealing.") (citing Del. Code. Ann. tit. 12, § 3806(c)).

49. Here, the duty of good faith and fair dealing is particularly important where Plaintiffs' status as "beneficiaries" under the Agreement is purportedly dependent upon Mr. Seery's discretion to file a GUC Certification declaring them as such. "Stated in its most general terms, the implied covenant requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain." *Dunlap v. State Farm Fire and Cas. Co.*, 878 A.2d 434, 442 (Del. 2005) (internal quotations omitted).

50. As other RESTATEMENT jurisdictions have recognized, Mr. Seery's refusal to give the GUC Certification and recognize Plaintiffs vesting of Classes 10 and 11 warrants treating those classes as fully vested. "[V]esting cannot be postponed by unreasonable delay in distributing an estate and […] when there is such delay, contingent interests vest at the time distribution ***should*** have been

[52] The CTA is governed by Delaware law. *Id.* at § 11.10.

made." *Estate of Cornell v. Johnson*, 367 P.3d 173, 178 (Idaho 2016) (emphasis added) (discussed in RESTATEMENT (SECOND) OF TRUSTS § 198 (1959)); *see also Edwards v. Gillis*, 146 Cal.Rptr.3d 256, 263 (Cal. Ct. App. 4 Dist., 2012) ("when there is [unreasonable] delay contingent interests vest at the time distribution should have been made.").

51. As set forth above, the Claimant Trust had sufficient assets to pay unsecured creditors in Classes 8 and 9 in full with interest at least as early as May 2023, and in all probability as early as September 2022.[53] And the CTA requires Mr. Seery as Claimant Trustee to "make timely distributions and not unduly prolong the duration of the Claimant Trust."[54] Had Mr. Seery fulfilled that mandate, he could and should have distributed remaining funds to Classes 8 and 9 in July 2023 at the latest, filed the GUC Certification with the Court, and begun distributing remaining assets to Classes 10 and 11. In short, Plaintiffs' contingent interests *should have vested* many months ago. Therefore, the law treats Plaintiffs as Claimant Trust Beneficiaries regardless of the language of the CTA.

52. In sum, the Plan defines the "Contingent Claimant Trust Interests" to include the Claimant Trust Interests distributed to Holders of Class A, B, and C Limited Partnership Interests.[55] The CTA defines "Contingent Trust Interests" to be the contingent interests in the Claimant Trust to be distributed to the Class A, B, and C Limited Partnership Interests.[56] Finally, the CTA defines "Claimant Trust Beneficiaries to include Class A, B and C Limited Partnership Interests upon the filing of the GUC certification.[57] Class A, B and C Limited Partnership Interests are intentionally defined as contingent or secondary beneficial interests in the Plan and the CTA and are therefore not

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[53] Two of the estate's major private equity positions sold in May 2022, and the remaining largest positions sold in September 2022. The May 2022 assets were Cornerstone Healthcare Group [*see* App. 05-09] and MGM [*see* App. 01-04]. The September 2022 positions were CCS Medical [*see* App. 10-14] and Trussway [*see* App. 15-17].

[54] CTA, Bankr. Dkt. 3521-5 at § 3.2(a).

[55] *See* Plan at Art. I, § B, ¶ 44.

[56] *See* CTA ¶ 1.1(m).

[57] *Id.*, ¶¶ 1.1(h) and 5.1(c).

mere incidental or third-party beneficiaries.[58] Plaintiffs have standing and a right to seek the information that they request in their Complaint.

2. Plaintiffs' accounting claim is sufficient under Delaware and Texas law.

53. Defendants also argue that Count One must be dismissed to the extent it is treated as an equitable accounting claim. Motion at ¶ 43. Specifically, Defendants argue that an accounting is not a cause of action in equity but only an equitable remedy where a fiduciary may be compelled to provide an account for property subject to trust. Defendants further argue that here, the CTA governs the rights of the parties and does not provide Plaintiffs as holders of Contingent Trust Interests with any rights. Motion at ¶ 44. Defendants are wrong once again.

54. Initially, as explained immediately above, Plaintiffs have legal rights, including a right to an accounting that under Delaware law, including the Delaware Statutory Trust Act, as well as the CTA. Therefore, Count One is proper under Delaware law.

55. Alternatively, Plaintiffs are entitled to bring an accounting claim under Texas law. "Questions of substantive law are controlled by the laws of the state where the cause of action arose, but matters of remedy and procedure are governed by the laws of the state where the action is sought to be maintained." *Wells Fargo Bank Texas, N.A. v. Foulston Siefkin LLP*, 348 F. Supp. 2d 772, 783 (N.D. Tex. 2004), *vacated on other grounds,* 465 F.3d 211 (5th Cir. 2006). Defendants assert that an action for an accounting "is an equitable remedy." Motion at ¶ 43. Thus, Defendants arguments based on Delaware law are misplaced because the law of the state where the action is sought to be maintained, Texas, applies in this regard. Motion at ¶¶ 39–45.

56. Under Texas law, courts have jurisdiction over claims seeking to "determine the powers, responsibilities, duties, and liability of a trustee," including "claims for a trust accounting."

[58] *See also Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding*, Bankr. Dkt. 3903, at p. 2.

Berry v. Berry, 646 S.W.3d 516, 527–28 (Tex. 2022). "Any interested person" may bring such a claim. *Id.* (citation omitted). An "interested person" includes a "beneficiary" as well as any other "person who is affected by the administration of the trust." *Id.* at 528 (citation omitted). A "beneficiary" is "a person for whose benefit property is held in trust, regardless of the nature of the interest." *Id.* (citation omitted). An "interest" includes "any interest, whether legal or equitable or both, present or future, vested or contingent, defeasible or indefeasible." *Id.* (citation omitted). "Whether a person, excluding a trustee or named beneficiary, is an interested person may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding." *Id.* (citation and internal marks omitted).

57. In this case, the Plan created the Claimant Trust, which was established for the benefit of Claimant Trust Beneficiaries. Complaint at ¶ 64. "Claimant Trust Beneficiaries" include, by definition, "Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests." Complaint at ¶ 64. Plaintiffs are holders of those partnership interests. Complaint at ¶¶ 53–59. As explained above, because Plaintiffs are beneficiaries of the Claimant Trust, they may bring claims under Texas law against the Claimant Trust for a trust accounting.

58. Defendants argue that Plaintiffs cannot sue for an accounting because their interests are contingent. Motion at ¶ 38. But under Texas law, the holder of "any interest, whether legal or equitable or both, present or future, vested *or contingent*, defeasible or indefeasible," as "may vary from time to time," may bring a claim for an accounting against the trustee. *Hill v. Hunt*, No. CIV.A. 3:07-CV-2020-, 2009 WL 5178021, at *2 (N.D. Tex. Dec. 30, 2009) (citing Tex. Prop. Code § 111.004(6)).

59. Further, because Plaintiffs can request an accounting under Texas law, Defendants' objection to Plaintiffs' claims for declaratory relief necessarily fails because, contrary to Defendant's

failed assertion, Plaintiffs have stated an underlying cause of action for the declaratory relief (an accounting). Motion at ¶¶ 46–47.

3. Defendants have not adequately demonstrated that either Plaintiff has unclean hands.

60. Defendants argue without authority that HMIT should be denied relief as a result of its "unclean hands." Motion at ¶ 45. Defendants' only support for this claim is a one-sentence reference to a currently pending lawsuit against HMIT, among others, for breach of a promissory note.[59] Not only was this lawsuit brought by a different party than those involved in this litigation, but Defendants fail to provide any evidence of any wrongdoing by HMIT (let alone Dugaboy) other than bald conclusory allegations in a complaint, let alone evidence of wrongdoing related to the allegations in this dispute.

F. Counts Two and Three Sufficiently State a Claim for Declaratory Judgment.

61. Defendants argue that Counts Two and Three, which seek declaratory relief, also fail to state a claim under Fed. R. Civ. P. § 12(b)(6) because they are based on Count One, and Count One is not a cognizable claim. Motion at ¶ 47. For the reasons discussed above, Count One does state a valid claim and therefore Counts Two and Three should not be dismissed.

62. Defendants also argue, without authority, that the value of the assets and liabilities of the Clamant Trust at any given point in time is irrelevant to whether Plaintiffs' Contingent Trust Interests are likely to vest because the Contingent Trust Interests cannot vest until several conditions are satisfied, including the liquidation of assets and expenses being paid. Motion at ¶ 48. Specifically, Defendants argue that "until these and other critical variables are known, the financial information Plaintiffs seek in their Complaint is meaningless for purposes of determining 'vesting'"[60] and therefore there is no controversy underlying these claims. Even if Defendants were correct, and they

[59] Motion at ¶ 45.

[60] *Id*. at ¶ 48.

are not, and these other variables must be determined first, the financial information sought by Defendants is exactly the information that will be necessary under the CTA to determine these variables and to determine when and how much Plaintiffs will be paid once these events occur. Defendants, of course, do not dispute this. In other words, it is nonsensical to claim that the requested information is "meaningless" just because the amounts payable to Plaintiffs may change in the future. The exact amounts do not need to be established at this time. The Court should decline Defendants' request to dismiss Counts Two and Three.

IV. CONCLUSION

63. Wherefore, Plaintiffs respectfully request that the Court deny the Motion in its entirety and grant any further relief as the Court deems proper and just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 29, 2023 a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

Volume 7

APPELLANT RECORD

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

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

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APPELLANT'S STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL BY RIGHT

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, Appellant Hunter Mountain Investment Trust ("HMIT") hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal by right of the "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt. 4104] that was signed June 22, 2024, and entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024.[1]

[1] Given the lack of clarity in the law about the appropriate mechanism for obtaining review, HMIT filed a Notice of Appeal by Right and a Notice of Appeal by Leave (along with a motion for leave to file an interlocutory appeal) and a petition for writ of mandamus (which will be filed shortly thereafter).

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court abused its discretion in granting Appellees' motion for an indefinite stay of Appellant's gatekeeper motion seeking permission to bring suit in Delaware to remove the trustee of a Delaware statutory trust when (1) Appellees failed to meet the required standard for obtaining a stay; (2) the Bankruptcy Court erroneously concluded that the issue of Appellant's standing to seek removal of the Claimant Trustee would be decided in other cases pending before the Court; and (3) an indefinite or unduly lengthy stay of litigation of the type ordered by the Bankruptcy Court is expressly disfavored by the Fifth Circuit.

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Vol. 1

1. Notice of Appeal for Bankruptcy Case No. 19-34054-sgj11 [Dkt. 4111]. — 00001

2. The judgment, order, or decree appealed from: "Order Extending Stay of Contested Matter [Docket No. 4000]" [Dkt. 4104] — 000009

3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held June 12, 2024 before Judge Stacey G.C. Jernigan re: Motion to Stay Contested Matter [Dkt. 4091]. — SEE Vol. 17 - 001988

4. Docket Sheet for Bankruptcy Case No. 19-34054-sgj11 kept by the Bankruptcy Clerk. — 000012

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
01/09/2020	19-34054-sgj-11	399	Order Approving Settlement with Official Committee of Unsecured Creditors regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course — Vol. 2 000578
02/22/2021	19-34054-sgj-11	1943	Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) — 000586
03/28/2023	19-34054-sgj-11	3699	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding — Vol. 3 000747
04/21/2023	19-34054-sgj-11	3756	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 3/31/23 — Vol. 4 001134

Vol 4 001149	04/21/2023	19-34054-sgj-11	3757	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 3/31/23
001164	04/23/2023	19-34054-sgj-11	3760	Hunter Mountain Investment Trust's Supplement to Emergency motion for Leave to File Verified Adversary Proceeding
001209	06/05/2023	19-34054-sgj-11	3815	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
001274	06/05/2023	19-34054-sgj-11	3816	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adverary [sic] Proceeding
001339	07/21/2023	19-34054-sgj-11	3888	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 6/30/23
001351	07/21/2023	19-34054-sgj-11	3889	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 6/30/23
Vol. 5 001363	08/25/2023	19-34054-sgj-11	3903	Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trusts' Emergency Motion for Leave to File Verified Adversary Proceeding
001468	01/01/2024	19-34054-sgj-11	4000	Motion for Leave to File a Delaware Complaint
Vol. 6 001606	10/23/2023	19-34054-sgj-11	3955	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 9/30/23
001618	10/23/2023	19-34054-sgj-11	3956	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 9/30/23
001630	01/16/2024	19-34054-sgj-11	4013	Highland's Motion to Stay Contested Matter [Dk No. 4000] or for Alternative Relief
001638	01/22/2024	19-34054-sgj-11	4019	James P. Seery, Jr.'s Joinder to Highland Capital Management L.P.'s Motion to Stay Contested Matter [Dk No. 4000] or for Alternative Relief and Emergency Motion to Expedite Hearing on Motion for Stay
001640	06/11/2024	19-34054-sgj-11	4087	Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay
001669	01/22/2024	19-34054-sgj-11	4020	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 12/31/23
001681	01/22/2024	19-34054-sgj-11	4021	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 12/31/23

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06/24/2024	19-34054-sgj-11	4104	Order Extending Stay of Contested Matter [Docket No. 4000]
01/22/2024	19-34054-sgj-11	4049	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 3/31/24
01/22/2024	19-34054-sgj-11	4050	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 3/31/24
07/18/2024	19-34054-sgj-11	4130	Post Confirmation Report of Highland Capital Management, LP for Quarter Ending 6/30/24, dated July 18, 2024
07/18/2024	19-34054-sgj-11	4131	Post Confirmation Report of Highland Claimant Trust for Quarter Ending 6/30/24, dated July 18, 2024

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001708
001720
001732

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
05/10/2023	23-03038	0001	Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0013	The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0014	Memorandum of Law in Support of Highland Capital Management L.P. and the Highland Claimant Trust's Motion to Dismiss Complaint

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DATE	CASE NO.	DKT. NO.	DESCRIPTION
12/29/2023	23-03038	0017	The Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

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12/29/2023	23-03038	0018	Appendix in Support of the Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

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01/19/2024	23-03038	0021	The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint

001863

05/24/2024	23-03038	0026	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets

001875

05/24/2024	23-03038	0027	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets

001911

06/07/2024	23-03038	0030	Notice of Appeal [Appellant Designation due by 06/21/2024] (Filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust)

001947

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

001988

DATE	CASE NO.	DKT. NO.	DESCRIPTION

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001988

06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript

Dated: July 22, 2024

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The undersigned hereby certifies that on July 22, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

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

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

APPENDIX IN SUPPORT OF THE DUGABOY INVESTMENT TRUST AND HUNTER MOUNTAIN INVESTMENT TRUST'S RESPONSE TO THE HIGHLAND PARTIES' MOTION TO DISMISS COMPLAINT TO (I) COMPEL DISCLOSURES ABOUT THE ASSETS OF THE HIGHLAND CLAIMANT TRUST and (II) DETERMINE (A) RELATIVE VALUE OF THOSE ASSETS, and (B) NATURE OF PLAINTIFFS' INTEREST IN THE CLAIMANT TRUST

Dugaboy Investment Trust and Hunter Mountain Investment Trust file this Appendix in Support of its Response to the Highland Parties' Motion to Dismiss Complaint and requests the Court take judicial notice of the documents contained herein.

Ex.	Date	Case	Dkt.	Document	Appendix Page(s)
1	3/17/22			Article: Amazon closes deal to buy MGM movie studio	App. 01-04
2	5/12/22			Article: ScionHealth Announces Definitive Agreement to Acquire Cornerstone Healthcare Group	App. 05-09
3	8/10/22			Article: CCS Announces Company Expansion Focused on Accelerating Innovation in Home-Based Diabetes Care Management	App. 10-14
4	9/1/22			Article: Builders FirstSource Closes Acquisition of Trussway	App. 15-17
5	6/1/23	21-00881	158	Notice of Appeal to United States Court of Appeals for the Fifth Circuit	App. 18-21

Dated: December 29, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 29, 2023, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

Exhibit 1

MEDIA

Amazon closes deal to buy MGM movie studio

PUBLISHED THU, MAR 17 2022•9:55 AM EDT UPDATED THU, MAR 17 2022•10:32 AM EDT

REUTERS

WATCH LIVE

KEY POINTS

Amazon on Thursday said it had closed its $8.5 billion deal to buy MGM, combining the fabled movie maker behind “Rocky” and “James Bond” with the online retailing giant.

Its decision to close comes after a deadline passed for the U.S. Federal Trade Commission to challenge the deal.

MGM bolsters Amazon Prime Video’s offering with more than 4,000 film titles.

In this article

AMZN +0.82 (+0.54%)

Pavlo Gonchar | LightRocket | Getty Images

Amazon on Thursday said it had closed its $8.5 billion deal to buy MGM, combining the fabled movie maker behind "Rocky" and "James Bond" with the online retailing giant as it looks to draw consumers through more streaming video.

In a statement, Amazon said it would welcome all MGM employees to the company and work with the studio's leadership, indicating there would not be layoffs. Its decision to close comes after a deadline passed for the U.S. Federal Trade Commission to challenge the deal.

The Seattle-based retailer announced the transaction in May 2021, saying MGM offered a trove of content to draw consumers to its fast-shipping and streaming club Prime, which costs $14.99 per month in the United States.

Nearly a year later, Amazon is clear of regulatory hurdles. The European Commission approved the deal Tuesday, with no conditions. Likewise, Amazon earlier informed the FTC that it had "substantially complied" with requests for information about the deal.

The FTC declined comment.

Amazon compete with streaming rivals Netflix and Disney +.

Hopkins praised MGM's "broad slate of original films and television shows."

"We welcome MGM employees, creators, and talent to Prime Video and Amazon Studios, and we look forward to working together to create even more opportunities to deliver quality storytelling," he said in a statement.

The FTC has a broader probe open into Amazon as part of government antitrust investigations begun under the Trump administration into the four big tech platforms, including Facebook and Google.

In this article

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TRENDING NOW

Mark Cuban shares the No. 1 jargon word he hates most: 'You sound stupid ... trying to sound smart'

Couple has $520,000 in debt—and wife had no idea: 'We've been living a life we shouldn't be living'

Former Trump lawyer Rudy Giuliani files for bankruptcy protection, lists more than $100M in debts

Exhibit 2

ScionHealth Announces Definitive Agreement to Acquire Cornerstone Healthcare Group

NEWS PROVIDED BY
ScionHealth →
12 May, 2022, 15:00 ET

ScionHealth Logo (PRNewsfoto/ScionHealth)

Cornerstone Healthcare Group Logo

Combination strengthens ScionHealth's position as a leading healthcare delivery network committed to investing in community healthcare

LOUISVILLE, Ky. and DALLAS, May 12, 2022 /PRNewswire/ -- ScionHealth and Cornerstone Healthcare Group ("Cornerstone") today announced that they have entered into a definitive agreement for ScionHealth to acquire Cornerstone. The combination of the two patient-focused and quality-driven organizations will strengthen ScionHealth's position as a leading healthcare delivery network, expanding services, resources, and expertise to grow and invest in the health and well-being of patients and employees in communities nationwide.

The addition of Cornerstone's locations will enhance ScionHealth's ability to advance access to high-quality care and implement innovative solutions to improve the patient experience. The transaction expands ScionHealth's national network of long-term acute care hospitals, community-based hospitals and physician practices to deliver life-saving care solutions for the nation's most medically complex patients.

ScionHealth was **established in late 2021** with a focus on investment in community healthcare and grounded in commitments to outstanding patient care and quality outcomes. The acquisition of Cornerstone is the first step in executing ScionHealth's strategic plan for growth and innovation.

"When we launched ScionHealth, we knew our portfolio would serve as a strong platform for growth," said Rob Jay, chief executive officer of ScionHealth. "Adding Cornerstone to ScionHealth is a significant first milestone and reflects our commitment to deliver high-quality healthcare solutions in the communities we serve. We are excited to welcome Cornerstone's talented group of employees and providers into the ScionHealth family. Cornerstone shares our values, as well as a similar focus on advancing clinical and quality excellence to benefit patients, pursue innovative solutions, and make healthcare more accessible. Additionally, today's announcement reinforces ScionHealth's commitment to being an active member of the Louisville business community, as well as a strong employer in Louisville and the other communities where our team members live and work across the U.S."

"This combination with ScionHealth confirms Cornerstone's commitment to quality care," said Steve Jakubcanin, chief executive officer and president. "We are proud to join an organization that puts people first and shares our vision to deliver best-in-class healthcare innovation and clinical expertise. We look forward to the benefits this combination will have for our team members and those we serve."

Upon the completion of regulatory approvals and satisfaction of customary closing conditions, the acquisition of Cornerstone is expected to be completed in the second half of 2022. Cornerstone Specialty Hospitals Clear Lake and Cornerstone Specialty Hospitals Houston Medical Center are excluded from the acquisition.

About ScionHealth

ScionHealth strives to provide high-quality, patient-centered acute and post-acute hospital solutions. The health system is focused on driving innovation, serving its communities, and investing in people and technology to deliver compassionate patient care and excellent health outcomes. Based in Louisville, ScionHealth operates 79 hospital campuses in 25 states – 61 long-term acute care hospitals and 18 community hospital campuses and associated health systems. For more information, please visit www.scionhealth.com.

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Vice President, Communications and Marketing

ScionHealth

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About Cornerstone Healthcare Group

Cornerstone Healthcare Group Holding, Inc. is a diversified healthcare company based in Dallas, Texas. Cornerstone's mission is to make a difference by providing exceptional care and delivering the best experience to all who they serve. For more information, visit www.chghospitals.com.

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Forward-Looking Statements

This communication contains certain information, including statements as to the expected timing, completion and effects of the proposed transaction involving ScionHealth and Cornerstone Healthcare Group, which may constitute forward-looking statements. Such forward-looking statements are subject to risks and uncertainties, and actual results may differ materially. Such forward looking statements include, among others, statements about the benefits of the proposed transaction, including future financial and operating results, plans, objectives, expectations for ScionHealth and other statements that are not historical facts. Such

statements are based on the current beliefs and expectations of management and are subject to significant risks and uncertainties outside of its control. These risks and uncertainties include, among others: the possibility that the anticipated benefits from the proposed transaction will not be realized, or will not be realized within the expected time periods; the occurrence of any event, change or other circumstances that could give rise to termination of the proposed transaction agreement or cause the proposed transaction not to close within the anticipated timeline or at all; risks associated with the disruption of management's attention from ongoing business operations due to the proposed transaction; risks associated with the retention of key employees; and the inability to obtain necessary regulatory approvals of the proposed transaction or the receipt of such approvals being subject to conditions that are not anticipated. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. Except as otherwise required by law, neither ScionHealth nor Cornerstone Healthcare Group undertakes any obligation, and expressly disclaims any obligation, to update, alter or otherwise revise any forward-looking statements, whether written or oral, that may be made from time to time, whether as a result of new information, future events or otherwise.

SOURCE ScionHealth

Exhibit 3

CCS Announces Company Expansion Focused on Accelerating Innovation in Home-Based Diabetes Care Management

NEWS PROVIDED BY
CCS →
10 Aug, 2022, 08:00 ET

A leader in home-delivered medical supplies for individuals living with chronic conditions, CCS is expanding its patient education, monitoring, and coaching services to unify the patient experience

DALLAS, Aug. 10, 2022 /PRNewswire/ -- CCS, which now includes CCS Medical and CCS Health, has announced an expansion of its business. The company — a leading provider of home-delivered medical supplies for those living with diabetes or other chronic conditions — will be expanding the education, monitoring, and coaching services it offers to create a more collaborative approach to care. This new model incorporates the delivery of products with access to accredited clinicians supported by proprietary data and technology to simplify the patient experience. In addition, CCS has created a new strategic advisory board and added three new advisory board members to help redefine chronic care management at home.

Continue Reading

CCS supports more than 200,000 patients living with chronic conditions in the United States and delivers more than 1.2 million shipments of medical supplies to patients in their own homes. Through its Health and Medical units, CCS works with more than 400 employers and more than 1,800 managed care plans nationally to offer a more hands-on, educational approach to supporting their population of patients with diabetes. After over a quarter of a century delivering medical supplies and more than a decade providing chronic care management services for individuals living with diabetes, CCS has the experience, data, and patient and provider relationships in place to create a new era of patient-driven, proactive chronic care management.

CCS is expanding its patient education, monitoring, and coaching services to unify the patient experience.

Post this

CCS now has two main divisions. First, CCS Health couples high-touch, human engagement with technology to assist patients with education and coaching on disease management and product adoption. Second, CCS Medical offers the most advanced technology and trusted brand names in continuous glucose monitoring and insulin pump therapy, along with the other medical product and device needs of the patient.

With CCS as their partner, patients are more likely to get on therapy and stay on therapy, improving patient outcomes and reducing costs. For example, CCS tracked an average drop of 1.15 points in patient A1C values for a large national health plan as part of CCS's LivingLinked™ offering, which is a clinical education program. Also, CCS's diabetes clinical care management program, called LivingConnected®, with a large employer group yielded a cost reduction of 45% for those enrolled vs. not enrolled.

"The LivingConnected program through CCS has increased adherence to the diabetes standards of care, improving the health of our employees and their spouses with diabetes, while generating substantial savings for program participants," said Heather Hormel, Senior

Director of Human Resources at United Regional Health Care Group. "Given the success we've had with our employee population, any organization like ours would embrace a solution that can deliver the clinical and financial results we've achieved through the partnership with CCS."

"The number of people being diagnosed with diabetes in the United States has been on the rise and is expected to continue to accelerate — and the pandemic has only made things worse," said Tony Vahedian, CEO of CCS. "It's clear how we have historically provided care to patients with diabetes needs to evolve. That's why we made the decision to accelerate updates to our own business model. These changes will enable our team to surround patients with the tools, resources, and support they need to manage their own care in a simpler way."

As part of the company's expansion, CCS kicked off a new Strategic Advisory Board to help integrate additional trusted clinical and technological leadership guidance as part of this business transition. The distinguished experts in their field who comprise the CCS Strategic Advisory Board include:

- **Francine Kaufman, MD** — Distinguished Professor Emerita of Pediatrics at the Keck School of Medicine of the University of Southern California and Children's Hospital Los Angeles. Francine is also a practicing endocrinologist, as well as the former president of the American Diabetes Association.
- **Christos M. Cotsakos, Ph.D.** — Founder, chairman, and CEO of Pennington Ventures, a digital transformation, financial, and strategic management firm. He is the former chairman and CEO of E*TRADE and took the company public in 1996 as one of a handful of internet entrepreneurs and pioneers. He also served as global co-CEO of AC Nielsen and co-founded ArrowPath Venture Capital. Christos has held senior strategic roles at the intersection of healthcare and technology for more than 25 years.
- **Jean-Claude Saghbini** — Chief Technology Officer at Lumeris. With decades of technology leadership experience, he has held leadership positions at a wide array of healthcare companies, including Wolters Kluwer Health and Cardinal Health.

"Considering the majority of people with newly diagnosed diabetes do not receive adequate care management education and training in the first year, it's no surprise that the healthcare industry and employers continue to grapple with less than optimal adherence and outcomes with this population of patients," said Dr. Kaufman. "I'm excited to join the advisory board at

CCS — they understand that with the right supplies, personalized education, ongoing coaching, and home-based monitoring, people living with diabetes can achieve improved health outcomes."

To learn more about CCS and their integrated approach to redefining home-based chronic care management, visit CCSMed.com.

About CCS

CCS is a leading provider of clinical programs and home-delivered medical supplies for those living with chronic conditions, particularly diabetes. CCS supports 200,000+ patients living with chronic conditions in the United States and delivers more than 1.2 million shipments of medical supplies to patients in their own homes each year. The company works specifically with health plans and employers to offer both technology and hands-on educational services to holistically support patients living with diabetes. After serving patients for more than 25 years, CCS has the experience, data, and patient and provider relationships in place to create a new era of home-based, proactive chronic care management. Entities managed by Riva Ridge Capital LP are the primary shareholder of CCS. To learn more about CCS, please visit: CCSMed.com; LinkedIn; and Twitter.

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SOURCE CCS

Exhibit 4

Source: *Builders FirstSource, Inc.*

September 01, 2022 16:01 ET

Builders FirstSource Closes Acquisition of Trussway

Strengthens Company's roof and floor truss value-added products, including a multifamily presence in key high-growth markets

Anticipated to generate robust free cash flow within first 15 months

DALLAS, Sept. 01, 2022 (GLOBE NEWSWIRE) -- Builders FirstSource, Inc. (NYSE: BLDR) ("BFS" or the "Company"), the nation's largest supplier of structural building products and value-added components and services, today announced it has acquired Trussway, a leading provider of pre-fabricated roof and floor trusses as well as value-added building components and services, including for the multifamily sector, with annualized sales of approximately $340 million.

"We are thrilled that Trussway will now be an integral part of Builders FirstSource. Since 1972, Trussway has been a supplier of choice to customers due to its ability to routinely deliver high quality products and services," said Dave Flitman, President and CEO of Builders FirstSource. "The addition of Trussway expands our footprint with our roof and floor truss offerings, including for multifamily customers, and enhances our value-added portfolio to better serve our customers and accelerate growth. We are excited to welcome the Trussway team, with its long-standing customer relationships and track record of profitable growth, into the Builders FirstSource family."

Headquartered in Houston, and with 1,000 employees nationwide, Trussway benefits from customer relationships across the ecosystem of owners, developers, general contractors and framers. Trussway serves more than 340 customer accounts in the U.S., and its average relationship with its top 25 customers is over 10 years. Trussway's innovative in-house estimating, design and engineering approach will be complementary to BFS, and the Company anticipates it will lead to synergies across its portfolio. As part of the acquisition, Builders FirstSource is adding Trussway's integrated network of six strategically located manufacturing facilities across the U.S.

"Trussway is honored to be a part of the BFS family," said Jeff Smith, President and CEO of Trussway. "For 50 years, Trussway associates have worked hard at building this company into a leading truss manufacturer. We look forward to bringing, and building on, our high intensity approach to safety, quality, service, production and customer satisfaction with the BFS Team."

The purchase of Trussway will be funded through cash on hand and the Company's ABL.

Advisors
Rothschild & Co. served as financial advisor to Trussway and Latham & Watkins LLP served as its legal counsel. Alston & Bird LLP served as BFS's legal counsel.

About Builders FirstSource

Headquartered in Dallas, Texas, Builders FirstSource is the largest U.S. supplier of building products, prefabricated components, and value-added services to the professional market segment for new residential construction and repair and remodeling. We provide customers an integrated homebuilding solution, offering manufacturing, supply, delivery and installation of a full range of structural and related building products. We operate in 42 states with approximately 560 locations and have a market presence in 47 of the top 50 and 85 of the top 100 MSA's, providing geographic diversity and balanced end market exposure. We service customers from strategically located distribution and manufacturing facilities (certain of which are co-located) that produce value-added products such as roof and floor trusses, wall panels, stairs, vinyl windows, custom millwork and pre-hung doors. Builders FirstSource also distributes dimensional lumber and lumber sheet goods, millwork, windows, interior and exterior doors, and other building products.

Forward-Looking Statements

Statements in this news release and the schedules hereto that are not purely historical facts or that necessarily depend upon future events, including statements about forecasted financial performance or other statements about anticipations, beliefs, expectations, hopes, synergies, intentions or strategies for the future, may be forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. Readers are cautioned not to place undue reliance on forward-looking statements. In addition, oral statements made by our directors, officers and employees to the investor and analyst communities, media representatives and others, depending upon their nature, may also constitute forward-looking statements. As with the forward-looking statements included in this release, these forward-looking statements are by nature inherently uncertain, and actual results may differ materially as a result of many factors. All forward-looking statements are based upon information available to Builders FirstSource on the date this release was submitted. Builders FirstSource undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. Any forward-looking statements involve risks and uncertainties that could cause actual events or results to differ materially from the events or results described in the forward-looking statements, including risks or uncertainties related to the continuing COVID-19 pandemic and its impact on the economy, the Company's acquisitions and continued ability to identify and consummate attractive acquisitions, the Company's growth strategies, including gaining market share and its digital strategies, or the Company's revenues and operating results being highly dependent on, among other things, the homebuilding industry, which in turn is dependent on economic conditions, lumber prices and the economy, including interest rates, inflation and labor and supply shortages. Builders FirstSource may not succeed in addressing these and other risks. Further information regarding factors that could affect our financial and other results can be found in the risk factors section of Builders FirstSource's most recent annual report on Form 10-K filed with the Securities and Exchange Commission (the "SEC") and in the other reports Builders FirstSource files with the SEC. Consequently, all forward-looking statements in this release are qualified by the factors, risks and uncertainties contained therein.

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ICR for Builders FirstSource, Inc.
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Exhibit 5

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

In re	§	
	§	**Civ. Act. No. 3:21-cv-0881-x**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	**Consolidated with:**
	§	**3:21-cv-0880-x**
Reorganized Debtor/Plaintiff,	§	**3:21-cv-1010-x**
	§	**3:21-cv-1378-x**
v.	§	**3:21-cv-1379-x**
	§	**3:21-cv-3160-x**
NEXPOINT ASSET MANAGEMENT, L.P. (f/k/a HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.), et al.,	§	**3:21-cv-3162-x**
	§	**3:21-cv-3179-x**
	§	**3:21-cv-3207-x**
		3:22-cv-0789-x

Defendants.

NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

James Dondero ("Dondero"), defendant in Civ. Act. No. 3:22-cv-0881-x (consolidated with the above-captioned matters) and the adversary proceeding styled *Highland Capital Management, L.P. vs. James Dondero, et al.*, Adversary Proceeding No. 21-03003-sgj, appeals to the United States Court of Appeals for the Fifth Circuit from the following orders of the District Court for the Northern District of Texas: (1) the AMENDED FINAL JUDGMENT AGAINST JAMES DONDERO entered in this consolidated case as Dkt. 148 on August 3, 2023, and (2) Electronic Orders Dkt. 129 and Dkt. 131 (clarified by Electronic Order Dkt. 135, entered on July 6, 2023) which denied as moot the Motion for Ruling on Pending Objections (addressing, *inter alia*, an Objection to Order Denying Motions to Extend Expert Disclosure and Discovery Deadlines).

The parties to the judgment appealed from and the names and addresses of their respective attorneys are as follows:

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Dated: September 1, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez

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Attorneys for Defendant James Dondero

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on September 1, 2023, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive electronic notices in this case.

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez

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and the Highland Claimant Trust

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

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

THE HIGHLAND PARTIES' REPLY IN FURTHER SUPPORT OF MOTION TO DISMISS COMPLAINT

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The Highland Parties, the defendants in the above-captioned adversary proceeding, reply to Plaintiffs' *Response* [Docket No. 17] (the "**Response**") and respectfully submit the following in further support of their Motion seeking to dismiss the Action.[1]

I. PRELIMINARY STATEMENT

1. The Claimant Trust is a Delaware statutory trust that was created by the Plan and is governed by the Delaware Statutory Trust Act. Under the Trust Act, whether a party is a beneficiary (here, a Claimant Trust Beneficiary) is determined by the plain language of the governing instrument (here, the CTA). Under the CTA, Plaintiffs (a) hold only contingent, unvested interests in the Claimant Trust, (b) are not Claimant Trust Beneficiaries, and (c) will not become Claimant Trust Beneficiaries unless they vest—and Plaintiffs will not vest unless and until all senior claims, including indemnification claims, are indefeasibly paid in full, all contingent claims in Class 8 and 9 are resolved, and the Claimant Trustee has certified as much to this Court, ***none*** of which has occurred.

2. To avoid the applicable language in the Plan and CTA, Plaintiffs argue—for the first time—that beneficiary status is determined by Delaware common law, not the CTA or the Trust Act. Plaintiffs are wrong. The Act explicitly defines the "beneficial owners" of a Delaware Statutory Trust by reference to the "governing instrument of the statutory trust." In other words, ***the CTA determines when and if Plaintiffs are Claimant Trust Beneficiaries***. Under the CTA, Plaintiffs are not Claimant Trust Beneficiaries and have no rights as beneficiaries.

3. In addition to their new legal theory, Plaintiffs continue to assert that this Court should deem them Claimant Trust Beneficiaries because they are "in the money" and are "likely to vest." But this Court has already determined that is not how the CTA or Plan works. Under the

[1] Capitalized terms used but not defined herein shall take on the meaning ascribed thereto in the Motion and the *Memorandum of Law* [Docket No. 14] (the "**MOL**") filed in support of the Motion. Further references to the Motion include the MOL.

Plan and CTA, whether Plaintiffs are "in the money" based on estimated assets and liabilities at a particular moment in time has no bearing on whether they have "vested" or are "likely to vest."

4. Moreover, this Court has already ruled that it lacks "the power to equitably deem HMIT's Contingent Trust Interest to be vested…." Ultimately, under the Plan, the CTA, and applicable law, Plaintiffs are not Claimant Trust Beneficiaries—and will not become Claimant Trust Beneficiaries unless and until they have actually vested. The Motion should be dismissed under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

II. REPLY

A. Plaintiffs Are Not Beneficiaries of the Claimant Trust Under Delaware Law

5. In the Response, Plaintiffs assert a new, but flawed, legal argument as to why they should be considered beneficiaries of the Claimant Trust. Plaintiffs' argument, however, ignores the statutory law governing the Claimant Trust and the clear language of the Plan and CTA.

6. Plaintiffs argue that Delaware trust law does not define "beneficiary" and that this Court must ignore the CTA and apply the definition of "beneficiary" in the Restatement (Third) of Trusts (the "**Restatement**"). The Claimant Trust, however, is a Delaware statutory trust governed by the Delaware Statutory Trust Act (the "**Trust Act,**" Chapter 38 of Title 12 of the Delaware Code).[2] Contrary to Plaintiffs' assertions, the Trust Act defines "beneficial owner" and uses that term exclusively to refer to the beneficial owners (*i.e.*, the beneficiaries of a Delaware statutory trust). Under the Trust Act, a trust's "beneficial owners" are "any owner[s] of a beneficial interest in a statutory trust, the fact of ownership to be determined and evidenced ... in conformity to the applicable provisions of the governing instrument of the statutory trust."[3] In other words, a statutory trust's "beneficial owners" are the parties defined as such in the trust's governing

[2] *See, e.g.*, CTA §§ 2.1(a); 11.10.
[3] 12 Del. C. § 3801(a).

instrument.[4] And, because the Trust Act expressly defines "beneficial owners," the Trust Act expressly precludes the application of any other definition of beneficiary, including that set forth in the Restatement. *See* 12 Del. C. § 3809 ("**Except to the extent otherwise provided in the governing instrument of a statutory trust or in this subchapter**, the laws of this State pertaining to trusts are hereby made applicable to statutory trusts") (emphasis added).

7. Accordingly, the determination of whether Plaintiffs are "beneficiaries" of the Claimant Trust begins and ends with the CTA, which defines "Claimant Trust Beneficiaries" as:

> the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.[5]

Plaintiffs, who hold Class 10 and 11 interests, are not "Claimant Trust Beneficiaries" and "shall not have any rights under" the CTA and will not "be deemed 'Beneficiaries'" "unless and until" they vest in accordance with the Plan and CTA.[6] The CTA and Plan are clear and unambiguous. Plaintiffs' attempts to avoid the CTA, the Plan, and applicable law are unavailing.[7]

8. But even if the Restatement's definition of "beneficiary" applied (it does not), Plaintiffs' argument would still fail. In *Paul Capital Advisors, LLC,*[8] the Delaware Chancery Court looked to the Restatement to determine whether a party was a "beneficiary" of a Delaware common

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[4] *See In re Nat'l Collegiate Student Loan Trs. Litig.,* 251 A.3d 116, 190 (2020) (relying on the definition of "beneficial owner" under the Trust Act to determine which holders of interests in a statutory trust were owed fiduciary duties under Delaware laws pertaining to all trusts).

[5] CTA, § 1.1(h); Plan, Art. I.B.27.

[6] *See, e.g.*, Plan, Art. I.B.44; CTA, §§ 1.1(h), 5.1(c).

[7] Plaintiffs' citation to *Estate of Tigani* and *Estate of Necastro,* which stand for the proposition that "statutory language" shouldn't be interpreted restrictively, is equally unavailing. *See* Response ¶ 46. Whether Plaintiffs are beneficiaries of the Claimant Trust is determined by the Plan and CTA, not a Delaware statute that must be "interpreted."

[8] *Paul Cap. Advisors, L.L.C. v. Stahl,* 2022 Del. Ch. LEXIS 195 (Del. Ch. Aug. 17, 2022), as corrected (Aug. 25, 2022).

law (*not* statutory) trust. Applying the Restatement's definition,[9] the Chancery Court found that a trust's "beneficiaries" are the persons defined as "beneficiaries" in the trust's governing document:

> According to the Defendants, [the fact that the trust agreements specify who the beneficiary is] ends the inquiry—the Plaintiffs are not beneficiaries. I agree. If the language of a trust's governing document "is unambiguous, the Court looks no further and does not consider extrinsic evidence of intent." The Court cannot "look to extrinsic evidence to read ambiguity into an unambiguous contract." This is particularly true where, as here, the Trust Agreements at issue are fully integrated. The Trust Agreements identify only one beneficiary: MHT. "If the drafters of the Trust Agreement[s] ... had intended the [Trust Advisor] to administer the [Exchange] Trusts in the interests of another deal party, the Trust Agreements would have said so." They do not. It is thus manifest from the language of the Trust Agreements that the settlor, MHT, intended itself to be the only beneficiary.[10]

The Chancery Court, finding that the movant was not a "beneficiary" under the governing instrument, dismissed the action for lack of standing.[11]

9. Likewise, Plaintiffs are not beneficiaries of the Claimant Trust under the clear and unambiguous language of the Plan and CTA. Highland, as settlor, did not "manifest its intention" to include Plaintiffs as beneficiaries. In fact, the Plan and the CTA *expressly exclude* Dugaboy and HMIT from the definition of Claimant Trust Beneficiaries. Plaintiffs are not beneficiaries of the Claimant Trust and lack standing under the CTA and Delaware law[12] to "compel" an accounting.

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[9] Restatement (Third) of Trusts § 48 ("[A] person is a beneficiary of a trust if the settlor manifests an intention to give the person a beneficial interest; a person who merely benefits incidentally from the performance of the trust is not a beneficiary.")

[10] *Stahl,* 2022 Del. Ch. LEXIS 195 at *27–*28.

[11] Plaintiffs' citation to an Idaho case based on an earlier version of the Restatement or a California case considering a California trust are irrelevant; the issues before the Court concern a Delaware statutory trust governed by Delaware law. CTA §§ 2.1(a); 11.10. Similarly, Plaintiffs' reliance on Texas law regarding equitable remedies—citing *Wells Fargo Bank Tex., N.A. v. Foulston Siefkin LLP,* 348 F. Supp. 2d 772, 783 (N.D. Tex. 2004), a Texas case about a Texas testamentary trust—is utterly out of place. Plaintiffs' argument that Texas law could somehow give Plaintiffs more standing than they have as non-beneficiaries under Delaware law, the Plan, and the CTA is misguided. Delaware law applies, and Plaintiffs cite no authority for why Texas law could or should govern. In any event, Plaintiffs' arguments under Texas law are contingent on their being beneficiaries. Response pg. 21-22 ("[B]ecause Plaintiffs are beneficiaries of the Claimant Trust, they may bring claims under Texas law against the Claimant Trust for a trust accounting"). Plaintiffs are not Claimant Trust Beneficiaries, and their argument fails.

[12] Plaintiffs state that "as explained immediately above, Plaintiffs have legal rights, including a right to an accounting that [*sic*] under Delaware law, including the Delaware Statutory Trust Act, as well as the CTA." Response, ¶ 54. Plaintiffs' conclusory statement is unsupported and unsupportable. Plaintiffs have not "explained" why they have rights; they simply assert they have rights as beneficiaries because they want to be beneficiaries. That is not how the law works.

B. All Counts Should Be Dismissed for Failure to State a Claim

10. The gravamen of all three Counts in the Complaint is that the Claimant Trustee must provide Plaintiffs with information sufficient to show that Plaintiffs are "in the money" and then deem them vested Claimant Trust Beneficiaries under the CTA.[13] In asserting their Counts, Plaintiffs admit, as they must, that the CTA—not Delaware common law—governs Plaintiffs' status as "beneficiaries" of the Claimant Trust. But as this Court has already found, Plaintiffs are not "in the money" and are not, and will not be, Claimant Trust Beneficiaries with rights under the CTA, unless and until they vest in accordance with the terms of the CTA.

11. Counts One and Three Are Moot: This Court previously found that, based on the disclosures in the Pro Forma Adjusted Balance Sheet, HMIT is "not in the money" and not a Claimant Trust Beneficiary. Yet Plaintiffs—despite their admissions in the Motion to Reconsider that the Pro Forma Adjusted Balance Sheet was sufficient to show Plaintiffs were "in the money"—continue to demand information to determine "whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests" under the CTA. Compl. ¶ 83. The Pro Forma Adjusted Balance Sheet provided that information[14] and showed that Plaintiffs were not "in the money."[15]

[13] In fact, Plaintiffs' motives are highly suspect since they seek "information" to review ***all*** of the Claimant Trust's post-effective date transactions, not just to determine whether they are "in the money." Compl. ¶88 ("Defendants should be compelled to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets, ***and details of all transactions that have occurred*** since the wall of silence was erected, and all liabilities.") (emphasis added). This betrays an improper intent to second-guess—and potentially challenge—Highland's business judgment.

[14] Indeed, Plaintiffs have already received more "information" than actual Claimant Trust Beneficiaries have a right to under the CTA (CTA, §§ 3.12(b); 5.10(a)), and HMIT relied on that information to argue (incorrectly) that it is "in the money."

[15] Plaintiffs contend that Count One is not moot because they still need additional "detail" and "backup" of the Pro Forma Adjusted Balance Sheet's numbers. *See* Response ¶¶ 17-27. In so arguing, Plaintiffs stubbornly cling to a false premise—that simply claiming to be "in the money" is relevant to being a Claimant Trust Beneficiary. It is not. Under the CTA, Plaintiffs will not be Claimant Trust Beneficiaries unless and until they vest, which requires, *inter alia*, the indefeasible payment of all senior claims, including indemnification claims.

12. Count Three Seeks an Advisory Opinion: Plaintiffs assert they should be deemed vested Claimant Trust Beneficiaries under the CTA. Plaintiffs allege that vesting is determined by "whether the 'Claimant Trust assets exceed the obligation of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid,'" and therefore is "not dependent upon hypothetical facts." Plaintiffs are (willfully) misconstruing the terms of the CTA. Whether current Claimant Trust Beneficiaries "may be indefeasibly paid" and contingent claims "likely to vest"[16] is irrelevant. As this Court has found, under the CTA, among other things, Claimant Trust Beneficiaries ***must be actually paid in full*** before contingent interests will vest, and whether they will be (and whether Plaintiffs will vest) is contingent upon unknown and unknowable facts.

13. Count Three Is Barred by Collateral Estoppel: This Court previously found that Plaintiffs are not "in the money" and cannot be deemed vested under the CTA. *See* Order Denying Leave at *34-35; Order Denying Reconsideration at 3-4. Plaintiffs maintain that Count Three is not barred by collateral estoppel because the prior decision did not address whether Plaintiffs are "'*in the money*' now" or whether they will "never be '*in the money*.'" Response ¶ 37. But the issues of whether Plaintiffs' contingent interests are "likely to vest" or whether Plaintiffs are "in the money now" are one and the same with the Court's prior determination that HMIT is not "in the money" because the conditions to vesting in the CTA *have not occurred and remain unknown*. Further, whether HMIT was "in the money" was a "necessary" part of the Court's prior order. This Court found "HMIT's status as a 'beneficiary' of the Claimant Trust is defined by the CTA itself, pure and simple" and expressly rejected HMIT's argument that "its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present

[16] Compl. ¶ 94.

'beneficial owner' under Delaware trust law." Order Denying Leave at *34-35.[17] In the Order Denying Reconsideration, the Court reiterated its finding that HMIT is not "in the money" and that its contingent interests have not vested under the Plan and CTA.[18]

C. Counts Two and Three for Declaratory Relief Fail as a Matter of Law

14. Counts Two and Three, which seek declaratory relief, fail to state plausible claims under Rule 12(b)(6) because there is no underlying controversy. These Counts, seeking declarations (a) regarding the Claimant Trust's assets and liabilities and (b) whether Plaintiffs' interests are likely to vest, are premised entirely on Count One. *See* Compl. ¶ 90 ("***Once Defendants are compelled to provide information about the Claimant Trust Assets***, Plaintiffs seek a determination from the Court of the relative value of the Claimant Trust Assets compared to the bankruptcy estate obligations…") (emphasis added). As discussed, Count One fails as a matter of law because Plaintiffs are not Claimant Trust Beneficiaries and have no right to information—let alone to "compel" the disclosure of information—under the CTA. The relief sought in Count One is also moot. Plaintiffs claim to seek additional financial information for the purpose of knowing whether they are, or will foreseeably be, Claimant Trust Beneficiaries. But this Court has already found that, based on the Pro Forma Adjusted Balance Sheet, they are not. For all the reasons discussed in the Motion and further herein, any additional financial information will not change this result. Because Count One does not present a justiciable controversy

[17] The Court explained that (i) "HMIT's status as a 'beneficiary' of the Claimant Trust is defined by the CTA itself, pure and simple"; (ii) under the CTA "'Contingent Trust Interests' 'shall not have any rights under this Agreement' and will not 'be deemed 'Beneficiaries' under this Agreement,' 'unless and until' they vest in accordance with the Plan and the CTA", and (iii) "[i]t is undisputed that HMIT's Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested…." *Id.* at *34-35.

[18] As noted in the Motion, Dugaboy's interests are aligned with HMIT's interests regarding whether Contingent Trust Interests have vested, and therefore, privity exists for purposes of collateral estoppel. *See* Motion ¶ 34 n. 17.

underlying Plaintiffs' claims for declaratory relief in Counts Two and Three, all three Counts should be dismissed.

III. CONCLUSION

The Highland Parties respectfully request that the Court grant the Motion, dismiss the Complaint in its entirety, and grant any additional relief the Court deems appropriate.

Dated: January 19, 2024

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The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 24, 2024

United States Bankruptcy Judge

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

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

MEMORANDUM OPINION AND ORDER GRANTING MOTION TO DISMISS ADVERSARY PROCEEDING IN WHICH CONTINGENT INTEREST HOLDERS IN CHAPTER 11 PLAN TRUST SEEK A POST-CONFIRMATION VALUATION OF TRUST ASSETS

I. INTRODUCTION

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

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

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

[2] Capitalized terms not defined in this introduction shall be defined later herein.

[3] *See Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiff's Interests in the Claimant Trust* ("Complaint"). Dkt. No. 1.

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

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

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

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

I. JURISDICTION

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

II. BACKGROUND

A. The Bankruptcy Case and the Plan

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

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

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

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

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[4] Mark Okada resigned from his role with Highland prior to the Petition Date.

[5] *See Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* ("Disclosure Statement") Art. II(D)4, at 20. Bankr. Dkt. No. 1473.

[6] *Id.*

[7] Bankr. Dkt. No. 339.

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

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

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

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

[9] Bankr. Dkt. No. 854.

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

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

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

[12] Bankr. Case Dkt. No. 1808.

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

[14] *See generally* Plan, Arts. III & IV.

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

B. Information Rights under the CTA

The Claimant Trust is a Delaware statutory trust established pursuant to the terms of that certain *Claimant Trust Agreement* ("CTA"), effective August 11, 2021, for the benefit of Claimant Trust Beneficiaries, which are defined in the CTA to be[15]

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

Under the clear terms of the CTA, information rights are limited, and the Claimant Trustee has no duty to provide an accounting of the Claimant Trust's assets to any party, including the Claimant Trust Beneficiaries.[16] The CTA grants limited information rights solely to a "Claimant Oversight Board"[17] and the Claimant Trust Beneficiaries:[18]

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

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

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

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

[18] CTA § 3.12(b).

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

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

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

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

[20] *See* CTA § 1.1(h); Plan Art. I.B.27.

including, as to Class 8 claims, "all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the 'GUC Payment Certification')."[21]

C. The Complaint and Motion to Dismiss

1. The Complaint

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

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

[21] *See* CTA § 5.1(c).

[22] For ease of reference, the court will refer to the Plaintiffs' "First Claim for Relief," "Second Claim for Relief," and "Third Claim for Relief" as Count I, Count II, and Count III, respectively.

[23] Complaint ¶¶ 82-88.

[24] *Id.* ¶ 75 (citing Plan, Art. IV(B)(9)).

[25] *Id.* ¶ 76.

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

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

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

[26] *Id.* ¶¶ 89-92, at 26. The court notes that Plaintiffs' request for declaratory relief in Count II is predicated on the court granting the equitable relief sought in Count I.

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

[28] *Id.* ¶ 94, at 27 (emphasis added).

acknowledge that "[a]ll of that must be done according to the terms of the Plan and the Claimant Trust Agreement."[29]

2. *The Valuation Motion, Precursor to the Complaint*

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

[29] *Id.* ¶ 94 n.6, at 27.

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

[31] HMIT filed a *Limited Response in Support of Certain Requested Relief* on August 24, 2022.

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

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

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

[33] Order Denying Valuation Motion, 4.

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

[35] *See id.* at 6 (quoting Fed. R. Bankr. P. 7001(9)).

[36] *Id.* at 6.

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

Proceeding.[38] Plaintiffs then filed the Complaint that initiated this Adversary Proceeding on May 10, 2023.

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

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

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

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

[39] Bankr. Dkt. No. 3699 (filed on March 28, 2023).

[40] *See* Bankr. Dkt. Nos. 3760, 3815, and 3816.

[41] Bankr. Dkt. No. 3757.

[42] Bankr. Dkt. No. 3897.

[43] Bankr. Dkt. No. 3870.

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

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

[44] Bankr. Dkt. No. 3872 (filed July 6, 2023).

[45] *See* Bankr. Dkt. Nos. 3756 and 3757 ("Post-Confirmation Reports").

[46] MTD Brief ¶ 20, at 10.

[47] Bankr. Dkt. No. 3904.

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

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

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

[48] Bankr. Dkt. No. 3905.

[49] Bankr. Dkt. No. 3936.

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

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

4. The Rule 12(b) Motion

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

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

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[51] *Id.* at 2-3.

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

[53] *See Joint Notice of Mediation Report* (filed on November 7, 2023). Bankr. Dkt. No. 3964.

[54] *See Order Approving Stipulation and Proposed Scheduling Order* (entered on November 21, 2023). Dkt. No. 12.

[55] Hereinafter, the court shall refer to a rule of the Federal Rules of Civil Procedure as "Rule ___."

[56] Hereinafter, the court shall refer to a rule of the Federal Rules of Bankruptcy Procedure as "Bankruptcy Rule ___."

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

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

III. CONCLUSIONS OF LAW

A. Legal Standards

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

[57] *See generally* MTD Brief, 11-25.

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

[59] *The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint* ("Reply"). Dkt. No. 21.

[60] A transcript of the February 14 hearing was filed on February 20, 2024. Dkt. No. 25.

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

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

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

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

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

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

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

[61] 63 F.4th at 483.

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

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

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

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

[62] The Fifth Circuit "interprets the § 2201 'case or controversy' requirement to be coterminous with Article III's 'case or controversy' requirement." *Id.* (quoting *Hosein v. Gonzales*, 452 F.3d 401, 403 (5th Cir. 2006)).

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

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

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

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

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

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

3. Collateral Estoppel

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

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

B. Application of the Legal Standards Here

1. Count I – Disclosure and Accounting

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

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

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

[64] Complaint ¶ 88.

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

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

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

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

[65] MTD Brief ¶ 25.

[66] MTD Brief ¶¶ 25-26.

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

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

[67] *See* Response ¶¶ 17-18.

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

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

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

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

[68] *See supra* p.10.

[69] *See supra* pp. 7-9 (discussion of information rights under the terms of the CTA).

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

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

[70] Order Denying Leave, 77-78.

[71] *Id.*, 78.

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

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

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[72] 12 Del. C. § 3801(a) (emphasis added).

[73] *See, e.g.*, Plan, Art. I.B.44; CTA §§ 1.1(h), 5.1(c).

[74] Complaint ¶ 83.

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

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

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

[76] Order Denying Leave to Bring Claims Pertaining to Claims Trading, 78.

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

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

2. *Count II – Request for Declaratory Relief*

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

[77] Complaint ¶¶ 89-92.

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

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

[79] *See supra* note 26.

enforceable, and the Fifth Circuit agreed with the district court that the agreement was unenforceable).[80]

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

3. Count III – Request for Declaratory Relief

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

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

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

[81] *Id.* ¶¶ 93-95, at 27.

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

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

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

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

Accordingly,

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

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

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

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

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

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

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 24, 2024

United States Bankruptcy Judge

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

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

MEMORANDUM OPINION AND ORDER GRANTING MOTION TO DISMISS ADVERSARY PROCEEDING IN WHICH CONTINGENT INTEREST HOLDERS IN CHAPTER 11 PLAN TRUST SEEK A POST-CONFIRMATION VALUATION OF TRUST ASSETS

I. INTRODUCTION

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

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

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

[2] Capitalized terms not defined in this introduction shall be defined later herein.

[3] *See Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiff's Interests in the Claimant Trust* ("Complaint"). Dkt. No. 1.

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

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

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

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

I. JURISDICTION

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

II. BACKGROUND

A. The Bankruptcy Case and the Plan

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

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

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

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

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[4] Mark Okada resigned from his role with Highland prior to the Petition Date.

[5] *See Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* ("Disclosure Statement") Art. II(D)4, at 20. Bankr. Dkt. No. 1473.

[6] *Id.*

[7] Bankr. Dkt. No. 339.

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

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

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

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

[9] Bankr. Dkt. No. 854.

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

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

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

[12] Bankr. Case Dkt. No. 1808.

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

[14] *See generally* Plan, Arts. III & IV.

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

B. Information Rights under the CTA

The Claimant Trust is a Delaware statutory trust established pursuant to the terms of that certain *Claimant Trust Agreement* ("CTA"), effective August 11, 2021, for the benefit of Claimant Trust Beneficiaries, which are defined in the CTA to be[15]

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

Under the clear terms of the CTA, information rights are limited, and the Claimant Trustee has no duty to provide an accounting of the Claimant Trust's assets to any party, including the Claimant Trust Beneficiaries.[16] The CTA grants limited information rights solely to a "Claimant Oversight Board"[17] and the Claimant Trust Beneficiaries:[18]

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

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

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

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

[18] CTA § 3.12(b).

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

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

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

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

[20] *See* CTA § 1.1(h); Plan Art. I.B.27.

including, as to Class 8 claims, "all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the 'GUC Payment Certification')."[21]

C. The Complaint and Motion to Dismiss

1. The Complaint

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

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

[21] *See* CTA § 5.1(c).

[22] For ease of reference, the court will refer to the Plaintiffs' "First Claim for Relief," "Second Claim for Relief," and "Third Claim for Relief" as Count I, Count II, and Count III, respectively.

[23] Complaint ¶¶ 82-88.

[24] *Id.* ¶ 75 (citing Plan, Art. IV(B)(9)).

[25] *Id.* ¶ 76.

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

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

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

[26] *Id.* ¶¶ 89-92, at 26. The court notes that Plaintiffs' request for declaratory relief in Count II is predicated on the court granting the equitable relief sought in Count I.

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

[28] *Id.* ¶ 94, at 27 (emphasis added).

acknowledge that "[a]ll of that must be done according to the terms of the Plan and the Claimant Trust Agreement."[29]

2. *The Valuation Motion, Precursor to the Complaint*

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

[29] *Id.* ¶ 94 n.6, at 27.

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

[31] HMIT filed a *Limited Response in Support of Certain Requested Relief* on August 24, 2022.

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

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

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

[33] Order Denying Valuation Motion, 4.

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

[35] *See id.* at 6 (quoting Fed. R. Bankr. P. 7001(9)).

[36] *Id.* at 6.

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

Proceeding.[38] Plaintiffs then filed the Complaint that initiated this Adversary Proceeding on May 10, 2023.

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

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

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

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

[39] Bankr. Dkt. No. 3699 (filed on March 28, 2023).

[40] *See* Bankr. Dkt. Nos. 3760, 3815, and 3816.

[41] Bankr. Dkt. No. 3757.

[42] Bankr. Dkt. No. 3897.

[43] Bankr. Dkt. No. 3870.

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

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

[44] Bankr. Dkt. No. 3872 (filed July 6, 2023).

[45] *See* Bankr. Dkt. Nos. 3756 and 3757 ("Post-Confirmation Reports").

[46] MTD Brief ¶ 20, at 10.

[47] Bankr. Dkt. No. 3904.

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

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

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

[48] Bankr. Dkt. No. 3905.

[49] Bankr. Dkt. No. 3936.

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

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

4. The Rule 12(b) Motion

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

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

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[51] *Id.* at 2-3.

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

[53] *See Joint Notice of Mediation Report* (filed on November 7, 2023). Bankr. Dkt. No. 3964.

[54] *See Order Approving Stipulation and Proposed Scheduling Order* (entered on November 21, 2023). Dkt. No. 12.

[55] Hereinafter, the court shall refer to a rule of the Federal Rules of Civil Procedure as "Rule ___."

[56] Hereinafter, the court shall refer to a rule of the Federal Rules of Bankruptcy Procedure as "Bankruptcy Rule ___."

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

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

III. CONCLUSIONS OF LAW

A. Legal Standards

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

[57] *See generally* MTD Brief, 11-25.

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

[59] *The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint* ("Reply"). Dkt. No. 21.

[60] A transcript of the February 14 hearing was filed on February 20, 2024. Dkt. No. 25.

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

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

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

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

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

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

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

[61] 63 F.4th at 483.

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

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

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

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

[62] The Fifth Circuit "interprets the § 2201 'case or controversy' requirement to be coterminous with Article III's 'case or controversy' requirement." *Id.* (quoting *Hosein v. Gonzales*, 452 F.3d 401, 403 (5th Cir. 2006)).

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

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

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

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

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

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

3. Collateral Estoppel

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

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

B. Application of the Legal Standards Here

1. Count I – Disclosure and Accounting

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

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

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

[64] Complaint ¶ 88.

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

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

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

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

[65] MTD Brief ¶ 25.

[66] MTD Brief ¶¶ 25-26.

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

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

[67] *See* Response ¶¶ 17-18.

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

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

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

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

[68] *See supra* p.10.

[69] *See supra* pp. 7-9 (discussion of information rights under the terms of the CTA).

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

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

[70] Order Denying Leave, 77-78.

[71] *Id.*, 78.

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

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

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[72] 12 Del. C. § 3801(a) (emphasis added).

[73] *See, e.g.*, Plan, Art. I.B.44; CTA §§ 1.1(h), 5.1(c).

[74] Complaint ¶ 83.

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

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

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

[76] Order Denying Leave to Bring Claims Pertaining to Claims Trading, 78.

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

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

2. *Count II – Request for Declaratory Relief*

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

[77] Complaint ¶¶ 89-92.

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

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

[79] *See supra* note 26.

enforceable, and the Fifth Circuit agreed with the district court that the agreement was unenforceable).[80]

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

3. *Count III – Request for Declaratory Relief*

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

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

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

[81] *Id.* ¶¶ 93-95, at 27.

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

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

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

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

Accordingly,

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

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

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

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

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

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

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Counsel for Dugaboy Investment Trust
and Hunter Mountain Investment Trust

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

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

NOTICE OF APPEAL

Part 1: Identify the appellant(s)

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

Dugaboy Investment Trust

Hunter Mountain Investment Trust

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

For appeals in an adversary proceeding:
x Plaintiff
□ Defendant
□ Other (describe)

For appeals in a bankruptcy case and not in an adversary proceeding:
□ Debtor
□ Creditor
□ Trustee
□ Other (describe)

Part 2: Identify the subject of this appeal

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

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

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

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

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

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

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

Highland Clamant Trust

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

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Dated: June 7, 2024

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CERTIFICATE OF SERVICE

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

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

EXHIBIT A

Notice of Appeal

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 24, 2024

United States Bankruptcy Judge

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

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

MEMORANDUM OPINION AND ORDER GRANTING MOTION TO DISMISS ADVERSARY PROCEEDING IN WHICH CONTINGENT INTEREST HOLDERS IN CHAPTER 11 PLAN TRUST SEEK A POST-CONFIRMATION VALUATION OF TRUST ASSETS

I. INTRODUCTION

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

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

---

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

[2] Capitalized terms not defined in this introduction shall be defined later herein.

[3] *See Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiff's Interests in the Claimant Trust* ("Complaint"). Dkt. No. 1.

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

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

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

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

I. JURISDICTION

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

II. BACKGROUND

A. The Bankruptcy Case and the Plan

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

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

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

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

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[4] Mark Okada resigned from his role with Highland prior to the Petition Date.

[5] *See Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* ("Disclosure Statement") Art. II(D)4, at 20. Bankr. Dkt. No. 1473.

[6] *Id.*

[7] Bankr. Dkt. No. 339.

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

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

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

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

[9] Bankr. Dkt. No. 854.

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

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

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

[12] Bankr. Case Dkt. No. 1808.

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

[14] *See generally* Plan, Arts. III & IV.

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

B. Information Rights under the CTA

The Claimant Trust is a Delaware statutory trust established pursuant to the terms of that certain *Claimant Trust Agreement* ("CTA"), effective August 11, 2021, for the benefit of Claimant Trust Beneficiaries, which are defined in the CTA to be[15]

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

Under the clear terms of the CTA, information rights are limited, and the Claimant Trustee has no duty to provide an accounting of the Claimant Trust's assets to any party, including the Claimant Trust Beneficiaries.[16] The CTA grants limited information rights solely to a "Claimant Oversight Board"[17] and the Claimant Trust Beneficiaries:[18]

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

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

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

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

[18] CTA § 3.12(b).

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

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

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

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

[20] *See* CTA § 1.1(h); Plan Art. I.B.27.

including, as to Class 8 claims, "all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the 'GUC Payment Certification')."[21]

C. The Complaint and Motion to Dismiss

1. The Complaint

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

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

[21] *See* CTA § 5.1(c).

[22] For ease of reference, the court will refer to the Plaintiffs' "First Claim for Relief," "Second Claim for Relief," and "Third Claim for Relief" as Count I, Count II, and Count III, respectively.

[23] Complaint ¶¶ 82-88.

[24] *Id.* ¶ 75 (citing Plan, Art. IV(B)(9)).

[25] *Id.* ¶ 76.

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

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

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

[26] *Id.* ¶¶ 89-92, at 26. The court notes that Plaintiffs' request for declaratory relief in Count II is predicated on the court granting the equitable relief sought in Count I.

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

[28] *Id.* ¶ 94, at 27 (emphasis added).

acknowledge that "[a]ll of that must be done according to the terms of the Plan and the Claimant Trust Agreement."[29]

2. *The Valuation Motion, Precursor to the Complaint*

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

[29] *Id.* ¶ 94 n.6, at 27.

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

[31] HMIT filed a *Limited Response in Support of Certain Requested Relief* on August 24, 2022.

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

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

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

[33] Order Denying Valuation Motion, 4.

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

[35] *See id.* at 6 (quoting Fed. R. Bankr. P. 7001(9)).

[36] *Id.* at 6.

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

Proceeding.[38] Plaintiffs then filed the Complaint that initiated this Adversary Proceeding on May 10, 2023.

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

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

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

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

[39] Bankr. Dkt. No. 3699 (filed on March 28, 2023).

[40] *See* Bankr. Dkt. Nos. 3760, 3815, and 3816.

[41] Bankr. Dkt. No. 3757.

[42] Bankr. Dkt. No. 3897.

[43] Bankr. Dkt. No. 3870.

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

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

[44] Bankr. Dkt. No. 3872 (filed July 6, 2023).

[45] *See* Bankr. Dkt. Nos. 3756 and 3757 ("Post-Confirmation Reports").

[46] MTD Brief ¶ 20, at 10.

[47] Bankr. Dkt. No. 3904.

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

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

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

[48] Bankr. Dkt. No. 3905.

[49] Bankr. Dkt. No. 3936.

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

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

4. The Rule 12(b) Motion

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

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

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[51] *Id.* at 2-3.

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

[53] *See Joint Notice of Mediation Report* (filed on November 7, 2023). Bankr. Dkt. No. 3964.

[54] *See Order Approving Stipulation and Proposed Scheduling Order* (entered on November 21, 2023). Dkt. No. 12.

[55] Hereinafter, the court shall refer to a rule of the Federal Rules of Civil Procedure as "Rule ___."

[56] Hereinafter, the court shall refer to a rule of the Federal Rules of Bankruptcy Procedure as "Bankruptcy Rule ___."

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

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

III. CONCLUSIONS OF LAW

A. Legal Standards

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

[57] *See generally* MTD Brief, 11-25.

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

[59] *The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint* ("Reply"). Dkt. No. 21.

[60] A transcript of the February 14 hearing was filed on February 20, 2024. Dkt. No. 25.

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

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

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

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

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

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

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

[61] 63 F.4th at 483.

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

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

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

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

[62] The Fifth Circuit "interprets the § 2201 'case or controversy' requirement to be coterminous with Article III's 'case or controversy' requirement." *Id.* (quoting *Hosein v. Gonzales*, 452 F.3d 401, 403 (5th Cir. 2006)).

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

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

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

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

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

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

3. *Collateral Estoppel*

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

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

B. Application of the Legal Standards Here

1. Count I – Disclosure and Accounting

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

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

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

[64] Complaint ¶ 88.

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

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

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

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

[65] MTD Brief ¶ 25.

[66] MTD Brief ¶¶ 25-26.

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

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

[67] *See* Response ¶¶ 17-18.

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

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

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

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

[68] *See supra* p.10.

[69] *See supra* pp. 7-9 (discussion of information rights under the terms of the CTA).

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

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

[70] Order Denying Leave, 77-78.

[71] *Id.*, 78.

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

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

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[72] 12 Del. C. § 3801(a) (emphasis added).

[73] *See, e.g.*, Plan, Art. I.B.44; CTA §§ 1.1(h), 5.1(c).

[74] Complaint ¶ 83.

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

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

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

[76] Order Denying Leave to Bring Claims Pertaining to Claims Trading, 78.

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

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

2. *Count II – Request for Declaratory Relief*

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

[77] Complaint ¶¶ 89-92.

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

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

[79] *See supra* note 26.

enforceable, and the Fifth Circuit agreed with the district court that the agreement was unenforceable).[80]

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

3. *Count III – Request for Declaratory Relief*

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

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

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

[81] *Id.* ¶¶ 93-95, at 27.

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

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

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

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

Accordingly,

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

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

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

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

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

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

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

	)	**Case No. 19-34054-sgj-11**
In Re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas
	)	June 12, 2024
	)	10:00 a.m. Docket
Reorganized Debtor.	)	
	)	STATUS CONFERENCE RE:
	)	HIGHLAND'S MOTION TO STAY
	)	CONTESTED MATTER
	)	

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

APPEARANCES:

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Proceedings recorded by electronic sound recording;
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DALLAS, TEXAS - JUNE 12, 2024 - 10:04 A.M.

THE CLERK: All rise.

THE COURT: Please be seated. We will now begin a status conference we have set in Highland Capital, Case No. 19-34054. This pertains to an order staying a contested matter that was initiated by Hunter Mountain Investment Trust.

All right. So let's get our lawyer appearances. We'll ask for Hunter Mountain, your appearance, please?

MS. DEITSCH-PEREZ: Good morning, Your Honor. This is Deborah Deitsch-Perez from Stinson for Hunter Mountain. Mr. Aigen is also on the line, I see, and he may assist me by pulling up a PowerPoint.

THE COURT: All right. I'm not sure why we're going to need a PowerPoint, but things are complex, shall we say, in this case as a general matter.

MS. DEITSCH-PEREZ: A short one.

THE COURT: So we will see what that's going to be about.

All right. For the Debtor, who do we have appearing?

MR. MORRIS: Good morning, Your Honor. It's John Morris from Pachulski Stang Ziehl & Jones on behalf of Highland Capital Management, LP.

THE COURT: Okay. I should say Reorganized Debtor, not Debtor. We're a few years down the road.

All right. Do we have other lawyers who want to appear

today?

MR. STANCIL: Your Honor, this is Mark Stancil from Willkie Farr & Gallagher. I'm joined by my colleague, Josh Levy. We represent Mr. Seery.

THE COURT: All right. Thank you.

Would that be all of our lawyer appearances, I presume?

All right. Well, let's be clear about why we are here. And I'm sure the lawyers will correct me if I'm wrong. There was a motion filed, I don't know, I would say January-ish of this year by Hunter Mountain Trust -- I'll call it a Gatekeeper Motion -- where Hunter Mountain was wanting leave of this Court to file a lawsuit in the Delaware Chancery Court against Mr. Seery regarding his role as the Claimant Trust Trustee. And we had a hearing January 25th, and the Court indicated it would stay the motion because I had -- I think that was when I had under advisement, maybe I'd just taken under advisement a Hunter Mountain motion for leave to file -- to go forward with another type of suit involving -- I think it was the Valuation Suit.

MS. DEITSCH-PEREZ: Your Honor? Your Honor?

THE COURT: Okay. So, anyway, I know I stayed the motion for leave to go forward in Delaware Chancery Court. Ms. Deitsch-Perez, what were you wanting to say?

MS. DEITSCH-PEREZ: I was going to say I believe Your Honor stayed the case awaiting your hearing and decision of

the motion to dismiss the valuation complaint.

MR. MORRIS: Correct.

THE COURT: All right. So, and I did go back and look at my order a few days ago, and I said we'd have a status conference after I ruled on that, right? So that's why we're here?

MR. MORRIS: Yes.

MS. DEITSCH-PEREZ: I think so. What Your Honor said was that you thought it was possible that your decision in the valuation case might bear on the motion to stay -- on the motion for leave, and so you stayed the matter, said we would have a status conference after it was decided. After it was decided, we called Ms. Ellison and asked for a status conference so that we could address whether or not the dismissal of the valuation complaint had any bearing on this matter.

In a nutshell, the Court dismissed the valuation complaint on the ground that the Plaintiffs had no standing to seek the valuation because the conditions in the CTA had not been met. Putting aside whether the parties believe that was correct -- it is being appealed -- the motion for leave is materially different and cannot and should not be decided on the same basis. And that's what we're here to discuss today.

THE COURT: All right. So we're here on the status conference because I ruled we would have a status conference

down the road to look at whether should we continue to stay the Hunter Mountain motion for leave to go forward in the Delaware Chancery Court.

So we're here pursuant to my prior order. And your client, Hunter Mountain, is arguing this is materially different, and so I can't figure out for the life of me why this is materially different. I'm just going to share my thinking right now. I have ruled three times now, right, that Hunter Mountain doesn't have standing. And I --

MS. DEITSCH-PEREZ: Your Honor, I --

THE COURT: And if it didn't have standing Time 1, 2, and 3, why on earth would it have standing now?

MS. DEITSCH-PEREZ: Your Honor, I'm prepared to explain why it's different. But if Your Honor has already decided on the basis of what you already have before you that Hunter Mountain has no standing, even though, here, the allegations concern -- are that Mr. Seery is deliberately manipulating the estate to maintain his tenure at his $150,000-a-month job by not paying creditors and refusing to issue the certification. And that allegation, and the fact that the law requires that this be decided by a Delaware court, if those things are not enough for Your Honor to believe that this matter is different and should be decided differently, then we would ask that you simply rule that Hunter Mountain has no standing and is not entitled to have a

Delaware court make the decision of the matters at issue in the motion for leave, and we would take it up at the same time as the valuation motion, so that the issue that Your Honor was concerned about --

THE COURT: What do you mean, you would take it up at the same time as the valuation motion?

MS. DEITSCH-PEREZ: In other words, if Your Honor were to rule right now, as you've indicated, that you believe that --

THE COURT: Right. You would appeal, and then what? What do you mean?

MS. DEITSCH-PEREZ: If I could finish, Your Honor. If Your Honor ruled that Hunter Mountain has no standing to seek leave to sue Mr. Seery in Delaware court and that the CTA overrides Delaware law if Delaware law --

THE COURT: Got it, got it, got it.

MS. DEITSCH-PEREZ: Right? Okay. If Your Honor were to rule that and deny the motion for leave, we would appeal that at the same time -- on the same timeline as the appeal of the valuation decision. And then Your Honor's concern about potentially conflicting rulings would not exist. We would consent to the same court hearing both so that we --

THE COURT: What makes you think a district judge would consolidate these two appeals? Or I guess it would be three appeals.

MS. DEITSCH-PEREZ: We have no control over that, but we would consent to it. The Debtor has expressed a concern about inconsistent rulings, and so if both parties sought for them to be -- the matters to be heard by the same judge -- we've done that in the past with all the -- with the reports and recommendations arising out of the withdrawal of the reference -- in every instance where the parties have requested the same judge to hear appeals from this Court, the District Court has agreed.

So while I certainly don't presume to control the District Court, we have good evidence that they would do so. And that would be the most efficient. It would minimize the chances of inconsistent rulings.

THE COURT: Okay. I'm going to hear your PowerPoint and see if there's something I'm missing, but this is really -- you said extremely different, or words to that effect. But I'm going to tell you right now, I would not -- to all the lawyers -- I would not be presumptuous and think that some district judge, let's say the one who has the current Hunter Mountain appeals, I don't know if it's one judge or two, is going to say, sure, we'll consolidate.

I mean, that's just not the way they work. Maybe you got lucky. Probably it was the Note Litigation, okay, where it made a ton of sense to consolidate that. But let me just be blunt. Bankruptcy is not their priority. The Constitution

requires that criminal matters be their priority. They're just, you know, they're not going to --

MS. DEITSCH-PEREZ: Your Honor, all we can do is ask.

THE COURT: They don't see the world the way we bankruptcy nerds see the world. Okay? That's just my experience. And I don't expect them to.

But, anyway, I -- who, by the way, has the Hunter Mountain appeals? Do we have that handy? I'm just curious.

MS. DEITSCH-PEREZ: I don't --

THE COURT: Judge Ada Brown? Does she have all of them, or just --

MR. MORRIS: She does. She has the main appeal of the order denying the motion for leave to sue Mr. Seery, Stonehill, and Farallon, the one that was the subject of the evidentiary hearing last June. She does have that matter right now.

THE COURT: And right now, do we have a judge assigned to the more recent order denying --

MS. DEITSCH-PEREZ: That was just --

THE COURT: -- Hunter Mountain leave?

MR. MORRIS: Not that I know of.

MS. DEITSCH-PEREZ: That was --

MR. MORRIS: That notice of appeal was just filed, I think, on June 7th, and I don't know if that's been assigned yet.

THE COURT: My law clerk over here is saying no. You're correct; there's no judge assigned to that. So we, you know, we --

MS. DEITSCH-PEREZ: So it is possible, then, that we could ask Judge Brown to hear all three. That's a possibility.

MR. MORRIS: May I be heard at some point, Your Honor?

THE COURT: Well, absolutely. Absolutely. But I am just, I'm focusing on procedure at the moment. And we'll let you explain why you think this is different, but surely you know where my brain is.

I've ruled three times now that Hunter Mountain does not have standing under the terms of the plan and under Delaware law. And three times, we have written lengthy opinions on that. And my impression, after sitting here 18 years, is the District Court is going to be very irritated with me and everyone else if I rule yet a fourth time on this and there is an appeal sent their way. Consolidation or no consolidation, at some point judicial economy and efficiency of the parties rears its head.

I mean, why wouldn't I stay this further and see how Judge Brown rules in the other matter? Heck, --

MS. DEITSCH-PEREZ: Your Honor, the --

THE COURT: -- at some point this plan could go

effective. I mean, excuse me, could be fully implemented. But I think we know why it hasn't been. My impression is certainly all we have left is to resolve all the litigation involving your client.

MS. DEITSCH-PEREZ: Your Honor, the reason you cannot stay it is because the Fifth Circuit and the Supreme Court have a very high standard for staying litigation, and by staying it you would be effectively denying the very relief that's being sought. Hunter Mountain is entitled to try to end this by removing a trustee with a conflict who is eating up the costs -- the money in the estate. And we're entitled to have that decided. And by staying it, you are effectively denying the relief. That's what's impermissible. The Fifth Circuit and the Supreme Court have set a very high bar to staying litigation.

This is not like the motion for mediation, where we harbored no illusion whatsoever that Your Honor would stay litigation over the Debtor's objection. The only --

THE COURT: Okay. It never would have occurred to me this was analogous to the motion to stay litigation. I think it's analogous to three different motions your client has filed and I've ruled on. I don't know, --

MS. DEITSCH-PEREZ: Your Honor, I will show you why it's different.

THE COURT: -- what number of pages, Courtney, were

our three rulings? And I say three because --

MS. DEITSCH-PEREZ: Your Honor?

THE COURT: -- there was a motion for reconsideration. I mean, a couple hundred pages of ink spilt that some district judge --

MS. DEITSCH-PEREZ: Your Honor?

THE COURT: -- has got to read? And why are we doing the same thing over and over? It's like the famous --

MS. DEITSCH-PEREZ: That's what I --

THE COURT: -- Einstein saying. You know, the famous Einstein saying. What did he say?

MR. MORRIS: The definition of insanity, Your Honor, doing the same thing over and over again, expecting a different result? That was going to be my opening line.

THE COURT: Oh, wow. Oh, wow. Okay. Well, that's --

MR. MORRIS: So we're in the same place.

THE COURT: -- definitely the one I was thinking.

MS. DEITSCH-PEREZ: Your Honor, the difference --

THE COURT: Okay. Ms. Deitsch, just --

MS. DEITSCH-PEREZ: The difference is that this was --

THE COURT: -- let's make -- just make your presentation and then we'll hear Mr. Morris's presentation. If something is horribly lost on me, this is your chance to

show me that I am totally missing the boat on why this situation is different.

MS. DEITSCH-PEREZ: Okay. There are two points here. One is we would like you to understand why it's different and see why it's different. But if you have already made up your mind, then simply deny the motion for leave, opine that the CTA overrides Delaware law, and the most efficient path is to have this evaluation and the insider trading case be appealed where that will be the most efficient use of resources.

So let me go -- could I ask --

MR. MORRIS: Your Honor, I apologize.

THE COURT: Okay. Before we do the whole PowerPoint, --

MR. MORRIS: I would love to be heard on the procedural point. Just the procedural point.

THE COURT: All right. You may, Mr. Morris.

MR. MORRIS: There is no motion to dismiss pending before the Court. What you're being asked to do, the Court doesn't have the authority to do. What we're here today to decide is whether or not to extend the stay. The answer is either going to be yes or no.

If the stay is extended, we're done. If the stay is not extended, then we're going to have to answer the complaint. And we're going to make a motion to dismiss. And we're going to have a whole -- with a Rule 11 motion, because this is all

collaterally estopped. But putting that aside for the moment, going to the District Court would be appropriate only if Hunter Mountain agrees that the issues are the exact same as raised in the stay.

You're about to hear a presentation that says, oh, no, no, they're not. These issues have never been heard before, they've never been briefed before, and there is no chance that it would be appropriate that the Court would have the authority to send this -- to make a decision on a case on a matter that's never been briefed. Right?

It's either a stay or it's not a stay. If it's a stay, let's go home. If it's not a stay, then we're going to answer the complaint with a motion to dismiss, and they can come back and tell us at that time, in writing, with notice, why they're not collaterally estopped by Your Honor's prior orders.

That's all.

THE COURT: Okay.

MS. DEITSCH-PEREZ: And that would normally be the case, Your Honor, but here the Court can sua sponte deny the motion. The Court has said repeatedly that it views it as the same. And so we are saying we would forego further briefing if Your Honor wanted to simply sua sponte dismiss the matter so that it could be appealed. And so it could be appealed on the same timeline more or less as the other matters that are proceeding.

I'll continue on now with --

THE COURT: Okay. Well, --

MS. DEITSCH-PEREZ: -- with the presentation.

THE COURT: I'll state the obvious. And as Mr. Morris said but I think you know very well, Ms. Deitsch-Perez, this is just a motion to unstay the contested matter -- I mean, it may be premature to call it a contested matter -- to unstay proceedings on Hunter Mountain's motion for leave to file a complaint in the Delaware Chancery Court. Should I keep the stay in place or not? Okay? So, --

MS. DEITSCH-PEREZ: I understand we're --

THE COURT: -- I don't think anyone has any confusion about that, and it's the reason why I said something about you having a PowerPoint. I was a little surprised that you would have a PowerPoint on this, but if you do, you do. I'll let you present it.

But I would never jump ahead, just so everyone is crystal clear, I would never jump ahead to a substantive ruling today that I'm denying your motion for leave to file the complaint in the Delaware Chancery Court. It would be either we're continuing the stay, we're going to continue the stay, please upload a new order supplementing my prior order saying the stay is going to be continued until whatever we decide, or it's going to be the stay is lifted, parties have, you know, 21 days to respond to Hunter Mountain's motion for leave to

file a complaint. Okay? So I hope there was no confusion on that.

MS. DEITSCH-PEREZ: No, Your Honor, we were simply responding to your repeated suggestion that this is the same and Hunter Mountain has no standing and the CTA overrides Delaware law, which was, if that was already determined and you did not need further explanation from the Reorganized Debtor on that in opposition, because we've already filed the motion for leave, then we would not argue as a procedural point that Your Honor could not simply make a decision.

THE COURT: Okay.

MS. DEITSCH-PEREZ: I understand that Mr. Morris is saying he does not want that because the whole goal here is to delay this long enough so that we can never be heard in Delaware. So I understand Mr. Morris's position.

MR. MORRIS: You know, Your Honor, I just, I so regret these ad hominem attacks. The fact of the matter is we don't have a pleading. We're about to hear arguments from Ms. Deitsch-Perez for the very first time. She's never briefed these issues. And I'm just going to leave it at that. This is just so improper.

THE COURT: All right. Well, how lengthy is your PowerPoint, and is it really geared towards the stay issue?

MS. DEITSCH-PEREZ: It is, Your Honor. It's seven slides.

THE COURT: Okay.

MS. DEITSCH-PEREZ: It's not very long. And there is nothing that we are going to raise that the Debtor is not aware of.

THE COURT: All right. Well, I'll let you present your seven slides. And, again, I think we're all crystal clear. This is just about is it time to lift the stay. And we've had a lot of preliminary discussions and I've made a lot of comments because it just seemed like the common-sense approach we might all agree to was let the District Court decide your appeal. She may say --

MS. DEITSCH-PEREZ: We do not agree to that --

THE COURT: -- Hunter Mountain has standing. She may say Hunter Mountain has standing, let them go forward with their valuation thing, with their suit they want to file against Farallon and whoever the other one was, I can't remember. You know, let them -- they have standing. She may view the plan documents, the Claimant Trust Agreement, Delaware law different. If she does, then absolutely I probably should lift the stay in this matter. I mean, I guess. I don't know.

MS. DEITSCH-PEREZ: Your Honor?

THE COURT: But it just seems like a matter of efficiency. You filed the appeals. You want it heard. You're entitled to that. Let that happen, and then we'll

figure out where we go from there. Except, as we well know, probably one party will file an appeal to the Fifth Circuit. So I'm just trying to understand what is rational here, and --

MS. DEITSCH-PEREZ: The Fifth Circuit has already rejected this very maneuver. And we have a slide that will tell you the --

THE COURT: Maneuver? What maneuver? What maneuver? Whose maneuver?

MS. DEITSCH-PEREZ: The maneuver is to stay a case, but it's the Debtor's request, to stay a case while awaiting other cases' decisions on standing. That's not proper. All of the cases should go up at the same time. If there's a dispositive ruling on standing at some point, well, it could be raised at that time. But there's no reason to stay, to prevent a party from having its day in court, because of the potential that another case is going to decide a similar or even the very same --

THE COURT: Okay. Present your PowerPoint and we'll perhaps better understand.

MS. DEITSCH-PEREZ: Okay. So, I'm --

Mike, if you can pull it up and go to Slide 2.

Okay. So, and before I get to that, yesterday we filed a notice of supplemental authority because since -- this is a very unusual circumstance.

THE COURT: Where did you file that?

MS. DEITSCH-PEREZ: In the bankruptcy. We filed a copy of the *Morris v. Spectra* Delaware case that the Debtor already had because we had found it, I think Mr. Aigen deserves the credit for this, and had provided it to the other counsel for HMIT to --

THE COURT: Okay. Just so you know, I've not seen it, I've not read it. So, --

MS. DEITSCH-PEREZ: Okay. I will describe it --

THE COURT: And I would not have been looking for it before a status conference.

MS. DEITSCH-PEREZ: Okay. I will -- it's very easy to describe. It's a Delaware case. And that was a case where someone was attempting to challenge -- a former shareholder was attempting to challenge a merger. And normally the rule in Delaware is, if you're not a shareholder, you can't challenge it anymore. You're not a shareholder; you can't challenge the merger.

But the claim there was that the Defendants had wrongfully caused the merger to eliminate the shareholders' ability to complain. And the Delaware Supreme Court said, gee, if someone deliberately does something to strip someone of their standing, we're not going to allow that, so we are going to allow someone who is no longer a shareholder to still complain about the merger.

And this is what we found, this is the most analogous

Delaware law we have found, and shows that it is appropriate, if someone does something that prevents someone from having standing, the Court should still allow the case to go forward.

So that's one reason why this is different. But the right to be heard in Delaware on an issue of the workings of a trust, on the issue of removing a trust, that's something that is subject to Delaware law and has to be decided by a Delaware court. And we cited in the opposition to the stay the *United Brotherhood* case and the Delaware statute that provides that.

And so that's another reason this case is different than the insider trading case or the valuation case, because this expressly involves the internal workings of a trust, which, even if you had a contract that had a venue provision, Delaware law says you can ignore that because this is important enough that we want this resolved by a Delaware court.

So, in Your Honor's decision dismissing the valuation proceeding, you relied on the Plaintiff's supposed agreement to the CTA as precluding them from challenging it or from invoking the duty of good faith and fair dealing. And I think you said something like that earlier today also. But that analysis is wrong here.

First, Hunter Mountain didn't negotiate or agree to the CTA. If you remember, at the time of the plan, the estate's projections were that payments would only be made through

Class 8. So Classes 10 or 11 had no reason to address the CTA.

But second, the duty of good faith and fair dealing can, should, really, must be raised when a party's actions actually prevent a condition precedent from occurring.

So the Court's conclusion that the existence of a condition precedent -- in other words, the conditions for vesting -- precludes a claim for good faith and fair dealing ignores the whole body of law that a party can't take advantage of his own wrongdoing.

So this isn't a case -- this usually comes up in the circumstance where somebody is claiming there's a breach of good faith and fair dealing because a party didn't do something that's expressly not required by the contract, where the duty of good faith and fair dealing is being used to contradict the contract. But that's not what's happening here.

Here, the complaint that is sought to be brought in Delaware is saying that Mr. Seery is thwarting the occurrence of the condition precedent, and the Plaintiff is entitled to have its allegations taken as true. And if that is true, that is the classic case for the invocation of good faith and fair dealing.

And we cite in the motion for leave the *Dunlap* case, the *Injective Labs* case, and the *Snow Phipps* case, all of which

are cases where there was some condition in the contract that the other side was alleged to be preventing from happening, and the courts allowed those -- either allowed the -- said that the parties (inaudible) to make that clear or allow the claim to go forward.

So these cases are directly counter to this case's mistaken conclusion that the vesting provision precludes HMIT from raising the good faith and fair dealing here. This is exactly when you must raise good faith and fair dealing, and it's entirely appropriate. So it is not like the valuation case, which was asking for information. It's not exactly like the insider trading case, either. Here, it is exactly when good faith and fair dealing governs.

So, for all of these reasons, the Court's prior decisions aren't governing here and are not a basis for staying or denying the gatekeeper matter.

But as we've said, if the Court's already decided otherwise, we would not object to the procedure of the Court sua sponte simply sending this on. What would not be fair would be stalling this case to prevent HMIT from seeking the Delaware decision-making to which it's entitled. And that's why, when the issue is a stay of court proceedings, the Fifth Circuit and the Supreme Court have a very high bar.

Mike, next slide. Mike, Slide 3. Okay.

Okay. So let's remember the standard for obtaining a

stay: A strong showing of likelihood to succeed on the merits; whether the movant -- that's the Debtor here -- will be irreparably harmed absent a stay; whether the issuance of a stay will injure other interested parties -- Hunter Mountain; and where the public interest lies.

And the Supreme Court has characterized the circumstances in which a stay is appropriate as rare. And that's the *Landis* case cited by the Northern District.

And Highland, in the motion for stay, doesn't address this standard at all. And in the initial hearing we had, Highland said, and the Court seemed to agree, well, the standard isn't required because, remember, when you all sought a stay for the mediation, you didn't raise the standard.

But that was very different, because for the mediation we had no illusion that Your Honor would grant a stay over the objection of the Debtor. So, really, what we were talking about in that circumstance is a consensual stay. And then the standard wouldn't apply.

Let's go to Slide 4, Mike.

Okay. And here is the case, the *Jamison* case, which relied on Supreme Court *Landis* case, said the defendant requested a stay pending the Supreme Court's rulings on two different cases where the same or virtually the same standing question was raised, and the Court denied the motion, saying that, because standing is an issue that can be raised at any

time, there was no reason to stay, because if the Supreme Court made a ruling that was dispositive it could be raised when that happened.

And that's exactly what the circumstance is here. The case should go forward, and if the Fifth Circuit makes a dispositive ruling, if there's a dispositive ruling that would end one of these other cases and is not distinguishable, it could be raised at that time.

So, go to the next slide.

Okay. And so the Fifth Circuit has also said discretionary stays, even when -- if they are lengthy or indefinite, should not be granted. That is exactly what the Debtor is asking for here. Let's take a look at how long things have been taking.

Go to Slide 6.

Okay. The Notes cases, the Court's reports and recommendations, December '22, the Notes case is still pending in the Fifth Circuit, the HarbourVest settlement. And this is not including the lower court, the District Court intermediate action. Two years. UBS, I mean, huge amounts of time. It's one and half to two years. All of them.

So if in fact the Court were to stay until a final decision, or even the decision of the next court, we are talking about a long enough time that it creates the very harm that the motion for leave -- that the complaint that Hunter

Mountain is trying to file is seeking to avoid.

This Court knows how long it takes to get through the District Court, out of the Fifth Circuit, much less, as we have with the release matter, going all the way to the Supreme Court.

So, if Hunter Mountain has to await a final nonappealable decision of the valuation proceeding before it can even start to seek to remove Seery in Delaware court, even winning would be a pyrrhic victory, because Mr. Seery will have remained employed and spending money and moving money into the indemnity subtrust for two or more years. And so a stay thereby creates irreparable harm for Hunter Mountain.

So, in sum, using the Claimant Trust Agreement to preclude Hunter Mountain from seeking removal of the Trustee actually underscores why Delaware law is crafted the way it is. Were it not for the duty of good faith and fair dealing imposed by Delaware law, Mr. Seery could arguably continually increase the funds set aside for indemnification, indefinitely withhold final distributions to Class 9 -- we believe Class 8 has already been paid in full -- and refuse to file the GUC certification.

Would it be okay if he paid everything other than $10 and refused to issue the GUC certification based on a theoretical possibility that he might need more money for indemnification? The amount that's been set aside for indemnification is so

much more than the $25 million that was originally contemplated at the time of the plan. So this is exactly the kind of conflict that Delaware Code Section 3327 regarding the removal of trustees is designed to prevent. It's designed to prevent the conflict where the trustee has a reason to hold onto the money that he or it is holding in trust for another party.

This is -- whatever the excess is, that belongs to Hunter Mountain. It doesn't belong to the professionals. It doesn't belong to Mr. Seery. And so someone who does not have this conflict should be making these decisions. And Hunter Mountain is entitled to go to Delaware for that decision.

So, putting this on ice is simply allowing the Claimant Trust to avoid scrutiny, and we would ask that Your Honor not do that.

Thank you.

THE COURT: Mr. Morris?

MR. MORRIS: Your Honor, I just want to begin where counsel left off. The excess -- if there is such a thing, and I don't know that there is, and I don't know that anybody will know until the case is over -- but the so-called excess belongs first to indemnified parties. Indemnified parties have a contractual right to be indemnified, frankly, before Class 8 or Class 9 receive a nickel, let alone Class 10 or 11.

So let's be really clear that what's happening here, as

Your Honor alluded to earlier, is that resources must be husbanded because of the ongoing onslaught of litigation. This case could be over tomorrow if Mr. Dondero would give a release to all protected parties.

So, just a little bit of background, though. Obviously, this issue of Hunter Mountain and Dugaboy's standing has been percolating for exactly two years. It was in June of 2022 that Mr. Draper on behalf of Dugaboy brought the first valuation motion. He was soon joined by Mr. Phillips on behalf of Hunter Mountain. That effort was the subject of substantial briefing over the rights or so-called rights or potential rights of Class 10 and Class 11, and ultimately Your Honor decided that the relief they sought was not appropriate as a contested matter and had to proceed as an adversary proceeding.

The next calendar year, 2023, we have a new lawyer for Hunter Mountain, Sawnie McEntire and his firm. Again, the issues of standing and Hunter Mountain's unvested contingent interest and the meaning of that were the subject of substantial litigation in 2023.

Now we've got a third lawyer, the Stinson firm, again representing Hunter Mountain, again raising basically the exact same issue.

Your Honor has issued multiple decisions that go into great detail. I want to just read just a couple of lines from

the Court's most recent decision that was filed at Docket No. 26 in Adversary Proceeding 23-03038.

On Page 29, the Court wrote that the Court "finds and concludes that under the terms of the CTA and Delaware law, Plaintiffs are not beneficiaries or beneficial owners of the Claimant Trust who would be entitled to assert rights under the CTA. The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, and the Trust Act does define 'Beneficial Owner' and uses that term exclusively to refer to the beneficiaries of a Delaware statutory trust. Specifically, under the Trust Act, a trust's -- a statutory trust's beneficial owners are any owners of a beneficial interest in a statutory trust, the fact of ownership to be determined and evidenced in conformity with the applicable provisions of the governing instrument of the statutory trust."

Your Honor went on at Page 30, said, "It appears that Plaintiffs may be frustrated that they did not negotiate or obtain the same oversight rights as the actual Claimant Trust beneficiaries in the plan and the CTA. The plan, with the incorporated CTA, was confirmed over three years ago now, and neither the Plaintiff -- neither of the Plaintiffs objected or appealed to the terms of the plan or the CTA that dictate those oversight rights. The Fifth Circuit, in September of 2022, affirmed the confirmation order and the terms of the

plan and its incorporated documents, including the CTA, in all respects other than striking certain exculpations."

Then, finally, Your Honor pointed out that "Plaintiffs make an argument that an implied covenant of good faith and fair dealing under Delaware law necessarily means that the terms of the CTA that govern the parties' rights here, including the information rights and the rights to an accounting from the Claimant Trustee that Plaintiffs seek in Count One can be overridden here. The Court disagrees. The Court will not use the implied covenant of good faith to override the rights and responsibilities that were bargained for in the trust agreement."

An exhaustive opinion. It is collateral estoppel at this point. I frankly think that Rule 11 gets implicated when lawyers continue to push issues that have already been decided.

It is the exact same issue. There is no claim for breach of good faith and fair dealing in the complaint. Just look at the proposed complaint that was filed at Docket No. 4000. Exhibit 1. There are five causes of action. Every one of them is premised not on a breach of good faith and fair dealing but on a breach of Delaware Corporate Law 3327. And as Your Honor knows from the extensive briefing that we've had, the Court looks to the trust document to determine the rights of the beneficiaries, and only beneficiaries have

rights under 3327.

This is law of the case. These parties are collaterally estopped from continuing to do this. The fact that they suggest that they could just bring lawsuit after lawsuit after lawsuit after lawsuit, where standing is always going to a threshold issue, until every single judge in the Northern District of Texas has an opportunity to weigh in is preposterous.

Let me go through -- let me just refer and respond to a couple of these last points. The statute that Ms. Deitsch-Perez cited in her first slide, 3804(e), it only applies if you're a beneficial owner. This Court has decided multiple times Hunter Mountain and Dugaboy are not beneficial owners.

Next. The duty of good faith and fair dealing, as I mentioned, it's not even a claim in the proposed complaint. And I know of no law, and I don't think anybody will ever be able to cite any law, that suggests a party to a contract owes a duty of good faith and fair dealing to someone with no rights under the contract. How is that even -- how does that even make sense?

I have no rights under the contract, that's what this Court has already held, but somehow Mr. Seery has an implied duty of good faith and fair dealing. Makes absolutely no sense.

The standard of likelihood of success on the merits.

Right? I don't think that standard applies when the Court is just policing its docket. But even if it did, likelihood of success on the merits? It's a certainty. The Court has already decided. We have won. Right? They can't -- they have no standing. So there's a hundred-percent certainty that we're likely to succeed on the merits.

This is not going to be lengthy or indefinite, and I will, you know, just say, Your Honor, that the Plaintiffs here have some control over this. There probably hasn't been five percent of the appeals where we don't get eventually some request for an extension of time. It happens every time. They're taking weeks now to file their appellate record. They're within the rules. They have the right to do. But if they want this to proceed more quickly, stop asking for extensions of time. We'll move quickly. We don't have a problem doing that at all.

Mr. Seery owes no --

MS. DEITSCH-PEREZ: Your -- I have to interrupt on that.

THE COURT: You will have your rebuttal time, but let Mr. Morris finish, please.

MR. MORRIS: Mr. Seery owes no duties to Hunter Mountain and to Dugaboy. He never has. We have an agreement. The agreement has been affirmed. The merits of that have been decided multiple times.

The Court should continue the stay here. The Court should allow the District Court, and, if necessary, the Fifth Circuit, to opine and let it take its course. Right? We're happy to work as quickly as they want. Not on an expedited basis, but within the rules. And if they do the same, I think this will get decided much quicker than they think.

In the alternative, Your Honor, if the Court for any reason wants to lift the stay, we would request 30 days to file an opposition here, and we will be filing a Rule 11.

I do just want to mention one last thing. Because as counsel pointed out, they filed a so-called supplement at 7:00 p.m. Eastern Time last night on the docket. I was out with my wife at the theater, and really haven't had any opportunity to look at this in any detail.

I will tell you that I -- Ms. Deitsch-Perez and I emailed multiple times yesterday. She and Mr. Aigen have been emailing me multiple times in the last week. No courtesy of a heads up. No suggestion that maybe we should adjourn this. No citation in their pleading as to why they think they get to file a surreply the eve before trial. There's no rule that allows them to do so.

And I would just, you know, just very quickly, Your Honor, the two cases that they cite are from 2021 and 1998. Those cases were decided even before Mr. Draper filed his first motion for valuation information two years ago.

The cases are easily distinguishable. They have nothing to do with statutory trusts. They have nothing to do with the definition of beneficiaries. They have nothing to do with Section 3327.

But I will say, Your Honor, if, upon reflection, the Court has any thought that those cases are at all relevant, we would respectfully request the opportunity to brief it. I don't think it's necessary. I think the filing was improper. But even if the Court accepts them, I think those cases are so easily distinguishable that it won't matter. But if, you know, it's not fair to be treated this way, to email multiple times, to give no notice, to file it 15 hours before a hearing, with no rule citation, with no right to do so, and expect the Court or expect me, frankly, to be prepared to fully address it. I've addressed it as best I'm able under the circumstances.

I think the motion to stay should be extended until a court of competent jurisdiction issues a final nonappealable, you know, affirmation, determination, on Your Honor's motion to dismiss the valuation proceeding.

THE COURT: All right. Before I hear any last word from Ms. Deitsch-Perez, I know Mr. Seery's counsel made an appearance. Is there anything you would like to say?

MR. STANCIL: No, Your Honor. I think Mr. Morris covered it quite well.

THE COURT: All right. Ms. Deitsch-Perez, you get the last word.

MS. DEITSCH-PEREZ: Your Honor, I've explained why this case is different and why a party cannot prevent another party from gaining rights under a contract. That is the epitome of breaching the contract by breaching the duty of good faith and fair dealing which is inherent in the contract.

Mr. Morris's argument that, oh, the stay is of no great moment because you could move expeditiously is incorrect, because, for example, the delays in the record, that is not something -- and he well knows, that is not something a party can control. The Court moves the record and the parties are stuck with however long that takes. And if one were to look at the record of the extensions in the appeals, they have -- equally well if not more so than the Debtor's side. And so I take exception to that.

And finally, the Reorganized Debtor is something of a bully. Every time that they don't like something, there has been a threat that we're going to seek sanctions. It's a way of trying to scare lawyers from exercising their duties to their clients. If he's going to make -- if the Debtor is going to make a sanctions motion, we'll fight it. We've fought it before. Sometimes they've threatened it and not done it.

But it is, I will point out, it is itself a violation of

Rule 11 to willfully and disingenuously threaten sanctions to try and prevent litigation. And that's what we think is going on here. It's a club.

If this matter is stayed, Hunter Mountain -- it's no different than if this Court simply denied the motion, because the passage of time will eviscerate what's in the estate.

Thank you.

THE COURT: I'm going to ask this question. I've asked it before in prior hearings, but I'm asking it again. And I always am asking it because of, well, a couple reasons. I've raised the issue of judicial economy and concerns about the efficient administration of justice and what's in the interest of the parties. How many appeals do we have pending or have been made since confirmation of the plan in February 2021? And I'm concerned about judicial economy, yes, but I'm also --

MS. DEITSCH-PEREZ: Your Honor, --

THE COURT: Let me -- here is another reason I ask. It is argued as part of the lawsuit you want to file that Mr. Seery isn't wrapping things up. But, of course, part of that hinges on are there appeals still pending. Okay? So I ask for those two reasons. I don't know if anyone has it at their fingertips, but it is --

MS. DEITSCH-PEREZ: Your Honor?

THE COURT: -- germane to everything I've heard here.

Okay? So who has --

MS. DEITSCH-PEREZ: Your Honor, there --

THE COURT: -- the answer at their fingertips? Either one of you?

MS. DEITSCH-PEREZ: Your Honor, there are not very many appeals still pending, but I would point out that some of these have been successful. That Your Honor's contempt decision was reversed. The release issue was partially reversed. So, --

THE COURT: Reversed and remanded for me to have follow-up hearings. So not done, by the way, but anyway, we'll have a hearing on that remand at some point.

MS. DEITSCH-PEREZ: But these are --

THE COURT: So, but anyway, the question was how many.

MS. DEITSCH-PEREZ: And I don't know exactly how many, but there are relatively few. If the issue is how much money is needed to be set aside for indemnification, there are relatively few appeals pending.

THE COURT: That is a non-answer. Okay?

MR. MORRIS: I'm counting, Your Honor.

THE COURT: Okay.

MS. DEITSCH-PEREZ: I would object to an off-the-cuff response.

MR. MORRIS: I'm counting.

MS. DEITSCH-PEREZ: We will follow up with the Court and give you an exact number.

THE COURT: You know what, I --

MR. MORRIS: I believe -- I think --

THE COURT: My decision today is likely not going to hinge on the precise answer here. Okay? I'm just asking a question because I'm worried about judicial economy and what's efficient, and I'm worried about a lingering continuing argument that Mr. Seery is not wrapping things up quickly enough. And I think the answer --

MS. DEITSCH-PEREZ: There's not a hundred million dollars.

THE COURT: -- to this question is relevant to both of those concerns. Having the precise answer, you know, no, but I'd like a ballpark answer --

MS. DEITSCH-PEREZ: Here's the --

THE COURT: -- at least, if not precise.

MR. MORRIS: Your Honor, the ballpark --

MS. DEITSCH-PEREZ: Here's the important answer, Your Honor.

MR. MORRIS: The ballpark --

MS. DEITSCH-PEREZ: It's there's not a hundred million dollars' worth of legal work left to do.

THE COURT: I just --

MS. DEITSCH-PEREZ: It's --

THE COURT: -- asked for the answer to a question, not an argument.

MR. MORRIS: Your Honor?

THE COURT: Mr. Morris, do you have an answer?

MR. MORRIS: It's approximately 55. But that includes --

MS. DEITSCH-PEREZ: There are not 55 appeals outstanding.

THE COURT: Stop interrupting. I want to hear the complete answer.

Fifty-five is what, the number of notices of appeal ever filed since the plan was confirmed?

MR. MORRIS: There are approximately 55 appeals that have been filed in the Highland bankruptcy case. Some of them, admittedly, include both an appeal to the District Court and then, you know, depending on the outcome there, an appeal to the Fifth Circuit. So it might involve the same case.

THE COURT: Okay.

MR. MORRIS: But there have been 55 appeals. Could be 54, could be 56, something like that.

THE COURT: Okay.

MR. MORRIS: And there's -- and there's probably -- there's probably at least eight or ten in the pipeline.

THE COURT: Eight or ten, do you mean still pending when you say in the pipeline?

MR. MORRIS: Still pending. Either haven't been briefed at all; they've been briefed and we're waiting for a court to rule; you know, it's in the District Court so we'll have to await the outcome there and then see if we go to the Fifth Circuit. I think there are -- I think we're waiting on several decisions for the Fifth Circuit. I think there are three matters in the pipeline in the Fifth Circuit, and there's probably four or five in the District Court.

MS. DEITSCH-PEREZ: Most of which have been largely briefed, so that we are awaiting decision. It's a small handful where there's still work to be done.

MR. MORRIS: Your Honor, just -- your decision last week, we don't even have a judge in the District Court. The notion that this is somehow, you know, on the precipice of completing litigation, it's just not realistic. I'll just leave it --

MS. DEITSCH-PEREZ: That's not the point. The point --

THE COURT: Look, I've heard about this enough. I know that sometimes, luck of the draw, you have a judge, let's say a district judge who doesn't have criminal jury trials week, week, week, week, week, for the next six months, and sometimes you have someone who just wrapped up something huge and can get to an appeal quickly. We're coming up on August before we know it, when we have changes of law clerks, new law

clerks coming in. And just who knows. Nobody can predict. But I just wanted sheer numbers.

And my last question on this is, we technically had a three-year trust duration, right? And I'm sure this is like every other one I've ever seen in all these years: There's an ability to extend the life of the trust. Am I correct that in August we have a three-year end of trust --

MR. MORRIS: Your Honor?

THE COURT: -- unless otherwise extended, Mr. Morris?

MR. MORRIS: Your Honor, you're exactly right. And we will be filing a motion, probably in the next week or two, to continue the trust, precisely because of all of this litigation will not be resolved on the third anniversary. So you're exactly right, Your Honor. We're in the process of drafting it. I can't see how it will be opposed, but I'm sure it will be.

We'll have a chart of all of the outstanding litigation. Your Honor will see how many pieces of litigation are still outstanding at that time. But I do expect to file that with the Court in the next week or two.

THE COURT: All right. And I won't get ahead of myself, but, really, the only thing, I'm guessing, after close to three years, that is left as far as trust administration is concluding these lawsuits. Probably all the assets have been liquidated, right, at this point? Or --

MR. MORRIS: You know, I don't know off the top of my head. I think there are a handful of assets, there may be a few assets that remain unsold. There's some, you know, managerial responsibilities over certain funds that we have to dispose of. But all of that is kind of irrelevant because all of that, I'm certain, will be completed before the end of the litigation cycle. You know, like, we can talk about the cases that are pending, but, you know, we had a new case filed just recently, right, for leave to remove Jim Seery as Trustee. And so, you know, if there's -- that's -- we're talking about the litigation that's pending. We also have to be concerned with what litigation Mr. Dondero might bring in the future. And, you know, if he can promise that he'll never bring another lawsuit, we might have a different view. But, you know, with the threat of ongoing litigation, yeah, we're just going to have to continue to husband resources.

But back to your specific question of the length of the trust, we do expect to file a motion shortly to extend the life of the trust, probably by a year, maybe two, but probably by a year.

THE COURT: Okay. All right. The Court --

MR. MORRIS: Your Honor, I really apologize, but I just have to tell you that I'm really low battery on my computer. For some reason, my charger is not working. And if I go blank, you'll know why. I'll switch to my phone.

THE COURT: Okay. Thank you.

As far as the ruling here today, I will extend the stay of this what I'll call a contested matter. Even though we don't have a response to Hunter Mountain's motion for leave to file the Delaware lawsuit on file yet, I'm calling it a contested matter that's been initiated by the Hunter Mountain motion. I'm going to extend the stay on letting the contested matter go forward until all appeals have been finally exhausted in connection with this Court's prior orders in which it has ruled Hunter Mountain does not have stay to either file the lawsuit -- oh, yes, I'm misspeaking, I meant to say standing just now when I said stay. The parties know the orders I'm talking about. Twice now, this Court has ruled that Hunter Mountain does not have standing to pursue litigation. The first time was in connection with when Hunter Mountain wanted to sue claims purchasers Farallon and Stonegate, I think it was called, Stonehill, and Mr. Seery concerning certain claims trading that, I'll call it, that happened during the case.

I ruled extensively then, and I hear Judge Brown has it on appeal now, why this Court thought Hunter Mountain did not have standing under the confirmation order, the plan, the Claimant Trust Agreement, or Delaware law.

And then I understand there's a new appeal when the Court ruled Hunter Mountain doesn't have standing to pursue a valuation complaint.

So, until all appeals, whether it ends in the District Court or ends in the Fifth Circuit or I suppose a cert petition could be filed to the Supreme Court, until all of those appeals have been exhausted, this matter will not go forward.

I have not been convinced today that the standing issues now with regard to this newest Hunter Mountain motion are sufficiently different where I should go forward and hear the motion for leave.

So, as I've alluded to a couple of times, I think it's in the interests of judicial economy and the efficient administration of justice and in the interests of the parties that I continue the stay in effect. I think there are very real issues that we do have, collateral estoppel and law of the case and other sorts of estoppel issues that would even preclude me, should preclude me, from looking at the current motion for leave.

But I will nevertheless look at the four-prong test for stays that traditionally are applied. Prong #1, whether there has been a showing of likelihood of success on the merits. Again, I view that I've already ruled on this, and I've spilt much ink on this, written well over a hundred pages on this. And I think there is a likelihood of success on the merits with regard to the issue of Hunter Mountain not having standing on appeal.

I think there would be certainly harm and injury here, I'll say irreparable harm, if we had to go through this yet again, yet again, yet again. The balance of harms certainly -- well, I don't just find the Reorganized Debtor to be harmed. Whether Hunter Mountain realizes it or not, everyone is going to be harmed if more litigation, more expense, is incurred litigating the same darn thing again. And again, based on what I've heard today, I don't see it any differently.

The cases that were filed at 7:00 p.m. Central Time last night, as I said, I wasn't even aware of it. I haven't looked at them. But they are older cases. It's not like something hot off the press from last week that Hunter Mountain would be justified in putting before the Court if it was germane. And just glancing at them, they don't seem to be relevant to this situation, where you have a plan that went out on notice, voting, opportunity for people to object, the Court approved the plan and the Claimant Trust Agreement in a confirmation order that was appealed.

We have, on top of that, the Delaware law that seemed to be fairly dispositive that Hunter Mountain is not to be deemed a beneficial owner of the trust.

So it is not in anyone's interest, as far as balancing of harms here, in this matter going forward, as long as the issues are primed for an appellate judge to either say you got

it wrong, Judge Jernigan, or you got it right. And the public interest is, I think, in favor of judicial economy and efficient administration of justice in this regard.

So if I go to the four-pronged test, it results in, I think, the stay being extended here. But, again, this is kind of a unique animal. I'm not sure that's even the way we should view it. The way we should view it is I've been asked again and again and again to rule on this issue. I've ruled on it -- I say three times because I did a lengthy order on a motion to reconsider the first time I did an order on this. So I have done three lengthy rulings on this.

I guess I'm just going to say, in closing, and I want this to be helpful but I'm guessing it might not be: The optics here, Ms. Deitsch-Perez, look terrible. Terrible. I mean, how else should it look to the Court? It's just like this has become a blood sport and the optics make it look like, well, it's not about justice and fairness. It's taken this very ugly turn some time ago that let's try --

MS. DEITSCH-PEREZ: We agree the --

THE COURT: -- let's try to destroy Mr. Seery. What else is a rational judge supposed to think?

MS. DEITSCH-PEREZ: Your Honor, Mr. Seery --

THE COURT: Now it's gotten to the point of raising the same issue again and again and again. And guess what. If this was going forward, if there was not going to be a stay in

place, I would be inclined to consider Rule 11 sanctions. How many times is it proper for a party to keep asking for the same thing again and again? You know, we'll use a different counsel this time. We'll say it's different this time. It's not different.

MS. DEITSCH-PEREZ: Your Honor, it is different, and Mr. Seery -- and put it -- take it away from Mr. Seery. The Claimant Trustee is the fiduciary for the parties who may benefit ultimately from the Claimant Trust. And so they have a right to make sure that the Claimant Trustee is not preventing their rights from vesting. It is a perfectly legitimate exercise. It is a perfectly legitimate endeavor.

And the optics do look bad. It looks like that the estate is doing everything it can to prevent scrutiny of that.

So we agree the optics are bad, but in exactly the opposite way. If there were transparency here, if we could actually get a trustee who doesn't have this conflict, this case could be resolved.

THE COURT: The 55 appeals, eight or ten of which are still in the pipeline. Relatively few, as you said. But we are three years post-effective date. That was the optics I'm talking about. There is no reason for this case not to be over except for this. That's the optics I'm talking about.

And it's one thing to legitimately exercise your right to appeal, a party's right to appeal when they disagree. God

bless America. That's what our judicial system is about. But when you start bringing the same motion again and again and again, that is definitely Rule 11 territory and definitely affects credibility. Okay?

Mr. Morris, if you're still there, please upload a simple form of order reflecting what the Court ruled today.

We are adjourned.

MR. MORRIS: I am. Thank you. Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 11:18 a.m.)

--oOo--

CERTIFICATE

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

/s/ Kathy Rehling **06/13/2024**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

Volume 8

APPELLEE RECORD

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

DEBTOR'S NOTICE OF FILING OF PLAN SUPPLEMENT TO THE FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (WITH TECHNICAL MODIFICATIONS)

PLEASE TAKE NOTICE that Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the "Debtor"), filed the *Debtor's Notice of Filing of*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Supplement to Third Amended Plan of Reorganization of Highland Capital Management, L.P., on November 13, 2020 [Docket No. 1389] (the "Initial Supplement"). The Initial Supplement included Exhibits A-H to the Plan (as defined below).

PLEASE TAKE NOTICE that on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472].

PLEASE TAKE NOTICE that the Debtor filed the *Debtor's Notice of Filing of Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* on December 18, 2020 [Docket No. 1606] (the "Second Supplement"). The Second Supplement included Exhibits I-K to the Plan.

PLEASE TAKE NOTICE that the Debtor filed the *Debtor's Notice of Filing of Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* on January 4, 2021 [Docket No. 1656] (the "Third Supplement"). The Third Supplement included Exhibits L-P to the Plan.

PLEASE TAKE NOTICE that on January 22, 2021, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (as subsequently amended and/or modified, the "Plan").

PLEASE TAKE NOTICE that the Debtor hereby files the documents included herewith as **Exhibits Q-CC** (collectively, the "Fourth Plan Supplement") further supplementing the Plan:

Exhibit Q: Amended Schedule of Retained Causes of Action (supersedes Exhibits E and L);

Exhibit R: Amended Form of Claimant Trust Agreement (supersedes Exhibits A and M);

Exhibit S: Redline of Form of Claimant Trust Agreement (against Exhibit M);

Exhibit T: Amended Form of Litigation Trust Agreement (supersedes Exhibits D and O);

Exhibit U: Redline of Form of Litigation Trust Agreement (against Exhibit P)

Exhibit V: Amended Form of Senior Employee Stipulation (supersedes Exhibit H and J);

Exhibit W: Redline of Form of Senior Employee Stipulation (against Exhibit J);

Exhibit X: Schedule of Contracts and Leases to Be Assumed (supersedes Exhibit H and I);

Exhibit Y: Related Entity List;

Exhibit Z Form of Reorganized Limited Partnership Agreement (supersedes Exhibit C);

Exhibit AA Redline of Form of Reorganized Limited Partnership Agreement (against Exhibit C);

Exhibit BB Senior Employee Stipulation (executed by Thomas Surgent);

Exhibit CC Senior Employee Stipulation (executed by Frank Waterhouse); and

Exhibit DD Schedule of Employees (supersedes Exhibit G).

PLEASE TAKE FURTHER NOTICE that this *Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with technical modifications)* (the "Notice of Plan Supplement") is being served on parties-in-interest without the Fourth Plan Supplement attached. Any party-in-interest wishing to obtain copies of the Plan or the Fourth Plan Supplement may do so by (i) contacting the Debtor's Solicitation Agent, KCC, at (i) 1-877-573-3984 (toll free) or 1-310-751-1829 (if international) or by email at HighlandInfo@kccllc.com, or (ii) viewing such documents by accessing them online at https://kccllc.net/HCMLP. The documents are also available on the Court's website: www.txnb.uscourts.gov. Please note that a PACER password and login are needed to access documents on the Court's website.

Dated: January 22, 2021.

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EXHIBIT Q

Schedule of Causes of Action

The Causes of Action shall include, *without limitation*, any cause of action based on the following:

breach of fiduciary duties, breach of duty of care, breach of duty of loyalty, usurpation of corporate opportunities, breach of implied covenant of good faith and fair dealing, conversion, misappropriation of assets, misappropriation of trade secrets, unfair competition, breach of contract, breach of warranty, fraud, constructive fraud, negligence, gross negligence, fraudulent conveyance, fraudulent transfer, fraudulent misrepresentation, negligent misrepresentation, fraudulent concealment, fraudulent inducement, tortious interference, *quantum meruit*, unjust enrichment, abuse of process, alter ego, substantive consolidation, recharacterization, business disparagement, indemnity, claims for recovery of distributions or dividends, claims for indemnification, promissory estoppel, quasi-contract claims, any counterclaims, equitable subordination, avoidance actions provided for under sections 544 or 547 of the Bankruptcy Code, claims brought under state law, claims brought under federal law, claims under any common-law theory of tort or law or equity, and any claims similar in nature to the foregoing claims.

The Causes of Action shall include, *without limitation*, any cause of action against the following persons and entities:

James Dondero, Mark Okada, Grant Scott, John Honis, any current or former insider of the Debtor, the Dugaboy Investment Trust, Charitable DAF Holdco, Ltd, Hunter Mountain Investment Trust, Nexbank Capital, Inc. Highland Capital Management Services, Inc., NexPoint Advisors GP, LLC, NexPoint Advisors, L.P., Strand Advisors XVI, Inc., Highland Capital Management Fund Advisors, L.P., NexAnnuity Holdings, Inc., the entities listed on the attached **Annex 1** hereto, any current or former employee of the Debtor, and any entity directly or indirectly owned, controlled, or operated for the benefit of the foregoing persons or entities.

The Causes of Action shall include, *without limitation*, any cause of action arising from the following transactions:

The transfer of ownership interests in the Debtor to Hunter Mountain Investment Trust, the creation or transfer of any notes receivable from the Debtor or from any entity related to the Debtor, the creation or transfer of assets to or from any charitable foundation or trust, the formation, performance, or breach of any contract for the Debtor to provide investment management, support services, or any other services, and the distribution of assets or cash from the Debtor to partners of the Debtor.

Annex 1

11 Estates Lane, LLC
1110 Waters, LLC
140 Albany, LLC
1525 Dragon, LLC
17720 Dickerson, LLC
1905 Wylie LLC
2006 Milam East Partners GP, LLC
2006 Milam East Partners, L.P.
201 Tarrant Partners, LLC
2014 Corpus Weber Road LLC
2325 Stemmons HoldCo, LLC
2325 Stemmons Hotel Partners, LLC
2325 Stemmons TRS, Inc.
300 Lamar, LLC
3409 Rosedale, LLC
3801 Maplewood, LLC
3801 Shenandoah, L.P.
3820 Goar Park LLC
400 Seaman, LLC
401 Ame, L.P.
4201 Locust, L.P.
4312 Belclaire, LLC
5833 Woodland, L.P.
5906 DeLoache, LLC
5950 DeLoache, LLC
7758 Ronnie, LLC
7759 Ronnie, LLC
AA Shotguns, LLC
Aberdeen Loan Funding, Ltd.
Acis CLO 2017-7 Ltd
Acis CLO Management GP, LLC
Acis CLO Management GP, LLC *(fka Acis CLO Opportunity Funds GP, LLC)*
Acis CLO Management Holdings, L.P.
Acis CLO Management Intermediate Holdings I, LLC
Acis CLO Management Intermediate Holdings II, LLC
Acis CLO Management, LLC *(fka Acis CLO Opportunity Funds SLP, LLC)*
Acis CLO Trust
Acis CLO Value Fund II Charitable DAF Ltd.
Acis CMOA Trust
Advisors Equity Group LLC
Alamo Manhattan Hotel I, LLC (Third Party)
Allenby, LLC
Allisonville RE Holdings, LLC
AM Uptown Hotel, LLC
Apex Care, L.P
Asbury Holdings, LLC *(fka HCSLR Camelback Investors (Delaware), LLC)*
Ascendant Advisors
Atlas IDF GP, LLC
Atlas IDF, LP
BB Votorantim Highland Infrastructure, LLC
BDC Toys Holdco, LLC
Beacon Mountain, LLC
Bedell Trust Ireland Limited (Charitable trust account)
Ben Roby (third party)
BH Equities, LLC
BH Heron Pointe, LLC
BH Hollister, LLC
BH Willowdale Manager, LLC
Big Spring Partners, LLC
Blair Investment Partners, LLC
Bloomdale, LLC
Brave Holdings III Inc.
Brentwood CLO, Ltd.
Brentwood Investors Corp.
Brian Mitts
Bristol Bay Funding Ltd.
Bristol Bay Funding, Ltd.
BVP Property, LLC
C-1 Arbors, Inc.
C-1 Cutter's Point, Inc.
C-1 Eaglecrest, Inc.
C-1 Silverbrook, Inc.
Cabi Holdco GP, LLC
Cabi Holdco I, Ltd
Cabi Holdco I, Ltd.

Cabi Holdco, L.P.
California Public Employees' Retirement System
Camelback Residential Investors, LLC
Camelback Residential Investors, LLC *(fka Sevilla Residential Partners, LLC)*
Camelback Residential Partners, LLC
Capital Real Estate - Latitude, LLC
Castle Bio Manager, LLC
Castle Bio, LLC
CG Works, Inc.
CG Works, Inc.
(fka Common Grace Ventures, Inc.)
Charitable DAF Fund, L.P.
Charitable DAF GP, LLC
Charitable DAF HoldCo, Ltd
Charitable DAF HoldCo, Ltd.
Claymore Holdings, LLC
CLO HoldCo, Ltd
CLO Holdco, Ltd.
Corbusier, Ltd.
Cornerstone Healthcare Group Holding, Inc.
Corpus Weber Road Member LLC
CP Equity Hotel Owner, LLC
CP Equity Land Owner, LLC
CP Equity Owner, LLC
CP Hotel TRS, LLC
CP Land Owner, LLC
CP Tower Owner, LLC
CRE - Lat, LLC
Credit Suisse, Cayman Islands Branch
Crossings 2017 LLC
Crown Global Insurance Company (third party)
Dallas Cityplace MF SPE Owner LLC
Dallas Lease and Finance, L.P.
Dana Scott Breault
James Dondero
Reese Avry Dondero
Jameson Drue Dondero
Dana Sprong (Third Party)
David c. Hopson
De Kooning, Ltd.
deKooning, Ltd.
DFA/BH Autumn Ridge, LLC
Dolomiti, LLC
DrugCrafters, L.P.
Dugaboy Investment Trust
Dugaboy Management, LLC
Dugaboy Project Management GP, LLC
Eagle Equity Advisors, LLC
Eames, Ltd.
Eastland CLO, Ltd.
Eastland Investors Corp.
EDS Legacy Heliport, LLC
EDS Legacy Partners Owner, LLC
EDS Legacy Partners, LLC
Empower Dallas Foundation, Inc.
ENA 41, LLC
Entegra Strat Superholdco, LLC
Entegra-FRO Holdco, LLC
Entegra-FRO Superholdco, LLC
Entegra-HOCF Holdco, LLC
Entegra-NHF Holdco, LLC
Entegra-NHF Superholdco, LLC
Entegra-RCP Holdco, LLC
Estates on Maryland Holdco, LLC
Estates on Maryland Owners SM, Inc.
Estates on Maryland Owners, LLC
Estates on Maryland, LLC
Falcon E&P Four Holdings, LLC
Falcon E&P One, LLC
Falcon E&P Opportunities Fund, L.P.
Falcon E&P Opportunities GP, LLC
Falcon E&P Royalty Holdings, LLC
Falcon E&P Six, LLC
Falcon E&P Two, LLC
Falcon Four Midstream, LLC
Falcon Four Upstream, LLC
Falcon Incentive Partners GP, LLC
Falcon Incentive Partners, LP
Falcon Six Midstream, LLC
Flamingo Vegas Holdco, LLC *(fka Cabi Holdco, LLC)*
Four Rivers Co-Invest GP, LLC
Four Rivers Co-Invest, L.P.

FRBH Abbington SM, Inc.
FRBH Abbington, LLC
FRBH Arbors, LLC
FRBH Beechwood SM, Inc.
FRBH Beechwood, LLC
FRBH C1 Residential, LLC
FRBH Courtney Cove SM, Inc.
FRBH Courtney Cove, LLC
FRBH CP, LLC
FRBH Duck Creek, LLC
FRBH Eaglecrest, LLC
FRBH Edgewater JV, LLC
FRBH Edgewater Owner, LLC
FRBH Edgewater SM, Inc.
FRBH JAX-TPA, LLC
FRBH Nashville Residential, LLC
FRBH Regatta Bay, LLC
FRBH Sabal Park SM, Inc.
FRBH Sabal Park, LLC
FRBH Silverbrook, LLC
FRBH Timberglen, LLC
FRBH Willow Grove SM, Inc.
FRBH Willow Grove, LLC
FRBH Woodbridge SM, Inc.
FRBH Woodbridge, LLC
Freedom C1 Residential, LLC
Freedom Duck Creek, LLC
Freedom Edgewater, LLC
Freedom JAX-TPA Residential, LLC
Freedom La Mirage, LLC
Freedom LHV LLC
Freedom Lubbock LLC
Freedom Miramar Apartments, LLC
Freedom Sandstone, LLC
Freedom Willowdale, LLC
Fundo de Investimento em Direitos Creditorios BB Votorantim Highland Infraestrutura
G&E Apartment REIT The Heights at Olde Towne, LLC
G&E Apartment REIT The Myrtles at Olde Towne, LLC
GAF REIT, LLC
GAF Toys Holdco, LLC
Gardens of Denton II, L.P.
Gardens of Denton III, L.P.
Gleneagles CLO, Ltd.
Goverannce RE, Ltd.
Governance Re, Ltd.
Governance, Ltd.
Grant Scott
Grant Scott, Trustee of The SLHC Trust
Grayson CLO, Ltd.
Grayson Investors Corp.
Greater Kansas City Community Foundation (third party)
Greenbriar CLO, Ltd.
Greg Busseyt
Gunwale LLC
Gunwale, LLC
Hakusan, LLC
Hammark Holdings LLC
Hampton Ridge Partners, LLC
Harbourvest Entities
Harko, LLC
Harry Bookey/Pam Bookey (third party)
Haverhill Acquisition Co., LLC
Haygood, LLC
HB 2015 Family LP (third party)
HCBH 11611 Ferguson, LLC
HCBH Buffalo Pointe II, LLC
HCBH Buffalo Pointe III, LLC
HCBH Buffalo Pointe, LLC
HCBH Hampton Woods SM, Inc.
HCBH Hampton Woods, LLC
HCBH Overlook SM, Inc.
HCBH Overlook, LLC
HCBH Rent Investors, LLC
HCMS Falcon GP, LLC
HCMS Falcon, L.P.
HCO Holdings, LLC
HCOF Preferred Holdings, L.P.
HCOF Preferred Holdings, LP
HCOF Preferred Holdings, Ltd.
HCRE 1775 James Ave, LLC
HCRE Addison TRS, LLC

HCRE Addison, LLC *(fka HWS Addison, LLC)*

HCRE Hotel Partner, LLC *(fka HCRE HWS Partner, LLC)*

HCRE Las Colinas TRS, LLC

HCRE Las Colinas, LLC *(fka HWS Las Colinas, LLC)*

HCRE Plano TRS, LLC

HCRE Plano, LLC *(fka HWS Plano, LLC)*

HCREF-I Holding Corp.

HCREF-II Holding Corp.

HCREF-III Holding Corp.

HCREF-IV Holding Corp.

HCREF-IX Holding Corp.

HCREF-V Holding Corp.

HCREF-VI Holding Corp.

HCREF-VII Holding Corp.

HCREF-VIII Holding Corp.

HCREF-XI Holding Corp.

HCREF-XII Holding Corp.

HCREF-XIII Holding Corp.

HCREF-XIV Holding Corp.

HCREF-XV Holding Corp.

HCSLR Camelback Investors (Cayman), Ltd.

HCSLR Camelback, LLC

HCT Holdco 2 Ltd.

HCT Holdco 2, Ltd.

HE 41, LLC

HE Capital 232 Phase I Property, LLC

HE Capital 232 Phase I, LLC

HE Capital Asante, LLC

HE Capital Fox Trails, LLC

HE Capital KR, LLC

HE Capital, LLC

HE CLO Holdco, LLC

HE Mezz Fox Trails, LLC

HE Mezz KR, LLC

HE Peoria Place Property, LLC

HE Peoria Place, LLC

Heron Pointe Investors, LLC

Hewett's Island CLO I-R, Ltd.

HFP Asset Funding II, Ltd.

HFP Asset Funding III, Ltd.

HFP CDO Construction Corp.

HFP GP, LLC

HFRO Sub, LLC

Hibiscus HoldCo, LLC

Highland - First Foundation Income Fund

Highland 401(k) Plan

Highland 401K Plan

Highland Argentina Regional Opportunity Fund GP, LLC

Highland Argentina Regional Opportunity Fund, L.P.

Highland Argentina Regional Opportunity Fund, Ltd.

Highland Argentina Regional Opportunity Master Fund, L.P.

Highland Brasil, LLC

Highland Capital Brasil Gestora de Recursos (*fka Highland Brasilinvest Gestora de Recursos, LTDA; fka HBI Consultoria Empresarial, LTDA)*

Highland Capital Management (Singapore) Pte Ltd

Highland Capital Management AG

Highland Capital Management AG
(Highland Capital Management SA)
(Highland Capital Management Ltd)

Highland Capital Management Fund Advisors, L.P.

Highland Capital Management Fund Advisors, L.P. *(fka Pyxis Capital, L.P.)*

Highland Capital Management Korea Limited

Highland Capital Management Latin America, L.P.

Highland Capital Management LP Retirement Plan and Trust

Highland Capital Management Multi-Strategy Insurance Dedicated Fund, L.P.

Highland Capital Management Real Estate Holdings I, LLC

Highland Capital Management Real Estate Holdings II, LLC

Highland Capital Management Services, Inc.

Highland Capital Management, L.P.

Highland Capital Management, L.P. Charitable Fund

Highland Capital Management, L.P. Retirement Plan and Trust

Highland Capital Management, L.P., as trustee of Acis CMOA Trust and nominiee for and on behalf of Highland CLO Assets Holdings Limited

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominiee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, LP

Highland Capital Management, LP Charitable Fund

Highland Capital Multi-Strategy Fund, LP

Highland Capital of New York, Inc.

Highland Capital Special Allocation, LLC

Highland CDO Holding Company

Highland CDO Opportunity Fund GP, L.P.

Highland CDO Opportunity Fund, L.P.

Highland CDO Opportunity Fund, Ltd.

Highland CDO Opportunity GP, LLC

Highland CDO Opportunity Master Fund, L.P.

Highland CDO Trust

Highland CLO 2018-1, Ltd.

Highland CLO Assets Holdings Limited

Highland CLO Funding, Ltd.

Highland CLO Funding, Ltd.

Highland CLO Funding, Ltd. *(fka Acis Loan Funding, Ltd.)*

Highland CLO Gaming Holdings, LLC

Highland CLO Holdings Ltd.

Highland CLO Holdings, Ltd. (as of 12.19.17)

Highland CLO Management Ltd.

Highland CLO Trust

Highland Credit Opportunities CDO Asset Holdings GP, Ltd.

Highland Credit Opportunities CDO Asset Holdings, L.P.

Highland Credit Opportunities CDO Financing, LLC

Highland Credit Opportunities CDO, Ltd.

Highland Credit Opportunities Holding Corporation

Highland Credit Opportunities Japanese Feeder Sub-Trust

Highland Credit Opportunities Japanese Unit Trust (Third Party)

Highland Credit Strategies Fund, L.P.

Highland Credit Strategies Fund, Ltd.

Highland Credit Strategies Holding Corporation

Highland Credit Strategies Holding Corporation

Highland Credit Strategies Master Fund, L.P.

Highland Dallas Foundation, Inc.

Highland Dynamic Income Fund GP, LLC

Highland Dynamic Income Fund GP, LLC *(fka Highland Capital Loan GP, LLC)*

Highland Dynamic Income Fund, L.P.

Highland Dynamic Income Fund, L.P. *(fka Highland Capital Loan Fund, L.P.)*

Highland Dynamic Income Fund, Ltd.

Highland Dynamic Income Fund, Ltd. *(fka Highland Loan Fund, Ltd.)*

Highland Dynamic Income Master Fund, L.P.

Highland Dynamic Income Master Fund, L.P. *(fka Highland Loan Master Fund, L.P.)*

Highland Employee Retention Assets LLC

Highland Energy Holdings, LLC

Highland Energy MLP Fund *(fka Highland Energy and Materials Fund)*

Highland Equity Focus Fund, L.P.

Highland ERA Management, LLC

Highland eSports Private Equity Fund

Highland Financial Corp.

Highland Financial Partners, L.P.

Highland Fixed Income Fund

Highland Flexible Income UCITS Fund

Highland Floating Rate Fund

Highland Floating Rate Opportunites Fund
Highland Floating Rate Opportunities Fund
Highland Fund Holdings, LLC
Highland Funds I
Highland Funds II
Highland Funds III
Highland GAF Chemical Holdings, LLC
Highland General Partner, LP
Highland Global Allocation Fund
Highland Global Allocation Fund *(fka Highland Global Allocation Fund II)*
Highland GP Holdings, LLC
Highland HCF Advisor Ltd.
Highland HCF Advisor, Ltd., as Trustee for and on behalf of Acis CLO Trust, as nominee for and on behalf of Highland CLO Funding, Ltd. (as of 3.29.18)
Highland Healthcare Equity Income and Growth Fund
Highland iBoxx Senior Loan ETF
Highland Income Fund
Highland Income Fund *(fka Highland Floating Rate Opportunities Fund)*
Highland Kansas City Foundation, Inc.
Highland Latin America Consulting, Ltd.
Highland Latin America GP, Ltd.
Highland Latin America LP, Ltd.
Highland Latin America Trust
Highland Legacy Limited
Highland LF Chemical Holdings, LLC
Highland Loan Funding V, LLC
Highland Loan Funding V, Ltd.
Highland Long/Short Equity Fund
Highland Long/Short Healthcare Fund
Highland Marcal Holding, Inc.
Highland Merger Arbitrage Fund
Highland Multi Strategy Credit Fund GP, L.P.
Highland Multi Strategy Credit Fund GP, L.P. *(fka Highland Credit Opportunities CDO GP, L.P.)*
Highland Multi Strategy Credit Fund, L.P.
Highland Multi Strategy Credit Fund, L.P. *(fka Highland Credit Opportunities Fund, L.P., fka Highland Credit Opportunities CDO, L.P.)*
Highland Multi Strategy Credit Fund, Ltd.
Highland Multi Strategy Credit Fund, Ltd. *(fka Highland Credit Opportunities Fund, Ltd.)*
Highland Multi Strategy Credit GP, LLC
Highland Multi Strategy Credit GP, LLC *(fka Highland Credit Opportunities CDO GP, LLC)*
Highland Multi-Strategy Fund GP, LLC
Highland Multi-Strategy Fund GP, LP
Highland Multi-Strategy IDF GP, LLC
Highland Multi-Strategy Master Fund, L.P.
Highland Multi-Strategy Master Fund, LP
Highland Multi-Strategy Onshore Master SubFund II, LLC
Highland Multi-Strategy Onshore Master Subfund, LLC
Highland Opportunistic Credit Fund
Highland Park CDO 1, Ltd.
Highland Park CDO I, Ltd.
Highland Premier Growth Equity Fund
Highland Premium Energy & Materials Fund
Highland Prometheus Feeder Fund I, L.P.
Highland Prometheus Feeder Fund I, LP
Highland Prometheus Feeder Fund II, L.P.
Highland Prometheus Feeder Fund II, LP
Highland Prometheus Master Fund, L.P.
Highland Receivables Finance I, LLC
Highland Restoration Capital Partners GP, LLC
Highland Restoration Capital Partners Master, L.P.
Highland Restoration Capital Partners Offshore, L.P.
Highland Restoration Capital Partners, L.P.
Highland Santa Barbara Foundation, Inc.
Highland Select Equity Fund GP, L.P.
Highland Select Equity Fund, L.P.
Highland Select Equity GP, LLC
Highland Select Equity Master Fund, L.P.

Highland Small-Cap Equity Fund
Highland Socially Responsible Equity Fund
Highland Socially Responsible Equity Fund
(fka Highland Premier Growth Equity Fund)

Highland Special Opportunities Holding Company
Highland SunBridge GP, LLC
Highland Tax-Exempt Fund
Highland TCI Holding Company, LLC
Highland Total Return Fund
Highland's Roads Land Holding Company, LLC
Hirst, Ltd.
HMCF PB Investors, LLC
HMx2 Investment Trust
(Matt McGraner)
Hockney, Ltd.
HRT North Atlanta, LLC
HRT Timber Creek, LLC
HRTBH North Atlanta, LLC
HRTBH Timber Creek, LLC
Huber Funding LLC
Hunter Mountain Investment Trust
HWS Investors Holdco, LLC
Internal Investors
Intertrust
James D. Dondero
Reese Avry Dondero
Jameson Drue Dondero
James Dondero
James Dondero and Mark Okada
James Dondero
Reese Avry Dondero
Jameson Drue Dondero
Japan Trustee Services Bank, Ltd.
Jasper CLO, Ltd.
Jewelry Ventures I, LLC
JMIJM, LLC
Joanna E. Milne Irrevocable Trust dated Nov 25 1998 (third party)
John Honis
John L. Holt, Jr.
John R. Sears, Jr.
Karisopolis, LLC
Keelhaul LLC
KHM Interests, LLC (third party)
Kuilima Montalban Holdings, LLC
Kuilima Resort Holdco, LLC
KV Cameron Creek Owner, LLC
Lakes at Renaissance Park Apartments Investors, L.P.
Lakeside Lane, LLC
Landmark Battleground Park II, LLC
Lane Britain
Larry K. Anders
LAT Battleground Park, LLC
LAT Briley Parkway, LLC
Lautner, Ltd.
Leawood RE Holdings, LLC
Liberty Cayman Holdings, Ltd.
Liberty CLO Holdco, Ltd.
Liberty CLO, Ltd.
Liberty Sub, Ltd.
Long Short Equity Sub, LLC
Longhorn Credit Funding LLC
Longhorn Credit Funding LLC - A
Longhorn Credit Funding LLC - B
Longhorn Credit Funding LLC (LHB)
Longhorn Credit Funding, LLC
Lurin Real Estate Holdings V, LLC
Maple Avenue Holdings, LLC
MaplesFS Limited
Marc C. Manzo
Mark and Pam Okada Family Trust - Exempt Descendants' Trust
Mark and Pam Okada Family Trust - Exempt Trust #2
Mark and Pamela Okada Family Trust - Exempt Descendants' Trust
Mark and Pamela Okada Family Trust - Exempt Descendants' Trust #2
Mark and Pamela Okada Family Trust - Exempt Trust #2
Mark K. Okada
Mark Okada

Mark Okada and Pam Okada
Mark Okada and Pam Okada, as joint owners
Mark Okada/Pamela Okada
Markham Fine Jewelers, L.P.
Markham Fine Jewelers, LP
Matt McGraner
Meritage Residential Partners, LLC
MGM Studios HoldCo, Ltd.
Michael Rossi
ML CLO XIX Sterling (Cayman), Ltd.
N/A
Nancy Dondero
NCI Apache Trail LLC
NCI Assets Holding Company LLC
NCI Country Club LLC
NCI Fort Worth Land LLC
NCI Front Beach Road LLC
NCI Minerals LLC
NCI Royse City Land LLC
NCI Stewart Creek LLC
NCI Storage, LLC
Neil Labatte
Neutra, Ltd.
New Jersey Tissue Company Holdco, LLC
(fka Marcal Paper Mills Holding Company, LLC)
NexAnnuity Holdings, Inc.
NexBank Capital Trust I
NexBank Capital, Inc.
NexBank Land Advisors, Inc.
NexBank Securities Inc.
NexBank Securities, Inc.
NexBank SSB
NexBank Title, Inc.
(dba NexVantage Title Services)
NexBank, SSB
NexPoint Advisors GP, LLC
NexPoint Advisors, L.P.
NexPoint Capital REIT, LLC
NexPoint Capital, Inc.
NexPoint Capital, Inc. *(fka NexPoint Capital, LLC)*
NexPoint CR F/H DST, LLC
NexPoint Credit Strategies Fund
NexPoint Discount Strategies Fund
(fka NexPoint Discount Yield Fund)
NexPoint DRIP
NexPoint Energy and Materials Opportunities Fund *(fka NexPoint Energy Opportunities Fund)*
NexPoint Event-Driven Fund
(fkaNexPoint Merger Arbitrage Fund)
NexPoint Flamingo DST
NexPoint Flamingo Investment Co, LLC
NexPoint Flamingo Leaseco, LLC
NexPoint Flamingo Manager, LlC
NexPoint Flamingo Property Manager, LlC
NexPoint Healthcare Opportunities Fund
NexPoint Hospitality Trust
NexPoint Hospitality, Inc.
NexPoint Hospitality, LLC
NexPoint Insurance Distributors, LLC
NexPoint Insurance Solutions GP, LLC
NexPoint Insurance Solutions GP, LLC
(fka Highland Capital Insurance Solutions GP, LLC)
NexPoint Insurance Solutions, L.P.
(fka Highland Capital Insurance Solutions, L.P.)
NexPoint Latin American Opportunities Fund
NexPoint Legacy 22, LLC
NexPoint Lincoln Porte Equity, LLC
NexPoint Lincoln Porte Manager, LLC
NexPoint Lincoln Porte, LLC
(fka NREA Lincoln Porte, LLC)
NexPoint Multifamily Capital Trust, Inc.
NexPoint Multifamily Capital Trust, Inc.
(fka NexPoint Multifamily Realty Trust, Inc., fka Highland Capital Realty Trust, Inc.)
NexPoint Multifamily Operating Partnership, L.P.
NexPoint Peoria, LLC
NexPoint Polo Glen DST
NexPoint Polo Glen Holdings, LLC
NexPoint Polo Glen Investment Co, LLC

NexPoint Polo Glen Leaseco, LLC
NexPoint Polo Glen Manager, LLC
NexPoint RE Finance Advisor GP, LLC
NexPoint RE Finance Advisor, L.P.
NexPoint Real Estate Advisors GP, LLC
NexPoint Real Estate Advisors II, L.P.
NexPoint Real Estate Advisors II, L.P.
NexPoint Real Estate Advisors III, L.P.
NexPoint Real Estate Advisors IV, L.P.
NexPoint Real Estate Advisors V, L.P.
NexPoint Real Estate Advisors VI, L.P.
NexPoint Real Estate Advisors VII GP, LLC
NexPoint Real Estate Advisors VII, L.P.
NexPoint Real Estate Advisors VIII, L.P.
NexPoint Real Estate Advisors, L.P.
NexPoint Real Estate Capital, LLC
NexPoint Real Estate Capital, LLC *(fka Highland Real Estate Capital, LLC, fka Highland Multifamily Credit Fund, LLC)*
NexPoint Real Estate Finance OP GP, LLC
NexPoint Real Estate Finance Operating Partnership, L.P.
NexPoint Real Estate Finance, Inc.
NexPoint Real Estate Opportunities, LLC
NexPoint Real Estate Opportunities, LLC *(fka Freedom REIT LLC)*
NexPoint Real Estate Partners, LLC (fka HCRE Partners, LLC)
NexPoint Real Estate Partners, LLC (fka HCRE Partners, LLC)
NexPoint Real Estate Strategies Fund
NexPoint Residential Trust Inc.
NexPoint Residential Trust Operating Partnership GP, LLC
NexPoint Residential Trust Operating Partnership, L.P.
NexPoint Residential Trust Operating Partnership, L.P.
NexPoint Residential Trust, Inc.
NexPoint Securities, Inc.
(fka Highland Capital Funds Distributor, Inc.)
(fka Pyxis Distributors, Inc.)
NexPoint Strategic Income Fund
(fka NexPoint Opportunistic Credit Fund, fka NexPoint Distressed Strategies Fund)
NexPoint Strategic Opportunities Fund
NexPoint Strategic Opportunities Fund
(fka NexPoint Credit Strategies Fund)
NexPoint Texas Multifamily Portfolio DST
(fka NREA Southeast Portfolio Two, DST)
NexPoint WLIF I Borrower, LLC
NexPoint WLIF I, LLC
NexPoint WLIF II Borrower, LLC
NexPoint WLIF II, LLC
NexPoint WLIF III Borrower, LLC
NexPoint WLIF III, LLC
NexPoint WLIF, LLC (Series I)
NexPoint WLIF, LLC (Series II)
NexPoint WLIF, LLC (Series III)
NexStrat LLC
NexVest, LLC
NexWash LLC
NFRO REIT Sub, LLC
NFRO TRS, LLC
NHF CCD, Inc.
NHT 2325 Stemmons, LLC
NHT Beaverton TRS, LLC
(fka NREA Hotel TRS, Inc.)
NHT Beaverton, LLC
NHT Bend TRS, LLC
NHT Bend, LLC
NHT Destin TRS, LLC
NHT Destin, LLC
NHT DFW Portfolio, LLC
NHT Holdco, LLC
NHT Holdings, LLC
NHT Intermediary, LLC
NHT Nashville TRS, LLC
NHT Nashville, LLC
NHT Olympia TRS, LLC
NHT Olympia, LLC
NHT Operating Partnership GP, LLC
NHT Operating Partnership II, LLC
NHT Operating Partnership, LLC
NHT Salem, LLC

NHT SP Parent, LLC
NHT SP TRS, LLC
NHT SP, LLC
NHT Tigard TRS, LLC
NHT Tigard, LLC
NHT TRS, Inc.
NHT Uptown, LLC
NHT Vancouver TRS, LLC
NHT Vancouver, LLC
NLA Assets LLC
NMRT TRS, Inc.
NREA Adair DST Manager, LLC
NREA Adair Investment Co, LLC
NREA Adair Joint Venture, LLC
NREA Adair Leaseco Manager, LLC
NREA Adair Leaseco, LLC
NREA Adair Property Manager LLC
NREA Adair, DST
NREA Ashley Village Investors, LLC
NREA Cameron Creek Investors, LLC
NREA Cityplace Hue Investors, LLC
NREA Crossing Investors LLC
NREA Crossings Investors, LLC
NREA Crossings Ridgewood Coinvestment, LLC *(fka NREA Crossings Ridgewood Investors, LLC)*
NREA DST Holdings, LLC
NREA El Camino Investors, LLC
NREA Estates Inc.
NREA Estates Investment Co, LLC
NREA Estates Leaseco, LLC
NREA Estates Manager, LLC
NREA Estates Property Manager, LLC
NREA Estates, DST
NREA Gardens DST Manager LLC
NREA Gardens DST Manager, LLC
NREA Gardens Investment Co, LLC
NREA Gardens Leaseco Manager, LLC
NREA Gardens Leaseco, LLC
NREA Gardens Property Manager, LLC
NREA Gardens Springing LLC
NREA Gardens Springing Manager, LLC
NREA Gardens, DST
NREA Hidden Lake Investment Co, LLC
NREA Hue Investors, LLC
NREA Keystone Investors, LLC
NREA Meritage Inc.
NREA Meritage Investment Co, LLC
NREA Meritage Leaseco, LLC
NREA Meritage Manager, LLC
NREA Meritage Property Manager, LLC
NREA Meritage, DST
NREA Oaks Investors, LLC
NREA Retreat Investment Co, LLC
NREA Retreat Leaseco, LLC
NREA Retreat Manager, LLC
NREA Retreat Property Manager, LLC
NREA Retreat, DST
NREA SE MF Holdings LLC
NREA SE MF Holdings, LLC
NREA SE MF Investment Co, LLC
NREA SE MF Investment Co, LLC
NREA SE Multifamily LLC
NREA SE Multifamily, LLC
NREA SE One Property Manager, LLC
NREA SE Three Property Manager, LLC
NREA SE Two Property Manager, LLC
NREA SE1 Andros Isles Leaseco, LLC
NREA SE1 Andros Isles Manager, LLC
NREA SE1 Andros Isles, DST
(Converted from DK Gateway Andros, LLC)
NREA SE1 Arborwalk Leaseco, LLC
NREA SE1 Arborwalk Manager, LLC
NREA SE1 Arborwalk, DST
(Converted from MAR Arborwalk, LLC)
NREA SE1 Towne Crossing Leaseco, LLC
NREA SE1 Towne Crossing Manager, LLC
NREA SE1 Towne Crossing, DST
(Converted from Apartment REIT Towne Crossing, LP)
NREA SE1 Walker Ranch Leaseco, LLC
NREA SE1 Walker Ranch Manager, LLC
NREA SE1 Walker Ranch, DST
(Converted from SOF Walker Ranch Owner, L.P.)
NREA SE2 Hidden Lake Leaseco, LLC

NREA SE2 Hidden Lake Manager, LLC
NREA SE2 Hidden Lake, DST
NREA SE2 Hidden Lake, DST
(Converted from SOF Hidden Lake SA Owner, L.P.)
NREA SE2 Vista Ridge Leaseco, LLC
NREA SE2 Vista Ridge Manager, LLC
NREA SE2 Vista Ridge, DST
NREA SE2 Vista Ridge, DST
(Converted from MAR Vista Ridge, L.P.)
NREA SE2 West Place Leaseco, LLC
NREA SE2 West Place Manager, LLC
NREA SE2 West Place, DST
(Converted from Landmark at West Place, LLC)
NREA SE3 Arboleda Leaseco, LLC
NREA SE3 Arboleda Manager, LLC
NREA SE3 Arboleda, DST
(Converted from G&E Apartment REIT Arboleda, LLC)
NREA SE3 Fairways Leaseco, LLC
NREA SE3 Fairways Manager, LLC
NREA SE3 Fairways, DST
(Converted from MAR Fairways, LLC)
NREA SE3 Grand Oasis Leaseco, LLC
NREA SE3 Grand Oasis Manager, LLC
NREA SE3 Grand Oasis, DST
(Converted from Landmark at Grand Oasis, LP)
NREA Southeast Portfolio One Manager, LLC
NREA Southeast Portfolio One, DST
NREA Southeast Portfolio One, DST
NREA Southeast Portfolio Three Manager, LLC
NREA Southeast Portfolio Three, DST
NREA Southeast Portfolio Three, DST
NREA Southeast Portfolio Two Manager, LLC
NREA Southeast Portfolio Two, DST
NREA Southeast Portfolio Two, LLC
NREA SOV Investors, LLC
NREA Uptown TRS, LLC
NREA VB I LLC
NREA VB II LLC
NREA VB III LLC
NREA VB IV LLC
NREA VB Pledgor I LLC
NREA VB Pledgor I, LLC
NREA VB Pledgor II LLC
NREA VB Pledgor II, LLC
NREA VB Pledgor III LLC
NREA VB Pledgor III, LLC
NREA VB Pledgor IV LLC
NREA VB Pledgor IV, LLC
NREA VB Pledgor V LLC
NREA VB Pledgor V, LLC
NREA VB Pledgor VI LLC
NREA VB Pledgor VI, LLC
NREA VB Pledgor VII LLC
NREA VB Pledgor VII, LLC
NREA VB SM, Inc.
NREA VB V LLC
NREA VB VI LLC
NREA VB VII LLC
NREA Vista Ridge Investment Co, LLC
NREC AR Investors, LLC
NREC BM Investors, LLC
NREC BP Investors, LLC
NREC Latitude Investors, LLC
NREC REIT Sub, Inc.
NREC TRS, Inc.
NREC WW Investors, LLC
NREF OP I Holdco, LLC
NREF OP I SubHoldco, LLC
NREF OP I, L.P.
NREF OP II Holdco, LLC
NREF OP II SubHoldco, LLC
NREF OP II, L.P.
NREF OP IV REIT Sub TRS, LLC
NREF OP IV REIT Sub, LLC
NREF OP IV, L.P.
NREO NW Hospitality Mezz, LLC
NREO NW Hospitality, LLC
NREO Perilune, LLC
NREO SAFStor Investors, LLC
NREO TRS, Inc.
NRESF REIT Sub, LLC

NXRT Abbington, LLC
NXRT Atera II, LLC
NXRT Atera, LLC
NXRT AZ2, LLC
NXRT Barrington Mill, LLC
NXRT Bayberry, LLC
NXRT Bella Solara, LLC
NXRT Bella Vista, LLC
NXRT Bloom, LLC
NXRT Brandywine GP I, LLC
NXRT Brandywine GP I, LLC
NXRT Brandywine GP II, LLC
NXRT Brandywine GP II, LLC
NXRT Brandywine LP, LLC
NXRT Brandywine LP, LLC
NXRT Brentwood Owner, LLC
NXRT Brentwood, LLC
NXRT Cedar Pointe Tenant, LLC
NXRT Cedar Pointe, LLC
NXRT Cityview, LLC
NXRT Cornerstone, LLC
NXRT Crestmont, LLC
NXRT Crestmont, LLC
NXRT Enclave, LLC
NXRT Glenview, LLC
NXRT H2 TRS, LLC
NXRT Heritage, LLC
NXRT Hollister TRS LLC
NXRT Hollister, LLC
NXRT LAS 3, LLC
NXRT Master Tenant, LLC
NXRT Nashville Residential, LLC
NXRT Nashville Residential, LLC *(fka Freedom Nashville Residential, LLC)*
NXRT North Dallas 3, LLC
NXRT Old Farm, LLC
NXRT Pembroke Owner, LLC
NXRT Pembroke, LLC
NXRT PHX 3, LLC
NXRT Radbourne Lake, LLC
NXRT Rockledge, LLC
NXRT Sabal Palms, LLC
NXRT SM, Inc.
NXRT Steeplechase, LLC
NXRT Stone Creek, LLC
NXRT Summers Landing GP, LLC
NXRT Summers Landing LP, LLC
NXRT Torreyana, LLC
NXRT Vanderbilt, LLC
NXRT West Place, LLC
NXRTBH AZ2, LLC
NXRTBH Barrington Mill Owner, LLC
NXRTBH Barrington Mill SM, Inc.
NXRTBH Barrington Mill, LLC
NXRTBH Bayberry, LLC
NXRTBH Cityview, LLC
NXRTBH Colonnade, LLC
NXRTBH Cornerstone Owner, LLC
NXRTBH Cornerstone SM, Inc.
NXRTBH Cornerstone, LLC
NXRTBH Dana Point SM, Inc.
NXRTBH Dana Point, LLC
NXRTBH Foothill SM, Inc.
NXRTBH Foothill, LLC
NXRTBH Heatherstone SM, Inc.
NXRTBH Heatherstone, LLC
NXRTBH Hollister Tenant, LLC
NXRTBH Hollister, LLC
NXRTBH Madera SM, Inc.
NXRTBH Madera, LLC
NXRTBH McMillan, LLC
NXRTBH North Dallas 3, LLC
NXRTBH Old Farm II, LLC
NXRTBH Old Farm Tenant, LLC
NXRTBH Old Farm, LLC
NXRTBH Radbourne Lake, LLC
NXRTBH Rockledge, LLC
NXRTBH Sabal Palms, LLC
NXRTBH Steeplechase, LLC
(dba Southpoint Reserve at Stoney Creek)-VA
NXRTBH Stone Creek, LLC
NXRTBH Vanderbilt, LLC
NXRTBH Versailles SM, Inc.
NXRTBH Versailles, LLC
Oak Holdco, LLC
Oaks CGC, LLC

Okada Family Revocable Trust
Oldenburg, Ltd.
Pam Capital Funding GP Co. Ltd.
Pam Capital Funding, L.P.
PamCo Cayman Ltd.
Park West 1700 Valley View Holdco, LLC
Park West 2021 Valley View Holdco, LLC
Park West Holdco, LLC
Park West Portfolio Holdco, LLC
Participants of Highland 401K Plan
Patrick Willoughby-McCabe
PCMG Trading Partners XXIII, L.P.
PCMG Trading Partners XXIII, LP
PDK Toys Holdco, LLC
Pear Ridge Partners, LLC
Penant Management GP, LLC
Penant Management LP
PensionDanmark Holding A/S
PensionDanmark Pensionsforsikringsaktieselskab
Peoria Place Development, LLC (30% cash contributions - profit participation only)
Perilune Aero Equity Holdings One, LLC
Perilune Aviation LLC
PetroCap Incentive Holdings III. L.P.
PetroCap Incentive Partners II GP, LLC
PetroCap Incentive Partners II, L.P.
PetroCap Incentive Partners III GP, LLC
PetroCap Incentive Partners III, LP
PetroCap Management Company LLC
PetroCap Partners II GP, LLC
PetroCap Partners II, L.P.
PetroCap Partners III GP, LLC
PetroCap Partners III, L.P.
Pharmacy Ventures I, LLC
Pharmacy Ventures II, LLC
Pollack, Ltd.
Powderhorn, LLC
PWM1 Holdings, LLC
PWM1, LLC
RADCO - Bay Meadows, LLLP
RADCO - Bay Park, LLLP
RADCO NREC Bay Meadows Holdings, LLC
RADCO NREC Bay Park Holdings, LLC
Ramarim, LLC
Rand Advisors Series I Insurance Fund
Rand Advisors Series II Insurance Fund
Rand Advisors, LLC
Rand PE Fund I, L.P.
Rand PE Fund I, L.P. - Series 1
Rand PE Fund Management, LLC
Rand PE Holdco, LLC
Realdania
Red River CLO, Ltd.
Red River Investors Corp.
Riverview Partners SC, LLC
Rockwall CDO II Ltd.
Rockwall CDO II, Ltd.
Rockwall CDO, Ltd.
Rockwall Investors Corp.
Rothko, Ltd.
RTT Bella Solara, LLC
RTT Bloom, LLC
RTT Financial, Inc.
RTT Hollister, LLC
RTT Rockledge, LLC
RTT Torreyana, LLC
SALI Fund Partners, LLC
San Diego County Employees Retirement Association
Sandstone Pasadena Apartments, LLC
Sandstone Pasadena, LLC
Santa Barbara Foundation (third party)
Saturn Oil & Gas LLC
SBC Master Pension Trust
Scott Matthew Siekielski
SE Battleground Park, LLC
SE Battleground Park, LLC
SE Glenview, LLC
SE Governors Green Holdings, L.L.C.
SE Governors Green Holdings, L.L.C. *(fka SCG Atlas Governors Green Holdings, L.L.C.)*
SE Governors Green I, LLC
SE Governors Green II, LLC

SE Governors Green II, LLC
SE Governors Green REIT, L.L.C.
SE Governors Green REIT, L.L.C. *(fka SCG Atlas Governors Green REIT, L.L.C.)*

SE Governors Green, LLC *(fka SCG Atlas Governors Green, L.L.C.)*
SE Gulfstream Isles GP, LLC
SE Gulfstream Isles GP, LLC
SE Gulfstream Isles LP, LLC
SE Gulfstream Isles LP, LLC
SE Heights at Olde Towne, LLC
SE Heights at Olde Towne, LLC
SE Lakes at Renaissance Park GP I, LLC
SE Lakes at Renaissance Park GP II, LLC
SE Lakes at Renaissance Park GP II, LLC
SE Lakes at Renaissance Park LP, LLC
SE Lakes at Renaissance Park LP, LLC
SE Multifamily Holdings LLC
SE Multifamily Holdings, LLC
SE Multifamily REIT Holdings LLC
SE Myrtles at Olde Towne, LLC
SE Myrtles at Olde Towne, LLC
SE Oak Mill I Holdings, LLC
SE Oak Mill I Holdings, LLC *(fka SCG Atlas Oak Mill I Holdings, L.L.C.)*
SE Oak Mill I Owner, LLC *(fka SCG Atlas Oak Mill I, L.L.C.)*
SE Oak Mill I REIT, LLC
SE Oak Mill I REIT, LLC *(fka SCG Atlas Oak Mill I REIT, L.L.C.)*
SE Oak Mill I, LLC
SE Oak Mill I, LLC
SE Oak Mill II Holdings, LLC
SE Oak Mill II Holdings, LLC *(fka SCG Atlas Oak Mill II Holdings, L.L.C.)*
SE Oak Mill II Owner, LLC *(fka SCG Atlas Oak Mill II, L.L.C.)*
SE Oak Mill II REIT, LLC
SE Oak Mill II REIT, LLC *(fka SCG Atlas Oak Mill II REIT, L.L.C.)*
SE Oak Mill II, LLC
SE Oak Mill II, LLC
SE Quail Landing, LLC
SE River Walk, LLC
SE Riverwalk, LLC
SE SM, Inc.
SE Stoney Ridge Holdings, L.L.C. *(fka SCG Atlas Stoney Ridge Holdings, L.L.C.)*
SE Stoney Ridge Holdings, LLC
SE Stoney Ridge I, LLC
SE Stoney Ridge I, LLC
SE Stoney Ridge II, LLC
SE Stoney Ridge II, LLC
SE Stoney Ridge REIT, L.L.C. *(fka SCG Atlas Stoney Ridge REIT, L.L.C.)*
SE Stoney Ridge REIT, LLC
SE Stoney Ridge, LLC *(fka SCG Atlas Stoney Ridge, L.L.C.)*
SE Victoria Park, LLC
SE Victoria Park, LLC
Sentinel Re Holdings, Ltd.
Sentinel Reinsurance Ltd.
SFH1, LLC
SFR WLIF I, LLC *(fka NexPoint WLIF I, LLC)*
SFR WLIF II, LLC *(NexPoint WLIF II, LLC)*
SFR WLIF III, LLC *(NexPoint WLIF III, LLC)*
SFR WLIF Manager, LLC *(NexPoint WLIF Manager, LLC)*
SFR WLIF, LLC *(NexPoint WLIF, LLC)*
SFR WLIF, LLC Series I
SFR WLIF, LLC Series II
SFR WLIF, LLC Series III
SH Castle BioSciences, LLC
Small Cap Equity Sub, LLC
Socially Responsible Equity Sub, LLC
SOF Brandywine I Owner, L.P.
SOF Brandywine II Owner, L.P.
SOF-X GS Owner, L.P.
Southfork Cayman Holdings, Ltd.
Southfork CLO, Ltd.

Specialty Financial Products Designated Activity Company *(fka Specialty Financial Products Limited)*

Spiritus Life, Inc.

SRL Sponsor LLC

SRL Whisperwod LLC

SRL Whisperwood Member LLC

SRL Whisperwood Venture LLC

SSB Assets LLC

Starck, Ltd.

Stemmons Hospitality, LLC

Steve Shin

Stonebridge Capital, Inc.

Stonebridge-Highland Healthcare Private Equity Fund

Strand Advisors III, Inc.

Strand Advisors IV, LLC

Strand Advisors IX, LLC

Strand Advisors V, LLC

Strand Advisors XIII, LLC

Strand Advisors XVI, Inc.

Strand Advisors, Inc.

Stratford CLO, Ltd.

Summers Landing Apartment Investors, L.P.

Term Loan B
(10% cash contributions - profit participation only)

The Dallas Foundation

The Dallas Foundation (third party)

The Dondero Insurance Rabbi Trust

The Dugaboy Investment Trust

The Dugaboy Investment Trust U/T/A Dated Nov 15, 2010

The Get Good Non-Exempt Trust No. 1

The Get Good Non-Exempt Trust No. 2

The Get Good Trust

The Mark and Pamela Okada Family Trust - Exempt Descendants' Trust

The Mark and Pamela Okada Family Trust - Exempt Trust #2

The Ohio State Life Insurance Company

The Okada Family Foundation, Inc.

The Okada Insurance Rabbi Trust

The SLHC Trust

The Trustees of Columbia University in the City of New York

The Twentysix Investment Trust
(Third Party Investor)

Thomas A. Neville

Thread 55, LLC

Tihany, Ltd.

Todd Travers

Tranquility Lake Apartments Investors, L.P.

Tuscany Acquisition, LLC

Uptown at Cityplace Condominium Association, Inc.

US Gaming OpCo, LLC

US Gaming SPV, LLC

US Gaming, LLC

Valhalla CLO, Ltd.

VB GP LLC

VB Holding, LLC

VB One, LLC

VB OP Holdings LLC

VBAnnex C GP, LLC

VBAnnex C Ohio, LLC

VBAnnex C, LP

Ventoux Capital, LLC
(Matt Goetz)

VineBrook Annex B, L.P.

VineBrook Annex I, L.P.

VineBrook Homes Merger Sub II LLC

VineBrook Homes Merger Sub LLC

VineBrook Homes OP GP, LLC

VineBrook Homes Operating Partnership, L.P.

VineBrook Homes Trust, Inc.

VineBrook Partners I, L.P.

VineBrook Partners II, L.P.

VineBrook Properties, LLC

Virginia Retirement System

Vizcaya Investment, LLC

Wake LV Holdings II, Ltd.

Wake LV Holdings, Ltd.

Walter Holdco GP, LLC

Walter Holdco I, Ltd.

Walter Holdco, L.P.

Warhol, Ltd.
Warren Chang
Westchester CLO, Ltd.
William L. Britain
Wright Ltd.
Wright, Ltd.
Yellow Metal Merchants, Inc.

EXHIBIT R

CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of _____ , 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this "Agreement"), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the "Debtor"), as settlor, and James P. Seery, Jr., as trustee (the "Claimant Trustee"), and [____] as Delaware trustee (the "Delaware Trustee," and together with the Debtor and the Claimant Trustee, the "Parties") for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the "Chapter 11 Case");

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the "Plan"),[1] which was confirmed by the Bankruptcy Court on _____, 2021, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (the "Confirmation Order");

WHEREAS, this Agreement, including all exhibits hereto, is the "Claimant Trust Agreement" described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries[2] in accordance with the Plan; (v) the Claimant Trustee can resolve Disputed Claims as set forth herein and in the Plan; and

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

[2] For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.

(vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

DECLARATION OF TRUST

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

ARTICLE I.
DEFINITION AND TERMS

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the "Definitions," Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) "Acis" means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) "Bankruptcy Court" has the meaning set forth in the Recitals hereof.

(c) "Cause" means (i) a Person's willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person's commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person's conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person's gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(d) "Claimant Trust Agreement" means this Agreement.

(e) "Claimant Trustee" means James P. Seery, Jr., as the initial "Claimant Trustee" hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) "Claimant Trust" means the "Highland Claimant Trust" established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) "Claimant Trust Assets" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

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

(i) "Claimant Trust Expense Cash Reserve" means $[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) "Claimant Trust Expenses" means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with this Agreement.

(k) "Committee Member" means a Member who is/was also a member of the Creditors' Committee.

(l) "Conflicted Member" has the meaning set forth in Section 4.6(c) hereof.

(m) "Contingent Trust Interests" means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

(n) "Creditors' Committee" means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) "Delaware Statutory Trust Act" means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) "Delaware Trustee" has the meaning set forth in the introduction hereof.

(q) "Disability" means as a result of the Claimant Trustee's or a Member's incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) "Disinterested Members" has the meaning set forth in Section 4.1 hereof.

(s) "Disputed Claims Reserve" means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) "Employees" means the employees of the Debtor set forth in the Plan Supplement.

(u) "Employee Claims" means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(v) "Estate Claims" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) "Equity Trust Interests" has the meaning given to it in Section 5.1(c) hereof.

(x) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(y) "General Unsecured Claim Trust Interests" means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) "GUC Beneficiaries" means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) "GUC Payment Certification" has the meaning given to it in Section 5.1(c) hereof.

(bb) "HarbourVest" means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) "Investment Advisers Act" means the Investment Advisers Act of 1940, as amended.

(dd) "Investment Company Act" means the Investment Company Act of 1940, as amended.

(ee) "Litigation Sub-Trust" means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) "Litigation Sub-Trust Agreement" means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) "Litigation Trustee" means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) "Managed Funds" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however,* that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) "Material Claims" means the Claims asserted by UBS, Patrick Hagaman Daugherty, Integrated Financial Associates, Inc., and the Employees.

(jj) "Member" means a Person that is member of the Oversight Board.

(kk) "New GP LLC" means the general partner of the Reorganized Debtor.

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

(mm) "Plan" has the meaning set forth in the Recitals hereof.

(nn) "Privileges" means the Debtor's rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to, attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that "Privileges" shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(oo) "PSZJ" means Pachulski Stang Ziehl & Jones LLP.

(pp) "Redeemer Committee" means the Redeemer Committee of the Highland Crusader Fund.

(qq) "Registrar" has the meaning given to it in Section 5.3(a) hereof.

(rr) "Reorganized Debtor Assets" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(ss) "Securities Act" means the Securities Act of 1933, as amended.

(tt) "Subordinated Beneficiaries" means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(uu) "Subordinated Claim Trust Interests" means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(vv) "TIA" means the Trust Indenture Act of 1939, as amended.

(ww) "Trust Interests" means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(xx) "Trust Register" has the meaning given to it in Section 5.3(b) hereof.

(yy) "Trustees" means collectively the Claimant Trustee and Delaware Trustee.

(zz) "UBS" means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) "WilmerHale" Wilmer Cutler Pickering Hale & Dorr LLP.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. "Includes" and "including" are not limiting and "or" is not exclusive. References to "Articles," "Sections" and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words "herein," "hereafter" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol "$" shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

ARTICLE II.
ESTABLISHMENT OF THE CLAIMANT TRUST

2.1 Creation of Name of Trust.

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the "Highland Claimant Trust." The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

2.2 Objectives.

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment, make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with "liquidating trust" status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee and (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust,

pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims, the Employee Claims, and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.

2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession, custody or control, (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee, directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address:[_____].

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

ARTICLE III.
THE TRUSTEES

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the Estate Claims transferred to the Litigation Sub-Trust, as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or

otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following "[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]".

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(c), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor's Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to $3,000,000 (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust's role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board solely in their capacities as such, in the form of fiduciary liability insurance, a directors and

officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay, such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;

(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xxi) being collectively, the "Authorized Acts").

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee's authority with respect to certain other assets, including certain portfolio company assets (the "Other Assets").

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority

of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

(i) terminate or extend the term of the Claimant Trust;

(ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;

(iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than $3,000,000 (over a thirty-day period);

(iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;

(v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder's Claim becomes an Allowed Claim under the Plan;

(vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;

(vii) borrow as may be necessary to fund activities of the Claimant Trust;

(viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;

(ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);

(x) change the compensation of the Claimant Trustee;

(xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and

(xii) retain counsel, experts, advisors, or any other professionals; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and

(ii) any other professional whose expected fees and expenses are estimated at less than or equal to $200,000.

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service ("IRS") guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys' fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee's resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause for Cause immediately upon notice thereof, or without Cause upon 60 days' prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she

may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the "Interim Trustee") until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person's appointment as Interim Trustee.

3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee's capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee's obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as "Estate Representative". The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the "Estate Representative") with respect to the Claimant Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims and the Employee Claims. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any

accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

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

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

(b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as

expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust.

ARTICLE IV.
THE OVERSIGHT BOARD

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof..

4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.7 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the

Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set forth in Sections 3.3(c), 4.9(a), 5.2, 5.4, 6.1, 9.1, and 10, herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or

in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed "Conflicted Members" with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a "Committee Member Claim Matter"). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article X hereof. The Members of the Oversight Board will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 4.7 below, or removal pursuant to Section 4.8 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving not less than 90 days prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day specified in such notice and (ii) the appointment of a successor in accordance with Section 4.9 below.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further

evidenced by the Claimant Trustee's filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee's website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member. Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.11.

ARTICLE V.
TRUST INTERESTS

5.1 Claimant Trust Interests.

(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the "GUC Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the "Subordinated Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary's Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the "Equity Holders"). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the "GUC Payment Certification"). Equity Holders will only be deemed "Beneficiaries" under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed "Equity Trust Interests." The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary's Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant

Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other wright to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the "Registrar"), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the "Trust Register"), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary's Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be "securities" under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys' fees and other costs; provided, however, that any fees and costs shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.

(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.

ARTICLE VI.
DISTRIBUTIONS

6.1 Distributions.

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive termination of the Claimant Trustee), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within six months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.

6.2 Manner of Payment or Distribution. All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 *De Minimis* Distributions. Distributions with a value of less than $100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. **After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.**

ARTICLE VII.
TAX MATTERS

7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes

where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

ARTICLE VIII.
STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, Delaware Trustee, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise

jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), Delaware Trustee, Oversight Board, and all past and present Members (collectively, in their capacities as such, the "Indemnified Parties") shall be indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party's reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties.

For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense and shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

ARTICLE IX.
TERMINATION

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

ARTICLE X.
AMENDMENTS AND WAIVER

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

ARTICLE XI.
MISCELLANEOUS

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not

permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee
c/o **[insert contact info for Claimant Trustee]**

With a copy to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd, 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)
Ira Kharasch (ikharasch@pszjlaw.com)
Gregory Demo (gdemo@pszjlaw.com)

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the

Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.11 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board. or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however*, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

[Remainder of Page Intentionally Blank]

IN WITNESS HEREOF, the parties hereto have caused this Claimant Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Highland Capital Management, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and
Chief Restructuring Officer

Claimant Trustee

By: _____
James P. Seery, Jr., not individually but solely in his capacity as the Claimant Trustee

EXHIBIT S

CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of _____ , 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this "Agreement"), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the "Debtor"), as settlor, and James P. Seery, Jr., as trustee (the "Claimant Trustee"), and [____] as Delaware trustee (the "Delaware Trustee," and together with the Debtor and the Claimant Trustee, the "Parties") for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the "Chapter 11 Case");

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the "Plan"),[1] which was confirmed by the Bankruptcy Court on _____, 2021, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (the "Confirmation Order");

WHEREAS, this Agreement, including all exhibits hereto, is the "Claimant Trust Agreement" described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries[2] in accordance with the Plan; (v) the Claimant Trustee can resolve Disputed Claims as set forth herein and in the Plan; and (vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

[2] For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.

DECLARATION OF TRUST

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

ARTICLE I.
DEFINITION AND TERMS

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the "Definitions," Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) "Acis" means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) "Bankruptcy Court" has the meaning set forth in the Recitals hereof.

(c) "Cause" means (i) a Person's willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person's commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person's conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person's gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(d) "Claimant Trust Agreement" means this Agreement.

(e) "Claimant Trustee" means James P. Seery, Jr., as the initial "Claimant Trustee" hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) "Claimant Trust" means the "Highland Claimant Trust" established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) "Claimant Trust Assets" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

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

(i) "Claimant Trust Expense Cash Reserve" means $[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) "Claimant Trust Expenses" means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with this Agreement.

(k) "Committee Member" means a Member who is/was also a member of the Creditors' Committee.

(l) "Conflicted Member" has the meaning set forth in Section 4.6(c) hereof.

(m) "Contingent Trust Interests" means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

(n) "Creditors' Committee" means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) "Delaware Statutory Trust Act" means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) "Delaware Trustee" has the meaning set forth in the introduction hereof.

(q) "Disability" means as a result of the Claimant Trustee's or a Member's incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) "Disinterested Members" has the meaning set forth in Section 4.1 hereof.

(s) "Disputed Claims Reserve" means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) "Employees" means the employees of the Debtor set forth in the Plan Supplement.

(u) "Employee Claims" means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(v) "Estate Claims" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) "Equity Trust Interests" has the meaning given to it in Section 5.1(c) hereof.

(x) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(y) "General Unsecured Claim Trust Interests" means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) "GUC Beneficiaries" means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) "GUC Payment Certification" has the meaning given to it in Section 5.1(c) hereof.

(bb) "HarbourVest" means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) "Investment Advisers Act" means the Investment Advisers Act of 1940, as amended.

(dd) "Investment Company Act" means the Investment Company Act of 1940, as amended.

(ee) "Litigation Sub-Trust" means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) "Litigation Sub-Trust Agreement" means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) "Litigation Trustee" means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) "Managed Funds" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however,* that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) "Material Claims" means the Claims asserted by UBS, Patrick Hagaman Daugherty, Integrated Financial Associates, Inc., and the Employees.

(jj) "Member" means a Person that is member of the Oversight Board.

(kk) "New GP LLC" means the general partner of the Reorganized Debtor.

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

(mm) "Plan" has the meaning set forth in the Recitals hereof.

(nn) "Privileges" means the Debtor's rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to, attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that "Privileges" shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(oo) "PSZJ" means Pachulski Stang Ziehl & Jones LLP.

(pp) "Redeemer Committee" means the Redeemer Committee of the Highland Crusader Fund.

(qq) "Registrar" has the meaning given to it in Section 5.3(a) hereof.

(rr) "Reorganized Debtor Assets" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(ss) "Securities Act" means the Securities Act of 1933, as amended.

(tt) "Subordinated Beneficiaries" means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(uu) "Subordinated Claim Trust Interests" means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(vv) "TIA" means the Trust Indenture Act of 1939, as amended.

(ww) "Trust Interests" means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(xx) "Trust Register" has the meaning given to it in Section 5.3(b) hereof.

(yy) "Trustees" means collectively the Claimant Trustee and Delaware Trustee.

(zz) "UBS" means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) "WilmerHale" Wilmer Cutler Pickering Hale & Dorr LLP.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. "Includes" and "including" are not limiting and "or" is not exclusive. References to "Articles," "Sections" and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words "herein," "hereafter" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol "$" shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

ARTICLE II.
ESTABLISHMENT OF THE CLAIMANT TRUST

2.1 Creation of Name of Trust.

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the "Highland Claimant Trust." The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

2.2 Objectives.

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment, make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with "liquidating trust" status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee and (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust, pursuant to section

1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims, the Employee Claims, and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.

2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession, custody or control, (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee, directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address:[_____].

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

ARTICLE III.
THE TRUSTEES

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the Estate Claims transferred to the Litigation Sub-Trust, as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that

any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following "[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]".

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(c), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor's Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to $3,000,000 (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust's role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board

solely in their capacities as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay, such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;

(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xxi) being collectively, the "Authorized Acts").

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee's authority with respect to certain other assets, including certain portfolio company assets (the "Other Assets").

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority

of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

(i) terminate or extend the term of the Claimant Trust;

(ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;

(iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than $3,000,000 (over a thirty-day period);

(iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;

(v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder's Claim becomes an Allowed Claim under the Plan;

(vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;

(vii) borrow as may be necessary to fund activities of the Claimant Trust;

(viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;

(ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);

(x) change the compensation of the Claimant Trustee;

(xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and

(xii) retain counsel, experts, advisors, or any other professionals; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and

(ii) any other professional whose expected fees and expenses are estimated at less than or equal to $200,000.

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service ("IRS") guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys' fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee's resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause for Cause immediately upon notice thereof, or without Cause upon 60 days' prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she

may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the "Interim Trustee") until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person's appointment as Interim Trustee.

3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee's capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee's obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as "Estate Representative". The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the "Estate Representative") with respect to the Claimant Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims and the Employee Claims. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any

accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

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

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, ~~including any severance, as agreed to by~~ the Claimant Trustee, on the one hand, and the Committee, if ~~agreed upon~~ prior to the Effective Date, or the Oversight Board, if ~~agreed upon~~ on or after the Effective Date~~,~~ , on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

(b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as

expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust.

ARTICLE IV.
THE OVERSIGHT BOARD

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof..

4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.7 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set forth in Sections 3.3(c), 4.9(a), 5.2, 5.4, 6.1, 9.1, and 10, herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to

such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed "Conflicted Members" with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a "Committee Member Claim Matter"). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article X hereof. The Members of the Oversight Board will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 4.7 below, or removal pursuant to Section 4.8 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving not less than 90 days prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day specified in such notice and (ii) the appointment of a successor in accordance with Section 4.9 below.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further evidenced by the Claimant Trustee's filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee's website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member. Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.11.

ARTICLE V.
TRUST INTERESTS

5.1 Claimant Trust Interests.

(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the "GUC Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class

8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the "Subordinated Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary's Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the "Equity Holders"). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the "GUC Payment Certification"). Equity Holders will only be deemed "Beneficiaries" under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed "Equity Trust Interests." The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary's Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other wright to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the "Registrar"), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the "Trust Register"), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary's Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be "securities" under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this

Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys' fees and other costs; provided, however, that any fees and costs shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.

(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by

Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.

ARTICLE VI.
DISTRIBUTIONS

6.1 Distributions.

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive termination of the Claimant Trustee), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within six months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.

6.2 Manner of Payment or Distribution. All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 *De Minimis* Distributions. Distributions with a value of less than $100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. **After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.**

ARTICLE VII.
TAX MATTERS

7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets

for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

ARTICLE VIII.
STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, Delaware Trustee, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of

the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), Delaware Trustee, Oversight Board, and all past and present Members (collectively, in their capacities as such, the "Indemnified Parties") shall be indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party's reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense and

shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

ARTICLE IX.
TERMINATION

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been

fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

ARTICLE X.
AMENDMENTS AND WAIVER

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

ARTICLE XI.
MISCELLANEOUS

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee
c/o **[insert contact info for Claimant Trustee]**

With a copy to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd, 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)
Ira Kharasch (ikharasch@pszjlaw.com)
Gregory Demo (gdemo@pszjlaw.com)

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.11 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement ~~or the Plan~~, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board, or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however*, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

[Remainder of Page Intentionally Blank]

IN WITNESS HEREOF, the parties hereto have caused this Claimant Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Highland Capital Management, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and
Chief Restructuring Officer

Claimant Trustee

By: _____
James P. Seery, Jr., not individually but solely in his capacity as the Claimant Trustee

Document comparison by Workshare 9.5 on Friday, January 22, 2021 4:38:30 PM

Input:	
Document 1 ID	PowerDocs://DOCS_NY/41280/9
Description	DOCS_NY-#41280-v9-Highland_-_Claimant_Trust_Agreement
Document 2 ID	PowerDocs://DOCS_NY/41280/10
Description	DOCS_NY-#41280-v10-Highland_-_Claimant_Trust_Agreement
Rendering set	Standard

Legend:	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	11
Deletions	5
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	16

EXHIBIT T

LITIGATION SUB-TRUST AGREEMENT

This Litigation Sub-Trust Agreement, effective as of _____, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this "Agreement"), by and among James P. Seery, Jr., as trustee of the Highland Claimant Trust (the "Claimant Trustee"), [____] as Delaware Trustee, and Marc S. Kirschner as trustee (the "Litigation Trustee," and together with the Claimant Trustee and Delaware Trustee, the "Parties") of the Litigation Sub-Trust for the benefit of the Claimant Trust as sole Litigation Sub-Trust Beneficiary.

RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. (the "Debtor") filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the "Chapter 11 Case");

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the "Plan"),[1] which was confirmed by the Bankruptcy Court on _____, 2021, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (the "Confirmation Order");

WHEREAS, this Agreement, including all exhibits hereto, is the "Litigation Sub-Trust Agreement" described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Litigation Sub-Trust Assets are hereby to be transferred by the Claimant Trust to the Litigation Sub-Trust (each as defined herein) created and evidenced by this Agreement so that (i) Estate Claims can be investigated, prosecuted, settled, abandoned, resolved, and otherwise monetized as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; (ii) proceeds of Estate Claims can be remitted to the Claimant Trust as Claimant Trust Assets for distribution to the Claimant Trust Beneficiaries (as defined in the Claimant Trust Agreement) in accordance with the Plan and Claimant Trust Agreement; (iii) the Litigation Trustee can investigate, litigate, settle, or otherwise resolve any Filed Claims relating to the Estate Claims, including the Employee Claims; and (iv) administrative services relating to the activities of the Litigation Sub-Trust can be performed by the Litigation Trustee.

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

DECLARATION OF TRUST

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Litigation Trustee and the Claimant Trustee have executed this Agreement for the benefit of the Claimant Trust as provided for in the Plan.

TO HAVE AND TO HOLD unto the Litigation Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Litigation Sub-Trust in accordance with Article IX hereof, this Litigation Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Litigation Sub-Trust Assets are to be strictly held and applied by the Litigation Trustee subject to the specific terms set forth below.

ARTICLE I.
DEFINITION AND TERMS

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the "Definitions," Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) "Bankruptcy Court" has the meaning set forth in the Recitals hereof.

(b) "Cause" means (i) a Person's willful failure to perform his material duties hereunder (which material duties shall include, without limitation, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person's commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person's conviction of a felony with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person's gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(c) "Claimant Trust Agreement" means the Claimant Trust Agreement dated [___], 2021, by and between the Debtor, Claimant Trustee, and Delaware Trustee.

(d) "Claimant Trustee" means James P. Seery, Jr., as the initial "Claimant Trustee" under the Claimant Trust Agreement and as defined in the Plan, and any successor Claimant Trustee who may be appointed pursuant to the terms of the Claimant Trust Agreement.

(e) "Claimant Trust" means the "Highland Claimant Trust" established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to the Claimant Trust Agreement.

(f) "Delaware Statutory Trust Act" means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(g) "Delaware Trustee" has the meaning set forth in the Claimant Trust Agreement.

(h) "Disability" means as a result of the Litigation Trustee's incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Litigation Trustee, the Litigation Trustee has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(i) "Estate Claims" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(j) "Employee" means the employees of the Debtor set forth in the Plan Supplement.

(k) "Employee Claims" means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(l) "Litigation Sub-Trust" means the sub-trust created pursuant to this Agreement, and in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d).

(m) "Litigation Sub-Trust Agreement" means this Agreement.

(n) "Litigation Sub-Trust Assets" means the Estate Claims and the Litigation Sub-Trust Expense Cash Reserve.

(o) "Litigation Sub-Trust Beneficiary" means the Claimant Trust.

(p) "Litigation Sub-Trust Expenses" means the costs, expenses, liabilities and obligations incurred by the Litigation Sub-Trust and/or the Litigation Trustee in administering and conducting the affairs of the Litigation Sub-Trust, and otherwise carrying out the terms of the Litigation Sub-Trust and the Plan on behalf of the Litigation Sub-Trust, including without any limitation, any taxes owed by the Litigation Sub-Trust, and the fees and expenses of the Litigation Trustee and professional persons retained by the Litigation Sub-Trust or Litigation Trustee in accordance with Article 3.12(b) of this Agreement.

(q) "Litigation Sub-Trust Expense Cash Reserve" means $[•] million in Cash to be funded by the Debtor or Reorganized Debtor, as applicable, pursuant to the Plan into a bank account of the Litigation Sub-Trust (or of the Claimant Trust for the benefit of the

Litigation Sub-Trust) on or before the Effective Date for the purpose of paying Litigation Sub-Trust Expenses in accordance herewith.

(r) "Litigation Trustee" means Marc S. Kirschner as the initial "Litigation Trustee" hereunder and under the Plan, and any successor Litigation Trustee who may be appointed pursuant to the terms of this Agreement.

(s) "Oversight Board" has the meaning set forth in the Claimant Trust Agreement.

(t) "Plan" has the meaning set forth in the Recitals hereof.

(u) "Privileges" means the Debtor's rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to, attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that "Privileges" shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(v) "Securities Act" means the Securities Act of 1933, as amended.

(w) "TIA" means the Trust Indenture Act of 1939, as amended.

(x) "Trust Interests" means the trust interest(s) to be distributed to the Claimant Trust as the sole Litigation Sub-Trust Beneficiary.

(y) "Trust Register" has the meaning given to it in Section 5.3(b) hereof.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. "Includes" and "including" are not limiting and "or" is not exclusive. References to "Articles," "Sections" and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words "herein," "hereafter" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol "$" shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

ARTICLE II.
ESTABLISHMENT OF THE LITIGATION SUB-TRUST

2.1 Establishment of Sub-Trust.

(a) The Parties, pursuant to the Plan and the Confirmation Order and in accordance with the applicable provisions of the Bankruptcy Code, hereby establish a statutory trust under the Delaware Statutory Trust Act on behalf of the Claimant Trust as the sole Litigation Sub-Trust Beneficiary, which shall be known as the "Highland Litigation Sub-Trust," on the terms set forth herein. The Litigation Trustee may use this name in accordance with the terms and conditions set forth herein as the Litigation Trustee sees fit.

(b) The Litigation Trustee shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in his capacity as Litigation Trustee, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

2.2 Nature and Purposes of the Litigation Sub-Trust. The Litigation Sub-Trust is organized and established as a trust for the purpose of monetizing the Estate Claims and making distributions to Litigation Sub-Trust Beneficiary in a manner consistent with "liquidating trust" status under Treasury Regulation Section 301.7701-4(d). The Litigation Sub-Trust shall serve as a mechanism for investigating, prosecuting, settling, resolving, and otherwise monetizing all Estate Claims and distributing the proceeds of such Estate Claims to the Claimant Trust in a timely fashion in accordance with the Plan, the Confirmation Order, and this Agreement. The Litigation Sub-Trust and Litigation Trustee shall have and retain any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Estate Claim as of the Petition Date. Except as otherwise provided herein, the Litigation Sub-Trust shall have the sole responsibility for the pursuit and settlement of the Estate Claims, and, subject to the terms of the Claimant Trustee Agreement, the sole power and authority to allow or settle and compromise any Claims related to the Estate Claims, including, without limitation, Employee Claims. For the avoidance of doubt, the Litigation Sub-Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Estate Claims and Employee Claims (in accordance with the terms of the Claimant Trust Agreement).

2.3 Transfer of Assets and Rights to the Litigation Sub-Trust.

(a) On or as soon as practicable after the Effective Date, the Claimant Trust shall automatically an irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims, Employee Claims, and Privileges. For purposes of the transfer of documents, the Litigation Sub-Trust is an assignee and successor to the Debtor in respect of the Estate Claims and Employee Claims and shall be treated as such in any review of confidentiality restrictions in requested documents. For the avoidance of doubt, following the Effective Date, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(b) Until the Litigation Sub-Trust terminates pursuant to the terms hereof, legal title to the Estate Claims shall be vested at all times in the Litigation Sub-Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Estate Claims to be vested in the Litigation Trustee, in which case title shall be deemed to be vested in the Litigation Trustee, solely in his capacity as Litigation Trustee. For purposes of such jurisdictions, the term Litigation Sub-Trust, as used herein, shall be read to mean the Litigation Trustee.

(c) In accordance with section 1123(d) of the Bankruptcy Code, the Litigation Trustee may enforce all rights to commence and pursue, as appropriate, any and all Estate Claims after the Effective Date. No Person or entity may rely on the absence of a specific reference in the Plan to any Estate Claim against them as any indication that the Litigation Trustee will not pursue any and all available Estate Claims or objections against them. Unless any Estate Claim against a Person or Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or an order of the Bankruptcy Court, the Litigation Trustee expressly reserves all Estate Claims for later adjudication, and, therefore, no preclusion doctrine including the doctrine of res judicata, collateral, estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Estate Claims upon, after, or as a consequence of the Confirmation Order.

2.4 Principal Office. The principal office of the Litigation Sub-Trust shall be maintained by the Litigation Trustee at the following address: Goldin Associates, a Teneo Company, 350 Fifth Avenue, New York, New York 10118.

2.5 Acceptance. The Litigation Trustee accepts the Litigation Sub-Trust imposed by this Agreement and agrees to observe and perform that Litigation Sub-Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.6 Further Assurances. The Claimant Trustee and any successors thereof will, upon reasonable request of the Litigation Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Litigation Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Litigation Trustee the powers, instruments or funds in trust hereunder.

2.7 Incidents of Ownership. The Claimant Trust shall be the sole beneficiary of the Litigation Sub-Trust and the Litigation Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

ARTICLE III.
THE LITIGATION TRUSTEE

3.1 Role. In furtherance of and consistent with the purpose of the Litigation Sub-Trust, the Plan, and this Agreement, the Litigation Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Litigation Trustee with respect to the Litigation Sub-Trust Assets for the benefit of the Litigation Sub-Trust Beneficiary and maintain, manage, and take action on behalf of the Litigation Sub-Trust.

3.2 Authority.

(a) In connection with the administration of the Litigation Sub-Trust, in addition to any and all of the powers enumerated elsewhere herein, the Litigation Trustee shall, in an expeditious but orderly manner, investigate, prosecute, settle, and otherwise resolve the Estate Claims. The Litigation Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Litigation Sub-Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law.

(b) The Litigation Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Estate Claims and Employee Claims (in accordance with the terms of the Claimant Trust Agreement). To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Estate Claims or Employee Claims prior to the Effective Date, on the Effective Date the Litigation Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following "Marc Kirschner, not individually but solely as Litigation Trustee for the Highland Litigation Sub-Trust, et al. v. [Defendant]".

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Litigation Trustee shall have the power and authority to:

(i) hold legal title to any and all rights in or arising from the Litigation Sub-Trust Assets, including, but not limited to, the right to collect any and all money and other property belonging to the Litigation Sub-Trust (including any proceeds of the Litigation Sub-Trust Assets);

(ii) perform the duties, exercise the powers, and asserts the rights of a trustee under sections 1123(b)(3)(B) of the Bankruptcy Code with respect to the Litigation Sub-Trust Assets, including the right to assert claims, defenses, offsets, and privileges;

(iii) subject to any approval of the Oversight Board that may be required under Section 3.3(b), protect and enforce the rights of the Litigation Sub-Trust with respect to any Litigation Sub-Trust Assets by any method deemed appropriate, including, without limitation, by judicial proceeds, or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(iv) determine and satisfy any and all liabilities created, incurred, or assumed by the Litigation Sub-Trust;

(v) subject to any approval of the Oversight Board that may be required under Section 3.3(b), investigate, analyze, compromise, adjust, arbitrate, mediate, sue on or defend, prosecute, abandon, dismiss, exercise rights, powers and privileges with respect to or otherwise deal with and settle, in accordance with the terms set forth in this Agreement, all

Estate Claims, Employee Claims, or any other Causes of Action in favor of or against the Litigation Sub-Trust;

(vi) with respect to any Estate Claim, avoid and recover transfers of the Debtor's property as may be permitted by the Bankruptcy Code or applicable state law;

(vii) subject to applicable law, seek the examination of any Entity or Person with respect to the Estate Claims;

(viii) make all payments relating to the Litigation Sub-Trust Assets;

(ix) assess, enforce, release, or waive any privilege or defense on behalf of the Litigation Sub-Trust, the Litigation Sub-Trust Assets, or the Litigation Sub-Trust Beneficiary, if applicable;

(x) prepare, or have prepared, and file, if necessary, with the appropriate taxing authority any and all tax returns, information returns, and other required documents with respect to the Litigation Sub-Trust, and pay taxes properly payable by the Litigation Sub-Trust;

(xi) if not otherwise covered by insurance coverage obtained by the Claimant Trust, obtain reasonable insurance coverage with respect to any liabilities and obligations of the Litigation Trustee, solely in his capacity as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Litigation Sub-Trust Expense and paid by the Litigation Trustee from the Litigation Sub-Trust Expense Reserve;

(xii) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Litigation Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Litigation Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Litigation Trustee shall be Litigation Sub-Trust Expenses and paid by the Litigation Trustee from the Litigation Sub-Trust Expense Cash Reserve;

(xiii) to the extent applicable, assert, enforce, release, or waive any Privilege or defense on behalf of the Litigation Sub-Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Litigation Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xiv) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Litigation Sub-Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the

Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder; and

(xv) exercise such other powers and authority as may be vested in or assumed by the Litigation Trustee by any Final Order (the foregoing subparagraphs (i)-(xv) being collectively, the "Authorized Acts").

(d) The Litigation Trustee has the power and authority to act as trustee of the Litigation Sub-Trust and perform the Authorized Acts through the date such Litigation Trustee resigns, is removed, or is otherwise unable to serve for any reason.

(e) Any determinations by the Liquidation Trustee, under the direction of the Oversight Board, with respect to the amount or timing of settlement or other disposition of any Estate Claims settled in accordance with the terms of this Agreement shall be conclusive and binding on the Litigation Sub-Trust Beneficiary and all other parties of interest following the entry of an order of a court of competent jurisdiction approving such settlement or other disposition to the extent required or obtained.

3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Litigation Sub-Trust and the Litigation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Estate Claims as required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, or (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Litigation Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 of the Claimant Trust Agreement, in order to:

(i) terminate or extend the term of the Litigation Sub-Trust;

(ii) commence litigation with respect to any Estate Claims and, if applicable under the terms of the Claimant Trust Agreement, the Employee Claims, including, without limitation, to (x) litigate, resolve, or settle coverage and/or the liability of any insurer under any insurance policy or legal action related thereto, or (y) pursue avoidance, recovery, or similar remedies that may be brought under chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes or common law, including fraudulent transfer law;

(iii) settle, dispose of, or abandon any Estate Claims (including any counterclaims to the extent such counterclaims are set off against the proceeds of any such Estate Claim);

(iv) borrow funds as may be necessary to fund litigation or other costs of the Litigation Sub-Trust;

(v) reserve or retain any cash or cash equivalents in the Litigation Sub-Trust Cash Reserve in an amount reasonably necessary to meet claims and contingent liabilities;

(vi) change the compensation of the Litigation Trustee; and

(vii) retain counsel, experts, advisors, or any other professionals.

(c) [Reserved]

3.4 Binding Nature of Actions. All actions taken and determinations made by the Litigation Trustee in accordance with the provisions of this Agreement shall be final and binding upon the Litigation Sub-Trust Beneficiary.

3.5 Term of Service. The Litigation Trustee shall serve as the Litigation Trustee for the duration of the Litigation Sub-Trust, subject to death, resignation or removal.

3.6 Resignation. The Litigation Trustee may resign as trustee of the Litigation Sub-Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Litigation Trustee shall continue to serve as Litigation Trustee after delivery of the Litigation Trustee's resignation until the proposed effective date of such resignation, unless the Litigation Trustee and a [simple majority] of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Litigation Trustee in accordance with Section 3.8 hereof becomes effective.

3.7 Removal.

(a) The Litigation Trustee may be removed by a [simple majority] vote of the Oversight Board for Cause, immediately upon notice thereof, or without Cause, upon [60 days'] prior written notice.

(b) To the extent there is any dispute regarding the removal of a Litigation Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Litigation Trustee will continue to serve as the Litigation Trustee after his removal until the earlier of (i) the time when a successor Litigation Trustee will become effective in accordance with Section 3.8 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.8 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death, Disability, or removal of the Litigation Trustee, or prospective vacancy by reason of resignation, a successor Litigation Trustee shall be selected by a [simple majority] vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Litigation Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Litigation Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Litigation

Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Litigation Sub-Trust, or the Claimant Trust on behalf of the Litigation Sub-Trust. The successor Litigation Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Litigation Trustee.

(b) Vesting or Rights in Successor Litigation Trustee. Every successor Litigation Trustee appointed hereunder shall execute, acknowledge, and deliver to the Litigation Sub-Trust, the Claimant Trustee, the exiting Litigation Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Litigation Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Litigation Trustee except that the successor Litigation Trustee shall not be liable for the acts or omissions of the retiring Litigation Trustee. In no event shall the retiring Litigation Trustee be liable for the acts or omissions of the successor Litigation Trustee.

(c) Interim Litigation Trustee. During any period in which there is a vacancy in the position of Litigation Trustee, the Oversight Board shall appoint one of its Members or the Claimant Trustee to serve as the interim Litigation Trustee (the "Interim Trustee") until a successor Litigation Trustee is appointed pursuant to Section 3.8(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Litigation Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board or Claimant Trustee, as applicable, merely by such Person's appointment as Interim Trustee.

3.9 Continuance of Litigation Sub-Trust. The death, resignation, or removal of the Litigation Trustee shall not operate to terminate the Litigation Sub-Trust created by this Agreement or to revoke any existing agency (other than any agency of the Litigation Trustee as the Litigation Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Litigation Trustee. In the event of the resignation or removal of the Litigation Trustee, the Litigation Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Litigation Trustee's capacity under this Agreement and the conveyance of the Estate Claims then held by the exiting Litigation Trustee to the successor Litigation Trustee; (ii) deliver to the successor Litigation Trustee all non-privileged documents, instruments, records, and other writings relating to the Litigation Sub-Trust as may be in the possession or under the control of the exiting Litigation Trustee, provided, the exiting Litigation Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Litigation Trustee and the cost of making such copies shall be a Litigation Sub-Trust Expense to be paid by the Litigation Sub-Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Litigation Trustee's obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Litigation Trustee by the Litigation Sub-Trust. The exiting Litigation Trustee shall irrevocably appoint the successor Litigation Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Litigation Trustee is obligated to perform under this Section 3.9.

3.10 Litigation Trustee as "Estate Representative". The Litigation Trustee will be the exclusive trustee of the Litigation Sub-Trust Assets, for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the "Estate Representative") with respect to the Estate Claims, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement. The Litigation Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Estate Claims, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interests constituting or relating to Estate Claims are preserved and retained and may be enforced by the Litigation Trustee as an Estate Representative.

3.11 Books and Records.

(a) The Litigation Trustee shall maintain, in respect of the Litigation Sub-Trust and the Claimant Trust, books and records pertinent to Estate Claims in its possession and the income of the Litigation Sub-Trust and payment of expenses, liabilities, and claims against or assumed by the Litigation Sub-Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Litigation Sub-Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the Litigation Sub-Trust, or as a condition for managing any payment or distribution out of the Litigation Sub-Trust. Notwithstanding the foregoing, the Litigation Trustee shall to retain such books and records, and for such periods, with respect to any Reorganized Debtor Assets as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

(b) The Litigation Trustee may dispose some or all of the books and records maintained by the Litigation Trustee at the later of (i) such time as the Litigation Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Litigation Sub-Trust, including with respect to the Estate Claims, or (ii) upon the termination and winding up of the Litigation Sub-Trust under Article IX of this Agreement.

3.12 Reports.

(a) Financial and Status Reports. The fiscal year of the Litigation Sub-Trust shall be the calendar year. Within 90 days after the end of each calendar year during the term of the Litigation Sub-Trust, and within 45 days after the end of each calendar quarter during (other than the fourth quarter) the term of the Litigation Sub-Trust and as soon as practicable upon termination of the Litigation Sub-Trust, the Litigation Trustee shall make available upon request to the Oversight Board or Litigation Sub-Trust Beneficiary appearing on its records as of the end of such period or such date of termination, a written report including: (i) unaudited financial statements of the Litigation Sub-Trust for such period, and, if the end of a calendar year, an unaudited report (which may be prepared by an independent certified public accountant

employed by the Litigation Trustee) reflecting the result of such agreed-upon procedures relating to the financial accounting administration of the Litigation Sub-Trust as proposed by the Litigation Trustee; (ii) a summary description of any action taken by the Litigation Sub-Trust that, in the judgment of the Litigation Trustee, materially affects the Litigation Sub-Trust and of which notice has not previously been given to the Oversight Board or Litigation Sub-Trust Beneficiary, provided, that any such description shall not include any privileged or confidential information of the Litigation Trustee; and (iii) a description of the progress of liquidating the Litigation Sub-Trust Assets and making distributions to the Litigation Sub-Trust Beneficiary and any other material information relating to the Litigation Sub-Trust Assets and the administration of the Litigation Sub-Trust deemed appropriate to be disclosed by the Litigation Trustee, which description shall include a written report detailing, among other things, the litigation status of the Estate Claims transferred to the Litigation Sub-Trust, any settlements entered into by the Litigation Sub-Trust with respect to the Estate Claims, the proceeds recovered to date from Estate Claims, and the distributions made by the Litigation Sub-Trust.

(b) Annual Plan and Budget. If instructed by the Oversight Board, the Litigation Trustee shall prepare and submit to the Oversight Board for approval an annual plan and budget in such detail as reasonably requested.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Litigation Trustee in connection with this Agreement, the Litigation Trustee shall receive initial compensation in a manner and amount as agreed upon by the Committee. Any additional compensation or compensation of a Successor Litigation Trustee shall be determined by the Oversight Board.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Litigation Trustee in the performance of his or her duties hereunder, shall be reimbursed as Litigation Sub-Trust Expenses paid by the Litigation Sub-Trust.

(b) Professionals.

(i) Engagement of Professionals. The Litigation Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Litigation Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Litigation Trustee shall pay the reasonable fees and expenses of any retained professionals as Litigation Sub-Trust Expenses.

3.14 Reliance by Litigation Trustee. Except as otherwise provided herein, the Litigation Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Litigation Trustee has no reason to believe to be other

than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Litigation Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Litigation Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Litigation Trustee in accordance therewith. The Litigation Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning Estate Claims, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Litigation Trustee in accordance therewith. The Litigation Sub-Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Litigation Sub-Trust Assets. The Litigation Trustee shall not commingle any of the Litigation Sub-Trust Assets with his or her own property or the property of any other Person.

3.16 [Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Litigation Sub-Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Litigation Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Litigation Sub-Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Litigation Sub-Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Litigation Sub-Trust.]

ARTICLE IV.
THE OVERSIGHT BOARD

The Oversight Board shall be governed by Article IV of the Claimant Trust Agreement.

ARTICLE V.
TRUST INTERESTS

5.1 Litigation Sub-Trust Interests. On the date hereof, the Litigation Sub-Trust shall issue Trust Interests to the Claimant Trust as the sole Litigation Sub-Trust Beneficiary. The Litigation Sub-Trust Beneficiary shall be entitled to distributions from the Litigation Sub-Trust Assets in accordance with the terms of the Plan and this Agreement.

5.2 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected.

5.3 Exemption from Registration. The Parties hereto intend that the rights of the Litigation Sub-Trust Beneficiary arising under this Litigation Sub-Trust shall not be "securities" under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Litigation Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Litigation Sub-Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Litigation Sub-Trust Beneficiary any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Litigation Trustee under this Agreement.

ARTICLE VI.
DISTRIBUTIONS

6.1 Distributions. The Litigation Trustee shall distribute Cash proceeds of the Estate Claims to the Claimant Trust within 30 days of receipt of such Cash proceeds, net of any amounts that (a) are reasonably necessary to maintain the value of the Litigation Sub-Trust Assets pending their monetization or other disposition during the term of the Litigation Sub-Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Litigation Sub-Trust Expenses and any other expenses incurred by the Litigation Sub-Trust (including, but not limited to, any taxes imposed on or payable by the Litigation Trustee with respect to the Litigation Sub-Trust Assets), and (c) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Litigation Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses).

6.2 Manner of Payment or Distribution. All distributions made by the Litigation Trustee on behalf of the Litigation Sub-Trust to the Litigation Sub-Trust Beneficiary shall be payable by the Litigation Trustee directly to the Claimant Trust, as sole Litigation Sub-Trust Beneficiary, on the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to the Claimant Trust shall be made pursuant to wire instructions provided by the Claimant Trustee to the Litigation Trustee.

ARTICLE VII.
TAX MATTERS

7.1 Tax Treatment and Tax Returns. It is intended that the Litigation Sub-Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) the sole beneficiary of which is the Claimant Trust. Consistent

with such treatment, it is intended that the transfer of the Litigation Sub Trust Assets from the Claimant Trust to the Litigation Sub Trust will be treated as a non-event for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). Further, because the Claimant Trust is itself intended to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable),it is intended that the beneficiaries of the Claimant Trust will be treated as the grantor of the Litigation Sub-Trust and owner of the Litigation Sub-Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Litigation Trustee shall cooperate with the Claimant Trustee in connection with the preparation and filing of any federal income tax returns (and foreign, state, and local income tax returns where applicable) or information statements relating to the Litigation Sub Trust Assets.

7.2 Withholding. The Litigation Trustee may withhold from any amount distributed from the Litigation Sub-Trust to the Litigation Sub-Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the Litigation Sub-Trust Beneficiary. As a condition to receiving any distribution from the Litigation Sub-Trust, the Litigation Trustee may require that the Litigation Sub-Trust Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Litigation Trustee to comply with applicable tax reporting and withholding laws.

ARTICLE VIII.
STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Litigation Trustee, acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan, the Oversight Board, or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Litigation Sub-Trust or to any Person (including the Litigation Sub-Trust Beneficiary and Claimant Trust Beneficiaries) in connection with the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Litigation Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Litigation Sub-Trust, the Litigation Trustee, or Oversight Board shall not be personally liable to the Litigation Sub-Trust or any other Person in connection with the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Litigation Trustee, Oversight Board, or any Member shall be personally liable to the Litigation Sub-Trust or to any Person for the acts or omissions of any employee, agent or professional of the Litigation Sub-Trust or Litigation Trustee, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Litigation

Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Litigation Sub-Trust.

8.2 Indemnification. The Litigation Trustee (including each former Litigation Trustee), Oversight Board, and all past and present Members (collectively, the "Indemnified Parties") shall be indemnified by the Litigation Sub-Trust against and held harmless by the Litigation Sub-Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Litigation Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Litigation Sub-Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Litigation Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Litigation Trustee and/or Oversight Board of an indemnification obligation will not excuse the Litigation Sub-Trust from indemnifying the Indemnified Party unless such delay has caused the Litigation Sub-Trust material harm. The Litigation Sub-Trust shall periodically advance or otherwise reimburse on demand the Indemnified Party's reasonable legal and other expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and related expenses) incurred in connection therewith as a Litigation Sub-Trust Expense, but the Indemnified Party shall be required to repay promptly to the Litigation Sub-Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Litigation Sub-Trust with respect to which such expenses were paid. The Litigation Sub-Trust shall indemnify and hold harmless the employees, agents and professionals of the Litigation Sub-Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Litigation Trustee or Member or the estate of any decedent Litigation Trustee or Member. The indemnification provided hereby shall be a Litigation Sub-Trust Expense.

8.3 To the extent applicable, the provisions and protections set forth in Article IX of the Plan will apply to the Litigation Sub-Trust, the Litigation Trustee, Oversight Board, and the Members.

ARTICLE IX.
TERMINATION

9.1 Duration. The Litigation Trustee, the Litigation Sub-Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as the Litigation Trustee determines that the Estate Claims is not likely to yield sufficient additional proceeds to justify

further pursuit of such Estate, and all Distributions required to be made by the Litigation Trustee to the Litigation Sub-Trust Beneficiary under the Plan and this Agreement have been made, but in no event shall the Litigation Sub-Trust be dissolved later than [three years] from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Litigation Sub-Trust Assets.

9.2 Continuance of the Litigation Trustee for Winding Up. After dissolution of the Litigation Sub-Trust and for purpose of liquidating and winding up the affairs of the Litigation Sub-Trust, the Litigation Trustee shall continue to act as such until the Litigation Trustee's duties have been fully performed. Prior to the final distribution of all remaining Litigation Sub-Trust Assets, the Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Litigation Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Litigation Sub-Trust, until such time as the winding up of the Litigation Sub-Trust is completed. Upon the dissolution of the Litigation Sub-Trust and completion of the winding up of the assets, liabilities and affairs of the Litigation Sub-Trust pursuant to the Delaware Statutory Trust Act, the Litigation Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Litigation Sub-Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Subject in all respects to 3.11, upon the Termination date, the Litigation Trustee shall retain for a period of two (2) years, as a Litigation Sub-Trust Expense, the books, records, and certificated and other documents and files that have been delivered to or created by the Litigation Trustee. Subject in all respects to Section 3.11, at the Litigation Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.3 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Litigation Sub-Trust, the Litigation Trustee, the Oversight Board, and its Members shall have no further duties or obligations hereunder.

ARTICLE X.
AMENDMENTS AND WAIVER

The Litigation Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Litigation Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Litigation Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

ARTICLE XI.
MISCELLANEOUS

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Litigation Sub-Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Litigation Sub-Trust Beneficiary.

11.2 Litigation Sub-Trust Beneficiary has No Legal Title to Litigation Sub-Trust Assets. The Litigation Sub-Trust Beneficiary shall have no legal title to any part of the Litigation Sub-Trust Assets.

11.3 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Litigation Trustee, Oversight Board, and the Litigation Sub-Trust Beneficiary any legal or equitable right, remedy or claim under or in respect of this Agreement. The Litigation Sub-Trust Assets shall be held for the sole and exclusive benefit of the Litigation Sub-Trust Beneficiary.

11.4 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Litigation Trustee:

Marc S. Kirschner
c/o Goldin Associates LLC, a Teneo Company
350 Fifth Avenue
New York, New York 10118

With a copy to:

[insert contact for counsel to the Litigation Trustee].

(b) If to the Claimant Trustee:

Claimant Trustee
c/o **[insert contact info for Claimant Trustee]**

With a copy to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd, 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)
Ira Kharasch (ikharasch@pszjlaw.com)
Gregory Demo (gdemo@pszjlaw.com)

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.4 to the entity to be charged with knowledge of such change.

11.5 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.6 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.7 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Litigation Sub-Trust, the Litigation Trustee, and the Litigation Sub-Trust Beneficiary, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Litigation Sub-Trust Beneficiary shall bind its successors and assigns.

11.8 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.9 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.10 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board. or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however*, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.11 Transferee Liabilities. The Litigation Sub-Trust shall have no liability for, and the Litigation Sub-Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Litigation Trustee or the Litigation Sub-Trust Beneficiary have any personal liability for such claims. If any liability shall be asserted against the Litigation Sub-Trust or the Litigation Trustee as the transferee of the Litigation Sub-Trust Assets on account of any claimed liability of,

through or under the Debtor or Reorganized Debtor, the Litigation Trustee may use such part of the Litigation Sub-Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Litigation Trustee as a Litigation Sub-Trust Expense.

[Remainder of Page Intentionally Blank]

IN WITNESS HEREOF, the parties hereto have caused this Litigation Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Claimant Trustee

By: _____
James P. Seery, Jr., not individually but solely in his capacity as the Claimant Trustee

Litigation Trustee

By: _____
Marc S. Kirschner, not individually but solely in his capacity as the Litigation Trustee

EXHIBIT U

LITIGATION SUB-TRUST AGREEMENT

This Litigation Sub-Trust Agreement, effective as of _____, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this "Agreement"), by and among James P. Seery, Jr., as trustee of the Highland Claimant Trust (the "Claimant Trustee"), [____] as Delaware Trustee, and Marc S. Kirschner as trustee (the "Litigation Trustee," and together with the Claimant Trustee [and Delaware Trustee], the "Parties") of the Litigation Sub-Trust for the benefit of the Claimant Trust as sole Litigation Sub-Trust Beneficiary.

RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. (the "Debtor") filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the "Chapter 11 Case");

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the "Plan"),[1] which was confirmed by the Bankruptcy Court on _____, 2021, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (the "Confirmation Order");

WHEREAS, this Agreement, including all exhibits hereto, is the "Litigation Sub-Trust Agreement" described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Litigation Sub-Trust Assets are hereby to be transferred by the Claimant Trust to the Litigation Sub-Trust (each as defined herein) created and evidenced by this Agreement so that (i) Estate Claims can be investigated, prosecuted, settled, abandoned, resolved, and otherwise monetized as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; (ii) proceeds of Estate Claims can be remitted to the Claimant Trust as Claimant Trust Assets for distribution to the Claimant Trust Beneficiaries (as defined in the Claimant Trust Agreement) in accordance with the Plan and Claimant Trust Agreement; (iii) the Litigation Trustee can investigate, litigate, settle, or otherwise resolve any Filed Claims relating to the Estate Claims, including the Employee Claims; and (iv) administrative services relating to the activities of the Litigation Sub-Trust can be performed by the Litigation Trustee.

DECLARATION OF TRUST

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Litigation Trustee and the Claimant Trustee have executed this Agreement for the benefit of the Claimant Trust as provided for in the Plan.

TO HAVE AND TO HOLD unto the Litigation Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Litigation Sub-Trust in accordance with Article IX hereof, this Litigation Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Litigation Sub-Trust Assets are to be strictly held and applied by the Litigation Trustee subject to the specific terms set forth below.

ARTICLE I.
DEFINITION AND TERMS

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the "Definitions," Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) "Bankruptcy Court" has the meaning set forth in the Recitals hereof.

(b) "Cause" means (i) a Person's willful failure to perform his material duties hereunder (which material duties shall include, without limitation, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person's commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person's conviction of a felony with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person's gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(c) "Claimant Trust Agreement" means the Claimant Trust Agreement dated [___], 2021, by and between the Debtor, Claimant Trustee, and Delaware Trustee.

(d) "Claimant Trustee" means James P. Seery, Jr., as the initial "Claimant Trustee" under the Claimant Trust Agreement and as defined in the Plan, and any successor Claimant Trustee who may be appointed pursuant to the terms of the Claimant Trust Agreement.

(e) "Claimant Trust" means the "Highland Claimant Trust" established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to the Claimant Trust Agreement.

(f) "Delaware Statutory Trust Act" means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(g) "Delaware Trustee" has the meaning set forth in the Claimant Trust Agreement.

(h) "Disability" means as a result of the Litigation Trustee's incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Litigation Trustee, the Litigation Trustee has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(i) "Estate Claims" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(j) "Employee" means the employees of the Debtor set forth in the Plan Supplement.

(k) "Employee Claims" means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(l) "Litigation Sub-Trust" means the sub-trust created pursuant to this Agreement, and in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d).

(m) "Litigation Sub-Trust Agreement" means this Agreement.

(n) "Litigation Sub-Trust Assets" means the Estate Claims and the Litigation Sub-Trust Expense Cash Reserve.

(o) "Litigation Sub-Trust Beneficiary" means the Claimant Trust.

(p) "Litigation Sub-Trust Expenses" means the costs, expenses, liabilities and obligations incurred by the Litigation Sub-Trust and/or the Litigation Trustee in administering and conducting the affairs of the Litigation Sub-Trust, and otherwise carrying out the terms of the Litigation Sub-Trust and the Plan on behalf of the Litigation Sub-Trust, including without any limitation, any taxes owed by the Litigation Sub-Trust, and the fees and expenses of the Litigation Trustee and professional persons retained by the Litigation Sub-Trust or Litigation Trustee in accordance with Article 3.12(b) of this Agreement.

(q) "Litigation Sub-Trust Expense Cash Reserve" means $[•] million in Cash to be funded by the Debtor or Reorganized Debtor, as applicable, pursuant to the Plan into a bank account of the Litigation Sub-Trust (or of the Claimant Trust for the benefit of the Litigation Sub-Trust) on or before the Effective Date for the purpose of paying Litigation Sub-Trust Expenses in accordance herewith.

(r) "Litigation Trustee" means Marc S. Kirschner as the initial "Litigation Trustee" hereunder and under the Plan, and any successor Litigation Trustee who may be appointed pursuant to the terms of this Agreement.

(s) "Oversight Board" has the meaning set forth in the Claimant Trust Agreement.

(t) "Plan" has the meaning set forth in the Recitals hereof.

(u) "Privileges" means the Debtor's rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to, attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that "Privileges" shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(v) "Securities Act" means the Securities Act of 1933, as amended.

(w) "TIA" means the Trust Indenture Act of 1939, as amended.

(x) "Trust Interests" means the trust interest(s) to be distributed to the Claimant Trust as the sole Litigation Sub-Trust Beneficiary.

(y) "Trust Register" has the meaning given to it in Section 5.3(b) hereof.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. "Includes" and "including" are not limiting and "or" is not exclusive. References to "Articles," "Sections" and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words "herein," "hereafter" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol "$" shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

ARTICLE II.
ESTABLISHMENT OF THE LITIGATION SUB-TRUST

2.1 Establishment of Sub-Trust.

(a) The Parties, pursuant to the Plan and the Confirmation Order and in accordance with the applicable provisions of the Bankruptcy Code, hereby establish a statutory trust under the Delaware Statutory Trust Act on behalf of the Claimant Trust as the sole

Litigation Sub-Trust Beneficiary, which shall be known as the "Highland Litigation Sub-Trust," on the terms set forth herein. The Litigation Trustee may use this name in accordance with the terms and conditions set forth herein as the Litigation Trustee sees fit.

(b) The Litigation Trustee shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in his capacity as Litigation Trustee, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

2.2 Nature and Purposes of the Litigation Sub-Trust. The Litigation Sub-Trust is organized and established as a trust for the purpose of monetizing the Estate Claims and making distributions to Litigation Sub-Trust Beneficiary in a manner consistent with "liquidating trust" status under Treasury Regulation Section 301.7701-4(d). The Litigation Sub-Trust shall serve as a mechanism for investigating, prosecuting, settling, resolving, and otherwise monetizing all Estate Claims and distributing the proceeds of such Estate Claims to the Claimant Trust in a timely fashion in accordance with the Plan, the Confirmation Order, and this Agreement. The Litigation Sub-Trust and Litigation Trustee shall have and retain any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Estate Claim as of the Petition Date. Except as otherwise provided herein, the Litigation Sub-Trust shall have the sole responsibility for the pursuit and settlement of the Estate Claims, and, subject to the terms of the Claimant Trustee Agreement, the sole power and authority to allow or settle and compromise any Claims related to the Estate Claims, including, without limitation, Employee Claims. For the avoidance of doubt, the Litigation Sub-Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Estate Claims and Employee Claims (in accordance with the terms of the Claimant Trust Agreement).

2.3 Transfer of Assets and Rights to the Litigation Sub-Trust.

(a) On or as soon as practicable after the Effective Date, the Claimant Trust shall automatically an irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims, Employee Claims, and Privileges. For purposes of the transfer of documents, the Litigation Sub-Trust is an assignee and successor to the Debtor in respect of the Estate Claims and Employee Claims and shall be treated as such in any review of confidentiality restrictions in requested documents. For the avoidance of doubt, following the Effective Date, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(b) Until the Litigation Sub-Trust terminates pursuant to the terms hereof, legal title to the Estate Claims shall be vested at all times in the Litigation Sub-Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Estate Claims to be vested in the Litigation Trustee, in which case title shall be deemed to be vested in the Litigation Trustee, solely in his capacity as Litigation Trustee. For purposes of such jurisdictions, the term Litigation Sub-Trust, as used herein, shall be read to mean the Litigation Trustee.

(c) In accordance with section 1123(d) of the Bankruptcy Code, the Litigation Trustee may enforce all rights to commence and pursue, as appropriate, any and all Estate Claims after the Effective Date. No Person or entity may rely on the absence of a specific reference in the Plan to any Estate Claim against them as any indication that the Litigation Trustee will not pursue any and all available Estate Claims or objections against them. Unless any Estate Claim against a Person or Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or an order of the Bankruptcy Court, the Litigation Trustee expressly reserves all Estate Claims for later adjudication, and, therefore, no preclusion doctrine including the doctrine of res judicata, collateral, estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Estate Claims upon, after, or as a consequence of the Confirmation Order.

2.4 Principal Office. The principal office of the Litigation Sub-Trust shall be maintained by the Litigation Trustee at the following address: Goldin Associates, a Teneo Company, 350 Fifth Avenue, New York, New York 10118.

2.5 Acceptance. The Litigation Trustee accepts the Litigation Sub-Trust imposed by this Agreement and agrees to observe and perform that Litigation Sub-Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.6 Further Assurances. The Claimant Trustee and any successors thereof will, upon reasonable request of the Litigation Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Litigation Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Litigation Trustee the powers, instruments or funds in trust hereunder.

2.7 Incidents of Ownership. The Claimant Trust shall be the sole beneficiary of the Litigation Sub-Trust and the Litigation Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

ARTICLE III.
THE LITIGATION TRUSTEE

3.1 Role. In furtherance of and consistent with the purpose of the Litigation Sub-Trust, the Plan, and this Agreement, the Litigation Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Litigation Trustee with respect to the Litigation Sub-Trust Assets for the benefit of the Litigation Sub-Trust Beneficiary and maintain, manage, and take action on behalf of the Litigation Sub-Trust.

3.2 Authority.

(a) In connection with the administration of the Litigation Sub-Trust, in addition to any and all of the powers enumerated elsewhere herein, the Litigation Trustee shall, in an expeditious but orderly manner, investigate, prosecute, settle, and otherwise resolve the Estate Claims. The Litigation Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement

and the provisions of the Plan and the Confirmation Order relating to the Litigation Sub-Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law.

(b) The Litigation Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Estate Claims and Employee Claims (in accordance with the terms of the Claimant Trust Agreement). To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Estate Claims or Employee Claims prior to the Effective Date, on the Effective Date the Litigation Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following "Marc Kirschner, not individually but solely as Litigation Trustee for the Highland Litigation Sub-Trust, et al. v. [Defendant]".

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Litigation Trustee shall have the power and authority to:

(i) hold legal title to any and all rights in or arising from the Litigation Sub-Trust Assets, including, but not limited to, the right to collect any and all money and other property belonging to the Litigation Sub-Trust (including any proceeds of the Litigation Sub-Trust Assets);

(ii) perform the duties, exercise the powers, and asserts the rights of a trustee under sections 1123(b)(3)(B) of the Bankruptcy Code with respect to the Litigation Sub-Trust Assets, including the right to assert claims, defenses, offsets, and privileges;

(iii) subject to any approval of the Oversight Board that may be required under Section 3.3(b), protect and enforce the rights of the Litigation Sub-Trust with respect to any Litigation Sub-Trust Assets by any method deemed appropriate, including, without limitation, by judicial proceeds, or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(iv) determine and satisfy any and all liabilities created, incurred, or assumed by the Litigation Sub-Trust;

(v) subject to any approval of the Oversight Board that may be required under Section 3.3(b), investigate, analyze, compromise, adjust, arbitrate, mediate, sue on or defend, prosecute, abandon, dismiss, exercise rights, powers and privileges with respect to or otherwise deal with and settle, in accordance with the terms set forth in this Agreement, all Estate Claims, Employee Claims, or any other Causes of Action in favor of or against the Litigation Sub-Trust;

(vi) with respect to any Estate Claim, avoid and recover transfers of the Debtor's property as may be permitted by the Bankruptcy Code or applicable state law;

(vii) subject to applicable law, seek the examination of any Entity or Person with respect to the Estate Claims;

(viii) make all payments relating to the Litigation Sub-Trust Assets;

(ix) assess, enforce, release, or waive any privilege or defense on behalf of the Litigation Sub-Trust, the Litigation Sub-Trust Assets, or the Litigation Sub-Trust Beneficiary, if applicable;

(x) prepare, or have prepared, and file, if necessary, with the appropriate taxing authority any and all tax returns, information returns, and other required documents with respect to the Litigation Sub-Trust, and pay taxes properly payable by the Litigation Sub-Trust;

(xi) if not otherwise covered by insurance coverage obtained by the Claimant Trust, obtain reasonable insurance coverage with respect to any liabilities and obligations of the Litigation Trustee, solely in his capacity as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Litigation Sub-Trust Expense and paid by the Litigation Trustee from the Litigation Sub-Trust Expense Reserve;

(xii) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Litigation Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Litigation Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Litigation Trustee shall be Litigation Sub-Trust Expenses and paid by the Litigation Trustee from the Litigation Sub-Trust Expense Cash Reserve;

(xiii) to the extent applicable, assert, enforce, release, or waive any Privilege or defense on behalf of the Litigation Sub-Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Litigation Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xiv) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Litigation Sub-Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder; and

(xv) exercise such other powers and authority as may be vested in or assumed by the Litigation Trustee by any Final Order (the foregoing subparagraphs (i)-(xv) being collectively, the "Authorized Acts").

(d) The Litigation Trustee has the power and authority to act as trustee of the Litigation Sub-Trust and perform the Authorized Acts through the date such Litigation Trustee resigns, is removed, or is otherwise unable to serve for any reason.

(e) Any determinations by the Liquidation Trustee, under the direction of the Oversight Board, with respect to the amount or timing of settlement or other disposition of any Estate Claims settled in accordance with the terms of this Agreement shall be conclusive and binding on the Litigation Sub-Trust Beneficiary and all other parties of interest following the entry of an order of a court of competent jurisdiction approving such settlement or other disposition to the extent required or obtained.

3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Litigation Sub-Trust and the Litigation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Estate Claims as required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, or (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Litigation Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 of the Claimant Trust Agreement, in order to:

(i) terminate or extend the term of the Litigation Sub-Trust;

(ii) commence litigation with respect to any Estate Claims and, if applicable under the terms of the Claimant Trust Agreement, the Employee Claims, including, without limitation, to (x) litigate, resolve, or settle coverage and/or the liability of any insurer under any insurance policy or legal action related thereto, or (y) pursue avoidance, recovery, or similar remedies that may be brought under chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes or common law, including fraudulent transfer law;

(iii) settle, dispose of, or abandon any Estate Claims (including any counterclaims to the extent such counterclaims are set off against the proceeds of any such Estate Claim);

(iv) borrow funds as may be necessary to fund litigation or other costs of the Litigation Sub-Trust;

(v) reserve or retain any cash or cash equivalents in the Litigation Sub-Trust Cash Reserve in an amount reasonably necessary to meet claims and contingent liabilities;

(vi) change the compensation of the Litigation Trustee; and

(vii) retain counsel, experts, advisors, or any other professionals.

(c) [Reserved]

3.4 Binding Nature of Actions. All actions taken and determinations made by the Litigation Trustee in accordance with the provisions of this Agreement shall be final and binding upon the Litigation Sub-Trust Beneficiary.

3.5 Term of Service. The Litigation Trustee shall serve as the Litigation Trustee for the duration of the Litigation Sub-Trust, subject to death, resignation or removal.

3.6 Resignation. The Litigation Trustee may resign as trustee of the Litigation Sub-Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Litigation Trustee shall continue to serve as Litigation Trustee after delivery of the Litigation Trustee's resignation until the proposed effective date of such resignation, unless the Litigation Trustee and a [simple majority] of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Litigation Trustee in accordance with Section 3.8 hereof becomes effective.

3.7 Removal.

(a) The Litigation Trustee may be removed by a [simple majority] vote of the Oversight Board for Cause, immediately upon notice thereof, or without Cause, upon [60 days'] prior written notice.

(b) To the extent there is any dispute regarding the removal of a Litigation Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Litigation Trustee will continue to serve as the Litigation Trustee after his removal until the earlier of (i) the time when a successor Litigation Trustee will become effective in accordance with Section 3.8 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.8 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death, Disability, or removal of the Litigation Trustee, or prospective vacancy by reason of resignation, a successor Litigation Trustee shall be selected by a [simple majority] vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Litigation Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Litigation Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Litigation Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Litigation Sub-Trust, or the Claimant Trust on behalf of the Litigation Sub-Trust. The successor Litigation Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Litigation Trustee.

(b) Vesting or Rights in Successor Litigation Trustee. Every successor Litigation Trustee appointed hereunder shall execute, acknowledge, and deliver to the Litigation Sub-Trust, the Claimant Trustee, the exiting Litigation Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Litigation Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Litigation Trustee except that the successor Litigation Trustee shall not be liable for the acts or omissions of the retiring Litigation Trustee. In no event shall the retiring Litigation Trustee be liable for the acts or omissions of the successor Litigation Trustee.

(c) Interim Litigation Trustee. During any period in which there is a vacancy in the position of Litigation Trustee, the Oversight Board shall appoint one of its Members or the Claimant Trustee to serve as the interim Litigation Trustee (the "Interim Trustee") until a successor Litigation Trustee is appointed pursuant to Section 3.8(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Litigation Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board or Claimant Trustee, as applicable, merely by such Person's appointment as Interim Trustee.

3.9 Continuance of Litigation Sub-Trust. The death, resignation, or removal of the Litigation Trustee shall not operate to terminate the Litigation Sub-Trust created by this Agreement or to revoke any existing agency (other than any agency of the Litigation Trustee as the Litigation Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Litigation Trustee. In the event of the resignation or removal of the Litigation Trustee, the Litigation Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Litigation Trustee's capacity under this Agreement and the conveyance of the Estate Claims then held by the exiting Litigation Trustee to the successor Litigation Trustee; (ii) deliver to the successor Litigation Trustee all non-privileged documents, instruments, records, and other writings relating to the Litigation Sub-Trust as may be in the possession or under the control of the exiting Litigation Trustee, provided, the exiting Litigation Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Litigation Trustee and the cost of making such copies shall be a Litigation Sub-Trust Expense to be paid by the Litigation Sub-Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Litigation Trustee's obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Litigation Trustee by the Litigation Sub-Trust. The exiting Litigation Trustee shall irrevocably appoint the successor Litigation Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Litigation Trustee is obligated to perform under this Section 3.9.

3.10 Litigation Trustee as "Estate Representative". The Litigation Trustee will be the exclusive trustee of the Litigation Sub-Trust Assets, for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the "Estate Representative") with respect to the Estate Claims, with all rights and powers attendant thereto, in addition to all rights and powers granted

in the Plan and in this Agreement. The Litigation Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Estate Claims, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interests constituting or relating to Estate Claims are preserved and retained and may be enforced by the Litigation Trustee as an Estate Representative.

3.11 Books and Records.

(a) The Litigation Trustee shall maintain, in respect of the Litigation Sub-Trust and the Claimant Trust, books and records pertinent to Estate Claims in its possession and the income of the Litigation Sub-Trust and payment of expenses, liabilities, and claims against or assumed by the Litigation Sub-Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Litigation Sub-Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the Litigation Sub-Trust, or as a condition for managing any payment or distribution out of the Litigation Sub-Trust. Notwithstanding the foregoing, the Litigation Trustee shall to retain such books and records, and for such periods, with respect to any Reorganized Debtor Assets as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

(b) The Litigation Trustee may dispose some or all of the books and records maintained by the Litigation Trustee at the later of (i) such time as the Litigation Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Litigation Sub-Trust, including with respect to the Estate Claims, or (ii) upon the termination and winding up of the Litigation Sub-Trust under Article IX of this Agreement.

3.12 Reports.

(a) Financial and Status Reports. The fiscal year of the Litigation Sub-Trust shall be the calendar year. Within 90 days after the end of each calendar year during the term of the Litigation Sub-Trust, and within 45 days after the end of each calendar quarter during (other than the fourth quarter) the term of the Litigation Sub-Trust and as soon as practicable upon termination of the Litigation Sub-Trust, the Litigation Trustee shall make available upon request to the Oversight Board or Litigation Sub-Trust Beneficiary appearing on its records as of the end of such period or such date of termination, a written report including: (i) unaudited financial statements of the Litigation Sub-Trust for such period, and, if the end of a calendar year, an unaudited report (which may be prepared by an independent certified public accountant employed by the Litigation Trustee) reflecting the result of such agreed-upon procedures relating to the financial accounting administration of the Litigation Sub-Trust as proposed by the Litigation Trustee; (ii) a summary description of any action taken by the Litigation Sub-Trust that, in the judgment of the Litigation Trustee, materially affects the Litigation Sub-Trust and of which notice has not previously been given to the Oversight Board or Litigation Sub-Trust

Beneficiary, provided, that any such description shall not include any privileged or confidential information of the Litigation Trustee; and (iii) a description of the progress of liquidating the Litigation Sub-Trust Assets and making distributions to the Litigation Sub-Trust Beneficiary and any other material information relating to the Litigation Sub-Trust Assets and the administration of the Litigation Sub-Trust deemed appropriate to be disclosed by the Litigation Trustee, which description shall include a written report detailing, among other things, the litigation status of the Estate Claims transferred to the Litigation Sub-Trust, any settlements entered into by the Litigation Sub-Trust with respect to the Estate Claims, the proceeds recovered to date from Estate Claims, and the distributions made by the Litigation Sub-Trust.

(b) Annual Plan and Budget. If instructed by the Oversight Board, the Litigation Trustee shall prepare and submit to the Oversight Board for approval an annual plan and budget in such detail as reasonably requested.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Litigation Trustee in connection with this Agreement, the Litigation Trustee shall receive initial compensation in a manner and amount as agreed upon by the Committee. Any additional compensation or compensation of a Successor Litigation Trustee shall be determined by the Oversight Board.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Litigation Trustee in the performance of his or her duties hereunder, shall be reimbursed as Litigation Sub-Trust Expenses paid by the Litigation Sub-Trust.

(b) Professionals.

(i) Engagement of Professionals. The Litigation Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Litigation Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Litigation Trustee shall pay the reasonable fees and expenses of any retained professionals as Litigation Sub-Trust Expenses.

3.14 Reliance by Litigation Trustee. Except as otherwise provided herein, the Litigation Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Litigation Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Litigation Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Litigation Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization

and protection in respect of any action taken or not taken by the Litigation Trustee in accordance therewith. The Litigation Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning Estate Claims, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Litigation Trustee in accordance therewith. The Litigation Sub-Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Litigation Sub-Trust Assets. The Litigation Trustee shall not commingle any of the Litigation Sub-Trust Assets with his or her own property or the property of any other Person.

3.16 [Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Litigation Sub-Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Litigation Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Litigation Sub-Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Litigation Sub-Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Litigation Sub-Trust.]

ARTICLE IV.
THE OVERSIGHT BOARD

The Oversight Board shall be governed by Article IV of the Claimant Trust Agreement.

ARTICLE V.
TRUST INTERESTS

5.1 Litigation Sub-Trust Interests. On the date hereof, the Litigation Sub-Trust shall issue Trust Interests to the Claimant Trust as the sole Litigation Sub-Trust Beneficiary. The Litigation Sub-Trust Beneficiary shall be entitled to distributions from the Litigation Sub-Trust Assets in accordance with the terms of the Plan and this Agreement.

5.2 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected.

5.3 Exemption from Registration. The Parties hereto intend that the rights of the Litigation Sub-Trust Beneficiary arising under this Litigation Sub-Trust shall not be "securities" under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Litigation Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Litigation Sub-Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Litigation Sub-Trust Beneficiary any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Litigation Trustee under this Agreement.

ARTICLE VI.
DISTRIBUTIONS

6.1 Distributions. The Litigation Trustee shall distribute Cash proceeds of the Estate Claims to the Claimant Trust within 30 days of receipt of such Cash proceeds, net of any amounts that (a) are reasonably necessary to maintain the value of the Litigation Sub-Trust Assets pending their monetization or other disposition during the term of the Litigation Sub-Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Litigation Sub-Trust Expenses and any other expenses incurred by the Litigation Sub-Trust (including, but not limited to, any taxes imposed on or payable by the Litigation Trustee with respect to the Litigation Sub-Trust Assets), and (c) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Litigation Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses).

6.2 Manner of Payment or Distribution. All distributions made by the Litigation Trustee on behalf of the Litigation Sub-Trust to the Litigation Sub-Trust Beneficiary shall be payable by the Litigation Trustee directly to the Claimant Trust, as sole Litigation Sub-Trust Beneficiary, on the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to the Claimant Trust shall be made pursuant to wire instructions provided by the Claimant Trustee to the Litigation Trustee.

ARTICLE VII.
TAX MATTERS

7.1 Tax Treatment and Tax Returns. It is intended that the Litigation Sub-Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) the sole beneficiary of which is the Claimant Trust. Consistent with such treatment, it is intended that the transfer of the Litigation Sub Trust Assets from the Claimant Trust to the Litigation Sub Trust will be treated as a non-event for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). Further, because

the Claimant Trust is itself intended to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable),it is intended that the beneficiaries of the Claimant Trust will be treated as the grantor of the Litigation Sub-Trust and owner of the Litigation Sub-Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Litigation Trustee shall cooperate with the Claimant Trustee in connection with the preparation and filing of any federal income tax returns (and foreign, state, and local income tax returns where applicable) or information statements relating to the Litigation Sub Trust Assets.

7.2 Withholding. The Litigation Trustee may withhold from any amount distributed from the Litigation Sub-Trust to the Litigation Sub-Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the Litigation Sub-Trust Beneficiary. As a condition to receiving any distribution from the Litigation Sub-Trust, the Litigation Trustee may require that the Litigation Sub-Trust Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Litigation Trustee to comply with applicable tax reporting and withholding laws.

ARTICLE VIII.
STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Litigation Trustee, acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan, the Oversight Board, or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Litigation Sub-Trust or to any Person (including the Litigation Sub-Trust Beneficiary and Claimant Trust Beneficiaries) in connection with the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Litigation Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Litigation Sub-Trust, the Litigation Trustee, or Oversight Board shall not be personally liable to the Litigation Sub-Trust or any other Person in connection with the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Litigation Trustee, Oversight Board, or any Member shall be personally liable to the Litigation Sub-Trust or to any Person for the acts or omissions of any employee, agent or professional of the Litigation Sub-Trust or Litigation Trustee, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Litigation Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Litigation Sub-Trust.

8.2 Indemnification. The Litigation Trustee (including each former Litigation Trustee), Oversight Board, and all past and present Members (collectively, the "Indemnified Parties") shall be indemnified by the Litigation Sub-Trust against and held harmless by the Litigation Sub-Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Litigation Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Litigation Sub-Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Litigation Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Litigation Trustee and/or Oversight Board of an indemnification obligation will not excuse the Litigation Sub-Trust from indemnifying the Indemnified Party unless such delay has caused the Litigation Sub-Trust material harm. The Litigation Sub-Trust shall periodically advance or otherwise reimburse on demand the Indemnified Party's reasonable legal and other expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and related expenses) incurred in connection therewith as a Litigation Sub-Trust Expense, but the Indemnified Party shall be required to repay promptly to the Litigation Sub-Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Litigation Sub-Trust with respect to which such expenses were paid. The Litigation Sub-Trust shall indemnify and hold harmless the employees, agents and professionals of the Litigation Sub-Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Litigation Trustee or Member or the estate of any decedent Litigation Trustee or Member. The indemnification provided hereby shall be a Litigation Sub-Trust Expense.

8.3 To the extent applicable, the provisions and protections set forth in Article IX of the Plan will apply to the Litigation Sub-Trust, the Litigation Trustee, Oversight Board, and the Members.

ARTICLE IX.
TERMINATION

9.1 Duration. The Litigation Trustee, the Litigation Sub-Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as the Litigation Trustee determines that the Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate, and all Distributions required to be made by the Litigation Trustee to the Litigation Sub-Trust Beneficiary under the Plan and this Agreement have been made, but in no event shall the Litigation Sub-Trust be dissolved later than [three years] from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such

third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Litigation Sub-Trust Assets.

9.2 Continuance of the Litigation Trustee for Winding Up. After dissolution of the Litigation Sub-Trust and for purpose of liquidating and winding up the affairs of the Litigation Sub-Trust, the Litigation Trustee shall continue to act as such until the Litigation Trustee's duties have been fully performed. Prior to the final distribution of all remaining Litigation Sub-Trust Assets, the Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Litigation Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Litigation Sub-Trust, until such time as the winding up of the Litigation Sub-Trust is completed. Upon the dissolution of the Litigation Sub-Trust and completion of the winding up of the assets, liabilities and affairs of the Litigation Sub-Trust pursuant to the Delaware Statutory Trust Act, the Litigation Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Litigation Sub-Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Subject in all respects to 3.11, upon the Termination date, the Litigation Trustee shall retain for a period of two (2) years, as a Litigation Sub-Trust Expense, the books, records, and certificated and other documents and files that have been delivered to or created by the Litigation Trustee. Subject in all respects to Section 3.11, at the Litigation Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.3 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Litigation Sub-Trust, the Litigation Trustee, the Oversight Board, and its Members shall have no further duties or obligations hereunder.

ARTICLE X.
AMENDMENTS AND WAIVER

The Litigation Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Litigation Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Litigation Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

ARTICLE XI.
MISCELLANEOUS

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Litigation Sub-Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Litigation Sub-Trust Beneficiary.

11.2 Litigation Sub-Trust Beneficiary has No Legal Title to Litigation Sub-Trust Assets. The Litigation Sub-Trust Beneficiary shall have no legal title to any part of the Litigation Sub-Trust Assets.

11.3 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Litigation Trustee, Oversight Board, and the Litigation Sub-Trust Beneficiary any legal or equitable right, remedy or claim under or in respect of this Agreement. The Litigation Sub-Trust Assets shall be held for the sole and exclusive benefit of the Litigation Sub-Trust Beneficiary.

11.4 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Litigation Trustee:

Marc S. Kirschner
c/o Goldin Associates LLC, a Teneo Company
350 Fifth Avenue
New York, New York 10118

With a copy to:

[insert contact for counsel to the Litigation Trustee].

(b) If to the Claimant Trustee:

Claimant Trustee
c/o **[insert contact info for Claimant Trustee]**

With a copy to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd, 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)
Ira Kharasch (ikharasch@pszjlaw.com)
Gregory Demo (gdemo@pszjlaw.com)

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.4 to the entity to be charged with knowledge of such change.

11.5 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition

or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.6 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.7 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Litigation Sub-Trust, the Litigation Trustee, and the Litigation Sub-Trust Beneficiary, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Litigation Sub-Trust Beneficiary shall bind its successors and assigns.

11.8 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.9 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.10 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement ~~or the Plan~~, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board, or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however*, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.11 Transferee Liabilities. The Litigation Sub-Trust shall have no liability for, and the Litigation Sub-Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Litigation Trustee or the Litigation Sub-Trust Beneficiary have any personal liability for such claims. If any liability shall be asserted against the Litigation Sub-Trust or the Litigation Trustee as the transferee of the Litigation Sub-Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Litigation Trustee may use such part of the Litigation Sub-Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Litigation Trustee as a Litigation Sub-Trust Expense.

[Remainder of Page Intentionally Blank]

IN WITNESS HEREOF, the parties hereto have caused this Litigation Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Claimant Trustee

By: _____
James P. Seery, Jr., not individually but solely in his capacity as the Claimant Trustee

Litigation Trustee

By: _____
Marc S. Kirschner, not individually but solely in his capacity as the Litigation Trustee

Document comparison by Workshare 9.5 on Friday, January 22, 2021 4:39:24 PM

Input:	
Document 1 ID	PowerDocs://DOCS_NY/41525/8
Description	DOCS_NY-#41525-v8-Highland_-_Litigation_Trust_Agreement
Document 2 ID	PowerDocs://DOCS_NY/41525/9
Description	DOCS_NY-#41525-v9-Highland_-_Litigation_Trust_Agreement
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	6
Deletions	3
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	9

EXHIBIT V

SENIOR EMPLOYEE STIPULATION AND TOLLING AGREEMENT EXTENDING STATUTES OF LIMITATION

This stipulation (the "Stipulation") is entered into as of [_____], by and between **[EMPLOYEE NAME]** (the "Senior Employee") and Highland Capital Management, L.P. (the "Debtor"). The Debtor and the Senior Employee are individually referred to as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, on October 16, 2019, the Debtor filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.,* Case No. 19-34054-sgj11 (the "Chapter 11 Case"):

WHEREAS, on October 29, 2019, the U.S. Trustee appointed the official committee of unsecured creditors (the "Committee") in the Chapter 11 Case;

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be further amended or supplemented, the "Plan")[1] [Docket No. 1472]. A hearing to consider confirmation of the Plan is currently scheduled for January 26, 2021.

WHEREAS, prior to and during the course of the Chapter 11 Case, the Senior Employee was employed by the Debtor as its [_____] and in such role provided services to the Debtor;

WHEREAS, (i) certain amounts that were allegedly due to be paid to the Senior Employee for the partial year of 2018 in installments due on February 28, 2020 and August 31, 2020; and (ii) certain amounts that were due to the Senior Employee in respect of the 2017 Deferred Award that vested after three years on May 31, 2020 ((i) and (ii), collectively, the "Bonus Amount") were not paid because of objections raised by the Committee;

WHEREAS, as of the date hereof, the total Bonus Amount through and including the date hereof is $ [_____];

WHEREAS, on [___], the Senior Employee filed a proof of claim [Claim No. [_]] (the "Proof of Claim"), which included a claim for the Bonus Amount;

WHEREAS, as set forth in the Proof of Claim, the Senior Employee may have other Claims against the Debtor in addition to the Bonus Amount (the "Other Employee Claims" and together with the Bonus Amount, the "Senior Employee Claims")[2]:

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

[2] For the avoidance of doubt, the "Other Employee Claims" shall include all prepetition and postpetition Claims of

WHEREAS, the Committee has alleged that certain causes of action against the Senior Employee may exist, which causes of action have been or will be retained pursuant to the Plan (the "Causes of Action"):

WHEREAS, the Plan provides for the release of certain of the Causes of Action (the "Released Causes of Action") against the Senior Employee as set forth in therein (the "Employee Release"):

WHEREAS, both the Employee Release and the payment of the Bonus Amount (as reduced pursuant to this Agreement) are conditioned on the Senior Employee executing this Stipulation on or prior to the Confirmation Date;

WHEREAS, the Plan provides for the creation of the Claimant Trust and Litigation Sub-Trust and the appointment of the Claimant Trust Oversight Committee (the "CTOC") to oversee such entities;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, each of the Parties stipulates and agrees as follows:

1. Covenant Not to Sue. In consideration of the Senior Employee's agreement to toll the statutes of limitation with respect to any Causes of Action that can be asserted against him and to waive a portion of the Bonus Amount which would otherwise be part of the Senior Employee Claim, the Debtor and any of its successors or assigns, including the Claimant Trust or the Litigation Sub-Trust (collectively, the "HCMLP Parties"), agree not to initiate or commence any lawsuit, action or proceeding for the purpose of prosecuting any Released Causes of Action against the Senior Employee from the date of this Stipulation until the earlier of (a) thirty calendar days after the Notice Date and (b) the Dissolution Date (each as defined below) (such date, the "Termination Date"). This Stipulation shall expire upon the Termination Date and shall thereafter be of no further force and effect; *provided, however,* that the termination of this Stipulation shall not affect the treatment of the Bonus Amount set forth in Section 5 hereof or in the Plan.

2. Non-Compliance: Vesting.

a. As set forth in the Plan, the Senior Employee acknowledges and agrees that the Employee Release will be deemed null and void and of no force and effect (1) if there is more than one member of the CTOC who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full CTOC) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

(1) sues, attempts to sue, or threatens or works with or assists

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the Senior Employee, including paid time off claims, claims (if applicable) for severance amounts under applicable employment agreements, and administrative claims (if applicable) but shall not include the Bonus Amount.

any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

(2) has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets,

(3) has violated the confidentiality provisions of Section 4 below, or

(4) (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (i) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (ii) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing. If such determination under this Section 2a is made, the Claimant Trustee will deliver a notice of non-compliance with the Plan (the "Notice") to the Senior Employee. Such Notice will be effective when deemed delivered pursuant to Section 8.h hereof (the "Notice Date").

b. Notwithstanding anything herein to the contrary, Employee Release will vest and all Released Causes of Action that may or could be brought against the Senior Employee will be indefeasibly released solely to the extent set forth in Article IX.D of the Plan so long as the Notice Date does not occur on or before the date that the Claimant Trust is dissolved (such date, the "Dissolution Date").

c. Notwithstanding anything to the contrary in this Stipulation or any other document, Senior Employee expressly reserves the right to take all actions necessary to pursue enforcement and payment of the Other Employee Claims, and such actions shall not violate the terms of this Stipulation; provided, that, for the avoidance of doubt, nothing in this Stipulation shall prejudice the rights of the Debtor, or any of the Debtor's successor in interests under the Plan, to object to or otherwise challenge any Other Employee Claims or limit the Senior Employee's obligations under Section 8 hereof. Additionally, this Agreement does not affect or impair Senior Employee's rights, if any, to seek indemnification from any party, including, without limitation, the Debtor, any HCMLP Parties, or any other affiliates thereof nor does it affect or impair the right of the Debtor, or any of the Debtor's successor in interests under the Plan, to challenge such request.

3. Tolling of Statutes of Limitation. In consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that the statute of limitations applicable to any Cause of Action is hereby tolled as of, and extended from, the date of this Stipulation through and including the Termination Date (the "Tolling Period"). The Tolling Period shall be excluded from any calculation of any statute of limitations period applicable to any Cause of Action that may be brought by the HCMLP Parties against the Senior Employee. The Senior Employee acknowledges that he will be estopped from arguing that this Stipulation is ineffective to extend the time within which the HCMLP Parties must commence an action to pursue any Cause of Action.

4. Confidentiality. In further consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that, in addition to existing obligations to maintain all business sensitive information concerning the HCMLP Parties in strictest confidence, each Senior Employee further agrees to keep all discussions, information and observations including, but not limited to, attorney-client privileged or work product information (collectively "Confidential Information") relating to the activities or planned activities of the HCMLP Parties strictly confidential. Each Senior Employee covenants and represents that it will not discuss such Confidential Information with anyone, other than the Senior Employee's personal attorney, the Claimant Trustee, or its respective representatives.

5. Bonus Amount.

a. The Senior Employee has agreed to forfeit a percentage of his Bonus Amount in consideration for the Employee Release and acknowledges that such agreement is an integral part of this Stipulation. The Senior Employee hereby agrees that (i) the Bonus Amount will be treated as an Allowed Class 7 (Convenience Claim) under the Plan and, to the extent required, will reduce his Bonus Amount as required to qualify for such treatment, (ii) the Senior Employee will receive the treatment provided to other Allowed Class 7 (Convenience Claims), (iii) the Allowed Class 7 distribution on the Bonus Amount will be further reduced by 5% (the "Reduced Amount"), and (iv) the Reduced Amount will be forever waived and released. Except as set forth herein, nothing herein will prejudice or otherwise impact any Other Employee Claim, or prevent the Senior Employee from prosecuting, pursuing, or enforcing any Other Employee Claim.

b. For the avoidance of doubt, although the Employee Release can be nullified as set forth in Section 2, any such nullification will have no effect on the treatment of the Senior Employee's Bonus Amount pursuant to this Section 5.

6. Other Employee Claims. The Parties acknowledge and agree that the Senior Employee is not entitled to make the Convenience Class Election with respect to the Other Employee Claims.

7. Effective Date. The Parties acknowledge and agree that this Stipulation and the Parties' obligations hereunder are conditioned in all respects on the approval of the Plan by the Bankruptcy Court and the occurrence of the Effective Date of the Plan. If, for any reason, the Plan is not approved by the Bankruptcy Court or the Effective Date does not occur, this Stipulation will be null and void and of no force and effect.

8. Plan Support. The Senior Employee agrees that he will use commercially reasonable efforts to assist the Debtor in confirmation of the Plan, including, without limitation, filing a notice of such Senior Employee's withdrawal from the *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669], and vote, if applicable, the Bonus Amount, the Other Employee Claims, and any other Claims in favor of the Plan.

9. Miscellaneous.

a. Counterparts. This Stipulation may be signed in counterparts and

such signatures may be delivered by facsimile or other electronic means.

b. Binding Effect. This Stipulation shall inure to the benefit of, and be binding upon, any and all successors-in-interests, assigns, and legal representatives, of any Party.

c. Authority. Each Party to this Stipulation and each person executing this document on behalf of any Party to this Stipulation warrants and represents that he, she, or it has the power and authority to execute, deliver and perform its obligations under this Stipulation.

d. Entire Agreement. This Stipulation sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Stipulation may only be amended by an agreement in writing signed by the Parties.

e. No Waiver and Reservation of Rights. Except as otherwise provided herein, nothing in this Stipulation shall be, or deemed to be, a waiver of any rights, remedies, or privileges of any of the Parties. Except as otherwise provided herein, this Stipulation is without prejudice to any Party's rights, privileges and remedies under applicable law, whether at law or in equity, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

f. No Admission of Liability. The Parties acknowledge that there is a bona fide dispute with respect to the Causes of Action. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Senior Employee and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Senior Employee.

g. No Waiver If Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

h. Notice. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered by email, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be subsequently specified in writing by any Party and delivered to all other Parties pursuant to this Section:

Senior Employee

[_____]
[_____]
[_____]
[_____]
Email: [_____]

With a copy to:

Attorneys for Senior Employee

[_____]
[_____]
[_____]
[_____]
Email: [_____]

HCMLP

Highland Capital Management, L.P
[_____]
[_____]
Attention: James P. Seery, Jr.
Telephone No.: [_____]
Email: [_____]

With a copy to:

Attorneys for HCMLP

[_____]
[_____]
[_____]
[_____]
Email: [_____]

i. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Stipulation; (b) executed this Stipulation upon the advice of such counsel; (c) read this Stipulation, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Stipulation and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

j. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

k. Governing Law: Venue. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the jurisdiction of the Bankruptcy Court with respect to any disputes arising from or out of this Agreement.

[Remainder of Page Blank]

IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: _____
Its: _____

SENIOR EMPLOYEE

By: _____
Name: _____
Its: _____

EXHIBIT W

SENIOR EMPLOYEE STIPULATION AND TOLLING AGREEMENT EXTENDING STATUTES OF LIMITATION

This stipulation (the "Stipulation") is entered into as of [_____], by and between **[EMPLOYEE NAME]** (the "Senior Employee") and Highland Capital Management, L.P. (the "Debtor"). The Debtor and the Senior Employee are individually referred to as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, on October 16, 2019, the Debtor filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.,* Case No. 19-34054-sgj11 (the "Chapter 11 Case"):

WHEREAS, on October 29, 2019, the U.S. Trustee appointed the official committee of unsecured creditors (the "Committee") in the Chapter 11 Case;

WHEREAS, on November ~~13,~~24, 2020, the Debtor filed the ~~*Third*~~*Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be further amended~~, or~~ supplemented~~, or otherwise modified from time to time,~~ the "Plan")~~.~~[1] [Docket No. 1472]. A hearing to consider confirmation of the Plan is currently scheduled for January 26, 2021.

WHEREAS, prior to and during the course of the Chapter 11 Case, the Senior Employee was employed by the Debtor as its [_____] and in such role provided services to the Debtor;

WHEREAS, ~~the Senior Employee is owed for his services~~ (i) certain amounts that were allegedly due to be paid to the Senior Employee for the partial year of 2018 in installments due on February 28, 2020 and August 31, 2020; and (ii) certain amounts that were due to the Senior Employee in respect of the 2017 Deferred Award that vested after three years on May 31, 2020 ((i) and (ii), collectively, the "~~Earned Amounts~~"~~):WHEREAS, the Committee objected to the Senior Employee receiving the Earned Amounts during the Chapter 11 Case and the Earned Amounts, although earned, was not paid~~Bonus Amount") were not paid because of objections raised by the Committee;

WHEREAS, as of the date hereof, the total ~~Earned Amounts~~Bonus Amount through and including the date hereof~~ owed to the Senior Employee~~ is $ [_____];

WHEREAS, on [___], the Senior Employee filed a proof of claim [Claim No. [_]] (the "Proof of Claim"), which included a claim for the Bonus Amount;

WHEREAS, as set forth in the Proof of Claim, the Senior Employee may have other~~ prepetition and postpetition~~ Claims against the Debtor in addition to the ~~Earned Amounts~~Bonus Amount (the "Other Employee Claims" and together with the Bonus Amount, the "Senior

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Employee Claims")[2]:

WHEREAS, the Committee has alleged that certain causes of action against the Senior Employee may exist, which causes of action have been or will be retained pursuant to the Plan (the "Causes of Action"):

WHEREAS, the Plan provides for the release of ~~such~~certain of the Causes of Action (the "Released Causes of Action") against the Senior Employee as set forth in therein (the "Employee Release"):

WHEREAS, both the Employee Release ~~is~~and the payment of the Bonus Amount (as reduced pursuant to this Agreement) are conditioned on the Senior Employee executing this Stipulation on or prior to the ~~Effective Date of the Plan and reducing his Earned Amounts as set forth herein~~Confirmation Date;

WHEREAS, the Plan provides for the creation of the Claimant Trust and Litigation Sub-Trust and the appointment of the Claimant Trust Oversight Committee (the "CTOC") to oversee such entities;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, each of the Parties stipulates and agrees as follows:

1. Covenant Not to Sue. In consideration of the Senior Employee's agreement to toll the statutes of limitation with respect to any Causes of Action that can be asserted against him and to waive a portion of the ~~Earned Amounts~~Bonus Amount which would otherwise ~~due to~~be part of the Senior Employee Claim, the Debtor and any of its successors or assigns, including the Claimant Trust or the Litigation Sub-Trust (collectively, the "HCMLP Parties"), agree not to initiate or commence any lawsuit, action or proceeding for the purpose of prosecuting any Released Causes of Action against the Senior Employee from the date of this Stipulation until the earlier of (a) thirty calendar days after the Notice Date and (b) the Dissolution Date (each as defined below) (such date, the "Termination Date"). This Stipulation shall expire upon the Termination Date and shall thereafter be of no further force and effect; *provided, however,* that the termination of this Stipulation shall not affect the treatment of the ~~Earned Amounts~~Bonus Amount set forth in Section 5 hereof or in the Plan.

2. Non-Compliance: Vesting.

a. As set forth in the Plan, the Senior Employee acknowledges and agrees that the Employee Release will be deemed null and void and of no force and effect (1) if there is more than one member of the CTOC who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full CTOC) that such Employee (regardless of whether the Employee is then

[2] For the avoidance of doubt, the "Other Employee Claims" shall include all prepetition and postpetition Claims of the Senior Employee ~~except for the Earned Amounts~~, including paid time off claims, claims (if applicable) for severance amounts under applicable employment agreements, and administrative claims (if applicable) but shall not include the Bonus Amount.

currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

(1) sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

(2) has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets,

(3) has violated the confidentiality provisions of Section 4 below, or

(4) (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (i) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (ii) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing. If such determination under this Section 2a is made, the Claimant Trustee will deliver a notice of non-compliance with the Plan (the "Notice") to the Senior Employee. Such Notice will be effective when deemed delivered pursuant to Section 8.h hereof (the "Notice Date").

b. Notwithstanding anything herein to the contrary, Employee Release will vest and all Released Causes of Action that may or could be brought against the Senior Employee will be indefeasibly released solely to the extent set forth in Article IX.D of the Plan so long as the Notice Date does not occur on or before the date that the Claimant Trust is dissolved (such date, the "Dissolution Date").

c. Notwithstanding anything to the contrary in this Stipulation or any other document, Senior Employee expressly reserves the right to take all actions necessary to pursue enforcement and payment of the Other Employee Claims, and such actions shall not violate the terms of this Stipulation; provided, that, for the avoidance of doubt, nothing in this Stipulation shall prejudice the rights of the Debtor, or any of the Debtor's successor in interests under the Plan, to object to or otherwise challenge any Other Employee Claims or limit the Senior Employee's obligations under Section 8 hereof. Additionally, this Agreement does not affect or impair Senior Employee's rights, if any, to seek indemnification from any party, including, without limitation, the Debtor, any HCMLP Parties, or any other affiliates thereof nor does it affect or impair the right of the Debtor, or any of the Debtor's successor in interests under the Plan, to challenge such request.

3. Tolling of Statutes of Limitation. In consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that the statute of ~~limitation~~limitations applicable to any Cause of Action is hereby tolled as of, and extended from, the date of this Stipulation through and including the Termination Date (the "Tolling Period"). The Tolling Period shall be excluded from any calculation of any statute of limitations period applicable to any Cause of Action that may be brought by the HCMLP Parties against the Senior Employee. The Senior Employee acknowledges that he will be estopped from arguing that

this Stipulation is ineffective to extend the time within which the HCMLP Parties must commence an action to pursue any Cause of Action.

4. Confidentiality. In further consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that, in addition to existing obligations to maintain all business sensitive information concerning the HCMLP Parties in strictest confidence, each Senior Employee further agrees to keep all discussions, information and observations including, but not limited to, attorney-client privileged or work product information (collectively "Confidential Information") relating to the activities or planned activities of the HCMLP Parties strictly confidential. Each Senior Employee covenants and represents that it will not discuss such Confidential Information with anyone, other than the Senior Employee's personal attorney, the Claimant Trustee, or its respective representatives.

5. ~~Earned Amounts.~~Bonus Amount.

a. The Senior Employee has agreed to forfeit a percentage of his Bonus Amount in consideration for the Employee Release and acknowledges that such agreement is an integral part of this Stipulation. The Senior Employee hereby agrees that (i) the ~~Earned Amounts~~Bonus Amount will be treated as an Allowed Class 7 (Convenience Claim) under the Plan and, to the extent required, will reduce his ~~Earned Amounts~~Bonus Amount as required to qualify for such treatment, (ii) the Senior Employee will receive the treatment provided to other Allowed Class 7 (Convenience Claims), (iii) the ~~Earned Amounts~~Allowed Class 7 distribution on the Bonus Amount will be further reduced by ~~40~~5% (the "Reduced Amount"), and (iv) the Reduced Amount will be forever waived and released. Except as set forth herein, nothing herein will prejudice or otherwise impact any Other Employee Claim, or prevent the Senior Employee from prosecuting, pursuing, or enforcing any Other Employee Claim.

b. For the avoidance of doubt, although the Employee Release can be nullified as set forth in Section 2, any such nullification will have no effect on the treatment of the Senior Employee's ~~Earned Amounts~~Bonus Amount pursuant to this Section 5.

6. Other Employee Claims. The Parties acknowledge and agree that the Senior Employee is not entitled to make the Convenience Class Election with respect to the Other Employee Claims.

7. ~~6.~~ Effective Date. The Parties acknowledge and agree that this Stipulation and the Parties' obligations hereunder are conditioned in all respects on the approval of the Plan by the Bankruptcy Court and the occurrence of the Effective Date of the Plan. If, for any reason, the Plan is not approved by the Bankruptcy Court or the Effective Date does not occur, this Stipulation will be null and void and of no force and effect.

8. ~~7.~~ Plan Support. The Senior Employee agrees that he will use commercially reasonable efforts to assist the Debtor in confirmation of the Plan ~~and vote any~~, including, without limitation, filing a notice of such Senior Employee's withdrawal from the *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669], and vote, if applicable, the Bonus Amount, the Other Employee Claims, and

any other Claims in favor of the Plan.

9. ~~8.~~ Miscellaneous.

a. Counterparts. This Stipulation may be signed in counterparts and such signatures may be delivered by facsimile or other electronic means.

b. Binding Effect. This Stipulation shall inure to the benefit of, and be binding upon, any and all successors-in-interests, assigns, and legal representatives, of any Party.

c. Authority. Each Party to this Stipulation and each person executing this document on behalf of any Party to this Stipulation warrants and represents that he, she, or it has the power and authority to execute, deliver and perform its obligations under this Stipulation.

d. Entire Agreement. This Stipulation sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Stipulation may only be amended by an agreement in writing signed by the Parties.

e. No Waiver and Reservation of Rights. Except as otherwise provided herein, nothing in this Stipulation shall be, or deemed to be, a waiver of any rights, remedies, or privileges of any of the Parties. Except as otherwise provided herein, this Stipulation is without prejudice to any Party's rights, privileges and remedies under applicable law, whether at law or in equity, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

f. No Admission of Liability. The Parties acknowledge that there is a bona fide dispute with respect to the Causes of Action. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Senior Employee and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Senior Employee.

g. No Waiver If Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

h. Notice. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered by email, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be subsequently specified in writing by any Party and delivered to all other Parties pursuant to this Section:

Senior Employee

[_____]
[_____]
[_____]

[_____]
Email: [_____]

With a copy to:

Attorneys for Senior Employee

[_____]
[_____]
[_____]
[_____]
Email: [_____]

HCMLP

Highland Capital Management, L.P
[_____]
[_____]
Attention: James P. Seery, Jr.
Telephone No.: [_____]
Email: [_____]

With a copy to:

Attorneys for HCMLP

[_____]
[_____]
[_____]
[_____]
Email: [_____]

i. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Stipulation; (b) executed this Stipulation upon the advice of such counsel; (c) read this Stipulation, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Stipulation and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

j. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

k. Governing Law: Venue. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the jurisdiction of the Bankruptcy Court with respect to any disputes arising from or out of this Agreement.

[Remainder of Page Blank]

IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: _____
Its: _____

SENIOR EMPLOYEE

By: _____
Name: _____
Its: _____

Document comparison by Workshare 9.5 on Thursday, January 21, 2021 4:39:21 PM

Input:	
Document 1 ID	PowerDocs://DOCS_NY/41454/10
Description	DOCS_NY-#41454-v10-Highland_-_Senior_Employee_Stipulation
Document 2 ID	PowerDocs://DOCS_NY/41454/18
Description	DOCS_NY-#41454-v18-Highland_-_Senior_Employee_Stipulation
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	44
Deletions	32
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	76

EXHIBIT X

Schedule of Contracts and Leases to Be Assumed

1. Advisory Services Agreement, dated November 21, 2011, effective June 20, 2011, by and between Carey International, Inc., and Highland Capital Management, L.P.
2. Amended and Restated Advisory Services Agreement, dated March 4, 2013, by and between Trussway Holdings, Inc., and Highland Capital Management, L.P.
3. Reference Portfolio Management Agreement, dated March 4, 2004, by and between Highland Capital Management, L.P., and Citibank N.A.
4. Advisory Services Agreement, dated May 25, 2011, by and between CCS Medical, Inc., and Highland Capital Management, L.P.
5. Amended and Restated Advisory Services Agreement, dated February 28, 2013, by and between Cornerstone Healthcare Group Holding, Inc., and Highland Capital Management, L.P.
6. Prime Brokerage Agreement by and between Jefferies LLC and Highland Capital Management, L.P., dated May 24, 2013.
7. Amended and Restated Shared Services Agreement, dated August 21, 2015, by and between Highland Capital Management, L.P., and Falcon E&P Opportunities GP, LLC.
8. Amended and Restated Administrative Services Agreement, effective as of August 21, 2015, by and between Highland Capital Management, L.P., and Petrocap Partners II GP, LLC.
9. Office Lease, between Crescent Investors, L.P., and Highland Capital Management, L.P.
10. Paylocity Corporation Services Agreement, between Highland Capital Management, L.P., and Paylocity Corporation, dated November 19, 2012.
11. Electronic Trading Services Agreement, between SunTrust Robinson Humphrey Inc., and Highland Capital Management, L.P., dated February 6, 2019.
12. Letter Agreement, between FTI Consulting, Inc., and Highland Capital Management, L.P., dated November 19, 2018.
13. Administrative Services Agreement, dated January 1, 2018, between Highland Capital Management, L.P., and Liberty Life Assurance Company of Boston.
14. Electronic Communications: Customer Authorization & Indemnification, between Highland Capital Management, L.P., and The Bank of New York Mellon Corporation, dated August 9, 2016.
15. Letter Agreement, dated August 9, 2016, Electronic Access Terms and Conditions, by and between The Bank of New York Mellon Trust Company, N.A., and Highland Capital Management, L.P.
16. Shared Services Agreement by and between Highland HCF Advisor, Ltd., and Highland Capital Management, L.P., dated effective October 27, 2017.

17. Sub-Advisory Agreement, by and between Highland HCF Advisors, Ltd., and Highland Capital Management, dated effective October 27, 2017.

18. Collateral Management Agreement, dated November 2, 2006, by and between Highland Credit Opportunities CDO Ltd. and Highland Capital Management, L.P.

19. Management Agreement, dated November 15, 2007, between Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Partners Master L.P., Highland Restoration Capital Partners GP, LLC, and Highland Capital Management, L.P.

20. Investment Management Agreement, between Highland Capital Multi-Strategy Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.

21. Investment Management Agreement, between Highland Capital Multi-Strategy Master Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.

22. Management Agreement, dated August 22, 2007, between and among Highland Capital Management, L.P., and Walkers Fund Services Limited, as trustee of Highland Credit Opportunities Japanese Unit Trust.

23. Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P., dated November 1, 2013.

24. Investment Management Agreement, dated March 31, 2015, by and among Highland Select Equity Master Fund, L.P., Highland Select Equity Fund GP, L.P., and Highland Capital Management, L.P.

25. Amended and Restated Investment Management Agreement, dated February 27, 2017, by and among Highland Prometheus Master Fund L.P., Highland Prometheus Feeder Fund I, L.P., Highland Prometheus Feeder Fund II, L.P., Highland SunBridge GP, LLC, and Highland Capital Management, L.P.

26. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.

27. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)

28. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.

29. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.

30. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.

31. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.

32. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.

33. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)

34. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.

35. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.

36. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.

37. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.

38. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.

39. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)

40. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.

41. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)

42. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.

43. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

44. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.

45. AT&T Managed Internet Service, between Highland Capital Management, L.P. and AT&T Corp., dated February 24, 2015.

46. ViaWest, Master Service Agreement, dated October 3, 2011, between Highland Capital Management, L.P. and ViaWest

47. Stockholders' Agreement, dated April 15, 2005, by and between American Banknote Corporation and Highland Capital Management, L.P.

48. Stockholders' Agreement and Amendment No. 1, dated January 25, 2011, by and between Carey Holdings, Inc. and Highland Capital Management, L.P.

49. Stockholders' Agreement and Amendment, dated March 24, 2010, by and between Cornerstone Healthcare Group Holding, Inc. and Highland Capital Management, L.P.

50. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.

51. Stock Purchase and Sale Agreement and Amendment, dated January 16, 2013, by and between Progenics Pharmaceuticals, Inc. and Highland Capital Management, L.P.

52. Stockholders' Agreement and Amendments, dated October 24, 2008, by and between JHT Holdings, Inc. and Highland Capital Management, L.P.

53. Amended and Restated Limited Partnership Agreement of Highland Dynamic Income Fund, L.P., dated February 25, 2013, by and between Highland Dynamic Income Fund GP, LLC and Highland Capital Management, L.P.

54. Highland Multi-Strategy Fund, L.P. Limited Partnership Agreement, dated July 6, 2006, by and between Highland Multi-Strategy Fund GP, L.P. and Highland Capital Management, L.P.

55. Operating Agreement of HE Capital, LLC (as amended), dated September 27, 2007, by and between ENA Capital, LLC Ellman Management Group, Inc. and Highland Capital Management, L.P.

56. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund II, LLC, dated February 27, 2007, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.

57. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund, LLC, dated July 19, 2006, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.

58. Highland Capital Management, L.P., Limited Liability Company Agreement of Highland Receivables Finance 1, LLC, by and between Highland Capital Management, L.P. and Highland Capital Management, L.P.

59. Agreement of Limited Partnership of Highland Restoration Capital Partners, L.P. and Amendments, dated November 6, 2007, by and between Highland Restoration Capital Partners GP, LLC and Highland Capital Management, L.P.

60. Agreement of Limited Partnership of Highland Select Equity Fund GP, L.P., dated October 2005, by and between Highland Select Equity Fund GP, LLC and Highland Capital Management, L.P.

61. Agreement of Limited Partnership of Penant Management LP, dated December 12, 2012, by and between Penant Management GP, LLC and Highland Capital Management, L.P.

62. Agreement of Limited Partnership of Petrocap Incentive Partners III, LP, dated April 12, 2018, by and between Petrocap Incentive Partners III GP, LLC, Petrocap Incentive Holdings III, LP and Highland Capital Management, L.P.

63. Amended and Restated Agreement of Limited Partnership of Petrocap Partners II, LP, dated October 30, 2014, by and between Petrocap Partners II GP, LLC, Petrocap Incentive Partners II, LP and Highland Capital Management, L.P.

64. Agreement of Limited Partnership of Highland Credit Opportunities CDO GP, L.P., dated December 29, 2005, by and between Highland Credit Opportunities CDO GP, LLC and Highland Capital Management, L.P.

65. Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P., dated November 1, 2014, by and between Highland Multi Strategy Credit Fund GP, L.P. and Highland Capital Management, L.P.

66. DUO Security, 2 factor authentication, by and between DUO Security and Highland Capital Management, L.P.

67. GoDaddy Domain Registrations, by and between GoDaddy and Highland Capital Management, L.P.

68. Highland Loan Fund, Ltd. et al, Investment Management Agreement, dated July 31, 2001, by and between Highland Loan Fund, Ltd. et al and Highland Capital Management, L.P.

69. E Mailflow Monitoring, by and between Mxtoolbox and Highland Capital Management, L.P.

70. Cloud single sign on for HR related employee login, by and between Onelogin and Highland Capital Management, L.P.

71. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.

72. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.

73. Order Addenda, dated January 28, 2020, by and between CenturyLink Communications, LLC and Highland Capital Management, L.P.

74. Service Agreement (as amended), dated April 1, 2005, by and between Intex Solutions, Inc. and Highland Capital Management, L.P.

75. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al

76. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd

77. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd

78. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association

79. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.

80. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company

81. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company

82. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

83. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company

84. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association

85. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.

86. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company

87. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

88. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association

89. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company

90. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

91. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

92. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

93. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

94. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

95. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.

96. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association

97. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust

98. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.

99. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.

100. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.

101. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association

102. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

103. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

104. Securities Account Control Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Highland CDO Opportunity Fund, Ltd.; JPMorgan Chase Bank, National Association

105. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.

106. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association

107. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company

108. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association

109. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street

110. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank

111. Extension/Buy-Out Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Citigroup Financial Products Inc.; Citigroup Global Markets Inc.

112. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.

113. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company

114. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

115. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery

116. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel

117. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms

118. Colocation Service Order dated October 14, 2019 between Highland Capital Management and Dawn US Holdings, LLC d/b/a Evoque Date Center Solutions

119. Tradesuite Web Module Services/Agreement between Highland Capital Management and DTCC ITP LLC

EXHIBIT Y

1. Debtor

Highland Capital Management, L.P.

2. Professionals

Pachulski Stang Ziehl & Jones LLP
Development Specialists, Inc.
Bradley Sharp
Kurtzman Carson Consultants LLC
Jenner & Block
Morris, Nichols, Arsht & Tunnel LLP
Morrison Cohen LLP
Latham & Watkins LLP
Richards Layton & Finger
Winstead PC
Rogge Dunn Group, PC
Blank Rome LLP
FTI Consulting
Young Conaway Stargatt & Taylor
Reid Collins Tsai
Deloitte
Price Waterhouse Coopers
Maples (Cayman)
Bell Nunnally
Rowlett Hill Collins LLP
Anderson Mori & Tomotsune
Culhane Meadows PLLC
Kim & Chang
Willkie Farr & Gallagher LLP
Wilmer Hale
Carey Olsen
ASW Law
Eric Felton
Morris, Nichols, Arsht & Tunnell LLP
Morrison Cohen LLP
Latham & Watkins LLP
Richards Layton & Finger
Winstead PC
Rogge Dunn Group, PC
Blank Rome LLP

3. Top 20 Unsecured Creditors

Acis Capital Management, L.P. and Acis Capital Management GP, LLC
American Arbitration Association
Andrews Kurth LLP
Bates White, LLC
Boies, Schiller & Flexner LLP
CLO Holdco, Ltd.
Connolly Gallagher LLP
Debevoise & Plimpton LLP
DLA Piper LLP (US)
Duff & Phelps, LLC
Foley Gardere
Joshua & Jennifer Terry
Lackey Hershman LLP
McKool Smith, P.C.
Meta-e Discovery LLC
NWCC, LLC
Patrick Daugherty
Redeemer Committee of The Highland Crusader Fund
Reid Collins & Tsai LLP
UBS AG, London Branch and UBS Securities LLC

4. Equity Holders (Direct and Indirect)

Atlas IDF GP LLC
Beacon Mountain LLC
Hunter Mountain Investment Trust
James Dondero
Mark K. Okada
Strand Advisors, Inc.
The Dugaboy Investment Trust
The Mark and Pamela Okada Family Trust – Exempt Trust #1
The Mark and Pamela Okada Family Trust – Exempt Trust #2

5. Affiliated Parties

Acis CLO Management GP, LLC
Acis CLO Management Holdings, L.P.
Acis CLO Management Intermediate Holdings I, LLC
Acis CLO Management Intermediate Holdings II, LLC
Acis CLO Management, LLC
Acis CMOA Trust
Advisors Equity Group LLC
Asbury Holdings, LLC
Castle Bio Manager, LLC
De Kooning, Ltd.
Eagle Equity Advisors, LLC
Eames, Ltd.
Gunwale LLC

HCREF-I Holding Corp.
HCREF-XI Holding Corp.
HCREF-XII Holding Corp.
HE Capital Fox Trails, LLC
HE Capital, LLC
HE Mezz Fox Trails, LLC
HE Peoria Place Property, LLC
HE Peoria Place, LLC
HFP CDO Construction Corp.
HFP GP, LLC
Highland Argentina Regional Opportunity Fund GP, LLC
Highland Brasil, LLC
Highland Capital Management (Singapore) Pte Ltd
Highland Capital Management Korea
Highland Capital Management Korea Limited
Highland Capital Management Korea Limited (Relying Advisor)
Highland Capital Multi-Strategy Fund, LP
Highland CDO Holding Company
Highland CDO Opportunity Fund GP, L.P.
Highland CDO Opportunity GP, LLC
Highland CLO Assets Holdings Limited
Highland CLO Holdings Ltd.
Highland CLO Management, Ltd.
Highland Dynamic Income Fund GP, LLC
Highland Employee Retention Assets LLC
Highland ERA Management, LLC
Highland Financial Corp.
Highland Financial Partners, L.P.
Highland Fund Holdings, LLC
Highland HCF Advisor Ltd. (Relying Advisor)
Highland HCF Advisors Ltd.
Highland Latin America Consulting, Ltd
Highland Latin America GP Ltd.
Highland Latin America GP, Ltd.
Highland Latin America LP, Ltd.
Highland Latin America Trust
Highland Multi Strategy Credit Fund GP, L.P.
Highland Multi Strategy Credit Fund, L.P.
Highland Multi Strategy Credit GP, LLC
Highland Multi-Strategy Fund GP, LLC
Highland Multi-Strategy Fund GP, LP
Highland Multi-Strategy Master Fund, L.P.
Highland Multi-Strategy Onshore Master SubFund II, LLC
Highland Multi-Strategy Onshore Master Subfund, LLC
Highland Receivables Finance I, LLC
Highland Restoration Capital Partners GP, LLC
Highland Select Equity GP, LLC
Highland Select Equity Master Fund, L.P.
Highland Special Opportunities Holding Company
Highland SunBridge GP, LLC
Hirst, Ltd.

Hockney, Ltd.
Lautner, Ltd.
Maple Avenue Holdings, LLC
Neutra, Ltd.
NexPoint Insurance Distributors, LLC
NexPoint Insurance Solutions GP, LLC
NexPoint Insurance Solutions, L.P.
NHT Holdco, LLC
NREA SE MF Holdings, LLC
NREA SE MF Investment Co, LLC
NREA SE Multifamily, LLC
NREA SE1 Andros Isles Leaseco, LLC
NREA SE1 Andros Isles Manager, LLC
NREA SE1 Arborwalk Leaseco, LLC
NREA SE1 Arborwalk Manager, LLC
NREA SE1 Towne Crossing Leaseco, LLC
NREA SE1 Towne Crossing Manager, LLC
NREA SE1 Walker Ranch Leaseco, LLC
NREA SE1 Walker Ranch Manager, LLC
NREA SE2 Hidden Lake Leaseco, LLC
NREA SE2 Hidden Lake Manager, LLC
NREA SE2 Vista Ridge Leaseco, LLC
NREA SE2 Vista Ridge Manager, LLC
NREA SE2 West Place Leaseco, LLC
NREA SE2 West Place Manager, LLC
NREA SE3 Arboleda Leaseco, LLC
NREA SE3 Arboleda Manager, LLC
NREA SE3 Fairways Leaseco, LLC
NREA SE3 Fairways Manager, LLC
NREA SE3 Grand Oasis Leaseco, LLC
NREA SE3 Grand Oasis Manager, LLC
NREA Southeast Portfolio One Manager, LLC
NREA Southeast Portfolio Three Manager, LLC
NREA Southeast Portfolio Two Manager, LLC
Oldenburg, Ltd.
Penant Management LP
Pershing LLC
PetroCap Incentive Partners III, LP
Pollack, Ltd.
SE Battleground Park, LLC
SE Glenview, LLC
SE Governors Green II, LLC
SE Gulfstream Isles GP, LLC
SE Gulfstream Isles LP, LLC
SE Heights at Olde Towne, LLC
SE Lakes at Renaissance Park GP I, LLC
SE Lakes at Renaissance Park GP II, LLC
SE Lakes at Renaissance Park LP, LLC
SE Multifamily Holdings LLC
SE Multifamily REIT Holdings LLC
SE Myrtles at Olde Towne, LLC

SE Quail Landing, LLC
SE River Walk, LLC
SE SM, Inc.
SE Stoney Ridge II, LLC
SE Victoria Park, LLC
SH Castle BioSciences, LLC
Starck, Ltd.
The Dondero Insurance Rabbi Trust
The Okada Insurance Rabbi Trust
Tihany, Ltd.
US Gaming SPV, LLC
US Gaming, LLC
Warhol, Ltd.
Wright, Ltd.

6. Other Parties

11 Estates Lane, LLC
1110 Waters, LLC
140 Albany, LLC
1525 Dragon, LLC
17720 Dickerson, LLC
1905 Wylie LLC
2006 Milam East Partners GP, LLC
2006 Milam East Partners, L.P.
201 Tarrant Partners, LLC
2014 Corpus Weber Road LLC
2325 Stemmons HoldCo, LLC
2325 Stemmons Hotel Partners, LLC
2325 Stemmons TRS, Inc.
300 Lamar, LLC
3409 Rosedale, LLC
3801 Maplewood, LLC
3801 Shenandoah, L.P.
3820 Goar Park LLC
400 Seaman, LLC
401 Ame, L.P.
4201 Locust, L.P.
4312 Belclaire, LLC
5833 Woodland, L.P.
5906 DeLoache, LLC
5950 DeLoache, LLC
7758 Ronnie, LLC
7759 Ronnie, LLC
AA Shotguns, LLC
Aberdeen Loan Funding, Ltd.
Acis CLO 2017-7 Ltd
Acis CLO Trust
Allenby, LLC
Allisonville RE Holdings, LLC
AM Uptown Hotel, LLC

Apex Care, L.P
Ascendant Advisors
Asury Holdings, LLC (fka HCSLR Camelback Investors (Delaware), LLC)
Atlas IDF LP
Atlas IDF, LP
Baylor University
BB Votorantim Highland Infrastructure, LLC
BDC Toys Holdco, LLC
BH Willowdale Manager, LLC
Big Spring Partners, LLC
Bloomdale, LLC
Brentwood CLO, Ltd.
Brentwood Investors Corp.
Bristol Bay Funding Ltd.
C-1 Arbors, Inc.
C-1 Cutter's Point, Inc.
C-1 Eaglecrest, Inc.
C-1 Silverbrook, Inc.
Cabi Holdco GP, LLC
Cabi Holdco I, Ltd.
Cabi Holdco, L.P.
Camelback Residential Investors, LLC (fka Sevilla Residential Partners, LLC)
Camelback Residential Partners, LLC
Capital Real Estate - Latitude, LLC
Castle Bio, LLC
CG Works, Inc. (fka Common Grace Ventures, Inc.)
Claymore Holdings, LLC
Concord Management, LLC
Corbusier, Ltd.
CP Equity Hotel Owner, LLC
CP Equity Land Owner, LLC
CP Equity Owner, LLC
CP Hotel TRS, LLC
CP Land Owner, LLC
CP Tower Owner, LLC
Crossings 2017 LLC
Crown Global Insurance Company
Dallas Cityplace MF SPE Owner LLC
Dallas Lease and Finance, L.P.
DFA/BH Autumn Ridge, LLC
Dolomiti, LLC
DrugCrafters, L.P.
Dugaboy Management, LLC
Dugaboy Project Management GP, LLC
Dustin Norris
Eastland CLO, Ltd.
Eastland Investors Corp.
EDS Legacy Heliport, LLC
EDS Legacy Partners Owner, LLC
EDS Legacy Partners, LLC
Entegra Strat Superholdco, LLC

Entegra-FRO Holdco, LLC
Entegra-FRO Superholdco, LLC
Entegra-HOCF Holdco, LLC
Entegra-NHF Holdco, LLC
Entegra-NHF Superholdco, LLC
Entegra-RCP Holdco, LLC
Estates on Maryland Holdco, LLC
Estates on Maryland Owners SM, Inc.
Estates on Maryland Owners, LLC
Estates on Maryland, LLC
Falcon E&P Four Holdings, LLC
Falcon E&P One, LLC
Falcon E&P Opportunities Fund GP LLC
Falcon E&P Opportunities Fund, L.P.
Falcon E&P Opportunities GP, LLC
Falcon E&P Royalty Holdings, LLC
Falcon E&P Six, LLC
Falcon E&P Two, LLC
Falcon Four Midstream, LLC
Falcon Four Upstream, LLC
Falcon Incentive Partners GP, LLC
Falcon Incentive Partners, LP
Falcon Six Midstream, LLC
Fix Asset Management
Flamingo Vegas Holdco, LLC (fka Cabi Holdco, LLC)
Four Rivers Co-Invest, L.P.
Frank Waterhouse
FRBH Abbington SM, Inc.
FRBH Abbington, LLC
FRBH Arbors, LLC
FRBH Beechwood SM, Inc.
FRBH Beechwood, LLC
FRBH C1 Residential, LLC
FRBH Courtney Cove SM, Inc.
FRBH Courtney Cove, LLC
FRBH CP, LLC
FRBH Duck Creek, LLC
FRBH Eaglecrest, LLC
FRBH Edgewater JV, LLC
FRBH Edgewater Owner, LLC
FRBH Edgewater SM, Inc.
FRBH JAX-TPA, LLC
FRBH Nashville Residential, LLC
FRBH Regatta Bay, LLC
FRBH Sabal Park SM, Inc.
FRBH Sabal Park, LLC
FRBH Silverbrook, LLC
FRBH Timberglen, LLC
FRBH Willow Grove SM, Inc.
FRBH Willow Grove, LLC
FRBH Woodbridge SM, Inc.

FRBH Woodbridge, LLC
Freedom C1 Residential, LLC
Freedom Duck Creek, LLC
Freedom Edgewater, LLC
Freedom JAX-TPA Residential, LLC
Freedom La Mirage, LLC
Freedom LHV LLC
Freedom Lubbock LLC
Freedom Miramar Apartments, LLC
Freedom Sandstone, LLC
Freedom Willowdale, LLC
FRM Investment Management
Fundo de Investimento em Direitos Creditorios BB Votorantim Highland Infraestrutura
G&E Apartment REIT The Heights at Olde Towne, LLC
G&E Apartment REIT The Myrtles at Olde Towne, LLC
GAF REIT, LLC
GAF Toys Holdco, LLC
Gardens of Denton II, L.P.
Gardens of Denton III, L.P.
Gleneagles CLO, Ltd.
Governance Ltd.
Governance Re, Ltd.
Governance, Ltd.
Grayson CLO, Ltd.
Grayson Investors Corp.
Greenbriar CLO, Ltd.
Grosvenor Capital Management, L.P.
Hakusan, LLC
Hammark Holdings LLC
Hampton Ridge Partners, LLC
Harko, LLC
Haverhill Acquisition Co., LLC
Haygood, LLC
HCBH 11611 Ferguson, LLC
HCBH Buffalo Pointe II, LLC
HCBH Buffalo Pointe III, LLC
HCBH Buffalo Pointe, LLC
HCBH Hampton Woods SM, Inc.
HCBH Hampton Woods, LLC
HCBH Overlook SM, Inc.
HCBH Overlook, LLC
HCBH Rent Investors, LLC
HCF Funds
HCMS Falcon GP, LLC
HCMS Falcon, L.P.
HCO Holdings, LLC
HCOF Preferred Holdings, LP
HCOF Preferred Holdings, Ltd.
HCRE 1775 James Ave, LLC
HCRE Addison TRS, LLC
HCRE Addison, LLC (fka HWS Addison, LLC)

HCRE Hotel Partner, LLC (fka HCRE HWS Partner, LLC)
HCRE Las Colinas TRS, LLC
HCRE Las Colinas, LLC (fka HWS Las Colinas, LLC)
HCRE Partners, LLC
HCRE Plano TRS, LLC
HCRE Plano, LLC (fka HWS Plano, LLC)
HCREF-II Holding Corp.
HCREF-III Holding Corp.
HCREF-IV Holding Corp.
HCREF-IX Holding Corp.
HCREF-V Holding Corp.
HCREF-VI Holding Corp.
HCREF-VII Holding Corp.
HCREF-VIII Holding Corp.
HCREF-XIII Holding Corp.
HCREF-XIV Holding Corp.
HCREF-XV Holding Corp.
HCSLR Camelback Investors (Cayman), Ltd.
HCSLR Camelback, LLC
HE 41, LLC
HE Capital 232 Phase I Property, LLC
HE Capital 232 Phase I, LLC
HE Capital Asante, LLC
HE Capital KR, LLC
HE CLO Holdco, LLC
HE Mezz KR, LLC
Heron Pointe Investors, LLC
HFP Asset Funding II, Ltd.
HFP Asset Funding III, Ltd.
HFRO Sub, LLC
Hibiscus HoldCo, LLC
Highland - First Foundation Income Fund
Highland 401(k) Plan
Highland Argentina Regional Opportunity Fund, L.P.
Highland Argentina Regional Opportunity Fund, Ltd.
Highland Argentina Regional Opportunity Master Fund, L.P.
Highland Capital Brasil Gestora de Recursos (fka Highland Brasilinvest Gestora de Recursos, LTDA; fka HBI Consultoria Empresarial, LTDA)
Highland Capital Insurance Solutions GP LLC
Highland Capital Insurance Solutions LP
Highland Capital Management AG (Highland Capital Management SA) (Highland Capital Management Ltd)
Highland Capital Management Fund Advisors, L.P. (fka Pyxis Capital, L.P.)
Highland Capital Management Latin America, L.P.
Highland Capital Management Latin America, L.P. (Relying Advisor)
Highland Capital Management Multi-Strategy Insurance Dedicated Fund, L.P.
Highland Capital Management Services, Inc.
Highland Capital Management, L.P.
Highland Capital Management, L.P. Charitable Fund
Highland Capital Management, L.P. Retirement Plan and Trust
Highland Capital of New York

Highland Capital of New York, Inc.
Highland Capital Real Estate Fund GP, LLC
Highland Capital Special Allocation, LLC
Highland CDO Opportunity Fund, L.P.
Highland CDO Opportunity Fund, Ltd.
Highland CDO Opportunity Master Fund, L.P.
Highland CDO Trust
Highland CLO 2018-1, Ltd.
Highland CLO Assets Holdings Limited
Highland CLO Funding, Ltd. (fka Acis Loan Funding, Ltd.)
Highland CLO Gaming Holdings, LLC
Highland CLO Management Ltd.
Highland CLO Trust
Highland Credit Opportunities CDO Asset Holdings GP, Ltd.
Highland Credit Opportunities CDO Asset Holdings, L.P.
Highland Credit Opportunities CDO Financing, LLC
Highland Credit Opportunities CDO, Ltd.
Highland Credit Opportunities Holding Corporation
Highland Credit Opportunities Japanese Feeder Sub-Trust
Highland Credit Strategies Fund, L.P.
Highland Credit Strategies Fund, Ltd.
Highland Credit Strategies Holding Corporation
Highland Credit Strategies Master Fund, L.P.
Highland Crusader Fund
Highland Dynamic Income Fund, L.P. (fka Highland Capital Loan Fund, L.P.)
Highland Dynamic Income Fund, Ltd. (fka Highland Loan Fund, Ltd.)
Highland Dynamic Income Master Fund, L.P. (fka Highland Loan Master Fund, L.P.)
Highland Energy Holdings, LLC
Highland Energy MLP Fund (fka Highland Energy and Materials Fund)
Highland eSports Private Equity Fund
Highland Fixed Income Fund
Highland Flexible Income UCITS Fund
Highland Floating Rate Fund
Highland Floating Rate Opportunities Fund (fka Highland Floating Rate Opportunities Fund II)
Highland Fund Holdings, LLC
Highland Funds I
Highland Funds II
Highland Funds III
Highland GAF Chemical Holdings, LLC
Highland General Partner, LP
Highland Global Allocation Fund (fka Highland Global Allocation Fund II)
Highland GP Holdings, LLC
Highland Healthcare Equity Income and Growth Fund
Highland iBoxx Senior Loan ETF
Highland Income Fund (fka Highland Floating Rate Opportunities Fund)
Highland Legacy Limited
Highland LF Chemical Holdings, LLC
Highland Loan Funding V, Ltd.
Highland Long/Short Equity Fund
Highland Long/Short Healthcare Fund
Highland Marcal Holding, Inc.

Highland Merger Arbitrage Fund
Highland Multi Strategy Credit Fund, Ltd. (fka Highland Credit Opportunities Fund, Ltd.)
Highland Multi Strategy Credit Fund, Ltd. (fka Highland Credit Opportunities Fund, Ltd.)
Highland Multi-Strategy Fund GP, LLC
Highland Multi-Strategy Fund GP, LP
Highland Multi-Strategy IDF GP, LLC
Highland Opportunistic Credit Fund
Highland Park CDO 1, Ltd.
Highland Premium Energy & Materials Fund
Highland Prometheus Feeder Fund I, L.P.
Highland Prometheus Feeder Fund II, L.P.
Highland Prometheus Master Fund, L.P.
Highland RCP Fund II, L.P.
Highland RCP II GP, LLC
Highland RCP II SLP GP, LLC
Highland RCP II SLP, L.P.
Highland RCP Parallel Fund II, L.P.
Highland Restoration Capital Partners Master, L.P.
Highland Restoration Capital Partners Offshore, L.P.
Highland Restoration Capital Partners, L.P.
Highland Select Equity Fund GP, L.P.
Highland Select Equity Fund, L.P.
Highland Small-Cap Equity Fund
Highland Socially Responsible Equity Fund (fka Highland Premier Growth Equity Fund)
Highland Tax-Exempt Fund
Highland TCI Holding Company, LLC
Highland Total Return Fund
Highland's Roads Land Holding Company, LLC
HMCF PB Investors, LLC
HRT North Atlanta, LLC
HRT Timber Creek, LLC
HRTBH North Atlanta, LLC
HRTBH Timber Creek, LLC
Huber Funding LLC
HWS Investors Holdco, LLC
James Dondero
Jasper CLO, Ltd.
Jewelry Ventures I, LLC
JMIJM, LLC
John Honis
Karisopolis, LLC
Keelhaul LLC
Kuilima Montalban Holdings, LLC
Kuilima Resort Holdco, LLC
KV Cameron Creek Owner, LLC
Lakes at Renaissance Park Apartments Investors, L.P.
Lakeside Lane, LLC
Landmark Battleground Park II, LLC
LAT Battleground Park, LLC
LAT Briley Parkway, LLC
Lauren Thedford

Leawood RE Holdings, LLC
Liberty Cayman Holdings, Ltd.
Liberty CLO, Ltd.
Long Short Equity Sub, LLC
Longhorn Credit Funding, LLC
Lurin Real Estate Holdings V, LLC
Mark and Pamela Okada Family Trust - Exempt Descendants' Trust
Mark and Pamela Okada Family Trust - Exempt Trust #2
Mark Okada
Markham Fine Jewelers, L.P.
Meritage Residential Partners, LLC
ML CLO XIX Sterling (Cayman), Ltd.
NCI Assets Holding Company LLC
New Jersey Tissue Company Holdco, LLC (fka Marcal Paper Mills Holding Company, LLC)
NexAnnuity Holdings, Inc.
NexBank Capital Inc.
NexBank Capital Trust I
NexBank Capital, Inc.
NexBank Land Advisors, Inc.
NexBank Securities, Inc.
NexBank SSB
NexBank Title, Inc. (dba NexVantage Title Services)
NexBank Wealth Advisors
NexPoint Advisors GP, LLC
NexPoint Advisors, L.P.
NexPoint Capital Inc.
NexPoint Capital REIT, LLC
NexPoint Capital, Inc. (fka NexPoint Capital, LLC)
NexPoint CR F/H DST, LLC
NexPoint Discount Strategies Fund (fka NexPoint Discount Yield Fund)
NexPoint Energy and Materials Opportunities Fund (fka NexPoint Energy Opportunities Fund)
NexPoint Event-Driven Fund (fkaNexPoint Merger Arbitrage Fund)
NexPoint Flamingo DST
NexPoint Flamingo Investment Co, LLC
NexPoint Flamingo Leaseco, LLC
NexPoint Flamingo Manager, LlC
NexPoint Funds
NexPoint Healthcare Opportunities Fund
NexPoint Hospitality Trust
NexPoint Hospitality, Inc.
NexPoint Hospitality, LLC
NexPoint Latin American Opportunities Fund
NexPoint Legacy 22, LLC
NexPoint Lincoln Porte Equity, LLC
NexPoint Lincoln Porte Manager, LLC
NexPoint Lincoln Porte, LLC (fka NREA Lincoln Porte, LLC)
NexPoint Multifamily Capital Trust, Inc. (fka NexPoint Multifamily Realty Trust, Inc., fka Highland Capital Realty Trust, Inc.)
NexPoint Multifamily Operating Partnership, L.P.
NexPoint Peoria, LLC
NexPoint RE Finance Advisor GP, LLC

NexPoint RE Finance Advisor, L.P.
NexPoint Real Estate Advisors GP, LLC
NexPoint Real Estate Advisors II, L.P.
NexPoint Real Estate Advisors III, L.P.
NexPoint Real Estate Advisors IV, L.P.
NexPoint Real Estate Advisors V, L.P.
NexPoint Real Estate Advisors VI, L.P.
NexPoint Real Estate Advisors VII GP, LLC
NexPoint Real Estate Advisors VII, L.P.
NexPoint Real Estate Advisors VIII, L.P.
NexPoint Real Estate Advisors, L.P.
NexPoint Real Estate Capital, LLC (fka Highland Real Estate Capital, LLC, fka Highland Multifamily Credit Fund, LLC)
NexPoint Real Estate Finance OP GP, LLC
NexPoint Real Estate Finance Operating Partnership, L.P.
NexPoint Real Estate Finance, Inc.
NexPoint Real Estate Opportunities, LLC (fka Freedom REIT LLC)
NexPoint Real Estate Partners, LLC (fka HCRE Partners, LLC)
NexPoint Real Estate Strategies Fund
NexPoint Residential Trust Inc.
NexPoint Residential Trust Operating Partnership GP, LLC
NexPoint Residential Trust Operating Partnership, L.P.
NexPoint Securities, Inc. (fka Highland Capital Funds Distributor, Inc.) (fka Pyxis Distributors, Inc.)
NexPoint Strategic Income Fund (fka NexPoint Opportunistic Credit Fund, fka NexPoint Distressed Strategies Fund)
NexPoint Strategic Opportunities Fund (fka NexPoint Credit Strategies Fund)
NexPoint Texas Multifamily Portfolio DST (fka NREA Southeast Portfolio Two, DST)
NexPoint WLIF I Borrower, LLC
NexPoint WLIF II Borrower, LLC
NexPoint WLIF III Borrower, LLC
NexStrat LLC
NexVest, LLC
NexWash LLC
NFRO REIT Sub, LLC
NFRO TRS, LLC
NHF CCD, Inc.
NHT 2325 Stemmons, LLC
NHT Beaverton TRS, LLC (fka NREA Hotel TRS, Inc.)
NHT Beaverton, LLC
NHT Bend TRS, LLC
NHT Bend, LLC
NHT Destin TRS, LLC
NHT Destin, LLC
NHT DFW Portfolio, LLC
NHT Holdings, LLC
NHT Intermediary, LLC
NHT Nashville TRS, LLC
NHT Nashville, LLC
NHT Olympia TRS, LLC
NHT Olympia, LLC
NHT Operating Partnership GP, LLC

NHT Operating Partnership II, LLC
NHT Operating Partnership, LLC
NHT Salem, LLC
NHT SP Parent, LLC
NHT SP TRS, LLC
NHT SP, LLC
NHT Tigard TRS, LLC
NHT Tigard, LLC
NHT TRS, Inc.
NHT Uptown, LLC
NHT Vancouver TRS, LLC
NHT Vancouver, LLC
NMRT TRS, Inc.
NREA Adair DST Manager, LLC
NREA Adair Investment Co, LLC
NREA Adair Joint Venture, LLC
NREA Adair Leaseco Manager, LLC
NREA Adair Leaseco, LLC
NREA Adair Property Manager LLC
NREA Adair, DST
NREA Ashley Village Investors, LLC
NREA Cameron Creek Investors, LLC
NREA Cityplace Hue Investors, LLC
NREA Crossings Investors, LLC
NREA Crossings Ridgewood Coinvestment, LLC (fka NREA Crossings Ridgewood Investors, LLC)
NREA DST Holdings, LLC
NREA El Camino Investors, LLC
NREA Estates Inc.
NREA Estates Investment Co, LLC
NREA Estates Leaseco, LLC
NREA Estates Manager, LLC
NREA Estates Property Manager, LLC
NREA Estates, DST
NREA Gardens DST Manager, LLC
NREA Gardens Investment Co, LLC
NREA Gardens Leaseco Manager, LLC
NREA Gardens Leaseco, LLC
NREA Gardens Property Manager, LLC
NREA Gardens Springing LLC
NREA Gardens Springing Manager, LLC
NREA Gardens, DST
NREA Hidden Lake Investment Co, LLC
NREA Hue Investors, LLC
NREA Keystone Investors, LLC
NREA Meritage Inc.
NREA Meritage Investment Co, LLC
NREA Meritage Leaseco, LLC
NREA Meritage Manager, LLC
NREA Meritage Property Manager, LLC
NREA Meritage, DST
NREA Oaks Investors, LLC

NREA Retreat Investment Co, LLC
NREA Retreat Leaseco, LLC
NREA Retreat Manager, LLC
NREA Retreat Property Manager, LLC
NREA Retreat, DST
NREA SE One Property Manager, LLC
NREA SE Three Property Manager, LLC
NREA SE Two Property Manager, LLC
NREA SE1 Andros Isles, DST (Converted from DK Gateway Andros, LLC)
NREA SE1 Arborwalk, DST (Converted from MAR Arborwalk, LLC)
NREA SE1 Towne Crossing, DST (Converted from Apartment REIT Towne Crossing, LP)
NREA SE1 Walker Ranch, DST (Converted from SOF Walker Ranch Owner, L.P.)
NREA SE2 Hidden Lake, DST (Converted from SOF Hidden Lake SA Owner, L.P.)
NREA SE2 Vista Ridge, DST (Converted from MAR Vista Ridge, L.P.)
NREA SE2 West Place, DST (Converted from Landmark at West Place, LLC)
NREA SE3 Arboleda, DST (Converted from G&E Apartment REIT Arboleda, LLC)
NREA SE3 Fairways, DST (Converted from MAR Fairways, LLC)
NREA SE3 Grand Oasis, DST (Converted from Landmark at Grand Oasis, LP)
NREA Southeast Portfolio One, DST
NREA Southeast Portfolio Three, DST
NREA Southeast Portfolio Two, LLC
NREA SOV Investors, LLC
NREA Uptown TRS, LLC
NREA VB I LLC
NREA VB II LLC
NREA VB III LLC
NREA VB IV LLC
NREA VB Pledgor I LLC
NREA VB Pledgor II LLC
NREA VB Pledgor III LLC
NREA VB Pledgor IV LLC
NREA VB Pledgor V LLC
NREA VB Pledgor VI LLC
NREA VB Pledgor VII LLC
NREA VB SM, Inc.
NREA VB V LLC
NREA VB VI LLC
NREA VB VII LLC
NREA Vista Ridge Investment Co, LLC
NREC AR Investors, LLC
NREC Latitude Investors, LLC
NREC REIT Sub, Inc.
NREC TRS, Inc.
NREC WW Investors, LLC
NREF OP I Holdco, LLC
NREF OP I SubHoldco, LLC
NREF OP I, L.P.
NREF OP II Holdco, LLC
NREF OP II SubHoldco, LLC
NREF OP II, L.P.
NREF OP IV REIT Sub TRS, LLC

NREF OP IV REIT Sub, LLC
NREF OP IV, L.P.
NREO NW Hospitality Mezz, LLC
NREO NW Hospitality, LLC
NREO Perilune, LLC
NREO SAFStor Investors, LLC
NREO TRS, Inc.
NRESF REIT Sub, LLC
NXRT Abbington, LLC
NXRT Atera II, LLC
NXRT Atera, LLC
NXRT AZ2, LLC
NXRT Barrington Mill, LLC
NXRT Bayberry, LLC
NXRT Bella Solara, LLC
NXRT Bella Vista, LLC
NXRT Bloom, LLC
NXRT Brandywine GP I, LLC
NXRT Brandywine GP II, LLC
NXRT Brandywine LP, LLC
NXRT Brentwood Owner, LLC
NXRT Brentwood, LLC
NXRT Cedar Pointe Tenant, LLC
NXRT Cedar Pointe, LLC
NXRT Cityview, LLC
NXRT Cornerstone, LLC
NXRT Crestmont, LLC
NXRT Enclave, LLC
NXRT Glenview, LLC
NXRT H2 TRS, LLC
NXRT Heritage, LLC
NXRT Hollister TRS LLC
NXRT Hollister, LLC
NXRT LAS 3, LLC
NXRT Master Tenant, LLC
NXRT Nashville Residential, LLC (fka Freedom Nashville Residential, LLC)
NXRT North Dallas 3, LLC
NXRT Old Farm, LLC
NXRT Pembroke Owner, LLC
NXRT Pembroke, LLC
NXRT PHX 3, LLC
NXRT Radbourne Lake, LLC
NXRT Rockledge, LLC
NXRT Sabal Palms, LLC
NXRT SM, Inc.
NXRT Steeplechase, LLC
NXRT Stone Creek, LLC
NXRT Summers Landing GP, LLC
NXRT Summers Landing LP, LLC
NXRT Torreyana, LLC
NXRT Vanderbilt, LLC

NXRT West Place, LLC
NXRTBH AZ2, LLC
NXRTBH Barrington Mill Owner, LLC
NXRTBH Barrington Mill SM, Inc.
NXRTBH Barrington Mill, LLC
NXRTBH Bayberry, LLC
NXRTBH Cityview, LLC
NXRTBH Colonnade, LLC
NXRTBH Cornerstone Owner, LLC
NXRTBH Cornerstone SM, Inc.
NXRTBH Cornerstone, LLC
NXRTBH Dana Point SM, Inc.
NXRTBH Dana Point, LLC
NXRTBH Foothill SM, Inc.
NXRTBH Foothill, LLC
NXRTBH Heatherstone SM, Inc.
NXRTBH Heatherstone, LLC
NXRTBH Hollister Tenant, LLC
NXRTBH Hollister, LLC
NXRTBH Madera SM, Inc.
NXRTBH Madera, LLC
NXRTBH McMillan, LLC
NXRTBH North Dallas 3, LLC
NXRTBH Old Farm II, LLC
NXRTBH Old Farm Tenant, LLC
NXRTBH Old Farm, LLC
NXRTBH Radbourne Lake, LLC
NXRTBH Rockledge, LLC
NXRTBH Sabal Palms, LLC
NXRTBH Steeplechase, LLC (dba Southpoint Reserve at Stoney Creek)-VA
NXRTBH Stone Creek, LLC
NXRTBH Vanderbilt, LLC
NXRTBH Versailles SM, Inc.
NXRTBH Versailles, LLC
Oak Holdco, LLC
Oaks CGC, LLC
Okada Family Revocable Trust
Pam Capital Funding GP Co. Ltd.
Pam Capital Funding, L.P.
PamCo Cayman Ltd.
Park West 1700 Valley View Holdco, LLC
Park West 2021 Valley View Holdco, LLC
Park West Holdco, LLC
Park West Portfolio Holdco, LLC
PCMG Trading Partners XXIII, L.P.
PDK Toys Holdco, LLC
Pear Ridge Partners, LLC
Penant Management GP, LLC
PensionDanmark Pensionsforsikringsaktieselskab
Perilune Aero Equity Holdings One, LLC
PetroCap Incentive Partners II, L.P.

PetroCap Partners II, L.P.
PetroCap Partners III, L.P.
Pharmacy Ventures I, LLC
Pharmacy Ventures II, LLC
Powderhorn, LLC
PWM1 Holdings, LLC
PWM1, LLC
RADCO NREC Bay Meadows Holdings, LLC
RADCO NREC Bay Park Holdings, LLC
Ramarim, LLC
Rand Advisors Series I Insurance Fund
Rand Advisors Series II Insurance Fund
Rand PE Fund I, L.P.
Rand PE Fund Management LLC
Red River CLO, Ltd.
Red River Investors Corp.
Riverview Partners SC, LLC
Rockwall CDO II Ltd.
Rockwall CDO, Ltd.
Rockwall Investors Corp.
Rothko, Ltd.
RTT Hollister, LLC
RTT Rockledge, LLC
Sandstone Pasadena Apartments, LLC
Scott Ellington
SE Governors Green Holdings, L.L.C. (fka SCG Atlas Governors Green Holdings, L.L.C.)
SE Governors Green I, LLC
SE Governors Green REIT, L.L.C. (fka SCG Atlas Governors Green REIT, L.L.C.)
SE Governors Green, LLC (fka SCG Atlas Governors Green, L.L.C.)
SE Oak Mill I Holdings, LLC (fka SCG Atlas Oak Mill I Holdings, L.L.C.)
SE Oak Mill I Owner, LLC (fka SCG Atlas Oak Mill I, L.L.C.)
SE Oak Mill I REIT, LLC (fka SCG Atlas Oak Mill I REIT, L.L.C.)
SE Oak Mill I, LLC
SE Oak Mill II Holdings, LLC (fka SCG Atlas Oak Mill II Holdings, L.L.C.)
SE Oak Mill II Owner, LLC (fka SCG Atlas Oak Mill II, L.L.C.)
SE Oak Mill II REIT, LLC (fka SCG Atlas Oak Mill II REIT, L.L.C.)
SE Oak Mill II, LLC
SE Stoney Ridge Holdings, L.L.C. (fka SCG Atlas Stoney Ridge Holdings, L.L.C.)
SE Stoney Ridge I, LLC
SE Stoney Ridge REIT, L.L.C. (fka SCG Atlas Stoney Ridge REIT, L.L.C.)
SE Stoney Ridge, LLC (fka SCG Atlas Stoney Ridge, L.L.C.)
SFH1, LLC
SFR WLIF I, LLC (fka NexPoint WLIF I, LLC)
SFR WLIF II, LLC (NexPoint WLIF II, LLC)
SFR WLIF III, LLC (NexPoint WLIF III, LLC)
SFR WLIF Manager, LLC (NexPoint WLIF Manager, LLC)
SFR WLIF, LLC (NexPoint WLIF, LLC)
SFR WLIF, LLC Series I
SFR WLIF, LLC Series II
SFR WLIF, LLC Series III
Small Cap Equity Sub, LLC

Socially Responsible Equity Sub, LLC
SOF Brandywine I Owner, L.P.
SOF Brandywine II Owner, L.P.
SOF-X GS Owner, L.P.
Southfork Cayman Holdings, Ltd.
Southfork CLO, Ltd.
Specialty Financial Products Designated Activity Company (fka Specialty Financial Products Limited)
Spiritus Life, Inc.
SRL Whisperwod LLC
SRL Whisperwood Member LLC
SRL Whisperwood Venture LLC
SSB Assets LLC
Stonebridge PEF
Stonebridge-Highland Healthcare Private Equity Fund
Strand Advisors III, Inc.
Strand Advisors IV, LLC
Strand Advisors IX, LLC
Strand Advisors V, LLC
Strand Advisors XIII, LLC
Strand Advisors XVI, Inc.
Strand Advisors, Inc.
Stratford CLO, Ltd.
Summers Landing Apartment Investors, L.P.
The Dugaboy Investment Trust
The Get Good Non-Exempt Trust No. 1
The Get Good Non-Exempt Trust No. 2
The Get Good Trust
The Ohio State Life Insurance Company
The Okada Family Foundation, Inc.
The SLHC Trust
Thread 55, LLC
Tranquility Lake Apartments Investors, L.P.
Trey Parker
Tricor Business Outsourcing
Turtle Bay Holdings, LLC
Tuscany Acquisition, LLC
United States Army Air Force Exchange Services
Uptown at Cityplace Condominium Association, Inc.
US Gaming OpCo, LLC
Valhalla CLO, Ltd.
VB GP LLC
VB Holding, LLC
VB One, LLC
VB OP Holdings LLC
VBAnnex C GP, LLC
VBAnnex C Ohio, LLC
VBAnnex C, LP
VineBrook Annex B, L.P.
VineBrook Annex I, L.P.
VineBrook Homes Merger Sub II LLC
VineBrook Homes Merger Sub LLC

VineBrook Homes OP GP, LLC
VineBrook Homes Operating Partnership, L.P.
VineBrook Homes Trust, Inc.
VineBrook Partners I, L.P.
VineBrook Partners II, L.P.
VineBrook Properties, LLC
Wake LV Holdings II, Ltd.
Wake LV Holdings, Ltd.
Walter Holdco GP, LLC
Walter Holdco I, Ltd.
Walter Holdco, L.P.
Westchester CLO, Ltd.
Yellow Metal Merchants, Inc.

7. Taxing and Other Significant Governmental Authorities

California Franchise Tax Board
Internal Revenue Service
Los Angeles County Tax Collector
Delaware Division of Revenue

8. Banks and Secured Parties

BBVA
KeyBank National Association
Jeffries, LLC Prime Brokerage Services
Frontier State Bank

9. United States Bankruptcy Judges in the District of Delaware

The Honorable Brendan L. Shannon
The Honorable Christopher S. Sontchi, Chief Judge
The Honorable John T. Dorsey
The Honorable Karen B. Owens
The Honorable Kevin Gross
The Honorable Laurie Selber Silverstein
The Honorable Mary F. Walrath

10. United States Trustee for the District of Delaware (and Key Staff Members)

Andrew Vara, Acting US Trustee
Benjamin Hackman, Trial Attorney
Christine Green, Paralegal Specialist
David Buchbinder, Trial Attorney
Diane Giordano, Bankruptcy Analyst
Dion Wynn, Paralegal Specialist
Edith A. Serrano, Paralegal Specialist
Hannah M. McCollum, Trial Attorney
Holly Dice, Auditor (Bankruptcy)
James R. O'Malley, Bankruptcy Analyst
Jane Leamy, Trial Attorney
Jeffrey Heck, Bankruptcy Analyst
Juliet Sarkessian, Trial Attorney
Karen Starr, Bankruptcy Analyst
Linda Casey, Trial Attorney
Linda Richenderfer, Trial Attorney
Lauren Attix, OA Assistant
Michael Panacio, Bankruptcy Analyst
Michael West, Bankruptcy Analyst

Ramona Vinson, Paralegal Specialist
Richard Schepacarter, Trial Attorney
Shakima L. Dortch, Paralegal Specialist

T. Patrick Tinker, Assistant U.S. Trustee
Timothy J. Fox, Jr., Trial Attorney

11. Clerk of Court and Deputy for the District of Delaware

Stephen Grant, Chief Deputy Clerk
Una O'Boyle, Clerk of Court

12. Notice Parties

Alvarez & Marshal CF Management, LLC
Coleman County TAD
Fannin CAD
Allen ISD
Rockwall CAD
Kaufman County
Tarrant County
Dallas County
Upshur County
Grayson County
Irving ISD
Pension Benefit Guaranty Corporation
Patrick Daugherty
Hunter Mountain Trust
Integrated Financial Associates
BET Investments, II, L.P.
Crescent TC Investors, L.P.
Intertrust Entities
CLO Entities

EXHIBIT Z

FIFTH AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

HIGHLAND CAPITAL MANAGEMENT, L.P.

(A Delaware Limited Partnership)

[_____], 2021

This FIFTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP (this "***Agreement***") of Highland Capital Management, L.P., (the "***Partnership***"), dated as of [_____], 2021 and entered into by and among the [*New GP Entity*] as general partner of the Partnership (the "***General Partner***") and the limited partner of the Partnership as set forth on Schedule A hereto (the "***Limited Partner***"), amends and restates in its entirety the Fourth Amended and Restated Agreement of Limited Partnership of the Partnership dated as of December 24, 2015 (as amended to date, the "***Prior Agreement***"), by and among Strand Advisors, Inc. (the "***Prior General Partner***") and the former limited partners of the Partnership who were limited partners of the Partnership (the "***Prior Limited Partners***"). The General Partner and Limited Partners are collectively referred to as the "***Partners***."

WHEREAS, the Prior Agreement, as amended pursuant to that certain amendment dated [_____], 2021, provides for the reconstitution and continuation of the Partnership if new limited partners are admitted to the partnership within 90 days after dissolution thereof and such new limited partners consent to the continuation of the Partnership.

WHEREAS, the Partnership was reorganized pursuant to the Plan of Reorganization of Highland Capital Management, L.P., that was approved by the United States Bankruptcy Court for Northern District of Texas, Dallas Division, on [_____] (the "***Plan***").

WHEREAS, pursuant to the Plan the limited partnership interests of the Prior Limited Partners and the Prior General Partner were canceled on [_____] and new limited partnership interests were issued to the Limited Partner and the General Partner under the Prior Agreement.

WHEREAS, the General Partner and the Limited Partner wish to ratify the admission to the Partnership of the General Partner and the Limited Partner and to amend and restate the terms of the Partnership as set forth in this Agreement.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein, the undersigned hereby agree as follows:

1. Continuation.

(a) Subject to the provisions of this Agreement, the Partners hereby continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Revised Uniform Limited Partnership Act (6 *Del.C.* §17-101, *et seq.)*, as amended from time to time (the "***Act***"). This Agreement amends, restates, and supersedes the Prior Agreement and all other prior agreements or understandings with respect to the matters covered herein.

(b) The Limited Partner, being the sole limited partner of the Partnership, hereby (i) consents to the continuation of the Partnership and (ii) ratifies and approves the appointment of the General Partner as general partner of the Partnership.

2. Organizational Matters.

(a) *Name; Certificate*. The name of the Partnership is Highland Capital Management, L.P. The Partnership was organized as a limited partnership pursuant to the Act and

filed a Certificate of Limited Partnership (the "***Certificate***") with the Secretary of State of the State of Delaware. Any person authorized to act on behalf of the General Partner or the Partnership may, subject to Section 19 below, cause the Partnership to file such other certificates and documents as may be necessary or appropriate to comply with the Act and any other applicable requirements for the operation of a limited partnership in accordance with the laws of the State of Delaware and any other jurisdictions in which the Partnership shall conduct business, and to maintain such filings for so long as the Partnership conducts business therein.

(b) *Offices*. The name of the resident agent for service of process for the Partnership and the address of the registered office of the Partnership in the State of Delaware is Corporation Services Company, 2023 Centre Road, Wilmington Delaware 19805-1297. The General Partner may establish places of business of the Partnership within and without the State of Delaware, as and when required by the Partnership's business and in furtherance of its purposes set forth herein, and may appoint (or cause the appointment of) agents for service of process in all jurisdictions in which the Partnership shall conduct business. The General Partner may from time to time in its sole discretion change the Partnership's places of business, resident agent for service of process, and/or the location of its registered office in Delaware.

3. Purpose; Powers. The Partnership is formed for the purpose of engaging in any lawful act or activity for which limited partnerships may be formed under the Act. Without limiting the foregoing, the general character and purposes of the business of the Partnership are to (a) engage in the business, directly and/or through one or more subsidiaries, of liquidating assets of, and performing investment management and advisory services for, pooled investment vehicles, funds, investment holdings, accounts, and interests therein; and (b) engage in any lawful activities (including, subject to the other provisions of this Agreement, the borrowing of money and the issuance of guarantees of indebtedness of others) directly or indirectly related or incidental thereto and in which a Delaware limited partnership may lawfully engage. The Partnership shall have and exercise all of the powers and rights conferred upon limited partnerships formed pursuant to the Act.

4. Management.

(a) *Authority of the General Partner*. The business and affairs of the Partnership shall be managed exclusively by and under the direction of the General Partner, which shall have the right, power and authority to exercise all of the powers of the Partnership except as otherwise provided by law or this Agreement. Decisions or actions made or approved by the General Partner in accordance with this Agreement shall constitute decisions or actions by the Partnership and shall be binding upon the Partnership and each Limited Partner of the Partnership. The General Partner may not be removed or replaced by the Limited Partners. In the event of the withdrawal, resignation or dissolution of the General Partner, a new General Partner shall be designated in writing by a majority in interest of the Limited Partners, who shall provide written notice to the remaining Limited Partners of such designation.

(b) *Delegation of Powers; Officers*. Notwithstanding anything to the contrary herein, the General Partner may delegate any or all or any portion of its rights, powers, authority, duties and responsibilities with respect to the management of the Partnership to such officers of the Partnership with such titles as the General Partner may determine ("***Officers***"). The General Partner

may authorize any such Officers to sign agreements, contracts, instruments, or other documents in the name of and on behalf of the Partnership, and such authority may be general or limited to specific instances. The power and authority of any Officer appointed by the General Partner under this Section 4(b) shall not exceed the power and authority possessed by the General Partner under this Agreement. The Officers shall hold office until their successors are duly appointed or their earlier death, resignation, or removal. Any Officer so appointed may be removed at any time, with or without cause, by the written consent of the General Partner. Any Officer may resign from his or her office upon prior written notice to the Partnership. If any office shall become vacant, a replacement Officer may be appointed by the written consent of the General Partner. Two or more offices may be held by the same person. The initial Officers of the Partnership are set forth on Schedule B.

(c) *Limited Partners*. No Limited Partner shall have any right to participate in the management of the Partnership as a Limited Partner. Moreover, no Limited Partner shall have any voting rights except with respect to consent to amendments as set forth in Section 19 below, or as otherwise required by the Act.

(d) *Transactions with Affiliates*. The General Partner or any person controlling, controlled by, or under common control with the General Partner (an "***Affiliate***") may engage in transactions with the Partnership from time to time, including without limitation for lending to or borrowing from the Partnership, engaging in the provision of services to the Partnership, or otherwise engaging in business transactions with the Partnership, provided that such transactions are entered into in good faith. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Act or any other applicable law, rule, or regulation.

5. Partners.

(a) *General*. The name, address, and percentage interest ownership interest of the General Partner and each Limited Partner in the Partnership (the "***Percentage Interest***") are set forth on Schedule A hereto. Additional Limited Partners may be admitted to the Partnership, and Schedule A may be amended, only with the written consent of the General Partner (provided, that failure to update Schedule A shall not itself be conclusive of whether consent of the General Partner has been obtained). No Limited Partner shall have the right or power to resign, withdraw or retire from the Partnership, except upon (i) the occurrence of any event described in Section 17-801 of the Act (in which case the Limited Partner(s) with respect to which such event has occurred shall, automatically and with no further action necessary by any person, cease to be a Limited Partner, and shall be deemed to have solely the interest of an assignee (within the meaning of Section 17 of the Act) with respect to such Limited Partner's Limited Partnership Interest), or (ii) with the consent of the General Partner. For the avoidance of doubt, no action may be taken to reduce, directly or indirectly, the Percentage Interest of any Partner without the written consent of such Partner.

(b) *Capital Contributions*. The Partners may, in their sole discretion, make additional capital contribution to the Partnership if requested by the General Partner. All capital, whenever contributed, shall be subject in all respects to the risks of the business and subordinate in right of payment to the claims of present or future creditors of the Partnership in accordance with this Agreement.

(c) *Capital Accounts*. The Partnership shall maintain a capital account for each Partner in accordance with Section 704(b) and 704(c) of the Internal Revenue Code of 1986, as amended (the "***Code***"), and the principles of the Treasury Regulations promulgated thereunder.

(d) *Tax Representative*. The General Partner shall serve as the "tax representative" to be the Partnership's designated representative within the meaning of Section 6223 of the Code with sole authority to act on behalf of the Partnership for purposes of subchapter C of Chapter 63 of the Code and any comparable provisions of state or local income tax laws (the "***Tax Representative***"). The Tax Representative is specifically directed and authorized to take whatever steps it deems necessary or desirable to perfect such designation, including, without limitation, filing any forms or documents with the Internal Revenue Service, properly designating a particular individual to act on its behalf of the Tax Representative and taking such other action as may from time to time be required under Treasury Regulations. The Tax Representative is hereby authorized to and shall perform all duties of a "tax representative" and shall serve as Tax Representative until its resignation or until the designation of its successor, whichever occurs sooner.

6. Allocation of Income and Losses.

(a) *Definitions*. For purposes of this Agreement, "***Income***" and "***Loss***" of the Partnership shall mean the taxable income and loss, respectively, of the Partnership computed with the adjustments set forth in Treasury Regulation under Code Section 704(b) including (A) adjustments pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(g), (B) the inclusion of the amount of any tax-exempt income as an item of income, (C) the inclusion of the amount of any nondeductible, noncapitalizable expense as an item of deduction and (D) the inclusion of the amount of unrealized gain or unrealized loss with respect to an asset of the Partnership as an item of income or gain (as applicable) upon distribution of such asset in kind or as required by Treasury Regulation Section 1.704-1(b)(2)(iv)(f).

(b) *Allocations Generally*. The Income and Loss of the Partnership for each fiscal year or other applicable period shall be allocated to and among the Partners in proportion to their respective Percentage Interests.

(c) *Adjustments*. Notwithstanding Section 6(b) (but subject to Section 6(c)),

(i) Items of income or gain for any taxable period shall be allocated to the Partner in the manner and to the extent required by the "qualified income offset" provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d); and

(ii) In no event shall any Loss or item of deduction be allocated to a Partner if such allocation would cause or increase a negative balance

in such Partner's capital account determined by increasing the Partner's capital account balance by any amount the Partner may be obligated to restore to the Partnership pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) and by decreasing such capital account balance by the amounts specified in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6)).

(d) *Nonrecourse Debt*. If at any time the Partnership incurs any "nonrecourse debt" (*i.e.,* debt that is treated as nonrecourse for purposes of Treasury Regulation Section 1.1001-2), the following provisions will apply notwithstanding anything to the contrary expressed elsewhere in this Agreement:

(i) "Nonrecourse deductions" (as defined in Treasury Regulation Sections 1.704-2(b) and (c)) shall be allocated to the Partners in proportion to their respective Percentage Interests.

(ii) All other allocations relating to such nonrecourse debt shall be allocated in accordance with Treasury Regulation Section 1.704-2; and

(iii) For purposes of Sections 6(b) and 6(c), each Partner's capital account balance shall be increased by the Partner's share of minimum gain and of partner nonrecourse debt minimum gain (as determined pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), respectively).

(e) *Deductions, Credits*. Except as otherwise provided herein or as required by Code Section 704, for federal income tax purposes, all items of income, gain, loss, deduction or credit shall be allocated to the Partners in the same manner as are Income and Loss.

(f) *Regulatory Allocations*. Notwithstanding the provisions of Sections 6(a)-(e) above, allocations of Income and Loss shall be made in the order of priority set forth in Exhibit I to this Agreement.

(g) *Withholding*. To the extent that the Partnership is required to withhold and pay over any amounts to any Governmental Authority with respect to Distributions or allocations to any Limited Partner, the amount withheld shall be treated as a Distribution to that Limited Partner pursuant to Sections 4.02, 4.03 or 4.05, as applicable. In the event of any claimed over-withholding, Limited Partners shall be limited to an action against the applicable jurisdiction and not against the Partnership (unless the Partnership has not yet paid such amounts over to such jurisdiction). If any amount required to be withheld was not, in fact, actually withheld from one or more Distributions and the Partnership shall have been required to pay such amount to such Governmental Entity, the Partnership may, at its option, (i) require the affected Limited Partner to reimburse the Partnership for such withholding or (ii) reduce any subsequent Distributions to such Limited Partner by the amount of such withholding, in each case plus interest. Each Limited Partner agrees to furnish the Partnership with such documentation as shall reasonably be requested by the Partnership to assist it in determining the extent of, and in fulfilling, its withholding

obligations. Each Limited Partner will indemnify the General Partner and the Partnership against any losses and liabilities (including interest and penalties) related to any withholding obligations with respect to allocations or Distributions made to such Limited Partner by the Partnership.

(h) *Consistent Tax Reporting*. Except as otherwise unanimously agreed to in writing by the Limited Partners, for U.S. federal, state and local income tax purposes, the Limited Partners agree, as a condition to their admission to the Partnership, to report all taxable income, loss and items thereof (including the character and timing of such items) in a manner consistent with the manner in which such taxable income, loss or item thereof is reported by the Partnership on its tax returns and the Schedules K-1 (or any successor form) furnished by the Partnership to the Limited Partners.

7. Distributions. Distributions shall be made from the undistributed profit and loss account to the Partners at the times and in the aggregate amounts determined by the General Partner in its sole discretion; provided, that distributions shall be made to the Partners in accordance with their Percentage Interests. Distributions may be in cash or in kind as determined by the General Partner in its sole discretion. Notwithstanding any provision to the contrary contained in this Agreement, the Partnership shall not make a distribution to the Limited Partners on account of its interest in the Partnership if such distribution would violate Section 17-607 of the Act or other applicable law.

8. Other Business. The Partners and their affiliates may engage in or possess an interest in other business ventures (unconnected with the Partnership) of every kind and description, independently or with others. The Partnership shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

9. Limited Liability. The debts, obligations, and liabilities of the Partnership, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Partnership and the General Partner. No Limited Partner shall have any liability (personal or otherwise) for any such debt, obligation, or liability of the Partnership solely by reason of acting in such capacity. For the avoidance of doubt, to the extent a Limited Partner is an Officer of the Partnership (regardless of title) and/or has authority to act on behalf of the General Partner of the Partnership, such Limited Partner shall remain a Limited Partner of the Partnership and shall not be subject to any liability (personal or otherwise) for any debt, obligation or liability of the Partnership.

10. Exculpation; Indemnification.

(a) *Exculpation*. Neither the General Partner nor any Covered Person (as defined below) shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts of omissions that do not constitute gross negligence, fraud, or willful misconduct. The General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its officers, directors, agents, trustees, or representatives, and the General Partner shall not be responsible for any misconduct or negligence on the part of any agent or representative appointed by the General Partner.

(b) *Indemnification*. To the fullest extent permitted by law, subject to Section 10(d) below, the Partnership shall indemnify each Covered Person for any and all losses, claims,

demands, costs, damages, liabilities (joint and several), expenses of any nature (including attorneys' fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which such Covered Person may be involved or threatened to be involved, as a party or otherwise, by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Partnership and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement. For the avoidance of doubt, the indemnification under this Section 10(b) shall apply even though at the time of such claim, demand, action, suit or proceeding such person is no longer a Covered Person (except as set forth in Section 10(c)(iii) below). Any indemnity under this Section 10(b) shall be provided out of and only to the extent of the Partnership's assets, and no Limited Partner shall have personal liability on account thereof. For the avoidance of doubt, any indemnification obligations of the Partnership under the Prior Agreement are null and void and are superseded in their entirety by this Section 10.

(c) *Covered Persons*. "***Covered Person***" means each of the following:

(i) the General Partner, and each member, partner, director, officer, and agent thereof,

(ii) each person who is or becomes an Officer of the Partnership on or after the date of this Agreement, and

(iii) each person who is or becomes an employee or agent of the Partnership on or after the date of this Agreement if the General Partner determines in its sole discretion that such employee or agent should be a Covered Person.

"Covered Person" shall *not* include any former officer, former partner, former director, former employee, or former agent of the Partnership or the General Partner (unless such Person is a "Covered Person" as defined in clause (i) or (ii) above on or after the date of this Agreement), *unless* the General Partner in its sole discretion determines that such Person should be a Covered Person.

(d) *Limitations on Indemnification*. Notwithstanding anything to the contrary herein, no indemnification shall be provided for any Covered Person (i) with respect to any action brought by such Covered Person as a plaintiff against the Partnership or another Covered Person, or (ii) for any loss, damage or claim arising from such Covered Person's fraud, gross negligence or willful misconduct (in each case as determined by a final and binding judgment of a court or arbitrator).

(e) *Advancement of Expenses*. Expenses reasonably incurred in defending any claim, action, suit or proceeding of the character described in Section 10(b), to the extent available, shall be advanced by the Partnership prior to the final disposition of such claim, action, suit or proceeding upon receipt of a written undertaking by or on behalf of the recipient to repay all such advances if it is ultimately determined by the General Partner that such Covered Person is not entitled to indemnification pursuant to Section 10(d).

(f) *Third Party Beneficiaries*. Covered Persons shall be deemed to be third-party beneficiaries solely for purposes of this Section 10. All rights of any Covered Person under this Section shall inure to the benefit of such Covered Person's heirs and assigns. Except as expressly provided in this Section 10(f), this Agreement is intended solely for the benefit of the parties hereto and, to the extent allowed by this Agreement, their respective permitted successors and assigns, and this Agreement is not for the benefit of, nor may any provision hereof be enforced by, any other person.

11. Fiscal Year. The fiscal year of the Partnership shall end on December 31st of each year.

12. Transfers of Limited Partner Interests. No Limited Partner may transfer, in whole or in part, whether by sale, exchange, lease, license, assignment, distribution, gift, transfer or other disposition or alienation in any way, its interest in the Partnership, without the prior consent of the General Partner, which consent may be given or withheld in the sole discretion of the General Partner and may include such terms and conditions as the General Partner shall deem appropriate in its sole discretion. In addition, it shall be a condition precedent to every transfer of all or any portion of a Limited Partner's interest permitted hereunder, the transferring Limited Partner shall demonstrate to the satisfaction of the General Partner that (i) the proposed transfer will not cause or result in a breach of any violation of law, including U.S. federal or state securities laws, and (ii) that the transfer would not adversely affect the classification of the Partnership as a partnership for U.S. federal tax purposes (including by causing the Partnership to be treated as a "publicly traded partnership" under Section 7704 of the Code), terminate it as a partnership under Code Section 708, or have a substantial adverse effect with respect to U.S. federal income taxes payable by the Partnership.

13. Dissolution. The Partnership shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (i) the consent of the General Partner; (ii) at any time there are no Limited Partners of the Partnership, unless the business of the Partnership is continued in a manner permitted by the Act; or (iii) the entry of a decree of judicial dissolution under Section 17-802 of the Act. Following the foregoing event, the General Partner shall proceed diligently to liquidate the assets of the Partnership in a manner consistent with commercially reasonable business practices. In the event of dissolution, the Partnership shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Partnership in an orderly manner), and the assets of the Partnership shall be applied in the manner, and in the order of priority, set forth in Section 17-804 of the Act. Liquidating distributions to the Partners shall be made in in accordance with their Percentage Interests.

14. Severability of Provisions. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

15. Counterparts. This Agreement may be executed in several counterparts and as so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties have not signed the same counterpart.

16. Facsimile Signature Page. This Agreement may be executed and delivered by the parties hereto by an executed signature page transmitted by facsimile, and any failure to deliver the originally executed signature page shall not affect the validity, legality or enforceability of this Agreement.

17. Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

18. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware (without regard to the conflicts of law principles), all rights and remedies being governed by said laws.

19. Consent to Jurisdiction. Each of the parties hereto consents and submits to the exclusive jurisdiction of the Bankruptcy Court for the Northern District of Texas, Dallas Division, for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement.

20. Amendments. No amendment of this Agreement shall be valid or binding unless such amendment is made with the written consent of the General Partner. Further, any amendment of this Agreement that reduces the Percentage Interest or economic rights of any Limited Partner in a manner that is disproportionate to other Limited Partners shall require the written consent of the affected Limited Partner. For the avoidance of doubt, amendment includes any merger, combination or other reorganization or any amendment of the Certificate that has the effect of changing or superseding the terms of this Agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date first set forth above.

GENERAL PARTNER:

[*NEW GP ENTITY*]

_____

By:
Its:

LIMITED PARTNER:

[CLAIMANT TRUST]

_____

By:
Its: Trustee

[Signature Page to Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.]

Schedule A

SCHEDULE OF PARTNERS

[Date], 2021

General Partner

Name	Address	Percentage Interest
[New GP Entity]	*[Insert Address]*	[1.00]%

Limited Partners

Name	Address	Percentage Interest
[Claimant Trust]	*[Insert Address]*	[99.00]%

Schedule B

SCHEDULE OF OFFICERS

[Date], 2021

Name	Officer Title
James P. Seery, Jr.	Chief Executive Officer
[Name]	*[Title]*
[Name]	*[Title]*

Exhibit I

REGULATORY ALLOCATIONS

(i) Items of income or gain (computed in accordance with Section 6(a), including the adjustments therein) for any taxable period shall be allocated to the Partners in the manner and to the minimum extent required by the "minimum gain chargeback" provisions of Treasury Regulation Section 1.704-2(f) and Treasury Regulation Section 1.704-2(i)(4).

(ii) All "nonrecourse deductions" (as defined in Treasury Regulation Section 1.704-2(b)(1)) of the Partnership for any year shall be allocated to the Partners in accordance with their respective Percentage Interests; provided, however, that nonrecourse deductions attributable to "partner nonrecourse debt" (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated to the Partners in accordance with the provisions of Treasury Regulation Section 1.704-2(i)(1).

(iii) Items of income or gain (computed in accordance with Section 6(a), including the adjustments therein) for any taxable period shall be allocated to the Partners in the manner and to the extent required by the "qualified income offset" provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(*d*).

(iv) In no event shall Loss of the Partnership be allocated to a Partner if such allocation would cause or increase a negative balance in such Partner's Adjusted Capital Account (determined for purposes of this Exhibit I only, by increasing the Partner's Adjusted Capital Account balance by the amount the Partner is obligated to restore to the Partnership pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(*c*) and decreasing it by the amounts specified in Treasury Regulation Sections 1.704-1(b)(2)(ii)(*d*)(*4*), (*5*) and (*6*)).

(v) For tax purposes, except as otherwise provided herein or as required by Code Section 704, all items of income, gain, loss, deduction or credit shall be allocated to the Partners in the same manner as are Income and Loss; provided, however, that if the Book Value of any property of the Partnership differs from its adjusted basis for tax purposes, then items of income, gain, loss, deduction or credit related to such property for tax purposes shall be allocated among the Partners so as to take account of the variation between the adjusted basis of the property for tax purposes and its Book Value in the manner provided for under Code Section 704(c).

(vi) For purposes hereof, the following terms have the meanings set forth below:

"***Adjusted Capital Account***" means, for each Partner, such Partner's capital account balance increased by such Partner's share of "minimum gain" and of "partner nonrecourse debt minimum gain" (as determined pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), respectively).

"***Book Value***" means, with respect to any asset, the asset's adjusted basis for U.S. federal income tax purposes; provided, however, that (i) the initial Book Value of any asset contributed to the Partnership shall be adjusted to equal its fair market value as determined by the General Partner at the time of its contribution, and (ii) the Book Values of all assets held by the Partnership shall be

adjusted to equal their respective fair market values as determined by the General Partner (taking Code Section 7701(g) into account) upon an election by the Partnership to revalue its property in accordance with Regulation Section 1.704-1(b)(2)(iv)(*f*) and upon liquidation of the Partnership. The Book Value of any asset whose Book Value was adjusted pursuant to the preceding sentence shall thereafter be adjusted in accordance with the provisions of Regulation Section 1.704-1(b)(2)(iv)(*g*).

EXHIBIT AA

FIFTH AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

HIGHLAND CAPITAL MANAGEMENT, L.P.

(A Delaware Limited Partnership)

[_____], ~~2020~~2021

This FIFTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP (this "***Agreement***") of Highland Capital Management, L.P., (the "***Partnership***"), dated as of [_____], ~~2020~~2021 and entered into by and among the [*New GP Entity*] as general partner of the Partnership (the "***General Partner***") and the limited partner of the Partnership as set forth on Schedule A hereto (the "***Limited Partner***"), amends and restates in its entirety the Fourth Amended and Restated Agreement of Limited Partnership of the Partnership dated as of December 24, 2015 (as amended to date, the "***Prior Agreement***"), by and among Strand Advisors, Inc. (the "***Prior General Partner***") and the former limited partners of the Partnership who were limited partners of the Partnership (the "***Prior Limited Partners***"). The General Partner and Limited Partners are collectively referred to as the "***Partners***."

WHEREAS, the Prior Agreement, as amended pursuant to that certain amendment dated [_____], ~~2020,~~2021, provides for the reconstitution and continuation of the Partnership if new limited partners are admitted to the partnership within 90 days after dissolution thereof and such new limited partners consent to the continuation of the Partnership.

WHEREAS, the Partnership was reorganized pursuant to the Plan of Reorganization of Highland Capital Management, L.P., that was approved by the United States Bankruptcy Court for Northern District of Texas, Dallas Division, on [_____] (the "***Plan***").

WHEREAS, pursuant to the Plan the limited partnership interests of the Prior Limited Partners and the Prior General Partner were canceled on [_____] and new limited partnership interests were issued to the Limited Partner and the General Partner under the Prior Agreement.

WHEREAS, the General Partner and the Limited Partner wish to ratify the admission to the Partnership of the General Partner and the Limited Partner and to amend and restate the terms of the Partnership as set forth in this Agreement.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein, the undersigned hereby agree as follows:

1. Continuation.

(a) Subject to the provisions of this Agreement, the Partners hereby continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Revised Uniform Limited Partnership Act (6 *Del.C.* §17-101, *et seq.)*, as amended from time to time (the "***Act***"). This Agreement amends, restates, and supersedes the Prior Agreement and all other prior agreements or understandings with respect to the matters covered herein.

(b) The Limited Partner, being the sole limited partner of the Partnership, hereby (i) consents to the continuation of the Partnership and (ii) ratifies and approves the appointment of the General Partner as general partner of the Partnership.

2. Organizational Matters.

(a) *Name; Certificate*. The name of the Partnership is Highland Capital Management, L.P. The Partnership was organized as a limited partnership pursuant to the Act and

filed a Certificate of Limited Partnership (the "***Certificate***") with the Secretary of State of the State of Delaware. Any person authorized to act on behalf of the General Partner or the Partnership may, subject to Section 19 below, cause the Partnership to file such other certificates and documents as may be necessary or appropriate to comply with the Act and any other applicable requirements for the operation of a limited partnership in accordance with the laws of the State of Delaware and any other jurisdictions in which the Partnership shall conduct business, and to maintain such filings for so long as the Partnership conducts business therein.

(b) *Offices*. The name of the resident agent for service of process for the Partnership and the address of the registered office of the Partnership in the State of Delaware is Corporation Services Company, 2023 Centre Road, Wilmington Delaware 19805-1297. The General Partner may establish places of business of the Partnership within and without the State of Delaware, as and when required by the Partnership's business and in furtherance of its purposes set forth herein, and may appoint (or cause the appointment of) agents for service of process in all jurisdictions in which the Partnership shall conduct business. The General Partner may from time to time in its sole discretion change the Partnership's places of business, resident agent for service of process, and/or the location of its registered office in Delaware.

3. Purpose; Powers. The Partnership is formed for the purpose of engaging in any lawful act or activity for which limited partnerships may be formed under the Act. Without limiting the foregoing, the general character and purposes of the business of the Partnership are to (a) engage in the business, directly and/or through one or more subsidiaries, of liquidating assets of, and performing investment management and advisory services for, pooled investment vehicles, funds, investment holdings, accounts, and interests therein; and (b) engage in any lawful activities (including, subject to the other provisions of this Agreement, the borrowing of money and the issuance of guarantees of indebtedness of others) directly or indirectly related or incidental thereto and in which a Delaware limited partnership may lawfully engage. The Partnership shall have and exercise all of the powers and rights conferred upon limited partnerships formed pursuant to the Act.

4. Management.

(a) *Authority of the General Partner*. The business and affairs of the Partnership shall be managed exclusively by and under the direction of the General Partner, which shall have the right, power and authority to exercise all of the powers of the Partnership except as otherwise provided by law or this Agreement. Decisions or actions made or approved by the General Partner in accordance with this Agreement shall constitute decisions or actions by the Partnership and shall be binding upon the Partnership and each Limited Partner of the Partnership. The General Partner may not be removed or replaced by the Limited Partners. In the event of the withdrawal, resignation or dissolution of the General Partner, a new General Partner shall be designated in writing by a majority in interest of the Limited Partners, who shall provide written notice to the remaining Limited Partners of such designation.

(b) *Delegation of Powers; Officers*. Notwithstanding anything to the contrary herein, the General Partner may delegate any or all or any portion of its rights, powers, authority, duties and responsibilities with respect to the management of the Partnership to such officers of the Partnership with such titles as the General Partner may determine ("***Officers***"). The General Partner may authorize any such Officers to sign agreements, contracts, instruments, or other documents in

the name of and on behalf of the Partnership, and such authority may be general or limited to specific instances. The power and authority of any Officer appointed by the General Partner under this Section 4(b) shall not exceed the power and authority possessed by the General Partner under this Agreement. The Officers shall hold office until their successors are duly appointed or their earlier death, resignation, or removal. Any Officer so appointed may be removed at any time, with or without cause, by the written consent of the General Partner. Any Officer may resign from his or her office upon prior written notice to the Partnership. If any office shall become vacant, a replacement Officer may be appointed by the written consent of the General Partner. Two or more offices may be held by the same person. The initial Officers of the Partnership are set forth on Schedule B.

(c) *Limited Partners*. No Limited Partner shall have any right to participate in the management of the Partnership as a Limited Partner. Moreover, no Limited Partner shall have any voting rights except with respect to consent to amendments as set forth in Section 19 below, or as otherwise required by the Act.

(d) *Transactions with Affiliates*. The General Partner or any person controlling, controlled by, or under common control with the General Partner (an "***Affiliate***") may engage in transactions with the Partnership from time to time, including without limitation for lending to or borrowing from the Partnership, engaging in the provision of services to the Partnership, or otherwise engaging in business transactions with the Partnership, provided that such transactions are entered into in good faith. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Act or any other applicable law, rule, or regulation.

5. Partners.

(a) *General*. The name, address, and percentage interest ownership interest of the General Partner and each Limited Partner in the Partnership (the "***Percentage Interest***") are set forth on Schedule A hereto. Additional Limited Partners may be admitted to the Partnership, and Schedule A may be amended, only with the written consent of the General Partner (provided, that failure to update Schedule A shall not itself be conclusive of whether consent of the General Partner has been obtained). No Limited Partner shall have the right or power to resign, withdraw or retire from the Partnership, except upon (i) the occurrence of any event described in Section 17-801 of the Act (in which case the Limited Partner(s) with respect to which such event has occurred shall, automatically and with no further action necessary by any person, cease to be a Limited Partner, and shall be deemed to have solely the interest of an assignee (within the meaning of Section 17 of the Act) with respect to such Limited Partner's Limited Partnership Interest), or (ii) with the consent of the General Partner. For the avoidance of doubt, no action may be taken to reduce, directly or indirectly, the Percentage Interest of any Partner without the written consent of such Partner.

(b) *Capital Contributions*. The Partners may, in their sole discretion, make additional capital contribution to the Partnership if requested by the General Partner. All capital,

whenever contributed, shall be subject in all respects to the risks of the business and subordinate in right of payment to the claims of present or future creditors of the Partnership in accordance with this Agreement.

(c) *Capital Accounts*. The Partnership shall maintain a capital account for each Partner in accordance with Section 704(b) and 704(c) of the Internal Revenue Code of 1986, as amended (the "***Code***"), and the principles of the Treasury Regulations promulgated thereunder.

(d) *Tax Representative*. The General Partner shall serve as the "tax representative" to be the Partnership's designated representative within the meaning of Section 6223 of the Code with sole authority to act on behalf of the Partnership for purposes of subchapter C of Chapter 63 of the Code and any comparable provisions of state or local income tax laws (the "***Tax Representative***"). The Tax Representative is specifically directed and authorized to take whatever steps it deems necessary or desirable to perfect such designation, including, without limitation, filing any forms or documents with the Internal Revenue Service, properly designating a particular individual to act on its behalf of the Tax Representative and taking such other action as may from time to time be required under Treasury Regulations. The Tax Representative is hereby authorized to and shall perform all duties of a "tax representative" and shall serve as Tax Representative until its resignation or until the designation of its successor, whichever occurs sooner.

6. Allocation of Income and Losses.

(a) *Definitions*. For purposes of this Agreement, "***Income***" and "***Loss***" of the Partnership shall mean the taxable income and loss, respectively, of the Partnership computed with the adjustments set forth in Treasury Regulation under Code Section 704(b) including (A) adjustments pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(g), (B) the inclusion of the amount of any tax-exempt income as an item of income, (C) the inclusion of the amount of any nondeductible, noncapitalizable expense as an item of deduction and (D) the inclusion of the amount of unrealized gain or unrealized loss with respect to an asset of the Partnership as an item of income or gain (as applicable) upon distribution of such asset in kind or as required by Treasury Regulation Section 1.704-1(b)(2)(iv)(f).

(b) *Allocations Generally*. The Income and Loss of the Partnership for each fiscal year or other applicable period shall be allocated to and among the Partners in proportion to their respective Percentage Interests.

(c) *Adjustments*. Notwithstanding Section 6(b) (but subject to Section 6(c)),

(i) Items of income or gain for any taxable period shall be allocated to the Partner in the manner and to the extent required by the "qualified income offset" provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d); and

(ii) In no event shall any Loss or item of deduction be allocated to a Partner if such allocation would cause or increase a negative balance in such Partner's capital account determined by increasing the Partner's capital account balance by any amount the Partner may be

obligated to restore to the Partnership pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) and by decreasing such capital account balance by the amounts specified in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6)).

(d) *Nonrecourse Debt*. If at any time the Partnership incurs any "nonrecourse debt" (*i.e.,* debt that is treated as nonrecourse for purposes of Treasury Regulation Section 1.1001-2), the following provisions will apply notwithstanding anything to the contrary expressed elsewhere in this Agreement:

(i) "Nonrecourse deductions" (as defined in Treasury Regulation Sections 1.704-2(b) and (c)) shall be allocated to the Partners in proportion to their respective Percentage Interests.

(ii) All other allocations relating to such nonrecourse debt shall be allocated in accordance with Treasury Regulation Section 1.704-2; and

(iii) For purposes of Sections 6(b) and 6(c), each Partner's capital account balance shall be increased by the Partner's share of minimum gain and of partner nonrecourse debt minimum gain (as determined pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), respectively).

(e) *Deductions, Credits*. Except as otherwise provided herein or as required by Code Section 704, for federal income tax purposes, all items of income, gain, loss, deduction or credit shall be allocated to the Partners in the same manner as are Income and Loss.

(f) *Regulatory Allocations*. Notwithstanding the provisions of Sections 6(a)-(e) above, allocations of Income and Loss shall be made in the order of priority set forth in Exhibit I to this Agreement.

(g) *Withholding*. To the extent that the Partnership is required to withhold and pay over any amounts to any Governmental Authority with respect to Distributions or allocations to any Limited Partner, the amount withheld shall be treated as a Distribution to that Limited Partner pursuant to Sections 4.02, 4.03 or 4.05, as applicable. In the event of any claimed over-withholding, Limited Partners shall be limited to an action against the applicable jurisdiction and not against the Partnership (unless the Partnership has not yet paid such amounts over to such jurisdiction). If any amount required to be withheld was not, in fact, actually withheld from one or more Distributions and the Partnership shall have been required to pay such amount to such Governmental Entity, the Partnership may, at its option, (i) require the affected Limited Partner to reimburse the Partnership for such withholding or (ii) reduce any subsequent Distributions to such Limited Partner by the amount of such withholding, in each case plus interest. Each Limited Partner agrees to furnish the Partnership with such documentation as shall reasonably be requested by the Partnership to assist it in determining the extent of, and in fulfilling, its withholding obligations. Each Limited Partner will indemnify the General Partner and the Partnership against any losses and liabilities (including

interest and penalties) related to any withholding obligations with respect to allocations or Distributions made to such Limited Partner by the Partnership.

(h) *Consistent Tax Reporting*. Except as otherwise unanimously agreed to in writing by the Limited Partners, for U.S. federal, state and local income tax purposes, the Limited Partners agree, as a condition to their admission to the Partnership, to report all taxable income, loss and items thereof (including the character and timing of such items) in a manner consistent with the manner in which such taxable income, loss or item thereof is reported by the Partnership on its tax returns and the Schedules K-1 (or any successor form) furnished by the Partnership to the Limited Partners.

7. Distributions. Distributions shall be made from the undistributed profit and loss account to the Partners at the times and in the aggregate amounts determined by the General Partner in its sole discretion; provided, that distributions shall be made to the Partners in accordance with their Percentage Interests. Distributions may be in cash or in kind as determined by the General Partner in its sole discretion. Notwithstanding any provision to the contrary contained in this Agreement, the Partnership shall not make a distribution to the Limited Partners on account of its interest in the Partnership if such distribution would violate Section 17-607 of the Act or other applicable law.

8. Other Business. The Partners and their affiliates may engage in or possess an interest in other business ventures (unconnected with the Partnership) of every kind and description, independently or with others. The Partnership shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

9. Limited Liability. The debts, obligations, and liabilities of the Partnership, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Partnership and the General Partner. No Limited Partner shall have any liability (personal or otherwise) for any such debt, obligation, or liability of the Partnership solely by reason of acting in such capacity. For the avoidance of doubt, to the extent a Limited Partner is an Officer of the Partnership (regardless of title) and/or has authority to act on behalf of the General Partner of the Partnership, such Limited Partner shall remain a Limited Partner of the Partnership and shall not be subject to any liability (personal or otherwise) for any debt, obligation or liability of the Partnership.

10. Exculpation; Indemnification.

(a) *Exculpation*. Neither the General Partner nor any Covered Person (as defined below) shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts of omissions that do not constitute gross negligence, fraud, or willful misconduct. The General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its officers, directors, agents, trustees, or representatives, and the General Partner shall not be responsible for any misconduct or negligence on the part of any agent or representative appointed by the General Partner.

(b) ~~(a) *General*~~*Indemnification*. To the fullest extent permitted by law, subject to Section 10(~~c~~d) below, the Partnership shall indemnify each Covered Person ~~(as defined below)~~ for any and all losses, claims, demands, costs, damages, liabilities (joint and several), expenses of any

nature (including attorneys' fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which such Covered Person may be involved or threatened to be involved, as a party or otherwise, by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Partnership and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement. For the avoidance of doubt, the indemnification under this Section 10(~~a~~b) shall apply even though at the time of such claim, demand, action, suit or proceeding such person is no longer a Covered Person (except as set forth in Section 10(c)(iii) below). Any indemnity under this Section 10(~~a~~b) shall be provided out of and only to the extent of the Partnership's assets, and no Limited Partner shall have personal liability on account thereof. For the avoidance of doubt, any indemnification obligations of the Partnership under the Prior Agreement are null and void and are superseded in their entirety by this Section 10.

(c) ~~(b)~~ *Covered Persons*. "***Covered Person***" means each of the following:

(i) the General Partner, and each member, partner, director, officer, and agent thereof,

(ii) each person who is or becomes an Officer of the Partnership on or after the date ~~hereof~~of this Agreement, and

(iii) each person who is or becomes an employee or agent of the Partnership on or after the date of this Agreement if the General Partner determines in its sole discretion that such employee or agent should be a Covered Person.

~~(iii)~~ "Covered Person" shall *not* include any ~~other current or~~ former officer, former partner, former director, former employee, or former agent ~~for~~of the Partnership or the General Partner~~, in each case to the extent determined by~~ (unless such Person is a "Covered Person" as defined in clause (i) or (ii) above on or after the date of this Agreement), *unless* the General Partner in its sole discretion determines that such Person should be a Covered Person.

(d) ~~(c)~~ *Limitations on Indemnification*. Notwithstanding anything to the contrary herein, no indemnification shall be provided for any Covered Person (i) with respect to any action brought by such Covered Person as a plaintiff against the Partnership or another Covered Person, or (ii) for any loss, damage or claim arising from such Covered Person's fraud, gross negligence or willful misconduct (in each case as determined by a final and binding judgment of a court or arbitrator).

(e) ~~(d)~~ *Advancement of Expenses*. Expenses reasonably incurred in defending any claim, action, suit or proceeding of the character described in Section 10(~~a~~b), to the extent available, shall be advanced by the Partnership prior to the final disposition of such claim, action, suit or proceeding upon receipt of a written undertaking by or on behalf of the recipient to repay all such advances if it is ultimately determined by the General Partner that such Covered Person is not entitled to indemnification pursuant to Section 10(~~c~~d).

(f) ~~(e)~~ *Third Party Beneficiaries*. Covered Persons shall be deemed to be third-party beneficiaries solely for purposes of this Section 10. All rights of any Covered Person under this Section shall inure to the benefit of such Covered Person's heirs and assigns. Except as expressly provided in this Section 10(f), this Agreement is intended solely for the benefit of the parties hereto and, to the extent allowed by this Agreement, their respective permitted successors and assigns, and this Agreement is not for the benefit of, nor may any provision hereof be enforced by, any other person.

11. Fiscal Year. The fiscal year of the Partnership shall end on December 31st of each year.

12. Transfers of Limited Partner Interests. No Limited Partner may transfer, in whole or in part, whether by sale, exchange, lease, license, assignment, distribution, gift, transfer or other disposition or alienation in any way, its interest in the Partnership, without the prior consent of the General Partner, which consent may be given or withheld in the sole discretion of the General Partner and may include such terms and conditions as the General Partner shall deem appropriate in its sole discretion. In addition, it shall be a condition precedent to every transfer of all or any portion of a Limited Partner's interest permitted hereunder, the transferring Limited Partner shall demonstrate to the satisfaction of the General Partner that (i) the proposed transfer will not cause or result in a breach of any violation of law, including U.S. federal or state securities laws, and (ii) that the transfer would not adversely affect the classification of the Partnership as a partnership for U.S. federal tax purposes (including by causing the Partnership to be treated as a "publicly traded partnership" under Section 7704 of the Code), terminate it as a partnership under Code Section 708, or have a substantial adverse effect with respect to U.S. federal income taxes payable by the Partnership.

13. Dissolution. The Partnership shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (i) the consent of the General Partner; (ii) at any time there are no Limited Partners of the Partnership, unless the business of the Partnership is continued in a manner permitted by the Act; or (iii) the entry of a decree of judicial dissolution under Section 17-802 of the Act. Following the foregoing event, the General Partner shall proceed diligently to liquidate the assets of the Partnership in a manner consistent with commercially reasonable business practices. In the event of dissolution, the Partnership shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Partnership in an orderly manner), and the assets of the Partnership shall be applied in the manner, and in the order of priority, set forth in Section 17-804 of the Act. Liquidating distributions to the Partners shall be made in in accordance with their Percentage Interests.

14. Severability of Provisions. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

15. Counterparts. This Agreement may be executed in several counterparts and as so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties have not signed the same counterpart.

16. Facsimile Signature Page. This Agreement may be executed and delivered by the parties hereto by an executed signature page transmitted by facsimile, and any failure to deliver the originally executed signature page shall not affect the validity, legality or enforceability of this Agreement.

17. Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

18. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware (without regard to the conflicts of law principles), all rights and remedies being governed by said laws.

19. Consent to Jurisdiction. Each of the parties hereto consents and submits to the exclusive jurisdiction of the Bankruptcy Court for the Northern District of Texas, Dallas Division, for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement.

20. ~~19.~~ Amendments. No amendment of this Agreement shall be valid or binding unless such amendment is made with the written consent of the General Partner. Further, any amendment of this Agreement that reduces the Percentage Interest or economic rights of any Limited Partner in a manner that is disproportionate to other Limited Partners shall require the written consent of the affected Limited Partner. For the avoidance of doubt, amendment includes any merger, combination or other reorganization or any amendment of the Certificate that has the effect of changing or superseding the terms of this Agreement.

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IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date first set forth above.

GENERAL PARTNER:

[*NEW GP ENTITY*]

_____

By:
Its:

LIMITED PARTNER:

[CLAIMANT TRUST]

_____

By:
Its: Trustee

[Signature Page to Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.]

Schedule A

SCHEDULE OF PARTNERS

[Date], ~~2020~~2021

General Partner

Name	Address	Percentage Interest
[New GP Entity]	*[Insert Address]*	[1.00]%

Limited Partners

Name	Address	Percentage Interest
[Claimant Trust]	*[Insert Address]*	[99.00]%

Schedule B

SCHEDULE OF OFFICERS

[Date], ~~2020~~2021

Name	Officer Title
~~[~~James P. Seery~~]~~, Jr.	~~[~~Chief Executive Officer~~]~~
[Name]	*[Title]*
[Name]	*[Title]*

Exhibit I

REGULATORY ALLOCATIONS

(i) Items of income or gain (computed in accordance with Section 6(a), including the adjustments therein) for any taxable period shall be allocated to the Partners in the manner and to the minimum extent required by the "minimum gain chargeback" provisions of Treasury Regulation Section 1.704-2(f) and Treasury Regulation Section 1.704-2(i)(4).

(ii) All "nonrecourse deductions" (as defined in Treasury Regulation Section 1.704-2(b)(1)) of the Partnership for any year shall be allocated to the Partners in accordance with their respective Percentage Interests; provided, however, that nonrecourse deductions attributable to "partner nonrecourse debt" (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated to the Partners in accordance with the provisions of Treasury Regulation Section 1.704-2(i)(1).

(iii) Items of income or gain (computed in accordance with Section 6(a), including the adjustments therein) for any taxable period shall be allocated to the Partners in the manner and to the extent required by the "qualified income offset" provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(*d*).

(iv) In no event shall Loss of the Partnership be allocated to a Partner if such allocation would cause or increase a negative balance in such Partner's Adjusted Capital Account (determined for purposes of this Exhibit I only, by increasing the Partner's Adjusted Capital Account balance by the amount the Partner is obligated to restore to the Partnership pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(*c*) and decreasing it by the amounts specified in Treasury Regulation Sections 1.704-1(b)(2)(ii)(*d*)(*4*), (*5*) and (*6*)).

(v) For tax purposes, except as otherwise provided herein or as required by Code Section 704, all items of income, gain, loss, deduction or credit shall be allocated to the Partners in the same manner as are Income and Loss; provided, however, that if the Book Value of any property of the Partnership differs from its adjusted basis for tax purposes, then items of income, gain, loss, deduction or credit related to such property for tax purposes shall be allocated among the Partners so as to take account of the variation between the adjusted basis of the property for tax purposes and its Book Value in the manner provided for under Code Section 704(c).

(vi) For purposes hereof, the following terms have the meanings set forth below:

"***Adjusted Capital Account***" means, for each Partner, such Partner's capital account balance increased by such Partner's share of "minimum gain" and of "partner nonrecourse debt minimum gain" (as determined pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), respectively).

"***Book Value***" means, with respect to any asset, the asset's adjusted basis for U.S. federal income tax purposes; provided, however, that (i) the initial Book Value of any asset contributed to the Partnership shall be adjusted to equal its fair market value as determined by the General Partner

at the time of its contribution, and (ii) the Book Values of all assets held by the Partnership shall be adjusted to equal their respective fair market values as determined by the General Partner (taking Code Section 7701(g) into account) upon an election by the Partnership to revalue its property in accordance with Regulation Section 1.704-1(b)(2)(iv)(*f*) and upon liquidation of the Partnership. The Book Value of any asset whose Book Value was adjusted pursuant to the preceding sentence shall thereafter be adjusted in accordance with the provisions of Regulation Section 1.704-1(b)(2)(iv)(*g*).

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Rendering set	Standard

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Split/Merged cell	
Padding cell	

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Total changes	64

EXHIBIT BB

SENIOR EMPLOYEE STIPULATION AND TOLLING AGREEMENT EXTENDING STATUTES OF LIMITATION

This stipulation (the "Stipulation") is entered into as of January 20, 2021, by and between Thomas Surgent (the "Senior Employee") and Highland Capital Management, L.P. (the "Debtor"). The Debtor and the Senior Employee are individually referred to as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, on October 16, 2019, the Debtor filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the "Chapter 11 Case"):

WHEREAS, on October 29, 2019, the U.S. Trustee appointed the official committee of unsecured creditors (the "Committee") in the Chapter 11 Case;

WHEREAS, On November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be further amended or supplemented, the "Plan")[1] [Docket No. 1472]. A hearing to consider confirmation of the Plan is currently scheduled for January 26, 2021.

WHEREAS, prior to and during the course of the Chapter 11 Case, the Senior Employee was employed by the Debtor as its Chief Compliance Officer and in such role provided services to the Debtor;

WHEREAS, (i) certain amounts that were allegedly due to be paid to the Senior Employee for the partial year of 2018 in installments due on February 28, 2020 and August 31, 2020; and (ii) certain amounts that were due to the Senior Employee in respect of the 2017 Deferred Award that vested after three years on May 31, 2020 ((i) and (ii), collectively, the "Bonus Amount") were not paid because of objections raised by the Committee;

WHEREAS, as of the date hereof, the total Bonus Amount through and including the date hereof is $[redacted]

WHEREAS, on May 26, 2020, the Senior Employee filed a proof of claim [Claim No. 183] (the "Proof of Claim"), which included a claim for the Bonus Amount;

WHEREAS, as set forth in the Proof of Claim, the Senior Employee may have other Claims against the Debtor in addition to the Bonus Amount (the "Other Employee

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Claims" and together with the Bonus Amount, the "Senior Employee Claims")[2]:

WHEREAS, the Committee has alleged that certain causes of action against the Senior Employee may exist, which causes of action have been or will be retained pursuant to the Plan (the "Causes of Action"):

WHEREAS, the Plan provides for the release of certain of the Causes of Action (the "Released Causes of Action") against the Senior Employee as set forth in therein (the "Employee Release"):

WHEREAS, both the Employee Release and the payment of the Bonus Amount (as reduced pursuant to this Agreement) are conditioned on the Senior Employee executing this Stipulation on or prior to the Confirmation Date;

WHEREAS, the Plan provides for the creation of the Claimant Trust and Litigation Sub- Trust and the appointment of the Claimant Trust Oversight Committee (the "CTOC") to oversee such entities;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, each of the Parties stipulates and agrees as follows:

1. Covenant Not to Sue. In consideration of the Senior Employee's agreement to toll the statutes of limitation with respect to any Causes of Action that can be asserted against him and to waive a portion of the Bonus Amount which would otherwise be part of the Senior Employee Claim, the Debtor and any of its successors or assigns, including the Claimant Trust or the Litigation Sub-Trust (collectively, the "HCMLP Parties"), agree not to initiate or commence any lawsuit, action or proceeding for the purpose of prosecuting any Released Causes of Action against the Senior Employee from the date of this Stipulation until the earlier of (a) thirty calendar days after the Notice Date and (b) the Dissolution Date (each as defined below) (such date, the "Termination Date"). This Stipulation shall expire upon the Termination Date and shall thereafter be of no further force and effect; *provided, however,* that the termination of this Stipulation shall not affect the treatment of the Bonus Amount set forth in Section 5 hereof or in the Plan.

2. Non-Compliance: Vesting.

a. As set forth in the Plan, the Senior Employee acknowledges and agrees that the Employee Release will be deemed null and void and of no force and effect (1) if there is more than one member of the CTOC who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant

[2] For the avoidance of doubt, the "Other Employee Claims" shall include all prepetition and postpetition Claims of the Senior Employee, including paid time off claims, claims (if applicable) for severance amounts under applicable employment agreements, and administrative claims (if applicable), but shall not include the Bonus Amount.

Trustee, determines (in each case after discussing with the full CTOC) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

(1) sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

(2) has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets,

(3) has violated the confidentiality provisions of Section 4 below, or

(4) (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (i) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (ii) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing. If such determination under this Section 2a is made, the Claimant Trustee will deliver a notice of non-compliance with the Plan (the "Notice") to the Senior Employee. Such Notice will be effective when deemed delivered pursuant to Section 8.h hereof (the "Notice Date").

b. Notwithstanding anything herein to the contrary, Employee Release will vest and all Released Causes of Action that may or could be brought against the Senior Employee will be indefeasibly released solely to the extent set forth in Article IX.D of the Plan so long as the Notice Date does not occur on or before the date that the Claimant Trust is dissolved (such date, the "Dissolution Date").

c. Notwithstanding anything to the contrary in this Stipulation or any other document, Senior Employee expressly reserves the right to take all actions necessary to pursue enforcement and payment of the Other Employee Claims, and such actions shall not violate the terms of this Stipulation; provided, that, for the avoidance of doubt, nothing in this Stipulation shall prejudice the rights of the Debtor, or any of the Debtor's successor in interests under the Plan, to object to or otherwise challenge any Other Employee Claims or limit the Senior Employee's obligations under Section 8 hereof. Additionally, this Agreement does not affect or impair Senior Employee's rights, if any, to seek indemnification from any party, including, without limitation, the Debtor, any HCMLP Parties, or any other affiliates thereof nor does it affect or impair the right of the Debtor, or any of the Debtor's successor in interests under the Plan, to challenge such request.

3. Tolling of Statutes of Limitation. In consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that the statute of limitations applicable to any Cause of Action is hereby tolled as of, and

extended from, the date of this Stipulation through and including the Termination Date (the "Tolling Period"). The Tolling Period shall be excluded from any calculation of any statute of limitations period applicable to any Cause of Action that may be brought by the HCMLP Parties against the Senior Employee. The Senior Employee acknowledges that he will be estopped from arguing that this Stipulation is ineffective to extend the time within which the HCMLP Parties must commence an action to pursue any Cause of Action.

4. Confidentiality. In further consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that, in addition to existing obligations to maintain all business sensitive information concerning the HCMLP Parties in strictest confidence, each Senior Employee further agrees to keep all discussions, information and observations including, but not limited to, attorney-client privileged or work product information (collectively "Confidential Information") relating to the activities or planned activities of the HCMLP Parties strictly confidential. Each Senior Employee covenants and represents that it will not discuss such Confidential Information with anyone, other than the Senior Employee's personal attorney, the Claimant Trustee, or its respective representatives.

5. Bonus Amount.

a. The Senior Employee has agreed to forfeit a percentage of his Bonus Amount in consideration for the Employee Release and acknowledges that such agreement is an integral part of this Stipulation. The Senior Employee hereby agrees that (i) the Bonus Amount will be treated as an Allowed Class 7 (Convenience Claim) under the Plan and, to the extent required, will reduce his Bonus Amount as required to qualify for such treatment, (ii) the Senior Employee will receive the treatment provided to other Allowed Class 7 (Convenience Claims), (iii) the Allowed Class 7 distribution on the Bonus Amount will be further reduced by 5% (the "Reduced Amount"), and (iv) the Reduced Amount will be forever waived and released. Except as set forth herein, nothing herein will prejudice or otherwise impact any Other Employee Claim, or prevent the Senior Employee from prosecuting, pursuing, or enforcing any Other Employee Claim.

b. For the avoidance of doubt, although the Employee Release can be nullified as set forth in Section 2, any such nullification will have no effect on the treatment of the Senior Employee's Bonus Amount pursuant to this Section 5.

6. Other Employee Claims. The Parties acknowledge and agree that the Senior Employee is not entitled to make the Convenience Class Election with respect to the Other Employee Claims.

7. Effective Date. The Parties acknowledge and agree that this Stipulation and the Parties' obligations hereunder are conditioned in all respects on the approval of the Plan by the Bankruptcy Court and the occurrence of the Effective Date of the Plan. If, for any reason, the Plan is not approved by the Bankruptcy Court or the Effective Date does not occur, this Stipulation will be null and void and of no force and effect.

8. Plan Support. The Senior Employee agrees that he will use commercially reasonable efforts to assist the Debtor in confirmation of the Plan, including, without limitation, filing a notice of such Senior Employee's withdrawal from the *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669], and vote, if applicable, the Bonus Amount, the Other Employee Claims, and any other Claims in favor of the Plan.

9. Miscellaneous.

a. Counterparts. This Stipulation may be signed in counterparts and such signatures may be delivered by facsimile or other electronic means.

b. Binding Effect. This Stipulation shall inure to the benefit of, and be binding upon, any and all successors-in-interests, assigns, and legal representatives, of any Party.

c. Authority. Each Party to this Stipulation and each person executing this document on behalf of any Party to this Stipulation warrants and represents that he, she, or it has the power and authority to execute, deliver and perform its obligations under this Stipulation.

d. Entire Agreement. This Stipulation sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Stipulation may only be amended by an agreement in writing signed by the Parties.

e. No Waiver and Reservation of Rights. Except as otherwise provided herein, nothing in this Stipulation shall be, or deemed to be, a waiver of any rights, remedies, or privileges of any of the Parties. Except as otherwise provided herein, this Stipulation is without prejudice to any Party's rights, privileges and remedies under applicable law, whether at law or in equity, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

f. No Admission of Liability. The Parties acknowledge that there is a bona fide dispute with respect to the Causes of Action. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Senior Employee and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Senior Employee.

g. No Waiver If Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

h. Notice. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered by email, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address

as may be subsequently specified in writing by any Party and delivered to all other Parties pursuant to this Section:

Senior Employee

Thomas Surgent
[redacted]

With a copy to:
Attorneys for Senior Employee

M. Michelle Hartmann
Baker McKenzie
1900 N. Pearl Street
Suite 1500
Dallas, Texas 75201
Email: michelle.hartmann@bakermckenzie.com

HCMLP

Highland Capital Management, L.P
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
Telephone No.: (631) 804-2049
Email: jpseeryjr@gmail.com

With a copy to:

Attorneys for HCMLP

John A. Morris
Pachulski Stang Ziehl & Jones LLP
780 Third Avenue
34th Floor
New York, New York 10017-2024
Telephone No.: (212) 561-7760
Email: jmorris@pszjlaw.com

i. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Stipulation; (b) executed this Stipulation upon the advice of such counsel; (c) read this Stipulation, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Stipulation and all the terms and conditions contained herein explained by independent counsel, who has answered

any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

j. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

k. Governing Law: Venue. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the jurisdiction of the Bankruptcy Court with respect to any disputes arising from or out of this Agreement.

[Remainder of Page Blank]

IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: _____
Its: _____

SENIOR EMPLOYEE

By: _____
Name: Thomas Surgent
Its: CCO

EXHIBIT CC

SENIOR EMPLOYEE STIPULATION AND TOLLING AGREEMENT EXTENDING STATUTES OF LIMITATION

This stipulation (the "Stipulation") is entered into as of January 20, 2021, by and between Frank Waterhouse (the "Senior Employee") and Highland Capital Management, L.P. (the "Debtor"). The Debtor and the Senior Employee are individually referred to as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, on October 16, 2019, the Debtor filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the "Chapter 11 Case"):

WHEREAS, on October 29, 2019, the U.S. Trustee appointed the official committee of unsecured creditors (the "Committee") in the Chapter 11 Case;

WHEREAS, On November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be further amended or supplemented, the "Plan")[1] [Docket No. 1472]. A hearing to consider confirmation of the Plan is currently scheduled for January 26, 2021.

WHEREAS, prior to and during the course of the Chapter 11 Case, the Senior Employee was employed by the Debtor as its Chief Financial Officer and in such role provided services to the Debtor;

WHEREAS, (i) certain amounts that were allegedly due to be paid to the Senior Employee for the partial year of 2018 in installments due on February 28, 2020 and August 31, 2020; and (ii) certain amounts that were due to the Senior Employee in respect of the 2017 Deferred Award that vested after three years on May 31, 2020 ((i) and (ii), collectively, the "Bonus Amount") were not paid because of objections raised by the Committee;

WHEREAS, as of the date hereof, the total Bonus Amount through and including the date hereof is [redacted]

WHEREAS, on May 26, 2020, the Senior Employee filed a proof of claim [Claim No. 182] (the "Proof of Claim"), which included a claim for the Bonus Amount;

WHEREAS, as set forth in the Proof of Claim, the Senior Employee may have other Claims against the Debtor in addition to the Bonus Amount (the "Other Employee Claims" and together

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

with the Bonus Amount, the "Senior Employee Claims")[2]:

WHEREAS, the Committee has alleged that certain causes of action against the Senior Employee may exist, which causes of action have been or will be retained pursuant to the Plan (the "Causes of Action"):

WHEREAS, the Plan provides for the release of certain of the Causes of Action (the "Released Causes of Action") against the Senior Employee as set forth in therein (the "Employee Release"):

WHEREAS, both the Employee Release and the payment of the Bonus Amount (as reduced pursuant to this Agreement) are conditioned on the Senior Employee executing this Stipulation on or prior to the Confirmation Date;

WHEREAS, the Plan provides for the creation of the Claimant Trust and Litigation Sub-Trust and the appointment of the Claimant Trust Oversight Committee (the "CTOC") to oversee such entities;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, each of the Parties stipulates and agrees as follows:

1. Covenant Not to Sue. In consideration of the Senior Employee's agreement to toll the statutes of limitation with respect to any Causes of Action that can be asserted against him and to waive a portion of the Bonus Amount which would otherwise be part of the Senior Employee Claim, the Debtor and any of its successors or assigns, including the Claimant Trust or the Litigation Sub-Trust (collectively, the "HCMLP Parties"), agree not to initiate or commence any lawsuit, action or proceeding for the purpose of prosecuting any Released Causes of Action against the Senior Employee from the date of this Stipulation until the earlier of (a) thirty calendar days after the Notice Date and (b) the Dissolution Date (each as defined below) (such date, the "Termination Date"). This Stipulation shall expire upon the Termination Date and shall thereafter be of no further force and effect; *provided, however*, that the termination of this Stipulation shall not affect the treatment of the Bonus Amount set forth in Section 5 hereof or in the Plan.

2. Non-Compliance: Vesting.

a. As set forth in the Plan, the Senior Employee acknowledges and agrees that the Employee Release will be deemed null and void and of no force and effect (1) if there is more than one member of the CTOC who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full CTOC) that such Employee (regardless of whether the Employee is then

[2] For the avoidance of doubt, the "Other Employee Claims" shall include all prepetition and postpetition Claims of the Senior Employee, including paid time off claims, claims (if applicable) for severance amounts under applicable employment agreements, and administrative claims (if applicable), but shall not include the Bonus Amount.

currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

(1) sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

(2) has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets,

(3) has violated the confidentiality provisions of Section 4 below, or

(4) (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (i) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (ii) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing. If such determination under this Section 2a is made, the Claimant Trustee will deliver a notice of non-compliance with the Plan (the "Notice") to the Senior Employee. Such Notice will be effective when deemed delivered pursuant to Section 8.h hereof (the "Notice Date").

b. Notwithstanding anything herein to the contrary, Employee Release will vest and all Released Causes of Action that may or could be brought against the Senior Employee will be indefeasibly released solely to the extent set forth in Article IX.D of the Plan so long as the Notice Date does not occur on or before the date that the Claimant Trust is dissolved (such date, the "Dissolution Date").

c. Notwithstanding anything to the contrary in this Stipulation or any other document, Senior Employee expressly reserves the right to take all actions necessary to pursue enforcement and payment of the Other Employee Claims, and such actions shall not violate the terms of this Stipulation; provided, that, for the avoidance of doubt, nothing in this Stipulation shall prejudice the rights of the Debtor, or any of the Debtor's successor in interests under the Plan, to object to or otherwise challenge any Other Employee Claims or limit the Senior Employee's obligations under Section 8 hereof. Additionally, this Agreement does not affect or impair Senior Employee's rights, if any, to seek indemnification from any party, including, without limitation, the Debtor, any HCMLP Parties, or any other affiliates thereof nor does it affect or impair the right of the Debtor, or any of the Debtor's successor in interests under the Plan, to challenge such request.

3. Tolling of Statutes of Limitation. In consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that the statute of limitations applicable to any Cause of Action is hereby tolled as of, and extended from, the date of this Stipulation through and including the Termination Date (the "Tolling Period"). The Tolling Period shall be excluded from any calculation of any statute of limitations period applicable to any Cause of Action that may be brought by the HCMLP Parties against the Senior Employee. The Senior Employee acknowledges that he will be estopped from arguing that this Stipulation is

ineffective to extend the time within which the HCMLP Parties must commence an action to pursue any Cause of Action.

4. Confidentiality. In further consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that, in addition to existing obligations to maintain all business sensitive information concerning the HCMLP Parties in strictest confidence, each Senior Employee further agrees to keep all discussions, information and observations including, but not limited to, attorney-client privileged or work product information (collectively "Confidential Information") relating to the activities or planned activities of the HCMLP Parties strictly confidential. Each Senior Employee covenants and represents that it will not discuss such Confidential Information with anyone, other than the Senior Employee's personal attorney, the Claimant Trustee, or its respective representatives.

5. Bonus Amount.

a. The Senior Employee has agreed to forfeit a percentage of his Bonus Amount in consideration for the Employee Release and acknowledges that such agreement is an integral part of this Stipulation. The Senior Employee hereby agrees that (i) the Bonus Amount will be treated as an Allowed Class 7 (Convenience Claim) under the Plan and, to the extent required, will reduce his Bonus Amount as required to qualify for such treatment, (ii) the Senior Employee will receive the treatment provided to other Allowed Class 7 (Convenience Claims), (iii) the Allowed Class 7 distribution on the Bonus Amount will be further reduced by 5% (the "Reduced Amount"), and (iv) the Reduced Amount will be forever waived and released. Except as set forth herein, nothing herein will prejudice or otherwise impact any Other Employee Claim, or prevent the Senior Employee from prosecuting, pursuing, or enforcing any Other Employee Claim ~~as a Class 8 Claim in accordance with the Plan.~~

b. For the avoidance of doubt, although the Employee Release can be nullified as set forth in Section 2, any such nullification will have no effect on the treatment of the Senior Employee's Bonus Amount pursuant to this Section 5.

6. Other Employee Claims. The Parties acknowledge and agree that the Senior Employee is not entitled to make the Convenience Class Election with respect to the Other Employee Claims.

7. Effective Date. The Parties acknowledge and agree that this Stipulation and the Parties' obligations hereunder are conditioned in all respects on the approval of the Plan by the Bankruptcy Court and the occurrence of the Effective Date of the Plan. If, for any reason, the Plan is not approved by the Bankruptcy Court or the Effective Date does not occur, this Stipulation will be null and void and of no force and effect.

8. Plan Support. The Senior Employee agrees that he will use commercially reasonable efforts to assist the Debtor in confirmation of the Plan, including, without limitation, filing a notice of such Senior Employee's withdrawal from the *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669], and vote, if applicable, the Bonus Amount, the Other Employee Claims, and any other Claims in favor of the Plan.

9. Miscellaneous.

a. Counterparts. This Stipulation may be signed in counterparts and such signatures may be delivered by facsimile or other electronic means.

b. Binding Effect. This Stipulation shall inure to the benefit of, and be binding upon, any and all successors-in-interests, assigns, and legal representatives, of any Party.

c. Authority. Each Party to this Stipulation and each person executing this document on behalf of any Party to this Stipulation warrants and represents that he, she, or it has the power and authority to execute, deliver and perform its obligations under this Stipulation.

d. Entire Agreement. This Stipulation sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Stipulation may only be amended by an agreement in writing signed by the Parties.

e. No Waiver and Reservation of Rights. Except as otherwise provided herein, nothing in this Stipulation shall be, or deemed to be, a waiver of any rights, remedies, or privileges of any of the Parties. Except as otherwise provided herein, this Stipulation is without prejudice to any Party's rights, privileges and remedies under applicable law, whether at law or in equity, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

f. No Admission of Liability. The Parties acknowledge that there is a bona fide dispute with respect to the Causes of Action. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Senior Employee and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Senior Employee.

g. No Waiver If Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

h. Notice. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered by email, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be subsequently specified in writing by any Party and delivered to all other Parties pursuant to this Section:

Senior Employee

Frank Waterhouse

[redacted]

With a copy to:

Attorneys for Senior Employee

M. Michelle Hartmann
Baker McKenzie
1900 N. Pearl Street
Suite 1500
Dallas, Texas 75201
Email: michelle.hartmann@bakermckenzie.com

HCMLP

Highland Capital Management, L.P
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
Telephone No.: (631) 804-2049
Email: jpseeryjr@gmail.com

With a copy to:

Attorneys for HCMLP

John A. Morris
Pachulski Stang Ziehl & Jones LLP
780 Third Avenue
34th Floor
New York, New York 10017-2024
Telephone No.: (212) 561-7760
Email: jmorris@pszjlaw.com

i. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Stipulation; (b) executed this Stipulation upon the advice of such counsel; (c) read this Stipulation, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Stipulation and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

j. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

k. Governing Law: Venue. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the jurisdiction of the Bankruptcy Court with respect to any disputes arising from or out of this Agreement.

[Remainder of Page Blank]

IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: _____
Its: CEO/CRO

SENIOR EMPLOYEE

By: _____
Name: FRANK WATERHOUSE
Its: _____

EXHIBIT DD

Released Employees

Name
Abayarathna, Sahan
Bannon, Lucy
Baynard, Paul C.
Beispiel, Michael
Brewer, Brigid
Broaddus, Paul
Burns, Nathan
Carter, Jerome
Chisum, Naomi
Clark, Stetson
Collins, Brian
Cotton, Austin
Cournoyer, Timothy
Covitz, Hunter
Diorio, Matthew
Eftekhari, Cyrus
Eliason, Hayley
Flaherty, Brendan
Fox, Sean
Goldsmith, Sarah B.
Gosserand, William
Gray, Matthew
Groff, Scott
Haltom, Steven
Hendrix, Kristin
Hoedebeck, Charlie
Irving, Mary K.
Jain, Bhawika
Jeong, Sang K.
Jimenez, Sarah
Kim, Helen
Klos, David
Kovelan, Kari J.
Leuthner, Andrew
Loiben, Tara J.
Luu, Joye
Mabry, William
Mckay, Bradley
Mills Iv, James
Nikolayev, Yegor

Owens, David
Park, Jun
Parker, Trey
Patel, Vishal
Patrick, Mark
Poglitsch, Jon
Post, Jason
Rice, Christopher
Richardson, Kellie
Rios, Heriberto
Roeber, Blair A.
Rothstein, Jason
Sachdev, Kunal
Schroth, Melissa
Sevilla, Jean-Paul
Short, Lauren
Staltari, Mauro
Stevens, Kellie
Stewart, Phoebe L.
Stoops, Clifford
Surgent, Thomas *
Swadley, Rick
Thedford, Lauren E.
Thomas, Kristen
Thottichira, Christina
Throckmorton, Michael
Vitiello, Stephanie
Waterhouse, Frank *
Yoo, Han Us

* Senior Employee - Required to execute Senior Employee Stipulation.

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

Volume 9

APPELLEE RECORD

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

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III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

DEBTOR'S NOTICE OF FILING OF PLAN SUPPLEMENT TO THE FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED)

PLEASE TAKE NOTICE that on January 22, 2021, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808]

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

(as subsequently amended and/or modified, the "Plan").[2]

PLEASE TAKE FURTHER NOTICE that Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the "Debtor"), filed the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* on November 24, 2020 [Docket No. 1473] (the "Disclosure Statement").

PLEASE TAKE FURTHER NOTICE that attached as Exhibit C to the Disclosure Statement was the Debtor's Liquidation Analysis/Financial Projections.

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit A** are the Debtor's amended Liquidation Analysis/Financial Projections (the "Amended Liquidation Analysis/Financial Projections"), which supersede the Liquidation Analysis/Financial Projections filed on November 24, 2020, with the Disclosure Statement.

PLEASE TAKE FURTHER NOTICE that a prior version of the Amended Liquidation Analysis/Financial Projections was provided to parties in interests on January 28, 2021, in advance of the deposition of James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer, and that the Amended Liquidation Analysis/Financial Projections differ from such version in two respects:

- The Amended Liquidation Analysis/Financial Projections include the settlement in principle between UBS and the Debtor, which provides for UBS receiving a Class 8 (General Unsecured Claim) of $50,000,000 and a Class 9 (Subordinated Claim) of $25,000,000. The prior Liquidation Analysis/Financial Projections included a Class 8 (General Unsecured Claim) in the amount of $94,761,076 pursuant to the Court's order temporarily allowing the UBS claim in that amount for voting purposes; and

- The Debtor inadvertently understated the aggregate amount of Class 8 (General Unsecured Claims) by $4,392,937, which error is corrected in the Amended Liquidation Analysis/Financial Projections.

PLEASE TAKE NOTICE that the Debtor hereby files the documents included herewith

[2] All capitalized terms used but not defined herein have the meanings given to them in the Plan.

as **Exhibits DD-FF** (collectively, the "Fifth Plan Supplement") as Exhibits DD-FF to the Plan:

Exhibit DD: Schedule of Retained Causes of Action (supersedes Exhibits E, L, and Q);

Exhibit EE: Revisions to Form of Claimant Trust Agreement (amends Exhibit R); and

Exhibit FF: Schedule of Contracts and Leases to Be Assumed (supersedes Exhibit H, I, and X).[3]

PLEASE TAKE NOTICE that the Debtor hereby gives notice of supplemental amendments (the "Plan Amendments") to the Plan, which are set forth in the redlined excerpts of the Plan attached hereto as **Exhibit B**.

[Remainder of Page Intentionally Blank]

[3] The Schedule of Contracts and Leases includes an agreement with Bloomberg Finance, L.P. ("Bloomberg"). The Debtor is currently in discussions with Bloomberg regarding the assumption of such agreement.

Dated: February 1, 2021.

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EXHIBIT A

Highland Capital Management, L.P.
Disclaimer For Financial Projections

This document includes financial projections for July 2020 through December 2022 (the "Projections") for Highland Capital Management, L.P. "Company"). These Projections have been prepared by DSI with input from management at the Company. The historical information utilized in these Projections has not been audited or reviewed for accuracy by DSI.

This document includes certain statements, estimates and forecasts provided by the Company with respect to the Company's anticipated future performance. These estimates and forecasts contain significant elements of subjective judgment and analysis that may or may not prove to be accurate or correct. There can be no assurance that these statements, estimates and forecasts will be attained and actual outcomes and results may differ materially from what is estimated or forecast herein.

These Projections should not be regarded as a representation of DSI that the projected results will be achieved.

Management may update or supplement these Projections in the future, however, DSI expressly disclaims any obligation to update its report.

These Projections were not prepared with a view toward compliance with published guidelines of the Securities and Exchange Commission or the American Institute of Certified Public Accountants regarding historical financial statements, projections or forecasts.

Highland Capital Management, L.P.
Statement of Assumptions

A. Plan effective date is March 1, 2021
B. All investment assets are sold by December 31, 2022.
C. All demand notes are collected in the year 2021; 3 term notes defaulted and have been demanded based on default provisions; payment estimated in 2021
D. Dugaboy term note with maturity date beyond 12/31/2022 are sold in Q1 2022; in the interim interest income and principal payments are not collected due to prepayment on note
E. Fixed assets currently used in daily operations are sold in June 2021 for $0
F. Highland bonus plan has been terminated in accordance with its terms. Accrual for employee bonuses as of January 2021 are reversed and not paid.
G. All Management advisory or shared service contracts are terminated on their terms by the effective date or shortly thereafter
H. Post-effective date, the reorganized Debtor would retain up to ten HCMLP employees (or hire similar employees) to help monetize the remaining assets.
I. Litigation Trustee budget is $6,500,000.
J. Unrealized gains or losses are not recorded on a monthly basis; all gains or losses are recorded as realized gains or losses upon sale of asset.
K. Plan does not provide for payment of interest to Class 8 holders of general unsecured claims, as set forth in the Plan. If holders of general unsecured claims receive 100% of their allowed claims, they would then be entitled to receive interest at the federal judgement rate, prior to any funds being available for claims or interest of junior priority.
L. Plan assumes zero allowed claims for IFA and Hunter Mountain Investment Trust ("HM").
M. Claim amounts listed in Plan vs. Liquidation schedule are subject to change; claim amounts in Class 8 assume $0 for IFA and HM, $50.0 million for UBS and $45 million HV. Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets
N. With the exception of Class 2 - Frontier, Classes 1-7 will be paid in full within 30 days of effective date.
O. Class 7 payout limited to 85% of each individual creditor claim or in the aggregate $13.15 million. Plan currently projects Class 7 payout of $10.3 million.
P. See below for Class 8 estimated payout schedule; payout is subject to certain assets being monetized by payout date (no Plan requirement to do so):
    - By September 30, 2021 - $50,000,000
    - By March 31, 2022 – additional $50,000,000
    - By June 30, 2022 – additional $25,000,000
    - All remaining proceeds are assumed to be paid out on or soon after all remaining assets are monetized.
Q. Assumptions subject to revision based on business decision and performance of the business

Highland Capital Management, L.P.
Plan Analysis Vs. Liquidation Analysis
(US $000's)

	Plan Analysis	Liquidation Analysis
Estimated cash on hand at 1/31/2020	$ 24,290	$ 24,290
Estimated proceeds from monetization of assets [1][2]	257,941	191,946
Estimated expenses through final distribution[1][3]	(59,573)	(41,488)
Total estimated $ available for distribution	222,658	174,748
Less: Claims paid in full		
Unclassified [4]	(1,080)	(1,080)
Administrative claims [5]	(10,574)	(10,574)
Class 1 - Jefferies Secured Claim	-	-
Class 2 - Frontier Secured Claim [6]	(5,781)	(5,781)
Class 3 - Other Secured Claims	(62)	(62)
Class 4 – Priority Non-Tax Claims	(16)	(16)
Class 5 - Retained Employee Claims	-	-
Class 6 - PTO Claims [5]	-	-
Class 7 – Convenience Claims [7][8]	(10,280)	-
Subtotal	(27,793)	(17,514)
Estimated amount remaining for distribution to general unsecured claims	194,865	157,235
% Distribution to Class 7 (Class 7 claims included in Class 8 in Liquidation scenario)	85.00%	0.00%
Class 8 – General Unsecured Claims [8][10]	273,219	286,100
Subtotal	273,219	286,100
% Distribution to general unsecured claims	71.32%	54.96%
Estimated amount remaining for distribution	-	-
Class 9 – Subordinated Claims	*no distribution*	*no distribution*
Class 10 – Class B/C Limited Partnership Interests	*no distribution*	*no distribution*
Class 11 – Class A Limited Partnership Interest	*no distribution*	*no distribution*

Footnotes:
[1] Assumes chapter 7 Trustee will not be able to achieve same sales proceeds as Claimant Trustee
Assumes Chapter 7 Trustee engages new professionals to help liquidate assets and terminates any management agreements with funds or CLOS
[2] Sale of investment assets, sale of fixed assets, collection of accounts receivable and interest receivable; Plan includes revenue from managing CLOs
[3] Estimated expenses through final distribution exclude non-cash expenses:
Depreciation of $462 thousand in 2021; Bad debt of $124K in 2021
[4] Unclassified claims include payments for priority tax claims and settlements with previously approved by the Bankruptcy Court
[5] Represents $4.7 million in unpaid professional fees, $4.5 million in timing of payments to vendors and $1.2 million to pay PTO
[6] Debtor will pay all unpaid interest estimated at $253 thousand of Frontier on effective date and continue to pay interest quarterly at 5.25% until Frontier's collateral is sold
[7] Claims payout limited to 85% of each individual creditor claim or limited to a total class payout of $13.15 million
[8] Plan: Class 7 includes $1.2 million estimate for aggregate contract rejections damage; Liquidation Class 8 includes $2.0 million for estimated rejection damages
[10] Class estimates $0 allowed claim for the following creditors: IFA and HM; assumes RCP claims offset against HCMLP interest in RCP fund
UBS claim included at $50.0 million.

Notes:
All claim amounts are estimated as of February 1, 2020 and subject to change

Highland Capital Management, L.P.
Balance Sheet
(US $000's)

	Actual Jun-20	Actual Sep-20	Forecast ---> Dec-20	Mar-21	Jun-21	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22	Dec-22
Assets											
Cash and Cash Equivalents	$ 14,994	$ 5,888	$ 31,047	$ 10,328	$ 40,063	$ 42,833	$ 135,137	$ 80,733	$ 72,238	$ 69,368	$ -
Other Current Assets	13,182	13,651	13,784	15,172	14,671	14,220	9,943	8,268	8,417	8,567	-
Investment Assets	320,912	305,961	283,812	280,946	233,234	171,174	47,503	47,503	25,888	25,888	-
Net Fixed Assets	3,055	2,823	2,592	1,348	-	-	-	-	-	-	-
TOTAL ASSETS	**$ 352,142**	**$ 328,323**	**$ 331,235**	**$ 307,793**	**$ 287,968**	**$ 228,227**	**$ 192,583**	**$ 136,504**	**$ 106,542**	**$ 103,823**	**$ -**
Liabilities											
Post-petition Liabilities	$ 142,730	$ 135,597	$ 131,230	$ 12,891	$ 10,249	$ 10,503	$ -	$ -	$ -	$ -	$ -
Pre-petition Liabilities	9,861	9,884	10,000	-	-	-	-	-	-	-	-
Claims											
Unclassified	-	-	-	-	-	-	-	-	-	-	-
Class 1 – Jefferies Secured Claim	-	-	-	-	-	-	-	-	-	-	-
Class 2 - Frontier Secured Claim	-	-	-	5,528	-	-	-	-	-	-	-
Class 3 - Other Secured Claims	-	-	-	-	-	-	-	-	-	-	-
Class 4 – Priority Non-Tax Claims	-	-	-	-	-	-	-	-	-	-	-
Class 5 – Retained Employee Claims	-	-	-	-	-	-	-	-	-	-	-
Class 6 - PTO Claims	-	-	-	-	-	-	-	-	-	-	-
Class 7 – Convenience Claims	-	-	-	-	-	-	-	-	-	-	-
Class 8 – General Unsecured Claims	-	-	-	273,219	273,219	223,219	223,219	173,219	148,219	148,219	78,354
Class 9 – Subordinated Claims [1]	-	-	-	-	-	-	-	-	-	-	-
Class 10 – Class B/C Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-
Class 11 – Class A Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-
Claim Payable	9,861	9,884	10,000	278,747	273,219	223,219	223,219	173,219	148,219	148,219	78,354
TOTAL LIABILITIES	**$ 152,591**	**145,481**	**141,230**	**291,639**	**283,468**	**233,723**	**223,219**	**173,219**	**148,219**	**148,219**	**78,354**
Partners' Capital	199,551	182,842	190,005	16,154	4,500	(5,495)	(30,636)	(36,715)	(41,677)	(44,396)	(78,354)
TOTAL LIABILITIES AND PARTNERS' CAPITAL	**$ 352,142**	**$ 328,323**	**$ 331,235**	**$ 307,793**	**$ 287,968**	**$ 228,227**	**$ 192,583**	**$ 136,504**	**$ 106,543**	**$ 103,823**	**$ -**

[1] Class 9 has $60 million of subordinated claims; Debtor anticipates no distributions to Class 9

Highland Capital Management, L.P.
Profit/Loss
(US $000's)

	Actual Jan 2020 to June 2020 Total	Actual 3 month ended Sept 2020	Forecast ---> 3 month ended Dec 2020	Total 2020	3 month ended Mar 2021	3 month ended Jun 2021	3 month ended Sept 2021	3 month ended Dec 2021	Total 2021
Revenue									
Management Fees	$ 6,572	$ 1,949	$ 2,804	$ 11,325	$ 1,329	$ 856	$ 856	$ 856	$ 3,897
Shared Service Fees	7,672	3,765	3,788	15,225	1,373	45	45	-	1,463
Other Income	3,126	538	340	4,004	316	274	-	-	591
Total revenue	$ 17,370	$ 6,252	$ 6,931	$ 30,554	$ 3,018	$ 1,176	$ 901	$ 856	$ 5,951
Operating Expenses [1]	13,328	9,171	9,399	31,899	12,168	4,897	3,973	3,333	24,371
Income/(loss) From Operations	$ 4,042	$ (2,918)	$ (2,468)	$ (1,345)	$ (9,149)	$ (3,722)	$ (3,072)	$ (2,477)	$ (18,420)
Professional Fees	17,522	7,707	8,351	33,581	7,478	6,583	2,268	1,810	18,138
Other Income/(Expenses) [2]	2,302	1,518	1,059	4,879	(156,042)	326	(93)	29	(155,781)
Operating Gain/(Loss)	$ (11,178)	$ (9,107)	$ (9,761)	$ (30,046)	$ (172,669)	$ (9,978)	$ (5,433)	$ (4,259)	$ (192,339)
Realized and Unrealized Gain/(Loss)									
Other Realized Gains/(Loss)	-	-	-	-	(1,013)	522	-	-	(491)
Net Realized Gain/(Loss) on Sale of Investment	(28,418)	1,549	(8,850)	(35,719)	(168)	(2,198)	(4,563)	(7,581)	(14,510)
Net Change in Unrealized Gain/(Loss) of Investments	(29,929)	(7,450)	4,523	(32,857)	-	-	-	-	-
Net Realized Gain /(Loss) from Equity Method Investees	-	-	(364)	(364)	-	-	-	(13,301)	(13,301)
Net Change in Unrealized Gain /(Loss) from Equity Method Investees	(80,782)	(1,700)	-	(82,482)	-	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	$ (139,129)	$ (7,601)	$ (4,692)	$ (151,422)	$ (1,182)	$ (1,675)	$ (4,563)	$ (20,882)	$ (28,302)
Net Income	$ (150,307)	$ (16,708)	$ (14,453)	$ (181,468)	$ (173,851)	$ (11,654)	$ (9,996)	$ (25,141)	$ (220,641)

Footnotes:
[1] Operating expenses include an adjustment in January 2021 to account for expenses that have not been accrued or paid prior to effective date.
[2] Other income and expenses of $197.3 million in Q1 2021 includes:
[a] $209.7 million was expensed to record for the increase of allowed claims.
[b] Income of $11.7 million for the accrued, but unpaid payroll liability related to the Debtor's deferred bonus programs amount written-off.

Highland Capital Management, L.P.
Profit/Loss
(US $000's)

	Forecast ---> 3 month ended Mar 2022	3 month ended Jun 2022	3 month ended Sept 2022	3 month ended Dec 2022	Total 2022	Plan
Revenue						
Management Fees	$ 580	$ 580	$ 580	$ 580	$ 2,318	$ 6,215
Shared Service Fees	-	-	-	-	-	1,463
Other Income	-	-	-	-	-	591
Total revenue	$ 580	$ 580	$ 580	$ 580	$ 2,318	$ 8,269
Operating Expenses	3,635	2,679	1,739	6,425	14,478	38,849
Income/(loss) From Operations	$ (3,056)	$ (2,099)	$ (1,159)	$ (5,846)	$ (12,160)	$ (30,580)
Professional Fees	2,921	2,761	1,461	2,176	9,318	27,455
Other Income/(Expenses)	(103)	(101)	(100)	(350)	(654)	(156,434)
Operating Gain/(Loss)	$ (6,079)	$ (4,961)	$ (2,719)	$ (8,371)	$ (22,131)	$ (214,470)
Realized and Unrealized Gain/(Loss)						
Other Realized Gains/(Loss)	-	-	-	(25,587)	(25,587)	(26,078)
Net Realized Gain/(Loss) on Sale of Investment	-	-	-	-	-	(14,510)
Net Change in Unrealized Gain/(Loss) of Investments	-	-	-	-	-	-
Net Realized Gain /(Loss) from Equity Method Investees	-	-	-	-	-	(13,301)
Net Change in Unrealized Gain /(Loss) from Equity Method Investees	-	-	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	$ -	$ -	$ -	$ (25,587)	$ (25,587)	$ (53,889)
Net Income	$ (6,079)	$ (4,961)	$ (2,719)	$ (33,958)	$ (47,718)	$ (268,359)

Highland Capital Management, L.P.
Cash Flow Indirect
(US $000's)

	Forecast ---->									
	Sep-20	**Dec-20**	**Mar-21**	**Jun-21**	**Sep-21**	**Dec-21**	**Mar-22**	**Jun-22**	**Sep-22**	**Dec-22**
Net (Loss) Income	$ (16,708)	$ (14,453)	$ (173,851)	$ (11,654)	$ (9,996)	$ (25,141)	$ (6,079)	$ (4,961)	$ (2,719)	$ (33,958)
Cash Flow from Operating Activity										
(Increase) / Decrease in Cash										
Depreciation and amortization	231	231	231	231	-	-	-	-	-	-
Other realized (gain)/ loss	-	-	1,013	(522)	-	-	-	-	-	25,587
Investment realized (gain)/ loss	(1,549)	9,214	168	2,198	4,563	20,882	-	-	-	-
Unrealized (gain) / loss	(9,150)	4,523	-	-	-	-	-	-	-	-
(Increase) Decrease in Current Assets	(470)	(133)	(1,388)	501	450	4,277	1,675	(149)	(150)	908
Increase (Decrease) in Current Liabilities	(7,110)	(4,251)	(44,172)	(2,643)	255	(10,503)	-	-	-	-
Net Cash Increase / (Decrease) - Operating Activities	(34,757)	(4,868)	(217,998)	(11,889)	(4,727)	(10,485)	(4,404)	(5,110)	(2,870)	(7,463)
Cash Flow From Investing Activities										
Proceeds from Sale of Fixed Assets	-	-	-	-	-	-	-	-	-	-
Proceeds from Investment Assets	25,650	30,027	2,698	47,152	57,498	102,788	-	21,616	-	7,960
Net Cash Increase / (Decrease) - Investing Activities	25,650	30,027	2,698	47,152	57,498	102,788	-	21,616	-	7,960
Cash Flow from Financing Activities										
Claims payable	-	-	(73,997)	-	-	-	-	-	-	-
Claim reclasses/(paid)	-	-	278,747	(5,528)	(50,000)	-	(50,000)	(25,000)	-	(69,865)
Maple Avenue Holdings	-	-	(4,975)	-	-	-	-	-	-	-
Frontier Note	-	-	(5,195)	-	-	-	-	-	-	-
Net Cash Increase / (Decrease) - Financing Activities	-	-	194,580	(5,528)	(50,000)	-	(50,000)	(25,000)	-	(69,865)
Net Change in Cash	$ (9,107)	$ 25,159	$ (20,719)	$ 29,735	$ 2,770	$ 92,303	$ (54,404)	$ (8,495)	$ (2,870)	$ (69,368)
Beginning Cash	14,994	5,888	31,047	10,328	40,063	42,833	135,137	80,733	72,238	69,368
Ending Cash	$ 5,888	$ 31,047	$ 10,328	$ 40,063	$ 42,833	$ 135,137	$ 80,733	$ 72,238	$ 69,368	$ -

EXHIBIT B

61. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns~~, direct and indirect majority owned subsidiaries, and the Managed Funds~~, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

63. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. "*Final Order*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

126. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

127. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. "*Subordinated Claim*" means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to ~~11 U.S.C. § 510 or~~an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

133. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

134. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. "*Voting Record Date*" means November 23, 2020.

Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed Priority Tax Claim~~, (b)~~ in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. ~~Under section 510 of the Bankruptcy Code, upon~~Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the ~~Effective~~Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts

forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) ~~and any applicable parties in Section VII.A of this Plan~~, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or

EXHIBIT DD

Schedule of Causes of Action

The Causes of Action shall include, *without limitation*, any cause of action based on the following:

breach of fiduciary duties, breach of duty of care, breach of duty of loyalty, usurpation of corporate opportunities, breach of implied covenant of good faith and fair dealing, conversion, misappropriation of assets, misappropriation of trade secrets, unfair competition, breach of contract, breach of warranty, fraud, constructive fraud, negligence, gross negligence, fraudulent conveyance, fraudulent transfer, fraudulent misrepresentation, negligent misrepresentation, fraudulent concealment, fraudulent inducement, tortious interference, *quantum meruit*, unjust enrichment, abuse of process, alter ego, substantive consolidation, recharacterization, business disparagement, indemnity, claims for recovery of distributions or dividends, claims for indemnification, promissory estoppel, quasi-contract claims, any counterclaims, equitable subordination, avoidance actions provided for under sections 544 or 547 of the Bankruptcy Code, claims brought under state law, claims brought under federal law, claims under any common-law theory of tort or law or equity, and any claims similar in nature to the foregoing claims.

The Causes of Action shall include, *without limitation*, any cause of action against the following persons and entities:

James Dondero, Mark Okada, Grant Scott, John Honis, any current or former insider of the Debtor, the Dugaboy Investment Trust, Charitable DAF Holdco, Ltd, Hunter Mountain Investment Trust, Nexbank Capital, Inc. Highland Capital Management Services, Inc., NexPoint Advisors GP, LLC, NexPoint Advisors, L.P., Strand Advisors XVI, Inc., Highland Capital Management Fund Advisors, L.P., NexAnnuity Holdings, Inc., the entities listed on the attached **Annex 1** hereto, any current or former employee of the Debtor, and any entity directly or indirectly owned, controlled, or operated for the benefit of the foregoing persons or entities.

The Causes of Action shall include, *without limitation*, any cause of action arising from the following transactions:

The transfer of ownership interests in the Debtor to Hunter Mountain Investment Trust, the creation or transfer of any notes receivable from the Debtor or from any entity related to the Debtor, the creation or transfer of assets to or from any charitable foundation or trust, the formation, performance, or breach of any contract for the Debtor to provide investment management, support services, or any other services, and the distribution of assets or cash from the Debtor to partners of the Debtor.

Annex 1

11 Estates Lane, LLC
1110 Waters, LLC
140 Albany, LLC
1525 Dragon, LLC
17720 Dickerson, LLC
1905 Wylie LLC
2006 Milam East Partners GP, LLC
2006 Milam East Partners, L.P.
201 Tarrant Partners, LLC
2014 Corpus Weber Road LLC
2325 Stemmons HoldCo, LLC
2325 Stemmons Hotel Partners, LLC
2325 Stemmons TRS, Inc.
300 Lamar, LLC
3409 Rosedale, LLC
3801 Maplewood, LLC
3801 Shenandoah, L.P.
3820 Goar Park LLC
400 Seaman, LLC
401 Ame, L.P.
4201 Locust, L.P.
4312 Belclaire, LLC
5833 Woodland, L.P.
5906 DeLoache, LLC
5950 DeLoache, LLC
7758 Ronnie, LLC
7759 Ronnie, LLC
AA Shotguns, LLC
Aberdeen Loan Funding, Ltd.
Acis CLO 2017-7 Ltd
Acis CLO Management GP, LLC
Acis CLO Management GP, LLC *(fka Acis CLO Opportunity Funds GP, LLC)*
Acis CLO Management Holdings, L.P.
Acis CLO Management Intermediate Holdings I, LLC
Acis CLO Management Intermediate Holdings II, LLC
Acis CLO Management, LLC *(fka Acis CLO Opportunity Funds SLP, LLC)*
Acis CLO Trust
Acis CLO Value Fund II Charitable DAF Ltd.
Acis CMOA Trust
Advisors Equity Group LLC
Alamo Manhattan Hotel I, LLC (Third Party)
Allenby, LLC
Allisonville RE Holdings, LLC
AM Uptown Hotel, LLC
Apex Care, L.P
Asbury Holdings, LLC *(fka HCSLR Camelback Investors (Delaware), LLC)*
Ascendant Advisors
Atlas IDF GP, LLC
Atlas IDF, LP
BB Votorantim Highland Infrastructure, LLC
BDC Toys Holdco, LLC
Beacon Mountain, LLC
Bedell Trust Ireland Limited (Charitable trust account)
Ben Roby (third party)
BH Equities, LLC
BH Heron Pointe, LLC
BH Hollister, LLC
BH Willowdale Manager, LLC
Big Spring Partners, LLC
Blair Investment Partners, LLC
Bloomdale, LLC
Brave Holdings III Inc.
Brentwood CLO, Ltd.
Brentwood Investors Corp.
Brian Mitts
Bristol Bay Funding Ltd.
Bristol Bay Funding, Ltd.
BVP Property, LLC
C-1 Arbors, Inc.
C-1 Cutter's Point, Inc.
C-1 Eaglecrest, Inc.
C-1 Silverbrook, Inc.
Cabi Holdco GP, LLC
Cabi Holdco I, Ltd
Cabi Holdco I, Ltd.

Cabi Holdco, L.P.
California Public Employees' Retirement System
Camelback Residential Investors, LLC
Camelback Residential Investors, LLC *(fka Sevilla Residential Partners, LLC)*
Camelback Residential Partners, LLC
Capital Real Estate - Latitude, LLC
Castle Bio Manager, LLC
Castle Bio, LLC
Cayco Admin Ltd.
Cayco Insolvency Ltd.
CG Works, Inc.
CG Works, Inc.
(fka Common Grace Ventures, Inc.)
Charitable DAF Fund, L.P.
Charitable DAF GP, LLC
Charitable DAF HoldCo, Ltd
Charitable DAF HoldCo, Ltd.
Claymore Holdings, LLC
CLO HoldCo, Ltd
CLO Holdco, Ltd.
Corbusier, Ltd.
Cornerstone Healthcare Group Holding, Inc.
Corpus Weber Road Member LLC
CP Equity Hotel Owner, LLC
CP Equity Land Owner, LLC
CP Equity Owner, LLC
CP Hotel TRS, LLC
CP Land Owner, LLC
CP Tower Owner, LLC
CRE - Lat, LLC
Credit Suisse, Cayman Islands Branch
Crossings 2017 LLC
Crown Global Insurance Company (third party)
Dallas Cityplace MF SPE Owner LLC
Dallas Lease and Finance, L.P.
Dana Scott Breault
James Dondero
Reese Avry Dondero
Jameson Drue Dondero

Dana Sprong (Third Party)

David c. Hopson
De Kooning, Ltd.
deKooning, Ltd.
DFA/BH Autumn Ridge, LLC
Dolomiti, LLC
DrugCrafters, L.P.
Dugaboy Investment Trust
Dugaboy Management, LLC
Dugaboy Project Management GP, LLC
Eagle Equity Advisors, LLC
Eames, Ltd.
Eastland CLO, Ltd.
Eastland Investors Corp.
EDS Legacy Heliport, LLC
EDS Legacy Partners Owner, LLC
EDS Legacy Partners, LLC
Empower Dallas Foundation, Inc.
ENA 41, LLC
Entegra Strat Superholdco, LLC
Entegra-FRO Holdco, LLC
Entegra-FRO Superholdco, LLC
Entegra-HOCF Holdco, LLC
Entegra-NHF Holdco, LLC
Entegra-NHF Superholdco, LLC
Entegra-RCP Holdco, LLC
Estates on Maryland Holdco, LLC
Estates on Maryland Owners SM, Inc.
Estates on Maryland Owners, LLC
Estates on Maryland, LLC
Falcon E&P Four Holdings, LLC
Falcon E&P One, LLC
Falcon E&P Opportunities Fund, L.P.
Falcon E&P Opportunities GP, LLC
Falcon E&P Royalty Holdings, LLC
Falcon E&P Six, LLC
Falcon E&P Two, LLC
Falcon Four Midstream, LLC
Falcon Four Upstream, LLC
Falcon Incentive Partners GP, LLC
Falcon Incentive Partners, LP
Falcon Six Midstream, LLC
Flamingo Vegas Holdco, LLC *(fka Cabi Holdco, LLC)*

Four Rivers Co-Invest GP, LLC
Four Rivers Co-Invest, L.P.
FRBH Abbington SM, Inc.
FRBH Abbington, LLC
FRBH Arbors, LLC
FRBH Beechwood SM, Inc.
FRBH Beechwood, LLC
FRBH C1 Residential, LLC
FRBH Courtney Cove SM, Inc.
FRBH Courtney Cove, LLC
FRBH CP, LLC
FRBH Duck Creek, LLC
FRBH Eaglecrest, LLC
FRBH Edgewater JV, LLC
FRBH Edgewater Owner, LLC
FRBH Edgewater SM, Inc.
FRBH JAX-TPA, LLC
FRBH Nashville Residential, LLC
FRBH Regatta Bay, LLC
FRBH Sabal Park SM, Inc.
FRBH Sabal Park, LLC
FRBH Silverbrook, LLC
FRBH Timberglen, LLC
FRBH Willow Grove SM, Inc.
FRBH Willow Grove, LLC
FRBH Woodbridge SM, Inc.
FRBH Woodbridge, LLC
Freedom C1 Residential, LLC
Freedom Duck Creek, LLC
Freedom Edgewater, LLC
Freedom JAX-TPA Residential, LLC
Freedom La Mirage, LLC
Freedom LHV LLC
Freedom Lubbock LLC
Freedom Miramar Apartments, LLC
Freedom Sandstone, LLC
Freedom Willowdale, LLC
Fundo de Investimento em Direitos Creditorios BB Votorantim Highland Infraestrutura
G&E Apartment REIT The Heights at Olde Towne, LLC
G&E Apartment REIT The Myrtles at Olde Towne, LLC
GAF REIT, LLC
GAF Toys Holdco, LLC
Gardens of Denton II, L.P.
Gardens of Denton III, L.P.
Gleneagles CLO, Ltd.
Goverannce RE, Ltd.
Governance Re, Ltd.
Governance, Ltd.
Grant Scott
Grant Scott, Trustee of The SLHC Trust
Grayson CLO, Ltd.
Grayson Investors Corp.
Greater Kansas City Community Foundation (third party)
Greenbriar CLO, Ltd.
Greg Busseyt
Gunwale LLC
Gunwale, LLC
Hakusan, LLC
Hammark Holdings LLC
Hampton Ridge Partners, LLC
Harko, LLC
Harry Bookey/Pam Bookey (third party)
Haverhill Acquisition Co., LLC
Haygood, LLC
HB 2015 Family LP (third party)
HCBH 11611 Ferguson, LLC
HCBH Buffalo Pointe II, LLC
HCBH Buffalo Pointe III, LLC
HCBH Buffalo Pointe, LLC
HCBH Hampton Woods SM, Inc.
HCBH Hampton Woods, LLC
HCBH Overlook SM, Inc.
HCBH Overlook, LLC
HCBH Rent Investors, LLC
HCMS Falcon GP, LLC
HCMS Falcon, L.P.
HCO Holdings, LLC
HCOF Preferred Holdings, L.P.
HCOF Preferred Holdings, LP
HCOF Preferred Holdings, Ltd.
HCRE 1775 James Ave, LLC
HCRE Addison TRS, LLC

HCRE Addison, LLC *(fka HWS Addison, LLC)*

HCRE Hotel Partner, LLC *(fka HCRE HWS Partner, LLC)*

HCRE Las Colinas TRS, LLC

HCRE Las Colinas, LLC *(fka HWS Las Colinas, LLC)*

HCRE Plano TRS, LLC

HCRE Plano, LLC *(fka HWS Plano, LLC)*

HCREF-I Holding Corp.

HCREF-II Holding Corp.

HCREF-III Holding Corp.

HCREF-IV Holding Corp.

HCREF-IX Holding Corp.

HCREF-V Holding Corp.

HCREF-VI Holding Corp.

HCREF-VII Holding Corp.

HCREF-VIII Holding Corp.

HCREF-XI Holding Corp.

HCREF-XII Holding Corp.

HCREF-XIII Holding Corp.

HCREF-XIV Holding Corp.

HCREF-XV Holding Corp.

HCSLR Camelback Investors (Cayman), Ltd.

HCSLR Camelback, LLC

HCT Holdco 2 Ltd.

HCT Holdco 2, Ltd.

HE 41, LLC

HE Capital 232 Phase I Property, LLC

HE Capital 232 Phase I, LLC

HE Capital Asante, LLC

HE Capital Fox Trails, LLC

HE Capital KR, LLC

HE Capital, LLC

HE CLO Holdco, LLC

HE Mezz Fox Trails, LLC

HE Mezz KR, LLC

HE Peoria Place Property, LLC

HE Peoria Place, LLC

Heron Pointe Investors, LLC

Hewett's Island CLO I-R, Ltd.

HFP Asset Funding II, Ltd.

HFP Asset Funding III, Ltd.

HFP CDO Construction Corp.

HFP GP, LLC

HFRO Sub, LLC

Hibiscus HoldCo, LLC

Highland - First Foundation Income Fund

Highland 401(k) Plan

Highland 401K Plan

Highland Argentina Regional Opportunity Fund GP, LLC

Highland Argentina Regional Opportunity Fund, L.P.

Highland Argentina Regional Opportunity Fund, Ltd.

Highland Argentina Regional Opportunity Master Fund, L.P.

Highland Brasil, LLC

Highland Capital Brasil Gestora de Recursos (*fka Highland Brasilinvest Gestora de Recursos, LTDA; fka HBI Consultoria Empresarial, LTDA)*

Highland Capital Management (Singapore) Pte Ltd

Highland Capital Management AG

Highland Capital Management AG
(Highland Capital Management SA)
(Highland Capital Management Ltd)

Highland Capital Management Fund Advisors, L.P.

Highland Capital Management Fund Advisors, L.P. *(fka Pyxis Capital, L.P.)*

Highland Capital Management Korea Limited

Highland Capital Management Latin America, L.P.

Highland Capital Management LP Retirement Plan and Trust

Highland Capital Management Multi-Strategy Insurance Dedicated Fund, L.P.

Highland Capital Management Real Estate Holdings I, LLC

Highland Capital Management Real Estate Holdings II, LLC

Highland Capital Management Services, Inc.

Highland Capital Management, L.P.

Highland Capital Management, L.P. Charitable Fund

Highland Capital Management, L.P. Retirement Plan and Trust

Highland Capital Management, L.P., as trustee of Acis CMOA Trust and nominiee for and on behalf of Highland CLO Assets Holdings Limited

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominiee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, LP

Highland Capital Management, LP Charitable Fund

Highland Capital Multi-Strategy Fund, LP

Highland Capital of New York, Inc.

Highland Capital Special Allocation, LLC

Highland CDO Holding Company

Highland CDO Opportunity Fund GP, L.P.

Highland CDO Opportunity Fund, L.P.

Highland CDO Opportunity Fund, Ltd.

Highland CDO Opportunity GP, LLC

Highland CDO Opportunity Master Fund, L.P.

Highland CDO Trust

Highland CLO 2018-1, Ltd.

Highland CLO Assets Holdings Limited

Highland CLO Funding, Ltd.

Highland CLO Funding, Ltd.

Highland CLO Funding, Ltd. *(fka Acis Loan Funding, Ltd.)*

Highland CLO Gaming Holdings, LLC

Highland CLO Holdings Ltd.

Highland CLO Holdings, Ltd. (as of 12.19.17)

Highland CLO Management Ltd.

Highland CLO Trust

Highland Credit Opportunities CDO Asset Holdings GP, Ltd.

Highland Credit Opportunities CDO Asset Holdings, L.P.

Highland Credit Opportunities CDO Financing, LLC

Highland Credit Opportunities CDO, Ltd.

Highland Credit Opportunities Holding Corporation

Highland Credit Opportunities Japanese Feeder Sub-Trust

Highland Credit Opportunities Japanese Unit Trust (Third Party)

Highland Credit Strategies Fund, L.P.

Highland Credit Strategies Fund, Ltd.

Highland Credit Strategies Holding Corporation

Highland Credit Strategies Holding Corporation

Highland Credit Strategies Master Fund, L.P.

Highland Dallas Foundation, Inc.

Highland Dynamic Income Fund GP, LLC

Highland Dynamic Income Fund GP, LLC *(fka Highland Capital Loan GP, LLC)*

Highland Dynamic Income Fund, L.P.

Highland Dynamic Income Fund, L.P. *(fka Highland Capital Loan Fund, L.P.)*

Highland Dynamic Income Fund, Ltd.

Highland Dynamic Income Fund, Ltd. *(fka Highland Loan Fund, Ltd.)*

Highland Dynamic Income Master Fund, L.P.

Highland Dynamic Income Master Fund, L.P. *(fka Highland Loan Master Fund, L.P.)*

Highland Employee Retention Assets LLC

Highland Energy Holdings, LLC

Highland Energy MLP Fund *(fka Highland Energy and Materials Fund)*

Highland Equity Focus Fund, L.P.

Highland ERA Management, LLC

Highland eSports Private Equity Fund

Highland Financial Corp.

Highland Financial Partners, L.P.

Highland Fixed Income Fund

Highland Flexible Income UCITS Fund

Highland Floating Rate Fund

Highland Floating Rate Opportunites Fund
Highland Floating Rate Opportunities Fund
Highland Fund Holdings, LLC
Highland Funds I
Highland Funds II
Highland Funds III
Highland GAF Chemical Holdings, LLC
Highland General Partner, LP
Highland Global Allocation Fund
Highland Global Allocation Fund *(fka Highland Global Allocation Fund II)*
Highland GP Holdings, LLC
Highland HCF Advisor Ltd.
Highland HCF Advisor, Ltd., as Trustee for and on behalf of Acis CLO Trust, as nominee for and on behalf of Highland CLO Funding, Ltd. (as of 3.29.18)
Highland Healthcare Equity Income and Growth Fund
Highland iBoxx Senior Loan ETF
Highland Income Fund
Highland Income Fund *(fka Highland Floating Rate Opportunities Fund)*
Highland Kansas City Foundation, Inc.
Highland Latin America Consulting, Ltd.
Highland Latin America GP, Ltd.
Highland Latin America LP, Ltd.
Highland Latin America Trust
Highland Legacy Limited
Highland LF Chemical Holdings, LLC
Highland Loan Funding V, LLC
Highland Loan Funding V, Ltd.
Highland Long/Short Equity Fund
Highland Long/Short Healthcare Fund
Highland Marcal Holding, Inc.
Highland Merger Arbitrage Fund
Highland Multi Strategy Credit Fund GP, L.P.
Highland Multi Strategy Credit Fund GP, L.P. *(fka Highland Credit Opportunities CDO GP, L.P.)*
Highland Multi Strategy Credit Fund, L.P.
Highland Multi Strategy Credit Fund, L.P. *(fka Highland Credit Opportunities Fund, L.P., fka Highland Credit Opportunities CDO, L.P.)*
Highland Multi Strategy Credit Fund, Ltd.
Highland Multi Strategy Credit Fund, Ltd. *(fka Highland Credit Opportunities Fund, Ltd.)*
Highland Multi Strategy Credit GP, LLC
Highland Multi Strategy Credit GP, LLC *(fka Highland Credit Opportunities CDO GP, LLC)*
Highland Multi-Strategy Fund GP, LLC
Highland Multi-Strategy Fund GP, LP
Highland Multi-Strategy IDF GP, LLC
Highland Multi-Strategy Master Fund, L.P.
Highland Multi-Strategy Master Fund, LP
Highland Multi-Strategy Onshore Master SubFund II, LLC
Highland Multi-Strategy Onshore Master Subfund, LLC
Highland Opportunistic Credit Fund
Highland Park CDO 1, Ltd.
Highland Park CDO I, Ltd.
Highland Premier Growth Equity Fund
Highland Premium Energy & Materials Fund
Highland Prometheus Feeder Fund I, L.P.
Highland Prometheus Feeder Fund I, LP
Highland Prometheus Feeder Fund II, L.P.
Highland Prometheus Feeder Fund II, LP
Highland Prometheus Master Fund, L.P.
Highland Receivables Finance I, LLC
Highland Restoration Capital Partners GP, LLC
Highland Restoration Capital Partners Master, L.P.
Highland Restoration Capital Partners Offshore, L.P.
Highland Restoration Capital Partners, L.P.
Highland Santa Barbara Foundation, Inc.
Highland Select Equity Fund GP, L.P.
Highland Select Equity Fund, L.P.
Highland Select Equity GP, LLC
Highland Select Equity Master Fund, L.P.

Highland Small-Cap Equity Fund
Highland Socially Responsible Equity Fund
Highland Socially Responsible Equity Fund
(fka Highland Premier Growth Equity Fund)

Highland Special Opportunities Holding Company
Highland SunBridge GP, LLC
Highland Tax-Exempt Fund
Highland TCI Holding Company, LLC
Highland Total Return Fund
Highland's Roads Land Holding Company, LLC
Hinduja Bank (Switzerland) Ltd
Hirst, Ltd.
HMCF PB Investors, LLC
HMx2 Investment Trust
(Matt McGraner)
Hockney, Ltd.
HRT North Atlanta, LLC
HRT Timber Creek, LLC
HRTBH North Atlanta, LLC
HRTBH Timber Creek, LLC
Huber Funding LLC
Hunter Mountain Investment Trust
HWS Investors Holdco, LLC
Internal Investors
Intertrust
James D. Dondero
Reese Avry Dondero
Jameson Drue Dondero
James Dondero
James Dondero and Mark Okada
James Dondero
Reese Avry Dondero
Jameson Drue Dondero
Japan Trustee Services Bank, Ltd.
Jasper CLO, Ltd.
Jewelry Ventures I, LLC
JMIJM, LLC
Joanna E. Milne Irrevocable Trust dated Nov 25 1998 (third party)
John Honis
John L. Holt, Jr.
John R. Sears, Jr.
Karisopolis, LLC
Keelhaul LLC
KHM Interests, LLC (third party)
Kuilima Montalban Holdings, LLC
Kuilima Resort Holdco, LLC
KV Cameron Creek Owner, LLC
Lakes at Renaissance Park Apartments Investors, L.P.
Lakeside Lane, LLC
Landmark Battleground Park II, LLC
Lane Britain
Larry K. Anders
LAT Battleground Park, LLC
LAT Briley Parkway, LLC
Lautner, Ltd.
Leawood RE Holdings, LLC
Liberty Cayman Holdings, Ltd.
Liberty CLO Holdco, Ltd.
Liberty CLO, Ltd.
Liberty Sub, Ltd.
Long Short Equity Sub, LLC
Longhorn Credit Funding LLC
Longhorn Credit Funding LLC - A
Longhorn Credit Funding LLC - B
Longhorn Credit Funding LLC (LHB)
Longhorn Credit Funding, LLC
Lurin Real Estate Holdings V, LLC
Maple Avenue Holdings, LLC
MaplesFS Limited
Marc C. Manzo
Mark and Pam Okada Family Trust - Exempt Descendants' Trust
Mark and Pam Okada Family Trust - Exempt Trust #2
Mark and Pamela Okada Family Trust - Exempt Descendants' Trust
Mark and Pamela Okada Family Trust - Exempt Descendants' Trust #2
Mark and Pamela Okada Family Trust - Exempt Trust #2
Mark K. Okada

Mark Okada
Mark Okada and Pam Okada
Mark Okada and Pam Okada, as joint owners
Mark Okada/Pamela Okada
Markham Fine Jewelers, L.P.
Markham Fine Jewelers, LP
Matt McGraner
Meritage Residential Partners, LLC
MGM Studios HoldCo, Ltd.
Michael Rossi
ML CLO XIX Sterling (Cayman), Ltd.
N/A
Nancy Dondero
NCI Apache Trail LLC
NCI Assets Holding Company LLC
NCI Country Club LLC
NCI Fort Worth Land LLC
NCI Front Beach Road LLC
NCI Minerals LLC
NCI Royse City Land LLC
NCI Stewart Creek LLC
NCI Storage, LLC
Neil Labatte
Neutra, Ltd.
New Jersey Tissue Company Holdco, LLC
(fka Marcal Paper Mills Holding Company, LLC)
NexAnnuity Holdings, Inc.
NexBank Capital Trust I
NexBank Capital, Inc.
NexBank Land Advisors, Inc.
NexBank Securities Inc.
NexBank Securities, Inc.
NexBank SSB
NexBank Title, Inc.
(dba NexVantage Title Services)
NexBank, SSB
NexPoint Advisors GP, LLC
NexPoint Advisors, L.P.
NexPoint Capital REIT, LLC
NexPoint Capital, Inc.
NexPoint Capital, Inc. *(fka NexPoint Capital, LLC)*
NexPoint CR F/H DST, LLC
NexPoint Credit Strategies Fund
NexPoint Discount Strategies Fund
(fka NexPoint Discount Yield Fund)
NexPoint DRIP
NexPoint Energy and Materials Opportunities Fund *(fka NexPoint Energy Opportunities Fund)*
NexPoint Event-Driven Fund
(fkaNexPoint Merger Arbitrage Fund)
NexPoint Flamingo DST
NexPoint Flamingo Investment Co, LLC
NexPoint Flamingo Leaseco, LLC
NexPoint Flamingo Manager, LlC
NexPoint Flamingo Property Manager, LlC
NexPoint Healthcare Opportunities Fund
NexPoint Hospitality Trust
NexPoint Hospitality, Inc.
NexPoint Hospitality, LLC
NexPoint Insurance Distributors, LLC
NexPoint Insurance Solutions GP, LLC
NexPoint Insurance Solutions GP, LLC
(fka Highland Capital Insurance Solutions GP, LLC)
NexPoint Insurance Solutions, L.P.
(fka Highland Capital Insurance Solutions, L.P.)
NexPoint Latin American Opportunities Fund
NexPoint Legacy 22, LLC
NexPoint Lincoln Porte Equity, LLC
NexPoint Lincoln Porte Manager, LLC
NexPoint Lincoln Porte, LLC
(fka NREA Lincoln Porte, LLC)
NexPoint Multifamily Capital Trust, Inc.
NexPoint Multifamily Capital Trust, Inc.
(fka NexPoint Multifamily Realty Trust, Inc., fka Highland Capital Realty Trust, Inc.)
NexPoint Multifamily Operating Partnership, L.P.
NexPoint Peoria, LLC
NexPoint Polo Glen DST

NexPoint Polo Glen Holdings, LLC
NexPoint Polo Glen Investment Co, LLC
NexPoint Polo Glen Leaseco, LLC
NexPoint Polo Glen Manager, LLC
NexPoint RE Finance Advisor GP, LLC
NexPoint RE Finance Advisor, L.P.
NexPoint Real Estate Advisors GP, LLC
NexPoint Real Estate Advisors II, L.P.
NexPoint Real Estate Advisors II, L.P.
NexPoint Real Estate Advisors III, L.P.
NexPoint Real Estate Advisors IV, L.P.
NexPoint Real Estate Advisors V, L.P.
NexPoint Real Estate Advisors VI, L.P.
NexPoint Real Estate Advisors VII GP, LLC
NexPoint Real Estate Advisors VII, L.P.
NexPoint Real Estate Advisors VIII, L.P.
NexPoint Real Estate Advisors, L.P.
NexPoint Real Estate Capital, LLC
NexPoint Real Estate Capital, LLC *(fka Highland Real Estate Capital, LLC, fka Highland Multifamily Credit Fund, LLC)*
NexPoint Real Estate Finance OP GP, LLC
NexPoint Real Estate Finance Operating Partnership, L.P.
NexPoint Real Estate Finance, Inc.
NexPoint Real Estate Opportunities, LLC
NexPoint Real Estate Opportunities, LLC *(fka Freedom REIT LLC)*
NexPoint Real Estate Partners, LLC (fka HCRE Partners, LLC)
NexPoint Real Estate Partners, LLC (fka HCRE Partners, LLC)
NexPoint Real Estate Strategies Fund
NexPoint Residential Trust Inc.
NexPoint Residential Trust Operating Partnership GP, LLC
NexPoint Residential Trust Operating Partnership, L.P.
NexPoint Residential Trust Operating Partnership, L.P.
NexPoint Residential Trust, Inc.
NexPoint Securities, Inc. *(fka Highland Capital Funds Distributor, Inc.) (fka Pyxis Distributors, Inc.)*
NexPoint Strategic Income Fund *(fka NexPoint Opportunistic Credit Fund, fka NexPoint Distressed Strategies Fund)*
NexPoint Strategic Opportunities Fund
NexPoint Strategic Opportunities Fund *(fka NexPoint Credit Strategies Fund)*
NexPoint Texas Multifamily Portfolio DST *(fka NREA Southeast Portfolio Two, DST)*
NexPoint WLIF I Borrower, LLC
NexPoint WLIF I, LLC
NexPoint WLIF II Borrower, LLC
NexPoint WLIF II, LLC
NexPoint WLIF III Borrower, LLC
NexPoint WLIF III, LLC
NexPoint WLIF, LLC (Series I)
NexPoint WLIF, LLC (Series II)
NexPoint WLIF, LLC (Series III)
NexStrat LLC
NexVest, LLC
NexWash LLC
NFRO REIT Sub, LLC
NFRO TRS, LLC
NHF CCD, Inc.
NHT 2325 Stemmons, LLC
NHT Beaverton TRS, LLC *(fka NREA Hotel TRS, Inc.)*
NHT Beaverton, LLC
NHT Bend TRS, LLC
NHT Bend, LLC
NHT Destin TRS, LLC
NHT Destin, LLC
NHT DFW Portfolio, LLC
NHT Holdco, LLC
NHT Holdings, LLC
NHT Intermediary, LLC
NHT Nashville TRS, LLC
NHT Nashville, LLC
NHT Olympia TRS, LLC
NHT Olympia, LLC
NHT Operating Partnership GP, LLC

NHT Operating Partnership II, LLC
NHT Operating Partnership, LLC
NHT Salem, LLC
NHT SP Parent, LLC
NHT SP TRS, LLC
NHT SP, LLC
NHT Tigard TRS, LLC
NHT Tigard, LLC
NHT TRS, Inc.
NHT Uptown, LLC
NHT Vancouver TRS, LLC
NHT Vancouver, LLC
NLA Assets LLC
NMRT TRS, Inc.
NREA Adair DST Manager, LLC
NREA Adair Investment Co, LLC
NREA Adair Joint Venture, LLC
NREA Adair Leaseco Manager, LLC
NREA Adair Leaseco, LLC
NREA Adair Property Manager LLC
NREA Adair, DST
NREA Ashley Village Investors, LLC
NREA Cameron Creek Investors, LLC
NREA Cityplace Hue Investors, LLC
NREA Crossing Investors LLC
NREA Crossings Investors, LLC
NREA Crossings Ridgewood Coinvestment, LLC *(fka NREA Crossings Ridgewood Investors, LLC)*
NREA DST Holdings, LLC
NREA El Camino Investors, LLC
NREA Estates Inc.
NREA Estates Investment Co, LLC
NREA Estates Leaseco, LLC
NREA Estates Manager, LLC
NREA Estates Property Manager, LLC
NREA Estates, DST
NREA Gardens DST Manager LLC
NREA Gardens DST Manager, LLC
NREA Gardens Investment Co, LLC
NREA Gardens Leaseco Manager, LLC
NREA Gardens Leaseco, LLC
NREA Gardens Property Manager, LLC
NREA Gardens Springing LLC
NREA Gardens Springing Manager, LLC
NREA Gardens, DST
NREA Hidden Lake Investment Co, LLC
NREA Hue Investors, LLC
NREA Keystone Investors, LLC
NREA Meritage Inc.
NREA Meritage Investment Co, LLC
NREA Meritage Leaseco, LLC
NREA Meritage Manager, LLC
NREA Meritage Property Manager, LLC
NREA Meritage, DST
NREA Oaks Investors, LLC
NREA Retreat Investment Co, LLC
NREA Retreat Leaseco, LLC
NREA Retreat Manager, LLC
NREA Retreat Property Manager, LLC
NREA Retreat, DST
NREA SE MF Holdings LLC
NREA SE MF Holdings, LLC
NREA SE MF Investment Co, LLC
NREA SE MF Investment Co, LLC
NREA SE Multifamily LLC
NREA SE Multifamily, LLC
NREA SE One Property Manager, LLC
NREA SE Three Property Manager, LLC
NREA SE Two Property Manager, LLC
NREA SE1 Andros Isles Leaseco, LLC
NREA SE1 Andros Isles Manager, LLC
NREA SE1 Andros Isles, DST
(Converted from DK Gateway Andros, LLC)
NREA SE1 Arborwalk Leaseco, LLC
NREA SE1 Arborwalk Manager, LLC
NREA SE1 Arborwalk, DST
(Converted from MAR Arborwalk, LLC)
NREA SE1 Towne Crossing Leaseco, LLC
NREA SE1 Towne Crossing Manager, LLC
NREA SE1 Towne Crossing, DST
(Converted from Apartment REIT Towne Crossing, LP)
NREA SE1 Walker Ranch Leaseco, LLC
NREA SE1 Walker Ranch Manager, LLC

NREA SE1 Walker Ranch, DST
(Converted from SOF Walker Ranch Owner, L.P.)

NREA SE2 Hidden Lake Leaseco, LLC

NREA SE2 Hidden Lake Manager, LLC

NREA SE2 Hidden Lake, DST

NREA SE2 Hidden Lake, DST
(Converted from SOF Hidden Lake SA Owner, L.P.)

NREA SE2 Vista Ridge Leaseco, LLC

NREA SE2 Vista Ridge Manager, LLC

NREA SE2 Vista Ridge, DST

NREA SE2 Vista Ridge, DST
(Converted from MAR Vista Ridge, L.P.)

NREA SE2 West Place Leaseco, LLC

NREA SE2 West Place Manager, LLC

NREA SE2 West Place, DST
(Converted from Landmark at West Place, LLC)

NREA SE3 Arboleda Leaseco, LLC

NREA SE3 Arboleda Manager, LLC

NREA SE3 Arboleda, DST
(Converted from G&E Apartment REIT Arboleda, LLC)

NREA SE3 Fairways Leaseco, LLC

NREA SE3 Fairways Manager, LLC

NREA SE3 Fairways, DST
(Converted from MAR Fairways, LLC)

NREA SE3 Grand Oasis Leaseco, LLC

NREA SE3 Grand Oasis Manager, LLC

NREA SE3 Grand Oasis, DST
(Converted from Landmark at Grand Oasis, LP)

NREA Southeast Portfolio One Manager, LLC

NREA Southeast Portfolio One, DST

NREA Southeast Portfolio One, DST

NREA Southeast Portfolio Three Manager, LLC

NREA Southeast Portfolio Three, DST

NREA Southeast Portfolio Three, DST

NREA Southeast Portfolio Two Manager, LLC

NREA Southeast Portfolio Two, DST

NREA Southeast Portfolio Two, LLC

NREA SOV Investors, LLC

NREA Uptown TRS, LLC

NREA VB I LLC

NREA VB II LLC

NREA VB III LLC

NREA VB IV LLC

NREA VB Pledgor I LLC

NREA VB Pledgor I, LLC

NREA VB Pledgor II LLC

NREA VB Pledgor II, LLC

NREA VB Pledgor III LLC

NREA VB Pledgor III, LLC

NREA VB Pledgor IV LLC

NREA VB Pledgor IV, LLC

NREA VB Pledgor V LLC

NREA VB Pledgor V, LLC

NREA VB Pledgor VI LLC

NREA VB Pledgor VI, LLC

NREA VB Pledgor VII LLC

NREA VB Pledgor VII, LLC

NREA VB SM, Inc.

NREA VB V LLC

NREA VB VI LLC

NREA VB VII LLC

NREA Vista Ridge Investment Co, LLC

NREC AR Investors, LLC

NREC BM Investors, LLC

NREC BP Investors, LLC

NREC Latitude Investors, LLC

NREC REIT Sub, Inc.

NREC TRS, Inc.

NREC WW Investors, LLC

NREF OP I Holdco, LLC

NREF OP I SubHoldco, LLC

NREF OP I, L.P.

NREF OP II Holdco, LLC

NREF OP II SubHoldco, LLC

NREF OP II, L.P.

NREF OP IV REIT Sub TRS, LLC

NREF OP IV REIT Sub, LLC

NREF OP IV, L.P.

NREO NW Hospitality Mezz, LLC

NREO NW Hospitality, LLC

NREO Perilune, LLC
NREO SAFStor Investors, LLC
NREO TRS, Inc.
NRESF REIT Sub, LLC
NXRT Abbington, LLC
NXRT Atera II, LLC
NXRT Atera, LLC
NXRT AZ2, LLC
NXRT Barrington Mill, LLC
NXRT Bayberry, LLC
NXRT Bella Solara, LLC
NXRT Bella Vista, LLC
NXRT Bloom, LLC
NXRT Brandywine GP I, LLC
NXRT Brandywine GP I, LLC
NXRT Brandywine GP II, LLC
NXRT Brandywine GP II, LLC
NXRT Brandywine LP, LLC
NXRT Brandywine LP, LLC
NXRT Brentwood Owner, LLC
NXRT Brentwood, LLC
NXRT Cedar Pointe Tenant, LLC
NXRT Cedar Pointe, LLC
NXRT Cityview, LLC
NXRT Cornerstone, LLC
NXRT Crestmont, LLC
NXRT Crestmont, LLC
NXRT Enclave, LLC
NXRT Glenview, LLC
NXRT H2 TRS, LLC
NXRT Heritage, LLC
NXRT Hollister TRS LLC
NXRT Hollister, LLC
NXRT LAS 3, LLC
NXRT Master Tenant, LLC
NXRT Nashville Residential, LLC
NXRT Nashville Residential, LLC *(fka Freedom Nashville Residential, LLC)*
NXRT North Dallas 3, LLC
NXRT Old Farm, LLC
NXRT Pembroke Owner, LLC
NXRT Pembroke, LLC
NXRT PHX 3, LLC
NXRT Radbourne Lake, LLC
NXRT Rockledge, LLC
NXRT Sabal Palms, LLC
NXRT SM, Inc.
NXRT Steeplechase, LLC
NXRT Stone Creek, LLC
NXRT Summers Landing GP, LLC
NXRT Summers Landing LP, LLC
NXRT Torreyana, LLC
NXRT Vanderbilt, LLC
NXRT West Place, LLC
NXRTBH AZ2, LLC
NXRTBH Barrington Mill Owner, LLC
NXRTBH Barrington Mill SM, Inc.
NXRTBH Barrington Mill, LLC
NXRTBH Bayberry, LLC
NXRTBH Cityview, LLC
NXRTBH Colonnade, LLC
NXRTBH Cornerstone Owner, LLC
NXRTBH Cornerstone SM, Inc.
NXRTBH Cornerstone, LLC
NXRTBH Dana Point SM, Inc.
NXRTBH Dana Point, LLC
NXRTBH Foothill SM, Inc.
NXRTBH Foothill, LLC
NXRTBH Heatherstone SM, Inc.
NXRTBH Heatherstone, LLC
NXRTBH Hollister Tenant, LLC
NXRTBH Hollister, LLC
NXRTBH Madera SM, Inc.
NXRTBH Madera, LLC
NXRTBH McMillan, LLC
NXRTBH North Dallas 3, LLC
NXRTBH Old Farm II, LLC
NXRTBH Old Farm Tenant, LLC
NXRTBH Old Farm, LLC
NXRTBH Radbourne Lake, LLC
NXRTBH Rockledge, LLC
NXRTBH Sabal Palms, LLC
NXRTBH Steeplechase, LLC
(dba Southpoint Reserve at Stoney Creek)-VA
NXRTBH Stone Creek, LLC
NXRTBH Vanderbilt, LLC

NXRTBH Versailles SM, Inc.
NXRTBH Versailles, LLC
Oak Holdco, LLC
Oaks CGC, LLC
Okada Family Revocable Trust
Oldenburg, Ltd.
Pam Capital Funding GP Co. Ltd.
Pam Capital Funding, L.P.
PamCo Cayman Ltd.
Park West 1700 Valley View Holdco, LLC
Park West 2021 Valley View Holdco, LLC
Park West Holdco, LLC
Park West Portfolio Holdco, LLC
Participants of Highland 401K Plan
Patrick Willoughby-McCabe
PCMG Trading Partners XXIII, L.P.
PCMG Trading Partners XXIII, LP
PDK Toys Holdco, LLC
Pear Ridge Partners, LLC
Penant Management GP, LLC
Penant Management LP
PensionDanmark Holding A/S
PensionDanmark Pensionsforsikringsaktieselskab
Peoria Place Development, LLC (30% cash contributions - profit participation only)
Perilune Aero Equity Holdings One, LLC
Perilune Aviation LLC
PetroCap Incentive Holdings III. L.P.
PetroCap Incentive Partners II GP, LLC
PetroCap Incentive Partners II, L.P.
PetroCap Incentive Partners III GP, LLC
PetroCap Incentive Partners III, LP
PetroCap Management Company LLC
PetroCap Partners II GP, LLC
PetroCap Partners II, L.P.
PetroCap Partners III GP, LLC
PetroCap Partners III, L.P.
Pharmacy Ventures I, LLC
Pharmacy Ventures II, LLC
Pollack, Ltd.
Powderhorn, LLC
PWM1 Holdings, LLC
PWM1, LLC
RADCO - Bay Meadows, LLLP
RADCO - Bay Park, LLLP
RADCO NREC Bay Meadows Holdings, LLC
RADCO NREC Bay Park Holdings, LLC
Ramarim, LLC
Rand Advisors Series I Insurance Fund
Rand Advisors Series II Insurance Fund
Rand Advisors, LLC
Rand PE Fund I, L.P.
Rand PE Fund I, L.P. - Series 1
Rand PE Fund Management, LLC
Rand PE Holdco, LLC
Realdania
Red River CLO, Ltd.
Red River Investors Corp.
Riverview Partners SC, LLC
Rockwall CDO II Ltd.
Rockwall CDO II, Ltd.
Rockwall CDO, Ltd.
Rockwall Investors Corp.
Rothko, Ltd.
RTT Bella Solara, LLC
RTT Bloom, LLC
RTT Financial, Inc.
RTT Hollister, LLC
RTT Rockledge, LLC
RTT Torreyana, LLC
SALI Fund Partners, LLC
SAS Management
SAS Asset Recovery Ltd.
San Diego County Employees Retirement Association
Sandstone Pasadena Apartments, LLC
Sandstone Pasadena, LLC
Santa Barbara Foundation (third party)
Saturn Oil & Gas LLC
SBC Master Pension Trust
Scott Matthew Siekielski
SE Battleground Park, LLC
SE Battleground Park, LLC

SE Glenview, LLC

SE Governors Green Holdings, L.L.C.

SE Governors Green Holdings, L.L.C. *(fka SCG Atlas Governors Green Holdings, L.L.C.)*

SE Governors Green I, LLC

SE Governors Green II, LLC

SE Governors Green II, LLC

SE Governors Green REIT, L.L.C.

SE Governors Green REIT, L.L.C. *(fka SCG Atlas Governors Green REIT, L.L.C.)*

SE Governors Green, LLC *(fka SCG Atlas Governors Green, L.L.C.)*

SE Gulfstream Isles GP, LLC

SE Gulfstream Isles GP, LLC

SE Gulfstream Isles LP, LLC

SE Gulfstream Isles LP, LLC

SE Heights at Olde Towne, LLC

SE Heights at Olde Towne, LLC

SE Lakes at Renaissance Park GP I, LLC

SE Lakes at Renaissance Park GP II, LLC

SE Lakes at Renaissance Park GP II, LLC

SE Lakes at Renaissance Park LP, LLC

SE Lakes at Renaissance Park LP, LLC

SE Multifamily Holdings LLC

SE Multifamily Holdings, LLC

SE Multifamily REIT Holdings LLC

SE Myrtles at Olde Towne, LLC

SE Myrtles at Olde Towne, LLC

SE Oak Mill I Holdings, LLC

SE Oak Mill I Holdings, LLC *(fka SCG Atlas Oak Mill I Holdings, L.L.C.)*

SE Oak Mill I Owner, LLC *(fka SCG Atlas Oak Mill I, L.L.C.)*

SE Oak Mill I REIT, LLC

SE Oak Mill I REIT, LLC *(fka SCG Atlas Oak Mill I REIT, L.L.C.)*

SE Oak Mill I, LLC

SE Oak Mill I, LLC

SE Oak Mill II Holdings, LLC

SE Oak Mill II Holdings, LLC *(fka SCG Atlas Oak Mill II Holdings, L.L.C.)*

SE Oak Mill II Owner, LLC *(fka SCG Atlas Oak Mill II, L.L.C.)*

SE Oak Mill II REIT, LLC

SE Oak Mill II REIT, LLC *(fka SCG Atlas Oak Mill II REIT, L.L.C.)*

SE Oak Mill II, LLC

SE Oak Mill II, LLC

SE Quail Landing, LLC

SE River Walk, LLC

SE Riverwalk, LLC

SE SM, Inc.

SE Stoney Ridge Holdings, L.L.C. *(fka SCG Atlas Stoney Ridge Holdings, L.L.C.)*

SE Stoney Ridge Holdings, LLC

SE Stoney Ridge I, LLC

SE Stoney Ridge I, LLC

SE Stoney Ridge II, LLC

SE Stoney Ridge II, LLC

SE Stoney Ridge REIT, L.L.C. *(fka SCG Atlas Stoney Ridge REIT, L.L.C.)*

SE Stoney Ridge REIT, LLC

SE Stoney Ridge, LLC *(fka SCG Atlas Stoney Ridge, L.L.C.)*

SE Victoria Park, LLC

SE Victoria Park, LLC

Sentinel Re Holdings, Ltd.

Sentinel Reinsurance Ltd.

Sentinel Reinsurance Limited

SFH1, LLC

SFR WLIF I, LLC *(fka NexPoint WLIF I, LLC)*

SFR WLIF II, LLC *(NexPoint WLIF II, LLC)*

SFR WLIF III, LLC *(NexPoint WLIF III, LLC)*

SFR WLIF Manager, LLC *(NexPoint WLIF Manager, LLC)*

SFR WLIF, LLC *(NexPoint WLIF, LLC)*

SFR WLIF, LLC Series I

SFR WLIF, LLC Series II

SFR WLIF, LLC Series III

SH Castle BioSciences, LLC

Small Cap Equity Sub, LLC
Socially Responsible Equity Sub, LLC
SOF Brandywine I Owner, L.P.
SOF Brandywine II Owner, L.P.
SOF-X GS Owner, L.P.
Southfork Cayman Holdings, Ltd.
Southfork CLO, Ltd.
Specialty Financial Products Designated Activity Company *(fka Specialty Financial Products Limited)*
Spiritus Life, Inc.
SRL Sponsor LLC
SRL Whisperwod LLC
SRL Whisperwood Member LLC
SRL Whisperwood Venture LLC
SSB Assets LLC
Starck, Ltd.
Stemmons Hospitality, LLC
Steve Shin
Stonebridge Capital, Inc.
Stonebridge-Highland Healthcare Private Equity Fund
Strand Advisors III, Inc.
Strand Advisors IV, LLC
Strand Advisors IX, LLC
Strand Advisors V, LLC
Strand Advisors XIII, LLC
Strand Advisors XVI, Inc.
Strand Advisors, Inc.
Stratford CLO, Ltd.
Summers Landing Apartment Investors, L.P.
Term Loan B
(10% cash contributions - profit participation only)
The Dallas Foundation
The Dallas Foundation (third party)
The Dondero Insurance Rabbi Trust
The Dugaboy Investment Trust
The Dugaboy Investment Trust U/T/A Dated Nov 15, 2010
The Get Good Non-Exempt Trust No. 1
The Get Good Non-Exempt Trust No. 2
The Get Good Trust
The Mark and Pamela Okada Family Trust - Exempt Descendants' Trust
The Mark and Pamela Okada Family Trust - Exempt Trust #2
The Ohio State Life Insurance Company
The Okada Family Foundation, Inc.
The Okada Insurance Rabbi Trust
The SLHC Trust
The Trustees of Columbia University in the City of New York
The Twentysix Investment Trust
(Third Party Investor)
Thomas A. Neville
Thread 55, LLC
Tihany, Ltd.
Todd Travers
Tranquility Lake Apartments Investors, L.P.
Tuscany Acquisition, LLC
Uptown at Cityplace Condominium Association, Inc.
US Gaming OpCo, LLC
US Gaming SPV, LLC
US Gaming, LLC
Valhalla CLO, Ltd.
VB GP LLC
VB Holding, LLC
VB One, LLC
VB OP Holdings LLC
VBAnnex C GP, LLC
VBAnnex C Ohio, LLC
VBAnnex C, LP
Ventoux Capital, LLC
(Matt Goetz)
VineBrook Annex B, L.P.
VineBrook Annex I, L.P.
VineBrook Homes Merger Sub II LLC
VineBrook Homes Merger Sub LLC
VineBrook Homes OP GP, LLC
VineBrook Homes Operating Partnership, L.P.
VineBrook Homes Trust, Inc.
VineBrook Partners I, L.P.
VineBrook Partners II, L.P.
VineBrook Properties, LLC

Virginia Retirement System
Vizcaya Investment, LLC
Wake LV Holdings II, Ltd.
Wake LV Holdings, Ltd.
Walter Holdco GP, LLC
Walter Holdco I, Ltd.
Walter Holdco, L.P.
Warhol, Ltd.
Warren Chang
Westchester CLO, Ltd.
William L. Britain
Wright Ltd.
Wright, Ltd.
Yellow Metal Merchants, Inc.

EXHIBIT EE

accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

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

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month ~~(the "Base Salary")~~. Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) ~~the Base Salary~~a base salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

EXHIBIT FF

Schedule of Contracts and Leases to Be Assumed

1. Advisory Services Agreement, dated November 21, 2011, effective June 20, 2011, by and between Carey International, Inc., and Highland Capital Management, L.P.
2. Amended and Restated Advisory Services Agreement, dated March 4, 2013, by and between Trussway Holdings, Inc., and Highland Capital Management, L.P.
3. Reference Portfolio Management Agreement, dated March 4, 2004, by and between Highland Capital Management, L.P., and Citibank N.A.
4. Advisory Services Agreement, dated May 25, 2011, by and between CCS Medical, Inc., and Highland Capital Management, L.P.
5. Amended and Restated Advisory Services Agreement, dated February 28, 2013, by and between Cornerstone Healthcare Group Holding, Inc., and Highland Capital Management, L.P.
6. Prime Brokerage Agreement by and between Jefferies LLC and Highland Capital Management, L.P., dated May 24, 2013.
7. Amended and Restated Shared Services Agreement, dated August 21, 2015, by and between Highland Capital Management, L.P., and Falcon E&P Opportunities GP, LLC.
8. Amended and Restated Administrative Services Agreement, effective as of August 21, 2015, by and between Highland Capital Management, L.P., and Petrocap Partners II GP, LLC.
9. Office Lease, between Crescent Investors, L.P., and Highland Capital Management, L.P.
10. Paylocity Corporation Services Agreement, between Highland Capital Management, L.P., and Paylocity Corporation, dated November 19, 2012.
11. Electronic Trading Services Agreement, between SunTrust Robinson Humphrey Inc., and Highland Capital Management, L.P., dated February 6, 2019.
12. Letter Agreement, between FTI Consulting, Inc., and Highland Capital Management, L.P., dated November 19, 2018.
13. Administrative Services Agreement, dated January 1, 2018, between Highland Capital Management, L.P., and Liberty Life Assurance Company of Boston.
14. Electronic Communications: Customer Authorization & Indemnification, between Highland Capital Management, L.P., and The Bank of New York Mellon Corporation, dated August 9, 2016.
15. Letter Agreement, dated August 9, 2016, Electronic Access Terms and Conditions, by and between The Bank of New York Mellon Trust Company, N.A., and Highland Capital Management, L.P.
16. Shared Services Agreement by and between Highland HCF Advisor, Ltd., and Highland Capital Management, L.P., dated effective October 27, 2017.

17. Sub-Advisory Agreement, by and between Highland HCF Advisors, Ltd., and Highland Capital Management, dated effective October 27, 2017.

18. Collateral Management Agreement, dated November 2, 2006, by and between Highland Credit Opportunities CDO Ltd. and Highland Capital Management, L.P.

19. Management Agreement, dated November 15, 2007, between Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Partners Master L.P., Highland Restoration Capital Partners GP, LLC, and Highland Capital Management, L.P.

20. Investment Management Agreement, between Highland Capital Multi-Strategy Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.

21. Investment Management Agreement, between Highland Capital Multi-Strategy Master Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.

22. Management Agreement, dated August 22, 2007, between and among Highland Capital Management, L.P., and Walkers Fund Services Limited, as trustee of Highland Credit Opportunities Japanese Unit Trust.

23. Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P., dated November 1, 2013.

24. Investment Management Agreement, dated March 31, 2015, by and among Highland Select Equity Master Fund, L.P., Highland Select Equity Fund GP, L.P., and Highland Capital Management, L.P.

25. Amended and Restated Investment Management Agreement, dated February 27, 2017, by and among Highland Prometheus Master Fund L.P., Highland Prometheus Feeder Fund I, L.P., Highland Prometheus Feeder Fund II, L.P., Highland SunBridge GP, LLC, and Highland Capital Management, L.P.

26. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.

27. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)

28. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.

29. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.

30. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.

31. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.

32. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.

33. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)

34. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.

35. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.

36. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.

37. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.

38. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.

39. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)

40. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.

41. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)

42. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.

43. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

44. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.

45. AT&T Managed Internet Service, between Highland Capital Management, L.P. and AT&T Corp., dated February 24, 2015.

46. ViaWest, Master Service Agreement, dated October 3, 2011, between Highland Capital Management, L.P. and ViaWest

47. Stockholders' Agreement, dated April 15, 2005, by and between American Banknote Corporation and Highland Capital Management, L.P.

48. Stockholders' Agreement and Amendment No. 1, dated January 25, 2011, by and between Carey Holdings, Inc. and Highland Capital Management, L.P.

49. Stockholders' Agreement and Amendment, dated March 24, 2010, by and between Cornerstone Healthcare Group Holding, Inc. and Highland Capital Management, L.P.

50. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.

51. Stock Purchase and Sale Agreement and Amendment, dated January 16, 2013, by and between Progenics Pharmaceuticals, Inc. and Highland Capital Management, L.P.

52. Stockholders' Agreement and Amendments, dated October 24, 2008, by and between JHT Holdings, Inc. and Highland Capital Management, L.P.

53. Amended and Restated Limited Partnership Agreement of Highland Dynamic Income Fund, L.P., dated February 25, 2013, by and between Highland Dynamic Income Fund GP, LLC and Highland Capital Management, L.P.

54. Highland Multi-Strategy Fund, L.P. Limited Partnership Agreement, dated July 6, 2006, by and between Highland Multi-Strategy Fund GP, L.P. and Highland Capital Management, L.P.

55. Operating Agreement of HE Capital, LLC (as amended), dated September 27, 2007, by and between ENA Capital, LLC Ellman Management Group, Inc. and Highland Capital Management, L.P.

56. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund II, LLC, dated February 27, 2007, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.

57. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund, LLC, dated July 19, 2006, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.

58. Highland Capital Management, L.P., Limited Liability Company Agreement of Highland Receivables Finance 1, LLC, by and between Highland Capital Management, L.P. and Highland Capital Management, L.P.

59. Agreement of Limited Partnership of Highland Restoration Capital Partners, L.P. and Amendments, dated November 6, 2007, by and between Highland Restoration Capital Partners GP, LLC and Highland Capital Management, L.P.

60. Agreement of Limited Partnership of Highland Select Equity Fund GP, L.P., dated October 2005, by and between Highland Select Equity Fund GP, LLC and Highland Capital Management, L.P.

61. Agreement of Limited Partnership of Penant Management LP, dated December 12, 2012, by and between Penant Management GP, LLC and Highland Capital Management, L.P.

62. Agreement of Limited Partnership of Petrocap Incentive Partners III, LP, dated April 12, 2018, by and between Petrocap Incentive Partners III GP, LLC, Petrocap Incentive Holdings III, LP and Highland Capital Management, L.P.

63. Amended and Restated Agreement of Limited Partnership of Petrocap Partners II, LP, dated October 30, 2014, by and between Petrocap Partners II GP, LLC, Petrocap Incentive Partners II, LP and Highland Capital Management, L.P.

64. Agreement of Limited Partnership of Highland Credit Opportunities CDO GP, L.P., dated December 29, 2005, by and between Highland Credit Opportunities CDO GP, LLC and Highland Capital Management, L.P.

65. Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P., dated November 1, 2014, by and between Highland Multi Strategy Credit Fund GP, L.P. and Highland Capital Management, L.P.

66. DUO Security, 2 factor authentication, by and between DUO Security and Highland Capital Management, L.P.

67. GoDaddy Domain Registrations, by and between GoDaddy and Highland Capital Management, L.P.

68. Highland Loan Fund, Ltd. et al, Investment Management Agreement, dated July 31, 2001, by and between Highland Loan Fund, Ltd. et al and Highland Capital Management, L.P.

69. E Mailflow Monitoring, by and between Mxtoolbox and Highland Capital Management, L.P.

70. Cloud single sign on for HR related employee login, by and between Onelogin and Highland Capital Management, L.P.

71. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.

72. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.

73. Order Addenda, dated January 28, 2020, by and between CenturyLink Communications, LLC and Highland Capital Management, L.P.

74. Service Agreement (as amended), dated April 1, 2005, by and between Intex Solutions, Inc. and Highland Capital Management, L.P.

75. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al

76. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd

77. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd

78. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association

79. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.

80. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company

81. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company

82. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

83. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company

84. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association

85. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.

86. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company

87. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

88. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association

89. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company

90. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

91. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

92. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

93. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

94. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

95. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.

96. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association

97. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust

98. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.

99. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.

100. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.

101. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association

102. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

103. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

104. Securities Account Control Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Highland CDO Opportunity Fund, Ltd.; JPMorgan Chase Bank, National Association

105. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.

106. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association

107. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company

108. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association

109. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street

110. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank

111. Extension/Buy-Out Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Citigroup Financial Products Inc.; Citigroup Global Markets Inc.

112. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.

113. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company

114. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

115. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery

116. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel

117. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms

118. Colocation Service Order dated October 14, 2019 between Highland Capital Management and Dawn US Holdings, LLC d/b/a Evoque Date Center Solutions

119. Tradesuite Web Module Services/Agreement between Highland Capital Management and DTCC ITP LLC

120. Bloomberg (Terminal) Agreement No. 306371 between Highland Capital Management and Bloomberg Finance, L.P.[1]

121. Master Service Agreement between Highland Capital Management and Via West

122. Amendment to Bloomberg Order Management System Addendum and Bloomberg Order Management System Schedule of Services Account No. 167969 between Highland Capital Management and Bloomberg Finance, L.P.

123. Fourth Amendment to Software License and Services Agreement between Highland Capital Management and Markit WSO Corporation

124. Master Services Agreement, First Amendment to Master Services Agreement, Second Amendment and Restatement of Master Services Agreement between Highland Capital Management and Siepe Services, LLC

125. Internet Agreement Account No. 831-000-7888-651 between Highland Capital Management and AT&T

126. Landline Fax Agreement Account No. 831-000-2532-176 between Highland Capital Management and AT&T

127. Amazon Web Services Account No. 353534426569 between Highland Capital Management and Amazon Web Service, Inc.

128. Website Hosting Agreement Account No. 325667 between Highland Capital Management and WP Engine

[1] The Debtor is currently in discussions with Bloomberg regarding the assumption of this agreement.

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	June 8, 2023
	9:30 a.m. Docket
Reorganized Debtor.	
	HMIT'S MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING (3699)

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

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DALLAS, TEXAS - JUNE 8, 2023 - 9:42 A.M.

THE CLERK: All rise. United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, The Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated. All right. We are here this morning for a setting in Highland. This is on a motion of Hunter Mountain for leave to file an adversary proceeding. I will start out by getting appearances from lawyers in the courtroom.

MR. MCENTIRE: Yes, Your Honor. Sawnie McEntire along with my partner Roger McCleary and Tim Miller on behalf of Hunter Mountain Investment Trust, Ltd.

THE COURT: Thank you.

MR. MORRIS: Good morning, Your Honor. John Morris, Pachulski Stang Ziehl & Jones, for the Reorganized Highland, for the Highland Claimant Trust. I'm joined by Mr. Pomerantz, Mr. Demo, and Ms. Winograd.

THE COURT: Good morning.

MR. STANCIL: Good morning, Your Honor. Mark Stancil from Willkie Farr & Gallagher for Mr. Seery. I'm joined by my colleague Josh Levy.

THE COURT: Good morning.

MR. MCILWAIN: Good morning, Your Honor. Brent McIlwain from Holland & Knight here for Muck Holding, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, and

Stonehill Capital Management, LLC.

THE COURT: Thank you. All right. Is that all of our lawyer appearances? I know we have observers on the WebEx, but I assume you are just observers. We scheduled this to be a live hearing for participants.

All right. Well, we had some ground rules for how this would go forward today. We, of course, have had two -- I call them hearings on what kind of hearing we're going to have. We've had two status conferences. And so our ground rules were set. Three hours of total presentation time for each the Movant and the aggregate Respondents. We also had an order regarding what discovery would or would not be allowed.

And to my surprise, there were a flurry of pleadings. We're a few minutes late getting out here because we were trying to digest what was filed late yesterday and into the night.

So I understand we have a controversy about a couple of expert witnesses who were listed on Monday on the Movants' exhibit and witness list. And I've seen a motion to exclude the expert witnesses' testimony. And I think we need to address that right off the bat. I don't want to take too much time on this, because, again, we're going to finish today, and I won't let this housekeeping matter eat into our three hours, but I want to get going. So I'll hear from Movant, Mr. McEntire.

MR. STANCIL: Your Honor, may --

THE COURT: Go ahead.

MR. STANCIL: We moved to exclude, so I would propose that my colleague, Mr. Levy, address this motion very briefly if --

THE COURT: Well, I guess --

MR. STANCIL: Or I will do as --

THE COURT: -- that actually makes sense.

MR. STANCIL: Okay.

THE COURT: I was thinking Mr. McEntire teed up the issue, but I suppose you did with the motion to exclude. So, Counsel?

MR. LEVY: Thank you, Your Honor. Josh Levy on behalf of Mr. Seery.

So, we think our papers largely speak for themselves, but two additional points we'd like to raise. In the response filed by Hunter Mountain this morning, and this is Docket Entry 3828, in Paragraph 11, they argue that this is a bench hearing on colorability, not a trial where junk science is a concern. But junk science is precisely what they're trying to introduce here. They have raised two expert witnesses, one who purports to be an expert in compensation but has no experience whatsoever in evaluating compensation, and they provide no methodology for their conclusion.

For example, they claim to have identified red flags.

They never explain what those red flags are, why they are red flags, or how they determined they were red flags. This is junk science, precisely what the Federal Rules are designed to exclude.

But that shouldn't detract from the broader procedural point that this is the first time we're hearing about expert witnesses, at 10:00 p.m. three days before the hearing. This is a trial by ambush. This motion was filed in March, we've been litigating this motion for over two months now, and this is the first time we're hearing about any expert witnesses.

As Your Honor noted, we've had multiple conferences. We've had rules setting the ground rules for this hearing. We've had orders setting the scope of discovery. But now Hunter Mountain is trying to pull a bait-and-switch. After never mentioning any experts, after obtaining orders limiting the scope of discovery, they then wait until right before the hearing to disclose their experts, ensuring that these experts are insulated from any kind of discovery and can ambush us at the hearing.

I'm happy to answer any other questions, but we believe they should be excluded and the accompanying exhibits should also be excluded.

THE COURT: All right. Thank you. And the accompanying exhibits, I don't review exhibits before a trial or a hearing because I don't know what's going to be objected

to and admitted. So do you want to point out, were there expert reports in the proposed exhibits?

MR. LEVY: These were charts and analyses prepared by their experts, not actual expert reports.

THE COURT: Okay.

MR. LEVY: In their witness and exhibit list, Hunter Mountain included several paragraphs that I guess serves as what would be their expert reports. And then it would be Exhibits 39 through 52, which consist of CVs, materials reviewed, and then what they term "data charts" prepared by their experts.

THE COURT: 39 through 52? Oh, I'm looking at the wrong exhibit notebook. Oh.

(Pause.)

THE COURT: Okay. Here we go. All right. No questions at this time.

Mr. McEntire?

MR. MCENTIRE: Yes, Your Honor. May I proceed?

THE COURT: You may.

MR. MCENTIRE: Again, my presentation and response is subject to our objection concerning that any evidence is being admitted for any purpose, other than what we believe is the proper standard of review. So my response and our offer of these experts is subject to that objection.

With that said, Mr. Levy's argument he just presented to

the Court presupposes that my client has a duty under 9014 to provide a report, which we do not; to provide detailed disclosures, which we do not, because 9014 is specifically exempted from the scope of Rule 26. What we did, we didn't have to do. What we did, and I made the decision to provide them some disclosure and identification of who they were, their backgrounds, and --

THE COURT: Well, let me stop you.

MR. MCENTIRE: Certainly.

THE COURT: "What we did, we didn't have to do." The Local Rules, first of all, do require an exhibit and witness list. And --

MR. MCENTIRE: We've provided that.

THE COURT: I know. I know. But you -- I thought I heard you --

MR. MCENTIRE: No, no.

THE COURT: -- saying you didn't have to do that. You do have to do that.

MR. MCENTIRE: No, no, no.

THE COURT: But I guess what you're saying is --

MR. MCENTIRE: What we provided was more than what the Local Rules require.

THE COURT: How so?

MR. MCENTIRE: We provided CVs. We provided their backgrounds. We disclosed in the actual witness description

who they were and the key components of their opinions. And we refer to their data charts. That is not something that the Local Rule requires.

THE COURT: Okay. Well, let me back up. We have our Local Rules, but then we had our two status conferences --

MR. MCENTIRE: Yes.

THE COURT: -- on what the format of the hearing --

MR. MCENTIRE: Yes.

THE COURT: -- would be.

MR. MCENTIRE: Yes.

THE COURT: And, of course, there was extensive discussion, evidence or no evidence? What did the legal standard, colorability, require?

MR. MCENTIRE: Yes.

THE COURT: And I came out in the end and said, if people want to put on witnesses, they're entitled to put on witnesses. I think there may be a mixture of a fact question and law question on colorability. So, and then I set a three-hour time limit and I said, if someone wants to depose Mr. Seery and Mr. Dondero, they can, but no more discovery other than that. Okay?

MR. MCENTIRE: I understand.

THE COURT: Why then did you not say, well, wait, Judge, if it's going to be evidence, we're just letting you know, in full disclosure, we might call a couple of experts,

and this may impact your decision on what kind of discovery can happen. And this may impact your decision on whether three hours each side is enough.

MR. MCENTIRE: Well, Your Honor, in fairness, I don't think we had made a final decision to actually designate any experts. And at the time, the focus was on other witnesses. But there was no exclusion, there was no limitation at all on my right to bring an expert. And the Rules are very clear. And the Court's --

THE COURT: But I specifically limited discovery, and it was on your motion. It was on your motion we set the hearing on --

MR. MCENTIRE: Actually, --

THE COURT: You know, did you need a continuance, because if we were going to have evidence, maybe you needed a continuance. And then there was a discovery issue raised.

MR. MCENTIRE: To be clear, Your Honor, I'm looking at your orders.

THE COURT: Got them in front of me.

MR. MCENTIRE: Your order of May 26, 2023. You said, You can put on your witnesses and the Court is going to rule. You made no limitations as to who the witnesses would be. Your order did not limit the scope of witnesses to simply Mr. Seery or Mr. Dondero. In fact, any suggestion that you did limit the witnesses is contrary --

THE COURT: Now, which order are you looking at?

MR. MCENTIRE: I'm looking at the May 26, 2023 order, Page 51, Lines 3 through 14.

THE COURT: Okay.

MR. MCENTIRE: You also stated --

THE COURT: I have -- have I entered three orders on this? I've got a May 10th order. I've got a May 22nd order.

MR. MCENTIRE: And I would also point out, Your Honor, --

THE COURT: Could you answer my question? I want to look at what you're looking at.

MR. MCENTIRE: Certainly.

THE COURT: Here we -- this is the one. Okay. Aha. Okay. May 26.

MR. MCENTIRE: Page 51, Lines 3 through 14.

THE COURT: I've entered three orders on what kind of hearing we're going to have. Okay. So you're looking where?

MR. MCENTIRE: Page 51, Lines 3 through 14. "You can put on your witnesses."

THE COURT: Page 51?

MR. MCENTIRE: Yes, ma'am.

THE COURT: Oh. You're looking at a transcript, not the order.

MR. MCENTIRE: That's right. I apologize.

THE COURT: Okay.

MR. MCENTIRE: Yeah, I'm looking at the transcript from the hearing.

THE COURT: Okay. Well, I'm looking at my order.

MR. MCENTIRE: And the order, the order also specifies no limitation at all in connection with the -- the --

THE COURT: But my order was based on what was discussed that day.

MR. MCENTIRE: And what was --

THE COURT: If you had said, hmm, Judge, if you're going to allow evidence, we may call a couple of experts, then there would have been a whole discussion about that and did I need to limit the discovery, as I did. And there would have been a whole discussion of, well, three hours, three hours each side, is that going to be enough if we have experts?

MR. MCENTIRE: The discovery ruling that you made was on my motion, and at the time I was not seeking to take any expert depositions. And you denied my request to take ample discovery. You limited my right to take only one deposition, without documents.

The issue of taking expert discovery was not even on the table. However, you made it very --

THE COURT: Well, that's my point precisely. The whole purpose of the hearing was, what kind of hearing are we going to have on June 8th?

MR. MCENTIRE: I understand. And our position --

THE COURT: We had already had one status conference on argument only versus evidence. And I allowed you all to file some briefing, which you did. And then I issued an order after the briefing, saying, I think I should allow evidence on the colorability question. I'm not forcing anyone to put on evidence, but if you want to put on evidence, you can.

And then you filed your motions and we had the next status conference on what kind of hearing we're going to have. And there was more argument: We don't think the evidence is appropriate, but if evidence is appropriate, we want you to continue the hearing to allow all kinds of discovery. I don't know what. And it was right before Memorial Day, and I hated the fact that a bunch of subpoenas were going to go out and ruin people's holidays. But there was no discussion then of, okay, but just so you know, since you have made the ruling that evidence can come in, we're going to have a couple of experts.

MR. MCENTIRE: As I've already mentioned, Your Honor, we had not made a decision to call experts at that time. We made a decision to call the experts shortly before we filed our designations.

The point here is this. The Rules do not require me to provide any more disclosure than I have. I have gone over and above the Local Rules.

If the Court believes that it would have allowed more time for this hearing, I would advise the Court that opposing counsel vehemently opposed any type of postponement or continuance. The discovery that I was requesting was discovery from fact witnesses. Experts were not at issue at that time. Experts are --

THE COURT: Because --

MR. MCENTIRE: -- at issue now.

THE COURT: -- nobody knew that experts might be called.

MR. MCENTIRE: I have a right to call experts, Your --

THE COURT: It changes the whole complexion.

MR. MCENTIRE: But I have a right to call experts, under the Rules. I have a right, a fundamental due process -- let me -- may I finish, Your Honor? A fundamental due process right to call experts. Their attempt to charge some type of *Daubert* challenge is nothing but a shotgun blast on the wall, having no meaning at all. At a minimum, I have a right to put the witnesses on the stand and we'll have a *Daubert* hearing.

If they want more time, they need to ask for it. They didn't ask for it. Their solution is to strike my experts, which is improper. It would be improper for this Court to strike my experts when they have been properly tendered under the Local Rules. They have not cited an alternative remedy.

If they want the alternative remedy, they need to ask the Court.

THE COURT: My next question is: How do you propose to get this all done in only three hours?

MR. MCENTIRE: We intend to move quickly.

THE COURT: But, see, now they, I'm guessing, prepared their case assuming there weren't going to be experts. And they, if they're good lawyers, which I know you all are, they have their script of the kind of things they were going to ask the witnesses.

MR. MCENTIRE: Well, did they have a --

THE COURT: And now they've got to carve out time for two last-minute experts?

MR. MCENTIRE: They had an option. And one of the options was they could have called me up on Tuesday and asked for their depositions and I probably would have agreed.

THE COURT: I already said no depositions except Seery and Dondero.

MR. MCENTIRE: Then they could have come and filed a different kind of motion with the Court.

Their only remedy that they're seeking is a draconian one. There are other options that are more consistent with the implementation of due process here, Your Honor, not striking my experts, which were properly identified under the Local Rules.

If the Court is going to strike my experts, note our objection. We are tendering our experts. We will put -- like to put a proffer on for the Fifth Circuit or for the appellate process. But if the Court is going to strike our experts, then it needs to do so. We object because we have done everything correctly.

THE COURT: Okay. Here's another problem. I have not had time to process their motion to exclude. Beyond the procedural issues, they are saying junk science, that there's inadequate expertise on the part of I guess at least one of them regarding executive compensation. I haven't had -- they filed their motion to exclude at 4:00-something yesterday. Okay?

MR. MCENTIRE: I understand.

THE COURT: Now, yeah, I could have stayed up all night. I stayed up pretty late anyway, by the way. But --

MR. MCENTIRE: Well, first of all, --

THE COURT: -- I haven't even had the time to process and intelligently rule on their motion --

MR. MCENTIRE: I appreciate that, and I'll respect --

THE COURT: -- as far as the --

MR. MCENTIRE: I'll respect the Court's statement.

THE COURT: -- junk science argument.

MR. MCENTIRE: I'll respect the Court's statement. Their process and the procedure they've adopted is improper,

because if you're going to have a *Daubert* hearing, that's a live hearing. Or they're going to have to have evidence to support their challenge. This is simply a conclusory shotgun blast on the wall, Your Honor.

If you even want to consider a *Daubert* challenge, the proper procedure is to put the witnesses on the stand and have an opportunity to have a proffer of evidence and a cross-examination. That's the proper procedure. Throwing something and innuendo and rhetoric and conclusions is not a proper *Daubert* motion at all. The Court could deny their *Daubert* motion just on those grounds.

THE COURT: I'm not going to rule on a motion that I've barely had a chance to read, not to mention your response that was filed at 8:00-something this morning.

MR. MORRIS: It was.

MR. MCENTIRE: It was. Well, then the option is you need to continue the proceeding to allow the experts to take the stand.

THE COURT: Well, I know you have thought on that, but here is something I'm contemplating doing. We'll go forward with the hearing in the manner my order said we would go forward with it. My, I guess, Order #3 of my three orders. And at the end of the evidence, you can argue in closing, each of you, why we should keep the evidence open to come back another day on only the experts. But time matters. If you've

all already used your three hours on each side, then are we going to come back for five minutes on each of them? I mean, I don't know.

And then, of course, I would have to, if I ruled in that way, I believe I would have to give them a chance to depose these people.

MR. MCENTIRE: I think that would be reasonable.

THE COURT: Okay. But you think you can get all of your evidence in, other than your experts, and your opening statement, if any, your closing argument, if any, in three hours?

MR. MCENTIRE: I'll do my best.

THE COURT: Well, if you -- it's not a matter of -- I'm just saying this may all be an academic argument, because I'm not increasing this to more than three hours each. We've fully vetted that.

MR. MCENTIRE: Well, what the Court is then doing by virtue of your ruling is that you're making me actually present my evidence in a shortened form today, two hours, two and a half hours, not knowing how -- whether or not you are actually going to allow experts.

So, without the certainty, I will have to abbreviate my entire presentation, giving them the advantage of putting more evidence on than I, in an effort to anticipate a positive ruling, which you're not prepared to provide yet. And so I'm

actually being penalized.

THE COURT: Counsel, we had two status conferences on what kind of hearing we were going to have.

MR. MCENTIRE: I understand.

THE COURT: Now, the fact that you had not decided your strategy for this hearing, that's not my fault. Again, we had two hearings on what kind of hearing we were going to have today. We could have fully vetted this. I could have heard about the experts, I could have decided if we were going to continue the hearing past June 8th, could have decided if we were going to allow more depositions.

MR. MCENTIRE: Your Honor, --

THE COURT: I could have fully studied the merits of the motion to exclude and decided if this is junk science or not.

MR. MCENTIRE: I would request a ruling at this time, Your Honor, on the experts. If you are not inclined to provide a ruling to me on the experts at this time, I would effectively be penalized on my time limits. I will have to set aside enough time to put the experts on, not knowing, not knowing whether you're going to give me the opportunity to do so until the end of the day. And that would be -- that would be punishment.

THE COURT: Isn't this going to be just preparing your case you would have -- I mean, going forward with your

case the way you would have?

MR. MCENTIRE: No, I don't -- really don't think so. I think there's --

THE COURT: I mean, --

MR. MCENTIRE: There's a difference.

THE COURT: -- you did not prepare your witnesses and your possible cross-examination with the expectation of I'll get my two experts in?

MR. MCENTIRE: My -- of course. But the point is, then I'm going to have to set aside a half an hour or maybe even longer from my other witness preparations, not knowing whether you'll even give me that time.

THE COURT: Isn't the other side going to have to do the very same thing?

MR. MCENTIRE: No.

THE COURT: Why not? They don't know how I'm going to rule. I don't know how I'm going to rule. I have not studied the motion to exclude the way I should.

MR. MCENTIRE: Okay. Well, Your Honor, we request a ruling now. But if the Court is not inclined to do so, please note our objection.

THE COURT: All right. I'll give the Movants the last word. And I say "Movants" plural. I'm trying to remember where I saw a joinder and when I did not. Did I see a joinder? I can't remember.

MR. MORRIS: Can we just have a moment, Your Honor?

THE COURT: Okay. Okay.

MR. MCILWAIN: Your Honor, my clients did file a joinder, but --

THE COURT: Okay.

MR. MCILWAIN: -- I'm going to let them handle this.

THE COURT: Okay.

(Pause.)

THE COURT: Counsel?

MR. LEVY: Thank you, Your Honor. Two brief points we'd like to make. The first is on the Rules. So, Hunter Mountain is focused on Rule 26(a) regarding reports. However, Rule 26(b) applies to contested matters under Rule 9014. And as we explain in Paragraph -- we explain in our brief, that -- or, in Paragraph 19 of our brief, that under Rule 26(b) we're entitled to depose the experts.

And so we agree with Your Honor's suggestion that if there's going to be any sort of experts, then we need the opportunity to depose them. This is Rule 26(b)(4)(A), which expressly does apply to contested matters under Bankruptcy Rule 9014(b).

The second point is we agree with the approach Your Honor has proposed. We think, for today, both sides can put on their full cases without expert witnesses. Both sides can have the full three hours, which should address Hunter

Mountain's concern. And if Your Honor decides at the conclusion of the hearing that expert testimony would be helpful, then we could take the opportunity to depose their experts and then come back for an additional half-hour for each side to address any expert testimony that Your Honor believes would be helpful.

THE COURT: Okay. Is your proposal that you each today would be limited to two and a half/two and a half? Or three/three, and then another hour, 30 minutes/30 minutes, if I --

MR. LEVY: Three/three.

THE COURT: -- decide to allow any experts?

MR. LEVY: Yeah. Three. Three and three for each side, the hearing contemplated by Your Honor's orders, today. And if Your Honor decides that expert testimony would be helpful, we could come back for an hour, for half an hour on each side, regarding experts.

THE COURT: All right. Mr. McEntire, what about that?

Oh, I'm sorry, did you --

MR. STANCIL: Oh, I'm sorry. Just one additional point, Your Honor. We would ask that Your Honor's ruling on the ultimate admissibility of this be limited to what they've actually put in front of us. The day for the hearing is today, so I think I'd like -- I'd suspect Your Honor would

like to avoid another raft of submissions. So we would just ask that they live or die with what they've said in the way of methodology, disclosures, and the like.

THE COURT: Okay. Mr. McEntire, this seems like the best of all worlds, maybe.

MR. MCENTIRE: Well, it may be the best of the worlds in which we're operating.

My first position is that the experts are admissible, period. And the Rules do not require anything more than what we've already done. In fact, we've done more than we were supposed to.

THE COURT: What is your argument about 26(b)(4), which --

MR. MCCLEARY: If they want to take a deposition, they could have called me up and asked for it.

MR. STANCIL: Your Honor, I was --

THE COURT: Wait a second. They were under a court order. Okay?

MR. MCENTIRE: They could have -- they could have sought --

THE COURT: They were under my order. Okay? They would have been violating my order if they had done it.

MR. STANCIL: I was also, Your Honor, I was in a --

THE COURT: Not to mention that it was --

MR. STANCIL: I was in an airplane from 9:00 a.m.

Tuesday until 9:00 p.m. Tuesday.

THE COURT: I'm surprised a lot of you got here, with the Martian atmosphere that I saw pictures of.

Yes. That's not realistic, to think that you disclose an expert on Monday for a Thursday hearing and they can call you up and --

MR. MCENTIRE: The other --

THE COURT: -- quickly put together a deposition. So, --

MR. MCENTIRE: Sure. The other option, --

THE COURT: Uh-huh.

MR. MCENTIRE: -- of course, Your Honor, as I mentioned before, and I'm not going to repeat myself, is they -- there's other forms of relief they could seek. But under the circumstances, and in light of your apparent leaning on the issue, then this is the best under the circumstances that they've suggested. We'd like an hour each.

I would also point out that -- well, anyway, that's it, Your Honor. Thank you.

THE COURT: All right. So we are going to go forward as planned, three hours/three hours. No experts today. In making your closings -- well, this is kind of awkward. I'm trying to think if we really have closing arguments, when you don't know if it's -- it doesn't seem to make sense. Like, I guess we could have closing arguments if you want, subject to

supplementing your closing arguments if we come back a second day with the experts. Okay?

And I'm not making a ruling today on the motion to exclude. I'm going to hear what I hear. And maybe what we'll do is I'll give you a placeholder hearing if we're going to come back on the experts. Then I'll go back and read the motion, the response, and make my ruling on are we coming back for another day of experts. Okay? Got it?

And with regard to the comment about not adding to, I think that's a fair point. You can't add new exhibits that the expert might talk about or that you might want me to consider between now and whenever the tentative day two is.

MR. MCENTIRE: Understand. We agree with that.

THE COURT: Okay.

MR. MCCLEARY: Your Honor, there is one -- one exhibit that has a small typo transcription of a number on it. So we would like to substitute for that. It's a minor detail. But I'll provide opposing counsel with that. But it's very minor.

THE COURT: You have it today, I presume?

MR. MCCLEARY: Yes, we have it.

THE COURT: Okay. So as long as you hand it to them today.

MR. STANCIL: No objection, Your Honor. We do -- I think someone is back at the office working on a short reply

on our motion, which I assume we could file in support of -- I mean, we filed our motion. They filed an opposition. I assume we would be entitled under the Rules to file a short reply on the actual exclusion issue.

THE COURT: That is fair, but let's talk about timing. You said someone is back at the office working on it. Could you get it on file by Monday?

MR. STANCIL: Yes, ma'am.

THE COURT: Okay. Then that'll be allowed if it's filed by the end of the day Monday.

MR. MCCLEARY: Your Honor, I'm providing a copy of Exhibit 43 to opposing counsel, which is the substitute exhibit.

And obviously, we'd like to have an opportunity to respond to what their filing is on Monday.

THE COURT: No. I mean, motion, response, reply. That's all our Rules permit. Okay? Motion, response, reply. Okay.

MR. MCCLEARY: Yes, Your Honor.

THE COURT: All right. Well, with that, do the parties want to make opening statements? If so, Mr. McEntire, you go first.

MR. MCENTIRE: Yes, Your Honor. We have a PowerPoint I would like to utilize, if I could.

THE COURT: You may.

MR. MORRIS: Your Honor, before we get to that, the Plaintiff has objected to virtually every single exhibit that we have. Should we deal with the evidence first, because I don't want to refer to documents or evidence in my opening that they're objecting to. They've literally objected to every single exhibit except one, although I think they're withdrawing certain of those objections.

I don't -- I don't know if the Court has had an opportunity to see the objection that was filed to the exhibits.

THE COURT: That was what was filed like at 11:00 last night or so?

MR. MORRIS: That's right.

THE COURT: Okay.

MR. MORRIS: And so at 2:00, 3:00, 4:00, 5:00 o'clock this morning, I actually typed out a response that I'd like to hand up to the Court. But we've got to resolve the evidentiary issues before we get to this.

THE COURT: Okay. Well, --

MR. MORRIS: And I don't know what their position is going to be --

THE COURT: -- as a housekeeping matter, let's do that first. And let's start with the Movants' exhibits. Do we have any stipulations on admissibility of Movants' exhibits?

MR. MORRIS: So, if I understand correctly, Your Honor, you'd like to know if we object to any of their exhibits first?

THE COURT: Yes. And --

MR. MORRIS: Okay.

THE COURT: -- we'll hold --

MR. MORRIS: Because we have very limited objections.

THE COURT: Yes. We're going to keep on hold for now your exhibits to the expert-related, --

MR. MORRIS: Yes.

THE COURT: -- your objections to the expert-related ones.

MR. MORRIS: Right. I think -- I think --

THE COURT: So let's not talk about, for this moment, --

MR. MORRIS: 39 --

THE COURT: -- 39 through 52.

MR. MORRIS: Okay.

THE COURT: But as for 1 through 38 or 53 through 80, do the Respondents have objections?

MR. LEVY: Yes, Your Honor. We have very limited objections.

THE COURT: Okay.

MR. LEVY: So, the three to which we object in their entirety are Exhibits 24, 25, and 76, all of which we object

to on relevance grounds.

Exhibits 24 and 25 are email correspondence between counsel in an unrelated state court matter where Mr. Seery is responding to a third-party subpoena regarding the preservation of his text messages on his iPhone. This has absolutely nothing to do with whether or not the Movants have stated a colorable claim for breach of fiduciary duties.

What this appears to be is related to an entirely separate motion raised by Dugaboy regarding the preservation of Mr. Seery's iPhone. So we object to Exhibits 24 and 25 because they have simply nothing to do with the issues in this hearing.

We also object to Exhibit 76, which is a filing from two years ago in a different bankruptcy matter, from *Acis*, regarding an injunction in place in that -- in that plan about issues that -- that occurred before the bankruptcy was in place. So this is just an entirely different case from issues that arose many, many years ago that, again, has nothing to do with this case.

THE COURT: This was whether the *Acis* plan injunction barred some lawsuit?

MR. LEVY: Exactly.

THE COURT: Okay. Okay. Is that all?

MR. LEVY: We also have limited objections to certain exhibits that we think are admissible for the -- for the fact

they're said, but not the truth of the matter asserted.

For example, Exhibits 1 and 2 are complaints filed in those actions. We have no objection to those coming in, but not for the truth of the matter asserted. These are advocacy pieces and pleadings. They're not actually substantive evidence.

And we would have similar -- similar objections to Exhibits 4, 6, 11, --

THE COURT: Wait. 4 is James Dondero Handwritten Notes, May 2021.

MR. LEVY: Yes.

THE COURT: Okay.

MR. LEVY: So, we have no objection to that coming into evidence.

THE COURT: Uh-huh.

MR. LEVY: But there are -- those are hearsay. They're not admissible standing by themselves for the truth of the matter asserted.

THE COURT: Okay.

MR. LEVY: And Exhibit 6 are news articles. Similarly, they're hearsay, but we have no objection to them coming in. They're admissible for the fact that they're published, but not the truth of the matter asserted.

THE COURT: Okay.

MR. LEVY: Exhibit 11, which is a motion filed by the

Debtor. Similarly, it's for -- we have no objection to anything on the docket coming in, but anything that's an advocacy piece, like a motion as opposed to an order, we think is not admissible for the truth of the matter asserted.

And that would be a similar objection, then, for Exhibit 58, which is a complaint.

Exhibits 59, 60, and 61 are -- are letters by counsel for Mr. Dondero to the U.S. Trustee's Office. We similarly have no objection to that coming in, but not for the truth of the matter asserted.

And Exhibits 62 and 63, Exhibit 62 is an attorney declaration attaching, similarly, documents that are -- that are advocacy pieces.

And Exhibit 63 appears to be an asset chart prepared by counsel. So it would be a similar objection.

And Exhibit 66 also is a declaration attaching documents.

No objections to those coming in, but not for the truth of the matter asserted.

Exhibits 72, 73, and 74 are all -- well, 72 are press articles. 73 and 74 are briefs. We don't object to that coming in, but we object to it being admitted for the truth of the matter asserted.

And similarly, Exhibit 80 is a pleading in an SDNY bankruptcy. We have no objection to that coming in, but not for the truth of the matter asserted.

And finally, Exhibits 81, 82, 83 don't specify particular documents. They appear to largely be reservations of rights. And so we would likewise reserve our right to object once we see any specific documents --

THE COURT: Okay.

MR. LEVY: -- admitted under these exhibits.

THE COURT: Okay. Mr. --

MR. LEVY: And I understand my colleague has an objection to Exhibit 5.

MR. MORRIS: Exhibit 5, which is the subject, I believe, of an unopposed sealing motion. That document has to do with purported restrictions on certain securities. Since it's subject to a sealing motion, I don't want to say too much more than that, other than that -- we don't think it should be admitted, because you can just see from the information on the document that it was created after the termination of a shared services agreement.

However, I'm hopeful that we can resolve the issue by simply stipulating that in December 2020 MGM was on a restricted list. What that means, what the consequences of it, the rest of it can be the subject of discussion. But if they're trying to get that document in for that particular fact, we would stipulate to it in order to resolve that dispute.

THE COURT: All right. Well, that's lots to respond

to, Mr. McCleary. Why don't we start with the outright objections: 24, 25. It's apparently text messages related to Mr. Seery's iPhone. I know we've got another motion pending out there that's not set today regarding Mr. Seery's iPhone.

MR. MCCLEARY: Yes, Your Honor. Well, as the Court is aware, we've attempted to get discovery from Mr. Seery in relation to the allegations in this lawsuit. And by the way, all of our exhibits that we're tendering are subject to our objections that this should not be an evidentiary hearing. I just want to make that clear.

THE COURT: Understood.

MR. MCCLEARY: Okay. Thank you. So, we're not waiving that.

The Exhibits 24 and 25 are relevant to the fact that he's -- he's not preserving information that is relevant to the claims in this lawsuit. And that also is something that is a factor in the colorability of our claims in this case.

THE COURT: How?

MR. MCCLEARY: Well, there is an effort, we believe, underway to not have information available for us to discover. And it reflects that they have been involved in providing -- we think supports -- providing material nonpublic information to other people that would be in his phone. And we want him to preserve it. And we think the fact that he is not is evidence that supports the colorability of our claims.

THE COURT: So, --

MR. MCENTIRE: Your Honor, this --

THE COURT: No. No. I'm processing that. You're wanting the Court to receive into evidence a text that may say something like, I delete messages periodically on my phone, to support your claim that you have a colorable claim that some sort of improper insider disclosure of information and insider trading is going on? He said he had an automatic delete feature on his phone; therefore, he -- that must be evidence of a colorable claim for insider trading. That's the argument?

MR. MCENTIRE: May I add to it, supplement, Your Honor? Mr. Seery, in his deposition, indicated that he did receive a text message that he had recently reviewed from Stonehill in February of 2021. To the extent, however, that is inconsistent with the fact that he has an automatic delete button, suggesting to me that certain text messages have been selectively saved and some other messages have been not selectively saved.

THE COURT: We don't have that motion set today.

MR. MCENTIRE: This is not -- that has nothing to do with the motion. It has to do with the fact that what is being presented to the Court in response, the Respondents' argument, is a selected window, a selected picture, that is -- distorts the reality of what we think has been destroyed

evidence.

Mr. Seery can't save one message that may be helpful to them and not save others that may not be. And it is inconsistent with the notion that this automatic delete button was already in effect, so why does he have one favorable message? That's why it's relevant.

THE COURT: Maybe he stopped using the automatic delete after --

MR. MCENTIRE: No, he didn't at this time, Your Honor.

THE COURT: Well, --

MR. MCENTIRE: That's the relevance.

THE COURT: So, --

MR. MCCLEARY: And he should never have used it, Your Honor, given his role and responsibilities.

THE COURT: We don't have that motion set today. What is the content of these emails? February 16th, March 10th, 2023? What is the content, for me to really zero in --

MR. LEVY: I have --

THE COURT: -- on relevance or not.

MR. LEVY: -- copies of the emails, if that would be helpful --

THE COURT: Okay.

MR. LEVY: -- to Your Honor.

THE COURT: Well, you know, now I'm seeing them, so I

don't know what the big deal is if --

MR. LEVY: As Your Honor can see, these are emails between counsel regarding preservation, which has nothing to do with whether there are colorable claims for fiduciary duties.

I'll add that -- and to show that this has nothing to do with this case and it is an attempt to generate a fishing expedition for documents in an entirely unrelated motion, we had a meet-and-confer where we represented to the counsel bringing that motion that we have been able to recover the text messages from the iCloud.

And so this is really just a sideshow. It has nothing to do with the issues of the colorability of claims for breach of fiduciary duties. It should not be introduced into evidence in this hearing.

THE COURT: All right. I'm going to sustain the objection, but this is without prejudice to you re-urging admission of these messages at the hearing on the motion regarding Mr. Seery's phone. Okay? Now, --

MR. MCCLEARY: That's as to 24 and 25, Your Honor?

THE COURT: Correct. And let's go now to the other one, the Exhibit 76, the *Acis*-related document, the relevance of that. Statement of Interested Party in Response to Motion of NexPoint to Confirm Discharge or Plan Injunction Does Not Bar Suit, or Alternatively, for Relief from All Applicable

Injunctions.

What is the relevance for today's matter?

MR. MCCLEARY: Your Honor, this is background of pleadings and just background information generally to support the allegations made in the case and the background.

THE COURT: What do you mean, background?

MR. MCCLEARY: Kind of the history relative to the claims trading and relative to the claims of the use of insider information.

THE COURT: Okay. Be more specific, because I certainly have a background education on *Acis* litigation.

(Pause.)

MR. MCCLEARY: Yeah. Your Honor, this is a data point that is referred to in one of our experts' data charts, I believe, so --

THE COURT: All right. So let's just carry that to --

MR. MCCLEARY: Yes.

THE COURT: I'm just going to mark it as carried along with 39 through 62, related to the experts.

(HMIT's Exhibits 39 through 62 and Exhibit 76 carried.)

THE COURT: Okay. What about all of these objections that we don't object *per se* but we want it clear that the documents are not being offered for the truth of the matter asserted because there's hearsay?

MR. MCENTIRE: Your Honor, I'll let Mr. McCleary address all of those.

I want to point out one exception, and that is Exhibit #4, which are handwritten notes from Mr. Jim Dondero. Those are not -- they are being offered for the truth of the matter asserted because it's an admission of a party opponent in these proceedings, and that's Farallon. They reflect significant statements and admissions by Farallon, which are not hearsay. It's an exception to the hearsay rule. And they're being offered for more -- they are being offered for the truth of the matter asserted, because -- and it's admissible in that format.

THE COURT: But are you referring to hearsay within hearsay? Because there would be, I guess -- I guess the handwritten notes of Mr. Dondero are his hearsay, and then you're saying there's --

MR. MCENTIRE: So, this is reflecting statements made to Mr. Dondero that are admissions of a party opponent.

MR. LEVY: None of that has been established. These are not notes from anybody at Farallon or Stonehill which could potentially be a party admission. These are notes by Mr. Dondero about what was purportedly said by somebody else, and there's no evidence that these were kept in the regular course of business.

This is hearsay and hearsay within hearsay. And this

could be established in testimony, but it can't be admitted -- the document can't be admitted to speak on behalf of a third person who's not here.

MR. MCENTIRE: Well, first of all, I agree, we'd need to lay a foundation. But that's not the purpose of this discussion right now. I am simply advising the Court that once I lay a foundation, it comes in for all purposes. It comes in as an admission of a party opponent.

MR. LEVY: It is not an admission of a party opponent. It is not notes or statements by any actual defendant. These are notes by Mr. Dondero being introduced for his own benefit. It is not a party admission.

THE COURT: Okay. I'm going to carry that one. If one of the witnesses that's on the witness stand -- well, presumably Mr. Dondero will be called -- we can get context at that time and decide if it's appropriate to let it in and let you cross-examine him on them if that's going to come in. All right? So we'll carry this one.

Anything else, though, unique, or can we consider as a batch all these other objections to -- most of them being pleadings, not all of them but a lot of them -- that the Respondents just want it clear that they're not being offered for the truth of the matter asserted? Your response?

MR. MCCLEARY: They're, again, largely data points relied on by experts in the course of coming up with their

opinions and just setting the background and history of the claims trading.

THE COURT: Well, then which ones are data points? Because I just need to carry those, right? If they're not being offered for any other reason.

MR. MCCLEARY: Well, I would have to -- we would have to refer to the charts of the experts, Your Honor, to determine that on all of them.

MR. MCENTIRE: In order to facilitate this, may I make a suggestion, Your Honor? We'll agree that if we're going to offer anything that he's identified other than for the purposes indicated, we will advise the Court. Otherwise, we'll accept the limitations imposed. And as we go through, if we offer an exhibit that is more than the truth -- if we are offering it for the truth of the matter asserted, we will advise the Court, and then we could take it up then. I'm just trying to get the ball rolling.

THE COURT: Okay. Well, that's still going to be a time-consuming thing, maybe. But, okay. Just, when we start the clock here -- very shortly, I hope -- I want people clear that when you make objections, that counts against your three hours. Okay? All right?

MR. LEVY: Okay. Understood, Your Honor.

MR. MCCLEARY: Your Honor, we have certainly made objection to some of their exhibits.

THE COURT: All right. Well, shall we turn to those now?

MR. MCCLEARY: Yes, Your Honor.

MR. MORRIS: Your Honor, they objected to every single exhibit except one, so let's be clear.

THE COURT: Okay.

MR. MORRIS: If they're withdrawing them, that's fine.

MR. MCCLEARY: Well, --

MR. MORRIS: But let's be clear.

MR. MCCLEARY: -- we are not withdrawing our general objection to all the evidence, of course. Just --

THE COURT: Okay. Let me just say for the record right now, I understand and you are preserving for all purposes your ability to argue on appeal that it was error for the Court to consider any evidence. Okay? You have not waived that argument by --

MR. MCCLEARY: Thank you.

THE COURT: -- now --

MR. MCCLEARY: Thank you. We can have --

THE COURT: -- agreeing to the admission of anybody's exhibit or offering your own exhibits.

MR. MCCLEARY: And we could have a running objection on that basis, on relevance to all the witnesses and the evidence that they offer on that basis. I would request that.

THE COURT: Well, okay, let me be clear. Relevance. Your argument is that no evidence is relevant because the Court doesn't need to consider any evidence --

MR. MCCLEARY: Yes, Your Honor.

THE COURT: -- on the colorability issue. You've got a running objection. It's not destroyed for appeal purposes. Okay?

MR. MCCLEARY: Thank you, Your Honor. Then, subject to that, in terms --

MR. MORRIS: I'm sorry to interrupt, but --

MR. MCCLEARY: Sure.

MR. MORRIS: -- would it be helpful if I gave the Court my list so she can see --

MR. MCCLEARY: Sure.

MR. MORRIS: -- what the --

MR. MCCLEARY: Sure.

MR. MORRIS: Okay. May I approach, Your Honor?

THE COURT: You may. I'm not sure, if everything has been objected to, I'm not sure how --

MR. MORRIS: Because I've tried -- I've tried to organize it in a way that would be helpful.

THE COURT: Okay.

(Pause.)

MR. MCCLEARY: Okay. Your --

THE COURT: I'm ready.

MR. MCCLEARY: -- Honor, yes.

THE COURT: Uh-huh.

MR. MCCLEARY: So, we are withdrawing our objections, other than the general objections to relevance based on the evidentiary nature of the proceeding, to Exhibits 1 and 2.

With respect to 3, this is a verified petition to take deposition for suit and seek documents filed on July 22, 2021. We object on the grounds of relevance and hearsay to that. Is that --

THE COURT: Well, --

MR. MORRIS: I don't -- I don't understand this one.

THE COURT: This --

MR. MCCLEARY: Is that, I'm sorry, is that your #11?

MR. MORRIS: Yeah.

MR. MCCLEARY: All right. We withdraw our objection to #3, subject to our general objection.

On Exhibit 4, we object to relevance and hearsay on a verified amended petition to take deposition before suit and seek documents.

THE COURT: Okay. This is my time to hear your argument. And we're going to be here --

MR. MORRIS: Can I -- can I do this here? It's going to be much quicker.

THE COURT: What do you mean? Do what here?

MR. MORRIS: So, if you just follow the chart that I

gave the Court, --

THE COURT: Uh-huh.

MR. MORRIS: -- Section A is a list of exhibits that they've objected to. Those exhibits are in the right-hand column.

At the same time, they are offering the exact same exhibits into evidence on their exhibit list. I don't understand how they can offer their exhibits and object to ours.

MR. MCCLEARY: Counsel. I'm sorry. We've already told them that, subject to our general objection, we'll withdraw the objections to those exhibits.

MR. MORRIS: Right. So can we agree that all objections to Section A are withdrawn?

MR. MCCLEARY: Subject to the general objection, yes.

MR. MORRIS: Thank you.

THE COURT: Okay. So, --

MR. MORRIS: That's going to be much quicker.

THE COURT: -- 11, 34, 2, 46, 42, 38, 41, 39, 40, and various attachments to Highland Exhibits 5 are withdrawn. So, admitted by stipulation.

(Debtors' Exhibits 2, 11, 34, 38, 39, 40, 41, 42, 46 are received into evidence. Certain attachments to Debtors' Exhibit 5 are received into evidence.)

MR. MORRIS: And to make this easy, Your Honor, at

some point I hope later today, but perhaps tomorrow, we'll slap a caption on this, we'll file it on the docket, so that, you know, an appellate court, if necessary, can follow along. But I think that we've just stipulated that all of the exhibits identified in Section A of this document are -- the objections have been withdrawn.

THE COURT: Okay.

MR. MCCLEARY: Subject to the general objections.

MR. MORRIS: Right. That gets us -- I'm going to jump to Section C, because I think the same is true. Section C identifies all exhibits that each party has taken from the docket. And you can see from Footnote 4, the Court can take judicial notice under Federal Rule of Evidence 201, we've just had the discussion about whether or not any of them would be limited for purposes of the truth of the matter asserted, but all of the exhibits identified in Section C I think the Court can take judicial notice of because they're on a docket.

THE COURT: Response?

MR. MORRIS: And so I would respectfully request that they withdraw their objections to anything in Section C.

THE COURT: Response, Mr. McCleary?

MR. MCCLEARY: I understand the Court can take judicial notice of those, Your Honor, but they do contain irrelevant and hearsay information also.

MR. MORRIS: The hearsay, I think that we just had

the discussion. I mean, if there's something that he wants to really point out at this point that I can respond to. But we would agree that advocacy pieces shouldn't be offered for the truth of the matter asserted. Court orders, on the other hand, are law of the case.

THE COURT: So, I mean, it's the very same situation we just addressed with your own exhibits. You have a lot of court filings. And they didn't have a problem with it, as long as everyone knew advocacy was not being accepted for the truth of the matter asserted.

MR. MCCLEARY: Well, --

THE COURT: Isn't this the same thing?

MR. MCCLEARY: -- they're not offering it for the truth of the matter asserted. That's one thing. And certainly the Court can take judicial notice. We do object to the extent they're offering Exhibits 6 through 10 for the truth of the matter asserted.

MR. MORRIS: Well, let me check those.

THE COURT: Well, --

MR. MCCLEARY: I'm sorry. 6, 7, uh -- (pause).

THE COURT: Those are orders of --

MR. MORRIS: Yeah.

THE COURT: -- courts.

MR. MORRIS: Yeah. They're orders of the Court.

MR. MCCLEARY: The orders are not relevant, Your

Honor.

THE COURT: Explain.

MR. MCCLEARY: Well, they have not demonstrated that the orders that they seek to introduce are relevant. They have orders regarding, for example, the contempt proceedings that are irrelevant to these proceedings. And prejudicial under 403.

THE COURT: All right. Shall I take a five- or ten-minute break? Let me -- I think I've been very generous by not starting the clock yet on the three hours/three hours.

MR. MCCLEARY: Appreciate that.

THE COURT: But here's how we do things in bankruptcy court. And I don't mean to talk down to anyone. I don't know, you may appear in bankruptcy court every day of your life. But we expect counsel to get together ahead of time and stipulate to the admissibility of as many exhibits as you can. If there's a preservation of rights here and there, fine. But we --

MR. MCCLEARY: Maybe if we take --

THE COURT: You know, --

MR. MCCLEARY: We can try to --

THE COURT: -- helping everyone to understand, --

MR. MCCLEARY: Sure.

THE COURT: -- we have thousands of cases in our court.

MR. MCCLEARY: Sure.

THE COURT: And this is just something we have to do to give all parties their day in court when they need time. And so --

MR. MCCLEARY: If you'd like us to take ten minutes and try to narrow this, we certainly --

THE COURT: Okay. With everybody understanding you should have taken the ten minutes before we got here. But, again, when I say three hours, --

MR. MORRIS: Yeah.

THE COURT: -- that's what I meant. Okay?

MR. MCCLEARY: Yes, Your Honor.

THE COURT: So we'll take a ten-minute break.

THE CLERK: All rise.

(A recess ensued from 10:42 a.m. until 10:54 a.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. Have we reached agreements on some of these exhibits?

MR. MCCLEARY: Your Honor, we have agreed on the ones that we can agree on, and we announced that to the Court with respect to the Paragraph A items that the Court's already ruled on.

I would like to point out to the Court that we just got their objections handed to us right before the hearing. We filed ours last night. So we didn't --

THE COURT: At 11:00-something, right?

MR. MCCLEARY: Yes, Your Honor, but we did --

THE COURT: Okay. Well, okay. So I guess your point is you want to make sure I'm annoyed with everyone, not just selective of you.

MR. MCCLEARY: Well, --

THE COURT: I mean, exhibit lists were filed Monday. So I don't know why on Tuesday people were not on the phone saying, you know, or Wednesday morning at the latest.

MR. MCCLEARY: Sure. And we haven't had much of an opportunity, in fairness, to consider their objections and respond because we just received them right at the time of the hearing, just before the hearing started.

Your Honor, we would urge our objections to Exhibit #4. We've objected to this petition to take deposition before suit and seek documents on the basis of relevance and hearsay. They have a number of pleadings in other matters that have nothing to do with, frankly, the colorability standard in this case. And this is an example.

THE COURT: Okay. This is the time for me to hear specific objections and what the basis is, and not just --

MR. MORRIS: Can we go back --

THE COURT: -- a category.

MR. MCCLEARY: Yeah.

MR. MORRIS: Can we go back to my way? Because it's

just going to be much faster. It really will be. Right? We -- Category 1, A and C, we dealt with. Category B, --

THE COURT: Well, we dealt with A.

MR. MORRIS: Right. And --

THE COURT: All of those are withdrawn, and they are admitted by stipulation.

MR. MORRIS: Right.

MR. MCCLEARY: Subject to --

THE COURT: Category C, --

MR. MCCLEARY: -- the general objections.

THE COURT: -- I'm not sure we're to closure on.

MR. MORRIS: Um, --

THE COURT: Are we to closure on C? Are you stipulating?

MR. MCCLEARY: No. We are not stipulating on C.

MR. MORRIS: Let's do them one at a time.

MR. MCCLEARY: I have not had an opportunity to -- to --

MR. MORRIS: Let's do them one at a time.

MR. MCCLEARY: Have not had an opportunity to look at each and every one of these, Your Honor. Because we did just get these.

THE COURT: Okay.

MR. MCCLEARY: But generally --

THE COURT: If we have not wrapped this up in 15

minutes, we're just going to start, and you can object the old-fashioned way. But I'm telling all lawyers here, objections count against your time. Okay?

MR. MORRIS: And I'd move for the admission of all of our exhibits right now, then.

THE COURT: Okay.

MR. MORRIS: So let him -- let -- put him on the clock and let's go.

THE COURT: Okay. So, 15 minutes. Let start going through everything except Category A.

MR. MORRIS: Number 4?

MR. MCCLEARY: Number 4, Your Honor, we object on the basis of relevance and hearsay.

MR. MORRIS: Okay. My response to that, Your Honor, and this will be my response -- this is in Section B of my outline --

THE COURT: Uh-huh.

MR. MORRIS: Okay? They object to Exhibits 3, 4, 5, and 9. These are Mr. Dondero's prior sworn statements. You just heard his lawyer stand here and tell the Court that somehow his handwritten notes should be admissible as an admission. You know what he did? He testified four different times under oath. That's Exhibits 3, 4, 5, and 9. Sworn statements.

They come into evidence not as hearsay but under Federal

Rule of Evidence 801(d)(1). It's beyond -- the notion that they can prove a colorable claim and that it's not relevant that he's got diametrically different -- he's got four different statements, now five with his notes, he's got five different statements. Doesn't that go to the colorability of these claims?

We believe it does. That's the basis for the introduction of these documents into evidence.

THE COURT: Okay. Mr. McCleary, your response?

MR. MCCLEARY: Well, it's a verified amended petition, Your Honor, in another matter, to -- before suit to seek documents. Has nothing to do with the merits of this case and our motion for leave. So we object on the grounds of relevance and hearsay.

THE COURT: Well, since they're prior sworn statements of Mr. Dondero, --

MR. MCCLEARY: Well, then they might -- if they want to use it later to impeach, they can try to do that, but they have to lay the foundation.

THE COURT: What about 801(d)(1)?

MR. MCCLEARY: Again, relevance, Your Honor.

THE COURT: Okay. I overrule. Those are --

MR. MCCLEARY: And Mr. --

MR. MORRIS: Okay.

THE COURT: Those are going to be admitted.

MR. MCCLEARY: By the way, on hearsay, Mr. Dondero is not Hunter Mountain. So when he argues that these are admissions, they're not admissions by Hunter Mountain.

MR. MORRIS: Your Honor, the only piece of evidence, literally the only piece of evidence they have are the words out of Mr. Dondero's mouth. There is no evidence, there will be no evidence of a *quid*, a *pro*, or a *quo*. There will be no evidence other than what Mr. Dondero testifies to --

MR. MCCLEARY: Well, --

MR. MORRIS: -- about what he was told. There will be no evidence that there was a meaningful relationship between Mr. Seery and Ms. -- and Farallon and Stonehill. There will be no evidence, none, that Farallon and Stonehill rubber-stamped Mr. Seery's compensation package. Nothing. The only thing we have are going to be the words out of Mr. Dondero's mouth and these notes that just showed up. And these statements --

MR. MCCLEARY: Your Honor?

THE COURT: Okay. Counsel, I mean, it just feels like --

MR. MORRIS: It's --

THE COURT: -- if notes get in, then sworn statements of Mr. Dondero should get in. Right?

MR. MCCLEARY: Your Honor, he's making arguments, closing arguments, opening arguments, trying to run out the

clock. We objected to relevance, and we stand on our objection.

THE COURT: Okay.

MR. MCCLEARY: And on hearsay.

THE COURT: I'll admit 3, 4, 5, and 9.

(Debtors' Exhibits 3, 4, 5, and 9 are received into evidence.)

MR. MORRIS: Section E.

MR. MCCLEARY: I'm sorry. So our objections are overruled?

THE COURT: They are overruled.

MR. MCCLEARY: On 3, 4, 5?

THE COURT: And 9.

MR. MORRIS: Section E of my outline.

MR. MCCLEARY: What about 6?

THE COURT: That's not --

MR. MORRIS: Well, --

THE COURT: Well, I don't --

MR. MORRIS: -- it would -- it would --

THE COURT: Let's go back to C. I'm not clear if we're to closure on Section C.

MR. MORRIS: I'll let Counsel go through --

THE COURT: And 6 is within Section C.

MR. MORRIS: I'll let Counsel go through each one, one at a time.

MR. MCCLEARY: No. That's all right. If you want to go through, you have them lumped in. Yeah, I think it'd probably be quickest if, frankly, we just go down the list, Your Honor. Frankly.

THE COURT: Well, you've got ten minutes left.

MR. MCCLEARY: Okay. We object to #6, memorandum and opinion order granting Dondero's motion to remand, on the basis of relevance and hearsay.

THE COURT: Overruled. I can take judicial notice under 201 of that. So 6 is admitted.

(Debtors' Exhibit 6 is received into evidence.)

MR. MCCLEARY: We object to Exhibits 7 and 8 on the grounds of relevance. 7 on relevance and hearsay, and 8 on relevance.

MR. MORRIS: I'll take 7 first, Your Honor.

THE COURT: Okay.

MR. MORRIS: It's an order dismissing Mr. Dondero's 202 petition. That 202 petition sought discovery on the basis of the exact same so-called insider trading claims that Hunter Mountain is asserting today.

I think it's not only relevant, it's almost dispositive that a Texas state court heard the exact same -- or, actually, not the exact same, because Mr. Dondero changed his story so many times -- but heard a version, I think Versions 1, 2, and 3, of this insider trading and would not even give them

discovery.

So when the Court considers whether or not there's a colorable claim here, I think it ought to think about what a Texas state court decided on not whether or not they have colorable claims, whether or not they're even entitled to discovery. I think it's very relevant. Move for its admission right now.

MR. MCCLEARY: Your Honor, it's ironic, because at that hearing counsel for the Respondents was arguing that it ought to be this Court that considers what discovery is appropriate.

THE COURT: Okay. Well, obviously, you can argue about that, but, again, I think I can take judicial notice of this. Right?

MR. MCCLEARY: Well, we argue that it's not relevant, Your Honor, and it is the --

THE COURT: Okay.

MR. MCCLEARY: 7 is not relevant and is hearsay.

THE COURT: Okay.

MR. MORRIS: Number 8, --

THE COURT: Objection is overruled.

MR. MCCLEARY: Overruled?

THE COURT: And so 7 is admitted.

(Debtors' Exhibit 7 is received into evidence.)

MR. MCCLEARY: 8 is our verified petition. And we

object on the grounds of relevance.

MR. MORRIS: You know, Your Honor, if I really had the time and the patience to do this, I think I'd find this document attached to Mr. McEntire's affidavit that's on their exhibit list.

But to speed this up just a little bit, how could their 202 petition that sought discovery on the basis of the very same insider trading allegation not be relevant? It's a judicial order. You can take notice of it. And it's incredibly relevant that a second Texas state court heard the same allegations that they're presenting to you as colorable and said no, you're not getting discovery.

MR. MCCLEARY: We don't know why they made that order, Your Honor. They could have simply accepted the opposition's arguments that this Court had jurisdiction and should consider what discovery ought to be done.

THE COURT: Overruled.

MR. MCCLEARY: It's not relevant to our --

THE COURT: I admit 8.

MR. MORRIS: Next?

MR. MCCLEARY: Overruled?

THE COURT: Yes.

(Debtors' Exhibit 8 is received into evidence.)

MR. MCCLEARY: The declaration of James Dondero. I think we withdrew the Dondero --

THE COURT: Right.

MR. MCCLEARY: -- declarations. If it --

THE COURT: It's --

MR. MCCLEARY: Numbered -- I'm sorry, #9.

THE COURT: 9. I've already checked it as admitted.

MR. MCCLEARY: If you want to -- if you want to offer #9, they can offer it.

THE COURT: It's admitted. I've already --

MR. MCCLEARY: Okay.

THE COURT: -- said.

MR. MCCLEARY: Number 10. It's an order denying our second Rule 202 petition. And we object to it on relevance, Your Honor.

THE COURT: Same objection. It's overruled. It's admitted.

(Debtors' Exhibit 10 is received into evidence.)

MR. MCCLEARY: Number 12, 13, and -- 12 and 13 are correspondence regarding resignation letters. We object on grounds of relevance.

THE COURT: Wait. Did we skip 11 for a reason?

MR. MCCLEARY: Pardon me?

THE COURT: Did we skip 11 for a reason?

MR. MCCLEARY: We only have it --

THE COURT: Oh, wait. It's already admitted by stipulation.

MR. MCCLEARY: Yeah, and we have --

MR. MORRIS: That's the one --

MR. MCCLEARY: We have our general objection.

MR. MORRIS: That's the one exhibit that they didn't object to.

THE COURT: Okay.

MR. MCCLEARY: We only had our general objection with respect to that.

THE COURT: Okay. Thank you. Thank you.

MR. MCCLEARY: On 12 --

THE COURT: Uh-huh.

MR. MCCLEARY: -- and 13, those are correspondence regarding resignations. We object on the grounds of relevance.

MR. MORRIS: So, the relevance of that, Your Honor, is to show that when Mr. Dondero sent this email to Mr. Seery in December 2020, he had absolutely no relationship to Highland, had absolutely no duty to Highland, had absolutely no reason to send this email to Highland. He wasn't in control of Highland. He wasn't --

If they'll stipulate to this, that's fine. He wasn't in control. He had no authority to do anything. He couldn't effectuate trades. He wasn't there. And that's what these documents are intended to prove.

THE COURT: Okay. Why are we -- this is --

MR. MCCLEARY: Because there are --
THE COURT: Some of this stuff, I mean, --
MR. MCCLEARY: There are other agreements.
THE COURT: -- is no big deal. Right?
MR. MCCLEARY: Sub-advisory agreements, other agreements that he had under which he had a responsibility to make the communications regarding material nonpublic information that he made. So this is simply irrelevant, Your Honor.
THE COURT: I overrule. I mean, again, I don't --
MR. MCCLEARY: Okay.
(Debtors' Exhibits 12 and 13 are received into evidence.)
MR. MCCLEARY: Number 14, --
THE COURT: You're both giving me just a lot of background that I already have, but of course a Court of Appeals --
MR. MORRIS: That's why we --
THE COURT: -- isn't going to have it.
MR. MORRIS: Yep.
MR. MCCLEARY: Well, #14, Exhibit 14, we object on the grounds of relevance and hearsay.
THE COURT: Okay. Wait a minute. We skipped 13 because -- why? Oh, wait, that was, I'm sorry, 12 and 13 --
MR. MORRIS: Yes.
THE COURT: -- where I've overruled the objection and

admitted.

Okay. Go ahead.

MR. MCCLEARY: 14, we object on the grounds of relevance and hearsay, Your Honor.

MR. MORRIS: I'm just going to make this real quick, Your Honor. Here's the thing. This Court knows it. It's actually facts that cannot be disputed because they're subject of court orders.

As the Court will recall, beginning in late November 2020 continuing through late December 2020, Mr. Dondero was engaged in a continuous pattern of interference with Highland's business and trading. It was the subject of the TRO, which is why the TRO is relevant.

Your Honor will recall that at the end of November Mr. Dondero attempted to stop Mr. Seery from trading in Avaya stock. On December 3rd is when he sent this threatening email, text message, to Mr. Dondero [sic]. It caused us to get the TRO.

Your Honor will recall on December 16, 2020, that's when we had the hearing on Mr. Dondero's motion to try to stop Mr. Seery from trading in the CLOs that the Court dismissed as frivolous and granted the directed verdict of Highland.

So, that's December 16. He sends this email about MGM on December 17th. And what happens on December 18th? More interference with Highland's business. It's a matter of --

beyond dispute. It's law of the case at this point because that's the subject of the contempt order. And the Court found that, after -- after hours, on December 18th, Hunter Covitz told Mr. Dondero that Mr. Seery was again trying to trade in Avaya stock, and within a day or two Mr. Dondero was again interfering it, and that's what led to the second -- to the first contempt order.

So all of these documents are relevant to show motive and what was happening. This email was not sent for any legitimate purpose. The evidence is just overwhelming. And it's not -- it's not like, oh, that's an argument we're making. Between the TRO and the contempt order, it's law of the case. He was interfering with Highland's business nonstop for thirty days, including the day before he sent this email and the day after he sent the email.

THE COURT: Okay.

MR. MCCLEARY: Your Honor, this is a lawsuit or an effort to file a lawsuit on behalf of Hunter Mountain Investment Trust, not James Dondero. And as much as Counsel wants to make this about Jim Dondero and attack him, this is a different case. So this exhibit has nothing to do with the claims in this lawsuit. It's not relevant. And hearsay.

MR. MORRIS: The only evidence is Mr. Dondero. It's -- could not be more relevant.

THE COURT: Okay. I overrule. I'm admitting this.

And so we're --

MR. MCCLEARY: Uh, --

THE COURT: It's 14. It's -- how far?

MR. MCCLEARY: 14. Exhibit 15 is where we are, Your Honor.

THE COURT: Okay.

(Debtors' Exhibit 14 is received into evidence.)

THE COURT: 15.

MR. MORRIS: Oh, that's -- that's the contempt order. And so these contain the judicial findings that are now beyond dispute that Mr. Dondero was engaged in interfering with Highland's business after the TRO was entered on December 10th.

THE COURT: Okay. Again, my own orders, --

MR. MCCLEARY: Your Honor, it's not --

THE COURT: -- I can take judicial notice of --

MR. MCCLEARY: It's --

THE COURT: -- under the Federal Rules of Evidence.

MR. MCCLEARY: It's --

THE COURT: 201.

MR. MCCLEARY: We simply object as not relevant. We object based on Federal Rule of Evidence 403. Any possible relevance is outweighed by the prejudice. And we object on the grounds of hearsay, Your Honor.

THE COURT: Prejudice? Prejudice? They're orders I

issued. I'm going to be prejudiced by my own orders?

MR. MCCLEARY: Uh, well, --

THE COURT: I don't --

MR. MCCLEARY: -- Hunter Mountain will be.

THE COURT: Okay. I'll overrule.

(Debtors' Exhibit 15 is received into evidence.)

THE COURT: I'll tell you what. We're out of our -- well, we've get probably 30 seconds left. Anything that we can maybe knock out to not have eat into your three hours? Both of you?

MR. MCCLEARY: Your Honor, we filed written objections to all of these exhibits. We urge those objections. 16.

THE COURT: I know, but this is your chance to argue why your objections have merit. I can -- we can just --

MR. MCCLEARY: Because, well, obviously, we're talking about pleadings and filings in other matters. The evidence that they're trying to use to impugn Jim Dondero, which has nothing to do with the merits of HMIT's claims and allegations of insider trades.

THE COURT: Okay. A lot of this is articles. Articles, articles, articles about MGM.

MR. MCCLEARY: On the articles, Your Honor, subject to our general objection, we'll withdraw the objections to the articles if they'll agree to the articles that we've offered.

MR. MORRIS: Your Honor, we didn't lodge an objection to their articles.

MR. MCCLEARY: Okay.

MR. MORRIS: And just so, if anybody is keeping track at home, this is Item B on the list that I created earlier this morning.

THE COURT: Okay. So, 25 through 30 are articles. Those are admitted by stipulation. Nothing is about the truth of the matter asserted. They're just articles that were out there for --

MR. MORRIS: Right. I would just --

MR. MCCLEARY: Yes.

THE COURT: -- the world.

MR. MORRIS: Just so we're clear, it's Exhibits 25, 6 -- 25, 26, 27, 28, 29, and 30.

THE COURT: Right.

(Debtors' Exhibits 25 through 30 are received into evidence.)

MR. MORRIS: And so, yes, those are all articles. They have their articles. Exhibit 72.

THE COURT: Oh, and 34 is another one. So that's admitted as well.

MR. MORRIS: Yes.

MR. MCCLEARY: Yes, Your Honor.

(Debtors' Exhibit 34 is received into evidence.)

THE COURT: Okay. Well, we're out of time, so as for the others, they can offer them the old-fashioned way if they want to, you can object the old-fashioned way, and it eats into both of your three hours.

MR. MCCLEARY: Yes, Your Honor.

THE COURT: Okay. Let's hear opening statements. And by the way, before we wrap up today, I'm going to say out loud everything I've admitted so we're all crystal clear on what's in the record. This has been a bit chaotic.

MR. MCCLEARY: Okay. Understood.

THE COURT: So, Caroline is going to be the keeper of our time over here. And if the judge ever interrupts you, she's going to stop the timer. Okay?

MR. MCENTIRE: Thank you.

THE COURT: I hope I won't any more, but you may proceed.

MR. MCENTIRE: No, I appreciate it. Thank you. Can you see it, Your Honor?

THE COURT: I can, yes. Thanks.

MR. MCENTIRE: Can opposing counsel see it?

MR. MORRIS: Yes, sir.

MR. MCENTIRE: All right.

THE COURT: And I'm just going to ask everyone who has a PowerPoint today, can I get a hard copy --

MR. MCENTIRE: Certainly.

THE COURT: -- before we close?

MR. MCENTIRE: Certainly.

THE COURT: Okay. Thank you.

OPENING STATEMENT ON BEHALF OF HUNTER MOUNTAIN INVESTMENT TRUST

MR. MCENTIRE: May it please the Court, Your Honor, at this time I'll be providing the opening statement on behalf of Hunter Mountain Investment Trust. It is a Delaware trust. Mark Patrick, who's in the courtroom, is the Administrator. He will be one of the witnesses that you'll hear today.

Hunter Mountain Investment Trust is the former 99.5 percent equity holder, currently classified as a Class 10 contingent beneficiary under the Claimant Trust Agreement. It is active in supporting various entities that in turn support charities throughout North Texas.

Your Honor, this is not an ordinary claims-trading case. I know the Court made those references in one of the hearings, and I wanted to more clearly respond. This has different indicia. An ordinary claims-trading case is normally outside the purview of the bankruptcy court. What makes this different is that we're involving, we believe and allege, breaches of fiduciary duty of the Debtor-in-Possession's CEO and the Trustee.

It involves also aiding and abetting by the entities that actually acquired the claims. And that falls into the

category of willful misconduct.

It also involves injury to the Reorganized Debtor and to the Claimant Trust. Ordinarily, a claims trade would not involve injury to the estate or the reorganized debtor. Here, we have alleged that it has. And the injury takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers.

During the course of my presentation today, I'll be referring to the Claims Purchasers as the collective of Farallon, Stonehill, Muck, and Jessup.

I would like to briefly discuss some of the issues that have already been presented to the Court, just to make sure that this record is clear.

Can you please continue?

We don't believe the *Barton* Doctrine is applicable. I believe that precedent is very clear that the *Barton* Doctrine deals with proceedings in other courts, and the various standards and requirements of *Barton* do not apply if in fact we're coming to the Court and filing the proceeding in the court where the Trustee was actually appointed.

And so I think that the law is clear. And this is Judge Houser here in the Northern District of Texas in the case *In re Provider Meds*. And she makes very clear that the standard for granting leave to sue here is actually less stringent than

a 12(b)(6) plausibility standard. So if there is any issue as to what standard this Court should be applying to the -- to this process, we believe it's a 12(b)(6) standard, confined to the four corners of the document.

If the Court wishes to consult the documents that are referred to in the four corners of the petition or complaint, it may do so.

But the standard here is even more flexible than a standard plausibility. Our evidence, though, achieves the standard of plausibility as well.

The *In re Deepwater Horizon* case is another important case. That's a Fifth Circuit case. A plaintiff's claim is colorable if it can allege standing and the elements necessary to state a claim on which relief could be granted. Defining a colorable claim as one with some possible validity. I don't have to prove my case today. I didn't have to prove my case in the prior hearings. I have to prove sufficient allegations, not evidence, but sufficient allegations to show that it has some possible basis of validity.

Possible basis of validity. We're not here talking about likelihoods. We're not here talking about *prima facie* evidence. We're not here talking about probabilities. We're talking about something less than plausibility. But, again, we achieve plausibility.

A colorable claim is defined as one which is plausible or

not without merit. These are various cases from around the country. The colorable claim requirement is met if a committee has asserted claims for relief that, on appropriate proof, would allow recovery. On appropriate proof. We're not required to put on that proof today, Your Honor.

Courts have determined that a court need not conduct an evidentiary hearing, but must ensure that the claims do not lack any merit whatsoever. We submit that our claims have substantial merit and deserve the opportunity to initiate our proceedings, have an opportunity to conduct discovery. And if they want to file a 12(b)(6) motion before this judge, before you, they can do so. If they want to file a motion for summary judgment, they can do so. But at this juncture, they cannot, and at this juncture this Court should not consider evidence in making its determination.

Standing under Delaware law. The Funds have collectively really hit the standing issue hard. I think it's easily resolved. First of all, it's clear that a beneficial owner has standing to bring a derivative action. Under Delaware law, a beneficial owner has a right to bring a derivative action on behalf of the -- against the trustee.

So the issue is, am I a beneficial owner? As a contingent beneficiary in Class 10, and that's the Court's inquiry here, do I qualify as a beneficial owner? And I think that Delaware law is clear that, by not limiting it to only vested

interests, by not limiting it only to immediate beneficiaries, they are not -- they are not extending the scope of the statute to contingent beneficiaries. And this is consistent with the laws around the country, because even Texas recognizes that an unvested contingent beneficiary has a property right to protect.

Even Mr. Seery admitted in his deposition that a unvested contingent interest is in the nature of a property right. If you have a property right, that property right can be abused. If you have a property right, that property right, whether it's inchoate or not, it can be abused, it can be misappropriated, and you could become aggrieved. And that is the constitutional standard for standing: Is Hunter Mountain Investment Trust aggrieved? And the answer is yes.

Contingent beneficiaries from around the country, in addition to Mr. Seery's admission that we have a property interest, contingent beneficiary has standing. This is the *Smith v. Clearwater* case on Slide 11. Very clearly, they say that even if it's subject to a future event. Their argument is that Mr. Seery has not certified Hunter Mountain as in the money. We believe we are in the money. That's a different issue. We believe he should certify, in the discharge of his duties. That's a different issue.

But even assuming his case -- his argument for a moment, their argument is that since he's not done that act, which we

also challenge and criticize that he's not done that act, that we can't qualify to bring this case. Well, that's not what the law is, that even an unvested interest, a contingent interest, has a right.

Slide 12. This is the State of Illinois. Despite the fact that interest is contingent and may not vest in possession, you still have a right to protect what you have. And you have standing to bring a cause of action.

The Claimant Trust Agreement, by the way, suggests that we have no vested interest, and they'll likely argue that point. But the point there is the law says that's irrelevant. If it's an inchoate interest, if it's potentially vested in the future, that's what imbues you with standing.

And in any event, the Claimant Trust Agreement is subject to Delaware trust law, and they can't get around that. They can say whatever they want to say in the agreement to try to block us from participation, but it's still subject to Delaware trust law, and Delaware trust law does not draw a distinction between vested or unvested.

The State of Missouri: There is no dispute in this case that the future -- that future beneficiaries have standing to bring an accounting action, whether they're vested or contingent. The *Bucksbaum* case. Article III standing exists, constitutional standing, including discretionary beneficiaries, have long been permitted to bring suits to

redress trustees' breaches of trust. This applies not only to our standing as an individual plaintiff, which we've brought, but also in our standing -- in our capacity seeking to bring a derivative action to benefit the Claimant Trust of the Reorganized Debtor. Both are permitted under this law under these cases.

An interest -- in the *Mayfield* case, an interest is any interest, whether legal or equitable or both, vested, contingent, defeasible, or indefeasible. So the unilateral self-serving wording of the Claimant Trust does not abrogate our right to bring the claim.

I'd like to talk briefly about fiduciary duties. We know that Mr. Seery has fiduciary duties to the estate when he was the CEO prior to the effective date. We allege that he breached those fiduciary duties, and that gives us standing to bring the claim that we have brought for breaching fiduciary duties, causing damages that are accruing post-effective date.

In the *Xtreme Power* case, again, the directors can either appear on both sides of the transaction or expect to derive any personal financial benefit. We are alleging that Mr. Seery engaged in self-dealing. We allege that he engaged in self-dealing by arriving at an understanding where he could put business allies -- whether you call them friends, business allies, close acquaintances -- on the committee, the Oversight Board that would ultimately oversee his compensation, which,

in the context of this case, makes no sense and it is excessive.

Muck is a specially -- special-purpose entity of Farallon. Farallon acquired the claims, created Muck to do the job. Muck is now on the Oversight Board.

Jessup. Jessup is a special-purpose entity, a shell created by Stonehill. Stonehill bought the claims, funneled the money through Jessup. Jessup is now on the Oversight Board. Jessup and Muck -- and by the way, the principals in Farallon are actually the representatives from Muck on the Oversight Board. So there's no suggestion that there's really a distinct corporate relationship here.

Michael Linn, who is a principal at Farallon. You'll hear his name today, throughout today. He actually is a representative of the Oversight Board, dealing with Mr. Seery and negotiating Mr. -- I put negotiation in quotes -- negotiating Mr. Seery's compensation.

I'd like to talk very briefly about background. We took Mr. Seery's deposition. I was unaware of this. I now know it. Perhaps the Court was already aware of it. This is Mr. Seery's first job as a CEO of any debtor. This is the first time Mr. Seery has ever been a chief restructuring officer. This is the first time Mr. Seery has ever been the CEO of a reorganized debtor. This is the first time that he's served as a trustee post-effective date. However, his compensation

is excessive and not market-driven, and there's a reason for that. We believe and we allege that it's a *quid pro quo* because of prior relationships with Farallon and Stonehill.

Farallon and Stonehill are hedge funds, Your Honor. They created their special-purpose entities on the eve of this transaction simply to take the title to the claims, but the money is going upstream.

Seery has a relationship with Farallon. Do we know the full extent of that relationship? No. We have been deprived of discovery. We attempted to get the discovery in the state court 202 process. We were denied for reasons not articulated in the court's order.

We attempted to get the discovery here that the Court refused under the last hearing about these relationships.

So what we do have begins to put the pieces of the puzzle together. And sufficient is more than plausible. It is more than colorable.

We know that Mr. Seery went on a meet-and-greet trip to Farallon's offices in 2017. Didn't have to. He was trying to cultivate a business relationship. Farallon was important to him.

We know that in 2019 he was no longer with Guggenheim Securities. He goes out to Farallon's offices for another meet-and-greet and he specifically meets with the two principals who are reflected in Mr. Dondero's notes, Raj Patel

and Michael Linn.

We know that in June 2020 Farallon emailed Seery. This is after Mr. Seery becomes the CEO. He says, "Congratulations. We're monitoring what you're doing."

Seery's relationship with Stonehill. These are all -- this is all before what we believe to be the events that are at issue in this case. We believe that -- represented Stonehill in the *Blockbuster* bankruptcy proceeding. There was an objection to a document. Mr. Seery was involved in the *Blockbuster* proceedings. Stonehill was one of his many clients on the committee that he represented.

We know that Stonehill is actively involved in one of Mr. Seery's charities in New York. We know that he sent text messages to Mr. Seery in February of 2021, wanting to know how to get involved in this bankruptcy.

Farallon and Stonehill were strangers to this bankruptcy. They weren't creditors. They were encouraged and they came into this process.

Farallon and Stonehill have not denied any of our allegations. They are not putting any evidence on today. We allege that these relationships was based and founded upon a *quid pro quo*. I'll scratch your back; you scratch mine. You give me some information; I want to evaluate these claims. And, by the way, we're going to be on the Oversight Board, or you're going to put us on the Oversight Board, or by default

we'll be on the Oversight Board, and we'll work out your compensation agreement.

Mr. Seery also has an established relationship with Stonehill.

I like to have a timeline of certain events. This is not all of the relevant events, but this can give you a quick picture. We know that Mr. Dondero sent an email to Mr. Seery in December of 2020 relating to MGM. It is undisputed that Mr. -- that Farallon emailed Seery, Mr. Seery, in January of 2021 if there was a path to get information regarding the claims for sales. Mr. Seery says he never responded to it, but we know that this entity, Farallon, got deeply involved in buying these claims shortly after this email.

We have the Claimant Trust Agreement suddenly being amended to not have a base fee, but now we're going to incorporate a success participation fee. As part of a plan, we're not criticizing that, but suddenly the vehicle for post-effective date bonuses is being created.

The Debtors' analysis comes out in association with the plan confirmation. It projects a 71.32 percent recovery for Class 8 and Class 9, and those are the principal classes we're talking about. 95 percent -- 98 percent of all of the claims here are in Class 8 and Class 9, until you get to us, Class 10.

71.32 percent of Class 8 means that Farallon and Stonehill

will get less than about a six percent internal rate return on their $163 million investment, which they have never denied. That is not a hedge fund investment goal. Investment -- hedge funds like these companies, they go for 38, 40, 50 percent of returns. Who would ever invest $163 million on a distressed asset that's not collateralized with only an expectation of an internal rate of turn of six percent? But that's going to be the evidence before the Court. That does not make any financial, rational wisdom at all.

The plan is confirmed. It's undisputed that Stonehill contacts Seery after the plan is confirmed to want to know how to get involved. They have phone calls after this text message. Muck is created on March 9. We know from Mr. Seery's deposition that Farallon told Seery that six days later they bought the claims. All the claims, by the way, when I say bought the claims, it's everything except UBS. To our knowledge. They may have negotiated the paperwork back then, but the claims transfers did not occur until the summer. All the other claims involved, the claims transfers were filed with this Court in mid-April and at the end of April.

Tim Cournoyer removes MGM from the restricted list. Tim Cournoyer is an employee of Highland. Well, it tells us that MGM was on the restricted list and there should be no discussion about MGM, but there was. There was discussions about MGM, and Mr. Dondero is going to testify to that.

And we also know that the HarbourVest settlement was consummated during this period of time. If it had been on the restricted list, as it was, that transaction should never have occurred. But it did occur. This Court ordered it. It approved it. And I'm not challenging -- we're not challenging that settlement. It is done. That is done. What we are challenging is the fact that Mr. Seery is actively involved in using inside material nonpublic information.

Jessup Holdings is created shortly thereafter, on April 8th. We have claims settling on April 30th. The Acis claim is transferred to Muck -- that's Farallon -- on April 16. The Redeemer and Crusader are all transferred on April 30th.

Stonehill and Farallon never deny that they did no due -- that they failed to do due diligence. We allege that there was no due diligence. And that relies in significant part upon Mr. Dondero. But now, because we have Mr. Seery's deposition, it also relies upon Mr. Seery's admissions in deposition, because he says he never opened up a data room, he doesn't know what due diligence they did. Farallon says the only due diligence they did is they talked to Jim Seery. And how do you invest $163 million, or $10 million or $50 million, whatever the part is, with an internal rate of return six percent, only on the advice of Mr. Seery, who's never been a trustee or a CEO before, unless there's something going on?

Your Honor, public announcement of MGM on May 26th. On

May 28th, two days later, Mr. Dondero calls Farallon. It took Mr. Dondero or his group a few days, a week or so, to even understand who -- that Farallon was involved, because the registrations for Muck and Jessup did not disclose their principals, did not even disclose addresses. They were shell -- they were companies that came in in the last minute to buy these claims incognito, frankly.

They found out that Farallon was involved. They had a call initially with Raj Patel, who is the principal of Farallon. He has three conversations total: One with Mr. Patel and two with Michael Linn. Michael Linn was the one responsible for these claim purchases. Patel admitted that Farallon relied exclusively on Seery and did no due diligence. Linn rejected the premium to sell. The evidence you'll hear today, that Mr. Linn rejected a premium up to 40 percent to sell the claims. He actually said he would not sell at all because he was told by Mr. Seery that the claims were too valuable.

That is evidence of insider trading. Specifically, they said they were very optimistic about MGM and they were unwilling to sell because Seery said too valuable.

We have -- these are the purchases. This is where the Class 9 claims fall. And keep in mind -- Tim, go back -- that $95 million of this upside potential is being told, at least to the publicly available information, that you're never going

to get there. Yet 95 -- $95 million is allocated to this category. So Class 8 is $275 million. Class 9 is 29 -- $95 million.

Next.

So we have the evidence that you'll hear today. Farallon admitted the timing. No due diligence, never denied by the Claim Purchasers. Based upon material nonpublic information. That's our allegation. Purchased over $160 million. This is never denied by the Claims Purchasers. They purchased claims when the return on investment was highly doubtful. Maximum expected annual rate of return, assuming publicly-available information, was approximately six percent, and that is totally atypical of what a hedge fund would seek.

Insider information. We're not talking about just MGM. The Respondents want to narrow the Court's inquiry. This is much larger than MGM. MGM is a part of it, it's a big part of it, but it's not the only part of it. It's other assets. Portfolio companies. Other invested assets. There's a lot of money out there, and it was never disclosed during the ordinary course of the bankruptcy, for reasons that the Court already knows, in terms of asset values. How does someone come in and purchase distressed assets, claims, without any understanding of what assets are backing those claims, when there's no publicly-available information there to do it and there's no evidence, no indication, no statement that actually

due diligence was done?

That right there, without anything else, makes our claims plausible. You don't have to prove insider trading by direct evidence. Nobody's going to admit that they did something wrong. You prove it circumstantially, and we've cited cases and we'll give you cases to that effect.

Next.

We have material nonpublic information. It is very clear that Mr. Dondero on December 17th sent this email, not just to Mr. Seery but to several other individuals, including lawyers. It states that he'd just gotten off a board call. A pre-board call. The update, he provides the update. Active diligencing. It's probably a first-quarter event. We can scour all of the other media documents that are in evidence, both from us and them, and you're not going to find any indication anywhere that a board member has said, guys, gals, it's going to be a probable first-quarter event. That's material nonpublic information.

THE COURT: By the way, you all objected to this exhibit.

MR. MCENTIRE: No, this is my exhibit.

THE COURT: We spent --

MR. MCENTIRE: I did not. They objected to this.

MR. MORRIS: Your Honor, we didn't object to it, and that is the one exhibit that they did not object to.

THE COURT: Oh, it is?

MR. MORRIS: Nobody objected to this exhibit.

MR. MCENTIRE: I'm not going to object to this exhibit, Your Honor.

THE COURT: Okay. It's a different version.

MR. MCENTIRE: Fair enough.

THE COURT: Okay. It was a different email around that same time frame.

MR. MCENTIRE: So just --

THE COURT: Apologies. We stopped the clock.

MR. MCENTIRE: This -- my next exhibit is simply a demonstrative, but I just want the Court to understand that MGM is no small matter here and Mr. Seery did testify in deposition that it probably made up $450 million. He was pretty close.

MR. MORRIS: Your Honor, I object to this demonstrative. There is no evidence in the record. It's not cited to anything. We're not just going to start putting up stuff on the screen that we like.

MR. MCENTIRE: Excuse me. I'm not offering this document into evidence.

MR. MORRIS: I don't care. The Court shouldn't be seeing a demonstrative exhibit that contains matters that are never going to be in the record.

THE COURT: Okay.

MR. MCENTIRE: I disagree. I can put the data in the record.

May I proceed?

MR. MORRIS: But you didn't.

THE COURT: Okay. I'm not considering the truth of this until and unless I get evidence of this.

MR. MCENTIRE: Fair enough. But the point is this, Mr. Seery has conceded in deposition that between the institutional funds and the CLOs, there's a lot of MGM securities and stock. We're talking a lot of money. We're not talking about just Highland Capital's investment.

You can skip the next slide. Skip.

So, rumors versus material nonpublic information. They can talk all day long, and if they want to use their time doing this, they can. There's a difference between rumor and actual material nonpublic information. Rumor from undocumented sources, lack of clarity, lack of timing. There is no -- there's no debate that a lot of people knew that maybe MGM might be for sale. Maybe they wouldn't. Sometimes it falls apart, you know. But the point is a board member is telling someone that there's a probable event in the first quarter of 2021. That is definite, specific, and it comes from the highest authority. That is -- if that's not material and public information, I don't know what could be.

Classic indications of insider trading. You have to have

a tipper with access to MNPI. Here, we know that Mr. Seery, if he's the tipper, we allege he's the tipper -- and these are words of art out of case law, by the way -- he has access to information about MGM. He has access about asset values, projected values. He has a relationship. We believe he has a very strong relationship. It's more than just social acquaintances. He's giving congratulatory emails. He's getting solicitations. He's solicited. Benefits received. We know what the benefits are. They get the opportunity to invest money with huge upside.

There was a point mentioned some time ago that, well, only -- only the sellers really have the grievance. Well, Your Honor, we have a right to start our lawsuit and do some discovery, because, frankly, a lot of sellers have big-boy agreements. They say, you don't sue me if I have MNPI. I don't sue you if you have MNPI. We have mutual releases. Let's go by our way. Everybody's happy. We're not going to come back and see each other ever again.

That's one of the things we're being deprived of here. But otherwise, what we have here is a colorable plan. We've asked for the communications with the sellers. We can't get it. We have here an email.

Next.

We have here an email. This actually -- you'll hear Mr. Dondero say this actually reflects three communications. Raj

Patel, Farallon, bought it because of Seery. Mr. Dondero contacted Mr. Patel and says, Raj Patel bought it because of Seery. 50 to 70 percent's not compelling. Class 8. 50 percent, 70 percent. Give you a 30 percent to 40 percent premium. Not compelling. I ain't going to sell. Ask what would be compelling. Nothing. No offer. Bought in February/March. We now know the time frame. We know that Stonehill is communicating with them and we know that Farallon has been just communicating with Mr. Seery. Bought assets with claims. It's not just the MGM. It's not just the portfolio companies and other assets. It's also the claims.

Well, what are the claims? It's the claims against Mr. Dondero. Well, how would they know about all this if there's no due diligence and there's no evidence of any due diligence before you? 130 percent of costs, not compelling, no counter. Mr. Dondero's angry. Discovery is coming.

Atypical behaviors are also circumstantial evidence of insider trading. We have strange behaviors here, Judge. We have a vast majority of the claim value is acquired by only two entities post-confirmation. Most significant claims are only owned by two entities who were strangers to the whole process.

The removal of -- and Mr. Morris offered to stipulate. The sudden removal of MGM from the compliance list in April of 2021 -- by the way, the removal doesn't cleanse the MNPI. If

you have material nonpublic information because you received it from Mr. Dondero, the fact that Mr. Dondero's no longer employed by Highland Capital or no longer directly or formally affiliated doesn't cleanse the MNPI.

We have no due diligence, regardless of the significant nine-digit numbers, and we have no rational explanation of why this kind of money would be invested when they're projecting an actual loss, if -- a modest return at best for Class 8 and a loss for Class 9.

Insider trading can be proved by circumstantial evidence, Your Honor. No fraudster, no person who's done wrong is going to admit to it, so you look for the classic -- you look for the classic elements. And that's what we had here. And we have alleged all of this in our pleadings. Not in extraneous evidence. Within the four corners of our pleadings. And that's why we have a plausible claim.

You know, I believe it's Rule 8, Rule 9 of the Federal -- you have to require specificity in a fraud claim. Well, this is not a fraud claim. This is a different claim. But we have provided specificity that passes the smell test of colorability. We have provided specificity that would satisfy even more stringent requirements under 12(b)(6).

The plan analysis. This is a, I think, a document admitted by everyone. Mr. Seery has testified that this projection of 71.32 percent for Class 8 came out in February

of 2021 and never changed, all the way up to the effective date.

So this is what the public believed. This is what the public knew. And if this was all that Farallon and if is all that Stonehill had access to, that means that they were going to lose their entire investment on Class 9. They bought UBS at a loss to begin with. And on the other three investments, they were going to get a very, very modest, minor return, six percent over three years, or even less. That is not what hedge funds do.

Seery's excessive post-effective date compensation. We have obtained no discovery from Farallon or Stonehill in this regard, but we know that he had no prior experience. We know that the award that was given him was not market-based, even though the self-serving documents that have been produced and that are attached to their exhibit list suggests a robust negotiation. Well, they were robust without any kind of reality check in the real world about whether it was market-supported. None. Mr. Seery has admitted to that.

It was not lowered. He's making $1.8 million a year right now, with most -- a lot of the assets already sold, the reorganization done. All they're doing now is monetizing assets. He's getting $1.8 million. He's got 11 people working for him. And then he has a bonus, a bonus that is -- increases significantly with his ability to recover for Muck,

Jessup, Farallon, and Stonehill.

And in the absence of -- if we were really dealing with uncertainty and risk, then that may be another issue, but here we're dealing with entities that already know that they're going to get a payday and they already have. They've already made about a $170 million return -- 170 percent return, excuse me -- over and above the original investment, when they were projected to actually lose money.

Just so you know, we have over $534 million of cash that has been basically monetized, and out of that, $203 million in total expenses -- $277 million to Class 8 and -- and -- 1 through 7, and Class 8 distributors. Excuse me, creditors. Even if you take -- if you take out the alleged obligations of Mr. Dondero on the promissory note cases, that still leaves over $100 million available, which puts us in the money. Puts us in the money. And the fact that you have $203 million of expenses in a case of this nature is part of our claim, is that we have delay actions. We have a situation where Mr. Seery is continuing to receive $1.8 million a year on a slow pace to monetize, paying other professionals, when this could have been over a long time ago. That's part of our allegations. It's not part of any valuation motion. It's actually in our allegations.

I'm going to reserve the rest. I think that's my opening statement, Your Honor. I'm going to reserve the rest for my

closing. And let me see. Yes, that's right. And thank you for your time.

THE COURT: All right. Caroline, how much time was that?

THE CLERK: Thirty-four minutes and 27 seconds.

THE COURT: Thirty-four minutes and 37 seconds. Okay.

THE CLERK: Twenty-seven.

THE COURT: Oh, 27. Okay.

MR. MCENTIRE: Thirty-four minutes?

MR. MCCLEARY: Thirty-four minutes.

MR. MORRIS: Your Honor, I do have hard copies of my short slide presentation.

THE COURT: All right. You may approach.

And Mr. McEntire, are you going to give me your PowerPoint later, hard copies later?

MR. MCENTIRE: Yes, Your Honor. I found one typo and I'd like to fix one typo and then we'll give it to you.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF THE DEBTORS

MR. MORRIS: Good morning, Your Honor. John Morris, Pachulski Stang Ziehl & Jones, for Highland Capital Management and the Claimant Trust.

I want to be fairly brief because I really want to focus on the evidence. I look forward to Your Honor hearing from

Mr. Seery so that he could clear up a lot of the misleading statements that were just made.

The Court is here today on a gatekeeper function, and we're delighted that the gatekeeper exists. We're delighted that the Court will have an opportunity, after considering evidence, to determine whether or not these claims are actually colorable.

There's -- there were a lot of conclusory statements I just heard. There were a lot of assumptions that were made. There were a lot of misleading statements that were made. At the end of the day, what the Court is going to be asked to do is to decide whether, in light of the evidence, do these claims stand up on their own? And they do not.

And let me begin by saying that I made a mistake a couple of weeks ago. If we can go to Slide 1. I told Your Honor that you were the sixth body to consider these insider trading claims. Based on Hunter Mountain's exhibit list, there is actually one more, and I'll get to that in a moment. So you're actually -- this is the seventh attempt to peddle these claims to one body or another.

The first was Mr. Dondero's 202 petition.

Everything I have here, Your Honor, is footnoted to evidence. Okay?

So, Footnote 1, you can look in the paragraphs of Mr. Dondero's petition, his amended petition, his declaration,

where he makes the same allegations. Again, I misspeak. Not the same allegations. Different versions of the allegations that are being presented today concerning insider trading.

He did it three times. The Texas state court said no discovery. In October of 2021, Douglas Draper wrote an extensive letter to the U.S. Trustee, setting forth the same allegations. You can find them at our Exhibit 5. It's attachment Exhibit A, Pages 6 through 11. Compare them to the allegations that are being made by Hunter Mountain today. The U.S. Trustee's Office took no action.

Mr. Rukavina followed up with the same thing to the same body in November of 2021. You can see where his allegations of insider trading are made and *quid pro quo* and all the rest of it. Again, they took no action.

The one that I don't have on this chart because I didn't -- I made the chart last week and then was unavailable. Mr. Rukavina sent a second letter. And you can find that at Plaintiffs' Exhibit 61. And in Plaintiffs' Exhibit 61, you'll see that Mr. Rukavina sent yet another letter to the U.S. Trustee's Office on May 11, 2022.

And these are all really important, right? The U.S. Trustee's Office has oversight responsibility for matters including claims trading. That's their job. They took three different swings at this. And these are pages of allegations. 6 to 11. 9 to 13. We think it's very important that the

Court look at what was told to the U.S. Trustee's Office. And you're going to hear Mr. Seery testify that Highland has never heard from the U.S. Trustee's Office concerning any of these allegations or any of the other allegations that are set forth in Mr. Rukavina and Mr. Draper's letter. Never. Declined to even initiate an investigation.

Hunter Mountain filed its own 202 petition. It boggles my mind that they try to create distance with Mr. Dondero, because the whole petition, like this whole complaint, is based on Mr. Dondero. He submitted a declaration alleging the same insider trading case, and a second Texas state court said I'm not even giving you discovery. We know that's the result.

But the best is the Texas State Securities Board. I think we're going to hear testimony that Mr. Dondero or somebody under his control is the one who filed the complaint with the Texas State Securities Board. Who would be the better body to assess whether or not there's insider trading than a securities board? I can't imagine there's a better body. They did an investigation. Mr. Dondero could have told them anything he wanted. I'm sure he did. And they wrote in their motion in Paragraph 37 one of the reasons they have colorable claims is the investigation is ongoing.

Much to their dismay, I'm sure, two days before our opposition was due, the Texas State Securities Board said, we've looked at the complaint, we've done our investigation,

and we're not taking any action. You can find that, Your Honor, Footnoted 5 at Exhibit 33.

You are now the seventh body who's being asked -- and you're being asked to do substantially more than any of the other prior bodies were. The Texas state courts were being asked, just let them have discovery. They said no. The U.S. Trustee's Office, charged with the responsibility of looking at claims trading, said, I'm not going to investigate. I know what you've told me. No. The Texas State Securities Board. Insider trading, insider trading. I'm not doing an investigation. I'm not doing anything. And now they want to come here and engage in, you know, in expensive, long litigation over the same claims nobody else would touch.

Can we go to the next slide?

Mr. Dondero's email. Good golly. "Amazon and Apple are in the data room." There's a hundred articles out there that they're putting into evidence that say that. "Both continue to express material interest." There's a hundred articles out there that say that. "Probably a first-quarter event. Will update as facts change."

There will not be any evidence that he ever updated anybody, because that wasn't the purpose of this, as Your Honor will recall. He had an axe to grind.

And I direct your -- I don't direct the Court to do anything -- I ask the Court to take a look at our opposition

to the motion, in Paragraphs 23 to 25, where we cite to extensive evidence, all of which is now part of the record, showing just what was happening, from the moment he got fired on October 10th until the end of the year, with the interference, with the interference, with the threats, with the TRO. It was nonstop.

Was this email sent in good faith by somebody who owed no duty to anybody? Or was it really just another attempt -- and this is why the gatekeeper is so important, because I think that's exactly what this Court is supposed to do: Is this a good-faith claim? Is this a claim that's made in good faith? It can't be. And you know why? You know what's -- you know what's -- I'll just say it now. I won't even save it for cross.

Remember the HarbourVest settlement that they're making so much, you know, about? Mr. Dondero is the tipper. According to him, he gave Mr. Seery inside information. According to him, Mr. Seery abused it by engaging in the HarbourVest transaction. But Mr. Dondero filed an extensive objection to the HarbourVest settlement and never said a word about this, because that wasn't on his mind at the time. The email was sent in order to interfere. And when that failed, he's trying to play gotcha now. It's ridiculous.

He owed no duty to Highland. It would have been a breach of his own duty to MGM to share that information at that

period of time.

The shared services agreement. They don't help him. Mr. Dondero has nothing to do with that. Highland is providing services. He's not providing services to Highland. Highland was providing. We had already given notice of termination. We had already had our plan and disclosure -- we had already had our disclosure statement approved. We were weeks away from confirmation. Please.

And the *Wall Street Journal* article on December 21st at Exhibit 27, that's not your garden-variety *Wall Street Journal* article, because it specifically says that investment bankers were engaged to start a formal process. The investment bankers are identified by name. Something has changed. Anybody could see that.

Yes, there were rumors for a long time. Nobody had ever said there was a formal process. Nobody had ever said investment bankers had ever been hired. Nobody had ever identified those investment bankers. Right? I mean, just the world changed.

If you can go to the next slide.

You know, before I get to the next slide in too much detail, *quid pro quo*. We look at it as *quid*. Did he -- is there any evidence that he actually gave anybody material nonpublic inside information? The answer is going to be no. The *quo* is the relationship. And I'm not going to spend too

much time on that now. But wait until you hear Mr. Seery testify as to the actual facts about his relationship. Because some of what we just heard is mind-boggling, that little -- that little page from the *Blockbuster* case, like, 14 years ago, where Farallon was one of a group of people who Jim Seery never met. Like, the stretch, what they're trying to do is beyond the pale. But I'm delighted to have Mr. Seery sit in the box and answer all the questions they want to ask him about his relationship with Farallon and Stonehill.

But getting to the point, the *quid pro quo*. The *quo* is they fixed his compensation? Are you kidding me? They rubber-stamped his compensation? Highland and Mr. Seery and the board are alleged to have negotiated? There's nothing alleged. There are facts. There is evidence. It is beyond dispute. If you look, just for example, right, they take issue with his salary? The salary was fixed by this Court in 2020. Without objection. He's getting the exact same salary that he ever got.

You'll hear that it's a full-time job. Your Honor knows better than anybody in this courtroom, other than me, perhaps, the litigation burden that's been placed on this man. He has no other income. He doesn't do anything else. This is a full-time job. It's the exact same job that he had when Your Honor approved his compensation package three years ago, without a raise. They didn't give him a nickel more. Not one

nickel. It's outrageous.

The balance of his compensation, of which he has not yet received a nickel, is exactly what this Court would want somebody in Mr. Seery's position to do. It aligns his interests with his constituency. Not with Stonehill. Not with Farallon. With all creditors. The greater the recovery, the greater the bonus. Outrageous, right? Remarkable, isn't it? Only in their world.

If Your Honor can go back to Mr. Rukavina's letter, because this is where it all -- that's where it all starts from. Like, excessive compensation. Mr. Rukavina, I don't know how he did this, why he did it, what it was based on. He actually told the U.S. Trustee's Office that they thought Mr. Seery made $50 million. It's in the letter. $50 million, they told the U.S. Trustee's Office he made. It's footnoted, so you can go find it. It's right there, at Page 14. Quote, Seery's success fee could approximate $50 million.

$8.8 million is what he's making. They think that's excessive? What do they think he should make? Three? Five? We're not going to hear that. But that's what this case is about. You just heard counsel in his opening statement. He literally said the only thing at issue is his compensation. And that has to be the case, because if there was -- if there was no claims trading, UBS and HarbourVest and Acis, right, the Redeemer Committee, they would all still be holding these

claims today.

When Stonehill and Farallon acquired the claims, they were all allowed. There was no debate about what the claims were. If they held the claims today, they would be worth the exact same amount of money, only a different person would be benefitting from it.

So the case actually is only about Mr. Seery's compensation. And they've moved the goalposts, as often happens in this courtroom, from rubber-stamping -- I'll give you what you want. When I hear rubber-stamp, I hear, you make a demand and I'll give it to you. And now they realize, when they see the negotiation -- because it's in evidence, it's just the documents, you can see the board minutes -- what do we, doctor the board minutes and they should get discovery because we doctored the board minutes? The board minutes show a four-month negotiation with an Independent Board member fully involved. It's mind-boggling. It's actually -- well, I'll just leave it at that.

Next slide. Last slide. Let me finish up. Three of the four sellers were former Committee members. Mr. Dondero agreed that Committee members would have access to special nonpublic inside information as part of the protocols, as part of the corporate governance settlement. He agreed to that. These are the people who got abused? These are the people who didn't know what was happening? Committee members and

HarbourVest, probably one of the biggest and most sophisticated funds in the world, didn't know what was happening? They got abused? Stonehill and Farallon took advantage of them?

If you read their pleadings closely, they actually allege, and I don't -- I don't know if there'll ever be any evidence of this -- but they actually allege that -- I forget which -- oh, somebody is an investor in Stonehill and Farallon, and so the theory is one of the sellers is an investor in Farallon. So not only did they abuse, they abused one of their own investors. Like, this is not a colorable claim. This is ridiculous.

None of the claims sellers are here. Sophisticated people who -- who -- right? Mr. Dondero could pick up the phone and say, hey, guys, you got ripped off. You sold your claims when you shouldn't have. They had an unfair advantage.

Nobody's here. Where is anybody complaining? They're not going to because they cut a deal that they thought was good for them at the time. In hindsight, maybe they have regrets. Right? We all have regrets sometimes in hindsight. But that doesn't create a claim.

We've heard so much about what hedge funds would get and how much and is this rational? The fact of the matter is, at the time Mr. Dondero had his phone call on May 28th, UBS had not been purchased, although MGM had already been announced.

So when they talk about MGM, maybe it's the fact -- and this is in evidence -- maybe it's the fact that, two days before, the MGM-Amazon deal actually was publicly announced. It actually was. So maybe when they say, hey, yeah, we like MGM, because, you know, that just -- that just got announced. Maybe that happened.

But at the end of the day, the claims that they bought, if you just look at the claims that were purchased at the time he had the conversation, all Mr. Seery had to do was meet projections and they were going to get $33 million in two years. A 30 percent return in two years. I don't know. That doesn't -- that doesn't sound crazy to me. Doesn't sound crazy to me. It certainly doesn't create a colorable claim, just because they think that Farallon or Stonehill -- there's not going to be any evidence of Farallon or Stonehill's risk profile. There's not going to be any evidence of Farallon or Stonehill's, you know, expected returns. There's not going to be any evidence at all about what due diligence they did or didn't do, other than what comes out of Mr. Dondero's mouth, as usual.

Mr. Dondero -- and let's look at what's going to come out of Mr. Dondero's mouth. He has multiple sworn statements. I'm going to take his notes and they're going to become mine. I'll put him on notice right now. Because those notes bear no relationship to the evolution of his sworn statements over

time.

The first time he mentions MGM in a sworn statement is two years after the fact in Version #5. That's a colorable claim? You want -- you want to oversee a litigation, or maybe it gets removed to the district court, maybe I get lucky to be in front of a jury, and I'll have Mr. Dondero explain how it took him five tries before he could write down the letters MGM. Not a colorable claim. No evidence against Stonehill whatsoever. Zero. Zero. Never spoke to them. There's no colorable claim here, Your Honor.

I'm going to turn the podium over to Mr. Stancil to talk about the law.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF JAMES P. SEERY, JR.

MR. STANCIL: Thank you, Your Honor. Mark Stancil, counsel for Mr. Seery. But I'm going to just very briefly address a few legal points. And I actually mean briefly.

THE COURT: Okay.

MR. STANCIL: I'll come back to a good bit of this in closing as time permits.

I heard Mr. McEntire say *Barton* doesn't apply. I would encourage him to start with what the gatekeeping order actually says. Here it is. This is in -- it's in the plan. Your Honor has confirmed it. The question we have in terms of what standard applies is, what does this order mean? Well, we

think that's going to be clear. It's not what they think the word "colorable" would mean in other contexts. It's not what they think they should have to satisfy now that they have a theory. It's, what does this mean?

And we'll get into some of the additional evidence from Your Honor's order at the time, later in closing.

Next slide, please.

But let me just start to say I'm awfully surprised to hear him say that he doesn't believe *Barton* applies, because the order says that it does. This is Paragraph 80 of the confirmation order. It says that the Court has statutory authority to approve the gatekeeper provision under these sections of the Bankruptcy Code. The gatekeeper provision is also within the spirit of the Supreme Court's *Barton* Doctrine. The gatekeeper provision is also consistent with the notion of a pre-filing injunction to deter vexatious litigants that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures*.

So I think it is impossible, and respectfully, Your Honor, it's law of the case. This is what the order is based on. The day for objecting to what's in the confirmation order is long gone.

So let me come back, then -- first slide, please -- and I'll just very briefly give you a little legal framework for what we're going to be arguing to you later in closing.

So, *Barton* does require a *prima facie* showing. That is *Vistacare* and plenty of other cases. That is more than a 12(b)(6) standard, Your Honor. Numerous courts agree. And in fact, as you'll hear us discuss later, Judge Houser's opinion is not to the contrary, because she said explicitly, I'm not applying *Barton*. So anything that they're relying on for what *Barton* requires from that opinion is *dicta*. But we can show you case after case after case, and we will, to show that *Barton* requires evidentiary hearings.

Here's a point, this third bullet here is something I have not heard a single word in all of the briefing and ink that has been spilled and in as long as we've been here this morning, is what is a gatekeeping order doing if all it does is reproduce a 12(b)(6) standard? That's what they say. In fact, they're actually saying it's even lower. Now I think I heard them say it's even lower than a 12(b)(6) standard.

That makes no sense whatsoever. We've just shown you that this gatekeeping order was imposed consistent with *Barton* and vexatious litigant principles. Later I will walk Your Honor through factual findings that you made detailing the vexatious litigation, detailing the abuses. The notion that the gate is the same gate that every other litigant who hasn't demonstrated that record of bad faith is absurd, and it serves no purpose.

And as Mr. Morris described, Hunter Mountain woefully,

woefully violates any *prima facie* showing. And we'll get into a little bit more exactly how that works.

We are going to ask this Court, in addition to ruling that *Barton* applies and that they've failed it, we're going to ask this Court, respectfully, to please consider ruling on multiple independent grounds as well. We know there's a penchant for appeals and appeals upon appeals. So we will argue to Your Honor, although we will largely spare you another rehash of our briefs, but we will explain to Your Honor why they do lack standing to bring this claim as a matter of Delaware law. And there was a lot of fuzzing up about constitutional standing and Delaware law. Not necessary.

If -- we will be happy to rely on our pleadings here, but on Page 27 of the Claimant Trust Agreement, that's what defines their rights under Delaware law, and they were talking about how beneficial owners under Delaware law have standing. Well, are they beneficial owners? They are not. Equity holders -- this is in Paragraph C, Page 27 of the Claimant Trust Agreement -- Equity holders will only be deemed beneficiaries under this agreement upon the filing of a payment certification with the bankruptcy court, at which time the contingent trust interests will vest and be deemed equity trust interests.

They are not beneficial owners of squat. That has not

happened.

And last, Your Honor, we will -- and I will organize this for Your Honor in closing as well -- we would ask you to rule on a straight-up 12(b)(6) standard as an alternative, because we know what's coming on appeal and we think their complaint collapses under its own weight. You heard Mr. Morris detailing their own math shows significant returns. You'll also hear us describe how they have nothing but mere conclusions and naked assertions upon information and belief but unsupported.

Iqbal and *Twombly* would still apply under their 12(b)(6) standard, especially, and perhaps even more with a heightened standard under Rule 9(b), because they're essentially alleging some version of fraud, it sounds like.

They're never going to get there, Your Honor. All we would ask is for a full record to take inevitably, unfortunately, to the Court of Appeals.

And I think Mr. -- I'm not sure which of my colleagues will be speaking briefly for Holland & Knight, but I'll just turn it over to them.

THE COURT: All right. Mr. McIlwain?

OPENING STATEMENT ON BEHALF OF THE CLAIM PURCHASERS

MR. MCILWAIN: Thank you, Your Honor. I'll be even briefer. Brent McIlwain here for the Claim Purchasers.

Your Honor, Mr. McEntire stated to this Court that my

clients have never denied any of this. In fact, in his reply, he says, The Claim Purchasers do not deny that they invested over $163 million. We do not deny that we did not due diligence, we do not deny that we refused to sell our claims at any price, and we do not deny that we invested the claims at what is, at best, a low ROI.

We had no duty to answer to HMIT or Mr. McEntire. We had no duty when we bought these claims to -- we had no duties to any creditor. We had -- it was a bilateral agreement with a third party. And frankly, Your Honor, it's not Mr. Dondero's or HMIT's business what due diligence we did and what information that we obtained.

But I will tell you right now, Your Honor, we were very careful in our pleadings to not bring issues of fact, because this -- HMIT has been chasing my clients, obviously, based on the notes that were presented in the initial PowerPoint, it was a -- it's retribution. It's retribution for not agreeing to sell the claims to Mr. Dondero when he offered to purchase at a 40 percent premium.

And Your Honor, when I look at that note, it's interesting, because I hadn't seen the note, obviously, until it showed up on the exhibit list. When you look at that note, I think it's -- I think it's very interesting. To the extent it was contemporaneous, I don't know. But what it shows, it shows that if you're a hammer, everything's a nail. And Mr.

Dondero is a vexatious litigator. And what did he write down? Discovery to follow.

But my question is this. Who was trying to trade on inside information? Mr. Dondero was offering a 40 percent premium, allegedly, on the cost. What information did he have? Certainly, he had inside information.

My client owed no duty to Mr. Dondero. My client owed no duty to anybody in this estate at the time of these claims purchase.

And Your Honor, we talk a lot about -- or, it's been talked a lot of insider trading. These are claims trades. I think the Court honed in on this from the very get-go. The Court does not have a role in claims trades. There's a 3001 notice that's filed post-claims trade, but there's no requirement that there's Court approval.

And these aren't securities. It's not as if we're trading claims and it could benefit or hurt you based on some equity position that you're going to obtain. We obtained claims that had been settled, they were litigated heavily, and the most that we can obtain is the amount of the claim. And that is, as Mr. Morris stated, all that changed was the name of the claimant. That's all. Because the claims didn't increase in value based on the trade.

Your Honor, our pleadings, I think, speak for themselves in terms of you really -- you really don't have to consider

evidence, from our perspective, to determine that this proposed complaint has no merit and is not plausible and presents no colorable claims.

The gatekeeper provision, and we're going to talk a lot about that today, obviously, right, requires that Mr. Dondero establish a *prima facie* case that the claims have some plausibility. If you can simply write down allegations, file a motion for leave and attach those allegations and say, Your Honor, you have to take all these as true, the gatekeeper has no meaning. There's no point in having a gatekeeper provision.

And in summary, Your Honor, what -- and I think Mr. Morris honed in on this specifically -- this really comes down to compensation. Right? Because this -- the allegation is that my clients purchased claims, presumably at a discount, right, based on some inside information, which we obviously deny, but we don't have to put that at issue today. For what purpose? For what purpose? So we got inside information from Mr. Seery so that we could then scratch his back on compensation on the back-end?

Your Honor, there is no reason that my clients need to be involved in this litigation. If HMIT thinks that this -- that they have a claim against Mr. Seery for excessive compensation, they can -- they could have brought such a gatekeeper motion, or a motion for leave under the gatekeeper

provision, without including my clients. Why did they include my clients? They included my clients because my clients did not sell to Mr. Dondero when he called, unsolicited, to try to get information. It's retribution. And that's what a vexatious litigator does, and that's why the gatekeeper provision is in place.

I'll reserve the rest for closing, Your Honor.

THE COURT: All right. Caroline, what was the collective time of the Respondents?

THE CLERK: Twenty-eight minutes and 37 seconds.

THE COURT: Twenty-eight minutes, 37 seconds.

All right. Well, let's talk about should we take a lunch break now? I'm thinking we should, because any witness is going to be, I'm sure, more than an hour. So can you all get by with 30 minutes, or do you need 45 minutes? I'll go with the majority vote on this.

(Counsel confer.)

MR. MCENTIRE: 1:00 o'clock. 45 minutes.

MR. MORRIS: 40 minutes, whatever. 1:00 o'clock?

THE COURT: We'll come back at 1:00 o'clock.

MR. MORRIS: Thank you, Your Honor.

THE COURT: Okay. Thank you.

THE CLERK: All rise.

(A luncheon recess ensued from 12:19 p.m. until 1:05 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're going back on the record in the Highland matter, the Hunter Mountain motion for leave to file lawsuit.

I'll just let you know that at 1:30 we're going to take probably what will be a five-minute break, maybe ten minutes at the most, because I have a 1:30 motion to lift stay docket. Just looking at the pleadings, I really think maybe one is going to be resolved and it won't be more than five or ten minutes. So whoever is on witness stand can either just stay there, because I think we won't be finished, or you can take a bathroom break or whatever. All right? So, it's video, the 1:30 docket.

All right. So, Mr. McEntire, are you ready to call your first witness?

MR. MCENTIRE: I am, Your Honor.

THE COURT: Okay.

MR. MCENTIRE: May I proceed?

THE COURT: You may.

MR. MCENTIRE: At this time, Hunter Mountain calls Mr. James Dondero.

THE COURT: All right. Mr. Dondero, welcome. If you could find your way to the witness box, I will swear you in once you're there. It looks like you've got lots of notebooks there. Please raise your right hand.

(The witness is sworn.)

THE COURT: All right. Thank you. You may be seated.

MR. MCENTIRE: I'm not familiar with your procedure. Should I approach the -- here to --

THE COURT: If you would, unless you're having --

MR. MCENTIRE: That's fine.

THE COURT: -- any kind of --

MR. MCENTIRE: That's fine. I'm not.

THE COURT: -- knee issues or, you know, sometimes people want to stay seated for that reason.

MR. MCENTIRE: Your Honor, again, my tender of Mr. Dondero as a witness is subject to our running objection on the evidentiary format.

THE COURT: Understood.

JAMES DAVID DONDERO, HUNTER MOUNTAIN INVESTMENT TRUST'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MCENTIRE:

Q Mr. Dondero, would you state your full name for the record, please?

A James David Dondero.

Q With whom are you currently -- what company are you currently affiliated with?

A Founder and president of NexPoint.

Q All right. And I think the Court is well aware, but would

you just briefly describe your prior affiliation with -- was it Highland Capital?

A Yes.

Q What was that affiliation?

A President and founder for 30 years, and then to facilitate an expeditious resolution of the estate I handed the reins to three Independent Board members and I became a portfolio manager until October of -- I was an unpaid portfolio manager until October of '20.

Q Thank you, sir. Do you have any current official position with Hunter Mountain Investment Trust?

A No.

Q Can you describe for us, sir, any actual or control you attempt to exercise on the business affairs of Hunter Mountain Investment Trust?

A None.

Q Are you -- do you have any official legal relationship with Hunter Mountain Investment Trust where you can attempt to exercise either direct or indirect control over Hunter Mountain Investment Trust?

A I do not.

Q Did you participate -- personally participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan?

A I did not.

Q As the former CEO of Highland Capital, are you familiar with the types of assets that Highland Capital owned? On the petition date?
A Yes.
Q And have you been monitoring these proceedings and the disclosures in these proceedings since the petition date?
A Yes.
Q Okay. Can you describe generally for me the types of assets on the petition date that Highland Capital owned? The types of assets? Describe the types of assets -- companies, stocks, securities, whatever, whatever you -- however you would describe it.
A There were some securities, but it was primarily investments in private equity companies and interests in funds.
Q Okay. I've heard the term portfolio company. What is a portfolio company?
A A portfolio company would be a private equity company that we controlled a majority of the equity and appointed and held accountable the management teams.
Q Would there be separate management, separate boards, for those portfolio companies?
A Yes.
Q All right. How many portfolio companies were there on the petition date, if you're aware? If you recall?

A Half a dozen, of different sizes.
Q Can you identify the names, if you recall?
A Yes.
Q What are those names?
A Trussway, Cornerstone, some small -- Carey International, CFA, SSP Holdings. Yeah, to a lesser extent, OmniCare.
Q All right.
A Or, um, --
Q In addition to the portfolio --
A Sorry.
Q -- of companies in which Highland Capital would own interests, did Highland also have interests in various funds?
A Yes. I said OmniCare. I meant OmniMax, I think was the name.
Q What type of funds?
A I'm sorry. The funds were usually funds that we were invested in or seeded or managed. So they're things like Multistrat, Restoration, a Korea fund, PetroCap.
Q Are these managed funds by Highland Capital? Or were they?
A Yes. Pretty much, with the exception of PetroCap. We were a minority -- a minority -- a large -- a large minority investor with a sub-advisor.
Q Did Highland Capital Management on the petition date own an interest, a direct security interest in MGM?

A Yes. And I -- yes.
Q Did the various portfolio companies that you've identified, did one or more of those portfolio companies also own MGM stock?
A Yes.
Q Did the various funds that you've identified, did one or more of those funds also own MGM stock?
A Yes. Between -- yes. Between the CLOs, the funds, Highland directly, it was about $500 million that eventually got taken out for about a billion dollars.
Q Okay. $500 million is what you said?
A Approximately. Depending on what mark, what time frame. But ultimately they got taken out for about a billion dollars.
Q Okay. And as a consequence of these investments, significant investment -- first of all, how would you describe that magnitude of investments? Is that a significant investment from the perspective of MGM?
A Yes.
Q As a consequence, what role, if any, did you play in terms of MGM's governance? Were you -- did you become a member of the board of directors?
A Yes. I was a board member for approximately ten years, and myself and the president of Anchorage, between our two entities, we had a majority of the equity in MGM.
Q Okay. If there was a third party, not familiar with the

management of Highland Capital, who had been monitoring these bankruptcy proceedings as you have, was there any way that a third-party stranger to this bankruptcy proceeding could, from your perspective, actually appreciate or identify the -- all the details of the investments that Highland Capital had?

MR. MORRIS: Objection to the form of the question. It calls for speculation. He's not here as an expert today. He shouldn't be allowed to testify what a third party would or wouldn't have thought or known.

MR. MCENTIRE: Well, I'll --

THE COURT: I'll overrule.

BY MR. MCENTIRE:

Q Mr. Dondero?

A The disclosures in the Highland bankruptcy were scant. I think there was six or eight line items listed, the descriptions of which were limited. But it didn't include -- it didn't include a broad listing of all the funds, and it didn't include subsidiaries or any net value or any offsetting liabilities or risks of any of the underlying companies or investments, either.

MR. MCENTIRE: Would you put up Exhibit 3, please?

BY MR. MCENTIRE:

Q Mr. Dondero, we're going to -- do you have a screen in front of you as well?

A Yes.

Q We're going to put up Exhibit 3, and I'm going to ask you some questions about it. First of all, would you identify Exhibit 3?
A It didn't come up on my screen yet.
Q Still not up there?
A Yes. Now it is.
Q Can you identify Exhibit 3, please?
(Discussion.)
Q There we go. Mr. Dondero, would you identify Exhibit 3, please?
A This was an email I sent to Compliance and relevant people to put -- to put MGM on the restricted list.
Q It indicates it was on December 17, 2020. Did you personally author this email?
A Yes.
Q You sent it to multiple individuals, including Mr. Surgent. Was Mr. Surgent an attorney at Highland Capital at the time?
A He was head of compliance for both organizations.
Q Scott Ellington? Is he an attorney? Was he an attorney at the time?
A He's the general counsel of Highland.
Q You also sent it to someone at NexPoint Advisors, Jason Post. Who is Mr. Post?
A Mr. Post was head of compliance at NexPoint Advisors and a

subordinate of Thomas Surgent's.
Q Jim Seery. Mr. Seery, of course. You also addressed it to Mr. Seery?
A Yes.
Q It says, Trading Restrictions Re: MGM Material Nonpublic Information. What did you mean by the term "material nonpublic information"?
A Material nonpublic information is when you have material nonpublic information that the public does not have, and it essentially makes you an insider and restricts you from trading.
Q All right. It says, Just got off a pre-board call.
First of all, you generated this in the ordinary course of your business, did you not?
A Um, --
Q This email.
A Yes.
Q Okay.
A Yes.
Q And --
A Any restricted list. Restricted list items happen all the time in the normal course of business.
Q And you've maintained a copy of this email as well, have you not?
A I'm sure we have one. I don't have it personally.

Q Fair enough. But you're -- you have -- you have access and custody over emails, correct?
A Not any of my Highland emails.
Q But those were left. Right?
A Yes. Yes.
MR. MORRIS: Your Honor, I mean, he's leading the witness at this point, so I'm just --
MR. MCENTIRE: That's fine.
MR. MORRIS: I'm just --
THE COURT: Okay. Sustained.
MR. MORRIS: -- going to be sensitive to it.
THE COURT: Sustained.
BY MR. MCENTIRE:
Q Mr. -- this is a true and accurate copy of the email that you sent, is it not?
A It appears to be.
MR. MCENTIRE: At this time, I would offer Exhibit 3 into evidence, Your Honor.
THE COURT: Okay. I'm looking through what we admitted earlier. Did we not --
MR. MCENTIRE: This already may be in evidence.
THE COURT: Yes. I'm --
MR. MCENTIRE: I don't --
THE COURT: Was there any objection?
MR. MORRIS: There wasn't. I mean, --

THE COURT: I think there was an objection that I overruled.

MR. MORRIS: No. There wasn't. I mean, unfortunately, we've gotten the short end of the stick here, because all of their documents are in evidence, and I got caught short because I'm going to have to do it the old-fashioned way. But yes, this is in evidence.

MR. MCENTIRE: Okay. Fair enough.

MR. MORRIS: Because -- actually got through all of their documents.

MR. MCENTIRE: Fair enough.

THE COURT: Okay. All right.

BY MR. MCENTIRE:

Q So, Mr. --

THE COURT: So it's in evidence.

BY MR. MCENTIRE:

Q -- Dondero, going back to Exhibit 3, it says, Just got off a pre-board call.

Is that the MGM board, a pre-board call?

A Yes.

Q What is a pre-board call?

A It's a pre-board call that usually sets the agenda. And, again, myself and the Anchorage guys, we would move in locksteps, in a coordinated fashion, generally, in terms of agenda and company policy.

Q It says, Update is as follows. Amazon and Apple actively diligencing in the data room.

What was your understanding of -- of -- what was your intent in conveying that information to the recipients?

A The intent was really in the last sentence, or second-to-last sentence, that the transaction was likely to close. Amazon had come back. We had turned Amazon away earlier in the year at $120 a share, and they said they wouldn't be willing to pay more. And --

THE COURT: Is there an objection?

MR. MORRIS: There is an objection. None of this was shared with Mr. Seery, all of this background that we're -- that we're doing. He -- I would request that we stick with the -- only the information that was given to Mr. Seery, like -- like he's talking about his intent. Like, who cares at this point?

MR. MCENTIRE: Well, --

MR. MORRIS: This is what Mr. Seery got.

THE COURT: Okay. What is your response to that?

MR. MCENTIRE: I have a response to -- well, they've -- they've questioned his intent in sending this in his opening statement.

MR. MORRIS: Ah.

MR. MCENTIRE: And I'm trying to make it clear what his intent was.

MR. MORRIS: So, you know what, Your Honor? *Quid pro quo*. Now we're going to do a real *quid pro quo*. He can ask him about his intent, and then he can't object to all of the other documents and exhibits that I say prove that this was here only to interfere with Mr. Seery's trading activity. I'll do that *quid pro quo*.

MR. MCENTIRE: May I proceed, Your Honor?

THE COURT: You may. Objection is overruled.

BY MR. MCENTIRE:

Q Mr. Dondero, what was your intent in communicating --

A Okay.

Q -- that probably a first-quarter event? What was your understanding?

A After 30 years of compliance education: Taint one, taint all. We were all sitting together. I -- the trading desk was right outside my desk. All the employees of Highland that would eventually move to NexPoint, all the ones that would eventually move to Skyview, all the ones that eventually moved to Jim Seery, were all within 30 feet of my desk.

Q What do you mean by "Taint one, taint all"?

A That's a compliance concept that, as a professional, you have a responsibility, when you are in possession of material nonpublic information, to put something on the restricted list so that it's not traded. Okay? And you can't -- one person can't sit in their cube and say they know something and not

tell anybody else, such that the rest of the organization trades. That's not the way compliance works.

Q It says also no -- also, any sales are subject to a shareholder agreement.

What was the meaning of that or the intent of that?

A There was a stringent shareholder agreement, particularly among the board members, that no shares could be bought or sold without approval of the company.

Q The company here being MGM?

A MGM, yes.

Q What is a restricted list?

A A restricted list is when you believe as an investment professional that you have material nonpublic information, you notify Compliance, and then Compliance notifies the entire organization and prevents any trading in that security.

Q You mentioned the doctrine taint one, taint all. If an individual or -- if an individual within a company setting is found to have traded on material nonpublic information, what is the potential consequence or sanction?

MR. MORRIS: Objection, Your Honor. This is like a legal conclusion. He's not a law enforcement officer. He's not a securities officer. What are we doing?

MR. MCENTIRE: I can rephrase.

THE COURT: Okay. He's going to rephrase.

BY MR. MCENTIRE:

Q Based upon your years -- based upon your years of experience as a board member of MGM, based upon your years of experience as a CEO of Highland Capital and an executive that trades in securities and has sold securities, what is your understanding, from a non-legal perspective, of what the risks are associated with trading on material nonpublic information?
A You could be -- you would be fired from the organization if you did. You could be banned from the securities industry. The industry can shut down the -- or, the SEC can shut down the advisor or they can fine the advisor.
Q Do you know what a compliance log is?
A Yes.
Q Should MGM have been placed on a compliance log at NexPoint?
A Throughout the organization -- throughout the organization, it should -- it should and it was on all -- at all organizations, yes.
Q Should it have been placed on a -- on a compliance log to Highland Capital, from your perspective?
A Yes.
Q Can you give us any explanation of why, to your knowledge, why MGM would be taken off the restricted list in April of 2021 at Highland Capital?
A When an investment professional puts something on the restricted list, in order for it to come off the restricted

list, the material nonpublic information has to be public. So there has to be a cleansing that occurs by the company.

Q To the extent that you were no longer affiliated with Highland Capital in the early portion, the first quarter of 2021, does that somehow cleanse the material nonpublic information that you identified?

A It does not.

Q Why not?

A Because the -- it -- the company hasn't -- the company didn't come out and make public the information that we knew from a private perspective that the transaction was about to go through.

Q You sat here during opening statements when Mr. Morris referred to the various news coverage and media coverage concerning MGM and the fact that people had expressed interest in buying in the past?

A Yes. And at the board level, we had entertained numerous ones. There were rumors that had no basis in fact, and there were negotiations we had with people that were never in the news. But none of them got to this degree of certainty where it was going to close within a couple months.

Q From your perspective as an investment professional, with the years of experience that you described for the Court, what is the difference between receiving an email from a board member such as yourself and rumors or suggestions of possible

sale in the media?
A I knew with certainty from the board level that Amazon had hit our price, agreed to hit our price, and it was going to close in the next couple months.
Q That's not rumor or innuendo; that's hard information from a member of the MGM board?
A Correct.
MR. MCENTIRE: All right. You can take that down, please, Tim.
BY MR. MCENTIRE:
Q I want to talk a little bit about due diligence. When you were the chief executive officer of Highland Capital, --
A Yes.
Q -- can you tell us whether Highland Capital ever involved itself in the acquisition of distressed assets?
A Yes. We did a fair amount of investing in distressed assets.
Q What is a distressed asset?
A It's something that trades at a discount, where the certainty and the timing of realizations or contractual obligations is uncertain.
Q Is a -- well, let me back up. Has Highland -- did Highland Capital ever invest in unsecured claims in connection with bankruptcy proceedings?
A Yes.

Q And in terms of the -- on the spectrum of risk, where does an unsecured creditor claim in a bankruptcy proceeding kind of rank in terms of the uncertainties or risk, from your perspective?

A It's high risk. It's a -- yeah, it would be highly-distressed, generally.

Q Explain to us -- I know the Court is very familiar with claims trading. Explain to us from your perspective as an investment -- a seasoned investment expert or executive what those risks are. What types of risk are associated with such an investment?

A You have to evaluate the assets tied to the claim specifically. Or if it's an unsecured in general, the assets in general in the estate.

You have to handicap the realization that a distressed seller might not get full value for something. You have to handicap the likelihood around that. And then you have to handicap the timing, and then you have to handicap the expenses and the other obligations of the estate, and then handicap risk items that aren't known or that are difficult if not impossible to underwrite, like unknown litigation or last-minute litigation or claims or something.

Q And all these handicapping, this handicapping process, how does that impact the price or the investment that you're willing to make? Generally?

A Generally, you put a much higher discount rate. You know, like if you would do debt at 10 percent and a normal public equity at a 15 percent return, you would do distressed or private equity investing at a 20, 25 percent return expectation to offset the risk and the unknowns.

Q In order to handicap an investment in an unsecured creditor's claim appropriately to reach an informed decision, what type of data would you need to have access to?

MR. MORRIS: Objection to the form of the question. He's not here as an expert. He's here as a fact witness. He should -- he should limit himself to that instead of talking about what investors should be doing.

MR. MCENTIRE: Well, Your Honor, with all due respect, he's here as the former CEO of Highland Capital. He has experience, firsthand knowledge experience, and he also has expertise because of his education, his career, and training.

And again, there's no limitation here under the Rules about what type of information I can elicit from him in this proceeding. This is, whether you call it expert testimony, I call it personal knowledge, but it has some expert aspects to it, but I think that's fair and appropriate.

THE COURT: Well, I think you can ask what kind of data would you rely on, would Highland Capital or entities he's been in charge of rely on, --

MR. MCENTIRE: I understand.

THE COURT: -- but not what would people rely on. So I sustain the objection partially.

MR. MCENTIRE: All right.

BY MR. MCENTIRE:

Q Mr. Dondero, I'll rephrase the question. When you were the chief executive officer of Highland Capital before Mr. Seery took the reins, and you, your company, Highland Capital, was investing in an unsecured creditor's claims, what due diligence, what type of information would you expect your team to explore and investigate?

A Sure. Distressed investment in a trade claim would be among our thickest folders, it would be among our most diligenced items, because you have those three buckets, the value of the assets, again, and the ability and timing of monetization of those as a not strong -- as a weak seller, and then you would have the litigation or claims against those, and then you would have to also have a third section of analysis for the litigation risk of the estate overall.

Q What type of legal analysis or legal due diligence would you have required as the CEO of Highland Capital?

A At Highland, we would have had third-party law firms, in addition to our own legal staff, in addition to our own business professionals, reviewing all the analysis and the assumptions.

Q With regard to a financial analysis, what types of financial due diligence would you have required?

A It would have been a detailed -- a detailed analysis of all the cash flows on the particular underlying investments, and an evaluation and valuation of what those companies or investments were worth.

Q Why is it important to look at the underlying value of the asset?

A Because that -- those are what will be monetized in order to give you a return on the claims or securities that you buy in a distressed situation.

MR. MCENTIRE: Tim, would you please put up Exhibit 4?

MR. MORRIS: Your Honor, I don't mean to be monitoring your time, but we're at the 1:30 --

THE COURT: I was just checking the clock here. Let's do take a break. So, --

MR. MCENTIRE: All right.

MR. MORRIS: Your Honor, can we have an instruction to the witness not to --

THE COURT: Yes.

MR. MORRIS: -- look at his phone and not to confer with anybody? Because we had that incident once before.

THE COURT: Okay. Well, I don't --

THE WITNESS: I don't have my phone.

THE COURT: Okay.

THE WITNESS: My phone's at the front desk.

THE COURT: So, no discussions with your lawyers or -- I guess he doesn't have his phone -- during this break.

MR. MORRIS: Thank you, Your Honor.

THE COURT: All right. So, I really think this will take five minutes, so don't go far.

(Off the record, 1:33 p.m. to 1:47 p.m.)

THE COURT: Okay. We will go back on the record, then, in the Highland matter.

MR. MCENTIRE: I'm just going to grab him right now.

THE COURT: Okay. We are, for the record, waiting on Mr. Dondero to take his place again on the witness stand.

(Pause.)

THE COURT: All right, Mr. Dondero. We're ready for you to resume your testimony.

All right. Mr. McEntire, you may proceed.

MR. MCENTIRE: Thank you, Your Honor.

DIRECT EXAMINATION, RESUMED

BY MR. MCENTIRE:

Q Mr. Dondero, when we left off, I was just putting up what I requested as Exhibit 4.

MR. MCENTIRE: And Tim, if you can put that back up, please.

BY MR. MCENTIRE:

Q Mr. Dondero, can you identify Exhibit #4, please?
A Yes. These are notes I took contemporaneous with three conversations with guys at Farallon.
Q I didn't quite hear you. Did you say contemporaneous?
A Yes.
Q So, you say with three conversations. Who were the conversations with?
A One was with Raj Patel that was fairly short, and he deflected me to Mike Linn, who was the portfolio manager in charge and had done the transactions.
Q Which transactions?
A The buying of the claim, the Highland claims.
Q All right. And what was your purpose in making these notes?
A We'd been trying nonstop to settle the case for two-plus years. We'd been counseled that it was a Kabuki dance that would just, you know, all settle at the end, and it never quite happened that way. And when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case.

The ownership was initially hidden, but we were able to find out pretty quickly that Farallon was Muck. So I reached out the Farallon guys.
Q All right. And were you ever able at that time to determine who was affiliated with Jessup, the other special-

purpose entity?
A We -- initially, we thought Farallon was all of the entities. We didn't find out about Stonehill -- it was more difficult and they had taken more efforts to hide the ownership in Stonehill. We didn't find out for two more months.
Q So your first conversation was with Mr. Patel?
A Yes.
Q And did you call him?
A Yes.
Q Your first entry, there's a 28 on the left-hand side. What does that 28 refer to, if you recall?
A That was the date, I believe.
Q Do you believe it was May 28th?
A Yes.
Q What makes you believe that?
A That's what it says.
Q Okay. Raj Patel --
THE COURT: Is there a way you can show the words that are cut off?
MR. MCENTIRE: On this particular one, I can't, Your Honor. We tried, but we can't. No.
THE COURT: If I look in the notebook, can I see it?
MR. MCENTIRE: I don't think so. I think this is -- what you see is exactly what's in the notebook. It's the same

document. This is how -- how we -- this is how we have it.

BY MR. MCENTIRE:

Q Mr. Patel. Who is Mr. Patel?

A He's Mike Linn's boss. He's head of -- I believe head of credit at Farallon.

Q Okay. And Farallon is based where, if you know?

A San Francisco.

Q And what kind of company is Farallon, if you know?

A They -- they look a lot like Highland. Well, they do real estate. They do hedge funds. They do -- they don't do as many 40 Act or retail funds, but they're -- they're an investor.

Q Mr. Patel. What did he tell you during this phone call?

A That he bought it because Seery told him to buy it and they had made money with Seery before.

Q All right. And how long did the call last?

A Not long.

Q Okay. You said he referred you to Mr. -- who was the person?

A To Mike Linn.

Q Who is Mike Linn?

A Mike Linn is a portfolio manager that works for Mr. Patel.

Q And did you call Mr. Linn?

A Yes.

Q All right. The notes here, do these reflect several

conversations?
A The first one reflects a conversation with Raj Patel, and then the rest of it reflects two conversations with Mike Linn.
Q All right. Where does the first conversation with Mike Linn start and where does it end?
A It ends -- it begins at the 50, 70 cents. We knew that they had -- that the claims had traded around 50 cents. And I said we'd be willing to pay 70 cents. We'd like to prevent the $5 million-a-month burn. We'd like to buy your claims.
Q Why 70 cents? What was -- what was that all about?
A I was trying to give them a compelling premium that was still less than I had offered the UCC three months earlier.
Q And so you have: Not compelling, Class 8. What does that mean?
A He said that was -- he just said 70 cents wasn't compelling.
Q There's a reference to: Asked what would be compelling. Was that a question you asked him?
A Yes.
Q And what was his response?
A He said he had no offer. And he -- we had heard he paid 50 cents and I offered him 70 cents and then -- but he was clear to me that he wouldn't tell me what he paid. And so the next time I called him I -- I -- instead of just making it cents on the dollar, I said I'd pay 130 percent of whatever he

did pay. You don't have to tell me what you paid, but I'll pay you 30 percent more than you paid, you know, a couple months ago. And -- or we thought they notified the Court when they just bought it, but they had actually negotiated buying it back in February. January or February. So --

Q Who told you that they bought it in February or March time frame?

A He did.

Q Okay. Was this during the first or the second phone --

MR. MORRIS: I apologize for interrupting. Who's the "he"?

MR. MCENTIRE: Mike Linn.

THE WITNESS: Mike Linn.

MR. MORRIS: Thank you so much.

MR. MCENTIRE: I'll make sure the record --

BY MR. MCENTIRE:

Q Mike Linn --

A Yes.

Q -- told you that Farallon had bought their interest in the claims back in the February or March time frame?

A Yes.

Q All right. Bought assets with claims. What does that refer to?

A He said it wasn't compelling because he said Seery told him it would be worth a lot more. He -- he confirmed what Raj

said, that -- I said, do you realize the estate is spending $5 million a month on legal fees? That, you know, you should want to sell this thing. And he said Seery told him it was worth a lot more and there were claims and litigation beyond the asset value.

Q You offered him 40 to 50 percent premium. What is that?

A That's what the 70 cents on the 50 cents represents. And then I changed the dialogue to I'll pay you 130 percent of whatever your cost was. And he said, not compelling. And then I, both -- both calls, I pressed him, what price would he offer at? And he said he had no offer, he wasn't willing to sell.

Q The 130 percent of cost, not compelling, was that in the second or the third call with Mr. Linn?

A It was at my third and final call with Farallon. My second call with Mike Linn was the 130 percent of cost.

Q And he said not compelling? You put it in quotation marks?

A Yep.

Q And then you said, no counter. What does that mean?

A He wouldn't -- he wouldn't give an offer, he wouldn't give a price at which he would sell.

Q What did Mike Linn tell you, in effect, with regard to his due diligence that Farallon had undertaken?

A When I -- when I told him about the risks and the

litigation and the burn, he said he wasn't following the case, he wasn't aware of it, he was depending on Jim Seery.

Q What, if anything, did Michael Linn tell you about MGM?

A That was more the initial Raj Patel call, where he said we bought it because he was very optimistic regarding MGM.

Q Okay. Did you have any understanding when he first got his optimism about MGM?

A No. He just said that's why they had bought it initially, they were very optimistic about MGM.

Q That's why they had bought it initially?

A Yes.

Q And they had bought it initially in the February-March time frame?

A Yes.

Q And that -- would you -- does that predate the public disclosure of the MGM sale to Amazon?

A Yes.

Q Substantially by a couple of months?

A Yes.

Q I'd like to turn your attention now to a different topic.

MR. MCENTIRE: And Tim, if you could pull up Exhibit 8, please.

I believe this document is already in evidence, Your Honor.

THE COURT: 8 is?

MR. MCENTIRE: Oh, by the way, I offer Exhibit 4 into evidence.

BY MR. MCENTIRE:

Q Let me ask you a couple quick questions.

THE COURT: Is there an objection?

MR. MORRIS: Nope.

THE COURT: Okay. 4 is admitted.

(Hunter Mountain Investment Trust's Exhibit 4 is received into evidence.)

BY MR. MCENTIRE:

Q Exhibit 8.

MR. MORRIS: I apologize, Your Honor. Just one caveat. It's not for the truth of the matter asserted; it's for what his impressions were at the time.

MR. MCENTIRE: Well, --

MR. MORRIS: This is what he wrote down. I don't --

MR. MCENTIRE: I'm offering it for the truth of the matter asserted.

MR. MORRIS: Okay. And I object to that extent. This --

MR. MCENTIRE: Let me --

MR. MORRIS: Can I *voir dire*? Can I *voir dire*? May I do --

MR. MCENTIRE: May I finish my statement that I was --

THE COURT: Let him finish, and then --

MR. MCENTIRE: Thank you.

THE COURT: -- you can.

MR. MCENTIRE: I am offering it for the truth of the matter asserted because these are documents that were prepared contemporaneously, it's an exception to the hearsay rule and reflects admissions of a -- of an adverse party. Admissions that are adverse to their interests. Declarations of interest adverse to their interest and admissions of an adverse party contemporaneously recorded. And so that's why I'm offering it.

MR. MORRIS: For all purposes?

THE COURT: Okay. Let me have you point me to the exact hearsay exception. I understand this hearsay exception you're arguing for the hearsay within the hearsay, the party opponent exception. But it's technically hearsay of Mr. Dondero, even though he's here on the stand.

MR. MCENTIRE: Well, I could lay a foundation, then.

BY MR. MCENTIRE:

Q Mr. Dondero, --

THE COURT: Well, no. I'm asking for what your --

MR. MCENTIRE: It's --

THE COURT: -- rule reference is.

MR. MCENTIRE: I don't have the Rules with me right this second. It's 803(1) --

(Discussion.)

MR. MCENTIRE: All right. Well, it's -- it's admissible under several categories. It's not hearsay because it's an admission of a party opponent. It's also an admission under 803(1), present sense impression. It's also admissible --

THE COURT: So you say it's Mr. Dondero's statement describing or explaining an event --

MR. MCENTIRE: Yes.

THE COURT: -- or admission made while or immediately after the declarant perceived it?

MR. MCENTIRE: Yes. It's also a record of a regularly-conducted activity, which is 803(6). And I think it's also not technically hearsay because it's also an admission of a party. So, this --

THE COURT: Well, that's the hearsay within the hearsay.

MR. MORRIS: Yeah.

THE COURT: But I'm -- I'm --

MR. MORRIS: That can't possibly be right. I can't go back to my hotel right now and write down that he told me that he did a bad thing and come in here tomorrow and say he admitted he did a bad thing because it's in my notes.

MR. MCENTIRE: Well, --

MR. MORRIS: That's can't possibly be the law.

MR. MCENTIRE: Well, --

MR. MORRIS: That's not the law.

MR. MCENTIRE: There are two hearsay issues here. One is whether this is a business record or otherwise qualifies as an exception to the hearsay rule, and then there's an internal hearsay issue of whether or not what Mr. Patel and Mr. --

THE COURT: You haven't established the business record exception. Okay?

MR. MCENTIRE: I'm prepared to lay the foundation right this second. At this moment.

THE COURT: You may proceed.

BY MR. MCENTIRE:

Q Mr. Dondero, is this a document that was generated by you in the ordinary course of your business?

A Yes.

Q Did you have personal knowledge when you recorded this document?

A Yes.

Q You personally recorded this document, correct?

A Yes.

Q And you have had custody of this document. Correct?

A Yes.

Q And this is --

MR. MCENTIRE: That's a -- that's a business record,

Your Honor.

MR. MORRIS: May I, Your Honor?

THE COURT: You may.

MR. MORRIS: Okay.

VOIR DIRE EXAMINATION

BY MR. MORRIS:

Q Where's the document now? How come it's -- how come it's cut off?

A I don't know.

Q Do you have the document today? How come we're looking at a document that's cut off?

A I'm sure we have it somewhere. I don't have it.

MR. MORRIS: So, number one, Your Honor, we don't have the actual document. We have a partial document.

Number two, let's talk about it for a second.

BY MR. MORRIS:

Q You say that you do this in the ordinary course of business. What's the purpose of taking these notes?

A When I'm starting negotiation with somebody new on something complicated and I don't know what their concerns or rationale is going to be, I take little notes like this.

Q And is it -- is it the purpose of it to capture the important things that are going on in the conversation?

A So I know next time how to address it differently, you know.

Q That's not my question. My question is, is the purpose of taking notes so that you have a written record of the important points that you discussed?
A Yes, so I know how to address it the next time.
Q Okay. And among the important points that you never put down on these notes was the letters MGM. Is that correct?
A Correct.
Q Okay. And you never put down here that Michael Linn told you he wasn't following the case, correct?
A No, I did not.
Q Okay.
A But it was --
Q And --
A Yeah. But I --
Q That --

MR. MORRIS: Your Honor, if this is --

MR. MCENTIRE: (faintly) This is *voir dire* of the witness for a business record exception.

MR. MORRIS: No, because --

THE COURT: Overruled.

MR. MORRIS: Thank you.

BY MR. MORRIS:

Q Mr. Patel wouldn't tell you how much he paid and that's why you didn't write it down, right?
A Mr. Patel told me he bought it because of Seery. My

conversation was very short with him. That was one of the few things he said. Linn said he wouldn't sell it because he didn't find it compelling.

Q Okay.

A And Linn was the one who wouldn't tell me --

Q Okay.

A -- the price.

Q But -- but even though you took these notes to write down things that you thought were important, you didn't write down MGM. Correct?

A Yes.

Q And you didn't write down that anybody was very optimistic about MGM. Correct?

A No, I did not.

Q And you didn't write down that Mr. Linn told you he wasn't following the case. Correct?

A Well, he said the same thing Patel said about he bought it because of Seery. He did confirm that. I didn't see any reason to write that again.

Q You didn't -- you never wrote it down. Not once. Not -- there's nothing about again, right. You never wrote down that --

A No, I did write --

Q -- anybody ever told you they weren't following the case. Correct?

A Correct.
Q Okay.
A But I wrote down that he bought it because of Seery.
Q Okay.

MR. MORRIS: Your Honor, no objection. It can go in.

MR. MCENTIRE: Okay.

THE COURT: Wait. Did you just say no objections?

MR. MORRIS: Except -- except for the hearsay on hearsay. It can't possibly be an admission. It's his -- it's his notes. This is what he wrote. It can come in for that purpose. It's -- it's a -- that's what he's testified to, and I can't object to that. But it can't possibly come in as an admission against Farallon.

MR. MCENTIRE: Well, I disagree.

MR. MORRIS: That's the point.

MR. MCENTIRE: Well, first of all, I disagree. This is otherwise admissible, and it can come. I think that's really, Your Honor, that's really the weight it's going to be given. It comes in. He's not making an objection to its admissibility. And if he wants to argue the weight of the document, that's a different issue.

MR. STANCIL: Your Honor, if I may.

THE COURT: You may.

MR. STANCIL: The second layer of hearsay goes to whether this is a statement by Farallon. It is a statement by

Mr. Dondero of what he heard, what he says he heard Farallon say. 801(d) refers to, when they're talking about an opposing party statement, made by the party, not made by a listener who says he heard the party. This is classic hearsay within hearsay. It's not admissible for that purpose.

THE COURT: Okay. I sustain the objection, and -- but I'm still struggling to understand what the Respondents have agreed to. Because --

MR. MORRIS: That -- that this is what he claims to have written down. I mean, right? So, so --

THE COURT: Okay.

MR. MORRIS: -- a present sense impression.

THE COURT: So, it is admitted as Mr. Dondero's present sense impression, but it's not admitted as to the truth of anything that Claims Purchasers may have said.

MR. MORRIS: And -- and the --

THE COURT: That's what you're saying?

MR. MORRIS: Yes. And the most important thing is that he's testified that the purpose of the notes was to capture the things that were important that he was told. And we've established what he wasn't told.

MR. MCENTIRE: Okay. I believe the document is in evidence, Your Honor.

THE COURT: Exhibit 4 is in evidence. But, again, there's no admission in here as to what Claims Purchasers

testified as to.

MR. MCENTIRE: Well, they haven't testified yet because --

THE COURT: This is what he --

THE DEFENDANT: I understand. I understand.

THE COURT: -- he says he remembers.

MR. MCENTIRE: Okay. So, --

THE COURT: It's sort of an --

MR. STANCIL: Your Honor, just so we're clear for our record, this is not admitted for the truth of what Farallon is purported to have said.

MR. MCENTIRE: Correct.

THE COURT: Correct.

MR. MCENTIRE: This --

MR. STANCIL: Thank you.

MR. MCENTIRE: This is offered for the truth of what Mr. -- Mr. Dondero recalls them saying.

THE COURT: Okay.

MR. MCENTIRE: In part.

THE COURT: I think -- I think we're on the same page now. I think. I think.

(Hunter Mountain Investment Trust's Exhibit 4 is received into evidence.)

MR. MCENTIRE: All right. May I proceed, Your Honor?

THE COURT: You may.

MR. MCENTIRE: Can you please put up Exhibit 8, please? And I believe this document has been put into evidence --

THE COURT: It is.

MR. MCENTIRE: Thank you.

BY MR. MCENTIRE:

Q Mr. Dondero, this document is a -- part of a -- the Court's docket. It was filed on February 1, 2021, if you could go to the top upper banner. It's Debtors' Notice of Filing of Plan Supplement of the Fifth Amended Plan of Reorganization of Highland Capital Management, as Modified.

Do you see that?

A Yes.

Q I'll direct your attention, --

MR. MCENTIRE: If you could go to Page 4, please, for me, Tim.

BY MR. MCENTIRE:

Q Page 4 has a schedule, a plan analysis and a liquidation analysis. Do you see that?

A Yes.

Q All right. For Class 8, what does it identify that is being projected for distributions to the general unsecured claims for Class 8?

A 71.3 percent.

Q What percentage is being identified that will be

distributed to Class 9?

A 9, no distribution.

Q No distribution? All right. Mr. Dondero, in Paragraph -- I'm going to give you a piece of paper.

MR. MCENTIRE: Can you just give me a piece of paper real quick?

BY MR. MCENTIRE:

Q I'm handing you a piece of paper and I'm --

A Okay. Thank you.

Q Mr. Dondero, in our complaint in this case, the proposed complaint in this case, we allege that Class 8 had a total of $270 million, the claims that were purchased by Farallon and Stonehill had a face value in Class 8 of $270 million. Would you write that number down?

And assuming that this was public information that was available in February of 2021 at 71.32 percent, --

MR. MORRIS: Objection, Your Honor. That's an assumption not in evidence. He hasn't laid a foundation for what was available in February in 2021.

BY MR. MCENTIRE:

Q Mr. Dondero, according to --

THE COURT: Wait. Are you going to respond, or are you just going to --

MR. MCENTIRE: I'll rephrase the question.

THE COURT: -- rephrase? Okay.

BY MR. MCENTIRE:

Q According to the document that is identified as Exhibit #8 that says that 71.32 percent is the anticipated projected payout on Class 8 claims, what is 71.32 percent of the face value of the claims that were purchased?

A About $192 million.

Q $192 million? And assuming for a moment that, as alleged by Hunter Mountain in this case, that $163 million was actually used to purchase the Class 8 claims, what is the difference?

A About $30 million.

Q A little less than that, isn't it? Or is the number --

A Yeah. $28 million or whatever.

Q $28 million? And based upon your years of experience in running Highland Capital, being involved in the purchase of unsecured claims, being involved in investigating and acquiring distressed assets, that return over a two-year period, is that the kind of return that a hedge fund would typically -- you would expect to receive?

MR. MORRIS: I just want to make sure that -- because the question changed a little bit in the middle. If he wants to ask him if he would have made the investment, that's fine. But he should not be permitted to testify as to what any other investor, including the ones who purchased these claims, would have done. Every -- there's different risk profiles. He can

testify to whatever he wants about himself.

THE COURT: Sustained.

BY MR. MCENTIRE:

Q Go ahead. Based upon your experience at Highland Capital, would Highland Capital have ever acquired those claims based upon that kind of return over two years? For a distressed asset such as this?

A No.

Q Why not?

A It's below a debt level return that you could get on high-rated assets with certainty. It's --

Q What do you mean by it's below -- below a debt return that you could get on collateralized assets? What do you mean by that?

A I think in this case the debt that the Debtor put in place paid 12, 13 percent and was triple secured or whatever. So no one would buy the residual claims for an 8 percent compounded, whatever that $28 million works out to.

MR. MORRIS: I move to strike, Your Honor. He shouldn't be talking about or testifying to what other people might do.

THE WITNESS: Well, we --

THE COURT: This is --

THE WITNESS: We would never have done that.

THE COURT: This is --

MR. MCENTIRE: He would not have.

THE COURT: -- Highland, not nobody. Okay.

BY MR. MCENTIRE:

Q Mr. Dondero, and what is it about the fact that these claims are not collateralized that impacts the decision-makers, from your perspective?

A You have all the risk that the $205 million of expenses this estate has currently paid grows to $300 or $400 million. You know, you have the risk that other litigation regarding Seery violating the Advisers Act --

MR. MORRIS: I move to strike, Your Honor.

THE WITNESS: -- results in --

THE COURT: Sustained.

THE WITNESS: -- expenses.

BY MR. MCENTIRE:

Q Just respond to my question, sir. What does the fact about not being collateralized, how does that impact the decision-maker's --

A Well, I was trying to answer it. You just have all kinds of residual risk of bad acts that have happened at the estate or expenses increasing or whatever.

MR. MORRIS: I move to strike the phrase "bad acts," Your Honor.

THE COURT: Overruled.

BY MR. MCENTIRE:

Q What did you mean by that? What did you mean by "bad acts"?

A We've highlighted it in a lot of complaints. There's been several violations of the Advisers Act.

MR. MORRIS: Move to strike, Your Honor. It's a legal conclusion.

THE COURT: Sustained.

BY MR. MCENTIRE:

Q Mr. Dondero, are you familiar with an entity known as NHF?

A Yes.

Q What is NHF?

A A NexPoint hedge fund. It was a closed-in fund that we manage still to this day at NexPoint. The name has changed to NXDT.

Q Was NHF publicly traded?

A It -- yeah, it's a publicly-traded equity. It's a closed-in fund, technically, but it's a publicly-traded security.

Q What -- what is your affiliation with NHF?

A I'm the portfolio manager.

Q And, again, what are your responsibilities as the portfolio manager?

A To optimize the portfolio and hopefully exceed investor expectations.

Q Have you become aware that Stonehill was purchasing MGM stock in the first quarter of 2021? And NHF?

A Yes. We believe -- we're able to demonstrate from Bloomberg records, on the Bloomberg terminal, they show up as holders and purchasers in the -- in the first few months of 2021.

Q What magnitude?

A I think it was one of their top equity positions. It was about six million bucks.

MR. MCENTIRE: Can you put up the chart? This is for demonstrative purposes only.

I'm not offering this chart into evidence, Your Honor. It's simply a demonstration. Or a demonstrative.

MR. MORRIS: Your Honor, there's no such thing.

MR. MCENTIRE: There is.

MR. MORRIS: A demonstrative has to be based on evidence. A demonstrative is supposed to summarize evidence. You don't put up a demonstrative until --

THE COURT: All right. What's your response to that?

MR. MCENTIRE: That I'm about to walk through some points where he can establish as a point of evidence, and then we can talk about it. Demonstratives, demonstratives are used all the time, Your Honor.

MR. MORRIS: It's to --

THE COURT: Well, they summarize evidence.

MR. MORRIS: It's to summarize evidence.

THE COURT: Yes. So, --

MR. MCENTIRE: Well, this is --

THE COURT: -- you can elicit the evidence, and then if this chart seems to summarize whatever he testifies as to, then --

MR. MCENTIRE: All right.

THE COURT: -- then I think maybe you can put it up.

MR. MCENTIRE: Mr. -- you can take it down, Tim.

BY MR. MCENTIRE:

Q Mr. Dondero, do you have an understanding of how much total distributions have been paid to date in the Highland bankruptcy?

A I believe the Class 8 -- the 1 through 7 was only about $10 million. I believe Class 8 got $260 or $270 million so far.

Q All right. And do you have an understanding of what the total amount of expenses are?

A Total expenses paid to date was $203 million. $205 million.

Q So the -- the -- there's a rough approximation between the professional expenses and the actual all proofs of claim; is that correct?

A There is, yeah, a ratio, and -- yes.

Q The total cash flow, if you add those two together, what are they? What are they approximately?

A $470 million.

Q $470 million? And do you understand that the -- that the Reorganized Debtor and the Claimant Trust would have more than sufficient assets to reach Class 10 where Hunter Mountain is currently located, even setting aside the claims against you?
A Correct. There's $57 million of cash on the balance sheet, net of a couple million today, I guess. And then there's $100 million of other assets.
MR. MCENTIRE: Reserve the rest of my questions. Reserve the rest of my questions, Your Honor.
THE COURT: Okay. Pass the witness.
MR. MCENTIRE: Could I have my time estimate?
THE COURT: Yes. Caroline?
THE CLERK: (faintly) As of right now, we are at 81 minutes, so --
MR. MCENTIRE: Thank you.
THE COURT: That was 81 minutes total?
THE CLERK: Yes.
THE COURT: Okay.
MR. MORRIS: May I proceed, Your Honor?
THE COURT: You may.

CROSS-EXAMINATION

BY MR. MORRIS:
Q Good afternoon, Mr. Dondero.
A Good to see you.
Q My pleasure. Do you know an attorney named Ronak

(phonetic) Patel?
A Is that Rakhee that they call --
Q Could be. Do you know an attorney named Rakhee Patel?
A There was a Rakhee Patel, I believe, early in the *Acis* case.
Q Let me try --
A I'm not -- I've never met her.
Q Let me try this differently.
A Okay.
Q Did you ever meet with the Texas State Securities Board?
A No.
Q Did anybody acting on your behalf ever file a complaint with the Texas State Securities Board?
A No.
Q Do you know if anybody's filed a complaint with the Texas State Securities Board? About Highland?
A I believe you covered it earlier. Mark Patrick.
Q Mark Patrick what?
A I guess he did, or Hunter Mountain did, or the DAF did. I don't -- I don't know.
Q Did you ever speak with Mark Patrick about a TSSB investigation of Highland?
A No.
Q Okay. Why do you think Mark Patrick knows about the TSSB investigation of Highland?

MR. MCENTIRE: Objection to form. Calls for speculation. He's just established that he's never --

THE WITNESS: I don't know.

MR. MCENTIRE: -- talked to Mark Patrick.

MR. MORRIS: Okay.

THE COURT: Okay. Sustained.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Have you ever seen the draft Hunter Mountain complaint in this case?

A No.

Q Okay. I think you testified a moment ago that Amazon had hit MGM's price by December 17th. Do I have that right?

A Yes.

Q Okay. Then how come you didn't say that in your email to Mr. Seery?

A Your best practices and typical practices, when you put it on the restricted list, is to just give as little information as possible so that the inside information isn't promulgated specifically throughout the organization and leaked --

Q So, --

A -- throughout the organization.

Q So, even though your intent was to convey information to Mr. Seery, you didn't actually tell him the truth, right? You didn't tell him that Amazon had actually hit the stock price.

Right?
A I wouldn't characterize it that way.
Q Okay. In fact, all you told him was that they were interested. Isn't that right?
A I wasn't telling him anything. I was telling Compliance, as an investment professional, that it needed to be on the restricted list because we were in possession of material nonpublic information regarding a merger that was going to go through shortly. Or in the next few months.
Q Is it your testimony that, as of December 17th, Amazon had made an offer that was acceptable to MGM?
A Yeah, we were going into -- that's what the board meeting was. We were going into exclusive negotiations to culminate the merger with them.
Q Okay. I think you have a binder there of our exhibits. If you can go to #11.
A Which one?
MR. MORRIS: May I approach?
THE WITNESS: Sure.
(Pause.)
BY MR. MORRIS:
Q That's your email, sir, right?
A Yes.
Q Okay. It doesn't say anything about Amazon hitting the price, right?

A It doesn't need to.
Q In fact, it still mentions Apple, doesn't it? Why did you feel the need to mention Apple if Amazon had already hit the price?
A The only way you generally get something done at attractive levels in business is if two people are interested.
Q But why weren't you -- why were you creating a story for the Compliance Department when the whole idea was to be transparent so they would understand what was happening? Why would you create a story that differed from the facts?
A It didn't differ from the facts, and it's not a story. It's a, we have material nonpublic information. Please put this on the restricted list. And --
Q But that -- but you said Amazon and Apple are actively diligencing and they're in the data room. Do you see that?
A That's true.
Q So, even though -- you know what, I'll move on. But this -- this doesn't say what you testified to earlier, that Apple hit the -- that Amazon hit the price. Right? Can we just agree on that?
A Well, agree that it doesn't have to and it's not supposed to.
MR. MORRIS: I move to strike. I just want --
THE COURT: Sustained.
BY MR. MORRIS:

Q -- you to -- I want you to just work with me here. You did not tell the Compliance Department that Apple -- that Amazon had hit the strike price. Right? Isn't that correct? That's not what this email says?

A The -- you can pull up a hundred of these type emails. They're not specific.

MR. MORRIS: I'm going to move to strike and I'm just going to ask you, --

THE COURT: Sustained.

BY MR. MORRIS:

Q -- because you testified to one thing, and I just want to make clear that you told the Compliance Department something different. Can we just agree on that?

MR. MCENTIRE: Well, Your Honor, may I respond to his motions to strike? I think he's becoming argumentative.

THE COURT: Could you speak into the mic, --

MR. MCENTIRE: I can.

THE COURT: -- please.

THE COURT: He's becoming argumentative. And I think it's very clear that, if he asks a question, the witness has a right to respond. I think his answers are totally responsive. And I don't think anything should be struck.

THE COURT: Okay. Your question was you didn't put in there anything about it hit the strike price --

MR. MORRIS: He didn't --

THE COURT: -- or whatever?

MR. MORRIS: He didn't -- he didn't tell the Compliance Department what he just testified to. In fact, he told the Compliance Department something very different. That's all I'm asking.

THE COURT: And I think that's just a yes or no.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Yes or no? You told the Compliance Department something different than what was actually happening?

A That's not true.

Q Oh.

A Exactly what was here, what was happening. I didn't give more detail, which is more hearsay.

Q Okay. If somebody was filing -- following the Highland bankruptcy, they would have known that MGM was very important, right?

A You'd have to show me where. I don't -- I don't see it in any of the bankruptcy --

Q You don't think that that's true?

A I didn't see it in any of the public filings.

Q Do you remember we were here two years ago on this very day, June 8, 2021, for the second contempt hearing? You sat in that very witness box during the second contempt hearing? Remember that? That was two years ago.

A I remember sitting in the box. What are you asking?
Q And do you remember that that was just a few days after MGM had announced its deal with Amazon?
A I -- I don't remember -- I -- was that the day the judge was hopeful that would lead to a resolution of the case?
Q Exactly. So, --
A Okay.
Q -- Judge Jernigan certainly knew that MGM was important. Right?
A Yes.
Q And she's a bankruptcy judge, right?
A Yes.
Q And she was overseeing the bankruptcy case, right? Correct?
A Yes.
Q And the very first thing when she walked in the door two years ago on this day was, oh my goodness, MGM, they have a deal, maybe we can finally get to a settlement. Right?
A And I wish she had pushed on that.
Q Do you --
A And I remember you guys dismissing it.
Q Do you think she had material nonpublic inside information?
A No, I don't think so.
Q She probably learned it in the bankruptcy case, right?

A Yeah.
Q Okay. Do you believe Mr. Seery sold any MGM securities between the day you sent your email and the day the Amazon deal was announced on May 26th?
A I don't know.
Q Do you -- so you have no knowledge? Let's do this a different way. You have no basis to say that Mr. Seery sold any MGM securities between the moment you sent this email on December 17th and the day the Amazon deal was announced on May 26th. Correct?
A I'm sorry. Just to clarify, you're saying sold, not bought, right? You're not asking me if --
Q I'll do either way.
A Okay.
Q Fair point.
A Sure.
Q Very fair point.
A Okay.
Q Do you believe that Mr. Seery engaged in any transactions of MGM securities between those two relevant data points?
A Yes.
Q Okay. What do you think he did?
A The HarbourVest transaction.
Q Okay. So, you learned about the HarbourVest transaction when?

A When it was filed.
Q And that was on December 23rd. Do you remember that?
A Yes.
Q It was just less than a week after you sent your email, right?
A Yes.
Q And do you remember that you filed an objection to the HarbourVest settlement?
A Yes.
Q And you're the one who gave Mr. Seery this material nonpublic inside information, right?
A Yes.
Q Did you object to the HarbourVest settlement on the basis that Mr. Seery was engaging in insider trading?
A Not then, I don't think. I believe --
Q You didn't, right? Even though it was happening at the exact same moment, the very -- within a week of you giving him this information. He's announcing that he's doing this settlement and you don't say a word. Isn't that right?
A Because I delegated the responsibility to Compliance by notifying them of material nonpublic information, and Compliance should hold the organization accountable. Compliance is separate and discrete from management. Compliance reports to the SEC.
Q You filed a 15-page objection to the settlement, didn't

you?
A I don't -- I don't know.
Q Did you tell Judge Jernigan that Mr. Seery was doing bad?
A Not then. I think a month later, two months later.
Q Even though you knew what was happening, you didn't say anything, right?
A I -- I'm not responsible for all the filings. I --
Q Even though it's under your name?
A Correct.
Q How about -- how about CLO Holdco? Did CLO Holdco file an objection to the HarbourVest settlement?
A I -- I don't know which entities did, but it -- whatever entities that were in control that could did, eventually, when they found out, you know, and -- but did -- did they, within a week or contemporaneously? No. It was right around the holidays. A lot of people weren't paying attention. You guys were trying to rush the HarbourVest thing through.
Q Sir, CLO Holdco filed an objection, claiming that it was entitled to purchase the HarbourVest interests in HCLOF because it had a right of first refusal, right? Isn't that right?
A Okay. I -- what ultimately governs the --
Q Isn't that right?
A I don't -- okay.
Q It's really just yes or no.

A I don't know.
Q If you don't remember, that's fine.
A I don't remember, yeah.
MR. MCENTIRE: Your Honor, would he please give the witness an opportunity to answer? He's interrupted three times in less than five seconds. Give the witness an opportunity to respond.
MR. MORRIS: This is real easy stuff.
THE COURT: Okay.
MR. MORRIS: I'm trying to cross him here.
MR. MCENTIRE: Your Honor, with all due respect, he's making it very difficult because he's being very aggressive --
MR. MORRIS: Nah.
MR. MCENTIRE: -- and he's interrupting the witness.
MR. MORRIS: I would never.
THE COURT: Okay. I don't feel the need to do that right now, but I will -- I will consider your request.
THE WITNESS: Can I give a complete answer to his last question, or one that I'd like to be my answer on the record?
THE COURT: Go ahead.
THE WITNESS: The governing responsibility as a registered investment advisor is you're not allowed to buy back from investors fund interests or investments unless you offer it to everybody else, in writing, in that fund first.

That's the Investment Advisers Act as I understand it, and that is what was improper in the HarbourVest transaction. I mean, besides the fact that the pricing was wrong, they misled HarbourVest. And I know HarbourVest hasn't complained, but just because your investors don't complain doesn't mean you can rip them off.

MR. MORRIS: I'd really move to strike the entirety of the answer, Your Honor.

THE COURT: Granted.

BY MR. MORRIS:

Q Mr. Dondero, HC --

A I'm not going to -- I'm not answering any more questions unless I can answer that question with that answer, --

Q Mr. Dondero, do you --

A -- because I believe it's responsive.

Q Do you remember that CLO Holdco withdrew their objection?

A I --

Q To the HarbourVest settlement?

A I don't remember.

Q Do you remember that's really when Grant Scott left the scene?

A I don't --

Q He thought it was inappropriate for them to withdraw, right?

A I don't remember all the details. I know they made some

mistakes, and there's a tolling agreement against Kane's (phonetic) firm for making mistakes, and, you know, whatever. But I -- I don't remember all the details.

Q And a couple of months later, you conspired with Mr. Patrick to try to sue Mr. Seery in order to try to get that very same interest in HCLOF, right?

MR. MCENTIRE: Your Honor, I have to object. There's no foundation and it's also highly argumentative and I move to object. That's a -- that's a question asked in bad faith.

THE WITNESS: I deny any conspiring.

MR. MORRIS: Okay.

THE COURT: Sustained.

BY MR. MORRIS:

Q In April, Mr. Patrick filed a lawsuit on behalf of CLO Holdco a couple of weeks after getting appointed as the head of CLO Holdco and the DAF about the HarbourVest settlement. Isn't that right?

A I believe so.

Q Okay. And you worked with him on that, right?

A I -- I did not work with him on that. I was very just tangentially aware.

Q Okay.

MR. MORRIS: I'm just going to refer the Court -- I'm going to move for the admission into evidence of the second contempt order.

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

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APPELLEE RECORD

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Counsel for Highland Capital Management, L.P.

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

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III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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THE COURT: Exhibit what?

MR. MORRIS: Just one moment, Your Honor.

(Pause.)

MR. MORRIS: You know what, I don't know that I have it on the list. I'm just going to ask the Court to take judicial notice. We had a hearing two years ago to this day, and the Court found in the order that it entered at the conclusion of that hearing that Mr. Patrick had abdicated his responsibility to Mr. Seery. It's one of the reasons why Mr. Seery wasn't held in contempt of Court. And I'd like -- I'd like Counsel to address it now.

MR. MCENTIRE: Yeah, I'll -- you said Seery, didn't you?

MR. MORRIS: Oh, sorry. I said Seery. I meant Dondero.

MR. MCENTIRE: (faintly) Also, I believe it's entirely irrelevant. Judicial -- taking judicial --

THE COURT: Would you speak in the microphone, please?

MR. MCENTIRE: I'm sorry. Taking judicial notice of something that is utterly irrelevant is not necessary, not appropriate. What this Court did two years ago roughly to the day -- and I assume he's correct -- has no bearing on anything before the Court today. Nothing. This has zero connection, nexus, under any analysis, any fair scrutiny, dealing with the

colorability of the claim that Hunter Mountain, who was not involved in those proceedings, is trying to advance here. And it would be -- it would be improper for this Court to even take it under judicial notice.

THE COURT: Okay. Response?

MR. MORRIS: Can I respond?

THE COURT: Uh-huh.

MR. MORRIS: Okay. So, Your Honor, I'm going to move for the introduction into evidence of Exhibit 45. It is the Charitable DAF complaint that was filed in the federal district court on April 12, 2021, under the direction of Mark Patrick, who today stands here as the representative of Hunter Mountain.

This was the complaint, if Your Honor will recall, that they tried to amend and we had a hearing here about the circumstances, because that amendment was going to name Mr. Seery personally, in violation of the gatekeeper order. Right?

THE COURT: Uh-huh.

MR. MORRIS: And so it is all tied together. If you go to Paragraph 77 of this exhibit, it says, HCLOF holds equity in MGM Studio. This is the exact same transaction, right? So, so Mr. Dondero says, I gave Mr. Seery inside information, he violated all of these things in the HarbourVest transaction, even though he didn't say a word

then, and here, while it's still on the restricted list, before the Amazon deal is announced, they're actually in court saying that they should be entitled to acquire that same asset that Mr. Seery supposedly acquired improperly. He wants it for himself.

I mean, are you kidding me? It's not relevant?

THE COURT: I overrule the relevance objection. It's admitted.

MR. MORRIS: Thank you. And 45 is admitted, Your Honor?

THE COURT: 45 is admitted.

MR. MORRIS: Okay.

(Debtors' Exhibit 45 is received into evidence.)

MR. MCENTIRE: Just, Your Honor, I was identifying my objection in connection with his original request that you take something under --

THE COURT: Would you speak in the microphone? Again, we --

MR. MCENTIRE: Yes. My original objection was addressing his request of you, Your Honor, to take something under judicial notice. I want to make sure my objection is also lodged with regard to Exhibit 45, which I understand you've overruled.

THE COURT: Correct.

MR. MCENTIRE: Okay.

THE COURT: It is so noted.

MR. MORRIS: Okay.

THE COURT: You've objected and I've admitted it.

MR. MORRIS: And I think I've said this already, but the reason that we're requesting the Court take judicial notice of its order on the second contempt proceeding is because it shows that Mr. Dondero and Mr. Patrick worked together, in violation of the gatekeeper, to try to suit Mr. Seery to obtain the interest in HCLOF that he is sitting here today saying somehow that Mr. Seery wrongfully acquired, even though he didn't say a word at the time.

THE COURT: Okay. So now we're talking about not Exhibit 45 --

MR. MORRIS: Yes.

THE COURT: -- but the order that was entered --

MR. MORRIS: Correct.

THE COURT: -- regarding the filing of Exhibit 45?

MR. MORRIS: Exactly.

THE COURT: Someone is going to need to give me a docket entry number before we're done here.

MR. MORRIS: Okay.

THE COURT: I can and will take judicial notice of that, but I need to have it --

MR. MCENTIRE: So I assume, for the record, my objection is overruled?

THE COURT: Your objection is overruled.

MR. MCENTIRE: Thank you.

MR. MORRIS: All right.

BY MR. MORRIS:

Q You mentioned something about, I think, was it NXDT or NHF?

A Yes.

Q And just let me see if I can do it this way. Right? So there used to be a fund known as the NexPoint Strategic Opportunities Fund, right?

A Yes.

Q Okay. And in 2020 that was a closed-in fund. Correct?

A Yes.

Q And it traded under the ticker symbol NHF, correct?

A Yes.

Q And then late in 2021 the name of the fund was changed to NexPoint Diversified Real Estate Trust, correct?

A Yes.

Q And the ticker symbol changed from NHF to NXDT, correct?

A Yes.

Q And then it became a REIT the following year, right?

A Yes.

Q And I'm just going to refer to these letters as the Fund; is that fair?

A That's fine.

Q For purposes of these questions. And you were the Fund's portfolio manager, the president, the principal executive officer, correct?
A Yes.
Q And another entity that you controlled, NexPoint Advisors, provided advisory services to the Fund, correct?
A Yes.
Q And you controlled NexPoint Advisors at all times, correct?
A Yes.
Q Okay. And the Fund was publicly traded, right?
A Yes.
Q And the Fund owned shares of MGM at the end of 19 -- at the end of 2020, correct?
A Yes.
Q In fact, as of December 2020, MGM was one of the Fund's ten largest holdings, with -- valued at over $25 million. Isn't that right?
A Yes.
Q And by the end of 2021, MGM was the Fund's fifth largest holding, with assets -- with a value of over $40 million. Correct?
A Yes.
Q And the Fund also held MGM common stock indirectly; isn't that right?

A Yes.
Q In fact, when the Amazon deal closed at the -- in March of 2022, the Fund issued a press release disclosing that it stood to receive over $125 million on the MGM shares that it held directly and indirectly. Correct?
A We issued several press releases. I don't remember --
Q Okay. Do you remember that, that as a result of the MGM sale, the Fund was expected to receive approximately $126 million?
A Yes.
Q Okay.
A Roughly.
Q All right. In October 2020, just a few weeks before you sent your email, the Fund announced the commencement of a tender offer to acquire outstanding shares at a certain price. Correct?
A Yeah, I believe so.
Q And you authorized that, right?
A Yes.
Q And when a fund acquires shares and then retires them, the shareholders who did not tender consequently own a larger percentage of the fund than they did before the tender, correct?
A Yes.
Q Okay. And the tender was completed in January, in the

first week of January 2001 [sic], correct?
A I don't remember when it was complete.
Q It started at the end of October 2020, and it ended sometime in January '21. Is that fair?
A Okay. I don't remember. Okay.
Q Do you want me to refresh your recollection?
A I'm just saying I don't remember.
Q Yeah, okay.
A I'm not dis...
Q Okay.
A -- denying it. I just don't remember the exact dates.
(Discussion.)
MR. MORRIS: Your Honor, can I mark for identification purposes Plaintiffs' Exhibit -- I'm just going to call it 100, to see if it refreshes the witness's recollection?
THE COURT: You may mark it.
MR. MORRIS: Okay.
THE COURT: We'll see where it goes from there.
(Debtors' Exhibit 100 is marked for identification.)
BY MR. MORRIS:
Q So, I've put --
MR. MCENTIRE: Hold it. Your Honor, I think we're now marking exhibits that we haven't put on an exhibit list.
MR. MORRIS: I'm trying to refresh his recollection.

MR. MCENTIRE: Okay.

MR. MORRIS: Yeah.

MR. MCENTIRE: Well, --

THE COURT: Yes.

MR. MORRIS: Okay? I haven't offered it in -- I haven't offered it --

THE COURT: I've not admitted -- I don't know what it is. I haven't admitted it yet. I'm waiting.

MR. MORRIS: I haven't offered it into evidence. He said he doesn't remember, --

THE COURT: Okay.

MR. MORRIS: -- I've got an SEC document here, and I'm going to try and refresh his recollection.

THE COURT: Okay.

BY MR. MORRIS:

Q You're familiar with these forms, right?

A Generally.

Q In fact, in fact, you sign them in your capacity as the fund portfolio manager, right? Your signature is put on it, anyway?

A Generally.

Q Yeah. And do you see that this is the Form N-CSR that was filed with the SEC at the end of 2001 [sic] on behalf of NexPoint Diversified Real Estate Trust?

A Yes.

Q Okay. So if you just turn to Page 16. And the numbers are kind of at the bottom in the middle of the page. You'll see the notes to the consolidated financial statements.

A Yes.

Q Okay. And Note 1 discusses the organization. Do you see that?

A Yes.

Q And at the bottom of the left-hand column, it says, On January 8, 2021, the company announced the final result of its exchange offer pursuant to which the company purchased the company's outstanding -- the company's common shares in exchange for certain consideration.

Do you see that?

A Yes.

Q That's a reference to the tender offer that you authorized at the end of October, correct?

A Yes.

Q And then at the bottom it says, The company share -- company -- excuse me. I strike that. It says, quote, The common shares at a price of $12 per common share, for an aggregate purchase price of approximately $125 -- $105 million. Upon retirement of the repurchased shares, the net asset value was $152 million, or $17.41 million.

Do you see that?

A Yes.

Q Does that refresh your recollection that the tender offer was completed at the beginning of January?
A Yes.
Q And that's with all of the MGM stock that the Fund still owned at that time, right?
A Yeah. We -- we didn't -- we didn't violate --
Q You didn't --
A We didn't -- we didn't violate like Seery did. We didn't sell any shares or buy shares.
Q Okay.
MR. MORRIS: I'm going to move to strike that, Your Honor.
THE COURT: So granted.
MR. MCENTIRE: Well, Your Honor, I've actually got a response to his motion to strike. This entire inquiry is irrelevant.
MR. MORRIS: Not --
MR. MCENTIRE: This has no relevance at all in connection with the allegations that we're making in this case.
THE COURT: Your response?
MR. MORRIS: My response, Your Honor, if you ask me -- let me just get a few more questions. He personally owned shares in the Fund. The Fund owned shares in MGM. And notwithstanding the restricted material, this is the insider,

and he is benefiting from himself through the Fund's repurchase of these shares in the tender offer, and he went and he had substantial holdings. I'll get to that in a minute.

So he is actually doing something worse than what Mr. Seery -- what he accuses Mr. Seery of, because he's buying shares for his own personal benefit. Right? He's the insider. Right? And the Fund owns the shares directly. There's never going to be an allegation that HCLOF ever owned any MGM stock. Never.

THE COURT: Okay. I'm going to allow this. Obviously, on redirect, you can further question on this --

MR. MCENTIRE: Well, --

THE COURT: -- to --

MR. MCENTIRE: Well, first of all, his suggestions and his accusations are purely argumentative.

THE COURT: Would you please speak in the microphone? We --

MR. MCENTIRE: Well, he's standing in the way, Your Honor.

THE COURT: Well, --

MR. MCENTIRE: It's irrelevant.

THE COURT: There are two. There's room for both of you.

Continue. Go ahead.

MR. MCENTIRE: It's entirely irrelevant, and it's argumentative.

THE COURT: Okay. Overruled. You can continue.

BY MR. MORRIS:

Q You did own an awful lot of the Fund's shares, didn't you?

A I owned some.

Q You owned some? You owned millions, right?

A Yes.

Q Okay. And as a result of the tender, you owned a greater interest of the Fund, right?

A Yes.

Q And therefore you owned a greater number -- a greater portion of the MGM stock, the $125 million of MGM stock that was owned directly and indirectly by the Fund, correct?

A You do know insiders weren't permitted to participate in the tender, which would have kept my percentage the same.

Q Sir, you benefitted -- you didn't stop the tender, right? You didn't say, now I know what's going to happen, I should stop it? You benefitted from the tender. Can we just agree on that?

A I did everything I was supposed to do, notifying Compliance. If they thought it was material, they would have -- it was in their hands once I notified Compliance of the material --

Q Okay.

A -- nonpublic information.
Q I appreciate that. I just want --
A It wasn't my responsibility to do Compliance's job to call you or call --
Q Okay.
A -- the SEC or call anybody else.
Q But you will agree that, even though you had material nonpublic inside information, you didn't take any steps to stop the tender, correct?
A The tender was for a relatively small amount of the stock. But I did -- I would -- it would not be my responsibility to change or adjust the tender --
Q Okay.
A -- or what was happening.
Q Okay. And then the last question is, you benefitted from the tender because the Fund repurchased shares, which increased your percentage ownership of the Fund, and therefore your percentage ownership of the MGM shares that were held directly and indirectly. Is that fair?
A Marginally, I guess. Yes.
Q Okay. From the -- from the millions of shares, you would describe it as marginal? Okay.
Let me move on. You've testified now that you spoke with representatives of Farallon in the late spring, I guess beginning on May 28th. Right?

A Yes.
Q And that was two days after the MGM deal was publicly announced, correct?
A Yes.
Q Okay. And had you ever communicated with Mr. Patel before that phone call?
A I don't believe so.
Q And then you spoke with Mr. Linn shortly after?
A Yes.
Q Had you ever spoken with Mr. Linn before that phone call with Mr. Linn?
A I don't believe so.
Q So these phone calls were the very first time that you ever spoke to either one of these gentlemen. Is that right?
A That I can remember.
Q Okay.
A If I ran into them at --
Q Uh-huh.
A -- a conference a decade ago, I don't know, but --
Q And they told you that they bought the shares in the February-March time frame, right?
A Yes.
Q And you have no reason to dispute that, correct?
A Correct.
Q Okay. And you didn't know how much they had paid for the

claims as a result of these conversations, correct?

A They did not admit a price.

Q Okay. And it's your testimony that there wasn't sufficient information in the public for them to buy -- this is your view -- that there wasn't sufficient information in the public to justify their purchases. Is that your view?

A Correct.

Q And even though you didn't think there was sufficient information in the public, you were prepared to pay 30 percent more than they did, right?

A Yes.

Q And is that because you were 30 percent more irrational than them or because you had material nonpublic inside information?

MR. MCENTIRE: Objection. Argumentative, Your Honor.

THE COURT: Overruled.

THE WITNESS: Even at a 30 percent premium, it was less than I offered the UCC several months earlier, number one.

Number two, I was still under the illusion there was a desire to resolve the place, not burn it down. You know, there was -- all the original members were happy to sell at $150 million. It was a $500 or $600 million estate. There should be $400 or $500 million of residual value. It shouldn't all be going out the door to lawyers and others.

BY MR. MORRIS:

Q You were willing to pay 30 percent more for an unknown purchase price, 30 percent more of an unknown purchase price, at a moment that you didn't believe there was sufficient information to buy the claims, correct?

A You have a couple misstatements in there. The Grosvenor piece was public. The Grosvenor piece traded at $67 million. So we knew that piece trade at around 50 cents. We knew from people in the marketplace the other pieces were trading right around that level.

So I wasn't just offering 30 percent on any willy-nilly number, 130 percent of any willy-nilly number. I knew they had paid around 50, 60 cents. And so I was offering 30 percent more than that. Thirty percent more than $150 million, call it $200 million. I had offered $230 or $240 million to resolve the whole estate before the plan went effective, and I got no response from the original UCC members.

Q So why didn't you just try to settle the case with them? Why did you try to buy the claim? Why, if you had these new people, and your good intentions were to finally get to a settlement of the case, why didn't you say, hey, guys, how do we resolve the case? Why did you want to buy the claims at a 30 percent premium over what they paid with no knowledge and no diligence, according to you? Can you explain that to Judge

Jernigan?

A Because Seery told them to hold on, don't worry, they were going to make $270 million.

Q That doesn't answer my question. Why didn't you try -- you had new owners. Why didn't you try to settle with them?

A When someone owns an asset, buying their asset is settling with them. What claim does Farallon have against us? At that point, they had no claims against us.

Q It doesn't settle the case, does it?

A But if we owned all the claims, it would settle the case. Just like if Seery had objected to the claims trading that they were supposed to give written notice to the Court, he had enough cash on the balance sheet to buy and retire all the claims.

Q All right. Let's go back, I apologize, to that Exhibit 11. No, it's not Exhibit 11. I think it's their Exhibit 4, your notes.

MR. MORRIS: Your Honor, may I have -- just have one moment?

THE COURT: You may.

MR. MORRIS: Can you tell me how long I've been going? That's really my question.

THE CLERK: So, on cross, --

MR. MORRIS: Yeah.

THE CLERK: -- you've been going for 32 minutes.

MR. MORRIS: Okay. Trying to speed this up.

BY MR. MORRIS:

Q All right. So, do we have your handwritten notes, which are Exhibit 4, in this binder? Oh.

THE COURT: Do you want to put it up again on the screen?

MR. MORRIS: Ms. Canty, if you're listening and you can do that, that would be great. If not, --

(Discussion.)

MS. CANTY: One second, John.

MR. MORRIS: All right. He -- he's got it.

THE COURT: Okay.

BY MR. MORRIS:

Q Okay. So, I just -- I just want to make -- you know, follow up on a few questions I asked you earlier on *voir dire*. So, these are your notes, right, and you said you write down the important stuff. Correct?

A I write down, yeah, the stuff I thought I would need for the next call.

Q Okay. And, you know, again, just so we have it all in one spot, it doesn't say anything about MGM. Correct?

A It does not.

Q It doesn't say anything about a *quid pro quo*, correct?

A *Quid pro*? Uh, no, it does not.

Q It doesn't say anything at all about Mr. Seery's

compensation, correct?
A It does not.
Q It doesn't say anything about the sharing of material nonpublic inside information, correct?
A When I told them discovery was coming, that was my response to I knew they had traded on material nonpublic information.
Q Okay. That -- you told them that?
A Yes.
Q Is that what you're saying now?
A Yes.
Q Oh, so that's what you told them? They didn't tell you that; that's what you told them?
A Yes.
Q And that's why you wanted discovery, right?
A I thought it would be a lot easier to get discovery on a situation like this than it has been for the last two years, yes.
Q Okay. Um, --
A In fact, I told them that it would be coming in the next few weeks. And this has been a couple years.
Q And that's exactly what you did, right?
A Well, we've been trying for two years to get --
Q Right.
A -- discovery in this.

Q Okay. So you filed your Texas 202, right?
A I don't know who filed what.
Q That was the one by Mr. Sbaiti that was filed under your name? Do you remember that?
A Generally.
Q Okay. Let's take a quick look at that document. It's #3 in our binder.
A Binder #3?
(Discussion.)
MR. MORRIS: Okay. I think #3 is in evidence, Your Honor.
THE WITNESS: Number 3 is in evidence.
THE COURT: Yes.
MR. MORRIS: Okay.
THE COURT: It is.
BY MR. MORRIS:
Q And if you can turn to the last page, Mr. Dondero. Page 8.
A Yes.
Q Okay. And that's your signature, right?
A Yes.
Q And you verified that this document was true and correct within the best of your personal knowledge, correct?
A Yes.
Q Did you read it before you signed it?

A Probably.
Q You don't recall doing that?
A Not at this moment.
Q And you may not have. Is that fair?
A No, I probably did. Do you have a question?
Q I'm just wondering if you signed it or not.
A I did sign it.
Q Okay. Good. So, can you go to Paragraph 21? Well, let's start at Paragraph 20. It says that Mr. Seery, quote, has an age-old connection to Farallon, and upon information and belief, advised Farallon to purchase the claims.
Do you see that?
A Yes.
Q And then the next paragraph you refer to the telephone call that you had with Michael Linn, right?
A Yes.
Q It doesn't refer to any phone call with Mr. Patel, correct?
A It does not.
Q And the only reason that you swore under oath you were told that Farallon purchased the claims was because of Farallon's, quote, prior dealings with Mr. Seery. Correct? In Paragraph 21, it says, Relying entirely on Mr. Seery's advice solely because of their prior dealings?
A Yes.

Q Okay. You didn't -- you didn't swear under oath at that time that you were told that they bought the claims because of MGM. Right?

A If you're asking if this is -- it seems like it's not complete, if that's what you're asking me.

Q I'm not asking you that. I'm asking you what -- I'm asking you to confirm that you swore under oath to the Texas state court, just weeks after you had these conversations, about what you were told concerning Farallon's purchase of the claims.

I'm focused on Paragraph 21. The only reason that you gave, that you told the Texas state court under oath, was that Farallon told you they bought their claims because of their prior dealings with Seery. Right?

A Yeah. And that's true. And that's consistent with what I've said.

Q Okay. You didn't say anything about MGM, correct?

A Correct.

Q You didn't say anything about a *quid pro quo*, correct?

A Correct.

Q You didn't say anything about Mr. Seery's compensation. Correct?

A I did not.

Q You didn't say anything about the sharing of material nonpublic inside information, correct?

A Different document, different purposes.
Q Well, but that's now two documents. You have your notes and you had this document, neither one of which say any of those things. Fair?
A Different documents, different purposes. I don't know if that's --
Q Is it fair that neither one of those documents say any of those things?
A It's fair that they don't all match.
Q Okay. Okay. Well, that's a fair statement. Let's go to the next one. Do you remember the next year you filed an amended petition?
A What tab?
Q That's -- I appreciate that. It's Tab 4. Do you see at the last page you've again signed a verification?
A Yep.
Q And do you see this one's filed with the Texas state court on May 2, 2022?
A Yes.
Q And you swore under oath that this statement was complete, true, and accurate to the best of your knowledge, correct?
A Yes.
Q Okay. Can you go to Page 5, please?
A Yes.
Q Directing your attention to Paragraph 23, do you see where

you say now that Farallon was relying, quote, on Mr. Seery's say-so because they had made so much money in the past when Mr. Seery told them to purchase claims.

Do you see that?

A Yes.

Q Again, you don't say anything about MGM, correct?

A Correct.

Q Again, you don't say anything about material nonpublic inside information, correct?

A Well, on 24 it does. Right? Mr. Seery had inside information on the price and value of claims. So, you've got to look at all of the bullet points.

Q But that's not the paragraph where you're talking -- that's -- it says, in other words. That's not the paragraph where you're describing your conversation with Farallon. That's your interpretation of it, correct, just as you just said?

A (no immediate response)

Q You told -- I'm sorry. I should let you finish the answer. That's your interpretation of it, correct?

A Well, I'm reading all the bullets in aggregate, and it's -- it's a picture of material information shared by Seery, not just MGM or one particular investment, but on all the other assets that aren't detailed in any of the public filings, also.

Q The only -- the only point I want to make, I think we can agree on this --
A Okay.
Q -- is that you believed that Mr. Seery gave them material nonpublic inside information. Farallon never told you that. Isn't that true? That's why you wanted discovery?
A They said they relied on him and did no diligence of their own. They were very express -- explicit about that.
Q Okay. Can you answer my question now?
A Which -- I thought -- that does, --
Q You concluded --
A -- yes.
Q -- that Mr. Seery gave them material nonpublic inside information. They never told you that. Fair?
A They said they relied on -- solely on Seery, didn't buy it for any other reason, and they did no due diligence of their own.
Q Okay. Let's go to the next one. Now, the no-due-diligence part, that's not in any version we've seen, right? That's something that you just --
A No, no, --
Q -- that you're just testifying to now? That's not in your notes, it's not in Version 1, and it's not in this version, correct?
A Well, let's go back to the Linn one, because when I was

going back and forth and he wouldn't give a price, he kept saying, Seery told us it's worth a lot more. And I kept saying, you've got to look at the burn, you've got to look at the professionals. And --

Q Okay.

A -- that's --

Q Shortly after this, you filed yet another declaration, right?

A Yes.

Q Uh-huh. Can you turn to #5? And this is another version of your recollection of what you were told, correct? In Paragraph 2?

A These are all -- I don't know why you're saying they're different. They're all the same. They're just slightly different verbiage. What's the major difference between any of them?

Q I'll ask, I'll ask you the question. The question is, you had never written in any of the prior versions that they didn't do any due diligence; isn't that right? You never -- you never talked about their due diligence in any prior version, correct?

A It's all -- it's all the same version. I don't -- some versions --

Q Can you answer my question?

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

Q Which --
A -- which ones included which -- I don't --
Q We've just looked at them. Do you want to look at them again?
A I just looked at one page in the other one and it was five pages. I just looked at the one page and I found two or three things --
Q Your notes --
A -- it didn't include, but --

MR. MORRIS: You know what. I don't want to argue. They say what they say, Your Honor, and I would ask the Court to look carefully at our objection to the motion because we lay all of this out.

Your Honor can -- here's the point, because I do want to finish up right now. There are five different versions of this conversation. They're laid out in the brief. And the question that you have to ask yourself, Your Honor, is, if you allow this case to go forward, how do they make a colorable claim when the story keeps changing?

And I'll just leave it at that, because, you know, the last version says MGM for the first time. Like, it comes out of nowhere. This -- his notes don't say it, he hasn't testified that that's what he was told, but somehow that's in his sworn statement.

So I'm just going to rest on the papers, because this is

-- I don't want to be argumentative.

THE COURT: Okay.

MR. MCENTIRE: Well, I'll object to the argument of counsel. He's just doing another opening statement here, and it's inappropriate and not proper.

THE COURT: Okay. I agree. This is Q and A.

MR. MORRIS: Okay.

THE COURT: So, --

BY MR. MORRIS:

Q Do you know -- do you have any knowledge or information as to how Mr. Seery's compensation was established?

A Uh, --

Q Withdrawn. I'm talking now not in his capacity as an independent director or the CEO of the Debtor. I'm only talking about in his capacity as the CEO of the Reorganized Debtor and the Claimant Trustee. Do you have any personal knowledge as to how his compensation was established?

A The knowledge I have is that the Claimant Trust gives full latitude to change it at almost any time they want. Add more to it, add more than that we've seen, double it in the future if reserves are reversed. It can do anything it wants. And I guess we've seen some redacted partial statements of his compensation, but that's all I know.

Q Okay. You have no knowledge about how Mr. Seery's compensation package was determined, correct?

A I was not involved.
Q Okay. You've never -- I'll just leave it at that.
MR. MORRIS: I have nothing further, Your Honor.
THE COURT: Okay. Pass the witness. I'm sorry, I guess I should ask, do any of the other responding parties have examination?
MR. STANCIL: No, Your Honor.
THE COURT: No? Okay. Redirect?
MR. MCENTIRE: Just very briefly, Your Honor.
THE COURT: Okay.
MR. MCENTIRE: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. MCENTIRE:
Q Mr. Dondero, you remember the questions about Judge Jernigan walking into the courtroom on June 8 two years ago saying, MGM is sold, maybe we can settle this case? Do you recall those questions?
A Yes.
Q And do you remember Mr. Morris's dramatic suggestion that, well, how did Judge Jernigan know, or to that effect?
A Yes.
Q Well, that had already been announced, had it not, publicly?
A Yes.
Q Several weeks before?

A Yes.
Q I'd like to direct your attention -- do you still have Exhibit 4 that he handed you? Do you have Exhibit 4 there?
A Uh, --
Q His exhibit?
A Is that the notes?
Q No, it's -- Exhibit 4 is the verified amended petition to take deposition before suit -- take -- in the state court. To -- deposition.
A You've got to give me more of a clue. I'm sorry. There's like six binders.
MR. MCENTIRE: Mr. Morris, can you show us where the exhibit --
MR. MORRIS: Sure. Which one is it?
MR. MCENTIRE: It's Exhibit 4. I'm going to talk to him about Exhibit 4 (inaudible) that you've have used with this witness.
BY MR. MCENTIRE:
Q I assume -- Mr. Dondero, were you assuming from the tone and the substantive content of his questions that Mr. Morris is suggesting that your notes are not reliable?
A He was trying to make it seem like the versions were different. They were all 90 percent the same. Different -- it seemed like different emphasis for different purposes. And then you have to remember we learned more about Farallon and

Stonehill over time. Like, in the beginning, when I had -- when I -- we didn't even know Stonehill was involved when I --

Q Sure.

A -- first talked to -- when --

Q Well, he made the big suggestion about you never talked about due diligence before. Turn to Exhibit 4, Paragraph 23, which he did not address with you. Can you turn to Paragraph 23 of Exhibit 4? Mr. Morris omitted to refer you to this particular paragraph.

A 23? Go ahead.

Q Would you read it into the record?

A (reading) On a telephone call between Petitioner and Michael Linn, a representative of Farallon, Michael Linn informed the Petitioner Farallon had purchased the claim sight-unseen and with no due diligence, a hundred percent relying on Mr. Seery's say-so, because they had made so much in the past with Mr. -- when Mr. Seery had (overspoken).

Q Now, since you've an opportunity to see other paragraphs and other -- that he was otherwise not selecting, you did refer to the -- to what Mr. Linn had told you about in May of 2021?

A Yes. I've been very consistent. Listen, I believe Farallon tapes all their conversations. So, eventually, as this goes further, I purposefully --

Q Well, let's --

MR. MORRIS: I move to strike, Your Honor.

THE WITNESS: Okay.

THE COURT: Sustained.

BY MR. MCENTIRE:

Q He also did not direct your attention or the Court's attention to Paragraph 27 of Exhibit 4, selecting -- presumably strategically selecting not to refer to that paragraph. Do you see Paragraph 27?

A Yes.

Q Could you read that into the record, please?

A (reading) However, Mr. Seery is privy to material nonpublic information, inside information of many of the securities that Highland deals in, as well as the funds that Mr. Seery manages through Highland. One of these assets was a publicly-traded security that Highland was an insider of, and therefore should not have traded, whether directly or indirectly, given its possession of insider information.

Q Isn't that paragraph just basically addressing MGM?

A Yeah, that's the only major position we had that that would apply to.

Q So the suggestion that you're just making this MGM stuff up is not true. It's consistent with what you've (inaudible) in other courts as well, correct?

A Yes. I believe it's disingenuous to say that there's different versions of my story.

Q Well, let's continue with Mr. Morris's strategy. Go to Exhibit 3, please. Mr. Morris suggested that there's no reference at all in any of these prior pleadings about Mr. Seery's excess conversation. Do you recall that series of questions?

A Yes. Or his statements, yes.

Q Yes. And he did not direct your --

MR. MORRIS: I move to strike. I asked him if he had any knowledge of the man's compensation package. That's what I asked him.

MR. MCENTIRE: No, sir. Your Honor, that's not what he asked him. That was one of the questions he asked. The other question was, there's nothing in here about compensation. That's what I'd like to address now.

MR. MORRIS: Oh, go right ahead.

THE COURT: Okay.

BY MR. MCENTIRE:

Q Directing your attention --

THE COURT: You can ask. I'd have to go back and check the record whether you had that second question you mentioned. I remember questions about does he have knowledge of Seery's compensation. I just can't remember if he asked, --

MR. MCENTIRE: Fair enough.

THE COURT: -- were there references to it in the --

MR. MCENTIRE: Well, --

THE COURT: -- prior pleadings.

MR. MCENTIRE: -- for the record, we'll make it clear that there is a reference.

BY MR. MCENTIRE:

Q If I could direct your attention to Paragraph 23, Exhibit -- as to --

MR. MORRIS: What exhibit is it?

MR. MCENTIRE: It's Exhibit 3.

MR. MORRIS: Hold on one second.

MS. MUSGRAVE: Your exhibit.

THE COURT: Highland's Exhibit 3.

MR. MORRIS: Give me a moment.

THE COURT: Page what?

MR. MCENTIRE: It's Paragraph 22 on Page 5.

THE WITNESS: I'm sorry. My Exhibit 3?

BY MR. MCENTIRE:

Q Could you read for me, please, Mr. --

MR. MORRIS: Hold on one second. It's my Exhibit 3 or your exhibit?

MR. MCENTIRE: It's your exhibit. This is Hunter Mountain's binder.

MR. MORRIS: Ah, I apologize.

MR. MCENTIRE: You were just using it.

MR. MORRIS: Okay. All right. Go ahead. What

paragraph were you?

BY MR. MCENTIRE:

Q I'd direct your attention, Mr. Dondero, to Paragraph 22.

MR. MORRIS: Yeah.

BY MR. MCENTIRE:

Q Would you read -- would you read Paragraph 22 into the record, please?

A (reading) Mr. Seery had much to gain by brokering a sale of the claim suggested to Muck, mainly his knowledge that Farallon as a friendly investor would allow him to remain as Highland's CEO with virtually unfettered discretion to administer Highland. In addition, Mr. Seery's written compensation package incentivized him to continue the bankruptcy for as long as possible.

Q There was also a series of questions to you about a transaction involving NexPoint -- NexPoint Diversified Real Estate Trust. Do you recall those questions?

A Yeah. Let's talk about that.

Q All right. Tell me what the transaction was.

A I'm sorry. The tender that he was asking about or --

Q Yes, the tender.

A There was -- investors wanted some shares retired, and we didn't have enough cash on the balance sheets. So we tendered in the form of giving them Preferred, which was like equity but a better dividend or a more secured dividend, and 20

percent cash. And then insiders weren't allowed to participate. But the whole tender was only for eight or ten percent of the nominal amount outstanding. And again, you've got a package of securities, so you didn't get any -- you didn't cash. And although it reduced the share count, it also increased the Preferred or the claims against the company. So it was marginally accretive, I guess.

Q All right.

A But, again, as far as inside information is concerned, Compliance is a separate party organization that reports up to the SEC. Has a dotted line to me. Reports to the SEC. They make sure everything we do is compliant.

Q Mr. Dondero, --

A Yeah. Can --

Q -- you didn't participate in the transaction, did you?

A No. Insiders weren't allowed to participate in the transaction.

MR. MCENTIRE: Reserve the rest of my questions, Your Honor.

THE COURT: Any recross?

RECROSS-EXAMINATION

BY MR. MORRIS:

Q The reference to the compensation that we just looked at, that was your own personal view, not something that anybody from Farallon ever told you, correct? You can go back and

look.
A Yeah, that --
Q I mean, it's not a trick question.
A Yeah, that was my pleading.
Q Okay. And that was your own speculation, if you will? It had nothing to do with anything Farallon ever told you, correct?
A I never discussed Seery's compensation with Farallon.
Q Okay. Thank you, sir, very much. Just one last question. The price of the tender --
A Yes.
Q -- was based in part on the value of the MGM stock, correct?
A The tender was based on market price --
Q And --
A -- of where the closed-in fund was trading. It was trading at a discount. And the discount to NAV, the NAV included MGM accurately marked at whatever time.
Q I appreciate that.
MR. MORRIS: No further questions, Your Honor.
THE COURT: All right. Mr. Dondero, that concludes your testimony.
THE WITNESS: Thank you.
THE COURT: You are excused from the witness box.
(The witness steps down.)

THE COURT: We probably should take a break, right?

MR. MORRIS: Okay.

THE COURT: Caroline, do you want to give them the aggregate time used?

THE CLERK: Yes. The Defendants used 91 minutes right now. And the Respondents together, 86 minutes.

THE COURT: Okay. I thought it was going to be higher than that.

(Laughter.)

MR. MCENTIRE: That's what it feels like.

MR. MORRIS: You were wishing.

THE COURT: I was wishing. Okay. A ten-minute break.

THE CLERK: All rise.

(A recess ensued from 3:17 p.m. until 3:28 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're back on the record in the Highland matter. Mr. McEntire, you may call your next witness.

MR. MCENTIRE: Your Honor, Hunter Mountain would call Mr. Seery adversely.

MR. STANCIL: Your Honor, we're waiting for Mr. Morris for just 60 more seconds. I think he's on his way back to the courtroom.

THE COURT: Okay. I just noticed.

Did I hear you say you're going to call him virtually?

MR. MCENTIRE: Adversely.

THE COURT: Oh, adversely? Okay. I'm so used to hearing the word "virtually" the past few years.

Oh, and there he is. Okay.

MR. SEERY: I'm sorry, Your Honor.

THE COURT: Mr. Seery, welcome.

MR. SEERY: Good afternoon, Your Honor.

THE COURT: Please raise your right hand.

(The witness is sworn.)

THE WITNESS: I do.

THE COURT: All right. You may be seated.

JAMES P. SEERY, JR., HUNTER MOUNTAIN INVESTMENT TRUST'S ADVERSE WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MCENTIRE:

Q Mr. Seery, would you please state your full name for the record?

A James P. Seery, Jr.

Q And you and I met for the first time I believe it was last Friday in your deposition; is that correct?

A You were by video.

Q I mean, --

A We didn't actually meet.

Q Correct. You are currently the CEO of the Reorganized

Debtor?

A That's correct.

Q Prior to your appointment as the CEO of the Reorganized Debtor, you've never served as a CEO of a reorganized debtor in the past, have you?

A I have not.

Q You previously served as the chief executive officer of Highland Capital as a Debtor-In-Possession. Is that correct?

A That's correct.

Q And that was the first time you'd ever served in a position such as that; is that correct?

A As the CEO of a debtor, yes.

Q Right. You also now currently serve as a Trustee for the Highland Claimant Trust, which was put into effect after the effective date of the plan, correct?

A Yes, I'm the Claimant Trustee.

Q All right. That's the first time --

THE COURT: Mr. McEntire, we usually require standing at the podium. I mean, do you need --

MR. MCENTIRE: That's fine. I'm totally fine.

THE COURT: Okay. That's --

MR. MCENTIRE: I forgot.

THE COURT: Okay. Thank you.

BY MR. MCENTIRE:

Q That was -- and your capacity as the Trustee for the

Claimant Trust, that's a first experience as well, correct?

A As the Claimant Trustee, yes.

Q All right. And in these various capacities as a CEO of the Reorganized Debtor, do you consider yourself to be subject to the Investment Advisers Act?

A No, I don't I'm subject to the Investment Advisers Act. I think Highland in certain capacities could be.

Q All right. But do you have any duties that -- that you are required to fulfill under the Investment Advisers Act accordingly?

A Do I?

Q Yes.

A I believe Highland does. I don't know that I have any personal duties.

Q All right, sir. Let me now talk a little bit about your duties that you did have at Highland. You agree that when you were at Highland you had fiduciary duties that you owed to the estate?

A Yes.

Q What were those duties?

A To generally treat the estate on an honest and fair matter.

Q Avoid conflicts of interest?

A Yes.

Q Not self-deal?

A Yes.
Q Do you agree with me that you would have a duty not to trade on material inside -- material nonpublic information?
A Generally, I would have a duty to not trade on material nonpublic information, yes.
Q Can you think of an exception?
A There may be. I just don't think of any one off the top of my head.
Q So, today, you would agree, for purposes of these proceedings, that you would have an obligation as the CEO of the Debtor-In-Possession not to participate in a transaction involving material nonpublic information? Agreed?
A It would depend. So, for example, if I was trading with someone else who had material nonpublic information, that might be a permissible transaction.
Q The HarbourVest transaction, you were involved in negotiating the HarbourVest settlement?
A Yes, I was.
Q Did that involve any component related to MGM stock?
A No, it did not.
Q There was no involvement at all concerning the transfer of MGM stock to any entity as a result of that transaction?
A None whatsoever.
Q Okay. And does HCLOF not have a participation at this time in MGM stock?

A We call it H-C-L-O-F.
Q Yes.
A It does not own MGM stock, and as I far as I know, never owned MGM stock.
Q Okay. You agree you received an email from Mr. Dondero in December of 2020. We've had it here before. You've seen it in the courtroom, correct?
A Yes.
Q Okay. Did you ever send -- forward that email to anyone else?
A I'm sorry. Could you repeat that?
Q Did you forward that email on to anyone else?
A I believe I did, yes.
Q To whom?
A I certainly discussed it with counsel. I believe I forwarded it to counsel, both the Pachulski firm and the WilmerHale firm. Thomas Surgent had gotten it. He was on the email. And I also forwarded it, I believe -- certainly, discussed it -- with the other independent directors.
Q Okay. I'm not going to talk about your conversations with other lawyers in-house, okay, or your outside counsel. Did you take any steps yourself personally to make sure that MGM stock was placed on a restricted list at Highland Capital after you received that email?
A No. MGM was already on the restricted list at Highland

Capital.

Q Okay. And is that because of Mr. Dondero's position on the board of MGM?

A It -- I believe that's the reason. It was on before I got to Highland.

Q Okay. And you agree, do you not, sir, that the email that you received from Mr. Dondero also contained material nonpublic information?

A I don't think so, no.

MR. MCENTIRE: Would you put up Exhibit -- our Exhibit 4, please?

MR. MORRIS: 4?

MR. MCENTIRE: 4.

BY MR. MCENTIRE:

Q Did H-C-L-O-F -- I'll refer to it as HCLOF, you refer to it as H-C-L-O-F -- did that -- did HCLOF own any funds that owned MGM stock?

A HCLOF had interest in certain Highland-managed CLOs that did own some.

Q As a result of the Highland settlement -- excuse me, the HarbourVest settlement, was there any impact on who owned some of those CLO funds?

A No.

Q Okay. How was the CLOs, the funds, handled, if at all, in the -- in the HarbourVest settlement?

A They didn't have any impact whatsoever on the HarbourVest settlement.

Q Looking at Exhibit 4 for a moment, please, did the interests, did the interests in -- HarbourVest's interests in any of those CLOs transfer?

A No, they did not.

Q Okay. And did HCLOF acquire any interest in any of those CLO's as a consequence of the HarbourVest settlement?

A No, it did not.

Q Looking at Exhibit 4. Excuse me, Exhibit 3 is what I meant to say. Exhibit 3.

THE COURT: Hunter Mountain Exhibit 3?

MR. MCENTIRE: Yes, ma'am.

THE COURT: Okay.

MR. MCENTIRE: Yes, Your Honor. Excuse me.

BY MR. MCENTIRE:

Q This is the email that we were just referring to that you received, correct?

A Yes.

Q And you don't think -- you knew that Mr. Dondero was on the board of directors of MGM?

A Yes.

Q And he -- as a member of the board of directors, when you received this, you see where he indicated that it was probably a first-quarter event? Do you see that?

A I see what it says, yes.
Q Okay. And you did not think that that was material nonpublic information?
A No, I did not.
Q When he indicated that Amazon and Apple were actively diligencing -- are diligencing in the data room, both continue to express material interest, coming from a member of the board of directors of MGM, you did not think that was material nonpublic information?
A I did not, no.
Q You know the difference between a newspaper article or a media article that discusses rumors of a possible sale and the difference between that and a member of the board of directors saying that a sale is going to occur? You understand the difference between the two?
A Between the two things you just outlined?
Q Yes.
A Yes. One you said a sale is going to occur, and the other you said a media report. But it would depend on what's in the media report. Some media reports are pure speculation. Others have a lot of detail, and they clearly came from an inside source, and that's why the market moves on them.
Q Okay. So what you're suggesting to me, that there was some indication in the media press before you received this email suggesting that there was actually going to be a sale in

the first quarter of 2021?

A I don't know if it had a first-quarter event in it, but certainly it was clear from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction had to take place very quickly. And in fact, the transaction did not take place in the first quarter.

Q Okay. So you -- when you received this particular email, you did not think that it was requiring any additional protection at -- in any way? Is that what you're suggesting to this Court?

A That the email required additional protection?

Q That you didn't take additional steps to make sure that it was maintained on the restricted list.

A It was already on the restricted list, so there was no change.

Q Was it --

A I --

MR. MORRIS: Hold on. Let him finish.

BY MR. MCENTIRE:

A I was suspicious when I got the email, but I didn't think I had to do anything else than the steps I told you I just took.

Q Yeah, I'm not asking whether you were suspicious or not. My question's a little bit different. You understand that MGM

was taken off your restricted list in April of 2021?
A I understand that that's what you've recently shown me. I wasn't aware of that fact or I didn't have a recollection of that fact, but certainly April of 2021 would be beyond the first quarter. Mr. Dondero was not an employee, an affiliate, subject to a contractual relationship. He had no duty to Highland and Highland had no duty to him. And in fact, it was quite antagonistic by that time. So it would be appropriate to take MGM off the restricted list at the end of that time.
Q Well, hopefully you won't take this as argumentative, but I object as nonresponsive. That really wasn't my question. Okay? My question --
THE COURT: Sustained.
BY MR. MCENTIRE:
Q -- is a little bit different. As far as you were concerned, MGM was on the restricted list and stayed on the restricted list all the way until the public announcement in May of 2021?
A That's not true.
Q When did you first become aware it was taken off the restricted list?
A I didn't -- I wasn't aware that it had come off the restricted list. I would have assumed it would have been off the restricted list once Mr. Dondero had been severed from Highland.

Q I see. Now, Mr. Dondero has relayed a conversation that he had with Mr. Patel and Mr. Linn, suggesting that they were particularly optimistic about MGM based upon what you told them.

A I --

Q Let me finish. If that occurred, are you suggesting that that is a lie?

A Two things. One is I don't think he actually testified to that. I think he said he had a conversation with Mr. Patel. Then he had a different conversation with Mr. Linn, and a subsequent conversation with Mr. Linn. So the way he laid it out were multiple conversations.

Q Agreed.

A I don't -- I don't know which one you're talking about.

Q Mr. Dondero testified that Mr. Patel was particularly optimistic about the investment because of what he had learned from Mr. -- from you about MGM.

MR. MORRIS: I dispute that characterization. Why can't he just ask the question?

MR. MCENTIRE: That is my question. If that --

THE COURT: What is the question? I'm not sure I hear the question.

MR. MCENTIRE: I'm getting lost because I'm getting interrupted. I'll try to rephrase it again.

MR. MORRIS: It's my first objection.

MR. MCENTIRE: And I --

THE COURT: Go ahead.

MR. MCENTIRE: I'm just going to rephrase, Your Honor.

THE COURT: Just rephrase your question.

MR. MCENTIRE: Thank you.

BY MR. MCENTIRE:

Q Mr. Dondero has testified that Farallon advised him in May of 2021 that they were optimistic about MGM based upon what you told them. Assuming that to be the case, do you deny that happened?

A I do deny that happened. Because I can't -- I don't know what Farallon told him, but I never told Farallon anything. And a conversation on May 28th, after the May 26th announcement that MGM was going through, might make people optimistic that it could go through, but there was a very difficult FTC process that MGM would have to go through.

Q And I'm referring to that. If Farallon stated that they were optimistic about MGM based upon what you had told them, --

A That would not be true.

Q -- that would be false?

A That would not be true.

Q And is Mr. Dondero says that's what Farallon told them, that would also be false?

A That's correct.
Q So we have your statement, we have what may be Farallon's statement, and we have what Mr. Dondero believes may have been Farallon's statement, and you're saying the latter two are just not true?
A I didn't have a conversation with Farallon about MGM that -- that I recall --
Q Well, you're on the witness stand.
A -- virtually at any time.
Q You're on the witness stand.
A Oh, I'm aware of where I am sitting.
Q Yeah. Good. We've got that cleared up. Now, are you suggesting that -- that you may not specifically recall this conversation?
A No, I am not saying that at all. After May 26th, when the MGM announcement was made and it was public, I may have had conversations with a number of people about MGM.
Q Well, let's make sure the record is clear. Did you call Farallon on May 26th and say, hey, did you know that MGM just sold?
A No, I don't recall any such conversation, and I wouldn't have had to, since it was in the paper.
Q I'm not talking about what's in the paper. I'm talking about conversations between you and Farallon.
A Yeah. I don't recall having a conversation with Farallon

on May 26th.

Q How about May 27th?

A Not that I recall, no.

Q How about May 28th?

A Not that I recall off the top of my head.

Q And we understand that that's the day that Mr. Dondero actually had his conversation that he's reported, at least, with Farallon. Do you recall that?

A That's what he claims, yes.

Q You were with a company called River -- you're a lawyer, correct?

A I am. I'm in retired status.

Q Okay. I wish I was.

A It's simply retiring your license and not having to take the CLE.

Q Understood. Now, you were with a company called River Birch?

A Yes.

Q And from River Birch, you went to Guggenheim Securities?

A That's correct.

Q At Guggenheim Securities, did you go to Farallon and meet with Mr. Patel in their offices in San Francisco?

A I believe we did, yes.

Q You call it a meet-and-greet?

A I do, yes.

Q That was in 2017?
A 2017, 2018. I'm not exactly sure when it was.
Q And one of the purposes of meet-and-greet is to solicit business or to see if a business opportunity -- see if it exists?
A That's not correct, no.
Q What is a meet-and-greet for, then?
A It's to meet the people at the fund and to greet the people at the fund. Introduce them to other people in your firm.
Q Just because it's going to be fun, or does it have a business angle to it?
A Oh, it hopefully will be fun, yes, but it's done in order to build a relationship over time. You're not in there soliciting business. If you do that, you won't do very well.
Q Okay. Fair enough. So you're there trying to develop a relationship with Farallon?
A Guggenheim was, yes.
Q And you were part of it?
A That's correct.
Q And what was your job at Guggenheim?
A I was co-head of credit.
Q Is that a fairly significant position at Guggenheim?
A Not really, no.
Q It's not significant at all?

A No.
Q All right.
A Which is why --
Q Well, you left --
A Which is why they don't have that business.
Q Okay. So is that why you left Guggenheim?
A It -- I did, yeah. It wasn't a good fit for either Guggenheim or for me, because it really wasn't something --
Q When did you --
A -- that they were set up to do.
Q -- leave Guggenheim?
A In 2019.
Q And then you went back to Farallon to meet with them again, did you not?
A I met with Farallon while I was in San Francisco with my wife.
Q Okay. Did you call ahead to arrange the meeting, or was it just a --
A I --
Q -- a blind call?
A I did call ahead, yes.
Q A cold call, I guess, is the word -- the phrase that they use. Okay. So -- and was that a meet-and-greet?
A That was again, yes.
Q Again, what were you trying to do? Develop a relationship

with Farallon?

A I was trying to catch up with them after having met them previously. And that was just Raj Patel. And this one I also met Michael Linn.

Q Okay. What kind of business were you in when you met with them the second time?

A I wasn't doing anything.

Q What were you hoping to do?

A I was hoping to get back into the investing side of the business, from running a credit-type lending business at Guggenheim, which is what they tried to do and it didn't work out. And I wanted to get back to what I was doing more at River Birch, but I was looking at other opportunities, whatever came along.

Q Well, what were the different options that you were looking at?

A I was looking at potentially getting back into investing, joining potentially a restructuring firm, any options like that. I was not looking to become a lawyer again.

Q And why would meeting and greeting with Farallon fit in within that scenario, the strategic scenarios that you've just discussed?

A They're a giant hedge fund.

Q A giant hedge fund?

A Yes.

Q And so it would be good to have a relationship with a giant hedge fund, wouldn't it?
A And to know what their thinking of the markets, where the opportunity set might be, who they are dealing with and interacting with. Those are -- those are valuable things to know over time.
Q And --
A And you need to maintain those relationships in order to be --
Q Sure.
A -- part of any business.
Q Sure. These meet-and-greets can actually evolve and provide relationship benefits, correct?
A I don't -- I'm not sure what you mean by relationship benefits.
Q Sloppy words for -- on my part. They can evolve into something that is a meaningful relationship?
A They could over time, yes.
Q And we know that after you became the CEO of Highland Capital that you received a call from, was it Farallon, to congratulate you on your appointment?
A It was an email.
Q And that was in the summer of 2020, shortly after your meet-and-greet out in San Francisco?
A Your calendar's a bit off, but it was in June of 2020, so

that would have been more than shortly after, but yes.
Q Okay. And who contacted you to congratulate you on your appointment?
A This was my appointment as an independent director. I had not yet been appointed as CEO or CRO. This was in June of 2020, and it was Michael Linn.
Q Michael Linn? Was it a telephone call?
A I think 30 seconds ago I said it was an email.
Q Fair enough. Do you still have that email?
A I do, yes.
Q Okay. He contacted you again, "he" being Michael Linn, he contacted you again in January of 2021, did he not?
A That's correct, yes.
Q He wanted to see if he could get involved somehow in the Highland bankruptcy?
A Well, he congratulated -- he didn't congratulate -- he wished me a happy new year, and he basically said it looks like you're -- again, he's following the case -- it looks like you're doing good work. Is there any way for us to get involved? We're interested in claims or buying assets.
Q Okay. And Stonehill. Now, you know the founder of Stonehill, do you not?
A No, I don't know him. I've met him several times.
Q Doesn't he come by and stop in and talk with you when you're in Stonehill's offices? And that's happened recently?

A Your use of the plural is incorrect, and you know that from the deposition. I was in Stonehill's office one time, and I was in a meeting with Mr. Stern. We ended up having a board meeting from Stonehill's office with the other participants on video, and Mr. Motulsky came in and said hello.

Q All right. And who's Mr. Motulsky?

A He's the founder of Stonehill.

Q I see. And did you know Mr. Motulsky before that?

A I'd interacted with Mr. Motulsky over the years at -- mostly at industry-type functions.

Q Okay. Now, Stonehill is also a hedge fund?

A Yes.

Q Are they different than Farallon in that regard, or similar?

A I don't know as much about what their business is. They certainly do a direct lending component, so I know that they -- they will do some direct lending, which I don't think is something Farallon really does. Farallon is much bigger, as I understand it, but I don't really know the size of Stonehill.

Q Okay.

A I know they're not a $50 billion fund like Farallon.

Q And do you know Mr. Stern at Farallon?

A I now know him, yes, because he was -- he's really the representative on the -- no, he's not the representative on

the board, but he is the one who manages the Stonehill and Jessup positions for Stonehill.

Q Well, we know that after you were CEO of Highland, you also got a text message, correct, a text message from someone at Stonehill, correct?

A Mr. Stern sent me a text message reintroducing himself -- I don't know if it was re- or just introducing -- and sent me his email and asked me to contact him about the case. This was at the end of February/beginning of March 2021, after the confirmation order.

Q Okay. After the -- after the confirmation order?

A Yes.

Q I believe the confirmation order -- I may be wrong -- I thought it was like the 21st, 22nd, somewhere in there. Does that sound right to you?

A Yes.

Q Okay. So, shortly after confirmation, then, Farallon calls you to congratulate you and wants to see how they can get involved?

A No. There was no congratulations there. Shortly after the confirmation order, which I believe was at least a week to ten days after confirmation, I got the communication from Mr. Stern to try to connect about the case.

Q All right.

A He's at Stonehill, not Farallon.

Q Correct. Now, --
A You said Farallon.
Q I misspoke, then. Thank you for correcting me. Let's talk about -- you live in New York?
A I do.
Q You're involved with a charity called Team Rubicon?
A Yes.
Q And Team Rubicon is a -- is that a veterans-type charity?
A Yeah. It's a veteran-led organization, and what it does is connects veterans to disasters. And mostly in the U.S., but also all over. So if there's a flood, if there's a hurricane, if there's an earthquake, veterans who have been trained in -- by the military in ready response and really being able to handle themselves when things are bad are deployed to help the communities that are hit. So I think that Team Rubicon likes to think, you know, on your worst day they're your best friend.
Q So you're -- are you on the board?
A No, I'm not.
Q You're on the Host Committee?
A I was on the Host Committee last year, and I'll be on the Host Committee this year.
Q Okay. And you have charity events?
A We have a charity event, yes.
Q Okay. And the purpose of the charity event is to raise a

bunch of money?
A That's correct.
Q Okay. Have you been successful in the past?
A I do my best. Team Rubicon is a big organization. It's done very well raising money. It doesn't have an endowment. The founder's theory was that if people give us money, we're supposed to spend it on helping other people. And so each year it has to raise more money.
Q And Stonehill has been -- has contributed to your charity?
A I believe Stonehill, one or two years, and I should know this, and I didn't look it up after our deposition, gave $10,000.
Q Okay. Maybe once, maybe twice?
A Maybe twice.
Q Okay.
A I hope more.
Q Okay. And they also attend your -- your actual charity events, do they not?
A No.
Q All right. They just give money?
A That's right. And the Mike Stern who's on the board of Team Rubicon is not the Mike Stern who is at Stonehill. It's an older gentleman who's in Texas who just happens to give a lot of money to --
Q All right.

A -- Team Rubicon.
Q You also represented Blockbuster. Take that back. Were you the lawyer or the attorney representing the Creditors Committee, the UCC, in the *Blockbuster* bankruptcy?
A No, I was not.
Q Tell me what your capacity was.
A I represented a group of bondholders, secured bondholders. So I represented the group.
Q And was Stonehill a member of that group?
A Not that I recall, but your pleadings seem to indicate that they were. So if they were, they were a small participant. The largest participant was Carl Icahn, who owned about 30 percent of it. Then the others who were big were DK, Davidson Kempner, Monarch, Owl Creek. Those were the big players.
Q Well, --
A When Carl Icahn is in your group, you remember that.
Q Yeah, well, Carl Icahn is not here. We're talking about Stonehill right now.
A And I said I don't remember them actually being a part of it. If they were, --
Q Okay. Well, let me -- let me give you what I'm going to mark as Exhibit 80. That's your name at the top, right?
(Hunter Mountain Investment Trust's Exhibit 80 is marked for identification.)

A That's correct, yes.
Q You were at the time with Sidley & Austin?
A That's correct, yes.
Q This is *In re Blockbuster*.
MR. MCENTIRE: Scroll down, please.
BY MR. MCENTIRE:
Q And steering group of senior -- involves -- well, let's count them. Let's see. One, two, three, four, five. Five entities comprising the backstop lenders. Is that correct?
A I think that's the steering group. So, in order to represent the group, you need to try to assemble a large-enough group that it's material to the company. And then the company, if you're -- particularly if you're over 50 percent, will pay the fees of the group. And you don't represent any individual member of the group. I've never represented Carl Icahn. I represent the group. And if folks want to stay in the group, they can stay. If they want to trade out of the group, they do. And the company will generally continue to pay the fees, and you represent the group so long as you have a controlling interest in the -- whatever the issue is.
Q Well, that's interesting, because now what you're telling me is that this group right here, this is kind of like the executive committee of the group.
A No, it's called the steering group, and it doesn't necessarily --

Q That's fine.
A Well, it's not an executive committee. It doesn't necessarily include just the largest. Some large holders won't be on it. The largest holders here by a long shot were Icahn, who --
Q I'm not talking about --
A -- unloaded, as I say, over 30 percent. Monarch, Owl Creek, and I just don't recall Stonehill being a part of it.
Q I'm not really interested in Carl Icahn. I just want to establish this is a steering group in which you were the lead counsel and Blockbuster was on it. Is that correct?
A Yes.
Q Excuse me. Not Blockbuster.
A I'm sorry.
Q Stonehill.
A No, it's the Blockbuster case in 2010, and Stonehill was apparently on it, but I just don't have a recollection of their involvement.
Q All right. So when Mr. -- who sent you the text message in February of 2021 from Stonehill?
A Michael Stern.
Q And had you actually met him before?
A I think I had, but we didn't know each --
Q All right.
A You know, we certainly didn't know each other, we'd never

worked on anything together, but I --

Q Do you have all your text messages from that period of time, that first quarter of 2021?

A I believe I do, yes.

Q They're saved?

A Yes.

Q Okay. When did the automatic delete button on your cell phone start?

MR. STANCIL: Your Honor, objection. We've covered this this morning. I believe this is a motion coming down the pike, and I thought we had -- thought we had had tabled this preservation issue.

MR. MCENTIRE: This has a direct bearing on his communications with Farallon and Stonehill in this period of time, Your Honor. We have one text message that he's identified, and I have a right to examine whether there are others. Or if not, why not.

MR. STANCIL: Your Honor, he's --

MR. MCENTIRE: That's a legitimate -- I'm not finished. That's a legitimate area of inquiry in this examination.

MR. STANCIL: He's testified he has them all. Your Honor did not order document discovery. I think that's it for purposes of today's hearing, Your Honor.

THE COURT: Okay. I sustain the objection.

BY MR. MCENTIRE:

Q After this text message that you received from Stonehill in February 2021, did you have any follow-up?

A Well, his text message, I don't recall what it said other than I was -- I do recall that he gave me his email address, because I didn't have it. And we just didn't know each other well enough. But we definitely had follow -up. He wanted to talk to me, and at some point we talked.

Q And when did you talk?

A I'm sorry?

Q When did you talk?

A When? I -- it was at the, initially, end of February, beginning of March. So it would have been somewhere in that -- in that time period.

Q End of February, beginning of March? And we also know that you next talked to Farallon, according to your testimony, and they advised you they had already purchased all their claims as of March 15, correct?

A On March 15th, they sent me an email that said they had purchased an interest in claims, and --

Q So -- go ahead.

A I'm not finished. And then at some point after that, we arranged a quick discussion, because that was a curious --

Q I want to assure you I will always let you finish.

A Thank you very much.

Q Unlike others. So, with that said, Mr. Seery, can you identify -- let me back up. Was there a data room set up at Highland Capital for claims investors to come in and look at data?

A No, there was not.

Q Are you aware, sitting here today, that Farallon did any due diligence in connection with its investment in the claims it purchased that are at issue in this proceeding?

A I have indication that they did some, yes. I don't know how much they did.

Q What is the indication?

A In the email in June of 2020, Mr. Linn said that he and his associate were following the case, thought it was -- that's the one that congratulated me on being an independent director, and that they were paying attention to the case. And it -- I don't recall the exact other items in there, but it was clear that they were following the Highland matter. And then in the email in January 2021, he also indicated that they'd been following the case further, and said, Looks like you have things well in hand, or something to that effect. So --

Q Do you have that email, too? Have you saved that email?

A They're all saved, yeah.

Q Okay. So let's talk about that. But you had no data room that would allow them to come in and actually investigate the

underlying assets. Is that correct?
A Not in respect of anybody trying to buy claims. We did have a data room with respect to financing.
Q Please listen to my question. I'll get to it. Data room for claims investors. There was no data room set up on or before March 15 to allow Farallon to come in and investigate its investment in this claim?
A That's correct.
Q There was no data room set up prior to March 15 to allow Stonehill to come in and investigate its investment in the claims it purchased. Is that correct?
A That's correct.
Q Can you identify any due diligence, sitting here today -- let me back up. You heard Mr. Dondero's testimony about portfolio companies, correct?
A Yes.
Q Portfolio companies are companies in which Highland Capital has an interest that actually have separate and distinct management. Is that correct?
A Generally. And it -- I disagree with some of his testimony, but generally that's correct, yes.
Q Well, okay. Let's just take on the part that you agree with. With regard to those portfolio companies, was there anything that was disclosed in the Highland publicly-available financials that would allowed a detailed analysis of

Highland's investments in each of those portfolio companies?

A I don't know. Certainly, in the four or five sets of projections that were filed, there were financial projections. I'm not sure exactly what was included in each one or in the disclosure statement.

Q Fair enough. Well, I'll represent to you I don't think there's detailed information on each individual portfolio company.

MR. MORRIS: Your Honor, he's not here to testify. I move to strike.

MR. MCENTIRE: Okay.

THE COURT: Sustained.

BY MR. MCENTIRE:

Q In that regard, Mr. Seery, can you identify what Farallon did to investigate the underlying asset value of any of these portfolio companies?

A I don't have any knowledge as to what Farallon did before it bought claims.

Q Can you identify what due diligence Stonehill did to investigate the underlying asset value in any of these portfolio companies?

A I don't -- I mean, in connection with claims purchasing, I have no idea what Stonehill did.

Q Now, I understand that you solicited -- perhaps I don't recall correctly. Did you solicit both Farallon and Stonehill

to participate in a bid to provide exit financing?
A I don't think that's fair. I solicited Farallon because I knew they already owned claims. Stonehill reached out to me, and that was one of the things they were interested in doing, if there was financing needs.
Q Okay.
A And at the time they reached out, which was right after confirmation -- right after confirmation and the confirmation order, we didn't know what our needs would be. We didn't really, at the early stage, think we needed exit financing. When we looked at some of the difficulty we were going to have -- for example, collecting notes and realizing on assets -- we realized that we were going to need some exit financing in order to have enough money to support the enterprise to monetize the assets.
Q And I think you used the -- I think the phrase you used, you are the straw man or a straw man bid? Is that what you called it the other day?
A We did. You set up a very typical competitive process to do exit financing.
Q And what was the --
A And what -- well, I --
Q -- suggest --
A I was going to get to your straw man. And one of the things you do is you assess what the market's going to look

like, what you think the market looks like, what you think a financing would be good for the enterprise, the flexibility you need, how you'd structure it. And then you put that out to prospective lenders and say, Here's our straw man. This is what we'd like you to consider in terms of financing. And then they do their work and come back. And they can either say, that looks great, or we have a totally different idea of what the financing might be, or some other combination of those things.

Q Mr. Seery, thank you for that answer, but I need to ask you to do me a favor. I'm on the clock, and so I'd just like to get my questions out, if you'd try to respond. Okay?

A Uh-huh.

Q Because your answers, as long as they may be, are impacting me a little bit.

So let me ask this question. In the straw man proposal that you put out for bid, what was the suggested interest rate?

A You know, you asked me that the other day, and I think I was slightly off. So it -- and I -- but I did tell you that it depended. There was -- I don't recall what the rate was, but it starts -- if everybody wants to put out money -- and I apologize for the length of the answer -- they look and they say, well, what if I get paid back in six months? Nobody wants to do that. So, duration makes a difference. So

there's an interest rate. There's upfront fees. There's often exit fees. And sometimes there's other amounts. So, our -- my recollection is that our straw man was somewhere in the low teens on the high end, and then closer to high single-digits on the low end. Something in that range.

Q And Farallon indicated to you they were not interested, correct?

A No, not exactly. What Farallon said was they didn't -- they signed an NDA because we invited them in. We invited in six folks. Five signed NDAs. Two of the -- I invited in Farallon. I invited in Stonehill. Well, Stonehill called me. I invited in Contrarian because they had bought claims. And then two lenders that I knew. And Farallon did the work and came back and said, this isn't really what we do. And the other guys, you're telling me, which I was, that other people are more competitive. And so it's not really what we do, we don't think the returns are good enough, but if you need us, because now they're already invested in the claims, call us.

Q Okay.

MR. MCENTIRE: And again, I'll object as nonresponsive. Your Honor, that was a very long answer talking about a lot of other entities. My only question was what the interest rate was.

MR. MORRIS: Your Honor, we oppose the motion to strike. I think it's --

MR. MCENTIRE: No, I didn't strike it. I said -- my objection was nonresponsive. I will now follow it up with a motion to strike his answer.

THE COURT: Overruled. Okay.

BY MR. MCENTIRE:

Q Mr. Seery, you just told us that the interest rate was in the high single digits to in the 12 and 13 percent range.

A No, I was giving you the all-in return for the lender. That's a very different --

Q All-in return?

A -- thing for the -- than an interest rate.

Q That's even better.

A And it depended on the time.

Q Fair enough.

Q So if -- the shorter the duration, the higher the effective return, because he's not getting the return for as long a period of time. If I have $100 million and I get 10 percent, I get just $10 million. But if I have that out for $3 million, I've earned $30 million. So maybe that gets squeezed in the longer it's out.

Q And Farallon said that the interest rate or the return rate was not what they were looking for?

A They indicated two things. I believe I've said this several times. One is they said, this isn't really what we do, a $50-ish million dollar loan to do an exit. But we're in

the case. If you need us, call us. Included in that was, it doesn't look attractive enough to us because you're telling me other guys are more competitive.

Q Okay. And do you know what kind of rate of return they were going to get on the investment of the -- on the claims at a 71 percent projected return rate?

A If we only hit the plan, Farallon's two purchases, based on the numbers you get -- you gave, over a two-year period, would be 38.9 percent.

Q Okay, but we're going to talk about that in a second. Okay. How much -- how much did Farallon actually invest?

A I'd have to look back at your numbers. They're in your pleading. I don't know what they actually paid. I just have it from your pleading.

Q Okay. And do you have paperwork that -- can you (inaudible) calculation here?

A I have a calculator that, when I looked at your numbers, I ran that, and I --

Q I see. All right.

A I'm able to remember certain things.

Q So, so if it's projected that the internal rate of return is only six percent, do you disagree with that?

A A hundred percent disagree. There's -- that's virtually impossible.

Q Okay.

A And that's, by the way, for hitting the plan.
Q I'm sorry?
A That's for hitting the 70 -- the 71-and-change percent.
Q I want to ask you a question about that. The 71-percent-and-change --
A Uh-huh.
Q -- that came out of the plan for Class 8, --
A Yes.
Q -- that was for Class 8, correct?
A Correct.
Q There was zero expected return to Class 9, correct?
A That's correct. They would only get upside, and I think it says in the projections, based upon our view at the time, litigation that could ensue, and that was part of the plan.
Q And as I understand it, that 71-and-some-change --
A Uh-huh.
Q -- projected return rate never changed from the date of confirmation all the way up to the effective date. Am I correct?
A The -- we didn't change the projections that we'd filed with the plan because the plan was confirmed. We didn't need to change the projections that were filed with the plan.
Q The NDAs, as you understand it, can you tell me specifically when the NDAs were signed?
A I know it's the first week of April to the second week of

April. Blue Torch may have signed -- who actually ended up doing the financing -- they may have signed it a week or so before. They'd been around offering financing a number of times in the past.

Q Fair enough. But we know that you understood as of March 15th that Farallon had already made their investments? I mean, claims?

A That's what they told me in that email, yes.

Q Okay. When did Stonehill sign the NDA?

A In and around the same time.

Q But you don't know when Stonehill actually purchased their claims?

A I don't know exactly when. I know generally that by the end of April, early May, they were -- they were the holder of the Redeemer claim. And --

(Interruption.)

A -- I can't remember whether it was from them or whether it was from --

Q Did you ever communicate with Stonehill during the time that they were doing their due diligence on the exit financing?

A Yes.

Q Okay. Did they come to your offices?

A I don't know if we were back yet. I think we were back, but I don't recall them coming to our offices. I think it was

all virtual. It's early '21, so there would have been vaccines. It would have been very -- very -- I don't recall them coming to the offices at that time.

Q But just to be clear, you don't know, you can't give the Court a date when Stonehill actually completed their investments in either Redeemer or HarbourVest?

A No, I don't. I don't know. Did -- just --

Q That was my question.

A When you say Redeemer or HarbourVest, they never bought HarbourVest.

Q It was just Redeemer?

A Correct.

Q All right. You understand that Muck is an entity, a special-purpose entity created by Farallon?

A That's my understanding, yes.

Q And you understand Jessup is a special-purpose entity created by Stonehill?

A That's my understanding, yes.

Q Muck and Jessup are both on the Oversight Committee?

A They are. They -- those entities are the --

Q Is it the Oversight Committee or the Oversight Board?

A Same thing.

Q Fair enough.

A I'll consider them the same.

Q And there's a third member, too, correct?

A That's correct.
Q Okay.
A Independent member.
Q Okay. So you have a three-person board; is that right?
A That's correct.
Q And one of their jobs is to make decisions concerning your compensation?
A The structure of the Claimant Trust Agreement provides that I'm to negotiate with the -- either the Committee or the Oversight Board. And the compensation in the Claimant Trust Agreement is a base salary of $150,000, which is -- a month, which is the same as the one in the case, plus severance, plus a success fee. And it's very specific that that will be negotiated by the -- either the Committee or then the Oversight Board.
Q And Michael Linn, who Mr. Dondero has referred to, he's actually on the Oversight Board, is he not?
A He's the Muck representative on the Oversight Board.
Q All right.
A Yes.
Q If I understand it correctly, you are currently receiving, as the Trustee, $150,000 a month. Is that correct?
A That's incorrect.
Q What are you receiving?
A I receive $150,000 a month as the Trustee and the CEO of

Highland Capital.

Q Well, --

A So I have --

Q -- fair enough.

A I have both roles. The Trustee, for example, doesn't manage the team, they actually work for Highland Capital, and I'm the CEO of Highland Capital.

Q There was some suggestion that the $150,000 was something that the Court had passed upon prior to the effective date or part of the plan. This is a separate negotiated item that you -- that you allegedly negotiated that was awarded to you post-effective date, correct?

A That's false.

Q Okay. So the $150,000 had a discount that was supposed to drop down to $75,000 after a period of time. That never happened, did it?

A The -- you seem to be mixing concepts. But the $150,000 a month was set by the plan and the -- and the Claimant Trust Agreement as the "base salary." That wasn't going to move. When we -- it never was supposed to move.

When I began negotiating with the Oversight Board for the success fee, they pushed back and said, we would like that to step down. So in our -- I did not say, oh, that's a great idea. We ended up negotiating, and they included a provision that we would renegotiate depending on the level of work.

That's one of the provisions.

Q Okay. But renegotiate down to $75,000 after a period of time, but that never happened?

A Initially, I believe it was supposed to step down to $75,000 automatic, subject to renegotiation that it go back up, not a structure that I particularly liked. And since then, we've negotiated on that point.

Q So you currently are making $150,000 a month?

A That's correct.

Q How often do you come to Dallas?

A Usually I'm here at least once a month. Usually it's between two and four days.

Q Okay. And you have a staff here in Dallas at Highland Capital, correct?

A Yes.

Q How many people?

A Eleven.

Q Eleven people?

A Uh-huh.

Q Working full-time?

A Yes.

Q And you're still making $1.8 million a year?

A Yes.

Q You also have a bonus structure, correct?

A That's correct.

Q And that's performance-based?

A That's correct.

MR. MCENTIRE: Can you pull up the agreement please? Okay.

(Pause.)

BY MR. MCENTIRE:

Q All right. Do you see --

MR. MCENTIRE: We're having technical difficulty here.

BY MR. MCENTIRE:

Q All right. Can you identify this document?

MR. MCENTIRE: What exhibit number is this?

MR. MILLER: 28.

BY MR. MCENTIRE:

Q Exhibit 28.

MR. MCENTIRE: I believe this is already in evidence.

THE COURT: Hunter Mountain Exhibit 28?

MR. MCENTIRE: Yes, Your Honor.

THE COURT: Okay.

BY MR. MCENTIRE:

Q This is the memorandum of agreement. Do you see that?

A Yes.

Q On the third line, it says -- and your name is identified here. You're the Claimant Trustee, correct?

A Claimant Trustee/CEO.

Q Engaged in robust, arm's length, and good-faith negotiations regarding the incentive compensation program.

As part of this robust, arm's length, and good-faith negotiation, did you personally conduct any independent search in the marketplace?

A I did -- what do you mean by search in the marketplace?

Q Well, did you try to do a market study? I asked that question in your deposition.

A I didn't know if you were asking a different question.

Q Same question.

A You mean market study on compensation?

Q Yes.

A No, I did not.

Q Are you aware of whether or not any member of the Oversight Board or Oversight Committee did a market study?

A On compensation?

Q On compensation.

A I'm not aware that they did one, no.

Q So this robust, arm's length, and good-faith negotiation, as far as you know, is divorced from any market study database or -- or methods. Is that correct?

A I don't believe that's correct, no.

Q I see. So did -- was any third-party consultant hired?

A Not by me or Highland or the Trust, no.

Q All right.

MR. MCENTIRE: Can you scroll down a little bit, please?

BY MR. MCENTIRE:

Q You signed this agreement, correct?

A Yes.

Q And we have Michael Linn signing on behalf of Muck, who also is with Farallon, correct?

A That's correct.

MR. MCENTIRE: Scroll down.

BY MR. MCENTIRE:

Q And by the way, this is a heavily-redacted document. The redactions deal with what?

A The redactions deal with the portion that would go to the team as opposed to going to me.

Q Are we talking about the 11-member team?

A Correct.

MR. MCENTIRE: Can you scroll down? Stop. Go back.

BY MR. MCENTIRE:

Q So we have the assumed allowed claim amounts under Section D. Do you see that?

A Yes.

Q Class 9, $98 million and some change. Class 8, $295 million and some change. Then we go into the incentive payment tiers. Do you see that?

A Yes.

Q What's the purpose of the tiers?
A The purpose of the tiers was to set additional compensation so that, the more recovery, the higher the compensation. So, below Tier 1, there was really effectively no bonus, is my recollection. And then in each tier there would be a percentage.

So the first tier is $10 million. There would be a percentage of that $10 million that could be allocated for bonus. Then in the next tier it would be $56 million. A portion of that would be allocated for bonus. And it's weighted more heavily to the higher-recovery tiers, meaning it incentivizes both me and the team to try to reach deeper into Class 8 and Class 9 and get higher recoveries.

Q Okay. So the idea is, the more difficult it is to get the recoveries, the higher percentage you should get, because if you're successful then you should be rewarded accordingly? Is that kind of how it works?
A I'm not sure if difficult is the term, but it's a combination of both expertise, difficulty, and time.

MR. MCENTIRE: All right. Can you scroll down, please? Next page.

BY MR. MCENTIRE:
Q And here are your actual tier participations. They go -- you said basically nothing Tier 1, up through 6 percent. So Tier 1 is the 71 percent, right?

A It's .72 percent, and it's of the -- that's the first piece. You have to get to Tier 1. So if we had not -- I believe it's structured is if we don't get to Tier 1, for example, we don't hit the plan, right around the plan number of 71-and-change cents, then there wouldn't -- there wouldn't be upside.

So it was very much structured in a way that you had to perform. And then the better the performance, the bigger the percentages of the tier.

Q So, in theory, Mr. Seery, by the time you get down to Tier 4 and Tier 5, it's a little bit less certain that you're ever going to get there. Is that right?

A Well, out of the gate, going deeper was uncertain. It's a question of being able to execute well on the assets and being able to control the costs and being able to make distributions. It wasn't based on what we just got for the assets. It's actually based on actual distributions --

Q I understand that.

A -- to Class 8 and 9 claimants.

Q I understand that. And the idea is, is that it take a lot more effort -- the theory was it might take a lot more effort to get all the way to the bottom of Tier 5 to pay all the Class 9 claims, right?

A And maybe a little luck.

Q Yeah. And Class 10 is not even factored into this, is it?

A No, it is not.
Q And so you didn't consider Class 10. You stopped at Tier 5?
A That's correct.
Q So your entitlement to a 6 percent return, or a 6 percent bonus on the recoveries, you say it's there to incentivize you. You didn't expect that to actually happen, did you, when you signed this? Is that your testimony?
MR. STANCIL: I object to the form of the question. It mischaracterizes the agreement.
BY MR. MCENTIRE:
Q You didn't expect it to happen, did you, sir?
THE WITNESS: Well, the six --
THE COURT: Wait. I'm sorry. Could you rephrase the question?
MR. MCENTIRE: Sure.
BY MR. MCENTIRE:
Q Are you telling the judge that you really didn't expect that to happen and that's why you were entitled to a higher percentage?
A No. We didn't expect to reach Class 9 and go deep into Class 9, but we certainly held out the possibility that we could. And it's not six percent. It's six percent of the increment. These are cumulative. So you get .72 of Tier 1. You get 1.17 of Tier 2. And you can add those, and you earn

them when you've actually made the distribution, but you don't get paid until you get all your distribution or we're relatively done or there's a renegotiation. Because the Committee wanted to make sure that I didn't say, hey, I hit Tier 3, time to go, I got a better job.

Q So, Mr. Seery, if Farallon told Mr. Dondero that they wouldn't sell basically at any price because you said it was too valuable, and they rejected a 40 or 50 percent premium, if they said that, is that -- is that a lie?

A That I -- rephrase that, please. I don't -- didn't quite understand your question.

Q Yeah. You've heard the testimony that Farallon, Michael Linn, told Mr. Dondero that they were not going to sell their claim at any amount because you had told them it was too valuable. Is that a lie?

A I think that's -- yeah, I don't think that's true.

Q Okay. And obviously, if they're not going to be willing to sell at any amount, they must be pretty certain they're going to hit Tier 5. Would that just be a lie?

A That -- that conversation was before this negotiation. That -- there's no -- they could not have had any expectation, either when they had that conversation in May or when we had this discussion that I was going to hit Tier 5 and I hadn't hit Tier 5. And the idea that they wouldn't sell at any price is complete utter nonsense, because they're capped on what

they can get.

Q So if -- sure. Okay. So, but if Farallon told --

A But that's what you said.

Q If Farallon told Mr. Dondero that they wouldn't even sell at 130 percent of the purchase price because you told them it would be too valuable, is that a lie?

A I never told them it would be too valuable. I don't -- I don't know any of the other parts that you're saying, the 130 percent of an unknown number, some guess number that Mr. Dondero had. I never told them it would be too valuable. That would be their own assessment of where we were at the end of May 2021.

Q If they said that you told them not to sell, that it was too valuable, is that a lie?

A That's untrue, yes.

Q If they told him -- if they told him that he told you -- that you told them it was too valuable because of MGM, is that a lie?

A Yes.

Q How many shares of stock did Highland Capital own?

MR. MCENTIRE: Well, one second. What is my time? How much time do I have?

THE CLERK: Right now you're at --

MR. MCENTIRE: So I'm almost two and a half hours in?

THE CLERK: Just about. A little under.

BY MR. MCENTIRE:

Q I'm going to have to speed up here, Mr. Seery.

THE COURT: A little under two and a half, you said.

BY MR. MCENTIRE:

Q Mr. Seery, I want to make sure. Highland Capital owns interests in the CLOs. What is the CLOs' stake in the MGM stock, or what was it?

A Highland Capital does not own any interest in any of the CLOs it manages. It has a fee stream, and it can have certain deferred fees that it can get, but it didn't own any interest in any of the CLOs that it managed.

Q Fair enough. How about the portfolio companies?

A Did Highland Capital own interests in the portfolio companies?

Q Yes.

A Some of the ones Mr. Dondero listed, but they weren't portfolio companies. So he said OmniMax, but we didn't have any management of OmniMax. We just had debt that converted to equity, but we didn't control the -- the thing. That was during the case, the company.

Q Did Multistrat have an interest in MGM?

A Multistrat owned MGM, yes.

Q Okay. And did your company, Highland Capital -- your company -- Highland Capital have an interest in Multistrat?

A Highland Capital owns 57 percent of Multistrat, yes.

Q And did Highland Capital have an interest in any other portfolio companies that have an interest in -- had a stake in MGM?

A RCP. Restoration Capital Partners.

Q And do you recall what the value of that was?

A It shifted over time. I don't -- I don't know what time you're talking about.

Q And isn't it true that 90 percent of all the securities that Highland Capital owned at the time that the sale went public was roughly 90 percent of all of Highland Capital's securities?

MR. STANCIL: Objection, Your Honor. I don't know what that question is asking.

THE COURT: I don't understand it, either.

Could you rephrase?

MR. MCENTIRE: I'll try to.

BY MR. MCENTIRE:

Q At the time that the announcement was made about Amazon buying MGM in May of 2021, what percentage of all the securities did MGM comprise of the securities that were owned by Highland Capital?

A Of the securities that were directly owned by Highland Capital, it may have been -- I'm thinking of public or semi-public securities, the 150,000 or 170,000 that we had that were subject to the Frontier lien. Might have been almost all

of the securities that we owned. It wasn't -- it was a good position, but it wasn't a huge driver for the directly-owned shares. There was more value in the Multistrat and the RCP.

Q What percent of shares of all --

MR. STANCIL: Your Honor, I'm sorry, I'm having trouble hearing the end of Mr. Seery's answers. So I know it's not his --

THE WITNESS: I'm sorry.

THE COURT: Okay. If you could make sure you speak into the mic.

THE WITNESS: Yeah. I'm sorry.

MR. STANCIL: I'm having trouble with Mr. McEntire talking over the end of Mr. Seery's answers.

THE COURT: Ah.

MR. STANCIL: I'm having trouble following.

THE COURT: Okay.

MR. STANCIL: I apologize.

THE COURT: Okay. Could you --

MR. MCENTIRE: I didn't know I was doing that.

THE COURT: Well, --

MR. MCENTIRE: I'll try to do better.

BY MR. MCENTIRE:

Q Mr. Seery, of all the stock that Highland Capital owned in May of 2021, what percentage of that was (inaudible) stock?

A Hopefully this is clear. Highland Capital did not own a

lot of stock. Highland Capital did have a direct ownership interest in MGM, so that might have been the vast majority of the stock that Highland Capital owned. It did own interest in other entities, like its investment in RCP or its investment in Multistrat. But of the stock that it owned directly, that was probably it, and that's the one that was liened up to Frontier.

Q Mr. Seery, did Highland Capital own approximately 170,000 shares of MGM stock in May of 2021?

A Yes. You -- I'm sorry. You asked me what percentage, and I think I said roughly that amount of stock liened up to Frontier, and that that might have been almost all of the stock we owned.

Q Does Highland Capital own a direct interest in HCLOF?

A In HC --

Q HCLOF?

A HCLOF? Yes. Highland Capital owns a small direct interest, and a large indirect interest which we got through the settlement with HarbourVest.

Q And the entity in which you acquired the indirect interest, what's the name of that entity?

A I don't recall. It's a -- it's a single-shell special-purpose entity that we own all of it and it has no other assets.

Q And just to make sure that the record is clear, you deny

under oath that HCLOF has any interest -- or had any interest in MGM stock?

A HCLOF has never owned MGM stock and still doesn't own MGM stock. It's never owned it.

Q Um, --

A At least -- at least, as long as I've been in this case.

MR. MCENTIRE: One second, Your Honor, please.

(Pause.)

MR. MCENTIRE: I'm going to have to pass the witness because of time sensitivities, Your Honor, so I'll pass the witness at this time.

THE COURT: Okay. Cross?

CROSS-EXAMINATION

BY MR. MORRIS:

Q Mr. Seery?

A Yes, sir.

Q You just covered a lot of what we would have covered, so I want to be really, really quick here. Okay? We're not covering old ground. Let's just start with the HarbourVest settlement. Do you recall that Mr. Dondero sent the email to you on December 17th?

A Yes.

Q Okay. When did you reach the agreement with HarbourVest on the settlement?

A December 10th.

Q Okay.

MR. MCENTIRE: Your Honor, I'd like to move into evidence Exhibit 31. Actually, let me lay a foundation first.

Can you give the witness --

MR. MCENTIRE: Is this a new exhibit?

MR. MORRIS: No. It's Exhibit 31.

MR. MCENTIRE: Can I see it, Tim, please?

MR. MORRIS: It's in your box.

MR. MCENTIRE: Give me a minute.

MR. MORRIS: Uh-huh.

THE COURT: Okay. We're about to focus on Highland Exhibit what?

MR. MORRIS: 31.

THE COURT: Okay.

MR. MORRIS: Do you have it, Your Honor?

THE COURT: I do.

BY MR. MORRIS:

Q Do you have it, Mr. Seery?

A I do, yes.

MR. MORRIS: Do you have it, sir?

MR. MCENTIRE: I do. Thank you.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Can you just tell the Court what this is?

A This is an email chain. It starts from me to the other

independent directors, copying counsel, to outline the terms of the HarbourVest settlement that I had just made the offer to HarbourVest to settle on these terms on December 8th. And this was the product of a number of negotiations that had taken place over the prior weeks, and this was the final offer that I was making to them to settle.

Q Directing your attention to the bottom of the first page, the first email dated December 8, 2020 at 6:46 p.m., can you just read the first sentence out loud.

A I lost -- you lost me.

Q That begins, "As discussed yesterday."

A Oh. "As discussed yesterday, after consultation with John Morris" -- that would be you -- "regarding litigation risks, this evening I made an offer" -- it says "and," but it should have said "an" -- "offer to HarbourVest to settle their claims. The following are the proposed terms."

Q Okay. Just stop right there. And you were -- this is the report that you gave to the independent directors?

A The other independent directors.

Q Right.

A I was also one.

Q Right. And did Mr. Dubel respond?

A He did, yes.

Q And can you just describe briefly what your understanding was of his response?

A Dubel responds a couple hours after I sent the original email: "Jim, this basically looks like a $10 million -- net $10 million payment to HV." That's HarbourVest. "Is that correct? Does the 72-cent recovery include the $22-1/2 million that we get from the transfer of HCLOF interests? Remind me again, post-effective date, who is managing HCLOF?"

So I think my understanding was Mr. Dubel was querying me on some of the terms that I had set forth here, including that the value of the claim in our estimation was going to be about $9.9 million, meaning they would have a $45 million senior claim, a $35 million junior claim, and we thought, based on the values we had then, it was going to pay out about $9.9 million.

Q Okay. And was this offer accepted?

A Yes, it was.

Q When was it accepted?

A I think I just said. On -- on December 10th.

Q Okay. And did the terms that you described for the other independent directors on December 8th, did they change in any way at all from that reflected in this email until the time we got to the 9019 hearing?

A Not at all, no.

Q Okay. I see that you mention in here that you -- it says, quote, "The interests have a marked value of $22-1/2 million, according to Hunter Covitz." Do you see that?

A That's correct, yes.
Q Who's Hunter Covitz?
A Hunter Covitz was a Highland employee. He ran the structured products business. So he was responsible for making sure that the CLO we managed, which was AC7, was compliant and was -- with the indentures. He also was responsible for monitoring the -- what we call the 1.0 CLOs, even though they weren't really CLOs, they were more like closed-in funds. And he also kept track of the Acis -- CLOs that HCLOF had an interest in that were managed by Acis.
Q Okay. And do you recall how he conveyed to you the NAV?
A Well, I talked to him numerous times, so this wasn't our -- I didn't just call him up at the end and say, what's the NAV? I had had discussions with him while I was negotiating with HarbourVest. And at some point, he or someone -- he told me the amount, and at some point he gave me a NAV statement that actually showed the NAV of HCLOF, which at 11/30 was roughly $45 million.
Q Okay. Can you turn to Exhibit 31-A, the next document in the binder?
A Mine's completely blacked out.
THE COURT: I'm sorry, what number?
MR. MORRIS: 31-A.
THE COURT: Oh.
MR. MORRIS: And the first two pages are redacted

just because they're not relevant and they're business information.

BY MR. MORRIS:

Q But can you turn to the last page, sir?

A Yes.

Q Can you tell the judge what this is?

A So this is a net asset value statement from HCLOF. That's Highland CLO Funding, Limited. That's the Guernsey entity that -- that held these interests. And this is a net asset amount, and it shows what the net -- what the net asset value is as of this time on a carryforward basis of $45.191 million.

Q Okay. And where did you get this document?

A I believe I got it from Covitz. It's generated by an entity called Elysium, which is the fund administrator for HCLOF, and I believe they're out of Guernsey.

Q And did you rely on this document in setting the proposal to HarbourVest?

A Well, both the conversations with Covitz and the document. And frankly, HarbourVest got the same documents because they were -- they held a membership interest in HCLOF. So he -- Michael Pugatch knew what the NAV was.

Q And would Mr. Dondero or entities controlled by him who also have interests in HCLOF, is it your understanding that they would have also had this document available?

A All members would --

MR. MCENTIRE: Excuse me. Excuse me. I object to that question, the question being "and the entities controlled by Mr. Dondero." There's no foundation for this witness to answer a question like that.

BY MR. MORRIS:

Q Who else owned --

THE COURT: Sustained.

BY MR. MORRIS:

Q -- an interest in HCLOF?

THE COURT: Go ahead.

THE WITNESS: It would have been DAF.

BY MR. MORRIS:

Q The DAF?

A Yeah.

Q Okay. Let's just ask this question. Is it your understanding that these NAV valuation reports were made to all holders of interests in HCLOF?

A Yes. And that would include the DAF. And I did leave off that there were three former Highland employees long gone, or at least not around at this point, who also owned very small interests, and they would have gotten those statements as well.

Q And does HCLOF also produce audited financial statements?

A It does, yes.

Q Can you go to Exhibit 60, please?

A Six zero?
Q Yes, sir. A couple of questions here. Is this a document that Highland would have received in the ordinary course of business?
A Yes, it is.
Q Okay. And what is the NAV depicted on this page as of the end of the year 2020?
A Well, you have to look through it, because this document is actually dated 4/21/21, --
Q Okay.
A -- which you can see on Page 10 where it's signed. And that shows a net asset value of $50.4 million as of 12/31/21. 12/20. I'm sorry. And -- but it wasn't prepared until -- the audits aren't done and we don't get this document until after the directors sign off in April.
Q Okay.
MR. MORRIS: And Your Honor, I move for the admission into evidence of these three HarbourVest-related documents, 30, 31-A, and 60.
MR. MCENTIRE: No objection.
THE COURT: They're admitted.
MR. MORRIS: Okay.
(Debtors' Exhibits 30, 31-A, and 60 are received into evidence.)
BY MR. MORRIS:

Q Okay. Let me move on. We've seen Mr. Dondero's email today. You've seen that before, correct?

A Yes.

Q Okay. What was your reaction when you got it?

A I was highly suspicious.

Q Why is that?

A Well, not to replow too much old ground, but this came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.

It also followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski being on it.

Furthermore, Pachulski had advised Mr. Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics.

And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

In addition, that followed the termination of the shared service arrangements, the approval of the disclosure statement, and the demand to collect on the demand notes that

Mr. Dondero and his entities were liable for.

So at that point, he'd been interfering with the business, he had threatened me, he was subject to a TRO, and I got this email and I was highly suspicious.

Q Did you ever share this email with anybody at Farallon?

A No.

Q Did you ever share this email with anybody at Stonehill?

A No. And just to be clear, not just the email, the contents. Never discussed it with them.

Q That was going to be my next question. Did you ever share any information about MGM with anybody?

MR. MCENTIRE: Objection. Leading.

MR. MORRIS: I'm asking the question.

MR. MCENTIRE: No, you're leading.

MR. MORRIS: This is the whole --

MR. MCENTIRE: You're leading the witness.

THE COURT: Overruled. Finish the question.

BY MR. MORRIS:

Q Did you ever share any information concerning with MGM with anybody at Stonehill before you learned that they had purchased claims?

MR. MCENTIRE: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: No. No, I did not.

BY MR. MORRIS:

Q Did you ever share any information with anybody at Farallon concerning MGM before you learned that they purchased their claims?

MR. MCENTIRE: Objection. Leading.

THE WITNESS: No, I did not.

THE COURT: Overruled.

THE WITNESS: I'm sorry.

(Pause.)

THE WITNESS: You know, you just asked me something about Stonehill.

THE COURT: No.

THE WITNESS: I'm sorry.

BY MR. MORRIS:

Q Yeah. No question.

A I wanted to clarify one.

Q What did you want to clarify, sir?

A Certainly didn't share anything about this email, any of the contents of it. I don't know if I ever -- I don't know exactly when Stonehill bought their claims, and they were subject to the NDA to do the financing process. So I know when Farallon told me they had bought their claims and I know we never had any discussions at all before they acquired their claims, and I don't know when Stonehill got those -- their claims, so I don't know when -- what was in the data room or what -- what might have been discussed about MGM while they

were under an NDA.
Q Okay.
A But certainly nothing -- I never shared the contents of this email, the substance of this email, the email at all. That's what I wanted to clarify.
Q What data room are you talking about, sir?
A This was the data room related to the exit financing where we sought exit financing and ultimately got exit financing from Blue Torch Capital.
Q And who put together the data room?
A DSI, which was our financial consultants, and our finance team.
Q And why did you -- did you delegate responsibility for creating the data room to DSI and the members of your team you just identified?
A Yeah, of course.
Q How come?
A I don't really know how to put together a data room.
Q Did you -- did you direct them to put anything in the data room?
A Not specifically. We had a deck that we -- that certainly I worked on and commented on, which would have been a general overview of the -- of the post-reorganized Highland and the -- and the -- and the Claimant Trust. So I certainly commented on that. But the specific information in the data room, I

don't -- I never looked at it. I don't know what it is.
Q How many -- how many entities who were participating in the exit facility process wound up making bids or offers?
A There were five that signed NDAs. Three provided substantive proposals. One was verbal. That was Bardin Hill, who'd been contacting me throughout the case, and they do this kind of financing, and they submitted a competitive bid. Stonehill in writing, and then amended, a more aggressive one, in writing. And Blue Torch probably three, and the most aggressive.
Q And did you give the -- did you give the opportunity to your age-old friends at Stonehill?
A They're not my age-old friends. And no, they lost. They were second, they were close, it was a good real proposal, but they didn't win.
Q So, --
A Blue Torch won.
Q So is it fair to say that you -- did you pick the best proposal that you thought provided the best value for the company that you were managing?
MR. MCENTIRE: Your Honor, again, for the last ten minutes, we've had nothing but leading questions. And it just is --
MR. MORRIS: Fine. Happy to --
THE COURT: Sustained. Rephrase.

BY MR. MORRIS:

Q Why did you pick Stone -- why did you pick Blue -- Blue-?

A Blue Torch.

Q Blue Torch, over the other bids?

A It was the best bid. So, structurally, it was the least expensive, although they were extremely close. I had a lot of confidence in Blue Torch because this type of financing is what they do. And while you can never have a hundred percent confidence that if somebody goes through the -- this is an LOI, right, so this is a letter of intent. When they go further, they may -- they may not complete it. But I had a high degree of confidence that they would get there, because, again, that's what they do. And they were the -- they were just the better bid.

Q Okay. Do you recall that in Mr. Dondero's notes he wrote down that he was told that Farallon had purchased their claims in February or March?

A I saw that on what he claimed, yes.

Q And is that consistent with what you were told by Farallon in March?

A They told me they acquired the claims -- they had acquired the claims on March 15th, by email. I don't know if they acquired them in February or March. Or even January. I know they said they had them on March 15.

Q Did you ever speak with Farallon about anything having to

do with the purchase of their claims?

MR. MCENTIRE: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: Not -- not before they sent me that email.

MR. MORRIS: I apologize. Withdrawn.

BY MR. MORRIS:

Q Before -- before learning of their purchase, had you had any discussions with them about potential claim purchases?

MR. MCENTIRE: Objection.

THE WITNESS: No.

MR. MCENTIRE: Leading.

THE WITNESS: I'm sorry.

THE COURT: Overruled.

THE WITNESS: No, I didn't.

BY MR. MORRIS:

Q Okay. Before you learned that Stonehill had purchased claims in the Highland bankruptcy, had you ever had any conversation with them about the potential purchase of claims?

MR. MCENTIRE: Objection. Leading.

THE WITNESS: No, I don't -- I don't --

THE COURT: Overruled.

THE WITNESS: I'm sorry. I don't -- I don't believe so, no.

BY MR. MORRIS:

Q Do you have any knowledge at all as to how the sellers went about selling their claims?

A I have some knowledge now, post-effective date, that I believe I have some understanding, but not a great one.

Q Did you ever communicate with any of the sellers about the potential sale of their claims prior to the time their claims were sold?

MR. MCENTIRE: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: I did have a conversation with Eric Felton who was the Redeemer representative on the Creditors' Committee. And it came out of one of the emails I got. I think it indicated that --

MR. MCENTIRE: Objection, hearsay, Your Honor. I mean, hearsay, Your Honor.

THE COURT: Okay.

MR. MCENTIRE: It's hearsay.

THE COURT: Okay. He's about to say something that's hearsay is the objection. Any response?

MR. MORRIS: I'm not offering it for the truth of the matter asserted. I'm offering it for Mr. Seery's state of mind and the extent of his communications. How about that?

MR. MCENTIRE: I don't see how you could offer it for anything other than for the truth of the matter asserted. It's coming from a third party, so I object to hearsay.

MR. MORRIS: Okay. You know what? We --

BY MR. MORRIS:

Q Other than the one conversation --

THE COURT: Are you withdrawing the question or do I need --

MR. MORRIS: Yeah. This is just --

THE COURT: Okay. You're withdrawing the question.

MR. MORRIS: I'll withdraw the question.

THE COURT: Okay.

BY MR. MORRIS:

Q Other than the one conversation with Mr. Felton, did you ever have a conversation with any seller prior to the time you learned that Farallon or Stonehill --

MR. MCENTIRE: Objection. Leading.

BY MR. MORRIS:

Q -- purchased the claims?

THE COURT: Overruled.

THE WITNESS: No.

BY MR. MORRIS:

Q Did you play any role in facilitating or recommending to Farallon or Muck that it purchase claims?

MR. MCENTIRE: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: No. None whatsoever.

BY MR. MORRIS:

Q Did you play any role in facilitating or recommending that Stonehill or Jessup purchase claims?
A No.
MR. MCENTIRE: Objection. Leading.
THE COURT: Overruled.
THE WITNESS: I'm sorry.
BY MR. MORRIS:
Q All right. Let's just finish up with compensation. Can you go to Exhibit 41, please? Can you just identify that document for the Court?
A This is the -- it's a memorandum agreement that sits on top of an outline. It is the December 2 incentive compensation agreed terms for Highland Capital --
Q Okay.
A -- and the Trust.
Q And when was this signed?
A It would have been -- the date is December 6th.
Q And --
A 2021. I'm sorry.
Q Okay. And when did you and the Committee members begin discussing your compensation package?
A Shortly after the effective date, which was August 11, 2021.
Q And were there any negotiations during that intervening three- or four-month period?

A Considerable negotiations during that period, yes.
Q Can you go to the last page of Exhibit 41? Can you describe that for the Court? I know it's hard to read, but --
A I --
Q -- the numbers don't matter so much as the infor... you know, just, can you just describe --
A Yeah.
Q -- what's being conveyed?
A So it's very hard to read, but it says -- because it's small -- Seery Proposal 1, Oversight Counter 1, Seery Proposal 2, Oversight Counter 2, and then it continues down. My recollection is that we had four or five rounds of back-and-forth that were meaningful. But it -- but it even took a detour in the middle, because it started with my proposal, which was pretty robust, and their response to me that they didn't like the structure or the amount, and so then we started talking about that. And then they -- after we were kind of hitting numbers and structure at the same time, they came back to me and said, stop, we've got to agree on the structure before we agree on the amounts.

MR. MCENTIRE: Your Honor, I'm going to object as it's hearsay and move to strike. This is -- he's not talking about the document. He's talking about something outside of the four corners of the document. I object to hearsay.

MR. MORRIS: Hearsay? There's no statement.

THE COURT: There was --

MR. MORRIS: It's a description of what happened.

MR. MCENTIRE: But he's actually referring to statements in his substantive comments.

THE COURT: Overruled. Okay.

MR. MORRIS: I move for the admission into evidence of Exhibit 41.

THE COURT: Any objection?

MR. MCENTIRE: That's the memorandum agreement, Mr. Morris? Is that it?

MR. MORRIS: Yes, sir.

MR. MCENTIRE: No objection.

THE COURT: Admitted.

(Debtors' Exhibit 41 is received into evidence.)

BY MR. MORRIS:

Q Can we go backwards to Exhibit 39, please? Can you describe for the Court what that is?

A This is a redacted copy of minutes of the board meeting on August 21 -- 26, 2021.

Q And there's a lot of stuff redacted there. Do you have an understanding as to why there is redactions?

A It would have nothing to do with these issues that we're discussing or the alleged *quid pro quo*.

Q Okay. Can you just read out loud the last portion that's unredacted on the second page, beginning with "Mr. Seery

reviewed"?

A It actually says, "Mr. Seery also presented the board with an overview of his incentive compensation program proposal, which would include not only Mr. Seery but the current HCMLP team. The terms and structure of the proposal had been previewed with the board in prior operating models presented by Mr. Seery. Mr. Seery reviewed the proposal and stated his view that the proposal was market-based and was designed to align incentive between himself and the HCMLP team on the one hand and the Claimant Trust beneficiaries on the other. The board asked questions regarding the proposal and determined that it would consider the proposal and revert to Mr. Seery with a counterproposal."

Q All right. When you were -- when you were shown one of these documents before, you were asked to identify Mr. Linn, but you weren't asked about the others. Do you see Richard Katz there?

A Yes.

Q Who's that?

A He's the independent member.

Q Did he play any role in the negotiation of your compensation package?

A Yes. He was actively involved.

Q Okay. And how about Mr. Provost? Who's he?

A He is the Jessup person. Jessup is the board member.

He's their representative on the board.

Q Okay.

MR. MORRIS: And I move for admission into evidence of Exhibit 39.

MR. MCENTIRE: No objection, Your Honor.

THE COURT: Admitted.

(Debtors' Exhibit 39 is received into evidence.)

BY MR. MORRIS:

Q Let's go to Exhibit 40, please. Can you just describe for the Court what that is?

A This is a subsequent board meeting minutes, August 30, 2021.

Q And can you just read into the record -- why are there redactions?

A Again, they would -- if there are redactions, it would have nothing to do with the issues that are being brought up in this motion.

Q And can you just read into the record the paragraph beginning, "Mr. Katz"?

A "Mr. Katz began the meeting by walking the Oversight Board and Mr. Seery through the Oversight Board's counterproposal to the HCMLP incentive compensation proposal, including the review of the spreadsheet and summary of the counterproposal. Discussion was joined by Mr. Linn and Mr. Stern. Mr. Seery asked numerous questions and received detailed responses from

the Oversight Board. Mr. Seery and the Oversight Board agreed to continue the discussion and negotiations regarding the proposed incentive compensation plan for the Claimant Trustee and the -- and the HCMLP."

Q So they didn't accept your original proposal that you made in the earlier document?

A They did not.

Q Okay. And did negotiations continue?

A They did, yes.

MR. MORRIS: Before we go on, I move for admission into evidence Exhibit 40.

THE COURT: Any --

MR. MCENTIRE: No objection.

THE COURT: It's admitted.

(Debtors' Exhibit 40 is received into evidence.)

BY MR. MORRIS:

Q Can you go to Exhibit 59, please? Can you describe for the Court what this is?

A This is an email string between me and the Oversight Board regarding the compensation proposal.

Q Okay. And directing your attention to the bottom, I guess, of the second page, there is an email from Mr. Katz dated October 26. Do you see that?

A At the bottom of the second -- oh, yes, yes.

Q Okay. Can you just read the sentence at the bottom of the

page beginning "We propose"?

MR. MCENTIRE: Well, Your Honor, I would, first of all, object to him just reading from the document until it's been put into evidence.

THE COURT: I'm sorry, say again?

MR. MCENTIRE: I would object to Exhibit --

THE COURT: We can't pick things up on the record when you don't speak in a mic.

MR. MCENTIRE: I object to him simply reading from the document before the document is offered into evidence.

MR. MORRIS: Okay.

MR. MCENTIRE: Accepted into evidence.

MR. MORRIS: Sure. I'd move it into evidence.

MR. MCENTIRE: I object as hearsay.

MR. MORRIS: This is a present sense recollection -- recorded. It's a clear business record. It's a negotiation that's happening over time. Mr. Seery is here to answer any questions about authenticity.

MR. MCENTIRE: Well, first of all, it's an email string involving communications with third parties. That's hearsay in and of itself. And it's not been established that this is a business record. And Mr. Morris's statements to that effect, frankly, don't carry his burden. There's internal hearsay contained throughout the document, Your Honor, even if it is a business record.

MR. MORRIS: Your Honor, just to be clear, let me respond.

THE COURT: Uh-huh.

MR. MORRIS: Exceptions to hearsay rule. 803(1) present sense impression; (2) -- (3) existing mental impression, state of mind about motive, (5) recorded recollection, (6) records of regularly-conducted activity, or Federal Rule of Evidence 807, residual exception for trustworthy and probative evidence. I'll take any of them.

MR. MCENTIRE: None of them apply.

MR. MORRIS: Okay.

THE COURT: Okay. Overruled.

MR. MORRIS: Thank you.

THE COURT: I admit it. 59's admitted.

(Debtors' Exhibit 59 is received into evidence.)

BY MR. MORRIS:

Q Can you just read that last sentence at the bottom of that page?

A This is from Rich Katz to me.

Q Uh-huh.

A (reading) We propose doing this in two stages. First, we'd like to come to agreement on structural, underscored, elements of the ICP.

ICP means incentive compensation program or plan.

Only after we'd done that, when the board had greater

understanding of what plan they were pricing, would we haggle out the specific numbers, underscore, tier attachment points, and percentage participation in each tier.

Q Okay. And going to the right-hand part of that, do you see where it says, Salary J.S. Only?

A Yes.

Q Can you just, you know, generally describe for the Court what the debate is or the negotiation that's happening on that particular point?

A Well, this was brought up earlier. The salary was $150,000 a month. That was the same salary that I'd had during the case that was approved by the Court. It had been approved by the Committee, approved by the other independent members. That was continuing. It was also contained as an actual base salary in the plan and the Claimant Trust Agreement, and they were never amended.

The Committee came back to me and said, we'd like that to step down. And they'd like it to step down on a definitive specific schedule, because they had a view that that would incentivize me to work faster to make distributions before the stepdown and that I wouldn't linger in the role. And the yellow --

Q Can you just read the yellow out loud?

A That's --

Q Read the whole thing.

A That's my response.
Q Read the whole thing.
A (reading) Based on the required expertise, volume, and personal risk of the work today, I do not think that any formulaic reduction in base comp is appropriate. With the complexity and amount of issues that I have to manage on a daily basis, I currently do not have capacity to take on significant outside work. Of course, things can change. If they do, I am open to discussing reduction in the base. I have no interest in sitting around doing nothing, having no risk, and collecting the full base compensation. We can include prefatory language and an agreement to revisit our terms, but I do not see an avenue to set parameters to lock in an agreement for the future at this time.
And then there's another paragraph on severance.
Q You can stop there.
MR. MORRIS: I have no further questions.
THE COURT: All right. Pass the witness.
MR. MCENTIRE: Do you have any questions?
A VOICE: No.
MR. MCENTIRE: Okay. How much time do I have, please?
THE CLERK: So, the limit is at two hours and 32 minutes.
MR. MCENTIRE: All right.

REDIRECT EXAMINATION

BY MR. MCENTIRE:

Q Just a couple questions very quickly, Mr. Seery. Highland Capital Management paid HarbourVest cash as part of the settlement, correct?

A That's incorrect.

Q There was no cash component at all?

A There was not.

Q And in connection with the HarbourVest settlement, HarbourVest transferred an interest in HCLOF to Highland Capital or an entity affiliated with Highland Capital; is that not correct?

A That's correct.

Q And that -- that entity -- and HCLOF, and HCLOF had an interest in various CLOs, correct?

MR. MORRIS: Your Honor, I object. This is beyond the scope of my cross, or redirect, however you prefer.

MR. MCENTIRE: Well, you spent a lot of time on HarbourVest. I'm just trying to clear it up.

MR. MORRIS: I didn't say the word CLO. I did not say the word CLO.

THE COURT: Overruled. He can go there.

If you'd please move the mic towards your voice.

BY MR. MCENTIRE:

Q And HCLOF had an interest in various CLOs, correct?

A I believe it had an interest in five CLOs. Oh, that's not true. It had an interest in five of the 1.0 CLOs. It also owned one hundred -- basically, somewhere between 87 and a hundred percent of Acis 3, 4, 5, 6, and 7, which is about a billion dollars of CLOs to 10 (inaudible) leveraged vehicles, and they owned basically all the equity, so that was the driver of the value.

Q And various entities that were -- I mean, some of these various CLOs had an interest in MGM stock, correct?

A The 1. -- the Highland 1.0s did. The value drivers I just described -- Acis 3, 4, 5, 6, and 7 -- had no interest in MGM.

Q But one of them did have an interest in MGM?

A That's not correct.

Q What did you just say?

A 3, 4, 5, 6, and 7 did not have any interest in MGM.

Q Were there any CLOs that had an interest in MGM?

A Some of the 1.0 CLOs did, --

Q I see.

A -- yes.

MR. MCENTIRE: Pass the witness.

MR. MORRIS: No further questions.

THE COURT: Mr. Seery, I want to ask you one thing.

THE WITNESS: Yes, Your Honor.

EXAMINATION BY THE COURT

THE COURT: We dance around it a lot. The Highland

ownership of MGM stock. If think -- if you could confirm I've heard this correct -- you said Highland itself owned 170,000 shares that were subject to a Frontier Bank lien?

THE WITNESS: Yes, Your Honor. I believe that's the right amount. So, Highland directly owned about 170,000 shares. Those were liened up to Frontier. They were -- they were never transferred. Highland never sold any MGM stock.

THE COURT: Okay. So Frontier still holds it or what?

THE WITNESS: No. In fact, post-effective -- I believe it was post-effective date, and with cash generated, we -- we paid off the Frontier loan, --

THE COURT: Uh-huh.

THE WITNESS: -- released that lien, and then we held those shares in MGM until the merger was consummated.

THE COURT: Okay.

THE WITNESS: So we tendered our shares into the -- into the merger and got the merger consideration, which was cash.

THE COURT: Okay. And so there was that. But other than that, you said Highland owned 50 percent of Multistrat, which owned some MGM stock?

THE WITNESS: Multistrat had a -- I don't recall the amount, but a material amount of MGM stock. That also -- so, Highland owned 57 percent of Multistrat. Is also the manager

of Multistrat.

THE COURT: Uh-huh.

THE WITNESS: Multistrat did not sell any MGM stock. It also tendered them into the merger as well.

THE COURT: Okay. And then you said Highland owned some percentage of Restoration --

THE WITNESS: Restorations Capital Partners.

THE COURT: -- Capital Partners, which owned some MGM stock?

THE WITNESS: Similarly, Highland is the manager of what we call RCP. RCP owned a material amount of MGM stock. RCP did not sell any MGM stock. However, in 2019, you'll recall that Mr. Dondero sold $125 million of stock postpetition out of RCP. It was MGM stock. He sold it back to MGM. We had a -- we had a hearing on it, because subsequently the Independent Board learned about it, the Committee learned about it, they had not -- it had not been disclosed, but there was a -- what we thought was a binding agreement with MGM, and MGM indicated that they were going to hold us to it, and so we had a hearing about approving that transaction. The Committee was not happy.

THE COURT: Okay. I'm fuzzy on when that was. You said?

THE WITNESS: That would have been in early 2020, probably April-ish timeframe.

THE COURT: Okay.

MR. MORRIS: Your Honor?

THE WITNESS: The transaction was in November, I believe.

MR. MORRIS: If it's helpful, Your Honor, you can find it at Docket 487.

THE COURT: Okay.

MR. MORRIS: I think that's the objection from the Committee where the issue was -- comes up at least at one time.

THE COURT: Okay. And then I think this is the last category I heard, that HCM and its specially-created sub owned just over 50 percent of HCLOF, and it in turn owns interest in a lot of CLOs, and a few of those, what you call the 1.0 CLOs, did own some MGM stock?

THE WITNESS: That's correct. So if you look on the audited financials that we had introduced into evidence, you'll see actually every asset that HCLOF owns. There's no MGM in there. It does own interest. There were minority interests in five or six of the 1.0 CLOs. Grayson, Greenbrier, Gleneagles, Brentwood, Liberty, and one other. And it had interest in those, but it never owned any MGM stock and it never traded any MGM stock. It didn't own any.

THE COURT: All right. Did I cover the universe of what MGM stock was owned by Highland or something Highland had

an interest in?

THE WITNESS: Yeah. So, the ones that HCLOF had an interest in that I just listed, those -- Jasper was the other one. I apologize. The -- they owned -- they owned MGM stock among their other -- they had a lot of other assets. The other CLOs, the 1.0 CLOs that Highland had, every one of them owned MGM stock. None of them sold or bought any stock. Those all tendered into the merger as well. Highland did not own any interest in any of those entities.

THE COURT: Uh-huh.

THE WITNESS: It just managed them.

THE COURT: Okay. And this is my last question. Someone brought up or it came up today that exactly two years ago today -- I didn't remember we were on an anniversary of that -- but was when we had a hearing, and I think it was a contempt hearing, but I had, I guess, read in the media, like many other human beings, an article about the MGM-Amazon transaction, and I had said I had hope in my heart and brain that this could be an impetus or a triggering event for maybe a settlement. And that was kind of quickly pooh-poohed, if you will.

Remind me why I was quickly persuaded, oh well, I guess that's not going to happen. I just can't remember what I heard that day.

THE WITNESS: Well, it was widely known that

Highland, meaning not the 171,000 --

THE COURT: Uh-huh.

THE WITNESS: -- but the entities that Highland or related entities, including DAF, the other Dondero entities, controlled a lot of Highland stock, as even Mr. Dondero said between Anchorage --

THE COURT: You mean MGM?

THE WITNESS: MGM, I'm sorry. Between -- there were only five major holders. There was the two we just mentioned and Davidson Kempner and Monarch and Owl Creek, and just a few other big holders.

And so Your Honor would have learned it from the case, but you also would have learned it from the paper, that any time a holder is mentioned, it's first Anchorage, because they owned the biggest piece, and Kevin Ulrich, who was the chairman of Anchorage, was also the chairman of MGM. And then Highland was always mentioned.

The reason that it didn't have some great amount of capital that went on to Highland, although there was money from RCP and there was money from MGM, is Highland doesn't own the stock that's -- or interests in the 1.0 CLOs that owned all of it. We just manage it.

THE COURT: Uh-huh.

THE WITNESS: And that goes to various other entities, including, in large part, to Dondero entities. So

there wasn't a big windfall to Highland from that.

The possibility of some upside from HCLOF, because it owned small interests in those five, there was some value in that, but a lot of it got tied up in the litigation that other entities, Dondero entities, are bringing against U.S. Bank and Acis, which has tied up everything in that -- those distributions.

THE COURT: Okay. All right. Thank you. You are excused from the stand.

THE WITNESS: Thank you, Your Honor.

MR. STANCIL: I owe you a docket number, Your Honor. You said don't let us leave before we give you a docket number for that second contempt order. We promised to come back. It was #2660.

THE COURT: Okay. Got it.

MR. STANCIL: Which -- did we move that into evidence?

MR. MORRIS: No. We asked the Court to take judicial notice.

THE COURT: I will take judicial notice of 2660, --

MR. STANCIL: Thank you, Your Honor.

THE COURT: -- I already said. Thank you.

THE WITNESS: Thank you, Your Honor.

THE COURT: You're excused.

(The witness steps down.)

THE COURT: All right. Are you going to have any other evidence, Mr. McEntire?

MR. MCENTIRE: Your Honor, as I respond to your question, I think we have 30 -- approximately 30 minutes left.

THE CLERK: Twenty-six, yes.

MR. MCENTIRE: Twenty-six. We do have another witness. We also have a closing final argument. And we also have an opportunity -- we want to reserve an opportunity for our experts that is still under advisement.

So my first action would be to ask for an extension of time, or we would like to add to our time limit. Instead of just three hours, we'd like to increase the time so we can accomplish all these things.

I mean, if the Court is unwilling to give us additional time, then I will be forced not to call another witness. I will move to a very short final argument. I need to preserve some time for my experts, should you allow them to testify.

THE COURT: Well, --

MR. MORRIS: May I respond?

THE COURT: -- you don't have to preserve time. I'm either going to allow you to put on your experts, and we said 30 minutes/30 minutes, --

MR. MORRIS: That was what I was going to say, Your Honor.

THE COURT: Okay.

MR. MORRIS: There's no prejudice here. Nobody's being harmed. There's no appellate issue. I thought we were really clear. Everybody gets their three hours today. We will file our reply brief on Monday. The Court will determine both whether it needs to hear expert testimony and whether or not our motion should be sustained. If the Court denies the motion, we'll take a couple of depositions and each side will get whatever period of time the Court orders.

But, you know, the attempts to create an appellate record are just -- you know, that's not -- there's no issue here. He can -- he's got 26 minutes. He can put on his witness, he can make his closing in the 26 minutes that they've always had.

THE COURT: All right. Well, we have --

MR. MCENTIRE: May I caucus? May I caucus very quickly, Your Honor?

THE COURT: Okay. Uh-huh. And while you're caucusing, we have our game plan on the experts. We know how that's going to happen. And I'm not extending the three hours.

MR. MORRIS: (sotto voce) We have 62 minutes?

(Pause.)

MR. MCENTIRE: Your Honor, accordingly, I'll just -- we'll move into a final argument at this time.

THE COURT: Okay. So you rest?

MR. MCENTIRE: I rest.

THE COURT: All right.

MR. MORRIS: We call Mark Patrick.

THE COURT: All right. Mr. Patrick, you've been called to the witness stand.

MR. MORRIS: I just need to find my examination notes. Just give me one moment, please.

THE COURT: All right. Please raise your right hand. Could you remain standing, please.

(The witness is sworn.)

THE COURT: All right. You may be seated.

MARK PATRICK, DEBTORS' WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Hi, Mr. Patrick.

A Hello.

Q Did you ever meet with anybody at the Texas State Securities Board?

A No.

Q Do you know if -- do you know anybody who ever met with anybody at the Texas State Securities Board concerning Highland?

A Yes.

Q And who met with the Texas State Securities Board concerning Highland?

A Ronnie (phonetic) Patel.

Q And is that a lawyer?
A Yes.
Q Do you know who retained Mr. -- that lawyer?
A Yes.
Q Who retained that lawyer?
A The DAF, the Charitable DAF Fund. Or one of its entities.
Q Okay. And is it your understanding that the DAF Fund or one of its charitable entities filed a complaint with the Texas State Securities Board?
A Yes.
Q Okay. Thank you very much. Does Hunter Mountain owe any money to Mr. Dondero?
A No.
Q Is there a promissory note that's outstanding that Mr. Dondero has pursuant to which Hunter Mountain owes him $60-plus million?
A No.
Q Who created Hunter Mountain?
A Well, I don't recall specifically. I just recall the facts that, when Hunter Mountain was created, Thomas Surgent, the chief compliance officer of Highland Capital Management, who was representing the Dugaboy Investment Trust as well as Highland Capital legally with respect to that transaction, requested to Rand that the Hunter Mountain Investment Trust be created for purposes of Highland filing its ADV with the SEC.

It was my understanding that when the ADV would be filed, sort of the ownership change would -- chain would stop at Hunter Mountain.

Q Okay. Dugaboy is Mr. Dondero's family trust, correct?

A No. But I'll help you along. Just please use the full name of the trust.

Q If I refer to the Trust, will you know that that's -- is that for the Hunter Mountain Investment Trust, or do you want me to use trust --

A There's no entity called Dugaboy. Just Dugaboy. There's not.

Q Okay.

A It's a shorthand. I'm --

Q Okay. I'll refer to Dugaboy then, okay?

A What are we referring to?

Q The trust known as Dugaboy.

A Okay. Fair enough. Go ahead.

Q Okay. Did Dugaboy contribute a portion of its ownership interest in Highland to the Highland -- to the Hunter Mountain Investment Trust?

A Contribute? No.

Q Did it transfer?

A Yes.

Q And did it receive in exchange a promissory note from Hunter Mountain?

A Yes, it did.
Q Okay. And Mr. Dondero is the lifetime beneficiary of Dugaboy, correct?
A Yes and no. It's a placeholder -- a placeholder provision that's never been used.
MR. MCCLEARY: Your Honor, pardon me. Pardon me. Objection, relevance, Your Honor.
THE COURT: Relevance?
MR. MORRIS: This is -- we've been told so many times that Mr. Dondero has no interest in this case, he has nothing to do with Hunter Mountain. He's the lifetime beneficiary of Dugaboy. And if I --
THE WITNESS: That provision has never been invoked. He's received no money through that provision.
THE COURT: Okay. Just wait. We're resolving --
MR. MORRIS: Right.
THE COURT: -- an objection at the moment.
BY MR. MORRIS:
Q Can we turn to Exhibit 51?
THE COURT: I'm still working on the objection.
MR. MORRIS: I'm going to try and lay a foundation. Okay?
THE COURT: Okay. So he's withdrawing the question.
MR. MCCLEARY: He's withdrawing the question? Okay.
THE COURT: Okay.

BY MR. MORRIS:

Q You have a binder in front of you, sir. Can you go to Exhibit 51?

THE COURT: And this is Highland's Exhibit 51?

MR. MORRIS: Yeah.

THE COURT: Okay.

BY MR. MORRIS:

Q And is that a promissory note that was made --

A Yes, it is.

Q -- that was made by Hunter Mountain in favor of Dugaboy back in 2015?

MR. MCCLEARY: Objection, relevance, Your Honor.

MR. MORRIS: I'm trying to connect Mr. Dondero to Hunter Mountain.

THE COURT: Okay. Overruled.

THE WITNESS: Yeah. It's a secured promissory note with the amount of approximately $62.6 million signed by Beacon Mountain, LLC, --

MR. MORRIS: Uh-huh.

THE WITNESS: -- as administrator for Hunter Mountain Investment Trust.

BY MR. MORRIS:

Q Okay. And as the -- what's your role with Hunter Mountain today?

A And it's in favor, just to answer your question, it's in

favor of the Dugaboy Investment Trust. That's where I was just being a little stickler --

Q I appreciate that.

A -- previously. Sorry.

Q I do.

A Okay. What is your question?

Q What's your role with Hunter Mountain today?

A I am the administrator.

Q When did you become the administrator?

A On or about August of 2022.

Q Okay. How did you become the administrator?

A Through the acquisition of Rand Advisors.

Q And does Hunter Mountain have any employees?

A No.

Q Does it have any operations?

A No.

Q Does it generate any revenue?

A Not -- not currently.

Q Okay. Did it generate any revenue in 2022?

A No.

Q Does it own any assets?

A Yes.

Q What does it own?

A It has -- it's my understanding it has a contingent beneficiary interest in the Claimants Trust.

Q And that's the only asset it has, right?
A Correct.
Q So that if it -- if that interest has no value, then Hunter Mountain has no ability to pay the Dugaboy note. Fair?
A (sotto voce) If that interest has no value?
That is correct.
Q Okay.
MR. MORRIS: I move Exhibit 51 into evidence.
MR. MCCLEARY: Your Honor, relevance. Objection.
THE COURT: Your response?
MR. MORRIS: Mr. Dondero desperately needs Hunter Mountain to win in this lawsuit because otherwise his family trust will get nothing on this $63 million note.
THE COURT: Okay. Overrule the objection. It's admitted.
(Debtors' Exhibit 51 is received into evidence.)
BY MR. MORRIS:
Q Neither you or any representative of Hunter Mountain has ever spoken with any representative of Farallon, correct?
A Correct.
Q Neither you nor any representative of Hunter Mountain has ever spoken with anybody at Stonehill, correct?
A Correct.
Q You have -- neither you nor Hunter Mountain have any personal knowledge about a *quid pro quo*, correct?

A (sotto voce) Nor Hunter Mountain have any personal knowledge about a *quid pro quo*.

Correct.

Q Neither you nor anybody at Hunter Mountain have any personal knowledge about how Mr. Seery's compensation package was determined, correct?

A Correct.

Q Neither you nor anybody at Hunter Mountain had any knowledge about the terms of Mr. Seery's compensation package until the Highland parties voluntarily disclosed that in opposition to the Hunter Mountain motion, correct?

A No. I --

MR. STANCIL: Objection, relevance, Your Honor.

THE COURT: Overruled.

THE WITNESS: No. I seem to -- I seem to have an awareness that the performance fee was amended at a certain time post-confirmation, or, you know, around the confirmation time period. And so that's with respect to the compensation. I -- just myself.

BY MR. MORRIS:

Q Can you tell Judge Jernigan everything you know or everything you knew before receiving Highland's opposition to this motion about Mr. Seery's compensation as the CEO of the Reorganized Debtor at the Claimant Trustee?

MR. MCCLEARY: Objection, Your Honor. That's

overboard and an unclear question.

THE COURT: Overruled. He's gone through some specific things now. I guess he's just trying to encompass anything we haven't covered.

THE WITNESS: Yeah. I had a -- I personally had a general understanding that Mr. Seery's compensation changed after the claims trading to put in a performance-based-type measure. But I do recall that it was always very -- it was unclear exactly the terms.

BY MR. MORRIS:

Q Okay. Did you learn anything else?

A Such as?

Q Just, did you ever learn anything else about Mr. Seery's compensation package that you haven't testified to yet?

MR. STANCIL: Your Honor, objection. Vague.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. MORRIS:

Q Okay. Neither you nor Hunter Mountain has any personal knowledge whatsoever about any due diligence that Stonehill did in connection with the purchase of claims, correct?

MR. MCCLEARY: Your Honor, he's getting into allegations in the complaint which involve attorney work product, so we object on the basis of invading the attorney work product.

THE COURT: Overruled.

THE WITNESS: Can you restate the question again?

BY MR. MORRIS:

Q Yes, sir. Neither you nor Hunter Mountain have any personal knowledge as to what due diligence Stonehill did before purchasing its claims in this case, correct?

MR. MCCLEARY: Objection. Attorney work product. Invasion of that. Could I --

THE COURT: I just ruled.

MR. MCCLEARY: I understand.

THE COURT: I just --

MR. MCCLEARY: Could I have a running objection to this line of questioning on that basis, Your Honor, invasion of attorney work product?

THE COURT: Why don't you explain why it's attorney work product. I'm missing --

MR. MCCLEARY: Because they might -- he would have knowledge from the efforts and investigation through attorneys in the case. I assume he's not asking -- you can't separate that, potentially. So he's getting into attorney work product.

MR. MORRIS: I'm asking for facts.

THE COURT: He's asking for facts. I overrule.

BY MR. MORRIS:

Q Can you answer the question, sir?

A Yeah. I'm not aware -- I'm not personally aware of how much work Farallon did, or Stonehill.

Q You have no knowledge whatsoever about the diligence Stonehill did before purchasing its claims, correct?

A Well, I would generalize now is that they did nothing.

Q And that's on the basis of Mr. Dondero's testimony, correct?

A I would just call it on a basis of our general inquiry, which would be including, in part, Mr. Dondero's testimony.

Q What else are you relying upon for your conclusion that you just described other than Mr. Dondero's? What other facts?

A Yeah, we -- yeah, we have not uncovered any facts that indicated that they did conduct any due diligence of any sort.

Q Okay. And are you -- do you have any personal knowledge as to what Farallon did in connection with its due diligence prior to buying its claim?

A Yeah. We have not been able to find any facts that would suggest that Farallon conducted any due diligence of any kind.

Q Okay.

MR. MORRIS: One second, Your Honor.

(Pause.)

BY MR. MORRIS:

Q Who's paying Hunter Mountain's legal fees?

A Hunter Mountain is paying -- is legally obligated and

paying its own legal fees.

Q If it generates no income and its only assets is the interest in Highland, where is it getting the funds to pay legal fees?

MR. MCCLEARY: Objection, Your Honor. This is irrelevant and invades the attorney-client privilege.

MR. STANCIL: Your Honor, I'm happy to read a Fifth Circuit case that says the identity of a third-party payer of attorneys' fees is not privileged. I would refer them to *In re Grand Jury Subpoena*, 913 F.2d 1118, a 1990 Fifth Circuit case. I can read from Judge Jones' opinion, but you tell me how much you want to hear on this.

THE COURT: Okay. I overrule your objection. He can answer.

THE WITNESS: There is a settlement agreement by Hunter Mountain Investment Trust as well as the Dugaboy Investment Trust that provides for the payment of attorney fees.

MR. MORRIS: No further questions, Your Honor.

THE COURT: Okay. Cross?

MR. MCCLEARY: Yes, Your Honor, briefly.

CROSS-EXAMINATION

BY MR. MCCLEARY:

Q Mr. Patrick, how would you describe Mr. Dondero's relationship with Hunter Mountain Investment Trust today?

A None.
Q You were asked some -- let me ask you about litigation, and litigation involving the sub-trust. Has Hunter Mountain been involved in litigation with Mr. Kirschner?
A Yes.
Q Okay. And what is your understanding of Mr. Kirschner's role?
MR. MORRIS: Your Honor, while I would love for them to continue --
MR. MCCLEARY: He's the --
MR. MORRIS: -- to use their time, I object that it's beyond the scope of my examination. They passed on the witness. They rested their case. He should be limited to the scope of my inquiry.
THE COURT: Okay. How does this tie to direct?
MR. MCCLEARY: Your Honor, it -- just very generally. This is --
THE COURT: Okay. I need to know how it ties to the direct.
MR. MCCLEARY: This doesn't tie directly to the direct, Your Honor.
THE COURT: Then it's beyond the scope, you acknowledge?
MR. MCCLEARY: Yes, Your Honor.
THE COURT: Okay. Sustained, then.

MR. MCCLEARY: Okay.

BY MR. MCCLEARY:

Q Mr. Patrick, has Hunter Mountain Investment filed any litigation as a plaintiff other than its efforts to be a plaintiff in this lawsuit and its action as a petitioner in the Rule 201 matter earlier this year in Dallas state court?

A The 202.

Q 202, yes.

A No, it has not.

Q All right. And then it's -- has it been a party, then, to any other litigation other than the efforts to file this action, the Rule 202 action, and has it been a defendant in any lawsuits?

A To my understanding, no.

Q Is it involved as a defendant in the Kirschner litigation?

A Yes.

Q Mr. Kirschner is suing Hunter Mountain; is that correct?

A That is correct.

Q Okay. So, is Hunter Mountain a vexatious litigant?

MR. MORRIS: Objection, Your Honor. This is now really beyond the scope. We're not doing -- this is -- we're not doing it. I'm not letting -- because there's a vexatious litigant motion pending now in the district court right now before Judge Starr. This has nothing to do with anything I asked.

THE COURT: Okay.

MR. MCCLEARY: They're trying to draw --

THE COURT: You've already asked him is it a party in any other litigation besides the 202 and this attempted one, so where are we going with this?

MR. MCCLEARY: Well, they're just trying to draw Mr. Dondero into this and -- this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed -- attempting to file this action and a Rule 202 proceeding. So they're not involved in a lot of litigation and they're not a vexatious litigant.

THE COURT: Okay. I think I'll sustain that and we can just move on.

MR. MCCLEARY: Okay. Then I'll pass the witness. Thank you, Your Honor.

THE COURT: Okay. Any redirect?

MR. MORRIS: No, thank you, Your Honor.

THE COURT: All right. You are excused, Mr. Patrick.

(The witness steps down.)

THE COURT: Anything else?

MR. MORRIS: Just a time check for both sides and let's get to closings.

THE COURT: Okay. Caroline?

THE CLERK: Movant has 23 minutes left and the Respondents have 47.

THE COURT: 23 and 47. Any other evidence from the Respondents?

MR. MORRIS: That is a fair question.

(Discussion.)

MR. MCCLEARY: Your Honor, I just want to confirm that all the exhibits that they did not object to have been admitted into evidence.

THE COURT: All right. Well, let me --

MR. MCCLEARY: We do offer them.

MR. MORRIS: Oh.

THE COURT: Hang on.

MR. MORRIS: Did I get Exhibit 45, Your Honor?

THE COURT: Just a moment. I'm doing two things at once here. 45 is in.

MR. MORRIS: Okay.

THE COURT: All right. On HMIT's exhibits, okay, first, as we all know, 29 through 52 are carried until -- if we have another hearing with the experts.

(HMIT's Exhibits 29 through 52 carried.)

THE COURT: I'm showing we have -- and speak up if anyone questions this -- I show that we have Hunter Mountain Exhibits 3 and 4, and then 7 through 10, 12 through 23, and 26 through 38, and 53 through 57, 64, 65, and then 67 through seventy --

(HMIT's Exhibits 3, 4, 7-10, 12-23, 26-38, 53-57, 64, 65,

67-70 are received into evidence.)

MR. MCCLEARY: Your Honor, I apologize. From 36 -- 26 to 32 are in?

THE COURT: I believe that was part of the stipulation, Mr. Morris, right?

MR. MCCLEARY: Yes.

MR. MORRIS: I think that's right.

THE COURT: Okay.

MR. MORRIS: We really didn't object to very many.

THE COURT: Yes.

MR. MCCLEARY: That would be 25, too. That would include 25?

MR. STANCIL: No. Objection. 25 is not --

THE COURT: It's not admitted.

MR. STANCIL: It's not in evidence.

THE COURT: 25 and 24 were not admitted.

MR. MORRIS: Correct. Those are my emails.

THE COURT: Okay. So --

MR. MCCLEARY: 25 is an article.

THE COURT: Your 25 was John Morris Email Re: Text Messages dated March 10, 2023.

MR. MCCLEARY: Okay.

THE COURT: Okay. I can't remember where I left off. I think I left off -- I'll just repeat after the expert exhibits that are carried. I've admitted 53 through 57. I

have admitted 64, 65, 67 through 71.

(HMIT's Exhibit 71 is received into evidence.)

Now, I'm not sure if I ended up admitting 72. That was the articles. I can't remember if you stipulated on that finally.

MR. MORRIS: I said they --

MR. MCCLEARY: They had no objection.

MR. MORRIS: -- they come in --

THE COURT: Not for the truth of the matter asserted.

MR. MORRIS: -- self -- exactly.

THE COURT: Okay.

MR. MORRIS: Self-authenticating.

THE COURT: So 72 is in.

MR. MCCLEARY: Okay.

(HMIT's Exhibit 72 is received into evidence.)

THE COURT: Then we had some pleadings. I think 73, 74, 75 are in, but again, not for the truth of the matter asserted in any advocacy on 73 and 74. And then 77, 78, 79 are in. And that's it.

(HMIT's Exhibits 73, 74, 75, 77, 78, and 79 are received into evidence.)

MS. DEITSCH-PEREZ: Your Honor, I didn't make an appearance, but I was taking notes (inaudible).

MR. MCCLEARY: Your Honor, I believe 80 should be in.

MR. MORRIS: No objection to 80. It's on our -- it's

part of our Exhibit 5.

THE COURT: Okay. 80 is in. Admitted.

(HMIT's exhibit 80 is received into evidence.)

MR. MORRIS: Yeah. That's really Section A of that thing that I gave you this morning.

THE COURT: If Ms. Deitsch-Perez wants to consult with the Hunter Mountain lawyers, she can. I don't know --

MR. MORRIS: Can I go through quickly mine, Your Honor? Because we actually never had the opportunity to put our exhibits in.

THE COURT: Okay. Let's make sure we're to --

MR. MORRIS: Okay. I'm sorry. I'm sorry.

THE COURT: -- closure on the Hunter Mountain exhibits.

MR. MORRIS: I'm sorry.

THE COURT: Anything I said that you disagree with? I don't think --

(Pause.)

THE COURT: Okay. Let's hurry up. What is the controversy?

A VOICE: Roger? The Court's addressing you.

MR. MCCLEARY: Oh. Excuse me, Your Honor. So, just a little unclear of whether you have Exhibits 21 through 25 admitted.

THE COURT: I have 21, 22, and 23. Not 24. Not 25.

Okay. Anything else?

MR. MCCLEARY: Okay. Then we do offer 24 and 25.

THE COURT: You offered them. I did not admit them.

MR. MCCLEARY: Okay. 76. I believe -- was that -- you're carrying?

MS. DEITSCH-PEREZ: Carried.

MR. MCCLEARY: You're carrying that?

THE COURT: Okay. I carried that and --

MR. MCCLEARY: It's part of the expert issue.

THE COURT: Okay. Yes, part of the expert. So it's carried.

(HMIT's Exhibit 76 is carried.)

(Pause.)

MR. MCCLEARY: I understand you've admitted 53 through 83, although some of them have now not been approved.

THE COURT: All right. Well, we need to clarify. 58 through 63, you think you offered them and I admitted them, but not for the truth? I remember that being discussed for 58 through 63. Are you actually offering them?

MR. MCCLEARY: Yes. 58 through 63.

THE COURT: All right. And Mr. Morris, you ultimately agreed that yes, but not for the truth of the matter asserted?

MR. MORRIS: That's right, Your Honor.

THE COURT: Okay. So they are admitted. Okay.

(HMIT's Exhibits 58 through 63 are received into evidence.)

THE COURT: And then there was an objection to the Mark Patrick declaration for the same thing, not for the truth of the matter asserted.

MR. MORRIS: Exactly.

THE COURT: But you agree as long as it's --

MR. MORRIS: Correct.

THE COURT: Okay. So what that means is, to recap, 53 through 75 are admitted, although some of those are only -- they're not for the truth of the matter asserted. And then 77 through 80 are admitted. Okay?

MR. MCCLEARY: And 76? We offered 76.

THE COURT: That's -- we carried it. We carried it. It relates to the expert.

MR. MCCLEARY: Carried it.

(Pause.)

MR. MCCLEARY: Thank you, Your Honor.

THE COURT: Okay. Now let's straighten out Highland's exhibits. So, I'm showing 1 through 16 have been admitted, and then 25 through 31-A?

MR. MORRIS: 25 through 31-A?

THE COURT: I'm sorry. Yes. 25 through 31-A.

MR. MORRIS: Okay.

THE COURT: And then 34. And then 39, 40, 41, and

then 45. 51, 59, and 60.

MR. MORRIS: Okay. So I'm going to do my best not to burden the Court. I'm trying to focus. We move for the admission into evidence of Exhibit 32, which is Mr. Dondero's objection to the HarbourVest settlement. And the reason that we're offering it is because he made no mention of any concern at all that the settlement implicated material nonpublic inside information.

THE COURT: All right. Any objection?

MR. MCCLEARY: 32?

THE COURT: Uh-huh.

MR. MCCLEARY: Yes, Your Honor. Relevance and hearsay.

THE COURT: Overruled. And I can take judicial notice of it in any event.

(Debtors' Exhibit 32 is received into evidence.)

MR. MORRIS: We move for the admission into evidence of Exhibit 33, which is the recent letter from the Texas State Securities Board declining to take any action after conducting an investigation of the Dugaboy complaint.

THE COURT: Okay. Any objection?

MR. MCCLEARY: We object on the grounds of relevance, 403, hearsay, and authenticity, Your Honor.

And I also, I think it's important that the decision by a regulatory body has no bearing on this cause of action or the

colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry, Your Honor.

THE COURT: Okay. I overrule the relevance objection. Certainly, it goes to colorability. It's some evidence. It's some evidence. A regulatory body did not choose to go forward --

MR. MCCLEARY: But that could be for --

THE COURT: -- on the complaint.

MR. MCCLEARY: That could be for reasons entirely unrelated.

THE COURT: True, true. It's some evidence.

MR. MORRIS: That's speculation.

MR. MCCLEARY: Not for this.

THE COURT: But what is the authenticity objection?

MR. MCCLEARY: Well, there's no demonstration. I don't believe they sponsored that with anyone.

THE COURT: Pardon? Say again?

MR. MCCLEARY: They didn't sponsor that with anyone.

MR. MORRIS: Your Honor, I actually -- if they really put me to it, because I was reading the Rules of Evidence in the wee hours of the morning, I am certain that there's an exception for government documents and government statements and government decisions.

MR. STANCIL: Your Honor, as to its authenticity, I

could produce a witness from Highland who said they got it, if that's really what we're doing. That it's the letter, they got it from the TSSB, if we're really doing authenticity.

MR. MCENTIRE: Well, first of all, it's hearsay and there is no authenticity issue and it's irrelevant. I understand --

MR. STANCIL: What is the authenticity issue, Mr. McEntire?

THE COURT: I'm trying to understand the authenticity issue. You think this is a --

MR. STANCIL: Do you think it's a real letter or a fake letter?

MR. MCENTIRE: Well, first of all, I'm going to address the Court and not you, okay?

Your Honor, --

THE COURT: Well, address by speaking in a --

MR. MCENTIRE: Yeah. Thank you.

THE COURT: Okay. I'm just saving the court reporter from grief, okay?

MR. MCENTIRE: It is hearsay, and it is hearsay that is calculated to be misrepresented or mischaracterized because it's utter speculation as to the basis for their decision. And if it's -- utter speculation is the basis of your decision, it has no reason to come in. There's no --

THE COURT: What you're telling me, it goes to the

weight of the evidence. Okay?

MR. MCENTIRE: Your Honor, --

THE COURT: Okay. You're not telling me it's inadmissible hearsay.

MR. MCENTIRE: Well, it is inadmissible hearsay.

MR. MORRIS: Can I just, for one second?

THE COURT: Please.

MR. MORRIS: Paragraph 34 of their motion, Your Honor. Quote, "The Court also should be aware that the Texas State Securities Board opened an investigation into the subject matter of the insider tradings at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT's position that the claims described in the attached adversary proceeding are plausible and certainly far more than merely colorable."

They used the investigation to try to convince you that their claims are colorable, and now we have a letter saying there's nothing.

THE COURT: Okay. You want to explain that to me?

MR. MCENTIRE: Well, we put no evidence in, in this proceeding --

THE COURT: You put what?

MR. MCENTIRE: We have put no evidence in, in this proceeding, --

THE COURT: You filed a pleading under Rule 11

suggesting this was highly relevant, right?

MR. MCENTIRE: We filed a motion. Yes, we did.

THE COURT: Under Rule 11.

MR. MCENTIRE: Yes. Of course we did.

THE COURT: Okay.

MR. MCENTIRE: Of course we did.

THE COURT: Suggesting this Texas State Securities Board complaint and investigation was highly relevant.

MR. MCENTIRE: The fact that it had opened an investigation and was conducting an investigation is irrelevant. Its decision to stop the investigation without further elaboration or clarification, this is why it calls for utter speculation.

MR. MORRIS: Your --

THE COURT: Okay. Do you have the hearsay exception that applies? I'm looking at my evidence rules right now for the government record or public record. Is it 803(8) that we need to have addressed here?

MR. STANCIL: 803(8), Your Honor.

A VOICE: Yeah, public records.

THE COURT: Okay.

MR. STANCIL: Public record. Sets out --

THE COURT: Public records, 803(8), hearsay exception. Moreover, you pled allegations suggesting this investigation was really relevant. So I overrule your

objection, and so that means 33 is admitted.

(Debtors' Exhibit 33 is received into evidence.)

MR. MORRIS: Thank you, Your Honor. I continue. Exhibit 36 --

MR. MCENTIRE: Which one was that?

MR. MORRIS: That was 33.

So now we're up to 36, Your Honor. I'm going to skip some of these.

THE COURT: Okay.

MR. MORRIS: But this is just the Court's order approving Mr. Seery's original --

THE COURT: I'm waiting for any objection for the record. Do we have an objection, Mr. McCleary?

MR. MCCLEARY: 36, relevance, Your Honor.

MR. MORRIS: The relevance is that this Court approved without objection Mr. Seery's compensation package in an amount that included a base salary of $150,000, which the Claimant Purchasers and the independent director saw fit to continue.

THE COURT: Objection overruled. It's admitted.

(Debtors' Exhibit 36 is received into evidence.)

MR. MORRIS: I think 38 may be on their list. Yeah, 38 is in as their 26, right? So that should be admitted.

THE COURT: Admitted.

(Debtors' Exhibit 38 is received into evidence.)

MR. MCCLEARY: If it's on our list, we agree.

THE COURT: Okay. It's admitted.

MR. MORRIS: That's it, Your Honor.

THE COURT: Okay. Do you all need a five-minute break before we do closing arguments?

MR. MORRIS: I'd be grateful.

THE COURT: Okay.

MR. MCCLEARY: Yes, Your Honor. Thank you.

THE COURT: Will do.

THE CLERK: All rise

(A recess ensued from 5:49 p.m. to 5:57 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated.

We're back on the record in the Highland matter. Closing arguments. Just for everyone's benefit, time -- you said 47 minutes and 23 minutes back several minutes ago, and then we had all the housekeeping stuff. So I'm not sure if that's where we are right now or if --

MR. MCENTIRE: I'm waiting for my monitor guy to be here.

THE COURT: Okay. Okay.

So Caroline, is it still 47 and 23?

THE CLERK: Yes.

THE COURT: That's when we started the housekeeping stuff.

MR. MCENTIRE: So 27 minutes?

THE COURT: Twenty-three.

THE CLERK: Twenty-three.

MR. MCENTIRE: Twenty-three? Can I get a five-minute warning, please? Would you pull up the PowerPoint? And let's go to Slide 39.

May I proceed, Your Honor?

THE COURT: You may.

CLOSING ARGUMENT ON BEHALF OF HUNTER MOUNTAIN INVESTMENT TRUST

MR. MCENTIRE: So, before I go to the PowerPoint, I'd like to kind of give a high-altitude overview of the situation as I see it from the evidence perspective. We don't believe this should have been an evidentiary hearing. Evidence has been allowed.

We had a situation where, if you believe Mr. Dondero's testimony as contrasted with Mr. Seery's testimony, you have a credibility issue. So the Court is now conducting an inquiry presumably on the basis in part on the credibility of witnesses. And if you engage -- and if you want to indulge that type of inquiry, the credibility of witnesses, without allowing the Plaintiff in this case or the Movant in this case to conduct some level of meaningful discovery, I would suggest we have been deprived of due process, because without documents to test Mr. Seery's statements, we are being deprived of something that's basically very fundamental in our

judicial process.

And therefore, it underscores our argument and our rationale why this shouldn't be an evidentiary hearing, because I don't believe the Court can consider credibility issues.

We have, on the one hand, unequivocal notes from Mr. Dondero prepared contemporaneously that would suggest that someone admitted to him and stated to him that they did in fact obtain material nonpublic information. Mr. Seery says that didn't happen. I specifically said, is that a lie? Yes, it's not true. Well, that's a real problem, because that's not the criteria that this Court should use for determining whether we have a colorable claim. A colorable claim is whether there is some possibility. It's something less, even less stringent than a 12(b)(6) standard, plausibility. We have that.

If you look at our pleadings, we have set forth all of the facts we need, all the elements we need to establish a trade on material inside information, nonpublic information. We have evidence -- we have allegations that there was no due diligence. And Farallon's lawyer stood up here -- well, I'm not going to really address that today. But if there was any day to address it, it was today. We have no evidence to suggest they did do due diligence. Even Mr. Seery said, I don't know what due diligence they did. We have evidence to

suggest that the only due diligence they did was to talk to Mr. Seery, who has told -- who told them that this is very valuable, don't -- this is a really good -- a good investment here, it's a lot better than the 71 percent that's on our disclosures.

And Judge, that evidence supports the colorability of the claim. And if you go down the pathway of saying, well, I'm not sure about Mr. Dondero because he had been held in contempt two years ago, that's a real problem. That's a problem for this Court. And I'm going to suggest that's why this should have been a four-corners deliberation. Even Farallon and Stonehill suggest this should be a four-corners deliberation.

We have evidence now of no due diligence. We have evidence before you that suggests that they did learn about MGM before the announcement date. We have evidence that Mr. Seery did trade on -- did -- was aware and received information of material nonpublic information. And for him, a CEO of his reputed stature, to sit here and say that was not material and that was nonpublic defies common sense. It defies reasonableness. That goes to credibility.

Mr. Dondero's notes speak volumes. The trades themselves speak volumes. Mr. Dondero established that the interest -- return of interest here is to be less than one -- it's in the one digits, and hedge funds trade in the 30, 40, 50 percent

range. Well, if that's the case, we have Farallon walking away from a return on the exit financing of 13 percent, and that wasn't good enough for him. How could six percent be good enough for him? There's something missing here. There's something not right.

And we're entitled to get our lawsuit on file and do some discovery. And if they want to do a 12(b)(6), they do a 12(b)(6). If they want to do a Rule 56 after discovery, they could do a Rule 56, all in this Court. But to address this threshold issue now based upon this, what happened here today, is a fundamental denial of due process.

I'd like to go to my pleadings.

Can you go to Slide 39, please?

First of all, let there be no doubt -- 39. Slide 39. 38. 38, please.

We can plead on information and belief. We have a right to plead on information and belief. And the Fifth Circuit -- that is an acknowledged procedural practice in the Fifth Circuit. And if some of our allegations are based upon information and belief, so be it. The test here is not at this stage. The test here is whether I have sufficient factual allegations, whether on information and belief or otherwise, to satisfy at most a plausibility standard. That's it.

And if they want to challenge us at a later date, they

can. Rule 56. 12(b)(6). Or standing. But we have standing. We have standing. We have standing under Delaware law. We're a contingent beneficial interest that has standing under Delaware law and all other law. All -- even Texas agrees that a contingent interest has standing, an inchoate interest as Mr. Seery described. A property interest. You have property interest, you have standing.

THE COURT: Let me ask you.

And Caroline, turn the clock off when the Court interrupts.

Just so you know, I mean, my analysis here is standing first. Does your client have standing? Because we all know that's a subject matter jurisdiction inquiry and I have to explore that first. And then I've said many times the legal standard question for colorability. That's kind of the second place I go --

MR. MCENTIRE: Sure.

THE COURT: -- if I find there's standing. But can you tell me, have there been appellate decisions that are relevant today on standing? Contrary to what people may expect, I don't follow every appellate decision from every appeal in the Highland case. Okay? I wait until I get a mandate --

MR. MCENTIRE: Sure.

THE COURT: -- to where I have to act on something.

MR. MCENTIRE: Sure.

THE COURT: So I feel like I've learned at some point that some either district judge or Fifth Circuit said some party didn't have standing. And I don't know if it was Hunter Mountain or some other trust.

MR. MCENTIRE: Not --

THE COURT: And is there anything they said that, if it wasn't Hunter Mountain, could be relevant here?

MR. MCENTIRE: I hope somebody kicks me if I'm wrong, what I'm about to say. I'm not aware of any such issue --

THE COURT: Okay.

MR. MCENTIRE: -- dealing with Hunter Mountain Investment Trust. I am not.

THE COURT: But any other party that might somehow bear on this case?

MR. MORRIS: I apologize, Your Honor, I was distracted. For which issue?

THE COURT: Standing. Because I was saying my first thing I've got to tackle in ruling on this is standing of Hunter Mountain. And I seem to remember learning that either the district court on an appeal or the Fifth Circuit on some appeal from Highland --

MR. MORRIS: Correct.

THE COURT: -- said some party didn't have standing.

MR. MORRIS: Correct.

THE COURT: And I don't know if it was --

MR. MORRIS: Dugaboy on the 2015.3, for sure, was a Fifth Circuit standing decision.

THE COURT: Okay.

MR. MORRIS: I think there was a district court order that preceded that.

THE COURT: Okay.

MR. MORRIS: That was the subject of the appeal.

THE COURT: The Dugaboy --

MR. MORRIS: 2015.3.

THE COURT: -- motion to require those --

MR. MORRIS: Yeah.

THE COURT: -- 2015.3 statements. Okay.

MR. MCENTIRE: So what we have here -- we can go back on the clock if you'd like.

THE COURT: Yes, please.

MR. MCENTIRE: How much time do I have?

THE CLERK: You have just under 16 minutes.

MR. MCENTIRE: Sixteen? Okay. Give me a two-minute warning. Sorry.

Your Honor, what we have here --

THE COURT: I don't think the U.S. Supreme Court justices will give you a two-minute warning, but maybe I'm wrong.

MR. MCENTIRE: Would you give me a two-minute

warning, please?

THE COURT: And I'm sure not a Supreme Court justice.

MR. MCENTIRE: What we have here is we have a 99.5 percent equity interest that has now been relegated to a category of contingent interest, which we don't believe we should be, and that's part of our declaratory judgment relief we're asking for, which we have standing to do that at a minimum because we want to be treated like a Class 9.

If they want to treat us like a Class 10, I have an argument for that, and it's more than colorable. It's persuasive. It's -- it is a winning argument. And that is we do have standing in our individual capacity, and we have given you a whole bunch of cases in our PowerPoint, or we will give you a whole bunch of cases in our PowerPoint and in our briefing to support that.

We also have given you Delaware case law that says we have standing under Delaware trust law to bring a derivative action against the Trustee. We have done everything appropriate here.

We have the -- a demand upon Seery obviously would be futile to prosecute the claim. A demand upon the Oversight Board would be futile to make a demand on Muck and Jessup, because they're Defendants and they're SPEs of Farallon and Stonehill. And a demand upon Mr. Kirschner would be futile. They suggest that there's an assignment of some sort, but that

would be a modification -- of the claims over to the Litigation Trust, but that would be a modification of the plan.

There's been no assignment of this claim, or these claims, to the Litigation Trust Trustee. But even if there had been, we pled that in the alternative as well. And it would be futile to make a demand on Mr. Kirschner because he's suing Hunter Mountain.

So we are an appropriate party. The only, then, issue becomes whether or not we have standing under Delaware law to bring a derivative action. And we have briefed that and we -- and that's included in our PowerPoint. The answer is yes.

I'd like to go briefly to Page -- next slide.

In our factual section, we set forth why this investment would defy any kind of rational economic sense in the absence of material nonpublic information as a factual allegation supported by data, supported by dates, supported by time.

Based upon that, we also have allegations that are framed around the admissions that Mr. Michael Linn provided. We have allegations that he turned down a 30 or 40 percent premium in our petition. We have allegations that they admitted that they did no due diligence. We have allegations that they admitted that they got material -- basically information about MGM.

And again, it's not all about MGM. It's about the values

of all the portfolio companies. They want to make it about MGM. If they do, we win. But it's much broader than that.

And we have standing to bring this claim because if we're right Mr. Seery will have to return excess compensation and the Claims Purchasers will have to disgorge. And that's going to help not just Hunter Mountain. That's going to help other creditors who haven't been paid yet.

So this is not exclusively -- Hunter Mountain would substantially benefit. I'm not suggesting otherwise. But it also benefits innocent stakeholders other than Hunter Mountain. And that's why we are an appropriate party. We don't have a conflict of interest to bring this. Everybody on their side of the table does. There's no one else who could bring this.

Your Honor, it's very clear when the trades took place. We give dates and times. It's very clear that -- next slide, 40. It's very clear that their investment was over $160 million. If it isn't, I don't see any denials. All we got today was a lame statement from the lawyer saying we're not here today to deny this.

MR. MORRIS: I'm offended.

THE COURT: He's offended by being called lame.

MR. MCENTIRE: Not you lame personally.

MR. MORRIS: Oh, thanks for the clarification.

THE COURT: Okay.

MR. MCENTIRE: A lame statement by you. In fact, it wasn't even you, so --

In any event, Your Honor, --

MR. MORRIS: I've been called worse.

MR. MCENTIRE: -- the point being is that there was no -- there's not -- never been an attempt to deny the factual allegations in our pleadings dealing with Farallon and Stonehill. None at all.

And so -- not that that's ultimately relevant, because that's an evidentiary issue outside of the four corners of our pleading, but it does -- it just stands out and screams. It screams. And it screams volumes.

So right, now based upon our pleadings -- we even plead in Paragraph 42, Paragraph 42, exactly what they invested. This is what you have before you. No one has disputed it. It's in the four corners of our pleading. We've got dates, times, amounts. We have admissions to Mr. -- well, we have admissions from Michael Linn, Paragraph 47. We have -- we do plead upon information and belief the *quid pro quo* on compensation. And frankly, the evidence here today is that the compensation is excessive. And the experts will further confirm that it is excessive. $1.8 million with a bonus program in place to pay him another $8, $9, $10 million, when in fact the risks don't exist and there's no uncertainty and therefore the percentages make no sense. That's --

THE COURT: What do you mean, the risks don't exist and there is no uncertainty?

MR. MCENTIRE: If Mr. Seery is telling Farallon and Stonehill don't sell, this could be really valuable, it's inconsistent with the notion that the schedule and the performance -- performance schedule in the compensation agreement is rationally justified. Because if it's really certain or it's likely you're going to make a lot of money, there's no reason to give him six percent to incentivize him because it's already a done deal.

And the whole point here is that I scratch your back, you scratch mine. They make a lot of money on their deal and he gets a lot of money on the backside post-effective date. Post-effective date.

Next slide, 49.

It would have been impossible, based upon the publicly-available information in Paragraph 49, impossible for Stonehill and Farallon, in the absence of inside information, to forecast any significant profit when they made their investments. It's not possible. Because given the amount of the Claim 8 and Claim 9 claims -- they actually invested in Claim 9 with a zero return. It's projected to be a negative result. On Claim 8, even if you allocate their entire purchase price to Claim 8, they're going to get something less than a 10 percent return paid out over a couple years. Nobody

invests that kind of money in an unsecured creditor asset that hasn't been collateralized. There's something wrong here.

And we have a right to have our day in court to show that. We have our right to take a true deposition of Mr. Seery with documents. We have a right to take Farallon and Stonehill's deposition with documents. And we have tried to get information and we have been turned down at every turn. We have a right to have our day in court, Your Honor.

We have allegations of excessive compensation. I know Mr. Morris suggested the other day that we didn't have any such allegations. They're here. The whole idea here is that Mr. Seery would really profit on the backside. And, you know, he actually testified, I believe -- I won't do that because that's outside the four corners of our pleading. But the -- there is a *quid pro quo*. We allege there's a *quid pro quo* upon information and belief. And we also allege willfully and knowingly, we allege conduct that falls clearly within the exceptions.

None of this -- none of these claims were released. Mr. Seery's not an exculpated party in the context of how we -- proposing to sue him here. None of the protected parties, to the extent that Muck and Jessup claim to be protected parties, they're not protected here, because all of the claims we're making are on the basis of willful misconduct and bad faith, which are the standards that they used and incorporated in the

plan and in the gatekeeper provisions.

How much time do I have?

THE CLERK: Right now you have --

MR. MCENTIRE: Thirty seconds?

THE CLERK: -- seven minutes left.

MR. MCENTIRE: Okay. Next slide, please.

Mr. Seery has admitted that he has a duty to avoid self-dealing. We allege that he did self-deal. There is clearly a relationship. We have a right to explore the depths of that relationship. Well, already we know there is a relationship. We have investments in charities, contributions to charities, meet-and-greets, congratulatory emails. It's not as if Farallon and Stonehill are strangers, or Mr. Seery's a stranger to them. It's not like that at all. They contacted him to get involved.

And by placing -- by acquiring these claims -- and by the way, this is the most significant trading activity in your bankruptcy, in this bankruptcy proceeding. Post-confirmation. Post-confirmation. By acquiring these claims, they were guaranteed to be put onto the Oversight Board. By acquiring these claims, they were guaranteed to be put in a position -- into a position where they would adjust, monitor, compensate Mr. Seery. That's the terms of the Claimant Trust. Those are the terms.

And it's interesting, because one of the amendments that's

in evidence to the plan, I think it's either the third or the fourth amendment, that came out of nowhere right before confirmation, they changed the structure of the Claimant Trust to go off a standard base pay and added in a bonus structure at the last minute. That's evidence.

Mr. Seery has acknowledged, we have alleged he had duties to avoid self-dealing, to always look out for the best interests of the estate, to avoid conflicts of interest. Well, here, to the extent that there is a *quid pro quo*, he is self-dealing and he has injured the Reorganized Debtor and he's injured the Claimant Trust, because that's just less money.

And we also allege, Your Honor, it's also an allegation that --

THE COURT: And let me ask, the sole injury here is compensation was more than it would have been if not for the sale of the claims to Farallon and Stonehill --

MR. MCENTIRE: That's one of the injuries.

THE COURT: -- and therefore less money at the end of the day for creditors and ultimately Hunter Mountain?

MR. MCENTIRE: Yes. And we also allege that, as part of this arrangement, conspiracy, as we allege conspiracy, we have seen over $200 million flow out of the coffers of this estate in the form of --

THE COURT: What do you mean, as a result of the

alleged conspiracy? What do you mean?

MR. MCENTIRE: A delay, a postponement, making long-term payouts, keeping the litigation alive. They actually suggested to Mr. Linn, don't settle these claims, don't sell out, because this is asset-backed, and we also have claims. And so --

THE COURT: Wait, what? Say again?

MR. MCENTIRE: One of the things that Mr. Linn told Mr. Dondero, according to Mr. Dondero's notes, is we have -- this is very valuable, we're buying assets and we're buying into claims, the litigation claims that are being asserted in this bankruptcy proceeding.

THE COURT: Yes. Got it.

MR. MCENTIRE: Yeah. And so the whole idea here is, is that people are funneling money in and taking money out of the coffers of this estate to fuel future litigation in order to have a bigger payday at the end for Class 8 and Class 9. That's exactly what those notes suggest.

THE COURT: I don't understand the correlation. What correlation are you making? Because of the claims being purchased, what?

MR. MCENTIRE: The claims being purchased allow Muck and Jessup to be in a position to award compensation. We've talked about that.

THE COURT: I got that.

MR. MCENTIRE: That's one type of injury. The other injury is, and we have alleged it, is the fact that these claims become very valuable not only because they're asset-backed but because also the litigation claims that Mr. Kirschner is prosecuting.

THE COURT: But how does the purchase of the claims impact that? They were allowed claims at certain amounts before, and after the purchase they're still allowed claims.

MR. MCENTIRE: Mr. Seery is telling them that, basically, this is our plan, this is what we're doing, this is --

THE COURT: That was the plan of reorganization that was confirmed by the Court. I don't get how something changed. I'm trying to get to what are the injuries that your client has suffered. And I get the compensation argument you're making, but I don't get the rest of it.

MR. MCENTIRE: If Mr. Dondero had been in a position, or one of his entities had been in a position, or even Hunter Mountain, and I'm not sure why Hunter Mountain -- be in a position to have acquired the claims, then we would -- this bankruptcy wouldn't even be in existence anymore. It'd be over. All creditors would be paid. It would be done. Be over. And that is an allegation we have made --

THE COURT: How do I know that?

MR. MCENTIRE: Because all the creditors would have

been paid off.

THE COURT: How do I know, if he would have purchased the claims, that's what would have happened?

MR. MCENTIRE: Well, that's what he testified to today here. I don't want to get off on a rabbit trail.

THE COURT: I'm trying to understand the injury, --

MR. MCENTIRE: Sure. I understand.

THE COURT: -- because that's part of my analysis here.

MR. MCENTIRE: The focus, the focus is on the compensation. And once they aid and abet, once they aid and abet a breach of fiduciary duties, they are subject to disgorgement, and disgorgement of all of their ill-gotten gains. And the ill-gotten gains are now well over -- approaching over $100,000 million.

THE COURT: How do you get to that number?

MR. MCENTIRE: Easily. We know how much they purchased, which has never been denied. We know how much has been distributed to Class 8. And we know what percentage of Class 8 they own. They own about 95 percent of all Class 8 claims. So if $270,000 million has been distributed to Class 8, they got 90 percent of that, 95 percent of it has already gone to them, Farallon and Stonehill.

THE COURT: But it would have gone to the sellers of the claims as well. I'm trying to make the connection.

MR. MCENTIRE: That's not the injury. The injury is what -- that is a consequence of their conduct. The injury is the compensation. All right? That's a distinct injury. They are subject to disgorgement as a consequence because they have done wrong, and the law should not tolerate -- should not tolerate and allow wrongdoers to get away. And that's where the unjust enrichment and disgorge --

THE COURT: And what are your best cases for that, that they would have to disgorge --

MR. MCENTIRE: We have cited --

THE COURT: -- the Purchasers would have to disgorge --

MR. MCENTIRE: We have cited cases in our brief.

THE COURT: I'm asking you now to --

MR. MCENTIRE: I don't have them in front of me right this second. But an aider and abettor --

THE COURT: The *CVC* case, is that your best case?

MR. MCENTIRE: I don't have the cases in front of me. I can say this, that the case law is robust, and I can supply you --

THE COURT: It is not robust. That's why I'm asking you to zero in. I read your *CVC* case from the Third Circuit, and I'm wondering, is that your strongest case?

MR. MCENTIRE: No. I think we -- I think we have a lot of strong cases. I'm not sure that it is the strongest.

THE COURT: Tell me which ones, so I --

MR. MCENTIRE: Ma'am, I just said I don't have it in front of me. If you'll look --

THE COURT: Okay. Well, this is closing argument where you present law in support of your position.

MR. MCENTIRE: Well, actually, I'm arguing facts right now. But Your Honor, what I want to tell you is if you'd like me to submit a letter brief on that, I will.

THE COURT: No.

MR. MCENTIRE: Okay. Then I won't. It's in my brief. All of our authorities are in the brief.

In conclusion, --

THE COURT: Okay. So that was the *CVC* case from the Third Circuit which dealt with an insider who purchased claims, statutory insider, a board member, a 28-percent equity owner, who purchased claims during the case to be in a position to file a competing plan and didn't disclose to the board or file a 3001(e) notice. Okay. There was -- claims shouldn't be allowed at more than what the purchaser paid for it.

MR. MCENTIRE: Okay.

THE COURT: Okay. I'm asking you, is that your best case? Because you also cited *Adelphia*, which seemed kind of factually off the mark. And so I really --

MR. MCENTIRE: I -- I'm sorry, --

THE COURT: I need to know, because I've made clear from the beginning, --

MR. MCENTIRE: Yes.

THE COURT: -- I'm struggling with how is there a cause of action related to claims trading.

MR. MCENTIRE: (chuckles)

THE COURT: I don't know why you're giggling. This is --

MR. MCENTIRE: No, I'm not. But --

THE COURT: -- serious stuff. Okay?

MR. MCENTIRE: Agreed. Agreed.

THE COURT: A bankruptcy estate is being charged ka-ching, ka-ching -- not bankruptcy estate -- the post-confirmation trust. Ka-ching, ka-ching, ka-ching. So this is serious stuff.

MR. MCENTIRE: Agreed.

THE COURT: I need to, you know, colorable claim.

MR. MCENTIRE: Agreed.

THE COURT: Colorable claim.

MR. MCENTIRE: Agreed.

THE COURT: Even if plausibility is the standard, which I've expressed my doubt about that, how do you have a plausible claim? What is your best case?

MR. MCENTIRE: Okay. This --

THE COURT: Just to recap what I'm focused on,

purchaser and seller, okay? I can see where breach of contract, maybe some sort of torts between those two. Okay. I can see where the U.S. Trustee, the SEC, I don't know, the Texas State Securities Board, they might get concerned about allegations of insider trading and there might be a regulatory action. But the estate? Again, the post-confirmation trust --

MR. MCENTIRE: Okay.

THE COURT: -- and a contingent beneficiary. I'm trying to understand what is the best legal authority that might support a colorable claim. And we talked about the *CVC* case and *Adelphia*. I'm trying to figure out what are other cases you think I should really hone in on to understand this.

MR. MCENTIRE: All right. At the very beginning this morning, during my opening statement, I had said this is not your typical claims-handling case, because I recall from our last conference you asked that question a couple of times. This is not your typical claims-handling case. And it's not a typical claims-handling case because we have a fiduciary that we claim breached his duties that were owed to the estate. And he self-dealt. And he -- this has nothing to do with the plan. This has something to do with what Mr. Seery did outside the corners of the plan. Perhaps he used the plan expediently. He self-dealt.

That's why this is not just between a seller and a buyer

of a claim. That's number one.

We have been denied an opportunity to discover the communications between the sellers and the buyers, and my guess is we have big boy agreements that prevent the sellers from ever coming back at anybody for fraud. My expectation, that's the case. We should have a right to go explore that. So that's why they're not here.

THE COURT: Why? I mean, what would that tell you? What would that tell you?

MR. MCENTIRE: That --

THE COURT: If there's a big boy agreement, if there's not, what --

MR. MCENTIRE: It would tell us --

THE COURT: -- consequence would that have for this --

MR. MCENTIRE: It would tell us --

THE COURT: -- proposed lawsuit?

MR. MCENTIRE: It would answer Mr. Morris's question that he's raised several times, this is the seller's issue, this is not -- this is not the Hunter Mountain's issue. It is Hunter Mountain's issue. Hunter Mountain as an equity interest-holder should be in a position to be certified as a Class 9 beneficiary now pursuant to our declaratory judgment action. That's number one.

Number two. As a contingent beneficiary, it is entitled

to protect its interests and bring suits if it sees that something has happened that is incorrect and is a tort involving the Reorganized Debtor and the Claimant Trust. That is the nature and the essence of our claim.

And as a consequence, the aiders and abettors should not be allowed to walk away unharmed. They should be required to disgorge their ill-gotten profits. And that calculation is easily done, as I've just demonstrated.

Your Honor, that's all I have. Thank you very much.

THE COURT: Thank you.

MR. MCENTIRE: And we talked -- we'd need an opportunity to argue on the issue of experts, because -- whether you're just going to take it under advisement, I'm not sure how you're going to handle that.

THE COURT: I'm going to read the pleadings and then I'm going to let you all know are we coming back for another day.

MR. MCENTIRE: Thank you.

THE COURT: All right. Who is making the closing argument -- do we have three closing arguments?

MR. STANCIL: Yes.

MR. MCILWAIN: We're going to do it in reverse order.

MR. MORRIS: Reverse order in.

THE COURT: Okay. Reverse order of --

MR. STANCIL: Keep it interesting.

MR. MORRIS: I think I was last on the opening.

THE COURT: -- importance?

(Laughter.)

THE COURT: No. Just kidding. Just kidding.

MR. MORRIS: We're assuming you remember what the original order was.

MR. STANCIL: Yeah, right, right.

MR. MORRIS: It was so many hours ago.

THE COURT: Okay. Oh, so many hours ago.

MR. MCILWAIN: I think I was referred to earlier as the lame lawyer.

THE COURT: Oh, you were. I think --

MR. MCILWAIN: So I'll start. I think --

THE COURT: I think you --

MR. MCILWAIN: Or maybe it was the lame argument, whatever. Whatever.

THE COURT: I think you were the lame one.

CLOSING ARGUMENT ON BEHALF OF THE CLAIM PURCHASERS

MR. MCILWAIN: Your Honor, Brent McIlwain here for the Claim Purchasers.

Let me start, I guess, by saying I understand now why Hunter Mountain did not want to put on evidence, because the evidence that they put on, frankly, made their case much worse.

As we argued or we stated in the opening statement, our

position is that you can look within the four corners of this document and determine that there is no plausible or colorable claim. What the evidence showed is that Mr. Dondero allegedly had a call with one -- with Farallon, not with Stonehill, with Farallon, Farallon wouldn't tell him what they paid, Farallon did not accept an offer of 130 or 140 percent of whatever they paid for the claim, and he thinks they did no due diligence, right? He had nothing in his notes about MGM. So he can say that he thought that they were positive because of MGM, but it's certainly not -- I don't think the Court should take that evidence with any credibility.

But interestingly, what Mr. Dondero says is, well, how do you know how much they paid for these claims? He goes, well, there was a market for the claims, right? They were all trading at 50 or 60 cents. But yet no one would ever buy these claims without any due diligence because the projections in the plan indicate that they wouldn't -- they wouldn't get a return.

Well, if there's a market for the claims and he's willing to pay 30 or 40 percent more than whatever someone purchased, certainly there is a market for the claims. And he is the only one, frankly, that had inside information. That's why he was willing to maybe pay more.

Or, alternatively, the case that you were describing before, Mr. Dondero maybe wanted to buy the claims so he could

control the case, right, so he could dismiss any litigation that was pending against himself so he could avoid the ire of the estate that is aimed at him.

It also -- the Court's inquiry as to what the injury is I think is precisely on point. The only injury offered at this point really is that somehow my client's agreed-to higher compensation that is reasonable or appropriate in return for some inside information on claims that were allegedly trading at 50 or 60 cents in any instance. And what the evidence showed is that, one, Mr. Dondero never had any information about that, about the compensation that Seery is receiving when this complaint was filed, when this motion for leave was filed.

And so if you judge the complaint within the four corners, there is no -- there is no *quid pro quo*, right? Because he says, well, there's obviously something up here because they wouldn't have bought these claims without due diligence, and they must have agreed to higher compensation, and that's why it all happened. And if we throw all this out here, then we'll get to do the discovery that we wanted to do.

Importantly, if you look at his notes, right, the first thing that's written down is discovery to follow, because that's how he operates. That's how a serial litigator operates. Discovery to follow so that I can pay you back for not selling your claim to me. Right? So I can't control the

world, so I can't control this case, you're going to pay. And we're all paying. Every one of us here. Right? There's 15 lawyers in the courtroom and probably 10 on the phone, right? We're all paying.

And so when Mr. McEntire says I'm not getting my day in court, we've had an entire day in court. We've had three hearings to decide what this hearing is going to be. And he's gotten more than his day in court for, frankly, what is word salad. This complaint doesn't pass any test, whether it's 12(b)(6) or under the *Barton* Doctrine. It's simply allegations that are thrown out there, and they're saying, so that we can do more discovery to determine if we actually have allegations. Because they want to continue to harass people, they want to continue to be a thorn in everyone's side, so that perhaps they can avoid further litigation against Mr. Dondero or they can convince somebody to settle with Mr. Dondero.

It doesn't make any sense, Your Honor, and this is exactly why there is a gatekeeper provision, right. That's why the Court imposed this.

And you ask yourself, why would someone sell these claims? Obviously, the sellers of the claims have not shown up. Whether they're big boy, it doesn't matter, because the Court and this estate had nothing to do with those sales. But they haven't shown back up. I can -- I can venture a guess why, if

I was involved with Mr. Dondero, I would sell my claim, right? Because I wouldn't have to be here. And that's exactly why the Court should not authorize this complaint to be filed and the gatekeeper provision of the order should prevent it. And frankly, this should be shut down and we should not have to have continued litigation over experts, or anything else, for that matter. And frankly, we should just be able to go on and let Mr. Seery do his job.

Because I think the evidence was pretty clear that his compensation is reasonable and it was in line, frankly, with what he was making before. And candidly -- and maybe it's because Mr. McEntire is not involved in bankruptcy cases, but this is similar compensation that I see in numerous cases, and it's tiered to incentivize Mr. Seery to do his job, and he's doing his job.

So, with that, Your Honor, I'll cede the rest of the time to the other parties.

THE COURT: Okay. Thank you.

CLOSING ARGUMENT ON BEHALF OF JAMES P. SEERY, JR.

MR. STANCIL: Thank you, Your Honor. I'm going to focus -- and I'm going to put my little clock up so Mr. Morris doesn't, you know, give me the hook here.

THE COURT: Okay.

MR. STANCIL: But first --

THE COURT: Next time we're all here, maybe I'll have

one of those red, what do you call them, the buzzer.

MR. STANCIL: Oh, the big light?

THE COURT: The red light.

MR. STANCIL: We used to joke that the judge I clerked for wished he had a trapdoor and he could just pull the lever when it was done.

THE COURT: Okay.

(Laughter.)

MR. STANCIL: Maybe I shouldn't have put that in your head.

THE COURT: Who was that? Are we going to say who that was?

MR. STANCIL: So Your Honor, I'm going to try to set the legal framework. I'm going to ask you -- and I think we have our -- we have the deck. It's the little -- if we could put that up and start on Slide 2.

I'd like to address what standard applies, and then I'd like to spend a few minutes asking Your Honor again not only to rule on multiple alternative grounds, but also I'd like to walk through what if you did this on a pure 12(b)(6), because it's going to collapse.

So, well, we'll just jump in. I said at the beginning that we know that the question here is not what does the word colorable mean in isolation. We wouldn't do that in any context. We would always look and see what the operative

language here is in the Court's confirmation order. So the question is, what did the Court mean, it must represent a colorable claim?

So we mentioned before Paragraph 80 of the confirmation order. That cites *Barton*. It cites the vexatious litigant cases. I've not heard one word from Mr. McEntire answering how it can be that we're here on a sub-12(b)(6) standard he now says when the Court articulated this legal authority and this legal basis in the confirmation order. If he believed that, the time to make that argument was on the confirmation appeal, and that's over.

But let me then say, how did we get, how did the Court get to Paragraph 80? Well, that came after a series of factual findings in the confirmation order -- in fact, actually, Josh, do you have the hard copy of this?

MR. LEVY: Yeah.

MR. STANCIL: If I could hand that to the Court.

May I approach, Your Honor?

THE COURT: You may. Thanks.

MR. STANCIL: And I don't propose to go through every slide, Your Honor.

THE COURT: Okay.

MR. STANCIL: But if you could turn to Slide #5. This is Paragraph 77 of the Court's confirmation order. Factual support for gatekeeper provision.

MR. MCENTIRE: Excuse me. May I have a copy? I can't see it.

THE COURT: Oh.

MR. LEVY: Oh, yeah, sure, sure.

MR. STANCIL: And can we get a copy of yours as well, --

MR. MCENTIRE: Sure.

MR. STANCIL: -- while we're at it? Thanks.

The facts supporting the need for the gatekeeper provision are as follows. I will not read them all, but if you scroll about eight lines down, it says, During the last several months, Mr. Dondero and the Dondero-related entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. And then there are six separate enumerated examples of that.

Paragraph 78 on the next slide. Findings regarding Dondero postpetition litigation. The Bankruptcy Court finds that the Dondero postpetition litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted he would, quote, burn down the place.

Next slide. This is Paragraph 79. Necessity of the

gatekeeper provision. If you would just skim to the bottom of that first column, it says, Approval of the gatekeeper provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtors' assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.

And then came Paragraph 80, which we've just discussed. With respect, Your Honor, the question is, what is the meaning of Paragraph 80? And in context, following those paragraphs regarding vexatious litigation and abuse of litigation, it is simply implausible to suggest that colorability is a sub-12(b)(6) standard.

And that is Mr. McEntire's contention today, that the gatekeeping order is actually lower than the threshold that every other litigant faces. Everyone else has to file a claim, pass a 12(b)(6), and on they go to get to discovery. Mr. McEntire believes that the gatekeeping order imposes less than that on him, and then he's treated just like everybody else. It makes no sense whatsoever.

So I'll skip Slides 8 and 9, Your Honor, but that's where the Fifth Circuit described the gatekeeping orders, affirmed them in relevant part, citing *Barton*. There is no mystery here.

If you could flip, Your Honor, to Slide 10 very briefly. We've talked about this case a little bit in one of our status hearings, *In re Vistacare Group*. This is the leading case that describes what it is that one does under a *Barton* analysis, and it says that the trustee must make a -- pardon me -- a party seeking leave to sue a trustee must make a *prima facie* case against the trustee, showing that its claim is not without foundation. A *prima facie* case is more than a 12(b)(6).

And I would direct Your Honor to the language in the third bullet. It involves a greater degree of flexibility than a Rule 12(b)(6) motion to dismiss because the bankruptcy court, which, given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit. Boy howdy, are we -- I'm sorry. My kids are going to tease me for that.

But this -- no case has ever proved the wisdom of that statement, Your Honor. We are here, and the Court is all too familiar with the facts and the parties of this case. And we're not here on an adversary proceeding. We're here on a contested matter. And Your Honor has the authority on any contested matter to take evidence, and a broad, broad discretion as to what evidence is appropriate to meet that standard.

So we have laid out briefly in Slide 11 what -- why we

believe that -- or how we believe that the *prima facie* showing would work. And in short -- and maybe this will help us going forward -- we believe that if they make -- if a party seeking relief under the gatekeeping order says things, we have the right to rebut them, like in a burden-shifting or a burden of production -- pardon me -- analysis. So you can say that the sun rises in the west, but we can bring in evidence to say it doesn't, it rises in the east. And that's the plausibility threshold.

And here, and if Your Honor would flip to the next slide, I'm not sure it's entirely fair to say, even after they have purported to withdraw their evidence, that they've really done so. And we disagreed with Mr. McEntire, and advised him of such leading up to this hearing, that we do not agree that his redactions fully excise all of the evidentiary assertions from his motion.

And I'll just pick one example here on Slide 12. On the left is Paragraph 32 of the motion for leave prior to the purported withdrawal. On the right is Paragraph 32 after the withdrawal. Your Honor will see all they've withdrawn are the citations. It's verbatim. It's the same allegations. And they have argued various facts and put them in evidence. So even if it were true, and it's not, but even if it were true that all you get here is a 12(b)(6) ruling in the ordinary case if you put no evidence in dispute, they forfeited that

right by putting these facts and evidence in dispute in their motion.

The fact that they have withdrawn evidentiary support for their evidentiary assertions does not relieve them of the reality that they have made all sorts of factual arguments in their motion for leave, and as a contested matter we have the right to address it.

I'm proposing, Your Honor, unless you have questions on the cases on 13, 14, those are the cases where we have described the hearings that have been held under *Vistacare* and *Foster*, and I know more about the down-in-the-weeds of *Foster* than I ever cared to, but I don't want to repeat what's in our briefs.

If Your Honor is willing to flip to Page 15, this is an argument I've alluded to briefly, but boy, we don't hear -- we have not heard a single thing as to what function the gatekeeper serves, particularly in context of Your Honor's factual findings in the confirmation order, if all it means is 12(b)(6) or lower. It just, it's an unanswerable point that they just persist in ignoring.

But I'd like to address very briefly that third bullet, because at various times and in their brief they have cited, Hunter Mountain has cited, down here we call it *Louisiana World*, I think in the Second Circuit we call it *STN*, but this UCC derivative standing. There are, in fact, two elements one

has to pass for that, and that's a different context. The first is colorability as it's used in that context, and that is often a 12(b)(6) standard in that context. But still to have standing, to bring that claim on behalf of the estate, you have to show a cost-benefit analysis. As we've heard today, we've probably spent more in legal fees today, or over the last three months, than the purportedly excessive compensation to Mr. Seery. And so I would respectfully submit, if we were here on a *Louisiana World* or *STN* hearing, this would be an open-and-shut case just as well.

So if I could, Your Honor, if you are willing to jump ahead to Slide 17, I'd like to ask you -- and I do want to address the standing jurisdictional question a little bit.

THE COURT: Okay.

MR. STANCIL: Not to get into the weeds of standing, because I think we have briefed that out the wazoo in our papers, and I read this morning -- I think it was this morning -- from the Claimant Trust Agreement, which says they're not a beneficial interest.

But my understanding is that Article III standing, whether there is a theoretical injury in any way, that is -- that goes to Your Honor's subject matter jurisdiction under Article III, but that is not true of statutory standing under Delaware law or prudential standing. Those are -- those go to basically whether they state a claim.

So, Your Honor, I believe, can -- and I've confessed to my colleague that the only way I remember this is I screwed it up really, really badly when I was clerking years ago -- but I believe Your Honor can, and in this case should, rule on the standing ground in the alternative. Not on the Article III. Article III is binary. They either have it or they don't. But on the statutory standing, you can say -- I think you can hold that they do not have standing under Delaware law to pursue the claim, but even if they do have standing, and then reach the remainder.

And we know we're headed for appeal. We've heard -- pretty much two-thirds of the time this morning has been laying the groundwork for an appeal. And we would only like -- we would like to make sure that we give the Fifth Circuit a fulsome record.

So I would like to ask Your Honor to flip to Page 19. And this is really the end of, I think, what we need to do. So, Your Honor, what if we were here just on 12(b)(6)? So we've got a *quid*, we've got a *pro*, we've got a *quo*. They fail at each turn. Let me spend most of my time on the *quid*. I'll let the documents of which the Court can take judicial notice speak for themselves. I will let the bare-bones nature of the assertion -- and it's okay to put in a complaint something on information and belief, but you still have to pass *Iqbal* and *Twombly*. I can't say upon information and belief that I was

denied a starting position on the Knicks, right? I would like to believe that's the case, but it still has to be a plausible allegation.

Let's look at this chart. And this chart is taken right out of our brief. These are their numbers. This is at the bottom. And I want to -- I would like to take head-on this proposition that this is not a rational investment on their numbers.

So let's take the Stonehill purchase of Redeemer. They paid $78 million to earn a projected profit, according to the November 30 disclosure statement, of $19.71 million. By my arithmetic, that is a return of 25.27 percent. Even by Mr. Dondero's lights, that's a pretty good return.

I'm going to come back to why that's not the end of the return, but let's look at the Farallon purchase of Acis. Spent $8 million. Projected profit, $8.4 million. I'll take 105 percent return any day.

Let's look at the Farallon purchase of HarbourVest. Purchase price, $27 million. Projected profit, $5.09 million. That is -- oh, I can't read my own writing anymore -- I think that is 18.85 percent. I would again gladly take that every day of the week, whether it's a distressed asset or otherwise.

But let me make one really important point that Mr. Dondero obfuscated, Mr. McEntire does not acknowledge, and it is just a fact. These are projected profits if all Mr. Seery

does is hit the plan. November 30, 2021. If he does no better than what he thought these assets were worth then, this is the expected return. So for those trades that we've talked about, that's a slam dunk even on that.

But let's look about -- we'll talk about upside. Because, as Your Honor knows from doing bankruptcy cases, upside, it's all about upside for people who are purchasing claims. So it isn't just that their returns were capped at these already-ample percentages. If Class 8, for example, of Redeemer paid out in full, they would be making not -- oh, gosh, I'm not sure I should do this on the fly -- but they'd be recovering $137 million on the Class 8 claim, not the $97.71 million. So there's another $40 million of upside.

Even if it's a low-probability event, that's a -- hedge funds do that all day every day.

Same here with Acis. Paid $8 million, expected $16.4 million, but they could get up to $23 million.

Now, we've heard so much about how Class 9 was worthless, worthless, worthless. No, it's not. There's always the potential for upside. Paid $27 million. Could recover $45 million just on Class 8. Could recover another $35 million on Class 9. They could recover $80 million on a $27 million purchase. Now, the probability of that is complicated, but it's not zero. We know that it's not zero. All we've heard from them today is that Mr. Seery is -- could pay off 8 and 9

in full. So I don't think that is even remotely plausible.

Let's talk briefly about UBS. They like to talk about UBS for the projected profit of $3.61 million in loss. But that was -- that's in August, and that claim trades.

So a couple of things that happened between the November 30 disclosure statement setting that projected value and the purchase of the UBS claim in August. Number one is we are nine, ten months past the worst of COVID. And Your Honor could take judicial notice of massive market movements just if you do nothing.

We don't need to get to that, because we talked all morning about MGM. May 26th, it's announced publicly. May 26, 2021.

So the notion that a purchaser of a UBS claim in the summer of 2021, after this MGM transaction is announced, would think, you know what, I think these claims are only worth what they were worth back in November, is not plausible.

And so this is why the comparisons to the debt, the exit financing, well, 12 percent. That's a 12 percent capped return. We're talking here about returns of 25 percent, 105 percent, 18.85 percent, just based on projections at the -- sort of in the darkest days post-COVID.

So it's not plausible. If a court were looking at this just under the 12(b)(6) standard, we would be -- we'd be dismissing this claim as well. And we really -- respectfully,

Your Honor, we need that ruling. We think we need that ruling so that whatever the -- whatever they may say the standard is in the Fifth Circuit, we only have to go one time. And we really believe that we're entitled to that.

I'll let Your Honor -- I will just stand on the deck and our briefs on the *pro* and the *quo*. But meet-and-greets, these are just conclusory allegations in the complaint. He says they worked -- that he worked for them 10 or 15 years ago, which some of that's not even true, but even if it were all true, if I were beholden to every client I've met at a schmooze fest or everybody I worked for in a group 20 years ago or 15 years ago, you know, I would be incapable of operating without a conflict of interest. And it's just not plausible. This is something that needs to go.

Unless the Court has questions, I will cede the remainder of our time to Mr. Morris.

THE COURT: No questions. Thank you.

CLOSING ARGUMENT ON BEHALF OF THE REORGANIZED DEBTOR

MR. MORRIS: Thank you so much, Your Honor, for your patience. It's been a very long day. I am very grateful that we're going to finish today.

As I said at the beginning, I believe this exercise, as difficult as it may have been, is so important and so vital, preserving this estate and what's left of it.

The gatekeeper exists for very important reasons. Your

Honor made those findings in her order that has been upheld on appeal. And we're here to make sure that frivolous litigation is not commenced against my clients, or, frankly, against Stonehill and Farallon, given their capacity as Claimant Oversight Board members.

Hunter Mountain confuses argument with facts. There's no facts here to support anything, and that's what the gatekeeper is about. The gatekeeper is making sure that there's a good-faith basis to pursue claims. And as Mr. Stancil points out, it is certainly acceptable to state things upon information and belief. But the point of the gatekeeper is if somebody says -- not somebody says -- somebody offers proof that those beliefs are wrong, you no longer have a plausible claim. And that's why we thought it was so important to go through this exercise today. Because the facts show that their beliefs are simply wrong, and the entire complaint is based on their beliefs.

There is zero evidence concerning the compensation other than their belief that the compensation is excessive. The case is over. Like, you could stop there. I'm going to go through a bunch of things that -- you could stop there.

I want to actually begin backwards, though, in time, with the HarbourVest settlement. Right? After two years of litigation and re-litigation and re-litigation of the HarbourVest settlement, the claims of insider trading, finally

the Court has before it admissible indisputable evidence that Mr. Seery negotiated the terms of the HarbourVest settlement before he ever got this notorious email from Mr. Dondero. That should be a finding of fact in Your Honor's order and it should never be -- nobody should ever make that allegation again. It's over. You have the documents. You have the email from Mr. Seery to the board, here are the terms, and those are the terms Your Honor approved.

And there's more. Because this is so important for us, because we're tired of being accused of wrongdoing. We're tired of being falsely accused of wrongdoing.

$22-1/2 million. That's the valuation Mr. Seery put on it. You can see that he's doing it to his Independent Board colleagues, copying his lawyers. He's telling them where he got it, from Hunter Covitz. The evidence is now in the record. It came from a regularly-published NAV report from November 30th. It was seven days old. It can never be disputed again that $22.5 million was a fair value, not based on some subjective view of Mr. Seery but based on the person who gave him the report that everybody relies upon that Mr. Dondero got.

And it was ratified yet again in the audited financial statements that came out, and it shows for the period ending -- this is Exhibit 60, I believe -- for the period ending December 31, 2020, $50 million. Okay, so it went up a few

million dollars in December.

This is their case? This is the case? Your Honor I know is still working on the motion to dismiss. That's Mark Patrick, right? That's the complaint that he brought. That's what this is about. I don't mean to confuse the issue, but it's time to put this stuff to rest, because it's wrong. Mr. Dondero has lost and he's got to get over it at some point.

But here's the best piece of evidence about this whole shenanigans about MGM being inside information. Mr. Dondero filed a 15-page objection to the HarbourVest settlement and didn't say a word about it. How is that possible? Six days before the settlement, he sends this email. Two weeks later, in January, he files a 15-page objection and doesn't mention anything about insider trading, MGM, or any wrongdoing by Mr. Seery. In fact, he argues the exact opposite, that Mr. Seery cut a bad deal. How is that possible? This is a plausible claim?

It gets better, or worse, depending on your point of view. CLO Holdco filed an objection and they said they're entitled to buy the asset. This is Mr. Dondero's, you know, operating arm of the DAF. They lost -- they actually had an honorable person who concluded, I don't really have that right. But these are the claims that Mr. Patrick is asserting, and he asserted them on April -- in April, before the MGM deal was announced. Right? And Your Honor found, and that's why it

was so important for the Court to take judicial notice of the second contempt order, because Mr. Dondero was intimately involved in bringing those claims and in bringing those claims against -- or trying to bring those claims against Mr. Seery, in violating of the gatekeeper. This is all tied together.

I have to tell you, I don't know why we're not doing Rule 11. Forget about colorable claims. This is a fraud on the Court. It really is. And I don't know when it's going to stop. I'd love to move on with my life, to be honest with you.

The tender offer. He's out there doing a tender offer benefitting as the fund that he manages acquires more shares and his interest goes up and the value goes up with all these MGM holdings. Really? And he's going to accuse Mr. Seery of wrongdoing?

There was one point of Mr. Dondero's testimony that made my heart skip a beat. It's when he referred to the need to get discovery. And why did it skip a beat? Because he actually had a moment of candor where he admitted that the notion that Mr. Seery gave them material nonpublic inside information was his thought. It's not anything that Farallon ever told him. And then it spins and it spins and it spins, and finally when he gets to the fifth version of his sworn statement MGM suddenly appears. It's not right. Colorable claims? Fraudulent claims.

What's the undisputed evidence right now? I'll take Mr. Dondero at his word that Mr. Patel told him that Farallon bought the claims in February or March. How did they reconcile that with the undisputed testimony that Mr. Seery thereafter invited Farallon to participate in the exit financing? And they signed an NDA in early April. Why would you sign an NDA if you already got inside information? Who would do that? What would be the purpose of that?

How do you reconcile the fact that, according to Mr. Dondero, the claims were already in Farallon's pocket when they signed an NDA to get information for an exit facility. Is that plausible?

We've heard Mr. McEntire say a bunch of times it's much broader than MGM. Not only not a scintilla of evidence, but no substantive allegation. Again, confusing argument with facts. Because he had -- yes, Mr. Seery had access to inside information relative to Highland. He's the CEO. But where is the evidence that he shared anything with anybody? There is nothing.

Mr. Dondero admitted in his motion -- in a moment of candor, he said that's what he concluded based on the fact that Mr. Patel supposedly told him, I bought because Seery told me to. He made the inference. No evidence. Nothing.

They're bringing this case for the benefit of innocent parties? These people have told you time and again that

assets exceed liabilities. What innocent parties? Where are they and how come they're not -- let's get to that point, too. Because they're saying, oh, Mr. Seery is, like, just not declaring the end of this. Seriously? How much do they think Mr. Seery should reserve for indemnification claims as we do trials like this with a mountain of lawyers billing $800, $1,500 an hour? Seriously? Mr. Seery is somehow acting in bad faith by not declaring the end of this case? How much is he supposed to reserve? They keep skipping over that. We'll talk about that in the mediation motion. We'll talk about that in the Hunter Mountain motion in July. Who's prosecuting that? Mr. Dondero's lawyer. I know there's a really big separation between Hunter Mountain and Mr. Dondero, but Stinson is prosecuting that claim on behalf of Hunter Mountain when they're seeking information.

And they complain about the legal fees? We've put our pens down. Kirschner put his pens down. We put down the claim objection. What we're doing is defense at this point.

We're awaiting the ruling on the notes litigation, and we will very much prosecute the vexatious litigant motion if Judge Starr grants the pending motion to exceed the page limit that's been out there for months. I'm not sure what's happening there. We'll do that for sure. But otherwise, we're just playing defense.

We're here today because they've made a motion, a motion

that lacks any good-faith basis whatsoever. And that's why today was so important, so the Court could hear the witnesses. They could -- the Court -- I mean, think about it. Texas State Securities Board. The audacity of saying that somehow a letter from the Texas State Securities Board saying they're taking no action after conducting an investigation of Dugaboy's claim of insider trading is irrelevant? Like, what?

I've told you before, all we do is play Whack-A-Mole. Whack-A-Mole. They make an argument, we prove it's frivolous, so they just make a new argument. Their pleading says their claims are colorable because there's an open investigation. Now there's no investigation and they say that's irrelevant. How can they say that with a straight face? I couldn't.

I want to talk about Mr. Seery. I want to finish with my Mr. Seery. I may not use all my time. We can go home early.

(Laughter.)

THE COURT: It's past early.

MR. MORRIS: But this guy has worked doggedly, Your Honor, and I will defend him until the end of time. He's a man who has so far exceeded expectations. And they're saying he's not -- he's overpaid? The guy is overpaid? When he's into Class 9? When he's being pursued with these frivolous claims? Every day he's being attacked. How much do they think he should be paid? I would have loved to -- I hope -- no, I don't hope. I don't think there's any reason to hear

expert testimony. I think Your Honor should exercise -- the Court should exercise its discretion and say there's no need, the Court doesn't need to hear expert testimony.

But if we do, I'll be delighted to hear their expert's view on what Mr. Seery -- if it's not $8.8 million for all these years, what should it be, after he takes an estate from 71 percent on the 8s to, according to them, assets exceed liabilities, 9s are paid in full?

You know what? If they put their pens down, maybe there would be a conversation. But as long as we keep doing this ridiculous, baseless, frivolous litigation, Mr. Seery is going to conserve resources, because he's got to pay people like me to defend him and to defend the estate. This is a preview of what we'll talk about at the mediation motion. He's doing a great job. He's devoting his life to it. He has no other income. He's got no other job. It's wrong.

The claims are not only not colorable, they are frivolous. I ask the Court to stop this in its tracks right now.

Thank you very much.

THE COURT: Thank you.

All right. Is there any time for the Movant to have the last word, which we usually give the Movant the last word.

THE CLERK: The Movant, I think, has a little under -- maybe about a minute left.

THE COURT: Anything you want to say in a minute?

MR. MCENTIRE: Yes, just I'll take 30 seconds. How is that?

THE COURT: Okay.

REBUTTAL CLOSING ARGUMENT ON BEHALF OF HUNTER MOUNTAIN

MR. MCENTIRE: I just want to direct your attention to our reply brief, specific paragraphs that address your question about authorities. We do cite several cases on Page 41, 40 and 41, dealing with the issue of unjust enrichment. That's it.

Thank you, Your Honor, very much.

THE COURT: Okay. Thank you. Unjust enrichment?

MR. MCENTIRE: Disgorgement.

THE COURT: Okay. But I was really, you know, claims trading in the bankruptcy context, just your best --

MR. MCENTIRE: Well, I think the cases that you identified were our best cases. The --

THE COURT: Okay.

MR. MCENTIRE: -- *Adelphia* and the other cases.

THE COURT: All right. Well, --

MR. MCENTIRE: There are other cases, Your Honor, in different contexts. There's also the *Washington Mutual* case dealing with equitable disallowance. There's also the *Mobile Steel* case, a Fifth Circuit --

THE COURT: *Mobile Steel*? Oh, my goodness. Okay.

MR. MCENTIRE: Okay. All right.

THE COURT: 1968? Or no. That doesn't mean it isn't still quoted often, but --

MR. MCENTIRE: Those would also be relevant.

THE COURT: Equitable subordination --

MR. MCENTIRE: Yes, ma'am.

THE COURT: -- when there's bad acts.

MR. MCENTIRE: And Footnote #10 in the *Mobile Steel* case. That is relevant, too. Just, --

THE COURT: Okay.

MR. MCENTIRE: Thank you.

THE COURT: All right. So I gave a deadline of Monday, right, --

MR. STANCIL: Yes.

THE COURT: -- to reply to the response to the motion in limine?

MR. STANCIL: Yes, Your Honor. Do you want time before you leave for the day? I mean, it's not going to be that long, so 4:00 o'clock Monday? Does that work for you?

THE COURT: I don't care. I probably won't start looking at it until the next day.

MR. STANCIL: But I will -- I'll just reserve and so I don't have my associates --

THE COURT: Yes. I think these days midnight, 11:59 p.m., is what lawyers tend to want.

MR. STANCIL: Oh, not this lawyer.

THE COURT: Oh, well, okay. Okay. So I'll just have to look at this, and probably by Friday of next week I will reach out through Traci and let you know what my decision is on whether we're going to have another day of just 30 minutes, 30 minutes of experts.

MR. MCENTIRE: Your Honor, another housekeeping matter. You'd wanted a copy of our PowerPoint, --

THE COURT: Yes.

MR. MCENTIRE: -- which I'm pleased to give you. We found a typo that we can correct electronically on the version I showed.

THE COURT: Uh-huh.

MR. MCENTIRE: I likely will send that to you and I can copy opposing counsel. Is that --

THE COURT: Okay. Send it to Traci Ellison, my courtroom deputy.

MR. MCENTIRE: All right.

THE COURT: And she'll --

MR. MCENTIRE: We'll do that first thing in the morning.

THE COURT: Okay.

MR. MCENTIRE: So you'll have a copy --

MR. STANCIL: Can we get the hard copy that -- from today, though?

MR. MCENTIRE: No, that had a typo on it. I really

don't want to share it. We fixed it.

THE COURT: What? I'm sorry, what?

MR. MORRIS: That's fine.

MR. STANCIL: Never mind.

THE COURT: Do I not need to know?

MR. STANCIL: Let's all go home.

THE COURT: Okay. And then my last question is -- and there was a mention of the CLO Holdco lawsuit, where there's a pending motion to dismiss. There's an opinion I'm writing well underway. I just keep getting sidetracked by other things. Imagine that. So I know that people are wanting to get an answer to that. So, trust me, it's going to get done here pretty soon.

You mentioned Brantley Starr. I mean, it is not my role to pick up the phone and call him and say hey, --

MR. MCENTIRE: No, I wasn't suggesting that.

THE COURT: -- District Judge, get busy on that.

MR. MCENTIRE: Yeah.

THE COURT: But I'll at least tell you, I know the man seems to have more jury trials than any judge I've seen in this building, so I suspect he's working late hours trying to get things done.

MR. MCENTIRE: Yeah.

THE COURT: What do we have upcoming? We have what you called the mediation motion. When is that set?

MR. MORRIS: June 26.

THE COURT: June 26th. Be here before we know it.

MR. MORRIS: Yeah. And just to keep the Court informed, the Movant's reply was due today. We gave them a week extension. They asked earlier today. I saw in my email we gave them. So I think you should expect the reply on the 15th. The hearing is the 26th, and that's not in person.

THE COURT: Okay. Well, I'm very interested to dive into those pleadings. I knew the motion was coming because one of the lawyers said at a prior hearing it would be coming. So I haven't read any of those pleadings, but, well, I'm just very interested to hear how this plays out. I mean, I've said it before.

MR. MORRIS: Uh-huh.

THE COURT: We had global mediation in summer of 2020. We had two very fine mediators. We had a heck of a lot settled, to my amazement. But we're now way down the road and whole lot of money has been eaten up fighting lots of stuff. I mean, it would have to be pens down. There's an enormous amount out there that would have to be part of it, and I just don't know if everyone is fully appreciating that. I hope they are. Anyone listening. We're really, really far down the road now, and there's just how many appeals? Someone at one time told me there were 26. I bet it's more than that by now.

MR. MORRIS: I think that's right. I think we argued on Monday, what is it, the sixth of nine appeals in the Fifth Circuit. And we've got, you know, a cert petition that we're waiting to hear from on the Supreme Court. And yeah, there's still a couple dozen matters in the district court.

THE COURT: Okay.

MR. MORRIS: Not one of them, not one of them we're prosecuting, with the exception of waiting on the Court to rule on the Report and Recommendation on the notes litigation and vexatious litigant. We are not the plaintiff, movant, in anything.

THE COURT: We've got adversaries. The Reports and Recommendations. That's just made everything go a lot slower. But all right. So we have that. And anything else coming up?

MR. MORRIS: I think on July 11th maybe there is a hearing scheduled on Hunter Mountain. If you recall, Hunter Mountain had that valuation motion last year that you denied on the grounds that they didn't have a legal right to valuation information. They made a motion earlier this year for leave to file an adversary proceeding to assert an equitable claim and some other declaratory relief, is my recollection.

While we filed an opposition, we didn't oppose the relief requested, so that motion got resolved. They have filed an adversary proceeding. And I think, if I remember correctly,

our response to the complaint, maybe that's what due. Oh, the 11th is a status conference. It could be a status conference, maybe to set a scheduling order.

THE COURT: Okay.

MR. MORRIS: But that's it. I think that's the only thing on the calendar.

THE COURT: That's a lot.

MR. MCENTIRE: Thank you.

THE COURT: Anything else? Okay.

MR. STANCIL: Thank you, Your Honor.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 7:18 p.m.)

--oOo--

CERTIFICATE

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

/s/ Kathy Rehling **06/12/2023**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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HMIT'S Exhibits, cont'd.

Debtors' Exhibits

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Debtors' Exhibits, cont'd.

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

Volume 11

APPELLEE RECORD

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	January 24, 2024
	9:30 a.m. Docket
Reorganized Debtor.	
	- HIGHLAND'S MOTION FOR BAD FAITH FINDING [3851]
	- HIGHLAND'S MOTION TO STAY CONTESTED MATTER [4013]

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

APPEARANCES:

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

DALLAS, TEXAS - JANUARY 24, 2024 - 9:32 A.M.

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, The Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated. All right. We have a video hearing this morning in certain Highland Capital Management matters. We're not going to do an appearance roll call because we've started a new, I think, more efficient system where we just have people log in their appearance when they come onto the video WebEx. And so we're going to rely on that.

All right. So we have two matters. One has been long-scheduled. It's Highland's motion for a bad faith finding and attorneys' fees against NexPoint Real Estate Partners in connection with proof of claim litigation. So we have that set.

And then we had an expedited motion to stay a contested matter set by Highland. Highland is wanting to stay any litigation on a newly-filed motion by Hunter Mountain Investment Trust to sue Mr. Seery in the Delaware Chancery Court or Delaware state court system.

I'm thinking it probably makes sense to consider that expedited motion for a stay first. Does anyone on the line disagree with that sequence?

MR. MORRIS: Your Honor, this is John Morris from

Pachulski for Highland. I don't disagree with it. I was prepared to handle the other matter first, simply because it was filed first, but I defer to the Court if that's the Court's wishes.

THE COURT: Well, I'm just thinking it's probably the shorter matter and there may be folks who will drop off, I don't know, maybe.

MR. MORRIS: Oh. Then that makes sense.

THE COURT: Okay. All right. Well, I'll hear what Highland wants to say first, please.

MR. MORRIS: Okay. Good morning, Your Honor. Before I get to that, just a couple of housekeeping matters. I don't mean to be the policeperson here, but there are, at least showing on my screen, a number of participants just by phone number. There's somebody who's identified as Participant. It may be that the Court has the information as to the identity of these folks, but I thought the purpose was to disclose the identity of anybody who's attending this hearing.

So I see, for example, phone numbers beginning with 202 or 312. There's somebody who's listed, at least on my screen, as "Participant." I don't think that was the intent of the rule. And, again, I don't mean to be the policeperson here. Somebody just joined with a telephone number beginning 469.

If I'm mistaken, you know, please just correct me, but I thought the idea was that there would be transparency as to

who was here.

THE COURT: Okay. The idea is, because of national rules at the Administrative Office of the Courts, post-September 21, 2023, because of so-called anti-broadcasting rules, if you're a participant in the case you may watch by video a court proceeding, but if you're not a participant you can only listen in, audio.

So it may be that those that you're seeing is just, you know, they may have chosen to use the term Participant, but they may be only audio. Of course, it seems less --

MR. MORRIS: Okay.

THE COURT: -- significant when we don't have human beings taking the witness stand in the courtroom.

So, Mike, can you answer, are the anonymous people, are they all audio?

THE CLERK: No. They're not. Not -- excuse me. Let me do this, Judge.

Okay. Anyone with a number, you need to identify yourself for the Court. I see a 202, a 312, and a 469 and 703. If you cannot identify yourself, we will have to expel you from the hearing.

THE COURT: And, again, --

(Inaudible interruption.)

THE COURT: Again, if you aren't identified, you're going to be expelled from the WebEx. You can always call in,

audio, but you -- not my rule. A rule from Washington, DC. So, does anyone at this point want to identify themselves?

(No response.)

THE COURT: Okay. Hearing no identification, they'll be expelled. And then, again, if they want to call in, they can call in, but no video WebEx.

All right. Any other housekeeping matters?

MR. MORRIS: Just one other, Your Honor. It's with some very mixed feelings that I report to the Court that our star paralegal, Aja Cantey, has left us. She has moved on to become the head bankruptcy paralegal at Paul Weiss. You know how much I rely on my paralegals. But my sadness has been assuaged a bit by Andrea Bates, who joined us recently. She is on the line today. She'll be assisting me in today's hearing.

I just wanted to, you know, let the Court knows that there has been a change, that we have supreme confidence in Ms. Bates, who joins us from Skadden Arps.

THE COURT: Okay.

MR. MORRIS: And I just -- I just didn't want there to be any surprises there.

THE COURT: All right. Thank you for announcing that.

MR. SANJANA: Your Honor, I'm sorry to interrupt. Your Honor?

THE COURT: Yes?

MR. SANJANA: I'm sorry to interrupt.

THE COURT: Who is this?

MR. SANJANA: Hi. This is Jason Sanjana at Reorg -- this is Jason Sanjana at Reorg Research. I was the 202 number. And I just wanted to -- I was always on audio, and I'm on audio now.

THE COURT: Okay.

MR. SANJANA: But I was on mute until now. So, --

THE COURT: Okay.

MR. SANJANA: -- I just wanted to let you know that.

THE COURT: Okay.

MR. SANJANA: But it may have been appearing as on WebEx for you, but it isn't.

THE COURT: Okay. All right. I appreciate you clarifying that for us, Jason.

Okay. Anything else?

MR. MORRIS: No, Your Honor.

THE COURT: All right. Well, we had this motion to stay the contested matter of Hunter Mountain wanting relief from the gatekeeper provision to sue Mr. Seery in Delaware. So I'll hear what Highland has to say with regard to its motion for a stay.

MR. MORRIS: Okay. Thank you, Your Honor. John Morris; Pachulski Stang Ziehl & Jones; for Highland Capital

Management. We're here today on Highland's motion for a very limited stay of Hunter Mountain's motion for leave to sue Mr. Seery.

I have a short deck to use to assist in today's presentation, and I would ask Ms. Bates to put that up on the screen.

While we're waiting for that, just so it's clear, the motion was originally filed at Docket No. 4013.

THE COURT: Okay.

MR. MORRIS: And, you know, as an overarching theme here, the basis for the stay is that the issues in the motion for leave pertaining to whether or not Hunter Mountain is a beneficiary under the Claimant Trust Agreement are the very issues that are going to be -- that have been fully briefed and that are going to be argued just three weeks from now in connection with Highland's motion to dismiss Hunter Mountain's valuation complaint.

And I think that the easiest thing to do here, Your Honor, if we can -- if we could go to the next slide, is just to think about what's -- what the pleadings are. What's the relief that is being requested and what's the basis for the relief?

And so you'll see -- and this is in our motion -- but I find it helpful to actually focus on exactly what the complaint is. The complaint that we're seeking to stay

includes four or five causes of action. You'll find up on the screen Paragraph 35 of the proposed complaint. It follows the heading Roman Numeral V, Causes of Action. And this is the basis for the complaint. It's solely relying on Delaware corporate law, Section 3327 of the Delaware corporate law. And that law allows, you know, certain people the ability to seek the removal of the Trustee.

As set forth in Hunter Mountain's own pleading, under Section 3327, relief can be sought only if it's in accordance with the governing instrument, and Hunter Mountain is not making that claim here, or by a trustor, another officeholder, or a beneficiary. There's no contention that Hunter Mountain is a trustor, there's no contention that it's a court, there's no contention that it's another officeholder.

Therefore, under Hunter Mountain's complaint that they seek to file to remove Mr. Seery, they must be a beneficiary. This Court must determine that Hunter Mountain is a beneficiary. That's what their complaint says, and there really can't be any dispute about that because each of the causes of action uses the very highlighted language that follows from the statute that they're relying upon.

And let's compare that with Hunter Mountain's motion -- complaint for valuation information. So if we can go to the next slide. They have three causes of action in that lawsuit, and every one of those causes of action also requires a

determination that Hunter Mountain is a beneficiary under the Claimant Trust Agreement.

The first cause of action can be found in Paragraphs 82 to 88, and it demands disclosure of trust assets and an accounting. They claim that they need the information, quote, to determine whether their claimant -- contingent Claimant Trust interests may vest into Claimant Trust interests.

You know, for me, Your Honor, that's already a -- shouldn't they know they're not beneficiaries? They have already conceded in Paragraph 83 that they are not holders of Claimant Trust interests but merely have unvested contingent Claimant Trust interests.

But beyond that, as the Court knows from prior litigation, only Claimant Trust beneficiaries have rights to obtain information, and those rights are severely limited.

So you have a concession that Hunter Mountain is not a Claimant Trust beneficiary. You have a document that's been adopted by this Court, approved by this Court, approved by the Fifth Circuit Court of Appeals, that expressly gives only Claimant Trust beneficiaries very limited information rights. And Hunter Mountain here seeks to ignore all of that.

They don't care that they're not a Claimant Trust beneficiary. They don't care that they're seeking more than even Claimant Trust beneficiaries are entitled to. They don't care that they're seeking information that they have no right

to receive.

But the whole premise of Count One is dependent on whether they're a Claimant Trust beneficiary, which is the exact same issue that has to be decided in the motion to remove Mr. Seery.

The second cause of action is for declaratory judgment on the value of the trust assets. That can be found in Paragraphs 89 to 92. And, you know, these are their words. This isn't my -- these aren't my words. This isn't argument. This is just asking the Court to read Hunter Mountain's own pleading. And it depends -- the second cause of action depends on whether the Defendants have been compelled to provide the information about the Claimant Trust assets. The Court can't make a declaratory judgment unless Highland has been compelled to provide the information. But for the reasons I just discussed, Highland can't be compelled to provide any information to Hunter Mountain or Dugaboy because they're not Claimant Trust beneficiaries.

For the same reasons, the third cause of action, which seeks declaratory judgment regarding the nature of the Plaintiffs' interests, you know, there's a whole host of reasons why these causes of action are deficient and why the motion to dismiss ought to be granted, but I'll save that for February 14th. The point now is that, just like the second cause of action, they seek a determination that the Claimant

Trust interests are likely to vest, an advisory opinion if I've ever heard of one. But be that as it may, it -- still, it's an acknowledgement that they're not Claimant Trust beneficiaries.

And so, in both cases, in both lawsuits, the central question is, is Hunter Mountain a Claimant Trust beneficiary?

If we can go to the next slide, let's look at the briefing, because there's really no dispute about this. There's no dispute about it at all. Look at Highland's motion to dismiss the valuation complaint. Right up in Paragraph 2, we say explicitly: Despite holding only unvested contingent trust interests with no rights in the Claimant Trust, Plaintiffs stubbornly seek financial information regarding Claimant Trust assets. This is the basis for the motion to dismiss, that they're not Claimant Trust beneficiaries.

And it's not as if this is the only place in the pleading where this is discussed. If you go to Docket No. 14 in this adversary proceeding, as you can see in the footnote, there's an extensive analysis that explains why Plaintiffs have no rights to financial information, precisely because they're not Claimant Trust beneficiaries.

And it's not as if Hunter Mountain says we're wrong, it's not an issue. They know it's an issue, and they go to great lengths to address it.

If we can go to the next slide. This is from their

opposition to the motion to dismiss. In Paragraph 10, they say the Claimant Trust Agreement evidences an intent that Plaintiffs become Claimant Trust beneficiaries when Claimant Trust assets are sufficient to pay all lower-ranked claims in full, with interest. Again, their pleading, not mine. And it shows that they understand the hurdle they have to come --

Now, there's lots of other stuff in these pleadings regarding other theories for why these claims fail, but all of them fail if they're not a Claimant Trust beneficiary.

And I'd ask the Court to pay particular attention to Paragraphs 40 to 52 in Hunter Mountain's pleading in opposition to the motion to dismiss. As you can see in the footnote, they have an extensive legal argument as to why Plaintiffs are allegedly -- why Plaintiffs allegedly, quote, have a legal right to obtain the information they seek. That's the same issue that's got to be decided in the motion for leave to sue Mr. Seery.

And what's really interesting, Your Honor, is not only do they make the argument in opposition to the motion to dismiss, they basically cut-and-pasted -- I credit Mr. Demo for helping me out; he pointed this out to me this morning, so I want to give credit where credit is due -- they cut-and-pasted the exact same argument in their motion for leave to sue Mr. Seery. So if you just compare Paragraphs 41 to 46 of Hunter Mountain's opposition to Highland's motion to dismiss the

valuation complaint to Paragraphs 31 to 37 of Hunter Mountain's motion for leave to sue Mr. Seery, you'll see they're making the exact same argument as to why they contend they're a Claimant Trust beneficiary.

Again, don't take our word for it. This isn't argument. This is just looking at their own pleading. Right? They're saying in both cases they're Claimant Trust beneficiaries. They're fighting it, right? They know they have to get over that hurdle, because if they don't they can't pursue these claims.

If we can go to the next slide. You've got Highland's reply. Again, extensive discussion. It's the very first point in the very first paragraph, under the Trust Act, whether a party is a beneficiary: Here, a Claimant Trust beneficiary is determined by the plain language of the governing trust -- here, the Claimant Trust Agreement.

And, again, if you take a look at the footnote, our reply in Paragraphs 5 through 9 provides further argument as to why Plaintiffs are not beneficiaries of the Claimant Trust under the plan, the Claimant Trust Agreement, or under applicable law.

So I think it's pretty clear from the pleadings, it's pretty clear from the parties' positions, it's pretty clear from the Delaware law that Hunter Mountain relies upon to move Mr. Seery, Section 3327, that the causes of action in that

proposed complaint and the causes of action in Hunter Mountain's valuation complaint all depend on whether or not Hunter Mountain is a beneficiary under the plan, under the Claimant Trust Agreement, and under Delaware law. And all of those issues are going to be argued in just three weeks. All of those issues are going to be decided by the Court thereafter.

If we can go to, yeah, this next slide. So, yesterday, Hunter Mountain filed its response to the motion for a stay. And I just want to address some of the arguments that were made.

You know, the first argument that they made concerned the legal standard. They said, oh, Highland didn't use the proper legal standard. We disagree. This isn't a motion for injunctive relief. It's not a motion for a stay pending appeal. It's a motion asking the Court to prudently police its own docket.

And here's, here's the irony, Your Honor. Again, don't take my word for it. Take Ms. Deitsch-Perez and her clients' word for it. Because just last year, in connection with their motion for a stay pending the mediation, in a pleading that was filed on 4/20, they said that the Court has the discretion to issue a stay. They relied on *Clinton v. Jones*, exactly as Highland has done to seek a stay in this case. Okay? So the very standard and the case citation that they criticize today

is the very standard and case citation that they relied upon last April.

And here, it gets even better. Because Ms. Deitsch-Perez, on behalf of her client, Hunter Mountain, joined in Dugaboy and Mr. Dondero's motion for a stay. She and her client personally adopted the very standard that they're criticizing today. You can't make this stuff up.

The standard is the right standard. The Court certainly has the discretion to police its own docket.

The second point that they make is that, you know, they'll be really prejudiced without a stay. I say it's the exact opposite. Everybody will be prejudiced without a stay. The Court will be prejudiced. Highland will be prejudiced. Mr. Dondero. Hunter Mountain. All of us will be prejudiced because we will wind up litigating the exact same issue twice. We will expend further resources. And of greatest concern to us is that we might wind up with inconsistent results.

There's no question that -- I shouldn't say there's no question. In all likelihood, a decision will be had on Highland's motion to dismiss the valuation complaint in short order, since argument is scheduled just three weeks from now and the matter is fully briefed. And as Your Honor knows, that -- if we prevail and the Court finds, as it's indicated in prior rulings, that Hunter Mountain is not a Claimant Trust beneficiary and has no rights to this information, and they

appeal that, that'll get assigned to a particular district judge.

If the stay is denied and we proceed with the litigation of the Hunter Mountain complaint that seeks to remove Mr. Seery and we prevail on that one, that'll go to a different judge, in all likelihood, since there's more than, I think, two dozen judges in the District Court. They'll be on completely separate tracks. And you run the -- you run the real risk -- I mean, actually, it's not a real risk, from our point, given the substance -- but you definitely run the risk of inconsistent decisions.

So I know, and I'll close in a moment with some comments about the wisdom of this whole exercise, but I know -- I know how much Mr. Dondero, you know, wants to challenge Mr. Seery. But that doesn't -- that doesn't make it the efficient thing to do. It doesn't make it the fair thing to do, when we're litigating the exact same issues right now.

The third, the third notion, the third argument they make is really they attempt to rewrite their complaint. They try to suggest that the issues are not identical. They suggest that, you know, they've got theories of breach of fiduciary duty and good faith and fair dealing. You know what, Your Honor? You just have to go back to Paragraph 35 of the proposed complaint. That are the legal theories of their case. And to the extent that there's a notion of fiduciary

duty in there, it is predicated on Section 337. In fact, it's predicated -- if you'll give me just one moment -- it's predicated on Section 337 -- 3327(1): The officeholder has committed a breach of trust.

It's not a stand -- there is no standalone breach of fiduciary duty claim, nor could there be. Because as the Court is likely aware, there's a very specific provision in the trust agreement that's been affirmed by this Court, the District Court, the Fifth Circuit, that specifically disclaimed any fiduciary duty to anybody but a Claimant Trust beneficiary. So you couldn't have a standalone breach of fiduciary duty claim. It just doesn't exist.

So they can try if they want to characterize their claims however they want. They should be held to the pleading that they filed. It's the one that we'll be defending if the motion for stay is denied or if the Debtor sees the light of day.

But I do want to close with just some general observations about this. Right? They want to -- they suggest, you know, Highland wants to avoid the suit to remove Mr. Seery. No, we don't. What we want to do is the right thing here. There is no dispute that neither Mr. Dondero, Mr. Patrick, or Hunter Mountain serve on the Claimant Trust Board. They have no personal knowledge of anything concerning the Claimant Oversight Board. And Hunter Mountain's proposed complaint

cites no facts concerning the governance of the Claimant Oversight Board.

Instead, they seek to file another complaint, borne out of grievances, based on rank speculation, untenable inferences, and fabricated tales, lacking in common sense, frankly, that is woefully ignorant of the evidence that has already been admitted against it.

According to Hunter Mountain, the Claimant Trust Board is missing in action. They have abandoned their fiduciary duty. They have ceded control of the Claimant Trust to Mr. Seery to do what he wishes, even if it's acting against Stonehill and Farallon's own interests. Right? The complaint said, oh, Mr. Seery is arbitrarily withholding distributions so he can supposedly enrich himself by getting the same salary that this Court approved it'll be four years ago in July.

You can't make this stuff up, Your Honor. The whole premise doesn't make any sense at all. Why doesn't it make any sense at all? Because Mr. Dondero [sic] is accountable. He is fully accountable. He's accountable for the Claimant Oversight Board and he is accountable to every holder of an actual vested claimant beneficial interest in the trust. He owes them fiduciary duties. Hunter Mountain is not in that group. But Mr. Seery is most definitely accountable to the people who had allowed claims and the people today who are Claimant Trust beneficiaries.

And here's the thing. Hunter Mountain knows that the Claimant Oversight Board is not missing in action. Hunter Mountain knows that Mr. Seery is not acting unilaterally. How does it know that? Because we had a trial last June. And during that trial -- you can find this at Docket No. --

MS. DEITSCH-PEREZ: Your Honor? I -- Your Honor, I regret --

THE COURT: Stop.

MS. DEITSCH-PEREZ: -- interrupting.

THE COURT: Okay. What do you want to say, Ms. Deitsch-Perez?

MS. DEITSCH-PEREZ: I regret interrupting Mr. Morris, but this is not an evidentiary hearing and Mr. Morris is now testifying to things that are not in his pleadings. It's just not a fair way to proceed and the Court should not allow it. Thank you.

THE COURT: Okay.

MR. MORRIS: If I may, Your Honor, just to --

THE COURT: Go ahead.

MR. MORRIS: We received a response -- we received a response yesterday --

THE COURT: Uh-huh.

MR. MORRIS: -- that accused Highland of filing this motion for the stay in order to avoid having this heard. I'd like to -- all I'm doing is responding to the very argument

that they made yesterday.

THE COURT: Okay. You may respond. I overrule that objection.

MR. MORRIS: Thank you. So, and this is all really important, because there's evidence in the record at Exhibits 39, 40, and 41 that were admitted last June that show a very active, responsible Claimant Oversight Board fulfilling their fiduciary duties in negotiating an incentive compensation package for Mr. Seery. And they want to file a complaint that says the Claimant Oversight Board has abandoned its responsibilities, that they're missing in action.

And I want to be really careful here. I want to -- I want to really be transparent here, frankly. Stonehill and Farallon are two of the biggest claimholders. They both hold seats on the board. Does it make any sense at all that they would allow Mr. Seery to do all this at their own expense if they didn't think it was justified?

This is very important, Your Honor. No one who holds a valid, vested claim in the Claimant Trust, who is a Claimant Trust beneficiary, not one of them is complaining about Mr. Seery's management. Not one of them is complaining about his decisions concerning reserves. Not one of them is complaining about whether he has or hasn't made distributions or how much he's distributing. Not one of them has suggested to the Court that Mr. Seery is acting unlawfully. Nobody

holding a claim, a vested claim in the trust is complaining about anything. The only person complaining is Mr. Dondero, the same person who has been the sole source of litigation since the effective date.

He and his counsel should be careful for what they wish for. If Highland's motion for a stay is denied, Highland will respond to the motion and will serve another Rule 11 motion, just as it did when Mr. Dondero filed his ridiculous lawsuit claiming that my firm actually represented him personally back in 2019. Your Honor may have seen how this ended. It ended with the withdrawal of that motion. And this motion will head for the same result.

And I say all of this, Your Honor, because I want to be respectful. I want to make sure everybody's eyes are wide open. I want to ensure everybody understands that we're not seeking a stay here because we're afraid of anything. And I want everybody to know that if the stay is denied or this motion is ever heard, that the first thing that's going to happen is there will be a response and a Rule 11 motion, because it has no basis in law and it has no basis in fact. Highland seeks a stay not to avoid a hearing on the merits but because it makes no sense to keep litigating the same issue over and over again. We are not the same. The stay should be granted.

Thank you, Your Honor.

THE COURT: I have two follow-up questions. First, I think I heard you say February 14th is when the Court --

MR. MORRIS: Yes.

THE COURT: -- is set to have a hearing on the motion to dismiss the complaint seeking valuation. Correct?

MR. MORRIS: Yes.

THE COURT: And --

MR. MORRIS: Yes, Your Honor.

THE COURT: And your motion for a stay here is 'Please stay hearing this latest Hunter Mountain motion to file a complaint until not only this Court has ruled on the February 14th matter but until all levels of appeals have been exhausted on that.' Am I correct about your request?

MR. MORRIS: Yes, Your Honor.

THE COURT: Okay. And my second question: When Ms. Deitsch-Perez started objecting to your argument, I think you were alluding to a trial this Court had on Hunter Mountain's motion to sue Farallon and Stonehill as well as Mr. Seery with regard to what I'll call claims purchasing activity. Is that what you were alluding to?

MR. MORRIS: It was, Your Honor.

THE COURT: Okay.

MR. MORRIS: And I was alluding to it for the very singular purpose of pointing out that there was evidence admitted into the record against Hunter Mountain that shows

the Claimant Oversight Board fulfilling its fiduciary duties and doing exactly what this Court would expect the Claimant Oversight Board would do.

And I point that out only to contrast that evidence, which has already been admitted, with allegations in the proposed complaint that somehow the Claimant Oversight Board has ceded control to Mr. Seery and they're missing in action. It's just -- they know it's not true. They have the evidence.

THE COURT: Okay. And I said two follow-up questions, but I actually have this additional question. This was on my brain, this -- I couldn't remember what month -- the trial, where I ruled on whether Hunter Mountain should be granted leave to sue Farallon and Stonehill and Mr. Seery. This was on my brain because, you know, I've issued a lot of opinions during the Highland case, but I remembered writing extensively on whether Hunter Mountain had standing back in connection with that motion. And in fact, I'm going to hold it up.

MR. MORRIS: Yep.

THE COURT: I wrote a 105-page opinion -- which I don't know if anyone besides my law clerk and I read it, because it's not entertaining -- but I wrote a 105-page opinion denying Hunter Mountain -- different lawyer at the time, not Ms. Deitsch-Perez -- denying Hunter Mountain leave

to sue what I'll call the Claims Purchasers -- Farallon, Stonehill, as well as Mr. Seery. They wanted to sue Mr. Seery for breach of fiduciary duty. And I had multiple reasons for denial, but lack of standing was one of those reasons.

And I went and printed the opinion yesterday to refresh my memory, did I rule on this already? I thought I ruled on this already. And 23 pages of my 105-page opinion deals with the lack of standing of Hunter Mountain. Twenty-three pages, and 85 footnotes, by the way, within that 23 pages, so it's a very dense 23 pages. I went through constitutional standing and I went through prudential standing, and I said Hunter Mountain failed under both tests.

So this is a very longwinded question: What I'm hearing you argue, Mr. Morris, is I'm going to rule one way or another on February 14th, and then there will likely be appeals, so let's don't have to reinvent the wheel. But is there something about my opinion, my 105-page opinion, that isn't -- I mean, have I already addressed this, or is there something I missed in that opinion regarding standing? Has something changed? This was August 2023.

So maybe it's not fair to ask you, because this was more the Claims Purchasers' lawyers' fight, right, and Mr. Seery's, more than --

MR. MORRIS: Right.

THE COURT: -- the Reorganized Debtor? They were the ones who briefed it and argued it. So maybe it's not something that you bothered to read in detail. But I feel like I've ruled on this. And --

MR. MORRIS: So, --

MS. DEITSCH-PEREZ: Your Honor, may --

THE COURT: First Mr. Morris, and then I'll let you, Ms. Deitsch-Perez.

MR. MORRIS: So, a couple of observations, Your Honor.

THE COURT: Uh-huh.

MR. MORRIS: First of all, I read every word that Your Honor wrote, --

THE COURT: I'm sorry.

MR. MORRIS: -- as I do for all judicial.

THE COURT: Okay.

MR. MORRIS: Yeah, right?

Second of all, this issue was addressed by the Court. It was addressed pretty extensively. It was addressed further, frankly, on -- there was a subsequent post-trial motion by Hunter Mountain challenging that very finding --

THE COURT: The motion for reconsideration.

MR. MORRIS: -- and it challenged that very finding.

THE COURT: Uh-huh.

MR. MORRIS: That's right. It challenged that very

finding based on the same *pro forma* balance sheet that's at -- that we're saying kind of moots this whole exercise, at least the valuation proceeding.

But I'm sure Your Honor is not aware of it, but Hunter Mountain has appealed that decision, and they are challenging, you know, every word, I think, in your order. Every word in seven interlocutory orders that preceded it.

And unlike the resolution of the issue that will be had on February 14th, where Hunter Mountain's lack of beneficial ownership in the Claimant Trust is front and center, that issue is one of a very, very long laundry list of issues that are going to the District Court. And we have no reason to believe, we have no -- right? It's one of a million issues, and there's no certainty at all that the District Court is ever going to get to that issue. Right? We don't know how they're going to -- it's just starting now. I don't even think the opening brief -- I think the opening brief might have been filed a day or two ago. I'll start looking at that shortly.

But, so that's why we didn't think that was particularly relevant. We did note that in our footnote. I mean, we did point out that this -- that, you know, there is an appeal of the Hunter Mountain decision of last June. But given the girth of the appeal and the number of matters that are being adjudicated, you know, I wouldn't -- we're not here saying

you should stay the latest Hunter Mountain motion in order to get a result there, because it doesn't seem, you know, maybe they address it, maybe they don't. There's no way to say because it's just not -- it's just buried in there. It's buried in the laundry list.

Another thing I'll say is that you did, you did address it. You did address it pretty comprehensively. But we have new pleadings, you know, with arguably some new shades of argument. But the motion for leave to remove Mr. Seery is based solely on Section 3327 of the Delaware law, which turns right back to the terms of the Claimant Trust.

I'm sure that we're going to wind up at the same spot, whether it's through res judicata, collateral estoppel. I mean, I think we've made a number of these arguments already. But the point here is, why do we have to litigate these issues for a third time?

THE COURT: Okay. Thank you.

All right. Ms. Deitsch-Perez, I'll hear from you.

MS. DEITSCH-PEREZ: Okay. And Mr. Aigen is going to pull up a PowerPoint.

Just to -- and go to Slide 2. But just to jump ahead, the motion for leave is predicated on Delaware Code 3327, and it has in it a number of criteria for why a trustee should be removed. The issues are entirely different than in a valuation proceeding, and a Delaware court may well have a

different view of what a beneficiary is for the purpose of Delaware Code 3327 and the importance of making sure that Delaware trustees are not hostile or unable to act.

I'm also going to jump ahead and answer one of the -- what Mr. Morris added in his last slide, which was new, claiming that, oh, no, it's perfectly clear that the Oversight Board is on the job, so really you, as an equitable matter, you shouldn't worry about this, because Mr. Seery is supervised.

One, that's not in his pleadings. But more importantly, he's mixing apples and oranges, because the evidence in the former trial had to do with approving his compensation. The issue in the motion for leave to bring a suit to remove Mr. Seery is the fact that the Claimant Trust structurally does not -- it gives Mr. Seery complete discretion over the issue of moving money into the indemnity subtrust. It's an entirely different issue than the issue that was raised in the trial in June, and Mr. Morris should and probably does know that, and so has been -- well, his comment was misleading at best.

THE COURT: Okay. Different --

MS. DEITSCH-PEREZ: But let's take a look at --

THE COURT: Different causes of action, different theories, but still it boils down to whether Hunter Mountain is a Claimant Trust beneficiary, right?

MS. DEITSCH-PEREZ: Or whether it will be treated as a Claimant Trust beneficiary, --

THE COURT: Okay.

MS. DEITSCH-PEREZ: -- which is an additional basis.

THE COURT: I don't know what that distinction, where it comes from.

MS. DEITSCH-PEREZ: The distinction is that the parties cannot waive, in Delaware, the duty of good faith and fair dealing. And so if Mr. Seery is taking actions that prevent or attempt to prevent the Class 10 and 11 from becoming beneficiaries, then under Delaware law he would not be able to raise a lack of that status as a defense under 3327.

THE COURT: You're talking about the cause of action --

MS. DEITSCH-PEREZ: And so if --

THE COURT: Stop. You're talking about the cause of action and defenses thereto. We're talking about standing, which, as I mentioned, 23 pages, 85 footnotes, the last time Hunter Mountain wanted to sue Mr. Seery and Farallon and Stonehill. Some of it was constitutional standing, but a few pages was standing under Delaware law, and I said not a Claimant Trust beneficiary. Okay?

Regardless of what the causes of action and theories are, Hunter Mountain has to be a Claimant Trust beneficiary.

MS. DEITSCH-PEREZ: Or --

THE COURT: I've written on that extensively already,

and it sounds like I'm going to have to write on it one way or another extensively after February 14th.

Why should we not stay this new motion to file a new lawsuit, rather than reinvent the wheel again? Maybe it's going to be different --

MS. DEITSCH-PEREZ: Your Honor, --

THE COURT: -- with the valuation motion versus what I wrote in Summer 2023. I don't know. I haven't started looking at the pleadings in depth. But what is illogical --

MS. DEITSCH-PEREZ: Your Honor?

THE COURT: -- about this? I mean, this is, again, it's about judicial resources, efficiency, parties' resources. Why on earth would --

MS. DEITSCH-PEREZ: No, Your Honor, what it --

THE COURT: Go ahead.

MS. DEITSCH-PEREZ: The reason is there's a reason that the Supreme Court has a very high standard to stay other judicial proceedings. So not only must the applicant make a showing of likelihood of success, but the issue is whether they will be irreparably harmed by not having a stay and whether another party would be harmed by having a stay.

And here, because Highland seeks to stay this matter for years, if it turns out in the end that Your Honor's decision is overturned and Hunter Mountain is found to have standing, it will be too late to do anything about it if the cases are

not allowed to proceed in tandem.

Parties have a right to have their cases heard. The fact that there are similar issues means at some point there may be res judicata or collateral estoppel that deals with it. But there's not a rule that only one case can go forward.

Under Highland's theory, virtually Hunter Mountain could not bring any claims, anymore, ever. And that's not the law. Hunter Mountain is entitled to have this decided.

It may well be that Your Honor thinks there's no difference because of 3327 and is going to rule the same way. We don't think that that's correct. We think we will convince you that because Hunter Mountain is moving under 3327, there is a difference in standing. And in any event, that it should go to a Delaware court for that determination to be made. But if Your Honor stays this proceeding, --

THE COURT: And by the way, by the way, what does the Trust Agreement say about where things get litigated?

MS. DEITSCH-PEREZ: Delaware law says that you -- that --

THE COURT: I asked what the Trust Agreement said.

MS. DEITSCH-PEREZ: Delaware law --

THE COURT: I asked what the trust agreement said, because it would trump, right? A contractual agreement would --

MS. DEITSCH-PEREZ: No. That's the -- exactly. It

doesn't trump. Under Delaware law, and we cite a case for this, it's in the brief, a venue provision in an agreement does not override having matters of Delaware internal affairs decided in Delaware. So, no, the Trust Agreement does not automatically override Delaware law.

And so this goes back to the *Landis* -- the standard for stay under *Landis*. Who's harmed? Which harm is irreparable? Because Highland seeks to stay this matter for years. And Your Honor knows how long the Fifth -- the District Court and the Fifth Circuit have been taking to get to rulings. It could be one, two, two and a half, three, if it goes up to the Supreme Court. It could be years. And by that time, Mr. Seery will have continued doing the very things that the complaint seeks to challenge. That's not fair.

I understand there may be a tiny amount of additional work. Mr. Morris says this is all the same. Well, if it's all the same, then he's already done the work. And if Your Honor is convinced it's all the same, well, then you cut-and-paste the old opinion and put it down and the parties could go forward with their appeals.

The prior standing decision is up on appeal. The parties are entitled to go forward and have -- and have their judicial process. There is -- the amount of money Highland spends on these matters, such as bringing -- bringing the sanctions claim against Mr. Ellington and then suddenly dropping it in

the middle, it defies belief that their -- the real interest here isn't conserving resources. If in fact these are duplicative matters, then it will be easy enough to write them up.

And because Highland waited two weeks after the motion to leave was filed and only a week before its response was due, is it really credible that it hasn't already largely written its response? Was it so sure that this Court would do as it asked that it didn't bother to respond, that it set a hearing for a date after its response was due? That seems improbable, Your Honor. I certainly hope that they've gotten this largely written.

But in any event, we've given them -- they asked for and we've given them an additional week to write up its response to the motion to leave. I'd ask that the Court allow this to proceed, because Highland simply doesn't meet the standard, the very, very high standard for a motion to stay here.

THE COURT: All right.

MR. MORRIS: If I may, just a few comments, Your Honor?

THE COURT: Very briefly. Two minutes. Because I thought this was going to be a short matter, and we've been going --

MR. MORRIS: Yeah.

THE COURT: -- fifty minutes. Five-oh minutes. So,

go ahead.

MR. MORRIS: Yeah. Okay. Just, it's not the exact same thing. It has the exact same legal gating issue: Are they a beneficiary?

If the Court denies the stay -- and I assure the Court, I haven't written one word of this thing yet -- but if the Court denies the stay, we are going to be in major litigation. We reserve the right to take discovery. There will be an evidentiary hearing, of that I'm absolutely certain, when we get to that point, as appropriate under the gatekeeping order that's been adopted by this Court. So it will be expensive, it will be time-consuming, and it will ultimately yield absolutely nothing for the Movants here.

You know, we didn't set the date for today. Ms. Deitsch-Perez is exactly wrong about that. The Court set the date for today. We filed an emergency motion a week ahead of time. It's not like we waited until the last second. Right?

So I just, I take offense with all of that. I take offense to the reference to the Ellington sanctions motion. That got resolved because Mr. Ellington finally said he wasn't going to sue Mr. Seery. Had he done that when we asked him a hundred times before that, we never would have filed the motion. He refused to do it. That's why the motion was filed. And it was resolved -- not withdrawn, but resolved -- only after Mr. Ellington and his lawyer finally said they

weren't going to sue Mr. Seery.

So, you know, facts matter, Your Honor. Facts are very important to me. And I want to make sure that the factual record is a hundred percent accurate.

The fact of the matter is, at the end of the day, the Court should grant the stay. You know, if Hunter Mountain really wanted Mr. Dondero [sic] out, they should have included it in their complaint last summer and they shouldn't be allowed to come up with new claims that aren't even in the proposed complaint that's on file right now. There is no claim for breach of the duty of good faith and fair dealing. There isn't. And so they don't get to come here and argue against the stay based on a pleading that has yet to be filed.

The Court should grant the stay.

THE COURT: All right.

MS. DEITSCH-PEREZ: Your Honor?

THE COURT: No. I'm done. I've heard enough.

I am going to grant a stay. It's going to be slightly different from what is requested here. I'm going to grant a -- well, I'm going to grant a stay on this newest HMIT motion to sue Mr. Seery until at least the time I rule on the valuation motion, the motion to dismiss the valuation complaint. Okay? So it's argued February 14th. We know how this case works. I get voluminous submissions. I try to carefully go through them and make a careful ruling. And so

will I get a ruling out in April? That's just a wild guess, okay, but it's probably a reasonable guess.

So what I envision doing is having something like a status conference/scheduling conference shortly after I rule on the motion to dismiss the valuation complaint and decide, are we going to continue the stay to let maybe any appeals -- in fact, I'll probably set a status/scheduling conference shortly after the deadline for a notice of appeal. And we'll see, is there an appeal pending, what's going on big-picture, should I continue the stay? Okay? So I'm not saying it's going to be a two- or three-year stay, but I'm saying it's going to be at least an until-later-this-year stay, and we'll see where things stand in this case.

Now, let me give you a couple of reasons. I don't think the four-prong TRO standard test applies here: Irreparable harm; likelihood of success on the merits; balancing the parties' interests; the public interest. I don't feel the need to make that evaluation here because I do think this is just policing the Court's own docket, which of course any court has the discretion to police its own docket, in the interest of judicial economy and reducing expense. And so I am going to elaborate on that and why I'm exercising my discretion as such.

As I've alluded to a couple of times, August 25, 2023, Docket Entry No. 3903, this Court issued a 105-page opinion in

what I would call a very similar context, if not squarely down the middle of the fairway the same context. And the context, for the record, was Hunter Mountain, through a different attorney -- not Ms. Deitsch-Perez, a different attorney -- filed a motion for leave to sue Mr. Seery and Farallon and Stonehill, Claims Purchasers, for different causes of action. One of them was breach of fiduciary duty by Mr. Seery, I note, but there were different causes of action.

As I've noted here, and I'm saying this for the record in case there's an appeal of this order granting stay today, in the 105-page opinion that I issued denying Hunter Mountain leave to file the lawsuit against Mr. Seery and the Claims Purchasers, I did spend 23 pages, dense pages with 85 footnotes, explaining why I thought in that context Hunter Mountain has no constitutional standing as well as no prudential standing to sue Mr. Seery and the Claims Purchasers.

I note that the prior lawyer for Hunter Mountain, not Ms. Deitsch-Perez, gave very little oral argument or written argument on that. In fact, as I remember, he said, The person aggrieved standard is what applies and we're a person aggrieved.

And the Fifth Circuit as well as the U.S. Supreme Court seem to love the topic of standing. Okay? And I thought we needed a very thorough discussion of standing, okay, because I

thought, more likely than not, that's going to be the first issue -- of course, because it could be bear on subject matter jurisdiction -- that's going to be the first issue that a District Court, the Fifth Circuit, even the U.S. Supreme Court is going to focus on. So, 23 pages, 85 footnotes.

Now, there may be more or different things to say when we have the motion to dismiss on the valuation complaint. Okay?

(Echoing.)

THE COURT: Please turn off your speakers, whoever that is.

I will note that Delaware law, that would be the narrower question of prudential standing, right? And in my 23 pages, I actually spent more time on constitutional standing than prudential standing. And as Mr. Morris notes, the 105-page opinion is chock-full of other stuff besides standing. Okay? Colorability of the claim that Hunter Mountain wanted to bring and what is the standard the Court should apply under the gatekeeping provision. Okay? So, lots of other things.

Yes, it may be years before a higher court rules or different courts rule. And it may be slightly nuanced and different for the valuation thing. But I don't know why anyone would reasonably think I would go down this trail a third time for the same party. Okay? I went down it *ad nauseam* August 25, 2023. It sounds like I'm going to go down it *ad nauseam* again February 14th and thereafter, as I decide

what to do.

As far as abuse of discretion, I think my bosses -- the District Court, the Fifth Circuit, the Supreme Court -- would want to slap my hand if I didn't grant the stay. It's not just judicial economy to me, it's not just efficiency of the parties, but it's my bosses. It's the District Court, the Fifth Circuit. Why are you going to make us look at this yet again? Okay?

Maybe I'll have something different to say. Maybe I'll have something more to say in connection with the valuation motion. I don't know. And that's why I'm leaving open the possibility that we're going to have a status conference after I've ruled, after notices of appeal may have been filed, and we'll figure out, do I go forward with this motion for leave? I'll have a better idea, is there something new and different at this point?

But there is no way any responsible court would go forward a third time considering Hunter Mountain's standing under Delaware law, under constitutional law, as a Claimant Trust beneficiary. Okay? There's no way any reasonable court would do that, with it twice having been teed up. Okay?

So that is the ruling of the Court. We will put it on our tickler system to set a status conference on whether to continue a stay in place after I've ruled on the valuation motion to dismiss.

All right. Please upload an order, Mr. Morris, that reflects that.

MR. MORRIS: Okay. And just so there's no ambiguity, any further briefing on the motion for leave is also suspended? Is that right?

THE COURT: Correct. Yes. Correct. And, again, --

MR. MORRIS: All right.

THE COURT: -- I just want to say one more thing, actually, for the record. Not whining to anyone, but it's going to sound like whining. I checked yesterday, and I'm not even sure my numbers are perfectly accurate, it may be more than this, but I counted in the Highland case I have issued 13 -- well, there are 13 published opinions from this Court. And then if you go back to *Acis*, which was, one might say, a precursor to Highland, there were five more published opinions. And that's not even counting Reports and Recommendations to the District Court, of which there are many more, probably close to a dozen. And then I've heard -- I've heard; I've never checked it -- that there were something like 55 appeals. And that was I think about a year ago someone announced that in court.

So, again, I mean, this is not just about the parties, although I care about the parties and the lawyers. This is about judicial efficiency. This is overwhelming to the system, so to speak. Okay? And so, again, I think it would

be an abuse of discretion for sure if I didn't grant the motion to stay.

All right. I've said enough. And with that, we'll go on to Highland's motion for a bad faith finding and attorneys' fees against I call it HCRE, but I guess it's changed its name a long time ago to NexPoint Real Estate Partners, LLC. All right. Mr. Morris, are you presenting that?

MR. MORRIS: I am, Your Honor. Thank you very much. John Morris, Pachulski Stang, for Highland.

We're here on this hearing, Your Honor, to argue Highland's motion for a bad faith finding for an award of attorneys' fees in connection with the proof of claim and the prosecution of the proof of claim by HCRE.

The motion was originally filed at Docket 3851, and if Ms. Bates can put up the next deck, I'll walk the Court through this. This is pretty straightforward.

The starting point, the starting point here, Your Honor, as it ought to be, is HCRE's claim. And if we could just, yeah, go to this page. What I've put up on the screen here, or what Ms. Bates has put up on the screen, is a slide that shows two pieces of evidence, two documents that were admitted into evidence in this matter. The first is HCRE's proof of claim, and the second is HCRE's response to Highland's objection to that proof of claim. And these documents are critical (chiming) because it sets forth the entire basis for,

you know, for this litigation.

In the proof of claim, HCRE said, among other things, that it contends that all or a portion (chiming) of Highland's interest in an entity called SE Multifamily, quote, does not belong to the Debtor. Or may be property of (garbled).

So this is the proof of claim. They're saying all or a portion of Highland's interest in SE Multifamily isn't Highland's. Right? But Your Honor knows that that's just a statement without regard to how they get there. A proof of claim -- and this is really simple, and it's why this motion, I think, is pretty simple -- a proof of claim has to have some basis in the law. Somebody could have a breach of contract. Somebody could have a slip and fall. There could be a personal injury case against the Debtor. There could be a claim for breach of fiduciary duty or other tortious conduct. But there's got to be a legal theory on which a claimant is seeking to recover against the Debtor.

And the claimant here, HCRE, set forth those legal theories in their response. And that's the box that's below it. And it's based on the very agreement that's at issue, the Amended and Restated (garbled) LLC Agreement for SE Multifamily. It says, After reviewing the documentation, HCRE, quote, believes the organizational documents relating to SE Multifamily Holdings, LLC improperly allocates the ownership percentages -- so that's the issue -- of the members

thereto due to mutual mistake, lack of consideration, and failure of consideration. And these are the legal theories. They claim to reform, rescind, or modify the agreement.

Again, not argument, don't accept anything I say, just accept what HCRE says. These are their pleadings. They told the Court that they believed that Highland didn't have a right to its interest in SE Multifamily. They told the Court that they believed the document improperly allocated the percentages. They told the Court that Highland provided no consideration. They told the Court that they had claims for reformation, to rescind the agreement, or to modify the agreement. That's the whole basis for this litigation.

If we could go to the next slide. Because let's just look at some very simple terms of the agreement. This is unambiguous. Right? And this is an agreement that's drafted by Highland, by HCRE, all under Mr. Dondero's control. Everybody's rowing in the same direction. The testimony here was consistent, not only among Highland and HCRE witnesses but also, and very, very importantly, BH Equities. Right? We haven't spent a lot of time talking about BH Equities, but that evidence is in the record. BH Equities testified up, down, and sideways that the agreement was consistent with its intent, that it was fully aware that Highland had only put in $49,000, that Highland was getting a 46.0 percent interest. Right?

But in addition to BH Equities, Mr. Dondero, and we'll talk about this more in a moment, and Mr. McGraner testified to the same thing. And how could they not? Just look at these provisions. The first box is Schedule A to the agreement. It says, right, in contrast to the $291 million that was credited to HCRE Partners -- they actually didn't put in any of that; that's what the testimony showed -- Highland actually put in $49,000. But these are the percentages that they wrote.

And Your Honor will recall that in the 48 hours before the document was signed -- this is evidence in the record; I'm sorry I don't have citations to the specific exhibits -- but there's a back-and-forth in emails between Freddy Chang, I believe it was, and BH Equities about Schedule A and about the contributions.

And so none of this is an accident. And it's not just stated in Section -- ii Schedule A. It's set forth -- Highland's interest was set forth in Section 1.7, in Section 6.1A, in Section 9.3E, which is the liquidation provision. Right? This was the waterfall in the event of a liquidation. So these are the plain, unambiguous, uncontested terms of the agreement that everybody agreed to when the document was signed.

We can go to the next slide.

Despite that, Mr. Dondero swore under the penalty of

perjury that the proof of claim was true and correct. Remember, the proof of claim said that this really wasn't Highland's interest in SE Multifamily. I don't understand how he could do that, given the plain terms of the agreement. But his testimony was short and precise and unambiguous. It can be found at Pages 55 to 59. It's quoted there -- it's cited there in the footnote. If you just read those four pages, Your Honor.

And Your Honor cited to this pretty extensively on Pages 4 and 5 of the Court's decision in this matter. I've summarized just some of the Court's findings. It's not the Court's findings; it's Mr. Dondero's admissions. He didn't -- he didn't personally do any due diligence of any kind to make sure that Exhibit A was truthful and accurate before he authorized it to be filed. He filed it.

He didn't review or provide comments to the proof of claim or Exhibit A before it was filed. He didn't review the applicable agreements or any documents before signing the proof of claim. He had no idea whose -- where the genesis of the proof of claim was, who at HCRE worked with or who provided information to Bonds Ellis to allow Bonds Ellis to prepare the proof of claim. He had no information about what information was given to Bonds Ellis to formulate the proof of claim. He didn't know whether Bonds Ellis ever communicated with anybody the real estate group regarding the

proof of claim.

He also testified that he never specifically asked anybody in the real estate group if the proof of claim was truthful and accurate before he authorized it to be filed. He didn't check with any member of the real estate group to see whether or not they believed the proof of claim was truthful and accurate. He failed to -- he admitted he failed to do anything to make sure the proof of claim was truthful and accurate before he authorized his electronic signature to be affixed and have it filed on behalf of HCRE.

That's bad faith, Your Honor. You can't rely on some vague process or say 'I'm just relying on others,' because if that's the case, that's what I -- that's we said in our reply, that's the very important person defense, right? He's too busy, he just relies on others, he just signs stuff, and he's got no obligation to do anything. How do you sign something under the penalty of perjury in that milieu?

If the Court doesn't grant our motion here, it will be sending a signal that people can sign proofs of claim with no knowledge of the substance of the claim, with no knowledge of whether the claim is valid, with no knowledge as to whether or not the Court should take the time to adjudicate a disputed claim.

That's what will happen. Right? That will be the signal, that very important people are absolved of the

responsibility of doing basic due diligence before signing a proof of claim.

I think the signing of the proof of claim, the filing of the proof of claim, given what we know now, in particular what we know now, is bad faith.

And I know that HCRE in their opposition said, oh, well, you know, Mr. McGraner did stuff. I would urge the Court to look at Pages 109 to 112 of the transcript, because Mr. McGraner kind of distanced himself from the proof of claim. He said he didn't authorize it, he didn't approve the filing. He said he never gave any documents to Mr. Sauter. He never discussed the proof of claim with Mr. Dondero or anybody at Bonds Ellis. He didn't provide any comments to the proof of claim. He deferred to counsel. He didn't know if Mr. Sauter gave any documents to Bonds Ellis. He never gave the information to Bonds Ellis. He never discussed it with anybody but D.C. Sauter. Right?

So the two people, the only two people who are authorized to act on behalf of HCRE did absolutely nothing to make sure that there was at least a modicum of credibility, at least some basic level of diligence, at least some good-faith basis to assert that this interest that Highland has in SE Multifamily could be subject to challenge. Right? They did nothing.

If we can go to the next slide.

And then, as Your Honor will recall, they tried to withdraw the proof of claim. Right? That in and of itself we contend was an act of bad faith, and it was an act of bad faith for multiple reasons. There's no dispute that they tried to -- they filed their motion to withdraw the proof of claim immediately after taking Highland's depositions but immediately before I was about to depose their witness. It's a naked attempt to try to procure a patently unfair litigation advantage, particularly in light of the fact that HCRE was simultaneously trying to preserve its claims for another day.

If they had just -- and Your Honor made this point at the hearing, right? Just say unequivocally you're done with this. They couldn't do it. They tried to save it for another day.

And so the withdrawal of -- a motion to withdraw the proof of claim we're not saying is always bad faith. Look at what I say in the title of this slide. Under these circumstances, when you file it after taking discovery but before subjecting your people to discovery, and when you try to preserve your claims for another day, the Court properly denied that motion for leave to withdraw the proof of claim. And it stunk. And Your Honor I think rightly questioned whether or not this was, you know, a threat to the integrity of the bankruptcy system and the claims process, whether or

not this amounted to gamesmanship.

But it didn't end there. In closing argument, HCRE persisted with its attempt to try to preserve their claim. This is bad faith. They continued down the exact same path. They told the Court in closing argument at Pages 180 to 181 of the transcript, quote, They want you to make findings that we can't raise any of these other issues, decisions, et cetera, going forward. That's not proper on proofs of claim. Going forward. They wanted to preserve this issue for the future.

But this issue is their proof of claim. This issue is based on the legal theory set forth in Paragraph 5 of HCRE's response to the objection, the response that says they have claims for rescission, to rescind, to modify the agreement. Right? That's the whole legal theory of it. But they wanted Your Honor to simply say the proof of claim is gone but you all can go pursue another day the legal theories that underlied the entire process.

That's (garbled), Your Honor. That's what this is all about, the claims process. You have a claim. You have legal theories on which the claim is based. If your claim is denied or if the objection to the claim is sustained, done. They wouldn't have it. It's why the proof of -- it's why the motion withdraw was denied and why the Court should find that their attempt to preserve these claims for the future is bad

faith.

And the interesting thing, Your Honor, is this is (chiming) one of the very few rulings in the case that Mr. Dondero didn't appeal. I think even he acknowledges, like, like, this is just not -- that he didn't -- he didn't want this seeing the light of day in the District Court.

If we can go to the next slide. And this really amplifies the bad faith in filing the proof of claim. It's the testimony about the nature of the claim. And again, I -- we talk about this exhaustively in our papers, and so I haven't cited to everything, but this is just some of the nuggets from, you know, the testimony that's out there. Right?

Consideration. Mr. McGraner testified that Highland bankrolled HCRE's business. Your Honor can take judicial notice that Highland loaned millions of dollars to HCRE. Right? Those are part of the Notes Litigation that HCRE is now strenuously trying to avoid repaying in its appeal. Right? They're appealing that to the Fifth Circuit and they're trying -- right? We bankrolled the business, we shouldn't have our interest, and they don't want to pay the money back. It really -- this is *chutzpa*, where I'm from. Right?

Going on to the question of consideration -- because, again, this is in Paragraph 5 of the pleading -- there's the

admission that HCRE didn't have the financial wherewithal to close on the Key Bank loan by itself and it needed Highland to provide capital -- flexibility by co-signing on the loan. Right? Couldn't have done the deal without Highland, but they want to take the interest away from us. Bankrolled the whole project, but they want to take the deal away from us.

They include Highland in order to provide tax benefits, but they want to take the deal away from us. Both Mr. Dondero and Mr. McGraner were very clear that tax benefits was one of the reasons Highland was in this. And if Your Honor will recall, in the closing argument, I pointed Your Honor to just one of the tax returns that showed something like $30-plus million in income was allocated to Highland in order to shelter it from taxes. Right? I don't know that there's anything illegal about it. I take no opinion about it. Right? I have no view on it. But *The Little Engine That Could* that put in the $49,000 was suddenly stuck with $31 million of income. I'll wait to hear an explanation as to why Highland was included in the deal and whether taxes were a part of it.

Mr. McGraner also testified just --

(Audio cuts out.)

THE COURT: Okay. What happened?

MR. MORRIS: (begins speaking)

THE COURT: Okay. Mr. Morris, we lost your sound

for about 20 seconds, so if you could kind of repeat the last 20 seconds.

MR. MORRIS: Sure. So I'll try and summarize. On the consideration piece, they know there was consideration. They pursued a claim based on lack of consideration, but in the first point there's an admission about Highland having both bankrolled the whole operation, and in the second point there's the admission from Mr. McGraner that the deal would never have gotten done without Highland's financial wherewithal. And Mr. Dondero and Mr. McGraner admitted that there were tax benefits. And Your Honor saw those tax benefits, right? In my closing argument, I pointed to just one of the tax returns showing that Highland -- I called it *The Little Engine That Could*, who put in the $49,000, somehow got -- somehow got $31 million of income assigned to it. Right?

This was not an accident. Highland was there for tax reasons. Again, I take no view as to the propriety of that at this time, but the notion that there was no consideration is just -- it was ridiculous then, and their admissions show that it was ridiculous.

The next bullet point shows Mr. McGraner's admissions that on March 15, 2019, the deadline was approaching to amend the original LLC agreement to admit BH Equities and to have it retroactive to the prior August. He admitted that he

reviewed the draft Schedule A, which is what we looked at, right? It showed $49,000 and a 46.06 percent interest for Highland. He saw that it unambiguously showed Highland making a $49,000 contribution, getting the 46.06 percent interest. He believed Schedule A reflected his understanding of the terms between Highland and HCRE, and he knew of no obligation that Highland had to make any future capital contributions. I've cited to all of the testimony very specifically.

Mr. McGraner admitted that the allocation of the interest in Schedule A was consistent with the parties' negotiation of the waterfall and other provisions in the amended LLC agreement, that HCRE understood it accurately reflected the parties' intent.

How do you (garbled) proof of claim saying you have to reform, rescind, modify the agreement, when all of this is in your head? How do you do that in good faith? They both admitted that Schedule A reflected the parties' intent at the time it was signed.

It's the last bullet point that's really the head scratcher. What happened is Mr. Dondero, who also caused Highland to file for bankruptcy, didn't like the consequences of his decision. Nothing happened here, as I said in my closing argument, that doesn't happen in every bankruptcy case. The assets of the Debtor are marshaled for distribution

to the creditors. Highland's interest in HCRE is an asset of the estate. HCRE challenged Highland's title to that asset. That's what this litigation is about. And the only reason they challenged the title is because they didn't like the consequences of Mr. Dondero's decision to file Highland for bankruptcy.

That's not good faith. If that were good faith, every equity owner of every business would be able to claw back everything they'd given to a company, every loan that they'd given to a company, every -- like, they can't do that. That's not what the law -- there's no basis for that theory.

Finally, just deal with the attorneys' fees issues quickly. You know, the challenges to our fees are both petty and baseless, frankly. They said we should have avoided discovery. I don't know how you say that. We shouldn't have taken depositions. They took depositions, and we shouldn't have done that? We should have gone to trial where they had discovery and we didn't? That doesn't make a lot of sense to me, and I can't imagine it would make sense to any objective participant.

They claim our legal fees are *per se* excessive. The total legal fee is less than five percent of the value of Highland's interest in SE Multifamily, not according to us but according to Mr. Dondero's family trust, Dugaboy. They told this Court in -- on June 30, 2022, I think, in the very first motion for

information, that Highland's interest in SE Multifamily was $20 million. So we spent less than five percent of the value of that to get good, clean title. I don't think that's excessive by any means, particularly with the amount of hoops we were required to jump through.

Unidentified timekeepers. They say three people were not identified. It was a *de minimis* amount of money. We've addressed that in the brief.

Travel time. You know, again, an even more *de minimis* -- I think that's right -- a more *de minimis* amount of money, less than $10,000 for me and Ms. Winograd to go to Dallas. We billed out at half-time. They admit it. And ironically, you know, our compensation for nonworking travel time was part of the agreement that was authorized when Mr. Dondero was still the head of Highland. I don't know how you criticize that today when it's part of Mr. Dondero's own agreement.

Finally, they take issue with Mr. Adler's relatively modest invoice. I think he charged $700 an hour. He (garbled) 30 hours or something in August 2022 as we were preparing for depositions. Mr. Dondero and Mr. McGraner have admitted that tax issues were a driving force in including Highland in this. And if you look at the Amended and Restated LLC Agreement in the section that comes after Section A, there is a multipage tax analysis that I can't possibly get my head around. I'm not a tax lawyer. And we needed some help to

understand kind of what the tax implications were.

I think, under the circumstances, the need for the tax services was completely warranted, and the amounts here are relatively modest to the whole. You know, it's 30-some-odd hours in connection with depositions at a $700 hourly rate, when my firm doesn't provide tax advice.

So, you know, Your Honor, I think I'm done. I think there's multiple reasons for finding the bad faith here. This proof of claim should never have been filed. You know, if they wanted to withdraw it, they shouldn't have taken our depositions and they should have given us a clean bill of health without trying to reserve some right to bring future challenges to our title to the asset.

And once we got to the trial, it became clear that there's absolutely no basis for the claim, that through the admissions there is no question that the document reflected the intent of parties. Highland provided more than adequate consideration for its interest. It continues to hold its interest today. It continues, you know, to receive its allocation of income. And there's a reason for all of that.

And for those reasons, Your Honor, I think the time has come to start holding people to account here. You know, we did it, as I mentioned, with the Rule 11 on the motion for leave to sue us. We were able to get rid of that. I think the Court really needs to try to bring some discipline to this

process instead of allowing people -- instead of allowing Mr. Dondero and those working at his direction to just file things irresponsibly, without basis of fact, you know, just -- just because.

It's not a thing. You know, that's not what this Court ought to be doing. It's not what I ought to be doing. It's not what I want to be doing, I'll tell you that right now. And so I think there's a real need for a bad faith finding in this particular case. I think there's a real need for there to be consequences of putting the Court and the Reorganized Debtor through this process. Because this -- if Mr. Dondero had only searched his own memory, if he had only asked Mr. McGraner, hey, did the agreement actually reflect the intent of the parties, how could this ever have gotten filed? That's all he had to do, was ask himself the question. All he had to do was ask Mr. McGraner. Right? We wouldn't be here, Your Honor.

And for those reasons, we ask the Court to find that this whole filing and prosecution of this claim was in bad faith (chiming), that we should get an award of attorneys' fees.

THE COURT: All right.

MR. MORRIS: Thank you.

THE COURT: A couple of follow-up questions. Thank you. I think you just answered this question with your closing comment, that you think there was bad faith in both

the filing and the prosecution.

So, as I understand it, the filing of the proof of claim itself you say is bad faith because you say it was a baseless proof of claim, and it was signed without any due diligence on the part of the person who signed it, Mr. Dondero? And then we obviously had months of prosecution, if you will, litigation, after Highland's objection. And then the timing of the withdrawal I would say is kind of a third thing I hear being argued, correct?

MR. MORRIS: Yeah. I would just summarize it this way. The filing of the proof of claim itself was bad faith for all of the reasons that I've stated. The motion to withdraw under these circumstances was also bad faith because they did it after taking discovery and tried to protect their own witnesses from discovery while trying to preserve the claims. They wanted to assert them at another day. Counsel said it in his closing. You know, going forward. That's what he said. And then the third thing is the substance. There is no basis to reform the contract. There's, like, there's no factual basis for the claim itself.

THE COURT: Okay. And my last question -- famous last words, my last question -- if I were to award attorneys' fees here, I'm looking at sort of a summary page for Pachulski's fees. I'm looking at Docket 2852-6. I think this was an Exhibit F to that motion.

So, I always use timelines in my life. While HCRE filed its proof of claim on April 8, 2020, and then Highland objected to it in an omnibus pleading on July 30, 2020, Pachulski has started the clock running, so to speak, August 21st. So, to the extent there were fees incurred, looking at this, after the proof of claim was filed, 2020, thereafter I note HCRE filed a response to the objection October 19, 2020, then the move to disqualify Wick Phillips, dah, dah, dah, dah, dah, April 14, 2021.

I had understood you weren't billing time for the disqualification motion, but in fact it looks like you're only asking for time starting August 2021, correct?

MR. MORRIS: That's right. My intent -- and I think we started the clock then because that's -- you know, we may have filed an omnibus objection, I think we did file, and we're not including time for that. So that's when -- that's when the fees started to become incurred.

THE COURT: Okay.

MR. MORRIS: And if I made a mistake anywhere, I apologize, Your Honor, but the intent was certainly to include, consistent with Your Honor's prior order, every minute of time that was expended in connection with the disqualification motion.

THE COURT: Okay. I just --

MR. MORRIS: Okay. I'm reminded, actually, I'm

actually reminded that August 7th was also the effective date, so that's probably why we used that date.

THE COURT: Okay. Understood. Understood.

All right. I think those are all my questions, so I will hear from HCRE, or NexPoint Real Estate, I think they may prefer to be called. Who is making the argument there?

THE CLERK: He's on mute, Judge.

THE COURT: Okay. You're on mute. Is it Mr. Gameros?

THE CLERK: Yes.

THE COURT: Okay. Mr. Gameros, you're on mute.

MR. GAMEROS: No, I'm not. There we go.

THE COURT: Okay. Here we go.

MR. GAMEROS: Sorry. Good morning, Your Honor.

THE COURT: Good morning.

MR. GAMEROS: Bill Gameros for NexPoint Real Estate. I'm going to hopefully show a PowerPoint. Let's see. I just want to make sure that this is showing. Can everyone see it?

THE COURT: Not yet.

MR. GAMEROS: All right. Nope. How about that? No.

THE COURT: We're not here on our court equipment. Do others -- Mr. Morris, do you see it?

MR. MORRIS: I do not, Your Honor.

THE COURT: Okay.

MR. GAMEROS: Let me try it this way. I'm sorry.

THE COURT: We do not -- oops, now something is starting to happen. Or was. For a --

MR. GAMEROS: How about now?

THE COURT: Here we go. Oh.

MR. GAMEROS: Is it showing now?

THE COURT: Oh, here we go. We have it now, yes.

MR. GAMEROS: All right. I'm sorry about that, Your Honor.

THE COURT: Okay.

MR. GAMEROS: Hate to waste the Court's time.

THE COURT: No problem.

MR. GAMEROS: All right. We're here in response to HCMLP's motion for a bad faith finding and attorneys' fees. First, what are they asking for? Over $800,000 in fees to defend a singular proof of claim that had for it as actions six short depositions, not lengthy, limited written discovery, and a single-day evidentiary hearing.

NREP only has one matter before this Court, the proof of claim. It has discrete ownership. You've already seen that from Mr. Morris's slides. BH Equities. Mr. McGraner actually has a remote interest in it. There are a bunch of folks that have interests in it, so it's a discrete ownership structure.

And it's not a vexatious litigant. It didn't appeal when the Court denied and overruled the proof of claim. It hasn't done anything else.

It didn't file its claim in bad faith. We're going to go through that with some detail. It's never conducted itself in bad faith in front of this Court in any step in the process.

But most importantly today, Your Honor, two things. First, there's not a single case cited in Mr. Morris's slide deck, and it's -- there's none cited for a very simple reason. There is no authority regarding fees for an alleged bad faith proof of claim under 105. We couldn't find it. We looked for it. It hasn't happened. There's no authority for it. He hasn't showed you any, and the authorities that he had showed, there's none in his slide, but we're going to go through them in detail, Your Honor, there's no basis to award attorneys' fees.

I think intellectually the Court should look at this as a two-step process. First, is the proof of claim and its prosecution done in bad faith? I think the answer is going to be a resounding no. But if the Court thinks there is a bad faith -- is bad faith activity, the second step is what fees are possibly awardable.

First, it's styled as a bad faith finding. You look at when the proof of claim was filed and the process that got there. Your Honor, in our response brief, we provide detailed citations to the trial transcript that says a variety of things, including Bonds Ellis never talked to Mr. Dondero, but, contrary to what Mr. Morris told you this morning, Mr.

McGraner did. So there are folks at NREP that were working with Bonds Ellis when they filed the proof of claim.

But he did so, candidly, with one of the best bankruptcy -- that NREP filed its proof of claim with one of the best bankruptcy shops in the Metroplex is telling. They wanted to do it, and they wanted to do it right, and they hired very competent counsel to do that.

These two cases I think are important. It's not just if there's a mistake in the proof of claim, you don't sanction them. And just beating the proof of claim. Is not enough if they lose. Undenied authority. And I think it's telling here.

This Court has seen a lot of litigation on proofs of claim. Objections to all of them, with a host of settlements. That just didn't happen here, but that doesn't make those prior proofs of claim in bad faith, even though they would like you to think that that's true. It's not true and it's not fair. It's also not right.

How did they do it? First, they hired Bonds Ellis. And part of that process was Bonds Ellis did the drafting. Mr. Dondero testified as to how he signed it and the basis on which he signed it. Because despite all the derision from HCMLP about the process and not believing in it, the reality is the process exists, it's what happened, it's what was done, and they coordinated with counsel in its filing.

Just because it's not enforceable, for whatever reason, doesn't make it sanctionable.

What were they trying to accomplish? They did try to reallocate. They wanted a reallocation because HCMLP only put in a tiny amount of capital and it wasn't providing any services.

I don't think it's in dispute that the bankruptcy case has been adversarial. I sat through the prior hour this morning. Mr. Morris made reference to it during this particular motion as well. But it also made the amendment impractical. Not in dispute.

Importantly, Your Honor, in your opinion disallowing the claim and sustaining HCMLP's objection, you didn't find that it was done in bad faith, and Mr. Morris asked you to do it several times at trial. Quite frankly, Your Honor, this ground has been plowed. We don't need to plow it again. The chance for the bad faith finding was last year. He didn't get what he wanted, so now he's taking a second swing at this particular piñata, and it's not right.

But look what happened in the reply brief. These are what are items of bad faith. Bad motive, animus, ill will. That's *Yorkshire*. That's the surreptitious bankruptcy filing. *Brown*. First, not bad faith. What happens in *Brown*, of course, it's a home case, a loan servicer looking to foreclose. And the sanction itself was tiny. Not $800,000.

It was a small sanction. And this Court, you, Your Honor, specifically looked at that case in the past.

Page (phonetic) (garbled). Intentional, deceitful, bad faith, theft. That is not what happened here. Not even close.

Lopez. They don't discuss *Lopez* again. They never mention it. Why? Because *Lopez* has the 'but for' test in it for fees. But this case, unlike *Lopez*, which had multiple motions to compel, had none.

Your Honor, this case had one hearing before the evidentiary trial. A scheduling conference. I'm sorry, it had two. The motion to withdraw, which we believe should have been granted. Your Honor didn't grant it. I understand the Court's ruling. We didn't appeal it. I'm not appealing it right now. But we did try to withdraw the proof of claim. But *Lopez* finds bad faith under 105 for discovery abuse. It doesn't even apply to these facts.

So, looking at the Court's inherent powers, it's not a standard fee application under the Code, that matters, but most importantly, they've got to provide a causal link for 'but for.' *Lopez* tells you that. *Hagar* in the Supreme Court tells you that.

What happens instead at the motion to withdraw, Mr. Morris tells you he wants to win on the merits. The difference in a withdrawn proof of claim and a disallowed proof of claim is

zero. There would have been no difference at all. Nothing has changed. Except for the 'but for' causation analysis on fees. They spent over $375,000 to get there.

I mentioned it in the reply brief. It's on the slide. The *Johnson* factors. Completely absent from their reply brief. They genuflect at it in the initial motion. But me telling you the *Johnson* factors, Your Honor, is like telling you the standard for summary judgment. You don't want to hear it.

However, eight out of twelve *Johnson* factors do not favor this particular fee app. Time and labor required for everything after the withdrawal. Not required.

Novelty and difficulty. It's a proof of claim. It's neither novel nor difficult.

Preclusion of other employment. There's no evidence of that.

The customary fee for work in the community. Candidly, it's against it. Eight hundred grand for fighting a proof of claim is pretty stout.

Time limitations. There were none.

The amount involved and the results obtained. Candidly, Your Honor, almost twice the fees for the same outcome.

Undesirability of the case. No evidence of that.

And awards in similar cases. Here, Your Honor, the absence of 105 cases for proofs of claim, there are no

comparable awards. And I think that's important.

What is the standard you should be using in assessing whether to use your 105 powers? Clear and convincing, Your Honor. Your Honor needs to have a firm belief or conviction that this was done with malice, ill intent, bad faith, et cetera. That's not here.

Why do you know that? Mr. McGraner had his deposition taken. He showed up at trial. Mr. Dondero had his deposition. Showed up at trial. At no instance were they running away from testifying. Quite the contrary. They came to court, they answered Mr. Morris's questions, they answered my questions. If Your Honor had questions, they would have answered them, too.

They took this very seriously. This wasn't some slapdash proof of claim. They were really trying to get something accomplished.

Fees. Your Honor, this is the fee table. I turned it sideways. It's in our response to the motion. I think it's absolutely shocking. The number of hours that were expended and the fees that were expended, the cumulative total -- this is just for selected timekeepers, not everybody -- but I'd point Your Honor to the very bottom, post-motion to withdraw. If they had just said yes, we'll take the win, they wouldn't have had to spend $350,000 for these selected timekeepers, over $375,000 with the rest. That is a clear failure of the

'but for' test in *Lopez* and the cases that it cites.

So, our conclusion, Your Honor. First, the reply doesn't change anything. They don't give you any new authority or any basis to award sanctions or bad faith analysis, if for no other reason than the record is already closed. You've seen this all before. And when asked repeatedly for a bad faith finding, you didn't give it to them. No bad faith in the filing of the claim.

The requested fees are reasonable and necessary. Your Honor, so they flunk the *Johnson* factors. They fail the 'but for' test.

Respectfully, Your Honor, their motion should be denied. If it's not going to be denied, we would like an opportunity to file supplemental briefing addressing the new authorities in the reply brief. Your Honor, I don't think we need to go there. I think you should deny it outright.

Subject to questions from the Court, that concludes my presentation.

THE COURT: All right. A few follow-up questions. In arguing about the size of the potential fees if I get to bad faith, you've had a little bit of a theme of: It was just a proof of claim, it was not difficult, and this was not some "slapdash proof of claim." So you emphasize not reasonable fees for addressing the proof of claim, and you also stress can't find any authority where attorneys' fees have been

allowed for having to defend against a proof of claim.

Here's what I want you to address. Here is what is going through my brain here. This wasn't a proof of claim where, oops, they actually paid our invoice, we're not really owed this amount, sorry, mistake. It's not a situation where you filed a $105,000 proof of claim and in fact only $97,000 was due and owing. And I just use those as very common examples we see in the Bankruptcy Court.

This was, while not a liquidated amount, while not an amount used in the proof of claim, it was basically a multimillion-dollar issue, right? And I don't know if it was a tens-of-millions-of-dollar issue or more than that, but it was a multimillion-dollar issue, right?

MR. GAMEROS: Yes, Your Honor, I understand that.

THE COURT: I mean, that's stating the obvious, right, because you're saying that Highland wasn't really entitled to a 46-percent-whatever ownership interest in Multifamily, it would be something much, much lower than that. Okay. So I think we had in the record Mr. Dondero says the equity interest is worth $20 million. And we know there was a Key Bank loan of up to $500 million-plus. I mean, the proof of claim seeking reformation was ultimately a many-multimillion-dollar claim, if the theory prevailed, right?

MR. GAMEROS: That's right, Your Honor. It could have been.

THE COURT: Okay. So, again, assuming I get to the bad faith finding, I mean, shouldn't I look at these fees in that context? I mean, it wasn't just a proof of claim; it was a potentially multimillion dollar hit to the estate, a bundle of value that wouldn't be there for the creditors. Is that fair, or no?

MR. GAMEROS: Your Honor, I think it's blending some issues in a way that I don't think are appropriate. I think for analyzing whether or not it's a bad faith filing or bad faith prosecution, you have to look to see ill motive, animus, et cetera, and that's not present here. Instead, --

THE COURT: Yes. I'm just saying --

MR. GAMEROS: -- you've got Mr. Dondero --

THE COURT: I'm just saying assuming I get there. And I totally recognize I've got to look at the overall facts of the filing of the claim, of the prosecution, of the withdrawal. I have to look at all that to see do we have bad faith.

But assuming I get there, you've challenged the reasonableness. And it wasn't just some proof of claim. It's a complicated proof of claim, right? It's potentially a multi --

MR. GAMEROS: Your Honor, I understand that.

THE COURT: Okay, go ahead.

MR. GAMEROS: I'm sorry for interrupting, Your Honor.

Go ahead.

THE COURT: Oh, I'm just saying it was pretty darn complicated, the proof of claim. It wasn't quantified. And even though it wasn't quantified, it was clearly a multimillion dollar claim being asserted at the end of the day, the ownership interest that HCRE was trying to challenge.

MR. GAMEROS: That's the position, Your Honor. And they looked at that particular position at the time of filing and said the capital wasn't right, and their response to the objection lays out the different legal arguments. That's exactly what happened.

THE COURT: Okay. My next question is I think you're arguing that because I did not specifically find bad faith in my opinion -- I'm in the mood to talk about lengthy opinions today; it was a 39-page opinion, with 127 footnotes, disallowing the proof of claim -- because I did not make a finding of bad faith there, I'm somehow precluded at this juncture. Am I hearing your argument correctly?

MR. GAMEROS: Your Honor, I didn't say precluded. I just said we don't need to plow that ground again.

THE COURT: Well, --

MR. GAMEROS: I think you left the door open for this particular motion.

THE COURT: Uh-huh.

MR. GAMEROS: And that's what you did in your

opinion. And I just think you were asked repeatedly to make a bad faith finding, and at the time when you ruled disallowing the proof of claim, you didn't do it. You didn't say bad faith.

THE COURT: Okay.

MR. GAMEROS: That's all.

THE COURT: Okay. And then I guess my last question is you said if they, Highland, if they had just said yes, take the win, we wouldn't have all these fees. But I really want to drill down. Would that really have been a win, or would it have been a temporary stand-down? I mean, I begged you all to wrap it all up with language in connection with the withdrawal of the proof of claim. You know, agreed you weren't going to raise this issue again. And your client wouldn't let you do that.

So is it really fair to say, if they had just said yes and taken the win, we wouldn't have had these fees, when it appeared very likely that it was going to be new litigation in a different forum? What is your response to that?

MR. GAMEROS: Your Honor, we're looking back at what happened with hindsight, and I think if we're going to see the maybe-bad we should also see the maybe-good.

What's happened, in hindsight? Zero. Nothing. NREP hasn't done anything. Its proof of claim was disallowed last year, and nothing else has happened.

I think what really happened at the hearing and the motion to withdraw and what we were hearing from Highland, candidly, is they wanted to put a pin in that's our number forever, can't talk about it, don't want to do that. And the agreement allows for amendment.

And that was what we were hung up on. What if we need to amend this thing in the future? We don't want to be stuck with a 46 percent number that we can never get away from. And that was the problem. That was it.

THE COURT: All right. Thank you, Mr. Gameros.

Any rebuttal, Mr. Morris?

MR. GAMEROS: Thank you, Your Honor.

MR. MORRIS: I do. I'll be brief. It's exactly a $20 million issue. It's not millions of dollars. It's exactly $20 million. As I like to say, don't take my word for it, take Mr. Dondero's word for it.

In Dugaboy's pleading that was filed under seal on June 30, 2022, he included his analysis of the value of Highland's assets. I don't want to go through them all, but I'm happy to report that he valued Highland's interest in SE Multifamily in that document that he represented to the Court was worth $20 million. So, from our perspective, we were fighting to get good, clean title to a $20 million asset. That's Point #1.

Point #2, of course, the Court has inherent power under 105 to enter orders of this type. I -- honestly, you know,

the cases are what the cases are. So there's never been a case exactly like this. You know what? I've been doing this for a while. I've never seen a proof of claim as baseless as this one.

So the whole concept of the 'but for' thing, I'll talk about in a minute, but there's no question that the Court has the power to enter orders of this type, and I don't even think counsel disputes that.

I do want to address the notion that we asked the Court repeatedly for a bad faith finding and the Court declined to do it. That's because this Court does its job and does its job well. And I understood Your Honor when you denied it without prejudice. It was telling. And apparently counsel got the signal, too, that you want to make sure that, before you enter an order of that type, that HCRE has due process. And that's why it's denied without prejudice. Because I was raising the issue for the first time at the podium, and you reluctantly, properly, prudently decided that probably isn't fair. And so you wanted to make sure that this thing was fully briefed. And it's been briefed, and that's why we're here today, not because you made a decision back in November of 2022 that there was no bad faith, but simply that you wanted to make sure that HCRE had a full opportunity to address the charge.

Getting to the 'but for' issue. But for the filing of,

frankly, a fraudulent, baseless proof of claim, Highland would have more than $800,000 in its pocket today.

But for the filing of a motion to withdraw that sought an unfair litigation advantage while trying to preserve for the future more challenges to Highland's clear and good title to this asset, Highland would have more money in its pocket.

But for the conduct of a trial, the taking of depositions, and all of the rest of it, we wouldn't be here today. Highland would have more than $800,000 in its pocket.

The notion that we should have taken the win, frankly, is offensive. That we should have just allowed them. He wants the benefit of the $300,000 on the theory that we should have allowed him to take our depositions, not take their depositions, and fight another day. I just -- I'm speechless. I'll just leave it at that. The argument speaks for itself.

No motive? They had no motive here? They don't have ill will? They showed up at the hearing? Goodness, I hope that doesn't absolve them from filing a proof of claim with no basis in fact or law. Of course they showed up at the hearing. They would have been in contempt of court at that point had they not.

The only reason, apparently, they filed the proof of claim is because they didn't like the unintended consequences of the Highland bankruptcy that Mr. Dondero filed. In what world, in what courtroom, under what law, is that a good faith basis for

pursuing a proof of claim, because you don't like the unintended consequences of your own decisions? That's bad motive right there. To try to deny a debtor a $20 million asset because you didn't like the way it turned out.

Mr. Dondero, Mr. McGraner, HCRE were perfectly happy for Highland to have a 46.06 percent interest in exchange for a $49,000 contribution right up until the day they filed that proof of claim. Maybe until the day they filed for bankruptcy. I didn't ask that particular question.

It's not good faith to come to this Court, to file a proof of claim, to go through all of this, because you don't like the consequences of your own decision.

The Court really needs to ask itself whether or not it wants to sanction this. Whether it wants to allow litigants, claimants, to file proofs of claim with no due diligence, no basis in fact, no basis in law. I don't think the Court should do that. I think the bad faith finding is easy, frankly.

And with respect to our legal fees, they are what they are. The notion that this was overstaffed is kind of crazy. It was me, Ms. Winograd, and Ms. Cantey. We billed, the three of us, more than 82 percent of the total fee. And if you take out Mr. Adler, it's probably close to if not in excess of 90 percent of it. It is what it is.

My rates are higher than some of the attorneys Mr. Dondero

hires. It is what it is. He knew about that when he hired us. They're market rates. Clients from east coast to west coast, from north to south, pay those rates every day, with bankruptcy court approval. I'm sorry if he doesn't like to pay those kinds of rates at this point in time, but they are what they are and my client is entitled to get reimbursed for this bad faith conduct.

I have nothing further, Your Honor.

THE COURT: Okay. Thank you.

Well, no surprise, we'll take this under advisement and issue a written opinion and order.

No surprise, I'm going to say like I always say, we'll get to this as soon as our calendar will allow, but I'm not going to promise a date on that.

Obviously, I'm going to be refreshing my memory, going back and studying the memorandum opinion and order I issued sustaining Highland's objection to this proof of claim and going back and looking at the transcript from that hearing that was submitted.

And I say this a lot, that timelines matter a heck of a lot to me and they reveal a heck of a lot. And I will be studying the timeline here and considering its significance.

Some of the important facts that will matter here are that the HCRE proof of claim, again, was filed timely in this case. April 8, 2020. It was signed by Mr. Dondero as the

representative of HCRE.

The evidence I do remember is that Mr. Dondero was president and sole manager of HCRE and he had signed the limited liability agreement for SE Multifamily Holdings, I think is the name of the entity. He had signed the agreement for both Highland and HCRE. There was an original LLC agreement and there was also an amended LLC agreement.

And again, I always think timelines -- again, I've said it a million times -- are very revealing. This was not a very ancient transaction, a very old transaction, in the Highland universe. The evidence I saw -- and again, I always create a timeline -- was that it was actually August 23, 2018 that this SE Multifamily entity was created, and then it was sometime early first quarter of 2019 where there was an amendment of the LLC agreement that brought in the BH entity and its six percent interest. And then, of course, it was October 2019 when the bankruptcy was filed.

Again, why am I mentioning this? I'm mentioning it because this was fairly recent in Highland history that this whole SE Multifamily transaction, Project Unicorn, was done. And that matters to me because I would think memories should have been fresh relative to a lot of other things we've looked at during this case. And so that really is weighing on my brain here with regard to the bad faith possibility on the filing of the proof of claim and the prosecution. It, in my

view, could have been a quick process, doing the due diligence and assembling, you know, is there a good faith basis for this proof of claim or not. And that concerns me. That concerns me.

It, as I recall hearing the evidence, looked like, oh my goodness, look at the consequences now of this bankruptcy, and Highland falling out of the status of being a friendly partner with HCRE. We don't like this. We don't like this and we want to change this.

So, again, I'm sort of thinking out loud here. I'm sort of revealing where I'm leaning right now. It seems like this was a recent-enough transaction where someone could have assembled information pretty quickly and figured out if there was any basis to argue reformation.

And I never did have a clear idea why they would pack up their marbles and want to go home if there was some evidence. And again, the Bankruptcy Rules require the Court to enter an order whether withdrawal should be permitted or not. I very much wanted this to go away, and then there wasn't -- wordsmithing could not come up with a sentence everyone would agree on to make it go away.

So I will, again, be drilling down on the evidence here as to whether we have bad faith, but that's some of the timeline and evidence I'm going to be drilling down on here.

I think *The Little Engine That Could* was the phrase Mr.

Morris argued. I remember very well the evidence was that Highland put in $49,000 to get its membership interest in SE Multifamily Holdings, but I already heard that it was required ultimately to be a cosigner on a $500 million loan from Key Bank. It provided resources, at least until some point during the bankruptcy, to SE Multifamily. And again, the tax benefit of absorbing the income from the entity, which, again, it's nothing to sneeze at here.

All of that I think was addressed pretty thoroughly in my earlier opinion, but again, I'm going to go back and look at it and the evidence and give you a thorough ruling one way or another on the indicia of bad faith as well as the reasonableness of fee-shifting.

All right. It sounds like I'm going to see you on February 14th, or some of you, and so I shall see you then. We're adjourned.

THE CLERK: All rise.

MR. GAMEROS: Your Honor?

THE COURT: I'm sorry?

MR. GAMEROS: Your Honor?

THE COURT: Yes.

MR. GAMEROS: Yeah, I'm sorry. I did ask, if you weren't going to deny it outright, if I could file a brief surreply. Is that allowed?

THE COURT: No. I've got enough on briefing on this.

Thank you.

MR. GAMEROS: All right. Thank you.

(Proceedings concluded at 11:41 a.m.)

--oOo--

CERTIFICATE

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

/s/ Kathy Rehling **01/24/2024**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 31, 2024

United States Bankruptcy Judge

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

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

ORDER GRANTING IN PART HIGHLAND'S MOTION TO STAY CONTESTED MATTER

Having considered (a) *Highland's Motion to Stay Contested Matter [Dkt No. 4000] or for Alternative Relief* [Docket No. 4013] (the "Motion")[1] filed by Highland Capital Management, L.P. ("HCMLP"), the reorganized debtor in the above-referenced bankruptcy case, and the Highland Claimant Trust (the "Trust" and together with HCMLP, "Highland"); (b) *James P. Seery, Jr.'s Joinder to Highland Capital Management, L.P.'s Motion to Stay Contested Matter [Dkt No. 4000] or for Alternative Relief and Emergency Motion to Expedite Hearing on Motion for Stay* [Docket

[1] Capitalized terms not defined herein shall take on the meanings ascribed to them in the Motion.

No. 4019] filed by James P. Seery, Jr.; (c) *Hunter Mountain Investment Trust's Response in Opposition to Highland's Motion to Stay Contested Matter [Dkt No. 4000] or for Alternative Relief* [Docket No. 4022] filed by Hunter Mountain Investment Trust's ("HMIT"); (d) the arguments heard at the hearing on the Motion on January 24, 2024 (the "Hearing"); and (e) all prior proceedings relating to this matter; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and for the reasons set forth by this Court on the record during the Hearing; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED IN PART** as set forth herein.

2. All proceedings in connection with the *Motion for Leave to File a Delaware Complaint* [Docket No. 4000] (the "Motion for Leave") are hereby stayed until the Court (a) issues an order determining *The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust* [Adv. Proc. 23-03038-sgj, Docket No. 13] (the "Motion to Dismiss"), and (b) holds a status conference with the parties in connection with the Motion for Leave during which the Court will consider whether to terminate or extend the stay (and, if the stay is terminated, to establish a briefing schedule for the Motion for Leave).

3. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

###End of Order###

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	February 14, 2024
	9:30 a.m. Docket
Reorganized Debtor.	
DUGABOY INVESTMENT TRUST, et al.,	**Adversary Proc. 23-3038-sgj**
Plaintiffs,	
v.	THE HIGHLAND PARTIES' MOTION TO DISMISS COMPLAINT [13]
HIGHLAND CAPITAL MANAGEMENT, L.P., et al.,	
Defendants.	

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

APPEARANCES:

For the Defendants/ Movants:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7760
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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

DALLAS, TEXAS - FEBRUARY 14, 2024 - 9:33 A.M.

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, The Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated. All right. We have a setting this morning in the adversary styled Dugaboy Investment Trust and Hunter Mountain Investment Trust versus Highland, Adversary 23-3038.

We have the Highland Parties' motion to dismiss the adversary.

Who is appearing for the Movant, Highland?

MR. MORRIS: Good morning, Your Honor. It's John Morris from Pachulski Stang Ziehl & Jones for the Movant.

THE COURT: All right. Thank you. And who do we have appearing for Plaintiffs/Respondents?

MS. DEITSCH-PEREZ: Good morning, Your Honor. It's Deborah Deitsch-Perez from Stinson.

THE COURT: All right.

MS. DEITSCH-PEREZ: And I would ask: Is anybody else having a little trouble hearing? The volume seems lower than usual here.

THE COURT: All right. It's loud and clear for the Court. What about you, Mr. Morris?

MR. MORRIS: It's no problem for me, Your Honor.

THE COURT: Okay.

MS. DEITSCH-PEREZ: Okay. I'll just listen hard.

THE COURT: All right. Well, I assume these are the only appearances we have.

As a reminder to folks on the WebEx, if you're a party in interest, fine, you can use both video and audio. But if you are not a case party in interest, the rules from Washington say it's supposed to be only an audio listen-in format for you.

All right. So let me quickly talk about our time issues. I have to give a CLE presentation on the other side of downtown at 12:00 noon today, so I really need to stop at about 11:30 or 11:35. You all have given a two-hour time estimate, so do you all think that is what you're going to need, an hour each?

MR. MORRIS: I do, Your Honor. I don't know that I'll need all that time, but I'll try and limit my opening remarks to 45 minutes and save 15 for rebuttal.

THE COURT: All right. What about you, Ms. Deitsch-Perez? Any issues there?

MS. DEITSCH-PEREZ: I would say the same.

THE COURT: Okay. Very good. Well, with that, Mr. Morris, I'll hear from you.

OPENING STATEMENT ON BEHALF OF THE MOVANTS

MR. MORRIS: Thank you, Your Honor. John Morris; Pachulski Stang Ziehl & Jones; for the Movant, Highland

Capital.

Your Honor, in the famous words of an old New Yorker, Yogi Berra, this is déjà vu all over again. Less than eight months ago, this Court issued rulings that held that HMIT was not a Claimant Trust beneficiary because its contingent interests have not vested. This Court ruled that HMIT was not in the money. This Court ruled that HMIT's rights as a contingent trust holder were determined solely with reference to the Claimant Trust agreement, and under the Claimant Trust agreement's clear and unambiguous provisions, they have no rights today.

Now, in their complaint, HMIT and Dugaboy basically ask for the same relief that they sought last year. They want information for the purported purpose of establishing that they are in the money, even though they told this Court last summer, based on available information, that they were in the money. They want a declaration that the value of trust assets exceeds the value of the trust liabilities, and they want a declaration that their contingent interests are likely to vest.

And I'll talk more about this in a moment, but it's really interesting, if you look at the last footnote of their complaint, they expressly ask the Court not to rule as to whether or not they are Claimant Trust beneficiaries. They only want the Court to rule in a declaratory judgment that

they're likely to vest. We'll talk about that more in a minute.

We need clear rulings on each of these matters, on each of the bases for which Highland moves to dismiss this complaint, because, you know, obviously, saying it once or twice hasn't been enough, so we need to say it one more time, loudly and clearly.

I've got a deck that I'll ask Andrea Bates to put up on the screen. I hope to go through it fairly quickly.

THE COURT: Okay.

MR. MORRIS: Ms. Bates, if you can put our deck up, please.

And I'd like to begin, once it's on the screen, just going through the three counts of the complaint. These are the counts that we're seeking to dismiss. They're -- they are, frankly, fairly straightforward.

(Pause.)

MS. BATES: Apologies. I got kicked out of the WebEx.

MR. MORRIS: Okay. (Pause.) Okay, great. If we can go to the next slide, please.

So, the first count, Your Honor, the first count of the complaint seeks the disclosure of trust assets and accounting, and an accounting. In Paragraph 83, they make it clear, they say, due to the lack of transparency into the assets of the

Claimant Trust, Plaintiffs are unable to determine whether the contingent Claimant Trust interests may vest into Claimant Trust interests. That's really an important allegation, because it's a concession. And there are other concessions. If you look at Paragraph 66, for example, it's a concession that they're not Claimant Trust beneficiaries. They know that. Right? No dispute. But they're seeking information to determine whether they may vest. That's what they're asking for.

And the next piece of this slide is also important because they're not just asking for information about assets and liabilities. They're asking for "details of all transactions that have occurred." Even under their theory of trying to figure out if they're in the money, why could that possibly be relevant? Details of transactions that have occurred. You know, Your Honor, we were here before the Court last spring on the mediation motion, and I recall Your Honor specifically asking Ms. Ruhland, what information? Because they were seeking information then for the mediation. What information could you possibly need other than assets and liabilities? And she didn't really have an answer.

Your Honor asked us -- and ordered us, frankly -- to produce that information, and we did. And that's the information that we'll talk about in a moment that HMIT relied upon to represent to the Court that it believed that the

entity was in the money.

But the important point here is why are they asking for details about transactions that have occurred? It's just a -- it's just -- when we talk about the equities at the end, I'm going to come back to that.

The important point here for Count One, Your Honor, they don't cite to or rely on any provision of the plan. They don't cite to or rely upon any provision of the Claimant Trust agreement. They don't cite to or rely upon any statute. This is a purely equitable claim.

If we can go to the next slide, please.

Count Two seeks a declaratory judgment concerning the value of the assets relative to the liabilities, but it's a conditional request. It requires that the Defendants be compelled to provide the information. And that's what it says in Paragraph 90. And it flows from that, according to them, that if assets exceed liabilities, all kinds of great things are going to happen. All affirmative proceedings can be deemed unnecessary. The bankruptcy court -- case can be brought to a close, and the bloodshed will stop.

But what's really interesting about this, and it portrays the intent of Hunter Mountain in this proceeding, is that they only want the affirmative proceeding to stop. If you look at Paragraph 91, and it's quoted there in the footnote, they only want pending adversary proceedings and get recovering value of

the HCMF -- HC -- the Highland estate.

So, presumably, they'll be allowed, right, they'll get paid. All creditors, according to them, if assets exceed liabilities, they get paid. And then all of the indemnified parties have nothing to use to defend themselves under the indemnities. That's what they're looking to do. It's really clear. And the Court should understand that they're not really ambiguous here. They want to look at all of the transactions. They want to, even under their theory that Class 8 and Class 9 should get paid, they should get everything else, there should be nothing left, and they should be able to continue to sue Mr. Seery and the Reorganized Debtor and the Claimant Trust and my firm from now until the end of time. That's the motivation here.

Let's look at Count Three. Count Three, they want a declaratory judgment regarding the nature of their interests in the Claimant Trust. But not really. But not really. What they want is a declaration and a determination that there are conditions, that the conditions are such that the contingent interests are "likely to vest." Again, if you look at the footnote, and we'll look at it in detail, they're again not asking the Court, because they know what the answer is going to be, they're not asking the Court to find that they are Claimant Trust beneficiaries, just that they are likely to vest at some point in the future.

They don't cite to or rely upon any provision of the plan. Again, they don't cite to or rely upon any provision in the Claimant Trust agreement or in any statute. It's a purely equitable claim.

If we can go to the next slide.

The terms of the Claimant Trust agreement determine when and if Plaintiffs are Claimant Trust beneficiaries, full stop. Under the Delaware Statutory Trust Act, whether a party is a beneficiary here, a Claimant Trust beneficiary, is determined by the plain language of the governing instrument -- here, the Claimant Trust agreement. And the plan, frankly, because the plan provisions matter in Articles III and IV. They also provide the same conditions for vesting.

We cited in our papers a case called *Paul Capital Advisors*. *Paul Capital Advisors* is from the Delaware Chancery Court. And what's really interesting about that case, Your Honor, is in that case the plaintiff was seeking to remove a trustee. A lawyer by the name of Michael Hurst defended that case, and Mr. Hurst -- who's a -- Mr. Ellington's counsel today; he was before Your Honor in December on the Ellington stalking matter; he's a longtime lawyer for Mr. Dondero -- Mr. Hurst actually urged the court to dismiss the case on the grounds that the plaintiff wasn't a beneficiary under the plain terms of that trust agreement. And the court granted the motion to dismiss, just like the Court should grant the

motion to dismiss today.

So one of Mr. Dondero's own lawyers was in the Delaware Chancery Court making the exact same argument that we're making today, and that is, even referring to the *Restatement*, a trust's beneficiaries are the people who are defined as beneficiaries in the trust governing documents or that are otherwise reflective of the settlor's intent. That's what *Paul Capital Advisors* holds.

Here, the settlor specifically decided to exclude HMIT and Dugaboy as holders of the Class 10 and 11 claims from the definition of Claimant Trust beneficiaries. We know that. We're going to look at that language in a moment.

The Claimant Trust agreement includes very specific provisions concerning vesting, none of which refer to, concern, or are dependent on the value of the trust assets and liabilities at any moment in time.

Being in the money is legally irrelevant under the plain terms of the plan and under the plain terms of the Claimant Trust agreement and on the plain terms of the case that Mr. Hurst successfully argued in the Delaware Chancery Court known as *Paul Capital Advisors*.

If we can go to the next slide.

Let's look at the provisions. Let's see. Right? Because one of the bases for the motion to dismiss is that they have no rights under the plan. Neither Hunter Mountain nor Dugaboy

have any rights under the plan. And, you know, if you follow *Capital Advisors*, and, really, just as the Court did last summer when it decided, I think properly and appropriately, that Hunter Mountain and Dugaboy's rights are determined solely under the provisions of the plan, let's just look at those provisions.

The Claimant Trust agreement, in Section 3.12, specifically says that the agreement doesn't require the Claimant Trustee to file any accounting. That's the reasoning sought in Count One. Can't do it. No. Right? There's no obligation to do it.

If we can go to the next slide.

Section 3.12(b) provides -- requires the Claimant Trustee to provide quarterly reporting to Oversight Board and Claimant Trust beneficiaries. Again, no allegation that Hunter Mountain or Dugaboy is an Oversight Board member. No allegation that they're Claimant Trust beneficiaries. In fact, the whole purpose of the complaint, supposedly, is to get information so that they can determine whether or not they're likely to vest.

So, there's a concession that they're not Claimant Trust beneficiaries. And so only those two groups of people, Oversight Board members and Claimant Trust beneficiaries, are entitled to receive these quarterly reports. And because Hunter Mountain and Dugaboy don't fall into either group, they

have no rights under Section 3.12(b).

Just to make it abundantly clear -- if we go to the next slide -- let's look at the definition of Claimant Trust beneficiary. Again, this is right out of the Claimant Trust agreement, Section 1.1(h). And it says, holders of allowed general unsecured claims or allowed subordinated claims, and only upon the certification of the Claimant Trustee that all holders of claims have been paid indefeasibly in full. That's a reference to Class 10 and 11 with the holders of the former limited partnership interests. Only then do they vest. That's how they vest. You've got to file this certification saying that everybody has been paid in full.

And they say, oh, gee, well, if assets exceed liabilities, that must mean they're in the money and the Trustee should just pay them in full.

But that's not what that trust agreement says. And let's be clear. The trust agreement and the plan were adopted and confirmed by this Court more than three years ago now. It was the first week of February 2021. Those documents were subject to appeal, but nothing we're talking about today is -- was ever the subject of appeals. Right? So these are the agreements. They're sacrosanct. The Delaware Chancery Court says you've got to follow the agreement. So let's do that.

If we can go to the next slide.

Distributions. So, right, the Claimant Trustee has to

certify that everybody has been paid in full. But what about distributions? When are they going to get paid in full? According to the plain and unambiguous terms of the Claimant Trust agreement, the Claimant Trust agreement shall distribute to holders of trust interests at least annually the cash on hand -- here's the important word: net -- net of any amounts that, among other things, if you go down to (d), are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee, in accordance with the plan and this agreement, including but not limited to indemnification obligations.

So it doesn't matter if assets exceed liabilities. We don't believe that they do. We don't believe that there is any reason to even engage in the debate. And the reason for that is because we've got substantial indemnification obligations that must be reserved for. And if -- and -- and -- we'll talk about that more in a moment.

But that's the key. That's the key here. They don't vest. Right? Class 10 and 11 does not vest until the Claimant Trustee certifies that everybody has been paid in full. And nobody is going to be paid in full as long as the Claimant Trust has indemnification obligations that must be satisfied. The Claimant Trustee is a fiduciary. He owes the beneficiaries of indemnification rights the duty to make sure that the Claimant Trust has sufficient assets to satisfy the

indemnification obligations.

And do you know who's not here today, Your Honor? Any Claimant Trust beneficiary. Any Claimant Trust beneficiary who would -- there is nobody here complaining that Mr. Seery is abusing his rights. There's no -- nobody is complaining that he should be distributing the cash. Nobody is complaining that, you know, he's overwithholding. And we'll talk more about why, actually, what he's doing is proper, although that's not an issue before the Court today. The only issue before the Court, frankly, is Section 6.1. And it says the trust must reserve amounts necessary or deemed necessary to satisfy indemnity obligations.

If we can go to the next slide, please.

So now let's get to the motion to dismiss itself now that we have an understanding of exactly what the Claimant Trust agreement and the plan provide. Let's look back at what the Court did. The Court issued two very important rulings last year on these very issues. And in the Court's lengthy decision on the Hunter Mountain motion for leave, the Court concluded, quote, HMIT's status as a beneficiary of the Claimant Trust was designed by the Claimant Trust agreement itself, pure and simple. The Court was right then, and the Court will be right today when presumably it stands by its prior ruling.

Under the Claimant Trust agreement, contingent trust

interests have no rights until they vest. And there's no dispute that they have not vested because the Claimant Trustee has not filed a certification that everybody is getting paid in full. That's what the language of the document says. We really are done here.

But there's more, because after that hearing Hunter Mountain made another motion and said, wait, Your Honor, those disclosures that you required Highland to make in support of mediation, they show we're in the money. They've already swung and they've missed at this. They said, oh, we're in the money. And Your Honor, unlike HMIT, actually read the disclosures and actually saw all of the contingencies in there.

It's ironic that HMIT, of all people, would be telling the Court that they're in the money when their beneficial owners are actually appealing the $70 million Notes Litigation, when their beneficial owners are playing fast and loose with the value of assets that they control, such as HCRE. Right? But they're still here with the same tired story, maybe we're in the money.

Your Honor, you've ruled on this and we're done, as far as I'm concerned. You found, among other things, that they failed to give proper attention to the notes to the financial statements that were integral to understanding the numbers. I hope that they've done that now.

Your Honor ruled that they failed to take into account the widespread litigation that's caused massive indemnification claims and legal fees, all of which must be satisfied.

Based on this Court's decision less than five months ago -- I think it was actually eight months ago -- Counts One and Three are moot and they're otherwise barred by collateral estoppel.

If we can go to the next slide, please.

Count Two must also be dismissed because it depends on Highland being "compelled to provide information about the Claimant Trust assets." That's in Paragraph 90. So if the Court doesn't compel Highland, the Court has no ability to make the declaration that's sought.

But even if you could, right, there's -- Plaintiffs have no legally cognizable right. They don't cite to anything. They don't have an equitable claim to compel Highland to provide trust -- the information. There is no underlying controversy to be resolved. They have no right to this information. They have no equitable claim to this information.

As we set forth in Paragraph 39 of our moving brief, they can't come here seeking equity that's barred by the plain terms of the trust agreement. The trust agreement, again, reflects the settlor's intent. The settlor intended that he would provide or that the Claimant Trustee would provide

limited information to the claimant board members and Claimant Trust beneficiaries, of which neither Hunter Mountain nor Dugaboy are one. They can't use equity to just override the very plain meaning of the operative documents and the intent of the settlor.

The Claimant Trust agreement is determinative. Since the value of the trust assets and liabilities at any moment in time is irrelevant to the question of vesting, there is no justiciable controversy to resolve.

So, two reasons. I don't think the Court can order Highland to produce any information, so it fails for that reason. And even if it did, the whole issue is completely irrelevant, given the plain terms of the trust agreement and the plan, so there is no justiciable controversy.

If we can go to the next slide.

Some other grounds to dismiss Count One. Right? Again, no legal right to the information or an accounting. Again, the request for equitable relief is barred by the plain terms of the trust agreement since they're not Claimant Trust beneficiaries.

And it's worth noting, as I mentioned earlier when we saw the very provision in the trust agreement, even Claimant Trust beneficiaries have no right to an accounting, or any right to any information beyond that provided in Section 3.12. But, again, I don't want to suggest that Hunter Mountain or Dugaboy

have any entitlement. It's just to contrast where actual trust beneficiaries lie vis-à-vis Hunter Mountain and Dugaboy.

If we can go to the next slide.

Other grounds to dismiss Count Three. Again, in Count Three, Plaintiffs seek a declaration as to whether or not the Claimant Trust beneficiaries may be indefeasibly paid and whether the conditions are such that their claimant -- you know, contingent Claimant Trust interests are likely to vest into Claimant Trust interests, making them Claimant Trust beneficiaries, yet another admission that they're not Claimant Trust beneficiaries today.

These are inquiries that would require the Court to, among other things, handicap the likelihood of Mr. Dondero's appeal in the Notes Litigation and the amount that is going to be needed to satisfy future indemnity obligations.

I have a reference in this bullet to Docket No. 3880. Your Honor, that's the other piece of information that I think the Court required Highland to produce in connection with the mediation, where we identified all of the outstanding litigation that we have. You know, we are here today. I was in Dallas two weeks ago before Judge Scholer to have oral argument on the Advisors' appeal of the judgment that was entered in favor of Highland and against them a couple of years ago.

We obviously had a lot of paperwork to deal with on the

motion for leave, you know, to sue my firm that was withdrawn in the face of a Rule 11 motion.

You know, these are all things that weren't even on that list. We've got the appeal now of the original Hunter Mountain decision. Again, with so many issues on appeal, I don't even know if the District Court will ever get to the standing question, because there's like literally dozens of issues on appeal.

We were in Houston last week for a Fifth Circuit argument on Your Honor's order conforming the plan to the original Fifth Circuit decision on confirmation.

All of these things are expensive. Mr. Dondero is famous for complaining about how expensive this is, and yet he continues to drive these costs. This hearing is making it much less -- it's making it less likely that he's ever going to be in the money. Every time we have another court appearance, every time he files another complaint, every time he, you know, does things to cause us to spend money, his being in the money -- not that it's legally relevant; I don't want to make any suggestion that it is -- but that's why we need these indemnification reserves, because there is no end in sight.

We do have a vexatious litigant motion, Your Honor. Hopefully, that will be successful. Hopefully, that will curtail things in the future. But, you know, remains to be

seen. That's just something that we feel we need to do.

The Plaintiffs tacitly admit that these requests are for impermissible advisory opinions. Obviously, they are. Any time you're asking the Court to make a determination about what's likely to happen in the future that has no legal significance whatsoever, it's an advisory opinion.

And, again, this is what I referred to earlier. If you look at Footnote 6 to Paragraph 94 of the complaint, oddly, they don't ask the Court to determine that they're Claimant Trust beneficiaries. Maybe it's because they've already admitted that they're not. I don't know. They're not asking the Court to convert their contingent interests into noncontingent interests. Again, maybe because they're -- it's an acknowledgement and an admission that that can't happen. But here's the tell, because those issues must be done in accordance with the plan and the CTA. We agreed. There's no dispute. There is no judiciable, justiciable dispute here. We agreed that all of these issues are decided by the plain terms of the plan.

I think that's my last slide, so you can take this down.

I just briefly want to finish up with just some observations about equities. As a matter of law, equity can't trump contractual terms. But if for some reason the Court even wanted to consider the question, I would ask the Court to take very seriously Hunter Mountain and Dugaboy's pleadings

where they're asking not for information regarding assets and liabilities, but they want a review of all of the prior transactions. They want to second-guess everything the Claimant Trustee has done to date. That smells. Right? And it's not the first time we've dealt with this issue. You know, Your Honor can take judicial notice of their pleadings in the Fifth Circuit when they were appealing that 2015.3 ruling. They explicitly told the Fifth Circuit they want information so that they can bring more claims. Right?

So there's not a good faith basis for this. There's not a legal basis for it. There's not an equitable basis for it. The Court has ruled on these issues multiple times already. There is no judiciable controversy before the Court. And for all of those reasons, the Court should just dismiss this complaint.

I have nothing further, Your Honor.

THE COURT: All right. Mr. Morris, you referred to the list of pending matters. And last night at 10:00 o'clock in bed, I meant to pull this up because it was referred to in one of the pleadings as well, and I didn't do it. Could you tell me the docket entry that appears at?

MR. MORRIS: Yeah, I think it's 3880. I apologize. I'm actually looking at my phone. I wouldn't typically do this, but I'm going to see if I can quickly find that. But I believe it's 3880.

THE COURT: Okay.

(Court confers with Clerk.)

THE COURT: Okay. All right. Ms. Deitsch-Perez?

OPENING STATEMENT ON BEHALF OF RESPONDENTS

MS. DEITSCH-PEREZ: Thank you. This adversary proceeding actually has deep roots. It was started by motion a long time ago, long before that balance sheet was filed. And it was done because the Claimant Trustee and the estate have consistently obscured the available resources in order to make it harder for the residual equity holders to investigate whether the estate has been mismanaged, to their detriment.

THE COURT: Did you say --

MS. DEITSCH-PEREZ: Mr. Morris talked --

THE COURT: Can I -- you said they've obscured the resources?

MS. DEITSCH-PEREZ: Yes. They've obscured what's in the estate. If you -- we'll look more closely at that balance sheet, Your Honor. In addition to not having filed the 2015 reports, the balance sheet, you're right, has a number of notes on it. But the notes -- and we'll look at those and go through them -- don't -- don't -- aren't illuminating. If you look at the face of the balance sheet, there is enough money to pay everybody and have money left over.

You have to rely on obscure, undetailed notes and assertions and assumptions to say maybe, maybe there won't be

money left over. But on the face of the balance sheet, there is enough money to pay everybody.

And if there's enough money to pay everybody, the leftover money is HMIT's. It's not -- it's not the professionals'. It's not the Claimant Trustee's. What's being used now is the residual -- old residual equity's money.

So Mr. Morris brought up mediation, and that was an interesting point, because in the papers, arguing about whether or not Your Honor should grant mediation, the estate and Mr. Seery made it very clear there would only be a resolution if there were complete and total releases given and all litigation stopped. So that was clear. We understood that. And what was at stake, obviously, in any mediation is what's left. So, what are the residual -- what's the residual?

But if we can't find out what the residual is and we can't find out what actually is being released, this estate can't ever end. It's not the Plaintiffs here who are keeping the engine going. It's the Defendants, because they know exactly how to push the buttons to raise suspicions about whether something untoward has gone on.

And so let me test the premise of the Defendants here with a hypothetical. Because, remember, Defendants arguments for dismissal turn on the contention that the Claimant Trust agreement prevents Plaintiffs from being considered

beneficiaries, no matter how much money the Claimant Trust has -- or squandered, for that matter -- if Mr. Seery doesn't authorize payment of Class 8 and 9 creditors in full and affirmatively certify that Classes 10 and 11 are beneficiaries. So, unless he does that, it's the Defendants' position Plaintiffs have no means of redress.

So let's test that with a hypothetical. Let's say that Mr. Seery, let's say that the Claimant Trustee, to keep earning his $150,000 a month indefinitely, massively overspends professional fees to justify an objectively unreasonable indemnity reserve of $125 million. And let's say he deliberately dribbles out payments to Class 8 and 9 so that eventually the combination of interest, administration, and professional fees is sufficient to eliminate the amounts that would otherwise be payable to the last dollar of 8 and 9, much less Classes 10 and 11.

And let's make the hypothetical even more extreme. What if Mr. Seery moved money into the Indemnity Subtrust and paid it to phantom vendors? I'm not saying he did that. I don't want stories about how we're accusing him of something. This is a hypothetical. But let's say he did that. He put it in the subtrust, paid it to phantom vendors, who kicked it back to him, in order to keep the amount low enough to pay the last dollar to Classes 8 and 9.

Under the Defendants' theory here, that can't ever be

discovered, much less remedied. And so that's why, that's why there is an equitable argument here, and a practical argument, Your Honor.

Because Your Honor has said you want this to end. This has to end. Well, the only way it can end is if there's sunshine, if there's enough disclosure and investigation so everybody can get comfortable that releases are appropriate and the money that could be left is left there, and then everybody can go home. Because we are all really tired of this. But it's the Defendants that are keeping it going.

THE COURT: Let me interrupt you. There are many jurisdictional arguments, as you all know. Many issues for this Court, legal issues here. But here are two things that stand out above all. And one is do the Plaintiffs have a contractual right to the information they seek or not. Why should the Court look beyond the Creditor Trust agreement, the plan, the confirmation order, which are final? These issues were never complained about. There's not enough transparency in the trust agreement language: No one ever made that argument. It's not on appeal.

So, again, many jurisdictional arguments here, but why should I ignore clear contractual terms here? It almost feels like modifying the plan three years down the road. So --

MS. DEITSCH-PEREZ: It's not --

THE COURT: So, --

MS. DEITSCH-PEREZ: I'll say it's not, Your Honor. It's not, Your Honor, because under Delaware law and under the good faith and fair dealing, every contract in Delaware -- we're not in -- it's not a Texas contract -- in Delaware, there's a covenant of good faith and fair dealing. And when a party to a contract actually does things that prevent someone else from obtaining the benefits under the contract, then you don't read the contract literally, you read it to prevent the wrongdoer from getting the benefit of their wrongdoing. And that's --

THE COURT: Okay.

MS. DEITSCH-PEREZ: That's the reason Your Honor can and must allow this case to go forward. Because, otherwise, there is a terrible, terrible law that's being created. It enables somebody to --

THE COURT: Well, you say it's terrible law, but, again, the trust agreement was out there for consumption before the confirmation hearing. And your clients --

MS. DEITSCH-PEREZ: Well, --

THE COURT: -- or others could have come in and said, this just doesn't work, this lack of transparency, this lack of oversight, this lack of access to information. And you didn't.

MS. DEITSCH-PEREZ: Your Honor, who would have thought that the --

THE COURT: And not only that, but this is not -- I have no reason to believe this is atypical language. In the dozens if not hundreds of post-confirmation liquidating trust agreements I've seen, it looks like standard fare.

MS. DEITSCH-PEREZ: Your Honor, there is no -- no one could have contemplated at the time that we would be in the situation that we are now, with information not having been provided. Many Chapter 11s are much more cooperative. They're not liquidations. They're reorganizations. They're -- people are trying to end the estate, so they're sharing information. This is not a circumstance that could have been contemplated. And Your Honor can do something about it now.

THE COURT: Well, which brings me to my second sort of overarching issue that stands out, of all the different issues. And these are my own words more than anything I think I've read. It feels like what you're asking for, if there's a jurisdictional way to get there, if there's a legal way to get there, it feels like it would be a meaningless exercise, because the value in the trust is going down daily. It's going down hourly, as we speak. The value I could determine, if this goes to trial, would be completely meaningless a month, two months, five months, three years later, because of all the litiga...

MS. DEITSCH-PEREZ: Your Honor, but on that theory --

THE COURT: Please don't interrupt until I finish. I

want to make sure my point is clear. My law clerk --

MS. DEITSCH-PEREZ: Okay.

THE COURT: -- did bring in to me the list --

MS. DEITSCH-PEREZ: I understand.

THE COURT: -- the list of litigation. And even this, if we pulled up the right one, it's several months old, so even this is very dated.

But let me put it in very plain terms. It kind of feels like your client is its worst enemy in getting this relief, because your client, because of the fifty-something appeals and because of the motions for leave to bring litigation, is causing the value of this trust to plummet. And we're never -- it seems like a meaningless exercise. I'll never be able to make a declaratory judgment as your client wants me to, if I can get there legally and jurisdictionally. How could I get to a point of being able to value the trust and value the likelihood, determine the likelihood that your client is in the money when the legal fees are going up hourly because of all of these appeals?

I'm not saying your client isn't entitled to appeal, but I'm just saying he may be his own worst enemy. That strategy means he's probably never going to be in the money.

So these are my -- I just, I'm wanting you hopefully to focus on these two biggest overarching issues in my brain. The trust agreement --

MS. DEITSCH-PEREZ: Okay.

THE COURT: -- says what it says.

MS. DEITSCH-PEREZ: And I can do that, Your Honor.

THE COURT: I'm supposed to respect contractual terms. So that's overarching issue number one in my mind.

But second, again, I don't know what the legal term would be for meaningless exercise, but it's just, it's almost like an impossibility thing to ever declare a value that means anything when it's going to be different two weeks from now, --

MS. DEITSCH-PEREZ: Your Honor, --

THE COURT: -- a month from now, a year from now.

MS. DEITSCH-PEREZ: Your Honor, it's not an impossibility. That, one, we would endeavor to do this really quickly and efficiently so that the cost of this is not material to what's in the estate.

But secondly, these kinds of exercises are done all the time in litigation. You estimate the future values. You -- an expert can assist Your Honor in determining what is a reasonable indemnification reserve. These are things that can be done. This is what lawyers and judges do.

THE COURT: This is off the chart. This is not like any other situation I can think of. This is off the chart with the amount of post-confirmation litigation. I mean, if you can point me to something analogous out there, I'd love to

see it.

MS. DEITSCH-PEREZ: The fact that there isn't a case exactly like this doesn't change the fact that there are professionals who can look at this, can look at what has been spent so far, can look at whether hearings could have two or three lawyers instead of ten, and make an estimate of the amount that's appropriate for an indemnity reserve. That's something that's susceptible of proof and determination.

It's not impossible for Your Honor to decide that, and it's not fruitless. Someone can say, hey, wait a minute, every hearing you had, you know, ten people from Pachulski and ten people from Quinn, even though they're no longer really involved, and ten people from Willkie. And so if you can rein that in, the Court can say, this is what a reasonable indemnification would be and this is what's left. And so, yes, it will finally create a path for us to resolve this estate.

But without this information, we're left with suspicion and uncertainty. How do you resolve something when you don't even know what's left? We don't -- because the reporting is quarterly, we've heard rumors in the marketplace that Class 8 has been paid in full. So I would ask Mr. Morris, is that correct? Has Class 8 already been paid in full? We don't know. I mean, can you tell us, what's the amount of the estate right now? We don't know. Because we don't know what

those notes mean. And Your Honor isn't -- and Your Honor doesn't know and can't know without shedding a light on this what that balance sheet really means.

And Mr. Morris makes a big deal about, oh, there are admissions in the complaint then they don't know if they're in the money. Your Honor, the complaint was filed before the balance sheet. So when in the last proceeding HMIT said it's in the money, that's because it knew from the balance sheet it's in the money. So you know now, you can look at that balance sheet and say on the face of it, okay, there is more -- there are more assets than liabilities. In order to determine that that wouldn't be the case, you'd need a lot more information about what those notes that you point to in the denial of reconsideration actually mean.

But here, the estate is trying to say no, not only do the Plaintiffs not get to know that information, we're not telling Your Honor, either. We're just putting a lid on it. And so we can all go on fighting because we don't have the disinfectant of information.

And so -- and now we'll get into more of the law. Your Honor asked, how can I do this? Delaware law requires this Court to afford standing to all beneficiaries, including contingent ones. And especially when it's alleged that vested status is being withheld in contravention of the duty of good faith and fair dealing.

So let's go to Slide 3.

Okay. Let's take a look at where we started and why, why we're so upset about this. If you look at the value of the estate as of June of '22, there was somewhere in the mid-$600 million in assets. And at the start, there was something under $400 million in claims. And so now, as of the end of '23 -- go back a second, go back, Mike, one more -- as of the end of '23, there was about $120 million of Class 8 and 9 remaining. But remember, there was -- you know, if you subtract 400 from 650, you've got $250 million. That's a pretty big cushion.

So let's go forward and look at what we know from the balance sheet. So, if we -- and we've put references there. But if we go through -- you can see from the face of the balance sheet there is a net value -- that's after everybody, 8 and 9 have been paid off -- of $122 million. So, in order to get rid of that, you have to assume the indemnification is going to eat up all of that.

Now, think about what the indemnification means. If in fact there was no wrongdoing, well, there'll be no judgment to indemnify.

THE COURT: But what about the --

MS. DEITSCH-PEREZ: If in fact --

THE COURT: What about the professional fees?

MS. DEITSCH-PEREZ: $122 million, Your Honor?

THE COURT: Well, we're three years post-confirmation, with no end in sight to these appeals.

MS. DEITSCH-PEREZ: Your Honor, I think it defies belief that they could reasonably spend $122 million. And the point is, if we can get this information and really have satisfaction that maybe there's really nothing bad that's happened and there are no -- there's no hidden money anywhere, and we know what's there, this can end. This can end.

THE COURT: Do you --

MS. DEITSCH-PEREZ: We can finally see the light at the end of the tunnel.

THE COURT: I mean, again, we're here for legal argument, but you're saying this could end. This is never going to end. This is never going to end. I stayed things in 2023, at your client's request, to take another crack at mediation. Okay? Even though we did mediation, even though I stayed everything in 2020 before confirmation and ordered global mediation and things didn't work out, your clients and Mr. Dondero convinced me, two years post-confirmation, stay everything again, because we don't think we got attention or respect from the mediators. The Debtor was focused on other people, like UBS and the Redeemer Committee and Joshua Terry.

So I don't know what happened, and I don't want to know what happened. It's not my role to know what happened in the most recent mediation exercise. But I do know that it's

enough to convince me this will never end. When things were stayed --

MS. DEITSCH-PEREZ: And Your Honor, --

THE COURT: When things were stayed and the legal fees weren't -- well, they were probably continuing to accrue because there were still appeal deadlines out there right and left that had to be addressed. But it's not going to settle. It's going to go on forever whether you get this information or not.

MS. DEITSCH-PEREZ: Your Honor, I'm telling you, and I represent the Plaintiffs, that the only thing that can enable this to end is to have sufficient information to be able to say, okay, I know what this all means, I know what we'll get, I know what we're foregoing.

How can anything ever settle if you don't know what you're giving up and you don't know what you're getting? How would that be possible? How would that be fair to parties to say, you should settle but you don't know what you're giving up and you don't know what you're getting? We're trying to get to the point where we could end this.

Shall I go on, Your Honor?

THE COURT: Yes, please.

MS. DEITSCH-PEREZ: Okay. Mike, next slide.

Okay. This is just a quick summary of the Defendants' arguments. Mootness, collateral estoppel, advisory opinion,

standing, failure to state a claim, and unclean hands.

Let's go to the next.

Okay. So, ironically, the Defendants argue that the balance sheet filed on July 6th eliminates the controversy among the party, parties, mooting the claims. But that can't be true, and Defendants won't provide the information to fill out the notes on the balance sheet and when -- when the balance sheet on its face shows assets exceed liabilities but the Defendants continue to maintain that they don't but without any analysis of why that's so.

Let's go on to the next.

But the Defendants shouldn't be able to have it both ways. If the balance sheet and financial statements are insufficient to determine whether assets exceed liabilities, as they claim, then the claims can't be moot. And, of course, a claim can't be dismissed simply because a defendant says in a pleading that a particular document shows that plaintiffs lack standing when the document itself does no such thing.

On its face, the balance sheet shows assets exceed liabilities. But if there's any doubt or ambiguity, that means discovery is needed, not that claims should be dismissed. This is a fact issue on which Plaintiffs are entitled to discovery and trial.

The next slide.

So, I mean, in response to the mootness arguments,

Plaintiffs cite cases that -- uncontroversial cases that say, when there's still a controversy, that claims are not moot. And if you'll look at Defendants' reply, they don't address any of that.

The Defendants also rely on the Court's order denying reconsideration of the HMIT gatekeeper regarding insider trading to say that it either moots Count Three or is the basis to collaterally estop Plaintiffs from proceeding. And there are numerous reasons that that's wrong.

So, one, the Court's dicta -- and it was dicta, because the Court had a lot of other reasons that it disposed of the matter -- is based on information that the Defendants now refuse to stand behind. And the Court's order doesn't address whether HMIT is in the money now or when the complaint was filed or whether it will ever. And it certainly doesn't exclude the potential that Plaintiffs would certainly be in the money but for Claimant Trustee's alleged breaches of good faith and fair dealing. So there's nothing about the Court's original or reconsideration order that precludes standing here.

Moreover, the order is obviously one that's on appeal and may be overturned.

Next slide.

If we look more closely at the requirements of collateral estoppel, Defendants are ignoring the basic elements of the

doctrine. So, one, the question is, are the claims identical? And they're not, for the reasons that I mentioned. The issues were obviously not necessary to the reconsideration decision since the Court stated it had several grounds for its decision.

More importantly, the Court's decision was made on a summary record in a gatekeeper proceeding. The -- so there was no discovery on that issue. And the Defendants have never fully detailed to the Plaintiff or the Court what's in the Claimant Trust, what's in the Indemnity Subtrust. We don't know.

So the balance sheet is summary information. The notes are not explained. And no one, not the Plaintiffs, not the Court, has had an opportunity to test the data and assumptions there, including undisclosed contingent liabilities and $198 million in off-balance-sheet adjustments.

So let's go to the next slide.

So I just urge the Court to go back and look at the balance sheet. And we have a picture of it up here. But if you look at it, you'll see notes. For example, Note 3. Value reflected herein consists primarily of ownership in private funds and subsidiaries. What funds? What are their assets? How liquid? Have they been sold? For a loss or gain? What's the resulting change in cash balance?

There's another note for other liabilities. To whom are

they owed? Note 5. The amount of further incremental indemnification reserves are currently expected to exceed $90 million and may be greater. $50 million? $90 million? $125 million? What's the math? What's the math behind that and how much has been used? What's been put aside? Who is getting it?

It says $35 million has been funded into the Indemnity Trust. What's the balance now? Did the additional funds reduce the value of the Claimant Trust? Did the money come out of current earnings, so maybe it hasn't reduced it?

Incremental springing contingent liabilities that range from $5 to $15 million. What are they? How much? When are they likely to crystallize?

These are among the questions that are unanswered from that balance sheet.

And let's go to Slide 12.

And so while -- Your Honor has pointed out many times that the August 25, 2023 opinion is very long, over a hundred pages, very detailed. And I concede: It is over a hundred pages. It is long. It has many sentences in it, and it has a lot of discussion. But there's no analysis about the value of the assets and liabilities or the net value of the Claimant Trust or what has been moved into the Indemnity Subtrust or why and was it justified. None of that is addressed.

The Court's October 6th opinion is short and it's cursory,

because it also doesn't analyze the value of the assets or liabilities or the net value of the Claimant Trust or what has been moved into the Indemnity Subtrust or why and whether it's justified. It simply states HMIT does not give proper attention to the voluminous supplemental notes in the balance sheet that were allegedly, this is a quote, "integral to understanding the numbers therein."

But what do those supplemental notes mean? The Debtor is vigorously shielding any scrutiny, while at the same time arguing that this Court's nonsubstantive reference to those notes collaterally estops Plaintiffs from bringing this action. But without access to information with which to challenge the other side, a party doesn't have a full and fair opportunity to be heard, and therefore any ruling based on that kind of proceeding can't have collateral estoppel effect.

Okay. So, again, this is just a summary. No full and fair opportunity prevents collateral estoppel, and the fact that there were numerous other grounds and a lack of reasoning to the issue that's being asserted here should serve collateral estoppel makes collateral estoppel inappropriate.

Okay. The Debtor also -- the Defendants argue that Count Three seeks an advisory opinion. It doesn't. It seeks a declaration concerning Plaintiffs' status that could be based on simple math from the face of the balance sheet that presently, presently there's enough money to pay everybody.

And so there would be a -- need to be a whole lot more explanation for the Defendants justifying why that's not the case.

So let's look at a hypothetical to see if Defendants' assertions about standing make sense. So let's say in a breach of contract case a broker fails to sell the plaintiff a million dollars' worth of shares that are at that time selling for a dollar each. Can the defendant move to dismiss, saying that plaintiff has no standing because the shares might go down in value, eliminating any damages? I'm sure Your Honor would say obviously not. But isn't that what the Defendants here are saying? It's -- they're saying it's possible they'll spend enough money to prevent the former equity from getting anything. But that doesn't mean that Plaintiffs lack standing now.

The Claimant Trust had sufficient assets to pay unsecured creditors in Class 8 and 9 in full, with interest, at least as early as mid-2023, maybe as early as September '22. Had Mr. Seery fulfilled his mandate, he should have distributed that and made the GUC certification. So Plaintiffs' contingent interests should have officially vested many months ago. And because of the duty of good faith and fair dealing, the Court --

THE COURT: What about Section 6.1 of the credit trust agreement?

MS. DEITSCH-PEREZ: You have to imply -- you have to add into that a duty of good faith and fair dealing. And so if Mr. -- if the Claimant Trustee has not taken those actions for the express purpose of making sure to silence -- trying to silence Class 10 and 11 and prevent them from getting money and being able to spend it all, you know, paying -- holding back enough to eventually pay a dollar -- a dollar less to Class 9, and using the rest of the money. So, Your Honor, because of the duty of good faith and fair dealing, 6.1 does not tie Your Honor's hands.

And let's look at the Slide 16.

THE COURT: The Trustee is required to reserve amounts necessary for indemnification obligations and the administration expenses of the trust are entitled to payment ahead of any classes under the plan. Class 8, Class 9, as well as --

MS. DEITSCH-PEREZ: Uh-huh.

THE COURT: -- 10, 11.

MS. DEITSCH-PEREZ: Your Honor, but is not -- is there not any limit on how much can be set aside? Let's say there were -- there was $300 million left over.

THE COURT: This is where I go back --

MS. DEITSCH-PEREZ: Could a Claimant --

THE COURT: -- to your client is in control of its own destiny here. This --

MS. DEITSCH-PEREZ: Well, basically, is Your Honor saying --

THE COURT: This should all be over. This should all be over, three years post-confirmation. It should all be over.

MS. DEITSCH-PEREZ: Yes. And --

THE COURT: They stayed --

MS. DEITSCH-PEREZ: Yes. And if we --

THE COURT: They stayed the mega-lawsuit. They stayed the mega-lawsuit for the reasons you are suggesting.

MS. DEITSCH-PEREZ: The unjustified mega-lawsuit that shouldn't have been brought in the first place. They stayed it. Very nice. They stayed it because they didn't -- they knew they didn't need that money. They knew it was unjustified. So they stayed it.

THE COURT: So that would suggest to me proper exercise of business judgment, litigation judgment. But they have no control over all of these appeals and all of the --

MS. DEITSCH-PEREZ: But --

THE COURT: -- litigation that your clients pursue.

MS. DEITSCH-PEREZ: Your Honor, my clients pursue litigation because they don't have the information to know whether they're -- wrongdoing is occurring. And the hallmark of this bankruptcy --

THE COURT: That doesn't apply with regard to the

appeals. And, again, --

MS. DEITSCH-PEREZ: Yes. And the appeals --

THE COURT: -- if your client wants to appeal, that is what's beautiful about our system. You can appeal and maybe get judgments overturned. But --

MS. DEITSCH-PEREZ: That's right.

THE COURT: -- it's a strategy here. Right? As long as you keep doing that, --

MS. DEITSCH-PEREZ: No, it's --

THE COURT: As long as you keep doing that, HMIT and Dugaboy's contingent interests, any recovery on them is going to continue to become less and less likely.

MS. DEITSCH-PEREZ: But so Your Honor, is Your Honor actually suggesting that they should lie down and not challenge anything to save a buck, and so if things have happened --

THE COURT: No. You heard what I said. Appeal away. Appeal away. No trial judge, no bankruptcy judge gets things right a hundred percent of the time. So appeal away. But don't complain about maybe not being in the money, when the greatest risk, it sounds like, to your client not being in the money is the professional fees continuing to impair value. And we could never get to a point in time where we could -- you know, again, my words earlier, meaningless exercise. How could I ever make a declaratory judgment about value or the

likelihood of your client recovering as long as there are dozens of appeals continuing to cause the liabilities to increase, the expenses to increase?

MS. DEITSCH-PEREZ: Your Honor, that's, I mean, --

THE COURT: You're asking the Court to do something impossible.

MS. DEITSCH-PEREZ: It's not impossible, because these appeals -- appeals like this happen all the time, and there are certainly professionals who are involved --

THE COURT: Name one bankruptcy case in history where there have been this many appeals.

MS. DEITSCH-PEREZ: It -- there don't -- there doesn't have to be another one with this many appeals. You just look at the cost of an appeal in any case and figure out whether, with what's going on here, what is the appropriate amount to set aside for that cost. It's eminently doable. It doesn't -- we don't have to have an exact case to match it to. We just need to have -- are there ever appeals of whether a release is overbroad? Sure. Are there ever appeals about whether a gatekeeper is appropriate? Sure. Are there ever appeals about whether the dismissal of a claim is appropriate? Sure. Those are all things that someone can look at and say, well, this is an appropriate amount to be spent on that, and so this is an appropriate amount to hold aside for resolving it.

But what we're saying is if we can get sufficient disclosure, we can figure out whether or not there -- it ought to be ended. But without that, we're left saying, what's being hidden here? What's actually left? What's been done? And so that's why -- and this is a problem that comes up in trusts all the time when there's not sufficient disclosure of what's in the trust. So that's why, under the *Restatement of Trusts*, --

THE COURT: Wait, wait, wait. This is what happens all the time? I don't know what kind of --

MS. DEITSCH-PEREZ: Yeah. In other words, that --

THE COURT: What post-confirmation trust agreement that's been approved as part of a plan does this happen all the time?

MS. DEITSCH-PEREZ: I'm not talking about -- about trusts in bankruptcies in particular. I'm talking about --

THE COURT: That's what we're dealing with here.

MS. DEITSCH-PEREZ: Well, --

THE COURT: And I'm just telling you: One time, I've wracked my brains, and one time since I've been on the bench -- I'm coming up on my 18-year anniversary.

MS. DEITSCH-PEREZ: Uh-huh.

THE COURT: I'm old. But one time I have had litigation about what the heck is going on with the post-confirmation creditor trust.

MS. DEITSCH-PEREZ: Uh-huh.

THE COURT: The facts were so very different. It was a creditor trust agreement, and I think it had a three-year term on it. The trust was going to be wrapped up in three years. And Year 3 came along and there was a motion to extend it. We're not done, we want to expand it, I don't know, six months, maybe a year. And then that time frame went by and there was another motion to extend it. So it was extended another year. And then it happened again.

And a creditor objected, saying, I want to know what the heck is going on. And I looked at the docket sheet and I'm like, gosh, there aren't any appeals out there, there's hardly any activity that's going on. And so we had a hearing. And the trustee was getting a flat fee that was rather large for the size of that estate, where unsecured creditors were probably going to get less than ten cents on the dollar. And we ended up having another hearing where we find out that the oversight committee hadn't met in like three years and these creditors who are likely to get five cents on the dollar, they had just mentally checked out a long time ago.

And even in that situation, I was struggling with my power, my jurisdiction, to put any equitable oversight mechanisms in place when the creditors had voted on this, when the creditors got to see the creditor trust agreement before the confirmation hearing and no one complained. And luckily,

that situation was resolved. The creditor trustee said, we're going to wrap it up in six months. I'm no longer going to take my compensation. And it was some tax issue that no one had been focusing on properly, like I think maybe the company hadn't done tax returns in a gazillion years before confirmation.

But the point I'm getting at is, again, many, many legal issues out there, but the overarching issue I keep coming back to is there's a creditor trust agreement that everyone got notice of and the Court approved. And contractual terms are something I'm supposed to respect. And you're asking me, on an equitable basis, to overrule this. This has maybe far-reaching effects for everyone who strikes a bargain in Chapter 11 with, Here's our plan, here's what the liquidating trust is going to be governed by, here's the hearing, speak now or forever hold your peace, I approve it. And --

MS. DEITSCH-PEREZ: You're right, Your Honor, that it has far-reaching effects. And if you don't do something to shine a light on this and enable the disclosure and the hearing, you will embolden claimant trustees to do exactly what's happening here, maybe in even worse circumstances. And the difference between the case you mention and the case here is -- actually weighs in favor of intercession sooner here because there is so much money involved.

So there's -- it's not a piddling amount that, you know,

where creditors are only getting a couple cents on the dollar anyway, so, you know, they're going to get three cents or two cents. It's of less magnitude. Here, there is an enormous amount of money that may be squandered. And so it's more important to look hard at this and impose the covenant of good faith and fair dealing.

And that's why the *Restatement of Trusts* says that beneficiaries of a trust are -- include contingent beneficiaries. And then if you take --

Let's go to the next slide, Mike.

Okay. Delaware courts also look to *Black's Law Dictionary*. And that's important here, because it actually includes contingent beneficiaries and direct beneficiaries within the definition, without any qualification, but expressly distinguishes an incidental beneficiary or someone who's going to be a beneficiary by virtue of a separate contract. And nothing in the Claimant Trust agreement indicates that Plaintiffs are merely incidental beneficiaries. And that's important because in that *Paul* case that Defendants rely on so heavily, they were incidental beneficiaries. It was a separate document, not the trust agreement itself, that would give rise to the status of the plaintiffs.

And so Delaware -- go to 18 -- Delaware courts make a point of not -- of not reading statutory language restrictively to exclude classes of beneficiaries. And so

while they are not absolutely on point, they are thematically on point, and to say that if someone is even a contingent beneficiary, they ought to have the rights that one has under the Delaware law.

And so -- go to -- move -- next slide.

And the duty of good faith and fair dealing is not disclaimed in the Claimant Trust agreement, and moreover, it cannot be disclaimed. So that's something Your Honor has to take into account. And the impact of a duty of good faith and fair dealing is that a party is basically estopped from raising a provision that they are using in conjunction with their own wrongdoing.

So if the Claimant Trustee is deliberately not paying out $8 million in full in order to keep an unreasonable amount in reserve and be able to be employed at $150,000 a month, you know, being paid the same thing now, when most of the liquidation has already been done, as, you know, when there were a million things going on and a lot of management. So it does seem unreasonable, and the Claimant Trustee has the power to keep that going basically forever.

Next slide.

And so -- and when I said earlier, you know, this is a common thing, what I meant was cases like *Estate of Cornell* and *Edwards*. It's just a -- it's a universal problem that you can prevent or postpone vesting unreasonably and prevent

distribution by your own acts.

And if you look at the Defendants' reply, there is not one word about these concepts, about whether or not the Court has the power and, really, must stop a trustee from raising their own interest over the interests of the beneficiaries, including the contingent beneficiaries.

Next slide.

So, and I really covered this to some degree, but Defendants' reliance on *Paul Capital*, which is an unpublished case, is misplaced. The interests here are not incidental. They're not derived from an outside contract. The court in *Paul Capital* also relied on the fact that the trust agreement -- agreements in that case were fully integrated, which was a reason they didn't look to that outside contract. But in fact, there's no merger clause in the CTA, so that's another difference.

Next.

Defendants' entire argument that Plaintiffs are not entitled to an accounting turns on its erroneous conclusion that Plaintiffs are not beneficiaries under the CTA. And now they also point to -- which I don't believe they did in their papers -- they also point to the general rule that an accounting is not done as a matter of course. But this Court has the power under Texas law to impose an accounting when there are questions, as there are here, that need to be

answered in order for the parties to make sensible decisions about what ought to be done going forward.

Then, unclean hands, it's a one-sentence argument in the Defendants' brief referring to the Kirschner litigation, which it doesn't actually identify by name and doesn't say anything about the fact that it was voluntarily stayed. And the claim against HMIT, and it is breach of contract, so it's really hard to understand how being a defendant in a breach of contract action is unclean hands. And the Plaintiffs made these points in response to Defendants' motion, and Defendants' reply brief is conspicuously silent of any rebuttal.

Okay. So, Defendants' motion to dismiss needs to be denied so that Plaintiffs finally have a full and fair opportunity to challenge Defendants' assertion.

Even if this Court disdains Plaintiffs and sympathizes with the Claimant Trustee, the Court is making law here. And as we've pointed out, the law would create this platform for claimant trustees to enshrine themselves and to do things under a veil of secrecy. And that's not something that I would think this Court would want to do.

If there's enough money to pay all of Classes 8 and 9, the remainder belongs to Classes 10 and 11, not the estate professionals. Money left over after --

THE COURT: Let me ask you.

MS. DEITSCH-PEREZ: -- Class 8 and 9 are paid --

THE COURT: Again, that's just not entirely correct, because of 6.1. It is in there that indemnification obligations must be reserved for. And let me ask you: How many times have your clients tried to sue Mr. Seery?

MS. DEITSCH-PEREZ: I -- a couple. And the point is if he --

THE COURT: Only a couple?

MS. DEITSCH-PEREZ: Yes.

THE COURT: Only a couple? So, --

MS. DEITSCH-PEREZ: Yes. But --

THE COURT: So they're required to reserve amounts necessary. How much is your client or your clients seeking to recover from Mr. Seery in those couple of lawsuits? I think there have been more than two attempts.

MS. DEITSCH-PEREZ: I don't think it's -- I don't think the -- I don't think the amounts sought are the issue. It's -- it's there's -- and I'm not counsel of record in the insider trading case, but I don't remember a large amount. The -- in the case we're bringing to --

THE COURT: The insider trading case? The insider trading case? Are you talking about the Stonehill/Farallon thing?

MS. DEITSCH-PEREZ: Yeah. Yes. I don't -- that -- you asked about every case where Mr. Seery is mentioned. So I

don't think there's a big number there. And the case --

THE COURT: Wait, wait, wait.

MS. DEITSCH-PEREZ: -- that I have --

THE COURT: You don't think there is a big number there? You don't remember the prayer for relief in that?

MS. DEITSCH-PEREZ: I don't, Your Honor. It's not -- I'm not the lawyer of record in the case.

THE COURT: Okay.

MS. DEITSCH-PEREZ: But let me point out, if --

THE COURT: I think it was rather open-ended and large. Okay? But, and then there's the professional fees and expenses that have priority.

MS. DEITSCH-PEREZ: Your Honor, --

THE COURT: I mean, I just, I want to hear: Are you asking me to disregard Section 6.1 on equitable grounds? I think at bottom you are, and I just want to hear you answer that question.

MS. DEITSCH-PEREZ: Your Honor, I'm going to answer that question, but I'm also going to point out that the indemnification, if in fact there is intentional wrongdoing that occurred, the estate is not obligated to indemnify. If in fact the Claimant Trustee prevails in a claim or Mr. Seery prevails in a claim, there is no judgment to indemnify. So we're only talking about professional fees.

And yes, Your Honor, you don't ignore 6.1. You read it

with a duty of good faith and fair dealing applied in it, and that enables you to allow this case to proceed, which is necessary if we are ever going to end this matter.

And I will tell you, you asked about what's being sought from Mr. Seery.

THE COURT: Can someone on your team -- can someone on your team tell me how many pending appeals there are right now? Because the chart that I asked my law clerk to pull is several months old.

MS. DEITSCH-PEREZ: We can -- I'm -- we can submit it after the fact, Your Honor.

THE COURT: Okay. I wanted to know right now, but --

MS. DEITSCH-PEREZ: We'll send something.

THE COURT: I wanted to know right now, when I'm --

MS. DEITSCH-PEREZ: I mean, I don't know right now how many there are.

THE COURT: Is -- are there a dozen?

MS. DEITSCH-PEREZ: And I wouldn't want to try and count while I'm sitting here.

THE COURT: Are there a dozen? Can you say, are there more than a dozen?

MS. DEITSCH-PEREZ: I don't know, Your Honor. I think many of them have wound down, and so the only -- we're awaiting decision. So I don't know.

But appeals, of their nature, are generally not that

expensive. There's no discovery. You write a brief. You go and argue it.

THE COURT: That is not my recollection whatsoever from reviewing fee apps for 18 years or for practicing law 17 years. You know. If --

MS. DEITSCH-PEREZ: Your Honor, I agree, if there were not -- if the Defendants didn't bring six or seven people to New Orleans or Houston when there is an appeal, I would think that it would cost less. There's no reason, in this day and age, where you can -- if you're only listening, you can -- you can do that from your office, because the Court provides an audio link. There's no reason to have that many people travel clear across the country to go sit and listen to arguments. So, is there a reason things cost more than they should? Absolutely. But that's not the Plaintiffs.

THE COURT: Okay.

MS. DEITSCH-PEREZ: This Court could look at what is left and say, you know what, in my experience, taking into account your 18 years, this is -- this is what this many proceedings should cost. That's the amount of -- and even if you add a little cushion -- that's the appropriate amount of indemnity, and everything else can be distributed. You can do that, Your Honor. You have the -- there are professionals who could give expert testimony, and with that, between that and Your Honor's experience, you can figure that out. It's not a

black box.

THE COURT: All right. Mr. Morris, your rebuttal, please.

MR. MORRIS: Thank you, Your Honor.

If nothing else, counsel's presentation proved one thing, and that is this proceeding should be dismissed. She insists -- she had her presentation up on the board -- that they're in the money. We disagree. We disagree both with the analysis and with its legal significance.

But just as HMIT contended last summer that they were in the money, counsel today is ratifying that and saying they're in the money. If they're in the money, why do they need this information? They don't.

Let me just start with the rebuttal, because it's going to be some random points just because I'm -- I've taken some notes.

The concept that three-plus years ago Heller Draper, Munsch Hardt, Bonds Ellis couldn't foresee that we would be here is mind-boggling, and, then, legally irrelevant. You know who had the foresight to see that we might be here? The Creditors' Committee. They're actually the ones who drove this process on the Claimant Trust agreement. It's why the agreement says exactly what it says. It's an agreement between parties that defines the beneficial owners' rights and the limitations on those rights.

There is a reason that contingent trust beneficiaries are not owed any duty whatsoever until their claims vest and that they have no rights under the Claimant Trust agreement or the plan, at least as it pertains to the Claimant Trust agreement, until their rights vest. The vesting process was not an accident. It was intended to make sure that Mr. Dondero could not do exactly what counsel is making plain she wants to do today, and that is get information in order to second-guess every decision that Mr. Seery has made. Okay?

Everybody on our side of the table knew, based on Mr. Dondero's very long history of litigation, that this was a possible end result, and they prepared for it. That Mr. Dondero's lawyers did not is on them. The Court should not be rewriting the agreement today.

Ms. Deitsch-Perez contends that somehow we have obscured resources. No such thing has ever occurred. Okay? The plan and the Claimant Trust agreement provide very specific rules on what must be disclosed. There are other rules that require disclosures. There is no allegation whatsoever that the Claimant Trustee or the Claimant Trust has failed to meet its obligations to make the disclosures required under the Claimant Trust agreement and under the law.

And in fact -- this is another point that just gets obscured in all of this, like a suggestion that somehow Mr. Seery is some rogue guy doing stuff all by himself. That's

false. It's baseless. There is a Claimant Oversight Board with an independent member and with two members who have a substantial stake in the Claimant Trust. And there are many Claimant Trust beneficiaries, not one of whom is here to complain, not one of whom is concerned about the lack of disclosure, not one of whom is concerned about the reserves that have been made in this case.

There's really nothing more to talk about, but I have to respond to certain of the other points. This notion that somehow assets that exceed liabilities are the property of HMIT is legally incorrect. That's as polite as I can say it. Your Honor focused on it. 6.1. It is what it is. But I do need to make the point that there is no way that anybody could make a reasonable estimate of indemnification claims. It's not just appeals, Your Honor. That's one aspect, and I appreciate Your Honor focusing on it. But we have litigation in Guernsey. We have litigation in the Southern District of New York. We have, you know, these suits. He doesn't want -- he is just looking for information.

He tried to sue my firm on this ridiculous theory that we were actually his lawyer way back in September 2019. Like, really? It was withdrawn in the face of a Rule 11 motion. But you know what? My firm incurred expenses defending itself.

These things don't stop. There is another lawsuit to

remove Mr. Seery. That's been stayed pending the outcome here, because just like they have no legal right or equitable claim to obtain any information from the trust, they have no legal right or equitable claim to remove Mr. Seery. But we're going to have to do that.

The money in the trust is not HMIT's. They have no legal or equitable claim to that money unless and until all senior claims and expenses are satisfied. And that will not happen as long as there's pending litigation.

You know, you're encouraged to make an estimate. What happens if your estimate is wrong, Your Honor? What happens if you come up with a ruling and say the estimate is $50 million and that's what Mr. Seery reserves, because he's going to comply with any order this Court issues, and at the end of $50 million there's still litigation and he or other indemnified parties have been sued? And now what? Now what happens then?

That's why this is completely untenable and it has no basis in law, fact, or equity.

Dicta? Your Honor's decision that HMIT was not in the money was dicta? That was the whole basis for the motion. The motion sought reconsideration on the basis that they were in the money and therefore had standing. It's not dicta. It's the holding, after an analysis of the balance sheet, after showing the faulty logic in HMIT's presentation. That

it's a balance sheet, Your Honor. It's not cash. You don't spend what's on a balance sheet, you can't buy anything with what's on the balance sheet, because what's on the balance sheet is a bunch of contingent stuff. Like the Notes Litigation. $70 million. They're here telling you they're in the money, and they treat that $70 million as being in the Claimant Trust's pocket. It's not. Not only is it not in the Claimant Trust's pocket, Mr. Dondero is doing everything he can to make sure it never gets in the Claimant Trust's pocket.

This is their disingenuous theory of what the balance sheet means.

Again, apologies for the somewhat disparate nature of the rebuttal.

Duty of good faith and fair dealing. You've heard that a lot. Where is it in the complaint? What cause of action here is dependent on duty of good faith and fair dealing? Nothing. You won't find it. The words aren't there. This is a request for information and two requests for declaratory judgment that assets exceed liabilities and that they may vest someday in the future. Their complaint, the only thing that's the subject of this motion, has nothing to do with the duty of good faith and fair dealing.

The Kirschner action. It was stayed. But you know what, Your Honor? It wasn't dismissed. It was stayed because responsible parties like Mr. Kirschner and Mr. Seery said,

let's pause and see what happens. There may come a time when we start that litigation. There may come a time. Right? It wasn't dismissed.

So the notion that we've made a decision that it's not necessary is wrong. The decision was made that we don't have to spend that money today. Let's keep it on ice and let's see if we need to in the future.

Willkie. We heard some disparaging remarks about Willkie's participation in these proceedings. Well, you know what, Your Honor? Mr. Seery, God bless him, never retained personal counsel in this case until HMIT sought leave to sue him. Willkie is in this case only because Mr. Dondero made the decision to go after Mr. Seery. Mr. Seery is entitled to indemnification, he has indemnification, and I'm delighted that the Willkie firm is by my side.

If Mr. Seery -- if Mr. Dondero has regrets about Willkie's participation, he shouldn't sue Mr. Seery anymore. Maybe they wouldn't have such a role.

Listen to what they're saying, Your Honor. Listen to Ms. Deitsch-Perez's hypotheticals. What if they find out that there's overpayments to professionals? What if there's payments to phantom vendors? What if they learn someday that Mr. Dondero -- Mr. Seery has engaged in wrongdoing? If this is what they want to hold out for, if this is what they want to continue to litigate for, because they think one day maybe

they might have something, somebody did something wrong, it's Mr. Dondero's prerogative. But this is not a vehicle to give him information to pursue those claims. It's just not.

Standing. There's no standing motion here. We're not saying dismiss this because they don't have standing to spring the claims. We're saying that they don't have any legal right to seek information because of the plain terms of the Claimant Trust agreement and the plan. It's not a standing question, it's about whether they have a legal right, and the plain terms of the operative documents state definitively that they do not.

They can't settle without the information.

(Pause.)

THE COURT: Whoops. We just lost you, Mr. Morris. We just lost your sound.

MR. MORRIS: Okay. Am I back?

THE COURT: You're back.

MR. MORRIS: Okay. People settle claims, known and unknown, all the time. Okay? Mr. Dondero should look at his success rate in litigation in this case and decide what he's really holding out for. He should look at the success in bringing the suit against my firm. He should look at what happened when we had the evidentiary hearing in Hunter Mountain and it was revealed that he was actually the party who engaged in inside information. He was actually the person

who lied to Mr. Seery about what was happening with MGM. He should think about his lack of success, the lack of merit, what happened in the Notes Litigation, how ridiculous the supposed oral agreement defense was. He should ask Mr. Rukavina how the hearing went in front of Judge Scholer last week on the appeal.

And he's holding out for more claims? This is what he wants to do for his life? God bless him. We will reserve everything.

Mr. Dondero is not the principal. He doesn't get some final say over the propriety of the actions of the Claimant Trustee or my firm. He doesn't have that right. That's what the Claimant Trust agreement was intended to do. It reflects the settlor's intent. And the settlor's intent was that Mr. Dondero or Hunter Mountain or Dugaboy would get a check at the end of the day if and when all senior claims and expenses were paid and satisfied. That has not happened, so they don't get a check. It's really that simple. It may be hard for him to take, and I appreciate that, but he should have thought about these issues three-plus years ago when all of this was proposed, because other people thought about it, and here we are.

And the Court has, I respectfully say, no authority, no jurisdiction to override the plain terms of an agreement that has been affirmed by this Court and has been affirmed by the

Fifth Circuit Court of Appeals. There has never been a challenge to these provisions that they just want you to completely ignore.

Just one moment, Your Honor.

(Pause.)

MR. MORRIS: Your Honor, I actually have nothing further unless the Court has any questions.

THE COURT: Okay. I only have one question. And let me preface it by saying that I don't pay much attention to appeals and satellite litigation unless something is brought to me. I mean, there just are not enough hours in the day for me. Plus it's just, it's not of my concern. Right? An appellate court is going to do what it's going to do and issue a mandate to me at some point, if appropriate. And the same with satellite litigation. It's either going to somehow be brought before me or not.

So you may think that I'm aware, lawyers, parties may think that I'm aware at all times of different things going on out there, but I'm really only sort of aware. I don't know how many pending appeals there are right now. But I do know that someone who seemed to know what he was talking about, another judge in Texas, not here, told me that Highland has spawned more appeals at the Fifth Circuit than any other -- I don't know if he said bankruptcy case in history or Chapter 11. And he said, are you proud of that? Hahaha. And I said

no. I'm not even remotely proud of that. And I haven't double-checked his figures, but he's kind of a numbers wonky lovable geek, so I think he probably knew what he was talking about.

But finally getting to my question, Mr. Morris: You alluded to there's a vexatious litigant motion pending, and you reminded me I heard about that at a hearing many months ago. I think you said it was before Judge Brantley Starr, a district judge here in this district. Is that correct?

MR. MORRIS: It is correct, Your Honor. And we filed our reply papers last Friday, so it's been fully briefed.

THE COURT: Okay. Well, even though I don't closely monitor appeals, satellite litigation, I may be monitoring that.

MS. DEITSCH-PEREZ: Your Honor, may I make one rebuttal, by the way, to Mr. Morris's presentation? I just have one comment.

THE COURT: If it's 30 seconds. But this is out of order. Usually, Movant goes last. I assume this is going to be hugely important.

MS. DEITSCH-PEREZ: It is important. It's something Your Honor raised and Mr. Morris raised, so I want to point something out so there is no misunderstanding. There was a lot of talk about, well, the Plaintiff should have done something about this at the time of the plan. If Your Honor

recalls, at the time of the plan the projections were that Classes 8 and 9 would recover a fraction of their value. So there was no reason Classes 10 and 11 should be -- should have anticipated the issues that have arisen now. And I just want to remind everybody of that.

MR. MORRIS: And just one sentence, Your Honor. Mr. Dondero acquired every single asset that Highland has. He was in Highland's offices with full access to all information through October. He had Mr. Waterhouse, the CFO, onsite until just before the confirmation hearing, and there was no objection to those projections.

What happened is Mr. Seery and his team did a great job and benefited from a rising market, and yet here we're going to be subjected to more litigation. It's brilliant.

THE COURT: All right. Well, I am finished hearing everything. And with respect to that comment for the Plaintiffs, I continue to think this is a very important issue, of the many issues, of the many jurisdictional issues here. And there are so many issues, I'm not sure, if you prioritize the issues, where this one falls on the list. And yet as a bankruptcy judge I am obsessed a bit with the issue of the impact on the Chapter 11 world.

We have liquidating Chapter 11s with -- or even if they're not liquidating, we have Chapter 11s where there's a litigation trust like this one where there is sometimes a

discussion, when are you going to get the creditor trust agreement on file? Oh, it's going to be part of a plan supplement, and the plan supplement will be filed, you know, ten days before the confirmation hearing. Whatever. I'm just giving you a typical fact pattern. And it's part of the evidence. It's part of the information. It's not just evidence at the confirmation hearing. It's usually on file several days before the confirmation hearing, where it's out there for consumption, for people to complain about if they think there are objectionable terms. And we just have this in dozens and dozens of cases.

And I can even go further back in my brain here. I mean, Chapter 11, very soon after the case was filed, we had a U.S. Trustee saying conversion to Chapter 7 or appointment of a Chapter 11 trustee. You know, we can't have Mr. Dondero as the manager of this Debtor anymore. And despite that argument, we put in place a corporate governance mechanism that Mr. Dondero agreed to. And my point is there's always been a huge amount of oversight by what we considered the fulcrum security here, the unsecured creditors. A huge amount of oversight. A huge amount of oversight in this case that was negotiated in response to a very active Creditors' Committee and a U.S. Trustee saying can't have a debtor-in-possession here.

So why do I go back? I mean, it's really troublesome for

any judge to hear, We have suspicion. We are worried about a breach of good faith and fair dealing. What if there are fictional vendors?

I mean, this case has been full of extensive oversight. And not only could the Plaintiffs here have complained about the terms of the creditor trust agreement, heck, they could have said convert this sucker to Chapter 7, because a Chapter 7 trustee will have -- there will be a lot of transparency for everything that happens in winding down this estate.

So, rambling, yes, I'm rambling. I do that. But the philosophical issue here, I just, it's hard for me to ignore, because, looming, we have the jurisdictional issues, but what you're asking me to do is something that it's just a fact pattern we see all the time of plans with litigation trust agreements. And we all know what the terms are going to be, and we can all argue about those terms if we don't think they're appropriate, and we all know that the future is uncertain and things could change, and that's just the way it is. Here it is. Live with it or not.

Anyway, but so that's a big deal, the contractual rights here.

And as I said earlier, another kind of overarching issue is it feels like kind of a meaningless exercise when we have the asset side of the balance sheet but the liabilities just grow unlike any other case. It's fair to say unlike any case.

There have been more appeals generated at the Fifth Circuit from this case than any Chapter 11 ever, and maybe any bankruptcy ever.

There was a reference to, well, yeah, there are lots of appeals, but you don't need to send six lawyers to New Orleans or have people. But I was just writing down as I was thinking through this, and Mr. Morris alluded to some of it, we've had at least the following law firms involved for either Mr. Dondero or entities he controls: Munsch Hardt; Bonds Ellis; Heller Draper; Louis Phillips' firm, I think that's Kelly Hart; the Stinson law firm; Sawnie McEntire's law firm; Ms. Ruhland, Amy Ruhland; Lang Winshew; and I forget the name of the lawyers who represented the Charitable Trusts.

MR. MORRIS: Mazin Sbaiti.

THE COURT: The Sbaiti law firm.

So I've just rattled off from memory nine law firms, okay? I'm not even sure I've captured them all. Probably not. So it's, on all sides of this, I can't remember if I've said this in court or I've just maybe said it back in chambers, but I'll say it: This feels like the Disneyland case. Have I ever said that in court yet? Do you know what I mean by that? I probably haven't.

The famous quote of Walt Disney, when someone asked him about the theme park and when it would be finished, and he said, Disneyland will never be finished as long as there are

creative people with imaginations. I mean, this is like the Disneyland case. It will never be finished as long as there are certain parties and lawyers who have imagination and keep filing stuff. I don't mean to be flippant, but I really am trying to emphasize what I said. Sure, people are entitled to appeal, but how can you complain about 'I don't know if I'm in the money or not' when there's just no end in sight?

So I'm going to obviously take this under advisement, and we will carefully look at every argument and every case, because that's what we do. That's what we're duty-bound to do. We don't knee-jerk anything around here. But I am very, very troubled by some of the arguments. And it's what made me ask about the vexatious litigant motion and its status, because it just feels so beyond the pale to make accusations of some sort of breach of good faith and fair dealing and raise the specter of lack of transparency and something untoward may be going on, when these were the terms negotiated as far as post-confirmation oversight, we have an Oversight Committee, and I think every rational person knows that the professional fees and the indemnification obligations and the appeals and the satellite litigation are why we can't wrap this up. Okay?

So let that soak in. And we will get an opinion out as soon as we can make it happen.

All right. We're adjourned.

THE CLERK: All rise.

(Proceedings concluded at 11:28 a.m.)

--oOo--

CERTIFICATE

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

/s/ Kathy Rehling **02/20/2024**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

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APPELLEE RECORD

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

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III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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BTXN 049 (rev. 03/15)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re: Highland Capital Management, L.P. Debtor(s) Hunter Mountain Investment Trust Appellant(s) vs. Highland Capital Management, L.P. et. al. Appellee(s)	§	Case No.: 19−34054−sgj11 Chapter No.: 11

NOTICE OF TRANSMITTAL

I am transmitting:

- ☐ The Motion for leave to Appeal 28 U.S.C. § (USDC Civil Action No. DNC Case).
- ☐ The Motion for Stay Pending Appeal (USDC Action No. − DNC Case).
- ☐ The Proposed Findings of Fact and Conclusions of Law.
- ☐ The Motion to Extend Time To File Designation (USDC Civil Action No DNC Case).
- ☐ On , the Record on Appeal was transmitted. The designation of record or item(s) designated by were not filed when the record was transmitted. The item(s) were filed on awaiting instructions from the assigned district judge.
- ☐ Other
- ☑ Copies of: Notice of appeal, appealed order [3904] and supporting documents

TO ALL ATTORNEYS: File all subsequent papers captioned and numbered with the appropriate division of the United States District Clerk's Office. Any questions concerning this proceeding should be directed to the U.S. District Clerk's Office at (214) 753−2200.

DATED: 9/15/23

FOR THE COURT:
Robert P. Colwell, Clerk of Court

by: /s/Sheniqua Whitaker, Deputy Clerk

BTXN 116 (rev. 07/08)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

APPEAL SERVICE LIST

Transmission of the Record

BK Case No.: 19−34054−sgj11

Received in District Court by: _____

Date: _____

Volume Number(s): _____

cc: Stacey G Jernigan
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BTXN 150 (rev. 11/10)

In Re:
Highland Capital Management, L.P.

Debtor(s)

Case No.: 19−34054−sgj11
Chapter No.: 11

CIVIL CASE COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) **APPELLANT**
Hunter Mountain Investment Trust

APPELLEE
Hunter Mountain Investment Trust, the Highland Claimant Trust, : James P. Seery, Jr., Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management, L.L.C., and Stonehill Capital Management LLC

(b) County of Residence of First Listed Party:
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Party:
(IN U.S. PLAINTIFF CASES ONLY)

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Attorney's (If Known)
See Service List

II. BASIS OF JURISDICTION

○ 1 U.S. Government Plaintiff ○ 2 U.S. Government Defendant ◉ 3 Federal Question (U.S. Government Not a Party) ○ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

Citizen of This State	○ 1	○ 1	Incorporated *or* Principal Place of Business In This State	○ 4	○ 4
Citizen of Another State	○ 2	○ 2	Incorporated *and* Principal Place of Business In Another State	○ 5	○ 5
Citizen or Subject of a Foreign Country	○ 3	○ 3	Foreign Nation	○ 6	○ 6

IV. NATURE OF SUIT

◉ 422 Appeal 28 USC 158 ○ 423 Withdrawal 28 USC 157 ○ 890 Other Statutory Actions

V. ORIGIN

◉ 1 Original Proceeding ○ 2 Removed from State Court ○ 3 Remanded from Appellate Court ○ 4 Reinstated or Reopened
○ 5 Transferred from another district ○ 6 Multidistrict Litigation ○ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity):**
422 Appeal 28 USC 158

Brief description of cause:
Notice of appeal of a bankuptcy court order

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23 DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

DATED: 9/13/23

FOR THE COURT:
Robert P. Colwell, Clerk of Court
by: /s/Sheniqua Whitaker, Deputy Clerk

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

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

HUNTER MOUNTAIN INVESTMENT TRUST'S AMENDED NOTICE OF APPEAL

Pursuant to 28 U.S.C. § 158(a) and Federal Rules of Bankruptcy Procedure 8001-8002, Appellant/Movant Hunter Mountain Investment Trust ("HMIT"), both in its individual capacity and derivatively on behalf of the Reorganized Debtor, Highland Capital Management, L.P., and the Highland Claimant Trust,[1] appeals to the United States District Court for the Northern District of Texas, Dallas Division, from this Court's August 25, 2023 Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding (Docs. 3903-3904) (attached to this notice as Exhibits 1 and 2) (the "Final Order"), and all associated interlocutory orders or decisions that merged into or preceded the Final Order, including but not limited to the following:

- March 31, 2023 Order Denying Application for Expedited Hearing (Doc. 3713) (attached to this notice as Exhibit 3);
- May 11, 2023 Order Fixing Briefing Schedule and Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding as Supplemented (Doc. 3781) (attached to this notice as Exhibit 4);

[1] And, in all capacities and alternative derivative capacities asserted in HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Bankr. Dkt. Nos. 3699, 3815, and 3816] ("Emergency Motion"), and the supplement to the Emergency Motion [Bankr. Dkt. No. 3760] and the draft Complaint attached to the same [Bankr. Dkt. No. 3760-1].

- May 24, 2023 Order Pertaining to the Hearing on Hunter Mountain Investment Trust's Motion for Leave to File Adversary Proceeding (Doc. 3790) (attached to this notice as Exhibit 5);
- May 26, 2023 Order Regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery Or, Alternatively, For Continuance of the June 8, 2023 Hearing (Doc. 3800) (attached to this notice as Exhibit 6);
- Evidentiary and other oral rulings, including but not limited to rulings associated with expert testimony, made at the June 8, 2023 Hearing;
- June 16, 2023 Memorandum Opinion and Order Granting Joint Motion to Exclude Expert Evidence (Doc. 3853) (attached to this notice as Exhibit 7); and,
- July 5, 2023 Order Striking HMIT's Evidentiary Proffer Pursuant to Rule 103(a)(2) and Limiting Briefing (Doc. 3869), including the appended email ruling (attached to this notice as Exhibit 8).

The names of all other parties to the orders and decisions appealed from and their respective counsel are as follows:

- Appellant/Movant HMIT, represented by:

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- Appellees/Non-movants Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management, L.L.C., and Stonehill Capital Management LLC, represented by:

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Dated: September 12, 2023

Respectfully Submitted,

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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served via ECF notification on September 12, 2023, on all parties receiving electronic notification.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

3130876.2

Exhibit 1

The following constitutes the ruling of the court and has the force and effect therein described.

Signed August 25, 2023

United States Bankruptcy Judge

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

IN RE:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-sgj-11**
Reorganized Debtor.	§	

MEMORANDUM OPINION AND ORDER PURSUANT TO PLAN "GATEKEEPER PROVISION" AND PRE-CONFIRMATION "GATEKEEPER ORDERS": DENYING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING[1]
[BANKR. DKT. NOS. 3699, 3760, 3815, and 3816]

I. INTRODUCTION

BEFORE THIS COURT is yet another post-confirmation dispute relating to the Chapter 11 bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor").

[1] On August 2, 2023, this court signed an Order [Bankr. Dkt. No. 3897] that was agreed to among various parties, after the filing of a Motion to Stay and Compel Mediation [Bankr. Dkt. No. 3752] filed by James D. Dondero and related entities. Pursuant to paragraph 7 of that order, certain pending matters in the bankruptcy court are stayed pending mediation. The parties did not agree to stay the matter addressed in this Memorandum Opinion and Order.

It is now more than two and half years since the confirmation of Highland's Plan[2]—the Plan having been confirmed on February 22, 2021.[3] The Plan was never stayed; it went effective on August 11, 2021 ("Effective Date"), and it was affirmed almost in its entirety by the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit"), in late summer 2022, including an approval of the so-called Gatekeeper Provision[4] therein. The Gatekeeper Provision—and how and whether it should now be exercised or interpreted to allow a certain lawsuit to be filed—is at the heart of the current *Emergency Motion for Leave to File Verified Adversary Proceeding* [Bankr. Dkt. Nos. 3699, 3760, 3815, 3816] (collectively, the "Motion for Leave") filed by a movant known as Hunter Mountain Investment Trust ("HMIT").

A. Who is the Movant, HMIT?

Who is HMIT? It is undisputed that it is a former equity owner of Highland. It held 99.5% of Highland's Class B/C limited partnership interests and was classified in a Class 10 under the confirmed Plan, which class treatment provided it with a contingent interest in the Highland Claimant Trust ("Claimant Trust") created under the Plan, and as defined in the Claimant Trust Agreement. This means that HMIT could receive consideration under the Plan if all claims against Highland are ultimately paid in full, with interest. As later further discussed, it is undisputed that

[2] Capitalized terms not defined in this introduction shall have the meaning ascribed to them below.

[3] The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order")[Bankr. Dkt. No. 1943].

[4] In an initial opinion dated August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in large part, "revers[ing] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan's exculpation, and affirm[ing] on all remaining grounds." *In re Highland Capital Management, L.P.*, No. 21-10449, 2022 WL 3571094, at *1 (5th Cir. Aug. 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022, "for the limited purpose of clarifying and confirming one part of its August 19, 2022 opinion," the Fifth Circuit withdrew its original opinion and replaced it with its opinion reported at *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419, 424 (5th Cir. 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section "IV(E)(2) – *Injunction and Gatekeeper Provisions*" of the original opinion: "The injunction and gatekeeper provisions are, on the other hand, perfectly lawful." was replaced with "We now turn to the Plan's injunction and gatekeeper provisions." In all other respects, the Fifth Circuit panel's original ruling remained unchanged. Petitions for writs of certiorari regarding the Confirmation Order have been pending at the United States Supreme Court since January 2023.

HMIT's only asset is its contingent interest in the Claimant Trust. It has no employees or revenue. HMIT's representative has testified that HMIT is liable on more than $62 million of indebtedness owed to The Dugaboy Investment Trust ("Dugaboy"), a family trust of which James Dondero ("Dondero"), the co-founder and former chief executive officer ("CEO") of Highland, and his family members are beneficiaries, and that Dugaboy also is paying HMIT's legal fees. HMIT vehemently disputes the suggestion that it is controlled by Dondero.

B. What Does the Movant HMIT Seek Leave to File?

HMIT seeks leave to file an adversary proceeding ("Proposed Complaint")[5] in the bankruptcy court to bring claims on behalf of itself and, derivatively, on behalf of the Reorganized Debtor and the Claimant Trust for alleged breach of fiduciary duties by the Reorganized Debtor's CEO and Claimant Trustee, James P. Seery, Jr. ("Seery") and conspiracy against: (1) Seery; and (2) purchasers of $365 million face amount of ***allowed*** unsecured claims in this case, who purchased their claims post-confirmation but prior to the occurrence of the Effective Date of the Plan ("Claims Purchasers,"[6] and with Seery, the "Proposed Defendants"). To be clear (and as later further explained), the claims acquired by the Claims Purchasers were acquired by them after extensive litigation, mediation, and settlements were approved by the bankruptcy court and after the original claims-holders had voted on the Plan and after Plan confirmation. As later explained,

[5] In its original Motion for Leave filed at Bankruptcy Docket No. 3699 on March 28, 2023, HMIT sought leave to file the proposed complaint ("Initial Proposed Complaint") attached as Exhibit 1 to the Motion for Leave. Nearly a month later, on April 23, 2023, HMIT filed a *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* ("Supplement") [Bankr. Dkt. No. 3760], a revised proposed complaint as Exhibit 1-A, and stating that "[t]he Supplement is not intended to supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action." Supplement, ¶ 1 and Exhibit 1-A. It is this revised proposed complaint to which this court will refer, when it uses the defined term "Proposed Complaint," even though HMIT filed redacted versions of its Motion for Leave on June 5, 2023 at Bankruptcy Docket Nos. 3815 and 3816 that attached the Initial Proposed Complaint as Exhibit 1.

[6] The Claims Purchasers identified in the Proposed Complaint are Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which is a special purpose entity created by Farallon to purchase allowed unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which is a special purpose entity created by Stonehill to purchase allowed unsecured claims against Highland.

the Claims Purchasers filed notices of their purchases as required by Bankruptcy Rule 3001(e)(2), and no objections were filed thereto. In any event, various damages or remedies are sought against the Proposed Defendants revolving around the Claims Purchasers' claims purchasing activities.

C. Why Does HMIT Need to Seek Leave?

As alluded to above, HMIT filed its Motion for Leave to comply with the provision in the Plan known as a "gatekeeper" provision ("Gatekeeper Provision") and with this court's prior gatekeeper orders entered in January and July 2020, which all require that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain (1) a finding from the bankruptcy court that its proposed claims ("Proposed Claims") are "colorable"; and (2) specific authorization by the bankruptcy court to pursue the Proposed Claims.[7] The Gatekeeper Provision was not included in the Plan *sans raison*. Indeed, as the Fifth Circuit recognized in affirming confirmation of the Plan, the Gatekeeper Provision (along with the other "protection provisions" in the Plan) had been included in the Plan to address the "continued litigiousness" of Mr. James Dondero ("Dondero"), Highland's co-founder and former chief executive officer ("CEO"), that began prepetition and escalated following the post-petition "nasty breakup" between Highland and Dondero, by "screen[ing] and prevent[ing] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[8]

[7] To be clear, the Gatekeeper Provision in the Plan was not the first or even second injunction of its type issued in this bankruptcy case. The Gatekeeper Orders were entered by the bankruptcy court pre-confirmation: (a) in January 2020, just a few months into the case, as part of this court's order approving a corporate governance settlement between Highland and its unsecured creditors committee, in which Dondero, Highland's co-founder and former CEO, was removed from any management role at Highland and three independent directors ("Independent Directors") were appointed in lieu of a chapter 11 trustee being appointed ("January 2020 Order"); and (b) in July 2020, in this court's order authorizing the employment of Seery (one of the three Independent Directors) as the Debtor's new Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative ("July 2020 Order," together with the January 2020 Order, the "Gatekeeper Orders").

[8] *See Highland Capital*, 48 F.4th at 427, 435.

D. Some Further Context Regarding Post-Confirmation Litigation Generally.

Since confirmation of the Plan, hundreds of millions of dollars have been paid out to creditors under the Plan, and there are numerous adversary proceedings and contested matters still pending, at various stages of litigation, in the bankruptcy court, the district court, and the Fifth Circuit, almost exclusively involving Dondero and entities that he owns or controls. To be sure, the post-confirmation litigation in this case does not consist of the usual adversaries and contested matters one typically sees by and against a reorganized debtor and/or litigation trustee, such as preference or other avoidance actions and litigation over objections to claims that are still pending after confirmation of a plan. Indeed, the claims of the largest creditors in this case (with claims asserted in the aggregate of more than one billion dollars) were successfully mediated and incorporated into the Plan—a plan which was ultimately accepted by the votes of an overwhelming majority of Highland's non-insider creditors. Dondero and entities under his control were the only parties who appealed the Confirmation Order, and Dondero and entities under his control have been the appellants in virtually every appeal that has been filed regarding this bankruptcy case. Petitions for writs of mandamus (which have been denied) have been filed in the district court and in the Fifth Circuit by some of these same entities, including one by HMIT, when this court denied setting an ***emergency*** hearing on the instant Motion for Leave (HMIT had sought a setting on three-days' notice).

A recent list of active matters involving Dondero and/or entities and/or individuals affiliated or associated with him, filed in the bankruptcy case by Highland and the Claimant Trust, reveals that there were at least 30 pending and "Active Dondero-Related Litigation" matters as of July 14, 2023: six (6) proceedings in this court; six (6) active appeals or actions are pending in the District Court for the Northern District of Texas; seven (7) appeals in the Fifth Circuit; two (2)

petitions for writs of certiorari in the United States Supreme Court; and nine (9) other proceedings or actions with or affecting the Highland Parties ("Highland," the "Claimant Trust," and "Seery") in various other state, federal, and foreign jurisdictions.[9]

The above-described context is included because the Proposed Defendants assert that the Motion for Leave is just a continuation of Dondero's unrelenting barrage of meritless and harassing litigation, making good on his oft-mentioned alleged threat to "burn down the place" after not achieving the results he wanted in the Highland bankruptcy case. Indeed, the Motion for Leave was filed after two years of unsuccessful attempts by, first, Dondero personally, and then HMIT to obtain pre-suit discovery from the Proposed Defendants (i.e., the Claims Purchasers) through two different Texas state court proceedings, pursuant to Tex. R. Civ. P. 202 ("Rule 202"). In each of these Rule 202 proceedings, Dondero and HMIT espoused the same Seery/Claims

[9] *See* Bankr. Dkt. No. 3880 (filed on July 14, 2023, providing a list of "Active Dondero-Related Litigation" and noting that the list is "a summary of active pending actions only and does not include actions that were resolved by final orders, including actions finally resolved after appeals to the U.S. District Court for the Northern District of Texas and/or the U.S. Court of Appeals for the Fifth Circuit."). Just since the filing by the Highland Parties of the list, ***three*** of the appeals pending in the Fifth Circuit have been decided against the Dondero-related appellants, two of which upheld the district court's dismissal of appeals by Dondero-related entities of bankruptcy court orders based on the lack of bankruptcy appellate standing on behalf of the appellant. On July 19, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by NexPoint Advisors, L.P. ("NexPoint") of bankruptcy court orders approving professional compensation on the basis that NexPoint did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the orders. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, 74 F.4th 361 (5th Cir. 2023). On July 31, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy—the Dondero family trust that, like the movant here in this Motion for Leave, was the holder of a limited partnership interest in Highland, and, as such, now has a contingent interest in the Claimant Trust—which had appealed a bankruptcy court order approving a Rule 9019 settlement on the same basis: Dugaboy did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the settlement order. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10960, 2023 WL 4861770 (5th Cir. July 31, 2023). The July 31, 2023 ruling followed the Fifth Circuit's ruling on February 21, 2023, affirming the district court's dismissal of an appeal by Dugaboy of yet another bankruptcy court order for lack of bankruptcy appellate standing. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023). These rulings by the Fifth Circuit are discussed in greater detail below. The third ruling by the Fifth Circuit since July 14, 2023, was issued by the Fifth Circuit in a per curium opinion not designated for publication on July 26, 2023, this one affirming the district court's affirmance of yet another Rule 9019 settlement order of the bankruptcy court that was appealed by Dugaboy, agreeing with the district court that the bankruptcy court had jurisdiction to approve a settlement among the Debtor, an entity affiliated with the Debtor but not a debtor itself, and UBS (the Debtor's largest prepetition creditor and the seller of its claims to the Claims Purchasers, which is one of the claims trading transactions HMIT complains about in the Proposed Complaint). *See The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P.*, No. 22-10983, 2023 WL 4842320 (5th Cir. July 26, 2023).

Purchasers conspiracy theory espoused in the Motion for Leave—that Seery must have provided one or more of the Claims Purchasers with material nonpublic information to induce them to want to purchase large, allowed, unsecured claims at a discount; a *quid pro quo* is suggested, such that the Claims Purchasers were allegedly told they would make a hefty profit on the claims they purchased and, in return, they would gladly "rubber stamp" Seery's "excessive compensation" as the Claimant Trustee of the Claimant Trust. In sum, HMIT alleges this constituted wrongful "insider trading" of the bankruptcy claims. In addition, certain lawyers for Dondero and Dugaboy sent letters reporting this alleged conspiracy and "insider trading" to the Texas State Securities Board ("TSSB") and the Executive Office of the United States Trustee ("EOUST").

It is against this background and in this context that the court must analyze, in the exercise of its gatekeeping function under the confirmed Plan and its prior Gatekeeping Orders, whether HMIT should be allowed to pursue the Proposed Claims (i.e., whether the Proposed Claims are "colorable" claims as contemplated under the Gatekeeper Orders and the Gatekeeper Provision of the Plan). The court held an evidentiary hearing on the Motion for Leave on June 8, 2023 ("June 8 Hearing"), during which the court admitted exhibits and heard testimony from three witnesses both in support of and in opposition to the Motion for Leave. Having considered the Motion for Leave, the response of the Proposed Defendants thereto, HMIT's reply to the response, and the arguments and evidence presented at the hearing on the Motion for Leave, the court denies HMIT's request for leave to pursue its Proposed Claims. The court's reasoning is set forth below.

II. BACKGROUND

A. Highland's Bankruptcy Case, Dondero's Removal as CEO, and the Plan

Highland was co-founded in Dallas in 1993 by Dondero and Mark Okada ("Okada"). It operated as a global investment adviser that provided investment management and advisory services and managed billions of dollars of assets, both directly and indirectly through numerous

affiliates. Highland's equity interest holders included HMIT (99.5%), Dugaboy (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. ("Strand"), which was wholly owned by Dondero and was the only general partner of Highland (0.25%). On October 16, 2019 (the "Petition Date"), Highland, with Dondero in control[10] and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims – many of which had finally become or were about to be liquidated (after a decade or more of contentious litigation in multiple fora all over the world—filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019. The official committee of unsecured creditors (the "Committee") (and later, the United States Trustee) expressed a desire for the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the specter of a possible appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.[11] As a result of this settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,[12] and three independent directors ("Independent Directors") were

[10] Mark Okada resigned from his role with Highland prior to the Petition Date.

[11] This order is hereinafter referred to as the "January 2020 Order" and was entered by the court on January 9, 2020 [Bankr. Dkt. No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Bankr. Dkt. No. 281].

[12] Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland's motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Bankr. Dkt. No. 338].

chosen to lead Highland through its chapter 11 case: Seery, John S. Dubel, and retired bankruptcy judge Russell Nelms. Given the Debtor's perceived culture of constant litigation while Dondero was at the helm, it was purportedly not easy to get such highly qualified persons to serve as independent board members. At the hearing on the corporate governance settlement motion, the court heard credible testimony that none of the Independent Directors would have taken on the role without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation from mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the Independent Directors without the bankruptcy court's prior authority. The gatekeeper provision approved by the court in its January 9 Order states,[13]

> No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation and did so "subject at all times to the supervision, direction and authority of the Independent Directors" and to his agreement to "resign immediately" "[i]n the event the Independent Directors determine for any reason that the Debtor shall no longer retain Dondero as an employee"[14] and to "not cause any Related Entity to terminate any agreements with the Debtor."[15] The court later

[13] January 2020 Order, 3-4, ¶ 10.

[14] January 2020 Order, 3, ¶ 8.

[15] *Id.* at ¶ 9.

entered, on July 16, 2020, an order approving the appointment of Seery as Highland's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative,[16] which included essentially the same "gatekeeper" language with respect to the pursuit of claims against Seery acting in these roles. The gatekeeper provision in the July 2020 Order was essentially the same as the gatekeeper provision in the January 2020 Order:

> No entity may commence or pursue a claim or cause of action of any kind against Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

July 2020 Order, 3, ¶5. Neither the January 2020 Order nor the July 2020 Order were appealed.

Throughout the summer of 2020, Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Dondero's plans failed to gain support, he and entities under his control engaged in substantial, costly, and time-consuming litigation for Highland.[17] As the Fifth Circuit described the situation, after Dondero's plans failed "he and other creditors began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital's management, threatening employees, and canceling trades between Highland Capital and its clients."[18] On October 9, 2020, Dondero resigned from all positions with the Debtor and its

[16] *See* the July 16, 2020 order approving the retention by Highland of Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020 ("July 2020 Order") [Bankr. Dkt. No. 854].

[17] According to Seery's credible testimony during the hearing on confirmation of the Plan that had been negotiated between the Committee and the Independent Directors, Dondero had threatened to "burn the place down" if his proposed plan was not accepted. *See* Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20. Bankr. Dkt. No. #1894.

[18] *Highland Capital*, 48 F.4th at 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at *1, *26 (Bankr. N.D. Tex.

affiliates in response to a demand by the Independent Directors made after Dondero's purported threats and disruptions to the Debtor's operations.[19]

The Independent Directors and the Committee had negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan") [Bankr. Dkt. No. 1808] on January 22, 2021.[20] Highland had negotiated settlements with most of its major creditors following mediation and had amended its initially proposed plan to address the objections of most of its creditors, leaving only the objections of Dondero and entities under his control (the "Dondero Parties") at the time of the confirmation hearing,[21] which was held over two days in early February 2021. The Plan is essentially an "asset monetization" plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). Highland's various servicing agreements were vested in the Reorganized Debtor, which continues to manage collateralized loan obligation vehicles ("CLOs") and various other investments postconfirmation. The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down the Reorganized Debtor over a three-year period by monetizing its assets and making

June 7, 2021) where this court "h[eld] Dondero in civil contempt, sanctioning him $100,000, and comparing this case to a 'nasty divorce.'").

[19] *See* Highland Ex. 13. The court shall refer to exhibits offered and admitted at the June 8 Hearing on the Motion for Leave by the Highland Parties as "Highland Ex. ___" and to exhibits offered and admitted by HMIT as "HMIT Ex. ___."

[20] The *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* was filed on November 24, 2020 ("Disclosure Statement") [Bankr. Dkt. No. 1473].

[21] The only other objection remaining was the objection of the United States Trustee to the Plan's exculpation, injunction, and release provisions.

distributions to Class 8 and Class 9 creditors as Claimant Trust Beneficiaries. The Claimant Trust is overseen by a Claimant Trust Oversight Board ("CTOB"), and pursuant to the terms of the Plan and the Claimant Trust Agreement ("CTA"),[22] the CTOB approved Seery's compensation package as the CEO of the Reorganized Debtor and the Claimant Trustee. Following their acquisition of their unsecured claims, representatives of Claims Purchasers Muck and Jessup became members of the CTOB.[23] Seery's compensation included the same base salary that he was receiving as CEO and CRO of Highland, plus an added incentive bonus tiered to recoveries and distributions to the creditors under the Plan. The Plan provides for the cancellation of the limited partnership interests in Highland held by HMIT, Dugaboy, and Okada and his family trusts in exchange for each holder's pro rata share of a contingent interest in the Claimant Trust ("Contingent Claimant Trust Interest"), as holders of allowed interests in Class 10 (holders of Class B/C limited partnership interests) or Class 11 (holders of Class A limited partnership interests) under the Plan.

B. Dondero Communicates Alleged Material Non-Public Information ("MNPI") to Seery, and Seery Allegedly Provides the MNPI to the Claims Purchasers in Furtherance of an Alleged Fraudulent Scheme to Have the Claims Purchasers "Rubber Stamp" His Compensation as Claimant Trustee Post-Confirmation

1. The December 17, 2020 MGM Email

Between Dondero's forced resignation from Highland in October 2020 and the confirmation hearing in February 2021, Dondero engaged in what appeared to be attempts to thwart, impede, and otherwise interfere with the Plan being proposed by the Independent Directors and the Committee. In the midst of this, on December 17, 2020, Dondero sent Seery[24] an email

[22] Highland Ex. 38

[23] The CTOB had three members: a representative of Muck (Michael Linn), a representative of Jessup (Christopher Provost), and an independent member (Richard Katz). *See* Joint Opposition ¶ 79.

[24] Dondero sent the email to others as well but did not copy counsel for the Independent Directors (including Seery) in violation of the terms of an existing temporary restraining order that enjoined Dondero from, among other things, "communicating . . . with any Board member" (including Seery) without including Debtor's counsel. Morris Dec. Ex. 23 ¶ 2(a). Citations to "Morris Dec. Ex. _" are to the exhibits attached to the *Declaration of John A. Morris in Support*

(the "MGM Email") that featured prominently in HMIT's Motion for Leave. According to HMIT and Dondero, the MGM Email contained material nonpublic information ("MNPI") regarding the possibility of an imminent acquisition of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"), likely by either Amazon or Apple.[25] At the time Dondero sent the MGM Email, Dondero sat on the board of directors of MGM, and the Debtor owned MGM stock directly. The Debtor also managed and partially owned a couple of other entities that owned MGM stock and managed various CLOs that owned some MGM stock as well. HMIT alleges now that Seery later misused and wrongfully disclosed to the Claims Purchasers this purported MNPI as part of a *quid pro quo* scheme, whereby the Claims Purchasers agreed to approve excessive compensation for Seery in the future (in exchange for him providing this allegedly "insider" information that inspired them to purchase unsecured claims with an alleged expectation of future large profits).[26] A timeline of events (in late 2020) in the weeks leading up to Dondero's MGM Email to Seery, following Dondero's departure from Highland, helps to put the email in full context:

- October 16: Dondero and his affiliates attempt to impede the Debtor's trading activities by demanding—with no legal basis—that Seery cease selling certain assets;[27]

- November 24: Bankruptcy Court enters an Order approving the Debtor's Disclosure Statement, scheduling the confirmation hearing on the Debtor's Plan for January 13, 2021, and granting related relief;[28]

- November 24–27: Dondero personally interferes with the Debtor's

of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding, Bankr. Dkt. No. 3784.

[25] *See* Proposed Complaint ¶ 45.

[26] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the [Claims Purchasers], with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims."); ¶ 4 ("As part of the scheme, the [Claims Purchasers] obtained a position to approve Seery's ongoing compensation – to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT.").

[27] *See* Highland Ex. 14, Dondero-Related Entities' October 16, 2020 Letter; Highland Ex. 15, *Memorandum Opinion and Order Holding Dondero in Contempt for Violation of TRO*, 13-15.

[28] *See* Bankr. Dkt. No. 1476.

implementation of certain securities trades ordered by Seery;[29]

- November 30: The Debtor provides written notice of termination of certain shared services agreements it had with Dondero's two non-debtor affiliates, NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"; together with NexPoint, the "Advisors");[30]

- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes they owed to the Debtor, that had an aggregate face amount of more than $60 million—this was part of creating liquidity for the Debtor's Plan;[31]

- December 3: Dondero responds with what appeared to be a threat of some sort to Seery in a text message: "***Be careful what you do -- last warning***;"[32]

- December 10: Dondero's interference and apparent threat cause the Debtor to seek and obtain a temporary restraining order ("TRO") against Dondero;[33]

- December 16: This court denies as "frivolous" a motion filed by certain affiliates of Dondero, in which they sought "temporary restrictions" on certain asset sales;[34] and

- December 17: Dondero sends the unsolicited MGM Email[35] to Seery, which violates the TRO entered just a week earlier.[36]

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[29] *See* Highland Ex. 15, 30-36.

[30] Morris Decl. Ex. 17; *see also* Transcript of June 8, 2023 Hearing on HMIT's Motion for Leave ("June 8 Hearing Transcript"), 273:23-24.

[31] Morris Decl. Exs. 18-21; *see also* June 8 Hearing Transcript, 273:23-274:1.

[32] Morris Decl. Ex. 22 (emphasis added); *see also* June 8 Hearing Transcript, 273:1-12 (where Seery testified about receiving the threat from Dondero: "A: [T]his came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.").

[33] *See* Morris Decl. Ex. 23, *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* entered December 10, 2020 [Adv. Pro. No. 20-3190 Dkt. No. 10].

[34] *See* Morris Decl. Ex. 24, Transcript of December 16, 2020 Hearing, 63:5-64:15.

[35] Highland Ex. 11.

[36] Seery testified at the June 8 Hearing that Dondero knowingly violated the TRO when he sent the MGM Email:

> [The MGM Email] . . . followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski [Debtor's counsel] being on it. Furthermore, Pachulski had advised Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics. And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

June 8 Hearing Transcript, 273:13-22.

The MGM Email had the subject line "Trading Restriction re MGM – material non public information" and stated:

> Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.[37]

Seery credibly testified at the June 8 Hearing that he was "highly suspicious" when he received the MGM Email. This was because, among other reasons, Dondero sent it ***after***: (i) unsuccessful efforts to impede the Debtor's trading activities (followed by the TRO); (ii) the "be careful what you do" text to Seery by Dondero: (iii) Highland's termination of its shared service arrangements with Dondero's various affiliated entities; (iv) the bankruptcy court's approval of the disclosure statement; and (v) Highland's demand to collect on the demand notes for which Dondero and his entities were liable.[38] Highland's Chapter 11 case was fast approaching the finish line. Moreover, MGM was already on the restricted list at Highland Capital, and had been for a long time, and Dondero would know this.[39] Still further, as of December 17, 2020 (the date Dondero sent the unsolicited MGM Email to Seery), Dondero no longer owed a duty of any kind to the Debtor or any entity controlled by the Debtor, having surrendered in January 2020 direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement[40] and having resigned from all roles at the Debtor and affiliates in October 2020. Still further, Dondero—to the extent he was sharing with Seery MNPI that he obtained as a member of the board of directors of MGM—would have been violating his own fiduciary duties to MGM.

[37] Highland Ex. 11.

[38] June 8 Hearing Transcript, 273:1-274:4.

[39] June 8 Hearing, 215:21-216:9.

[40] *See* Bankr. Dkt. Nos. 339, 354-1 (Term Sheet)).

In any event, in a declaration filed by Dondero in support of HMIT's Rule 202 petition in Texas state court for pre-suit discovery,[41] he indicated that his goal in sending the MGM E-mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

> On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple's interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades***.

It is noteworthy that ***Dondero's labeling of the MGM Email (in the subject line) as a communication containing "material non public information" did not make it so***. In fact, it appears from the credible evidence presented at the June 8, 2023 hearing on HMIT's Motion for Leave that the MGM Email did not disclose information to Seery that was not already made available to the public at the time it was sent. Seery testified that he did not think the MGM Email contained MNPI and that he did not personally "take any steps . . . to make sure that MGM stock was placed on a restricted list at Highland Capital after [he] received [the MGM Email]" because—as earlier noted—"MGM was already on the restricted list at Highland Capital . . . before I got to Highland."[42] Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months[43] and that was officially

[41] Highland Ex. 9 ¶ 3 (emphasis added).

[42] June 8 Hearing Transcript, 215:21-216:9. Seery elaborated upon further questioning from HMIT's counsel that he did not think the indications in the MGM Email (that came from a member of the board of directors of MGM) that "it was probably a first-quarter event" and that "Amazon and Apple were actively diligencing – are diligencing in the data room, both continue to express material interest" were not MNPI. *Id.*, 217:23-218:10. He testified that "it was clear [before he received the MGM Email] from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction would have to take place very quickly. And, in fact, the transaction did not take place in the first quarter." *Id.*, 219:3-7.

[43] *See* Highland Ex. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Ex. 26 (describing prospects of an MGM sale, noting that, among its largest

announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[44] For example, as early as January 2020, Apple and Amazon were identified as being among a new group of "Big 6" global media companies, and MGM was identified as being a leading media acquisition target. Indeed, according to at least one media report on January 26, 2020, "MGM, in particular, seems like a logical candidate to sell this year" having already held "preliminary talks with Apple, Netflix and other larger media companies."[45] In October 2020, the Wall Street Journal reported that MGM's largest shareholder, Anchorage Capital Group ("Anchorage"), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as Chairman of MGM's Board. The article reported that "[i]n recent months, Mr. Ulrich has said he is working toward a deal," and he specifically named Amazon and Apple as being among four possible buyers.[46] Thus, no one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed "material interest" in acquiring MGM. Dondero testified during the June 8 Hearing that, at the time he sent the MGM Email, he "knew with certainty from the board level that Amazon had hit our price, and it was going to close in the next couple of months,"[47] that "as of December 17th, Amazon had made an offer that was acceptable to MGM, [and that] that's what the board meeting was. We were going into exclusive negotiations to culminate the merger with

shareholders, was "Highland Capital Management, LP") (article October 11, 2020). *See also* Highland Exs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for $8.4 billion).

[44] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid.

[45] Highland Ex. 25.

[46] Highland Ex. 26.

[47] June 8 Hearing Transcript, 127:2-4.

them."[48] Notwithstanding this testimony, Dondero eventually admitted (after a lengthy and torturous cross examination) that he did not actually communicate this supposed "inside" information to Seery in the MGM Email. He did not "say anything about Amazon hitting the price." He did not say anything about the MGM board going into exclusive negotiations with Amazon "to culminate the merger with them." Rather, he communicated information that Seery and any member of the public who cared to look could have gleaned from publicly available information as of December 17, 2020, regarding a much-written-about potential MGM transaction that involved interest from numerous companies, including, specifically, Amazon and Apple. When questioned why "[he felt] the need to mention Apple [in the MGM Email] if Amazon had already hit the price," Dondero simply answered, "The only way you generally get something done at attractive levels in business is if two people are interested," suggesting that he specifically ***did not*** communicate the purported inside information he obtained as a MGM board member—that Amazon had met MGM's strike price and that the MGM board was moving forward with exclusive negotiations with Amazon—because he wanted it to appear that there was still a competitive process going on that included both Amazon and Apple.[49]

Even if the MGM Email contained MNPI on the day it was sent (four months prior to the first of the Claim Purchases that occurred in April 2021), the information was fully and publicly disclosed to the market in the days and weeks that followed. For example, on December 21, 2020, just four days later, a Wall Street Journal article titled *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale*, reported that MGM had "tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process," and had "a market value of around $5.5 billion, based on privately traded shares and including debt." The Wall Street Journal Article reiterated

[48] *Id.*, 161:10-14.

[49] June 8 Hearing Transcript, 162:2-6.

that (i) Anchorage "has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks," and (ii) "Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers."[50] (*Id*. Ex. 27.) The Wall Street Journal's reporting was picked up and expanded upon in other publications soon after. For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The world is net enough! Amazon joins other streaming services in £4bn bidding war for Bond films as MGM considers selling back catalogue*, cited the Wall Street Journal article and further reported that MGM "hopes to spark a battle that could interest streaming services such as Amazon Prime";[51]

- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that "it's now become apparent that MGM is actually up on the auction block," noting that the Wall Street Journal was "reporting that the studio has begun a formal sale process" and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder;[52] and

- On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition.[53]

Finally, Highland and entities it controlled did not sell their MGM stock while the MGM-Amazon deal was under discussion and/or not made public but, instead, they tendered their MGM holdings in connection with, and as part of, the ultimate MGM-Amazon transaction after it closed in March 2022.

[50] Highland Ex. 27.

[51] Highland Ex. 28.

[52] Highland Ex. 29.

[53] Highland Ex. 30.

2. No Evidence to Support HMIT/Dondero's Assumptions that Seery Shared Alleged MNPI in the MGM Email with Claims Purchasers

One of HMIT's allegations in the Proposed Complaint it seeks leave to file—which is central to HMIT's and Dondero's conspiracy theory—is that Seery shared the alleged MNPI from the MGM Email with the Claims Purchasers (or at least Farallon—the owner/affiliate of Muck, one of the Claims Purchasers) and that the Claims Purchasers only acquired the purchased claims ("Purchased Claims") based on, and because, of their receipt of the MNPI from Seery. HMIT essentially admits in the original version of its Motion for Leave that it has no direct evidence that Seery communicated the alleged MNPI to any of the Claims Purchasers. Rather, its allegation is based on inferences it wants the court to make based on "circumstantial" evidence and on the Dondero Declarations that were attached to the Motion for Leave, which described communications Dondero purportedly had with one or two representatives of Farallon in the "late spring" of 2021 concerning Farallon's recent acquisition of certain claims in the Highland bankruptcy case.[54] Based on these communications, HMIT and Dondero only assume Seery must have provided the MNPI about MGM to Farallon, which must have caused both Farallon and the other Claims Purchaser, Stonehill, to acquire the Purchased Claims.[55]

At the June 8 Hearing, HMIT offered Dondero's testimony that he had three telephone conversations with two representatives of Farallon, Mike Linn ("Linn") and Raj Patel ("Patel"),

[54] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 1 and Ex. 3; *see also* Highland Ex. 9, *Declaration of James Dondero* (with Exhibit 1) dated February 15, 2023.

[55] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 28. HMIT subsequently filed the final version of the Motion for Leave that was revised to withdraw the Dondero Declarations and delete all references therein to the Dondero Declarations (but, notably, leaving in the allegations that were based on the Dondero Declaration(s)). This was done after the court ruled that it would allow the Proposed Defendants to examine Dondero regarding his Declarations. HMIT contended at that point that the court should consider the Motion for Leave on a no-evidence Rule 12(b)(6) type basis (but could not explain why it had attached the Dondero Declarations as evidence that "supported" the Motion for Leave, if it believed no evidence should be considered). *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 28; *see also infra* pages 45 to 47 regarding the "sideshow" litigation that occurred prior to the June 8 Hearing over whether the hearing on the Motion for Leave would be an evidentiary hearing.

who allegedly told him that they purchased the claims without conducting any due diligence and based solely on Seery's assurances that the claims were valuable. These conversations allegedly took place on May 28, 2021—two days after the MGM-Amazon deal was officially announced to the public (on May 26, 2021). Dondero also testified that a photocopy of handwritten notes ("Dondero Notes")[56] (which were partially cut off) were notes he took contemporaneously with these short telephone conversations he initiated (one with Patel and two follow-up conversations with Linn).[57] He testified that his purpose in taking these notes and in initiating the phone calls was that "[w]e'd been trying nonstop to settle the case for two-plus years. . . . [a]nd when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case . . . [s]o I reached out [to] the Farallon guys,"[58] and further, on *voir dire* from the Proposed Defendants' counsel, that the purpose of taking the notes was so that he had "a written record of the important points that [he] discussed . . . so I know how to address it the next time."[59] The handwritten notes[60] stated:

Raj Patel bought it because of Seery	*1*
50-70¢ not compelling	*2*
Class 8	*3*
Asked what would be compelling	*4*
-- No Offer	*5*
Bought in Feb/March timeframe	*6*
Bought assets w/ Claims	*7*
Offered him 40-50% premium	*8*
130% of cost; "Not Compelling"	*9*
No Counter; Told Discovery coming	*10*

[56] HMIT Ex. 4. The handwritten notes were admitted into evidence after *voir dire*, not for the truth of anything Patel or Linn allegedly said to him during the three telephone conversations, but as Dondero's "present sense impression" of the telephone conversations.

[57] June 8 Hearing Transcript, 133:1-136:3.

[58] *See id.*, 133:13-23.

[59] *See id.* (on *voir dire*), 144:1838-145:4.

[60] HMIT Ex. 4. The court has placed in a table and numbered each line for ease of reference. The table does not include the separate apparent partial date from the top left corner that Dondero testified was the date that he made the initial call to Patel: May 28, 2021.

On direct examination, Dondero testified that line 1 is what he wrote contemporaneously with the short call he initiated to Patel of Farallon in which Patel allegedly told Dondero "that he bought it because Seery told him to buy it and they had made money with Seery before"[61] and that Farallon "bought [the claim] because he was very optimistic regarding MGM"[62] before referring him to Linn, a portfolio manager at Farallon. Dondero testified that the rest of the handwritten notes (reflected in lines 2 through 10 of the table) were notes he took contemporaneously with two telephone conversations he had with Linn following his call to Patel, with lines 2-8 referring to Dondero's first call with Linn and lines 9 and 10 referring to his second call with Linn.[63] Dondero testified that the "50-70¢" in line 2 referred to his offer to Linn to pay 70 cents on the dollar to buy Farallon's[64] claims because "[w]e knew that they had – that the claims had traded around 50 cents" and "[w]e wanted to prevent the $5 million-a-month burn" (referring to attorney's fees in the Highland case) and that "not compelling Class 8" in lines 2-3 referred to Linn's response to him that the offer was not compelling.[65] Dondero testified that lines 4-5 referred to him asking Linn what amount would be compelling and to Linn's response that "he had no offer."[66] Dondero testified that lines 6-8 referred to Linn telling Dondero that Farallon bought the claims in the February, March timeframe and that Dondero told Linn that, given that the estate was spending $5 million a month on legal fees, Farallon should want to sell its claims and Linn's alleged response that "Seery told him it was worth a lot more."[67] Lastly, Dondero testified on direct examination

[61] June 8 Hearing Transcript, 134:7-10, 135:13-22.

[62] *Id.*, 139:3-11.

[63] *Id.*, 136:4-138:16.

[64] As noted above, Farallon did not acquire any of the Purchased Claims; rather, Farallon created a special purpose entity, Muck, to acquire the claims.

[65] June 8 Hearing Transcript, 136:4-16.

[66] *Id.*, 136:17-23.

[67] *Id.*, 137:6-138:7.

that the last two lines referred to a second telephone conversation he had with Linn in which Dondero offered 130 percent of cost for the claims and that Linn told him that the offer was not compelling, and he would not give a price at which he would sell.[68]

On cross-examination, Dondero acknowledged that, though he had testified that the handwritten notes were intended to be a written record of the important points from the telephone conversations he had with Patel and Linn, there was no mention in the notes of: (1) MGM: (2) or that Farallon was very optimistic about MGM; (3) the sharing of MNPI; (4) a *quid pro quo;* or (5) Seery's compensation, and that his last note—"Told Discovery coming"—was a reference to Dondero telling Linn (not Linn telling Dondero) that discovery was coming in response to Dondero's own supposition that Farallon must have traded on MNPI.[69] Cross-examination also revealed that Farallon never told Dondero that Seery gave them MNPI, and that Dondero only ***believed*** Seery ***must have*** given Farallon MNPI, because Farallon (Patel and Linn) had told him that the only reason Farallon bought their claims was because of their prior dealings with Seery, which Dondero took to mean that they had conducted no due diligence on their own prior to acquiring the claims. Dondero also testified that he did not have any personal knowledge as to how Seery's compensation package, as CEO of the Reorganized Debtor and Claimant Trustee, was determined because he was "not involved" in the setting of Seery's compensation pursuant to the Claimant Trust[70] and that he never discussed Seery's compensation with Farallon.[71]

As noted earlier, Dondero attempted to obtain discovery from the Claims Purchasers in a Texas state court pursuant to Rule 202 of the Texas Rules of Civil Procedure. The Texas state

[68] *Id.*, 138:8-22.

[69] *Id.*, 190:14-191:25. Dondero testified that he told Linn that discovery "would be coming in the next few weeks" and noted that "this has been a couple years. . . . [w]e've been trying for two years to get . . . discovery in this."

[70] *Id.*, 200:13-201:1.

[71] *Id.*, 208:23-209:8.

court denied the First Rule 202 petition on June 1, 2022, after having considered the amended petition, the responses, the record, applicable authorities and having conducted a hearing on the petition on June 1, 2022.[72]

3. Dondero Unsuccessfully Seeks Discovery and to Have Various Agencies and Courts Outside of the Bankruptcy Court Acknowledge His Insider Trading Theories

Dondero acknowledged at the June 8 Hearing that the verified petition ("First Rule 202 Petition") he signed and filed on July 22, 2021, in the first Texas Rule 202 proceeding—just weeks after his telephone calls with Linn and Patel—was true and accurate. In it, he swore under oath as to what Linn told him in the telephone call concerning Farallon's purchase of the claims, and the only reason he gave for wanting discovery was that Linn told him Farallon bought the claims "sight unseen—relying entirely on Seery's advice solely because of their prior dealings."[73] Dondero acknowledged, as well, that his sworn statement that he filed in support of an amended verified Rule 202 petition filed in the same Texas Rule 202 proceeding, but nearly ten months later (in May 2022), described the same telephone conversation he had with Linn, and it did not mention MGM at all and did not say that Linn told him that Seery gave him MNPI; rather, the sworn statement stated only that "On a telephone call between Petitioner and Michael Lin[n], a representative of Farallon, Mr. Lin[n] informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Seery's say-so because they had made so much money in the past when Seery told them to purchase claims" and that Linn did not tell him that Seery gave them MNPI, but he concluded that Seery gave Farallon MNPI based on what Linn did tell him.[74]

[72] Highland Ex. 7.

[73] *Id.*, 193:8-194:16; Highland Ex. 3, *Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 21. The first Texas Rule 202 proceeding in which Dondero sought discovery regarding the Farallon acquisition of its claims was brought by Dondero, individually, in the 95th Judicial District, Dallas County, Texas.

[74] *Id.*, 195:11-197:17; Highland Ex. 4, *Amended Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 23.

Nine days later, Dondero filed a declaration in the same proceeding, in which he described the same call with Linn as follows:[75]

> Last year, I called Farallon's Michael Lin[n] about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin[n] of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Seery had testified in court, it made no sense to me that Mr. Lin[n] would think that the claims were worth more than what Seery testified under oath was the value of the bankruptcy claims.

Dondero further stated in his declaration that "I have an interest in ensuring that the claims purchased by [Farallon] are not used as a means to deprive the equity holders of their share of the funds," and that "[i]t has become obvious that despite the fact that the bankruptcy estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights. Accordingly, "I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee."[76] Dondero attached as Exhibit A to his declaration a letter from Douglas Draper ("Draper"), an attorney with the law firm of Heller, Draper & Horn, L.L.C. in New Orleans, to the office of the General Counsel, Executive Office for U.S. Trustees, dated October 5, 2021, in which Draper opens the letter by stating that "[t]he purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the [Creditors' Committee] in the bankruptcy of [Highland]," and later noted that he "became involved in Highland's bankruptcy through my representation of [Dugaboy], an irrevocable trust of which Dondero is the primary beneficiary."[77] Mr. Draper laid out the same allegations of insider claims trading, breach of

[75] Highland Ex. 5, ¶ 2.
[76] *Id.*, ¶¶ 3-4.
[77] *Id.*, Ex. A, 1-2.

fiduciary duties, and conspiracy that HMIT seeks to bring in the Proposed Complaint.[78] The U.S. Trustee's office took no action. Dondero made a second and third attempt to get the U.S. Trustee's office to conduct an investigation into the same allegations laid out in Draper's letter, this time in "follow-up" letters to the Office of the U.S. Trustee on November 3, 2021, and six months later, on May 11, 2022, through another lawyer, Davor Rukavina ("Rukavina"), in which Rukavina wrote "to provide additional information regarding the systemic abuses of bankruptcy process occasioned during the [Highland] bankruptcy."[79] Again, the U.S. Trustee's office took no action.

On February 15, 2023, Dondero filed yet another sworn statement about his alleged conversation with Linn, this time in support of a Verified Rule 202 Petition ***filed by HMIT*** ("Second Rule 202 Petition"), filed in a different Texas state court (Texas District Court, 191st Judicial District, Dallas County, Texas), following Dondero's unsuccessful attempts throughout 2021 and 2022 to obtain discovery in the First Rule 202 proceeding and based on the same allegations of misconduct by Seery and Farallon.[80] In this new sworn statement, Dondero describes for the first time the "call" he had with Linn as having been "phone calls" with Patel and Linn and ***mentions MGM*** and Farallon's alleged optimism about the ***expected sale of MGM***:[81]

> In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC ("Farallon"), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Seery because they had made significant profits when Seery told them to purchase other claims in the past. They also stated that they were particularly optimistic because of the expected sale of MGM.

[78] *Id.*, Ex. A, 6-11.

[79] HMIT Ex. 61.

[80] Highland Ex. 9.

[81] *Id.*, ¶ 4.

The Second Rule 202 Petition was also denied by the second Texas state court on March 8, 2023.[82]

HMIT, in an apparent attempt to provide support for its argument that the Proposed Claims are "colorable," stated in its Motion for Leave that "[t]he Court also should be aware that the Texas States [sic] Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely 'colorable.'"[83] But, two days before opposition briefing was due, on May 9, 2023, the TSSB issued a letter ("TSSB Letter") to Highland, informing it that "[t]he staff of the [TSSB] has completed its review of the complaint received by the Staff against [Highland]. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time."[84] HMIT's counsel (frankly, to the astonishment of the court) objected to the admission of the TSSB Letter at the June 8 Hearing "on the grounds of relevance, 403, hearsay, and authenticity . . . [a]nd I also . . . think it's important that the decision by a regulatory body has no bearing on this cause of action or the colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry."[85] The court overruled HMIT's objection to the relevance of this exhibit—considering, among other things, that HMIT, in its Motion for Leave, specifically mentioned the allegedly open TSSB "investigation" as relevant evidence the court "should be aware" of in making its determination of whether the Proposed Claims were "colorable."[86]

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[82] Highland Ex. 10.

[83] Motion for Leave, ¶ 37.

[84] *See* Highland Ex. 33.

[85] June 8 Hearing Transcript, 323:22-324:3.

[86] *Id.*, 324:4-328:2.

C. Claims Purchasers Purchase Claims and File Notices of Transfers of Claims

To be clear about the time line here, it was after confirmation of the Plan but prior to the Effective Date of the Plan, that the Claims Purchasers: (1) purchased several large unsecured claims that had been allowed following, and as part of, Rule 9019 settlements, each of which were approved by the bankruptcy court, after notice and hearing, prior to the confirmation hearing; and (2) filed notices of the transfers of those claims pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure. The noticing of the claims transfers began on April 16, 2021, with the notice of transfer of the claim held by Acis Capital Management to Muck, and ended on August 9, 2021, with the notices of transfers of the claims held by UBS Securities to Muck and Jessup:

Claimant(s)	**Date Filed/ Claim No.**	**Asserted Amount**	**Claim Settled/Allowed? If so, Amount**	**Date Filed/ Rule 3001 Notice Dkt. No.**
Acis Capital Management LP and Acis Capital Management, GP LLC (together, "Acis")	12/31/2019 Claim No. 23	$23,000,000	Yes[87] $23,000,000	4/16/2021 Bankr. Dkt. No. 2215 (Muck)
Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee")	4/3/2020 Claim No. 72	$190,824,557	Yes[88] $137,696,610	4/30/2021 Bankr. Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (the "HarbourVest Parties")	4/8/2020 Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes[89] $80,000,000 in aggregate ($45,000,000 General Unsecured Claim, and $35,000,000 subordinated claim)	4/30/2021 Bankr. Dkt. No. 2263 (Muck)

[87] Bankr. Dkt. No. 1302. The Debtor's settlement with Acis was approved over the objection of Dondero. Bankr. Dkt. No. 1121.

[88] Bankr. Dkt. No. 1273.

[89] Bankr. Dkt. No. 1788. The Debtor's settlement with the HarbourVest Parties was approved over the objections of Dondero, Bankr. Dkt. No. 1697, and Dugaboy and the Get Good Trust. Bankr. Dkt. No. 1706.

UBS Securities LLC, UBS AG, London Branch (the "UBS Parties")	6/26/2020 Claim Nos. 190, 191	$1,039,957,799.40	Yes[90] $125,000,000 in aggregate ($65,000,000 General	8/9/2021 Bankr. Dkt. No. 2698 (Muck) and Bankr. Dkt. No. 2697 (Jessup)

HMIT insists that it "made no sense" for the Claims Purchasers to buy the Purchased Claims because "the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk," and "their investment was projected to yield a small return with virtually no margin for error."[91] Dondero testified that it was ***his*** view that there was insufficient information in the public to justify the claims purchases.[92] But, HMIT's arguments here are contradicted by the information that was publicly available to Farallon and Stonehill at the time of their purchases and by HMIT's own allegations. In advance of Plan confirmation, Highland projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. In the Proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims.[93] Taking into account the face amount of the allowed claims, the Claims Purchasers' projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value[94]	Purchaser	Purchase Price	Projected Profit
Redeemer	$137.0	$0.0	$97.71	Stonehill	$78.0	$19.71
Acis	$23.0	$0.0	$16.4	Farallon	$8.0	$8.40

[90] Bankr. Dkt. No. 2389. The Debtor's settlement with the UBS Parties was approved over the objections of Dondero, Dkt. No. 2295, and Dugaboy and the Get Good Trust. Bankr. Dkt. Nos. 2268, 2293.

[91] Proposed Complaint, ¶ 3.

[92] June 8 Hearing Transcript, 187:3-7 ("Q: And it's your testimony that there wasn't sufficient information in the public for them to buy – this is your view – that there wasn't sufficient information in the public to justify their purchases. Is that your view? A: Correct.).

[93] *Id.*, ¶ 42.

[94] "Ascribed Value" is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

HarbourVest	$45.0	$35.0	$32.09	Farallon	$27.0	$5.09
UBS	$65.0	$60.0	$46.39	Stonehill & Farallon	$50.0	($3.61)

As HMIT acknowledges, by the time Dondero spoke with Farallon in the "late spring" of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest.[95] Based on an aggregate purchase price of $113 million for these three claims, the Claims Purchasers would have expected to net over $33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections, because they also purchased the Class 9 claims and would therefore capture any upside. In this context, HMIT's and Dondero's assertions that it did not "make any sense" for the Claims Purchasers to purchase their claims when they did does not pass muster—given the publicly available information about potential recoveries under the Plan. Dondero even acknowledged, on cross-examination, that he was prepared to pay ***30 percent more*** than Farallon had paid, even though he did not think there was sufficient public information available to justify Farallon's purchase of the claims.[96] Dondero essentially testified that he wanted to purchase Farallon's claims because he wanted to be in a position of control to force a settlement or resolution of the bankruptcy case, post-confirmation, under terms acceptable to him. He did not want to try to settle by negotiating with Farallon and Stonehill ***as creditors***, but instead he wanted to purchase the claims because "if we owned all the claims, it would settle the case."[97]

[95] *See* Complaint, ¶ 41 n.12. The UBS claims were not acquired until August 2021, long after the alleged "*quid pro quo*" was supposedly agreed upon and the MGM-Amazon deal was announced in the press in late May 2021. *See*, Highland Ex. 34, *Amazon's $8.45 Billion Deal for MGM is Historic But Feels Mundane* (dated May 26, 2021).

[96] June 8 Hearing Transcript, 187:8-11.

[97] *Id.*, 187:12-189:10.

D. Fifth Circuit's Approval of the Gatekeeper Provision in Plan, Recognition of Res Judicata Effect of the Prior Gatekeeper Orders, and the Bankruptcy Court's Order Approving Highland's Motion to Conform Plan

Harkening back to February 22, 2021, after a robust confirmation hearing, this court entered its order confirming the Plan, over the objections of Dondero and Dondero-Related Parties, specifically questioning the good faith of their objections. The court found, after noting "the remoteness of their economic interests" that "[it] has good reason to believe that [the Dondero Parties] are not objecting to protect economic interests they have in the Debtor but to be disruptors. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan."[94] The Plan became effective on August 11, 2021.

Of relevance to the Motion for Leave, the confirmed Plan included certain exculpations, releases, and injunctions designed to protect the Debtor and other bankruptcy participants from bad-faith litigation. These participants included: Highland's employees (with certain exceptions); Seery as Highland's CEO and CRO; Strand (after the appointment of the Independent Directors); the Independent Directors; the successor entities; the CTOB and its members; the Committee and its members; professionals retained in the case; and all "Related Persons." The injunction provisions contained a Gatekeeper Provision which is similar to the gatekeeper provisions in the prior Gatekeeper Orders in that it provided that the bankruptcy court will act as a "gatekeeper" to screen and prevent bad-faith litigation against the Protected Parties. The Gatekeeper Provision in the Plan states, in pertinent part:[98]

> No Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents ***a colorable claim of any kind***, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically

[98] Plan, 50-51 (emphasis added).

> authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

The Plan defines Protected Parties as,

> collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the [CTOB] (in their official capacities), (xiii) [HCMLP GP LLC], (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); [but excluding Dondero and Okada and various entities including HMIT and Dugaboy].

The court notes that the Gatekeeper Provision in the Plan provides protection to a broader number of persons than the persons protected under the January 2020 Order (addressing the Independent Directors and their agents and advisors) and the July 2020 Order (addressing Seery in his role as CEO and CRO of the Debtor). But, at the same time, it is less restrictive than the gatekeeping provisions under the Gatekeeper Orders, in that the gatekeeping provisions in the prior orders shield the protected parties from any claim that is not both "colorable" ***and*** a claim for "willful misconduct or gross negligence," effectively providing the protected parties under the prior orders with a limited immunity from claims of simple negligence or breach of contract that do not rise to the level of "willful misconduct or gross negligence," whereas the Gatekeeping Provision under the Plan does not act as a release or exculpation of the Protected Parties in any way because it does not prohibit any party from bringing ***any kind of claim*** against a Protected Party, provided the proposed claimant first obtains a finding in the bankruptcy court that its proposed claims are "colorable."[99]

[99] It should be noted that--as discussed further below--there are, separately in the Plan, exculpations as to a smaller universe of persons--*e.g.,* the Debtor, the Committee and its members, and the Independent Directors.

Dondero and some of the entities under his control appealed[100] the Confirmation Order directly to the Fifth Circuit, arguing, among other issues, that the Plan's exculpation, release, and injunction provisions, including the Gatekeeper Provision (collectively, the "Protection Provisions") impermissibly provide certain non-debtor bankruptcy participants with a discharge, purportedly in contravention of the provisions of Bankruptcy Code § 524(e)'s statutory bar on non-debtor discharges. As noted above, the Fifth Circuit, "affirm[ed] the confirmation order in large part" and "reverse[d] ***only insofar as the plan exculpates*** certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties ***from the plan's exculpation***, and affirm[ed] on all remaining grounds."[101] The Fifth Circuit specifically found the "injunction and gatekeeping provisions [to be] sound" and found that it was only "the ***exculpation*** of certain non-debtors" that "exceed[ed] the bankruptcy court's authority," agreeing with the bankruptcy court's conclusions that the Protection Provisions were legal, necessary under the circumstances, and in the best interest of all parties" in part, and only disagreeing to the extent that the ***exculpation*** provision improperly extended to certain bankruptcy participants other than Highland, the Committee and its members, and the Independent Directors and "revers[ing] and strik[ing] the few unlawful parts

[100] On appeal, the appellant funds ("Funds"), whom this court found to be "owned and/or controlled" by Dondero despite their purported independence, also asked the Fifth Circuit to vacate this court's factual finding "because it threatens the Funds' compliance with federal law and damages their reputations and values" and because "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him." *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th at 434. Applying the "clear error" standard of review, the Fifth Circuit "le[ft] the bankruptcy court's factual finding undisturbed" because "nothing in this record leaves us with a firm and definite conviction that the bankruptcy court made a mistake in finding that the Funds are 'owned and/or controlled by [Dondero]." *Id.* at 434-35.

[101] *See supra* note 4. The Fifth Circuit replaced its initial opinion with its final opinion a few days after certain appellants had filed a short (four-and-one-half pages) motion for rehearing (the "Motion for Rehearing") on September 2, 2022. The movants had asked the Fifth Circuit to "narrowly amend the [initial] Opinion in order to confirm the Court's holding that the impermissibly exculpated parties are similarly struck from the protections of the injunction and gatekeeper provisions of the plan (in other words, that such parties cannot constitute 'Protected Parties')." In the final Fifth Circuit opinion, same as the initial Fifth Circuit opinion, the Fifth Circuit stated that, with regard to the Confirmation Order, the panel would "reverse only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strike those few parties from the plan's exculpation, and affirm on all remaining grounds." *Highland Capital*, 48 F.4th at 424. No findings, discussion, or rulings regarding the injunction and gatekeeper provisions that were in the initial Fifth Circuit opinion were disturbed.

of the Plan's ***exculpation provision***."[102] The Fifth Circuit then remanded to the Bankruptcy Court "for further proceedings in accordance with the opinion."[103]

In the course of analyzing the Protection Provisions under the Plan, the Fifth Circuit noted that the protection provisions in the January and July 2020 Orders appointing the Independent Directors and Seery as CEO and CRO of Highland were *res judicata* and that "*those* orders have the effect of exculpating the Independent Directors and Seery in his executive capacities" such that "[d]espite removal from the exculpation provision in the confirmation order, the Independent Directors' agents, advisors, and employees, as well as Seery in his official capacities are all exculpated to the extent provided in the January and July 2020 Orders."[104]

The Reorganized Debtor filed a motion in the bankruptcy court to conform the plan to the Fifth Circuit's mandate, proposing that only one change was needed to make the Plan compliant with the Fifth Circuit's ruling: narrow the defined term for "Exculpated Parties" to read as follows:

> "Exculpated Parties" means, collectively, (i) the Debtor, (ii) the Independent Directors, (iii) the Committee, and (iv) members of the Committee (in their official capacities).

The Reorganized Debtor proposed that this one simple revision of this defined term removed the exculpations deemed by the Fifth Circuit to violate section 524(e) of the Bankruptcy Code, and that no other changes would be required to conform the Plan and Confirmation Order to the Fifth Circuit's mandate. Some of the Dondero-related entities objected to the motion to conform, arguing that the Fifth Circuit's ruling required more surgery on the Plan than simply narrowing the defined term "Exculpated Parties." On February 27, 2023, this court entered its order granting

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[102] *Id.* at 435.

[103] *Id.* at 440. The Fifth Circuit's docket reflects that it issued its Judgment and mandate on September 12, 2022.

[104] *Highland Capital*, 48 F.4th at 438 n.15. The Fifth Circuit stated, "To the extent Appellants seek to roll back the protections in the bankruptcy court's January 2020 and July 2020 orders (which is not clear from their briefing), such a collateral attack is precluded." *Id.*

Highland's motion to conform the Plan, ordering that one change be made to the Plan – revising the definition of "Exculpated Parties" – and no more.[105] The objecting parties' direct appeal of this order has been certified to the Fifth Circuit and is one of the numerous currently active appeals by Dondero-related parties pending in the Fifth Circuit.

E. HMIT's Motion for Leave

HMIT filed its emergency Motion for Leave on March 28, 2023, which, with attachments, as first filed, was 387 pages in length, including an initial proposed complaint ("Initial Proposed Complaint") and two sworn declarations of Dondero that were attached as "objective evidence" in "support[ ]" of the Motion for Leave,[106] and with it, an application for an emergency setting on the hearing on the Motion to Leave. On April 23, 2023, HMIT filed a pleading entitled a "supplement" to its Motion to Leave ("Supplement"),[107] to which it attached a revised proposed verified complaint ("Proposed Complaint")[108] as Exhibit 1-A to the Motion for Leave and stated that "[t]he Supplement is not intended to amend or supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action."[109] The HMIT Motion for Leave was later amended to eliminate the Dondero Declarations and references to the same (but not the underlying allegations that were supposedly supported by the Dondero Declarations).[110]

[105] Bankr. Dkt. No. 3672.

[106] Bankr. Dkt. No. 3699.

[107] Bankr. Dkt. No. 3760.

[108] *See supra* note 5.

[109] Supplement ¶ 1.

[110] Bankr. Dkt. Nos. 3815 and 3816. Both of these filings had the Initial Proposed Complaint attached as Exhibit 1 to the Motion for Leave.

As earlier noted, HMIT desires leave to sue the Proposed Defendants regarding ***the post-confirmation, pre-Effective Date purchase of allowed unsecured claims***. The Proposed Defendants would be:

> **Seery,** who was a stranger to Highland until approximately four months following the Petition Date when he was brought in as one of the three Independent Directors, and now serves as the CEO of the Reorganized Debtor and the Trustee of the Claimant Trust (and also was previously Highland's CRO during the case, then CEO, and, also, an Independent Board Member of Highland's general partner during the Highland case). Seery is best understood as the man who took Dondero's place running Highland—per the request of the Committee.
>
> **Claims Purchasers,** who were strangers to Highland until the end of the bankruptcy case. They are identified as Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the "Claims Purchasers"). The Claims Purchasers purchased $240 million face value of already-allowed unsecured claims post-confirmation and pre-Effective Date in the spring of 2021 and another $125 million face value of already-allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk's docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Committee during the Highland bankruptcy case).
>
> **John Doe Defendants Nos. 1-10**, which are described to be "currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue."
>
> **Highland,** as a nominal defendant. HMIT added Highland as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.
>
> **Claimant Trust**, as a nominal defendant. HMIT added the Claimant Trust as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

The proposed plaintiffs would be:

> **HMIT,** which, again, was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited partnership interests). HMIT is the holder of a Class 10 interest under the Plan, pursuant to which HMIT's limited partnership interest in Highland was extinguished as of the Effective Date in exchange for a pro rata share of a contingent interest in the Claimant Trust.

Highland, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

Claimant Trust, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Claimant Trust.

In the Proposed Complaint, HMIT asserts the following six counts: Count I (against Seery) for breach of fiduciary duties; Count II (against the Claims Purchasers and John Doe Defendants) for knowing participation in breach of fiduciary duties; Count III (against all Proposed Defendants) for conspiracy; Count IV (against Muck and Jessup) for equitable disallowance of their claims; Count V (against all Proposed Defendants) for unjust enrichment and constructive trust; and Count VI (against all Proposed Defendants) for declaratory relief.[111] The gist of the Proposed Complaint is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that "wrongful conduct occurred" and "improper trades" were made.[112] HMIT believes the Claims Purchasers paid around $160 million for the $365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland's Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. And, of course, Dondero purports to have concluded from the three phone conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Seery must have given these Claims Purchasers MNPI regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Seery must have shared

[111] In the Initial Proposed Complaint, HMIT proposed to bring claims against the various Proposed Defendants in seven counts, including a count for fraud by misrepresentation and material nondisclosure against all Proposed Defendants. In the Proposed Complaint, HMIT abandons its claim for fraud by misrepresentation and material nondisclosure.

[112] Motion for Leave, 7.

MNPI regarding the likely imminent sale of MGM, in which Highland had, directly and indirectly, substantial holdings. As noted earlier, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[113] In summary, while the Proposed Complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor's estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Seery, and are now happily approving Seery's allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages in the form of equitable disallowance of the Claims Purchasers' claims and disgorgement of distributions on account of those claims, the imposition of a constructive trust over all disgorged funds, and declaratory relief.

HMIT claims that, in seeking to file the Proposed Complaint, it is seeking to protect the rights and interests of the Reorganized Debtor, the Claimant Trust, and "innocent stakeholders" who were allegedly injured by Seery's and the Claims Purchasers' alleged conspiratorial and

[113] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid. Credible testimony from Seery at the June 8 Hearing revealed that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public).

fraudulent scheme to line Seery's pockets with excessive compensation for his role as Claimant Trustee. In its Motion for Leave, HMIT states that "[t]he attached Adversary Proceeding alleges claims which are substantially more than 'colorable' based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud, including a fraud upon innocent stakeholders, as well as breaches of fiduciary duties and knowing participation in (or aiding or abetting) breaches of fiduciary duty."[114]

F. Is HMIT Really Dondero by Another Name?

The Proposed Defendants argue that HMIT's Motion for Leave is nothing more than a continuation of the harassing and bad-faith litigation by Dondero and his related entities that the Gatekeeper Provisions were intended to prevent and, thus, this is one of multiple reasons that the Motion for Leave should be denied.

To be clear, HMIT asserts that it is controlled by Mark Patrick ("Patrick"), who has been HMIT's administrator since August 2022. Patrick asserts that he is not influenced or controlled by Dondero, in general, and specifically not in its efforts to pursue the Proposed Claims against Seery and the Claims Purchasers. However, the testimony elicited at the June 8 Hearing—the hearing at which HMIT had the burden of showing the court that its Proposed Claims were "colorable" such that it should be allowed to pursue them through the filing of the Proposed Complaint—paints a different picture. Somewhat tellingly, HMIT chose not to call Patrick—allegedly HMIT's only representative and control person—as a witness in support of its Motion for Leave. Rather, Dondero was HMIT's first witness called in support of its motion, and the first

[114] *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 3. HMIT notes, in a footnote 6, that "Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement."

questions on direct from HMIT's counsel were aimed at establishing that Dondero was not behind the filing of the Motion for Leave and the pursuit of the Proposed Claims.[115] Dondero testified that he did not (i) "have any current official position" with HMIT, (ii) "attempt to exercise [control] on the business affairs of [HMIT]," (iii) "have any official legal relationship with [HMIT] where [he] can attempt to exercise either direct or indirect control over [HMIT]," or (iv) "participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan."[116] After HMIT rested, Highland and the Claimant Trust called Patrick as a witness, and he testified that he was the administrator of HMIT, that HMIT does not have any employees, operations, or revenues, and, when asked if HMIT owned any assets, Patrick testified, with not a great deal of certainty, that "it's my understanding it has a contingent beneficiary interest in the Claimants [sic] Trust" and that is the only asset HMIT has.[117] Patrick testified that HMIT did not owe any money to Dondero personally, but acknowledged that in 2015, HMIT had issued a secured promissory note in favor of Dondero's family trust, Dugaboy, in the amount of approximately $62.6 million (the "Dugaboy Note") in exchange for Dugaboy transferring a portion of its limited partner interests in Highland to HMIT; the Dugaboy Note was secured in part by the Highland limited partnership interests purchased from Dugaboy.[118] Patrick admitted that, if HMIT's Class 10 interest has no value, HMIT would have no ability to pay the Dugaboy Note.[119] He further testified that neither he nor any representative of HMIT had ever spoken with any representative of Farallon or Stonehill, that he had no personal knowledge about any *quid pro quo*, the amount of due diligence Farallon or Stonehill conducted prior to buying their claims, or the terms of

[115] *See* June 8 Hearing Transcript, 113:10-25.

[116] *Id.*

[117] June 8 Hearing Transcript, 307:7-308:2.

[118] *Id.*, 303:11-305:1; Highland Ex. 51, HMIT's $62,657,647.27 *Secured Promissory Note* dated December 24, 2015, in favor of Dugaboy.

[119] *Id.*, 308:3-16.

Seery's compensation package (until the terms were disclosed to them in opposition to the Motion for Leave).[120] Patrick admitted that Dugaboy was paying HMIT's attorneys' fees pursuant to a settlement agreement between HMIT and Dugaboy.[121]

On cross-examination by HMIT's counsel, Patrick further testified that HMIT has not filed any litigation, as plaintiff, other than its efforts to be a plaintiff in the Motion for Leave and its action as a petitioner in the Texas Rule 202 proceeding filed earlier in 2023 in the Texas state court.[122] HMIT's counsel argued that the point of this questioning was that "they're just trying to draw Dondero into this and – this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed – attempting to file this action and a Rule 202 proceeding.[123] But, Dondero and HMIT's counsel referred during the June 8 Hearing to the First Rule 202 Petition (where Dondero was the petitioner) and the Second Rule 202 Petition (where HMIT was the petitioner) as "our" Rule 202 petitions, and also to the numerous attempts at getting the discovery (that Dondero had warned Linn was coming) in the collective. For example, in objecting to the admission of Highland's Exhibit 10 – the Texas state court order denying and dismissing the Second Rule 202 Petition – on the basis of relevance, HMIT's counsel referred to the order as "an order denying ***our second"*** Rule 202 Petition.[124] And, Dondero testified that his warning to Linn in May 2021 that "discovery was coming" was "my response to I knew they had traded on material nonpublic information" and that "I thought it would be a lot easier to get

[120] *Id.*, 308:18-312:12. This testimony from Patrick came after HMIT's counsel objection to counsel's line of questioning regarding Patrick's personal knowledge of the facts supporting the allegations in the Proposed Complaint on the basis that he was invading the attorney work product privilege, which was overruled by this court; HMIT's counsel argued (311:4-19) that the line of questioning was an "invasion of attorney work product . . . [b]ecause they might – he would have knowledge from the efforts and investigation through attorneys in the case."

[121] *Id.*, 312:24-313:18.

[122] *Id.*, 315:3-9.

[123] *Id.*, 316:6-11.

[124] *Id.*, 58:11-13. The court overruled HMIT's relevance objection and admitted Highland's Exhibit 10 into evidence. *Id.*, 58:14-15.

discovery on a situation like this than it has been for the last two years" and that "***we've*** been trying for two years to get . . . discovery."[125]

Dondero's use of an entity over which he exerts influence and control to pursue his own agenda in the bankruptcy case is not new. Rather, this has been part of Dondero's *modus operandi* since the "nasty breakup" between Dondero and Highland that culminated with Dondero's ouster in October 2020, whereby Dondero, after not getting his way in the bankruptcy court, continued to lob objections and create obstacles to Highland's implementation of the Plan through entities he owns or controls. As noted above, the Fifth Circuit specifically upheld this court's finding in the Confirmation Order that Dondero owned or controlled the various entities that had objected to confirmation of the Plan and appealed the Confirmation Order, where the Dondero-related appellants made similar protestations that they are not owned or controlled by Dondero and asked the Fifth Circuit to vacate this court's factual finding because, among other reasons, "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him."[126] Based on the totality of the evidence in this proceeding, the court finds that, contrary to the protestations of HMIT's counsel and Patrick otherwise, Dondero is the driving force behind HMIT's Motion for Leave and the Proposed Complaint. The Motion for Leave is just one more attempt by Dondero to press his conspiracy theory that he has pressed for over two years now, unsuccessfully, in Texas state court through Rule 202 proceedings, with the Texas State Securities Board, and with the United States Trustee's office.

[125] *Id.*, 191:5-25.

[126] *Highland Capital*, 48 F.4th at 434-435.

G. Opposition to Motion for Leave: Arguing No Standing and No "Colorable" Claims

Highland, the Claimant Trust, and Seery (together, the "Highland Parties") filed a joint opposition ("Joint Opposition") to HMIT's Motion for Leave on May 11, 2023.[127] The Claims Purchasers filed a separate objection ("Claims Purchasers' Objection") to the Motion for Leave on May 11, 2023, as well.[128] In the Joint Opposition, the Highland Parties urge the court to deny HMIT leave to pursue the Proposed Claims because, as a threshold matter, HMIT does not have standing to bring them, directly or derivatively against the Proposed Defendants. They argue, in the alternative, that the Motion for Leave should be denied even if HMIT had standing to pursue the Proposed Claims because none of the Proposed Claims are "colorable" claims as that term is used in the Gatekeeper Provision of the Plan (and Gatekeeper Orders).[129]

The Claims Purchasers likewise argue that HMIT lacks standing to complain about claims trading in the bankruptcy which occurred between sophisticated Claims Purchasers and sophisticated sellers ("Claims Sellers"), represented by skilled bankruptcy and transactional counsel. Moreover, they argue HMIT cannot show that it or the Reorganized Debtor or the Claimant Trust were injured by the claims trading at issue because the Purchased Claims had already been adjudicated as allowed claims in the bankruptcy case—thus, distributions under the Plan on account of the Purchased Claims remain the same, the only difference being who holds the claims. Moreover, even if HMIT could succeed in equitably subordinating the validly transferred ***allowed*** claims, HMIT would still be in the same position it is today: the holder of a

[127] Bankr. Dkt. Nos. 3783. Highland, the Claimant Trust, and Seery also filed on May 11 a *Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding* ("Morris Declaration") that attached 44 Exhibits in support of the Joint Opposition. Bankr. Dkt. No. 3784.

[128] Bankr. Dkt. No. 3780.

[129] *See* Joint Opposition ¶ 139 ("Because HMIT lacks standing, this Court need not reach the merits of HMIT's proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion.").

contingent, speculative Class 10 interest that would only be paid after payment, in full, with interest, of all creditors under the Plan. The Claims Purchasers argue in the alternative that the Proposed Claims are not "colorable."

Finally, the Proposed Defendants argue that the standard of review for assessing whether the Proposed Claims are "colorable" (as such term is used in the Gatekeeper Provision and Gatekeeping Orders) is a standard that is a higher than the "plausibility" standard applied to Rule 12(b)(6). They argue that HMIT should be required to meet a higher bar with respect to colorability that includes making a *prima facie* showing that the Proposed Claims have merit (and/or are not without foundation) which requires HMIT to do more than meet the liberal notice-pleading standards.

H. HMIT's Reply to the Proposed Defendants' Opposition to the Motion for Leave

In its reply brief ("Reply"), filed by HMIT on May 18, 2023,[130] it argues that it has constitutional standing as an "aggrieved party" to bring the Proposed Claims on behalf of itself.[131] HMIT also argues that it has standing under Delaware Trust law to bring a derivative action on behalf of the Claimant Trust and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to bring the claims.[132] Finally, HMIT maintains that the standard of review that the bankruptcy court should apply in assessing the "colorability" of the Proposed Claims is no greater than the standard of review applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), which would require the bankruptcy court to look only to the "four corners" of the Proposed Complaint

[130] Bankr. Dkt. No. 3785.

[131] *See* Reply ¶ 7.

[132] See, Reply ¶ 23 n.5, where HMIT argues "The nature of this injury, in addition to Seery's influence over the Claimant Trust, and the lack of prior action by the Claimant Trust to pursue the claims HMIT seeks to pursue derivatively, among other things, demonstrate that HMIT is not only a proper party to assert its derivative claims – but the best party to do so."

and "not weigh extraneous evidence,"[133] take all allegations as true, and view all allegations and inferences in a light most favorable to HMIT. As discussed in greater length below, HMIT argues that, under this standard, the bankruptcy court should not consider evidence in making its determination as to whether the Proposed Complaint presents "colorable" claims.

I. Litigation within the Litigation: The Pre- June 8 Hearing Skirmishes

Suffice it to say there was significant activity before the Motion for Leave actually was presented at the June 8 hearing. HMIT sought an emergency hearing on its Motion for Leave (wanting a hearing on three days' notice). When the bankruptcy court denied an emergency hearing, HMIT unsuccessfully pursued an interlocutory appeal of the denial of an emergency hearing to the district court. HMIT then petitioned for a writ of mandamus at the Fifth Circuit regarding the emergency hearing denial, which was denied by the Fifth Circuit on April 12, 2023.

Next, there were multiple pleadings and hearings regarding ***what kind of hearing*** the bankruptcy court should or should not hold on the Motion for Leave—particularly focusing on whether or not it would be an evidentiary hearing.[134] The resolution of this issue turned on what standard of review the court should apply in exercising its gatekeeping function and determining the colorability of the Proposed Claims. HMIT (although it had submitted two declarations of Dondero with its original Motion for Leave and approximately 350 pages of total evidentiary support) was adamant that there should be no evidence presented at the hearing on the Motion for Leave, arguing that the standard for review should be the plausibility standard under Rule 12(b)(6)

[133] *See* Reply ¶ 47.

[134] Highland, joined by Seery and the Claims Purchasers, had filed a motion asking the bankruptcy court to set a briefing schedule on the Motion for Leave and to schedule a status conference, indicating that Highland's proposed timetable for same was opposed by HMIT. HMIT subsequently filed a response unopposed to a briefing schedule and status conference, but, before the status conference, HMIT filed a brief, stating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the bankruptcy court did not need evidence to exercise its gatekeeping function and determine if HMIT has a "colorable" claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

motions to dismiss such that "the threshold inquiry is very, very low. Evidence is not allowed. . . . [S]imilar to a 12(b)(6) inquiry, [the court] is limited to the four corners of the principal pleading – in this case, the complaint, or now the revised complaint."[135] Counsel for the Proposed Defendants argued that the standard of review for colorability here, in the specific context of the court exercising its gatekeeping function under the Plan, is more akin to the standards applied under the Supreme Court's *Barton Doctrine*[136] pursuant to which that the bankruptcy court must apply a higher standard than the 12(b)(6) standard, including the consideration of evidence at the hearing on the motion for leave; if the standard of review presents no greater hurdle to the movant than the 12(b)(6) standard applied to every plaintiff in every case, then the gatekeeping provisions mean nothing and do nothing to protect the parties from the harassing, bad-faith litigation they were put in place to prevent.[137] On May 22, 2023, after receipt of post-hearing briefing on the issue, the court entered an order stating that "the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave" and "[t]herefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing [on the Motion to Leave] if they so choose."

Two days later, HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing, seeking expedited depositions of corporate

[135] Transcript of April 24, 2023 Status Conference, Bankr. Dkt. No. 3765 ("April 24 Transcript"), 14:6-11.

[136] The *Barton Doctrine* was established in the 19th century Supreme Court case of *Barton v. Barbour*, 104 U.S. 126 (1881), and states that a party wishing to sue a court-appointed trustee or receiver must first obtain leave of the appointing court by making a *prima facie* case that the claim it wishes to bring is not without foundation.

[137] *See* April 24 Transcript, 36:24-37:4 ("[W]e're exactly today where the Court had predicted in entering [the Confirmation Order], that the costs and distraction of this litigation are substantial. And if all we're doing is replicating a 12(b)(6) hearing on a motion for leave, we're actually not doing anything to reduce, as the Court made clear, the burdens, distractions, of litigation."); 37:5-13 ("The Fifth Circuit likewise cited *Barton* in its order affirming the confirmation order. Specifically, it also explained that the provisions, these gatekeeper provisions requiring advance approval were meant to 'screen and prevent bad-faith litigation.' Well that – if that means only what the Plaintiff[ ] say[s] it does, then it really doesn't do anything at all to screen. There's no gatekeeping because their version of what that means is always policed under 12(b)(6) standards.").

representatives of the Claims Purchasers and of Seery and production of documents pursuant to deposition notices and subpoenas duces tecum that HMIT had attached to the motion. On May 26, 2023, this court held yet another status conference. Following the status conference, the court granted in part and denied in part HMIT's request for expedited discovery by ordering only Seery and Dondero to be made available for depositions prior to the June 8 Hearing. The court reached what seemed like appropriate middle ground by allowing the deposition of Seery and allowing the other parties to depose Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Dondero had been seeking discovery relating to the very claims trades that are the subject of the Revised Proposed Complaint from the Claims Purchasers in Texas state court "Rule 202" proceedings for approximately two years, where their attempts were rebuffed.

Approximately 60 hours before the June 8 Hearing, HMIT filed its Witness and Exhibit List disclosing for the first time two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony). Highland, the Claimant Trust, and Seery filed a joint motion to exclude the expert testimony and documents ("Motion to Exclude"), which the court ultimately granted in a separate order.

During the full-day June 8 Hearing on the Motion to Leave, the court admitted over 50 HMIT exhibits and over 30 Highland/Claimant Trust exhibits. The court heard testimony from HMIT's witnesses Dondero and Seery (as an adverse witness) and from the Highland Parties' witness Mark Patrick, the administrator of HMIT since August 2022 (as an adverse witness). The bankruptcy court allowed HMIT to make a running objection to all evidence—as it continued to argue that evidence was not appropriate.

III. LEGAL ANALYSIS

In determining whether HMIT should be granted leave, pursuant to the Gatekeeper Provision of the Plan and the court's prior Gatekeeper Orders, to pursue the Proposed Claims, the court must address the issue of whether HMIT would have ***standing*** to bring the Proposed Claims in the first instance. If so, the next question is whether the Proposed Claims are "***colorable***." But prior to getting into the weeds on ***standing*** and "***colorability,***" some general discussion regarding the topic of claims trading in the bankruptcy world seems appropriate, given that HMIT's Proposed Claims are based, in large part, on allegations of ***improper*** claims trading.

A. Claims Trading in the Context of Bankruptcy Cases—Can It Be Tortious or Otherwise Actionable?

As noted, at the crux of HMIT's desired lawsuit is what this court will refer to as "claims trading activity" that occurred shortly after the Plan was confirmed, but before the Plan went effective. HMIT believes that the claims trading activity gave rise to various torts: breach of fiduciary duty on the part of Seery; knowing participation in breach of fiduciary duty by the other Proposed Defendants; and conspiracy by all Defendants. HMIT also believes that the following remedies should be imposed: equitable disallowance of the Purchased Claims; disgorgement of the alleged profits the Claims Purchasers made on their purchases; and disgorgement of all Seery's compensation received since the beginning of his "collusion" with the other Defendants. Without a doubt, the Motion for Leave and Proposed Complaint revolve almost entirely around the claims trading activity.

This begs the question: ***When (or under what circumstances) might claims trading activity during a bankruptcy case give rise to a cause of action that either the bankruptcy estate or an economic stakeholder in the case might have standing to bring?*** Here, the claims trading

wasn't even "during a bankruptcy case" really—it was post-confirmation and pre-effective date, and it happened to be: (a) after mediation of the claims, (b) after Rule 9019 settlement motions, (c) after objections by Dondero and certain of his family trusts were lodged, (d) after evidentiary hearings, and (e) after orders were ultimately entered ***allowing*** the claims (and in most cases, such orders were appealed). The further crux of HMIT's desired lawsuit is that Seery allegedly "wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends" by sharing ***material non-public information*** to them regarding the potential value of the claims (i.e., the potential value of the bankruptcy estate), and this is what made the claims trading activity particularly pernicious. The alleged sharing of MNPI allegedly caused the Claims Purchasers to purchase their claims without doing any due diligence and with knowledge that the claims would be worth much more than the Plan's "pessimistic" projections might have suggested, and also allowed Seery to plant friendly allies into the creditor constituency (and on the post-confirmation CTOB) that would "rubber stamp" his generous compensation. This is all referred to as "not arm's-length" and "collusive." Notably, the MNPI mostly pertained to a likely future acquisition of MGM by Amazon (which transaction, indeed, occurred in 2022, after being publicly announced in Spring of 2021); as noted earlier, Highland owned, directly and indirectly, common stock in MGM. Also notably, there had been rumors and media attention regarding a potential sale of MGM for many months.[138] In summary, to be clear, HMIT's desired lawsuit is laced with a theme of "insider trading"—although this isn't a situation of securities trading *per se* (i.e., the unsecured Purchased Claims were not securities), and, as noted earlier, the Texas State Securities Board has not seen fit to investigate the claims trading activity.

So, preliminarily, is claims trading in bankruptcy sinister *per se*? The answer is no.

[138] *E.g.,* Benjamin Mullin, *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale,* THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.).

The activity of investing in distressed debt (which frequently occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and, indeed, has been so for a very long time. As noted by one scholar:

> The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

Adam J. Levitin, *Bankruptcy* Markets*: Making Sense of Claims Trading*, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010) (hereinafter "*Bankruptcy Markets*").[139]

As a pure policy matter, some practitioners have bemoaned this claims trading phenomenon, suggesting that "distressed debt traders may sacrifice the long-term viability of a debtor for the ability to realize substantial and quick returns on their investments."[140] Others suggest that claims trading in bankruptcy is beneficial, in that it allows creditors of a debtor an early exit from a potentially long bankruptcy case, enabling them to save expense and administrative hassles, realize immediate liquidity on their claims (albeit discounted), and may

[139] *See also* Aaron Hammer & Michael Brandess, *Claims Trading: The Wild West of Chapter 11s*, AM. BANKR. INST. JOURNAL 62 (Jul./Aug. 2010); Chaim Fortgang & Thomas Mayer, *Trading Claims and Taking Control of Corporations in Chapter 11,* 12 CARDOZO L. REV. 1, 25 (1990) (noting that "the first recorded instance of American fiduciaries trading claims against insolvent debtors predates all federal bankruptcy laws and goes back to 1790" when the original 13 colonies were insolvent, owing tremendous amounts of debt to various parties in connection with the Revolutionary War; early American investors purchased these debts for approximately 25% of their par value, hoping the claims would be paid at face value by the American government).

[140] Harvey R. Miller, *Chapter 11 Reorganization Cases and the Delaware Myth*, 55 VAND. L. REV. 1987, 2016 (2002). *See also* Harvey R. Miller & Shai Y. Waisman, *Does Chapter 11 Reorganization Remain a Viable Option for Distressed Businesses for the Twenty-First Century?*, 78 AM. BANKR. L.J. 153 (2004); Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129 (2005).

even permit them to take advantage of a tax loss on their own desired timetable.[141] On the flipside, "[c]aims trading permits an entrance to the bankruptcy process for those investors who want to take the time and effort to monitor the debtor and contribute expertise to the reorganization process."[142]

So, what are the "rules of the road" here? What does the Bankruptcy Code dictate regarding claims trading? The answer is nothing. The Bankruptcy Code itself has no provisions whatsoever regarding claims trading. The only thing resembling any regulation of claims trading during a bankruptcy case is found at Federal Rule of Bankruptcy Procedure 3001(e)—the current version of which went into effect in 1991—and it imposes extremely light regulation—if it could even be called that. This rule requires, in pertinent part (at subsection (2)), that "[i]f a claim other than one based on a publicly traded note, bond, or debenture" is traded during the case after a proof of claim is filed, notice/evidence of that trade must be filed with the bankruptcy clerk by the transferee. The transferor shall then be notified and given 21 days to object. If there is an objection, the bankruptcy court will hold a hearing regarding whether a transfer, in fact, took place. If there is no objection, nothing further needs to happen, and the transferee will be considered substituted for the transferor.

There are several things noteworthy about Rule 3001(e)(2). First, the only party given the opportunity to object is the ***transferor*** of the claim (presumably, in the situation of a dispute regarding whether there was truly an agreement regarding the transfer of the claim). Second, there is no need for a bankruptcy court order approving the transfer (except in the event of an objection

[141] *See Bankruptcy Markets*, at 70. *See also In re Kreisler,* 546 F.3d 863, 864 (7th Cir. 2008) ("Claims trading allows creditors to opt out of the bankruptcy system, trading an uncertain future payment for an immediate one, so long as they can find a purchaser.").

[142] *Bankruptcy Markets* at 70 (citing, among other authorities, Edith S. Hotchkiss & Robert M. Mooradian, *Vulture Investors and the Market for Control of Distressed Firms*, 43 J. FIN. ECON. 401, 401 (1997) (finding that "vulture investors add value by disciplining managers of distressed firms").

by the alleged transferor). Third, the ***economic consideration paid need not be disclosed to the court or anyone***. Fourth, there is no requirement or definition of timeliness. Finally, it explicitly does not apply with regard to publicly traded debt. This, alone, means that many claims trades are not even reported in a bankruptcy case. But it is not just publicly traded debt that will not be reflected with a Rule 3001(e) filing. For example, bank debt, in modern times, is often syndicated (i.e., fragmented into many beneficial holders of portions of the debt) and only the administrative agent for the syndicate (or the "lead bank") will file a proof of claim in the bankruptcy—thus, as the syndicated interests (participations) change hands, and they frequently do, there typically will not be a Rule 3001(e) notice filed.[143] To be clear here, this syndication-of-bank-debt fact, along with the fact that there are financial products whereby bank debt might be carved up into economic interests separate and apart from legal title to the loan, means there are many situations in which trading of claims during a bankruptcy case is not necessarily transparent or, for that matter, policed by the bankruptcy court. This is the world of modern bankruptcy. Most of the claims trading that gets reported through a Rule 3001(e) notice is the trading of small vendor claims. And this is all regarded as private sale transactions for the most part.[144]

Suffice it to say that there is not a wealth of case law dealing with claims trading in a bankruptcy context. Perhaps this is not surprising, since it is not prohibited and ***is mostly a matter of private contract between buyer and seller***. The case law that does exist seems to arise in situations of perceived bad faith of a purchaser—for example, when there was an attempt to control voting and/or ultimate control of the debtor through the plan process (not always problematic, but

[143] Anne Marrs Huber & Thomas H. Young, *The Trading of Bank Debt in and Out of Chapter 11*, 15 J. BANKR. L. & PRAC. 1, 1, 3 (2006).

[144] Note that Bankruptcy Rule 3001(e) was very different before 1991. Between 1983-1991, the rule required that parties transferring claims inform the court that a transfer of claims was taking place and also disclose the consideration paid for the transferred claims. A hearing would take place prior to the execution of a trade. Judicial involvement was required and resulted in judicial scrutiny of transactions—something that simply does not exist today.

there are outlier cases where this was found to cross a line and result in consequences such as disallowing votes on a plan or even equitable subordination of a claim).[145] Another type of case that has generated case law is where the purchaser of claims occupied a fiduciary status with the debtor.[146] Still another type of case that has generated case law is where there is an attempt to cleanse claims that might have risks because of a seller's malfeasance, by trading the claim to a new claim holder.[147]

The following is a potpourri of the more notable cases that have addressed claims trading in different contexts. Most of them imposed no adverse consequences on claims traders: *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (where a corporation named Garlin, that was owned by the individual chapter 7 debtors' sister and close friend, purchased a $900,000 bank claim for $16,500, and there was no disclosure of Garlin's connections to debtors and no Rule 3001(e)(2) notice was filed, the Seventh Circuit reversed the bankruptcy court's invocation of the doctrine of equitable subordination to the claim, stating: "Equitable subordination is generally appropriate only if a creditor is guilty of misconduct that causes injury to the interests of other creditors;" the Seventh Circuit further stated that it could "put to one side whether the court's finding of inequitable conduct was correct" because even if there was misconduct, it did not harm the other creditors, who were in the same position whether the original creditor or Garlin happened to own the claim; the Seventh Circuit did note that Garlin's decision to purchase the original bank

[145] *In re Applegate Prop. Ltd.,* 133 B.R. 827, 836 (Bankr. W.D. Tex. 1991) (designating votes of an affiliate of the debtor that purchased a blocking position to thwart a creditor's plan because it was done in bad faith); *In re Allegheny Int'l, Inc.,* 118 B.R. 282, 289–90 (Bankr. W.D. Pa. 1990) (because of bad faith activities, the court designated votes of a claims purchaser who purchased to get a blocking position on a plan). *But see In re First Humanics Corp.,* 124 B.R. 87, 92 (Bankr. W.D. Mo. 1991) (claims purchased by debtor's former management company to gain standing to file a plan to protect interest of the debtor was in good faith).

[146] *See In re Exec. Office Ctrs., Inc.*, 96 B.R. 642, 649-650 (Bankr. E.D. La. 1988) (and numerous old cites therein).

[147] *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 340 B.R. 180 (Bankr. S.D.N.Y. 2006), *vacated, Enron Corp. v. Springfield Assocs., L.L.C. (In re Enron Corp.),* 379 B.R. 425 (S.D.N.Y 2007); *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 333 B.R. 205, 211 (Bankr. S.D.N.Y. 2005).

creditor's claim might have disadvantaged the other creditors if it interfered with the trustee's own potential settlement with the original bank creditor (note that the trustee argued that she had been negotiating a deal with bank under which bank might have reduced its claims); however, the trustee presented no evidence that any deal with the bank was imminent or even likely; thus, whether such a deal could have been reached was speculation; equitable subordination was therefore improper."); *Viking Assocs., L.L.C. v. Drewes (In re Olson),* 120 F.3d 98, 102 (8th Cir. 1997) (case involved the actions of an entity known as Viking in purchasing all of the unsecured claims against the bankruptcy estate of two chapter 7 debtors, Hugo and Jeraldine Olson; Viking was a related entity, owned by the debtors' children, and purchased $525,000 of unsecured claims for $67,000; while the bankruptcy court had discounted the claims down to the purchase amount and subordinated Viking's discounted claims to the claims of the other unsecured creditors, relying on section 105 of the Bankruptcy Code, the Eighth Circuit held that the bankruptcy court lacked the authority to do this, and, thus, reversed and remanded; the Eighth Circuit noted that in 1991, Bankruptcy Rule 3001(e)(2) was amended "to restrict the bankruptcy court's power to inspect the terms of" claims transfers. *Id.* at 101 (citing *In re SPM Mfg. Corp.,* 984 F.2d 1305, 1314 n. 9 (1st Cir. 1993)); the text of the rule makes clear that the existence of a "dispute" depends upon an objection by the ***transferor***; where there is no objection by the ***transferor***, there is no longer any role for the court); *Citicorp. Venture Capital, Ltd. v. Official Committee of Unsecured Creditors (In re Papercraft Corp.),* 160 F.3d 982 (3d Cir. 1998) (large investor who held seat on board of directors of debtor and debtor's parent, and who also had nonpublic information regarding the debtor's value, anonymously purchased 40% of the unsecured claims at a steep discount during the chapter 11 case, and then, having obtained a blocking position for plan voting purposes, proposed a plan to acquire debtor; the claims purchaser's claims were equitably reduced to amount

paid for the claims since investor was a fiduciary who was deemed to have engaged in inequitable conduct); *Figter Ltd. v. Teachers Ins. & Annuity Ass'n of Am. (In re Figter),* 118 F.3d 635 (9th Cir. 1997) (Ninth Circuit affirmed bankruptcy court's ruling that a secured creditor's purchase of 21 out of 34 unsecured claims in the case was in good faith and it would not be prohibited from voting such claims on the debtor's plan, pursuant to Bankruptcy Code section 1126(e)); *In re Lorraine Castle Apartments Bldg. Corp.,* 145 F.2d 55, 57 & 58 (7th Cir. 1945) (in a case under the old Bankruptcy Act, in which there were more restrictions on claims trading, a debtor and two of its stockholders argued that the claims of purchasers of bonds should be limited to the amounts they paid for them; bankruptcy court special master found, "that, though he did not approve generally the ethics reflected by speculation in such bonds," there was no cause for limitation of the amounts of their claims, pointing out that the persons who had dealt in the bonds were not officials, directors, or stockholders of the corporation and owed no fiduciary duty to the estate or its beneficiaries—rather they were investors or speculators who thought the bonds were selling too cheaply and that they might make a legitimate profit upon them; the district court agreed, as did the Seventh Circuit, noting that "[t]o reduce the participation to the amount paid for securities, in the absence of exceptional circumstances which are not present here, would reduce the value of such bonds to those who have them and want to sell them. This would result in unearned, undeserved profit for the debtor, destroy or impair the sales value of securities by abolishing the profit motive, which inspires purchasers."); *In re Washington Mutual, Inc.*, 461 B.R. 200 (Bankr. Del. 2011), *vacated in part*, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (discussion of an equity committee's potential standing to pursue equitable subordination or equitable disallowance of the claims of certain noteholders who had allegedly traded their claims during the chapter 11

case while having material non-public information; while bankruptcy court originally indicating these were viable tools, court later vacated its ruling on this after a settlement was reached).

Suffice it to say that the courts have, more often than not, been unwilling to impose legal consequences, for an actor's involvement with claims trading. At most, in outlier-type situations during a case, courts have taken steps to disallow claims for voting purposes or to subordinate claims to other unsecured creditors for distribution purposes.[148] But the case at bar does not present facts that are typical of any of the situations in reported cases.

For one thing, unlike in the reported cases this court has located, there ***seems to have been complete symmetry of sophistication among the claim sellers and claim purchasers here—and complete symmetry with HMIT for that matter***. All persons involved are highly sophisticated financial institutions, hedge funds, or private equity funds. No one was a "mom-and-pop" type business or vendor that might be vulnerable to chicanery. The claims ranged from being worth $10's of millions of dollars to $100's of millions of dollars in face value. And, of course, the sellers/transferors of the claims have never shown up, subsequent to the claims trading

[148] Note that, while some cases suggest that outright disallowance of an unsecured claim, in the case of "inequitable conduct" might be permitted (not merely equitable subordination to unsecured creditors)—usually citing to *Pepper v. Litton*, 308 U.S. 295 (1939)—the Fifth Circuit has suggested otherwise. *In re Mobile Steel Co., Inc.,* 563 F.2d 692, 699-700 (5th Cir. 1977) (cleaned up) (noting that "equitable considerations can justify only the subordination of claims, not their disallowance" and also noting that "three conditions must be satisfied before exercise of the power of equitable subordination is appropriate[:] (i) The claimant must have engaged in some type of inequitable conduct[;] (ii) The misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant[; and] (iii) Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act." In *Mobile Steel*, the Fifth Circuit held that the bankruptcy judge exceeded the bounds of his equitable jurisdiction by disallowing a group of claims and also reversed the subordination of certain claims, on the grounds that the bankruptcy court had made clearly erroneous findings regarding alleged inequitable conduct and other necessary facts. *Contrast In re Lothian Oil Inc.,* 650 F.3d 539 (5th Cir. 2011) (involving the question of whether a bankruptcy court may ***recharacterize*** a claim as equity rather than debt; the court held yes, but it has nothing to do with inequitable conduct *per se*; rather section 502(b)'s language that a claim should be allowed unless it is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law...." is the relevant authority; unlike equitable subordination, recharacterization is about looking at the true substance of a transaction not the conduct of a party (if it looks like a duck and quacks like a duck, it's a duck—i.e., equity); the court indicated that section 105 is not a basis to recharacterize debt as equity; it's a matter of looking at state law to determine if there is any basis and looking at the nature of the underlying transaction—as either a lending arrangement or equity infusion.

transactions, to complain about anything. Everyone involved here is, essentially, a behemoth and there is literally no sign of innocent creditors getting harmed. Second, the case at bar is unique in that the claims traded here ***had all been allowed after objections, mediation, and Rule 9019 settlements during the bankruptcy case***. Thus, the amounts that would be paid on them were "locked in," so to speak. There was no risk to a hypothetical claims-purchaser of disallowance, offset, or any "claw-back" litigation (or—one might have reasonably assumed—any type of litigation). Third, the terms for distributions on unsecured claims had been established in a confirmed plan (although the claims were purchased before the effective date of the Plan). Thus, there was a degree of certainty regarding return on investment for the Claims Purchasers here that was much higher than if the claims had been purchased early, during, or mid-way through the case.[149] ***This was post-confirmation, pre-effective date claims purchasing.*** Interestingly, all three of these facts might suggest that little due diligence would be undertaken by any hypothetical purchaser. The rules of the road had been set. The court makes this observation because HMIT has suggested there is something highly suspicious about the fact that Farallon allegedly told Dondero that it did no due diligence before purchasing its claims (leading him to conclude that the Claims Purchasers must have purchased their claims based on receiving MNPI from Seery). Not only has there been no colorable evidence suggesting that insider information was shared, but the lack of due diligence in this context does not reasonably seem suspicious. The claims purchases

[149] *See discussion* in BANKRUPTCY MARKETS, at 91:

> Some claims purchasers buy before the bankruptcy petition is filed, some at the beginning of the case, and some towards the end. For example, there are investors who look to purchase at low prices either when a business is failing or early in the bankruptcy and ride through the case until payouts are fairly certain. [Citations omitted.] These investors might be hoping to buy at 30 cents on the dollar and get a payout at 70 cents on the dollar. Perhaps if they waited another six months, the payout would be 74 cents on the dollar, but the additional 4 cents on the dollar for six months might not be a worthwhile return for the time value of the investment. Other investors might not want to assume the risk that exists in the early days of a case when the fate of the debtor is much less certain, but they would gladly purchase at 70 cents on the dollar at the end of the case to get a payout of 74 cents on the dollar six months later.

were almost like passive investments, at this point—there was no risk of a claim objection and there was a confirmed plan, with a lengthy disclosure statement that described not only plan payment terms and projections, but essentially anything that any investor might want to know.

To reiterate, here, HMIT seeks leave to assert the following causes of action:

I. Breach of Fiduciary Duties (Seery)

II. Knowing Participation in Breach of Fiduciary Duties (Claims Purchasers)

III. Conspiracy (all Proposed Defendants)

IV. Equitable Disallowance (Claims Purchasers)

V. Unjust Enrichment and Constructive Trust (all Proposed Defendants)

VI. Declaratory Judgment (all Proposed Defendants)

The court struggles to fathom how any of these proposed causes of action or remedies can be applied in the context of: (a) post-confirmation claims trading; (b) where the claims have all been litigated and allowed.

In reflecting on the case law and various Bankruptcy Code provisions, the court can fathom the following hypotheticals in which claims trading during a bankruptcy case might be somehow actionable:

> **Hypothetical #1**: The most obvious situation would be if a purchaser of a claim files a Rule 3001(e) Notice, and the seller/transferor then files an objection thereto. There would then be a contested hearing between purchaser and seller regarding the validity of the transfer with the bankruptcy court issuing an appropriate order after the hearing on the objection. ***As noted, there was no objection to the Rule 3001(e) notices here***.
>
> **Hypothetical #2:** Alternatively, there could be a breach of contract suit between purchaser and seller if one thinks the other breached the purchase-sale agreement somehow. Perhaps torts might also be alleged in such litigation. ***As noted, there is no dispute between purchasers and sellers here.***
>
> **Hypothetical #3:** If there is believed to be fraud in connection with a plan, a party in interest might, pursuant to section 1144 of the Bankruptcy Code, move for

revocation of the plan "at any time before 180 days after the date of entry of the order for confirmation" and the court "may revoke such order if and only if such order was procured by fraud." ***As noted, here HMIT has suggested that the "pessimistic" plan projections may have been fraudulent or misrepresentations somehow. The time elapsed long ago to seek revocation of the Plan.***

Hypothetical #4: As discussed above, in rare situations (bad faith), during a Chapter 11 case, before a plan is confirmed, a claims purchaser's claim might not be allowed for voting purposes. *See* Sections 1126(e) of the Bankruptcy Code ("the court may designate any entity whose acceptance or rejection of such plan was not in good faith"). ***Obviously, in this case, this is not applicable—the claims were purchased post-confirmation.***

Hypothetical #5: As discussed above, in rare situations (inequitable conduct), a court might equitably subordinate ***claims*** to ***other claims***. *See* Section 510(c) of the Bankruptcy Code. But here**,** HMIT is seeking either: (a) equitable subordination of the ***claims*** of the Claims Purchaser to HMIT's ***Class 10 former equity interest*** (in contravention of the explicit terms of section 510(c)) or, (b) ***equitable disallowance*** of the claims of the Claims Purchasers (in contravention of *Mobile Steel*).

Hypothetical #6: Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case may permit "recharacterization" of a claim from debt to equity in certain circumstances, but not in circumstances like the ones in this case. Here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). The problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). Here there was most definitely "a contest" with regard to all of these purchased claims. ***Thus, it would appear that any effort to have a court reconsider these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.***

Hypothetical #7: If a party believes "insider trading" occurred there are governmental agencies that investigate and police that. ***Here, the purchased claims (which were not based on bonds or certificated equity interests) would not be securities so as to fall under the SEC's purview. Moreover, there was evidence that HMIT or Dondero-Related entities requested that the Texas State Securities Board investigate the claims trading and the board did not find a basis to pursue anyone for wrongdoing***.

Hypothetical #8: The United States Trustee can investigate wrongdoing by a debtor or unsecured creditors committee. While the United States Trustee would naturally have concerns about members of an unsecured creditors committee (or an officer of a debtor-in-possession) adhering to fiduciary duties and not putting their

> own interests above those of the estate, here, there are a couple of points that seem noteworthy. One, the claims trading activity was post-confirmation so—while certain of the claim-sellers may have still been on the unsecured creditors committee, as the effective date of the plan had not yet occurred—the circumstances are very different than if this had all happened during the early, contentious stages of the case. It seems inconceivable that there was somehow a disparity of information that might be troubling—the Plan had been confirmed and it was available for the world to see. The whole notion of "insider information" (just after confirmation here) feels a bit off-point. Bankruptcy practitioners and judges sometimes call bankruptcy a fishbowl or use the "open kimono" metaphor for good reason. It is generally a very open process. And information-sharing on the part of a debtor-in-possession or unsecured creditors committee is intended to be robust. *See, e.g.,* Bankruptcy Code sections 521 and 1102(b)(3). In a way, HMIT here seems to be complaining about this very situation that the Code and Rules have designed.

In summary, claims trading is a highly ***unregulated*** activity in the bankruptcy world. ***HMIT is attempting to pursue causes of action here that, to this court's knowledge, have never been allowed in a context like this***.

B. Back to Standing—Would HMIT Have Standing to Bring the Proposed Claims?

The Proposed Defendants argue that HMIT lacks standing to bring the Proposed Claims, either: (a) derivatively on behalf of the Reorganized Debtor and Claimant Trust, or (b) directly on behalf of itself. Thus, they argue that this is one reason that the Motion for Leave should be denied.

In making their specific standing arguments, the parties analyze things slightly differently:

The Claims Purchasers focus primarily on HMIT's lack of ***constitutional*** standing but also argue that HMIT does not have ***prudential*** standing under Delaware trust law to bring the Proposed Claims either individually or derivatively. Why do they mention Delaware trust law? Because the Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29.[150]

The Highland Parties' standing arguments focus almost entirely on HMIT's lack of ***prudential*** standing under Delaware trust law to bring the Proposed Claims.

HMIT argues that the Proposed Defendants "play fast and loose with standing arguments" and that HMIT has ***constitutional*** standing as a "party aggrieved"[151] to bring the Proposed Claims on behalf of itself. HMIT also argues that it has standing under Delaware trust law to bring a

[150] *See* Proposed Complaint, ¶ 26.

[151] Proposed Complaint, ¶7.

derivative action on behalf of the Claimant Trust, and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to do so.

1. The Different Types of Standing: Constitutional Versus Prudential

The parties are addressing two concepts of standing that can sometimes be confused and misapplied by both attorneys and judges: ***constitutional Article III standing***, which implicates federal court subject matter jurisdiction,[152] and the narrower standing concept of ***prudential standing***, which does not implicate subject matter jurisdiction but nevertheless might prevent a party from having capacity to sue, pursuant to limitations set by courts, statutes or other law.

Article III constitutional standing works as follows: a plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing three elements: (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[153] "If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve."[154] These elements ensure that a plaintiff has "'such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf."[155]

[152] Article III, Section 2 of the U.S. Constitution gives federal courts jurisdiction over enumerated cases and controversies.

[153] *See Thole v. U.S. Bank, N.A.*, 140 S.Ct. 1615, 1618 (2020)(citing the Supreme Court's seminal case on the tripartite test for Article III constitutional standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), where the Supreme Court stated that "the irreducible constitutional minimum of standing contains [the] three elements"); *see also Spokeo*, 578 U.S. at 338; *Abraugh v. Altimus*, 26 F.4th 298, 302 (5th Cir. 2022) (citing *id.*).

[154] *Transunion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021)(cleaned up).

[155] *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Apart from this minimal constitutional mandate, courts and statutes have set other limits on the class of persons who may seek judicial remedies—and this is the concept of prudential standing. In its recent opinion in *Abraugh v. Altimus*,[156] the Fifth Circuit set forth a detailed analysis of the two types of "standing," noting that the term "standing" is often "misused" in our legal system, which has led to confusion for both attorneys and judges.[157] The constitutional standing that is necessary for a court to exercise subject matter jurisdiction is broader than prudential standing and is only the first hurdle a party must clear before pursuing a claim in federal court.

The Fifth Circuit explained that ***in addition to*** Article III constitutional standing, "courts have occasionally articulated other 'standing' requirements that plaintiffs must satisfy under certain conditions, ***beyond those imposed by Article III***,"[158] such as the "standing" requirement that might be imposed by a statute or by jurisprudence. The *Abraugh* case was a perfect example of the latter.

Abraugh involved the civil rights statutes that provide, among other things, that "a party must have standing under the state wrongful death or survival statutes to bring [a § 1983 cause of action]" and noted that these statutes impose additional "standing" requirements that are a matter of prudential standing, not constitutional standing.[159] In *Abraugh*, the Fifth Circuit reversed and remanded a district court's dismissal of a § 1983 civil rights cause of action—noting that the district court had stated that it was dismissing based on a "lack of subject matter jurisdiction" because the plaintiff in that action lacked standing.[160] The plaintiff was the mother of a prisoner

[156] 26 F.4th 298.
[157] *Id.* at 303.
[158] *Id.* at 302 (emphasis added).
[159] *Id.* at 302-303.
[160] *Id.* at 301.

who died by suicide while in custody who brought a § 1983 action against Louisiana correctional officers and officials. After finding that the plaintiff/mother lacked standing under Louisiana's wrongful death and survival statutes (because there had been a surviving child and wife of the prisoner who were the proper parties with capacity to sue), the district court held that it was dismissing for lack of subject matter jurisdiction. The Fifth Circuit pointed out that the plaintiff/mother may have lacked standing under Louisiana's wrongful death and survival statutes to bring the claim under § 1983, but that type of standing was matter of ***prudential*** standing, and the plaintiff/mother actually ***did*** have ***Article III*** constitutional standing ("a constitutionally cognizable interest in the life of her son").[161] Thus, the district court's error was ***not*** in finding that the plaintiff/mother lacked prudential standing but in improperly conflating the two standing concepts when it held that it had lacked ***subject matter jurisdiction*** to consider any of the plaintiff's/mother's amended complaints.[162] The Fifth Circuit noted specifically that[163]

> prudential standing does not present a jurisdictional question, but "a merits question: who, according to the governing substantive law, is entitled to enforce the right?" As the Federal Rules of Civil Procedure make clear, "an action must be prosecuted in the name of the real party in interest." FED. R. CIV. P. 17(a)(1). And a violation of this rule is a failure of "prudential" standing. "Not one of our precedents holds that the inquiry is jurisdictional." It goes only to the validity of the cause of action. And "the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction."

Somewhat relevant to this prudential standing discussion is the fact that, in this bankruptcy case, there have been dozens of appeals of bankruptcy court orders by Dondero and Dondero-related entities. In connection therewith, both the district court and the Fifth Circuit, in evaluating the ***appellate standing*** of the appellants, have taken pains to distinguish between the concepts of:

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[161] *Id.*

[162] *Id.* at 301, 303-304. The Fifth Circuit opined that "the district court did not err in describing [the mother's] inability to sue under Louisiana law as a defect of 'standing[, b]ut it is a defect of prudential standing, not Article III standing" thus technically not implicating the federal court's subject matter jurisdiction. *Id.* at 303.

[163] *Id.* at 304 (cleaned up).

(a) traditional, constitutional standing, and (b) a type of prudential standing known as the "person aggrieved" test, which is applied in the Fifth Circuit in determining whether a party has ***standing to appeal a bankruptcy court order***—which it describes as a narrower and "more exacting" standard than constitutional standing. As explained in a Fifth Circuit opinion addressing the standing of a Dondero-related entity called NexPoint to appeal bankruptcy court orders allowing professional fees, the "person aggrieved" standard that is typically applied to ascertain bankruptcy ***appellate*** standing originated in a statute in the Bankruptcy Act. The Fifth Circuit continued to apply it after Congress removed the provision when it enacted the Bankruptcy Code in 1978.[164] Because it is narrower and "more exacting" than the test for Article III constitutional standing, it involves application of prudential standing considerations.[165] The Fifth Circuit describes the "person aggrieved" test for bankruptcy appellant standing as requiring that an appellant show that it was "*directly and adversely affected pecuniarily* by the order of the bankruptcy court," requiring "a higher causal nexus between act and injury than traditional standing . . . that best deals with the unique posture of bankruptcy actions."[166] In affirming the district court's dismissal of NexPoint's appeal of the bankruptcy court's fee orders, due to NexPoint's lack of prudential standing under the "person aggrieved" test, the court rejected NexPoint's argument that it had standing to appeal

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[164] *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, No. 22-10575, 2023 WL 4621466, *2 (5th Cir. July 19, 2023)(citing *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004)(cleaned up)).

[165] *Id.* at *1, **4-6 (where the Fifth Circuit repeatedly throughout its opinion refers to the "person aggrieved" test for standing in bankruptcy actions as a test for "prudential standing."); *see also Dondero v. Highland Capital Mgt., L.P.*, Civ. Act. No. 3:20-cv-3390-X, 2002 WL 837208 (N.D. Tex. Mar. 18, 2022)(where the district court, in addressing Dondero's standing to appeal a bankruptcy court order approving a Rule 9019 settlement (between Highland and Acis Capital Management GP LLC), notes that "[i]t is substantially more difficult to have standing to appeal a bankruptcy court's order than it is to pursue a typical complaint under Article III of the U.S. Constitution" and that "the Fifth Circuit has long recognized that bankruptcy cases' wide-reaching scope calls for a more stringent standing test.").

[166] *See id.* at *3 (cleaned up). The court quotes its 2018 opinion in *Matter of Technicool Sys., Inc. (In re Technicool)*, 896 F.3d 382, 385 (5th Cir. 2018), which explains why the "person aggrieved" prudential standing standard is applied in bankruptcy actions: "Bankruptcy cases often involve numerous parties with conflicting and overlapping interests. Allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Given the specter of such sclerotic litigation, standing to appeal a bankruptcy court order is, of necessity, *quite limited*." *Id.* (cleaned up).

because "it meets traditional Article III standing requirements [and that the more exacting] prudential standing considerations such as the 'person aggrieved' standard" did not survive the Supreme Court's 2014 *Lexmark*[167] opinion,[168] which addressed standing issues in the context of false advertising claims under the Lanham Act and reminded that courts may not "limit a cause of action that Congress has created merely because 'prudence' dictates."[169] The Fifth Circuit held that the Supreme Court's reminder in *Lexmark* did not nullify the "person aggrieved" test for prudential standing in bankruptcy appeals, citing its own decision in *Superior MRI Services Inc. v. Alliance Healthcare Services, Inc.*[170] (rendered a year after *Lexmark* was decided), in which it held that *Lexmark* applied only to the circumstances of that case, "rather than broadly modifying—or undermining—*all* prudential standing concerns, such as the one animating the 'person aggrieved' standard in bankruptcy appeals."[171]

Similarly, in yet another appeal in this bankruptcy case involving three Dondero-related entities as appellants (NexPoint, Dugaboy, and HCMFA)—this one an appeal of a bankruptcy court order authorizing the creation of an indemnity subtrust and entry into an indemnity trust agreement—the district court noted the parties' confusion about the standing issue, as exemplified in the parties' reference to constitutional standing when they were actually arguing that they had prudential standing under the "person aggrieved" test: "Although the parties frame this issue as one of constitutional standing . . . they cite case law and present arguments about the prudential

[167] *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

[168] *Id.* at *2.

[169] *See id.* at *4 (cleaned up).

[170] 778 F.3d 502 (5th Cir. 2015).

[171] *NexPoint*, 2023 WL 4621466 at *4 (cleaned up). The Fifth Circuit explicitly stated that "*Lexmark* does not expressly reach prudential concerns in bankruptcy appeals and brought no change relevant here." *Id.* at *5 (cleaned up).

standing requirement embodied in the 'person aggrieved' test."[172] The district court noted that it had an "independent obligation to consider constitutional standing before reaching its prudential aspects."[173] The district court dismissed the appeal as to Dugaboy and HCMFA for lack of standing but, upon concluding that NexPoint did have standing, dismissed the appeal as to it on the merits. The Fifth Circuit affirmed.[174] Interestingly, the court noted that, while the parties did not contest the district court's determination that NexPoint had standing to pursue the appeal, it "may consider prudential standing issues *sua sponte*."[175] In doing so, the Fifth Circuit recognized the distinction between constitutional standing and the prudential "person aggrieved" test applied to bankruptcy appeals, which "is, of necessity, quite limited" and "an even more exacting standard than traditional constitutional standing," as it requires an appellant to show that it is "directly, adversely, and financially impacted by a bankruptcy order."[176]

In summary, in analyzing whether HMIT would have standing to bring the Proposed Claims, this court must ***first*** determine whether HMIT would have constitutional standing under Article III (which is a subject matter jurisdiction hurdle) and, assuming it does, then ***additionally*** address whether HMIT would also have prudential standing (i.e., capacity to sue) pursuant to any applicable statutes (e.g., Delaware statutes), jurisprudence, or other substantive law that might ***limit*** who may sue. Notwithstanding HMIT's argument that it has standing under the "person

[172] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2002 WL 270862, *1 (N.D. Tex. Jan. 18, 2022)(cleaned up). The district court dismissed the appeals of two of the appellants, Dugaboy and HCMFA, finding that they lacked both constitutional standing and prudential standing under the "person aggrieved" test and affirmed the bankruptcy court's order after finding the third appellant, NexPoint, to have prudential standing under the "person aggrieved" test. *Id.* at **1-3 and *4.

[173] *Id.* at *1 n.2.

[174] *Highland Capital Mgt. Fund, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 57 F.4th 494 (5th Cir. 2023).

[175] *Id.* at 501 (cleaned up).

[176] *Id.*

aggrieved" test[177]—which, as discussed above, is a matter of prudential standing—this is applied only in the context of bankruptcy ***appellate*** matters.[178] As noted in its most recent opinion discussing standing in an appeal from the Highland bankruptcy case, the Fifth Circuit reiterated that the "person aggrieved" test is a test for bankruptcy ***appellate*** standing, which is narrower than a party in interest's right to be heard in bankruptcy cases in general.[179] The court rejected an argument that Bankruptcy Code § 1109, which provides that "[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter" confers ***appellate*** standing, noting that "one's standing to appear and be heard before the bankruptcy court [is] a concept distinct from standing to appeal the merits of a decision" and that the "person aggrieved" test for bankruptcy appellate standing is narrower than the test for determining one's standing to appear and be heard in a bankruptcy proceeding.[180]

Thus, the court will now analyze whether HMIT would, at a minimum, have constitutional standing to bring the Proposed Claims.

2. HMIT Would Lack Article III Constitutional Standing to Bring the Proposed Claims.

As noted above, the Supreme Court and the Fifth Circuit have made clear that constitutional standing is necessary for a court to exercise subject matter jurisdiction. It is only the first hurdle a party must clear before pursuing a claim in federal court. HMIT, as plaintiff, would bear the

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[177] HMIT insists that it has constitutional standing to bring claims on its individual behalf "as an aggrieved party." *See* Reply, ¶ 7.

[178] HMIT's argument in this matter that it has constitutional standing because it is a "party aggrieved" incorrectly conflates the prudential bankruptcy appellate "person aggrieved" test with the broader test that is applied to constitutional standing. The court is not being critical of this mistake. As noted at *supra* note 149, the Fifth Circuit in *Abraugh* pointed out that courts and attorneys alike have created confusion by misusing the term "standing" when they equate a lack of "standing," in all instances, with a lack of subject matter jurisdiction, even when the party is found to lack only prudential standing. Thus, HMIT is not alone in its confusion over the two different concepts of standing.

[179] *See NexPoint*, 2023 WL 4621466 at *6.

[180] *Id.* at *6 (cleaned up)("Because Section 1109(b) expands the right to be heard [in a bankruptcy proceeding] to a wider class than those who qualify under the 'person aggrieved' standard, courts considering the issue have concluded that merely being a party in interest is insufficient to confer ***appellate*** standing.")(emphasis added).

burden of establishing: (1) that it suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[181]

Concrete and Particularized; Actual or Imminent. As the Supreme Court made clear in the *Lujan* case, the injury in fact element requires a showing that the injury was "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."[182] The Supreme Court in the *Spokeo* case expounded on the "concrete and particularized" requirements of the "injury in fact" element. Particularization requires a showing that the injury "must affect the plaintiff in a personal and individual way," but while particularization is necessary, it alone is "not sufficient," because an injury in fact must also be "concrete."[183] And, concreteness is "quite different from particularization."[184] A "concrete" injury must be "real," and "not abstract," though it does not mean that the injury must be "tangible," as the injury can be intangible and nevertheless be concrete.[185] In addition to the concreteness and particularization requirements, an injury in fact must be "actual or imminent" such that "allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing."[186] "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly*

[181] *See supra* note 153.
[182] *Lujan*, 504 U.S. at 560 (cleaned up).
[183] *Spokeo*, 578 U.S. at 339.
[184] *Id.* at 340.
[185] *Id.*
[186] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

impending"; "allegations of *possible* future injury are not sufficient."[187]

Traceability - Causal Connection. As to the second element—that the injury was caused by the defendant—the Supreme Court in *Lujan* further described it as requiring a showing that "the injury has to be fairly traceable to the challenged action of the defendant."[188] The "fairly traceable" test requires an examination of "the causal connection between the assertedly unlawful conduct and the alleged injury."[189]

Redressability. The third element—redressability—requires the court to examine the connection "between the alleged injury and the judicial relief requested."[190] "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court."[191] "[A] court must determine that there is an available remedy which will have a 'substantial probability' of redressing the plaintiff's injury."[192]

The Claims Purchasers argue that HMIT lacks constitutional standing to pursue the claims asserted in the Proposed Complaint because: (i) neither HMIT nor the Bankruptcy Estate was injured by the Claim Purchasers' acquisition of the claims; and (ii) the Proposed Complaint lacks a theory of cognizable damages to the Reorganized Debtor, the Claimant Trust, and/or the beneficiaries of the Claimant Trust.[193]

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[187] *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013)(cleaned up); *see also Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir. 2023)("[Injury] cannot be speculative, conjectural, or hypothetical [and] [a]llegations of only a 'possible' future injury similarly will not suffice.")(cleaned up).

[188] *Lujan*, 504 U.S. at 560-61 (cleaned up).

[189] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

[190] *Id.* (noting "it is important to keep the ['fairly traceable' and 'redressability'] inquiries separate if the 'redressability' component is to focus on the requested relief.").

[191] *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998).

[192] *City of Los Angeles v. Lyons*, 461 U.S. 95, 129 n.20 (1983)(Marshall, J., dissenting)(cleaned up); *see also Ondrusek v. U.S. Army Corps of Engineers*, Civ. Act. No. 3:22-cv-1874-N, 2023 WL 2169908, at *5 ("Plaintiffs have not demonstrated that any available remedy would be sufficiently likely to relieve their alleged economic losses. Without a showing of redressability, those harms also cannot support Plaintiff's Article III standing.").

[193] As noted earlier, certain of the Proposed Defendants—the Highland Parties—do not focus on HMIT's lack of constitutional standing to pursue the Proposed Claims against them, but on its lack of prudential standing under

The court agrees with the Claims Purchasers' argument here. What is HMIT's concrete and particularized injury—that is "real" and is not abstract? That is not conjectural or hypothetical? That is actual or imminent?

Recall that, under the Plan, HMIT holds a Class 10 contingent interest in the Claimant Trust that only realizes value if all creditors are paid in full with interest. HMIT alleges the following injury: it has suffered a devaluation of its unvested Contingent Claimant Trust Interest by virtue of the alleged over-compensation of Seery as the Claimant Trustee—Seery's alleged over-compensation depletes the assets in the Claimant Trust available for distribution to creditors under the Plan, such that there is less likely a chance that HMIT ultimately receives any distributions on account of its Class 10 Contingent Claimant Trust Interest.[194] Yet, HMIT testified, through both witnesses Dondero and Patrick, that it had no personal knowledge of what Seery's actual compensation is under the CTA at the time HMIT filed its Motion for Leave. It was clear that HMIT's allegations regarding Seery's "excessive" compensation were based entirely on Dondero's pure speculation. In reality, Seery's base salary is exactly what the bankruptcy court approved during the bankruptcy case by a court order (after negotiations between Seery and the Committee). The CTA now further governs his compensation. The CTA, which was publicly filed ***in advance of*** the Plan confirmation hearing and approved by this court as part of the Plan

applicable law. Because constitutional standing is a matter of subject matter jurisdiction, the court has an independent duty to determine whether HMIT would have constitutional standing to pursue the Proposed Claims in federal court. The issue cannot be forfeited or waived by a party. *See Abraugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)("[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Moreover, courts . . . have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.")(cleaned up); *Abraugh*, 26 F.4th at 304 ("It is our constitutional duty, of course, to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.")(cleaned up).

[194] At the June 8 Hearing, HMIT's counsel was unable to identify any other injury HMIT has alleged to have suffered. HMIT's counsel acknowledged that claims trades, in and of themselves, would not "involve injury to the Reorganized Debtor and to the Claimant Trust" and that claims trades are "normally outside the purview of the bankruptcy court" but that "[h]ere, we have alleged . . . . injury [that] takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers." June 8 Hearing Transcript, 67:16-68:8. HMIT can only point to Seery's excess compensation as injury.

(which has been affirmed by the Fifth Circuit), specifically provides that Seery's post-Effective Date compensation would include a "Base Salary" (again, same as during the bankruptcy case), a "success fee," and "severance."[195] The CTA discussed the role of the Committee and then the CTOB in setting the success fee and severance and the like. A fully executed copy of the CTA was admitted into evidence at the June 8 Hearing. HMIT is essentially arguing that its injury (i.e., diminished likelihood of realizing value on its Contingent Claimant Trust Interest) stems from a court-sanctioned and creditor-approved process for approving compensation to Seery. Moreover, HMIT has failed to plead facts sufficient to show that, even if Seery received excessive compensation and that compensation is ordered to be returned, HMIT's Contingent Claimant Trust Interest will ever vest. The district court and the Fifth Circuit in various appeals by Dugaboy, another Dondero-related entity that, similar to HMIT, was a holder of a limited partnership interest in Highland whose interests were terminated as of the Effective Date of the Plan in exchange for a Contingent Claimant Trust Interest, have repeatedly rejected Dugaboy's claims to have standing based on the ***speculative nature of its alleged injuries as a contingent beneficiary of the Claimant Trust under the Plan***. For example, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy of the bankruptcy court's order authorizing the creation of an indemnity subtrust, wherein Judge Fitzwater found that, in addition to lacking prudential standing under the

[195] The Disclosure Statement that was approved by this court, after notice and a hearing, on November 24, 2020, provided that "The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement . . . ." The CTA was part of a Plan Supplement (as amended) that was filed in advance of the confirmation hearing and provided:

> Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

See Highland Ex. 38, at § 3.13(a)(i).

"person aggrieved" test to appeal the bankruptcy court's order, Dugaboy lacked constitutional standing "because they have not identified any injury fairly traceable to the Order: ***the injuries identified are speculative at best and nonexistent at worst***."[196] HMIT's allegations of injury are, without a doubt, "merely conjectural or hypothetical" and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests."[197] The court finds that HMIT would not meet the "concrete and particularized" or the "actual or imminent" requirements for an "injury in fact," and, thus, would lack constitutional standing to pursue the Proposed Claims.

With regard to the second requirement of constitutional standing—whether HMIT could show "traceability" with respect to the Claims Purchasers and/or Seery (i.e., a "causal connection between the assertedly unlawful conduct and the alleged injury"[198]), as noted above, there is only a speculative injury. Even if there is unlawful conduct asserted (i.e., sharing of MNPI to Claims Purchasers who then, as a *quid pro quo*, rubber stamped excessive compensation for Seery), there is nothing other than a hypothetical theory of an alleged injury (i.e., an allegedly less likelihood of a distribution on a Contingent Claimant Trust Interest).

With respect to the third requirement of constitutional standing—whether HMIT can show "redressability" (i.e., that it is likely, not speculative, that the injury can be redressed by a favorable

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[196] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, *1 n.2 (N.D. Tex. Jan. 28, 2022), *aff'd* 57 F.4th 494 (5th Cir. 2023)(emphasis added); *see also* Judge Scholer's opinion in *Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-2268-S, 2022 WL 3701720, *3 (N.D. Tex. Aug. 8, 2022)(cleaned up), *aff'd per curium*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023) (where Dugaboy had argued that "***its pecuniary interest is . . . a potential recovery under the Plan as one of Debtor's former equity holders***" and that "it ha[d] standing as a 'contingent beneficiary' under the Plan, or a beneficiary who will be entitled to payment after all creditors are paid in full," and Judge Scholer stated, "This assertion is premised on the assumption that Dugaboy's 0.1866% pre-bankruptcy limited partnership interest in Debtor—which was extinguished under the Plan—makes it a contingent beneficiary of the creditor trust created under the Plan. . . . [S]uch a 'speculative prospect of harm is far from a direct, adverse, pecuniary hit' as required to confer standing."

[197] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

[198] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

decision), there are multiple problems here.[199] The major remedy sought here is the equitable disallowance of the allowed Purchased Claims (and disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims). There is no such remedy available here. As noted earlier, there is a similar concept of ***equitable subordination*** of a claim to another claim, or of an interest to another interest, pursuant to Bankruptcy Code section 510(c). But under the literal terms of section 510(c), ***claims cannot be subordinated to interests***. Moreover, the Fifth Circuit noted in the *Mobile Steel* case,[200] that ***equitable disallowance*** of a claim (as opposed to equitable subordination of a claims) is not an available remedy. Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case might permit "recharacterization" of a claim from debt to equity in certain circumstances—but not based on inequitable conduct but rather on the nature of a financial transaction. In any event, here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). As noted earlier, the problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). As further noted earlier, here there was most definitely a "contest" with regard to all of these purchased claims. ***Thus, it would appear***

[199] *See supra* notes 182-184 and accompanying text. The court will note that, as discussed *supra* note 141 and pages 71-72, the remedy of equitable subordination (as to the Claims Purchasers) would not redress HMIT's alleged injury (because equitable subordination of claims to interests is not an available remedy in the Fifth Circuit and thus subordination of the Purchased Claims to other claims would not change HMIT's distributions from the Claimant Trust, if any), and because outright disallowance of all or part of the already allowed Purchased Claims is not an available remedy either, HMIT would not be able to meet the "redressability" requirement with respect to the Claims Purchasers.

[200] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

that any effort to have a court reconsider and potentially disallow these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.

3. HMIT Would Also Lack Prudential Standing to Bring the Proposed Claims.

Even if HMIT would have constitutional standing to bring the Proposed Claims in an adversary proceeding filed in the bankruptcy court, the Proposed Claims would still be barred if HMIT would lack prudential standing to bring them under applicable state or federal law. HMIT argues that it does have prudential standing under both federal bankruptcy law and Delaware law to pursue the Proposed Claims derivatively and also to bring the Proposed Claims in its individual capacity.

With regard to "federal bankruptcy law," HMIT argues that it has standing pursuant to: (a) Rule 23.1 of the Federal Rules of Civil Procedure, pertaining to derivative actions, which "applies to this proceeding pursuant to" Rule 7023.1 of the Federal Rules of Bankruptcy Procedure, and (b) *Louisiana World Exposition v. Federal Insurance Co. ("LWE")*,[201] the Fifth Circuit's leading case addressing when a creditors committee may be granted standing to bring causes of action on behalf of a bankruptcy estate. But, federal bankruptcy law does not confer standing ***where the plaintiff otherwise lacks standing under applicable state law***. In other words, whether HMIT would have prudential standing to sue under Delaware law is dispositive of the issue, regardless of the forum. Rule 23.1 "speaks only to the adequacy of the . . . pleadings," and "cannot be understood to 'abridge, enlarge, or modify any substantive right,'"[202] including a right (or lack thereof) to bring a derivative action under the substantive law of Delaware. Additionally, HMIT's reliance on *LWE* is misplaced: *LWE* permits creditors, in certain circumstances ***during*** a bankruptcy case, to "file

[201] 858 F.2d 233 (5th Cir. 1988).

[202] *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991)(quoting 28 U.S.C. § 2072(b)).

suit on behalf of a debtor-in-possession or a trustee"[203] and does not apply to a party's right to sue, derivatively, on behalf of the Reorganized Debtor or any entity that is the assignee of the former bankruptcy estate's assets. Upon confirmation of the Plan, the bankruptcy estate of Highland ceased to exist;[204] Highland is no longer a debtor-in-possession but a reorganized debtor, and the Claimant Trust is a new entity created under the Plan and Claimant Trust Agreement. Even if *LWE* did apply in this ***post***-confirmation context, it supports the application of Delaware law to the issue of prudential standing and does not supersede state-law requirements for standing. In *LWE*, before addressing the requirements a creditors' committee must meet to sue derivatively on behalf of a bankruptcy estate as a matter of federal bankruptcy law, the Fifth Circuit conducted a lengthy analysis to determine "as a threshold issue" whether the creditors' committee in that case could assert its claims under Louisiana law.[205] The court specifically addressed whether the creditors' committee could pursue a derivative action under Louisiana law and concluded that "there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions."[206] So, even under *LWE* (which the court does not think applies in this post-confirmation context), if HMIT would be barred from bringing a derivative action on behalf the Reorganized Debtor or Claimant Trust under state law, the analysis stops there.[207] Thus, the court looks to Delaware law to determine if HMIT would have prudential standing to pursue the derivative claims on behalf the Reorganized Debtor and the Claimant Trust.

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[203] *LWE*, 858 F.2d at 247.

[204] *See In re Craig's Stores*, 266 F.3d 388, 390 (5th Cir. 2001).

[205] *LWE*, 858 F.2d at 236-45.

[206] *Id.* at 243.

[207] *See In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 (where the Delaware bankruptcy court denied the creditors' committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act, stating, "To determine that the third party

HMIT acknowledges that both the Reorganized Debtor and the Claimant Trust are organized under Delaware law, and thus the cause of action against Seery alleging breach of fiduciary duties to the Reorganized Debtor and the Claimant Trust are governed by Delaware law under the "Internal Affairs Doctrine."[208] In addition, because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting theory of liability as to the Claims Purchasers is also governed by Delaware law.[209] For the reasons set forth below, the court finds that HMIT would lack prudential standing under Delaware law to bring the claims set forth in the Proposed Complaint, derivatively, on behalf of either the Claimant Trust or the Reorganized Debtor.

a) First, HMIT Would Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Claimant Trust.

The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29,[210] and "to proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement" such that "the plaintiff must be a beneficial owner" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[211] This requirement is "mandatory and exclusive" and only "a beneficial owner" "has standing to bring a derivative claim on behalf of the

may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors' state of incorporation or formation.").

[208] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[209] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

[210] *See* Proposed Complaint, ¶ 26.

[211] *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *19 n.123 (Del. Ch. June 15, 2011), *aff'd* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b).

Trust."[212] The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, would lack standing to bring derivative claims on behalf of the Claimant Trust. HMIT argues to the contrary: that it ***is*** currently, and was at all relevant times, a "beneficial owner" of the Claimant Trust under Delaware trust law such that it would have standing to bring derivative claims on behalf of the Claimant Trust if it were allowed to proceed with the filing of the Proposed Complaint. The disagreement turns on the nature of HMIT's interest under the Plan and the Claimant Trust Agreement and whether HMIT, as a holder of such interest, would be considered a "beneficial owner" of the Claimant Trust under Delaware trust law.

As noted, pursuant to the Plan, HMIT's former limited partnership interest in Highland was cancelled as of the Effective Date in exchange for its pro rata share of a "Contingent Claimant Trust Interest," as defined under the Plan.[213] HMIT argues that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present "beneficial owner" under Delaware trust law.

The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust; rather, the "beneficial owners" of the Claimant Trust are the "Claimant Trust Beneficiaries,"[214] which are defined in the Plan and the CTA as "the Holders of Allowed General Unsecured Claims" (which are in Class 8 under the Plan) and "Holders of Allowed Subordinated Claims" (which are in Class 9 under the Plan); [215] HMIT, a holder of a Class 10 interest under the Plan, is neither.

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[212] *In re Nat'l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)). HMIT acknowledges this requirement in its Reply: "Delaware statutory trust law provides that a plaintiff in a derivative action on behalf of a trust must be a beneficial owner at the time of the action and at the time of the transaction." Reply, ¶ 19 (citing 12 Del C. § 3816).

[213] *See* Plan Art. III.H.10 and Art. I.B.44.

[214] Section 2.8 of the CTA provides, "The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . . ." HMIT Ex. 26, § 2.8.

[215] *See* Plan Art. I.B.44 ("'*Claimant Trust Beneficiaries*' means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the

HMIT, as the holder of a "Contingent Claimant Trust Interest," has only an ***unvested*** contingent interest in the Claimant Trust and, as such, is not a "beneficial owner" of the Claimant Trust for standing purposes under Delaware trust law. HMIT argues that it "should be treated as a vested Claimant Trust Beneficiary due to [the Proposed Defendants'] wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein."[216] The court disagrees.

HMIT's status as a "beneficiary" of the Claimant Trust is defined by the CTA itself, pure and simple. The CTA specifically provides that "Contingent Trust Interests" "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA. It is undisputed that HMIT's Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested based on HMIT's unsupported allegation of wrongdoing on the part of Seery, the Claimant Trustee. Thus, the court finds that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, lacks prudential standing under Delaware law to bring derivative claims on behalf of the Claimant Trust.[217]

Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests."); CTA § 1.1(h). *See also*, CTA, 1 at n.2 ("For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan."). HMIT Ex. 26.

[216] Proposed Complaint ¶ 24.

[217] *See Nat'l Coll.*, 251 A.3d at 190–92 (dismissing creditors' derivative claims because they were not "beneficial owners of the Trusts"); *Hartsel*, 2011 WL 2421003, at *19 n.123 (dismissing derivative claims by investors that "no longer own shares" because "those investors no longer have standing to pursue a derivative claim").

b) HMIT Would Likewise Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Reorganized Debtor.

HMIT acknowledges that the Reorganized Debtor, Highland Capital Management, L.P., is a Delaware limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.*[218] To bring "a derivative action" on behalf of a limited partnership, "the plaintiff must be a partner or an assignee of a partnership interest" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[219]

HMIT is not a partner, general or limited, of the Reorganized Debtor limited partnership. HMIT ***was*** a limited partner in the original debtor (specifically, a holder of Class B/C Limited Partnership interests in Highland), but that limited partnership interest was extinguished on August 11, 2021 (the Effective Date of the Plan) per the terms of the Plan, and HMIT does not own any partnership interest in the newly created Reorganized Debtor limited partnership.[220] Because HMIT would not hold a partnership interest in the Reorganized Debtor at "the time of bringing the action," it "lacks derivative standing" to bring claims "on the partnership's behalf."[221] HMIT likewise cannot satisfy "the continuous ownership requirement"; when HMIT's limited partnership interest in the original Debtor was cancelled on the Plan's Effective Date, HMIT "los[t] standing to continue a derivative suit" on behalf of the Debtor.[222] Finally, to the extent HMIT

[218] Proposed Complaint ¶ 25.

[219] 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) ("The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another party's fiduciary duties to them.") (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff'd* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) ("The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.") (citing 6 Del. C. § 17-211(h)).

[220] *See* Plan Art. IV.A.

[221] *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

[222] *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff's partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re*

seeks to bring a "double derivative" action on behalf of the Claimant Trust based on claims purportedly held by its wholly owned subsidiary, the Reorganized Debtor, HMIT lacks standing. A "double derivative" action is a suit "brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled."[223] And, under Delaware law, "parent level standing is required to enforce a subsidiary's claim derivatively."[224] Because HMIT would lack derivative standing to bring claims on behalf of the parent Claimant Trust,[225] it also would lack standing to bring a double derivative action.

c) Finally, HMIT Would Also Lack Prudential Standing under Applicable Law to Bring the Proposed Claims As ***Direct*** Claims.

HMIT argues that it has "direct" standing to pursue the Proposed Claims on behalf of itself, individually.[226] But just because HMIT asserts that some or even all of the Proposed Claims are direct, not derivative claims, does not make it so: "a claim is not 'direct' simply because it is pleaded that way."[227] Rather, in determining whether claims are direct or derivative, a court must "look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs' characterization."[228] And, under Delaware law, "whether a claim is solely derivative or

SkyPort Global Commcn's, Inc.), 2011 WL 111427, at *25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders "lack standing to bring a derivative claim" under Delaware law because they "had their equity interests in the company extinguished pursuant to the merger under the Plan"); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) ("[T]he cancellation of WorldCom shares under the Plan … prevents the required continuation of shareholder status through the litigation.") (cleaned up).

[223] *Lambrecht v. O'Neal*, 3 A.3d 277, 282 (Del. 2010).

[224] *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

[225] *See supra* pp. 80-82.

[226] *See e.g.*, Motion for Leave ¶ 10 ("HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . ."); *id.* ¶ 67 (arguing that "HMIT has [d]irect [s]tanding"); Proposed Complaint ¶ 24 ("HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.").

[227] *Schmermerhorn*, 2011 WL 111427, at *26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at *7 (Del. Ch. Nov. 5, 2004)).

[228] *See id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)); *see also Moore v. Simon Enters., Inc.*, 919 F.Supp. 1007, 1009 (N.D. Tex. 1995)("The determination of whether a claim is a derivative claim or a direct claim is made by reference to the nature of the wrongs alleged in the complaint, and is not limited by a [party's] characterization or stated intention.")(cleaned up).

may continue as a dual-natured claim 'must turn ***solely*** on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'"[229] "In addition, to prove that a claim is direct, a plaintiff 'must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.'"[230] Similarly, in the bankruptcy context, whether a creditor can assert a claim directly or whether the claim belongs to the estate turns on the nature of the injury for which relief is sought: "[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate," such that "only the bankruptcy trustee has standing to pursue the claim for the estate . . . ."[231] "To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate."[232]

As a reminder, HMIT argues that the injury it has suffered is a devaluation of its interests in the Claimant Trust by virtue of alleged over-compensation of Seery as the Claimant Trustee. HMIT was unable, when pressed during closing arguments, to identify any other injury. It essentially admitted that the claims trades, in and of themselves, would not have harmed the Claimant Trust, the Reorganized Debtor, or individual stakeholders, including HMIT, ***since the Claims Purchasers acquired already allowed unsecured claims, such that the distributions on those claims pursuant to the Plan would be unchanged in the hands of new holders of the claims***.

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[229] *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original).

[230] *Id.* (quoting *Tooley*, 845 A.2d at 1033); *see also Schmermerhorn*, 2011 WL 111427, at *24 (same).

[231] *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)).

[232] *Id.*; *see also Schertz-Cibolo-Universal City Indep. Sch. Dist. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994)("If a cause of action alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate.")(citations omitted).

Thus, by its own concessions, any alleged harm to HMIT (through devaluation of assets in the Claimant Trust) "comes about only because of harm to the debtor," so the alleged "injury is derivative."[233] The court concludes that all of the claims set forth in the Proposed Complaint allege derivative claims only, and that none would be direct claims against the Proposed Defendants. Thus, HMIT would lack prudential standing to bring any of the Proposed Claims in the Proposed Complaint, so its Motion for Leave should be denied.

d) Some Final Points Regarding Standing.

In this standing discussion, one should not lose sight of the fact that there are both procedural safeguards in place, as well as certain independent individuals in place with fiduciary duties that might act in the event of any shenanigans regarding Claimant Trust activities. Under section 4.1 of the CTA (approved as part of the Plan process), the CTOB, which includes an independent disinterested member in addition to representatives of the Claims Purchasers,[234] oversees the Claimant Trustee's performance of his duties, approves his compensation, and may remove him for cause. Moreover, there is a separate "Litigation Trustee" in this case who was brought in, post-confirmation, as an independent fiduciary to pursue claims and causes of action. These independent persons are checks and balances in the post-confirmation wind down of Highland. This is what creditors voted on in connection with the Plan. Seery and the Claims Purchasers are not in sole control of anything. The CTA, as well as Delaware law, very clearly set forth who can bring an action in the event of some colorable claim. This is the reality of prudential

[233] *Meridian*, 912 F.3d at 293–94 ("The creditors' injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties."); *see also El Paso,* 152 A.3d at 1260–61 & n.60 (holding that claim "claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative") (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at *12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had "not identified any independent harm suffered by the limited partners"; "the partnership suffered all the harm at issue—it paid too much").

[234] *See supra* note 23 and accompanying text.

standing. Just as in the *Abraugh* case, where Louisiana law dictated that a mother could not bring a wrongful death case when the deceased prisoner had a surviving wife and child, Delaware law and the CTA dictate here that a contingent beneficiary cannot bring the Proposed Claims here. This is separate and apart from whether the claims are colorable.

C. Are the Proposed Claims "Colorable"?

1. What is the Proper Standard of Review for a "Colorability" Determination?

Although the court has determined that HMIT would ***not*** have standing (constitutional or prudential) to bring the Proposed Claims, this court will nevertheless evaluate whether the claims—assuming HMIT somehow has standing—might be "colorable." This, in turn, requires the court to assess what the legal standard is to determine if a claim is "colorable." As a reminder, the Plan's Gatekeeper Provision and this court's prior Gatekeeper Orders entered in January and July 2020 each required that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain a finding from the bankruptcy court that its proposed claims are "colorable." The Gatekeeper Provision and Gatekeeper Orders did not specifically define "colorable" or what type of legal standard should apply.

HMIT argues that the standard for review to be applied by this court is the same as a simple "plausibility" standard used in connection with a Rule 12(b)(6) motions to dismiss. In other words, the court should simply assess whether the allegations of the Proposed Complaint, taken as true and with all inferences drawn in favor of the movant, state a ***plausible*** claim for relief (i.e., colorable equals plausible), and that this standard does not allow for the weighing of evidence by the court.[235] The Proposed Defendants, however, argue that the test for colorability should be more

[235] Reply, ¶ 5 ("[T]he determination of 'colorability' does not allow the 'weighing' of evidence. At most, a Rule 12(b)(6) 'plausibility' standard applies.").

akin to the test applied under the *Barton* doctrine,[236] under which a plaintiff must make a *prima facie* case that a proposed claim against a bankruptcy trustee is "not without foundation." In this regard, they argue that the court can and should consider evidence outside of the four corners of the complaint—especially since HMIT attached to its Motion for Leave, as "evidence" to support it, two declarations of Dondero (as part of a 350-page attachment) and only attempted to withdraw those declarations after the Highland Parties urged that they be permitted to cross-examine Dondero on them.

This court ultimately determined that the "colorability" standard was somewhat of a mixed question of fact and law and, therefore, the parties could put on evidence at the June 8 Hearing if they so-chose. The court would not require it. It was up to the parties. But, in any event, the Proposed Defendants should have an opportunity to cross-examine Dondero on the statements made in his declarations since the declarations had been filed on the docket and the court had reviewed them at this point. HMIT attempted to withdraw the declarations and any reference to them in the Motion for Leave, by filing redacted versions of the Motion for Leave,[237] less than 72 hours before the June 8 Hearing; however, the redacted versions did not redact any allegations in the Motion for Leave that were purportedly supported by the Dondero declarations. Also, HMIT called Dondero as a direct witness, in addition to calling Seery as an adverse witness at the June 8 Hearing, albeit subject to its running objection to the evidentiary format of the hearing.[238] HMIT also filed a witness and exhibit list attaching 80 exhibits and over 2850 pages of evidence and

[236] *Barton v. Barbour,* 104 U.S. 126 (1881).

[237] Bankr. Dkt. Nos. 3815 and 3816.

[238] *See* June 8 Hearing Transcript, 7:20-24, 112:11-13.

moved for the admission of those exhibits at the June 8 Hearing (again, subject to its running objection to the evidentiary format of the hearing).[239]

In determining what appropriate legal standard applies here in the "colorability" analysis, the context in which the Gatekeeper Provision of the Plan was approved seems very relevant. In determining that the Gatekeeper Provision was legal, necessary, and in the best interest of all of the parties, this court set forth in the Confirmation Order a lengthy discussion of the factual support for it, and made specific findings relating to Dondero's post-petition litigation and the need for inclusion of the Gatekeeper Provision in the Plan.[240] This court observed that "prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade" and that "[d]uring the last several months, Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor."[241] This court further found that: (1) Dondero's post-petition litigation "was a result of Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Seery's credible testimony, that if Dondero's plan proposal was not accepted, he would 'burn down the place,'"[242] (2) without the Gatekeeper Provision in place, "Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date" and that "the threat of continued litigation by Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result in lower distributions to creditors because of

[239] *See Hunter Mountain Investment Trust's Witness and Exhibit List in Connection with Its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* ("HMIT W&E List")[Bankr. Dkt. No. 3818] and n.1 thereto; *see also* June 8 Hearing Transcript, 33:7-10.

[240] *See* Confirmation Order ¶¶ 76-79.

[241] *Id.* ¶ 77.

[242] *Id.* ¶ 78. *See supra* note 12.

costs and distraction such litigation or the threats of such litigation would cause,"[243] and, (3) "unless the [court] approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance,[244] the absence of which will present unacceptable risks to parties currently willing to serve in such roles." Thus, as set forth in the Confirmation Order, the Gatekeeper Provision (and the Gatekeeper Orders as well, which were approved based on the same concerns regarding the threat of continued litigation by Dondero and his related entities) required Dondero and related entities to make a threshold showing of colorability, noting that the:

> Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC,* 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017)."[245]

The Fifth Circuit, in approving the Gatekeeper Provision on appeal, noted that that the Plan injunction and Gatekeeper Provision "screen and prevent bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[246]

Again, the court believes it is appropriate to consider the context in which—and the purpose for which—the Gatekeeper Orders and Gatekeeper Provision were entered in assessing

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[243] *Id.*

[244] Asd noted at ⁋ 79 of the Confirmation Order, the bankruptcy court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance for the post-confirmation parties implementing the Plan. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so ***without an exclusion for claims asserted by Mr. Dondero and his affiliates*** required that the Confirmation Order approve the Gatekeeper Provision.

[245] *Id.* ¶ 80.

[246] *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.* (*In re Highland Cap. Mgmt., L.P.*), 48 F.4th 419, 435 (5th Cir. 2022).

how "colorability" should work here. It seems that applying HMIT's proposed Rule 12(b)(6) "plausibility" standard would impose no hurdle at all to litigants and would render the threshold for bringing claims under the Gatekeeper Provision and Gatekeeper Orders entirely duplicative of the motion to dismiss standard that every litigant already faces.

The authorities cited by HMIT in support of its argument for applying a Rule 12(b)(6) standard are inapposite. HMIT has cited no authority that addresses the appropriate standard for assessing the "colorability" of claims in the context of a plan gatekeeper provision—specifically, one implemented in response to a demonstrated need to screen and prevent continued bad-faith, harassing litigation against a chapter 11 debtor that would impede the debtor's implementation of a plan, which is what we have here. HMIT relies on a bevy of cases that include benefits coverage disputes under ERISA, Medicare coverage disputes, and constitutional challenges[247]—none of which implicate the *Barton* doctrine and vexatious-litigant concerns that were referenced by the court in the Plan as justifications for the gatekeeping provisions at issue here.

In affirming the Plan's Gatekeeper Provision, the Fifth Circuit stated, "Courts have long recognized bankruptcy courts can perform a gatekeeping function" and noted, by way of example, that "[u]nder the '*Barton* doctrine,' the bankruptcy court may require a party to 'obtain leave of

[247] *See Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has "a colorable claim to vested benefits" such that the employee may be considered a "participant" under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting "claimants [with] no colorable legal claim" to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant's double jeopardy claim was "colorable" such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at *3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a "colorable claim" against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at *3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a "colorable claim" to warrant the district court's exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at *5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at *5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a "colorable constitutional claim" such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

the bankruptcy court before initiating an action in district court when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor's official capacity."[248] As noted above, the Fifth Circuit found that the Gatekeeper Provision, which "requires that, before any lawsuit is filed, the plaintiff must seek the bankruptcy court's approval of the claim as 'colorable'"—*i.e.*, to "screen and prevent bad-faith litigation,"—is "sound."[249]

On balance, the court views jurisprudence applying the *Barton* doctrine and vexatious litigant injunctions—while not specifically addressing the "colorability" standard under gatekeeping provisions in a plan[250]—as more informative on how to approach "colorability" than any of the other authorities presented by the parties. One example is *In re VistaCare Group, LLC*.[251]

In *VistaCare*, the Third Circuit noted that, under the *Barton* doctrine, "[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation," and emphasized that the "not without foundation" standard, while similar to the standard courts apply in evaluating Rule 12(b)(6) motions to dismiss, "involves a greater degree of flexibility" than a Rule 12(b)(6) motion to dismiss because "the bankruptcy court, which given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit," and "is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor's estate."[252] To satisfy the "*prima facie* case standard," "the movant must do more than meet the liberal notice-pleading

[248] *Id.* at 438 (cleaned up).

[249] *Id.* at 435.

[250] The court acknowledges that the *Barton* doctrine itself would not be directly applicable here because HMIT is proposing to bring the Proposed Complaint in the bankruptcy court – the "appointing" court of Seery.

[251] 678 F.3d 218 (3d Cir. 2012).

[252] *Id.* at 232-233 (cleaned up).

requirements of Rule 8."[253] "[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless."[254] This court agrees with the notion, that "[t]o apply a less stringent standard would eviscerate the protections" of the Gatekeeper Provision and Gatekeeper Orders.[255] The court notes, as well, that courts in the *Barton* doctrine context regularly hold evidentiary hearings on motions for leave to determine if the proposed complaint meets the necessary threshold for pursuing litigation. The Third Circuit in *VistaCare* noted that "[w]hether to hold a hearing [on a motion for leave to bring suit against a trustee] is within the sound discretion of the bankruptcy court,"[256] and that "the decision whether to grant leave may involve a 'balancing of the interests of all parties involved,'" which will ordinarily require an evidentiary hearing.[257] The Third Circuit applied "the deferential abuse of discretion standard" in considering whether the bankruptcy court's granting of leave should be affirmed on appeal.[258]

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[253] *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases).

[254] *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at *2 (N.D. Ill. Nov. 30, 2000).

[255] *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at *2).

[256] *VistaCare*, 678 F.3d at 232 n.12.

[257] *Id.* at 233 (quoting *In re Kashani*, 190 B.R. 875, 886–87 (9th Cir. BAP 1995)). The Third Circuit noted that the bankruptcy court's holding of an evidentiary hearing on the motion for leave was appropriate (though not required in every case)). *Id.* at 232 n.12.

[258] *Id.* at 224 ("We review a bankruptcy court's decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard.") (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)). Courts of appeal routinely apply the deferential abuse of discretion standard to a bankruptcy court's decision regarding whether leave should be granted to sue a trustee. Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. *See In re Bednar*, 2021 WL 1625399, at *3 (B.A.P. 10th Cir. Apr. 27, 2021) ("[T]he Bankruptcy Court's decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . . .") (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App'x 969, 973–74 (11th Cir. 2016) ("Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court's ruling on a *Barton* motion for an abuse of discretion.") (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at *3 (B.A.P. 1st Cir. Sept. 17, 2014) ("Appellate courts review a bankruptcy court's decision to deny a motion for leave to sue under the abuse of discretion standard.") (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

The Fifth Circuit has affirmed a bankruptcy court's conducting of an evidentiary hearing, in the context of applying a *Barton* doctrine analysis as to a proposed lawsuit against a trustee, without any concern that the inquiry was somehow improper.[259]

Similarly, courts in the vexatious litigant context, where there was an injunction requiring a movant to seek leave to pursue claims, have required movants to "show that the claims sought to be asserted have sufficient merit," including that "the proposed filing is both procedural and legally sound," and "that the claims are not brought for any improper purpose, such as harassment."[260] "For a prefiling injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review," such as the "plausibility" standard for a Rule 12(b)(6) motion.[261] Rather, courts apply "an additional layer of review," and "may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action" or that the "litigant's allegations are unlikely," especially "when prior cases have shown the litigant to be untrustworthy or not credible . . . ."[262]

In summary, the court rejects HMIT's positions: (a) that it need only show, at most, that the allegations in the Proposed Complaint are "plausible" under the Rule 12(b)(6) standard for motions to dismiss; and (b) that this court improperly conducted an evidentiary hearing on the Motion for Leave (i.e., that consideration of evidence in this context is impermissible). The court notes, again, that HMIT's argument that this court is not permitted to consider evidence in making its "colorability" determination is completely contradictory to HMIT's actions in filing the Motion

[259] *See Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at *4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after "a close examination" by the bankruptcy court of the evidence regarding the trustee's actions and finding that "the plaintiffs' allegations are not based in fact"), *aff'd* 799 F. App'x 271 (5th Cir. 2020).

[260] *Silver v. City of San Antonio*, 2020 WL 3803922, at *1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); *see also Silver v. Perez*, 2020 WL 3790489, at *1 (W.D. Tex. July 7, 2020) (same).

[261] *Silver*, 2020 WL 3803922, at *6.

[262] *Id.*

for Leave, where it attached two Dondero declarations as part of 350 pages of "objective evidence" that "supported" its motion.

The court concludes that the appropriate standard to be applied in making its "colorability" determination in ***this*** bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in ***this*** Plan, is a broader standard than the "plausibility" standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves ***an additional level of review***—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are ***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***. Additionally, this court may, and should, take into consideration its ***knowledge*** of the ***bankruptcy proceedings*** and ***the parties*** and any additional evidence presented at the hearing on the Motion for Leave. For ease of reference, the court will refer to this standard of "colorability" as the "Gatekeeper Colorability Test." The court considers this test as a sort of hybrid of what the *Barton* doctrine contemplates and what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place.

2. HMIT's Proposed Complaint Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test or Even Under a Rule 12(b)(6) "Plausibility" Standard.

The court finds, in the exercise of its gatekeeping function under the Gatekeeper Orders and the Gatekeeping Provision in the Plan, that the Motion for Leave should be denied as the claims set forth in the Proposed Complaint are not "colorable" claims. The court makes this determination after considering evidence admitted at the June 8 Hearing, including the testimony of Dondero, Patrick, and Seery, and the numerous exhibits offered by HMIT and the Highland Parties. HMIT's Proposed Claims lack foundation, are without merit, and appear to be motivated by the improper purposes of vexatiousness and harassment. But, even under the less stringent

"plausibility" standard under Rule 12(b)(6) motions to dismiss, where all allegations must be accepted as true, HMIT's "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," fail to "[]cross the line from conceivable to plausible."[263]

HMIT makes unsubstantiated and conclusory allegations in its Motion for Leave and Proposed Complaint that the Claims Purchasers purchased the large allowed unsecured claims only because Seery, while he was CEO of Highland prior to the Effective Date of the Plan, provided them with MNPI and assurances that the Purchased Claims were very valuable. This was allegedly in exchange for their agreement to approve, in their future capacities as members of the CTOB, excessive compensation for Seery in his capacity as the Claimant Trustee after the Effective Date of the Plan. This was an alleged *quid pro quo* that HMIT claims establishes Seery's breach of fiduciary duties and the Claims Purchasers' conspiracy to participate in that breach. As discussed below, these allegations are unsubstantiated and conclusory allegations, and they do not support the inferences that HMIT needs the court to make when it analyzes whether the Proposed Claims are "colorable"—or even merely plausible.

a) HMIT's Proposed Breach of Fiduciary Duties Claim Set Forth in Count I of the Proposed Complaint

Based on HMIT's Proposed Complaint and the evidence admitted at the June 8 Hearing, the court finds that HMIT has not pleaded facts that would support a "colorable" breach of fiduciary duties claim against Seery, under this court's Gatekeeper Colorability Test, nor a plausible claim pursuant to the Rule 12(b) standard. HMIT alleges that Seery breached his fiduciary duties (i) "[b]y disclosing material non-public information to Stonehill and Farallon"

[263] *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

before their purchase of certain Highland claims, and (ii) by receiving "compensation paid to him under the terms of the [CTA] since the Effective Date of the Plan in August 2021."[264]

As earlier noted, both the Reorganized Debtor and the Claimant Trust are organized under Delaware law and, thus, its proposed Count I against Seery for breach of fiduciary duties to these entities is governed by Delaware law under the "Internal Affairs Doctrine."[265] Under Delaware law, "[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege '(1) that a fiduciary duty existed and (2) that the defendant breached that duty.'"[266] HMIT fails to plausibly or sufficiently allege either element such that its breach of fiduciary duty claims against Seery could survive.

Under Delaware law, officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders.[267] Because Seery did not owe any "duty" to HMIT directly and individually, the Proposed Complaint fails to state a claim for breach of fiduciary duties to HMIT. HMIT's "legal conclusion[]" that Seery "owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate"[268] "do[es] not suffice" to plausibly allege the existence of any actionable fiduciary relationship.[269] And as discussed earlier in the standing section, HMIT does not have standing to assert a breach of fiduciary claim derivatively on behalf

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[264] Proposed Complaint ¶¶ 64–67.

[265] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[266] *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at *30 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at *8 (Del. Ch. Feb. 28, 2020)).

[267] *See Gilbert v El Paso Co.*, 1988 WL 124325, at *9 (Del. Ch. Nov. 21, 1988) ("[D]irectors' fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.") *aff'd,* 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at *11 (Del. Ch. Nov. 7, 2013) (same).

[268] Proposed Complaint ¶ 63.

[269] *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

of the Claimant Trust or Reorganized Debtor. But even if HMIT had sufficiently alleged the existence of a fiduciary duty by Seery to HMIT—or to the Reorganized Debtor or Claimant Trust that HMIT would have standing to assert—Seery's alleged communications with Farallon would not have breached those duties.

HMIT alleges that Seery ""disclose[d] material non-public information to Stonehill and Farallon," and they "acted on inside information and Seery's secret assurances of great profits."[270] But the Proposed Complaint does not make any factual allegations regarding HMIT's "conclusory allegations," and its "legal conclusions" are "purely speculative, devoid of factual support," and therefore "stop[] short of the line between possibility and plausibility of entitlement to relief"[271] (and certainly stop short of being "colorable"). HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, and what "assurances of great profits" he made to Farallon or to Stonehill. At the June 8 Hearing, Dondero could only clarify that he believed the MGM Email to have been MNPI and that he ***believed*** that Seery ***must have*** communicated that MNPI to Farallon at some point between December 17, 2020 (the date the MGM Email was sent) and May 28, 2021 (the day that Dondero alleges to have had three telephone calls with representatives of Farallon, Messrs. Patel and Linn, regarding Farallon's purchase of the bankruptcy claims). Dondero alleges that, during these phone calls, Patel and Linn gave Dondero no reason for their purchase of the claims that "made [any] sense." Dondero and Patrick also both testified that neither of them had any personal knowledge: (a) of a *quid pro quo* arrangement between Seery and the Claims Purchasers, (b) of Seery having actually communicated any information from the MGM Email to Farallon, or (c) whether Seery's post-Effective Date compensation had or had not been negotiated in an arms' length transaction. Dondero only

[270] Proposed Complaint ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.

[271] *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up).

speculates regarding these things, because it "made no sense" to him that the Claims Purchasers would have acquired the bankruptcy claims without having received the MNPI. But HMIT admits in the Proposed Complaint that Farallon and Stonehill purchased the Highland claims at discounts of 43% to 65% to their allowed amounts. Thus, they would receive at least an 18% return based on publicly available estimates in Highland's court-approved Disclosure Statement.[272] The evidence established that, if the acquisition of the UBS claims is excluded—recall that the UBS claims were not purchased until August 2021, which was after the May 28, 2021 phones calls that Dondero made to Farallon personnel—the Claims Purchasers would have expected to net over $33 million in profits, or nearly a 30% return on their investment, had Highland met its projections (this is based on the aggregate purchase price of $113 million for the non-UBS claims purchased in the Spring 2021).

To be clear, the only purported MNPI identified in HMIT's Proposed Complaint was the MGM Email Dondero sent to Seery containing "information regarding Amazon and Apple's interest in acquiring MGM." But, the evidence showed that this information was widely reported in the financial press at the time. Thus, it could not have constituted MNPI as a matter of law.[273] Moreover, the evidence showed that Dondero ***did not*** communicate in the MGM Email the actual inside information that he claimed to have obtained as a board member of MGM–which was that Amazon had met MGM's "strike price" and that the MGM board was going into exclusive negotiations with Amazon to culminate the merger with them (and, thus, Apple was no longer considered a potential purchaser). Dondero admitted that he included Apple in the MGM Email for the purpose of making it look like there was a competitive process still ongoing. In other

[272] Proposed Complaint ¶¶ 3, 37, 42.

[273] *See, e.g.*, *SEC v. Cuban*, 2013 WL 791405, at *10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not "material, nonpublic information" and "'becomes public when disclosed to achieve a broad dissemination to the investing public'") (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)).

words, the MGM Email, at the very least, did not include MNPI and, at worst, was deceptive regarding the status of the negotiations between MGM and potential purchasers.

As to HMIT's allegations that Seery's post-Effective Date compensation is "excessive" and that the negotiations between Seery and the CTOB "were not arm's-length,"[274] the evidence at the June 8 Hearing reflected that the allegations are completely speculative, without any foundation whatsoever, and lack merit. And they are also simply not plausible. HMIT fails to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty.[275]

b) HMIT's Proposed Claims Set Forth in Counts II (Knowing Participation in Breach of Fiduciaries) and III (Conspiracy)

HMIT seeks to hold the Claims Purchasers secondarily liable for Seery's alleged breach of fiduciaries duties on an aiding and abetting theory in Count II of the Proposed Complaint[276] and, along with Seery, on a civil conspiracy theory of liability in Count III of the Proposed Complaint.[277] Because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting breach of fiduciary duties claim against the Claims Purchasers (Count II) is also governed by Delaware law.[278] HMIT's conspiracy cause of action against the Claims

[274] Proposed Complaint ¶¶ 4, 13, 54, 74.

[275] *See Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]though the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation.").

[276] Proposed Complaint ¶¶ 69-74.

[277] Proposed Complaint ¶¶ 75-81.

[278] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

Purchasers and Seery (Count III), on the other hand, does not involve a matter of "internal affairs" or of corporate governance, so it is governed by Texas law under the Plan.[279]

As an initial matter, because HMIT does not present either a "colorable"—or even plausible claim—that Seery breached his fiduciary duties, it cannot show that it has alleged a "colorable" or plausible claim for secondary liability for the same alleged wrongdoing.[280] In addition, HMIT's civil conspiracy claim against the Claims Purchasers and Seery is based entirely on Dondero's speculation and unsupported inferences and, thus, HMIT has not "colorably" alleged, or even plausibly alleged, its conspiracy claim. Under Texas law, "civil conspiracy is a theory of vicarious liability and not an independent tort."[281] "[T]he elements of civil conspiracy [are] "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result."[282] While HMIT alleges that "Defendants conspired with each other to unlawfully breach fiduciary duties,"[283] it is simply a "legal conclusion" and not the kind of allegation that the court must assume to be true even for purposes of determining plausibility under a motion to dismiss.[284]

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[279] *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M)(which provides for the application of Texas law to "the rights and obligations arising under this Plan" except for "corporate governance matters.")

[280] *See English v. Narang*, 2019 WL 1300855, at *14 (Del. Ch. Mar. 20, 2019) ("As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.") (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at *10 (Tex. App. Jan. 25, 2022) ("[A] defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.") (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)). Because HMIT's breach of fiduciary duty claim is governed by Delaware law, its aiding and abetting theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas). By contrast, "conspiracy is not an internal affair" or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

[281] *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019).

[282] *Id.* at 141 (cleaned up).

[283] Proposed Complaint ¶ 76.

[284] *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66).

HMIT repeats four times that Seery provided MNPI to Farallon and Stonehill as a "as a *quid pro quo*" for "additional compensation,"[285] each time based upon conclusory allegations based "upon information and belief" and, frankly, pure speculation from Dondero that his imagined "scheme," "covert *quid pro quo,*" and secret "conspiracy" between Seery, on the one hand, and Farallon and Stonehill, on the other,[286] ***must have*** occurred because "[i]t made no sense for the [Claims] Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk" (i.e., "[t]he counter-intuitive nature of the purchases at issue compels the conclusion that the [Claims] Purchasers acted on inside information and Seery's assurance of great profits.")[287] Importantly, HMIT admits that the Claims Purchasers would have turned a profit based on the information available to them at the time of their acquisitions of the Purchased Claims.[288] HMIT's allegations about the level of potential profits were contradicted by their own allegations and other evidence admitted at the June 8 Hearing. But Dondero's speculation about what level of projected return would be sufficient to justify the acquisition of the claims by the Claims Purchasers, or any other third-party investor, does not give rise to a plausible inference that they acted improperly.[289] Thus, HMIT cannot meet

[285] Proposed Complaint ¶ 77; *see also id.* ¶¶ 4, 47, 74.

[286] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.").

[287] *Id.*

[288] *See, e.g.*, *id.* ¶ 3 (alleging that acquiring the claims "did not offer a ***sufficient*** potential profit to justify the publicly disclosed risk")(emphasis added); ¶ 43 ("Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . ."); ¶ 49 ("Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* ***significant*** profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.") (third emphasis added).

[289] In fact, the court did not allow Mr. Dondero to testify regarding what kind of information a hypothetical investor in bankruptcy claims would require or what level of potential profits would justify the purchase of bankruptcy claims by investors in the bankruptcy claims trading market because he was testifying as a fact witness, not an expert. Thus, the court only allowed Dondero to testify as to what data ***he*** (or entities he controls or controlled) would rely on, what ***his*** risk tolerance would have been, and what level of potential profits ***he*** would have required to purchase an allowed unsecured bankruptcy claim in a post-confirmation situation. June 8 Hearing Transcript, 129:6-130:4.

its burden, under the Gatekeeper Colorability Test, of making a prima facie showing that its allegations do not lack foundation or merit. Nor can it meet a plausibility standard.

In addition, contrary to the Proposed Complaint's statement that it would have been "***impossible*** for Stonehill and Farallon (in the absence of insider information) to forecast ***any*** significant profit at the time of their multi-million-dollar investments," the evidence showed there were already reports in the financial press that MGM was engaging with Amazon, Apple, and others in selling its media portfolio, and thus the prospect of an MGM transaction increasing the value of, and return on, the Purchased Claims, "at the time of their multi-million-dollar investments" was publicly available information.[290] HMIT's suggestion that the Claims Purchasers were in possession of inside information not publicly available when they acquired the Purchased Claims is simply not plausible. Nor is HMIT's allegation that "[u]pon information and belief" Farallon "conducted no due diligence but relied on Seery's profit guarantees" plausible. The allegations regarding Farallon not conducting any due diligence are based, again, entirely on Dondero's speculation and inferences he made from what Patel and Linn (of Farallon) allegedly told him on May 28, 2021; Dondero did not testify that either Patel or Linn ever told him specifically that they had conducted no due diligence. HMIT's allegations in the Proposed Complaint that ***Farallon*** "conducted no due diligence," are based on Dondero's speculation, unsubstantiated, and contradicted by the testimony of Seery, who testified that emails to him from Linn in June 2020 and later in January 2021 indicated to him that Farallon, at least, had been conducting some level of due diligence in that they had been following and paying attention to the

[290] The court notes, as well, that the Claim Purchasers acquired the UBS claims in August 2021—approximately two and a half months ***after*** the announcement of the MGM-Amazon transaction (which was on May 26, 2021)—a fact that HMIT makes no attempt to harmonize with its conspiracy theory that the Claims Purchasers profited from the misuse of MNPI allegedly given to them by Seery.

Highland case.[291] In addition, there are no allegations in the Proposed Complaint regarding whether Stonehill conducted due diligence or not, and Patrick testified that neither he nor HMIT had any personal knowledge of how much due diligence Farallon or Stonehill did prior to acquiring the Purchased Claims.[292] The court finds and concludes that HMIT's allegations of aiding and abetting and conspiracy in Counts II and III of the Proposed Complaint are based on unsubstantiated inferences and speculation, lack internal consistency, and lack consistency with verifiable public facts. Accordingly, HMIT has failed to show that these claims have a foundation and merit and has also failed to show that they are plausible.

c) HMIT's Proposed Claims Set Forth in Counts IV (Equitable Disallowance), V (Unjust Enrichment and Constructive Trust), and VI (Declaratory Relief) of the Proposed Complaint

i. Count IV (Equitable Disallowance).

In Count IV of its Proposed Complaint, HMIT seeks "equitable disallowance" of the claims acquired by Farallon's and Stonehill's special purpose entities Muck and Jessup, "to the extent over and above their initial investment," and, in the alternative, equitable subordination of their claims to all claims and interests, including HMIT's unvested Class 10 Contingent Claimant Trust Interest, "given [their] willful, inequitable, bad faith conduct" of allegedly "purchasing the Claims based on material non-public information" and being "unfairly advantaged" in "earning significant profits on their purchases."[293] As noted above, these remedies are not available to HMIT.[294]

First, HMIT's request to equitably subordinate the Purchased Claims to all claims and interests is not permitted because Bankruptcy Code § 510(c), by its terms, permits equitable

[291] *See* June 8 Hearing Transcript, 239:6-21.
[292] *See id.*, 310:19-312:2.
[293] Proposed Complaint ¶¶ 83-87.
[294] *See infra* pages 74-75.

subordination of a ***claim to other claims*** or an ***interest to other interests*** but does not permit equitable subordination of a ***claim to interests***.

Second, "equitable" disallowance of claims is not an available remedy in the Fifth Circuit pursuant to the *Mobile Steel* case.[295]

Third, reconsideration of an already-allowed claim in a bankruptcy case can only be accomplished through Bankruptcy Code § 502(j), which, pursuant to Federal Rule of Bankruptcy Procedure 9024, allows reconsideration of allowance of a claim that was allowed following ***a contest*** (which is certainly the case with respect to the Purchased Claims) based on the "equities of the case." But this is only if the request for reconsideration is made within the one-year limitation prescribed in Rule 60(c) of the Federal Rules of Civil Procedure. HMIT's request for disallowance of Muck and Jessup's Purchased Claims (if it could somehow be construed as a request for reconsideration of their claims), is clearly untimely, as it is being made well beyond a year since their allowance by this court following contests and approval of Rule 9019 settlements. Thus, the court finds that HMIT has not alleged a colorable or even plausible claim in Count IV of the Proposed Complaint and, therefore, the Motion for Leave should be denied.

ii. Count V (Unjust Enrichment and Constructive Trust)

In Count V of the Proposed Complaint, HMIT alleges that, "by acquiring the Claims using [MNPI], Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity" and that "[a]llowing [the Claims Purchasers] to retain their ill-gotten benefits would be unconscionable;" thus, HMIT alleges, the Claims Purchasers "should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment" and "a constructive trust should be imposed on such proceeds . . . ."[296]

[295] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

[296] Proposed Complaint ¶¶ 89-93.

HMIT alleges further that "Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restitute all compensation he has received from the outset of his collusive activities" and "[a]lternatively he should be required to disgorge and restitute all compensation received since the Effective Date" over which a constructive trust should be imposed.[297] HMIT has not alleged a colorable or even a plausible claim for unjust enrichment or constructive trust in Count V.

Under Texas law,[298] "[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay."[299] Thus, "when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory."[300] Here, as noted above, HMIT's only alleged injury is a diminution of the value of its unvested Contingent Claimant Trust Interest by virtue of Seery's allegedly having wrongfully obtained excessive compensation, with the help of the Claims Purchasers. ***Yet Seery's compensation is governed by express agreements*** (i.e., the Plan and the CTA). Thus, HMIT's claim based on unjust enrichment is not an available theory of recovery.

iii. Count VI (Declaratory Relief)

HMIT seeks declaratory relief in Count VI of the Proposed Complaint, essentially, that Dondero's conspiracy theory is correct and that HMIT's would succeed on the merits with respect

[297] *Id.* ¶ 94.

[298] Under the Plan, Texas law governs HMIT's "claim" for unjust enrichment because it is not a "corporate governance matter." (Plan Art. XII.M.) It also governs HMIT's "claim" for constructive trust, which "is merely a remedy used to grant relief on the underlying cause of action." *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

[299] *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).

[300] *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)).

to the Proposed Claims if it were permitted leave to bring them in an adversary proceeding.[301] But, a request for declaratory relief is not "an independent cause of action"[302] and "in the absence of any underlying viable claims such relief is unavailable."[303] This court has already found and concluded that HMIT would not have constitutional or prudential standing to bring the underlying causes of action in the Proposed Complaint. This court has also found and concluded that all of the Proposed Claims are without foundation or merit and are not even plausible and are all; being brought for the improper purpose of continuing Dondero's vexatious, harassing, bad-faith litigation. Thus, HMIT would not be entitled to pursue declaratory judgement relief as requested in Count VI of the Proposed Complaint.

d) HMIT Has No Basis to Seek Punitive Damages

HMIT separately alleges that the Claims Purchasers' and Seery's "misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others," thus entitling HMIT to an award of punitive damages under applicable law. But, HMIT abandoned its proposed fraud claim that was in its Original Proposed Complaint, so its sole claim for primary liability is Seery's alleged breach of his fiduciary duties. And under Delaware law, the "court cannot award punitive damages in [a] fiduciary duty action."[304]

[301] Proposed Complaint ¶¶ 96-99.

[302] *See Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 932 (5th Cir. 2023).

[303] *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at *2 (S.D. Tex. June 7, 2016) (citing *Collin Cty. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)); *see also Hopkins v. Cornerstone Am.*

[304] *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff'd* 682 F. App'x 24 (2d Cir. 2017).

3. HMIT Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test Because It Seeks to Bring the Proposed Complaint for Improper Purposes of Harassment and Bad-Faith, Vexatiousness.

Under this court's Gatekeeper Colorability Test, in addition to showing that its allegations and claims are not without foundation or merit, HMIT must also show that the Proposed Claims are not being brought for any improper purpose. Taking into consideration the court's knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, the court finds that HMIT is acting at the behest of, and under the control or influence of, Dondero in continuing to pursue harassing, bad faith, vexatious litigation to achieve his desired result in these bankruptcy proceedings. So, in addition to failing to show that its Proposed Claims have foundation and merit, HMIT cannot show that it is pursuing the Proposed Claims for a proper purpose and, thus, cannot meet the requirements under the Gatekeeper Colorability Test; HMIT's Motion for Leave should be denied.

IV. CONCLUSION

The court concludes, having taken into consideration both its knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, that HMIT's Motion for Leave should be denied for three independent reasons: (1) HMIT would lack constitutional standing to bring the Proposed Claims (and, thus, the federal courts would lack subject matter jurisdiction over the Proposed Claims); (2) even if HMIT would have constitutional standing to pursue the Proposed Claims, it would lack prudential standing to bring the Proposed Claims; and (3) even if HMIT would have both constitutional standing and prudential standing to bring the Proposed Claims, it has not met its burden under the Gatekeeper Colorability Test of showing that its Proposed Claims are "colorable" claims—that the Proposed Claims are not without foundation, not without merit, and not being pursued for an improper purpose. Moreover,

even if this court's Gatekeeper Colorability Test should be replaced with a Rule 12(b)(6) "plausibility" standard, the Proposed Claims are not plausible.

Accordingly,

IT IS ORDERED that HMIT's Motion for Leave be, and hereby is **DENIED**.

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

Exhibit 2

The following constitutes the ruling of the court and has the force and effect therein described.

Signed August 25, 2023

United States Bankruptcy Judge

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

IN RE:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-sgj-11**
Reorganized Debtor.	§	

MEMORANDUM OPINION AND ORDER PURSUANT TO PLAN "GATEKEEPER PROVISION" AND PRE-CONFIRMATION "GATEKEEPER ORDERS": DENYING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING[1]
[BANKR. DKT. NOS. 3699, 3760, 3815, and 3816]

I. INTRODUCTION

BEFORE THIS COURT is yet another post-confirmation dispute relating to the Chapter 11 bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor").

[1] On August 2, 2023, this court signed an Order [Bankr. Dkt. No. 3897] that was agreed to among various parties, after the filing of a Motion to Stay and Compel Mediation [Bankr. Dkt. No. 3752] filed by James D. Dondero and related entities. Pursuant to paragraph 7 of that order, certain pending matters in the bankruptcy court are stayed pending mediation. The parties did not agree to stay the matter addressed in this Memorandum Opinion and Order.

It is now more than two and half years since the confirmation of Highland's Plan[2]—the Plan having been confirmed on February 22, 2021.[3] The Plan was never stayed; it went effective on August 11, 2021 ("Effective Date"), and it was affirmed almost in its entirety by the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit"), in late summer 2022, including an approval of the so-called Gatekeeper Provision[4] therein. The Gatekeeper Provision—and how and whether it should now be exercised or interpreted to allow a certain lawsuit to be filed—is at the heart of the current *Emergency Motion for Leave to File Verified Adversary Proceeding* [Bankr. Dkt. Nos. 3699, 3760, 3815, 3816] (collectively, the "Motion for Leave") filed by a movant known as Hunter Mountain Investment Trust ("HMIT").

A. Who is the Movant, HMIT?

Who is HMIT? It is undisputed that it is a former equity owner of Highland. It held 99.5% of Highland's Class B/C limited partnership interests and was classified in a Class 10 under the confirmed Plan, which class treatment provided it with a contingent interest in the Highland Claimant Trust ("Claimant Trust") created under the Plan, and as defined in the Claimant Trust Agreement. This means that HMIT could receive consideration under the Plan if all claims against Highland are ultimately paid in full, with interest. As later further discussed, it is undisputed that

[2] Capitalized terms not defined in this introduction shall have the meaning ascribed to them below.

[3] The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order")[Bankr. Dkt. No. 1943].

[4] In an initial opinion dated August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in large part, "revers[ing] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan's exculpation, and affirm[ing] on all remaining grounds." *In re Highland Capital Management, L.P.*, No. 21-10449, 2022 WL 3571094, at *1 (5th Cir. Aug. 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022, "for the limited purpose of clarifying and confirming one part of its August 19, 2022 opinion," the Fifth Circuit withdrew its original opinion and replaced it with its opinion reported at *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419, 424 (5th Cir. 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section "IV(E)(2) – *Injunction and Gatekeeper Provisions*" of the original opinion: "The injunction and gatekeeper provisions are, on the other hand, perfectly lawful." was replaced with "We now turn to the Plan's injunction and gatekeeper provisions." In all other respects, the Fifth Circuit panel's original ruling remained unchanged. Petitions for writs of certiorari regarding the Confirmation Order have been pending at the United States Supreme Court since January 2023.

HMIT's only asset is its contingent interest in the Claimant Trust. It has no employees or revenue. HMIT's representative has testified that HMIT is liable on more than $62 million of indebtedness owed to The Dugaboy Investment Trust ("Dugaboy"), a family trust of which James Dondero ("Dondero"), the co-founder and former chief executive officer ("CEO") of Highland, and his family members are beneficiaries, and that Dugaboy also is paying HMIT's legal fees. HMIT vehemently disputes the suggestion that it is controlled by Dondero.

B. What Does the Movant HMIT Seek Leave to File?

HMIT seeks leave to file an adversary proceeding ("Proposed Complaint")[5] in the bankruptcy court to bring claims on behalf of itself and, derivatively, on behalf of the Reorganized Debtor and the Claimant Trust for alleged breach of fiduciary duties by the Reorganized Debtor's CEO and Claimant Trustee, James P. Seery, Jr. ("Seery") and conspiracy against: (1) Seery; and (2) purchasers of $365 million face amount of ***allowed*** unsecured claims in this case, who purchased their claims post-confirmation but prior to the occurrence of the Effective Date of the Plan ("Claims Purchasers,"[6] and with Seery, the "Proposed Defendants"). To be clear (and as later further explained), the claims acquired by the Claims Purchasers were acquired by them after extensive litigation, mediation, and settlements were approved by the bankruptcy court and after the original claims-holders had voted on the Plan and after Plan confirmation. As later explained,

[5] In its original Motion for Leave filed at Bankruptcy Docket No. 3699 on March 28, 2023, HMIT sought leave to file the proposed complaint ("Initial Proposed Complaint") attached as Exhibit 1 to the Motion for Leave. Nearly a month later, on April 23, 2023, HMIT filed a *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* ("Supplement") [Bankr. Dkt. No. 3760], a revised proposed complaint as Exhibit 1-A, and stating that "[t]he Supplement is not intended to supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action." Supplement, ¶ 1 and Exhibit 1-A. It is this revised proposed complaint to which this court will refer, when it uses the defined term "Proposed Complaint," even though HMIT filed redacted versions of its Motion for Leave on June 5, 2023 at Bankruptcy Docket Nos. 3815 and 3816 that attached the Initial Proposed Complaint as Exhibit 1.

[6] The Claims Purchasers identified in the Proposed Complaint are Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which is a special purpose entity created by Farallon to purchase allowed unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which is a special purpose entity created by Stonehill to purchase allowed unsecured claims against Highland.

the Claims Purchasers filed notices of their purchases as required by Bankruptcy Rule 3001(e)(2), and no objections were filed thereto. In any event, various damages or remedies are sought against the Proposed Defendants revolving around the Claims Purchasers' claims purchasing activities.

C. Why Does HMIT Need to Seek Leave?

As alluded to above, HMIT filed its Motion for Leave to comply with the provision in the Plan known as a "gatekeeper" provision ("Gatekeeper Provision") and with this court's prior gatekeeper orders entered in January and July 2020, which all require that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain (1) a finding from the bankruptcy court that its proposed claims ("Proposed Claims") are "colorable"; and (2) specific authorization by the bankruptcy court to pursue the Proposed Claims.[7] The Gatekeeper Provision was not included in the Plan *sans raison*. Indeed, as the Fifth Circuit recognized in affirming confirmation of the Plan, the Gatekeeper Provision (along with the other "protection provisions" in the Plan) had been included in the Plan to address the "continued litigiousness" of Mr. James Dondero ("Dondero"), Highland's co-founder and former chief executive officer ("CEO"), that began prepetition and escalated following the post-petition "nasty breakup" between Highland and Dondero, by "screen[ing] and prevent[ing] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[8]

[7] To be clear, the Gatekeeper Provision in the Plan was not the first or even second injunction of its type issued in this bankruptcy case. The Gatekeeper Orders were entered by the bankruptcy court pre-confirmation: (a) in January 2020, just a few months into the case, as part of this court's order approving a corporate governance settlement between Highland and its unsecured creditors committee, in which Dondero, Highland's co-founder and former CEO, was removed from any management role at Highland and three independent directors ("Independent Directors") were appointed in lieu of a chapter 11 trustee being appointed ("January 2020 Order"); and (b) in July 2020, in this court's order authorizing the employment of Seery (one of the three Independent Directors) as the Debtor's new Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative ("July 2020 Order," together with the January 2020 Order, the "Gatekeeper Orders").

[8] *See Highland Capital*, 48 F.4th at 427, 435.

D. Some Further Context Regarding Post-Confirmation Litigation Generally.

Since confirmation of the Plan, hundreds of millions of dollars have been paid out to creditors under the Plan, and there are numerous adversary proceedings and contested matters still pending, at various stages of litigation, in the bankruptcy court, the district court, and the Fifth Circuit, almost exclusively involving Dondero and entities that he owns or controls. To be sure, the post-confirmation litigation in this case does not consist of the usual adversaries and contested matters one typically sees by and against a reorganized debtor and/or litigation trustee, such as preference or other avoidance actions and litigation over objections to claims that are still pending after confirmation of a plan. Indeed, the claims of the largest creditors in this case (with claims asserted in the aggregate of more than one billion dollars) were successfully mediated and incorporated into the Plan—a plan which was ultimately accepted by the votes of an overwhelming majority of Highland's non-insider creditors. Dondero and entities under his control were the only parties who appealed the Confirmation Order, and Dondero and entities under his control have been the appellants in virtually every appeal that has been filed regarding this bankruptcy case. Petitions for writs of mandamus (which have been denied) have been filed in the district court and in the Fifth Circuit by some of these same entities, including one by HMIT, when this court denied setting an ***emergency*** hearing on the instant Motion for Leave (HMIT had sought a setting on three-days' notice).

A recent list of active matters involving Dondero and/or entities and/or individuals affiliated or associated with him, filed in the bankruptcy case by Highland and the Claimant Trust, reveals that there were at least 30 pending and "Active Dondero-Related Litigation" matters as of July 14, 2023: six (6) proceedings in this court; six (6) active appeals or actions are pending in the District Court for the Northern District of Texas; seven (7) appeals in the Fifth Circuit; two (2)

petitions for writs of certiorari in the United States Supreme Court; and nine (9) other proceedings or actions with or affecting the Highland Parties ("Highland," the "Claimant Trust," and "Seery") in various other state, federal, and foreign jurisdictions.[9]

The above-described context is included because the Proposed Defendants assert that the Motion for Leave is just a continuation of Dondero's unrelenting barrage of meritless and harassing litigation, making good on his oft-mentioned alleged threat to "burn down the place" after not achieving the results he wanted in the Highland bankruptcy case. Indeed, the Motion for Leave was filed after two years of unsuccessful attempts by, first, Dondero personally, and then HMIT to obtain pre-suit discovery from the Proposed Defendants (i.e., the Claims Purchasers) through two different Texas state court proceedings, pursuant to Tex. R. Civ. P. 202 ("Rule 202"). In each of these Rule 202 proceedings, Dondero and HMIT espoused the same Seery/Claims

[9] *See* Bankr. Dkt. No. 3880 (filed on July 14, 2023, providing a list of "Active Dondero-Related Litigation" and noting that the list is "a summary of active pending actions only and does not include actions that were resolved by final orders, including actions finally resolved after appeals to the U.S. District Court for the Northern District of Texas and/or the U.S. Court of Appeals for the Fifth Circuit."). Just since the filing by the Highland Parties of the list, ***three*** of the appeals pending in the Fifth Circuit have been decided against the Dondero-related appellants, two of which upheld the district court's dismissal of appeals by Dondero-related entities of bankruptcy court orders based on the lack of bankruptcy appellate standing on behalf of the appellant. On July 19, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by NexPoint Advisors, L.P. ("NexPoint") of bankruptcy court orders approving professional compensation on the basis that NexPoint did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the orders. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, 74 F.4th 361 (5th Cir. 2023). On July 31, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy—the Dondero family trust that, like the movant here in this Motion for Leave, was the holder of a limited partnership interest in Highland, and, as such, now has a contingent interest in the Claimant Trust—which had appealed a bankruptcy court order approving a Rule 9019 settlement on the same basis: Dugaboy did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the settlement order. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10960, 2023 WL 4861770 (5th Cir. July 31, 2023). The July 31, 2023 ruling followed the Fifth Circuit's ruling on February 21, 2023, affirming the district court's dismissal of an appeal by Dugaboy of yet another bankruptcy court order for lack of bankruptcy appellate standing. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023). These rulings by the Fifth Circuit are discussed in greater detail below. The third ruling by the Fifth Circuit since July 14, 2023, was issued by the Fifth Circuit in a per curium opinion not designated for publication on July 26, 2023, this one affirming the district court's affirmance of yet another Rule 9019 settlement order of the bankruptcy court that was appealed by Dugaboy, agreeing with the district court that the bankruptcy court had jurisdiction to approve a settlement among the Debtor, an entity affiliated with the Debtor but not a debtor itself, and UBS (the Debtor's largest prepetition creditor and the seller of its claims to the Claims Purchasers, which is one of the claims trading transactions HMIT complains about in the Proposed Complaint). *See The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P.*, No. 22-10983, 2023 WL 4842320 (5th Cir. July 26, 2023).

Purchasers conspiracy theory espoused in the Motion for Leave—that Seery must have provided one or more of the Claims Purchasers with material nonpublic information to induce them to want to purchase large, allowed, unsecured claims at a discount; a *quid pro quo* is suggested, such that the Claims Purchasers were allegedly told they would make a hefty profit on the claims they purchased and, in return, they would gladly "rubber stamp" Seery's "excessive compensation" as the Claimant Trustee of the Claimant Trust. In sum, HMIT alleges this constituted wrongful "insider trading" of the bankruptcy claims. In addition, certain lawyers for Dondero and Dugaboy sent letters reporting this alleged conspiracy and "insider trading" to the Texas State Securities Board ("TSSB") and the Executive Office of the United States Trustee ("EOUST").

It is against this background and in this context that the court must analyze, in the exercise of its gatekeeping function under the confirmed Plan and its prior Gatekeeping Orders, whether HMIT should be allowed to pursue the Proposed Claims (i.e., whether the Proposed Claims are "colorable" claims as contemplated under the Gatekeeper Orders and the Gatekeeper Provision of the Plan). The court held an evidentiary hearing on the Motion for Leave on June 8, 2023 ("June 8 Hearing"), during which the court admitted exhibits and heard testimony from three witnesses both in support of and in opposition to the Motion for Leave. Having considered the Motion for Leave, the response of the Proposed Defendants thereto, HMIT's reply to the response, and the arguments and evidence presented at the hearing on the Motion for Leave, the court denies HMIT's request for leave to pursue its Proposed Claims. The court's reasoning is set forth below.

II. BACKGROUND

A. Highland's Bankruptcy Case, Dondero's Removal as CEO, and the Plan

Highland was co-founded in Dallas in 1993 by Dondero and Mark Okada ("Okada"). It operated as a global investment adviser that provided investment management and advisory services and managed billions of dollars of assets, both directly and indirectly through numerous

affiliates. Highland's equity interest holders included HMIT (99.5%), Dugaboy (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. ("Strand"), which was wholly owned by Dondero and was the only general partner of Highland (0.25%). On October 16, 2019 (the "Petition Date"), Highland, with Dondero in control[10] and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims – many of which had finally become or were about to be liquidated (after a decade or more of contentious litigation in multiple fora all over the world—filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019. The official committee of unsecured creditors (the "Committee") (and later, the United States Trustee) expressed a desire for the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the specter of a possible appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.[11] As a result of this settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,[12] and three independent directors ("Independent Directors") were

[10] Mark Okada resigned from his role with Highland prior to the Petition Date.

[11] This order is hereinafter referred to as the "January 2020 Order" and was entered by the court on January 9, 2020 [Bankr. Dkt. No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Bankr. Dkt. No. 281].

[12] Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland's motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Bankr. Dkt. No. 338].

chosen to lead Highland through its chapter 11 case: Seery, John S. Dubel, and retired bankruptcy judge Russell Nelms. Given the Debtor's perceived culture of constant litigation while Dondero was at the helm, it was purportedly not easy to get such highly qualified persons to serve as independent board members. At the hearing on the corporate governance settlement motion, the court heard credible testimony that none of the Independent Directors would have taken on the role without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation from mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the Independent Directors without the bankruptcy court's prior authority. The gatekeeper provision approved by the court in its January 9 Order states,[13]

> No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation and did so "subject at all times to the supervision, direction and authority of the Independent Directors" and to his agreement to "resign immediately" "[i]n the event the Independent Directors determine for any reason that the Debtor shall no longer retain Dondero as an employee"[14] and to "not cause any Related Entity to terminate any agreements with the Debtor."[15] The court later

[13] January 2020 Order, 3-4, ¶ 10.

[14] January 2020 Order, 3, ¶ 8.

[15] *Id.* at ¶ 9.

entered, on July 16, 2020, an order approving the appointment of Seery as Highland's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative,[16] which included essentially the same "gatekeeper" language with respect to the pursuit of claims against Seery acting in these roles. The gatekeeper provision in the July 2020 Order was essentially the same as the gatekeeper provision in the January 2020 Order:

> No entity may commence or pursue a claim or cause of action of any kind against Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

July 2020 Order, 3, ¶5. Neither the January 2020 Order nor the July 2020 Order were appealed.

Throughout the summer of 2020, Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Dondero's plans failed to gain support, he and entities under his control engaged in substantial, costly, and time-consuming litigation for Highland.[17] As the Fifth Circuit described the situation, after Dondero's plans failed "he and other creditors began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital's management, threatening employees, and canceling trades between Highland Capital and its clients."[18] On October 9, 2020, Dondero resigned from all positions with the Debtor and its

[16] *See* the July 16, 2020 order approving the retention by Highland of Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020 ("July 2020 Order") [Bankr. Dkt. No. 854].

[17] According to Seery's credible testimony during the hearing on confirmation of the Plan that had been negotiated between the Committee and the Independent Directors, Dondero had threatened to "burn the place down" if his proposed plan was not accepted. *See* Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20. Bankr. Dkt. No. #1894.

[18] *Highland Capital*, 48 F.4th at 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at *1, *26 (Bankr. N.D. Tex.

affiliates in response to a demand by the Independent Directors made after Dondero's purported threats and disruptions to the Debtor's operations.[19]

The Independent Directors and the Committee had negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan") [Bankr. Dkt. No. 1808] on January 22, 2021.[20] Highland had negotiated settlements with most of its major creditors following mediation and had amended its initially proposed plan to address the objections of most of its creditors, leaving only the objections of Dondero and entities under his control (the "Dondero Parties") at the time of the confirmation hearing,[21] which was held over two days in early February 2021. The Plan is essentially an "asset monetization" plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). Highland's various servicing agreements were vested in the Reorganized Debtor, which continues to manage collateralized loan obligation vehicles ("CLOs") and various other investments postconfirmation. The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down the Reorganized Debtor over a three-year period by monetizing its assets and making

June 7, 2021) where this court "h[eld] Dondero in civil contempt, sanctioning him $100,000, and comparing this case to a 'nasty divorce.'").

[19] *See* Highland Ex. 13. The court shall refer to exhibits offered and admitted at the June 8 Hearing on the Motion for Leave by the Highland Parties as "Highland Ex. ___" and to exhibits offered and admitted by HMIT as "HMIT Ex. ___."

[20] The *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* was filed on November 24, 2020 ("Disclosure Statement") [Bankr. Dkt. No. 1473].

[21] The only other objection remaining was the objection of the United States Trustee to the Plan's exculpation, injunction, and release provisions.

distributions to Class 8 and Class 9 creditors as Claimant Trust Beneficiaries. The Claimant Trust is overseen by a Claimant Trust Oversight Board ("CTOB"), and pursuant to the terms of the Plan and the Claimant Trust Agreement ("CTA"),[22] the CTOB approved Seery's compensation package as the CEO of the Reorganized Debtor and the Claimant Trustee. Following their acquisition of their unsecured claims, representatives of Claims Purchasers Muck and Jessup became members of the CTOB.[23] Seery's compensation included the same base salary that he was receiving as CEO and CRO of Highland, plus an added incentive bonus tiered to recoveries and distributions to the creditors under the Plan. The Plan provides for the cancellation of the limited partnership interests in Highland held by HMIT, Dugaboy, and Okada and his family trusts in exchange for each holder's pro rata share of a contingent interest in the Claimant Trust ("Contingent Claimant Trust Interest"), as holders of allowed interests in Class 10 (holders of Class B/C limited partnership interests) or Class 11 (holders of Class A limited partnership interests) under the Plan.

B. Dondero Communicates Alleged Material Non-Public Information ("MNPI") to Seery, and Seery Allegedly Provides the MNPI to the Claims Purchasers in Furtherance of an Alleged Fraudulent Scheme to Have the Claims Purchasers "Rubber Stamp" His Compensation as Claimant Trustee Post-Confirmation

1. The December 17, 2020 MGM Email

Between Dondero's forced resignation from Highland in October 2020 and the confirmation hearing in February 2021, Dondero engaged in what appeared to be attempts to thwart, impede, and otherwise interfere with the Plan being proposed by the Independent Directors and the Committee. In the midst of this, on December 17, 2020, Dondero sent Seery[24] an email

[22] Highland Ex. 38

[23] The CTOB had three members: a representative of Muck (Michael Linn), a representative of Jessup (Christopher Provost), and an independent member (Richard Katz). *See* Joint Opposition ¶ 79.

[24] Dondero sent the email to others as well but did not copy counsel for the Independent Directors (including Seery) in violation of the terms of an existing temporary restraining order that enjoined Dondero from, among other things, "communicating . . . with any Board member" (including Seery) without including Debtor's counsel. Morris Dec. Ex. 23 ¶ 2(a). Citations to "Morris Dec. Ex. _" are to the exhibits attached to the *Declaration of John A. Morris in Support*

(the "MGM Email") that featured prominently in HMIT's Motion for Leave. According to HMIT and Dondero, the MGM Email contained material nonpublic information ("MNPI") regarding the possibility of an imminent acquisition of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"), likely by either Amazon or Apple.[25] At the time Dondero sent the MGM Email, Dondero sat on the board of directors of MGM, and the Debtor owned MGM stock directly. The Debtor also managed and partially owned a couple of other entities that owned MGM stock and managed various CLOs that owned some MGM stock as well. HMIT alleges now that Seery later misused and wrongfully disclosed to the Claims Purchasers this purported MNPI as part of a *quid pro quo* scheme, whereby the Claims Purchasers agreed to approve excessive compensation for Seery in the future (in exchange for him providing this allegedly "insider" information that inspired them to purchase unsecured claims with an alleged expectation of future large profits).[26] A timeline of events (in late 2020) in the weeks leading up to Dondero's MGM Email to Seery, following Dondero's departure from Highland, helps to put the email in full context:

- October 16: Dondero and his affiliates attempt to impede the Debtor's trading activities by demanding—with no legal basis—that Seery cease selling certain assets;[27]

- November 24: Bankruptcy Court enters an Order approving the Debtor's Disclosure Statement, scheduling the confirmation hearing on the Debtor's Plan for January 13, 2021, and granting related relief;[28]

- November 24–27: Dondero personally interferes with the Debtor's

of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding, Bankr. Dkt. No. 3784.

[25] *See* Proposed Complaint ¶ 45.

[26] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the [Claims Purchasers], with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims."); ¶ 4 ("As part of the scheme, the [Claims Purchasers] obtained a position to approve Seery's ongoing compensation – to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT.").

[27] *See* Highland Ex. 14, Dondero-Related Entities' October 16, 2020 Letter; Highland Ex. 15, *Memorandum Opinion and Order Holding Dondero in Contempt for Violation of TRO*, 13-15.

[28] *See* Bankr. Dkt. No. 1476.

implementation of certain securities trades ordered by Seery;[29]

- November 30: The Debtor provides written notice of termination of certain shared services agreements it had with Dondero's two non-debtor affiliates, NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"; together with NexPoint, the "Advisors");[30]

- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes they owed to the Debtor, that had an aggregate face amount of more than $60 million—this was part of creating liquidity for the Debtor's Plan;[31]

- December 3: Dondero responds with what appeared to be a threat of some sort to Seery in a text message: "***Be careful what you do -- last warning***;"[32]

- December 10: Dondero's interference and apparent threat cause the Debtor to seek and obtain a temporary restraining order ("TRO") against Dondero;[33]

- December 16: This court denies as "frivolous" a motion filed by certain affiliates of Dondero, in which they sought "temporary restrictions" on certain asset sales;[34] and

- December 17: Dondero sends the unsolicited MGM Email[35] to Seery, which violates the TRO entered just a week earlier.[36]

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[29] *See* Highland Ex. 15, 30-36.

[30] Morris Decl. Ex. 17; *see also* Transcript of June 8, 2023 Hearing on HMIT's Motion for Leave ("June 8 Hearing Transcript"), 273:23-24.

[31] Morris Decl. Exs. 18-21; *see also* June 8 Hearing Transcript, 273:23-274:1.

[32] Morris Decl. Ex. 22 (emphasis added); *see also* June 8 Hearing Transcript, 273:1-12 (where Seery testified about receiving the threat from Dondero: "A: [T]his came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.").

[33] *See* Morris Decl. Ex. 23, *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* entered December 10, 2020 [Adv. Pro. No. 20-3190 Dkt. No. 10].

[34] *See* Morris Decl. Ex. 24, Transcript of December 16, 2020 Hearing, 63:5-64:15.

[35] Highland Ex. 11.

[36] Seery testified at the June 8 Hearing that Dondero knowingly violated the TRO when he sent the MGM Email:

> [The MGM Email] . . . followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski [Debtor's counsel] being on it. Furthermore, Pachulski had advised Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics. And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

June 8 Hearing Transcript, 273:13-22.

The MGM Email had the subject line "Trading Restriction re MGM – material non public information" and stated:

> Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.[37]

Seery credibly testified at the June 8 Hearing that he was "highly suspicious" when he received the MGM Email. This was because, among other reasons, Dondero sent it ***after***: (i) unsuccessful efforts to impede the Debtor's trading activities (followed by the TRO); (ii) the "be careful what you do" text to Seery by Dondero: (iii) Highland's termination of its shared service arrangements with Dondero's various affiliated entities; (iv) the bankruptcy court's approval of the disclosure statement; and (v) Highland's demand to collect on the demand notes for which Dondero and his entities were liable.[38] Highland's Chapter 11 case was fast approaching the finish line. Moreover, MGM was already on the restricted list at Highland Capital, and had been for a long time, and Dondero would know this.[39] Still further, as of December 17, 2020 (the date Dondero sent the unsolicited MGM Email to Seery), Dondero no longer owed a duty of any kind to the Debtor or any entity controlled by the Debtor, having surrendered in January 2020 direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement[40] and having resigned from all roles at the Debtor and affiliates in October 2020. Still further, Dondero—to the extent he was sharing with Seery MNPI that he obtained as a member of the board of directors of MGM—would have been violating his own fiduciary duties to MGM.

[37] Highland Ex. 11.

[38] June 8 Hearing Transcript, 273:1-274:4.

[39] June 8 Hearing, 215:21-216:9.

[40] *See* Bankr. Dkt. Nos. 339, 354-1 (Term Sheet)).

In any event, in a declaration filed by Dondero in support of HMIT's Rule 202 petition in Texas state court for pre-suit discovery,[41] he indicated that his goal in sending the MGM E-mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

> On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple's interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades***.

It is noteworthy that ***Dondero's labeling of the MGM Email (in the subject line) as a communication containing "material non public information" did not make it so***. In fact, it appears from the credible evidence presented at the June 8, 2023 hearing on HMIT's Motion for Leave that the MGM Email did not disclose information to Seery that was not already made available to the public at the time it was sent. Seery testified that he did not think the MGM Email contained MNPI and that he did not personally "take any steps . . . to make sure that MGM stock was placed on a restricted list at Highland Capital after [he] received [the MGM Email]" because—as earlier noted—"MGM was already on the restricted list at Highland Capital . . . before I got to Highland."[42] Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months[43] and that was officially

[41] Highland Ex. 9 ¶ 3 (emphasis added).

[42] June 8 Hearing Transcript, 215:21-216:9. Seery elaborated upon further questioning from HMIT's counsel that he did not think the indications in the MGM Email (that came from a member of the board of directors of MGM) that "it was probably a first-quarter event" and that "Amazon and Apple were actively diligencing – are diligencing in the data room, both continue to express material interest" were not MNPI. *Id.*, 217:23-218:10. He testified that "it was clear [before he received the MGM Email] from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction would have to take place very quickly. And, in fact, the transaction did not take place in the first quarter." *Id.*, 219:3-7.

[43] *See* Highland Ex. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Ex. 26 (describing prospects of an MGM sale, noting that, among its largest

announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[44] For example, as early as January 2020, Apple and Amazon were identified as being among a new group of "Big 6" global media companies, and MGM was identified as being a leading media acquisition target. Indeed, according to at least one media report on January 26, 2020, "MGM, in particular, seems like a logical candidate to sell this year" having already held "preliminary talks with Apple, Netflix and other larger media companies."[45] In October 2020, the Wall Street Journal reported that MGM's largest shareholder, Anchorage Capital Group ("Anchorage"), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as Chairman of MGM's Board. The article reported that "[i]n recent months, Mr. Ulrich has said he is working toward a deal," and he specifically named Amazon and Apple as being among four possible buyers.[46] Thus, no one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed "material interest" in acquiring MGM. Dondero testified during the June 8 Hearing that, at the time he sent the MGM Email, he "knew with certainty from the board level that Amazon had hit our price, and it was going to close in the next couple of months,"[47] that "as of December 17th, Amazon had made an offer that was acceptable to MGM, [and that] that's what the board meeting was. We were going into exclusive negotiations to culminate the merger with

shareholders, was "Highland Capital Management, LP") (article October 11, 2020). *See also* Highland Exs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for $8.4 billion).

[44] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid.

[45] Highland Ex. 25.

[46] Highland Ex. 26.

[47] June 8 Hearing Transcript, 127:2-4.

them."[48] Notwithstanding this testimony, Dondero eventually admitted (after a lengthy and torturous cross examination) that he did not actually communicate this supposed "inside" information to Seery in the MGM Email. He did not "say anything about Amazon hitting the price." He did not say anything about the MGM board going into exclusive negotiations with Amazon "to culminate the merger with them." Rather, he communicated information that Seery and any member of the public who cared to look could have gleaned from publicly available information as of December 17, 2020, regarding a much-written-about potential MGM transaction that involved interest from numerous companies, including, specifically, Amazon and Apple. When questioned why "[he felt] the need to mention Apple [in the MGM Email] if Amazon had already hit the price," Dondero simply answered, "The only way you generally get something done at attractive levels in business is if two people are interested," suggesting that he specifically ***did not*** communicate the purported inside information he obtained as a MGM board member—that Amazon had met MGM's strike price and that the MGM board was moving forward with exclusive negotiations with Amazon—because he wanted it to appear that there was still a competitive process going on that included both Amazon and Apple.[49]

Even if the MGM Email contained MNPI on the day it was sent (four months prior to the first of the Claim Purchases that occurred in April 2021), the information was fully and publicly disclosed to the market in the days and weeks that followed. For example, on December 21, 2020, just four days later, a Wall Street Journal article titled *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale*, reported that MGM had "tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process," and had "a market value of around $5.5 billion, based on privately traded shares and including debt." The Wall Street Journal Article reiterated

[48] *Id.*, 161:10-14.

[49] June 8 Hearing Transcript, 162:2-6.

that (i) Anchorage "has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks," and (ii) "Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers."[50] (*Id*. Ex. 27.) The Wall Street Journal's reporting was picked up and expanded upon in other publications soon after. For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The world is net enough! Amazon joins other streaming services in £4bn bidding war for Bond films as MGM considers selling back catalogue*, cited the Wall Street Journal article and further reported that MGM "hopes to spark a battle that could interest streaming services such as Amazon Prime";[51]

- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that "it's now become apparent that MGM is actually up on the auction block," noting that the Wall Street Journal was "reporting that the studio has begun a formal sale process" and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder;[52] and

- On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition.[53]

Finally, Highland and entities it controlled did not sell their MGM stock while the MGM-Amazon deal was under discussion and/or not made public but, instead, they tendered their MGM holdings in connection with, and as part of, the ultimate MGM-Amazon transaction after it closed in March 2022.

[50] Highland Ex. 27.

[51] Highland Ex. 28.

[52] Highland Ex. 29.

[53] Highland Ex. 30.

2. No Evidence to Support HMIT/Dondero's Assumptions that Seery Shared Alleged MNPI in the MGM Email with Claims Purchasers

One of HMIT's allegations in the Proposed Complaint it seeks leave to file—which is central to HMIT's and Dondero's conspiracy theory—is that Seery shared the alleged MNPI from the MGM Email with the Claims Purchasers (or at least Farallon—the owner/affiliate of Muck, one of the Claims Purchasers) and that the Claims Purchasers only acquired the purchased claims ("Purchased Claims") based on, and because, of their receipt of the MNPI from Seery. HMIT essentially admits in the original version of its Motion for Leave that it has no direct evidence that Seery communicated the alleged MNPI to any of the Claims Purchasers. Rather, its allegation is based on inferences it wants the court to make based on "circumstantial" evidence and on the Dondero Declarations that were attached to the Motion for Leave, which described communications Dondero purportedly had with one or two representatives of Farallon in the "late spring" of 2021 concerning Farallon's recent acquisition of certain claims in the Highland bankruptcy case.[54] Based on these communications, HMIT and Dondero only assume Seery must have provided the MNPI about MGM to Farallon, which must have caused both Farallon and the other Claims Purchaser, Stonehill, to acquire the Purchased Claims.[55]

At the June 8 Hearing, HMIT offered Dondero's testimony that he had three telephone conversations with two representatives of Farallon, Mike Linn ("Linn") and Raj Patel ("Patel"),

[54] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 1 and Ex. 3; *see also* Highland Ex. 9, *Declaration of James Dondero* (with Exhibit 1) dated February 15, 2023.

[55] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 28. HMIT subsequently filed the final version of the Motion for Leave that was revised to withdraw the Dondero Declarations and delete all references therein to the Dondero Declarations (but, notably, leaving in the allegations that were based on the Dondero Declaration(s)). This was done after the court ruled that it would allow the Proposed Defendants to examine Dondero regarding his Declarations. HMIT contended at that point that the court should consider the Motion for Leave on a no-evidence Rule 12(b)(6) type basis (but could not explain why it had attached the Dondero Declarations as evidence that "supported" the Motion for Leave, if it believed no evidence should be considered). *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 28; *see also infra* pages 45 to 47 regarding the "sideshow" litigation that occurred prior to the June 8 Hearing over whether the hearing on the Motion for Leave would be an evidentiary hearing.

who allegedly told him that they purchased the claims without conducting any due diligence and based solely on Seery's assurances that the claims were valuable. These conversations allegedly took place on May 28, 2021—two days after the MGM-Amazon deal was officially announced to the public (on May 26, 2021). Dondero also testified that a photocopy of handwritten notes ("Dondero Notes")[56] (which were partially cut off) were notes he took contemporaneously with these short telephone conversations he initiated (one with Patel and two follow-up conversations with Linn).[57] He testified that his purpose in taking these notes and in initiating the phone calls was that "[w]e'd been trying nonstop to settle the case for two-plus years. . . . [a]nd when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case . . . [s]o I reached out [to] the Farallon guys,"[58] and further, on *voir dire* from the Proposed Defendants' counsel, that the purpose of taking the notes was so that he had "a written record of the important points that [he] discussed . . . so I know how to address it the next time."[59] The handwritten notes[60] stated:

Raj Patel bought it because of Seery	*1*
50-70¢ not compelling	*2*
Class 8	*3*
Asked what would be compelling	*4*
-- No Offer	*5*
Bought in Feb/March timeframe	*6*
Bought assets w/ Claims	*7*
Offered him 40-50% premium	*8*
130% of cost; "Not Compelling"	*9*
No Counter; Told Discovery coming	*10*

[56] HMIT Ex. 4. The handwritten notes were admitted into evidence after *voir dire*, not for the truth of anything Patel or Linn allegedly said to him during the three telephone conversations, but as Dondero's "present sense impression" of the telephone conversations.

[57] June 8 Hearing Transcript, 133:1-136:3.

[58] *See id.*, 133:13-23.

[59] *See id.* (on *voir dire*), 144:1838-145:4.

[60] HMIT Ex. 4. The court has placed in a table and numbered each line for ease of reference. The table does not include the separate apparent partial date from the top left corner that Dondero testified was the date that he made the initial call to Patel: May 28, 2021.

On direct examination, Dondero testified that line 1 is what he wrote contemporaneously with the short call he initiated to Patel of Farallon in which Patel allegedly told Dondero "that he bought it because Seery told him to buy it and they had made money with Seery before"[61] and that Farallon "bought [the claim] because he was very optimistic regarding MGM"[62] before referring him to Linn, a portfolio manager at Farallon. Dondero testified that the rest of the handwritten notes (reflected in lines 2 through 10 of the table) were notes he took contemporaneously with two telephone conversations he had with Linn following his call to Patel, with lines 2-8 referring to Dondero's first call with Linn and lines 9 and 10 referring to his second call with Linn.[63] Dondero testified that the "50-70¢" in line 2 referred to his offer to Linn to pay 70 cents on the dollar to buy Farallon's[64] claims because "[w]e knew that they had – that the claims had traded around 50 cents" and "[w]e wanted to prevent the $5 million-a-month burn" (referring to attorney's fees in the Highland case) and that "not compelling Class 8" in lines 2-3 referred to Linn's response to him that the offer was not compelling.[65] Dondero testified that lines 4-5 referred to him asking Linn what amount would be compelling and to Linn's response that "he had no offer."[66] Dondero testified that lines 6-8 referred to Linn telling Dondero that Farallon bought the claims in the February, March timeframe and that Dondero told Linn that, given that the estate was spending $5 million a month on legal fees, Farallon should want to sell its claims and Linn's alleged response that "Seery told him it was worth a lot more."[67] Lastly, Dondero testified on direct examination

[61] June 8 Hearing Transcript, 134:7-10, 135:13-22.

[62] *Id.*, 139:3-11.

[63] *Id.*, 136:4-138:16.

[64] As noted above, Farallon did not acquire any of the Purchased Claims; rather, Farallon created a special purpose entity, Muck, to acquire the claims.

[65] June 8 Hearing Transcript, 136:4-16.

[66] *Id.*, 136:17-23.

[67] *Id.*, 137:6-138:7.

that the last two lines referred to a second telephone conversation he had with Linn in which Dondero offered 130 percent of cost for the claims and that Linn told him that the offer was not compelling, and he would not give a price at which he would sell.[68]

On cross-examination, Dondero acknowledged that, though he had testified that the handwritten notes were intended to be a written record of the important points from the telephone conversations he had with Patel and Linn, there was no mention in the notes of: (1) MGM: (2) or that Farallon was very optimistic about MGM; (3) the sharing of MNPI; (4) a *quid pro quo;* or (5) Seery's compensation, and that his last note—"Told Discovery coming"—was a reference to Dondero telling Linn (not Linn telling Dondero) that discovery was coming in response to Dondero's own supposition that Farallon must have traded on MNPI.[69] Cross-examination also revealed that Farallon never told Dondero that Seery gave them MNPI, and that Dondero only ***believed*** Seery ***must have*** given Farallon MNPI, because Farallon (Patel and Linn) had told him that the only reason Farallon bought their claims was because of their prior dealings with Seery, which Dondero took to mean that they had conducted no due diligence on their own prior to acquiring the claims. Dondero also testified that he did not have any personal knowledge as to how Seery's compensation package, as CEO of the Reorganized Debtor and Claimant Trustee, was determined because he was "not involved" in the setting of Seery's compensation pursuant to the Claimant Trust[70] and that he never discussed Seery's compensation with Farallon.[71]

As noted earlier, Dondero attempted to obtain discovery from the Claims Purchasers in a Texas state court pursuant to Rule 202 of the Texas Rules of Civil Procedure. The Texas state

[68] *Id.*, 138:8-22.

[69] *Id.*, 190:14-191:25. Dondero testified that he told Linn that discovery "would be coming in the next few weeks" and noted that "this has been a couple years. . . . [w]e've been trying for two years to get . . . discovery in this."

[70] *Id.*, 200:13-201:1.

[71] *Id.*, 208:23-209:8.

court denied the First Rule 202 petition on June 1, 2022, after having considered the amended petition, the responses, the record, applicable authorities and having conducted a hearing on the petition on June 1, 2022.[72]

3. Dondero Unsuccessfully Seeks Discovery and to Have Various Agencies and Courts Outside of the Bankruptcy Court Acknowledge His Insider Trading Theories

Dondero acknowledged at the June 8 Hearing that the verified petition ("First Rule 202 Petition") he signed and filed on July 22, 2021, in the first Texas Rule 202 proceeding—just weeks after his telephone calls with Linn and Patel—was true and accurate. In it, he swore under oath as to what Linn told him in the telephone call concerning Farallon's purchase of the claims, and the only reason he gave for wanting discovery was that Linn told him Farallon bought the claims "sight unseen—relying entirely on Seery's advice solely because of their prior dealings."[73] Dondero acknowledged, as well, that his sworn statement that he filed in support of an amended verified Rule 202 petition filed in the same Texas Rule 202 proceeding, but nearly ten months later (in May 2022), described the same telephone conversation he had with Linn, and it did not mention MGM at all and did not say that Linn told him that Seery gave him MNPI; rather, the sworn statement stated only that "On a telephone call between Petitioner and Michael Lin[n], a representative of Farallon, Mr. Lin[n] informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Seery's say-so because they had made so much money in the past when Seery told them to purchase claims" and that Linn did not tell him that Seery gave them MNPI, but he concluded that Seery gave Farallon MNPI based on what Linn did tell him.[74]

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[72] Highland Ex. 7.

[73] *Id.*, 193:8-194:16; Highland Ex. 3, *Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 21. The first Texas Rule 202 proceeding in which Dondero sought discovery regarding the Farallon acquisition of its claims was brought by Dondero, individually, in the 95th Judicial District, Dallas County, Texas.

[74] *Id.*, 195:11-197:17; Highland Ex. 4, *Amended Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 23.

Nine days later, Dondero filed a declaration in the same proceeding, in which he described the same call with Linn as follows:[75]

> Last year, I called Farallon's Michael Lin[n] about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin[n] of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Seery had testified in court, it made no sense to me that Mr. Lin[n] would think that the claims were worth more than what Seery testified under oath was the value of the bankruptcy claims.

Dondero further stated in his declaration that "I have an interest in ensuring that the claims purchased by [Farallon] are not used as a means to deprive the equity holders of their share of the funds," and that "[i]t has become obvious that despite the fact that the bankruptcy estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights. Accordingly, "I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee."[76] Dondero attached as Exhibit A to his declaration a letter from Douglas Draper ("Draper"), an attorney with the law firm of Heller, Draper & Horn, L.L.C. in New Orleans, to the office of the General Counsel, Executive Office for U.S. Trustees, dated October 5, 2021, in which Draper opens the letter by stating that "[t]he purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the [Creditors' Committee] in the bankruptcy of [Highland]," and later noted that he "became involved in Highland's bankruptcy through my representation of [Dugaboy], an irrevocable trust of which Dondero is the primary beneficiary."[77] Mr. Draper laid out the same allegations of insider claims trading, breach of

[75] Highland Ex. 5, ¶ 2.
[76] *Id.*, ¶¶ 3-4.
[77] *Id.*, Ex. A, 1-2.

fiduciary duties, and conspiracy that HMIT seeks to bring in the Proposed Complaint.[78] The U.S. Trustee's office took no action. Dondero made a second and third attempt to get the U.S. Trustee's office to conduct an investigation into the same allegations laid out in Draper's letter, this time in "follow-up" letters to the Office of the U.S. Trustee on November 3, 2021, and six months later, on May 11, 2022, through another lawyer, Davor Rukavina ("Rukavina"), in which Rukavina wrote "to provide additional information regarding the systemic abuses of bankruptcy process occasioned during the [Highland] bankruptcy."[79] Again, the U.S. Trustee's office took no action.

On February 15, 2023, Dondero filed yet another sworn statement about his alleged conversation with Linn, this time in support of a Verified Rule 202 Petition ***filed by HMIT*** ("Second Rule 202 Petition"), filed in a different Texas state court (Texas District Court, 191st Judicial District, Dallas County, Texas), following Dondero's unsuccessful attempts throughout 2021 and 2022 to obtain discovery in the First Rule 202 proceeding and based on the same allegations of misconduct by Seery and Farallon.[80] In this new sworn statement, Dondero describes for the first time the "call" he had with Linn as having been "phone calls" with Patel and Linn and ***mentions MGM*** and Farallon's alleged optimism about the ***expected sale of MGM***:[81]

> In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC ("Farallon"), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Seery because they had made significant profits when Seery told them to purchase other claims in the past. They also stated that they were particularly optimistic because of the expected sale of MGM.

[78] *Id.*, Ex. A, 6-11.

[79] HMIT Ex. 61.

[80] Highland Ex. 9.

[81] *Id.*, ¶ 4.

The Second Rule 202 Petition was also denied by the second Texas state court on March 8, 2023.[82]

HMIT, in an apparent attempt to provide support for its argument that the Proposed Claims are "colorable," stated in its Motion for Leave that "[t]he Court also should be aware that the Texas States [sic] Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely 'colorable.'"[83] But, two days before opposition briefing was due, on May 9, 2023, the TSSB issued a letter ("TSSB Letter") to Highland, informing it that "[t]he staff of the [TSSB] has completed its review of the complaint received by the Staff against [Highland]. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time."[84] HMIT's counsel (frankly, to the astonishment of the court) objected to the admission of the TSSB Letter at the June 8 Hearing "on the grounds of relevance, 403, hearsay, and authenticity . . . [a]nd I also . . . think it's important that the decision by a regulatory body has no bearing on this cause of action or the colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry."[85] The court overruled HMIT's objection to the relevance of this exhibit—considering, among other things, that HMIT, in its Motion for Leave, specifically mentioned the allegedly open TSSB "investigation" as relevant evidence the court "should be aware" of in making its determination of whether the Proposed Claims were "colorable."[86]

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[82] Highland Ex. 10.

[83] Motion for Leave, ¶ 37.

[84] *See* Highland Ex. 33.

[85] June 8 Hearing Transcript, 323:22-324:3.

[86] *Id.*, 324:4-328:2.

C. Claims Purchasers Purchase Claims and File Notices of Transfers of Claims

To be clear about the time line here, it was after confirmation of the Plan but prior to the Effective Date of the Plan, that the Claims Purchasers: (1) purchased several large unsecured claims that had been allowed following, and as part of, Rule 9019 settlements, each of which were approved by the bankruptcy court, after notice and hearing, prior to the confirmation hearing; and (2) filed notices of the transfers of those claims pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure. The noticing of the claims transfers began on April 16, 2021, with the notice of transfer of the claim held by Acis Capital Management to Muck, and ended on August 9, 2021, with the notices of transfers of the claims held by UBS Securities to Muck and Jessup:

Claimant(s)	**Date Filed/ Claim No.**	**Asserted Amount**	**Claim Settled/Allowed? If so, Amount**	**Date Filed/ Rule 3001 Notice Dkt. No.**
Acis Capital Management LP and Acis Capital Management, GP LLC (together, "Acis")	12/31/2019 Claim No. 23	$23,000,000	Yes[87] $23,000,000	4/16/2021 Bankr. Dkt. No. 2215 (Muck)
Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee")	4/3/2020 Claim No. 72	$190,824,557	Yes[88] $137,696,610	4/30/2021 Bankr. Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (the "HarbourVest Parties")	4/8/2020 Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes[89] $80,000,000 in aggregate ($45,000,000 General Unsecured Claim, and $35,000,000 subordinated claim)	4/30/2021 Bankr. Dkt. No. 2263 (Muck)

[87] Bankr. Dkt. No. 1302. The Debtor's settlement with Acis was approved over the objection of Dondero. Bankr. Dkt. No. 1121.

[88] Bankr. Dkt. No. 1273.

[89] Bankr. Dkt. No. 1788. The Debtor's settlement with the HarbourVest Parties was approved over the objections of Dondero, Bankr. Dkt. No. 1697, and Dugaboy and the Get Good Trust. Bankr. Dkt. No. 1706.

UBS Securities LLC, UBS AG, London Branch (the "UBS Parties")	6/26/2020 Claim Nos. 190, 191	$1,039,957,799.40	Yes[90] $125,000,000 in aggregate ($65,000,000 General	8/9/2021 Bankr. Dkt. No. 2698 (Muck) and Bankr. Dkt. No. 2697 (Jessup)

HMIT insists that it "made no sense" for the Claims Purchasers to buy the Purchased Claims because "the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk," and "their investment was projected to yield a small return with virtually no margin for error."[91] Dondero testified that it was ***his*** view that there was insufficient information in the public to justify the claims purchases.[92] But, HMIT's arguments here are contradicted by the information that was publicly available to Farallon and Stonehill at the time of their purchases and by HMIT's own allegations. In advance of Plan confirmation, Highland projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. In the Proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims.[93] Taking into account the face amount of the allowed claims, the Claims Purchasers' projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value[94]	Purchaser	Purchase Price	Projected Profit
Redeemer	$137.0	$0.0	$97.71	Stonehill	$78.0	$19.71
Acis	$23.0	$0.0	$16.4	Farallon	$8.0	$8.40

[90] Bankr. Dkt. No. 2389. The Debtor's settlement with the UBS Parties was approved over the objections of Dondero, Dkt. No. 2295, and Dugaboy and the Get Good Trust. Bankr. Dkt. Nos. 2268, 2293.

[91] Proposed Complaint, ¶ 3.

[92] June 8 Hearing Transcript, 187:3-7 ("Q: And it's your testimony that there wasn't sufficient information in the public for them to buy – this is your view – that there wasn't sufficient information in the public to justify their purchases. Is that your view? A: Correct.).

[93] *Id.*, ¶ 42.

[94] "Ascribed Value" is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

HarbourVest	$45.0	$35.0	$32.09	Farallon	$27.0	$5.09
UBS	$65.0	$60.0	$46.39	Stonehill & Farallon	$50.0	($3.61)

As HMIT acknowledges, by the time Dondero spoke with Farallon in the "late spring" of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest.[95] Based on an aggregate purchase price of $113 million for these three claims, the Claims Purchasers would have expected to net over $33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections, because they also purchased the Class 9 claims and would therefore capture any upside. In this context, HMIT's and Dondero's assertions that it did not "make any sense" for the Claims Purchasers to purchase their claims when they did does not pass muster—given the publicly available information about potential recoveries under the Plan. Dondero even acknowledged, on cross-examination, that he was prepared to pay ***30 percent more*** than Farallon had paid, even though he did not think there was sufficient public information available to justify Farallon's purchase of the claims.[96] Dondero essentially testified that he wanted to purchase Farallon's claims because he wanted to be in a position of control to force a settlement or resolution of the bankruptcy case, post-confirmation, under terms acceptable to him. He did not want to try to settle by negotiating with Farallon and Stonehill ***as creditors***, but instead he wanted to purchase the claims because "if we owned all the claims, it would settle the case."[97]

[95] *See* Complaint, ¶ 41 n.12. The UBS claims were not acquired until August 2021, long after the alleged "*quid pro quo*" was supposedly agreed upon and the MGM-Amazon deal was announced in the press in late May 2021. *See*, Highland Ex. 34, *Amazon's $8.45 Billion Deal for MGM is Historic But Feels Mundane* (dated May 26, 2021).

[96] June 8 Hearing Transcript, 187:8-11.

[97] *Id.*, 187:12-189:10.

D. Fifth Circuit's Approval of the Gatekeeper Provision in Plan, Recognition of Res Judicata Effect of the Prior Gatekeeper Orders, and the Bankruptcy Court's Order Approving Highland's Motion to Conform Plan

Harkening back to February 22, 2021, after a robust confirmation hearing, this court entered its order confirming the Plan, over the objections of Dondero and Dondero-Related Parties, specifically questioning the good faith of their objections. The court found, after noting "the remoteness of their economic interests" that "[it] has good reason to believe that [the Dondero Parties] are not objecting to protect economic interests they have in the Debtor but to be disruptors. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan."[94] The Plan became effective on August 11, 2021.

Of relevance to the Motion for Leave, the confirmed Plan included certain exculpations, releases, and injunctions designed to protect the Debtor and other bankruptcy participants from bad-faith litigation. These participants included: Highland's employees (with certain exceptions); Seery as Highland's CEO and CRO; Strand (after the appointment of the Independent Directors); the Independent Directors; the successor entities; the CTOB and its members; the Committee and its members; professionals retained in the case; and all "Related Persons." The injunction provisions contained a Gatekeeper Provision which is similar to the gatekeeper provisions in the prior Gatekeeper Orders in that it provided that the bankruptcy court will act as a "gatekeeper" to screen and prevent bad-faith litigation against the Protected Parties. The Gatekeeper Provision in the Plan states, in pertinent part:[98]

> No Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents ***a colorable claim of any kind***, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically

[98] Plan, 50-51 (emphasis added).

> authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

The Plan defines Protected Parties as,

> collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the [CTOB] (in their official capacities), (xiii) [HCMLP GP LLC], (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); [but excluding Dondero and Okada and various entities including HMIT and Dugaboy].

The court notes that the Gatekeeper Provision in the Plan provides protection to a broader number of persons than the persons protected under the January 2020 Order (addressing the Independent Directors and their agents and advisors) and the July 2020 Order (addressing Seery in his role as CEO and CRO of the Debtor). But, at the same time, it is less restrictive than the gatekeeping provisions under the Gatekeeper Orders, in that the gatekeeping provisions in the prior orders shield the protected parties from any claim that is not both "colorable" ***and*** a claim for "willful misconduct or gross negligence," effectively providing the protected parties under the prior orders with a limited immunity from claims of simple negligence or breach of contract that do not rise to the level of "willful misconduct or gross negligence," whereas the Gatekeeping Provision under the Plan does not act as a release or exculpation of the Protected Parties in any way because it does not prohibit any party from bringing ***any kind of claim*** against a Protected Party, provided the proposed claimant first obtains a finding in the bankruptcy court that its proposed claims are "colorable."[99]

[99] It should be noted that--as discussed further below--there are, separately in the Plan, exculpations as to a smaller universe of persons--*e.g.,* the Debtor, the Committee and its members, and the Independent Directors.

Dondero and some of the entities under his control appealed[100] the Confirmation Order directly to the Fifth Circuit, arguing, among other issues, that the Plan's exculpation, release, and injunction provisions, including the Gatekeeper Provision (collectively, the "Protection Provisions") impermissibly provide certain non-debtor bankruptcy participants with a discharge, purportedly in contravention of the provisions of Bankruptcy Code § 524(e)'s statutory bar on non-debtor discharges. As noted above, the Fifth Circuit, "affirm[ed] the confirmation order in large part" and "reverse[d] ***only insofar as the plan exculpates*** certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties ***from the plan's exculpation***, and affirm[ed] on all remaining grounds."[101] The Fifth Circuit specifically found the "injunction and gatekeeping provisions [to be] sound" and found that it was only "the ***exculpation*** of certain non-debtors" that "exceed[ed] the bankruptcy court's authority," agreeing with the bankruptcy court's conclusions that the Protection Provisions were legal, necessary under the circumstances, and in the best interest of all parties" in part, and only disagreeing to the extent that the ***exculpation*** provision improperly extended to certain bankruptcy participants other than Highland, the Committee and its members, and the Independent Directors and "revers[ing] and strik[ing] the few unlawful parts

[100] On appeal, the appellant funds ("Funds"), whom this court found to be "owned and/or controlled" by Dondero despite their purported independence, also asked the Fifth Circuit to vacate this court's factual finding "because it threatens the Funds' compliance with federal law and damages their reputations and values" and because "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him." *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th at 434. Applying the "clear error" standard of review, the Fifth Circuit "le[ft] the bankruptcy court's factual finding undisturbed" because "nothing in this record leaves us with a firm and definite conviction that the bankruptcy court made a mistake in finding that the Funds are 'owned and/or controlled by [Dondero]." *Id.* at 434-35.

[101] *See supra* note 4. The Fifth Circuit replaced its initial opinion with its final opinion a few days after certain appellants had filed a short (four-and-one-half pages) motion for rehearing (the "Motion for Rehearing") on September 2, 2022. The movants had asked the Fifth Circuit to "narrowly amend the [initial] Opinion in order to confirm the Court's holding that the impermissibly exculpated parties are similarly struck from the protections of the injunction and gatekeeper provisions of the plan (in other words, that such parties cannot constitute 'Protected Parties')." In the final Fifth Circuit opinion, same as the initial Fifth Circuit opinion, the Fifth Circuit stated that, with regard to the Confirmation Order, the panel would "reverse only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strike those few parties from the plan's exculpation, and affirm on all remaining grounds." *Highland Capital*, 48 F.4th at 424. No findings, discussion, or rulings regarding the injunction and gatekeeper provisions that were in the initial Fifth Circuit opinion were disturbed.

of the Plan's ***exculpation provision***."[102] The Fifth Circuit then remanded to the Bankruptcy Court "for further proceedings in accordance with the opinion."[103]

In the course of analyzing the Protection Provisions under the Plan, the Fifth Circuit noted that the protection provisions in the January and July 2020 Orders appointing the Independent Directors and Seery as CEO and CRO of Highland were *res judicata* and that "*those* orders have the effect of exculpating the Independent Directors and Seery in his executive capacities" such that "[d]espite removal from the exculpation provision in the confirmation order, the Independent Directors' agents, advisors, and employees, as well as Seery in his official capacities are all exculpated to the extent provided in the January and July 2020 Orders."[104]

The Reorganized Debtor filed a motion in the bankruptcy court to conform the plan to the Fifth Circuit's mandate, proposing that only one change was needed to make the Plan compliant with the Fifth Circuit's ruling: narrow the defined term for "Exculpated Parties" to read as follows:

> "Exculpated Parties" means, collectively, (i) the Debtor, (ii) the Independent Directors, (iii) the Committee, and (iv) members of the Committee (in their official capacities).

The Reorganized Debtor proposed that this one simple revision of this defined term removed the exculpations deemed by the Fifth Circuit to violate section 524(e) of the Bankruptcy Code, and that no other changes would be required to conform the Plan and Confirmation Order to the Fifth Circuit's mandate. Some of the Dondero-related entities objected to the motion to conform, arguing that the Fifth Circuit's ruling required more surgery on the Plan than simply narrowing the defined term "Exculpated Parties." On February 27, 2023, this court entered its order granting

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[102] *Id.* at 435.

[103] *Id.* at 440. The Fifth Circuit's docket reflects that it issued its Judgment and mandate on September 12, 2022.

[104] *Highland Capital*, 48 F.4th at 438 n.15. The Fifth Circuit stated, "To the extent Appellants seek to roll back the protections in the bankruptcy court's January 2020 and July 2020 orders (which is not clear from their briefing), such a collateral attack is precluded." *Id.*

Highland's motion to conform the Plan, ordering that one change be made to the Plan – revising the definition of "Exculpated Parties" – and no more.[105] The objecting parties' direct appeal of this order has been certified to the Fifth Circuit and is one of the numerous currently active appeals by Dondero-related parties pending in the Fifth Circuit.

E. HMIT's Motion for Leave

HMIT filed its emergency Motion for Leave on March 28, 2023, which, with attachments, as first filed, was 387 pages in length, including an initial proposed complaint ("Initial Proposed Complaint") and two sworn declarations of Dondero that were attached as "objective evidence" in "support[ ]" of the Motion for Leave,[106] and with it, an application for an emergency setting on the hearing on the Motion to Leave. On April 23, 2023, HMIT filed a pleading entitled a "supplement" to its Motion to Leave ("Supplement"),[107] to which it attached a revised proposed verified complaint ("Proposed Complaint")[108] as Exhibit 1-A to the Motion for Leave and stated that "[t]he Supplement is not intended to amend or supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action."[109] The HMIT Motion for Leave was later amended to eliminate the Dondero Declarations and references to the same (but not the underlying allegations that were supposedly supported by the Dondero Declarations).[110]

[105] Bankr. Dkt. No. 3672.

[106] Bankr. Dkt. No. 3699.

[107] Bankr. Dkt. No. 3760.

[108] *See supra* note 5.

[109] Supplement ¶ 1.

[110] Bankr. Dkt. Nos. 3815 and 3816. Both of these filings had the Initial Proposed Complaint attached as Exhibit 1 to the Motion for Leave.

As earlier noted, HMIT desires leave to sue the Proposed Defendants regarding ***the post-confirmation, pre-Effective Date purchase of allowed unsecured claims***. The Proposed Defendants would be:

> **Seery,** who was a stranger to Highland until approximately four months following the Petition Date when he was brought in as one of the three Independent Directors, and now serves as the CEO of the Reorganized Debtor and the Trustee of the Claimant Trust (and also was previously Highland's CRO during the case, then CEO, and, also, an Independent Board Member of Highland's general partner during the Highland case). Seery is best understood as the man who took Dondero's place running Highland—per the request of the Committee.
>
> **Claims Purchasers,** who were strangers to Highland until the end of the bankruptcy case. They are identified as Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the "Claims Purchasers"). The Claims Purchasers purchased $240 million face value of already-allowed unsecured claims post-confirmation and pre-Effective Date in the spring of 2021 and another $125 million face value of already-allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk's docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Committee during the Highland bankruptcy case).
>
> **John Doe Defendants Nos. 1-10**, which are described to be "currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue."
>
> **Highland,** as a nominal defendant. HMIT added Highland as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.
>
> **Claimant Trust**, as a nominal defendant. HMIT added the Claimant Trust as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

The proposed plaintiffs would be:

> **HMIT,** which, again, was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited partnership interests). HMIT is the holder of a Class 10 interest under the Plan, pursuant to which HMIT's limited partnership interest in Highland was extinguished as of the Effective Date in exchange for a pro rata share of a contingent interest in the Claimant Trust.

Highland, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

Claimant Trust, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Claimant Trust.

In the Proposed Complaint, HMIT asserts the following six counts: Count I (against Seery) for breach of fiduciary duties; Count II (against the Claims Purchasers and John Doe Defendants) for knowing participation in breach of fiduciary duties; Count III (against all Proposed Defendants) for conspiracy; Count IV (against Muck and Jessup) for equitable disallowance of their claims; Count V (against all Proposed Defendants) for unjust enrichment and constructive trust; and Count VI (against all Proposed Defendants) for declaratory relief.[111] The gist of the Proposed Complaint is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that "wrongful conduct occurred" and "improper trades" were made.[112] HMIT believes the Claims Purchasers paid around $160 million for the $365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland's Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. And, of course, Dondero purports to have concluded from the three phone conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Seery must have given these Claims Purchasers MNPI regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Seery must have shared

[111] In the Initial Proposed Complaint, HMIT proposed to bring claims against the various Proposed Defendants in seven counts, including a count for fraud by misrepresentation and material nondisclosure against all Proposed Defendants. In the Proposed Complaint, HMIT abandons its claim for fraud by misrepresentation and material nondisclosure.

[112] Motion for Leave, 7.

MNPI regarding the likely imminent sale of MGM, in which Highland had, directly and indirectly, substantial holdings. As noted earlier, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[113] In summary, while the Proposed Complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor's estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Seery, and are now happily approving Seery's allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages in the form of equitable disallowance of the Claims Purchasers' claims and disgorgement of distributions on account of those claims, the imposition of a constructive trust over all disgorged funds, and declaratory relief.

HMIT claims that, in seeking to file the Proposed Complaint, it is seeking to protect the rights and interests of the Reorganized Debtor, the Claimant Trust, and "innocent stakeholders" who were allegedly injured by Seery's and the Claims Purchasers' alleged conspiratorial and

[113] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid. Credible testimony from Seery at the June 8 Hearing revealed that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public).

fraudulent scheme to line Seery's pockets with excessive compensation for his role as Claimant Trustee. In its Motion for Leave, HMIT states that "[t]he attached Adversary Proceeding alleges claims which are substantially more than 'colorable' based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud, including a fraud upon innocent stakeholders, as well as breaches of fiduciary duties and knowing participation in (or aiding or abetting) breaches of fiduciary duty."[114]

F. Is HMIT Really Dondero by Another Name?

The Proposed Defendants argue that HMIT's Motion for Leave is nothing more than a continuation of the harassing and bad-faith litigation by Dondero and his related entities that the Gatekeeper Provisions were intended to prevent and, thus, this is one of multiple reasons that the Motion for Leave should be denied.

To be clear, HMIT asserts that it is controlled by Mark Patrick ("Patrick"), who has been HMIT's administrator since August 2022. Patrick asserts that he is not influenced or controlled by Dondero, in general, and specifically not in its efforts to pursue the Proposed Claims against Seery and the Claims Purchasers. However, the testimony elicited at the June 8 Hearing—the hearing at which HMIT had the burden of showing the court that its Proposed Claims were "colorable" such that it should be allowed to pursue them through the filing of the Proposed Complaint—paints a different picture. Somewhat tellingly, HMIT chose not to call Patrick—allegedly HMIT's only representative and control person—as a witness in support of its Motion for Leave. Rather, Dondero was HMIT's first witness called in support of its motion, and the first

[114] *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 3. HMIT notes, in a footnote 6, that "Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement."

questions on direct from HMIT's counsel were aimed at establishing that Dondero was not behind the filing of the Motion for Leave and the pursuit of the Proposed Claims.[115] Dondero testified that he did not (i) "have any current official position" with HMIT, (ii) "attempt to exercise [control] on the business affairs of [HMIT]," (iii) "have any official legal relationship with [HMIT] where [he] can attempt to exercise either direct or indirect control over [HMIT]," or (iv) "participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan."[116] After HMIT rested, Highland and the Claimant Trust called Patrick as a witness, and he testified that he was the administrator of HMIT, that HMIT does not have any employees, operations, or revenues, and, when asked if HMIT owned any assets, Patrick testified, with not a great deal of certainty, that "it's my understanding it has a contingent beneficiary interest in the Claimants [sic] Trust" and that is the only asset HMIT has.[117] Patrick testified that HMIT did not owe any money to Dondero personally, but acknowledged that in 2015, HMIT had issued a secured promissory note in favor of Dondero's family trust, Dugaboy, in the amount of approximately $62.6 million (the "Dugaboy Note") in exchange for Dugaboy transferring a portion of its limited partner interests in Highland to HMIT; the Dugaboy Note was secured in part by the Highland limited partnership interests purchased from Dugaboy.[118] Patrick admitted that, if HMIT's Class 10 interest has no value, HMIT would have no ability to pay the Dugaboy Note.[119] He further testified that neither he nor any representative of HMIT had ever spoken with any representative of Farallon or Stonehill, that he had no personal knowledge about any *quid pro quo*, the amount of due diligence Farallon or Stonehill conducted prior to buying their claims, or the terms of

[115] *See* June 8 Hearing Transcript, 113:10-25.

[116] *Id.*

[117] June 8 Hearing Transcript, 307:7-308:2.

[118] *Id.*, 303:11-305:1; Highland Ex. 51, HMIT's $62,657,647.27 *Secured Promissory Note* dated December 24, 2015, in favor of Dugaboy.

[119] *Id.*, 308:3-16.

Seery's compensation package (until the terms were disclosed to them in opposition to the Motion for Leave).[120] Patrick admitted that Dugaboy was paying HMIT's attorneys' fees pursuant to a settlement agreement between HMIT and Dugaboy.[121]

On cross-examination by HMIT's counsel, Patrick further testified that HMIT has not filed any litigation, as plaintiff, other than its efforts to be a plaintiff in the Motion for Leave and its action as a petitioner in the Texas Rule 202 proceeding filed earlier in 2023 in the Texas state court.[122] HMIT's counsel argued that the point of this questioning was that "they're just trying to draw Dondero into this and – this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed – attempting to file this action and a Rule 202 proceeding.[123] But, Dondero and HMIT's counsel referred during the June 8 Hearing to the First Rule 202 Petition (where Dondero was the petitioner) and the Second Rule 202 Petition (where HMIT was the petitioner) as "our" Rule 202 petitions, and also to the numerous attempts at getting the discovery (that Dondero had warned Linn was coming) in the collective. For example, in objecting to the admission of Highland's Exhibit 10 – the Texas state court order denying and dismissing the Second Rule 202 Petition – on the basis of relevance, HMIT's counsel referred to the order as "an order denying ***our second"*** Rule 202 Petition.[124] And, Dondero testified that his warning to Linn in May 2021 that "discovery was coming" was "my response to I knew they had traded on material nonpublic information" and that "I thought it would be a lot easier to get

[120] *Id.*, 308:18-312:12. This testimony from Patrick came after HMIT's counsel objection to counsel's line of questioning regarding Patrick's personal knowledge of the facts supporting the allegations in the Proposed Complaint on the basis that he was invading the attorney work product privilege, which was overruled by this court; HMIT's counsel argued (311:4-19) that the line of questioning was an "invasion of attorney work product . . . [b]ecause they might – he would have knowledge from the efforts and investigation through attorneys in the case."

[121] *Id.*, 312:24-313:18.

[122] *Id.*, 315:3-9.

[123] *Id.*, 316:6-11.

[124] *Id.*, 58:11-13. The court overruled HMIT's relevance objection and admitted Highland's Exhibit 10 into evidence. *Id.*, 58:14-15.

discovery on a situation like this than it has been for the last two years" and that "***we've*** been trying for two years to get . . . discovery."[125]

Dondero's use of an entity over which he exerts influence and control to pursue his own agenda in the bankruptcy case is not new. Rather, this has been part of Dondero's *modus operandi* since the "nasty breakup" between Dondero and Highland that culminated with Dondero's ouster in October 2020, whereby Dondero, after not getting his way in the bankruptcy court, continued to lob objections and create obstacles to Highland's implementation of the Plan through entities he owns or controls. As noted above, the Fifth Circuit specifically upheld this court's finding in the Confirmation Order that Dondero owned or controlled the various entities that had objected to confirmation of the Plan and appealed the Confirmation Order, where the Dondero-related appellants made similar protestations that they are not owned or controlled by Dondero and asked the Fifth Circuit to vacate this court's factual finding because, among other reasons, "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him."[126] Based on the totality of the evidence in this proceeding, the court finds that, contrary to the protestations of HMIT's counsel and Patrick otherwise, Dondero is the driving force behind HMIT's Motion for Leave and the Proposed Complaint. The Motion for Leave is just one more attempt by Dondero to press his conspiracy theory that he has pressed for over two years now, unsuccessfully, in Texas state court through Rule 202 proceedings, with the Texas State Securities Board, and with the United States Trustee's office.

[125] *Id.*, 191:5-25.

[126] *Highland Capital*, 48 F.4th at 434-435.

G. Opposition to Motion for Leave: Arguing No Standing and No "Colorable" Claims

Highland, the Claimant Trust, and Seery (together, the "Highland Parties") filed a joint opposition ("Joint Opposition") to HMIT's Motion for Leave on May 11, 2023.[127] The Claims Purchasers filed a separate objection ("Claims Purchasers' Objection") to the Motion for Leave on May 11, 2023, as well.[128] In the Joint Opposition, the Highland Parties urge the court to deny HMIT leave to pursue the Proposed Claims because, as a threshold matter, HMIT does not have standing to bring them, directly or derivatively against the Proposed Defendants. They argue, in the alternative, that the Motion for Leave should be denied even if HMIT had standing to pursue the Proposed Claims because none of the Proposed Claims are "colorable" claims as that term is used in the Gatekeeper Provision of the Plan (and Gatekeeper Orders).[129]

The Claims Purchasers likewise argue that HMIT lacks standing to complain about claims trading in the bankruptcy which occurred between sophisticated Claims Purchasers and sophisticated sellers ("Claims Sellers"), represented by skilled bankruptcy and transactional counsel. Moreover, they argue HMIT cannot show that it or the Reorganized Debtor or the Claimant Trust were injured by the claims trading at issue because the Purchased Claims had already been adjudicated as allowed claims in the bankruptcy case—thus, distributions under the Plan on account of the Purchased Claims remain the same, the only difference being who holds the claims. Moreover, even if HMIT could succeed in equitably subordinating the validly transferred ***allowed*** claims, HMIT would still be in the same position it is today: the holder of a

[127] Bankr. Dkt. Nos. 3783. Highland, the Claimant Trust, and Seery also filed on May 11 a *Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding* ("Morris Declaration") that attached 44 Exhibits in support of the Joint Opposition. Bankr. Dkt. No. 3784.

[128] Bankr. Dkt. No. 3780.

[129] *See* Joint Opposition ¶ 139 ("Because HMIT lacks standing, this Court need not reach the merits of HMIT's proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion.").

contingent, speculative Class 10 interest that would only be paid after payment, in full, with interest, of all creditors under the Plan. The Claims Purchasers argue in the alternative that the Proposed Claims are not "colorable."

Finally, the Proposed Defendants argue that the standard of review for assessing whether the Proposed Claims are "colorable" (as such term is used in the Gatekeeper Provision and Gatekeeping Orders) is a standard that is a higher than the "plausibility" standard applied to Rule 12(b)(6). They argue that HMIT should be required to meet a higher bar with respect to colorability that includes making a *prima facie* showing that the Proposed Claims have merit (and/or are not without foundation) which requires HMIT to do more than meet the liberal notice-pleading standards.

H. HMIT's Reply to the Proposed Defendants' Opposition to the Motion for Leave

In its reply brief ("Reply"), filed by HMIT on May 18, 2023,[130] it argues that it has constitutional standing as an "aggrieved party" to bring the Proposed Claims on behalf of itself.[131] HMIT also argues that it has standing under Delaware Trust law to bring a derivative action on behalf of the Claimant Trust and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to bring the claims.[132] Finally, HMIT maintains that the standard of review that the bankruptcy court should apply in assessing the "colorability" of the Proposed Claims is no greater than the standard of review applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), which would require the bankruptcy court to look only to the "four corners" of the Proposed Complaint

[130] Bankr. Dkt. No. 3785.

[131] *See* Reply ¶ 7.

[132] See, Reply ¶ 23 n.5, where HMIT argues "The nature of this injury, in addition to Seery's influence over the Claimant Trust, and the lack of prior action by the Claimant Trust to pursue the claims HMIT seeks to pursue derivatively, among other things, demonstrate that HMIT is not only a proper party to assert its derivative claims – but the best party to do so."

and "not weigh extraneous evidence,"[133] take all allegations as true, and view all allegations and inferences in a light most favorable to HMIT. As discussed in greater length below, HMIT argues that, under this standard, the bankruptcy court should not consider evidence in making its determination as to whether the Proposed Complaint presents "colorable" claims.

I. Litigation within the Litigation: The Pre- June 8 Hearing Skirmishes

Suffice it to say there was significant activity before the Motion for Leave actually was presented at the June 8 hearing. HMIT sought an emergency hearing on its Motion for Leave (wanting a hearing on three days' notice). When the bankruptcy court denied an emergency hearing, HMIT unsuccessfully pursued an interlocutory appeal of the denial of an emergency hearing to the district court. HMIT then petitioned for a writ of mandamus at the Fifth Circuit regarding the emergency hearing denial, which was denied by the Fifth Circuit on April 12, 2023.

Next, there were multiple pleadings and hearings regarding ***what kind of hearing*** the bankruptcy court should or should not hold on the Motion for Leave—particularly focusing on whether or not it would be an evidentiary hearing.[134] The resolution of this issue turned on what standard of review the court should apply in exercising its gatekeeping function and determining the colorability of the Proposed Claims. HMIT (although it had submitted two declarations of Dondero with its original Motion for Leave and approximately 350 pages of total evidentiary support) was adamant that there should be no evidence presented at the hearing on the Motion for Leave, arguing that the standard for review should be the plausibility standard under Rule 12(b)(6)

[133] *See* Reply ¶ 47.

[134] Highland, joined by Seery and the Claims Purchasers, had filed a motion asking the bankruptcy court to set a briefing schedule on the Motion for Leave and to schedule a status conference, indicating that Highland's proposed timetable for same was opposed by HMIT. HMIT subsequently filed a response unopposed to a briefing schedule and status conference, but, before the status conference, HMIT filed a brief, stating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the bankruptcy court did not need evidence to exercise its gatekeeping function and determine if HMIT has a "colorable" claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

motions to dismiss such that "the threshold inquiry is very, very low. Evidence is not allowed. . . . [S]imilar to a 12(b)(6) inquiry, [the court] is limited to the four corners of the principal pleading – in this case, the complaint, or now the revised complaint."[135] Counsel for the Proposed Defendants argued that the standard of review for colorability here, in the specific context of the court exercising its gatekeeping function under the Plan, is more akin to the standards applied under the Supreme Court's *Barton Doctrine*[136] pursuant to which that the bankruptcy court must apply a higher standard than the 12(b)(6) standard, including the consideration of evidence at the hearing on the motion for leave; if the standard of review presents no greater hurdle to the movant than the 12(b)(6) standard applied to every plaintiff in every case, then the gatekeeping provisions mean nothing and do nothing to protect the parties from the harassing, bad-faith litigation they were put in place to prevent.[137] On May 22, 2023, after receipt of post-hearing briefing on the issue, the court entered an order stating that "the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave" and "[t]herefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing [on the Motion to Leave] if they so choose."

Two days later, HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing, seeking expedited depositions of corporate

[135] Transcript of April 24, 2023 Status Conference, Bankr. Dkt. No. 3765 ("April 24 Transcript"), 14:6-11.

[136] The *Barton Doctrine* was established in the 19th century Supreme Court case of *Barton v. Barbour*, 104 U.S. 126 (1881), and states that a party wishing to sue a court-appointed trustee or receiver must first obtain leave of the appointing court by making a *prima facie* case that the claim it wishes to bring is not without foundation.

[137] *See* April 24 Transcript, 36:24-37:4 ("[W]e're exactly today where the Court had predicted in entering [the Confirmation Order], that the costs and distraction of this litigation are substantial. And if all we're doing is replicating a 12(b)(6) hearing on a motion for leave, we're actually not doing anything to reduce, as the Court made clear, the burdens, distractions, of litigation."); 37:5-13 ("The Fifth Circuit likewise cited *Barton* in its order affirming the confirmation order. Specifically, it also explained that the provisions, these gatekeeper provisions requiring advance approval were meant to 'screen and prevent bad-faith litigation.' Well that – if that means only what the Plaintiff[ ] say[s] it does, then it really doesn't do anything at all to screen. There's no gatekeeping because their version of what that means is always policed under 12(b)(6) standards.").

representatives of the Claims Purchasers and of Seery and production of documents pursuant to deposition notices and subpoenas duces tecum that HMIT had attached to the motion. On May 26, 2023, this court held yet another status conference. Following the status conference, the court granted in part and denied in part HMIT's request for expedited discovery by ordering only Seery and Dondero to be made available for depositions prior to the June 8 Hearing. The court reached what seemed like appropriate middle ground by allowing the deposition of Seery and allowing the other parties to depose Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Dondero had been seeking discovery relating to the very claims trades that are the subject of the Revised Proposed Complaint from the Claims Purchasers in Texas state court "Rule 202" proceedings for approximately two years, where their attempts were rebuffed.

Approximately 60 hours before the June 8 Hearing, HMIT filed its Witness and Exhibit List disclosing for the first time two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony). Highland, the Claimant Trust, and Seery filed a joint motion to exclude the expert testimony and documents ("Motion to Exclude"), which the court ultimately granted in a separate order.

During the full-day June 8 Hearing on the Motion to Leave, the court admitted over 50 HMIT exhibits and over 30 Highland/Claimant Trust exhibits. The court heard testimony from HMIT's witnesses Dondero and Seery (as an adverse witness) and from the Highland Parties' witness Mark Patrick, the administrator of HMIT since August 2022 (as an adverse witness). The bankruptcy court allowed HMIT to make a running objection to all evidence—as it continued to argue that evidence was not appropriate.

III. LEGAL ANALYSIS

In determining whether HMIT should be granted leave, pursuant to the Gatekeeper Provision of the Plan and the court's prior Gatekeeper Orders, to pursue the Proposed Claims, the court must address the issue of whether HMIT would have ***standing*** to bring the Proposed Claims in the first instance. If so, the next question is whether the Proposed Claims are "***colorable***." But prior to getting into the weeds on ***standing*** and "***colorability,***" some general discussion regarding the topic of claims trading in the bankruptcy world seems appropriate, given that HMIT's Proposed Claims are based, in large part, on allegations of ***improper*** claims trading.

A. Claims Trading in the Context of Bankruptcy Cases—Can It Be Tortious or Otherwise Actionable?

As noted, at the crux of HMIT's desired lawsuit is what this court will refer to as "claims trading activity" that occurred shortly after the Plan was confirmed, but before the Plan went effective. HMIT believes that the claims trading activity gave rise to various torts: breach of fiduciary duty on the part of Seery; knowing participation in breach of fiduciary duty by the other Proposed Defendants; and conspiracy by all Defendants. HMIT also believes that the following remedies should be imposed: equitable disallowance of the Purchased Claims; disgorgement of the alleged profits the Claims Purchasers made on their purchases; and disgorgement of all Seery's compensation received since the beginning of his "collusion" with the other Defendants. Without a doubt, the Motion for Leave and Proposed Complaint revolve almost entirely around the claims trading activity.

This begs the question: ***When (or under what circumstances) might claims trading activity during a bankruptcy case give rise to a cause of action that either the bankruptcy estate or an economic stakeholder in the case might have standing to bring?*** Here, the claims trading

wasn't even "during a bankruptcy case" really—it was post-confirmation and pre-effective date, and it happened to be: (a) after mediation of the claims, (b) after Rule 9019 settlement motions, (c) after objections by Dondero and certain of his family trusts were lodged, (d) after evidentiary hearings, and (e) after orders were ultimately entered ***allowing*** the claims (and in most cases, such orders were appealed). The further crux of HMIT's desired lawsuit is that Seery allegedly "wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends" by sharing ***material non-public information*** to them regarding the potential value of the claims (i.e., the potential value of the bankruptcy estate), and this is what made the claims trading activity particularly pernicious. The alleged sharing of MNPI allegedly caused the Claims Purchasers to purchase their claims without doing any due diligence and with knowledge that the claims would be worth much more than the Plan's "pessimistic" projections might have suggested, and also allowed Seery to plant friendly allies into the creditor constituency (and on the post-confirmation CTOB) that would "rubber stamp" his generous compensation. This is all referred to as "not arm's-length" and "collusive." Notably, the MNPI mostly pertained to a likely future acquisition of MGM by Amazon (which transaction, indeed, occurred in 2022, after being publicly announced in Spring of 2021); as noted earlier, Highland owned, directly and indirectly, common stock in MGM. Also notably, there had been rumors and media attention regarding a potential sale of MGM for many months.[138] In summary, to be clear, HMIT's desired lawsuit is laced with a theme of "insider trading"—although this isn't a situation of securities trading *per se* (i.e., the unsecured Purchased Claims were not securities), and, as noted earlier, the Texas State Securities Board has not seen fit to investigate the claims trading activity.

So, preliminarily, is claims trading in bankruptcy sinister *per se*? The answer is no.

[138] *E.g.,* Benjamin Mullin, *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale,* THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.).

The activity of investing in distressed debt (which frequently occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and, indeed, has been so for a very long time. As noted by one scholar:

> The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

Adam J. Levitin, *Bankruptcy* Markets*: Making Sense of Claims Trading*, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010) (hereinafter "*Bankruptcy Markets*").[139]

As a pure policy matter, some practitioners have bemoaned this claims trading phenomenon, suggesting that "distressed debt traders may sacrifice the long-term viability of a debtor for the ability to realize substantial and quick returns on their investments."[140] Others suggest that claims trading in bankruptcy is beneficial, in that it allows creditors of a debtor an early exit from a potentially long bankruptcy case, enabling them to save expense and administrative hassles, realize immediate liquidity on their claims (albeit discounted), and may

[139] *See also* Aaron Hammer & Michael Brandess, *Claims Trading: The Wild West of Chapter 11s*, AM. BANKR. INST. JOURNAL 62 (Jul./Aug. 2010); Chaim Fortgang & Thomas Mayer, *Trading Claims and Taking Control of Corporations in Chapter 11,* 12 CARDOZO L. REV. 1, 25 (1990) (noting that "the first recorded instance of American fiduciaries trading claims against insolvent debtors predates all federal bankruptcy laws and goes back to 1790" when the original 13 colonies were insolvent, owing tremendous amounts of debt to various parties in connection with the Revolutionary War; early American investors purchased these debts for approximately 25% of their par value, hoping the claims would be paid at face value by the American government).

[140] Harvey R. Miller, *Chapter 11 Reorganization Cases and the Delaware Myth*, 55 VAND. L. REV. 1987, 2016 (2002). *See also* Harvey R. Miller & Shai Y. Waisman, *Does Chapter 11 Reorganization Remain a Viable Option for Distressed Businesses for the Twenty-First Century?*, 78 AM. BANKR. L.J. 153 (2004); Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129 (2005).

even permit them to take advantage of a tax loss on their own desired timetable.[141] On the flipside, "[c]aims trading permits an entrance to the bankruptcy process for those investors who want to take the time and effort to monitor the debtor and contribute expertise to the reorganization process."[142]

So, what are the "rules of the road" here? What does the Bankruptcy Code dictate regarding claims trading? The answer is nothing. The Bankruptcy Code itself has no provisions whatsoever regarding claims trading. The only thing resembling any regulation of claims trading during a bankruptcy case is found at Federal Rule of Bankruptcy Procedure 3001(e)—the current version of which went into effect in 1991—and it imposes extremely light regulation—if it could even be called that. This rule requires, in pertinent part (at subsection (2)), that "[i]f a claim other than one based on a publicly traded note, bond, or debenture" is traded during the case after a proof of claim is filed, notice/evidence of that trade must be filed with the bankruptcy clerk by the transferee. The transferor shall then be notified and given 21 days to object. If there is an objection, the bankruptcy court will hold a hearing regarding whether a transfer, in fact, took place. If there is no objection, nothing further needs to happen, and the transferee will be considered substituted for the transferor.

There are several things noteworthy about Rule 3001(e)(2). First, the only party given the opportunity to object is the ***transferor*** of the claim (presumably, in the situation of a dispute regarding whether there was truly an agreement regarding the transfer of the claim). Second, there is no need for a bankruptcy court order approving the transfer (except in the event of an objection

[141] *See Bankruptcy Markets*, at 70. *See also In re Kreisler,* 546 F.3d 863, 864 (7th Cir. 2008) ("Claims trading allows creditors to opt out of the bankruptcy system, trading an uncertain future payment for an immediate one, so long as they can find a purchaser.").

[142] *Bankruptcy Markets* at 70 (citing, among other authorities, Edith S. Hotchkiss & Robert M. Mooradian, *Vulture Investors and the Market for Control of Distressed Firms*, 43 J. FIN. ECON. 401, 401 (1997) (finding that "vulture investors add value by disciplining managers of distressed firms").

by the alleged transferor). Third, the ***economic consideration paid need not be disclosed to the court or anyone***. Fourth, there is no requirement or definition of timeliness. Finally, it explicitly does not apply with regard to publicly traded debt. This, alone, means that many claims trades are not even reported in a bankruptcy case. But it is not just publicly traded debt that will not be reflected with a Rule 3001(e) filing. For example, bank debt, in modern times, is often syndicated (i.e., fragmented into many beneficial holders of portions of the debt) and only the administrative agent for the syndicate (or the "lead bank") will file a proof of claim in the bankruptcy—thus, as the syndicated interests (participations) change hands, and they frequently do, there typically will not be a Rule 3001(e) notice filed.[143] To be clear here, this syndication-of-bank-debt fact, along with the fact that there are financial products whereby bank debt might be carved up into economic interests separate and apart from legal title to the loan, means there are many situations in which trading of claims during a bankruptcy case is not necessarily transparent or, for that matter, policed by the bankruptcy court. This is the world of modern bankruptcy. Most of the claims trading that gets reported through a Rule 3001(e) notice is the trading of small vendor claims. And this is all regarded as private sale transactions for the most part.[144]

Suffice it to say that there is not a wealth of case law dealing with claims trading in a bankruptcy context. Perhaps this is not surprising, since it is not prohibited and ***is mostly a matter of private contract between buyer and seller***. The case law that does exist seems to arise in situations of perceived bad faith of a purchaser—for example, when there was an attempt to control voting and/or ultimate control of the debtor through the plan process (not always problematic, but

[143] Anne Marrs Huber & Thomas H. Young, *The Trading of Bank Debt in and Out of Chapter 11*, 15 J. BANKR. L. & PRAC. 1, 1, 3 (2006).

[144] Note that Bankruptcy Rule 3001(e) was very different before 1991. Between 1983-1991, the rule required that parties transferring claims inform the court that a transfer of claims was taking place and also disclose the consideration paid for the transferred claims. A hearing would take place prior to the execution of a trade. Judicial involvement was required and resulted in judicial scrutiny of transactions—something that simply does not exist today.

there are outlier cases where this was found to cross a line and result in consequences such as disallowing votes on a plan or even equitable subordination of a claim).[145] Another type of case that has generated case law is where the purchaser of claims occupied a fiduciary status with the debtor.[146] Still another type of case that has generated case law is where there is an attempt to cleanse claims that might have risks because of a seller's malfeasance, by trading the claim to a new claim holder.[147]

The following is a potpourri of the more notable cases that have addressed claims trading in different contexts. Most of them imposed no adverse consequences on claims traders: *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (where a corporation named Garlin, that was owned by the individual chapter 7 debtors' sister and close friend, purchased a $900,000 bank claim for $16,500, and there was no disclosure of Garlin's connections to debtors and no Rule 3001(e)(2) notice was filed, the Seventh Circuit reversed the bankruptcy court's invocation of the doctrine of equitable subordination to the claim, stating: "Equitable subordination is generally appropriate only if a creditor is guilty of misconduct that causes injury to the interests of other creditors;" the Seventh Circuit further stated that it could "put to one side whether the court's finding of inequitable conduct was correct" because even if there was misconduct, it did not harm the other creditors, who were in the same position whether the original creditor or Garlin happened to own the claim; the Seventh Circuit did note that Garlin's decision to purchase the original bank

[145] *In re Applegate Prop. Ltd.,* 133 B.R. 827, 836 (Bankr. W.D. Tex. 1991) (designating votes of an affiliate of the debtor that purchased a blocking position to thwart a creditor's plan because it was done in bad faith); *In re Allegheny Int'l, Inc.,* 118 B.R. 282, 289–90 (Bankr. W.D. Pa. 1990) (because of bad faith activities, the court designated votes of a claims purchaser who purchased to get a blocking position on a plan). *But see In re First Humanics Corp.,* 124 B.R. 87, 92 (Bankr. W.D. Mo. 1991) (claims purchased by debtor's former management company to gain standing to file a plan to protect interest of the debtor was in good faith).

[146] *See In re Exec. Office Ctrs., Inc.*, 96 B.R. 642, 649-650 (Bankr. E.D. La. 1988) (and numerous old cites therein).

[147] *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 340 B.R. 180 (Bankr. S.D.N.Y. 2006), *vacated, Enron Corp. v. Springfield Assocs., L.L.C. (In re Enron Corp.),* 379 B.R. 425 (S.D.N.Y 2007); *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 333 B.R. 205, 211 (Bankr. S.D.N.Y. 2005).

creditor's claim might have disadvantaged the other creditors if it interfered with the trustee's own potential settlement with the original bank creditor (note that the trustee argued that she had been negotiating a deal with bank under which bank might have reduced its claims); however, the trustee presented no evidence that any deal with the bank was imminent or even likely; thus, whether such a deal could have been reached was speculation; equitable subordination was therefore improper."); *Viking Assocs., L.L.C. v. Drewes (In re Olson),* 120 F.3d 98, 102 (8th Cir. 1997) (case involved the actions of an entity known as Viking in purchasing all of the unsecured claims against the bankruptcy estate of two chapter 7 debtors, Hugo and Jeraldine Olson; Viking was a related entity, owned by the debtors' children, and purchased $525,000 of unsecured claims for $67,000; while the bankruptcy court had discounted the claims down to the purchase amount and subordinated Viking's discounted claims to the claims of the other unsecured creditors, relying on section 105 of the Bankruptcy Code, the Eighth Circuit held that the bankruptcy court lacked the authority to do this, and, thus, reversed and remanded; the Eighth Circuit noted that in 1991, Bankruptcy Rule 3001(e)(2) was amended "to restrict the bankruptcy court's power to inspect the terms of" claims transfers. *Id.* at 101 (citing *In re SPM Mfg. Corp.,* 984 F.2d 1305, 1314 n. 9 (1st Cir. 1993)); the text of the rule makes clear that the existence of a "dispute" depends upon an objection by the ***transferor***; where there is no objection by the ***transferor***, there is no longer any role for the court); *Citicorp. Venture Capital, Ltd. v. Official Committee of Unsecured Creditors (In re Papercraft Corp.),* 160 F.3d 982 (3d Cir. 1998) (large investor who held seat on board of directors of debtor and debtor's parent, and who also had nonpublic information regarding the debtor's value, anonymously purchased 40% of the unsecured claims at a steep discount during the chapter 11 case, and then, having obtained a blocking position for plan voting purposes, proposed a plan to acquire debtor; the claims purchaser's claims were equitably reduced to amount

paid for the claims since investor was a fiduciary who was deemed to have engaged in inequitable conduct); *Figter Ltd. v. Teachers Ins. & Annuity Ass'n of Am. (In re Figter),* 118 F.3d 635 (9th Cir. 1997) (Ninth Circuit affirmed bankruptcy court's ruling that a secured creditor's purchase of 21 out of 34 unsecured claims in the case was in good faith and it would not be prohibited from voting such claims on the debtor's plan, pursuant to Bankruptcy Code section 1126(e)); *In re Lorraine Castle Apartments Bldg. Corp.,* 145 F.2d 55, 57 & 58 (7th Cir. 1945) (in a case under the old Bankruptcy Act, in which there were more restrictions on claims trading, a debtor and two of its stockholders argued that the claims of purchasers of bonds should be limited to the amounts they paid for them; bankruptcy court special master found, "that, though he did not approve generally the ethics reflected by speculation in such bonds," there was no cause for limitation of the amounts of their claims, pointing out that the persons who had dealt in the bonds were not officials, directors, or stockholders of the corporation and owed no fiduciary duty to the estate or its beneficiaries—rather they were investors or speculators who thought the bonds were selling too cheaply and that they might make a legitimate profit upon them; the district court agreed, as did the Seventh Circuit, noting that "[t]o reduce the participation to the amount paid for securities, in the absence of exceptional circumstances which are not present here, would reduce the value of such bonds to those who have them and want to sell them. This would result in unearned, undeserved profit for the debtor, destroy or impair the sales value of securities by abolishing the profit motive, which inspires purchasers."); *In re Washington Mutual, Inc.*, 461 B.R. 200 (Bankr. Del. 2011), *vacated in part*, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (discussion of an equity committee's potential standing to pursue equitable subordination or equitable disallowance of the claims of certain noteholders who had allegedly traded their claims during the chapter 11

case while having material non-public information; while bankruptcy court originally indicating these were viable tools, court later vacated its ruling on this after a settlement was reached).

Suffice it to say that the courts have, more often than not, been unwilling to impose legal consequences, for an actor's involvement with claims trading. At most, in outlier-type situations during a case, courts have taken steps to disallow claims for voting purposes or to subordinate claims to other unsecured creditors for distribution purposes.[148] But the case at bar does not present facts that are typical of any of the situations in reported cases.

For one thing, unlike in the reported cases this court has located, there ***seems to have been complete symmetry of sophistication among the claim sellers and claim purchasers here—and complete symmetry with HMIT for that matter***. All persons involved are highly sophisticated financial institutions, hedge funds, or private equity funds. No one was a "mom-and-pop" type business or vendor that might be vulnerable to chicanery. The claims ranged from being worth $10's of millions of dollars to $100's of millions of dollars in face value. And, of course, the sellers/transferors of the claims have never shown up, subsequent to the claims trading

[148] Note that, while some cases suggest that outright disallowance of an unsecured claim, in the case of "inequitable conduct" might be permitted (not merely equitable subordination to unsecured creditors)—usually citing to *Pepper v. Litton*, 308 U.S. 295 (1939)—the Fifth Circuit has suggested otherwise. *In re Mobile Steel Co., Inc.,* 563 F.2d 692, 699-700 (5th Cir. 1977) (cleaned up) (noting that "equitable considerations can justify only the subordination of claims, not their disallowance" and also noting that "three conditions must be satisfied before exercise of the power of equitable subordination is appropriate[:] (i) The claimant must have engaged in some type of inequitable conduct[;] (ii) The misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant[; and] (iii) Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act." In *Mobile Steel*, the Fifth Circuit held that the bankruptcy judge exceeded the bounds of his equitable jurisdiction by disallowing a group of claims and also reversed the subordination of certain claims, on the grounds that the bankruptcy court had made clearly erroneous findings regarding alleged inequitable conduct and other necessary facts. *Contrast In re Lothian Oil Inc.,* 650 F.3d 539 (5th Cir. 2011) (involving the question of whether a bankruptcy court may ***recharacterize*** a claim as equity rather than debt; the court held yes, but it has nothing to do with inequitable conduct *per se*; rather section 502(b)'s language that a claim should be allowed unless it is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law...." is the relevant authority; unlike equitable subordination, recharacterization is about looking at the true substance of a transaction not the conduct of a party (if it looks like a duck and quacks like a duck, it's a duck—i.e., equity); the court indicated that section 105 is not a basis to recharacterize debt as equity; it's a matter of looking at state law to determine if there is any basis and looking at the nature of the underlying transaction—as either a lending arrangement or equity infusion.

transactions, to complain about anything. Everyone involved here is, essentially, a behemoth and there is literally no sign of innocent creditors getting harmed. Second, the case at bar is unique in that the claims traded here ***had all been allowed after objections, mediation, and Rule 9019 settlements during the bankruptcy case***. Thus, the amounts that would be paid on them were "locked in," so to speak. There was no risk to a hypothetical claims-purchaser of disallowance, offset, or any "claw-back" litigation (or—one might have reasonably assumed—any type of litigation). Third, the terms for distributions on unsecured claims had been established in a confirmed plan (although the claims were purchased before the effective date of the Plan). Thus, there was a degree of certainty regarding return on investment for the Claims Purchasers here that was much higher than if the claims had been purchased early, during, or mid-way through the case.[149] ***This was post-confirmation, pre-effective date claims purchasing.*** Interestingly, all three of these facts might suggest that little due diligence would be undertaken by any hypothetical purchaser. The rules of the road had been set. The court makes this observation because HMIT has suggested there is something highly suspicious about the fact that Farallon allegedly told Dondero that it did no due diligence before purchasing its claims (leading him to conclude that the Claims Purchasers must have purchased their claims based on receiving MNPI from Seery). Not only has there been no colorable evidence suggesting that insider information was shared, but the lack of due diligence in this context does not reasonably seem suspicious. The claims purchases

[149] *See discussion* in BANKRUPTCY MARKETS, at 91:

> Some claims purchasers buy before the bankruptcy petition is filed, some at the beginning of the case, and some towards the end. For example, there are investors who look to purchase at low prices either when a business is failing or early in the bankruptcy and ride through the case until payouts are fairly certain. [Citations omitted.] These investors might be hoping to buy at 30 cents on the dollar and get a payout at 70 cents on the dollar. Perhaps if they waited another six months, the payout would be 74 cents on the dollar, but the additional 4 cents on the dollar for six months might not be a worthwhile return for the time value of the investment. Other investors might not want to assume the risk that exists in the early days of a case when the fate of the debtor is much less certain, but they would gladly purchase at 70 cents on the dollar at the end of the case to get a payout of 74 cents on the dollar six months later.

were almost like passive investments, at this point—there was no risk of a claim objection and there was a confirmed plan, with a lengthy disclosure statement that described not only plan payment terms and projections, but essentially anything that any investor might want to know.

To reiterate, here, HMIT seeks leave to assert the following causes of action:

I. Breach of Fiduciary Duties (Seery)

II. Knowing Participation in Breach of Fiduciary Duties (Claims Purchasers)

III. Conspiracy (all Proposed Defendants)

IV. Equitable Disallowance (Claims Purchasers)

V. Unjust Enrichment and Constructive Trust (all Proposed Defendants)

VI. Declaratory Judgment (all Proposed Defendants)

The court struggles to fathom how any of these proposed causes of action or remedies can be applied in the context of: (a) post-confirmation claims trading; (b) where the claims have all been litigated and allowed.

In reflecting on the case law and various Bankruptcy Code provisions, the court can fathom the following hypotheticals in which claims trading during a bankruptcy case might be somehow actionable:

> **Hypothetical #1**: The most obvious situation would be if a purchaser of a claim files a Rule 3001(e) Notice, and the seller/transferor then files an objection thereto. There would then be a contested hearing between purchaser and seller regarding the validity of the transfer with the bankruptcy court issuing an appropriate order after the hearing on the objection. ***As noted, there was no objection to the Rule 3001(e) notices here***.
>
> **Hypothetical #2:** Alternatively, there could be a breach of contract suit between purchaser and seller if one thinks the other breached the purchase-sale agreement somehow. Perhaps torts might also be alleged in such litigation. ***As noted, there is no dispute between purchasers and sellers here.***
>
> **Hypothetical #3:** If there is believed to be fraud in connection with a plan, a party in interest might, pursuant to section 1144 of the Bankruptcy Code, move for

revocation of the plan "at any time before 180 days after the date of entry of the order for confirmation" and the court "may revoke such order if and only if such order was procured by fraud." ***As noted, here HMIT has suggested that the "pessimistic" plan projections may have been fraudulent or misrepresentations somehow. The time elapsed long ago to seek revocation of the Plan.***

Hypothetical #4: As discussed above, in rare situations (bad faith), during a Chapter 11 case, before a plan is confirmed, a claims purchaser's claim might not be allowed for voting purposes. *See* Sections 1126(e) of the Bankruptcy Code ("the court may designate any entity whose acceptance or rejection of such plan was not in good faith"). ***Obviously, in this case, this is not applicable—the claims were purchased post-confirmation.***

Hypothetical #5: As discussed above, in rare situations (inequitable conduct), a court might equitably subordinate ***claims*** to ***other claims***. *See* Section 510(c) of the Bankruptcy Code. But here**,** HMIT is seeking either: (a) equitable subordination of the ***claims*** of the Claims Purchaser to HMIT's ***Class 10 former equity interest*** (in contravention of the explicit terms of section 510(c)) or, (b) ***equitable disallowance*** of the claims of the Claims Purchasers (in contravention of *Mobile Steel*).

Hypothetical #6: Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case may permit "recharacterization" of a claim from debt to equity in certain circumstances, but not in circumstances like the ones in this case. Here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). The problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). Here there was most definitely "a contest" with regard to all of these purchased claims. ***Thus, it would appear that any effort to have a court reconsider these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.***

Hypothetical #7: If a party believes "insider trading" occurred there are governmental agencies that investigate and police that. ***Here, the purchased claims (which were not based on bonds or certificated equity interests) would not be securities so as to fall under the SEC's purview. Moreover, there was evidence that HMIT or Dondero-Related entities requested that the Texas State Securities Board investigate the claims trading and the board did not find a basis to pursue anyone for wrongdoing***.

Hypothetical #8: The United States Trustee can investigate wrongdoing by a debtor or unsecured creditors committee. While the United States Trustee would naturally have concerns about members of an unsecured creditors committee (or an officer of a debtor-in-possession) adhering to fiduciary duties and not putting their

> own interests above those of the estate, here, there are a couple of points that seem noteworthy. One, the claims trading activity was post-confirmation so—while certain of the claim-sellers may have still been on the unsecured creditors committee, as the effective date of the plan had not yet occurred—the circumstances are very different than if this had all happened during the early, contentious stages of the case. It seems inconceivable that there was somehow a disparity of information that might be troubling—the Plan had been confirmed and it was available for the world to see. The whole notion of "insider information" (just after confirmation here) feels a bit off-point. Bankruptcy practitioners and judges sometimes call bankruptcy a fishbowl or use the "open kimono" metaphor for good reason. It is generally a very open process. And information-sharing on the part of a debtor-in-possession or unsecured creditors committee is intended to be robust. *See, e.g.,* Bankruptcy Code sections 521 and 1102(b)(3). In a way, HMIT here seems to be complaining about this very situation that the Code and Rules have designed.

In summary, claims trading is a highly ***unregulated*** activity in the bankruptcy world. ***HMIT is attempting to pursue causes of action here that, to this court's knowledge, have never been allowed in a context like this***.

B. Back to Standing—Would HMIT Have Standing to Bring the Proposed Claims?

The Proposed Defendants argue that HMIT lacks standing to bring the Proposed Claims, either: (a) derivatively on behalf of the Reorganized Debtor and Claimant Trust, or (b) directly on behalf of itself. Thus, they argue that this is one reason that the Motion for Leave should be denied.

In making their specific standing arguments, the parties analyze things slightly differently:

The Claims Purchasers focus primarily on HMIT's lack of ***constitutional*** standing but also argue that HMIT does not have ***prudential*** standing under Delaware trust law to bring the Proposed Claims either individually or derivatively. Why do they mention Delaware trust law? Because the Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29.[150]

The Highland Parties' standing arguments focus almost entirely on HMIT's lack of ***prudential*** standing under Delaware trust law to bring the Proposed Claims.

HMIT argues that the Proposed Defendants "play fast and loose with standing arguments" and that HMIT has ***constitutional*** standing as a "party aggrieved"[151] to bring the Proposed Claims on behalf of itself. HMIT also argues that it has standing under Delaware trust law to bring a

[150] *See* Proposed Complaint, ¶ 26.

[151] Proposed Complaint, ¶7.

derivative action on behalf of the Claimant Trust, and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to do so.

1. The Different Types of Standing: Constitutional Versus Prudential

The parties are addressing two concepts of standing that can sometimes be confused and misapplied by both attorneys and judges: ***constitutional Article III standing***, which implicates federal court subject matter jurisdiction,[152] and the narrower standing concept of ***prudential standing***, which does not implicate subject matter jurisdiction but nevertheless might prevent a party from having capacity to sue, pursuant to limitations set by courts, statutes or other law.

Article III constitutional standing works as follows: a plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing three elements: (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[153] "If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve."[154] These elements ensure that a plaintiff has "'such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf."[155]

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[152] Article III, Section 2 of the U.S. Constitution gives federal courts jurisdiction over enumerated cases and controversies.

[153] *See Thole v. U.S. Bank, N.A.*, 140 S.Ct. 1615, 1618 (2020)(citing the Supreme Court's seminal case on the tripartite test for Article III constitutional standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), where the Supreme Court stated that "the irreducible constitutional minimum of standing contains [the] three elements"); *see also Spokeo*, 578 U.S. at 338; *Abraugh v. Altimus*, 26 F.4th 298, 302 (5th Cir. 2022) (citing *id.*).

[154] *Transunion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021)(cleaned up).

[155] *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Apart from this minimal constitutional mandate, courts and statutes have set other limits on the class of persons who may seek judicial remedies—and this is the concept of prudential standing. In its recent opinion in *Abraugh v. Altimus*,[156] the Fifth Circuit set forth a detailed analysis of the two types of "standing," noting that the term "standing" is often "misused" in our legal system, which has led to confusion for both attorneys and judges.[157] The constitutional standing that is necessary for a court to exercise subject matter jurisdiction is broader than prudential standing and is only the first hurdle a party must clear before pursuing a claim in federal court.

The Fifth Circuit explained that ***in addition to*** Article III constitutional standing, "courts have occasionally articulated other 'standing' requirements that plaintiffs must satisfy under certain conditions, ***beyond those imposed by Article III***,"[158] such as the "standing" requirement that might be imposed by a statute or by jurisprudence. The *Abraugh* case was a perfect example of the latter.

Abraugh involved the civil rights statutes that provide, among other things, that "a party must have standing under the state wrongful death or survival statutes to bring [a § 1983 cause of action]" and noted that these statutes impose additional "standing" requirements that are a matter of prudential standing, not constitutional standing.[159] In *Abraugh*, the Fifth Circuit reversed and remanded a district court's dismissal of a § 1983 civil rights cause of action—noting that the district court had stated that it was dismissing based on a "lack of subject matter jurisdiction" because the plaintiff in that action lacked standing.[160] The plaintiff was the mother of a prisoner

[156] 26 F.4th 298.
[157] *Id.* at 303.
[158] *Id.* at 302 (emphasis added).
[159] *Id.* at 302-303.
[160] *Id.* at 301.

who died by suicide while in custody who brought a § 1983 action against Louisiana correctional officers and officials. After finding that the plaintiff/mother lacked standing under Louisiana's wrongful death and survival statutes (because there had been a surviving child and wife of the prisoner who were the proper parties with capacity to sue), the district court held that it was dismissing for lack of subject matter jurisdiction. The Fifth Circuit pointed out that the plaintiff/mother may have lacked standing under Louisiana's wrongful death and survival statutes to bring the claim under § 1983, but that type of standing was matter of ***prudential*** standing, and the plaintiff/mother actually ***did*** have ***Article III*** constitutional standing ("a constitutionally cognizable interest in the life of her son").[161] Thus, the district court's error was ***not*** in finding that the plaintiff/mother lacked prudential standing but in improperly conflating the two standing concepts when it held that it had lacked ***subject matter jurisdiction*** to consider any of the plaintiff's/mother's amended complaints.[162] The Fifth Circuit noted specifically that[163]

> prudential standing does not present a jurisdictional question, but "a merits question: who, according to the governing substantive law, is entitled to enforce the right?" As the Federal Rules of Civil Procedure make clear, "an action must be prosecuted in the name of the real party in interest." FED. R. CIV. P. 17(a)(1). And a violation of this rule is a failure of "prudential" standing. "Not one of our precedents holds that the inquiry is jurisdictional." It goes only to the validity of the cause of action. And "the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction."

Somewhat relevant to this prudential standing discussion is the fact that, in this bankruptcy case, there have been dozens of appeals of bankruptcy court orders by Dondero and Dondero-related entities. In connection therewith, both the district court and the Fifth Circuit, in evaluating the ***appellate standing*** of the appellants, have taken pains to distinguish between the concepts of:

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[161] *Id.*

[162] *Id.* at 301, 303-304. The Fifth Circuit opined that "the district court did not err in describing [the mother's] inability to sue under Louisiana law as a defect of 'standing[, b]ut it is a defect of prudential standing, not Article III standing" thus technically not implicating the federal court's subject matter jurisdiction. *Id.* at 303.

[163] *Id.* at 304 (cleaned up).

(a) traditional, constitutional standing, and (b) a type of prudential standing known as the "person aggrieved" test, which is applied in the Fifth Circuit in determining whether a party has ***standing to appeal a bankruptcy court order***—which it describes as a narrower and "more exacting" standard than constitutional standing. As explained in a Fifth Circuit opinion addressing the standing of a Dondero-related entity called NexPoint to appeal bankruptcy court orders allowing professional fees, the "person aggrieved" standard that is typically applied to ascertain bankruptcy ***appellate*** standing originated in a statute in the Bankruptcy Act. The Fifth Circuit continued to apply it after Congress removed the provision when it enacted the Bankruptcy Code in 1978.[164] Because it is narrower and "more exacting" than the test for Article III constitutional standing, it involves application of prudential standing considerations.[165] The Fifth Circuit describes the "person aggrieved" test for bankruptcy appellant standing as requiring that an appellant show that it was "*directly and adversely affected pecuniarily* by the order of the bankruptcy court," requiring "a higher causal nexus between act and injury than traditional standing . . . that best deals with the unique posture of bankruptcy actions."[166] In affirming the district court's dismissal of NexPoint's appeal of the bankruptcy court's fee orders, due to NexPoint's lack of prudential standing under the "person aggrieved" test, the court rejected NexPoint's argument that it had standing to appeal

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[164] *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, No. 22-10575, 2023 WL 4621466, *2 (5th Cir. July 19, 2023)(citing *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004)(cleaned up)).

[165] *Id.* at *1, **4-6 (where the Fifth Circuit repeatedly throughout its opinion refers to the "person aggrieved" test for standing in bankruptcy actions as a test for "prudential standing."); *see also Dondero v. Highland Capital Mgt., L.P.*, Civ. Act. No. 3:20-cv-3390-X, 2002 WL 837208 (N.D. Tex. Mar. 18, 2022)(where the district court, in addressing Dondero's standing to appeal a bankruptcy court order approving a Rule 9019 settlement (between Highland and Acis Capital Management GP LLC), notes that "[i]t is substantially more difficult to have standing to appeal a bankruptcy court's order than it is to pursue a typical complaint under Article III of the U.S. Constitution" and that "the Fifth Circuit has long recognized that bankruptcy cases' wide-reaching scope calls for a more stringent standing test.").

[166] *See id.* at *3 (cleaned up). The court quotes its 2018 opinion in *Matter of Technicool Sys., Inc. (In re Technicool)*, 896 F.3d 382, 385 (5th Cir. 2018), which explains why the "person aggrieved" prudential standing standard is applied in bankruptcy actions: "Bankruptcy cases often involve numerous parties with conflicting and overlapping interests. Allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Given the specter of such sclerotic litigation, standing to appeal a bankruptcy court order is, of necessity, *quite limited*." *Id.* (cleaned up).

because "it meets traditional Article III standing requirements [and that the more exacting] prudential standing considerations such as the 'person aggrieved' standard" did not survive the Supreme Court's 2014 *Lexmark*[167] opinion,[168] which addressed standing issues in the context of false advertising claims under the Lanham Act and reminded that courts may not "limit a cause of action that Congress has created merely because 'prudence' dictates."[169] The Fifth Circuit held that the Supreme Court's reminder in *Lexmark* did not nullify the "person aggrieved" test for prudential standing in bankruptcy appeals, citing its own decision in *Superior MRI Services Inc. v. Alliance Healthcare Services, Inc.*[170] (rendered a year after *Lexmark* was decided), in which it held that *Lexmark* applied only to the circumstances of that case, "rather than broadly modifying—or undermining—*all* prudential standing concerns, such as the one animating the 'person aggrieved' standard in bankruptcy appeals."[171]

Similarly, in yet another appeal in this bankruptcy case involving three Dondero-related entities as appellants (NexPoint, Dugaboy, and HCMFA)—this one an appeal of a bankruptcy court order authorizing the creation of an indemnity subtrust and entry into an indemnity trust agreement—the district court noted the parties' confusion about the standing issue, as exemplified in the parties' reference to constitutional standing when they were actually arguing that they had prudential standing under the "person aggrieved" test: "Although the parties frame this issue as one of constitutional standing . . . they cite case law and present arguments about the prudential

[167] *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

[168] *Id.* at *2.

[169] *See id.* at *4 (cleaned up).

[170] 778 F.3d 502 (5th Cir. 2015).

[171] *NexPoint*, 2023 WL 4621466 at *4 (cleaned up). The Fifth Circuit explicitly stated that "*Lexmark* does not expressly reach prudential concerns in bankruptcy appeals and brought no change relevant here." *Id.* at *5 (cleaned up).

standing requirement embodied in the 'person aggrieved' test."[172] The district court noted that it had an "independent obligation to consider constitutional standing before reaching its prudential aspects."[173] The district court dismissed the appeal as to Dugaboy and HCMFA for lack of standing but, upon concluding that NexPoint did have standing, dismissed the appeal as to it on the merits. The Fifth Circuit affirmed.[174] Interestingly, the court noted that, while the parties did not contest the district court's determination that NexPoint had standing to pursue the appeal, it "may consider prudential standing issues *sua sponte*."[175] In doing so, the Fifth Circuit recognized the distinction between constitutional standing and the prudential "person aggrieved" test applied to bankruptcy appeals, which "is, of necessity, quite limited" and "an even more exacting standard than traditional constitutional standing," as it requires an appellant to show that it is "directly, adversely, and financially impacted by a bankruptcy order."[176]

In summary, in analyzing whether HMIT would have standing to bring the Proposed Claims, this court must ***first*** determine whether HMIT would have constitutional standing under Article III (which is a subject matter jurisdiction hurdle) and, assuming it does, then ***additionally*** address whether HMIT would also have prudential standing (i.e., capacity to sue) pursuant to any applicable statutes (e.g., Delaware statutes), jurisprudence, or other substantive law that might ***limit*** who may sue. Notwithstanding HMIT's argument that it has standing under the "person

[172] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2002 WL 270862, *1 (N.D. Tex. Jan. 18, 2022)(cleaned up). The district court dismissed the appeals of two of the appellants, Dugaboy and HCMFA, finding that they lacked both constitutional standing and prudential standing under the "person aggrieved" test and affirmed the bankruptcy court's order after finding the third appellant, NexPoint, to have prudential standing under the "person aggrieved" test. *Id.* at **1-3 and *4.

[173] *Id.* at *1 n.2.

[174] *Highland Capital Mgt. Fund, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 57 F.4th 494 (5th Cir. 2023).

[175] *Id.* at 501 (cleaned up).

[176] *Id.*

aggrieved" test[177]—which, as discussed above, is a matter of prudential standing—this is applied only in the context of bankruptcy ***appellate*** matters.[178] As noted in its most recent opinion discussing standing in an appeal from the Highland bankruptcy case, the Fifth Circuit reiterated that the "person aggrieved" test is a test for bankruptcy ***appellate*** standing, which is narrower than a party in interest's right to be heard in bankruptcy cases in general.[179] The court rejected an argument that Bankruptcy Code § 1109, which provides that "[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter" confers ***appellate*** standing, noting that "one's standing to appear and be heard before the bankruptcy court [is] a concept distinct from standing to appeal the merits of a decision" and that the "person aggrieved" test for bankruptcy appellate standing is narrower than the test for determining one's standing to appear and be heard in a bankruptcy proceeding.[180]

Thus, the court will now analyze whether HMIT would, at a minimum, have constitutional standing to bring the Proposed Claims.

2. HMIT Would Lack Article III Constitutional Standing to Bring the Proposed Claims.

As noted above, the Supreme Court and the Fifth Circuit have made clear that constitutional standing is necessary for a court to exercise subject matter jurisdiction. It is only the first hurdle a party must clear before pursuing a claim in federal court. HMIT, as plaintiff, would bear the

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[177] HMIT insists that it has constitutional standing to bring claims on its individual behalf "as an aggrieved party." *See* Reply, ¶ 7.

[178] HMIT's argument in this matter that it has constitutional standing because it is a "party aggrieved" incorrectly conflates the prudential bankruptcy appellate "person aggrieved" test with the broader test that is applied to constitutional standing. The court is not being critical of this mistake. As noted at *supra* note 149, the Fifth Circuit in *Abraugh* pointed out that courts and attorneys alike have created confusion by misusing the term "standing" when they equate a lack of "standing," in all instances, with a lack of subject matter jurisdiction, even when the party is found to lack only prudential standing. Thus, HMIT is not alone in its confusion over the two different concepts of standing.

[179] *See NexPoint*, 2023 WL 4621466 at *6.

[180] *Id.* at *6 (cleaned up)("Because Section 1109(b) expands the right to be heard [in a bankruptcy proceeding] to a wider class than those who qualify under the 'person aggrieved' standard, courts considering the issue have concluded that merely being a party in interest is insufficient to confer ***appellate*** standing.")(emphasis added).

burden of establishing: (1) that it suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[181]

Concrete and Particularized; Actual or Imminent. As the Supreme Court made clear in the *Lujan* case, the injury in fact element requires a showing that the injury was "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."[182] The Supreme Court in the *Spokeo* case expounded on the "concrete and particularized" requirements of the "injury in fact" element. Particularization requires a showing that the injury "must affect the plaintiff in a personal and individual way," but while particularization is necessary, it alone is "not sufficient," because an injury in fact must also be "concrete."[183] And, concreteness is "quite different from particularization."[184] A "concrete" injury must be "real," and "not abstract," though it does not mean that the injury must be "tangible," as the injury can be intangible and nevertheless be concrete.[185] In addition to the concreteness and particularization requirements, an injury in fact must be "actual or imminent" such that "allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing."[186] "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly*

[181] *See supra* note 153.
[182] *Lujan*, 504 U.S. at 560 (cleaned up).
[183] *Spokeo*, 578 U.S. at 339.
[184] *Id.* at 340.
[185] *Id.*
[186] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

impending"; "allegations of *possible* future injury are not sufficient."[187]

Traceability - Causal Connection. As to the second element—that the injury was caused by the defendant—the Supreme Court in *Lujan* further described it as requiring a showing that "the injury has to be fairly traceable to the challenged action of the defendant."[188] The "fairly traceable" test requires an examination of "the causal connection between the assertedly unlawful conduct and the alleged injury."[189]

Redressability. The third element—redressability—requires the court to examine the connection "between the alleged injury and the judicial relief requested."[190] "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court."[191] "[A] court must determine that there is an available remedy which will have a 'substantial probability' of redressing the plaintiff's injury."[192]

The Claims Purchasers argue that HMIT lacks constitutional standing to pursue the claims asserted in the Proposed Complaint because: (i) neither HMIT nor the Bankruptcy Estate was injured by the Claim Purchasers' acquisition of the claims; and (ii) the Proposed Complaint lacks a theory of cognizable damages to the Reorganized Debtor, the Claimant Trust, and/or the beneficiaries of the Claimant Trust.[193]

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[187] *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013)(cleaned up); *see also Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir. 2023)("[Injury] cannot be speculative, conjectural, or hypothetical [and] [a]llegations of only a 'possible' future injury similarly will not suffice.")(cleaned up).

[188] *Lujan*, 504 U.S. at 560-61 (cleaned up).

[189] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

[190] *Id.* (noting "it is important to keep the ['fairly traceable' and 'redressability'] inquiries separate if the 'redressability' component is to focus on the requested relief.").

[191] *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998).

[192] *City of Los Angeles v. Lyons*, 461 U.S. 95, 129 n.20 (1983)(Marshall, J., dissenting)(cleaned up); *see also Ondrusek v. U.S. Army Corps of Engineers*, Civ. Act. No. 3:22-cv-1874-N, 2023 WL 2169908, at *5 ("Plaintiffs have not demonstrated that any available remedy would be sufficiently likely to relieve their alleged economic losses. Without a showing of redressability, those harms also cannot support Plaintiff's Article III standing.").

[193] As noted earlier, certain of the Proposed Defendants—the Highland Parties—do not focus on HMIT's lack of constitutional standing to pursue the Proposed Claims against them, but on its lack of prudential standing under

The court agrees with the Claims Purchasers' argument here. What is HMIT's concrete and particularized injury—that is "real" and is not abstract? That is not conjectural or hypothetical? That is actual or imminent?

Recall that, under the Plan, HMIT holds a Class 10 contingent interest in the Claimant Trust that only realizes value if all creditors are paid in full with interest. HMIT alleges the following injury: it has suffered a devaluation of its unvested Contingent Claimant Trust Interest by virtue of the alleged over-compensation of Seery as the Claimant Trustee—Seery's alleged over-compensation depletes the assets in the Claimant Trust available for distribution to creditors under the Plan, such that there is less likely a chance that HMIT ultimately receives any distributions on account of its Class 10 Contingent Claimant Trust Interest.[194] Yet, HMIT testified, through both witnesses Dondero and Patrick, that it had no personal knowledge of what Seery's actual compensation is under the CTA at the time HMIT filed its Motion for Leave. It was clear that HMIT's allegations regarding Seery's "excessive" compensation were based entirely on Dondero's pure speculation. In reality, Seery's base salary is exactly what the bankruptcy court approved during the bankruptcy case by a court order (after negotiations between Seery and the Committee). The CTA now further governs his compensation. The CTA, which was publicly filed ***in advance of*** the Plan confirmation hearing and approved by this court as part of the Plan

applicable law. Because constitutional standing is a matter of subject matter jurisdiction, the court has an independent duty to determine whether HMIT would have constitutional standing to pursue the Proposed Claims in federal court. The issue cannot be forfeited or waived by a party. *See Abraugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)("[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Moreover, courts . . . have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.")(cleaned up); *Abraugh*, 26 F.4th at 304 ("It is our constitutional duty, of course, to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.")(cleaned up).

[194] At the June 8 Hearing, HMIT's counsel was unable to identify any other injury HMIT has alleged to have suffered. HMIT's counsel acknowledged that claims trades, in and of themselves, would not "involve injury to the Reorganized Debtor and to the Claimant Trust" and that claims trades are "normally outside the purview of the bankruptcy court" but that "[h]ere, we have alleged . . . . injury [that] takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers." June 8 Hearing Transcript, 67:16-68:8. HMIT can only point to Seery's excess compensation as injury.

(which has been affirmed by the Fifth Circuit), specifically provides that Seery's post-Effective Date compensation would include a "Base Salary" (again, same as during the bankruptcy case), a "success fee," and "severance."[195] The CTA discussed the role of the Committee and then the CTOB in setting the success fee and severance and the like. A fully executed copy of the CTA was admitted into evidence at the June 8 Hearing. HMIT is essentially arguing that its injury (i.e., diminished likelihood of realizing value on its Contingent Claimant Trust Interest) stems from a court-sanctioned and creditor-approved process for approving compensation to Seery. Moreover, HMIT has failed to plead facts sufficient to show that, even if Seery received excessive compensation and that compensation is ordered to be returned, HMIT's Contingent Claimant Trust Interest will ever vest. The district court and the Fifth Circuit in various appeals by Dugaboy, another Dondero-related entity that, similar to HMIT, was a holder of a limited partnership interest in Highland whose interests were terminated as of the Effective Date of the Plan in exchange for a Contingent Claimant Trust Interest, have repeatedly rejected Dugaboy's claims to have standing based on the ***speculative nature of its alleged injuries as a contingent beneficiary of the Claimant Trust under the Plan***. For example, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy of the bankruptcy court's order authorizing the creation of an indemnity subtrust, wherein Judge Fitzwater found that, in addition to lacking prudential standing under the

[195] The Disclosure Statement that was approved by this court, after notice and a hearing, on November 24, 2020, provided that "The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement . . . ." The CTA was part of a Plan Supplement (as amended) that was filed in advance of the confirmation hearing and provided:

> Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

See Highland Ex. 38, at § 3.13(a)(i).

"person aggrieved" test to appeal the bankruptcy court's order, Dugaboy lacked constitutional standing "because they have not identified any injury fairly traceable to the Order: ***the injuries identified are speculative at best and nonexistent at worst***."[196] HMIT's allegations of injury are, without a doubt, "merely conjectural or hypothetical" and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests."[197] The court finds that HMIT would not meet the "concrete and particularized" or the "actual or imminent" requirements for an "injury in fact," and, thus, would lack constitutional standing to pursue the Proposed Claims.

With regard to the second requirement of constitutional standing—whether HMIT could show "traceability" with respect to the Claims Purchasers and/or Seery (i.e., a "causal connection between the assertedly unlawful conduct and the alleged injury"[198]), as noted above, there is only a speculative injury. Even if there is unlawful conduct asserted (i.e., sharing of MNPI to Claims Purchasers who then, as a *quid pro quo*, rubber stamped excessive compensation for Seery), there is nothing other than a hypothetical theory of an alleged injury (i.e., an allegedly less likelihood of a distribution on a Contingent Claimant Trust Interest).

With respect to the third requirement of constitutional standing—whether HMIT can show "redressability" (i.e., that it is likely, not speculative, that the injury can be redressed by a favorable

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[196] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, *1 n.2 (N.D. Tex. Jan. 28, 2022), *aff'd* 57 F.4th 494 (5th Cir. 2023)(emphasis added); *see also* Judge Scholer's opinion in *Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-2268-S, 2022 WL 3701720, *3 (N.D. Tex. Aug. 8, 2022)(cleaned up), *aff'd per curium*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023) (where Dugaboy had argued that "***its pecuniary interest is . . . a potential recovery under the Plan as one of Debtor's former equity holders***" and that "it ha[d] standing as a 'contingent beneficiary' under the Plan, or a beneficiary who will be entitled to payment after all creditors are paid in full," and Judge Scholer stated, "This assertion is premised on the assumption that Dugaboy's 0.1866% pre-bankruptcy limited partnership interest in Debtor—which was extinguished under the Plan—makes it a contingent beneficiary of the creditor trust created under the Plan. . . . [S]uch a 'speculative prospect of harm is far from a direct, adverse, pecuniary hit' as required to confer standing."

[197] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

[198] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

decision), there are multiple problems here.[199] The major remedy sought here is the equitable disallowance of the allowed Purchased Claims (and disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims). There is no such remedy available here. As noted earlier, there is a similar concept of ***equitable subordination*** of a claim to another claim, or of an interest to another interest, pursuant to Bankruptcy Code section 510(c). But under the literal terms of section 510(c), ***claims cannot be subordinated to interests***. Moreover, the Fifth Circuit noted in the *Mobile Steel* case,[200] that ***equitable disallowance*** of a claim (as opposed to equitable subordination of a claims) is not an available remedy. Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case might permit "recharacterization" of a claim from debt to equity in certain circumstances—but not based on inequitable conduct but rather on the nature of a financial transaction. In any event, here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). As noted earlier, the problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). As further noted earlier, here there was most definitely a "contest" with regard to all of these purchased claims. ***Thus, it would appear***

[199] *See supra* notes 182-184 and accompanying text. The court will note that, as discussed *supra* note 141 and pages 71-72, the remedy of equitable subordination (as to the Claims Purchasers) would not redress HMIT's alleged injury (because equitable subordination of claims to interests is not an available remedy in the Fifth Circuit and thus subordination of the Purchased Claims to other claims would not change HMIT's distributions from the Claimant Trust, if any), and because outright disallowance of all or part of the already allowed Purchased Claims is not an available remedy either, HMIT would not be able to meet the "redressability" requirement with respect to the Claims Purchasers.

[200] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

that any effort to have a court reconsider and potentially disallow these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.

3. HMIT Would Also Lack Prudential Standing to Bring the Proposed Claims.

Even if HMIT would have constitutional standing to bring the Proposed Claims in an adversary proceeding filed in the bankruptcy court, the Proposed Claims would still be barred if HMIT would lack prudential standing to bring them under applicable state or federal law. HMIT argues that it does have prudential standing under both federal bankruptcy law and Delaware law to pursue the Proposed Claims derivatively and also to bring the Proposed Claims in its individual capacity.

With regard to "federal bankruptcy law," HMIT argues that it has standing pursuant to: (a) Rule 23.1 of the Federal Rules of Civil Procedure, pertaining to derivative actions, which "applies to this proceeding pursuant to" Rule 7023.1 of the Federal Rules of Bankruptcy Procedure, and (b) *Louisiana World Exposition v. Federal Insurance Co. ("LWE")*,[201] the Fifth Circuit's leading case addressing when a creditors committee may be granted standing to bring causes of action on behalf of a bankruptcy estate. But, federal bankruptcy law does not confer standing ***where the plaintiff otherwise lacks standing under applicable state law***. In other words, whether HMIT would have prudential standing to sue under Delaware law is dispositive of the issue, regardless of the forum. Rule 23.1 "speaks only to the adequacy of the . . . pleadings," and "cannot be understood to 'abridge, enlarge, or modify any substantive right,'"[202] including a right (or lack thereof) to bring a derivative action under the substantive law of Delaware. Additionally, HMIT's reliance on *LWE* is misplaced: *LWE* permits creditors, in certain circumstances ***during*** a bankruptcy case, to "file

[201] 858 F.2d 233 (5th Cir. 1988).

[202] *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991)(quoting 28 U.S.C. § 2072(b)).

suit on behalf of a debtor-in-possession or a trustee"[203] and does not apply to a party's right to sue, derivatively, on behalf of the Reorganized Debtor or any entity that is the assignee of the former bankruptcy estate's assets. Upon confirmation of the Plan, the bankruptcy estate of Highland ceased to exist;[204] Highland is no longer a debtor-in-possession but a reorganized debtor, and the Claimant Trust is a new entity created under the Plan and Claimant Trust Agreement. Even if *LWE* did apply in this ***post***-confirmation context, it supports the application of Delaware law to the issue of prudential standing and does not supersede state-law requirements for standing. In *LWE*, before addressing the requirements a creditors' committee must meet to sue derivatively on behalf of a bankruptcy estate as a matter of federal bankruptcy law, the Fifth Circuit conducted a lengthy analysis to determine "as a threshold issue" whether the creditors' committee in that case could assert its claims under Louisiana law.[205] The court specifically addressed whether the creditors' committee could pursue a derivative action under Louisiana law and concluded that "there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions."[206] So, even under *LWE* (which the court does not think applies in this post-confirmation context), if HMIT would be barred from bringing a derivative action on behalf the Reorganized Debtor or Claimant Trust under state law, the analysis stops there.[207] Thus, the court looks to Delaware law to determine if HMIT would have prudential standing to pursue the derivative claims on behalf the Reorganized Debtor and the Claimant Trust.

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[203] *LWE*, 858 F.2d at 247.

[204] *See In re Craig's Stores*, 266 F.3d 388, 390 (5th Cir. 2001).

[205] *LWE*, 858 F.2d at 236-45.

[206] *Id.* at 243.

[207] *See In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 (where the Delaware bankruptcy court denied the creditors' committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act, stating, "To determine that the third party

HMIT acknowledges that both the Reorganized Debtor and the Claimant Trust are organized under Delaware law, and thus the cause of action against Seery alleging breach of fiduciary duties to the Reorganized Debtor and the Claimant Trust are governed by Delaware law under the "Internal Affairs Doctrine."[208] In addition, because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting theory of liability as to the Claims Purchasers is also governed by Delaware law.[209] For the reasons set forth below, the court finds that HMIT would lack prudential standing under Delaware law to bring the claims set forth in the Proposed Complaint, derivatively, on behalf of either the Claimant Trust or the Reorganized Debtor.

a) First, HMIT Would Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Claimant Trust.

The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29,[210] and "to proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement" such that "the plaintiff must be a beneficial owner" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[211] This requirement is "mandatory and exclusive" and only "a beneficial owner" "has standing to bring a derivative claim on behalf of the

may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors' state of incorporation or formation.").

[208] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[209] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

[210] *See* Proposed Complaint, ¶ 26.

[211] *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *19 n.123 (Del. Ch. June 15, 2011), *aff'd* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b).

Trust."[212] The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, would lack standing to bring derivative claims on behalf of the Claimant Trust. HMIT argues to the contrary: that it ***is*** currently, and was at all relevant times, a "beneficial owner" of the Claimant Trust under Delaware trust law such that it would have standing to bring derivative claims on behalf of the Claimant Trust if it were allowed to proceed with the filing of the Proposed Complaint. The disagreement turns on the nature of HMIT's interest under the Plan and the Claimant Trust Agreement and whether HMIT, as a holder of such interest, would be considered a "beneficial owner" of the Claimant Trust under Delaware trust law.

As noted, pursuant to the Plan, HMIT's former limited partnership interest in Highland was cancelled as of the Effective Date in exchange for its pro rata share of a "Contingent Claimant Trust Interest," as defined under the Plan.[213] HMIT argues that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present "beneficial owner" under Delaware trust law.

The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust; rather, the "beneficial owners" of the Claimant Trust are the "Claimant Trust Beneficiaries,"[214] which are defined in the Plan and the CTA as "the Holders of Allowed General Unsecured Claims" (which are in Class 8 under the Plan) and "Holders of Allowed Subordinated Claims" (which are in Class 9 under the Plan); [215] HMIT, a holder of a Class 10 interest under the Plan, is neither.

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[212] *In re Nat'l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)). HMIT acknowledges this requirement in its Reply: "Delaware statutory trust law provides that a plaintiff in a derivative action on behalf of a trust must be a beneficial owner at the time of the action and at the time of the transaction." Reply, ¶ 19 (citing 12 Del C. § 3816).

[213] *See* Plan Art. III.H.10 and Art. I.B.44.

[214] Section 2.8 of the CTA provides, "The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . . ." HMIT Ex. 26, § 2.8.

[215] *See* Plan Art. I.B.44 ("'*Claimant Trust Beneficiaries*' means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the

HMIT, as the holder of a "Contingent Claimant Trust Interest," has only an ***unvested*** contingent interest in the Claimant Trust and, as such, is not a "beneficial owner" of the Claimant Trust for standing purposes under Delaware trust law. HMIT argues that it "should be treated as a vested Claimant Trust Beneficiary due to [the Proposed Defendants'] wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein."[216] The court disagrees.

HMIT's status as a "beneficiary" of the Claimant Trust is defined by the CTA itself, pure and simple. The CTA specifically provides that "Contingent Trust Interests" "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA. It is undisputed that HMIT's Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested based on HMIT's unsupported allegation of wrongdoing on the part of Seery, the Claimant Trustee. Thus, the court finds that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, lacks prudential standing under Delaware law to bring derivative claims on behalf of the Claimant Trust.[217]

Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests."); CTA § 1.1(h). *See also*, CTA, 1 at n.2 ("For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan."). HMIT Ex. 26.

[216] Proposed Complaint ¶ 24.

[217] *See Nat'l Coll.*, 251 A.3d at 190–92 (dismissing creditors' derivative claims because they were not "beneficial owners of the Trusts"); *Hartsel*, 2011 WL 2421003, at *19 n.123 (dismissing derivative claims by investors that "no longer own shares" because "those investors no longer have standing to pursue a derivative claim").

b) HMIT Would Likewise Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Reorganized Debtor.

HMIT acknowledges that the Reorganized Debtor, Highland Capital Management, L.P., is a Delaware limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.*[218] To bring "a derivative action" on behalf of a limited partnership, "the plaintiff must be a partner or an assignee of a partnership interest" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[219]

HMIT is not a partner, general or limited, of the Reorganized Debtor limited partnership. HMIT ***was*** a limited partner in the original debtor (specifically, a holder of Class B/C Limited Partnership interests in Highland), but that limited partnership interest was extinguished on August 11, 2021 (the Effective Date of the Plan) per the terms of the Plan, and HMIT does not own any partnership interest in the newly created Reorganized Debtor limited partnership.[220] Because HMIT would not hold a partnership interest in the Reorganized Debtor at "the time of bringing the action," it "lacks derivative standing" to bring claims "on the partnership's behalf."[221] HMIT likewise cannot satisfy "the continuous ownership requirement"; when HMIT's limited partnership interest in the original Debtor was cancelled on the Plan's Effective Date, HMIT "los[t] standing to continue a derivative suit" on behalf of the Debtor.[222] Finally, to the extent HMIT

[218] Proposed Complaint ¶ 25.

[219] 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) ("The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another party's fiduciary duties to them.") (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff'd* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) ("The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.") (citing 6 Del. C. § 17-211(h)).

[220] *See* Plan Art. IV.A.

[221] *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

[222] *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff's partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re*

seeks to bring a "double derivative" action on behalf of the Claimant Trust based on claims purportedly held by its wholly owned subsidiary, the Reorganized Debtor, HMIT lacks standing. A "double derivative" action is a suit "brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled."[223] And, under Delaware law, "parent level standing is required to enforce a subsidiary's claim derivatively."[224] Because HMIT would lack derivative standing to bring claims on behalf of the parent Claimant Trust,[225] it also would lack standing to bring a double derivative action.

c) Finally, HMIT Would Also Lack Prudential Standing under Applicable Law to Bring the Proposed Claims As ***Direct*** Claims.

HMIT argues that it has "direct" standing to pursue the Proposed Claims on behalf of itself, individually.[226] But just because HMIT asserts that some or even all of the Proposed Claims are direct, not derivative claims, does not make it so: "a claim is not 'direct' simply because it is pleaded that way."[227] Rather, in determining whether claims are direct or derivative, a court must "look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs' characterization."[228] And, under Delaware law, "whether a claim is solely derivative or

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SkyPort Global Commcn's, Inc.), 2011 WL 111427, at *25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders "lack standing to bring a derivative claim" under Delaware law because they "had their equity interests in the company extinguished pursuant to the merger under the Plan"); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) ("[T]he cancellation of WorldCom shares under the Plan … prevents the required continuation of shareholder status through the litigation.") (cleaned up).

[223] *Lambrecht v. O'Neal*, 3 A.3d 277, 282 (Del. 2010).

[224] *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

[225] *See supra* pp. 80-82.

[226] *See e.g.*, Motion for Leave ¶ 10 ("HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . ."); *id.* ¶ 67 (arguing that "HMIT has [d]irect [s]tanding"); Proposed Complaint ¶ 24 ("HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.").

[227] *Schmermerhorn*, 2011 WL 111427, at *26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at *7 (Del. Ch. Nov. 5, 2004)).

[228] *See id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)); *see also Moore v. Simon Enters., Inc.*, 919 F.Supp. 1007, 1009 (N.D. Tex. 1995)("The determination of whether a claim is a derivative claim or a direct claim is made by reference to the nature of the wrongs alleged in the complaint, and is not limited by a [party's] characterization or stated intention.")(cleaned up).

may continue as a dual-natured claim 'must turn ***solely*** on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'"[229] "In addition, to prove that a claim is direct, a plaintiff 'must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.'"[230] Similarly, in the bankruptcy context, whether a creditor can assert a claim directly or whether the claim belongs to the estate turns on the nature of the injury for which relief is sought: "[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate," such that "only the bankruptcy trustee has standing to pursue the claim for the estate . . . ."[231] "To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate."[232]

As a reminder, HMIT argues that the injury it has suffered is a devaluation of its interests in the Claimant Trust by virtue of alleged over-compensation of Seery as the Claimant Trustee. HMIT was unable, when pressed during closing arguments, to identify any other injury. It essentially admitted that the claims trades, in and of themselves, would not have harmed the Claimant Trust, the Reorganized Debtor, or individual stakeholders, including HMIT, ***since the Claims Purchasers acquired already allowed unsecured claims, such that the distributions on those claims pursuant to the Plan would be unchanged in the hands of new holders of the claims***.

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[229] *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original).

[230] *Id.* (quoting *Tooley*, 845 A.2d at 1033); *see also Schmermerhorn*, 2011 WL 111427, at *24 (same).

[231] *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)).

[232] *Id.*; *see also Schertz-Cibolo-Universal City Indep. Sch. Dist. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994)("If a cause of action alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate.")(citations omitted).

Thus, by its own concessions, any alleged harm to HMIT (through devaluation of assets in the Claimant Trust) "comes about only because of harm to the debtor," so the alleged "injury is derivative."[233] The court concludes that all of the claims set forth in the Proposed Complaint allege derivative claims only, and that none would be direct claims against the Proposed Defendants. Thus, HMIT would lack prudential standing to bring any of the Proposed Claims in the Proposed Complaint, so its Motion for Leave should be denied.

d) Some Final Points Regarding Standing.

In this standing discussion, one should not lose sight of the fact that there are both procedural safeguards in place, as well as certain independent individuals in place with fiduciary duties that might act in the event of any shenanigans regarding Claimant Trust activities. Under section 4.1 of the CTA (approved as part of the Plan process), the CTOB, which includes an independent disinterested member in addition to representatives of the Claims Purchasers,[234] oversees the Claimant Trustee's performance of his duties, approves his compensation, and may remove him for cause. Moreover, there is a separate "Litigation Trustee" in this case who was brought in, post-confirmation, as an independent fiduciary to pursue claims and causes of action. These independent persons are checks and balances in the post-confirmation wind down of Highland. This is what creditors voted on in connection with the Plan. Seery and the Claims Purchasers are not in sole control of anything. The CTA, as well as Delaware law, very clearly set forth who can bring an action in the event of some colorable claim. This is the reality of prudential

[233] *Meridian*, 912 F.3d at 293–94 ("The creditors' injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties."); *see also El Paso,* 152 A.3d at 1260–61 & n.60 (holding that claim "claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative") (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at *12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had "not identified any independent harm suffered by the limited partners"; "the partnership suffered all the harm at issue—it paid too much").

[234] *See supra* note 23 and accompanying text.

standing. Just as in the *Abraugh* case, where Louisiana law dictated that a mother could not bring a wrongful death case when the deceased prisoner had a surviving wife and child, Delaware law and the CTA dictate here that a contingent beneficiary cannot bring the Proposed Claims here. This is separate and apart from whether the claims are colorable.

C. Are the Proposed Claims "Colorable"?

1. What is the Proper Standard of Review for a "Colorability" Determination?

Although the court has determined that HMIT would ***not*** have standing (constitutional or prudential) to bring the Proposed Claims, this court will nevertheless evaluate whether the claims—assuming HMIT somehow has standing—might be "colorable." This, in turn, requires the court to assess what the legal standard is to determine if a claim is "colorable." As a reminder, the Plan's Gatekeeper Provision and this court's prior Gatekeeper Orders entered in January and July 2020 each required that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain a finding from the bankruptcy court that its proposed claims are "colorable." The Gatekeeper Provision and Gatekeeper Orders did not specifically define "colorable" or what type of legal standard should apply.

HMIT argues that the standard for review to be applied by this court is the same as a simple "plausibility" standard used in connection with a Rule 12(b)(6) motions to dismiss. In other words, the court should simply assess whether the allegations of the Proposed Complaint, taken as true and with all inferences drawn in favor of the movant, state a ***plausible*** claim for relief (i.e., colorable equals plausible), and that this standard does not allow for the weighing of evidence by the court.[235] The Proposed Defendants, however, argue that the test for colorability should be more

[235] Reply, ¶ 5 ("[T]he determination of 'colorability' does not allow the 'weighing' of evidence. At most, a Rule 12(b)(6) 'plausibility' standard applies.").

akin to the test applied under the *Barton* doctrine,[236] under which a plaintiff must make a *prima facie* case that a proposed claim against a bankruptcy trustee is "not without foundation." In this regard, they argue that the court can and should consider evidence outside of the four corners of the complaint—especially since HMIT attached to its Motion for Leave, as "evidence" to support it, two declarations of Dondero (as part of a 350-page attachment) and only attempted to withdraw those declarations after the Highland Parties urged that they be permitted to cross-examine Dondero on them.

This court ultimately determined that the "colorability" standard was somewhat of a mixed question of fact and law and, therefore, the parties could put on evidence at the June 8 Hearing if they so-chose. The court would not require it. It was up to the parties. But, in any event, the Proposed Defendants should have an opportunity to cross-examine Dondero on the statements made in his declarations since the declarations had been filed on the docket and the court had reviewed them at this point. HMIT attempted to withdraw the declarations and any reference to them in the Motion for Leave, by filing redacted versions of the Motion for Leave,[237] less than 72 hours before the June 8 Hearing; however, the redacted versions did not redact any allegations in the Motion for Leave that were purportedly supported by the Dondero declarations. Also, HMIT called Dondero as a direct witness, in addition to calling Seery as an adverse witness at the June 8 Hearing, albeit subject to its running objection to the evidentiary format of the hearing.[238] HMIT also filed a witness and exhibit list attaching 80 exhibits and over 2850 pages of evidence and

[236] *Barton v. Barbour,* 104 U.S. 126 (1881).

[237] Bankr. Dkt. Nos. 3815 and 3816.

[238] *See* June 8 Hearing Transcript, 7:20-24, 112:11-13.

moved for the admission of those exhibits at the June 8 Hearing (again, subject to its running objection to the evidentiary format of the hearing).[239]

In determining what appropriate legal standard applies here in the "colorability" analysis, the context in which the Gatekeeper Provision of the Plan was approved seems very relevant. In determining that the Gatekeeper Provision was legal, necessary, and in the best interest of all of the parties, this court set forth in the Confirmation Order a lengthy discussion of the factual support for it, and made specific findings relating to Dondero's post-petition litigation and the need for inclusion of the Gatekeeper Provision in the Plan.[240] This court observed that "prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade" and that "[d]uring the last several months, Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor."[241] This court further found that: (1) Dondero's post-petition litigation "was a result of Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Seery's credible testimony, that if Dondero's plan proposal was not accepted, he would 'burn down the place,'"[242] (2) without the Gatekeeper Provision in place, "Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date" and that "the threat of continued litigation by Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result in lower distributions to creditors because of

[239] *See Hunter Mountain Investment Trust's Witness and Exhibit List in Connection with Its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* ("HMIT W&E List")[Bankr. Dkt. No. 3818] and n.1 thereto; *see also* June 8 Hearing Transcript, 33:7-10.

[240] *See* Confirmation Order ¶¶ 76-79.

[241] *Id.* ¶ 77.

[242] *Id.* ¶ 78. *See supra* note 12.

costs and distraction such litigation or the threats of such litigation would cause,"[243] and, (3) "unless the [court] approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance,[244] the absence of which will present unacceptable risks to parties currently willing to serve in such roles." Thus, as set forth in the Confirmation Order, the Gatekeeper Provision (and the Gatekeeper Orders as well, which were approved based on the same concerns regarding the threat of continued litigation by Dondero and his related entities) required Dondero and related entities to make a threshold showing of colorability, noting that the:

> Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC,* 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017)."[245]

The Fifth Circuit, in approving the Gatekeeper Provision on appeal, noted that that the Plan injunction and Gatekeeper Provision "screen and prevent bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[246]

Again, the court believes it is appropriate to consider the context in which—and the purpose for which—the Gatekeeper Orders and Gatekeeper Provision were entered in assessing

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[243] *Id.*

[244] Asd noted at ⁋ 79 of the Confirmation Order, the bankruptcy court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance for the post-confirmation parties implementing the Plan. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so ***without an exclusion for claims asserted by Mr. Dondero and his affiliates*** required that the Confirmation Order approve the Gatekeeper Provision.

[245] *Id.* ¶ 80.

[246] *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.* (*In re Highland Cap. Mgmt., L.P.*), 48 F.4th 419, 435 (5th Cir. 2022).

how "colorability" should work here. It seems that applying HMIT's proposed Rule 12(b)(6) "plausibility" standard would impose no hurdle at all to litigants and would render the threshold for bringing claims under the Gatekeeper Provision and Gatekeeper Orders entirely duplicative of the motion to dismiss standard that every litigant already faces.

The authorities cited by HMIT in support of its argument for applying a Rule 12(b)(6) standard are inapposite. HMIT has cited no authority that addresses the appropriate standard for assessing the "colorability" of claims in the context of a plan gatekeeper provision—specifically, one implemented in response to a demonstrated need to screen and prevent continued bad-faith, harassing litigation against a chapter 11 debtor that would impede the debtor's implementation of a plan, which is what we have here. HMIT relies on a bevy of cases that include benefits coverage disputes under ERISA, Medicare coverage disputes, and constitutional challenges[247]—none of which implicate the *Barton* doctrine and vexatious-litigant concerns that were referenced by the court in the Plan as justifications for the gatekeeping provisions at issue here.

In affirming the Plan's Gatekeeper Provision, the Fifth Circuit stated, "Courts have long recognized bankruptcy courts can perform a gatekeeping function" and noted, by way of example, that "[u]nder the '*Barton* doctrine,' the bankruptcy court may require a party to 'obtain leave of

[247] *See Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has "a colorable claim to vested benefits" such that the employee may be considered a "participant" under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting "claimants [with] no colorable legal claim" to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant's double jeopardy claim was "colorable" such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at *3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a "colorable claim" against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at *3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a "colorable claim" to warrant the district court's exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at *5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at *5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a "colorable constitutional claim" such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

the bankruptcy court before initiating an action in district court when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor's official capacity."[248] As noted above, the Fifth Circuit found that the Gatekeeper Provision, which "requires that, before any lawsuit is filed, the plaintiff must seek the bankruptcy court's approval of the claim as 'colorable'"—*i.e.*, to "screen and prevent bad-faith litigation,"—is "sound."[249]

On balance, the court views jurisprudence applying the *Barton* doctrine and vexatious litigant injunctions—while not specifically addressing the "colorability" standard under gatekeeping provisions in a plan[250]—as more informative on how to approach "colorability" than any of the other authorities presented by the parties. One example is *In re VistaCare Group, LLC*.[251]

In *VistaCare*, the Third Circuit noted that, under the *Barton* doctrine, "[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation," and emphasized that the "not without foundation" standard, while similar to the standard courts apply in evaluating Rule 12(b)(6) motions to dismiss, "involves a greater degree of flexibility" than a Rule 12(b)(6) motion to dismiss because "the bankruptcy court, which given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit," and "is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor's estate."[252] To satisfy the "*prima facie* case standard," "the movant must do more than meet the liberal notice-pleading

[248] *Id.* at 438 (cleaned up).

[249] *Id.* at 435.

[250] The court acknowledges that the *Barton* doctrine itself would not be directly applicable here because HMIT is proposing to bring the Proposed Complaint in the bankruptcy court – the "appointing" court of Seery.

[251] 678 F.3d 218 (3d Cir. 2012).

[252] *Id.* at 232-233 (cleaned up).

requirements of Rule 8."[253] "[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless."[254] This court agrees with the notion, that "[t]o apply a less stringent standard would eviscerate the protections" of the Gatekeeper Provision and Gatekeeper Orders.[255] The court notes, as well, that courts in the *Barton* doctrine context regularly hold evidentiary hearings on motions for leave to determine if the proposed complaint meets the necessary threshold for pursuing litigation. The Third Circuit in *VistaCare* noted that "[w]hether to hold a hearing [on a motion for leave to bring suit against a trustee] is within the sound discretion of the bankruptcy court,"[256] and that "the decision whether to grant leave may involve a 'balancing of the interests of all parties involved,'" which will ordinarily require an evidentiary hearing.[257] The Third Circuit applied "the deferential abuse of discretion standard" in considering whether the bankruptcy court's granting of leave should be affirmed on appeal.[258]

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[253] *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases).

[254] *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at *2 (N.D. Ill. Nov. 30, 2000).

[255] *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at *2).

[256] *VistaCare*, 678 F.3d at 232 n.12.

[257] *Id.* at 233 (quoting *In re Kashani*, 190 B.R. 875, 886–87 (9th Cir. BAP 1995)). The Third Circuit noted that the bankruptcy court's holding of an evidentiary hearing on the motion for leave was appropriate (though not required in every case)). *Id.* at 232 n.12.

[258] *Id.* at 224 ("We review a bankruptcy court's decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard.") (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)). Courts of appeal routinely apply the deferential abuse of discretion standard to a bankruptcy court's decision regarding whether leave should be granted to sue a trustee. Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. *See In re Bednar*, 2021 WL 1625399, at *3 (B.A.P. 10th Cir. Apr. 27, 2021) ("[T]he Bankruptcy Court's decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . . .") (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App'x 969, 973–74 (11th Cir. 2016) ("Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court's ruling on a *Barton* motion for an abuse of discretion.") (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at *3 (B.A.P. 1st Cir. Sept. 17, 2014) ("Appellate courts review a bankruptcy court's decision to deny a motion for leave to sue under the abuse of discretion standard.") (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

The Fifth Circuit has affirmed a bankruptcy court's conducting of an evidentiary hearing, in the context of applying a *Barton* doctrine analysis as to a proposed lawsuit against a trustee, without any concern that the inquiry was somehow improper.[259]

Similarly, courts in the vexatious litigant context, where there was an injunction requiring a movant to seek leave to pursue claims, have required movants to "show that the claims sought to be asserted have sufficient merit," including that "the proposed filing is both procedural and legally sound," and "that the claims are not brought for any improper purpose, such as harassment."[260] "For a prefiling injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review," such as the "plausibility" standard for a Rule 12(b)(6) motion.[261] Rather, courts apply "an additional layer of review," and "may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action" or that the "litigant's allegations are unlikely," especially "when prior cases have shown the litigant to be untrustworthy or not credible . . . ."[262]

In summary, the court rejects HMIT's positions: (a) that it need only show, at most, that the allegations in the Proposed Complaint are "plausible" under the Rule 12(b)(6) standard for motions to dismiss; and (b) that this court improperly conducted an evidentiary hearing on the Motion for Leave (i.e., that consideration of evidence in this context is impermissible). The court notes, again, that HMIT's argument that this court is not permitted to consider evidence in making its "colorability" determination is completely contradictory to HMIT's actions in filing the Motion

[259] *See Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at *4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after "a close examination" by the bankruptcy court of the evidence regarding the trustee's actions and finding that "the plaintiffs' allegations are not based in fact"), *aff'd* 799 F. App'x 271 (5th Cir. 2020).

[260] *Silver v. City of San Antonio*, 2020 WL 3803922, at *1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); *see also Silver v. Perez*, 2020 WL 3790489, at *1 (W.D. Tex. July 7, 2020) (same).

[261] *Silver*, 2020 WL 3803922, at *6.

[262] *Id.*

for Leave, where it attached two Dondero declarations as part of 350 pages of "objective evidence" that "supported" its motion.

The court concludes that the appropriate standard to be applied in making its "colorability" determination in ***this*** bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in ***this*** Plan, is a broader standard than the "plausibility" standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves ***an additional level of review***—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are ***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***. Additionally, this court may, and should, take into consideration its ***knowledge*** of the ***bankruptcy proceedings*** and ***the parties*** and any additional evidence presented at the hearing on the Motion for Leave. For ease of reference, the court will refer to this standard of "colorability" as the "Gatekeeper Colorability Test." The court considers this test as a sort of hybrid of what the *Barton* doctrine contemplates and what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place.

2. HMIT's Proposed Complaint Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test or Even Under a Rule 12(b)(6) "Plausibility" Standard.

The court finds, in the exercise of its gatekeeping function under the Gatekeeper Orders and the Gatekeeping Provision in the Plan, that the Motion for Leave should be denied as the claims set forth in the Proposed Complaint are not "colorable" claims. The court makes this determination after considering evidence admitted at the June 8 Hearing, including the testimony of Dondero, Patrick, and Seery, and the numerous exhibits offered by HMIT and the Highland Parties. HMIT's Proposed Claims lack foundation, are without merit, and appear to be motivated by the improper purposes of vexatiousness and harassment. But, even under the less stringent

"plausibility" standard under Rule 12(b)(6) motions to dismiss, where all allegations must be accepted as true, HMIT's "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," fail to "[]cross the line from conceivable to plausible."[263]

HMIT makes unsubstantiated and conclusory allegations in its Motion for Leave and Proposed Complaint that the Claims Purchasers purchased the large allowed unsecured claims only because Seery, while he was CEO of Highland prior to the Effective Date of the Plan, provided them with MNPI and assurances that the Purchased Claims were very valuable. This was allegedly in exchange for their agreement to approve, in their future capacities as members of the CTOB, excessive compensation for Seery in his capacity as the Claimant Trustee after the Effective Date of the Plan. This was an alleged *quid pro quo* that HMIT claims establishes Seery's breach of fiduciary duties and the Claims Purchasers' conspiracy to participate in that breach. As discussed below, these allegations are unsubstantiated and conclusory allegations, and they do not support the inferences that HMIT needs the court to make when it analyzes whether the Proposed Claims are "colorable"—or even merely plausible.

a) HMIT's Proposed Breach of Fiduciary Duties Claim Set Forth in Count I of the Proposed Complaint

Based on HMIT's Proposed Complaint and the evidence admitted at the June 8 Hearing, the court finds that HMIT has not pleaded facts that would support a "colorable" breach of fiduciary duties claim against Seery, under this court's Gatekeeper Colorability Test, nor a plausible claim pursuant to the Rule 12(b) standard. HMIT alleges that Seery breached his fiduciary duties (i) "[b]y disclosing material non-public information to Stonehill and Farallon"

[263] *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

before their purchase of certain Highland claims, and (ii) by receiving "compensation paid to him under the terms of the [CTA] since the Effective Date of the Plan in August 2021."[264]

As earlier noted, both the Reorganized Debtor and the Claimant Trust are organized under Delaware law and, thus, its proposed Count I against Seery for breach of fiduciary duties to these entities is governed by Delaware law under the "Internal Affairs Doctrine."[265] Under Delaware law, "[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege '(1) that a fiduciary duty existed and (2) that the defendant breached that duty.'"[266] HMIT fails to plausibly or sufficiently allege either element such that its breach of fiduciary duty claims against Seery could survive.

Under Delaware law, officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders.[267] Because Seery did not owe any "duty" to HMIT directly and individually, the Proposed Complaint fails to state a claim for breach of fiduciary duties to HMIT. HMIT's "legal conclusion[]" that Seery "owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate"[268] "do[es] not suffice" to plausibly allege the existence of any actionable fiduciary relationship.[269] And as discussed earlier in the standing section, HMIT does not have standing to assert a breach of fiduciary claim derivatively on behalf

[264] Proposed Complaint ¶¶ 64–67.

[265] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[266] *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at *30 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at *8 (Del. Ch. Feb. 28, 2020)).

[267] *See Gilbert v El Paso Co.*, 1988 WL 124325, at *9 (Del. Ch. Nov. 21, 1988) ("[D]irectors' fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.") *aff'd,* 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at *11 (Del. Ch. Nov. 7, 2013) (same).

[268] Proposed Complaint ¶ 63.

[269] *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

of the Claimant Trust or Reorganized Debtor. But even if HMIT had sufficiently alleged the existence of a fiduciary duty by Seery to HMIT—or to the Reorganized Debtor or Claimant Trust that HMIT would have standing to assert—Seery's alleged communications with Farallon would not have breached those duties.

HMIT alleges that Seery ""disclose[d] material non-public information to Stonehill and Farallon," and they "acted on inside information and Seery's secret assurances of great profits."[270] But the Proposed Complaint does not make any factual allegations regarding HMIT's "conclusory allegations," and its "legal conclusions" are "purely speculative, devoid of factual support," and therefore "stop[] short of the line between possibility and plausibility of entitlement to relief"[271] (and certainly stop short of being "colorable"). HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, and what "assurances of great profits" he made to Farallon or to Stonehill. At the June 8 Hearing, Dondero could only clarify that he believed the MGM Email to have been MNPI and that he ***believed*** that Seery ***must have*** communicated that MNPI to Farallon at some point between December 17, 2020 (the date the MGM Email was sent) and May 28, 2021 (the day that Dondero alleges to have had three telephone calls with representatives of Farallon, Messrs. Patel and Linn, regarding Farallon's purchase of the bankruptcy claims). Dondero alleges that, during these phone calls, Patel and Linn gave Dondero no reason for their purchase of the claims that "made [any] sense." Dondero and Patrick also both testified that neither of them had any personal knowledge: (a) of a *quid pro quo* arrangement between Seery and the Claims Purchasers, (b) of Seery having actually communicated any information from the MGM Email to Farallon, or (c) whether Seery's post-Effective Date compensation had or had not been negotiated in an arms' length transaction. Dondero only

[270] Proposed Complaint ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.

[271] *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up).

speculates regarding these things, because it "made no sense" to him that the Claims Purchasers would have acquired the bankruptcy claims without having received the MNPI. But HMIT admits in the Proposed Complaint that Farallon and Stonehill purchased the Highland claims at discounts of 43% to 65% to their allowed amounts. Thus, they would receive at least an 18% return based on publicly available estimates in Highland's court-approved Disclosure Statement.[272] The evidence established that, if the acquisition of the UBS claims is excluded—recall that the UBS claims were not purchased until August 2021, which was after the May 28, 2021 phones calls that Dondero made to Farallon personnel—the Claims Purchasers would have expected to net over $33 million in profits, or nearly a 30% return on their investment, had Highland met its projections (this is based on the aggregate purchase price of $113 million for the non-UBS claims purchased in the Spring 2021).

To be clear, the only purported MNPI identified in HMIT's Proposed Complaint was the MGM Email Dondero sent to Seery containing "information regarding Amazon and Apple's interest in acquiring MGM." But, the evidence showed that this information was widely reported in the financial press at the time. Thus, it could not have constituted MNPI as a matter of law.[273] Moreover, the evidence showed that Dondero ***did not*** communicate in the MGM Email the actual inside information that he claimed to have obtained as a board member of MGM–which was that Amazon had met MGM's "strike price" and that the MGM board was going into exclusive negotiations with Amazon to culminate the merger with them (and, thus, Apple was no longer considered a potential purchaser). Dondero admitted that he included Apple in the MGM Email for the purpose of making it look like there was a competitive process still ongoing. In other

[272] Proposed Complaint ¶¶ 3, 37, 42.

[273] *See, e.g.*, *SEC v. Cuban*, 2013 WL 791405, at *10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not "material, nonpublic information" and "'becomes public when disclosed to achieve a broad dissemination to the investing public'") (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)).

words, the MGM Email, at the very least, did not include MNPI and, at worst, was deceptive regarding the status of the negotiations between MGM and potential purchasers.

As to HMIT's allegations that Seery's post-Effective Date compensation is "excessive" and that the negotiations between Seery and the CTOB "were not arm's-length,"[274] the evidence at the June 8 Hearing reflected that the allegations are completely speculative, without any foundation whatsoever, and lack merit. And they are also simply not plausible. HMIT fails to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty.[275]

b) HMIT's Proposed Claims Set Forth in Counts II (Knowing Participation in Breach of Fiduciaries) and III (Conspiracy)

HMIT seeks to hold the Claims Purchasers secondarily liable for Seery's alleged breach of fiduciaries duties on an aiding and abetting theory in Count II of the Proposed Complaint[276] and, along with Seery, on a civil conspiracy theory of liability in Count III of the Proposed Complaint.[277] Because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting breach of fiduciary duties claim against the Claims Purchasers (Count II) is also governed by Delaware law.[278] HMIT's conspiracy cause of action against the Claims

[274] Proposed Complaint ¶¶ 4, 13, 54, 74.

[275] *See Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]though the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation.").

[276] Proposed Complaint ¶¶ 69-74.

[277] Proposed Complaint ¶¶ 75-81.

[278] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

Purchasers and Seery (Count III), on the other hand, does not involve a matter of "internal affairs" or of corporate governance, so it is governed by Texas law under the Plan.[279]

As an initial matter, because HMIT does not present either a "colorable"—or even plausible claim—that Seery breached his fiduciary duties, it cannot show that it has alleged a "colorable" or plausible claim for secondary liability for the same alleged wrongdoing.[280] In addition, HMIT's civil conspiracy claim against the Claims Purchasers and Seery is based entirely on Dondero's speculation and unsupported inferences and, thus, HMIT has not "colorably" alleged, or even plausibly alleged, its conspiracy claim. Under Texas law, "civil conspiracy is a theory of vicarious liability and not an independent tort."[281] "[T]he elements of civil conspiracy [are] "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result."[282] While HMIT alleges that "Defendants conspired with each other to unlawfully breach fiduciary duties,"[283] it is simply a "legal conclusion" and not the kind of allegation that the court must assume to be true even for purposes of determining plausibility under a motion to dismiss.[284]

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[279] *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M)(which provides for the application of Texas law to "the rights and obligations arising under this Plan" except for "corporate governance matters.")

[280] *See English v. Narang*, 2019 WL 1300855, at *14 (Del. Ch. Mar. 20, 2019) ("As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.") (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at *10 (Tex. App. Jan. 25, 2022) ("[A] defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.") (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)). Because HMIT's breach of fiduciary duty claim is governed by Delaware law, its aiding and abetting theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas). By contrast, "conspiracy is not an internal affair" or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

[281] *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019).

[282] *Id.* at 141 (cleaned up).

[283] Proposed Complaint ¶ 76.

[284] *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66).

HMIT repeats four times that Seery provided MNPI to Farallon and Stonehill as a "as a *quid pro quo*" for "additional compensation,"[285] each time based upon conclusory allegations based "upon information and belief" and, frankly, pure speculation from Dondero that his imagined "scheme," "covert *quid pro quo,*" and secret "conspiracy" between Seery, on the one hand, and Farallon and Stonehill, on the other,[286] ***must have*** occurred because "[i]t made no sense for the [Claims] Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk" (i.e., "[t]he counter-intuitive nature of the purchases at issue compels the conclusion that the [Claims] Purchasers acted on inside information and Seery's assurance of great profits.")[287] Importantly, HMIT admits that the Claims Purchasers would have turned a profit based on the information available to them at the time of their acquisitions of the Purchased Claims.[288] HMIT's allegations about the level of potential profits were contradicted by their own allegations and other evidence admitted at the June 8 Hearing. But Dondero's speculation about what level of projected return would be sufficient to justify the acquisition of the claims by the Claims Purchasers, or any other third-party investor, does not give rise to a plausible inference that they acted improperly.[289] Thus, HMIT cannot meet

[285] Proposed Complaint ¶ 77; *see also id.* ¶¶ 4, 47, 74.

[286] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.").

[287] *Id.*

[288] *See, e.g.*, *id.* ¶ 3 (alleging that acquiring the claims "did not offer a ***sufficient*** potential profit to justify the publicly disclosed risk")(emphasis added); ¶ 43 ("Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . ."); ¶ 49 ("Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* ***significant*** profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.") (third emphasis added).

[289] In fact, the court did not allow Mr. Dondero to testify regarding what kind of information a hypothetical investor in bankruptcy claims would require or what level of potential profits would justify the purchase of bankruptcy claims by investors in the bankruptcy claims trading market because he was testifying as a fact witness, not an expert. Thus, the court only allowed Dondero to testify as to what data ***he*** (or entities he controls or controlled) would rely on, what ***his*** risk tolerance would have been, and what level of potential profits ***he*** would have required to purchase an allowed unsecured bankruptcy claim in a post-confirmation situation. June 8 Hearing Transcript, 129:6-130:4.

its burden, under the Gatekeeper Colorability Test, of making a prima facie showing that its allegations do not lack foundation or merit. Nor can it meet a plausibility standard.

In addition, contrary to the Proposed Complaint's statement that it would have been "***impossible*** for Stonehill and Farallon (in the absence of insider information) to forecast ***any*** significant profit at the time of their multi-million-dollar investments," the evidence showed there were already reports in the financial press that MGM was engaging with Amazon, Apple, and others in selling its media portfolio, and thus the prospect of an MGM transaction increasing the value of, and return on, the Purchased Claims, "at the time of their multi-million-dollar investments" was publicly available information.[290] HMIT's suggestion that the Claims Purchasers were in possession of inside information not publicly available when they acquired the Purchased Claims is simply not plausible. Nor is HMIT's allegation that "[u]pon information and belief" Farallon "conducted no due diligence but relied on Seery's profit guarantees" plausible. The allegations regarding Farallon not conducting any due diligence are based, again, entirely on Dondero's speculation and inferences he made from what Patel and Linn (of Farallon) allegedly told him on May 28, 2021; Dondero did not testify that either Patel or Linn ever told him specifically that they had conducted no due diligence. HMIT's allegations in the Proposed Complaint that ***Farallon*** "conducted no due diligence," are based on Dondero's speculation, unsubstantiated, and contradicted by the testimony of Seery, who testified that emails to him from Linn in June 2020 and later in January 2021 indicated to him that Farallon, at least, had been conducting some level of due diligence in that they had been following and paying attention to the

[290] The court notes, as well, that the Claim Purchasers acquired the UBS claims in August 2021—approximately two and a half months ***after*** the announcement of the MGM-Amazon transaction (which was on May 26, 2021)—a fact that HMIT makes no attempt to harmonize with its conspiracy theory that the Claims Purchasers profited from the misuse of MNPI allegedly given to them by Seery.

Highland case.[291] In addition, there are no allegations in the Proposed Complaint regarding whether Stonehill conducted due diligence or not, and Patrick testified that neither he nor HMIT had any personal knowledge of how much due diligence Farallon or Stonehill did prior to acquiring the Purchased Claims.[292] The court finds and concludes that HMIT's allegations of aiding and abetting and conspiracy in Counts II and III of the Proposed Complaint are based on unsubstantiated inferences and speculation, lack internal consistency, and lack consistency with verifiable public facts. Accordingly, HMIT has failed to show that these claims have a foundation and merit and has also failed to show that they are plausible.

c) HMIT's Proposed Claims Set Forth in Counts IV (Equitable Disallowance), V (Unjust Enrichment and Constructive Trust), and VI (Declaratory Relief) of the Proposed Complaint

i. Count IV (Equitable Disallowance).

In Count IV of its Proposed Complaint, HMIT seeks "equitable disallowance" of the claims acquired by Farallon's and Stonehill's special purpose entities Muck and Jessup, "to the extent over and above their initial investment," and, in the alternative, equitable subordination of their claims to all claims and interests, including HMIT's unvested Class 10 Contingent Claimant Trust Interest, "given [their] willful, inequitable, bad faith conduct" of allegedly "purchasing the Claims based on material non-public information" and being "unfairly advantaged" in "earning significant profits on their purchases."[293] As noted above, these remedies are not available to HMIT.[294]

First, HMIT's request to equitably subordinate the Purchased Claims to all claims and interests is not permitted because Bankruptcy Code § 510(c), by its terms, permits equitable

[291] *See* June 8 Hearing Transcript, 239:6-21.
[292] *See id.*, 310:19-312:2.
[293] Proposed Complaint ¶¶ 83-87.
[294] *See infra* pages 74-75.

subordination of a ***claim to other claims*** or an ***interest to other interests*** but does not permit equitable subordination of a ***claim to interests***.

Second, "equitable" disallowance of claims is not an available remedy in the Fifth Circuit pursuant to the *Mobile Steel* case.[295]

Third, reconsideration of an already-allowed claim in a bankruptcy case can only be accomplished through Bankruptcy Code § 502(j), which, pursuant to Federal Rule of Bankruptcy Procedure 9024, allows reconsideration of allowance of a claim that was allowed following ***a contest*** (which is certainly the case with respect to the Purchased Claims) based on the "equities of the case." But this is only if the request for reconsideration is made within the one-year limitation prescribed in Rule 60(c) of the Federal Rules of Civil Procedure. HMIT's request for disallowance of Muck and Jessup's Purchased Claims (if it could somehow be construed as a request for reconsideration of their claims), is clearly untimely, as it is being made well beyond a year since their allowance by this court following contests and approval of Rule 9019 settlements. Thus, the court finds that HMIT has not alleged a colorable or even plausible claim in Count IV of the Proposed Complaint and, therefore, the Motion for Leave should be denied.

ii. Count V (Unjust Enrichment and Constructive Trust)

In Count V of the Proposed Complaint, HMIT alleges that, "by acquiring the Claims using [MNPI], Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity" and that "[a]llowing [the Claims Purchasers] to retain their ill-gotten benefits would be unconscionable;" thus, HMIT alleges, the Claims Purchasers "should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment" and "a constructive trust should be imposed on such proceeds . . . ."[296]

[295] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

[296] Proposed Complaint ¶¶ 89-93.

HMIT alleges further that "Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restitute all compensation he has received from the outset of his collusive activities" and "[a]lternatively he should be required to disgorge and restitute all compensation received since the Effective Date" over which a constructive trust should be imposed.[297] HMIT has not alleged a colorable or even a plausible claim for unjust enrichment or constructive trust in Count V.

Under Texas law,[298] "[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay."[299] Thus, "when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory."[300] Here, as noted above, HMIT's only alleged injury is a diminution of the value of its unvested Contingent Claimant Trust Interest by virtue of Seery's allegedly having wrongfully obtained excessive compensation, with the help of the Claims Purchasers. ***Yet Seery's compensation is governed by express agreements*** (i.e., the Plan and the CTA). Thus, HMIT's claim based on unjust enrichment is not an available theory of recovery.

iii. Count VI (Declaratory Relief)

HMIT seeks declaratory relief in Count VI of the Proposed Complaint, essentially, that Dondero's conspiracy theory is correct and that HMIT's would succeed on the merits with respect

[297] *Id.* ¶ 94.

[298] Under the Plan, Texas law governs HMIT's "claim" for unjust enrichment because it is not a "corporate governance matter." (Plan Art. XII.M.) It also governs HMIT's "claim" for constructive trust, which "is merely a remedy used to grant relief on the underlying cause of action." *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

[299] *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).

[300] *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)).

to the Proposed Claims if it were permitted leave to bring them in an adversary proceeding.[301] But, a request for declaratory relief is not "an independent cause of action"[302] and "in the absence of any underlying viable claims such relief is unavailable."[303] This court has already found and concluded that HMIT would not have constitutional or prudential standing to bring the underlying causes of action in the Proposed Complaint. This court has also found and concluded that all of the Proposed Claims are without foundation or merit and are not even plausible and are all; being brought for the improper purpose of continuing Dondero's vexatious, harassing, bad-faith litigation. Thus, HMIT would not be entitled to pursue declaratory judgement relief as requested in Count VI of the Proposed Complaint.

d) HMIT Has No Basis to Seek Punitive Damages

HMIT separately alleges that the Claims Purchasers' and Seery's "misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others," thus entitling HMIT to an award of punitive damages under applicable law. But, HMIT abandoned its proposed fraud claim that was in its Original Proposed Complaint, so its sole claim for primary liability is Seery's alleged breach of his fiduciary duties. And under Delaware law, the "court cannot award punitive damages in [a] fiduciary duty action."[304]

[301] Proposed Complaint ¶¶ 96-99.

[302] *See Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 932 (5th Cir. 2023).

[303] *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at *2 (S.D. Tex. June 7, 2016) (citing *Collin Cty. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)); *see also Hopkins v. Cornerstone Am.*

[304] *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff'd* 682 F. App'x 24 (2d Cir. 2017).

3. HMIT Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test Because It Seeks to Bring the Proposed Complaint for Improper Purposes of Harassment and Bad-Faith, Vexatiousness.

Under this court's Gatekeeper Colorability Test, in addition to showing that its allegations and claims are not without foundation or merit, HMIT must also show that the Proposed Claims are not being brought for any improper purpose. Taking into consideration the court's knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, the court finds that HMIT is acting at the behest of, and under the control or influence of, Dondero in continuing to pursue harassing, bad faith, vexatious litigation to achieve his desired result in these bankruptcy proceedings. So, in addition to failing to show that its Proposed Claims have foundation and merit, HMIT cannot show that it is pursuing the Proposed Claims for a proper purpose and, thus, cannot meet the requirements under the Gatekeeper Colorability Test; HMIT's Motion for Leave should be denied.

IV. CONCLUSION

The court concludes, having taken into consideration both its knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, that HMIT's Motion for Leave should be denied for three independent reasons: (1) HMIT would lack constitutional standing to bring the Proposed Claims (and, thus, the federal courts would lack subject matter jurisdiction over the Proposed Claims); (2) even if HMIT would have constitutional standing to pursue the Proposed Claims, it would lack prudential standing to bring the Proposed Claims; and (3) even if HMIT would have both constitutional standing and prudential standing to bring the Proposed Claims, it has not met its burden under the Gatekeeper Colorability Test of showing that its Proposed Claims are "colorable" claims—that the Proposed Claims are not without foundation, not without merit, and not being pursued for an improper purpose. Moreover,

even if this court's Gatekeeper Colorability Test should be replaced with a Rule 12(b)(6) "plausibility" standard, the Proposed Claims are not plausible.

Accordingly,

IT IS ORDERED that HMIT's Motion for Leave be, and hereby is **DENIED**.

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

Exhibit 3

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 31, 2023

United States Bankruptcy Judge

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

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

ORDER DENYING APPLICATION FOR EXPEDITED HEARING [DE # 3700]

This Order is issued in response to the *Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding* ("Expedited Haring Request") [DE # 3700] filed by Hunter Mountain Investment Trust ("HMIT" or "Movant") on March 28, 2023, at 4:09 p.m. C.D.T. The Expedited Hearing Request seeks a hearing within three days, or as soon thereafter as counsel can be heard, on HMIT's *Emergency Motion for Leave to File Verified Adversary Proceeding* ("Motion for Leave") which was filed on March 28, 2023, at 4:02 p.m. C.D.T.

The court has concluded that no emergency or other good cause exists, pursuant to Fed. R. Bankr. Proc. 9006, and the *Expedited Hearing Request* will be denied. The *Motion for Leave* will be set in the ordinary course (after 21 days' notice to affected parties)—i.e., after April 18, 2023.

The *Motion for Leave* is 37 pages in length and contains 350 pages of attachments. It seeks leave from the bankruptcy court—pursuant to the bankruptcy court's "gatekeeping" role[1] under the confirmed Chapter 11 plan of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor")—to sue at least the following parties: Muck Holdings, LLC ("Muck"); Jessup Holdings, LLC ("Jessup"); Farallon Capital Management, LLC ("Farallon"); Stonehill Capital Management, LLC ("Stonehill"); James P. Seery, Jr. ("Seery"); and John Doe Defendant Nos. 1-10 (collectively, the "Affected Parties"). The conduct that is described as a basis for the desired lawsuit is certain trading of unsecured claims that occurred in 2021 during the Highland bankruptcy case.[2] It appears that millions of dollars of damages are sought by Movant, who was formerly the largest indirect (ultimate) equity holder of Highland. The legal theories (e.g., breaches of fiduciary duties; fraud; conspiracy; equitable disallowance) are novel in the bankruptcy claims trading context. The bankruptcy court, pursuant to the Highland plan, will need to analyze whether such claims are "colorable" such that leave to sue should be granted.

The Affected Parties—and other parties in interest in the underlying bankruptcy case, for that matter—should be afforded a reasonable opportunity to respond to the *Motion for Leave*. While Movant, HMIT, has alleged that it may be facing a statute of limitations defense as to

[1] The bankruptcy court's "gatekeeping" role was recently affirmed by the Fifth Circuit in *In re Highland Capital Management, L.P.*, 48 F.4th 419, 438 (5th Cir. 2022).
[2] Notice of the claims trading was provided in filings in Highland bankruptcy case, as follows: Claim No. 23 (DE ## 2211, 2212, and 2215), Claim Nos. 190 and 191 (DE ## 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (DE # 2263), Claim No. 81 (DE # 2262), Claim No. 72 (DE # 2261).

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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some claims after April 16, 2023, it appears that Movant has known about the conduct underlying the desired lawsuit for well over a year, based on activity that has occurred in the bankruptcy court. *See, e.g., Memorandum Opinion and Order Granting James Dondero's Motion to Remand Adversary Proceeding to State Court, Denying Fee Reimbursement Request, and Related Rulings, Dondero v. Alvarez & Marsal CRF Management, LLC and Farallon Capital Management LLC* [DE # 22], in Adv. Proc. # 21-03051 (January 4, 2022). Thus, the need for an emergency hearing is dubious. Accordingly

IT IS ORDERED that the Expedited Hearing Request is denied.

Counsel shall contact the Courtroom Deputy for a setting on the *Motion for Leave*, which setting shall be no sooner than April 19, 2023.

* * * END OF ORDER * * *

Exhibit 4

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 10, 2023

United States Bankruptcy Judge

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

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

ORDER FIXING BRIEFING SCHEDULE AND HEARING DATE WITH RESPECT TO HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING AS SUPPLEMENTED

The Court conducted a status conference on April 24, 2023, concerning the final scheduling of *Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3760] (collectively, the "Underlying Motion"), as well as whether the hearing on the Underlying Motion would be evidentiary, and the Court having considered (i) the *Opposed Emergency Motion*

to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3738] (the "Motion")[1] filed by Highland Capital Management, L.P., and the Highland Claimant Trust; (ii) the *Joinder to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3740] filed by Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management, L.L.C., and Stonehill Capital Management LLC; (iii) the *Response and Reservation of Rights* [Docket No. 3748] filed by Hunter Mountain Investment Trust; (iv) the *Objection Regarding Evidentiary Hearing and Brief Concerning Gatekeeper Proceedings Relating to "Colorability"* [Docket No. 3758] filed by Hunter Mountain Investment Trust, and (v) the arguments of counsel,

IT IS HEREBY ORDERED that:

1. The hearing on Hunter Mountain Investment Trust's *Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3760] (collectively, the "Underlying Motion") shall be held in person on **June 8, 2023, at 9:30 a.m. (Central Time)** before the Honorable Stacey G. C. Jernigan, at **1100 Commerce Street, 14th Floor, Courtroom 1, Dallas, Texas**, and by Webex for those interested but not directly participating in the hearing.

2. Any responses to the Underlying Motion shall be filed no later than May 11, 2023.

3. Any replies in support of the Underlying Motion shall be filed no later than May 18, 2023.

4. The Court will advise the parties on or reasonably after May 18, 2023, whether the Court intends to conduct the hearing on an evidentiary basis.

###End of Order###

[1] All capitalized terms used but not defined herein have the meanings given to them in the Motion.

Approved as Form Only:

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Counsel for James P. Seery, Jr.

Exhibit 5

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 22, 2023

United States Bankruptcy Judge

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

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

ORDER PERTAINING TO THE HEARING ON HUNTER MOUNTAIN INVESTMENT TRUST'S MOTION FOR LEAVE TO FILE ADVERSARY PROCEEDING

[DE ## 3699 & 3760]

Based on the court's review of all of the parties' pleadings and briefing relating to the above-referenced motion and supplemental motion ("Motion for Leave"), the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave—and, in particular, pertaining to the court's required inquiry into whether "colorable" claims may exist, as described in the Motion for Leave. Therefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing if they so choose. This may include

examining any witness for whom a Declaration or Affidavit has already been filed. The parties will be allowed no more than three hours of presentation time each (allocated three hours to the movant and three hours to the aggregate respondents). This allocated presentation time may be spent in whatever manner the parties believe will be useful to the court (argument/evidence).

 # # # END OF ORDER # # #

United States Bankruptcy Court

Northern District of Texas

In re:

Highland Capital Management, L.P.

Debtor

Case No. 19-34054-sgj

Chapter 11

CERTIFICATE OF NOTICE

District/off: 0539-3 User: admin

Date Rcvd: May 23, 2023 Form ID: pdf012 Total Noticed: 1

The following symbols are used throughout this certificate:

Symbol	Definition
+	Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on May 24, 2023:

Recip ID		Recipient Name and Address
aty	+	Alan J. Kornfeld, Pachulski Stang Ziehl & Jones LLPL, 10100 Santa Monica Blvd., 13 Fl, Los Angeles, CA 90067-4114

TOTAL: 1

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI).

NONE

BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

NONE

NOTICE CERTIFICATION

I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 24, 2023 Signature: /s/Gustava Winters

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on May 22, 2023 at the address(es) listed below:

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TOTAL: 476

Exhibit 6

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 26, 2023

United States Bankruptcy Judge

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

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

ORDER REGARDING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR EXPEDITED DISCOVERY OR, ALTERNATIVELY, FOR CONTINUANCE OF THE JUNE 8, 2023 HEARING

[Dkt. Nos. 3788 and 3791]

Having considered the *Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing* of Hunter Mountain Investment Trust ("HMIT") filed on May 24, 2023, at Dkt. No. 3788 ("Motion for Expedited Discovery"), and, separately, on May 25, 2023, at Dkt. No. 3791 ("Motion for Continuance," and, together with the Motion for Expedited Discovery, the "Motions"), and the arguments of counsel at the emergency hearing on the Motions held on Friday May 26, 2023, at 9:30 a.m.,

IT IS ORDERED that the Motion for Continuance be, and hereby is, **DENIED**;

IT IS FURTHER ORDERED that the Motion for Expedited Discovery be, and hereby is, **GRANTED**, in part and only to the extent as set forth below:

(1) To the extent any party would like to depose either James P. Seery, Jr. or James Dondero in advance of the June 8 hearing ("June 8 Hearing") on HMIT's *Emergency Motion for Leave to File Verified Adversary Proceeding* [Dkt. No. 3699] and *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* [Dkt. 3760] (together, the "Motion for Leave"), Mr. Seery and Mr. Dondero shall be made available for depositions ("Depositions") on a date and at a time agreeable to the parties that is no earlier than May 31, 2023, and no later than June 7, 2023, and no discovery or depositions of any other party or witness will be permitted prior to the June 8 hearing; and

(2) None of the parties shall be entitled to any other discovery, including the production of documents from Mr. Seery or Mr. Dondero, or any other party or witness pursuant to a subpoena *duces tecum*, or otherwise, prior to the conduct of the Depositions or to the court's ruling on the Motion for Leave following the June 8, 2023 hearing;

IT IS FURTHER ORDERED that, except as specifically set forth in this Order, HMIT's Motion for Expedited Discovery be, and hereby is, **DENIED**.

 # # # END OF ORDER # # #

Exhibit 7

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 16, 2023

United States Bankruptcy Judge

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

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

MEMORANDUM OPINION AND ORDER GRANTING JOINT MOTION TO EXCLUDE EXPERT EVIDENCE [DE # 3820]

I. INTRODUCTION.

BEFORE THIS COURT is yet another dispute in the continuing saga of the Chapter 11 bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor").

The Reorganized Debtor has been operating under a confirmed Chapter 11 plan for approximately two years now—a plan having been confirmed on February 22, 2021. The plan was never stayed; it went effective in August 2021; and it was affirmed almost in its entirety by

the United States Court of Appeals for the Fifth Circuit (in late summer 2022). A petition for writ of certiorari regarding the plan confirmation order has been pending at the United States Supreme Court since January 2023. Millions of dollars have been paid out to creditors under the plan, although the plan has not been completed.

This court uses the words "continuing saga" because there is a mountain of litigation that is still pending. First, there are numerous adversary proceedings still pending, in which the Reorganized Debtor and a Litigation Trustee appointed under the plan are seeking to liquidate claims that Highland has against others, in order to augment the pot of money available for unsecured creditors. Some of these adversary proceedings involve what seem like simple suits on promissory notes (albeit very large promissory notes), and others involve highly complex torts. There are numerous appeals pending and, from time to time, petitions for writs of mandamus have been filed post-confirmation. And there are new lawsuits popping up around every corner it seems.

To be sure, this post-confirmation litigation is not the "usual stuff," and the adverse parties in this ongoing post-confirmation litigation are not the "usual suspects." For example, the numerous post-confirmation adversary proceedings do not involve preference lawsuits or other Chapter 5 avoidance actions against non-insider creditors—as we so often see proliferate in Chapter 11 cases post-confirmation. And we do not have long-running proof of claim objections pending post-confirmation—because all of the proof of claim objections regarding non-insider creditors were resolved long ago (with major compromises reached and settlements approved by the court—some after formal mediation). And as for the myriad appeals, the non-insider creditors in this case—with proofs of claim asserted in the hundreds of millions of dollars—overwhelmingly supported Highland's confirmed plan and, therefore, they have not been appellants on any of the aforementioned appeals.

So who has been the adverse party in this deluge of post-confirmation litigation? The founder and former Chief Executive Officer ("CEO") of Highland, Mr. James Dondero personally, and entities that he controls (*e.g.,* family trusts; investment advisory firms; managed funds; and other entities—frequently organized offshore—that were not themselves debtors in the Highland Chapter 11 case but assert party-in-interest status in various capacities). To be clear, Mr. Dondero takes umbrage at the suggestion that ***all*** of the adverse parties in these numerous post-confirmation scuffles are controlled by him.

Which brings us to the current, post-confirmation contested matter before the court. Currently, a party called Hunter Mountain Investment Trust ("HMIT"), a Delaware trust, has filed a "gatekeeper motion"—that is, a motion seeking leave from this court to file an adversary proceeding in the bankruptcy court against the Reorganized Debtor's CEO and certain investors who purchased allowed unsecured claims in this case post-confirmation and pre-Effective Date (as further described below). HMIT's gatekeeper motion has given birth to a sideshow, so to speak, regarding ***what, if any, evidence the court ought to consider in connection with HMIT's gatekeeper motion—the latest "act" in such sideshow focusing on the propriety of considering expert testimony.***

Who or what exactly is HMIT? HMIT is an entity with no employees and no income whose only asset is a contingent right of recovery under the Highland confirmed plan—by virtue of HMIT having held a majority (99.5%) of the limited partnership interests in Highland pre-confirmation, which interests were classified in the plan in a "Class 10" (that was projected to receive no recovery). Mr. Dondero asserts that he does not control HMIT. HMIT represents that, since on or about August 2022, it has been solely controlled by a Mr. Mark Patrick (a former employee of Highland who left Highland one week after its Plan was confirmed and went to work for an entity

called "Skyview Group," that was formed by certain former Highland employees, and apparently now advises various affiliate entities of Mr. Dondero).[1] While HMIT only has one asset (the "Class 10" contingent interest), Mark Patrick has testified that HMIT is liable on a $62.6 million-dollar indebtedness that it owes to The Dugaboy Investment Trust (a family trust of which Mr. Dondero is the lifetime beneficiary), pursuant to a promissory note made by HMIT in favor of Dugaboy, in 2015, in exchange for Dugaboy transferring to HMIT an ownership interest in Highland. *See* Transcript 6/8/23 Hearing, at pp. 304-308 [DE # 3843]. *See also* Highland Exh. 51 from 6/8/23 Hearing [DE # 3817]. Mr. Patrick has testified that Dugaboy and HMIT have a settlement, pursuant to which, Dugaboy is paying HMIT's attorney's fees. Transcript 6/8/23 Hearing, at p. at 313:2-18 [DE # 3843].

II. HMIT'S MOTION FOR LEAVE TO FILE LAWSUIT (a.k.a. THE "GATEKEEPER MOTION").

To understand the procedural motion now before the court—***which deals with whether or not the bankruptcy court should allow or exclude expert witness testimony and documents*** (more fully described below)—one must understand the context in which it is being considered, which is the hearing on HMIT's *Emergency Motion for Leave to File Verified Adversary Proceeding* that was filed by HMIT (the "HMIT Motion for Leave"), which this court loosely refers to sometimes as the "Gatekeeping Motion."

The HMIT Motion for Leave, as alluded to, requests leave from the bankruptcy court to file a post-confirmation, post-Effective Date adversary proceeding pursuant to this bankruptcy court's "gatekeeping" orders and, specifically, the gatekeeping, injunction, and exculpation

[1] *See* DE # 2440 (Transcript of a 6/8/21 Hearing, at pp. 95:18-96:10).

provisions of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [DE # 1943], as modified (the "Plan"). The HMIT Motion for Leave, with attachments, as first filed, was 387 pages in length, and the attachments included a proposed complaint and two sworn declarations of the aforementioned former CEO of the Reorganized Debtor, Mr. Dondero. The HMIT Motion for Leave was later amended to eliminate the declarations of Mr. Dondero. DE ## 3815 & 3816. In a nutshell, HMIT desires leave to sue certain parties regarding ***the post-confirmation, pre-Effective Date purchase of allowed unsecured claims***. The proposed defendants would be:

> **Mr. James P. Seery, Jr.,** who now serves as the CEO of the Reorganized Debtor and also serves as the Trustee of the Highland Claimant Trust created pursuant to the Plan, and also was previously Highland's Chief Restructuring Officer ("CRO") during the case, then CEO, and, also, an Independent Board Member of Highland's general partner during the Highland case. Mr. Seery is best understood as the man who took Mr. Dondero's place running Highland—per the request of the Official Unsecured Creditors Committee.
>
> **Certain Claims Purchasers,** known as Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the "Claims Purchasers"). The Claims Purchasers purchased $240 million face value of unsecured claims post-confirmation and pre-Effective Date—which claims had already been allowed during the Highland case—in the spring of 2021 and another $125 million face value allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk's docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Official Unsecured Creditors Committee during the Highland bankruptcy case).
>
> **John Doe Defendant Nos. 1-10**, which are described to be "currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue."

The proposed plaintiffs would be:

> **HMIT,** which represents that it was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited

partnership interests). HMIT represents that it currently holds a Class 10 interest under the confirmed Highland plan, which gives it a contingent interest in the Claimant Trust created under the plan, and as defined in the Claimant Trust Agreement ("CTA").

Reorganized Debtor, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

Highland Claimant Trust, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Highland Claimant Trust.

The gist of the complaint that HMIT seeks leave to file is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that "wrongful conduct occurred" and "improper trades" were made. HMIT Motion for Leave, 7. HMIT believes the Claim Purchasers paid around $160 million for the $365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland's Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. Also, Mr. Dondero purports to have concluded from conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Mr. Seery must have given these claims purchasers material nonpublic information ("MNPI") regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Mr. Seery shared MNPI regarding the likely imminent sale of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"), in which Highland had, directly and indirectly, substantial holdings. Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in

media reports for several months[2] and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[3] Note that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public). In summary, while HMIT's proposed complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Mr. Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor's estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors (who, incidentally, are not complaining) to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Mr. Seery, and are now happily approving Mr. Seery's allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Mr. Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages.

The individual counts that HMIT wants to allege are:

I. Breach of Fiduciary Duty (as to Mr. Seery)

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[2] *See* Highland Exh. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Exh. 26 (describing prospects of an MGM sale noting that, among its largest shareholders, was "Highland Capital Management, LP") (article October 11, 2020). *See also* Highland Exhs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for $8.4 billion).

[3] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid.

II. Breach of Fiduciary Duty and Knowing Participation in Breach of Fiduciary Duty (as to Claims Purchasers)

III. Fraud by Misrepresentation and Material Nondisclosure (as to all proposed defendants)[4]

IV. Conspiracy (as to all proposed defendants)

V. Equitable Disallowance (as to Muck and Jessup)

VI. Unjust Enrichment and Constructive Trust (as to all proposed defendants)

V. Declaratory Judgment (as to all proposed defendants)

III. NEXT, THE DELUGE OF ACTIVITY, IN MULTIPLE COURTS, AFTER THE FILING OF THE HMIT MOTION FOR LEAVE.

After the HMIT Motion for Leave was filed on March 28, 2023, there was two-and-a-half months of activity regarding ***what type of hearing the bankruptcy court would hold and when*** on the HMIT Motion for Leave. A timeline is set forth below.

3/28/23: The HMIT Motion for Leave was filed, along with a request for emergency hearing on same. DE ## 3699 & 3700. HMIT requested that the court schedule a hearing on the motion "on three (3) days' notice, and that any responses be filed no later than twenty-four hours before the scheduled hearing sought." DE # 3700, 2. The HMIT Motion for Leave was 37 pages in length, plus another 350 pages of supporting exhibits, including two sworn declarations of Mr. Dondero.

3/31/23: Bankruptcy Court entered order denying an emergency hearing on the HMIT Motion for Leave. DE # 3713. The court stated that it would set the hearing on normal notice (at least 21 days' notice), seeing no emergency.

4/4/23-4/12/23: HMIT pursued an unsuccessful interlocutory appeal and then a petition for writ of mandamus regarding the Bankruptcy Court's denial of an emergency hearing at first the District Court and then the Fifth Circuit.

4/13/23: Highland filed a motion asking the Bankruptcy Court to set a briefing schedule on the HMIT Motion for Leave, indicating that Highland's proposed timetable for same was opposed by HMIT. DE # 3738. The Claims Purchaser and Mr. Seery joined in that motion. DE ## 3740 & 3747. HMIT subsequently filed a response unopposed to a briefing schedule and status conference. DE # 3748.

[4] This Count III has gone in and out of the various drafts HMIT has filed with the court and was included in the latest version of the proposed complaint that was filed at DE # 3816.

4/21/23: HMIT filed a Brief [DE # 3758] before the status conference indicating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the Bankruptcy Court did not need evidence in order to exercise its gatekeeping function and determine if HMIT has a "colorable" claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

4/24/23: The Bankruptcy Court held a status/scheduling conference; there was extensive discussion among all the parties regarding what type of hearing there needed to be on the HMIT Motion for Leave. HMIT was adamant there should be no evidence. Highland and Mr. Seery argued they ought to be able to cross-examine Mr. Dondero since his sworn declarations had been attached to the HMIT Motion for Leave as "objective evidence" that "supported" the HMIT Motion for Leave. DE #3699, p. 2. HMIT stated that it would withdraw Mr. Dondero's declarations, but not if the court was going to allow evidence.

5/11/23: Bankruptcy Court entered Order [DE # 3781] fixing a briefing schedule for the parties and stating that the court would "advise the parties on or reasonably after May 18, 2023, whether the Court intend[ed] to conduct the hearing on an evidentiary basis."

5/22/23: Bankruptcy Court issued an Order [DE # 3787] after receipt of briefing, stating that "the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave—and, in particular, pertaining to the court's required inquiry into whether 'colorable' claims may exist, as described in the Motion for Leave. Therefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing if they so choose. This may include examining any witness for whom a Declaration or Affidavit has already been filed. The parties will be allowed no more than three hours of presentation time each (allocated three hours to the movant and three hours to the aggregate respondents). This allocated presentation time may be spent in whatever manner the parties believe will be useful to the court (argument/evidence)."

5/24/23: HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing. [DE # 3788 & 3789]. HMIT continued to urge that it did not think presentation of evidence was appropriate in connection with the HMIT Motion for Leave, but that "subject to and without waiving its objections, HMIT requests immediate leave to obtain all of its requested discovery on or before the specific dates identified in each deposition notice (with duces tecum), failing which the hearing on HMIT's Motion for Leave should be continued until HMIT has obtained such discovery. The requested discovery is generally described in this Motion, but is set forth with particularity in the Deposition Notices with Duces Tecum attached as Exhibits A-E. [paragraph numbering omitted.] In summary, HMIT seeks expedited depositions of corporate representatives of Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup") and also seeks the deposition of James A. Seery, Jr. ("Seery")." Deposition Notices were attached for each of these five parties. Nothing was stated about a possible need for (or intention to present) expert testimony.

5/26/23: The Bankruptcy Court held yet another status conference in response to HMIT's newest emergency motion. The Bankruptcy Court referred to this as a "second hearing on what kind of hearing we were going to have" on the HMIT Motion for Leave. The court heard more discussions on whether it was appropriate to consider evidence at the hearing on the HMIT Motion for Leave. Nothing was mentioned about possible experts. The court, continuing to believe that

there could be mixed questions of fact and law inherent in deciding the HMIT Motion for Leave, granted in part and denied in part HMIT's request for expedited discovery it sought of Mr. Seery and the Claims Purchasers. The Bankruptcy Court issued a follow-up order [DE # 3800] that provided: "(1) To the extent any party would like to depose either James P. Seery, Jr. or James Dondero in advance of the June 8 hearing ("June 8 Hearing") on HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. 3760] (together, the "Motion for Leave"), Mr. Seery and Mr. Dondero shall be made available for depositions ("Depositions") on a date and at a time agreeable to the parties that is no earlier than May 31, 2023, and no later than June 7, 2023, and no discovery or depositions of any other party or witness will be permitted prior to the June 8 hearing; and (2) None of the parties shall be entitled to any other discovery, including the production of documents from Mr. Seery or Mr. Dondero, or any other party or witness pursuant to a subpoena duces tecum, or otherwise, prior to the conduct of the Depositions or to the court's ruling on the Motion for Leave following the June 8, 2023 hearing" The Bankruptcy Court issued this ruling with the expectation—based on everything it heard—that HMIT did not wish for the court to consider evidence but, if it did, it thought it should get to depose Mr. Seery and the Claims Purchasers. The court reached what seemed like appropriate middle ground by allowing the deposition of Mr. Seery and allowing the other parties to depose Mr. Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Mr. Dondero had been seeking discovery from the Claims Purchasers in state court "Rule 202" proceedings for approximately two years.

June 5, 2023 (10:10 pm): HMIT filed its Witness and Exhibit List disclosing two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony).

June 7, 2023 (4:07 pm): A Joint Motion to Exclude Expert Testimony and Documents was filed by Highland, Mr. Seery, and the Highland Claimant Trust ("Motion to Exclude Expert Evidence").

June 8, 2023 (8:12 am): HMIT filed a Response to the Motion to Exclude Expert Evidence.

June 8, 2023 (9:30 am): The Bankruptcy Court commenced its hearing on the HMIT Motion for Leave. The parties desired for court to rule on whether the expert testimony and exhibits should be allowed into the record. After much discussion, the court informed parties that it had not had the opportunity to study their eleventh-hour filings, and that the court would go forward with the hearing as the court had earlier contemplated (three hours per side; no experts for now) and the court would take the Motion to Exclude Expert Evidence under advisement and would schedule a "Day 2" for the hearing on the HMIT Motion for Leave for the experts if it determined that was appropriate. The court gave Highland, Mr. Seery, and the Highland Claimant Trust a deadline of 6/12/23 to reply to HMIT's Response. They filed a Reply (in which the Claims Purchasers joined). The Bankruptcy Court ordered no more pleadings would be considered. HMIT filed another pleading on this topic on 6/13/23 [DE # 3845] and Highland and Mr. Seery responded to the HMIT additional pleading [DE # 3846] and then HMIT replied to their response [DE # 3847].

IV. TURNING, FINALLY, TO THE MOTION TO EXCLUDE EXPERT EVIDENCE

As indicated in the timeline above, HMIT designated on June 5, 2023, at 10:10 pm CDT, two expert witnesses to testify at the hearing on the HMIT Motion for Leave. The first one was Mr. Scott Van Meter, stating that he "may provide opinion testimony on issues relating to Mr. Seery's compensation and claims trading." The second one was Mr. Steve Pully, stating that he "may provide opinion testimony on issues relating to Mr. Seery's claims trading." To be clear, Mr. Seery is not alleged to have engaged in claims trading (i.e., he is not alleged to have either sold or purchased any claims in the Highland case). Rather, it is surmised by HMIT that Mr. Seery might have shared MNPI with the Claims Purchasers. Details about the two proposed experts' education, experience, and the likely substance of their testimony were provided.

Further, with regard to Mr. Van Meter, HMIT disclosed that he had analyzed the claims trading in the Highland case and holds the opinion that there are "red flags" plausibly indicating the use of MNPI in connection with the claim purchasers' investment in their claims –primarily among them the fact that the claims purchasers allegedly did not undertake due diligence. He also would apparently opine that Mr. Seery's compensation is not reasonable or excessive because not based on any market study and because the Claims Purchasers, as large creditors on the post-confirmation oversight committee, have the ability to control it.

Further, with regard to Mr. Pully, HMIT disclosed that the projections in the publicly available information (presumably the Disclosure Statement and Plan and accompanying exhibits, the Bankruptcy Schedules, and Monthly Operating Reports) would not have rewarded the Claims Purchasers with the type of economic return that hedge funds/private equity firms would expect to realize. Thus, they must have had some MNPI to convince them that the claims purchasing was worthwhile.

There are procedural problems and substantive problems with the Proposed Experts (hereinafter so called).

A. The Procedural Problems.

The timeline set forth above is highly problematic. Highland, Mr. Seery, and the Highland Claimant Trust refer to the timeline here as tantamount to "trial by ambush."

HMIT counters that it, in fact, complied with this court's local rules and national rules as well. As to the local rules, Local Bankruptcy Rule 9014-1(c) of the Northern District of Texas requires, in contested matters, the exchange of exhibits and witness lists with opposing parties at least 3 calendar days before a scheduled hearing (unless a specific order otherwise applies). The hearing on the HMIT Motion for Leave was scheduled for June 8, 2023, at 9:30 am CDT, and HMIT filed its exhibit and witness list on June 5, 2023, at 10:10 pm CDT—technically three calendar days before the hearing, albeit less than 72 hours before the hearing. As for the national rules, HMIT states that it was under no duty to disclose the existence or substance of expert testimony prior to the exchange of witness lists, because national Rule 9014 of the Federal Rules of Bankruptcy Procedure ("FRBP"), applying to contested matters, does not incorporate Rule 26(a)(2) of the Federal Rules of Civil Procedure ("FRCP"), which defines the content and timing for expert disclosures (unless the court directs otherwise, which it did not here).

HMIT's focus on these rules is disingenuous. The court does not view the Proposed Experts as having been appropriately and timely disclosed in light of the two-and-a-half-month timeline set forth above and—most importantly—the bankruptcy court's multiple prior conferences and orders setting the scope of the hearing and associated discovery. HMIT's revelation (approximately 60 hours before the hearing on the HMIT Motion for Leave) that it

sought to offer expert testimony came far too late. HMIT never raised even the prospect of expert testimony at any point in its multiple filings with the bankruptcy court (which consisted of many hundreds of pages) or during the two status/scheduling conferences on the HMIT Motion for Leave. During the two status/scheduling conferences, this court repeatedly asked HMIT what it wanted to do at the hearing on the HMIT Motion for Leave (as far as there being evidence or no evidence—zeroing in on the inconvenient complication for HMIT that it had already put in some evidence, through the filing of the declarations of Mr. Dondero in support of its motion, and this, at the very least, would entitle the parties to cross-examine him on the statements contained in the declarations). HMIT represented that it desired for the hearing to be conducted "on the pleadings only" and that it had or would withdraw the declarations of Mr. Dondero (it had not withdrawn the declarations as of the status/scheduling conferences). But, alternatively, if there would be evidence, HMIT wanted to conduct expedited discovery of documents, fact depositions, and corporate representative depositions. [DE # 3791]. ***HMIT made no mention of any experts***. Only after the bankruptcy court had ruled on HMIT's request for expedited discovery—and expressly limited the scope of discovery—did HMIT reveal its Proposed Experts [DE # 3818]. Obviously, the court would have fully vetted with the parties at the status/scheduling conferences the need for experts and the need for any discovery of them if HMIT mentioned it as a possibility.

Additionally, while HMIT focuses on the fact that FRBP 9014 excludes FRCP 26(a)(2)(b)'s requirements regarding expert witness disclosures and reports (absent the court directing otherwise), FRBP 9014 ***does*** include ***FRCP 26(b)(4)(A)***, in contested matters, which provides that "[a] party may depose any person who has been identified as an expert whose opinions may be presented at trial." *See* FRBP 9014(b); FRBP 7026. As alluded to above, this bankruptcy court had limited pre-hearing discovery to "depositions of Mr. Dondero and/or Mr. Seery" in reliance on

HMIT's representations, which omitted any reference to expert witnesses. By waiting until roughly 60 hours before the hearing to disclose the Proposed Experts, this resulted in Highland, Mr. Seery, and the Highland Claimant Trust not having sufficient time to seek to modify the court's prior status/scheduling orders, let alone take two expert depositions.

B. *The Substantive Problems*.

Finally, on a substantive level, the Proposed Experts' testimony and documents are inadmissible because they will not "help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702(a). Federal Rule of Evidence 702(a) provides that a witness who is qualified as an expert may testify in the form of an opinion or otherwise if, among other requirements, "the expert's scientific, technical, or otherwise specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue."

The fact finder here at this stage, in the context of determining whether HMIT's proposed complaint asserts "colorable" claims under the gatekeeper provision of the Plan, obviously, is the bankruptcy judge. The judge, thus, may decide whether the Proposed Experts would help her analyze or understand an issue. This court is well within its discretion to conclude that the Proposed Experts would not advance the judge's analysis. This bankruptcy judge has had years of experience (both before and after her 17 years as a bankruptcy judge) with the topic of claims purchasing that sometimes occurs during a bankruptcy case. The court notes, anecdotally, that the activity of investing in distressed debt (which frequently even occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and has, indeed, been for a couple of decades. As noted by one scholar:

> The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in

> 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

ADAM J. LEVITIN, BANKRUPTCY MARKETS: MAKING SENSE OF CLAIMS TRADING, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010).

This judge has likewise had decades of experience with hedge funds and private equity funds. The court understands very well financial concepts such as return on investment, risk, and the handicapping of how certain events might impact recoveries. This court can take judicial notice that there was volatility in the capital markets during the time period of this case that would certainly factor into decisions to buy or sell claims.[5] This court understands the concepts of MNPI and fiduciary duties. The judge remembers very well when the possibility of an MGM-Amazon transaction flooded the news in late 2020 and 2021, and then became a reality. The court remembers asking the parties in the Highland case during open court about it, since it was widely known that Highland and its affiliates owned direct or indirect interests in MGM stock. This was before, by the way, certain of the claims purchases that are at issue here were made.

Finally, this judge has decades of experience with executive compensation in bankruptcy cases and in connection with post-confirmation trusts.[6] In fact, this court approved Mr. Seery's

[5] A court "can, of course, take judicial notice of stock prices." *Schweitzer v. Invs. Comm. of Phillips 66 Savings Plan*, 960 F.3d 190, 193 n.3 (5th Cir. 2020).

[6] This court even ran across one article that the above-signing judge published on the topic before she was a judge. *Bringing Home the Bacon, or Just Being a Hog? Employee and Executive Compensation Issues in Chapter 11*, 22nd Annual Bankruptcy Conference, The University of Texas School of Law (Nov. 2003) (co-authored with Frances Smith). The bankruptcy judge does not mean to suggest that a 20-year-old article makes anyone per se an expert. It

compensation early on during the bankruptcy case (in 2020), and his compensation was negotiated by the former members of the Official Unsecured Creditors Committee, among others. Mr. Seery's compensation during this bankruptcy case was obviously subject to a motion, notice and a hearing, and was fully disclosed. Mr. Seery's base compensation now is the same as what this court approved back in 2020. Certainly, in a bankruptcy case, one size does not fit all. Highland is a unique case that has involved great contentiousness and hundreds of millions of dollars of assets. Mr. Seery's compensation reflects these circumstances, among other things.

In summary, with all due respect to the Proposed Experts, it is hard for this court to conceive how they could help this court to understand the evidence or determine a fact in issue relative to the gatekeeping motion—as contemplated by Fed. R. Evid. 702(a)—when this court deals with the issues presented by motion, and similar issues, somewhat regularly.

Accordingly, the court will exercise its discretion under Fed. R. Evid 702(a) and exclude the Proposed Experts testimony and HMIT Exhibits 39-52 relating to same.

A further opinion and order will be forthcoming on the HMIT Motion for Leave.

END OF MEMORANDUM OPINION AND ORDER####

is merely to further the point that a long-term bankruptcy judge with Chapter 11 experience typically has developed expertise regarding executive compensation issues pre-and post-confirmation in Chapter 11 cases.

Exhibit 8

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 1, 2023

United States Bankruptcy Judge

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

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

ORDER STRIKING HMIT'S EVIDENTIARY PROFFER PURSUANT TO RULE 103(a)(2) AND LIMITING BRIEFING

The Court has reviewed Hunter Mountain Investment Trust's ("HMIT") *Evidentiary Proffer Pursuant to Rule 103(a)(2)* ("Proffer"; Dkt. No. 3858), the *Highland Parties' Joint Objections To And Motion To Strike HMIT's Evidentiary Proffer Pursuant to Rule 103(a)(2)* ("Motion"; Dkt. No. 3860) filed by Highland Capital Management, L.P., the Highland Claimant Trust, and James P. Seery, Jr. (collectively, the "Highland Parties"), and the *Claims Purchasers' Joinder to the Highland Parties' Objections and Motion to Strike HMIT's Purported Proffer* (Dkt. No. 3861) filed by Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management,

L.L.C., and Stonehill Capital Management LLC (collectively with HMIT and the Highland Parties, the "Parties"). After due deliberation, the Court has determined that good and sufficient cause has been shown for the relief requested in the Motion. It is therefore **ORDERED** that:

1. The Motion is **GRANTED**.

2. The Proffer and its accompanying declarations are stricken from the record for the reasons set forth in the Court's June 27, 2023 email (attached hereto as Exhibit A). The Court directs the Clerk to remove docket entry 3858 from the docket.

3. The Parties shall not file any additional briefs, motions, pleadings, proffers, or other submissions with the Court in connection with the Motion, the Highland Parties' *Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully* (Dkt. No. 3820), or any proposed/excluded expert evidence relative to HMIT's *Motion for Leave to File Verified Adversary Proceeding* (Dkt. No. 3699).

END OF ORDER

Exhibit A

From: Traci Ellison <Traci_Ellison@txnb.uscourts.gov>
Date: June 27, 2023 at 12:40:54 PM CDT
To: "Stancil, Mark" <MStancil@robinskaplan.com>, "Courtney Hamilton" <chamilton@haywardfirm.com>, "Zachery Annable" <zannable@haywardfirm.com>, "Sawnie A. McEntire" <smcentire@pmmlaw.com>, "Roger L. McCleary" <rmccleary@pmmlaw.com>, "Omar J. Alaniz" <OAlaniz@reedsmith.com>, "McIlwain, Brent R (DAL - X59481)" <Brent.McIlwain@hklaw.com>
Subject: 19-34054-sgj11 Highland Capital Management, L.P.

Dear Counsel:

Please see the following message from Judge Jernigan:

"With regard to the Evidentiary Proffer ("Proffer") of Hunter Mountain Investment Trust ("HMIT") filed at DE # 3858 on 6/19/23 (i.e., after the 6/8/23 hearing on HMIT's Motion for Leave to File Verified Adversary Proceeding [DE # 3699] and after the court's written 6/16/23 ruling regarding the admissibility of the proposed expert evidence), the court has determined that the Proffer is unnecessary. Rule 103(a)(2) does not apply if "the substance" of the excluded evidence "was apparent from the context." Fed. R. Evid. 103(a)(2). Here, "the substance" of the excluded evidence was quite apparent from the "context"--more specifically, the witness and exhibit list filed by HMIT, the proposed exhibits offered [see DE # 3818], and the statements of HMIT's counsel on the record at the 6/8/23 hearing.

The court is aware of the motion to strike the Proffer [DE # 3860] and the Joinder therein [DE # 3861]. The court concludes it is appropriate to grant the motion to strike. The court directs counsel for movants to upload a form of order that grants their motion to strike. The order shall direct the Clerk to mark DE # 3858 as stricken from the record as both filed without authority and unnecessary pursuant to FRE 103(a)(2).

The parties are directed to file no more pleadings in the bankruptcy court regarding this issue of the proposed/excluded expert evidence relative to DE # 3699. The court has ruled [at DE # 3854]."

Thank you,
Traci

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

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

HUNTER MOUNTAIN INVESTMENT TRUST'S NOTICE OF APPEAL

Pursuant to 28 U.S.C. § 158(a) and Federal Rules of Bankruptcy Procedure 8001-8002, Movant Hunter Mountain Investment Trust ("HMIT"), both in its individual capacity and derivatively on behalf of the Reorganized Debtor, Highland Capital Management, L.P., and the Highland Claimant Trust,[1] appeals to the United States District Court for the Northern District of Texas, Dallas Division, from this Court's August 25, 2023 Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding (Docs. 3903-3904) (attached to this notice as Exhibits 1 and 2) (the "Final Order"), and all associated interlocutory orders or decisions that merged into or preceded the Final Order, including but not limited to the following:

- March 31, 2023 Order Denying Application for Expedited Hearing (Doc. 3713) (attached to this notice as Exhibit 3);
- May 11, 2023 Order Fixing Briefing Schedule and Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding as Supplemented (Doc. 3781) (attached to this notice as Exhibit 4);

[1] And, in all capacities and alternative derivative capacities asserted in HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Bankr. Dkt. Nos. 3699, 3815, and 3816] ("Emergency Motion"), and the supplement to the Emergency Motion [Bankr. Dkt. No. 3760] and the draft Complaint attached to the same [Bankr. Dkt. No. 3760-1].

- May 24, 2023 Order Pertaining to the Hearing on Hunter Mountain Investment Trust's Motion for Leave to File Adversary Proceeding (Doc. 3790) (attached to this notice as Exhibit 5);

- May 26, 2023 Order Regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery Or, Alternatively, For Continuance of the June 8, 2023 Hearing (Doc. 3800) (attached to this notice as Exhibit 6);

- Evidentiary and other oral rulings, including but not limited to rulings associated with expert testimony, made at the June 8, 2023 Hearing;

- June 16, 2023 Memorandum Opinion and Order Granting Joint Motion to Exclude Expert Evidence (Doc. 3853) (attached to this notice as Exhibit 7); and,

- July 5, 2023 Order Striking HMIT's Evidentiary Proffer Pursuant to Rule 103(a)(2) and Limiting Briefing (Doc. 3869), including the appended email ruling (attached to this notice as Exhibit 8).

The names of all other parties to the Orders and their respective counsel are as follows:

- Movant HMIT, represented by:

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- Non-movants Highland Capital Management, L.P., and the Highland Claimant Trust, represented by:

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  John A. Morris
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- Non-movants Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management, L.L.C., and Stonehill Capital Management LLC, represented by:

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Dated: September 8, 2023

Respectfully Submitted,

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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served via ECF notification on September 8, 2023, on all parties receiving electronic notification.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

3130663.1

Exhibit 1

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed August 25, 2023

United States Bankruptcy Judge

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

IN RE:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-sgj-11**
Reorganized Debtor.	§	

MEMORANDUM OPINION AND ORDER PURSUANT TO PLAN "GATEKEEPER PROVISION" AND PRE-CONFIRMATION "GATEKEEPER ORDERS": DENYING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING[1]
[BANKR. DKT. NOS. 3699, 3760, 3815, and 3816]

I. INTRODUCTION

BEFORE THIS COURT is yet another post-confirmation dispute relating to the Chapter 11 bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor").

[1] On August 2, 2023, this court signed an Order [Bankr. Dkt. No. 3897] that was agreed to among various parties, after the filing of a Motion to Stay and Compel Mediation [Bankr. Dkt. No. 3752] filed by James D. Dondero and related entities. Pursuant to paragraph 7 of that order, certain pending matters in the bankruptcy court are stayed pending mediation. The parties did not agree to stay the matter addressed in this Memorandum Opinion and Order.

It is now more than two and half years since the confirmation of Highland's Plan[2]—the Plan having been confirmed on February 22, 2021.[3] The Plan was never stayed; it went effective on August 11, 2021 ("Effective Date"), and it was affirmed almost in its entirety by the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit"), in late summer 2022, including an approval of the so-called Gatekeeper Provision[4] therein. The Gatekeeper Provision—and how and whether it should now be exercised or interpreted to allow a certain lawsuit to be filed—is at the heart of the current *Emergency Motion for Leave to File Verified Adversary Proceeding* [Bankr. Dkt. Nos. 3699, 3760, 3815, 3816] (collectively, the "Motion for Leave") filed by a movant known as Hunter Mountain Investment Trust ("HMIT").

A. Who is the Movant, HMIT?

Who is HMIT? It is undisputed that it is a former equity owner of Highland. It held 99.5% of Highland's Class B/C limited partnership interests and was classified in a Class 10 under the confirmed Plan, which class treatment provided it with a contingent interest in the Highland Claimant Trust ("Claimant Trust") created under the Plan, and as defined in the Claimant Trust Agreement. This means that HMIT could receive consideration under the Plan if all claims against Highland are ultimately paid in full, with interest. As later further discussed, it is undisputed that

[2] Capitalized terms not defined in this introduction shall have the meaning ascribed to them below.

[3] The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order")[Bankr. Dkt. No. 1943].

[4] In an initial opinion dated August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in large part, "revers[ing] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan's exculpation, and affirm[ing] on all remaining grounds." *In re Highland Capital Management, L.P.*, No. 21-10449, 2022 WL 3571094, at *1 (5th Cir. Aug. 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022, "for the limited purpose of clarifying and confirming one part of its August 19, 2022 opinion," the Fifth Circuit withdrew its original opinion and replaced it with its opinion reported at *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419, 424 (5th Cir. 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section "IV(E)(2) – *Injunction and Gatekeeper Provisions*" of the original opinion: "The injunction and gatekeeper provisions are, on the other hand, perfectly lawful." was replaced with "We now turn to the Plan's injunction and gatekeeper provisions." In all other respects, the Fifth Circuit panel's original ruling remained unchanged. Petitions for writs of certiorari regarding the Confirmation Order have been pending at the United States Supreme Court since January 2023.

HMIT's only asset is its contingent interest in the Claimant Trust. It has no employees or revenue. HMIT's representative has testified that HMIT is liable on more than $62 million of indebtedness owed to The Dugaboy Investment Trust ("Dugaboy"), a family trust of which James Dondero ("Dondero"), the co-founder and former chief executive officer ("CEO") of Highland, and his family members are beneficiaries, and that Dugaboy also is paying HMIT's legal fees. HMIT vehemently disputes the suggestion that it is controlled by Dondero.

B. What Does the Movant HMIT Seek Leave to File?

HMIT seeks leave to file an adversary proceeding ("Proposed Complaint")[5] in the bankruptcy court to bring claims on behalf of itself and, derivatively, on behalf of the Reorganized Debtor and the Claimant Trust for alleged breach of fiduciary duties by the Reorganized Debtor's CEO and Claimant Trustee, James P. Seery, Jr. ("Seery") and conspiracy against: (1) Seery; and (2) purchasers of $365 million face amount of ***allowed*** unsecured claims in this case, who purchased their claims post-confirmation but prior to the occurrence of the Effective Date of the Plan ("Claims Purchasers,"[6] and with Seery, the "Proposed Defendants"). To be clear (and as later further explained), the claims acquired by the Claims Purchasers were acquired by them after extensive litigation, mediation, and settlements were approved by the bankruptcy court and after the original claims-holders had voted on the Plan and after Plan confirmation. As later explained,

[5] In its original Motion for Leave filed at Bankruptcy Docket No. 3699 on March 28, 2023, HMIT sought leave to file the proposed complaint ("Initial Proposed Complaint") attached as Exhibit 1 to the Motion for Leave. Nearly a month later, on April 23, 2023, HMIT filed a *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* ("Supplement") [Bankr. Dkt. No. 3760], a revised proposed complaint as Exhibit 1-A, and stating that "[t]he Supplement is not intended to supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action." Supplement, ¶ 1 and Exhibit 1-A. It is this revised proposed complaint to which this court will refer, when it uses the defined term "Proposed Complaint," even though HMIT filed redacted versions of its Motion for Leave on June 5, 2023 at Bankruptcy Docket Nos. 3815 and 3816 that attached the Initial Proposed Complaint as Exhibit 1.

[6] The Claims Purchasers identified in the Proposed Complaint are Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which is a special purpose entity created by Farallon to purchase allowed unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which is a special purpose entity created by Stonehill to purchase allowed unsecured claims against Highland.

the Claims Purchasers filed notices of their purchases as required by Bankruptcy Rule 3001(e)(2), and no objections were filed thereto. In any event, various damages or remedies are sought against the Proposed Defendants revolving around the Claims Purchasers' claims purchasing activities.

C. Why Does HMIT Need to Seek Leave?

As alluded to above, HMIT filed its Motion for Leave to comply with the provision in the Plan known as a "gatekeeper" provision ("Gatekeeper Provision") and with this court's prior gatekeeper orders entered in January and July 2020, which all require that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain (1) a finding from the bankruptcy court that its proposed claims ("Proposed Claims") are "colorable"; and (2) specific authorization by the bankruptcy court to pursue the Proposed Claims.[7] The Gatekeeper Provision was not included in the Plan *sans raison*. Indeed, as the Fifth Circuit recognized in affirming confirmation of the Plan, the Gatekeeper Provision (along with the other "protection provisions" in the Plan) had been included in the Plan to address the "continued litigiousness" of Mr. James Dondero ("Dondero"), Highland's co-founder and former chief executive officer ("CEO"), that began prepetition and escalated following the post-petition "nasty breakup" between Highland and Dondero, by "screen[ing] and prevent[ing] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[8]

[7] To be clear, the Gatekeeper Provision in the Plan was not the first or even second injunction of its type issued in this bankruptcy case. The Gatekeeper Orders were entered by the bankruptcy court pre-confirmation: (a) in January 2020, just a few months into the case, as part of this court's order approving a corporate governance settlement between Highland and its unsecured creditors committee, in which Dondero, Highland's co-founder and former CEO, was removed from any management role at Highland and three independent directors ("Independent Directors") were appointed in lieu of a chapter 11 trustee being appointed ("January 2020 Order"); and (b) in July 2020, in this court's order authorizing the employment of Seery (one of the three Independent Directors) as the Debtor's new Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative ("July 2020 Order," together with the January 2020 Order, the "Gatekeeper Orders").

[8] *See Highland Capital*, 48 F.4th at 427, 435.

D. Some Further Context Regarding Post-Confirmation Litigation Generally.

Since confirmation of the Plan, hundreds of millions of dollars have been paid out to creditors under the Plan, and there are numerous adversary proceedings and contested matters still pending, at various stages of litigation, in the bankruptcy court, the district court, and the Fifth Circuit, almost exclusively involving Dondero and entities that he owns or controls. To be sure, the post-confirmation litigation in this case does not consist of the usual adversaries and contested matters one typically sees by and against a reorganized debtor and/or litigation trustee, such as preference or other avoidance actions and litigation over objections to claims that are still pending after confirmation of a plan. Indeed, the claims of the largest creditors in this case (with claims asserted in the aggregate of more than one billion dollars) were successfully mediated and incorporated into the Plan—a plan which was ultimately accepted by the votes of an overwhelming majority of Highland's non-insider creditors. Dondero and entities under his control were the only parties who appealed the Confirmation Order, and Dondero and entities under his control have been the appellants in virtually every appeal that has been filed regarding this bankruptcy case. Petitions for writs of mandamus (which have been denied) have been filed in the district court and in the Fifth Circuit by some of these same entities, including one by HMIT, when this court denied setting an ***emergency*** hearing on the instant Motion for Leave (HMIT had sought a setting on three-days' notice).

A recent list of active matters involving Dondero and/or entities and/or individuals affiliated or associated with him, filed in the bankruptcy case by Highland and the Claimant Trust, reveals that there were at least 30 pending and "Active Dondero-Related Litigation" matters as of July 14, 2023: six (6) proceedings in this court; six (6) active appeals or actions are pending in the District Court for the Northern District of Texas; seven (7) appeals in the Fifth Circuit; two (2)

petitions for writs of certiorari in the United States Supreme Court; and nine (9) other proceedings or actions with or affecting the Highland Parties ("Highland," the "Claimant Trust," and "Seery") in various other state, federal, and foreign jurisdictions.[9]

The above-described context is included because the Proposed Defendants assert that the Motion for Leave is just a continuation of Dondero's unrelenting barrage of meritless and harassing litigation, making good on his oft-mentioned alleged threat to "burn down the place" after not achieving the results he wanted in the Highland bankruptcy case. Indeed, the Motion for Leave was filed after two years of unsuccessful attempts by, first, Dondero personally, and then HMIT to obtain pre-suit discovery from the Proposed Defendants (i.e., the Claims Purchasers) through two different Texas state court proceedings, pursuant to Tex. R. Civ. P. 202 ("Rule 202"). In each of these Rule 202 proceedings, Dondero and HMIT espoused the same Seery/Claims

[9] *See* Bankr. Dkt. No. 3880 (filed on July 14, 2023, providing a list of "Active Dondero-Related Litigation" and noting that the list is "a summary of active pending actions only and does not include actions that were resolved by final orders, including actions finally resolved after appeals to the U.S. District Court for the Northern District of Texas and/or the U.S. Court of Appeals for the Fifth Circuit."). Just since the filing by the Highland Parties of the list, ***three*** of the appeals pending in the Fifth Circuit have been decided against the Dondero-related appellants, two of which upheld the district court's dismissal of appeals by Dondero-related entities of bankruptcy court orders based on the lack of bankruptcy appellate standing on behalf of the appellant. On July 19, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by NexPoint Advisors, L.P. ("NexPoint") of bankruptcy court orders approving professional compensation on the basis that NexPoint did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the orders. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, 74 F.4th 361 (5th Cir. 2023). On July 31, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy—the Dondero family trust that, like the movant here in this Motion for Leave, was the holder of a limited partnership interest in Highland, and, as such, now has a contingent interest in the Claimant Trust—which had appealed a bankruptcy court order approving a Rule 9019 settlement on the same basis: Dugaboy did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the settlement order. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10960, 2023 WL 4861770 (5th Cir. July 31, 2023). The July 31, 2023 ruling followed the Fifth Circuit's ruling on February 21, 2023, affirming the district court's dismissal of an appeal by Dugaboy of yet another bankruptcy court order for lack of bankruptcy appellate standing. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023). These rulings by the Fifth Circuit are discussed in greater detail below. The third ruling by the Fifth Circuit since July 14, 2023, was issued by the Fifth Circuit in a per curium opinion not designated for publication on July 26, 2023, this one affirming the district court's affirmance of yet another Rule 9019 settlement order of the bankruptcy court that was appealed by Dugaboy, agreeing with the district court that the bankruptcy court had jurisdiction to approve a settlement among the Debtor, an entity affiliated with the Debtor but not a debtor itself, and UBS (the Debtor's largest prepetition creditor and the seller of its claims to the Claims Purchasers, which is one of the claims trading transactions HMIT complains about in the Proposed Complaint). *See The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P.*, No. 22-10983, 2023 WL 4842320 (5th Cir. July 26, 2023).

Purchasers conspiracy theory espoused in the Motion for Leave—that Seery must have provided one or more of the Claims Purchasers with material nonpublic information to induce them to want to purchase large, allowed, unsecured claims at a discount; a *quid pro quo* is suggested, such that the Claims Purchasers were allegedly told they would make a hefty profit on the claims they purchased and, in return, they would gladly "rubber stamp" Seery's "excessive compensation" as the Claimant Trustee of the Claimant Trust. In sum, HMIT alleges this constituted wrongful "insider trading" of the bankruptcy claims. In addition, certain lawyers for Dondero and Dugaboy sent letters reporting this alleged conspiracy and "insider trading" to the Texas State Securities Board ("TSSB") and the Executive Office of the United States Trustee ("EOUST").

It is against this background and in this context that the court must analyze, in the exercise of its gatekeeping function under the confirmed Plan and its prior Gatekeeping Orders, whether HMIT should be allowed to pursue the Proposed Claims (i.e., whether the Proposed Claims are "colorable" claims as contemplated under the Gatekeeper Orders and the Gatekeeper Provision of the Plan). The court held an evidentiary hearing on the Motion for Leave on June 8, 2023 ("June 8 Hearing"), during which the court admitted exhibits and heard testimony from three witnesses both in support of and in opposition to the Motion for Leave. Having considered the Motion for Leave, the response of the Proposed Defendants thereto, HMIT's reply to the response, and the arguments and evidence presented at the hearing on the Motion for Leave, the court denies HMIT's request for leave to pursue its Proposed Claims. The court's reasoning is set forth below.

II. BACKGROUND

A. Highland's Bankruptcy Case, Dondero's Removal as CEO, and the Plan

Highland was co-founded in Dallas in 1993 by Dondero and Mark Okada ("Okada"). It operated as a global investment adviser that provided investment management and advisory services and managed billions of dollars of assets, both directly and indirectly through numerous

affiliates. Highland's equity interest holders included HMIT (99.5%), Dugaboy (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. ("Strand"), which was wholly owned by Dondero and was the only general partner of Highland (0.25%). On October 16, 2019 (the "Petition Date"), Highland, with Dondero in control[10] and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims – many of which had finally become or were about to be liquidated (after a decade or more of contentious litigation in multiple fora all over the world—filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019. The official committee of unsecured creditors (the "Committee") (and later, the United States Trustee) expressed a desire for the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the specter of a possible appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.[11] As a result of this settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,[12] and three independent directors ("Independent Directors") were

[10] Mark Okada resigned from his role with Highland prior to the Petition Date.

[11] This order is hereinafter referred to as the "January 2020 Order" and was entered by the court on January 9, 2020 [Bankr. Dkt. No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Bankr. Dkt. No. 281].

[12] Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland's motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Bankr. Dkt. No. 338].

chosen to lead Highland through its chapter 11 case: Seery, John S. Dubel, and retired bankruptcy judge Russell Nelms. Given the Debtor's perceived culture of constant litigation while Dondero was at the helm, it was purportedly not easy to get such highly qualified persons to serve as independent board members. At the hearing on the corporate governance settlement motion, the court heard credible testimony that none of the Independent Directors would have taken on the role without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation from mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the Independent Directors without the bankruptcy court's prior authority. The gatekeeper provision approved by the court in its January 9 Order states,[13]

> No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation and did so "subject at all times to the supervision, direction and authority of the Independent Directors" and to his agreement to "resign immediately" "[i]n the event the Independent Directors determine for any reason that the Debtor shall no longer retain Dondero as an employee"[14] and to "not cause any Related Entity to terminate any agreements with the Debtor."[15] The court later

[13] January 2020 Order, 3-4, ¶ 10.

[14] January 2020 Order, 3, ¶ 8.

[15] *Id.* at ¶ 9.

entered, on July 16, 2020, an order approving the appointment of Seery as Highland's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative,[16] which included essentially the same "gatekeeper" language with respect to the pursuit of claims against Seery acting in these roles. The gatekeeper provision in the July 2020 Order was essentially the same as the gatekeeper provision in the January 2020 Order:

> No entity may commence or pursue a claim or cause of action of any kind against Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

July 2020 Order, 3, ¶5. Neither the January 2020 Order nor the July 2020 Order were appealed.

Throughout the summer of 2020, Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Dondero's plans failed to gain support, he and entities under his control engaged in substantial, costly, and time-consuming litigation for Highland.[17] As the Fifth Circuit described the situation, after Dondero's plans failed "he and other creditors began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital's management, threatening employees, and canceling trades between Highland Capital and its clients."[18] On October 9, 2020, Dondero resigned from all positions with the Debtor and its

[16] *See* the July 16, 2020 order approving the retention by Highland of Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020 ("July 2020 Order") [Bankr. Dkt. No. 854].

[17] According to Seery's credible testimony during the hearing on confirmation of the Plan that had been negotiated between the Committee and the Independent Directors, Dondero had threatened to "burn the place down" if his proposed plan was not accepted. *See* Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20. Bankr. Dkt. No. #1894.

[18] *Highland Capital*, 48 F.4th at 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at *1, *26 (Bankr. N.D. Tex.

affiliates in response to a demand by the Independent Directors made after Dondero's purported threats and disruptions to the Debtor's operations.[19]

The Independent Directors and the Committee had negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan") [Bankr. Dkt. No. 1808] on January 22, 2021.[20] Highland had negotiated settlements with most of its major creditors following mediation and had amended its initially proposed plan to address the objections of most of its creditors, leaving only the objections of Dondero and entities under his control (the "Dondero Parties") at the time of the confirmation hearing,[21] which was held over two days in early February 2021. The Plan is essentially an "asset monetization" plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). Highland's various servicing agreements were vested in the Reorganized Debtor, which continues to manage collateralized loan obligation vehicles ("CLOs") and various other investments postconfirmation. The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down the Reorganized Debtor over a three-year period by monetizing its assets and making

June 7, 2021) where this court "h[eld] Dondero in civil contempt, sanctioning him $100,000, and comparing this case to a 'nasty divorce.'").

[19] *See* Highland Ex. 13. The court shall refer to exhibits offered and admitted at the June 8 Hearing on the Motion for Leave by the Highland Parties as "Highland Ex. ___" and to exhibits offered and admitted by HMIT as "HMIT Ex. ___."

[20] The *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* was filed on November 24, 2020 ("Disclosure Statement") [Bankr. Dkt. No. 1473].

[21] The only other objection remaining was the objection of the United States Trustee to the Plan's exculpation, injunction, and release provisions.

distributions to Class 8 and Class 9 creditors as Claimant Trust Beneficiaries. The Claimant Trust is overseen by a Claimant Trust Oversight Board ("CTOB"), and pursuant to the terms of the Plan and the Claimant Trust Agreement ("CTA"),[22] the CTOB approved Seery's compensation package as the CEO of the Reorganized Debtor and the Claimant Trustee. Following their acquisition of their unsecured claims, representatives of Claims Purchasers Muck and Jessup became members of the CTOB.[23] Seery's compensation included the same base salary that he was receiving as CEO and CRO of Highland, plus an added incentive bonus tiered to recoveries and distributions to the creditors under the Plan. The Plan provides for the cancellation of the limited partnership interests in Highland held by HMIT, Dugaboy, and Okada and his family trusts in exchange for each holder's pro rata share of a contingent interest in the Claimant Trust ("Contingent Claimant Trust Interest"), as holders of allowed interests in Class 10 (holders of Class B/C limited partnership interests) or Class 11 (holders of Class A limited partnership interests) under the Plan.

B. Dondero Communicates Alleged Material Non-Public Information ("MNPI") to Seery, and Seery Allegedly Provides the MNPI to the Claims Purchasers in Furtherance of an Alleged Fraudulent Scheme to Have the Claims Purchasers "Rubber Stamp" His Compensation as Claimant Trustee Post-Confirmation

1. The December 17, 2020 MGM Email

Between Dondero's forced resignation from Highland in October 2020 and the confirmation hearing in February 2021, Dondero engaged in what appeared to be attempts to thwart, impede, and otherwise interfere with the Plan being proposed by the Independent Directors and the Committee. In the midst of this, on December 17, 2020, Dondero sent Seery[24] an email

[22] Highland Ex. 38

[23] The CTOB had three members: a representative of Muck (Michael Linn), a representative of Jessup (Christopher Provost), and an independent member (Richard Katz). *See* Joint Opposition ¶ 79.

[24] Dondero sent the email to others as well but did not copy counsel for the Independent Directors (including Seery) in violation of the terms of an existing temporary restraining order that enjoined Dondero from, among other things, "communicating . . . with any Board member" (including Seery) without including Debtor's counsel. Morris Dec. Ex. 23 ¶ 2(a). Citations to "Morris Dec. Ex. _" are to the exhibits attached to the *Declaration of John A. Morris in Support*

(the "MGM Email") that featured prominently in HMIT's Motion for Leave. According to HMIT and Dondero, the MGM Email contained material nonpublic information ("MNPI") regarding the possibility of an imminent acquisition of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"), likely by either Amazon or Apple.[25] At the time Dondero sent the MGM Email, Dondero sat on the board of directors of MGM, and the Debtor owned MGM stock directly. The Debtor also managed and partially owned a couple of other entities that owned MGM stock and managed various CLOs that owned some MGM stock as well. HMIT alleges now that Seery later misused and wrongfully disclosed to the Claims Purchasers this purported MNPI as part of a *quid pro quo* scheme, whereby the Claims Purchasers agreed to approve excessive compensation for Seery in the future (in exchange for him providing this allegedly "insider" information that inspired them to purchase unsecured claims with an alleged expectation of future large profits).[26] A timeline of events (in late 2020) in the weeks leading up to Dondero's MGM Email to Seery, following Dondero's departure from Highland, helps to put the email in full context:

- October 16: Dondero and his affiliates attempt to impede the Debtor's trading activities by demanding—with no legal basis—that Seery cease selling certain assets;[27]

- November 24: Bankruptcy Court enters an Order approving the Debtor's Disclosure Statement, scheduling the confirmation hearing on the Debtor's Plan for January 13, 2021, and granting related relief;[28]

- November 24–27: Dondero personally interferes with the Debtor's

of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding, Bankr. Dkt. No. 3784.

[25] *See* Proposed Complaint ¶ 45.

[26] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the [Claims Purchasers], with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims."); ¶ 4 ("As part of the scheme, the [Claims Purchasers] obtained a position to approve Seery's ongoing compensation – to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT.").

[27] *See* Highland Ex. 14, Dondero-Related Entities' October 16, 2020 Letter; Highland Ex. 15, *Memorandum Opinion and Order Holding Dondero in Contempt for Violation of TRO*, 13-15.

[28] *See* Bankr. Dkt. No. 1476.

implementation of certain securities trades ordered by Seery;[29]

- November 30: The Debtor provides written notice of termination of certain shared services agreements it had with Dondero's two non-debtor affiliates, NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"; together with NexPoint, the "Advisors");[30]

- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes they owed to the Debtor, that had an aggregate face amount of more than $60 million—this was part of creating liquidity for the Debtor's Plan;[31]

- December 3: Dondero responds with what appeared to be a threat of some sort to Seery in a text message: "***Be careful what you do -- last warning***;"[32]

- December 10: Dondero's interference and apparent threat cause the Debtor to seek and obtain a temporary restraining order ("TRO") against Dondero;[33]

- December 16: This court denies as "frivolous" a motion filed by certain affiliates of Dondero, in which they sought "temporary restrictions" on certain asset sales;[34] and

- December 17: Dondero sends the unsolicited MGM Email[35] to Seery, which violates the TRO entered just a week earlier.[36]

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[29] *See* Highland Ex. 15, 30-36.

[30] Morris Decl. Ex. 17; *see also* Transcript of June 8, 2023 Hearing on HMIT's Motion for Leave ("June 8 Hearing Transcript"), 273:23-24.

[31] Morris Decl. Exs. 18-21; *see also* June 8 Hearing Transcript, 273:23-274:1.

[32] Morris Decl. Ex. 22 (emphasis added); *see also* June 8 Hearing Transcript, 273:1-12 (where Seery testified about receiving the threat from Dondero: "A: [T]his came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.").

[33] *See* Morris Decl. Ex. 23, *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* entered December 10, 2020 [Adv. Pro. No. 20-3190 Dkt. No. 10].

[34] *See* Morris Decl. Ex. 24, Transcript of December 16, 2020 Hearing, 63:5-64:15.

[35] Highland Ex. 11.

[36] Seery testified at the June 8 Hearing that Dondero knowingly violated the TRO when he sent the MGM Email:

> [The MGM Email] . . . followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski [Debtor's counsel] being on it. Furthermore, Pachulski had advised Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics. And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

June 8 Hearing Transcript, 273:13-22.

The MGM Email had the subject line "Trading Restriction re MGM – material non public information" and stated:

> Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.[37]

Seery credibly testified at the June 8 Hearing that he was "highly suspicious" when he received the MGM Email. This was because, among other reasons, Dondero sent it ***after***: (i) unsuccessful efforts to impede the Debtor's trading activities (followed by the TRO); (ii) the "be careful what you do" text to Seery by Dondero: (iii) Highland's termination of its shared service arrangements with Dondero's various affiliated entities; (iv) the bankruptcy court's approval of the disclosure statement; and (v) Highland's demand to collect on the demand notes for which Dondero and his entities were liable.[38] Highland's Chapter 11 case was fast approaching the finish line. Moreover, MGM was already on the restricted list at Highland Capital, and had been for a long time, and Dondero would know this.[39] Still further, as of December 17, 2020 (the date Dondero sent the unsolicited MGM Email to Seery), Dondero no longer owed a duty of any kind to the Debtor or any entity controlled by the Debtor, having surrendered in January 2020 direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement[40] and having resigned from all roles at the Debtor and affiliates in October 2020. Still further, Dondero—to the extent he was sharing with Seery MNPI that he obtained as a member of the board of directors of MGM—would have been violating his own fiduciary duties to MGM.

[37] Highland Ex. 11.

[38] June 8 Hearing Transcript, 273:1-274:4.

[39] June 8 Hearing, 215:21-216:9.

[40] *See* Bankr. Dkt. Nos. 339, 354-1 (Term Sheet)).

In any event, in a declaration filed by Dondero in support of HMIT's Rule 202 petition in Texas state court for pre-suit discovery,[41] he indicated that his goal in sending the MGM E-mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

> On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple's interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades***.

It is noteworthy that ***Dondero's labeling of the MGM Email (in the subject line) as a communication containing "material non public information" did not make it so***. In fact, it appears from the credible evidence presented at the June 8, 2023 hearing on HMIT's Motion for Leave that the MGM Email did not disclose information to Seery that was not already made available to the public at the time it was sent. Seery testified that he did not think the MGM Email contained MNPI and that he did not personally "take any steps . . . to make sure that MGM stock was placed on a restricted list at Highland Capital after [he] received [the MGM Email]" because—as earlier noted—"MGM was already on the restricted list at Highland Capital . . . before I got to Highland."[42] Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months[43] and that was officially

[41] Highland Ex. 9 ¶ 3 (emphasis added).

[42] June 8 Hearing Transcript, 215:21-216:9. Seery elaborated upon further questioning from HMIT's counsel that he did not think the indications in the MGM Email (that came from a member of the board of directors of MGM) that "it was probably a first-quarter event" and that "Amazon and Apple were actively diligencing – are diligencing in the data room, both continue to express material interest" were not MNPI. *Id.*, 217:23-218:10. He testified that "it was clear [before he received the MGM Email] from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction would have to take place very quickly. And, in fact, the transaction did not take place in the first quarter." *Id.*, 219:3-7.

[43] *See* Highland Ex. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Ex. 26 (describing prospects of an MGM sale, noting that, among its largest

announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[44] For example, as early as January 2020, Apple and Amazon were identified as being among a new group of "Big 6" global media companies, and MGM was identified as being a leading media acquisition target. Indeed, according to at least one media report on January 26, 2020, "MGM, in particular, seems like a logical candidate to sell this year" having already held "preliminary talks with Apple, Netflix and other larger media companies."[45] In October 2020, the Wall Street Journal reported that MGM's largest shareholder, Anchorage Capital Group ("Anchorage"), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as Chairman of MGM's Board. The article reported that "[i]n recent months, Mr. Ulrich has said he is working toward a deal," and he specifically named Amazon and Apple as being among four possible buyers.[46] Thus, no one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed "material interest" in acquiring MGM. Dondero testified during the June 8 Hearing that, at the time he sent the MGM Email, he "knew with certainty from the board level that Amazon had hit our price, and it was going to close in the next couple of months,"[47] that "as of December 17th, Amazon had made an offer that was acceptable to MGM, [and that] that's what the board meeting was. We were going into exclusive negotiations to culminate the merger with

shareholders, was "Highland Capital Management, LP") (article October 11, 2020). *See also* Highland Exs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for $8.4 billion).

[44] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid.

[45] Highland Ex. 25.

[46] Highland Ex. 26.

[47] June 8 Hearing Transcript, 127:2-4.

them."[48] Notwithstanding this testimony, Dondero eventually admitted (after a lengthy and torturous cross examination) that he did not actually communicate this supposed "inside" information to Seery in the MGM Email. He did not "say anything about Amazon hitting the price." He did not say anything about the MGM board going into exclusive negotiations with Amazon "to culminate the merger with them." Rather, he communicated information that Seery and any member of the public who cared to look could have gleaned from publicly available information as of December 17, 2020, regarding a much-written-about potential MGM transaction that involved interest from numerous companies, including, specifically, Amazon and Apple. When questioned why "[he felt] the need to mention Apple [in the MGM Email] if Amazon had already hit the price," Dondero simply answered, "The only way you generally get something done at attractive levels in business is if two people are interested," suggesting that he specifically ***did not*** communicate the purported inside information he obtained as a MGM board member—that Amazon had met MGM's strike price and that the MGM board was moving forward with exclusive negotiations with Amazon—because he wanted it to appear that there was still a competitive process going on that included both Amazon and Apple.[49]

Even if the MGM Email contained MNPI on the day it was sent (four months prior to the first of the Claim Purchases that occurred in April 2021), the information was fully and publicly disclosed to the market in the days and weeks that followed. For example, on December 21, 2020, just four days later, a Wall Street Journal article titled *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale*, reported that MGM had "tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process," and had "a market value of around $5.5 billion, based on privately traded shares and including debt." The Wall Street Journal Article reiterated

[48] *Id.*, 161:10-14.

[49] June 8 Hearing Transcript, 162:2-6.

that (i) Anchorage "has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks," and (ii) "Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers."[50] (*Id*. Ex. 27.) The Wall Street Journal's reporting was picked up and expanded upon in other publications soon after. For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The world is net enough! Amazon joins other streaming services in £4bn bidding war for Bond films as MGM considers selling back catalogue*, cited the Wall Street Journal article and further reported that MGM "hopes to spark a battle that could interest streaming services such as Amazon Prime";[51]

- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that "it's now become apparent that MGM is actually up on the auction block," noting that the Wall Street Journal was "reporting that the studio has begun a formal sale process" and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder;[52] and

- On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition.[53]

Finally, Highland and entities it controlled did not sell their MGM stock while the MGM-Amazon deal was under discussion and/or not made public but, instead, they tendered their MGM holdings in connection with, and as part of, the ultimate MGM-Amazon transaction after it closed in March 2022.

[50] Highland Ex. 27.

[51] Highland Ex. 28.

[52] Highland Ex. 29.

[53] Highland Ex. 30.

2. No Evidence to Support HMIT/Dondero's Assumptions that Seery Shared Alleged MNPI in the MGM Email with Claims Purchasers

One of HMIT's allegations in the Proposed Complaint it seeks leave to file—which is central to HMIT's and Dondero's conspiracy theory—is that Seery shared the alleged MNPI from the MGM Email with the Claims Purchasers (or at least Farallon—the owner/affiliate of Muck, one of the Claims Purchasers) and that the Claims Purchasers only acquired the purchased claims ("Purchased Claims") based on, and because, of their receipt of the MNPI from Seery. HMIT essentially admits in the original version of its Motion for Leave that it has no direct evidence that Seery communicated the alleged MNPI to any of the Claims Purchasers. Rather, its allegation is based on inferences it wants the court to make based on "circumstantial" evidence and on the Dondero Declarations that were attached to the Motion for Leave, which described communications Dondero purportedly had with one or two representatives of Farallon in the "late spring" of 2021 concerning Farallon's recent acquisition of certain claims in the Highland bankruptcy case.[54] Based on these communications, HMIT and Dondero only assume Seery must have provided the MNPI about MGM to Farallon, which must have caused both Farallon and the other Claims Purchaser, Stonehill, to acquire the Purchased Claims.[55]

At the June 8 Hearing, HMIT offered Dondero's testimony that he had three telephone conversations with two representatives of Farallon, Mike Linn ("Linn") and Raj Patel ("Patel"),

[54] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 1 and Ex. 3; *see also* Highland Ex. 9, *Declaration of James Dondero* (with Exhibit 1) dated February 15, 2023.

[55] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 28. HMIT subsequently filed the final version of the Motion for Leave that was revised to withdraw the Dondero Declarations and delete all references therein to the Dondero Declarations (but, notably, leaving in the allegations that were based on the Dondero Declaration(s)). This was done after the court ruled that it would allow the Proposed Defendants to examine Dondero regarding his Declarations. HMIT contended at that point that the court should consider the Motion for Leave on a no-evidence Rule 12(b)(6) type basis (but could not explain why it had attached the Dondero Declarations as evidence that "supported" the Motion for Leave, if it believed no evidence should be considered). *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 28; *see also infra* pages 45 to 47 regarding the "sideshow" litigation that occurred prior to the June 8 Hearing over whether the hearing on the Motion for Leave would be an evidentiary hearing.

who allegedly told him that they purchased the claims without conducting any due diligence and based solely on Seery's assurances that the claims were valuable. These conversations allegedly took place on May 28, 2021—two days after the MGM-Amazon deal was officially announced to the public (on May 26, 2021). Dondero also testified that a photocopy of handwritten notes ("Dondero Notes")[56] (which were partially cut off) were notes he took contemporaneously with these short telephone conversations he initiated (one with Patel and two follow-up conversations with Linn).[57] He testified that his purpose in taking these notes and in initiating the phone calls was that "[w]e'd been trying nonstop to settle the case for two-plus years. . . . [a]nd when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case . . . [s]o I reached out [to] the Farallon guys,"[58] and further, on *voir dire* from the Proposed Defendants' counsel, that the purpose of taking the notes was so that he had "a written record of the important points that [he] discussed . . . so I know how to address it the next time."[59] The handwritten notes[60] stated:

Raj Patel bought it because of Seery	*1*
50-70¢ not compelling	*2*
Class 8	*3*
Asked what would be compelling	*4*
-- No Offer	*5*
Bought in Feb/March timeframe	*6*
Bought assets w/ Claims	*7*
Offered him 40-50% premium	*8*
130% of cost; "Not Compelling"	*9*
No Counter; Told Discovery coming	*10*

[56] HMIT Ex. 4. The handwritten notes were admitted into evidence after *voir dire*, not for the truth of anything Patel or Linn allegedly said to him during the three telephone conversations, but as Dondero's "present sense impression" of the telephone conversations.

[57] June 8 Hearing Transcript, 133:1-136:3.

[58] *See id.*, 133:13-23.

[59] *See id.* (on *voir dire*), 144:1838-145:4.

[60] HMIT Ex. 4. The court has placed in a table and numbered each line for ease of reference. The table does not include the separate apparent partial date from the top left corner that Dondero testified was the date that he made the initial call to Patel: May 28, 2021.

On direct examination, Dondero testified that line 1 is what he wrote contemporaneously with the short call he initiated to Patel of Farallon in which Patel allegedly told Dondero "that he bought it because Seery told him to buy it and they had made money with Seery before"[61] and that Farallon "bought [the claim] because he was very optimistic regarding MGM"[62] before referring him to Linn, a portfolio manager at Farallon. Dondero testified that the rest of the handwritten notes (reflected in lines 2 through 10 of the table) were notes he took contemporaneously with two telephone conversations he had with Linn following his call to Patel, with lines 2-8 referring to Dondero's first call with Linn and lines 9 and 10 referring to his second call with Linn.[63] Dondero testified that the "50-70¢" in line 2 referred to his offer to Linn to pay 70 cents on the dollar to buy Farallon's[64] claims because "[w]e knew that they had – that the claims had traded around 50 cents" and "[w]e wanted to prevent the $5 million-a-month burn" (referring to attorney's fees in the Highland case) and that "not compelling Class 8" in lines 2-3 referred to Linn's response to him that the offer was not compelling.[65] Dondero testified that lines 4-5 referred to him asking Linn what amount would be compelling and to Linn's response that "he had no offer."[66] Dondero testified that lines 6-8 referred to Linn telling Dondero that Farallon bought the claims in the February, March timeframe and that Dondero told Linn that, given that the estate was spending $5 million a month on legal fees, Farallon should want to sell its claims and Linn's alleged response that "Seery told him it was worth a lot more."[67] Lastly, Dondero testified on direct examination

[61] June 8 Hearing Transcript, 134:7-10, 135:13-22.

[62] *Id.*, 139:3-11.

[63] *Id.*, 136:4-138:16.

[64] As noted above, Farallon did not acquire any of the Purchased Claims; rather, Farallon created a special purpose entity, Muck, to acquire the claims.

[65] June 8 Hearing Transcript, 136:4-16.

[66] *Id.*, 136:17-23.

[67] *Id.*, 137:6-138:7.

that the last two lines referred to a second telephone conversation he had with Linn in which Dondero offered 130 percent of cost for the claims and that Linn told him that the offer was not compelling, and he would not give a price at which he would sell.[68]

On cross-examination, Dondero acknowledged that, though he had testified that the handwritten notes were intended to be a written record of the important points from the telephone conversations he had with Patel and Linn, there was no mention in the notes of: (1) MGM: (2) or that Farallon was very optimistic about MGM; (3) the sharing of MNPI; (4) a *quid pro quo;* or (5) Seery's compensation, and that his last note—"Told Discovery coming"—was a reference to Dondero telling Linn (not Linn telling Dondero) that discovery was coming in response to Dondero's own supposition that Farallon must have traded on MNPI.[69] Cross-examination also revealed that Farallon never told Dondero that Seery gave them MNPI, and that Dondero only ***believed*** Seery ***must have*** given Farallon MNPI, because Farallon (Patel and Linn) had told him that the only reason Farallon bought their claims was because of their prior dealings with Seery, which Dondero took to mean that they had conducted no due diligence on their own prior to acquiring the claims. Dondero also testified that he did not have any personal knowledge as to how Seery's compensation package, as CEO of the Reorganized Debtor and Claimant Trustee, was determined because he was "not involved" in the setting of Seery's compensation pursuant to the Claimant Trust[70] and that he never discussed Seery's compensation with Farallon.[71]

As noted earlier, Dondero attempted to obtain discovery from the Claims Purchasers in a Texas state court pursuant to Rule 202 of the Texas Rules of Civil Procedure. The Texas state

[68] *Id.*, 138:8-22.

[69] *Id.*, 190:14-191:25. Dondero testified that he told Linn that discovery "would be coming in the next few weeks" and noted that "this has been a couple years. . . . [w]e've been trying for two years to get . . . discovery in this."

[70] *Id.*, 200:13-201:1.

[71] *Id.*, 208:23-209:8.

court denied the First Rule 202 petition on June 1, 2022, after having considered the amended petition, the responses, the record, applicable authorities and having conducted a hearing on the petition on June 1, 2022.[72]

3. Dondero Unsuccessfully Seeks Discovery and to Have Various Agencies and Courts Outside of the Bankruptcy Court Acknowledge His Insider Trading Theories

Dondero acknowledged at the June 8 Hearing that the verified petition ("First Rule 202 Petition") he signed and filed on July 22, 2021, in the first Texas Rule 202 proceeding—just weeks after his telephone calls with Linn and Patel—was true and accurate. In it, he swore under oath as to what Linn told him in the telephone call concerning Farallon's purchase of the claims, and the only reason he gave for wanting discovery was that Linn told him Farallon bought the claims "sight unseen—relying entirely on Seery's advice solely because of their prior dealings."[73] Dondero acknowledged, as well, that his sworn statement that he filed in support of an amended verified Rule 202 petition filed in the same Texas Rule 202 proceeding, but nearly ten months later (in May 2022), described the same telephone conversation he had with Linn, and it did not mention MGM at all and did not say that Linn told him that Seery gave him MNPI; rather, the sworn statement stated only that "On a telephone call between Petitioner and Michael Lin[n], a representative of Farallon, Mr. Lin[n] informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Seery's say-so because they had made so much money in the past when Seery told them to purchase claims" and that Linn did not tell him that Seery gave them MNPI, but he concluded that Seery gave Farallon MNPI based on what Linn did tell him.[74]

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[72] Highland Ex. 7.

[73] *Id.*, 193:8-194:16; Highland Ex. 3, *Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 21. The first Texas Rule 202 proceeding in which Dondero sought discovery regarding the Farallon acquisition of its claims was brought by Dondero, individually, in the 95th Judicial District, Dallas County, Texas.

[74] *Id.*, 195:11-197:17; Highland Ex. 4, *Amended Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 23.

Nine days later, Dondero filed a declaration in the same proceeding, in which he described the same call with Linn as follows:[75]

> Last year, I called Farallon's Michael Lin[n] about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin[n] of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Seery had testified in court, it made no sense to me that Mr. Lin[n] would think that the claims were worth more than what Seery testified under oath was the value of the bankruptcy claims.

Dondero further stated in his declaration that "I have an interest in ensuring that the claims purchased by [Farallon] are not used as a means to deprive the equity holders of their share of the funds," and that "[i]t has become obvious that despite the fact that the bankruptcy estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights. Accordingly, "I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee."[76] Dondero attached as Exhibit A to his declaration a letter from Douglas Draper ("Draper"), an attorney with the law firm of Heller, Draper & Horn, L.L.C. in New Orleans, to the office of the General Counsel, Executive Office for U.S. Trustees, dated October 5, 2021, in which Draper opens the letter by stating that "[t]he purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the [Creditors' Committee] in the bankruptcy of [Highland]," and later noted that he "became involved in Highland's bankruptcy through my representation of [Dugaboy], an irrevocable trust of which Dondero is the primary beneficiary."[77] Mr. Draper laid out the same allegations of insider claims trading, breach of

[75] Highland Ex. 5, ¶ 2.
[76] *Id.*, ¶¶ 3-4.
[77] *Id.*, Ex. A, 1-2.

fiduciary duties, and conspiracy that HMIT seeks to bring in the Proposed Complaint.[78] The U.S. Trustee's office took no action. Dondero made a second and third attempt to get the U.S. Trustee's office to conduct an investigation into the same allegations laid out in Draper's letter, this time in "follow-up" letters to the Office of the U.S. Trustee on November 3, 2021, and six months later, on May 11, 2022, through another lawyer, Davor Rukavina ("Rukavina"), in which Rukavina wrote "to provide additional information regarding the systemic abuses of bankruptcy process occasioned during the [Highland] bankruptcy."[79] Again, the U.S. Trustee's office took no action.

On February 15, 2023, Dondero filed yet another sworn statement about his alleged conversation with Linn, this time in support of a Verified Rule 202 Petition ***filed by HMIT*** ("Second Rule 202 Petition"), filed in a different Texas state court (Texas District Court, 191st Judicial District, Dallas County, Texas), following Dondero's unsuccessful attempts throughout 2021 and 2022 to obtain discovery in the First Rule 202 proceeding and based on the same allegations of misconduct by Seery and Farallon.[80] In this new sworn statement, Dondero describes for the first time the "call" he had with Linn as having been "phone calls" with Patel and Linn and ***mentions MGM*** and Farallon's alleged optimism about the ***expected sale of MGM***:[81]

> In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC ("Farallon"), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Seery because they had made significant profits when Seery told them to purchase other claims in the past. They also stated that they were particularly optimistic because of the expected sale of MGM.

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[78] *Id.*, Ex. A, 6-11.

[79] HMIT Ex. 61.

[80] Highland Ex. 9.

[81] *Id.*, ¶ 4.

The Second Rule 202 Petition was also denied by the second Texas state court on March 8, 2023.[82]

HMIT, in an apparent attempt to provide support for its argument that the Proposed Claims are "colorable," stated in its Motion for Leave that "[t]he Court also should be aware that the Texas States [sic] Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely 'colorable.'"[83] But, two days before opposition briefing was due, on May 9, 2023, the TSSB issued a letter ("TSSB Letter") to Highland, informing it that "[t]he staff of the [TSSB] has completed its review of the complaint received by the Staff against [Highland]. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time."[84] HMIT's counsel (frankly, to the astonishment of the court) objected to the admission of the TSSB Letter at the June 8 Hearing "on the grounds of relevance, 403, hearsay, and authenticity . . . [a]nd I also . . . think it's important that the decision by a regulatory body has no bearing on this cause of action or the colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry."[85] The court overruled HMIT's objection to the relevance of this exhibit—considering, among other things, that HMIT, in its Motion for Leave, specifically mentioned the allegedly open TSSB "investigation" as relevant evidence the court "should be aware" of in making its determination of whether the Proposed Claims were "colorable."[86]

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[82] Highland Ex. 10.

[83] Motion for Leave, ¶ 37.

[84] *See* Highland Ex. 33.

[85] June 8 Hearing Transcript, 323:22-324:3.

[86] *Id.*, 324:4-328:2.

C. Claims Purchasers Purchase Claims and File Notices of Transfers of Claims

To be clear about the time line here, it was after confirmation of the Plan but prior to the Effective Date of the Plan, that the Claims Purchasers: (1) purchased several large unsecured claims that had been allowed following, and as part of, Rule 9019 settlements, each of which were approved by the bankruptcy court, after notice and hearing, prior to the confirmation hearing; and (2) filed notices of the transfers of those claims pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure. The noticing of the claims transfers began on April 16, 2021, with the notice of transfer of the claim held by Acis Capital Management to Muck, and ended on August 9, 2021, with the notices of transfers of the claims held by UBS Securities to Muck and Jessup:

Claimant(s)	**Date Filed/ Claim No.**	**Asserted Amount**	**Claim Settled/Allowed? If so, Amount**	**Date Filed/ Rule 3001 Notice Dkt. No.**
Acis Capital Management LP and Acis Capital Management, GP LLC (together, "Acis")	12/31/2019 Claim No. 23	$23,000,000	Yes[87] $23,000,000	4/16/2021 Bankr. Dkt. No. 2215 (Muck)
Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee")	4/3/2020 Claim No. 72	$190,824,557	Yes[88] $137,696,610	4/30/2021 Bankr. Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (the "HarbourVest Parties")	4/8/2020 Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes[89] $80,000,000 in aggregate ($45,000,000 General Unsecured Claim, and $35,000,000 subordinated claim)	4/30/2021 Bankr. Dkt. No. 2263 (Muck)

[87] Bankr. Dkt. No. 1302. The Debtor's settlement with Acis was approved over the objection of Dondero. Bankr. Dkt. No. 1121.

[88] Bankr. Dkt. No. 1273.

[89] Bankr. Dkt. No. 1788. The Debtor's settlement with the HarbourVest Parties was approved over the objections of Dondero, Bankr. Dkt. No. 1697, and Dugaboy and the Get Good Trust. Bankr. Dkt. No. 1706.

UBS Securities LLC, UBS AG, London Branch (the "UBS Parties")	6/26/2020 Claim Nos. 190, 191	$1,039,957,799.40	Yes[90] $125,000,000 in aggregate ($65,000,000 General	8/9/2021 Bankr. Dkt. No. 2698 (Muck) and Bankr. Dkt. No. 2697 (Jessup)

HMIT insists that it "made no sense" for the Claims Purchasers to buy the Purchased Claims because "the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk," and "their investment was projected to yield a small return with virtually no margin for error."[91] Dondero testified that it was ***his*** view that there was insufficient information in the public to justify the claims purchases.[92] But, HMIT's arguments here are contradicted by the information that was publicly available to Farallon and Stonehill at the time of their purchases and by HMIT's own allegations. In advance of Plan confirmation, Highland projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. In the Proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims.[93] Taking into account the face amount of the allowed claims, the Claims Purchasers' projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value[94]	Purchaser	Purchase Price	Projected Profit
Redeemer	$137.0	$0.0	$97.71	Stonehill	$78.0	$19.71
Acis	$23.0	$0.0	$16.4	Farallon	$8.0	$8.40

[90] Bankr. Dkt. No. 2389. The Debtor's settlement with the UBS Parties was approved over the objections of Dondero, Dkt. No. 2295, and Dugaboy and the Get Good Trust. Bankr. Dkt. Nos. 2268, 2293.

[91] Proposed Complaint, ¶ 3.

[92] June 8 Hearing Transcript, 187:3-7 ("Q: And it's your testimony that there wasn't sufficient information in the public for them to buy – this is your view – that there wasn't sufficient information in the public to justify their purchases. Is that your view? A: Correct.).

[93] *Id.*, ¶ 42.

[94] "Ascribed Value" is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

HarbourVest	$45.0	$35.0	$32.09	Farallon	$27.0	$5.09
UBS	$65.0	$60.0	$46.39	Stonehill & Farallon	$50.0	($3.61)

As HMIT acknowledges, by the time Dondero spoke with Farallon in the "late spring" of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest.[95] Based on an aggregate purchase price of $113 million for these three claims, the Claims Purchasers would have expected to net over $33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections, because they also purchased the Class 9 claims and would therefore capture any upside. In this context, HMIT's and Dondero's assertions that it did not "make any sense" for the Claims Purchasers to purchase their claims when they did does not pass muster—given the publicly available information about potential recoveries under the Plan. Dondero even acknowledged, on cross-examination, that he was prepared to pay ***30 percent more*** than Farallon had paid, even though he did not think there was sufficient public information available to justify Farallon's purchase of the claims.[96] Dondero essentially testified that he wanted to purchase Farallon's claims because he wanted to be in a position of control to force a settlement or resolution of the bankruptcy case, post-confirmation, under terms acceptable to him. He did not want to try to settle by negotiating with Farallon and Stonehill ***as creditors***, but instead he wanted to purchase the claims because "if we owned all the claims, it would settle the case."[97]

[95] *See* Complaint, ¶ 41 n.12. The UBS claims were not acquired until August 2021, long after the alleged "*quid pro quo*" was supposedly agreed upon and the MGM-Amazon deal was announced in the press in late May 2021. *See*, Highland Ex. 34, *Amazon's $8.45 Billion Deal for MGM is Historic But Feels Mundane* (dated May 26, 2021).

[96] June 8 Hearing Transcript, 187:8-11.

[97] *Id.*, 187:12-189:10.

D. Fifth Circuit's Approval of the Gatekeeper Provision in Plan, Recognition of Res Judicata Effect of the Prior Gatekeeper Orders, and the Bankruptcy Court's Order Approving Highland's Motion to Conform Plan

Harkening back to February 22, 2021, after a robust confirmation hearing, this court entered its order confirming the Plan, over the objections of Dondero and Dondero-Related Parties, specifically questioning the good faith of their objections. The court found, after noting "the remoteness of their economic interests" that "[it] has good reason to believe that [the Dondero Parties] are not objecting to protect economic interests they have in the Debtor but to be disruptors. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan."[94] The Plan became effective on August 11, 2021.

Of relevance to the Motion for Leave, the confirmed Plan included certain exculpations, releases, and injunctions designed to protect the Debtor and other bankruptcy participants from bad-faith litigation. These participants included: Highland's employees (with certain exceptions); Seery as Highland's CEO and CRO; Strand (after the appointment of the Independent Directors); the Independent Directors; the successor entities; the CTOB and its members; the Committee and its members; professionals retained in the case; and all "Related Persons." The injunction provisions contained a Gatekeeper Provision which is similar to the gatekeeper provisions in the prior Gatekeeper Orders in that it provided that the bankruptcy court will act as a "gatekeeper" to screen and prevent bad-faith litigation against the Protected Parties. The Gatekeeper Provision in the Plan states, in pertinent part:[98]

> No Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents ***a colorable claim of any kind***, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically

[98] Plan, 50-51 (emphasis added).

> authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

The Plan defines Protected Parties as,

> collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the [CTOB] (in their official capacities), (xiii) [HCMLP GP LLC], (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); [but excluding Dondero and Okada and various entities including HMIT and Dugaboy].

The court notes that the Gatekeeper Provision in the Plan provides protection to a broader number of persons than the persons protected under the January 2020 Order (addressing the Independent Directors and their agents and advisors) and the July 2020 Order (addressing Seery in his role as CEO and CRO of the Debtor). But, at the same time, it is less restrictive than the gatekeeping provisions under the Gatekeeper Orders, in that the gatekeeping provisions in the prior orders shield the protected parties from any claim that is not both "colorable" ***and*** a claim for "willful misconduct or gross negligence," effectively providing the protected parties under the prior orders with a limited immunity from claims of simple negligence or breach of contract that do not rise to the level of "willful misconduct or gross negligence," whereas the Gatekeeping Provision under the Plan does not act as a release or exculpation of the Protected Parties in any way because it does not prohibit any party from bringing ***any kind of claim*** against a Protected Party, provided the proposed claimant first obtains a finding in the bankruptcy court that its proposed claims are "colorable."[99]

[99] It should be noted that--as discussed further below--there are, separately in the Plan, exculpations as to a smaller universe of persons--*e.g.,* the Debtor, the Committee and its members, and the Independent Directors.

Dondero and some of the entities under his control appealed[100] the Confirmation Order directly to the Fifth Circuit, arguing, among other issues, that the Plan's exculpation, release, and injunction provisions, including the Gatekeeper Provision (collectively, the "Protection Provisions") impermissibly provide certain non-debtor bankruptcy participants with a discharge, purportedly in contravention of the provisions of Bankruptcy Code § 524(e)'s statutory bar on non-debtor discharges. As noted above, the Fifth Circuit, "affirm[ed] the confirmation order in large part" and "reverse[d] ***only insofar as the plan exculpates*** certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties ***from the plan's exculpation***, and affirm[ed] on all remaining grounds."[101] The Fifth Circuit specifically found the "injunction and gatekeeping provisions [to be] sound" and found that it was only "the ***exculpation*** of certain non-debtors" that "exceed[ed] the bankruptcy court's authority," agreeing with the bankruptcy court's conclusions that the Protection Provisions were legal, necessary under the circumstances, and in the best interest of all parties" in part, and only disagreeing to the extent that the ***exculpation*** provision improperly extended to certain bankruptcy participants other than Highland, the Committee and its members, and the Independent Directors and "revers[ing] and strik[ing] the few unlawful parts

[100] On appeal, the appellant funds ("Funds"), whom this court found to be "owned and/or controlled" by Dondero despite their purported independence, also asked the Fifth Circuit to vacate this court's factual finding "because it threatens the Funds' compliance with federal law and damages their reputations and values" and because "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him." *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th at 434. Applying the "clear error" standard of review, the Fifth Circuit "le[ft] the bankruptcy court's factual finding undisturbed" because "nothing in this record leaves us with a firm and definite conviction that the bankruptcy court made a mistake in finding that the Funds are 'owned and/or controlled by [Dondero]." *Id.* at 434-35.

[101] *See supra* note 4. The Fifth Circuit replaced its initial opinion with its final opinion a few days after certain appellants had filed a short (four-and-one-half pages) motion for rehearing (the "Motion for Rehearing") on September 2, 2022. The movants had asked the Fifth Circuit to "narrowly amend the [initial] Opinion in order to confirm the Court's holding that the impermissibly exculpated parties are similarly struck from the protections of the injunction and gatekeeper provisions of the plan (in other words, that such parties cannot constitute 'Protected Parties')." In the final Fifth Circuit opinion, same as the initial Fifth Circuit opinion, the Fifth Circuit stated that, with regard to the Confirmation Order, the panel would "reverse only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strike those few parties from the plan's exculpation, and affirm on all remaining grounds." *Highland Capital*, 48 F.4th at 424. No findings, discussion, or rulings regarding the injunction and gatekeeper provisions that were in the initial Fifth Circuit opinion were disturbed.

of the Plan's ***exculpation provision***."[102] The Fifth Circuit then remanded to the Bankruptcy Court "for further proceedings in accordance with the opinion."[103]

In the course of analyzing the Protection Provisions under the Plan, the Fifth Circuit noted that the protection provisions in the January and July 2020 Orders appointing the Independent Directors and Seery as CEO and CRO of Highland were *res judicata* and that "*those* orders have the effect of exculpating the Independent Directors and Seery in his executive capacities" such that "[d]espite removal from the exculpation provision in the confirmation order, the Independent Directors' agents, advisors, and employees, as well as Seery in his official capacities are all exculpated to the extent provided in the January and July 2020 Orders."[104]

The Reorganized Debtor filed a motion in the bankruptcy court to conform the plan to the Fifth Circuit's mandate, proposing that only one change was needed to make the Plan compliant with the Fifth Circuit's ruling: narrow the defined term for "Exculpated Parties" to read as follows:

> "Exculpated Parties" means, collectively, (i) the Debtor, (ii) the Independent Directors, (iii) the Committee, and (iv) members of the Committee (in their official capacities).

The Reorganized Debtor proposed that this one simple revision of this defined term removed the exculpations deemed by the Fifth Circuit to violate section 524(e) of the Bankruptcy Code, and that no other changes would be required to conform the Plan and Confirmation Order to the Fifth Circuit's mandate. Some of the Dondero-related entities objected to the motion to conform, arguing that the Fifth Circuit's ruling required more surgery on the Plan than simply narrowing the defined term "Exculpated Parties." On February 27, 2023, this court entered its order granting

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[102] *Id.* at 435.

[103] *Id.* at 440. The Fifth Circuit's docket reflects that it issued its Judgment and mandate on September 12, 2022.

[104] *Highland Capital*, 48 F.4th at 438 n.15. The Fifth Circuit stated, "To the extent Appellants seek to roll back the protections in the bankruptcy court's January 2020 and July 2020 orders (which is not clear from their briefing), such a collateral attack is precluded." *Id.*

Highland's motion to conform the Plan, ordering that one change be made to the Plan – revising the definition of "Exculpated Parties" – and no more.[105] The objecting parties' direct appeal of this order has been certified to the Fifth Circuit and is one of the numerous currently active appeals by Dondero-related parties pending in the Fifth Circuit.

E. HMIT's Motion for Leave

HMIT filed its emergency Motion for Leave on March 28, 2023, which, with attachments, as first filed, was 387 pages in length, including an initial proposed complaint ("Initial Proposed Complaint") and two sworn declarations of Dondero that were attached as "objective evidence" in "support[ ]" of the Motion for Leave,[106] and with it, an application for an emergency setting on the hearing on the Motion to Leave. On April 23, 2023, HMIT filed a pleading entitled a "supplement" to its Motion to Leave ("Supplement"),[107] to which it attached a revised proposed verified complaint ("Proposed Complaint")[108] as Exhibit 1-A to the Motion for Leave and stated that "[t]he Supplement is not intended to amend or supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action."[109] The HMIT Motion for Leave was later amended to eliminate the Dondero Declarations and references to the same (but not the underlying allegations that were supposedly supported by the Dondero Declarations).[110]

[105] Bankr. Dkt. No. 3672.

[106] Bankr. Dkt. No. 3699.

[107] Bankr. Dkt. No. 3760.

[108] *See supra* note 5.

[109] Supplement ¶ 1.

[110] Bankr. Dkt. Nos. 3815 and 3816. Both of these filings had the Initial Proposed Complaint attached as Exhibit 1 to the Motion for Leave.

As earlier noted, HMIT desires leave to sue the Proposed Defendants regarding ***the post-confirmation, pre-Effective Date purchase of allowed unsecured claims***. The Proposed Defendants would be:

> **Seery,** who was a stranger to Highland until approximately four months following the Petition Date when he was brought in as one of the three Independent Directors, and now serves as the CEO of the Reorganized Debtor and the Trustee of the Claimant Trust (and also was previously Highland's CRO during the case, then CEO, and, also, an Independent Board Member of Highland's general partner during the Highland case). Seery is best understood as the man who took Dondero's place running Highland—per the request of the Committee.
>
> **Claims Purchasers,** who were strangers to Highland until the end of the bankruptcy case. They are identified as Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the "Claims Purchasers"). The Claims Purchasers purchased $240 million face value of already-allowed unsecured claims post-confirmation and pre-Effective Date in the spring of 2021 and another $125 million face value of already-allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk's docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Committee during the Highland bankruptcy case).
>
> **John Doe Defendants Nos. 1-10**, which are described to be "currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue."
>
> **Highland,** as a nominal defendant. HMIT added Highland as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.
>
> **Claimant Trust**, as a nominal defendant. HMIT added the Claimant Trust as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

The proposed plaintiffs would be:

> **HMIT,** which, again, was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited partnership interests). HMIT is the holder of a Class 10 interest under the Plan, pursuant to which HMIT's limited partnership interest in Highland was extinguished as of the Effective Date in exchange for a pro rata share of a contingent interest in the Claimant Trust.

Highland, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

Claimant Trust, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Claimant Trust.

In the Proposed Complaint, HMIT asserts the following six counts: Count I (against Seery) for breach of fiduciary duties; Count II (against the Claims Purchasers and John Doe Defendants) for knowing participation in breach of fiduciary duties; Count III (against all Proposed Defendants) for conspiracy; Count IV (against Muck and Jessup) for equitable disallowance of their claims; Count V (against all Proposed Defendants) for unjust enrichment and constructive trust; and Count VI (against all Proposed Defendants) for declaratory relief.[111] The gist of the Proposed Complaint is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that "wrongful conduct occurred" and "improper trades" were made.[112] HMIT believes the Claims Purchasers paid around $160 million for the $365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland's Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. And, of course, Dondero purports to have concluded from the three phone conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Seery must have given these Claims Purchasers MNPI regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Seery must have shared

[111] In the Initial Proposed Complaint, HMIT proposed to bring claims against the various Proposed Defendants in seven counts, including a count for fraud by misrepresentation and material nondisclosure against all Proposed Defendants. In the Proposed Complaint, HMIT abandons its claim for fraud by misrepresentation and material nondisclosure.

[112] Motion for Leave, 7.

MNPI regarding the likely imminent sale of MGM, in which Highland had, directly and indirectly, substantial holdings. As noted earlier, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[113] In summary, while the Proposed Complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor's estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Seery, and are now happily approving Seery's allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages in the form of equitable disallowance of the Claims Purchasers' claims and disgorgement of distributions on account of those claims, the imposition of a constructive trust over all disgorged funds, and declaratory relief.

HMIT claims that, in seeking to file the Proposed Complaint, it is seeking to protect the rights and interests of the Reorganized Debtor, the Claimant Trust, and "innocent stakeholders" who were allegedly injured by Seery's and the Claims Purchasers' alleged conspiratorial and

[113] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid. Credible testimony from Seery at the June 8 Hearing revealed that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public).

fraudulent scheme to line Seery's pockets with excessive compensation for his role as Claimant Trustee. In its Motion for Leave, HMIT states that "[t]he attached Adversary Proceeding alleges claims which are substantially more than 'colorable' based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud, including a fraud upon innocent stakeholders, as well as breaches of fiduciary duties and knowing participation in (or aiding or abetting) breaches of fiduciary duty."[114]

F. Is HMIT Really Dondero by Another Name?

The Proposed Defendants argue that HMIT's Motion for Leave is nothing more than a continuation of the harassing and bad-faith litigation by Dondero and his related entities that the Gatekeeper Provisions were intended to prevent and, thus, this is one of multiple reasons that the Motion for Leave should be denied.

To be clear, HMIT asserts that it is controlled by Mark Patrick ("Patrick"), who has been HMIT's administrator since August 2022. Patrick asserts that he is not influenced or controlled by Dondero, in general, and specifically not in its efforts to pursue the Proposed Claims against Seery and the Claims Purchasers. However, the testimony elicited at the June 8 Hearing—the hearing at which HMIT had the burden of showing the court that its Proposed Claims were "colorable" such that it should be allowed to pursue them through the filing of the Proposed Complaint—paints a different picture. Somewhat tellingly, HMIT chose not to call Patrick—allegedly HMIT's only representative and control person—as a witness in support of its Motion for Leave. Rather, Dondero was HMIT's first witness called in support of its motion, and the first

[114] *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 3. HMIT notes, in a footnote 6, that "Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement."

questions on direct from HMIT's counsel were aimed at establishing that Dondero was not behind the filing of the Motion for Leave and the pursuit of the Proposed Claims.[115] Dondero testified that he did not (i) "have any current official position" with HMIT, (ii) "attempt to exercise [control] on the business affairs of [HMIT]," (iii) "have any official legal relationship with [HMIT] where [he] can attempt to exercise either direct or indirect control over [HMIT]," or (iv) "participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan."[116] After HMIT rested, Highland and the Claimant Trust called Patrick as a witness, and he testified that he was the administrator of HMIT, that HMIT does not have any employees, operations, or revenues, and, when asked if HMIT owned any assets, Patrick testified, with not a great deal of certainty, that "it's my understanding it has a contingent beneficiary interest in the Claimants [sic] Trust" and that is the only asset HMIT has.[117] Patrick testified that HMIT did not owe any money to Dondero personally, but acknowledged that in 2015, HMIT had issued a secured promissory note in favor of Dondero's family trust, Dugaboy, in the amount of approximately $62.6 million (the "Dugaboy Note") in exchange for Dugaboy transferring a portion of its limited partner interests in Highland to HMIT; the Dugaboy Note was secured in part by the Highland limited partnership interests purchased from Dugaboy.[118] Patrick admitted that, if HMIT's Class 10 interest has no value, HMIT would have no ability to pay the Dugaboy Note.[119] He further testified that neither he nor any representative of HMIT had ever spoken with any representative of Farallon or Stonehill, that he had no personal knowledge about any *quid pro quo*, the amount of due diligence Farallon or Stonehill conducted prior to buying their claims, or the terms of

[115] *See* June 8 Hearing Transcript, 113:10-25.

[116] *Id.*

[117] June 8 Hearing Transcript, 307:7-308:2.

[118] *Id.*, 303:11-305:1; Highland Ex. 51, HMIT's $62,657,647.27 *Secured Promissory Note* dated December 24, 2015, in favor of Dugaboy.

[119] *Id.*, 308:3-16.

Seery's compensation package (until the terms were disclosed to them in opposition to the Motion for Leave).[120] Patrick admitted that Dugaboy was paying HMIT's attorneys' fees pursuant to a settlement agreement between HMIT and Dugaboy.[121]

On cross-examination by HMIT's counsel, Patrick further testified that HMIT has not filed any litigation, as plaintiff, other than its efforts to be a plaintiff in the Motion for Leave and its action as a petitioner in the Texas Rule 202 proceeding filed earlier in 2023 in the Texas state court.[122] HMIT's counsel argued that the point of this questioning was that "they're just trying to draw Dondero into this and – this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed – attempting to file this action and a Rule 202 proceeding.[123] But, Dondero and HMIT's counsel referred during the June 8 Hearing to the First Rule 202 Petition (where Dondero was the petitioner) and the Second Rule 202 Petition (where HMIT was the petitioner) as "our" Rule 202 petitions, and also to the numerous attempts at getting the discovery (that Dondero had warned Linn was coming) in the collective. For example, in objecting to the admission of Highland's Exhibit 10 – the Texas state court order denying and dismissing the Second Rule 202 Petition – on the basis of relevance, HMIT's counsel referred to the order as "an order denying ***our second"*** Rule 202 Petition.[124] And, Dondero testified that his warning to Linn in May 2021 that "discovery was coming" was "my response to I knew they had traded on material nonpublic information" and that "I thought it would be a lot easier to get

[120] *Id.*, 308:18-312:12. This testimony from Patrick came after HMIT's counsel objection to counsel's line of questioning regarding Patrick's personal knowledge of the facts supporting the allegations in the Proposed Complaint on the basis that he was invading the attorney work product privilege, which was overruled by this court; HMIT's counsel argued (311:4-19) that the line of questioning was an "invasion of attorney work product . . . [b]ecause they might – he would have knowledge from the efforts and investigation through attorneys in the case."

[121] *Id.*, 312:24-313:18.

[122] *Id.*, 315:3-9.

[123] *Id.*, 316:6-11.

[124] *Id.*, 58:11-13. The court overruled HMIT's relevance objection and admitted Highland's Exhibit 10 into evidence. *Id.*, 58:14-15.

discovery on a situation like this than it has been for the last two years" and that "***we've*** been trying for two years to get . . . discovery."[125]

Dondero's use of an entity over which he exerts influence and control to pursue his own agenda in the bankruptcy case is not new. Rather, this has been part of Dondero's *modus operandi* since the "nasty breakup" between Dondero and Highland that culminated with Dondero's ouster in October 2020, whereby Dondero, after not getting his way in the bankruptcy court, continued to lob objections and create obstacles to Highland's implementation of the Plan through entities he owns or controls. As noted above, the Fifth Circuit specifically upheld this court's finding in the Confirmation Order that Dondero owned or controlled the various entities that had objected to confirmation of the Plan and appealed the Confirmation Order, where the Dondero-related appellants made similar protestations that they are not owned or controlled by Dondero and asked the Fifth Circuit to vacate this court's factual finding because, among other reasons, "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him."[126] Based on the totality of the evidence in this proceeding, the court finds that, contrary to the protestations of HMIT's counsel and Patrick otherwise, Dondero is the driving force behind HMIT's Motion for Leave and the Proposed Complaint. The Motion for Leave is just one more attempt by Dondero to press his conspiracy theory that he has pressed for over two years now, unsuccessfully, in Texas state court through Rule 202 proceedings, with the Texas State Securities Board, and with the United States Trustee's office.

[125] *Id.*, 191:5-25.

[126] *Highland Capital*, 48 F.4th at 434-435.

G. Opposition to Motion for Leave: Arguing No Standing and No "Colorable" Claims

Highland, the Claimant Trust, and Seery (together, the "Highland Parties") filed a joint opposition ("Joint Opposition") to HMIT's Motion for Leave on May 11, 2023.[127] The Claims Purchasers filed a separate objection ("Claims Purchasers' Objection") to the Motion for Leave on May 11, 2023, as well.[128] In the Joint Opposition, the Highland Parties urge the court to deny HMIT leave to pursue the Proposed Claims because, as a threshold matter, HMIT does not have standing to bring them, directly or derivatively against the Proposed Defendants. They argue, in the alternative, that the Motion for Leave should be denied even if HMIT had standing to pursue the Proposed Claims because none of the Proposed Claims are "colorable" claims as that term is used in the Gatekeeper Provision of the Plan (and Gatekeeper Orders).[129]

The Claims Purchasers likewise argue that HMIT lacks standing to complain about claims trading in the bankruptcy which occurred between sophisticated Claims Purchasers and sophisticated sellers ("Claims Sellers"), represented by skilled bankruptcy and transactional counsel. Moreover, they argue HMIT cannot show that it or the Reorganized Debtor or the Claimant Trust were injured by the claims trading at issue because the Purchased Claims had already been adjudicated as allowed claims in the bankruptcy case—thus, distributions under the Plan on account of the Purchased Claims remain the same, the only difference being who holds the claims. Moreover, even if HMIT could succeed in equitably subordinating the validly transferred ***allowed*** claims, HMIT would still be in the same position it is today: the holder of a

[127] Bankr. Dkt. Nos. 3783. Highland, the Claimant Trust, and Seery also filed on May 11 a *Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding* ("Morris Declaration") that attached 44 Exhibits in support of the Joint Opposition. Bankr. Dkt. No. 3784.

[128] Bankr. Dkt. No. 3780.

[129] *See* Joint Opposition ¶ 139 ("Because HMIT lacks standing, this Court need not reach the merits of HMIT's proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion.").

contingent, speculative Class 10 interest that would only be paid after payment, in full, with interest, of all creditors under the Plan. The Claims Purchasers argue in the alternative that the Proposed Claims are not "colorable."

Finally, the Proposed Defendants argue that the standard of review for assessing whether the Proposed Claims are "colorable" (as such term is used in the Gatekeeper Provision and Gatekeeping Orders) is a standard that is a higher than the "plausibility" standard applied to Rule 12(b)(6). They argue that HMIT should be required to meet a higher bar with respect to colorability that includes making a *prima facie* showing that the Proposed Claims have merit (and/or are not without foundation) which requires HMIT to do more than meet the liberal notice-pleading standards.

H. HMIT's Reply to the Proposed Defendants' Opposition to the Motion for Leave

In its reply brief ("Reply"), filed by HMIT on May 18, 2023,[130] it argues that it has constitutional standing as an "aggrieved party" to bring the Proposed Claims on behalf of itself.[131] HMIT also argues that it has standing under Delaware Trust law to bring a derivative action on behalf of the Claimant Trust and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to bring the claims.[132] Finally, HMIT maintains that the standard of review that the bankruptcy court should apply in assessing the "colorability" of the Proposed Claims is no greater than the standard of review applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), which would require the bankruptcy court to look only to the "four corners" of the Proposed Complaint

[130] Bankr. Dkt. No. 3785.

[131] *See* Reply ¶ 7.

[132] See, Reply ¶ 23 n.5, where HMIT argues "The nature of this injury, in addition to Seery's influence over the Claimant Trust, and the lack of prior action by the Claimant Trust to pursue the claims HMIT seeks to pursue derivatively, among other things, demonstrate that HMIT is not only a proper party to assert its derivative claims – but the best party to do so."

and "not weigh extraneous evidence,"[133] take all allegations as true, and view all allegations and inferences in a light most favorable to HMIT. As discussed in greater length below, HMIT argues that, under this standard, the bankruptcy court should not consider evidence in making its determination as to whether the Proposed Complaint presents "colorable" claims.

I. Litigation within the Litigation: The Pre- June 8 Hearing Skirmishes

Suffice it to say there was significant activity before the Motion for Leave actually was presented at the June 8 hearing. HMIT sought an emergency hearing on its Motion for Leave (wanting a hearing on three days' notice). When the bankruptcy court denied an emergency hearing, HMIT unsuccessfully pursued an interlocutory appeal of the denial of an emergency hearing to the district court. HMIT then petitioned for a writ of mandamus at the Fifth Circuit regarding the emergency hearing denial, which was denied by the Fifth Circuit on April 12, 2023.

Next, there were multiple pleadings and hearings regarding ***what kind of hearing*** the bankruptcy court should or should not hold on the Motion for Leave—particularly focusing on whether or not it would be an evidentiary hearing.[134] The resolution of this issue turned on what standard of review the court should apply in exercising its gatekeeping function and determining the colorability of the Proposed Claims. HMIT (although it had submitted two declarations of Dondero with its original Motion for Leave and approximately 350 pages of total evidentiary support) was adamant that there should be no evidence presented at the hearing on the Motion for Leave, arguing that the standard for review should be the plausibility standard under Rule 12(b)(6)

[133] *See* Reply ¶ 47.

[134] Highland, joined by Seery and the Claims Purchasers, had filed a motion asking the bankruptcy court to set a briefing schedule on the Motion for Leave and to schedule a status conference, indicating that Highland's proposed timetable for same was opposed by HMIT. HMIT subsequently filed a response unopposed to a briefing schedule and status conference, but, before the status conference, HMIT filed a brief, stating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the bankruptcy court did not need evidence to exercise its gatekeeping function and determine if HMIT has a "colorable" claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

motions to dismiss such that "the threshold inquiry is very, very low. Evidence is not allowed. . . . [S]imilar to a 12(b)(6) inquiry, [the court] is limited to the four corners of the principal pleading – in this case, the complaint, or now the revised complaint."[135] Counsel for the Proposed Defendants argued that the standard of review for colorability here, in the specific context of the court exercising its gatekeeping function under the Plan, is more akin to the standards applied under the Supreme Court's *Barton Doctrine*[136] pursuant to which that the bankruptcy court must apply a higher standard than the 12(b)(6) standard, including the consideration of evidence at the hearing on the motion for leave; if the standard of review presents no greater hurdle to the movant than the 12(b)(6) standard applied to every plaintiff in every case, then the gatekeeping provisions mean nothing and do nothing to protect the parties from the harassing, bad-faith litigation they were put in place to prevent.[137] On May 22, 2023, after receipt of post-hearing briefing on the issue, the court entered an order stating that "the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave" and "[t]herefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing [on the Motion to Leave] if they so choose."

Two days later, HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing, seeking expedited depositions of corporate

[135] Transcript of April 24, 2023 Status Conference, Bankr. Dkt. No. 3765 ("April 24 Transcript"), 14:6-11.

[136] The *Barton Doctrine* was established in the 19th century Supreme Court case of *Barton v. Barbour*, 104 U.S. 126 (1881), and states that a party wishing to sue a court-appointed trustee or receiver must first obtain leave of the appointing court by making a *prima facie* case that the claim it wishes to bring is not without foundation.

[137] *See* April 24 Transcript, 36:24-37:4 ("[W]e're exactly today where the Court had predicted in entering [the Confirmation Order], that the costs and distraction of this litigation are substantial. And if all we're doing is replicating a 12(b)(6) hearing on a motion for leave, we're actually not doing anything to reduce, as the Court made clear, the burdens, distractions, of litigation."); 37:5-13 ("The Fifth Circuit likewise cited *Barton* in its order affirming the confirmation order. Specifically, it also explained that the provisions, these gatekeeper provisions requiring advance approval were meant to 'screen and prevent bad-faith litigation.' Well that – if that means only what the Plaintiff[ ] say[s] it does, then it really doesn't do anything at all to screen. There's no gatekeeping because their version of what that means is always policed under 12(b)(6) standards.").

representatives of the Claims Purchasers and of Seery and production of documents pursuant to deposition notices and subpoenas duces tecum that HMIT had attached to the motion. On May 26, 2023, this court held yet another status conference. Following the status conference, the court granted in part and denied in part HMIT's request for expedited discovery by ordering only Seery and Dondero to be made available for depositions prior to the June 8 Hearing. The court reached what seemed like appropriate middle ground by allowing the deposition of Seery and allowing the other parties to depose Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Dondero had been seeking discovery relating to the very claims trades that are the subject of the Revised Proposed Complaint from the Claims Purchasers in Texas state court "Rule 202" proceedings for approximately two years, where their attempts were rebuffed.

Approximately 60 hours before the June 8 Hearing, HMIT filed its Witness and Exhibit List disclosing for the first time two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony). Highland, the Claimant Trust, and Seery filed a joint motion to exclude the expert testimony and documents ("Motion to Exclude"), which the court ultimately granted in a separate order.

During the full-day June 8 Hearing on the Motion to Leave, the court admitted over 50 HMIT exhibits and over 30 Highland/Claimant Trust exhibits. The court heard testimony from HMIT's witnesses Dondero and Seery (as an adverse witness) and from the Highland Parties' witness Mark Patrick, the administrator of HMIT since August 2022 (as an adverse witness). The bankruptcy court allowed HMIT to make a running objection to all evidence—as it continued to argue that evidence was not appropriate.

III. LEGAL ANALYSIS

In determining whether HMIT should be granted leave, pursuant to the Gatekeeper Provision of the Plan and the court's prior Gatekeeper Orders, to pursue the Proposed Claims, the court must address the issue of whether HMIT would have ***standing*** to bring the Proposed Claims in the first instance. If so, the next question is whether the Proposed Claims are "***colorable***." But prior to getting into the weeds on ***standing*** and "***colorability,***" some general discussion regarding the topic of claims trading in the bankruptcy world seems appropriate, given that HMIT's Proposed Claims are based, in large part, on allegations of ***improper*** claims trading.

A. Claims Trading in the Context of Bankruptcy Cases—Can It Be Tortious or Otherwise Actionable?

As noted, at the crux of HMIT's desired lawsuit is what this court will refer to as "claims trading activity" that occurred shortly after the Plan was confirmed, but before the Plan went effective. HMIT believes that the claims trading activity gave rise to various torts: breach of fiduciary duty on the part of Seery; knowing participation in breach of fiduciary duty by the other Proposed Defendants; and conspiracy by all Defendants. HMIT also believes that the following remedies should be imposed: equitable disallowance of the Purchased Claims; disgorgement of the alleged profits the Claims Purchasers made on their purchases; and disgorgement of all Seery's compensation received since the beginning of his "collusion" with the other Defendants. Without a doubt, the Motion for Leave and Proposed Complaint revolve almost entirely around the claims trading activity.

This begs the question: ***When (or under what circumstances) might claims trading activity during a bankruptcy case give rise to a cause of action that either the bankruptcy estate or an economic stakeholder in the case might have standing to bring?*** Here, the claims trading

wasn't even "during a bankruptcy case" really—it was post-confirmation and pre-effective date, and it happened to be: (a) after mediation of the claims, (b) after Rule 9019 settlement motions, (c) after objections by Dondero and certain of his family trusts were lodged, (d) after evidentiary hearings, and (e) after orders were ultimately entered ***allowing*** the claims (and in most cases, such orders were appealed). The further crux of HMIT's desired lawsuit is that Seery allegedly "wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends" by sharing ***material non-public information*** to them regarding the potential value of the claims (i.e., the potential value of the bankruptcy estate), and this is what made the claims trading activity particularly pernicious. The alleged sharing of MNPI allegedly caused the Claims Purchasers to purchase their claims without doing any due diligence and with knowledge that the claims would be worth much more than the Plan's "pessimistic" projections might have suggested, and also allowed Seery to plant friendly allies into the creditor constituency (and on the post-confirmation CTOB) that would "rubber stamp" his generous compensation. This is all referred to as "not arm's-length" and "collusive." Notably, the MNPI mostly pertained to a likely future acquisition of MGM by Amazon (which transaction, indeed, occurred in 2022, after being publicly announced in Spring of 2021); as noted earlier, Highland owned, directly and indirectly, common stock in MGM. Also notably, there had been rumors and media attention regarding a potential sale of MGM for many months.[138] In summary, to be clear, HMIT's desired lawsuit is laced with a theme of "insider trading"—although this isn't a situation of securities trading *per se* (i.e., the unsecured Purchased Claims were not securities), and, as noted earlier, the Texas State Securities Board has not seen fit to investigate the claims trading activity.

So, preliminarily, is claims trading in bankruptcy sinister *per se*? The answer is no.

[138] *E.g.,* Benjamin Mullin, *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale,* THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.).

The activity of investing in distressed debt (which frequently occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and, indeed, has been so for a very long time. As noted by one scholar:

> The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

Adam J. Levitin, *Bankruptcy* Markets*: Making Sense of Claims Trading*, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010) (hereinafter "*Bankruptcy Markets*").[139]

As a pure policy matter, some practitioners have bemoaned this claims trading phenomenon, suggesting that "distressed debt traders may sacrifice the long-term viability of a debtor for the ability to realize substantial and quick returns on their investments."[140] Others suggest that claims trading in bankruptcy is beneficial, in that it allows creditors of a debtor an early exit from a potentially long bankruptcy case, enabling them to save expense and administrative hassles, realize immediate liquidity on their claims (albeit discounted), and may

[139] *See also* Aaron Hammer & Michael Brandess, *Claims Trading: The Wild West of Chapter 11s*, AM. BANKR. INST. JOURNAL 62 (Jul./Aug. 2010); Chaim Fortgang & Thomas Mayer, *Trading Claims and Taking Control of Corporations in Chapter 11,* 12 CARDOZO L. REV. 1, 25 (1990) (noting that "the first recorded instance of American fiduciaries trading claims against insolvent debtors predates all federal bankruptcy laws and goes back to 1790" when the original 13 colonies were insolvent, owing tremendous amounts of debt to various parties in connection with the Revolutionary War; early American investors purchased these debts for approximately 25% of their par value, hoping the claims would be paid at face value by the American government).

[140] Harvey R. Miller, *Chapter 11 Reorganization Cases and the Delaware Myth*, 55 VAND. L. REV. 1987, 2016 (2002). *See also* Harvey R. Miller & Shai Y. Waisman, *Does Chapter 11 Reorganization Remain a Viable Option for Distressed Businesses for the Twenty-First Century?*, 78 AM. BANKR. L.J. 153 (2004); Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129 (2005).

even permit them to take advantage of a tax loss on their own desired timetable.[141] On the flipside, "[c]aims trading permits an entrance to the bankruptcy process for those investors who want to take the time and effort to monitor the debtor and contribute expertise to the reorganization process."[142]

So, what are the "rules of the road" here? What does the Bankruptcy Code dictate regarding claims trading? The answer is nothing. The Bankruptcy Code itself has no provisions whatsoever regarding claims trading. The only thing resembling any regulation of claims trading during a bankruptcy case is found at Federal Rule of Bankruptcy Procedure 3001(e)—the current version of which went into effect in 1991—and it imposes extremely light regulation—if it could even be called that. This rule requires, in pertinent part (at subsection (2)), that "[i]f a claim other than one based on a publicly traded note, bond, or debenture" is traded during the case after a proof of claim is filed, notice/evidence of that trade must be filed with the bankruptcy clerk by the transferee. The transferor shall then be notified and given 21 days to object. If there is an objection, the bankruptcy court will hold a hearing regarding whether a transfer, in fact, took place. If there is no objection, nothing further needs to happen, and the transferee will be considered substituted for the transferor.

There are several things noteworthy about Rule 3001(e)(2). First, the only party given the opportunity to object is the ***transferor*** of the claim (presumably, in the situation of a dispute regarding whether there was truly an agreement regarding the transfer of the claim). Second, there is no need for a bankruptcy court order approving the transfer (except in the event of an objection

[141] *See Bankruptcy Markets*, at 70. *See also In re Kreisler,* 546 F.3d 863, 864 (7th Cir. 2008) ("Claims trading allows creditors to opt out of the bankruptcy system, trading an uncertain future payment for an immediate one, so long as they can find a purchaser.").

[142] *Bankruptcy Markets* at 70 (citing, among other authorities, Edith S. Hotchkiss & Robert M. Mooradian, *Vulture Investors and the Market for Control of Distressed Firms*, 43 J. FIN. ECON. 401, 401 (1997) (finding that "vulture investors add value by disciplining managers of distressed firms").

by the alleged transferor). Third, the ***economic consideration paid need not be disclosed to the court or anyone***. Fourth, there is no requirement or definition of timeliness. Finally, it explicitly does not apply with regard to publicly traded debt. This, alone, means that many claims trades are not even reported in a bankruptcy case. But it is not just publicly traded debt that will not be reflected with a Rule 3001(e) filing. For example, bank debt, in modern times, is often syndicated (i.e., fragmented into many beneficial holders of portions of the debt) and only the administrative agent for the syndicate (or the "lead bank") will file a proof of claim in the bankruptcy—thus, as the syndicated interests (participations) change hands, and they frequently do, there typically will not be a Rule 3001(e) notice filed.[143] To be clear here, this syndication-of-bank-debt fact, along with the fact that there are financial products whereby bank debt might be carved up into economic interests separate and apart from legal title to the loan, means there are many situations in which trading of claims during a bankruptcy case is not necessarily transparent or, for that matter, policed by the bankruptcy court. This is the world of modern bankruptcy. Most of the claims trading that gets reported through a Rule 3001(e) notice is the trading of small vendor claims. And this is all regarded as private sale transactions for the most part.[144]

Suffice it to say that there is not a wealth of case law dealing with claims trading in a bankruptcy context. Perhaps this is not surprising, since it is not prohibited and ***is mostly a matter of private contract between buyer and seller***. The case law that does exist seems to arise in situations of perceived bad faith of a purchaser—for example, when there was an attempt to control voting and/or ultimate control of the debtor through the plan process (not always problematic, but

[143] Anne Marrs Huber & Thomas H. Young, *The Trading of Bank Debt in and Out of Chapter 11*, 15 J. BANKR. L. & PRAC. 1, 1, 3 (2006).

[144] Note that Bankruptcy Rule 3001(e) was very different before 1991. Between 1983-1991, the rule required that parties transferring claims inform the court that a transfer of claims was taking place and also disclose the consideration paid for the transferred claims. A hearing would take place prior to the execution of a trade. Judicial involvement was required and resulted in judicial scrutiny of transactions—something that simply does not exist today.

there are outlier cases where this was found to cross a line and result in consequences such as disallowing votes on a plan or even equitable subordination of a claim).[145] Another type of case that has generated case law is where the purchaser of claims occupied a fiduciary status with the debtor.[146] Still another type of case that has generated case law is where there is an attempt to cleanse claims that might have risks because of a seller's malfeasance, by trading the claim to a new claim holder.[147]

The following is a potpourri of the more notable cases that have addressed claims trading in different contexts. Most of them imposed no adverse consequences on claims traders: *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (where a corporation named Garlin, that was owned by the individual chapter 7 debtors' sister and close friend, purchased a $900,000 bank claim for $16,500, and there was no disclosure of Garlin's connections to debtors and no Rule 3001(e)(2) notice was filed, the Seventh Circuit reversed the bankruptcy court's invocation of the doctrine of equitable subordination to the claim, stating: "Equitable subordination is generally appropriate only if a creditor is guilty of misconduct that causes injury to the interests of other creditors;" the Seventh Circuit further stated that it could "put to one side whether the court's finding of inequitable conduct was correct" because even if there was misconduct, it did not harm the other creditors, who were in the same position whether the original creditor or Garlin happened to own the claim; the Seventh Circuit did note that Garlin's decision to purchase the original bank

[145] *In re Applegate Prop. Ltd.,* 133 B.R. 827, 836 (Bankr. W.D. Tex. 1991) (designating votes of an affiliate of the debtor that purchased a blocking position to thwart a creditor's plan because it was done in bad faith); *In re Allegheny Int'l, Inc.,* 118 B.R. 282, 289–90 (Bankr. W.D. Pa. 1990) (because of bad faith activities, the court designated votes of a claims purchaser who purchased to get a blocking position on a plan). *But see In re First Humanics Corp.,* 124 B.R. 87, 92 (Bankr. W.D. Mo. 1991) (claims purchased by debtor's former management company to gain standing to file a plan to protect interest of the debtor was in good faith).

[146] *See In re Exec. Office Ctrs., Inc.*, 96 B.R. 642, 649-650 (Bankr. E.D. La. 1988) (and numerous old cites therein).

[147] *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 340 B.R. 180 (Bankr. S.D.N.Y. 2006), *vacated, Enron Corp. v. Springfield Assocs., L.L.C. (In re Enron Corp.),* 379 B.R. 425 (S.D.N.Y 2007); *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 333 B.R. 205, 211 (Bankr. S.D.N.Y. 2005).

creditor's claim might have disadvantaged the other creditors if it interfered with the trustee's own potential settlement with the original bank creditor (note that the trustee argued that she had been negotiating a deal with bank under which bank might have reduced its claims); however, the trustee presented no evidence that any deal with the bank was imminent or even likely; thus, whether such a deal could have been reached was speculation; equitable subordination was therefore improper."); *Viking Assocs., L.L.C. v. Drewes (In re Olson),* 120 F.3d 98, 102 (8th Cir. 1997) (case involved the actions of an entity known as Viking in purchasing all of the unsecured claims against the bankruptcy estate of two chapter 7 debtors, Hugo and Jeraldine Olson; Viking was a related entity, owned by the debtors' children, and purchased $525,000 of unsecured claims for $67,000; while the bankruptcy court had discounted the claims down to the purchase amount and subordinated Viking's discounted claims to the claims of the other unsecured creditors, relying on section 105 of the Bankruptcy Code, the Eighth Circuit held that the bankruptcy court lacked the authority to do this, and, thus, reversed and remanded; the Eighth Circuit noted that in 1991, Bankruptcy Rule 3001(e)(2) was amended "to restrict the bankruptcy court's power to inspect the terms of" claims transfers. *Id.* at 101 (citing *In re SPM Mfg. Corp.,* 984 F.2d 1305, 1314 n. 9 (1st Cir. 1993)); the text of the rule makes clear that the existence of a "dispute" depends upon an objection by the ***transferor***; where there is no objection by the ***transferor***, there is no longer any role for the court); *Citicorp. Venture Capital, Ltd. v. Official Committee of Unsecured Creditors (In re Papercraft Corp.),* 160 F.3d 982 (3d Cir. 1998) (large investor who held seat on board of directors of debtor and debtor's parent, and who also had nonpublic information regarding the debtor's value, anonymously purchased 40% of the unsecured claims at a steep discount during the chapter 11 case, and then, having obtained a blocking position for plan voting purposes, proposed a plan to acquire debtor; the claims purchaser's claims were equitably reduced to amount

paid for the claims since investor was a fiduciary who was deemed to have engaged in inequitable conduct); *Figter Ltd. v. Teachers Ins. & Annuity Ass'n of Am. (In re Figter),* 118 F.3d 635 (9th Cir. 1997) (Ninth Circuit affirmed bankruptcy court's ruling that a secured creditor's purchase of 21 out of 34 unsecured claims in the case was in good faith and it would not be prohibited from voting such claims on the debtor's plan, pursuant to Bankruptcy Code section 1126(e)); *In re Lorraine Castle Apartments Bldg. Corp.,* 145 F.2d 55, 57 & 58 (7th Cir. 1945) (in a case under the old Bankruptcy Act, in which there were more restrictions on claims trading, a debtor and two of its stockholders argued that the claims of purchasers of bonds should be limited to the amounts they paid for them; bankruptcy court special master found, "that, though he did not approve generally the ethics reflected by speculation in such bonds," there was no cause for limitation of the amounts of their claims, pointing out that the persons who had dealt in the bonds were not officials, directors, or stockholders of the corporation and owed no fiduciary duty to the estate or its beneficiaries—rather they were investors or speculators who thought the bonds were selling too cheaply and that they might make a legitimate profit upon them; the district court agreed, as did the Seventh Circuit, noting that "[t]o reduce the participation to the amount paid for securities, in the absence of exceptional circumstances which are not present here, would reduce the value of such bonds to those who have them and want to sell them. This would result in unearned, undeserved profit for the debtor, destroy or impair the sales value of securities by abolishing the profit motive, which inspires purchasers."); *In re Washington Mutual, Inc.*, 461 B.R. 200 (Bankr. Del. 2011), *vacated in part*, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (discussion of an equity committee's potential standing to pursue equitable subordination or equitable disallowance of the claims of certain noteholders who had allegedly traded their claims during the chapter 11

case while having material non-public information; while bankruptcy court originally indicating these were viable tools, court later vacated its ruling on this after a settlement was reached).

Suffice it to say that the courts have, more often than not, been unwilling to impose legal consequences, for an actor's involvement with claims trading. At most, in outlier-type situations during a case, courts have taken steps to disallow claims for voting purposes or to subordinate claims to other unsecured creditors for distribution purposes.[148] But the case at bar does not present facts that are typical of any of the situations in reported cases.

For one thing, unlike in the reported cases this court has located, there ***seems to have been complete symmetry of sophistication among the claim sellers and claim purchasers here—and complete symmetry with HMIT for that matter***. All persons involved are highly sophisticated financial institutions, hedge funds, or private equity funds. No one was a "mom-and-pop" type business or vendor that might be vulnerable to chicanery. The claims ranged from being worth $10's of millions of dollars to $100's of millions of dollars in face value. And, of course, the sellers/transferors of the claims have never shown up, subsequent to the claims trading

[148] Note that, while some cases suggest that outright disallowance of an unsecured claim, in the case of "inequitable conduct" might be permitted (not merely equitable subordination to unsecured creditors)—usually citing to *Pepper v. Litton*, 308 U.S. 295 (1939)—the Fifth Circuit has suggested otherwise. *In re Mobile Steel Co., Inc.,* 563 F.2d 692, 699-700 (5th Cir. 1977) (cleaned up) (noting that "equitable considerations can justify only the subordination of claims, not their disallowance" and also noting that "three conditions must be satisfied before exercise of the power of equitable subordination is appropriate[:] (i) The claimant must have engaged in some type of inequitable conduct[;] (ii) The misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant[; and] (iii) Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act." In *Mobile Steel*, the Fifth Circuit held that the bankruptcy judge exceeded the bounds of his equitable jurisdiction by disallowing a group of claims and also reversed the subordination of certain claims, on the grounds that the bankruptcy court had made clearly erroneous findings regarding alleged inequitable conduct and other necessary facts. *Contrast In re Lothian Oil Inc.,* 650 F.3d 539 (5th Cir. 2011) (involving the question of whether a bankruptcy court may ***recharacterize*** a claim as equity rather than debt; the court held yes, but it has nothing to do with inequitable conduct *per se*; rather section 502(b)'s language that a claim should be allowed unless it is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law...." is the relevant authority; unlike equitable subordination, recharacterization is about looking at the true substance of a transaction not the conduct of a party (if it looks like a duck and quacks like a duck, it's a duck—i.e., equity); the court indicated that section 105 is not a basis to recharacterize debt as equity; it's a matter of looking at state law to determine if there is any basis and looking at the nature of the underlying transaction—as either a lending arrangement or equity infusion.

transactions, to complain about anything. Everyone involved here is, essentially, a behemoth and there is literally no sign of innocent creditors getting harmed. Second, the case at bar is unique in that the claims traded here ***had all been allowed after objections, mediation, and Rule 9019 settlements during the bankruptcy case***. Thus, the amounts that would be paid on them were "locked in," so to speak. There was no risk to a hypothetical claims-purchaser of disallowance, offset, or any "claw-back" litigation (or—one might have reasonably assumed—any type of litigation). Third, the terms for distributions on unsecured claims had been established in a confirmed plan (although the claims were purchased before the effective date of the Plan). Thus, there was a degree of certainty regarding return on investment for the Claims Purchasers here that was much higher than if the claims had been purchased early, during, or mid-way through the case.[149] ***This was post-confirmation, pre-effective date claims purchasing.*** Interestingly, all three of these facts might suggest that little due diligence would be undertaken by any hypothetical purchaser. The rules of the road had been set. The court makes this observation because HMIT has suggested there is something highly suspicious about the fact that Farallon allegedly told Dondero that it did no due diligence before purchasing its claims (leading him to conclude that the Claims Purchasers must have purchased their claims based on receiving MNPI from Seery). Not only has there been no colorable evidence suggesting that insider information was shared, but the lack of due diligence in this context does not reasonably seem suspicious. The claims purchases

[149] *See discussion* in BANKRUPTCY MARKETS, at 91:

> Some claims purchasers buy before the bankruptcy petition is filed, some at the beginning of the case, and some towards the end. For example, there are investors who look to purchase at low prices either when a business is failing or early in the bankruptcy and ride through the case until payouts are fairly certain. [Citations omitted.] These investors might be hoping to buy at 30 cents on the dollar and get a payout at 70 cents on the dollar. Perhaps if they waited another six months, the payout would be 74 cents on the dollar, but the additional 4 cents on the dollar for six months might not be a worthwhile return for the time value of the investment. Other investors might not want to assume the risk that exists in the early days of a case when the fate of the debtor is much less certain, but they would gladly purchase at 70 cents on the dollar at the end of the case to get a payout of 74 cents on the dollar six months later.

were almost like passive investments, at this point—there was no risk of a claim objection and there was a confirmed plan, with a lengthy disclosure statement that described not only plan payment terms and projections, but essentially anything that any investor might want to know.

To reiterate, here, HMIT seeks leave to assert the following causes of action:

I. Breach of Fiduciary Duties (Seery)

II. Knowing Participation in Breach of Fiduciary Duties (Claims Purchasers)

III. Conspiracy (all Proposed Defendants)

IV. Equitable Disallowance (Claims Purchasers)

V. Unjust Enrichment and Constructive Trust (all Proposed Defendants)

VI. Declaratory Judgment (all Proposed Defendants)

The court struggles to fathom how any of these proposed causes of action or remedies can be applied in the context of: (a) post-confirmation claims trading; (b) where the claims have all been litigated and allowed.

In reflecting on the case law and various Bankruptcy Code provisions, the court can fathom the following hypotheticals in which claims trading during a bankruptcy case might be somehow actionable:

> **Hypothetical #1**: The most obvious situation would be if a purchaser of a claim files a Rule 3001(e) Notice, and the seller/transferor then files an objection thereto. There would then be a contested hearing between purchaser and seller regarding the validity of the transfer with the bankruptcy court issuing an appropriate order after the hearing on the objection. ***As noted, there was no objection to the Rule 3001(e) notices here***.
>
> **Hypothetical #2:** Alternatively, there could be a breach of contract suit between purchaser and seller if one thinks the other breached the purchase-sale agreement somehow. Perhaps torts might also be alleged in such litigation. ***As noted, there is no dispute between purchasers and sellers here.***
>
> **Hypothetical #3:** If there is believed to be fraud in connection with a plan, a party in interest might, pursuant to section 1144 of the Bankruptcy Code, move for

revocation of the plan "at any time before 180 days after the date of entry of the order for confirmation" and the court "may revoke such order if and only if such order was procured by fraud." ***As noted, here HMIT has suggested that the "pessimistic" plan projections may have been fraudulent or misrepresentations somehow. The time elapsed long ago to seek revocation of the Plan.***

Hypothetical #4: As discussed above, in rare situations (bad faith), during a Chapter 11 case, before a plan is confirmed, a claims purchaser's claim might not be allowed for voting purposes. *See* Sections 1126(e) of the Bankruptcy Code ("the court may designate any entity whose acceptance or rejection of such plan was not in good faith"). ***Obviously, in this case, this is not applicable—the claims were purchased post-confirmation.***

Hypothetical #5: As discussed above, in rare situations (inequitable conduct), a court might equitably subordinate ***claims*** to ***other claims***. *See* Section 510(c) of the Bankruptcy Code. But here**,** HMIT is seeking either: (a) equitable subordination of the ***claims*** of the Claims Purchaser to HMIT's ***Class 10 former equity interest*** (in contravention of the explicit terms of section 510(c)) or, (b) ***equitable disallowance*** of the claims of the Claims Purchasers (in contravention of *Mobile Steel*).

Hypothetical #6: Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case may permit "recharacterization" of a claim from debt to equity in certain circumstances, but not in circumstances like the ones in this case. Here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). The problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). Here there was most definitely "a contest" with regard to all of these purchased claims. ***Thus, it would appear that any effort to have a court reconsider these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.***

Hypothetical #7: If a party believes "insider trading" occurred there are governmental agencies that investigate and police that. ***Here, the purchased claims (which were not based on bonds or certificated equity interests) would not be securities so as to fall under the SEC's purview. Moreover, there was evidence that HMIT or Dondero-Related entities requested that the Texas State Securities Board investigate the claims trading and the board did not find a basis to pursue anyone for wrongdoing***.

Hypothetical #8: The United States Trustee can investigate wrongdoing by a debtor or unsecured creditors committee. While the United States Trustee would naturally have concerns about members of an unsecured creditors committee (or an officer of a debtor-in-possession) adhering to fiduciary duties and not putting their

> own interests above those of the estate, here, there are a couple of points that seem noteworthy. One, the claims trading activity was post-confirmation so—while certain of the claim-sellers may have still been on the unsecured creditors committee, as the effective date of the plan had not yet occurred—the circumstances are very different than if this had all happened during the early, contentious stages of the case. It seems inconceivable that there was somehow a disparity of information that might be troubling—the Plan had been confirmed and it was available for the world to see. The whole notion of "insider information" (just after confirmation here) feels a bit off-point. Bankruptcy practitioners and judges sometimes call bankruptcy a fishbowl or use the "open kimono" metaphor for good reason. It is generally a very open process. And information-sharing on the part of a debtor-in-possession or unsecured creditors committee is intended to be robust. *See, e.g.,* Bankruptcy Code sections 521 and 1102(b)(3). In a way, HMIT here seems to be complaining about this very situation that the Code and Rules have designed.

In summary, claims trading is a highly ***unregulated*** activity in the bankruptcy world. ***HMIT is attempting to pursue causes of action here that, to this court's knowledge, have never been allowed in a context like this***.

B. Back to Standing—Would HMIT Have Standing to Bring the Proposed Claims?

The Proposed Defendants argue that HMIT lacks standing to bring the Proposed Claims, either: (a) derivatively on behalf of the Reorganized Debtor and Claimant Trust, or (b) directly on behalf of itself. Thus, they argue that this is one reason that the Motion for Leave should be denied.

In making their specific standing arguments, the parties analyze things slightly differently:

The Claims Purchasers focus primarily on HMIT's lack of ***constitutional*** standing but also argue that HMIT does not have ***prudential*** standing under Delaware trust law to bring the Proposed Claims either individually or derivatively. Why do they mention Delaware trust law? Because the Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29.[150]

The Highland Parties' standing arguments focus almost entirely on HMIT's lack of ***prudential*** standing under Delaware trust law to bring the Proposed Claims.

HMIT argues that the Proposed Defendants "play fast and loose with standing arguments" and that HMIT has ***constitutional*** standing as a "party aggrieved"[151] to bring the Proposed Claims on behalf of itself. HMIT also argues that it has standing under Delaware trust law to bring a

[150] *See* Proposed Complaint, ¶ 26.

[151] Proposed Complaint, ¶7.

derivative action on behalf of the Claimant Trust, and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to do so.

1. The Different Types of Standing: Constitutional Versus Prudential

The parties are addressing two concepts of standing that can sometimes be confused and misapplied by both attorneys and judges: ***constitutional Article III standing***, which implicates federal court subject matter jurisdiction,[152] and the narrower standing concept of ***prudential standing***, which does not implicate subject matter jurisdiction but nevertheless might prevent a party from having capacity to sue, pursuant to limitations set by courts, statutes or other law.

Article III constitutional standing works as follows: a plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing three elements: (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[153] "If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve."[154] These elements ensure that a plaintiff has "'such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf."[155]

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[152] Article III, Section 2 of the U.S. Constitution gives federal courts jurisdiction over enumerated cases and controversies.

[153] *See Thole v. U.S. Bank, N.A.*, 140 S.Ct. 1615, 1618 (2020)(citing the Supreme Court's seminal case on the tripartite test for Article III constitutional standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), where the Supreme Court stated that "the irreducible constitutional minimum of standing contains [the] three elements"); *see also Spokeo*, 578 U.S. at 338; *Abraugh v. Altimus*, 26 F.4th 298, 302 (5th Cir. 2022) (citing *id.*).

[154] *Transunion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021)(cleaned up).

[155] *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Apart from this minimal constitutional mandate, courts and statutes have set other limits on the class of persons who may seek judicial remedies—and this is the concept of prudential standing. In its recent opinion in *Abraugh v. Altimus*,[156] the Fifth Circuit set forth a detailed analysis of the two types of "standing," noting that the term "standing" is often "misused" in our legal system, which has led to confusion for both attorneys and judges.[157] The constitutional standing that is necessary for a court to exercise subject matter jurisdiction is broader than prudential standing and is only the first hurdle a party must clear before pursuing a claim in federal court.

The Fifth Circuit explained that ***in addition to*** Article III constitutional standing, "courts have occasionally articulated other 'standing' requirements that plaintiffs must satisfy under certain conditions, ***beyond those imposed by Article III***,"[158] such as the "standing" requirement that might be imposed by a statute or by jurisprudence. The *Abraugh* case was a perfect example of the latter.

Abraugh involved the civil rights statutes that provide, among other things, that "a party must have standing under the state wrongful death or survival statutes to bring [a § 1983 cause of action]" and noted that these statutes impose additional "standing" requirements that are a matter of prudential standing, not constitutional standing.[159] In *Abraugh*, the Fifth Circuit reversed and remanded a district court's dismissal of a § 1983 civil rights cause of action—noting that the district court had stated that it was dismissing based on a "lack of subject matter jurisdiction" because the plaintiff in that action lacked standing.[160] The plaintiff was the mother of a prisoner

[156] 26 F.4th 298.
[157] *Id.* at 303.
[158] *Id.* at 302 (emphasis added).
[159] *Id.* at 302-303.
[160] *Id.* at 301.

who died by suicide while in custody who brought a § 1983 action against Louisiana correctional officers and officials. After finding that the plaintiff/mother lacked standing under Louisiana's wrongful death and survival statutes (because there had been a surviving child and wife of the prisoner who were the proper parties with capacity to sue), the district court held that it was dismissing for lack of subject matter jurisdiction. The Fifth Circuit pointed out that the plaintiff/mother may have lacked standing under Louisiana's wrongful death and survival statutes to bring the claim under § 1983, but that type of standing was matter of ***prudential*** standing, and the plaintiff/mother actually ***did*** have ***Article III*** constitutional standing ("a constitutionally cognizable interest in the life of her son").[161] Thus, the district court's error was ***not*** in finding that the plaintiff/mother lacked prudential standing but in improperly conflating the two standing concepts when it held that it had lacked ***subject matter jurisdiction*** to consider any of the plaintiff's/mother's amended complaints.[162] The Fifth Circuit noted specifically that[163]

> prudential standing does not present a jurisdictional question, but "a merits question: who, according to the governing substantive law, is entitled to enforce the right?" As the Federal Rules of Civil Procedure make clear, "an action must be prosecuted in the name of the real party in interest." FED. R. CIV. P. 17(a)(1). And a violation of this rule is a failure of "prudential" standing. "Not one of our precedents holds that the inquiry is jurisdictional." It goes only to the validity of the cause of action. And "the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction."

Somewhat relevant to this prudential standing discussion is the fact that, in this bankruptcy case, there have been dozens of appeals of bankruptcy court orders by Dondero and Dondero-related entities. In connection therewith, both the district court and the Fifth Circuit, in evaluating the ***appellate standing*** of the appellants, have taken pains to distinguish between the concepts of:

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[161] *Id.*

[162] *Id.* at 301, 303-304. The Fifth Circuit opined that "the district court did not err in describing [the mother's] inability to sue under Louisiana law as a defect of 'standing[, b]ut it is a defect of prudential standing, not Article III standing" thus technically not implicating the federal court's subject matter jurisdiction. *Id.* at 303.

[163] *Id.* at 304 (cleaned up).

(a) traditional, constitutional standing, and (b) a type of prudential standing known as the "person aggrieved" test, which is applied in the Fifth Circuit in determining whether a party has ***standing to appeal a bankruptcy court order***—which it describes as a narrower and "more exacting" standard than constitutional standing. As explained in a Fifth Circuit opinion addressing the standing of a Dondero-related entity called NexPoint to appeal bankruptcy court orders allowing professional fees, the "person aggrieved" standard that is typically applied to ascertain bankruptcy ***appellate*** standing originated in a statute in the Bankruptcy Act. The Fifth Circuit continued to apply it after Congress removed the provision when it enacted the Bankruptcy Code in 1978.[164] Because it is narrower and "more exacting" than the test for Article III constitutional standing, it involves application of prudential standing considerations.[165] The Fifth Circuit describes the "person aggrieved" test for bankruptcy appellant standing as requiring that an appellant show that it was "*directly and adversely affected pecuniarily* by the order of the bankruptcy court," requiring "a higher causal nexus between act and injury than traditional standing . . . that best deals with the unique posture of bankruptcy actions."[166] In affirming the district court's dismissal of NexPoint's appeal of the bankruptcy court's fee orders, due to NexPoint's lack of prudential standing under the "person aggrieved" test, the court rejected NexPoint's argument that it had standing to appeal

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[164] *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, No. 22-10575, 2023 WL 4621466, *2 (5th Cir. July 19, 2023)(citing *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004)(cleaned up)).

[165] *Id.* at *1, **4-6 (where the Fifth Circuit repeatedly throughout its opinion refers to the "person aggrieved" test for standing in bankruptcy actions as a test for "prudential standing."); *see also Dondero v. Highland Capital Mgt., L.P.*, Civ. Act. No. 3:20-cv-3390-X, 2002 WL 837208 (N.D. Tex. Mar. 18, 2022)(where the district court, in addressing Dondero's standing to appeal a bankruptcy court order approving a Rule 9019 settlement (between Highland and Acis Capital Management GP LLC), notes that "[i]t is substantially more difficult to have standing to appeal a bankruptcy court's order than it is to pursue a typical complaint under Article III of the U.S. Constitution" and that "the Fifth Circuit has long recognized that bankruptcy cases' wide-reaching scope calls for a more stringent standing test.").

[166] *See id.* at *3 (cleaned up). The court quotes its 2018 opinion in *Matter of Technicool Sys., Inc. (In re Technicool)*, 896 F.3d 382, 385 (5th Cir. 2018), which explains why the "person aggrieved" prudential standing standard is applied in bankruptcy actions: "Bankruptcy cases often involve numerous parties with conflicting and overlapping interests. Allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Given the specter of such sclerotic litigation, standing to appeal a bankruptcy court order is, of necessity, *quite limited*." *Id.* (cleaned up).

because "it meets traditional Article III standing requirements [and that the more exacting] prudential standing considerations such as the 'person aggrieved' standard" did not survive the Supreme Court's 2014 *Lexmark*[167] opinion,[168] which addressed standing issues in the context of false advertising claims under the Lanham Act and reminded that courts may not "limit a cause of action that Congress has created merely because 'prudence' dictates."[169] The Fifth Circuit held that the Supreme Court's reminder in *Lexmark* did not nullify the "person aggrieved" test for prudential standing in bankruptcy appeals, citing its own decision in *Superior MRI Services Inc. v. Alliance Healthcare Services, Inc.*[170] (rendered a year after *Lexmark* was decided), in which it held that *Lexmark* applied only to the circumstances of that case, "rather than broadly modifying—or undermining—*all* prudential standing concerns, such as the one animating the 'person aggrieved' standard in bankruptcy appeals."[171]

Similarly, in yet another appeal in this bankruptcy case involving three Dondero-related entities as appellants (NexPoint, Dugaboy, and HCMFA)—this one an appeal of a bankruptcy court order authorizing the creation of an indemnity subtrust and entry into an indemnity trust agreement—the district court noted the parties' confusion about the standing issue, as exemplified in the parties' reference to constitutional standing when they were actually arguing that they had prudential standing under the "person aggrieved" test: "Although the parties frame this issue as one of constitutional standing . . . they cite case law and present arguments about the prudential

[167] *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

[168] *Id.* at *2.

[169] *See id.* at *4 (cleaned up).

[170] 778 F.3d 502 (5th Cir. 2015).

[171] *NexPoint*, 2023 WL 4621466 at *4 (cleaned up). The Fifth Circuit explicitly stated that "*Lexmark* does not expressly reach prudential concerns in bankruptcy appeals and brought no change relevant here." *Id.* at *5 (cleaned up).

standing requirement embodied in the 'person aggrieved' test."[172] The district court noted that it had an "independent obligation to consider constitutional standing before reaching its prudential aspects."[173] The district court dismissed the appeal as to Dugaboy and HCMFA for lack of standing but, upon concluding that NexPoint did have standing, dismissed the appeal as to it on the merits. The Fifth Circuit affirmed.[174] Interestingly, the court noted that, while the parties did not contest the district court's determination that NexPoint had standing to pursue the appeal, it "may consider prudential standing issues *sua sponte*."[175] In doing so, the Fifth Circuit recognized the distinction between constitutional standing and the prudential "person aggrieved" test applied to bankruptcy appeals, which "is, of necessity, quite limited" and "an even more exacting standard than traditional constitutional standing," as it requires an appellant to show that it is "directly, adversely, and financially impacted by a bankruptcy order."[176]

In summary, in analyzing whether HMIT would have standing to bring the Proposed Claims, this court must ***first*** determine whether HMIT would have constitutional standing under Article III (which is a subject matter jurisdiction hurdle) and, assuming it does, then ***additionally*** address whether HMIT would also have prudential standing (i.e., capacity to sue) pursuant to any applicable statutes (e.g., Delaware statutes), jurisprudence, or other substantive law that might ***limit*** who may sue. Notwithstanding HMIT's argument that it has standing under the "person

[172] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2002 WL 270862, *1 (N.D. Tex. Jan. 18, 2022)(cleaned up). The district court dismissed the appeals of two of the appellants, Dugaboy and HCMFA, finding that they lacked both constitutional standing and prudential standing under the "person aggrieved" test and affirmed the bankruptcy court's order after finding the third appellant, NexPoint, to have prudential standing under the "person aggrieved" test. *Id.* at **1-3 and *4.

[173] *Id.* at *1 n.2.

[174] *Highland Capital Mgt. Fund, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 57 F.4th 494 (5th Cir. 2023).

[175] *Id.* at 501 (cleaned up).

[176] *Id.*

aggrieved" test[177]—which, as discussed above, is a matter of prudential standing—this is applied only in the context of bankruptcy ***appellate*** matters.[178] As noted in its most recent opinion discussing standing in an appeal from the Highland bankruptcy case, the Fifth Circuit reiterated that the "person aggrieved" test is a test for bankruptcy ***appellate*** standing, which is narrower than a party in interest's right to be heard in bankruptcy cases in general.[179] The court rejected an argument that Bankruptcy Code § 1109, which provides that "[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter" confers ***appellate*** standing, noting that "one's standing to appear and be heard before the bankruptcy court [is] a concept distinct from standing to appeal the merits of a decision" and that the "person aggrieved" test for bankruptcy appellate standing is narrower than the test for determining one's standing to appear and be heard in a bankruptcy proceeding.[180]

Thus, the court will now analyze whether HMIT would, at a minimum, have constitutional standing to bring the Proposed Claims.

2. HMIT Would Lack Article III Constitutional Standing to Bring the Proposed Claims.

As noted above, the Supreme Court and the Fifth Circuit have made clear that constitutional standing is necessary for a court to exercise subject matter jurisdiction. It is only the first hurdle a party must clear before pursuing a claim in federal court. HMIT, as plaintiff, would bear the

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[177] HMIT insists that it has constitutional standing to bring claims on its individual behalf "as an aggrieved party." *See* Reply, ¶ 7.

[178] HMIT's argument in this matter that it has constitutional standing because it is a "party aggrieved" incorrectly conflates the prudential bankruptcy appellate "person aggrieved" test with the broader test that is applied to constitutional standing. The court is not being critical of this mistake. As noted at *supra* note 149, the Fifth Circuit in *Abraugh* pointed out that courts and attorneys alike have created confusion by misusing the term "standing" when they equate a lack of "standing," in all instances, with a lack of subject matter jurisdiction, even when the party is found to lack only prudential standing. Thus, HMIT is not alone in its confusion over the two different concepts of standing.

[179] *See NexPoint*, 2023 WL 4621466 at *6.

[180] *Id.* at *6 (cleaned up)("Because Section 1109(b) expands the right to be heard [in a bankruptcy proceeding] to a wider class than those who qualify under the 'person aggrieved' standard, courts considering the issue have concluded that merely being a party in interest is insufficient to confer ***appellate*** standing.")(emphasis added).

burden of establishing: (1) that it suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[181]

Concrete and Particularized; Actual or Imminent. As the Supreme Court made clear in the *Lujan* case, the injury in fact element requires a showing that the injury was "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."[182] The Supreme Court in the *Spokeo* case expounded on the "concrete and particularized" requirements of the "injury in fact" element. Particularization requires a showing that the injury "must affect the plaintiff in a personal and individual way," but while particularization is necessary, it alone is "not sufficient," because an injury in fact must also be "concrete."[183] And, concreteness is "quite different from particularization."[184] A "concrete" injury must be "real," and "not abstract," though it does not mean that the injury must be "tangible," as the injury can be intangible and nevertheless be concrete.[185] In addition to the concreteness and particularization requirements, an injury in fact must be "actual or imminent" such that "allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing."[186] "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly*

[181] *See supra* note 153.
[182] *Lujan*, 504 U.S. at 560 (cleaned up).
[183] *Spokeo*, 578 U.S. at 339.
[184] *Id.* at 340.
[185] *Id.*
[186] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

impending"; "allegations of *possible* future injury are not sufficient."[187]

Traceability - Causal Connection. As to the second element—that the injury was caused by the defendant—the Supreme Court in *Lujan* further described it as requiring a showing that "the injury has to be fairly traceable to the challenged action of the defendant."[188] The "fairly traceable" test requires an examination of "the causal connection between the assertedly unlawful conduct and the alleged injury."[189]

Redressability. The third element—redressability—requires the court to examine the connection "between the alleged injury and the judicial relief requested."[190] "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court."[191] "[A] court must determine that there is an available remedy which will have a 'substantial probability' of redressing the plaintiff's injury."[192]

The Claims Purchasers argue that HMIT lacks constitutional standing to pursue the claims asserted in the Proposed Complaint because: (i) neither HMIT nor the Bankruptcy Estate was injured by the Claim Purchasers' acquisition of the claims; and (ii) the Proposed Complaint lacks a theory of cognizable damages to the Reorganized Debtor, the Claimant Trust, and/or the beneficiaries of the Claimant Trust.[193]

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[187] *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013)(cleaned up); *see also Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir. 2023)("[Injury] cannot be speculative, conjectural, or hypothetical [and] [a]llegations of only a 'possible' future injury similarly will not suffice.")(cleaned up).

[188] *Lujan*, 504 U.S. at 560-61 (cleaned up).

[189] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

[190] *Id.* (noting "it is important to keep the ['fairly traceable' and 'redressability'] inquiries separate if the 'redressability' component is to focus on the requested relief.").

[191] *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998).

[192] *City of Los Angeles v. Lyons*, 461 U.S. 95, 129 n.20 (1983)(Marshall, J., dissenting)(cleaned up); *see also Ondrusek v. U.S. Army Corps of Engineers*, Civ. Act. No. 3:22-cv-1874-N, 2023 WL 2169908, at *5 ("Plaintiffs have not demonstrated that any available remedy would be sufficiently likely to relieve their alleged economic losses. Without a showing of redressability, those harms also cannot support Plaintiff's Article III standing.").

[193] As noted earlier, certain of the Proposed Defendants—the Highland Parties—do not focus on HMIT's lack of constitutional standing to pursue the Proposed Claims against them, but on its lack of prudential standing under

The court agrees with the Claims Purchasers' argument here. What is HMIT's concrete and particularized injury—that is "real" and is not abstract? That is not conjectural or hypothetical? That is actual or imminent?

Recall that, under the Plan, HMIT holds a Class 10 contingent interest in the Claimant Trust that only realizes value if all creditors are paid in full with interest. HMIT alleges the following injury: it has suffered a devaluation of its unvested Contingent Claimant Trust Interest by virtue of the alleged over-compensation of Seery as the Claimant Trustee—Seery's alleged over-compensation depletes the assets in the Claimant Trust available for distribution to creditors under the Plan, such that there is less likely a chance that HMIT ultimately receives any distributions on account of its Class 10 Contingent Claimant Trust Interest.[194] Yet, HMIT testified, through both witnesses Dondero and Patrick, that it had no personal knowledge of what Seery's actual compensation is under the CTA at the time HMIT filed its Motion for Leave. It was clear that HMIT's allegations regarding Seery's "excessive" compensation were based entirely on Dondero's pure speculation. In reality, Seery's base salary is exactly what the bankruptcy court approved during the bankruptcy case by a court order (after negotiations between Seery and the Committee). The CTA now further governs his compensation. The CTA, which was publicly filed ***in advance of*** the Plan confirmation hearing and approved by this court as part of the Plan

applicable law. Because constitutional standing is a matter of subject matter jurisdiction, the court has an independent duty to determine whether HMIT would have constitutional standing to pursue the Proposed Claims in federal court. The issue cannot be forfeited or waived by a party. *See Abraugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)("[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Moreover, courts . . . have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.")(cleaned up); *Abraugh*, 26 F.4th at 304 ("It is our constitutional duty, of course, to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.")(cleaned up).

[194] At the June 8 Hearing, HMIT's counsel was unable to identify any other injury HMIT has alleged to have suffered. HMIT's counsel acknowledged that claims trades, in and of themselves, would not "involve injury to the Reorganized Debtor and to the Claimant Trust" and that claims trades are "normally outside the purview of the bankruptcy court" but that "[h]ere, we have alleged . . . . injury [that] takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers." June 8 Hearing Transcript, 67:16-68:8. HMIT can only point to Seery's excess compensation as injury.

(which has been affirmed by the Fifth Circuit), specifically provides that Seery's post-Effective Date compensation would include a "Base Salary" (again, same as during the bankruptcy case), a "success fee," and "severance."[195] The CTA discussed the role of the Committee and then the CTOB in setting the success fee and severance and the like. A fully executed copy of the CTA was admitted into evidence at the June 8 Hearing. HMIT is essentially arguing that its injury (i.e., diminished likelihood of realizing value on its Contingent Claimant Trust Interest) stems from a court-sanctioned and creditor-approved process for approving compensation to Seery. Moreover, HMIT has failed to plead facts sufficient to show that, even if Seery received excessive compensation and that compensation is ordered to be returned, HMIT's Contingent Claimant Trust Interest will ever vest. The district court and the Fifth Circuit in various appeals by Dugaboy, another Dondero-related entity that, similar to HMIT, was a holder of a limited partnership interest in Highland whose interests were terminated as of the Effective Date of the Plan in exchange for a Contingent Claimant Trust Interest, have repeatedly rejected Dugaboy's claims to have standing based on the ***speculative nature of its alleged injuries as a contingent beneficiary of the Claimant Trust under the Plan***. For example, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy of the bankruptcy court's order authorizing the creation of an indemnity subtrust, wherein Judge Fitzwater found that, in addition to lacking prudential standing under the

[195] The Disclosure Statement that was approved by this court, after notice and a hearing, on November 24, 2020, provided that "The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement . . . ." The CTA was part of a Plan Supplement (as amended) that was filed in advance of the confirmation hearing and provided:

> Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

See Highland Ex. 38, at § 3.13(a)(i).

"person aggrieved" test to appeal the bankruptcy court's order, Dugaboy lacked constitutional standing "because they have not identified any injury fairly traceable to the Order: ***the injuries identified are speculative at best and nonexistent at worst***."[196] HMIT's allegations of injury are, without a doubt, "merely conjectural or hypothetical" and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests."[197] The court finds that HMIT would not meet the "concrete and particularized" or the "actual or imminent" requirements for an "injury in fact," and, thus, would lack constitutional standing to pursue the Proposed Claims.

With regard to the second requirement of constitutional standing—whether HMIT could show "traceability" with respect to the Claims Purchasers and/or Seery (i.e., a "causal connection between the assertedly unlawful conduct and the alleged injury"[198]), as noted above, there is only a speculative injury. Even if there is unlawful conduct asserted (i.e., sharing of MNPI to Claims Purchasers who then, as a *quid pro quo*, rubber stamped excessive compensation for Seery), there is nothing other than a hypothetical theory of an alleged injury (i.e., an allegedly less likelihood of a distribution on a Contingent Claimant Trust Interest).

With respect to the third requirement of constitutional standing—whether HMIT can show "redressability" (i.e., that it is likely, not speculative, that the injury can be redressed by a favorable

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[196] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, *1 n.2 (N.D. Tex. Jan. 28, 2022), *aff'd* 57 F.4th 494 (5th Cir. 2023)(emphasis added); *see also* Judge Scholer's opinion in *Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-2268-S, 2022 WL 3701720, *3 (N.D. Tex. Aug. 8, 2022)(cleaned up), *aff'd per curium*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023) (where Dugaboy had argued that "***its pecuniary interest is . . . a potential recovery under the Plan as one of Debtor's former equity holders***" and that "it ha[d] standing as a 'contingent beneficiary' under the Plan, or a beneficiary who will be entitled to payment after all creditors are paid in full," and Judge Scholer stated, "This assertion is premised on the assumption that Dugaboy's 0.1866% pre-bankruptcy limited partnership interest in Debtor—which was extinguished under the Plan—makes it a contingent beneficiary of the creditor trust created under the Plan. . . . [S]uch a 'speculative prospect of harm is far from a direct, adverse, pecuniary hit' as required to confer standing."

[197] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

[198] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

decision), there are multiple problems here.[199] The major remedy sought here is the equitable disallowance of the allowed Purchased Claims (and disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims). There is no such remedy available here. As noted earlier, there is a similar concept of ***equitable subordination*** of a claim to another claim, or of an interest to another interest, pursuant to Bankruptcy Code section 510(c). But under the literal terms of section 510(c), ***claims cannot be subordinated to interests***. Moreover, the Fifth Circuit noted in the *Mobile Steel* case,[200] that ***equitable disallowance*** of a claim (as opposed to equitable subordination of a claims) is not an available remedy. Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case might permit "recharacterization" of a claim from debt to equity in certain circumstances—but not based on inequitable conduct but rather on the nature of a financial transaction. In any event, here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). As noted earlier, the problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). As further noted earlier, here there was most definitely a "contest" with regard to all of these purchased claims. ***Thus, it would appear***

[199] *See supra* notes 182-184 and accompanying text. The court will note that, as discussed *supra* note 141 and pages 71-72, the remedy of equitable subordination (as to the Claims Purchasers) would not redress HMIT's alleged injury (because equitable subordination of claims to interests is not an available remedy in the Fifth Circuit and thus subordination of the Purchased Claims to other claims would not change HMIT's distributions from the Claimant Trust, if any), and because outright disallowance of all or part of the already allowed Purchased Claims is not an available remedy either, HMIT would not be able to meet the "redressability" requirement with respect to the Claims Purchasers.

[200] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

that any effort to have a court reconsider and potentially disallow these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.

3. HMIT Would Also Lack Prudential Standing to Bring the Proposed Claims.

Even if HMIT would have constitutional standing to bring the Proposed Claims in an adversary proceeding filed in the bankruptcy court, the Proposed Claims would still be barred if HMIT would lack prudential standing to bring them under applicable state or federal law. HMIT argues that it does have prudential standing under both federal bankruptcy law and Delaware law to pursue the Proposed Claims derivatively and also to bring the Proposed Claims in its individual capacity.

With regard to "federal bankruptcy law," HMIT argues that it has standing pursuant to: (a) Rule 23.1 of the Federal Rules of Civil Procedure, pertaining to derivative actions, which "applies to this proceeding pursuant to" Rule 7023.1 of the Federal Rules of Bankruptcy Procedure, and (b) *Louisiana World Exposition v. Federal Insurance Co. ("LWE")*,[201] the Fifth Circuit's leading case addressing when a creditors committee may be granted standing to bring causes of action on behalf of a bankruptcy estate. But, federal bankruptcy law does not confer standing ***where the plaintiff otherwise lacks standing under applicable state law***. In other words, whether HMIT would have prudential standing to sue under Delaware law is dispositive of the issue, regardless of the forum. Rule 23.1 "speaks only to the adequacy of the . . . pleadings," and "cannot be understood to 'abridge, enlarge, or modify any substantive right,'"[202] including a right (or lack thereof) to bring a derivative action under the substantive law of Delaware. Additionally, HMIT's reliance on *LWE* is misplaced: *LWE* permits creditors, in certain circumstances ***during*** a bankruptcy case, to "file

[201] 858 F.2d 233 (5th Cir. 1988).

[202] *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991)(quoting 28 U.S.C. § 2072(b)).

suit on behalf of a debtor-in-possession or a trustee"[203] and does not apply to a party's right to sue, derivatively, on behalf of the Reorganized Debtor or any entity that is the assignee of the former bankruptcy estate's assets. Upon confirmation of the Plan, the bankruptcy estate of Highland ceased to exist;[204] Highland is no longer a debtor-in-possession but a reorganized debtor, and the Claimant Trust is a new entity created under the Plan and Claimant Trust Agreement. Even if *LWE* did apply in this ***post***-confirmation context, it supports the application of Delaware law to the issue of prudential standing and does not supersede state-law requirements for standing. In *LWE*, before addressing the requirements a creditors' committee must meet to sue derivatively on behalf of a bankruptcy estate as a matter of federal bankruptcy law, the Fifth Circuit conducted a lengthy analysis to determine "as a threshold issue" whether the creditors' committee in that case could assert its claims under Louisiana law.[205] The court specifically addressed whether the creditors' committee could pursue a derivative action under Louisiana law and concluded that "there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions."[206] So, even under *LWE* (which the court does not think applies in this post-confirmation context), if HMIT would be barred from bringing a derivative action on behalf the Reorganized Debtor or Claimant Trust under state law, the analysis stops there.[207] Thus, the court looks to Delaware law to determine if HMIT would have prudential standing to pursue the derivative claims on behalf the Reorganized Debtor and the Claimant Trust.

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[203] *LWE*, 858 F.2d at 247.

[204] *See In re Craig's Stores*, 266 F.3d 388, 390 (5th Cir. 2001).

[205] *LWE*, 858 F.2d at 236-45.

[206] *Id.* at 243.

[207] *See In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 (where the Delaware bankruptcy court denied the creditors' committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act, stating, "To determine that the third party

HMIT acknowledges that both the Reorganized Debtor and the Claimant Trust are organized under Delaware law, and thus the cause of action against Seery alleging breach of fiduciary duties to the Reorganized Debtor and the Claimant Trust are governed by Delaware law under the "Internal Affairs Doctrine."[208] In addition, because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting theory of liability as to the Claims Purchasers is also governed by Delaware law.[209] For the reasons set forth below, the court finds that HMIT would lack prudential standing under Delaware law to bring the claims set forth in the Proposed Complaint, derivatively, on behalf of either the Claimant Trust or the Reorganized Debtor.

a) First, HMIT Would Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Claimant Trust.

The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29,[210] and "to proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement" such that "the plaintiff must be a beneficial owner" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[211] This requirement is "mandatory and exclusive" and only "a beneficial owner" "has standing to bring a derivative claim on behalf of the

may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors' state of incorporation or formation.").

[208] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[209] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

[210] *See* Proposed Complaint, ¶ 26.

[211] *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *19 n.123 (Del. Ch. June 15, 2011), *aff'd* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b).

Trust."[212] The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, would lack standing to bring derivative claims on behalf of the Claimant Trust. HMIT argues to the contrary: that it ***is*** currently, and was at all relevant times, a "beneficial owner" of the Claimant Trust under Delaware trust law such that it would have standing to bring derivative claims on behalf of the Claimant Trust if it were allowed to proceed with the filing of the Proposed Complaint. The disagreement turns on the nature of HMIT's interest under the Plan and the Claimant Trust Agreement and whether HMIT, as a holder of such interest, would be considered a "beneficial owner" of the Claimant Trust under Delaware trust law.

As noted, pursuant to the Plan, HMIT's former limited partnership interest in Highland was cancelled as of the Effective Date in exchange for its pro rata share of a "Contingent Claimant Trust Interest," as defined under the Plan.[213] HMIT argues that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present "beneficial owner" under Delaware trust law.

The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust; rather, the "beneficial owners" of the Claimant Trust are the "Claimant Trust Beneficiaries,"[214] which are defined in the Plan and the CTA as "the Holders of Allowed General Unsecured Claims" (which are in Class 8 under the Plan) and "Holders of Allowed Subordinated Claims" (which are in Class 9 under the Plan); [215] HMIT, a holder of a Class 10 interest under the Plan, is neither.

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[212] *In re Nat'l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)). HMIT acknowledges this requirement in its Reply: "Delaware statutory trust law provides that a plaintiff in a derivative action on behalf of a trust must be a beneficial owner at the time of the action and at the time of the transaction." Reply, ¶ 19 (citing 12 Del C. § 3816).

[213] *See* Plan Art. III.H.10 and Art. I.B.44.

[214] Section 2.8 of the CTA provides, "The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . . ." HMIT Ex. 26, § 2.8.

[215] *See* Plan Art. I.B.44 ("'*Claimant Trust Beneficiaries*' means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the

HMIT, as the holder of a "Contingent Claimant Trust Interest," has only an ***unvested*** contingent interest in the Claimant Trust and, as such, is not a "beneficial owner" of the Claimant Trust for standing purposes under Delaware trust law. HMIT argues that it "should be treated as a vested Claimant Trust Beneficiary due to [the Proposed Defendants'] wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein."[216] The court disagrees.

HMIT's status as a "beneficiary" of the Claimant Trust is defined by the CTA itself, pure and simple. The CTA specifically provides that "Contingent Trust Interests" "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA. It is undisputed that HMIT's Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested based on HMIT's unsupported allegation of wrongdoing on the part of Seery, the Claimant Trustee. Thus, the court finds that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, lacks prudential standing under Delaware law to bring derivative claims on behalf of the Claimant Trust.[217]

Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests."); CTA § 1.1(h). *See also*, CTA, 1 at n.2 ("For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan."). HMIT Ex. 26.

[216] Proposed Complaint ¶ 24.

[217] *See Nat'l Coll.*, 251 A.3d at 190–92 (dismissing creditors' derivative claims because they were not "beneficial owners of the Trusts"); *Hartsel*, 2011 WL 2421003, at *19 n.123 (dismissing derivative claims by investors that "no longer own shares" because "those investors no longer have standing to pursue a derivative claim").

b) HMIT Would Likewise Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Reorganized Debtor.

HMIT acknowledges that the Reorganized Debtor, Highland Capital Management, L.P., is a Delaware limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.*[218] To bring "a derivative action" on behalf of a limited partnership, "the plaintiff must be a partner or an assignee of a partnership interest" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[219]

HMIT is not a partner, general or limited, of the Reorganized Debtor limited partnership. HMIT ***was*** a limited partner in the original debtor (specifically, a holder of Class B/C Limited Partnership interests in Highland), but that limited partnership interest was extinguished on August 11, 2021 (the Effective Date of the Plan) per the terms of the Plan, and HMIT does not own any partnership interest in the newly created Reorganized Debtor limited partnership.[220] Because HMIT would not hold a partnership interest in the Reorganized Debtor at "the time of bringing the action," it "lacks derivative standing" to bring claims "on the partnership's behalf."[221] HMIT likewise cannot satisfy "the continuous ownership requirement"; when HMIT's limited partnership interest in the original Debtor was cancelled on the Plan's Effective Date, HMIT "los[t] standing to continue a derivative suit" on behalf of the Debtor.[222] Finally, to the extent HMIT

[218] Proposed Complaint ¶ 25.

[219] 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) ("The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another party's fiduciary duties to them.") (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff'd* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) ("The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.") (citing 6 Del. C. § 17-211(h)).

[220] *See* Plan Art. IV.A.

[221] *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

[222] *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff's partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re*

seeks to bring a "double derivative" action on behalf of the Claimant Trust based on claims purportedly held by its wholly owned subsidiary, the Reorganized Debtor, HMIT lacks standing. A "double derivative" action is a suit "brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled."[223] And, under Delaware law, "parent level standing is required to enforce a subsidiary's claim derivatively."[224] Because HMIT would lack derivative standing to bring claims on behalf of the parent Claimant Trust,[225] it also would lack standing to bring a double derivative action.

c) Finally, HMIT Would Also Lack Prudential Standing under Applicable Law to Bring the Proposed Claims As ***Direct*** Claims.

HMIT argues that it has "direct" standing to pursue the Proposed Claims on behalf of itself, individually.[226] But just because HMIT asserts that some or even all of the Proposed Claims are direct, not derivative claims, does not make it so: "a claim is not 'direct' simply because it is pleaded that way."[227] Rather, in determining whether claims are direct or derivative, a court must "look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs' characterization."[228] And, under Delaware law, "whether a claim is solely derivative or

SkyPort Global Commcn's, Inc.), 2011 WL 111427, at *25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders "lack standing to bring a derivative claim" under Delaware law because they "had their equity interests in the company extinguished pursuant to the merger under the Plan"); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) ("[T]he cancellation of WorldCom shares under the Plan … prevents the required continuation of shareholder status through the litigation.") (cleaned up).

[223] *Lambrecht v. O'Neal*, 3 A.3d 277, 282 (Del. 2010).

[224] *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

[225] *See supra* pp. 80-82.

[226] *See e.g.*, Motion for Leave ¶ 10 ("HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . ."); *id.* ¶ 67 (arguing that "HMIT has [d]irect [s]tanding"); Proposed Complaint ¶ 24 ("HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.").

[227] *Schmermerhorn*, 2011 WL 111427, at *26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at *7 (Del. Ch. Nov. 5, 2004)).

[228] *See id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)); *see also Moore v. Simon Enters., Inc.*, 919 F.Supp. 1007, 1009 (N.D. Tex. 1995)("The determination of whether a claim is a derivative claim or a direct claim is made by reference to the nature of the wrongs alleged in the complaint, and is not limited by a [party's] characterization or stated intention.")(cleaned up).

may continue as a dual-natured claim 'must turn ***solely*** on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'"[229] "In addition, to prove that a claim is direct, a plaintiff 'must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.'"[230] Similarly, in the bankruptcy context, whether a creditor can assert a claim directly or whether the claim belongs to the estate turns on the nature of the injury for which relief is sought: "[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate," such that "only the bankruptcy trustee has standing to pursue the claim for the estate . . . ."[231] "To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate."[232]

As a reminder, HMIT argues that the injury it has suffered is a devaluation of its interests in the Claimant Trust by virtue of alleged over-compensation of Seery as the Claimant Trustee. HMIT was unable, when pressed during closing arguments, to identify any other injury. It essentially admitted that the claims trades, in and of themselves, would not have harmed the Claimant Trust, the Reorganized Debtor, or individual stakeholders, including HMIT, ***since the Claims Purchasers acquired already allowed unsecured claims, such that the distributions on those claims pursuant to the Plan would be unchanged in the hands of new holders of the claims***.

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[229] *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original).

[230] *Id.* (quoting *Tooley*, 845 A.2d at 1033); *see also Schmermerhorn*, 2011 WL 111427, at *24 (same).

[231] *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)).

[232] *Id.*; *see also Schertz-Cibolo-Universal City Indep. Sch. Dist. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994)("If a cause of action alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate.")(citations omitted).

Thus, by its own concessions, any alleged harm to HMIT (through devaluation of assets in the Claimant Trust) "comes about only because of harm to the debtor," so the alleged "injury is derivative."[233] The court concludes that all of the claims set forth in the Proposed Complaint allege derivative claims only, and that none would be direct claims against the Proposed Defendants. Thus, HMIT would lack prudential standing to bring any of the Proposed Claims in the Proposed Complaint, so its Motion for Leave should be denied.

d) Some Final Points Regarding Standing.

In this standing discussion, one should not lose sight of the fact that there are both procedural safeguards in place, as well as certain independent individuals in place with fiduciary duties that might act in the event of any shenanigans regarding Claimant Trust activities. Under section 4.1 of the CTA (approved as part of the Plan process), the CTOB, which includes an independent disinterested member in addition to representatives of the Claims Purchasers,[234] oversees the Claimant Trustee's performance of his duties, approves his compensation, and may remove him for cause. Moreover, there is a separate "Litigation Trustee" in this case who was brought in, post-confirmation, as an independent fiduciary to pursue claims and causes of action. These independent persons are checks and balances in the post-confirmation wind down of Highland. This is what creditors voted on in connection with the Plan. Seery and the Claims Purchasers are not in sole control of anything. The CTA, as well as Delaware law, very clearly set forth who can bring an action in the event of some colorable claim. This is the reality of prudential

[233] *Meridian*, 912 F.3d at 293–94 ("The creditors' injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties."); *see also El Paso,* 152 A.3d at 1260–61 & n.60 (holding that claim "claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative") (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at *12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had "not identified any independent harm suffered by the limited partners"; "the partnership suffered all the harm at issue—it paid too much").

[234] *See supra* note 23 and accompanying text.

standing. Just as in the *Abraugh* case, where Louisiana law dictated that a mother could not bring a wrongful death case when the deceased prisoner had a surviving wife and child, Delaware law and the CTA dictate here that a contingent beneficiary cannot bring the Proposed Claims here. This is separate and apart from whether the claims are colorable.

C. Are the Proposed Claims "Colorable"?

1. What is the Proper Standard of Review for a "Colorability" Determination?

Although the court has determined that HMIT would ***not*** have standing (constitutional or prudential) to bring the Proposed Claims, this court will nevertheless evaluate whether the claims—assuming HMIT somehow has standing—might be "colorable." This, in turn, requires the court to assess what the legal standard is to determine if a claim is "colorable." As a reminder, the Plan's Gatekeeper Provision and this court's prior Gatekeeper Orders entered in January and July 2020 each required that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain a finding from the bankruptcy court that its proposed claims are "colorable." The Gatekeeper Provision and Gatekeeper Orders did not specifically define "colorable" or what type of legal standard should apply.

HMIT argues that the standard for review to be applied by this court is the same as a simple "plausibility" standard used in connection with a Rule 12(b)(6) motions to dismiss. In other words, the court should simply assess whether the allegations of the Proposed Complaint, taken as true and with all inferences drawn in favor of the movant, state a ***plausible*** claim for relief (i.e., colorable equals plausible), and that this standard does not allow for the weighing of evidence by the court.[235] The Proposed Defendants, however, argue that the test for colorability should be more

[235] Reply, ¶ 5 ("[T]he determination of 'colorability' does not allow the 'weighing' of evidence. At most, a Rule 12(b)(6) 'plausibility' standard applies.").

akin to the test applied under the *Barton* doctrine,[236] under which a plaintiff must make a *prima facie* case that a proposed claim against a bankruptcy trustee is "not without foundation." In this regard, they argue that the court can and should consider evidence outside of the four corners of the complaint—especially since HMIT attached to its Motion for Leave, as "evidence" to support it, two declarations of Dondero (as part of a 350-page attachment) and only attempted to withdraw those declarations after the Highland Parties urged that they be permitted to cross-examine Dondero on them.

This court ultimately determined that the "colorability" standard was somewhat of a mixed question of fact and law and, therefore, the parties could put on evidence at the June 8 Hearing if they so-chose. The court would not require it. It was up to the parties. But, in any event, the Proposed Defendants should have an opportunity to cross-examine Dondero on the statements made in his declarations since the declarations had been filed on the docket and the court had reviewed them at this point. HMIT attempted to withdraw the declarations and any reference to them in the Motion for Leave, by filing redacted versions of the Motion for Leave,[237] less than 72 hours before the June 8 Hearing; however, the redacted versions did not redact any allegations in the Motion for Leave that were purportedly supported by the Dondero declarations. Also, HMIT called Dondero as a direct witness, in addition to calling Seery as an adverse witness at the June 8 Hearing, albeit subject to its running objection to the evidentiary format of the hearing.[238] HMIT also filed a witness and exhibit list attaching 80 exhibits and over 2850 pages of evidence and

[236] *Barton v. Barbour,* 104 U.S. 126 (1881).

[237] Bankr. Dkt. Nos. 3815 and 3816.

[238] *See* June 8 Hearing Transcript, 7:20-24, 112:11-13.

moved for the admission of those exhibits at the June 8 Hearing (again, subject to its running objection to the evidentiary format of the hearing).[239]

In determining what appropriate legal standard applies here in the "colorability" analysis, the context in which the Gatekeeper Provision of the Plan was approved seems very relevant. In determining that the Gatekeeper Provision was legal, necessary, and in the best interest of all of the parties, this court set forth in the Confirmation Order a lengthy discussion of the factual support for it, and made specific findings relating to Dondero's post-petition litigation and the need for inclusion of the Gatekeeper Provision in the Plan.[240] This court observed that "prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade" and that "[d]uring the last several months, Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor."[241] This court further found that: (1) Dondero's post-petition litigation "was a result of Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Seery's credible testimony, that if Dondero's plan proposal was not accepted, he would 'burn down the place,'"[242] (2) without the Gatekeeper Provision in place, "Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date" and that "the threat of continued litigation by Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result in lower distributions to creditors because of

[239] *See Hunter Mountain Investment Trust's Witness and Exhibit List in Connection with Its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* ("HMIT W&E List")[Bankr. Dkt. No. 3818] and n.1 thereto; *see also* June 8 Hearing Transcript, 33:7-10.

[240] *See* Confirmation Order ¶¶ 76-79.

[241] *Id.* ¶ 77.

[242] *Id.* ¶ 78. *See supra* note 12.

costs and distraction such litigation or the threats of such litigation would cause,"[243] and, (3) "unless the [court] approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance,[244] the absence of which will present unacceptable risks to parties currently willing to serve in such roles." Thus, as set forth in the Confirmation Order, the Gatekeeper Provision (and the Gatekeeper Orders as well, which were approved based on the same concerns regarding the threat of continued litigation by Dondero and his related entities) required Dondero and related entities to make a threshold showing of colorability, noting that the:

> Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC,* 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017)."[245]

The Fifth Circuit, in approving the Gatekeeper Provision on appeal, noted that that the Plan injunction and Gatekeeper Provision "screen and prevent bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[246]

Again, the court believes it is appropriate to consider the context in which—and the purpose for which—the Gatekeeper Orders and Gatekeeper Provision were entered in assessing

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[243] *Id.*

[244] Asd noted at ⁋ 79 of the Confirmation Order, the bankruptcy court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance for the post-confirmation parties implementing the Plan. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so ***without an exclusion for claims asserted by Mr. Dondero and his affiliates*** required that the Confirmation Order approve the Gatekeeper Provision.

[245] *Id.* ¶ 80.

[246] *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.* (*In re Highland Cap. Mgmt., L.P.*), 48 F.4th 419, 435 (5th Cir. 2022).

how "colorability" should work here. It seems that applying HMIT's proposed Rule 12(b)(6) "plausibility" standard would impose no hurdle at all to litigants and would render the threshold for bringing claims under the Gatekeeper Provision and Gatekeeper Orders entirely duplicative of the motion to dismiss standard that every litigant already faces.

The authorities cited by HMIT in support of its argument for applying a Rule 12(b)(6) standard are inapposite. HMIT has cited no authority that addresses the appropriate standard for assessing the "colorability" of claims in the context of a plan gatekeeper provision—specifically, one implemented in response to a demonstrated need to screen and prevent continued bad-faith, harassing litigation against a chapter 11 debtor that would impede the debtor's implementation of a plan, which is what we have here. HMIT relies on a bevy of cases that include benefits coverage disputes under ERISA, Medicare coverage disputes, and constitutional challenges[247]—none of which implicate the *Barton* doctrine and vexatious-litigant concerns that were referenced by the court in the Plan as justifications for the gatekeeping provisions at issue here.

In affirming the Plan's Gatekeeper Provision, the Fifth Circuit stated, "Courts have long recognized bankruptcy courts can perform a gatekeeping function" and noted, by way of example, that "[u]nder the '*Barton* doctrine,' the bankruptcy court may require a party to 'obtain leave of

[247] *See Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has "a colorable claim to vested benefits" such that the employee may be considered a "participant" under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting "claimants [with] no colorable legal claim" to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant's double jeopardy claim was "colorable" such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at *3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a "colorable claim" against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at *3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a "colorable claim" to warrant the district court's exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at *5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at *5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a "colorable constitutional claim" such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

the bankruptcy court before initiating an action in district court when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor's official capacity."[248] As noted above, the Fifth Circuit found that the Gatekeeper Provision, which "requires that, before any lawsuit is filed, the plaintiff must seek the bankruptcy court's approval of the claim as 'colorable'"—*i.e.*, to "screen and prevent bad-faith litigation,"—is "sound."[249]

On balance, the court views jurisprudence applying the *Barton* doctrine and vexatious litigant injunctions—while not specifically addressing the "colorability" standard under gatekeeping provisions in a plan[250]—as more informative on how to approach "colorability" than any of the other authorities presented by the parties. One example is *In re VistaCare Group, LLC*.[251]

In *VistaCare*, the Third Circuit noted that, under the *Barton* doctrine, "[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation," and emphasized that the "not without foundation" standard, while similar to the standard courts apply in evaluating Rule 12(b)(6) motions to dismiss, "involves a greater degree of flexibility" than a Rule 12(b)(6) motion to dismiss because "the bankruptcy court, which given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit," and "is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor's estate."[252] To satisfy the "*prima facie* case standard," "the movant must do more than meet the liberal notice-pleading

[248] *Id.* at 438 (cleaned up).

[249] *Id.* at 435.

[250] The court acknowledges that the *Barton* doctrine itself would not be directly applicable here because HMIT is proposing to bring the Proposed Complaint in the bankruptcy court – the "appointing" court of Seery.

[251] 678 F.3d 218 (3d Cir. 2012).

[252] *Id.* at 232-233 (cleaned up).

requirements of Rule 8."[253] "[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless."[254] This court agrees with the notion, that "[t]o apply a less stringent standard would eviscerate the protections" of the Gatekeeper Provision and Gatekeeper Orders.[255] The court notes, as well, that courts in the *Barton* doctrine context regularly hold evidentiary hearings on motions for leave to determine if the proposed complaint meets the necessary threshold for pursuing litigation. The Third Circuit in *VistaCare* noted that "[w]hether to hold a hearing [on a motion for leave to bring suit against a trustee] is within the sound discretion of the bankruptcy court,"[256] and that "the decision whether to grant leave may involve a 'balancing of the interests of all parties involved,'" which will ordinarily require an evidentiary hearing.[257] The Third Circuit applied "the deferential abuse of discretion standard" in considering whether the bankruptcy court's granting of leave should be affirmed on appeal.[258]

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[253] *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases).

[254] *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at *2 (N.D. Ill. Nov. 30, 2000).

[255] *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at *2).

[256] *VistaCare*, 678 F.3d at 232 n.12.

[257] *Id.* at 233 (quoting *In re Kashani*, 190 B.R. 875, 886–87 (9th Cir. BAP 1995)). The Third Circuit noted that the bankruptcy court's holding of an evidentiary hearing on the motion for leave was appropriate (though not required in every case)). *Id.* at 232 n.12.

[258] *Id.* at 224 ("We review a bankruptcy court's decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard.") (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)). Courts of appeal routinely apply the deferential abuse of discretion standard to a bankruptcy court's decision regarding whether leave should be granted to sue a trustee. Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. *See In re Bednar*, 2021 WL 1625399, at *3 (B.A.P. 10th Cir. Apr. 27, 2021) ("[T]he Bankruptcy Court's decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . . .") (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App'x 969, 973–74 (11th Cir. 2016) ("Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court's ruling on a *Barton* motion for an abuse of discretion.") (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at *3 (B.A.P. 1st Cir. Sept. 17, 2014) ("Appellate courts review a bankruptcy court's decision to deny a motion for leave to sue under the abuse of discretion standard.") (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

The Fifth Circuit has affirmed a bankruptcy court's conducting of an evidentiary hearing, in the context of applying a *Barton* doctrine analysis as to a proposed lawsuit against a trustee, without any concern that the inquiry was somehow improper.[259]

Similarly, courts in the vexatious litigant context, where there was an injunction requiring a movant to seek leave to pursue claims, have required movants to "show that the claims sought to be asserted have sufficient merit," including that "the proposed filing is both procedural and legally sound," and "that the claims are not brought for any improper purpose, such as harassment."[260] "For a prefiling injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review," such as the "plausibility" standard for a Rule 12(b)(6) motion.[261] Rather, courts apply "an additional layer of review," and "may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action" or that the "litigant's allegations are unlikely," especially "when prior cases have shown the litigant to be untrustworthy or not credible . . . ."[262]

In summary, the court rejects HMIT's positions: (a) that it need only show, at most, that the allegations in the Proposed Complaint are "plausible" under the Rule 12(b)(6) standard for motions to dismiss; and (b) that this court improperly conducted an evidentiary hearing on the Motion for Leave (i.e., that consideration of evidence in this context is impermissible). The court notes, again, that HMIT's argument that this court is not permitted to consider evidence in making its "colorability" determination is completely contradictory to HMIT's actions in filing the Motion

[259] *See Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at *4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after "a close examination" by the bankruptcy court of the evidence regarding the trustee's actions and finding that "the plaintiffs' allegations are not based in fact"), *aff'd* 799 F. App'x 271 (5th Cir. 2020).

[260] *Silver v. City of San Antonio*, 2020 WL 3803922, at *1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); *see also Silver v. Perez*, 2020 WL 3790489, at *1 (W.D. Tex. July 7, 2020) (same).

[261] *Silver*, 2020 WL 3803922, at *6.

[262] *Id.*

for Leave, where it attached two Dondero declarations as part of 350 pages of "objective evidence" that "supported" its motion.

The court concludes that the appropriate standard to be applied in making its "colorability" determination in ***this*** bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in ***this*** Plan, is a broader standard than the "plausibility" standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves ***an additional level of review***—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are ***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***. Additionally, this court may, and should, take into consideration its ***knowledge*** of the ***bankruptcy proceedings*** and ***the parties*** and any additional evidence presented at the hearing on the Motion for Leave. For ease of reference, the court will refer to this standard of "colorability" as the "Gatekeeper Colorability Test." The court considers this test as a sort of hybrid of what the *Barton* doctrine contemplates and what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place.

2. HMIT's Proposed Complaint Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test or Even Under a Rule 12(b)(6) "Plausibility" Standard.

The court finds, in the exercise of its gatekeeping function under the Gatekeeper Orders and the Gatekeeping Provision in the Plan, that the Motion for Leave should be denied as the claims set forth in the Proposed Complaint are not "colorable" claims. The court makes this determination after considering evidence admitted at the June 8 Hearing, including the testimony of Dondero, Patrick, and Seery, and the numerous exhibits offered by HMIT and the Highland Parties. HMIT's Proposed Claims lack foundation, are without merit, and appear to be motivated by the improper purposes of vexatiousness and harassment. But, even under the less stringent

"plausibility" standard under Rule 12(b)(6) motions to dismiss, where all allegations must be accepted as true, HMIT's "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," fail to "[]cross the line from conceivable to plausible."[263]

HMIT makes unsubstantiated and conclusory allegations in its Motion for Leave and Proposed Complaint that the Claims Purchasers purchased the large allowed unsecured claims only because Seery, while he was CEO of Highland prior to the Effective Date of the Plan, provided them with MNPI and assurances that the Purchased Claims were very valuable. This was allegedly in exchange for their agreement to approve, in their future capacities as members of the CTOB, excessive compensation for Seery in his capacity as the Claimant Trustee after the Effective Date of the Plan. This was an alleged *quid pro quo* that HMIT claims establishes Seery's breach of fiduciary duties and the Claims Purchasers' conspiracy to participate in that breach. As discussed below, these allegations are unsubstantiated and conclusory allegations, and they do not support the inferences that HMIT needs the court to make when it analyzes whether the Proposed Claims are "colorable"—or even merely plausible.

a) HMIT's Proposed Breach of Fiduciary Duties Claim Set Forth in Count I of the Proposed Complaint

Based on HMIT's Proposed Complaint and the evidence admitted at the June 8 Hearing, the court finds that HMIT has not pleaded facts that would support a "colorable" breach of fiduciary duties claim against Seery, under this court's Gatekeeper Colorability Test, nor a plausible claim pursuant to the Rule 12(b) standard. HMIT alleges that Seery breached his fiduciary duties (i) "[b]y disclosing material non-public information to Stonehill and Farallon"

[263] *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

before their purchase of certain Highland claims, and (ii) by receiving "compensation paid to him under the terms of the [CTA] since the Effective Date of the Plan in August 2021."[264]

As earlier noted, both the Reorganized Debtor and the Claimant Trust are organized under Delaware law and, thus, its proposed Count I against Seery for breach of fiduciary duties to these entities is governed by Delaware law under the "Internal Affairs Doctrine."[265] Under Delaware law, "[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege '(1) that a fiduciary duty existed and (2) that the defendant breached that duty.'"[266] HMIT fails to plausibly or sufficiently allege either element such that its breach of fiduciary duty claims against Seery could survive.

Under Delaware law, officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders.[267] Because Seery did not owe any "duty" to HMIT directly and individually, the Proposed Complaint fails to state a claim for breach of fiduciary duties to HMIT. HMIT's "legal conclusion[]" that Seery "owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate"[268] "do[es] not suffice" to plausibly allege the existence of any actionable fiduciary relationship.[269] And as discussed earlier in the standing section, HMIT does not have standing to assert a breach of fiduciary claim derivatively on behalf

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[264] Proposed Complaint ¶¶ 64–67.

[265] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[266] *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at *30 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at *8 (Del. Ch. Feb. 28, 2020)).

[267] *See Gilbert v El Paso Co.*, 1988 WL 124325, at *9 (Del. Ch. Nov. 21, 1988) ("[D]irectors' fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.") *aff'd,* 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at *11 (Del. Ch. Nov. 7, 2013) (same).

[268] Proposed Complaint ¶ 63.

[269] *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

of the Claimant Trust or Reorganized Debtor. But even if HMIT had sufficiently alleged the existence of a fiduciary duty by Seery to HMIT—or to the Reorganized Debtor or Claimant Trust that HMIT would have standing to assert—Seery's alleged communications with Farallon would not have breached those duties.

HMIT alleges that Seery ""disclose[d] material non-public information to Stonehill and Farallon," and they "acted on inside information and Seery's secret assurances of great profits."[270] But the Proposed Complaint does not make any factual allegations regarding HMIT's "conclusory allegations," and its "legal conclusions" are "purely speculative, devoid of factual support," and therefore "stop[] short of the line between possibility and plausibility of entitlement to relief"[271] (and certainly stop short of being "colorable"). HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, and what "assurances of great profits" he made to Farallon or to Stonehill. At the June 8 Hearing, Dondero could only clarify that he believed the MGM Email to have been MNPI and that he ***believed*** that Seery ***must have*** communicated that MNPI to Farallon at some point between December 17, 2020 (the date the MGM Email was sent) and May 28, 2021 (the day that Dondero alleges to have had three telephone calls with representatives of Farallon, Messrs. Patel and Linn, regarding Farallon's purchase of the bankruptcy claims). Dondero alleges that, during these phone calls, Patel and Linn gave Dondero no reason for their purchase of the claims that "made [any] sense." Dondero and Patrick also both testified that neither of them had any personal knowledge: (a) of a *quid pro quo* arrangement between Seery and the Claims Purchasers, (b) of Seery having actually communicated any information from the MGM Email to Farallon, or (c) whether Seery's post-Effective Date compensation had or had not been negotiated in an arms' length transaction. Dondero only

[270] Proposed Complaint ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.

[271] *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up).

speculates regarding these things, because it "made no sense" to him that the Claims Purchasers would have acquired the bankruptcy claims without having received the MNPI. But HMIT admits in the Proposed Complaint that Farallon and Stonehill purchased the Highland claims at discounts of 43% to 65% to their allowed amounts. Thus, they would receive at least an 18% return based on publicly available estimates in Highland's court-approved Disclosure Statement.[272] The evidence established that, if the acquisition of the UBS claims is excluded—recall that the UBS claims were not purchased until August 2021, which was after the May 28, 2021 phones calls that Dondero made to Farallon personnel—the Claims Purchasers would have expected to net over $33 million in profits, or nearly a 30% return on their investment, had Highland met its projections (this is based on the aggregate purchase price of $113 million for the non-UBS claims purchased in the Spring 2021).

To be clear, the only purported MNPI identified in HMIT's Proposed Complaint was the MGM Email Dondero sent to Seery containing "information regarding Amazon and Apple's interest in acquiring MGM." But, the evidence showed that this information was widely reported in the financial press at the time. Thus, it could not have constituted MNPI as a matter of law.[273] Moreover, the evidence showed that Dondero ***did not*** communicate in the MGM Email the actual inside information that he claimed to have obtained as a board member of MGM–which was that Amazon had met MGM's "strike price" and that the MGM board was going into exclusive negotiations with Amazon to culminate the merger with them (and, thus, Apple was no longer considered a potential purchaser). Dondero admitted that he included Apple in the MGM Email for the purpose of making it look like there was a competitive process still ongoing. In other

[272] Proposed Complaint ¶¶ 3, 37, 42.

[273] *See, e.g.*, *SEC v. Cuban*, 2013 WL 791405, at *10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not "material, nonpublic information" and "'becomes public when disclosed to achieve a broad dissemination to the investing public'") (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)).

words, the MGM Email, at the very least, did not include MNPI and, at worst, was deceptive regarding the status of the negotiations between MGM and potential purchasers.

As to HMIT's allegations that Seery's post-Effective Date compensation is "excessive" and that the negotiations between Seery and the CTOB "were not arm's-length,"[274] the evidence at the June 8 Hearing reflected that the allegations are completely speculative, without any foundation whatsoever, and lack merit. And they are also simply not plausible. HMIT fails to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty.[275]

b) HMIT's Proposed Claims Set Forth in Counts II (Knowing Participation in Breach of Fiduciaries) and III (Conspiracy)

HMIT seeks to hold the Claims Purchasers secondarily liable for Seery's alleged breach of fiduciaries duties on an aiding and abetting theory in Count II of the Proposed Complaint[276] and, along with Seery, on a civil conspiracy theory of liability in Count III of the Proposed Complaint.[277] Because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting breach of fiduciary duties claim against the Claims Purchasers (Count II) is also governed by Delaware law.[278] HMIT's conspiracy cause of action against the Claims

[274] Proposed Complaint ¶¶ 4, 13, 54, 74.

[275] *See Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]though the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation.").

[276] Proposed Complaint ¶¶ 69-74.

[277] Proposed Complaint ¶¶ 75-81.

[278] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

Purchasers and Seery (Count III), on the other hand, does not involve a matter of "internal affairs" or of corporate governance, so it is governed by Texas law under the Plan.[279]

As an initial matter, because HMIT does not present either a "colorable"—or even plausible claim—that Seery breached his fiduciary duties, it cannot show that it has alleged a "colorable" or plausible claim for secondary liability for the same alleged wrongdoing.[280] In addition, HMIT's civil conspiracy claim against the Claims Purchasers and Seery is based entirely on Dondero's speculation and unsupported inferences and, thus, HMIT has not "colorably" alleged, or even plausibly alleged, its conspiracy claim. Under Texas law, "civil conspiracy is a theory of vicarious liability and not an independent tort."[281] "[T]he elements of civil conspiracy [are] "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result."[282] While HMIT alleges that "Defendants conspired with each other to unlawfully breach fiduciary duties,"[283] it is simply a "legal conclusion" and not the kind of allegation that the court must assume to be true even for purposes of determining plausibility under a motion to dismiss.[284]

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[279] *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M)(which provides for the application of Texas law to "the rights and obligations arising under this Plan" except for "corporate governance matters.")

[280] *See English v. Narang*, 2019 WL 1300855, at *14 (Del. Ch. Mar. 20, 2019) ("As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.") (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at *10 (Tex. App. Jan. 25, 2022) ("[A] defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.") (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)). Because HMIT's breach of fiduciary duty claim is governed by Delaware law, its aiding and abetting theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas). By contrast, "conspiracy is not an internal affair" or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

[281] *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019).

[282] *Id.* at 141 (cleaned up).

[283] Proposed Complaint ¶ 76.

[284] *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66).

HMIT repeats four times that Seery provided MNPI to Farallon and Stonehill as a "as a *quid pro quo*" for "additional compensation,"[285] each time based upon conclusory allegations based "upon information and belief" and, frankly, pure speculation from Dondero that his imagined "scheme," "covert *quid pro quo,*" and secret "conspiracy" between Seery, on the one hand, and Farallon and Stonehill, on the other,[286] ***must have*** occurred because "[i]t made no sense for the [Claims] Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk" (i.e., "[t]he counter-intuitive nature of the purchases at issue compels the conclusion that the [Claims] Purchasers acted on inside information and Seery's assurance of great profits.")[287] Importantly, HMIT admits that the Claims Purchasers would have turned a profit based on the information available to them at the time of their acquisitions of the Purchased Claims.[288] HMIT's allegations about the level of potential profits were contradicted by their own allegations and other evidence admitted at the June 8 Hearing. But Dondero's speculation about what level of projected return would be sufficient to justify the acquisition of the claims by the Claims Purchasers, or any other third-party investor, does not give rise to a plausible inference that they acted improperly.[289] Thus, HMIT cannot meet

[285] Proposed Complaint ¶ 77; *see also id.* ¶¶ 4, 47, 74.

[286] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.").

[287] *Id.*

[288] *See, e.g.*, *id.* ¶ 3 (alleging that acquiring the claims "did not offer a ***sufficient*** potential profit to justify the publicly disclosed risk")(emphasis added); ¶ 43 ("Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . ."); ¶ 49 ("Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* ***significant*** profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.") (third emphasis added).

[289] In fact, the court did not allow Mr. Dondero to testify regarding what kind of information a hypothetical investor in bankruptcy claims would require or what level of potential profits would justify the purchase of bankruptcy claims by investors in the bankruptcy claims trading market because he was testifying as a fact witness, not an expert. Thus, the court only allowed Dondero to testify as to what data ***he*** (or entities he controls or controlled) would rely on, what ***his*** risk tolerance would have been, and what level of potential profits ***he*** would have required to purchase an allowed unsecured bankruptcy claim in a post-confirmation situation. June 8 Hearing Transcript, 129:6-130:4.

its burden, under the Gatekeeper Colorability Test, of making a prima facie showing that its allegations do not lack foundation or merit. Nor can it meet a plausibility standard.

In addition, contrary to the Proposed Complaint's statement that it would have been "***impossible*** for Stonehill and Farallon (in the absence of insider information) to forecast ***any*** significant profit at the time of their multi-million-dollar investments," the evidence showed there were already reports in the financial press that MGM was engaging with Amazon, Apple, and others in selling its media portfolio, and thus the prospect of an MGM transaction increasing the value of, and return on, the Purchased Claims, "at the time of their multi-million-dollar investments" was publicly available information.[290] HMIT's suggestion that the Claims Purchasers were in possession of inside information not publicly available when they acquired the Purchased Claims is simply not plausible. Nor is HMIT's allegation that "[u]pon information and belief" Farallon "conducted no due diligence but relied on Seery's profit guarantees" plausible. The allegations regarding Farallon not conducting any due diligence are based, again, entirely on Dondero's speculation and inferences he made from what Patel and Linn (of Farallon) allegedly told him on May 28, 2021; Dondero did not testify that either Patel or Linn ever told him specifically that they had conducted no due diligence. HMIT's allegations in the Proposed Complaint that ***Farallon*** "conducted no due diligence," are based on Dondero's speculation, unsubstantiated, and contradicted by the testimony of Seery, who testified that emails to him from Linn in June 2020 and later in January 2021 indicated to him that Farallon, at least, had been conducting some level of due diligence in that they had been following and paying attention to the

[290] The court notes, as well, that the Claim Purchasers acquired the UBS claims in August 2021—approximately two and a half months ***after*** the announcement of the MGM-Amazon transaction (which was on May 26, 2021)—a fact that HMIT makes no attempt to harmonize with its conspiracy theory that the Claims Purchasers profited from the misuse of MNPI allegedly given to them by Seery.

Highland case.[291] In addition, there are no allegations in the Proposed Complaint regarding whether Stonehill conducted due diligence or not, and Patrick testified that neither he nor HMIT had any personal knowledge of how much due diligence Farallon or Stonehill did prior to acquiring the Purchased Claims.[292] The court finds and concludes that HMIT's allegations of aiding and abetting and conspiracy in Counts II and III of the Proposed Complaint are based on unsubstantiated inferences and speculation, lack internal consistency, and lack consistency with verifiable public facts. Accordingly, HMIT has failed to show that these claims have a foundation and merit and has also failed to show that they are plausible.

c) HMIT's Proposed Claims Set Forth in Counts IV (Equitable Disallowance), V (Unjust Enrichment and Constructive Trust), and VI (Declaratory Relief) of the Proposed Complaint

i. Count IV (Equitable Disallowance).

In Count IV of its Proposed Complaint, HMIT seeks "equitable disallowance" of the claims acquired by Farallon's and Stonehill's special purpose entities Muck and Jessup, "to the extent over and above their initial investment," and, in the alternative, equitable subordination of their claims to all claims and interests, including HMIT's unvested Class 10 Contingent Claimant Trust Interest, "given [their] willful, inequitable, bad faith conduct" of allegedly "purchasing the Claims based on material non-public information" and being "unfairly advantaged" in "earning significant profits on their purchases."[293] As noted above, these remedies are not available to HMIT.[294]

First, HMIT's request to equitably subordinate the Purchased Claims to all claims and interests is not permitted because Bankruptcy Code § 510(c), by its terms, permits equitable

[291] *See* June 8 Hearing Transcript, 239:6-21.
[292] *See id.*, 310:19-312:2.
[293] Proposed Complaint ¶¶ 83-87.
[294] *See infra* pages 74-75.

subordination of a ***claim to other claims*** or an ***interest to other interests*** but does not permit equitable subordination of a ***claim to interests***.

Second, "equitable" disallowance of claims is not an available remedy in the Fifth Circuit pursuant to the *Mobile Steel* case.[295]

Third, reconsideration of an already-allowed claim in a bankruptcy case can only be accomplished through Bankruptcy Code § 502(j), which, pursuant to Federal Rule of Bankruptcy Procedure 9024, allows reconsideration of allowance of a claim that was allowed following ***a contest*** (which is certainly the case with respect to the Purchased Claims) based on the "equities of the case." But this is only if the request for reconsideration is made within the one-year limitation prescribed in Rule 60(c) of the Federal Rules of Civil Procedure. HMIT's request for disallowance of Muck and Jessup's Purchased Claims (if it could somehow be construed as a request for reconsideration of their claims), is clearly untimely, as it is being made well beyond a year since their allowance by this court following contests and approval of Rule 9019 settlements. Thus, the court finds that HMIT has not alleged a colorable or even plausible claim in Count IV of the Proposed Complaint and, therefore, the Motion for Leave should be denied.

ii. Count V (Unjust Enrichment and Constructive Trust)

In Count V of the Proposed Complaint, HMIT alleges that, "by acquiring the Claims using [MNPI], Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity" and that "[a]llowing [the Claims Purchasers] to retain their ill-gotten benefits would be unconscionable;" thus, HMIT alleges, the Claims Purchasers "should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment" and "a constructive trust should be imposed on such proceeds . . . ."[296]

[295] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

[296] Proposed Complaint ¶¶ 89-93.

HMIT alleges further that "Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restitute all compensation he has received from the outset of his collusive activities" and "[a]lternatively he should be required to disgorge and restitute all compensation received since the Effective Date" over which a constructive trust should be imposed.[297] HMIT has not alleged a colorable or even a plausible claim for unjust enrichment or constructive trust in Count V.

Under Texas law,[298] "[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay."[299] Thus, "when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory."[300] Here, as noted above, HMIT's only alleged injury is a diminution of the value of its unvested Contingent Claimant Trust Interest by virtue of Seery's allegedly having wrongfully obtained excessive compensation, with the help of the Claims Purchasers. ***Yet Seery's compensation is governed by express agreements*** (i.e., the Plan and the CTA). Thus, HMIT's claim based on unjust enrichment is not an available theory of recovery.

iii. Count VI (Declaratory Relief)

HMIT seeks declaratory relief in Count VI of the Proposed Complaint, essentially, that Dondero's conspiracy theory is correct and that HMIT's would succeed on the merits with respect

[297] *Id.* ¶ 94.

[298] Under the Plan, Texas law governs HMIT's "claim" for unjust enrichment because it is not a "corporate governance matter." (Plan Art. XII.M.) It also governs HMIT's "claim" for constructive trust, which "is merely a remedy used to grant relief on the underlying cause of action." *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

[299] *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).

[300] *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)).

to the Proposed Claims if it were permitted leave to bring them in an adversary proceeding.[301] But, a request for declaratory relief is not "an independent cause of action"[302] and "in the absence of any underlying viable claims such relief is unavailable."[303] This court has already found and concluded that HMIT would not have constitutional or prudential standing to bring the underlying causes of action in the Proposed Complaint. This court has also found and concluded that all of the Proposed Claims are without foundation or merit and are not even plausible and are all; being brought for the improper purpose of continuing Dondero's vexatious, harassing, bad-faith litigation. Thus, HMIT would not be entitled to pursue declaratory judgement relief as requested in Count VI of the Proposed Complaint.

d) HMIT Has No Basis to Seek Punitive Damages

HMIT separately alleges that the Claims Purchasers' and Seery's "misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others," thus entitling HMIT to an award of punitive damages under applicable law. But, HMIT abandoned its proposed fraud claim that was in its Original Proposed Complaint, so its sole claim for primary liability is Seery's alleged breach of his fiduciary duties. And under Delaware law, the "court cannot award punitive damages in [a] fiduciary duty action."[304]

[301] Proposed Complaint ¶¶ 96-99.

[302] *See Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 932 (5th Cir. 2023).

[303] *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at *2 (S.D. Tex. June 7, 2016) (citing *Collin Cty. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)); *see also Hopkins v. Cornerstone Am.*

[304] *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff'd* 682 F. App'x 24 (2d Cir. 2017).

3. HMIT Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test Because It Seeks to Bring the Proposed Complaint for Improper Purposes of Harassment and Bad-Faith, Vexatiousness.

Under this court's Gatekeeper Colorability Test, in addition to showing that its allegations and claims are not without foundation or merit, HMIT must also show that the Proposed Claims are not being brought for any improper purpose. Taking into consideration the court's knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, the court finds that HMIT is acting at the behest of, and under the control or influence of, Dondero in continuing to pursue harassing, bad faith, vexatious litigation to achieve his desired result in these bankruptcy proceedings. So, in addition to failing to show that its Proposed Claims have foundation and merit, HMIT cannot show that it is pursuing the Proposed Claims for a proper purpose and, thus, cannot meet the requirements under the Gatekeeper Colorability Test; HMIT's Motion for Leave should be denied.

IV. CONCLUSION

The court concludes, having taken into consideration both its knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, that HMIT's Motion for Leave should be denied for three independent reasons: (1) HMIT would lack constitutional standing to bring the Proposed Claims (and, thus, the federal courts would lack subject matter jurisdiction over the Proposed Claims); (2) even if HMIT would have constitutional standing to pursue the Proposed Claims, it would lack prudential standing to bring the Proposed Claims; and (3) even if HMIT would have both constitutional standing and prudential standing to bring the Proposed Claims, it has not met its burden under the Gatekeeper Colorability Test of showing that its Proposed Claims are "colorable" claims—that the Proposed Claims are not without foundation, not without merit, and not being pursued for an improper purpose. Moreover,

even if this court's Gatekeeper Colorability Test should be replaced with a Rule 12(b)(6) "plausibility" standard, the Proposed Claims are not plausible.

Accordingly,

IT IS ORDERED that HMIT's Motion for Leave be, and hereby is **DENIED**.

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

Exhibit 2

The following constitutes the ruling of the court and has the force and effect therein described.

Signed August 25, 2023

United States Bankruptcy Judge

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

IN RE:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-sgj-11**
Reorganized Debtor.	§	

MEMORANDUM OPINION AND ORDER PURSUANT TO PLAN "GATEKEEPER PROVISION" AND PRE-CONFIRMATION "GATEKEEPER ORDERS": DENYING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING[1]
[BANKR. DKT. NOS. 3699, 3760, 3815, and 3816]

I. INTRODUCTION

BEFORE THIS COURT is yet another post-confirmation dispute relating to the Chapter 11 bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor").

[1] On August 2, 2023, this court signed an Order [Bankr. Dkt. No. 3897] that was agreed to among various parties, after the filing of a Motion to Stay and Compel Mediation [Bankr. Dkt. No. 3752] filed by James D. Dondero and related entities. Pursuant to paragraph 7 of that order, certain pending matters in the bankruptcy court are stayed pending mediation. The parties did not agree to stay the matter addressed in this Memorandum Opinion and Order.

It is now more than two and half years since the confirmation of Highland's Plan[2]—the Plan having been confirmed on February 22, 2021.[3] The Plan was never stayed; it went effective on August 11, 2021 ("Effective Date"), and it was affirmed almost in its entirety by the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit"), in late summer 2022, including an approval of the so-called Gatekeeper Provision[4] therein. The Gatekeeper Provision—and how and whether it should now be exercised or interpreted to allow a certain lawsuit to be filed—is at the heart of the current *Emergency Motion for Leave to File Verified Adversary Proceeding* [Bankr. Dkt. Nos. 3699, 3760, 3815, 3816] (collectively, the "Motion for Leave") filed by a movant known as Hunter Mountain Investment Trust ("HMIT").

A. Who is the Movant, HMIT?

Who is HMIT? It is undisputed that it is a former equity owner of Highland. It held 99.5% of Highland's Class B/C limited partnership interests and was classified in a Class 10 under the confirmed Plan, which class treatment provided it with a contingent interest in the Highland Claimant Trust ("Claimant Trust") created under the Plan, and as defined in the Claimant Trust Agreement. This means that HMIT could receive consideration under the Plan if all claims against Highland are ultimately paid in full, with interest. As later further discussed, it is undisputed that

[2] Capitalized terms not defined in this introduction shall have the meaning ascribed to them below.

[3] The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order")[Bankr. Dkt. No. 1943].

[4] In an initial opinion dated August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in large part, "revers[ing] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan's exculpation, and affirm[ing] on all remaining grounds." *In re Highland Capital Management, L.P.*, No. 21-10449, 2022 WL 3571094, at *1 (5th Cir. Aug. 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022, "for the limited purpose of clarifying and confirming one part of its August 19, 2022 opinion," the Fifth Circuit withdrew its original opinion and replaced it with its opinion reported at *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419, 424 (5th Cir. 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section "IV(E)(2) – *Injunction and Gatekeeper Provisions*" of the original opinion: "The injunction and gatekeeper provisions are, on the other hand, perfectly lawful." was replaced with "We now turn to the Plan's injunction and gatekeeper provisions." In all other respects, the Fifth Circuit panel's original ruling remained unchanged. Petitions for writs of certiorari regarding the Confirmation Order have been pending at the United States Supreme Court since January 2023.

HMIT's only asset is its contingent interest in the Claimant Trust. It has no employees or revenue. HMIT's representative has testified that HMIT is liable on more than $62 million of indebtedness owed to The Dugaboy Investment Trust ("Dugaboy"), a family trust of which James Dondero ("Dondero"), the co-founder and former chief executive officer ("CEO") of Highland, and his family members are beneficiaries, and that Dugaboy also is paying HMIT's legal fees. HMIT vehemently disputes the suggestion that it is controlled by Dondero.

B. What Does the Movant HMIT Seek Leave to File?

HMIT seeks leave to file an adversary proceeding ("Proposed Complaint")[5] in the bankruptcy court to bring claims on behalf of itself and, derivatively, on behalf of the Reorganized Debtor and the Claimant Trust for alleged breach of fiduciary duties by the Reorganized Debtor's CEO and Claimant Trustee, James P. Seery, Jr. ("Seery") and conspiracy against: (1) Seery; and (2) purchasers of $365 million face amount of ***allowed*** unsecured claims in this case, who purchased their claims post-confirmation but prior to the occurrence of the Effective Date of the Plan ("Claims Purchasers,"[6] and with Seery, the "Proposed Defendants"). To be clear (and as later further explained), the claims acquired by the Claims Purchasers were acquired by them after extensive litigation, mediation, and settlements were approved by the bankruptcy court and after the original claims-holders had voted on the Plan and after Plan confirmation. As later explained,

[5] In its original Motion for Leave filed at Bankruptcy Docket No. 3699 on March 28, 2023, HMIT sought leave to file the proposed complaint ("Initial Proposed Complaint") attached as Exhibit 1 to the Motion for Leave. Nearly a month later, on April 23, 2023, HMIT filed a *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* ("Supplement") [Bankr. Dkt. No. 3760], a revised proposed complaint as Exhibit 1-A, and stating that "[t]he Supplement is not intended to supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action." Supplement, ¶ 1 and Exhibit 1-A. It is this revised proposed complaint to which this court will refer, when it uses the defined term "Proposed Complaint," even though HMIT filed redacted versions of its Motion for Leave on June 5, 2023 at Bankruptcy Docket Nos. 3815 and 3816 that attached the Initial Proposed Complaint as Exhibit 1.

[6] The Claims Purchasers identified in the Proposed Complaint are Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which is a special purpose entity created by Farallon to purchase allowed unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which is a special purpose entity created by Stonehill to purchase allowed unsecured claims against Highland.

the Claims Purchasers filed notices of their purchases as required by Bankruptcy Rule 3001(e)(2), and no objections were filed thereto. In any event, various damages or remedies are sought against the Proposed Defendants revolving around the Claims Purchasers' claims purchasing activities.

C. Why Does HMIT Need to Seek Leave?

As alluded to above, HMIT filed its Motion for Leave to comply with the provision in the Plan known as a "gatekeeper" provision ("Gatekeeper Provision") and with this court's prior gatekeeper orders entered in January and July 2020, which all require that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain (1) a finding from the bankruptcy court that its proposed claims ("Proposed Claims") are "colorable"; and (2) specific authorization by the bankruptcy court to pursue the Proposed Claims.[7] The Gatekeeper Provision was not included in the Plan *sans raison*. Indeed, as the Fifth Circuit recognized in affirming confirmation of the Plan, the Gatekeeper Provision (along with the other "protection provisions" in the Plan) had been included in the Plan to address the "continued litigiousness" of Mr. James Dondero ("Dondero"), Highland's co-founder and former chief executive officer ("CEO"), that began prepetition and escalated following the post-petition "nasty breakup" between Highland and Dondero, by "screen[ing] and prevent[ing] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[8]

[7] To be clear, the Gatekeeper Provision in the Plan was not the first or even second injunction of its type issued in this bankruptcy case. The Gatekeeper Orders were entered by the bankruptcy court pre-confirmation: (a) in January 2020, just a few months into the case, as part of this court's order approving a corporate governance settlement between Highland and its unsecured creditors committee, in which Dondero, Highland's co-founder and former CEO, was removed from any management role at Highland and three independent directors ("Independent Directors") were appointed in lieu of a chapter 11 trustee being appointed ("January 2020 Order"); and (b) in July 2020, in this court's order authorizing the employment of Seery (one of the three Independent Directors) as the Debtor's new Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative ("July 2020 Order," together with the January 2020 Order, the "Gatekeeper Orders").

[8] *See Highland Capital*, 48 F.4th at 427, 435.

D. Some Further Context Regarding Post-Confirmation Litigation Generally.

Since confirmation of the Plan, hundreds of millions of dollars have been paid out to creditors under the Plan, and there are numerous adversary proceedings and contested matters still pending, at various stages of litigation, in the bankruptcy court, the district court, and the Fifth Circuit, almost exclusively involving Dondero and entities that he owns or controls. To be sure, the post-confirmation litigation in this case does not consist of the usual adversaries and contested matters one typically sees by and against a reorganized debtor and/or litigation trustee, such as preference or other avoidance actions and litigation over objections to claims that are still pending after confirmation of a plan. Indeed, the claims of the largest creditors in this case (with claims asserted in the aggregate of more than one billion dollars) were successfully mediated and incorporated into the Plan—a plan which was ultimately accepted by the votes of an overwhelming majority of Highland's non-insider creditors. Dondero and entities under his control were the only parties who appealed the Confirmation Order, and Dondero and entities under his control have been the appellants in virtually every appeal that has been filed regarding this bankruptcy case. Petitions for writs of mandamus (which have been denied) have been filed in the district court and in the Fifth Circuit by some of these same entities, including one by HMIT, when this court denied setting an ***emergency*** hearing on the instant Motion for Leave (HMIT had sought a setting on three-days' notice).

A recent list of active matters involving Dondero and/or entities and/or individuals affiliated or associated with him, filed in the bankruptcy case by Highland and the Claimant Trust, reveals that there were at least 30 pending and "Active Dondero-Related Litigation" matters as of July 14, 2023: six (6) proceedings in this court; six (6) active appeals or actions are pending in the District Court for the Northern District of Texas; seven (7) appeals in the Fifth Circuit; two (2)

petitions for writs of certiorari in the United States Supreme Court; and nine (9) other proceedings or actions with or affecting the Highland Parties ("Highland," the "Claimant Trust," and "Seery") in various other state, federal, and foreign jurisdictions.[9]

The above-described context is included because the Proposed Defendants assert that the Motion for Leave is just a continuation of Dondero's unrelenting barrage of meritless and harassing litigation, making good on his oft-mentioned alleged threat to "burn down the place" after not achieving the results he wanted in the Highland bankruptcy case. Indeed, the Motion for Leave was filed after two years of unsuccessful attempts by, first, Dondero personally, and then HMIT to obtain pre-suit discovery from the Proposed Defendants (i.e., the Claims Purchasers) through two different Texas state court proceedings, pursuant to Tex. R. Civ. P. 202 ("Rule 202"). In each of these Rule 202 proceedings, Dondero and HMIT espoused the same Seery/Claims

[9] *See* Bankr. Dkt. No. 3880 (filed on July 14, 2023, providing a list of "Active Dondero-Related Litigation" and noting that the list is "a summary of active pending actions only and does not include actions that were resolved by final orders, including actions finally resolved after appeals to the U.S. District Court for the Northern District of Texas and/or the U.S. Court of Appeals for the Fifth Circuit."). Just since the filing by the Highland Parties of the list, ***three*** of the appeals pending in the Fifth Circuit have been decided against the Dondero-related appellants, two of which upheld the district court's dismissal of appeals by Dondero-related entities of bankruptcy court orders based on the lack of bankruptcy appellate standing on behalf of the appellant. On July 19, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by NexPoint Advisors, L.P. ("NexPoint") of bankruptcy court orders approving professional compensation on the basis that NexPoint did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the orders. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, 74 F.4th 361 (5th Cir. 2023). On July 31, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy—the Dondero family trust that, like the movant here in this Motion for Leave, was the holder of a limited partnership interest in Highland, and, as such, now has a contingent interest in the Claimant Trust—which had appealed a bankruptcy court order approving a Rule 9019 settlement on the same basis: Dugaboy did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the settlement order. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10960, 2023 WL 4861770 (5th Cir. July 31, 2023). The July 31, 2023 ruling followed the Fifth Circuit's ruling on February 21, 2023, affirming the district court's dismissal of an appeal by Dugaboy of yet another bankruptcy court order for lack of bankruptcy appellate standing. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023). These rulings by the Fifth Circuit are discussed in greater detail below. The third ruling by the Fifth Circuit since July 14, 2023, was issued by the Fifth Circuit in a per curium opinion not designated for publication on July 26, 2023, this one affirming the district court's affirmance of yet another Rule 9019 settlement order of the bankruptcy court that was appealed by Dugaboy, agreeing with the district court that the bankruptcy court had jurisdiction to approve a settlement among the Debtor, an entity affiliated with the Debtor but not a debtor itself, and UBS (the Debtor's largest prepetition creditor and the seller of its claims to the Claims Purchasers, which is one of the claims trading transactions HMIT complains about in the Proposed Complaint). *See The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P.*, No. 22-10983, 2023 WL 4842320 (5th Cir. July 26, 2023).

Purchasers conspiracy theory espoused in the Motion for Leave—that Seery must have provided one or more of the Claims Purchasers with material nonpublic information to induce them to want to purchase large, allowed, unsecured claims at a discount; a *quid pro quo* is suggested, such that the Claims Purchasers were allegedly told they would make a hefty profit on the claims they purchased and, in return, they would gladly "rubber stamp" Seery's "excessive compensation" as the Claimant Trustee of the Claimant Trust. In sum, HMIT alleges this constituted wrongful "insider trading" of the bankruptcy claims. In addition, certain lawyers for Dondero and Dugaboy sent letters reporting this alleged conspiracy and "insider trading" to the Texas State Securities Board ("TSSB") and the Executive Office of the United States Trustee ("EOUST").

It is against this background and in this context that the court must analyze, in the exercise of its gatekeeping function under the confirmed Plan and its prior Gatekeeping Orders, whether HMIT should be allowed to pursue the Proposed Claims (i.e., whether the Proposed Claims are "colorable" claims as contemplated under the Gatekeeper Orders and the Gatekeeper Provision of the Plan). The court held an evidentiary hearing on the Motion for Leave on June 8, 2023 ("June 8 Hearing"), during which the court admitted exhibits and heard testimony from three witnesses both in support of and in opposition to the Motion for Leave. Having considered the Motion for Leave, the response of the Proposed Defendants thereto, HMIT's reply to the response, and the arguments and evidence presented at the hearing on the Motion for Leave, the court denies HMIT's request for leave to pursue its Proposed Claims. The court's reasoning is set forth below.

II. BACKGROUND

A. Highland's Bankruptcy Case, Dondero's Removal as CEO, and the Plan

Highland was co-founded in Dallas in 1993 by Dondero and Mark Okada ("Okada"). It operated as a global investment adviser that provided investment management and advisory services and managed billions of dollars of assets, both directly and indirectly through numerous

affiliates. Highland's equity interest holders included HMIT (99.5%), Dugaboy (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. ("Strand"), which was wholly owned by Dondero and was the only general partner of Highland (0.25%). On October 16, 2019 (the "Petition Date"), Highland, with Dondero in control[10] and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims – many of which had finally become or were about to be liquidated (after a decade or more of contentious litigation in multiple fora all over the world—filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019. The official committee of unsecured creditors (the "Committee") (and later, the United States Trustee) expressed a desire for the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the specter of a possible appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.[11] As a result of this settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,[12] and three independent directors ("Independent Directors") were

[10] Mark Okada resigned from his role with Highland prior to the Petition Date.

[11] This order is hereinafter referred to as the "January 2020 Order" and was entered by the court on January 9, 2020 [Bankr. Dkt. No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Bankr. Dkt. No. 281].

[12] Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland's motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Bankr. Dkt. No. 338].

chosen to lead Highland through its chapter 11 case: Seery, John S. Dubel, and retired bankruptcy judge Russell Nelms. Given the Debtor's perceived culture of constant litigation while Dondero was at the helm, it was purportedly not easy to get such highly qualified persons to serve as independent board members. At the hearing on the corporate governance settlement motion, the court heard credible testimony that none of the Independent Directors would have taken on the role without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation from mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the Independent Directors without the bankruptcy court's prior authority. The gatekeeper provision approved by the court in its January 9 Order states,[13]

> No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation and did so "subject at all times to the supervision, direction and authority of the Independent Directors" and to his agreement to "resign immediately" "[i]n the event the Independent Directors determine for any reason that the Debtor shall no longer retain Dondero as an employee"[14] and to "not cause any Related Entity to terminate any agreements with the Debtor."[15] The court later

[13] January 2020 Order, 3-4, ¶ 10.

[14] January 2020 Order, 3, ¶ 8.

[15] *Id.* at ¶ 9.

entered, on July 16, 2020, an order approving the appointment of Seery as Highland's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative,[16] which included essentially the same "gatekeeper" language with respect to the pursuit of claims against Seery acting in these roles. The gatekeeper provision in the July 2020 Order was essentially the same as the gatekeeper provision in the January 2020 Order:

> No entity may commence or pursue a claim or cause of action of any kind against Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

July 2020 Order, 3, ¶5. Neither the January 2020 Order nor the July 2020 Order were appealed.

Throughout the summer of 2020, Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Dondero's plans failed to gain support, he and entities under his control engaged in substantial, costly, and time-consuming litigation for Highland.[17] As the Fifth Circuit described the situation, after Dondero's plans failed "he and other creditors began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital's management, threatening employees, and canceling trades between Highland Capital and its clients."[18] On October 9, 2020, Dondero resigned from all positions with the Debtor and its

[16] *See* the July 16, 2020 order approving the retention by Highland of Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020 ("July 2020 Order") [Bankr. Dkt. No. 854].

[17] According to Seery's credible testimony during the hearing on confirmation of the Plan that had been negotiated between the Committee and the Independent Directors, Dondero had threatened to "burn the place down" if his proposed plan was not accepted. *See* Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20. Bankr. Dkt. No. #1894.

[18] *Highland Capital*, 48 F.4th at 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at *1, *26 (Bankr. N.D. Tex.

affiliates in response to a demand by the Independent Directors made after Dondero's purported threats and disruptions to the Debtor's operations.[19]

The Independent Directors and the Committee had negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan") [Bankr. Dkt. No. 1808] on January 22, 2021.[20] Highland had negotiated settlements with most of its major creditors following mediation and had amended its initially proposed plan to address the objections of most of its creditors, leaving only the objections of Dondero and entities under his control (the "Dondero Parties") at the time of the confirmation hearing,[21] which was held over two days in early February 2021. The Plan is essentially an "asset monetization" plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). Highland's various servicing agreements were vested in the Reorganized Debtor, which continues to manage collateralized loan obligation vehicles ("CLOs") and various other investments postconfirmation. The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down the Reorganized Debtor over a three-year period by monetizing its assets and making

June 7, 2021) where this court "h[eld] Dondero in civil contempt, sanctioning him $100,000, and comparing this case to a 'nasty divorce.'").

[19] *See* Highland Ex. 13. The court shall refer to exhibits offered and admitted at the June 8 Hearing on the Motion for Leave by the Highland Parties as "Highland Ex. ___" and to exhibits offered and admitted by HMIT as "HMIT Ex. ___."

[20] The *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* was filed on November 24, 2020 ("Disclosure Statement") [Bankr. Dkt. No. 1473].

[21] The only other objection remaining was the objection of the United States Trustee to the Plan's exculpation, injunction, and release provisions.

distributions to Class 8 and Class 9 creditors as Claimant Trust Beneficiaries. The Claimant Trust is overseen by a Claimant Trust Oversight Board ("CTOB"), and pursuant to the terms of the Plan and the Claimant Trust Agreement ("CTA"),[22] the CTOB approved Seery's compensation package as the CEO of the Reorganized Debtor and the Claimant Trustee. Following their acquisition of their unsecured claims, representatives of Claims Purchasers Muck and Jessup became members of the CTOB.[23] Seery's compensation included the same base salary that he was receiving as CEO and CRO of Highland, plus an added incentive bonus tiered to recoveries and distributions to the creditors under the Plan. The Plan provides for the cancellation of the limited partnership interests in Highland held by HMIT, Dugaboy, and Okada and his family trusts in exchange for each holder's pro rata share of a contingent interest in the Claimant Trust ("Contingent Claimant Trust Interest"), as holders of allowed interests in Class 10 (holders of Class B/C limited partnership interests) or Class 11 (holders of Class A limited partnership interests) under the Plan.

B. Dondero Communicates Alleged Material Non-Public Information ("MNPI") to Seery, and Seery Allegedly Provides the MNPI to the Claims Purchasers in Furtherance of an Alleged Fraudulent Scheme to Have the Claims Purchasers "Rubber Stamp" His Compensation as Claimant Trustee Post-Confirmation

1. The December 17, 2020 MGM Email

Between Dondero's forced resignation from Highland in October 2020 and the confirmation hearing in February 2021, Dondero engaged in what appeared to be attempts to thwart, impede, and otherwise interfere with the Plan being proposed by the Independent Directors and the Committee. In the midst of this, on December 17, 2020, Dondero sent Seery[24] an email

[22] Highland Ex. 38

[23] The CTOB had three members: a representative of Muck (Michael Linn), a representative of Jessup (Christopher Provost), and an independent member (Richard Katz). *See* Joint Opposition ¶ 79.

[24] Dondero sent the email to others as well but did not copy counsel for the Independent Directors (including Seery) in violation of the terms of an existing temporary restraining order that enjoined Dondero from, among other things, "communicating . . . with any Board member" (including Seery) without including Debtor's counsel. Morris Dec. Ex. 23 ¶ 2(a). Citations to "Morris Dec. Ex. _" are to the exhibits attached to the *Declaration of John A. Morris in Support*

(the "MGM Email") that featured prominently in HMIT's Motion for Leave. According to HMIT and Dondero, the MGM Email contained material nonpublic information ("MNPI") regarding the possibility of an imminent acquisition of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"), likely by either Amazon or Apple.[25] At the time Dondero sent the MGM Email, Dondero sat on the board of directors of MGM, and the Debtor owned MGM stock directly. The Debtor also managed and partially owned a couple of other entities that owned MGM stock and managed various CLOs that owned some MGM stock as well. HMIT alleges now that Seery later misused and wrongfully disclosed to the Claims Purchasers this purported MNPI as part of a *quid pro quo* scheme, whereby the Claims Purchasers agreed to approve excessive compensation for Seery in the future (in exchange for him providing this allegedly "insider" information that inspired them to purchase unsecured claims with an alleged expectation of future large profits).[26] A timeline of events (in late 2020) in the weeks leading up to Dondero's MGM Email to Seery, following Dondero's departure from Highland, helps to put the email in full context:

- October 16: Dondero and his affiliates attempt to impede the Debtor's trading activities by demanding—with no legal basis—that Seery cease selling certain assets;[27]

- November 24: Bankruptcy Court enters an Order approving the Debtor's Disclosure Statement, scheduling the confirmation hearing on the Debtor's Plan for January 13, 2021, and granting related relief;[28]

- November 24–27: Dondero personally interferes with the Debtor's

of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding, Bankr. Dkt. No. 3784.

[25] *See* Proposed Complaint ¶ 45.

[26] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the [Claims Purchasers], with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims."); ¶ 4 ("As part of the scheme, the [Claims Purchasers] obtained a position to approve Seery's ongoing compensation – to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT.").

[27] *See* Highland Ex. 14, Dondero-Related Entities' October 16, 2020 Letter; Highland Ex. 15, *Memorandum Opinion and Order Holding Dondero in Contempt for Violation of TRO*, 13-15.

[28] *See* Bankr. Dkt. No. 1476.

implementation of certain securities trades ordered by Seery;[29]

- November 30: The Debtor provides written notice of termination of certain shared services agreements it had with Dondero's two non-debtor affiliates, NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"; together with NexPoint, the "Advisors");[30]

- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes they owed to the Debtor, that had an aggregate face amount of more than $60 million—this was part of creating liquidity for the Debtor's Plan;[31]

- December 3: Dondero responds with what appeared to be a threat of some sort to Seery in a text message: "***Be careful what you do -- last warning***;"[32]

- December 10: Dondero's interference and apparent threat cause the Debtor to seek and obtain a temporary restraining order ("TRO") against Dondero;[33]

- December 16: This court denies as "frivolous" a motion filed by certain affiliates of Dondero, in which they sought "temporary restrictions" on certain asset sales;[34] and

- December 17: Dondero sends the unsolicited MGM Email[35] to Seery, which violates the TRO entered just a week earlier.[36]

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[29] *See* Highland Ex. 15, 30-36.

[30] Morris Decl. Ex. 17; *see also* Transcript of June 8, 2023 Hearing on HMIT's Motion for Leave ("June 8 Hearing Transcript"), 273:23-24.

[31] Morris Decl. Exs. 18-21; *see also* June 8 Hearing Transcript, 273:23-274:1.

[32] Morris Decl. Ex. 22 (emphasis added); *see also* June 8 Hearing Transcript, 273:1-12 (where Seery testified about receiving the threat from Dondero: "A: [T]his came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.").

[33] *See* Morris Decl. Ex. 23, *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* entered December 10, 2020 [Adv. Pro. No. 20-3190 Dkt. No. 10].

[34] *See* Morris Decl. Ex. 24, Transcript of December 16, 2020 Hearing, 63:5-64:15.

[35] Highland Ex. 11.

[36] Seery testified at the June 8 Hearing that Dondero knowingly violated the TRO when he sent the MGM Email:

> [The MGM Email] . . . followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski [Debtor's counsel] being on it. Furthermore, Pachulski had advised Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics. And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

June 8 Hearing Transcript, 273:13-22.

The MGM Email had the subject line "Trading Restriction re MGM – material non public information" and stated:

> Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.[37]

Seery credibly testified at the June 8 Hearing that he was "highly suspicious" when he received the MGM Email. This was because, among other reasons, Dondero sent it ***after***: (i) unsuccessful efforts to impede the Debtor's trading activities (followed by the TRO); (ii) the "be careful what you do" text to Seery by Dondero: (iii) Highland's termination of its shared service arrangements with Dondero's various affiliated entities; (iv) the bankruptcy court's approval of the disclosure statement; and (v) Highland's demand to collect on the demand notes for which Dondero and his entities were liable.[38] Highland's Chapter 11 case was fast approaching the finish line. Moreover, MGM was already on the restricted list at Highland Capital, and had been for a long time, and Dondero would know this.[39] Still further, as of December 17, 2020 (the date Dondero sent the unsolicited MGM Email to Seery), Dondero no longer owed a duty of any kind to the Debtor or any entity controlled by the Debtor, having surrendered in January 2020 direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement[40] and having resigned from all roles at the Debtor and affiliates in October 2020. Still further, Dondero—to the extent he was sharing with Seery MNPI that he obtained as a member of the board of directors of MGM—would have been violating his own fiduciary duties to MGM.

[37] Highland Ex. 11.

[38] June 8 Hearing Transcript, 273:1-274:4.

[39] June 8 Hearing, 215:21-216:9.

[40] *See* Bankr. Dkt. Nos. 339, 354-1 (Term Sheet)).

In any event, in a declaration filed by Dondero in support of HMIT's Rule 202 petition in Texas state court for pre-suit discovery,[41] he indicated that his goal in sending the MGM E-mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

> On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple's interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades***.

It is noteworthy that ***Dondero's labeling of the MGM Email (in the subject line) as a communication containing "material non public information" did not make it so***. In fact, it appears from the credible evidence presented at the June 8, 2023 hearing on HMIT's Motion for Leave that the MGM Email did not disclose information to Seery that was not already made available to the public at the time it was sent. Seery testified that he did not think the MGM Email contained MNPI and that he did not personally "take any steps . . . to make sure that MGM stock was placed on a restricted list at Highland Capital after [he] received [the MGM Email]" because—as earlier noted—"MGM was already on the restricted list at Highland Capital . . . before I got to Highland."[42] Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months[43] and that was officially

[41] Highland Ex. 9 ¶ 3 (emphasis added).

[42] June 8 Hearing Transcript, 215:21-216:9. Seery elaborated upon further questioning from HMIT's counsel that he did not think the indications in the MGM Email (that came from a member of the board of directors of MGM) that "it was probably a first-quarter event" and that "Amazon and Apple were actively diligencing – are diligencing in the data room, both continue to express material interest" were not MNPI. *Id.*, 217:23-218:10. He testified that "it was clear [before he received the MGM Email] from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction would have to take place very quickly. And, in fact, the transaction did not take place in the first quarter." *Id.*, 219:3-7.

[43] *See* Highland Ex. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Ex. 26 (describing prospects of an MGM sale, noting that, among its largest

announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[44] For example, as early as January 2020, Apple and Amazon were identified as being among a new group of "Big 6" global media companies, and MGM was identified as being a leading media acquisition target. Indeed, according to at least one media report on January 26, 2020, "MGM, in particular, seems like a logical candidate to sell this year" having already held "preliminary talks with Apple, Netflix and other larger media companies."[45] In October 2020, the Wall Street Journal reported that MGM's largest shareholder, Anchorage Capital Group ("Anchorage"), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as Chairman of MGM's Board. The article reported that "[i]n recent months, Mr. Ulrich has said he is working toward a deal," and he specifically named Amazon and Apple as being among four possible buyers.[46] Thus, no one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed "material interest" in acquiring MGM. Dondero testified during the June 8 Hearing that, at the time he sent the MGM Email, he "knew with certainty from the board level that Amazon had hit our price, and it was going to close in the next couple of months,"[47] that "as of December 17th, Amazon had made an offer that was acceptable to MGM, [and that] that's what the board meeting was. We were going into exclusive negotiations to culminate the merger with

shareholders, was "Highland Capital Management, LP") (article October 11, 2020). *See also* Highland Exs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for $8.4 billion).

[44] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid.

[45] Highland Ex. 25.

[46] Highland Ex. 26.

[47] June 8 Hearing Transcript, 127:2-4.

them."[48] Notwithstanding this testimony, Dondero eventually admitted (after a lengthy and torturous cross examination) that he did not actually communicate this supposed "inside" information to Seery in the MGM Email. He did not "say anything about Amazon hitting the price." He did not say anything about the MGM board going into exclusive negotiations with Amazon "to culminate the merger with them." Rather, he communicated information that Seery and any member of the public who cared to look could have gleaned from publicly available information as of December 17, 2020, regarding a much-written-about potential MGM transaction that involved interest from numerous companies, including, specifically, Amazon and Apple. When questioned why "[he felt] the need to mention Apple [in the MGM Email] if Amazon had already hit the price," Dondero simply answered, "The only way you generally get something done at attractive levels in business is if two people are interested," suggesting that he specifically ***did not*** communicate the purported inside information he obtained as a MGM board member—that Amazon had met MGM's strike price and that the MGM board was moving forward with exclusive negotiations with Amazon—because he wanted it to appear that there was still a competitive process going on that included both Amazon and Apple.[49]

Even if the MGM Email contained MNPI on the day it was sent (four months prior to the first of the Claim Purchases that occurred in April 2021), the information was fully and publicly disclosed to the market in the days and weeks that followed. For example, on December 21, 2020, just four days later, a Wall Street Journal article titled *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale*, reported that MGM had "tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process," and had "a market value of around $5.5 billion, based on privately traded shares and including debt." The Wall Street Journal Article reiterated

[48] *Id.*, 161:10-14.

[49] June 8 Hearing Transcript, 162:2-6.

that (i) Anchorage "has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks," and (ii) "Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers."[50] (*Id*. Ex. 27.) The Wall Street Journal's reporting was picked up and expanded upon in other publications soon after. For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The world is net enough! Amazon joins other streaming services in £4bn bidding war for Bond films as MGM considers selling back catalogue*, cited the Wall Street Journal article and further reported that MGM "hopes to spark a battle that could interest streaming services such as Amazon Prime";[51]

- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that "it's now become apparent that MGM is actually up on the auction block," noting that the Wall Street Journal was "reporting that the studio has begun a formal sale process" and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder;[52] and

- On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition.[53]

Finally, Highland and entities it controlled did not sell their MGM stock while the MGM-Amazon deal was under discussion and/or not made public but, instead, they tendered their MGM holdings in connection with, and as part of, the ultimate MGM-Amazon transaction after it closed in March 2022.

[50] Highland Ex. 27.

[51] Highland Ex. 28.

[52] Highland Ex. 29.

[53] Highland Ex. 30.

2. No Evidence to Support HMIT/Dondero's Assumptions that Seery Shared Alleged MNPI in the MGM Email with Claims Purchasers

One of HMIT's allegations in the Proposed Complaint it seeks leave to file—which is central to HMIT's and Dondero's conspiracy theory—is that Seery shared the alleged MNPI from the MGM Email with the Claims Purchasers (or at least Farallon—the owner/affiliate of Muck, one of the Claims Purchasers) and that the Claims Purchasers only acquired the purchased claims ("Purchased Claims") based on, and because, of their receipt of the MNPI from Seery. HMIT essentially admits in the original version of its Motion for Leave that it has no direct evidence that Seery communicated the alleged MNPI to any of the Claims Purchasers. Rather, its allegation is based on inferences it wants the court to make based on "circumstantial" evidence and on the Dondero Declarations that were attached to the Motion for Leave, which described communications Dondero purportedly had with one or two representatives of Farallon in the "late spring" of 2021 concerning Farallon's recent acquisition of certain claims in the Highland bankruptcy case.[54] Based on these communications, HMIT and Dondero only assume Seery must have provided the MNPI about MGM to Farallon, which must have caused both Farallon and the other Claims Purchaser, Stonehill, to acquire the Purchased Claims.[55]

At the June 8 Hearing, HMIT offered Dondero's testimony that he had three telephone conversations with two representatives of Farallon, Mike Linn ("Linn") and Raj Patel ("Patel"),

[54] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 1 and Ex. 3; *see also* Highland Ex. 9, *Declaration of James Dondero* (with Exhibit 1) dated February 15, 2023.

[55] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 28. HMIT subsequently filed the final version of the Motion for Leave that was revised to withdraw the Dondero Declarations and delete all references therein to the Dondero Declarations (but, notably, leaving in the allegations that were based on the Dondero Declaration(s)). This was done after the court ruled that it would allow the Proposed Defendants to examine Dondero regarding his Declarations. HMIT contended at that point that the court should consider the Motion for Leave on a no-evidence Rule 12(b)(6) type basis (but could not explain why it had attached the Dondero Declarations as evidence that "supported" the Motion for Leave, if it believed no evidence should be considered). *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 28; *see also infra* pages 45 to 47 regarding the "sideshow" litigation that occurred prior to the June 8 Hearing over whether the hearing on the Motion for Leave would be an evidentiary hearing.

who allegedly told him that they purchased the claims without conducting any due diligence and based solely on Seery's assurances that the claims were valuable. These conversations allegedly took place on May 28, 2021—two days after the MGM-Amazon deal was officially announced to the public (on May 26, 2021). Dondero also testified that a photocopy of handwritten notes ("Dondero Notes")[56] (which were partially cut off) were notes he took contemporaneously with these short telephone conversations he initiated (one with Patel and two follow-up conversations with Linn).[57] He testified that his purpose in taking these notes and in initiating the phone calls was that "[w]e'd been trying nonstop to settle the case for two-plus years. . . . [a]nd when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case . . . [s]o I reached out [to] the Farallon guys,"[58] and further, on *voir dire* from the Proposed Defendants' counsel, that the purpose of taking the notes was so that he had "a written record of the important points that [he] discussed . . . so I know how to address it the next time."[59] The handwritten notes[60] stated:

Raj Patel bought it because of Seery	*1*
50-70¢ not compelling	*2*
Class 8	*3*
Asked what would be compelling	*4*
-- No Offer	*5*
Bought in Feb/March timeframe	*6*
Bought assets w/ Claims	*7*
Offered him 40-50% premium	*8*
130% of cost; "Not Compelling"	*9*
No Counter; Told Discovery coming	*10*

[56] HMIT Ex. 4. The handwritten notes were admitted into evidence after *voir dire*, not for the truth of anything Patel or Linn allegedly said to him during the three telephone conversations, but as Dondero's "present sense impression" of the telephone conversations.

[57] June 8 Hearing Transcript, 133:1-136:3.

[58] *See id.*, 133:13-23.

[59] *See id.* (on *voir dire*), 144:1838-145:4.

[60] HMIT Ex. 4. The court has placed in a table and numbered each line for ease of reference. The table does not include the separate apparent partial date from the top left corner that Dondero testified was the date that he made the initial call to Patel: May 28, 2021.

On direct examination, Dondero testified that line 1 is what he wrote contemporaneously with the short call he initiated to Patel of Farallon in which Patel allegedly told Dondero "that he bought it because Seery told him to buy it and they had made money with Seery before"[61] and that Farallon "bought [the claim] because he was very optimistic regarding MGM"[62] before referring him to Linn, a portfolio manager at Farallon. Dondero testified that the rest of the handwritten notes (reflected in lines 2 through 10 of the table) were notes he took contemporaneously with two telephone conversations he had with Linn following his call to Patel, with lines 2-8 referring to Dondero's first call with Linn and lines 9 and 10 referring to his second call with Linn.[63] Dondero testified that the "50-70¢" in line 2 referred to his offer to Linn to pay 70 cents on the dollar to buy Farallon's[64] claims because "[w]e knew that they had – that the claims had traded around 50 cents" and "[w]e wanted to prevent the $5 million-a-month burn" (referring to attorney's fees in the Highland case) and that "not compelling Class 8" in lines 2-3 referred to Linn's response to him that the offer was not compelling.[65] Dondero testified that lines 4-5 referred to him asking Linn what amount would be compelling and to Linn's response that "he had no offer."[66] Dondero testified that lines 6-8 referred to Linn telling Dondero that Farallon bought the claims in the February, March timeframe and that Dondero told Linn that, given that the estate was spending $5 million a month on legal fees, Farallon should want to sell its claims and Linn's alleged response that "Seery told him it was worth a lot more."[67] Lastly, Dondero testified on direct examination

[61] June 8 Hearing Transcript, 134:7-10, 135:13-22.

[62] *Id.*, 139:3-11.

[63] *Id.*, 136:4-138:16.

[64] As noted above, Farallon did not acquire any of the Purchased Claims; rather, Farallon created a special purpose entity, Muck, to acquire the claims.

[65] June 8 Hearing Transcript, 136:4-16.

[66] *Id.*, 136:17-23.

[67] *Id.*, 137:6-138:7.

that the last two lines referred to a second telephone conversation he had with Linn in which Dondero offered 130 percent of cost for the claims and that Linn told him that the offer was not compelling, and he would not give a price at which he would sell.[68]

On cross-examination, Dondero acknowledged that, though he had testified that the handwritten notes were intended to be a written record of the important points from the telephone conversations he had with Patel and Linn, there was no mention in the notes of: (1) MGM: (2) or that Farallon was very optimistic about MGM; (3) the sharing of MNPI; (4) a *quid pro quo;* or (5) Seery's compensation, and that his last note—"Told Discovery coming"—was a reference to Dondero telling Linn (not Linn telling Dondero) that discovery was coming in response to Dondero's own supposition that Farallon must have traded on MNPI.[69] Cross-examination also revealed that Farallon never told Dondero that Seery gave them MNPI, and that Dondero only ***believed*** Seery ***must have*** given Farallon MNPI, because Farallon (Patel and Linn) had told him that the only reason Farallon bought their claims was because of their prior dealings with Seery, which Dondero took to mean that they had conducted no due diligence on their own prior to acquiring the claims. Dondero also testified that he did not have any personal knowledge as to how Seery's compensation package, as CEO of the Reorganized Debtor and Claimant Trustee, was determined because he was "not involved" in the setting of Seery's compensation pursuant to the Claimant Trust[70] and that he never discussed Seery's compensation with Farallon.[71]

As noted earlier, Dondero attempted to obtain discovery from the Claims Purchasers in a Texas state court pursuant to Rule 202 of the Texas Rules of Civil Procedure. The Texas state

[68] *Id.*, 138:8-22.

[69] *Id.*, 190:14-191:25. Dondero testified that he told Linn that discovery "would be coming in the next few weeks" and noted that "this has been a couple years. . . . [w]e've been trying for two years to get . . . discovery in this."

[70] *Id.*, 200:13-201:1.

[71] *Id.*, 208:23-209:8.

court denied the First Rule 202 petition on June 1, 2022, after having considered the amended petition, the responses, the record, applicable authorities and having conducted a hearing on the petition on June 1, 2022.[72]

3. Dondero Unsuccessfully Seeks Discovery and to Have Various Agencies and Courts Outside of the Bankruptcy Court Acknowledge His Insider Trading Theories

Dondero acknowledged at the June 8 Hearing that the verified petition ("First Rule 202 Petition") he signed and filed on July 22, 2021, in the first Texas Rule 202 proceeding—just weeks after his telephone calls with Linn and Patel—was true and accurate. In it, he swore under oath as to what Linn told him in the telephone call concerning Farallon's purchase of the claims, and the only reason he gave for wanting discovery was that Linn told him Farallon bought the claims "sight unseen—relying entirely on Seery's advice solely because of their prior dealings."[73] Dondero acknowledged, as well, that his sworn statement that he filed in support of an amended verified Rule 202 petition filed in the same Texas Rule 202 proceeding, but nearly ten months later (in May 2022), described the same telephone conversation he had with Linn, and it did not mention MGM at all and did not say that Linn told him that Seery gave him MNPI; rather, the sworn statement stated only that "On a telephone call between Petitioner and Michael Lin[n], a representative of Farallon, Mr. Lin[n] informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Seery's say-so because they had made so much money in the past when Seery told them to purchase claims" and that Linn did not tell him that Seery gave them MNPI, but he concluded that Seery gave Farallon MNPI based on what Linn did tell him.[74]

[72] Highland Ex. 7.

[73] *Id.*, 193:8-194:16; Highland Ex. 3, *Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 21. The first Texas Rule 202 proceeding in which Dondero sought discovery regarding the Farallon acquisition of its claims was brought by Dondero, individually, in the 95th Judicial District, Dallas County, Texas.

[74] *Id.*, 195:11-197:17; Highland Ex. 4, *Amended Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 23.

Nine days later, Dondero filed a declaration in the same proceeding, in which he described the same call with Linn as follows:[75]

> Last year, I called Farallon's Michael Lin[n] about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin[n] of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Seery had testified in court, it made no sense to me that Mr. Lin[n] would think that the claims were worth more than what Seery testified under oath was the value of the bankruptcy claims.

Dondero further stated in his declaration that "I have an interest in ensuring that the claims purchased by [Farallon] are not used as a means to deprive the equity holders of their share of the funds," and that "[i]t has become obvious that despite the fact that the bankruptcy estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights. Accordingly, "I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee."[76] Dondero attached as Exhibit A to his declaration a letter from Douglas Draper ("Draper"), an attorney with the law firm of Heller, Draper & Horn, L.L.C. in New Orleans, to the office of the General Counsel, Executive Office for U.S. Trustees, dated October 5, 2021, in which Draper opens the letter by stating that "[t]he purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the [Creditors' Committee] in the bankruptcy of [Highland]," and later noted that he "became involved in Highland's bankruptcy through my representation of [Dugaboy], an irrevocable trust of which Dondero is the primary beneficiary."[77] Mr. Draper laid out the same allegations of insider claims trading, breach of

[75] Highland Ex. 5, ¶ 2.
[76] *Id.*, ¶¶ 3-4.
[77] *Id.*, Ex. A, 1-2.

fiduciary duties, and conspiracy that HMIT seeks to bring in the Proposed Complaint.[78] The U.S. Trustee's office took no action. Dondero made a second and third attempt to get the U.S. Trustee's office to conduct an investigation into the same allegations laid out in Draper's letter, this time in "follow-up" letters to the Office of the U.S. Trustee on November 3, 2021, and six months later, on May 11, 2022, through another lawyer, Davor Rukavina ("Rukavina"), in which Rukavina wrote "to provide additional information regarding the systemic abuses of bankruptcy process occasioned during the [Highland] bankruptcy."[79] Again, the U.S. Trustee's office took no action.

On February 15, 2023, Dondero filed yet another sworn statement about his alleged conversation with Linn, this time in support of a Verified Rule 202 Petition ***filed by HMIT*** ("Second Rule 202 Petition"), filed in a different Texas state court (Texas District Court, 191st Judicial District, Dallas County, Texas), following Dondero's unsuccessful attempts throughout 2021 and 2022 to obtain discovery in the First Rule 202 proceeding and based on the same allegations of misconduct by Seery and Farallon.[80] In this new sworn statement, Dondero describes for the first time the "call" he had with Linn as having been "phone calls" with Patel and Linn and ***mentions MGM*** and Farallon's alleged optimism about the ***expected sale of MGM***:[81]

> In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC ("Farallon"), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Seery because they had made significant profits when Seery told them to purchase other claims in the past. They also stated that they were particularly optimistic because of the expected sale of MGM.

[78] *Id.*, Ex. A, 6-11.

[79] HMIT Ex. 61.

[80] Highland Ex. 9.

[81] *Id.*, ¶ 4.

The Second Rule 202 Petition was also denied by the second Texas state court on March 8, 2023.[82]

HMIT, in an apparent attempt to provide support for its argument that the Proposed Claims are "colorable," stated in its Motion for Leave that "[t]he Court also should be aware that the Texas States [sic] Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely 'colorable.'"[83] But, two days before opposition briefing was due, on May 9, 2023, the TSSB issued a letter ("TSSB Letter") to Highland, informing it that "[t]he staff of the [TSSB] has completed its review of the complaint received by the Staff against [Highland]. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time."[84] HMIT's counsel (frankly, to the astonishment of the court) objected to the admission of the TSSB Letter at the June 8 Hearing "on the grounds of relevance, 403, hearsay, and authenticity . . . [a]nd I also . . . think it's important that the decision by a regulatory body has no bearing on this cause of action or the colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry."[85] The court overruled HMIT's objection to the relevance of this exhibit—considering, among other things, that HMIT, in its Motion for Leave, specifically mentioned the allegedly open TSSB "investigation" as relevant evidence the court "should be aware" of in making its determination of whether the Proposed Claims were "colorable."[86]

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[82] Highland Ex. 10.

[83] Motion for Leave, ¶ 37.

[84] *See* Highland Ex. 33.

[85] June 8 Hearing Transcript, 323:22-324:3.

[86] *Id.*, 324:4-328:2.

C. Claims Purchasers Purchase Claims and File Notices of Transfers of Claims

To be clear about the time line here, it was after confirmation of the Plan but prior to the Effective Date of the Plan, that the Claims Purchasers: (1) purchased several large unsecured claims that had been allowed following, and as part of, Rule 9019 settlements, each of which were approved by the bankruptcy court, after notice and hearing, prior to the confirmation hearing; and (2) filed notices of the transfers of those claims pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure. The noticing of the claims transfers began on April 16, 2021, with the notice of transfer of the claim held by Acis Capital Management to Muck, and ended on August 9, 2021, with the notices of transfers of the claims held by UBS Securities to Muck and Jessup:

Claimant(s)	**Date Filed/ Claim No.**	**Asserted Amount**	**Claim Settled/Allowed? If so, Amount**	**Date Filed/ Rule 3001 Notice Dkt. No.**
Acis Capital Management LP and Acis Capital Management, GP LLC (together, "Acis")	12/31/2019 Claim No. 23	$23,000,000	Yes[87] $23,000,000	4/16/2021 Bankr. Dkt. No. 2215 (Muck)
Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee")	4/3/2020 Claim No. 72	$190,824,557	Yes[88] $137,696,610	4/30/2021 Bankr. Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (the "HarbourVest Parties")	4/8/2020 Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes[89] $80,000,000 in aggregate ($45,000,000 General Unsecured Claim, and $35,000,000 subordinated claim)	4/30/2021 Bankr. Dkt. No. 2263 (Muck)

[87] Bankr. Dkt. No. 1302. The Debtor's settlement with Acis was approved over the objection of Dondero. Bankr. Dkt. No. 1121.

[88] Bankr. Dkt. No. 1273.

[89] Bankr. Dkt. No. 1788. The Debtor's settlement with the HarbourVest Parties was approved over the objections of Dondero, Bankr. Dkt. No. 1697, and Dugaboy and the Get Good Trust. Bankr. Dkt. No. 1706.

UBS Securities LLC, UBS AG, London Branch (the "UBS Parties")	6/26/2020 Claim Nos. 190, 191	$1,039,957,799.40	Yes[90] $125,000,000 in aggregate ($65,000,000 General	8/9/2021 Bankr. Dkt. No. 2698 (Muck) and Bankr. Dkt. No. 2697 (Jessup)

HMIT insists that it "made no sense" for the Claims Purchasers to buy the Purchased Claims because "the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk," and "their investment was projected to yield a small return with virtually no margin for error."[91] Dondero testified that it was ***his*** view that there was insufficient information in the public to justify the claims purchases.[92] But, HMIT's arguments here are contradicted by the information that was publicly available to Farallon and Stonehill at the time of their purchases and by HMIT's own allegations. In advance of Plan confirmation, Highland projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. In the Proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims.[93] Taking into account the face amount of the allowed claims, the Claims Purchasers' projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value[94]	Purchaser	Purchase Price	Projected Profit
Redeemer	$137.0	$0.0	$97.71	Stonehill	$78.0	$19.71
Acis	$23.0	$0.0	$16.4	Farallon	$8.0	$8.40

[90] Bankr. Dkt. No. 2389. The Debtor's settlement with the UBS Parties was approved over the objections of Dondero, Dkt. No. 2295, and Dugaboy and the Get Good Trust. Bankr. Dkt. Nos. 2268, 2293.

[91] Proposed Complaint, ¶ 3.

[92] June 8 Hearing Transcript, 187:3-7 ("Q: And it's your testimony that there wasn't sufficient information in the public for them to buy – this is your view – that there wasn't sufficient information in the public to justify their purchases. Is that your view? A: Correct.).

[93] *Id.*, ¶ 42.

[94] "Ascribed Value" is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

HarbourVest	$45.0	$35.0	$32.09	Farallon	$27.0	$5.09
UBS	$65.0	$60.0	$46.39	Stonehill & Farallon	$50.0	($3.61)

As HMIT acknowledges, by the time Dondero spoke with Farallon in the "late spring" of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest.[95] Based on an aggregate purchase price of $113 million for these three claims, the Claims Purchasers would have expected to net over $33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections, because they also purchased the Class 9 claims and would therefore capture any upside. In this context, HMIT's and Dondero's assertions that it did not "make any sense" for the Claims Purchasers to purchase their claims when they did does not pass muster—given the publicly available information about potential recoveries under the Plan. Dondero even acknowledged, on cross-examination, that he was prepared to pay ***30 percent more*** than Farallon had paid, even though he did not think there was sufficient public information available to justify Farallon's purchase of the claims.[96] Dondero essentially testified that he wanted to purchase Farallon's claims because he wanted to be in a position of control to force a settlement or resolution of the bankruptcy case, post-confirmation, under terms acceptable to him. He did not want to try to settle by negotiating with Farallon and Stonehill ***as creditors***, but instead he wanted to purchase the claims because "if we owned all the claims, it would settle the case."[97]

[95] *See* Complaint, ¶ 41 n.12. The UBS claims were not acquired until August 2021, long after the alleged "*quid pro quo*" was supposedly agreed upon and the MGM-Amazon deal was announced in the press in late May 2021. *See*, Highland Ex. 34, *Amazon's $8.45 Billion Deal for MGM is Historic But Feels Mundane* (dated May 26, 2021).

[96] June 8 Hearing Transcript, 187:8-11.

[97] *Id.*, 187:12-189:10.

D. Fifth Circuit's Approval of the Gatekeeper Provision in Plan, Recognition of Res Judicata Effect of the Prior Gatekeeper Orders, and the Bankruptcy Court's Order Approving Highland's Motion to Conform Plan

Harkening back to February 22, 2021, after a robust confirmation hearing, this court entered its order confirming the Plan, over the objections of Dondero and Dondero-Related Parties, specifically questioning the good faith of their objections. The court found, after noting "the remoteness of their economic interests" that "[it] has good reason to believe that [the Dondero Parties] are not objecting to protect economic interests they have in the Debtor but to be disruptors. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan."[94] The Plan became effective on August 11, 2021.

Of relevance to the Motion for Leave, the confirmed Plan included certain exculpations, releases, and injunctions designed to protect the Debtor and other bankruptcy participants from bad-faith litigation. These participants included: Highland's employees (with certain exceptions); Seery as Highland's CEO and CRO; Strand (after the appointment of the Independent Directors); the Independent Directors; the successor entities; the CTOB and its members; the Committee and its members; professionals retained in the case; and all "Related Persons." The injunction provisions contained a Gatekeeper Provision which is similar to the gatekeeper provisions in the prior Gatekeeper Orders in that it provided that the bankruptcy court will act as a "gatekeeper" to screen and prevent bad-faith litigation against the Protected Parties. The Gatekeeper Provision in the Plan states, in pertinent part:[98]

> No Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents ***a colorable claim of any kind***, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically

[98] Plan, 50-51 (emphasis added).

> authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

The Plan defines Protected Parties as,

> collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the [CTOB] (in their official capacities), (xiii) [HCMLP GP LLC], (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); [but excluding Dondero and Okada and various entities including HMIT and Dugaboy].

The court notes that the Gatekeeper Provision in the Plan provides protection to a broader number of persons than the persons protected under the January 2020 Order (addressing the Independent Directors and their agents and advisors) and the July 2020 Order (addressing Seery in his role as CEO and CRO of the Debtor). But, at the same time, it is less restrictive than the gatekeeping provisions under the Gatekeeper Orders, in that the gatekeeping provisions in the prior orders shield the protected parties from any claim that is not both "colorable" ***and*** a claim for "willful misconduct or gross negligence," effectively providing the protected parties under the prior orders with a limited immunity from claims of simple negligence or breach of contract that do not rise to the level of "willful misconduct or gross negligence," whereas the Gatekeeping Provision under the Plan does not act as a release or exculpation of the Protected Parties in any way because it does not prohibit any party from bringing ***any kind of claim*** against a Protected Party, provided the proposed claimant first obtains a finding in the bankruptcy court that its proposed claims are "colorable."[99]

[99] It should be noted that--as discussed further below--there are, separately in the Plan, exculpations as to a smaller universe of persons--*e.g.,* the Debtor, the Committee and its members, and the Independent Directors.

Dondero and some of the entities under his control appealed[100] the Confirmation Order directly to the Fifth Circuit, arguing, among other issues, that the Plan's exculpation, release, and injunction provisions, including the Gatekeeper Provision (collectively, the "Protection Provisions") impermissibly provide certain non-debtor bankruptcy participants with a discharge, purportedly in contravention of the provisions of Bankruptcy Code § 524(e)'s statutory bar on non-debtor discharges. As noted above, the Fifth Circuit, "affirm[ed] the confirmation order in large part" and "reverse[d] ***only insofar as the plan exculpates*** certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties ***from the plan's exculpation***, and affirm[ed] on all remaining grounds."[101] The Fifth Circuit specifically found the "injunction and gatekeeping provisions [to be] sound" and found that it was only "the ***exculpation*** of certain non-debtors" that "exceed[ed] the bankruptcy court's authority," agreeing with the bankruptcy court's conclusions that the Protection Provisions were legal, necessary under the circumstances, and in the best interest of all parties" in part, and only disagreeing to the extent that the ***exculpation*** provision improperly extended to certain bankruptcy participants other than Highland, the Committee and its members, and the Independent Directors and "revers[ing] and strik[ing] the few unlawful parts

[100] On appeal, the appellant funds ("Funds"), whom this court found to be "owned and/or controlled" by Dondero despite their purported independence, also asked the Fifth Circuit to vacate this court's factual finding "because it threatens the Funds' compliance with federal law and damages their reputations and values" and because "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him." *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th at 434. Applying the "clear error" standard of review, the Fifth Circuit "le[ft] the bankruptcy court's factual finding undisturbed" because "nothing in this record leaves us with a firm and definite conviction that the bankruptcy court made a mistake in finding that the Funds are 'owned and/or controlled by [Dondero]." *Id.* at 434-35.

[101] *See supra* note 4. The Fifth Circuit replaced its initial opinion with its final opinion a few days after certain appellants had filed a short (four-and-one-half pages) motion for rehearing (the "Motion for Rehearing") on September 2, 2022. The movants had asked the Fifth Circuit to "narrowly amend the [initial] Opinion in order to confirm the Court's holding that the impermissibly exculpated parties are similarly struck from the protections of the injunction and gatekeeper provisions of the plan (in other words, that such parties cannot constitute 'Protected Parties')." In the final Fifth Circuit opinion, same as the initial Fifth Circuit opinion, the Fifth Circuit stated that, with regard to the Confirmation Order, the panel would "reverse only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strike those few parties from the plan's exculpation, and affirm on all remaining grounds." *Highland Capital*, 48 F.4th at 424. No findings, discussion, or rulings regarding the injunction and gatekeeper provisions that were in the initial Fifth Circuit opinion were disturbed.

of the Plan's ***exculpation provision***."[102] The Fifth Circuit then remanded to the Bankruptcy Court "for further proceedings in accordance with the opinion."[103]

In the course of analyzing the Protection Provisions under the Plan, the Fifth Circuit noted that the protection provisions in the January and July 2020 Orders appointing the Independent Directors and Seery as CEO and CRO of Highland were *res judicata* and that "*those* orders have the effect of exculpating the Independent Directors and Seery in his executive capacities" such that "[d]espite removal from the exculpation provision in the confirmation order, the Independent Directors' agents, advisors, and employees, as well as Seery in his official capacities are all exculpated to the extent provided in the January and July 2020 Orders."[104]

The Reorganized Debtor filed a motion in the bankruptcy court to conform the plan to the Fifth Circuit's mandate, proposing that only one change was needed to make the Plan compliant with the Fifth Circuit's ruling: narrow the defined term for "Exculpated Parties" to read as follows:

> "Exculpated Parties" means, collectively, (i) the Debtor, (ii) the Independent Directors, (iii) the Committee, and (iv) members of the Committee (in their official capacities).

The Reorganized Debtor proposed that this one simple revision of this defined term removed the exculpations deemed by the Fifth Circuit to violate section 524(e) of the Bankruptcy Code, and that no other changes would be required to conform the Plan and Confirmation Order to the Fifth Circuit's mandate. Some of the Dondero-related entities objected to the motion to conform, arguing that the Fifth Circuit's ruling required more surgery on the Plan than simply narrowing the defined term "Exculpated Parties." On February 27, 2023, this court entered its order granting

[102] *Id.* at 435.

[103] *Id.* at 440. The Fifth Circuit's docket reflects that it issued its Judgment and mandate on September 12, 2022.

[104] *Highland Capital*, 48 F.4th at 438 n.15. The Fifth Circuit stated, "To the extent Appellants seek to roll back the protections in the bankruptcy court's January 2020 and July 2020 orders (which is not clear from their briefing), such a collateral attack is precluded." *Id.*

Highland's motion to conform the Plan, ordering that one change be made to the Plan – revising the definition of "Exculpated Parties" – and no more.[105] The objecting parties' direct appeal of this order has been certified to the Fifth Circuit and is one of the numerous currently active appeals by Dondero-related parties pending in the Fifth Circuit.

E. HMIT's Motion for Leave

HMIT filed its emergency Motion for Leave on March 28, 2023, which, with attachments, as first filed, was 387 pages in length, including an initial proposed complaint ("Initial Proposed Complaint") and two sworn declarations of Dondero that were attached as "objective evidence" in "support[ ]" of the Motion for Leave,[106] and with it, an application for an emergency setting on the hearing on the Motion to Leave. On April 23, 2023, HMIT filed a pleading entitled a "supplement" to its Motion to Leave ("Supplement"),[107] to which it attached a revised proposed verified complaint ("Proposed Complaint")[108] as Exhibit 1-A to the Motion for Leave and stated that "[t]he Supplement is not intended to amend or supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action."[109] The HMIT Motion for Leave was later amended to eliminate the Dondero Declarations and references to the same (but not the underlying allegations that were supposedly supported by the Dondero Declarations).[110]

[105] Bankr. Dkt. No. 3672.

[106] Bankr. Dkt. No. 3699.

[107] Bankr. Dkt. No. 3760.

[108] *See supra* note 5.

[109] Supplement ¶ 1.

[110] Bankr. Dkt. Nos. 3815 and 3816. Both of these filings had the Initial Proposed Complaint attached as Exhibit 1 to the Motion for Leave.

As earlier noted, HMIT desires leave to sue the Proposed Defendants regarding ***the post-confirmation, pre-Effective Date purchase of allowed unsecured claims***. The Proposed Defendants would be:

> **Seery,** who was a stranger to Highland until approximately four months following the Petition Date when he was brought in as one of the three Independent Directors, and now serves as the CEO of the Reorganized Debtor and the Trustee of the Claimant Trust (and also was previously Highland's CRO during the case, then CEO, and, also, an Independent Board Member of Highland's general partner during the Highland case). Seery is best understood as the man who took Dondero's place running Highland—per the request of the Committee.
>
> **Claims Purchasers,** who were strangers to Highland until the end of the bankruptcy case. They are identified as Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the "Claims Purchasers"). The Claims Purchasers purchased $240 million face value of already-allowed unsecured claims post-confirmation and pre-Effective Date in the spring of 2021 and another $125 million face value of already-allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk's docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Committee during the Highland bankruptcy case).
>
> **John Doe Defendants Nos. 1-10**, which are described to be "currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue."
>
> **Highland,** as a nominal defendant. HMIT added Highland as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.
>
> **Claimant Trust**, as a nominal defendant. HMIT added the Claimant Trust as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

The proposed plaintiffs would be:

> **HMIT,** which, again, was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited partnership interests). HMIT is the holder of a Class 10 interest under the Plan, pursuant to which HMIT's limited partnership interest in Highland was extinguished as of the Effective Date in exchange for a pro rata share of a contingent interest in the Claimant Trust.

Highland, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

Claimant Trust, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Claimant Trust.

In the Proposed Complaint, HMIT asserts the following six counts: Count I (against Seery) for breach of fiduciary duties; Count II (against the Claims Purchasers and John Doe Defendants) for knowing participation in breach of fiduciary duties; Count III (against all Proposed Defendants) for conspiracy; Count IV (against Muck and Jessup) for equitable disallowance of their claims; Count V (against all Proposed Defendants) for unjust enrichment and constructive trust; and Count VI (against all Proposed Defendants) for declaratory relief.[111] The gist of the Proposed Complaint is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that "wrongful conduct occurred" and "improper trades" were made.[112] HMIT believes the Claims Purchasers paid around $160 million for the $365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland's Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. And, of course, Dondero purports to have concluded from the three phone conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Seery must have given these Claims Purchasers MNPI regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Seery must have shared

[111] In the Initial Proposed Complaint, HMIT proposed to bring claims against the various Proposed Defendants in seven counts, including a count for fraud by misrepresentation and material nondisclosure against all Proposed Defendants. In the Proposed Complaint, HMIT abandons its claim for fraud by misrepresentation and material nondisclosure.

[112] Motion for Leave, 7.

MNPI regarding the likely imminent sale of MGM, in which Highland had, directly and indirectly, substantial holdings. As noted earlier, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[113] In summary, while the Proposed Complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor's estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Seery, and are now happily approving Seery's allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages in the form of equitable disallowance of the Claims Purchasers' claims and disgorgement of distributions on account of those claims, the imposition of a constructive trust over all disgorged funds, and declaratory relief.

HMIT claims that, in seeking to file the Proposed Complaint, it is seeking to protect the rights and interests of the Reorganized Debtor, the Claimant Trust, and "innocent stakeholders" who were allegedly injured by Seery's and the Claims Purchasers' alleged conspiratorial and

[113] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid. Credible testimony from Seery at the June 8 Hearing revealed that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public).

fraudulent scheme to line Seery's pockets with excessive compensation for his role as Claimant Trustee. In its Motion for Leave, HMIT states that "[t]he attached Adversary Proceeding alleges claims which are substantially more than 'colorable' based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud, including a fraud upon innocent stakeholders, as well as breaches of fiduciary duties and knowing participation in (or aiding or abetting) breaches of fiduciary duty."[114]

F. Is HMIT Really Dondero by Another Name?

The Proposed Defendants argue that HMIT's Motion for Leave is nothing more than a continuation of the harassing and bad-faith litigation by Dondero and his related entities that the Gatekeeper Provisions were intended to prevent and, thus, this is one of multiple reasons that the Motion for Leave should be denied.

To be clear, HMIT asserts that it is controlled by Mark Patrick ("Patrick"), who has been HMIT's administrator since August 2022. Patrick asserts that he is not influenced or controlled by Dondero, in general, and specifically not in its efforts to pursue the Proposed Claims against Seery and the Claims Purchasers. However, the testimony elicited at the June 8 Hearing—the hearing at which HMIT had the burden of showing the court that its Proposed Claims were "colorable" such that it should be allowed to pursue them through the filing of the Proposed Complaint—paints a different picture. Somewhat tellingly, HMIT chose not to call Patrick—allegedly HMIT's only representative and control person—as a witness in support of its Motion for Leave. Rather, Dondero was HMIT's first witness called in support of its motion, and the first

[114] *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 3. HMIT notes, in a footnote 6, that "Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement."

questions on direct from HMIT's counsel were aimed at establishing that Dondero was not behind the filing of the Motion for Leave and the pursuit of the Proposed Claims.[115] Dondero testified that he did not (i) "have any current official position" with HMIT, (ii) "attempt to exercise [control] on the business affairs of [HMIT]," (iii) "have any official legal relationship with [HMIT] where [he] can attempt to exercise either direct or indirect control over [HMIT]," or (iv) "participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan."[116] After HMIT rested, Highland and the Claimant Trust called Patrick as a witness, and he testified that he was the administrator of HMIT, that HMIT does not have any employees, operations, or revenues, and, when asked if HMIT owned any assets, Patrick testified, with not a great deal of certainty, that "it's my understanding it has a contingent beneficiary interest in the Claimants [sic] Trust" and that is the only asset HMIT has.[117] Patrick testified that HMIT did not owe any money to Dondero personally, but acknowledged that in 2015, HMIT had issued a secured promissory note in favor of Dondero's family trust, Dugaboy, in the amount of approximately $62.6 million (the "Dugaboy Note") in exchange for Dugaboy transferring a portion of its limited partner interests in Highland to HMIT; the Dugaboy Note was secured in part by the Highland limited partnership interests purchased from Dugaboy.[118] Patrick admitted that, if HMIT's Class 10 interest has no value, HMIT would have no ability to pay the Dugaboy Note.[119] He further testified that neither he nor any representative of HMIT had ever spoken with any representative of Farallon or Stonehill, that he had no personal knowledge about any *quid pro quo*, the amount of due diligence Farallon or Stonehill conducted prior to buying their claims, or the terms of

[115] *See* June 8 Hearing Transcript, 113:10-25.

[116] *Id.*

[117] June 8 Hearing Transcript, 307:7-308:2.

[118] *Id.*, 303:11-305:1; Highland Ex. 51, HMIT's $62,657,647.27 *Secured Promissory Note* dated December 24, 2015, in favor of Dugaboy.

[119] *Id.*, 308:3-16.

Seery's compensation package (until the terms were disclosed to them in opposition to the Motion for Leave).[120] Patrick admitted that Dugaboy was paying HMIT's attorneys' fees pursuant to a settlement agreement between HMIT and Dugaboy.[121]

On cross-examination by HMIT's counsel, Patrick further testified that HMIT has not filed any litigation, as plaintiff, other than its efforts to be a plaintiff in the Motion for Leave and its action as a petitioner in the Texas Rule 202 proceeding filed earlier in 2023 in the Texas state court.[122] HMIT's counsel argued that the point of this questioning was that "they're just trying to draw Dondero into this and – this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed – attempting to file this action and a Rule 202 proceeding.[123] But, Dondero and HMIT's counsel referred during the June 8 Hearing to the First Rule 202 Petition (where Dondero was the petitioner) and the Second Rule 202 Petition (where HMIT was the petitioner) as "our" Rule 202 petitions, and also to the numerous attempts at getting the discovery (that Dondero had warned Linn was coming) in the collective. For example, in objecting to the admission of Highland's Exhibit 10 – the Texas state court order denying and dismissing the Second Rule 202 Petition – on the basis of relevance, HMIT's counsel referred to the order as "an order denying ***our second"*** Rule 202 Petition.[124] And, Dondero testified that his warning to Linn in May 2021 that "discovery was coming" was "my response to I knew they had traded on material nonpublic information" and that "I thought it would be a lot easier to get

[120] *Id.*, 308:18-312:12. This testimony from Patrick came after HMIT's counsel objection to counsel's line of questioning regarding Patrick's personal knowledge of the facts supporting the allegations in the Proposed Complaint on the basis that he was invading the attorney work product privilege, which was overruled by this court; HMIT's counsel argued (311:4-19) that the line of questioning was an "invasion of attorney work product . . . [b]ecause they might – he would have knowledge from the efforts and investigation through attorneys in the case."

[121] *Id.*, 312:24-313:18.

[122] *Id.*, 315:3-9.

[123] *Id.*, 316:6-11.

[124] *Id.*, 58:11-13. The court overruled HMIT's relevance objection and admitted Highland's Exhibit 10 into evidence. *Id.*, 58:14-15.

discovery on a situation like this than it has been for the last two years" and that "***we've*** been trying for two years to get . . . discovery."[125]

Dondero's use of an entity over which he exerts influence and control to pursue his own agenda in the bankruptcy case is not new. Rather, this has been part of Dondero's *modus operandi* since the "nasty breakup" between Dondero and Highland that culminated with Dondero's ouster in October 2020, whereby Dondero, after not getting his way in the bankruptcy court, continued to lob objections and create obstacles to Highland's implementation of the Plan through entities he owns or controls. As noted above, the Fifth Circuit specifically upheld this court's finding in the Confirmation Order that Dondero owned or controlled the various entities that had objected to confirmation of the Plan and appealed the Confirmation Order, where the Dondero-related appellants made similar protestations that they are not owned or controlled by Dondero and asked the Fifth Circuit to vacate this court's factual finding because, among other reasons, "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him."[126] Based on the totality of the evidence in this proceeding, the court finds that, contrary to the protestations of HMIT's counsel and Patrick otherwise, Dondero is the driving force behind HMIT's Motion for Leave and the Proposed Complaint. The Motion for Leave is just one more attempt by Dondero to press his conspiracy theory that he has pressed for over two years now, unsuccessfully, in Texas state court through Rule 202 proceedings, with the Texas State Securities Board, and with the United States Trustee's office.

[125] *Id.*, 191:5-25.

[126] *Highland Capital*, 48 F.4th at 434-435.

G. Opposition to Motion for Leave: Arguing No Standing and No "Colorable" Claims

Highland, the Claimant Trust, and Seery (together, the "Highland Parties") filed a joint opposition ("Joint Opposition") to HMIT's Motion for Leave on May 11, 2023.[127] The Claims Purchasers filed a separate objection ("Claims Purchasers' Objection") to the Motion for Leave on May 11, 2023, as well.[128] In the Joint Opposition, the Highland Parties urge the court to deny HMIT leave to pursue the Proposed Claims because, as a threshold matter, HMIT does not have standing to bring them, directly or derivatively against the Proposed Defendants. They argue, in the alternative, that the Motion for Leave should be denied even if HMIT had standing to pursue the Proposed Claims because none of the Proposed Claims are "colorable" claims as that term is used in the Gatekeeper Provision of the Plan (and Gatekeeper Orders).[129]

The Claims Purchasers likewise argue that HMIT lacks standing to complain about claims trading in the bankruptcy which occurred between sophisticated Claims Purchasers and sophisticated sellers ("Claims Sellers"), represented by skilled bankruptcy and transactional counsel. Moreover, they argue HMIT cannot show that it or the Reorganized Debtor or the Claimant Trust were injured by the claims trading at issue because the Purchased Claims had already been adjudicated as allowed claims in the bankruptcy case—thus, distributions under the Plan on account of the Purchased Claims remain the same, the only difference being who holds the claims. Moreover, even if HMIT could succeed in equitably subordinating the validly transferred ***allowed*** claims, HMIT would still be in the same position it is today: the holder of a

[127] Bankr. Dkt. Nos. 3783. Highland, the Claimant Trust, and Seery also filed on May 11 a *Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding* ("Morris Declaration") that attached 44 Exhibits in support of the Joint Opposition. Bankr. Dkt. No. 3784.

[128] Bankr. Dkt. No. 3780.

[129] *See* Joint Opposition ¶ 139 ("Because HMIT lacks standing, this Court need not reach the merits of HMIT's proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion.").

contingent, speculative Class 10 interest that would only be paid after payment, in full, with interest, of all creditors under the Plan. The Claims Purchasers argue in the alternative that the Proposed Claims are not "colorable."

Finally, the Proposed Defendants argue that the standard of review for assessing whether the Proposed Claims are "colorable" (as such term is used in the Gatekeeper Provision and Gatekeeping Orders) is a standard that is a higher than the "plausibility" standard applied to Rule 12(b)(6). They argue that HMIT should be required to meet a higher bar with respect to colorability that includes making a *prima facie* showing that the Proposed Claims have merit (and/or are not without foundation) which requires HMIT to do more than meet the liberal notice-pleading standards.

H. HMIT's Reply to the Proposed Defendants' Opposition to the Motion for Leave

In its reply brief ("Reply"), filed by HMIT on May 18, 2023,[130] it argues that it has constitutional standing as an "aggrieved party" to bring the Proposed Claims on behalf of itself.[131] HMIT also argues that it has standing under Delaware Trust law to bring a derivative action on behalf of the Claimant Trust and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to bring the claims.[132] Finally, HMIT maintains that the standard of review that the bankruptcy court should apply in assessing the "colorability" of the Proposed Claims is no greater than the standard of review applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), which would require the bankruptcy court to look only to the "four corners" of the Proposed Complaint

[130] Bankr. Dkt. No. 3785.

[131] *See* Reply ¶ 7.

[132] See, Reply ¶ 23 n.5, where HMIT argues "The nature of this injury, in addition to Seery's influence over the Claimant Trust, and the lack of prior action by the Claimant Trust to pursue the claims HMIT seeks to pursue derivatively, among other things, demonstrate that HMIT is not only a proper party to assert its derivative claims – but the best party to do so."

and "not weigh extraneous evidence,"[133] take all allegations as true, and view all allegations and inferences in a light most favorable to HMIT. As discussed in greater length below, HMIT argues that, under this standard, the bankruptcy court should not consider evidence in making its determination as to whether the Proposed Complaint presents "colorable" claims.

I. Litigation within the Litigation: The Pre- June 8 Hearing Skirmishes

Suffice it to say there was significant activity before the Motion for Leave actually was presented at the June 8 hearing. HMIT sought an emergency hearing on its Motion for Leave (wanting a hearing on three days' notice). When the bankruptcy court denied an emergency hearing, HMIT unsuccessfully pursued an interlocutory appeal of the denial of an emergency hearing to the district court. HMIT then petitioned for a writ of mandamus at the Fifth Circuit regarding the emergency hearing denial, which was denied by the Fifth Circuit on April 12, 2023.

Next, there were multiple pleadings and hearings regarding ***what kind of hearing*** the bankruptcy court should or should not hold on the Motion for Leave—particularly focusing on whether or not it would be an evidentiary hearing.[134] The resolution of this issue turned on what standard of review the court should apply in exercising its gatekeeping function and determining the colorability of the Proposed Claims. HMIT (although it had submitted two declarations of Dondero with its original Motion for Leave and approximately 350 pages of total evidentiary support) was adamant that there should be no evidence presented at the hearing on the Motion for Leave, arguing that the standard for review should be the plausibility standard under Rule 12(b)(6)

[133] *See* Reply ¶ 47.

[134] Highland, joined by Seery and the Claims Purchasers, had filed a motion asking the bankruptcy court to set a briefing schedule on the Motion for Leave and to schedule a status conference, indicating that Highland's proposed timetable for same was opposed by HMIT. HMIT subsequently filed a response unopposed to a briefing schedule and status conference, but, before the status conference, HMIT filed a brief, stating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the bankruptcy court did not need evidence to exercise its gatekeeping function and determine if HMIT has a "colorable" claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

motions to dismiss such that "the threshold inquiry is very, very low. Evidence is not allowed. . . . [S]imilar to a 12(b)(6) inquiry, [the court] is limited to the four corners of the principal pleading – in this case, the complaint, or now the revised complaint."[135] Counsel for the Proposed Defendants argued that the standard of review for colorability here, in the specific context of the court exercising its gatekeeping function under the Plan, is more akin to the standards applied under the Supreme Court's *Barton Doctrine*[136] pursuant to which that the bankruptcy court must apply a higher standard than the 12(b)(6) standard, including the consideration of evidence at the hearing on the motion for leave; if the standard of review presents no greater hurdle to the movant than the 12(b)(6) standard applied to every plaintiff in every case, then the gatekeeping provisions mean nothing and do nothing to protect the parties from the harassing, bad-faith litigation they were put in place to prevent.[137] On May 22, 2023, after receipt of post-hearing briefing on the issue, the court entered an order stating that "the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave" and "[t]herefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing [on the Motion to Leave] if they so choose."

Two days later, HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing, seeking expedited depositions of corporate

[135] Transcript of April 24, 2023 Status Conference, Bankr. Dkt. No. 3765 ("April 24 Transcript"), 14:6-11.

[136] The *Barton Doctrine* was established in the 19th century Supreme Court case of *Barton v. Barbour*, 104 U.S. 126 (1881), and states that a party wishing to sue a court-appointed trustee or receiver must first obtain leave of the appointing court by making a *prima facie* case that the claim it wishes to bring is not without foundation.

[137] *See* April 24 Transcript, 36:24-37:4 ("[W]e're exactly today where the Court had predicted in entering [the Confirmation Order], that the costs and distraction of this litigation are substantial. And if all we're doing is replicating a 12(b)(6) hearing on a motion for leave, we're actually not doing anything to reduce, as the Court made clear, the burdens, distractions, of litigation."); 37:5-13 ("The Fifth Circuit likewise cited *Barton* in its order affirming the confirmation order. Specifically, it also explained that the provisions, these gatekeeper provisions requiring advance approval were meant to 'screen and prevent bad-faith litigation.' Well that – if that means only what the Plaintiff[ ] say[s] it does, then it really doesn't do anything at all to screen. There's no gatekeeping because their version of what that means is always policed under 12(b)(6) standards.").

representatives of the Claims Purchasers and of Seery and production of documents pursuant to deposition notices and subpoenas duces tecum that HMIT had attached to the motion. On May 26, 2023, this court held yet another status conference. Following the status conference, the court granted in part and denied in part HMIT's request for expedited discovery by ordering only Seery and Dondero to be made available for depositions prior to the June 8 Hearing. The court reached what seemed like appropriate middle ground by allowing the deposition of Seery and allowing the other parties to depose Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Dondero had been seeking discovery relating to the very claims trades that are the subject of the Revised Proposed Complaint from the Claims Purchasers in Texas state court "Rule 202" proceedings for approximately two years, where their attempts were rebuffed.

Approximately 60 hours before the June 8 Hearing, HMIT filed its Witness and Exhibit List disclosing for the first time two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony). Highland, the Claimant Trust, and Seery filed a joint motion to exclude the expert testimony and documents ("Motion to Exclude"), which the court ultimately granted in a separate order.

During the full-day June 8 Hearing on the Motion to Leave, the court admitted over 50 HMIT exhibits and over 30 Highland/Claimant Trust exhibits. The court heard testimony from HMIT's witnesses Dondero and Seery (as an adverse witness) and from the Highland Parties' witness Mark Patrick, the administrator of HMIT since August 2022 (as an adverse witness). The bankruptcy court allowed HMIT to make a running objection to all evidence—as it continued to argue that evidence was not appropriate.

III. LEGAL ANALYSIS

In determining whether HMIT should be granted leave, pursuant to the Gatekeeper Provision of the Plan and the court's prior Gatekeeper Orders, to pursue the Proposed Claims, the court must address the issue of whether HMIT would have ***standing*** to bring the Proposed Claims in the first instance. If so, the next question is whether the Proposed Claims are "***colorable***." But prior to getting into the weeds on ***standing*** and "***colorability,***" some general discussion regarding the topic of claims trading in the bankruptcy world seems appropriate, given that HMIT's Proposed Claims are based, in large part, on allegations of ***improper*** claims trading.

A. Claims Trading in the Context of Bankruptcy Cases—Can It Be Tortious or Otherwise Actionable?

As noted, at the crux of HMIT's desired lawsuit is what this court will refer to as "claims trading activity" that occurred shortly after the Plan was confirmed, but before the Plan went effective. HMIT believes that the claims trading activity gave rise to various torts: breach of fiduciary duty on the part of Seery; knowing participation in breach of fiduciary duty by the other Proposed Defendants; and conspiracy by all Defendants. HMIT also believes that the following remedies should be imposed: equitable disallowance of the Purchased Claims; disgorgement of the alleged profits the Claims Purchasers made on their purchases; and disgorgement of all Seery's compensation received since the beginning of his "collusion" with the other Defendants. Without a doubt, the Motion for Leave and Proposed Complaint revolve almost entirely around the claims trading activity.

This begs the question: ***When (or under what circumstances) might claims trading activity during a bankruptcy case give rise to a cause of action that either the bankruptcy estate or an economic stakeholder in the case might have standing to bring?*** Here, the claims trading

wasn't even "during a bankruptcy case" really—it was post-confirmation and pre-effective date, and it happened to be: (a) after mediation of the claims, (b) after Rule 9019 settlement motions, (c) after objections by Dondero and certain of his family trusts were lodged, (d) after evidentiary hearings, and (e) after orders were ultimately entered ***allowing*** the claims (and in most cases, such orders were appealed). The further crux of HMIT's desired lawsuit is that Seery allegedly "wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends" by sharing ***material non-public information*** to them regarding the potential value of the claims (i.e., the potential value of the bankruptcy estate), and this is what made the claims trading activity particularly pernicious. The alleged sharing of MNPI allegedly caused the Claims Purchasers to purchase their claims without doing any due diligence and with knowledge that the claims would be worth much more than the Plan's "pessimistic" projections might have suggested, and also allowed Seery to plant friendly allies into the creditor constituency (and on the post-confirmation CTOB) that would "rubber stamp" his generous compensation. This is all referred to as "not arm's-length" and "collusive." Notably, the MNPI mostly pertained to a likely future acquisition of MGM by Amazon (which transaction, indeed, occurred in 2022, after being publicly announced in Spring of 2021); as noted earlier, Highland owned, directly and indirectly, common stock in MGM. Also notably, there had been rumors and media attention regarding a potential sale of MGM for many months.[138] In summary, to be clear, HMIT's desired lawsuit is laced with a theme of "insider trading"—although this isn't a situation of securities trading *per se* (i.e., the unsecured Purchased Claims were not securities), and, as noted earlier, the Texas State Securities Board has not seen fit to investigate the claims trading activity.

So, preliminarily, is claims trading in bankruptcy sinister *per se*? The answer is no.

[138] *E.g.,* Benjamin Mullin, *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale,* THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.).

The activity of investing in distressed debt (which frequently occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and, indeed, has been so for a very long time. As noted by one scholar:

> The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

Adam J. Levitin, *Bankruptcy* Markets*: Making Sense of Claims Trading*, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010) (hereinafter "*Bankruptcy Markets*").[139]

As a pure policy matter, some practitioners have bemoaned this claims trading phenomenon, suggesting that "distressed debt traders may sacrifice the long-term viability of a debtor for the ability to realize substantial and quick returns on their investments."[140] Others suggest that claims trading in bankruptcy is beneficial, in that it allows creditors of a debtor an early exit from a potentially long bankruptcy case, enabling them to save expense and administrative hassles, realize immediate liquidity on their claims (albeit discounted), and may

[139] *See also* Aaron Hammer & Michael Brandess, *Claims Trading: The Wild West of Chapter 11s*, AM. BANKR. INST. JOURNAL 62 (Jul./Aug. 2010); Chaim Fortgang & Thomas Mayer, *Trading Claims and Taking Control of Corporations in Chapter 11,* 12 CARDOZO L. REV. 1, 25 (1990) (noting that "the first recorded instance of American fiduciaries trading claims against insolvent debtors predates all federal bankruptcy laws and goes back to 1790" when the original 13 colonies were insolvent, owing tremendous amounts of debt to various parties in connection with the Revolutionary War; early American investors purchased these debts for approximately 25% of their par value, hoping the claims would be paid at face value by the American government).

[140] Harvey R. Miller, *Chapter 11 Reorganization Cases and the Delaware Myth*, 55 VAND. L. REV. 1987, 2016 (2002). *See also* Harvey R. Miller & Shai Y. Waisman, *Does Chapter 11 Reorganization Remain a Viable Option for Distressed Businesses for the Twenty-First Century?*, 78 AM. BANKR. L.J. 153 (2004); Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129 (2005).

even permit them to take advantage of a tax loss on their own desired timetable.[141] On the flipside, "[c]aims trading permits an entrance to the bankruptcy process for those investors who want to take the time and effort to monitor the debtor and contribute expertise to the reorganization process."[142]

So, what are the "rules of the road" here? What does the Bankruptcy Code dictate regarding claims trading? The answer is nothing. The Bankruptcy Code itself has no provisions whatsoever regarding claims trading. The only thing resembling any regulation of claims trading during a bankruptcy case is found at Federal Rule of Bankruptcy Procedure 3001(e)—the current version of which went into effect in 1991—and it imposes extremely light regulation—if it could even be called that. This rule requires, in pertinent part (at subsection (2)), that "[i]f a claim other than one based on a publicly traded note, bond, or debenture" is traded during the case after a proof of claim is filed, notice/evidence of that trade must be filed with the bankruptcy clerk by the transferee. The transferor shall then be notified and given 21 days to object. If there is an objection, the bankruptcy court will hold a hearing regarding whether a transfer, in fact, took place. If there is no objection, nothing further needs to happen, and the transferee will be considered substituted for the transferor.

There are several things noteworthy about Rule 3001(e)(2). First, the only party given the opportunity to object is the ***transferor*** of the claim (presumably, in the situation of a dispute regarding whether there was truly an agreement regarding the transfer of the claim). Second, there is no need for a bankruptcy court order approving the transfer (except in the event of an objection

[141] *See Bankruptcy Markets*, at 70. *See also In re Kreisler,* 546 F.3d 863, 864 (7th Cir. 2008) ("Claims trading allows creditors to opt out of the bankruptcy system, trading an uncertain future payment for an immediate one, so long as they can find a purchaser.").

[142] *Bankruptcy Markets* at 70 (citing, among other authorities, Edith S. Hotchkiss & Robert M. Mooradian, *Vulture Investors and the Market for Control of Distressed Firms*, 43 J. FIN. ECON. 401, 401 (1997) (finding that "vulture investors add value by disciplining managers of distressed firms").

by the alleged transferor). Third, the ***economic consideration paid need not be disclosed to the court or anyone***. Fourth, there is no requirement or definition of timeliness. Finally, it explicitly does not apply with regard to publicly traded debt. This, alone, means that many claims trades are not even reported in a bankruptcy case. But it is not just publicly traded debt that will not be reflected with a Rule 3001(e) filing. For example, bank debt, in modern times, is often syndicated (i.e., fragmented into many beneficial holders of portions of the debt) and only the administrative agent for the syndicate (or the "lead bank") will file a proof of claim in the bankruptcy—thus, as the syndicated interests (participations) change hands, and they frequently do, there typically will not be a Rule 3001(e) notice filed.[143] To be clear here, this syndication-of-bank-debt fact, along with the fact that there are financial products whereby bank debt might be carved up into economic interests separate and apart from legal title to the loan, means there are many situations in which trading of claims during a bankruptcy case is not necessarily transparent or, for that matter, policed by the bankruptcy court. This is the world of modern bankruptcy. Most of the claims trading that gets reported through a Rule 3001(e) notice is the trading of small vendor claims. And this is all regarded as private sale transactions for the most part.[144]

Suffice it to say that there is not a wealth of case law dealing with claims trading in a bankruptcy context. Perhaps this is not surprising, since it is not prohibited and ***is mostly a matter of private contract between buyer and seller***. The case law that does exist seems to arise in situations of perceived bad faith of a purchaser—for example, when there was an attempt to control voting and/or ultimate control of the debtor through the plan process (not always problematic, but

[143] Anne Marrs Huber & Thomas H. Young, *The Trading of Bank Debt in and Out of Chapter 11*, 15 J. BANKR. L. & PRAC. 1, 1, 3 (2006).

[144] Note that Bankruptcy Rule 3001(e) was very different before 1991. Between 1983-1991, the rule required that parties transferring claims inform the court that a transfer of claims was taking place and also disclose the consideration paid for the transferred claims. A hearing would take place prior to the execution of a trade. Judicial involvement was required and resulted in judicial scrutiny of transactions—something that simply does not exist today.

there are outlier cases where this was found to cross a line and result in consequences such as disallowing votes on a plan or even equitable subordination of a claim).[145] Another type of case that has generated case law is where the purchaser of claims occupied a fiduciary status with the debtor.[146] Still another type of case that has generated case law is where there is an attempt to cleanse claims that might have risks because of a seller's malfeasance, by trading the claim to a new claim holder.[147]

The following is a potpourri of the more notable cases that have addressed claims trading in different contexts. Most of them imposed no adverse consequences on claims traders: *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (where a corporation named Garlin, that was owned by the individual chapter 7 debtors' sister and close friend, purchased a $900,000 bank claim for $16,500, and there was no disclosure of Garlin's connections to debtors and no Rule 3001(e)(2) notice was filed, the Seventh Circuit reversed the bankruptcy court's invocation of the doctrine of equitable subordination to the claim, stating: "Equitable subordination is generally appropriate only if a creditor is guilty of misconduct that causes injury to the interests of other creditors;" the Seventh Circuit further stated that it could "put to one side whether the court's finding of inequitable conduct was correct" because even if there was misconduct, it did not harm the other creditors, who were in the same position whether the original creditor or Garlin happened to own the claim; the Seventh Circuit did note that Garlin's decision to purchase the original bank

[145] *In re Applegate Prop. Ltd.,* 133 B.R. 827, 836 (Bankr. W.D. Tex. 1991) (designating votes of an affiliate of the debtor that purchased a blocking position to thwart a creditor's plan because it was done in bad faith); *In re Allegheny Int'l, Inc.,* 118 B.R. 282, 289–90 (Bankr. W.D. Pa. 1990) (because of bad faith activities, the court designated votes of a claims purchaser who purchased to get a blocking position on a plan). *But see In re First Humanics Corp.,* 124 B.R. 87, 92 (Bankr. W.D. Mo. 1991) (claims purchased by debtor's former management company to gain standing to file a plan to protect interest of the debtor was in good faith).

[146] *See In re Exec. Office Ctrs., Inc.*, 96 B.R. 642, 649-650 (Bankr. E.D. La. 1988) (and numerous old cites therein).

[147] *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 340 B.R. 180 (Bankr. S.D.N.Y. 2006), *vacated, Enron Corp. v. Springfield Assocs., L.L.C. (In re Enron Corp.),* 379 B.R. 425 (S.D.N.Y 2007); *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 333 B.R. 205, 211 (Bankr. S.D.N.Y. 2005).

creditor's claim might have disadvantaged the other creditors if it interfered with the trustee's own potential settlement with the original bank creditor (note that the trustee argued that she had been negotiating a deal with bank under which bank might have reduced its claims); however, the trustee presented no evidence that any deal with the bank was imminent or even likely; thus, whether such a deal could have been reached was speculation; equitable subordination was therefore improper."); *Viking Assocs., L.L.C. v. Drewes (In re Olson),* 120 F.3d 98, 102 (8th Cir. 1997) (case involved the actions of an entity known as Viking in purchasing all of the unsecured claims against the bankruptcy estate of two chapter 7 debtors, Hugo and Jeraldine Olson; Viking was a related entity, owned by the debtors' children, and purchased $525,000 of unsecured claims for $67,000; while the bankruptcy court had discounted the claims down to the purchase amount and subordinated Viking's discounted claims to the claims of the other unsecured creditors, relying on section 105 of the Bankruptcy Code, the Eighth Circuit held that the bankruptcy court lacked the authority to do this, and, thus, reversed and remanded; the Eighth Circuit noted that in 1991, Bankruptcy Rule 3001(e)(2) was amended "to restrict the bankruptcy court's power to inspect the terms of" claims transfers. *Id.* at 101 (citing *In re SPM Mfg. Corp.,* 984 F.2d 1305, 1314 n. 9 (1st Cir. 1993)); the text of the rule makes clear that the existence of a "dispute" depends upon an objection by the ***transferor***; where there is no objection by the ***transferor***, there is no longer any role for the court); *Citicorp. Venture Capital, Ltd. v. Official Committee of Unsecured Creditors (In re Papercraft Corp.),* 160 F.3d 982 (3d Cir. 1998) (large investor who held seat on board of directors of debtor and debtor's parent, and who also had nonpublic information regarding the debtor's value, anonymously purchased 40% of the unsecured claims at a steep discount during the chapter 11 case, and then, having obtained a blocking position for plan voting purposes, proposed a plan to acquire debtor; the claims purchaser's claims were equitably reduced to amount

paid for the claims since investor was a fiduciary who was deemed to have engaged in inequitable conduct); *Figter Ltd. v. Teachers Ins. & Annuity Ass'n of Am. (In re Figter),* 118 F.3d 635 (9th Cir. 1997) (Ninth Circuit affirmed bankruptcy court's ruling that a secured creditor's purchase of 21 out of 34 unsecured claims in the case was in good faith and it would not be prohibited from voting such claims on the debtor's plan, pursuant to Bankruptcy Code section 1126(e)); *In re Lorraine Castle Apartments Bldg. Corp.,* 145 F.2d 55, 57 & 58 (7th Cir. 1945) (in a case under the old Bankruptcy Act, in which there were more restrictions on claims trading, a debtor and two of its stockholders argued that the claims of purchasers of bonds should be limited to the amounts they paid for them; bankruptcy court special master found, "that, though he did not approve generally the ethics reflected by speculation in such bonds," there was no cause for limitation of the amounts of their claims, pointing out that the persons who had dealt in the bonds were not officials, directors, or stockholders of the corporation and owed no fiduciary duty to the estate or its beneficiaries—rather they were investors or speculators who thought the bonds were selling too cheaply and that they might make a legitimate profit upon them; the district court agreed, as did the Seventh Circuit, noting that "[t]o reduce the participation to the amount paid for securities, in the absence of exceptional circumstances which are not present here, would reduce the value of such bonds to those who have them and want to sell them. This would result in unearned, undeserved profit for the debtor, destroy or impair the sales value of securities by abolishing the profit motive, which inspires purchasers."); *In re Washington Mutual, Inc.*, 461 B.R. 200 (Bankr. Del. 2011), *vacated in part*, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (discussion of an equity committee's potential standing to pursue equitable subordination or equitable disallowance of the claims of certain noteholders who had allegedly traded their claims during the chapter 11

case while having material non-public information; while bankruptcy court originally indicating these were viable tools, court later vacated its ruling on this after a settlement was reached).

Suffice it to say that the courts have, more often than not, been unwilling to impose legal consequences, for an actor's involvement with claims trading. At most, in outlier-type situations during a case, courts have taken steps to disallow claims for voting purposes or to subordinate claims to other unsecured creditors for distribution purposes.[148] But the case at bar does not present facts that are typical of any of the situations in reported cases.

For one thing, unlike in the reported cases this court has located, there ***seems to have been complete symmetry of sophistication among the claim sellers and claim purchasers here—and complete symmetry with HMIT for that matter***. All persons involved are highly sophisticated financial institutions, hedge funds, or private equity funds. No one was a "mom-and-pop" type business or vendor that might be vulnerable to chicanery. The claims ranged from being worth $10's of millions of dollars to $100's of millions of dollars in face value. And, of course, the sellers/transferors of the claims have never shown up, subsequent to the claims trading

[148] Note that, while some cases suggest that outright disallowance of an unsecured claim, in the case of "inequitable conduct" might be permitted (not merely equitable subordination to unsecured creditors)—usually citing to *Pepper v. Litton*, 308 U.S. 295 (1939)—the Fifth Circuit has suggested otherwise. *In re Mobile Steel Co., Inc.,* 563 F.2d 692, 699-700 (5th Cir. 1977) (cleaned up) (noting that "equitable considerations can justify only the subordination of claims, not their disallowance" and also noting that "three conditions must be satisfied before exercise of the power of equitable subordination is appropriate[:] (i) The claimant must have engaged in some type of inequitable conduct[;] (ii) The misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant[; and] (iii) Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act." In *Mobile Steel*, the Fifth Circuit held that the bankruptcy judge exceeded the bounds of his equitable jurisdiction by disallowing a group of claims and also reversed the subordination of certain claims, on the grounds that the bankruptcy court had made clearly erroneous findings regarding alleged inequitable conduct and other necessary facts. *Contrast In re Lothian Oil Inc.,* 650 F.3d 539 (5th Cir. 2011) (involving the question of whether a bankruptcy court may ***recharacterize*** a claim as equity rather than debt; the court held yes, but it has nothing to do with inequitable conduct *per se*; rather section 502(b)'s language that a claim should be allowed unless it is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law...." is the relevant authority; unlike equitable subordination, recharacterization is about looking at the true substance of a transaction not the conduct of a party (if it looks like a duck and quacks like a duck, it's a duck—i.e., equity); the court indicated that section 105 is not a basis to recharacterize debt as equity; it's a matter of looking at state law to determine if there is any basis and looking at the nature of the underlying transaction—as either a lending arrangement or equity infusion.

transactions, to complain about anything. Everyone involved here is, essentially, a behemoth and there is literally no sign of innocent creditors getting harmed. Second, the case at bar is unique in that the claims traded here ***had all been allowed after objections, mediation, and Rule 9019 settlements during the bankruptcy case***. Thus, the amounts that would be paid on them were "locked in," so to speak. There was no risk to a hypothetical claims-purchaser of disallowance, offset, or any "claw-back" litigation (or—one might have reasonably assumed—any type of litigation). Third, the terms for distributions on unsecured claims had been established in a confirmed plan (although the claims were purchased before the effective date of the Plan). Thus, there was a degree of certainty regarding return on investment for the Claims Purchasers here that was much higher than if the claims had been purchased early, during, or mid-way through the case.[149] ***This was post-confirmation, pre-effective date claims purchasing.*** Interestingly, all three of these facts might suggest that little due diligence would be undertaken by any hypothetical purchaser. The rules of the road had been set. The court makes this observation because HMIT has suggested there is something highly suspicious about the fact that Farallon allegedly told Dondero that it did no due diligence before purchasing its claims (leading him to conclude that the Claims Purchasers must have purchased their claims based on receiving MNPI from Seery). Not only has there been no colorable evidence suggesting that insider information was shared, but the lack of due diligence in this context does not reasonably seem suspicious. The claims purchases

[149] *See discussion* in BANKRUPTCY MARKETS, at 91:

> Some claims purchasers buy before the bankruptcy petition is filed, some at the beginning of the case, and some towards the end. For example, there are investors who look to purchase at low prices either when a business is failing or early in the bankruptcy and ride through the case until payouts are fairly certain. [Citations omitted.] These investors might be hoping to buy at 30 cents on the dollar and get a payout at 70 cents on the dollar. Perhaps if they waited another six months, the payout would be 74 cents on the dollar, but the additional 4 cents on the dollar for six months might not be a worthwhile return for the time value of the investment. Other investors might not want to assume the risk that exists in the early days of a case when the fate of the debtor is much less certain, but they would gladly purchase at 70 cents on the dollar at the end of the case to get a payout of 74 cents on the dollar six months later.

were almost like passive investments, at this point—there was no risk of a claim objection and there was a confirmed plan, with a lengthy disclosure statement that described not only plan payment terms and projections, but essentially anything that any investor might want to know.

To reiterate, here, HMIT seeks leave to assert the following causes of action:

I. Breach of Fiduciary Duties (Seery)

II. Knowing Participation in Breach of Fiduciary Duties (Claims Purchasers)

III. Conspiracy (all Proposed Defendants)

IV. Equitable Disallowance (Claims Purchasers)

V. Unjust Enrichment and Constructive Trust (all Proposed Defendants)

VI. Declaratory Judgment (all Proposed Defendants)

The court struggles to fathom how any of these proposed causes of action or remedies can be applied in the context of: (a) post-confirmation claims trading; (b) where the claims have all been litigated and allowed.

In reflecting on the case law and various Bankruptcy Code provisions, the court can fathom the following hypotheticals in which claims trading during a bankruptcy case might be somehow actionable:

> **Hypothetical #1**: The most obvious situation would be if a purchaser of a claim files a Rule 3001(e) Notice, and the seller/transferor then files an objection thereto. There would then be a contested hearing between purchaser and seller regarding the validity of the transfer with the bankruptcy court issuing an appropriate order after the hearing on the objection. ***As noted, there was no objection to the Rule 3001(e) notices here***.
>
> **Hypothetical #2:** Alternatively, there could be a breach of contract suit between purchaser and seller if one thinks the other breached the purchase-sale agreement somehow. Perhaps torts might also be alleged in such litigation. ***As noted, there is no dispute between purchasers and sellers here.***
>
> **Hypothetical #3:** If there is believed to be fraud in connection with a plan, a party in interest might, pursuant to section 1144 of the Bankruptcy Code, move for

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

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APPELLEE RECORD

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

002805

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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revocation of the plan "at any time before 180 days after the date of entry of the order for confirmation" and the court "may revoke such order if and only if such order was procured by fraud." ***As noted, here HMIT has suggested that the "pessimistic" plan projections may have been fraudulent or misrepresentations somehow. The time elapsed long ago to seek revocation of the Plan.***

Hypothetical #4: As discussed above, in rare situations (bad faith), during a Chapter 11 case, before a plan is confirmed, a claims purchaser's claim might not be allowed for voting purposes. *See* Sections 1126(e) of the Bankruptcy Code ("the court may designate any entity whose acceptance or rejection of such plan was not in good faith"). ***Obviously, in this case, this is not applicable—the claims were purchased post-confirmation.***

Hypothetical #5: As discussed above, in rare situations (inequitable conduct), a court might equitably subordinate ***claims*** to ***other claims***. *See* Section 510(c) of the Bankruptcy Code. But here**,** HMIT is seeking either: (a) equitable subordination of the ***claims*** of the Claims Purchaser to HMIT's ***Class 10 former equity interest*** (in contravention of the explicit terms of section 510(c)) or, (b) ***equitable disallowance*** of the claims of the Claims Purchasers (in contravention of *Mobile Steel*).

Hypothetical #6: Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case may permit "recharacterization" of a claim from debt to equity in certain circumstances, but not in circumstances like the ones in this case. Here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). The problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). Here there was most definitely "a contest" with regard to all of these purchased claims. ***Thus, it would appear that any effort to have a court reconsider these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.***

Hypothetical #7: If a party believes "insider trading" occurred there are governmental agencies that investigate and police that. ***Here, the purchased claims (which were not based on bonds or certificated equity interests) would not be securities so as to fall under the SEC's purview. Moreover, there was evidence that HMIT or Dondero-Related entities requested that the Texas State Securities Board investigate the claims trading and the board did not find a basis to pursue anyone for wrongdoing***.

Hypothetical #8: The United States Trustee can investigate wrongdoing by a debtor or unsecured creditors committee. While the United States Trustee would naturally have concerns about members of an unsecured creditors committee (or an officer of a debtor-in-possession) adhering to fiduciary duties and not putting their

> own interests above those of the estate, here, there are a couple of points that seem noteworthy. One, the claims trading activity was post-confirmation so—while certain of the claim-sellers may have still been on the unsecured creditors committee, as the effective date of the plan had not yet occurred—the circumstances are very different than if this had all happened during the early, contentious stages of the case. It seems inconceivable that there was somehow a disparity of information that might be troubling—the Plan had been confirmed and it was available for the world to see. The whole notion of "insider information" (just after confirmation here) feels a bit off-point. Bankruptcy practitioners and judges sometimes call bankruptcy a fishbowl or use the "open kimono" metaphor for good reason. It is generally a very open process. And information-sharing on the part of a debtor-in-possession or unsecured creditors committee is intended to be robust. *See, e.g.,* Bankruptcy Code sections 521 and 1102(b)(3). In a way, HMIT here seems to be complaining about this very situation that the Code and Rules have designed.

In summary, claims trading is a highly ***unregulated*** activity in the bankruptcy world. ***HMIT is attempting to pursue causes of action here that, to this court's knowledge, have never been allowed in a context like this***.

B. Back to Standing—Would HMIT Have Standing to Bring the Proposed Claims?

The Proposed Defendants argue that HMIT lacks standing to bring the Proposed Claims, either: (a) derivatively on behalf of the Reorganized Debtor and Claimant Trust, or (b) directly on behalf of itself. Thus, they argue that this is one reason that the Motion for Leave should be denied.

In making their specific standing arguments, the parties analyze things slightly differently:

The Claims Purchasers focus primarily on HMIT's lack of ***constitutional*** standing but also argue that HMIT does not have ***prudential*** standing under Delaware trust law to bring the Proposed Claims either individually or derivatively. Why do they mention Delaware trust law? Because the Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29.[150]

The Highland Parties' standing arguments focus almost entirely on HMIT's lack of ***prudential*** standing under Delaware trust law to bring the Proposed Claims.

HMIT argues that the Proposed Defendants "play fast and loose with standing arguments" and that HMIT has ***constitutional*** standing as a "party aggrieved"[151] to bring the Proposed Claims on behalf of itself. HMIT also argues that it has standing under Delaware trust law to bring a

[150] *See* Proposed Complaint, ¶ 26.

[151] Proposed Complaint, ¶7.

derivative action on behalf of the Claimant Trust, and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to do so.

1. The Different Types of Standing: Constitutional Versus Prudential

The parties are addressing two concepts of standing that can sometimes be confused and misapplied by both attorneys and judges: ***constitutional Article III standing***, which implicates federal court subject matter jurisdiction,[152] and the narrower standing concept of ***prudential standing***, which does not implicate subject matter jurisdiction but nevertheless might prevent a party from having capacity to sue, pursuant to limitations set by courts, statutes or other law.

Article III constitutional standing works as follows: a plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing three elements: (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[153] "If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve."[154] These elements ensure that a plaintiff has "'such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf."[155]

[152] Article III, Section 2 of the U.S. Constitution gives federal courts jurisdiction over enumerated cases and controversies.

[153] *See Thole v. U.S. Bank, N.A.*, 140 S.Ct. 1615, 1618 (2020)(citing the Supreme Court's seminal case on the tripartite test for Article III constitutional standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), where the Supreme Court stated that "the irreducible constitutional minimum of standing contains [the] three elements"); *see also Spokeo*, 578 U.S. at 338; *Abraugh v. Altimus*, 26 F.4th 298, 302 (5th Cir. 2022) (citing *id.*).

[154] *Transunion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021)(cleaned up).

[155] *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Apart from this minimal constitutional mandate, courts and statutes have set other limits on the class of persons who may seek judicial remedies—and this is the concept of prudential standing. In its recent opinion in *Abraugh v. Altimus*,[156] the Fifth Circuit set forth a detailed analysis of the two types of "standing," noting that the term "standing" is often "misused" in our legal system, which has led to confusion for both attorneys and judges.[157] The constitutional standing that is necessary for a court to exercise subject matter jurisdiction is broader than prudential standing and is only the first hurdle a party must clear before pursuing a claim in federal court.

The Fifth Circuit explained that ***in addition to*** Article III constitutional standing, "courts have occasionally articulated other 'standing' requirements that plaintiffs must satisfy under certain conditions, ***beyond those imposed by Article III***,"[158] such as the "standing" requirement that might be imposed by a statute or by jurisprudence. The *Abraugh* case was a perfect example of the latter.

Abraugh involved the civil rights statutes that provide, among other things, that "a party must have standing under the state wrongful death or survival statutes to bring [a § 1983 cause of action]" and noted that these statutes impose additional "standing" requirements that are a matter of prudential standing, not constitutional standing.[159] In *Abraugh*, the Fifth Circuit reversed and remanded a district court's dismissal of a § 1983 civil rights cause of action—noting that the district court had stated that it was dismissing based on a "lack of subject matter jurisdiction" because the plaintiff in that action lacked standing.[160] The plaintiff was the mother of a prisoner

[156] 26 F.4th 298.
[157] *Id.* at 303.
[158] *Id.* at 302 (emphasis added).
[159] *Id.* at 302-303.
[160] *Id.* at 301.

who died by suicide while in custody who brought a § 1983 action against Louisiana correctional officers and officials. After finding that the plaintiff/mother lacked standing under Louisiana's wrongful death and survival statutes (because there had been a surviving child and wife of the prisoner who were the proper parties with capacity to sue), the district court held that it was dismissing for lack of subject matter jurisdiction. The Fifth Circuit pointed out that the plaintiff/mother may have lacked standing under Louisiana's wrongful death and survival statutes to bring the claim under § 1983, but that type of standing was matter of ***prudential*** standing, and the plaintiff/mother actually ***did*** have ***Article III*** constitutional standing ("a constitutionally cognizable interest in the life of her son").[161] Thus, the district court's error was ***not*** in finding that the plaintiff/mother lacked prudential standing but in improperly conflating the two standing concepts when it held that it had lacked ***subject matter jurisdiction*** to consider any of the plaintiff's/mother's amended complaints.[162] The Fifth Circuit noted specifically that[163]

> prudential standing does not present a jurisdictional question, but "a merits question: who, according to the governing substantive law, is entitled to enforce the right?" As the Federal Rules of Civil Procedure make clear, "an action must be prosecuted in the name of the real party in interest." FED. R. CIV. P. 17(a)(1). And a violation of this rule is a failure of "prudential" standing. "Not one of our precedents holds that the inquiry is jurisdictional." It goes only to the validity of the cause of action. And "the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction."

Somewhat relevant to this prudential standing discussion is the fact that, in this bankruptcy case, there have been dozens of appeals of bankruptcy court orders by Dondero and Dondero-related entities. In connection therewith, both the district court and the Fifth Circuit, in evaluating the ***appellate standing*** of the appellants, have taken pains to distinguish between the concepts of:

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[161] *Id.*

[162] *Id.* at 301, 303-304. The Fifth Circuit opined that "the district court did not err in describing [the mother's] inability to sue under Louisiana law as a defect of 'standing[, b]ut it is a defect of prudential standing, not Article III standing" thus technically not implicating the federal court's subject matter jurisdiction. *Id.* at 303.

[163] *Id.* at 304 (cleaned up).

(a) traditional, constitutional standing, and (b) a type of prudential standing known as the "person aggrieved" test, which is applied in the Fifth Circuit in determining whether a party has ***standing to appeal a bankruptcy court order***—which it describes as a narrower and "more exacting" standard than constitutional standing. As explained in a Fifth Circuit opinion addressing the standing of a Dondero-related entity called NexPoint to appeal bankruptcy court orders allowing professional fees, the "person aggrieved" standard that is typically applied to ascertain bankruptcy ***appellate*** standing originated in a statute in the Bankruptcy Act. The Fifth Circuit continued to apply it after Congress removed the provision when it enacted the Bankruptcy Code in 1978.[164] Because it is narrower and "more exacting" than the test for Article III constitutional standing, it involves application of prudential standing considerations.[165] The Fifth Circuit describes the "person aggrieved" test for bankruptcy appellant standing as requiring that an appellant show that it was "*directly and adversely affected pecuniarily* by the order of the bankruptcy court," requiring "a higher causal nexus between act and injury than traditional standing . . . that best deals with the unique posture of bankruptcy actions."[166] In affirming the district court's dismissal of NexPoint's appeal of the bankruptcy court's fee orders, due to NexPoint's lack of prudential standing under the "person aggrieved" test, the court rejected NexPoint's argument that it had standing to appeal

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[164] *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, No. 22-10575, 2023 WL 4621466, *2 (5th Cir. July 19, 2023)(citing *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004)(cleaned up)).

[165] *Id.* at *1, **4-6 (where the Fifth Circuit repeatedly throughout its opinion refers to the "person aggrieved" test for standing in bankruptcy actions as a test for "prudential standing."); *see also Dondero v. Highland Capital Mgt., L.P.*, Civ. Act. No. 3:20-cv-3390-X, 2002 WL 837208 (N.D. Tex. Mar. 18, 2022)(where the district court, in addressing Dondero's standing to appeal a bankruptcy court order approving a Rule 9019 settlement (between Highland and Acis Capital Management GP LLC), notes that "[i]t is substantially more difficult to have standing to appeal a bankruptcy court's order than it is to pursue a typical complaint under Article III of the U.S. Constitution" and that "the Fifth Circuit has long recognized that bankruptcy cases' wide-reaching scope calls for a more stringent standing test.").

[166] *See id.* at *3 (cleaned up). The court quotes its 2018 opinion in *Matter of Technicool Sys., Inc. (In re Technicool)*, 896 F.3d 382, 385 (5th Cir. 2018), which explains why the "person aggrieved" prudential standing standard is applied in bankruptcy actions: "Bankruptcy cases often involve numerous parties with conflicting and overlapping interests. Allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Given the specter of such sclerotic litigation, standing to appeal a bankruptcy court order is, of necessity, *quite limited*." *Id.* (cleaned up).

because "it meets traditional Article III standing requirements [and that the more exacting] prudential standing considerations such as the 'person aggrieved' standard" did not survive the Supreme Court's 2014 *Lexmark*[167] opinion,[168] which addressed standing issues in the context of false advertising claims under the Lanham Act and reminded that courts may not "limit a cause of action that Congress has created merely because 'prudence' dictates."[169] The Fifth Circuit held that the Supreme Court's reminder in *Lexmark* did not nullify the "person aggrieved" test for prudential standing in bankruptcy appeals, citing its own decision in *Superior MRI Services Inc. v. Alliance Healthcare Services, Inc.*[170] (rendered a year after *Lexmark* was decided), in which it held that *Lexmark* applied only to the circumstances of that case, "rather than broadly modifying—or undermining—*all* prudential standing concerns, such as the one animating the 'person aggrieved' standard in bankruptcy appeals."[171]

Similarly, in yet another appeal in this bankruptcy case involving three Dondero-related entities as appellants (NexPoint, Dugaboy, and HCMFA)—this one an appeal of a bankruptcy court order authorizing the creation of an indemnity subtrust and entry into an indemnity trust agreement—the district court noted the parties' confusion about the standing issue, as exemplified in the parties' reference to constitutional standing when they were actually arguing that they had prudential standing under the "person aggrieved" test: "Although the parties frame this issue as one of constitutional standing . . . they cite case law and present arguments about the prudential

[167] *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

[168] *Id.* at *2.

[169] *See id.* at *4 (cleaned up).

[170] 778 F.3d 502 (5th Cir. 2015).

[171] *NexPoint*, 2023 WL 4621466 at *4 (cleaned up). The Fifth Circuit explicitly stated that "*Lexmark* does not expressly reach prudential concerns in bankruptcy appeals and brought no change relevant here." *Id.* at *5 (cleaned up).

standing requirement embodied in the 'person aggrieved' test."[172] The district court noted that it had an "independent obligation to consider constitutional standing before reaching its prudential aspects."[173] The district court dismissed the appeal as to Dugaboy and HCMFA for lack of standing but, upon concluding that NexPoint did have standing, dismissed the appeal as to it on the merits. The Fifth Circuit affirmed.[174] Interestingly, the court noted that, while the parties did not contest the district court's determination that NexPoint had standing to pursue the appeal, it "may consider prudential standing issues *sua sponte*."[175] In doing so, the Fifth Circuit recognized the distinction between constitutional standing and the prudential "person aggrieved" test applied to bankruptcy appeals, which "is, of necessity, quite limited" and "an even more exacting standard than traditional constitutional standing," as it requires an appellant to show that it is "directly, adversely, and financially impacted by a bankruptcy order."[176]

In summary, in analyzing whether HMIT would have standing to bring the Proposed Claims, this court must ***first*** determine whether HMIT would have constitutional standing under Article III (which is a subject matter jurisdiction hurdle) and, assuming it does, then ***additionally*** address whether HMIT would also have prudential standing (i.e., capacity to sue) pursuant to any applicable statutes (e.g., Delaware statutes), jurisprudence, or other substantive law that might ***limit*** who may sue. Notwithstanding HMIT's argument that it has standing under the "person

[172] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2002 WL 270862, *1 (N.D. Tex. Jan. 18, 2022)(cleaned up). The district court dismissed the appeals of two of the appellants, Dugaboy and HCMFA, finding that they lacked both constitutional standing and prudential standing under the "person aggrieved" test and affirmed the bankruptcy court's order after finding the third appellant, NexPoint, to have prudential standing under the "person aggrieved" test. *Id.* at **1-3 and *4.

[173] *Id.* at *1 n.2.

[174] *Highland Capital Mgt. Fund, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 57 F.4th 494 (5th Cir. 2023).

[175] *Id.* at 501 (cleaned up).

[176] *Id.*

aggrieved" test[177]—which, as discussed above, is a matter of prudential standing—this is applied only in the context of bankruptcy ***appellate*** matters.[178] As noted in its most recent opinion discussing standing in an appeal from the Highland bankruptcy case, the Fifth Circuit reiterated that the "person aggrieved" test is a test for bankruptcy ***appellate*** standing, which is narrower than a party in interest's right to be heard in bankruptcy cases in general.[179] The court rejected an argument that Bankruptcy Code § 1109, which provides that "[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter" confers ***appellate*** standing, noting that "one's standing to appear and be heard before the bankruptcy court [is] a concept distinct from standing to appeal the merits of a decision" and that the "person aggrieved" test for bankruptcy appellate standing is narrower than the test for determining one's standing to appear and be heard in a bankruptcy proceeding.[180]

Thus, the court will now analyze whether HMIT would, at a minimum, have constitutional standing to bring the Proposed Claims.

2. HMIT Would Lack Article III Constitutional Standing to Bring the Proposed Claims.

As noted above, the Supreme Court and the Fifth Circuit have made clear that constitutional standing is necessary for a court to exercise subject matter jurisdiction. It is only the first hurdle a party must clear before pursuing a claim in federal court. HMIT, as plaintiff, would bear the

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[177] HMIT insists that it has constitutional standing to bring claims on its individual behalf "as an aggrieved party." *See* Reply, ¶ 7.

[178] HMIT's argument in this matter that it has constitutional standing because it is a "party aggrieved" incorrectly conflates the prudential bankruptcy appellate "person aggrieved" test with the broader test that is applied to constitutional standing. The court is not being critical of this mistake. As noted at *supra* note 149, the Fifth Circuit in *Abraugh* pointed out that courts and attorneys alike have created confusion by misusing the term "standing" when they equate a lack of "standing," in all instances, with a lack of subject matter jurisdiction, even when the party is found to lack only prudential standing. Thus, HMIT is not alone in its confusion over the two different concepts of standing.

[179] *See NexPoint*, 2023 WL 4621466 at *6.

[180] *Id.* at *6 (cleaned up)("Because Section 1109(b) expands the right to be heard [in a bankruptcy proceeding] to a wider class than those who qualify under the 'person aggrieved' standard, courts considering the issue have concluded that merely being a party in interest is insufficient to confer ***appellate*** standing.")(emphasis added).

burden of establishing: (1) that it suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[181]

Concrete and Particularized; Actual or Imminent. As the Supreme Court made clear in the *Lujan* case, the injury in fact element requires a showing that the injury was "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."[182] The Supreme Court in the *Spokeo* case expounded on the "concrete and particularized" requirements of the "injury in fact" element. Particularization requires a showing that the injury "must affect the plaintiff in a personal and individual way," but while particularization is necessary, it alone is "not sufficient," because an injury in fact must also be "concrete."[183] And, concreteness is "quite different from particularization."[184] A "concrete" injury must be "real," and "not abstract," though it does not mean that the injury must be "tangible," as the injury can be intangible and nevertheless be concrete.[185] In addition to the concreteness and particularization requirements, an injury in fact must be "actual or imminent" such that "allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing."[186] "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly*

[181] *See supra* note 153.
[182] *Lujan*, 504 U.S. at 560 (cleaned up).
[183] *Spokeo*, 578 U.S. at 339.
[184] *Id.* at 340.
[185] *Id.*
[186] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

impending"; "allegations of *possible* future injury are not sufficient."[187]

Traceability - Causal Connection. As to the second element—that the injury was caused by the defendant—the Supreme Court in *Lujan* further described it as requiring a showing that "the injury has to be fairly traceable to the challenged action of the defendant."[188] The "fairly traceable" test requires an examination of "the causal connection between the assertedly unlawful conduct and the alleged injury."[189]

Redressability. The third element—redressability—requires the court to examine the connection "between the alleged injury and the judicial relief requested."[190] "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court."[191] "[A] court must determine that there is an available remedy which will have a 'substantial probability' of redressing the plaintiff's injury."[192]

The Claims Purchasers argue that HMIT lacks constitutional standing to pursue the claims asserted in the Proposed Complaint because: (i) neither HMIT nor the Bankruptcy Estate was injured by the Claim Purchasers' acquisition of the claims; and (ii) the Proposed Complaint lacks a theory of cognizable damages to the Reorganized Debtor, the Claimant Trust, and/or the beneficiaries of the Claimant Trust.[193]

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[187] *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013)(cleaned up); *see also Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir. 2023)("[Injury] cannot be speculative, conjectural, or hypothetical [and] [a]llegations of only a 'possible' future injury similarly will not suffice.")(cleaned up).

[188] *Lujan*, 504 U.S. at 560-61 (cleaned up).

[189] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

[190] *Id.* (noting "it is important to keep the ['fairly traceable' and 'redressability'] inquiries separate if the 'redressability' component is to focus on the requested relief.").

[191] *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998).

[192] *City of Los Angeles v. Lyons*, 461 U.S. 95, 129 n.20 (1983)(Marshall, J., dissenting)(cleaned up); *see also Ondrusek v. U.S. Army Corps of Engineers*, Civ. Act. No. 3:22-cv-1874-N, 2023 WL 2169908, at *5 ("Plaintiffs have not demonstrated that any available remedy would be sufficiently likely to relieve their alleged economic losses. Without a showing of redressability, those harms also cannot support Plaintiff's Article III standing.").

[193] As noted earlier, certain of the Proposed Defendants—the Highland Parties—do not focus on HMIT's lack of constitutional standing to pursue the Proposed Claims against them, but on its lack of prudential standing under

The court agrees with the Claims Purchasers' argument here. What is HMIT's concrete and particularized injury—that is "real" and is not abstract? That is not conjectural or hypothetical? That is actual or imminent?

Recall that, under the Plan, HMIT holds a Class 10 contingent interest in the Claimant Trust that only realizes value if all creditors are paid in full with interest. HMIT alleges the following injury: it has suffered a devaluation of its unvested Contingent Claimant Trust Interest by virtue of the alleged over-compensation of Seery as the Claimant Trustee—Seery's alleged over-compensation depletes the assets in the Claimant Trust available for distribution to creditors under the Plan, such that there is less likely a chance that HMIT ultimately receives any distributions on account of its Class 10 Contingent Claimant Trust Interest.[194] Yet, HMIT testified, through both witnesses Dondero and Patrick, that it had no personal knowledge of what Seery's actual compensation is under the CTA at the time HMIT filed its Motion for Leave. It was clear that HMIT's allegations regarding Seery's "excessive" compensation were based entirely on Dondero's pure speculation. In reality, Seery's base salary is exactly what the bankruptcy court approved during the bankruptcy case by a court order (after negotiations between Seery and the Committee). The CTA now further governs his compensation. The CTA, which was publicly filed ***in advance of*** the Plan confirmation hearing and approved by this court as part of the Plan

applicable law. Because constitutional standing is a matter of subject matter jurisdiction, the court has an independent duty to determine whether HMIT would have constitutional standing to pursue the Proposed Claims in federal court. The issue cannot be forfeited or waived by a party. *See Abraugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)("[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Moreover, courts . . . have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.")(cleaned up); *Abraugh*, 26 F.4th at 304 ("It is our constitutional duty, of course, to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.")(cleaned up).

[194] At the June 8 Hearing, HMIT's counsel was unable to identify any other injury HMIT has alleged to have suffered. HMIT's counsel acknowledged that claims trades, in and of themselves, would not "involve injury to the Reorganized Debtor and to the Claimant Trust" and that claims trades are "normally outside the purview of the bankruptcy court" but that "[h]ere, we have alleged . . . . injury [that] takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers." June 8 Hearing Transcript, 67:16-68:8. HMIT can only point to Seery's excess compensation as injury.

(which has been affirmed by the Fifth Circuit), specifically provides that Seery's post-Effective Date compensation would include a "Base Salary" (again, same as during the bankruptcy case), a "success fee," and "severance."[195] The CTA discussed the role of the Committee and then the CTOB in setting the success fee and severance and the like. A fully executed copy of the CTA was admitted into evidence at the June 8 Hearing. HMIT is essentially arguing that its injury (i.e., diminished likelihood of realizing value on its Contingent Claimant Trust Interest) stems from a court-sanctioned and creditor-approved process for approving compensation to Seery. Moreover, HMIT has failed to plead facts sufficient to show that, even if Seery received excessive compensation and that compensation is ordered to be returned, HMIT's Contingent Claimant Trust Interest will ever vest. The district court and the Fifth Circuit in various appeals by Dugaboy, another Dondero-related entity that, similar to HMIT, was a holder of a limited partnership interest in Highland whose interests were terminated as of the Effective Date of the Plan in exchange for a Contingent Claimant Trust Interest, have repeatedly rejected Dugaboy's claims to have standing based on the ***speculative nature of its alleged injuries as a contingent beneficiary of the Claimant Trust under the Plan***. For example, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy of the bankruptcy court's order authorizing the creation of an indemnity subtrust, wherein Judge Fitzwater found that, in addition to lacking prudential standing under the

[195] The Disclosure Statement that was approved by this court, after notice and a hearing, on November 24, 2020, provided that "The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement . . . ." The CTA was part of a Plan Supplement (as amended) that was filed in advance of the confirmation hearing and provided:

> Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

See Highland Ex. 38, at § 3.13(a)(i).

"person aggrieved" test to appeal the bankruptcy court's order, Dugaboy lacked constitutional standing "because they have not identified any injury fairly traceable to the Order: ***the injuries identified are speculative at best and nonexistent at worst***."[196] HMIT's allegations of injury are, without a doubt, "merely conjectural or hypothetical" and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests."[197] The court finds that HMIT would not meet the "concrete and particularized" or the "actual or imminent" requirements for an "injury in fact," and, thus, would lack constitutional standing to pursue the Proposed Claims.

With regard to the second requirement of constitutional standing—whether HMIT could show "traceability" with respect to the Claims Purchasers and/or Seery (i.e., a "causal connection between the assertedly unlawful conduct and the alleged injury"[198]), as noted above, there is only a speculative injury. Even if there is unlawful conduct asserted (i.e., sharing of MNPI to Claims Purchasers who then, as a *quid pro quo*, rubber stamped excessive compensation for Seery), there is nothing other than a hypothetical theory of an alleged injury (i.e., an allegedly less likelihood of a distribution on a Contingent Claimant Trust Interest).

With respect to the third requirement of constitutional standing—whether HMIT can show "redressability" (i.e., that it is likely, not speculative, that the injury can be redressed by a favorable

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[196] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, *1 n.2 (N.D. Tex. Jan. 28, 2022), *aff'd* 57 F.4th 494 (5th Cir. 2023)(emphasis added); *see also* Judge Scholer's opinion in *Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-2268-S, 2022 WL 3701720, *3 (N.D. Tex. Aug. 8, 2022)(cleaned up), *aff'd per curium*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023) (where Dugaboy had argued that "***its pecuniary interest is . . . a potential recovery under the Plan as one of Debtor's former equity holders***" and that "it ha[d] standing as a 'contingent beneficiary' under the Plan, or a beneficiary who will be entitled to payment after all creditors are paid in full," and Judge Scholer stated, "This assertion is premised on the assumption that Dugaboy's 0.1866% pre-bankruptcy limited partnership interest in Debtor—which was extinguished under the Plan—makes it a contingent beneficiary of the creditor trust created under the Plan. . . . [S]uch a 'speculative prospect of harm is far from a direct, adverse, pecuniary hit' as required to confer standing."

[197] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

[198] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

decision), there are multiple problems here.[199] The major remedy sought here is the equitable disallowance of the allowed Purchased Claims (and disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims). There is no such remedy available here. As noted earlier, there is a similar concept of ***equitable subordination*** of a claim to another claim, or of an interest to another interest, pursuant to Bankruptcy Code section 510(c). But under the literal terms of section 510(c), ***claims cannot be subordinated to interests***. Moreover, the Fifth Circuit noted in the *Mobile Steel* case,[200] that ***equitable disallowance*** of a claim (as opposed to equitable subordination of a claims) is not an available remedy. Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case might permit "recharacterization" of a claim from debt to equity in certain circumstances—but not based on inequitable conduct but rather on the nature of a financial transaction. In any event, here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). As noted earlier, the problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). As further noted earlier, here there was most definitely a "contest" with regard to all of these purchased claims. ***Thus, it would appear***

[199] *See supra* notes 182-184 and accompanying text. The court will note that, as discussed *supra* note 141 and pages 71-72, the remedy of equitable subordination (as to the Claims Purchasers) would not redress HMIT's alleged injury (because equitable subordination of claims to interests is not an available remedy in the Fifth Circuit and thus subordination of the Purchased Claims to other claims would not change HMIT's distributions from the Claimant Trust, if any), and because outright disallowance of all or part of the already allowed Purchased Claims is not an available remedy either, HMIT would not be able to meet the "redressability" requirement with respect to the Claims Purchasers.

[200] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

that any effort to have a court reconsider and potentially disallow these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.

3. HMIT Would Also Lack Prudential Standing to Bring the Proposed Claims.

Even if HMIT would have constitutional standing to bring the Proposed Claims in an adversary proceeding filed in the bankruptcy court, the Proposed Claims would still be barred if HMIT would lack prudential standing to bring them under applicable state or federal law. HMIT argues that it does have prudential standing under both federal bankruptcy law and Delaware law to pursue the Proposed Claims derivatively and also to bring the Proposed Claims in its individual capacity.

With regard to "federal bankruptcy law," HMIT argues that it has standing pursuant to: (a) Rule 23.1 of the Federal Rules of Civil Procedure, pertaining to derivative actions, which "applies to this proceeding pursuant to" Rule 7023.1 of the Federal Rules of Bankruptcy Procedure, and (b) *Louisiana World Exposition v. Federal Insurance Co. ("LWE")*,[201] the Fifth Circuit's leading case addressing when a creditors committee may be granted standing to bring causes of action on behalf of a bankruptcy estate. But, federal bankruptcy law does not confer standing ***where the plaintiff otherwise lacks standing under applicable state law***. In other words, whether HMIT would have prudential standing to sue under Delaware law is dispositive of the issue, regardless of the forum. Rule 23.1 "speaks only to the adequacy of the . . . pleadings," and "cannot be understood to 'abridge, enlarge, or modify any substantive right,'"[202] including a right (or lack thereof) to bring a derivative action under the substantive law of Delaware. Additionally, HMIT's reliance on *LWE* is misplaced: *LWE* permits creditors, in certain circumstances ***during*** a bankruptcy case, to "file

[201] 858 F.2d 233 (5th Cir. 1988).

[202] *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991)(quoting 28 U.S.C. § 2072(b)).

suit on behalf of a debtor-in-possession or a trustee"[203] and does not apply to a party's right to sue, derivatively, on behalf of the Reorganized Debtor or any entity that is the assignee of the former bankruptcy estate's assets. Upon confirmation of the Plan, the bankruptcy estate of Highland ceased to exist;[204] Highland is no longer a debtor-in-possession but a reorganized debtor, and the Claimant Trust is a new entity created under the Plan and Claimant Trust Agreement. Even if *LWE* did apply in this ***post***-confirmation context, it supports the application of Delaware law to the issue of prudential standing and does not supersede state-law requirements for standing. In *LWE*, before addressing the requirements a creditors' committee must meet to sue derivatively on behalf of a bankruptcy estate as a matter of federal bankruptcy law, the Fifth Circuit conducted a lengthy analysis to determine "as a threshold issue" whether the creditors' committee in that case could assert its claims under Louisiana law.[205] The court specifically addressed whether the creditors' committee could pursue a derivative action under Louisiana law and concluded that "there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions."[206] So, even under *LWE* (which the court does not think applies in this post-confirmation context), if HMIT would be barred from bringing a derivative action on behalf the Reorganized Debtor or Claimant Trust under state law, the analysis stops there.[207] Thus, the court looks to Delaware law to determine if HMIT would have prudential standing to pursue the derivative claims on behalf the Reorganized Debtor and the Claimant Trust.

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[203] *LWE*, 858 F.2d at 247.

[204] *See In re Craig's Stores*, 266 F.3d 388, 390 (5th Cir. 2001).

[205] *LWE*, 858 F.2d at 236-45.

[206] *Id.* at 243.

[207] *See In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 (where the Delaware bankruptcy court denied the creditors' committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act, stating, "To determine that the third party

HMIT acknowledges that both the Reorganized Debtor and the Claimant Trust are organized under Delaware law, and thus the cause of action against Seery alleging breach of fiduciary duties to the Reorganized Debtor and the Claimant Trust are governed by Delaware law under the "Internal Affairs Doctrine."[208] In addition, because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting theory of liability as to the Claims Purchasers is also governed by Delaware law.[209] For the reasons set forth below, the court finds that HMIT would lack prudential standing under Delaware law to bring the claims set forth in the Proposed Complaint, derivatively, on behalf of either the Claimant Trust or the Reorganized Debtor.

a) First, HMIT Would Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Claimant Trust.

The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29,[210] and "to proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement" such that "the plaintiff must be a beneficial owner" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[211] This requirement is "mandatory and exclusive" and only "a beneficial owner" "has standing to bring a derivative claim on behalf of the

may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors' state of incorporation or formation.").

[208] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[209] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

[210] *See* Proposed Complaint, ¶ 26.

[211] *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *19 n.123 (Del. Ch. June 15, 2011), *aff'd* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b).

Trust."[212] The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, would lack standing to bring derivative claims on behalf of the Claimant Trust. HMIT argues to the contrary: that it ***is*** currently, and was at all relevant times, a "beneficial owner" of the Claimant Trust under Delaware trust law such that it would have standing to bring derivative claims on behalf of the Claimant Trust if it were allowed to proceed with the filing of the Proposed Complaint. The disagreement turns on the nature of HMIT's interest under the Plan and the Claimant Trust Agreement and whether HMIT, as a holder of such interest, would be considered a "beneficial owner" of the Claimant Trust under Delaware trust law.

As noted, pursuant to the Plan, HMIT's former limited partnership interest in Highland was cancelled as of the Effective Date in exchange for its pro rata share of a "Contingent Claimant Trust Interest," as defined under the Plan.[213] HMIT argues that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present "beneficial owner" under Delaware trust law.

The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust; rather, the "beneficial owners" of the Claimant Trust are the "Claimant Trust Beneficiaries,"[214] which are defined in the Plan and the CTA as "the Holders of Allowed General Unsecured Claims" (which are in Class 8 under the Plan) and "Holders of Allowed Subordinated Claims" (which are in Class 9 under the Plan); [215] HMIT, a holder of a Class 10 interest under the Plan, is neither.

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[212] *In re Nat'l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)). HMIT acknowledges this requirement in its Reply: "Delaware statutory trust law provides that a plaintiff in a derivative action on behalf of a trust must be a beneficial owner at the time of the action and at the time of the transaction." Reply, ¶ 19 (citing 12 Del C. § 3816).

[213] *See* Plan Art. III.H.10 and Art. I.B.44.

[214] Section 2.8 of the CTA provides, "The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . . ." HMIT Ex. 26, § 2.8.

[215] *See* Plan Art. I.B.44 ("'*Claimant Trust Beneficiaries*' means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the

HMIT, as the holder of a "Contingent Claimant Trust Interest," has only an ***unvested*** contingent interest in the Claimant Trust and, as such, is not a "beneficial owner" of the Claimant Trust for standing purposes under Delaware trust law. HMIT argues that it "should be treated as a vested Claimant Trust Beneficiary due to [the Proposed Defendants'] wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein."[216] The court disagrees.

HMIT's status as a "beneficiary" of the Claimant Trust is defined by the CTA itself, pure and simple. The CTA specifically provides that "Contingent Trust Interests" "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA. It is undisputed that HMIT's Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested based on HMIT's unsupported allegation of wrongdoing on the part of Seery, the Claimant Trustee. Thus, the court finds that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, lacks prudential standing under Delaware law to bring derivative claims on behalf of the Claimant Trust.[217]

Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests."); CTA § 1.1(h). *See also*, CTA, 1 at n.2 ("For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan."). HMIT Ex. 26.

[216] Proposed Complaint ¶ 24.

[217] *See Nat'l Coll.*, 251 A.3d at 190–92 (dismissing creditors' derivative claims because they were not "beneficial owners of the Trusts"); *Hartsel*, 2011 WL 2421003, at *19 n.123 (dismissing derivative claims by investors that "no longer own shares" because "those investors no longer have standing to pursue a derivative claim").

b) HMIT Would Likewise Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Reorganized Debtor.

HMIT acknowledges that the Reorganized Debtor, Highland Capital Management, L.P., is a Delaware limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.*[218] To bring "a derivative action" on behalf of a limited partnership, "the plaintiff must be a partner or an assignee of a partnership interest" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[219]

HMIT is not a partner, general or limited, of the Reorganized Debtor limited partnership. HMIT ***was*** a limited partner in the original debtor (specifically, a holder of Class B/C Limited Partnership interests in Highland), but that limited partnership interest was extinguished on August 11, 2021 (the Effective Date of the Plan) per the terms of the Plan, and HMIT does not own any partnership interest in the newly created Reorganized Debtor limited partnership.[220] Because HMIT would not hold a partnership interest in the Reorganized Debtor at "the time of bringing the action," it "lacks derivative standing" to bring claims "on the partnership's behalf."[221] HMIT likewise cannot satisfy "the continuous ownership requirement"; when HMIT's limited partnership interest in the original Debtor was cancelled on the Plan's Effective Date, HMIT "los[t] standing to continue a derivative suit" on behalf of the Debtor.[222] Finally, to the extent HMIT

[218] Proposed Complaint ¶ 25.

[219] 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) ("The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another party's fiduciary duties to them.") (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff'd* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) ("The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.") (citing 6 Del. C. § 17-211(h)).

[220] *See* Plan Art. IV.A.

[221] *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

[222] *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff's partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re*

seeks to bring a "double derivative" action on behalf of the Claimant Trust based on claims purportedly held by its wholly owned subsidiary, the Reorganized Debtor, HMIT lacks standing. A "double derivative" action is a suit "brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled."[223] And, under Delaware law, "parent level standing is required to enforce a subsidiary's claim derivatively."[224] Because HMIT would lack derivative standing to bring claims on behalf of the parent Claimant Trust,[225] it also would lack standing to bring a double derivative action.

c) Finally, HMIT Would Also Lack Prudential Standing under Applicable Law to Bring the Proposed Claims As ***Direct*** Claims.

HMIT argues that it has "direct" standing to pursue the Proposed Claims on behalf of itself, individually.[226] But just because HMIT asserts that some or even all of the Proposed Claims are direct, not derivative claims, does not make it so: "a claim is not 'direct' simply because it is pleaded that way."[227] Rather, in determining whether claims are direct or derivative, a court must "look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs' characterization."[228] And, under Delaware law, "whether a claim is solely derivative or

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SkyPort Global Commcn's, Inc.), 2011 WL 111427, at *25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders "lack standing to bring a derivative claim" under Delaware law because they "had their equity interests in the company extinguished pursuant to the merger under the Plan"); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) ("[T]he cancellation of WorldCom shares under the Plan … prevents the required continuation of shareholder status through the litigation.") (cleaned up).

[223] *Lambrecht v. O'Neal*, 3 A.3d 277, 282 (Del. 2010).

[224] *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

[225] *See supra* pp. 80-82.

[226] *See e.g.*, Motion for Leave ¶ 10 ("HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . ."); *id.* ¶ 67 (arguing that "HMIT has [d]irect [s]tanding"); Proposed Complaint ¶ 24 ("HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.").

[227] *Schmermerhorn*, 2011 WL 111427, at *26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at *7 (Del. Ch. Nov. 5, 2004)).

[228] *See id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)); *see also Moore v. Simon Enters., Inc.*, 919 F.Supp. 1007, 1009 (N.D. Tex. 1995)("The determination of whether a claim is a derivative claim or a direct claim is made by reference to the nature of the wrongs alleged in the complaint, and is not limited by a [party's] characterization or stated intention.")(cleaned up).

may continue as a dual-natured claim 'must turn ***solely*** on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'"[229] "In addition, to prove that a claim is direct, a plaintiff 'must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.'"[230] Similarly, in the bankruptcy context, whether a creditor can assert a claim directly or whether the claim belongs to the estate turns on the nature of the injury for which relief is sought: "[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate," such that "only the bankruptcy trustee has standing to pursue the claim for the estate . . . ."[231] "To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate."[232]

As a reminder, HMIT argues that the injury it has suffered is a devaluation of its interests in the Claimant Trust by virtue of alleged over-compensation of Seery as the Claimant Trustee. HMIT was unable, when pressed during closing arguments, to identify any other injury. It essentially admitted that the claims trades, in and of themselves, would not have harmed the Claimant Trust, the Reorganized Debtor, or individual stakeholders, including HMIT, ***since the Claims Purchasers acquired already allowed unsecured claims, such that the distributions on those claims pursuant to the Plan would be unchanged in the hands of new holders of the claims***.

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[229] *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original).

[230] *Id.* (quoting *Tooley*, 845 A.2d at 1033); *see also Schmermerhorn*, 2011 WL 111427, at *24 (same).

[231] *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)).

[232] *Id.*; *see also Schertz-Cibolo-Universal City Indep. Sch. Dist. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994)("If a cause of action alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate.")(citations omitted).

Thus, by its own concessions, any alleged harm to HMIT (through devaluation of assets in the Claimant Trust) "comes about only because of harm to the debtor," so the alleged "injury is derivative."[233] The court concludes that all of the claims set forth in the Proposed Complaint allege derivative claims only, and that none would be direct claims against the Proposed Defendants. Thus, HMIT would lack prudential standing to bring any of the Proposed Claims in the Proposed Complaint, so its Motion for Leave should be denied.

d) Some Final Points Regarding Standing.

In this standing discussion, one should not lose sight of the fact that there are both procedural safeguards in place, as well as certain independent individuals in place with fiduciary duties that might act in the event of any shenanigans regarding Claimant Trust activities. Under section 4.1 of the CTA (approved as part of the Plan process), the CTOB, which includes an independent disinterested member in addition to representatives of the Claims Purchasers,[234] oversees the Claimant Trustee's performance of his duties, approves his compensation, and may remove him for cause. Moreover, there is a separate "Litigation Trustee" in this case who was brought in, post-confirmation, as an independent fiduciary to pursue claims and causes of action. These independent persons are checks and balances in the post-confirmation wind down of Highland. This is what creditors voted on in connection with the Plan. Seery and the Claims Purchasers are not in sole control of anything. The CTA, as well as Delaware law, very clearly set forth who can bring an action in the event of some colorable claim. This is the reality of prudential

[233] *Meridian*, 912 F.3d at 293–94 ("The creditors' injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties."); *see also El Paso,* 152 A.3d at 1260–61 & n.60 (holding that claim "claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative") (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at *12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had "not identified any independent harm suffered by the limited partners"; "the partnership suffered all the harm at issue—it paid too much").

[234] *See supra* note 23 and accompanying text.

standing. Just as in the *Abraugh* case, where Louisiana law dictated that a mother could not bring a wrongful death case when the deceased prisoner had a surviving wife and child, Delaware law and the CTA dictate here that a contingent beneficiary cannot bring the Proposed Claims here. This is separate and apart from whether the claims are colorable.

C. Are the Proposed Claims "Colorable"?

1. What is the Proper Standard of Review for a "Colorability" Determination?

Although the court has determined that HMIT would ***not*** have standing (constitutional or prudential) to bring the Proposed Claims, this court will nevertheless evaluate whether the claims—assuming HMIT somehow has standing—might be "colorable." This, in turn, requires the court to assess what the legal standard is to determine if a claim is "colorable." As a reminder, the Plan's Gatekeeper Provision and this court's prior Gatekeeper Orders entered in January and July 2020 each required that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain a finding from the bankruptcy court that its proposed claims are "colorable." The Gatekeeper Provision and Gatekeeper Orders did not specifically define "colorable" or what type of legal standard should apply.

HMIT argues that the standard for review to be applied by this court is the same as a simple "plausibility" standard used in connection with a Rule 12(b)(6) motions to dismiss. In other words, the court should simply assess whether the allegations of the Proposed Complaint, taken as true and with all inferences drawn in favor of the movant, state a ***plausible*** claim for relief (i.e., colorable equals plausible), and that this standard does not allow for the weighing of evidence by the court.[235] The Proposed Defendants, however, argue that the test for colorability should be more

[235] Reply, ¶ 5 ("[T]he determination of 'colorability' does not allow the 'weighing' of evidence. At most, a Rule 12(b)(6) 'plausibility' standard applies.").

akin to the test applied under the *Barton* doctrine,[236] under which a plaintiff must make a *prima facie* case that a proposed claim against a bankruptcy trustee is "not without foundation." In this regard, they argue that the court can and should consider evidence outside of the four corners of the complaint—especially since HMIT attached to its Motion for Leave, as "evidence" to support it, two declarations of Dondero (as part of a 350-page attachment) and only attempted to withdraw those declarations after the Highland Parties urged that they be permitted to cross-examine Dondero on them.

This court ultimately determined that the "colorability" standard was somewhat of a mixed question of fact and law and, therefore, the parties could put on evidence at the June 8 Hearing if they so-chose. The court would not require it. It was up to the parties. But, in any event, the Proposed Defendants should have an opportunity to cross-examine Dondero on the statements made in his declarations since the declarations had been filed on the docket and the court had reviewed them at this point. HMIT attempted to withdraw the declarations and any reference to them in the Motion for Leave, by filing redacted versions of the Motion for Leave,[237] less than 72 hours before the June 8 Hearing; however, the redacted versions did not redact any allegations in the Motion for Leave that were purportedly supported by the Dondero declarations. Also, HMIT called Dondero as a direct witness, in addition to calling Seery as an adverse witness at the June 8 Hearing, albeit subject to its running objection to the evidentiary format of the hearing.[238] HMIT also filed a witness and exhibit list attaching 80 exhibits and over 2850 pages of evidence and

[236] *Barton v. Barbour,* 104 U.S. 126 (1881).

[237] Bankr. Dkt. Nos. 3815 and 3816.

[238] *See* June 8 Hearing Transcript, 7:20-24, 112:11-13.

moved for the admission of those exhibits at the June 8 Hearing (again, subject to its running objection to the evidentiary format of the hearing).[239]

In determining what appropriate legal standard applies here in the "colorability" analysis, the context in which the Gatekeeper Provision of the Plan was approved seems very relevant. In determining that the Gatekeeper Provision was legal, necessary, and in the best interest of all of the parties, this court set forth in the Confirmation Order a lengthy discussion of the factual support for it, and made specific findings relating to Dondero's post-petition litigation and the need for inclusion of the Gatekeeper Provision in the Plan.[240] This court observed that "prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade" and that "[d]uring the last several months, Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor."[241] This court further found that: (1) Dondero's post-petition litigation "was a result of Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Seery's credible testimony, that if Dondero's plan proposal was not accepted, he would 'burn down the place,'"[242] (2) without the Gatekeeper Provision in place, "Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date" and that "the threat of continued litigation by Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result in lower distributions to creditors because of

[239] *See Hunter Mountain Investment Trust's Witness and Exhibit List in Connection with Its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* ("HMIT W&E List")[Bankr. Dkt. No. 3818] and n.1 thereto; *see also* June 8 Hearing Transcript, 33:7-10.

[240] *See* Confirmation Order ¶¶ 76-79.

[241] *Id.* ¶ 77.

[242] *Id.* ¶ 78. *See supra* note 12.

costs and distraction such litigation or the threats of such litigation would cause,"[243] and, (3) "unless the [court] approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance,[244] the absence of which will present unacceptable risks to parties currently willing to serve in such roles." Thus, as set forth in the Confirmation Order, the Gatekeeper Provision (and the Gatekeeper Orders as well, which were approved based on the same concerns regarding the threat of continued litigation by Dondero and his related entities) required Dondero and related entities to make a threshold showing of colorability, noting that the:

> Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC,* 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017)."[245]

The Fifth Circuit, in approving the Gatekeeper Provision on appeal, noted that that the Plan injunction and Gatekeeper Provision "screen and prevent bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[246]

Again, the court believes it is appropriate to consider the context in which—and the purpose for which—the Gatekeeper Orders and Gatekeeper Provision were entered in assessing

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[243] *Id.*

[244] Asd noted at ⁋ 79 of the Confirmation Order, the bankruptcy court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance for the post-confirmation parties implementing the Plan. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so ***without an exclusion for claims asserted by Mr. Dondero and his affiliates*** required that the Confirmation Order approve the Gatekeeper Provision.

[245] *Id.* ¶ 80.

[246] *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.* (*In re Highland Cap. Mgmt., L.P.*), 48 F.4th 419, 435 (5th Cir. 2022).

how "colorability" should work here. It seems that applying HMIT's proposed Rule 12(b)(6) "plausibility" standard would impose no hurdle at all to litigants and would render the threshold for bringing claims under the Gatekeeper Provision and Gatekeeper Orders entirely duplicative of the motion to dismiss standard that every litigant already faces.

The authorities cited by HMIT in support of its argument for applying a Rule 12(b)(6) standard are inapposite. HMIT has cited no authority that addresses the appropriate standard for assessing the "colorability" of claims in the context of a plan gatekeeper provision—specifically, one implemented in response to a demonstrated need to screen and prevent continued bad-faith, harassing litigation against a chapter 11 debtor that would impede the debtor's implementation of a plan, which is what we have here. HMIT relies on a bevy of cases that include benefits coverage disputes under ERISA, Medicare coverage disputes, and constitutional challenges[247]—none of which implicate the *Barton* doctrine and vexatious-litigant concerns that were referenced by the court in the Plan as justifications for the gatekeeping provisions at issue here.

In affirming the Plan's Gatekeeper Provision, the Fifth Circuit stated, "Courts have long recognized bankruptcy courts can perform a gatekeeping function" and noted, by way of example, that "[u]nder the '*Barton* doctrine,' the bankruptcy court may require a party to 'obtain leave of

[247] *See Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has "a colorable claim to vested benefits" such that the employee may be considered a "participant" under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting "claimants [with] no colorable legal claim" to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant's double jeopardy claim was "colorable" such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at *3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a "colorable claim" against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at *3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a "colorable claim" to warrant the district court's exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at *5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at *5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a "colorable constitutional claim" such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

the bankruptcy court before initiating an action in district court when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor's official capacity."[248] As noted above, the Fifth Circuit found that the Gatekeeper Provision, which "requires that, before any lawsuit is filed, the plaintiff must seek the bankruptcy court's approval of the claim as 'colorable'"—*i.e.*, to "screen and prevent bad-faith litigation,"—is "sound."[249]

On balance, the court views jurisprudence applying the *Barton* doctrine and vexatious litigant injunctions—while not specifically addressing the "colorability" standard under gatekeeping provisions in a plan[250]—as more informative on how to approach "colorability" than any of the other authorities presented by the parties. One example is *In re VistaCare Group, LLC*.[251]

In *VistaCare*, the Third Circuit noted that, under the *Barton* doctrine, "[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation," and emphasized that the "not without foundation" standard, while similar to the standard courts apply in evaluating Rule 12(b)(6) motions to dismiss, "involves a greater degree of flexibility" than a Rule 12(b)(6) motion to dismiss because "the bankruptcy court, which given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit," and "is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor's estate."[252] To satisfy the "*prima facie* case standard," "the movant must do more than meet the liberal notice-pleading

[248] *Id.* at 438 (cleaned up).

[249] *Id.* at 435.

[250] The court acknowledges that the *Barton* doctrine itself would not be directly applicable here because HMIT is proposing to bring the Proposed Complaint in the bankruptcy court – the "appointing" court of Seery.

[251] 678 F.3d 218 (3d Cir. 2012).

[252] *Id.* at 232-233 (cleaned up).

requirements of Rule 8."[253] "[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless."[254] This court agrees with the notion, that "[t]o apply a less stringent standard would eviscerate the protections" of the Gatekeeper Provision and Gatekeeper Orders.[255] The court notes, as well, that courts in the *Barton* doctrine context regularly hold evidentiary hearings on motions for leave to determine if the proposed complaint meets the necessary threshold for pursuing litigation. The Third Circuit in *VistaCare* noted that "[w]hether to hold a hearing [on a motion for leave to bring suit against a trustee] is within the sound discretion of the bankruptcy court,"[256] and that "the decision whether to grant leave may involve a 'balancing of the interests of all parties involved,'" which will ordinarily require an evidentiary hearing.[257] The Third Circuit applied "the deferential abuse of discretion standard" in considering whether the bankruptcy court's granting of leave should be affirmed on appeal.[258]

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[253] *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases).

[254] *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at *2 (N.D. Ill. Nov. 30, 2000).

[255] *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at *2).

[256] *VistaCare*, 678 F.3d at 232 n.12.

[257] *Id.* at 233 (quoting *In re Kashani*, 190 B.R. 875, 886–87 (9th Cir. BAP 1995)). The Third Circuit noted that the bankruptcy court's holding of an evidentiary hearing on the motion for leave was appropriate (though not required in every case)). *Id.* at 232 n.12.

[258] *Id.* at 224 ("We review a bankruptcy court's decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard.") (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)). Courts of appeal routinely apply the deferential abuse of discretion standard to a bankruptcy court's decision regarding whether leave should be granted to sue a trustee. Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. *See In re Bednar*, 2021 WL 1625399, at *3 (B.A.P. 10th Cir. Apr. 27, 2021) ("[T]he Bankruptcy Court's decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . . .") (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App'x 969, 973–74 (11th Cir. 2016) ("Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court's ruling on a *Barton* motion for an abuse of discretion.") (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at *3 (B.A.P. 1st Cir. Sept. 17, 2014) ("Appellate courts review a bankruptcy court's decision to deny a motion for leave to sue under the abuse of discretion standard.") (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

The Fifth Circuit has affirmed a bankruptcy court's conducting of an evidentiary hearing, in the context of applying a *Barton* doctrine analysis as to a proposed lawsuit against a trustee, without any concern that the inquiry was somehow improper.[259]

Similarly, courts in the vexatious litigant context, where there was an injunction requiring a movant to seek leave to pursue claims, have required movants to "show that the claims sought to be asserted have sufficient merit," including that "the proposed filing is both procedural and legally sound," and "that the claims are not brought for any improper purpose, such as harassment."[260] "For a prefiling injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review," such as the "plausibility" standard for a Rule 12(b)(6) motion.[261] Rather, courts apply "an additional layer of review," and "may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action" or that the "litigant's allegations are unlikely," especially "when prior cases have shown the litigant to be untrustworthy or not credible . . . ."[262]

In summary, the court rejects HMIT's positions: (a) that it need only show, at most, that the allegations in the Proposed Complaint are "plausible" under the Rule 12(b)(6) standard for motions to dismiss; and (b) that this court improperly conducted an evidentiary hearing on the Motion for Leave (i.e., that consideration of evidence in this context is impermissible). The court notes, again, that HMIT's argument that this court is not permitted to consider evidence in making its "colorability" determination is completely contradictory to HMIT's actions in filing the Motion

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[259] *See Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at *4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after "a close examination" by the bankruptcy court of the evidence regarding the trustee's actions and finding that "the plaintiffs' allegations are not based in fact"), *aff'd* 799 F. App'x 271 (5th Cir. 2020).

[260] *Silver v. City of San Antonio*, 2020 WL 3803922, at *1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); *see also Silver v. Perez*, 2020 WL 3790489, at *1 (W.D. Tex. July 7, 2020) (same).

[261] *Silver*, 2020 WL 3803922, at *6.

[262] *Id.*

for Leave, where it attached two Dondero declarations as part of 350 pages of "objective evidence" that "supported" its motion.

The court concludes that the appropriate standard to be applied in making its "colorability" determination in ***this*** bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in ***this*** Plan, is a broader standard than the "plausibility" standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves ***an additional level of review***—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are ***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***. Additionally, this court may, and should, take into consideration its ***knowledge*** of the ***bankruptcy proceedings*** and ***the parties*** and any additional evidence presented at the hearing on the Motion for Leave. For ease of reference, the court will refer to this standard of "colorability" as the "Gatekeeper Colorability Test." The court considers this test as a sort of hybrid of what the *Barton* doctrine contemplates and what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place.

2. HMIT's Proposed Complaint Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test or Even Under a Rule 12(b)(6) "Plausibility" Standard.

The court finds, in the exercise of its gatekeeping function under the Gatekeeper Orders and the Gatekeeping Provision in the Plan, that the Motion for Leave should be denied as the claims set forth in the Proposed Complaint are not "colorable" claims. The court makes this determination after considering evidence admitted at the June 8 Hearing, including the testimony of Dondero, Patrick, and Seery, and the numerous exhibits offered by HMIT and the Highland Parties. HMIT's Proposed Claims lack foundation, are without merit, and appear to be motivated by the improper purposes of vexatiousness and harassment. But, even under the less stringent

"plausibility" standard under Rule 12(b)(6) motions to dismiss, where all allegations must be accepted as true, HMIT's "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," fail to "[]cross the line from conceivable to plausible."[263]

HMIT makes unsubstantiated and conclusory allegations in its Motion for Leave and Proposed Complaint that the Claims Purchasers purchased the large allowed unsecured claims only because Seery, while he was CEO of Highland prior to the Effective Date of the Plan, provided them with MNPI and assurances that the Purchased Claims were very valuable. This was allegedly in exchange for their agreement to approve, in their future capacities as members of the CTOB, excessive compensation for Seery in his capacity as the Claimant Trustee after the Effective Date of the Plan. This was an alleged *quid pro quo* that HMIT claims establishes Seery's breach of fiduciary duties and the Claims Purchasers' conspiracy to participate in that breach. As discussed below, these allegations are unsubstantiated and conclusory allegations, and they do not support the inferences that HMIT needs the court to make when it analyzes whether the Proposed Claims are "colorable"—or even merely plausible.

a) HMIT's Proposed Breach of Fiduciary Duties Claim Set Forth in Count I of the Proposed Complaint

Based on HMIT's Proposed Complaint and the evidence admitted at the June 8 Hearing, the court finds that HMIT has not pleaded facts that would support a "colorable" breach of fiduciary duties claim against Seery, under this court's Gatekeeper Colorability Test, nor a plausible claim pursuant to the Rule 12(b) standard. HMIT alleges that Seery breached his fiduciary duties (i) "[b]y disclosing material non-public information to Stonehill and Farallon"

[263] *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

before their purchase of certain Highland claims, and (ii) by receiving "compensation paid to him under the terms of the [CTA] since the Effective Date of the Plan in August 2021."[264]

As earlier noted, both the Reorganized Debtor and the Claimant Trust are organized under Delaware law and, thus, its proposed Count I against Seery for breach of fiduciary duties to these entities is governed by Delaware law under the "Internal Affairs Doctrine."[265] Under Delaware law, "[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege '(1) that a fiduciary duty existed and (2) that the defendant breached that duty.'"[266] HMIT fails to plausibly or sufficiently allege either element such that its breach of fiduciary duty claims against Seery could survive.

Under Delaware law, officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders.[267] Because Seery did not owe any "duty" to HMIT directly and individually, the Proposed Complaint fails to state a claim for breach of fiduciary duties to HMIT. HMIT's "legal conclusion[]" that Seery "owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate"[268] "do[es] not suffice" to plausibly allege the existence of any actionable fiduciary relationship.[269] And as discussed earlier in the standing section, HMIT does not have standing to assert a breach of fiduciary claim derivatively on behalf

[264] Proposed Complaint ¶¶ 64–67.

[265] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[266] *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at *30 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at *8 (Del. Ch. Feb. 28, 2020)).

[267] *See Gilbert v El Paso Co.*, 1988 WL 124325, at *9 (Del. Ch. Nov. 21, 1988) ("[D]irectors' fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.") *aff'd,* 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at *11 (Del. Ch. Nov. 7, 2013) (same).

[268] Proposed Complaint ¶ 63.

[269] *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

of the Claimant Trust or Reorganized Debtor. But even if HMIT had sufficiently alleged the existence of a fiduciary duty by Seery to HMIT—or to the Reorganized Debtor or Claimant Trust that HMIT would have standing to assert—Seery's alleged communications with Farallon would not have breached those duties.

HMIT alleges that Seery ""disclose[d] material non-public information to Stonehill and Farallon," and they "acted on inside information and Seery's secret assurances of great profits."[270] But the Proposed Complaint does not make any factual allegations regarding HMIT's "conclusory allegations," and its "legal conclusions" are "purely speculative, devoid of factual support," and therefore "stop[] short of the line between possibility and plausibility of entitlement to relief"[271] (and certainly stop short of being "colorable"). HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, and what "assurances of great profits" he made to Farallon or to Stonehill. At the June 8 Hearing, Dondero could only clarify that he believed the MGM Email to have been MNPI and that he ***believed*** that Seery ***must have*** communicated that MNPI to Farallon at some point between December 17, 2020 (the date the MGM Email was sent) and May 28, 2021 (the day that Dondero alleges to have had three telephone calls with representatives of Farallon, Messrs. Patel and Linn, regarding Farallon's purchase of the bankruptcy claims). Dondero alleges that, during these phone calls, Patel and Linn gave Dondero no reason for their purchase of the claims that "made [any] sense." Dondero and Patrick also both testified that neither of them had any personal knowledge: (a) of a *quid pro quo* arrangement between Seery and the Claims Purchasers, (b) of Seery having actually communicated any information from the MGM Email to Farallon, or (c) whether Seery's post-Effective Date compensation had or had not been negotiated in an arms' length transaction. Dondero only

[270] Proposed Complaint ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.

[271] *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up).

speculates regarding these things, because it "made no sense" to him that the Claims Purchasers would have acquired the bankruptcy claims without having received the MNPI. But HMIT admits in the Proposed Complaint that Farallon and Stonehill purchased the Highland claims at discounts of 43% to 65% to their allowed amounts. Thus, they would receive at least an 18% return based on publicly available estimates in Highland's court-approved Disclosure Statement.[272] The evidence established that, if the acquisition of the UBS claims is excluded—recall that the UBS claims were not purchased until August 2021, which was after the May 28, 2021 phones calls that Dondero made to Farallon personnel—the Claims Purchasers would have expected to net over $33 million in profits, or nearly a 30% return on their investment, had Highland met its projections (this is based on the aggregate purchase price of $113 million for the non-UBS claims purchased in the Spring 2021).

To be clear, the only purported MNPI identified in HMIT's Proposed Complaint was the MGM Email Dondero sent to Seery containing "information regarding Amazon and Apple's interest in acquiring MGM." But, the evidence showed that this information was widely reported in the financial press at the time. Thus, it could not have constituted MNPI as a matter of law.[273] Moreover, the evidence showed that Dondero ***did not*** communicate in the MGM Email the actual inside information that he claimed to have obtained as a board member of MGM–which was that Amazon had met MGM's "strike price" and that the MGM board was going into exclusive negotiations with Amazon to culminate the merger with them (and, thus, Apple was no longer considered a potential purchaser). Dondero admitted that he included Apple in the MGM Email for the purpose of making it look like there was a competitive process still ongoing. In other

[272] Proposed Complaint ¶¶ 3, 37, 42.

[273] *See, e.g.*, *SEC v. Cuban*, 2013 WL 791405, at *10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not "material, nonpublic information" and "'becomes public when disclosed to achieve a broad dissemination to the investing public'") (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)).

words, the MGM Email, at the very least, did not include MNPI and, at worst, was deceptive regarding the status of the negotiations between MGM and potential purchasers.

As to HMIT's allegations that Seery's post-Effective Date compensation is "excessive" and that the negotiations between Seery and the CTOB "were not arm's-length,"[274] the evidence at the June 8 Hearing reflected that the allegations are completely speculative, without any foundation whatsoever, and lack merit. And they are also simply not plausible. HMIT fails to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty.[275]

b) HMIT's Proposed Claims Set Forth in Counts II (Knowing Participation in Breach of Fiduciaries) and III (Conspiracy)

HMIT seeks to hold the Claims Purchasers secondarily liable for Seery's alleged breach of fiduciaries duties on an aiding and abetting theory in Count II of the Proposed Complaint[276] and, along with Seery, on a civil conspiracy theory of liability in Count III of the Proposed Complaint.[277] Because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting breach of fiduciary duties claim against the Claims Purchasers (Count II) is also governed by Delaware law.[278] HMIT's conspiracy cause of action against the Claims

[274] Proposed Complaint ¶¶ 4, 13, 54, 74.

[275] *See Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]though the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation.").

[276] Proposed Complaint ¶¶ 69-74.

[277] Proposed Complaint ¶¶ 75-81.

[278] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

Purchasers and Seery (Count III), on the other hand, does not involve a matter of "internal affairs" or of corporate governance, so it is governed by Texas law under the Plan.[279]

As an initial matter, because HMIT does not present either a "colorable"—or even plausible claim—that Seery breached his fiduciary duties, it cannot show that it has alleged a "colorable" or plausible claim for secondary liability for the same alleged wrongdoing.[280] In addition, HMIT's civil conspiracy claim against the Claims Purchasers and Seery is based entirely on Dondero's speculation and unsupported inferences and, thus, HMIT has not "colorably" alleged, or even plausibly alleged, its conspiracy claim. Under Texas law, "civil conspiracy is a theory of vicarious liability and not an independent tort."[281] "[T]he elements of civil conspiracy [are] "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result."[282] While HMIT alleges that "Defendants conspired with each other to unlawfully breach fiduciary duties,"[283] it is simply a "legal conclusion" and not the kind of allegation that the court must assume to be true even for purposes of determining plausibility under a motion to dismiss.[284]

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[279] *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M)(which provides for the application of Texas law to "the rights and obligations arising under this Plan" except for "corporate governance matters.")

[280] *See English v. Narang*, 2019 WL 1300855, at *14 (Del. Ch. Mar. 20, 2019) ("As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.") (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at *10 (Tex. App. Jan. 25, 2022) ("[A] defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.") (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)). Because HMIT's breach of fiduciary duty claim is governed by Delaware law, its aiding and abetting theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas). By contrast, "conspiracy is not an internal affair" or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

[281] *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019).

[282] *Id.* at 141 (cleaned up).

[283] Proposed Complaint ¶ 76.

[284] *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66).

HMIT repeats four times that Seery provided MNPI to Farallon and Stonehill as a "as a *quid pro quo*" for "additional compensation,"[285] each time based upon conclusory allegations based "upon information and belief" and, frankly, pure speculation from Dondero that his imagined "scheme," "covert *quid pro quo,*" and secret "conspiracy" between Seery, on the one hand, and Farallon and Stonehill, on the other,[286] ***must have*** occurred because "[i]t made no sense for the [Claims] Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk" (i.e., "[t]he counter-intuitive nature of the purchases at issue compels the conclusion that the [Claims] Purchasers acted on inside information and Seery's assurance of great profits.")[287] Importantly, HMIT admits that the Claims Purchasers would have turned a profit based on the information available to them at the time of their acquisitions of the Purchased Claims.[288] HMIT's allegations about the level of potential profits were contradicted by their own allegations and other evidence admitted at the June 8 Hearing. But Dondero's speculation about what level of projected return would be sufficient to justify the acquisition of the claims by the Claims Purchasers, or any other third-party investor, does not give rise to a plausible inference that they acted improperly.[289] Thus, HMIT cannot meet

[285] Proposed Complaint ¶ 77; *see also id.* ¶¶ 4, 47, 74.

[286] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.").

[287] *Id.*

[288] *See, e.g.*, *id.* ¶ 3 (alleging that acquiring the claims "did not offer a ***sufficient*** potential profit to justify the publicly disclosed risk")(emphasis added); ¶ 43 ("Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . ."); ¶ 49 ("Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* ***significant*** profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.") (third emphasis added).

[289] In fact, the court did not allow Mr. Dondero to testify regarding what kind of information a hypothetical investor in bankruptcy claims would require or what level of potential profits would justify the purchase of bankruptcy claims by investors in the bankruptcy claims trading market because he was testifying as a fact witness, not an expert. Thus, the court only allowed Dondero to testify as to what data ***he*** (or entities he controls or controlled) would rely on, what ***his*** risk tolerance would have been, and what level of potential profits ***he*** would have required to purchase an allowed unsecured bankruptcy claim in a post-confirmation situation. June 8 Hearing Transcript, 129:6-130:4.

its burden, under the Gatekeeper Colorability Test, of making a prima facie showing that its allegations do not lack foundation or merit. Nor can it meet a plausibility standard.

In addition, contrary to the Proposed Complaint's statement that it would have been "***impossible*** for Stonehill and Farallon (in the absence of insider information) to forecast ***any*** significant profit at the time of their multi-million-dollar investments," the evidence showed there were already reports in the financial press that MGM was engaging with Amazon, Apple, and others in selling its media portfolio, and thus the prospect of an MGM transaction increasing the value of, and return on, the Purchased Claims, "at the time of their multi-million-dollar investments" was publicly available information.[290] HMIT's suggestion that the Claims Purchasers were in possession of inside information not publicly available when they acquired the Purchased Claims is simply not plausible. Nor is HMIT's allegation that "[u]pon information and belief" Farallon "conducted no due diligence but relied on Seery's profit guarantees" plausible. The allegations regarding Farallon not conducting any due diligence are based, again, entirely on Dondero's speculation and inferences he made from what Patel and Linn (of Farallon) allegedly told him on May 28, 2021; Dondero did not testify that either Patel or Linn ever told him specifically that they had conducted no due diligence. HMIT's allegations in the Proposed Complaint that ***Farallon*** "conducted no due diligence," are based on Dondero's speculation, unsubstantiated, and contradicted by the testimony of Seery, who testified that emails to him from Linn in June 2020 and later in January 2021 indicated to him that Farallon, at least, had been conducting some level of due diligence in that they had been following and paying attention to the

[290] The court notes, as well, that the Claim Purchasers acquired the UBS claims in August 2021—approximately two and a half months ***after*** the announcement of the MGM-Amazon transaction (which was on May 26, 2021)—a fact that HMIT makes no attempt to harmonize with its conspiracy theory that the Claims Purchasers profited from the misuse of MNPI allegedly given to them by Seery.

Highland case.[291] In addition, there are no allegations in the Proposed Complaint regarding whether Stonehill conducted due diligence or not, and Patrick testified that neither he nor HMIT had any personal knowledge of how much due diligence Farallon or Stonehill did prior to acquiring the Purchased Claims.[292] The court finds and concludes that HMIT's allegations of aiding and abetting and conspiracy in Counts II and III of the Proposed Complaint are based on unsubstantiated inferences and speculation, lack internal consistency, and lack consistency with verifiable public facts. Accordingly, HMIT has failed to show that these claims have a foundation and merit and has also failed to show that they are plausible.

c) HMIT's Proposed Claims Set Forth in Counts IV (Equitable Disallowance), V (Unjust Enrichment and Constructive Trust), and VI (Declaratory Relief) of the Proposed Complaint

i. Count IV (Equitable Disallowance).

In Count IV of its Proposed Complaint, HMIT seeks "equitable disallowance" of the claims acquired by Farallon's and Stonehill's special purpose entities Muck and Jessup, "to the extent over and above their initial investment," and, in the alternative, equitable subordination of their claims to all claims and interests, including HMIT's unvested Class 10 Contingent Claimant Trust Interest, "given [their] willful, inequitable, bad faith conduct" of allegedly "purchasing the Claims based on material non-public information" and being "unfairly advantaged" in "earning significant profits on their purchases."[293] As noted above, these remedies are not available to HMIT.[294]

First, HMIT's request to equitably subordinate the Purchased Claims to all claims and interests is not permitted because Bankruptcy Code § 510(c), by its terms, permits equitable

[291] *See* June 8 Hearing Transcript, 239:6-21.
[292] *See id.*, 310:19-312:2.
[293] Proposed Complaint ¶¶ 83-87.
[294] *See infra* pages 74-75.

subordination of a ***claim to other claims*** or an ***interest to other interests*** but does not permit equitable subordination of a ***claim to interests***.

Second, "equitable" disallowance of claims is not an available remedy in the Fifth Circuit pursuant to the *Mobile Steel* case.[295]

Third, reconsideration of an already-allowed claim in a bankruptcy case can only be accomplished through Bankruptcy Code § 502(j), which, pursuant to Federal Rule of Bankruptcy Procedure 9024, allows reconsideration of allowance of a claim that was allowed following ***a contest*** (which is certainly the case with respect to the Purchased Claims) based on the "equities of the case." But this is only if the request for reconsideration is made within the one-year limitation prescribed in Rule 60(c) of the Federal Rules of Civil Procedure. HMIT's request for disallowance of Muck and Jessup's Purchased Claims (if it could somehow be construed as a request for reconsideration of their claims), is clearly untimely, as it is being made well beyond a year since their allowance by this court following contests and approval of Rule 9019 settlements. Thus, the court finds that HMIT has not alleged a colorable or even plausible claim in Count IV of the Proposed Complaint and, therefore, the Motion for Leave should be denied.

ii. Count V (Unjust Enrichment and Constructive Trust)

In Count V of the Proposed Complaint, HMIT alleges that, "by acquiring the Claims using [MNPI], Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity" and that "[a]llowing [the Claims Purchasers] to retain their ill-gotten benefits would be unconscionable;" thus, HMIT alleges, the Claims Purchasers "should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment" and "a constructive trust should be imposed on such proceeds . . . ."[296]

[295] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

[296] Proposed Complaint ¶¶ 89-93.

HMIT alleges further that "Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restitute all compensation he has received from the outset of his collusive activities" and "[a]lternatively he should be required to disgorge and restitute all compensation received since the Effective Date" over which a constructive trust should be imposed.[297] HMIT has not alleged a colorable or even a plausible claim for unjust enrichment or constructive trust in Count V.

Under Texas law,[298] "[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay."[299] Thus, "when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory."[300] Here, as noted above, HMIT's only alleged injury is a diminution of the value of its unvested Contingent Claimant Trust Interest by virtue of Seery's allegedly having wrongfully obtained excessive compensation, with the help of the Claims Purchasers. ***Yet Seery's compensation is governed by express agreements*** (i.e., the Plan and the CTA). Thus, HMIT's claim based on unjust enrichment is not an available theory of recovery.

iii. Count VI (Declaratory Relief)

HMIT seeks declaratory relief in Count VI of the Proposed Complaint, essentially, that Dondero's conspiracy theory is correct and that HMIT's would succeed on the merits with respect

[297] *Id.* ¶ 94.

[298] Under the Plan, Texas law governs HMIT's "claim" for unjust enrichment because it is not a "corporate governance matter." (Plan Art. XII.M.) It also governs HMIT's "claim" for constructive trust, which "is merely a remedy used to grant relief on the underlying cause of action." *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

[299] *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).

[300] *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)).

to the Proposed Claims if it were permitted leave to bring them in an adversary proceeding.[301] But, a request for declaratory relief is not "an independent cause of action"[302] and "in the absence of any underlying viable claims such relief is unavailable."[303] This court has already found and concluded that HMIT would not have constitutional or prudential standing to bring the underlying causes of action in the Proposed Complaint. This court has also found and concluded that all of the Proposed Claims are without foundation or merit and are not even plausible and are all; being brought for the improper purpose of continuing Dondero's vexatious, harassing, bad-faith litigation. Thus, HMIT would not be entitled to pursue declaratory judgement relief as requested in Count VI of the Proposed Complaint.

d) HMIT Has No Basis to Seek Punitive Damages

HMIT separately alleges that the Claims Purchasers' and Seery's "misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others," thus entitling HMIT to an award of punitive damages under applicable law. But, HMIT abandoned its proposed fraud claim that was in its Original Proposed Complaint, so its sole claim for primary liability is Seery's alleged breach of his fiduciary duties. And under Delaware law, the "court cannot award punitive damages in [a] fiduciary duty action."[304]

[301] Proposed Complaint ¶¶ 96-99.

[302] *See Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 932 (5th Cir. 2023).

[303] *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at *2 (S.D. Tex. June 7, 2016) (citing *Collin Cty. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)); *see also Hopkins v. Cornerstone Am.*

[304] *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff'd* 682 F. App'x 24 (2d Cir. 2017).

3. HMIT Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test Because It Seeks to Bring the Proposed Complaint for Improper Purposes of Harassment and Bad-Faith, Vexatiousness.

Under this court's Gatekeeper Colorability Test, in addition to showing that its allegations and claims are not without foundation or merit, HMIT must also show that the Proposed Claims are not being brought for any improper purpose. Taking into consideration the court's knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, the court finds that HMIT is acting at the behest of, and under the control or influence of, Dondero in continuing to pursue harassing, bad faith, vexatious litigation to achieve his desired result in these bankruptcy proceedings. So, in addition to failing to show that its Proposed Claims have foundation and merit, HMIT cannot show that it is pursuing the Proposed Claims for a proper purpose and, thus, cannot meet the requirements under the Gatekeeper Colorability Test; HMIT's Motion for Leave should be denied.

IV. CONCLUSION

The court concludes, having taken into consideration both its knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, that HMIT's Motion for Leave should be denied for three independent reasons: (1) HMIT would lack constitutional standing to bring the Proposed Claims (and, thus, the federal courts would lack subject matter jurisdiction over the Proposed Claims); (2) even if HMIT would have constitutional standing to pursue the Proposed Claims, it would lack prudential standing to bring the Proposed Claims; and (3) even if HMIT would have both constitutional standing and prudential standing to bring the Proposed Claims, it has not met its burden under the Gatekeeper Colorability Test of showing that its Proposed Claims are "colorable" claims—that the Proposed Claims are not without foundation, not without merit, and not being pursued for an improper purpose. Moreover,

even if this court's Gatekeeper Colorability Test should be replaced with a Rule 12(b)(6) "plausibility" standard, the Proposed Claims are not plausible.

Accordingly,

IT IS ORDERED that HMIT's Motion for Leave be, and hereby is **DENIED**.

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

Exhibit 3

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 31, 2023

United States Bankruptcy Judge

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

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

ORDER DENYING APPLICATION FOR EXPEDITED HEARING [DE # 3700]

This Order is issued in response to the *Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding* ("Expedited Haring Request") [DE # 3700] filed by Hunter Mountain Investment Trust ("HMIT" or "Movant") on March 28, 2023, at 4:09 p.m. C.D.T. The Expedited Hearing Request seeks a hearing within three days, or as soon thereafter as counsel can be heard, on HMIT's *Emergency Motion for Leave to File Verified Adversary Proceeding* ("Motion for Leave") which was filed on March 28, 2023, at 4:02 p.m. C.D.T.

The court has concluded that no emergency or other good cause exists, pursuant to Fed. R. Bankr. Proc. 9006, and the *Expedited Hearing Request* will be denied. The *Motion for Leave* will be set in the ordinary course (after 21 days' notice to affected parties)—i.e., after April 18, 2023.

The *Motion for Leave* is 37 pages in length and contains 350 pages of attachments. It seeks leave from the bankruptcy court—pursuant to the bankruptcy court's "gatekeeping" role[1] under the confirmed Chapter 11 plan of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor")—to sue at least the following parties: Muck Holdings, LLC ("Muck"); Jessup Holdings, LLC ("Jessup"); Farallon Capital Management, LLC ("Farallon"); Stonehill Capital Management, LLC ("Stonehill"); James P. Seery, Jr. ("Seery"); and John Doe Defendant Nos. 1-10 (collectively, the "Affected Parties"). The conduct that is described as a basis for the desired lawsuit is certain trading of unsecured claims that occurred in 2021 during the Highland bankruptcy case.[2] It appears that millions of dollars of damages are sought by Movant, who was formerly the largest indirect (ultimate) equity holder of Highland. The legal theories (e.g., breaches of fiduciary duties; fraud; conspiracy; equitable disallowance) are novel in the bankruptcy claims trading context. The bankruptcy court, pursuant to the Highland plan, will need to analyze whether such claims are "colorable" such that leave to sue should be granted.

The Affected Parties—and other parties in interest in the underlying bankruptcy case, for that matter—should be afforded a reasonable opportunity to respond to the *Motion for Leave*. While Movant, HMIT, has alleged that it may be facing a statute of limitations defense as to

[1] The bankruptcy court's "gatekeeping" role was recently affirmed by the Fifth Circuit in *In re Highland Capital Management, L.P.*, 48 F.4th 419, 438 (5th Cir. 2022).
[2] Notice of the claims trading was provided in filings in Highland bankruptcy case, as follows: Claim No. 23 (DE ## 2211, 2212, and 2215), Claim Nos. 190 and 191 (DE ## 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (DE # 2263), Claim No. 81 (DE # 2262), Claim No. 72 (DE # 2261).

some claims after April 16, 2023, it appears that Movant has known about the conduct underlying the desired lawsuit for well over a year, based on activity that has occurred in the bankruptcy court. *See, e.g., Memorandum Opinion and Order Granting James Dondero's Motion to Remand Adversary Proceeding to State Court, Denying Fee Reimbursement Request, and Related Rulings, Dondero v. Alvarez & Marsal CRF Management, LLC and Farallon Capital Management LLC* [DE # 22], in Adv. Proc. # 21-03051 (January 4, 2022). Thus, the need for an emergency hearing is dubious. Accordingly

IT IS ORDERED that the Expedited Hearing Request is denied.

Counsel shall contact the Courtroom Deputy for a setting on the *Motion for Leave*, which setting shall be no sooner than April 19, 2023.

* * * END OF ORDER * * *

Exhibit 4

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 10, 2023

United States Bankruptcy Judge

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

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

ORDER FIXING BRIEFING SCHEDULE AND HEARING DATE WITH RESPECT TO HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING AS SUPPLEMENTED

The Court conducted a status conference on April 24, 2023, concerning the final scheduling of *Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3760] (collectively, the "Underlying Motion"), as well as whether the hearing on the Underlying Motion would be evidentiary, and the Court having considered (i) the *Opposed Emergency Motion*

to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3738] (the "Motion")[1] filed by Highland Capital Management, L.P., and the Highland Claimant Trust; (ii) the *Joinder to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3740] filed by Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management, L.L.C., and Stonehill Capital Management LLC; (iii) the *Response and Reservation of Rights* [Docket No. 3748] filed by Hunter Mountain Investment Trust; (iv) the *Objection Regarding Evidentiary Hearing and Brief Concerning Gatekeeper Proceedings Relating to "Colorability"* [Docket No. 3758] filed by Hunter Mountain Investment Trust, and (v) the arguments of counsel,

IT IS HEREBY ORDERED that:

1. The hearing on Hunter Mountain Investment Trust's *Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3760] (collectively, the "Underlying Motion") shall be held in person on **June 8, 2023, at 9:30 a.m. (Central Time)** before the Honorable Stacey G. C. Jernigan, at **1100 Commerce Street, 14th Floor, Courtroom 1, Dallas, Texas**, and by Webex for those interested but not directly participating in the hearing.

2. Any responses to the Underlying Motion shall be filed no later than May 11, 2023.

3. Any replies in support of the Underlying Motion shall be filed no later than May 18, 2023.

4. The Court will advise the parties on or reasonably after May 18, 2023, whether the Court intends to conduct the hearing on an evidentiary basis.

###End of Order###

[1] All capitalized terms used but not defined herein have the meanings given to them in the Motion.

Approved as Form Only:

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Counsel for James P. Seery, Jr.

Exhibit 5

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 22, 2023

United States Bankruptcy Judge

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

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

ORDER PERTAINING TO THE HEARING ON HUNTER MOUNTAIN INVESTMENT TRUST'S MOTION FOR LEAVE TO FILE ADVERSARY PROCEEDING

[DE ## 3699 & 3760]

Based on the court's review of all of the parties' pleadings and briefing relating to the above-referenced motion and supplemental motion ("Motion for Leave"), the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave—and, in particular, pertaining to the court's required inquiry into whether "colorable" claims may exist, as described in the Motion for Leave. Therefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing if they so choose. This may include

examining any witness for whom a Declaration or Affidavit has already been filed. The parties will be allowed no more than three hours of presentation time each (allocated three hours to the movant and three hours to the aggregate respondents). This allocated presentation time may be spent in whatever manner the parties believe will be useful to the court (argument/evidence).

 # # # END OF ORDER # # #

United States Bankruptcy Court

Northern District of Texas

In re:

Highland Capital Management, L.P.

Debtor

Case No. 19-34054-sgj

Chapter 11

CERTIFICATE OF NOTICE

District/off: 0539-3 User: admin

Date Rcvd: May 23, 2023 Form ID: pdf012 Total Noticed: 1

The following symbols are used throughout this certificate:

Symbol	Definition
+	Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on May 24, 2023:

Recip ID		Recipient Name and Address
aty	+	Alan J. Kornfeld, Pachulski Stang Ziehl & Jones LLPL, 10100 Santa Monica Blvd., 13 Fl, Los Angeles, CA 90067-4114

TOTAL: 1

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI).

NONE

BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

NONE

NOTICE CERTIFICATION

I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 24, 2023 Signature: /s/Gustava Winters

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on May 22, 2023 at the address(es) listed below:

Name	Email Address
A. Lee Hogewood, III	on behalf of Interested Party NexPoint Real Estate Strategies Fund lee.hogewood@klgates.com matthew.houston@klgates.com;Sarah.bryant@klgates.com;Mary-Beth.pearson@klgates.com;litigation.docketing@klgates.com;Emily.mather@klgates.com;Artoush.varshosaz@klgates.com
A. Lee Hogewood, III	on behalf of Defendant NexPoint Advisors L.P. lee.hogewood@klgates.com, matthew.houston@klgates.com;Sarah.bryant@klgates.com;Mary-Beth.pearson@klgates.com;litigation.docketing@klgates.com;Emily.mather@klgates.com;Artoush.varshosaz@klgates.com
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Exhibit 6

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 26, 2023

United States Bankruptcy Judge

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

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

ORDER REGARDING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR EXPEDITED DISCOVERY OR, ALTERNATIVELY, FOR CONTINUANCE OF THE JUNE 8, 2023 HEARING

[Dkt. Nos. 3788 and 3791]

Having considered the *Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing* of Hunter Mountain Investment Trust ("HMIT") filed on May 24, 2023, at Dkt. No. 3788 ("Motion for Expedited Discovery"), and, separately, on May 25, 2023, at Dkt. No. 3791 ("Motion for Continuance," and, together with the Motion for Expedited Discovery, the "Motions"), and the arguments of counsel at the emergency hearing on the Motions held on Friday May 26, 2023, at 9:30 a.m.,

IT IS ORDERED that the Motion for Continuance be, and hereby is, **DENIED**;

IT IS FURTHER ORDERED that the Motion for Expedited Discovery be, and hereby is, **GRANTED**, in part and only to the extent as set forth below:

(1) To the extent any party would like to depose either James P. Seery, Jr. or James Dondero in advance of the June 8 hearing ("June 8 Hearing") on HMIT's *Emergency Motion for Leave to File Verified Adversary Proceeding* [Dkt. No. 3699] and *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* [Dkt. 3760] (together, the "Motion for Leave"), Mr. Seery and Mr. Dondero shall be made available for depositions ("Depositions") on a date and at a time agreeable to the parties that is no earlier than May 31, 2023, and no later than June 7, 2023, and no discovery or depositions of any other party or witness will be permitted prior to the June 8 hearing; and

(2) None of the parties shall be entitled to any other discovery, including the production of documents from Mr. Seery or Mr. Dondero, or any other party or witness pursuant to a subpoena *duces tecum*, or otherwise, prior to the conduct of the Depositions or to the court's ruling on the Motion for Leave following the June 8, 2023 hearing;

IT IS FURTHER ORDERED that, except as specifically set forth in this Order, HMIT's Motion for Expedited Discovery be, and hereby is, **DENIED**.

 # # # END OF ORDER # # #

Exhibit 7

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 16, 2023

United States Bankruptcy Judge

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

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

MEMORANDUM OPINION AND ORDER GRANTING JOINT MOTION TO EXCLUDE EXPERT EVIDENCE [DE # 3820]

I. INTRODUCTION.

BEFORE THIS COURT is yet another dispute in the continuing saga of the Chapter 11 bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor").

The Reorganized Debtor has been operating under a confirmed Chapter 11 plan for approximately two years now—a plan having been confirmed on February 22, 2021. The plan was never stayed; it went effective in August 2021; and it was affirmed almost in its entirety by

the United States Court of Appeals for the Fifth Circuit (in late summer 2022). A petition for writ of certiorari regarding the plan confirmation order has been pending at the United States Supreme Court since January 2023. Millions of dollars have been paid out to creditors under the plan, although the plan has not been completed.

This court uses the words "continuing saga" because there is a mountain of litigation that is still pending. First, there are numerous adversary proceedings still pending, in which the Reorganized Debtor and a Litigation Trustee appointed under the plan are seeking to liquidate claims that Highland has against others, in order to augment the pot of money available for unsecured creditors. Some of these adversary proceedings involve what seem like simple suits on promissory notes (albeit very large promissory notes), and others involve highly complex torts. There are numerous appeals pending and, from time to time, petitions for writs of mandamus have been filed post-confirmation. And there are new lawsuits popping up around every corner it seems.

To be sure, this post-confirmation litigation is not the "usual stuff," and the adverse parties in this ongoing post-confirmation litigation are not the "usual suspects." For example, the numerous post-confirmation adversary proceedings do not involve preference lawsuits or other Chapter 5 avoidance actions against non-insider creditors—as we so often see proliferate in Chapter 11 cases post-confirmation. And we do not have long-running proof of claim objections pending post-confirmation—because all of the proof of claim objections regarding non-insider creditors were resolved long ago (with major compromises reached and settlements approved by the court—some after formal mediation). And as for the myriad appeals, the non-insider creditors in this case—with proofs of claim asserted in the hundreds of millions of dollars—overwhelmingly supported Highland's confirmed plan and, therefore, they have not been appellants on any of the aforementioned appeals.

So who has been the adverse party in this deluge of post-confirmation litigation? The founder and former Chief Executive Officer ("CEO") of Highland, Mr. James Dondero personally, and entities that he controls (*e.g.,* family trusts; investment advisory firms; managed funds; and other entities—frequently organized offshore—that were not themselves debtors in the Highland Chapter 11 case but assert party-in-interest status in various capacities). To be clear, Mr. Dondero takes umbrage at the suggestion that ***all*** of the adverse parties in these numerous post-confirmation scuffles are controlled by him.

Which brings us to the current, post-confirmation contested matter before the court. Currently, a party called Hunter Mountain Investment Trust ("HMIT"), a Delaware trust, has filed a "gatekeeper motion"—that is, a motion seeking leave from this court to file an adversary proceeding in the bankruptcy court against the Reorganized Debtor's CEO and certain investors who purchased allowed unsecured claims in this case post-confirmation and pre-Effective Date (as further described below). HMIT's gatekeeper motion has given birth to a sideshow, so to speak, regarding ***what, if any, evidence the court ought to consider in connection with HMIT's gatekeeper motion—the latest "act" in such sideshow focusing on the propriety of considering expert testimony.***

Who or what exactly is HMIT? HMIT is an entity with no employees and no income whose only asset is a contingent right of recovery under the Highland confirmed plan—by virtue of HMIT having held a majority (99.5%) of the limited partnership interests in Highland pre-confirmation, which interests were classified in the plan in a "Class 10" (that was projected to receive no recovery). Mr. Dondero asserts that he does not control HMIT. HMIT represents that, since on or about August 2022, it has been solely controlled by a Mr. Mark Patrick (a former employee of Highland who left Highland one week after its Plan was confirmed and went to work for an entity

called "Skyview Group," that was formed by certain former Highland employees, and apparently now advises various affiliate entities of Mr. Dondero).[1] While HMIT only has one asset (the "Class 10" contingent interest), Mark Patrick has testified that HMIT is liable on a $62.6 million-dollar indebtedness that it owes to The Dugaboy Investment Trust (a family trust of which Mr. Dondero is the lifetime beneficiary), pursuant to a promissory note made by HMIT in favor of Dugaboy, in 2015, in exchange for Dugaboy transferring to HMIT an ownership interest in Highland. *See* Transcript 6/8/23 Hearing, at pp. 304-308 [DE # 3843]. *See also* Highland Exh. 51 from 6/8/23 Hearing [DE # 3817]. Mr. Patrick has testified that Dugaboy and HMIT have a settlement, pursuant to which, Dugaboy is paying HMIT's attorney's fees. Transcript 6/8/23 Hearing, at p. at 313:2-18 [DE # 3843].

II. HMIT'S MOTION FOR LEAVE TO FILE LAWSUIT (a.k.a. THE "GATEKEEPER MOTION").

To understand the procedural motion now before the court—***which deals with whether or not the bankruptcy court should allow or exclude expert witness testimony and documents*** (more fully described below)—one must understand the context in which it is being considered, which is the hearing on HMIT's *Emergency Motion for Leave to File Verified Adversary Proceeding* that was filed by HMIT (the "HMIT Motion for Leave"), which this court loosely refers to sometimes as the "Gatekeeping Motion."

The HMIT Motion for Leave, as alluded to, requests leave from the bankruptcy court to file a post-confirmation, post-Effective Date adversary proceeding pursuant to this bankruptcy court's "gatekeeping" orders and, specifically, the gatekeeping, injunction, and exculpation

[1] *See* DE # 2440 (Transcript of a 6/8/21 Hearing, at pp. 95:18-96:10).

provisions of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [DE # 1943], as modified (the "Plan"). The HMIT Motion for Leave, with attachments, as first filed, was 387 pages in length, and the attachments included a proposed complaint and two sworn declarations of the aforementioned former CEO of the Reorganized Debtor, Mr. Dondero. The HMIT Motion for Leave was later amended to eliminate the declarations of Mr. Dondero. DE ## 3815 & 3816. In a nutshell, HMIT desires leave to sue certain parties regarding ***the post-confirmation, pre-Effective Date purchase of allowed unsecured claims***. The proposed defendants would be:

> **Mr. James P. Seery, Jr.,** who now serves as the CEO of the Reorganized Debtor and also serves as the Trustee of the Highland Claimant Trust created pursuant to the Plan, and also was previously Highland's Chief Restructuring Officer ("CRO") during the case, then CEO, and, also, an Independent Board Member of Highland's general partner during the Highland case. Mr. Seery is best understood as the man who took Mr. Dondero's place running Highland—per the request of the Official Unsecured Creditors Committee.
>
> **Certain Claims Purchasers,** known as Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the "Claims Purchasers"). The Claims Purchasers purchased $240 million face value of unsecured claims post-confirmation and pre-Effective Date—which claims had already been allowed during the Highland case—in the spring of 2021 and another $125 million face value allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk's docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Official Unsecured Creditors Committee during the Highland bankruptcy case).
>
> **John Doe Defendant Nos. 1-10**, which are described to be "currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue."

The proposed plaintiffs would be:

HMIT, which represents that it was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited

partnership interests). HMIT represents that it currently holds a Class 10 interest under the confirmed Highland plan, which gives it a contingent interest in the Claimant Trust created under the plan, and as defined in the Claimant Trust Agreement ("CTA").

Reorganized Debtor, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

Highland Claimant Trust, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Highland Claimant Trust.

The gist of the complaint that HMIT seeks leave to file is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that "wrongful conduct occurred" and "improper trades" were made. HMIT Motion for Leave, 7. HMIT believes the Claim Purchasers paid around $160 million for the $365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland's Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. Also, Mr. Dondero purports to have concluded from conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Mr. Seery must have given these claims purchasers material nonpublic information ("MNPI") regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Mr. Seery shared MNPI regarding the likely imminent sale of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"), in which Highland had, directly and indirectly, substantial holdings. Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in

media reports for several months[2] and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[3] Note that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public). In summary, while HMIT's proposed complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Mr. Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor's estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors (who, incidentally, are not complaining) to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Mr. Seery, and are now happily approving Mr. Seery's allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Mr. Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages.

The individual counts that HMIT wants to allege are:

I. Breach of Fiduciary Duty (as to Mr. Seery)

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[2] *See* Highland Exh. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Exh. 26 (describing prospects of an MGM sale noting that, among its largest shareholders, was "Highland Capital Management, LP") (article October 11, 2020). *See also* Highland Exhs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for $8.4 billion).

[3] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid.

II. Breach of Fiduciary Duty and Knowing Participation in Breach of Fiduciary Duty (as to Claims Purchasers)

III. Fraud by Misrepresentation and Material Nondisclosure (as to all proposed defendants)[4]

IV. Conspiracy (as to all proposed defendants)

V. Equitable Disallowance (as to Muck and Jessup)

VI. Unjust Enrichment and Constructive Trust (as to all proposed defendants)

V. Declaratory Judgment (as to all proposed defendants)

III. NEXT, THE DELUGE OF ACTIVITY, IN MULTIPLE COURTS, AFTER THE FILING OF THE HMIT MOTION FOR LEAVE.

After the HMIT Motion for Leave was filed on March 28, 2023, there was two-and-a-half months of activity regarding ***what type of hearing the bankruptcy court would hold and when*** on the HMIT Motion for Leave. A timeline is set forth below.

3/28/23: The HMIT Motion for Leave was filed, along with a request for emergency hearing on same. DE ## 3699 & 3700. HMIT requested that the court schedule a hearing on the motion "on three (3) days' notice, and that any responses be filed no later than twenty-four hours before the scheduled hearing sought." DE # 3700, 2. The HMIT Motion for Leave was 37 pages in length, plus another 350 pages of supporting exhibits, including two sworn declarations of Mr. Dondero.

3/31/23: Bankruptcy Court entered order denying an emergency hearing on the HMIT Motion for Leave. DE # 3713. The court stated that it would set the hearing on normal notice (at least 21 days' notice), seeing no emergency.

4/4/23-4/12/23: HMIT pursued an unsuccessful interlocutory appeal and then a petition for writ of mandamus regarding the Bankruptcy Court's denial of an emergency hearing at first the District Court and then the Fifth Circuit.

4/13/23: Highland filed a motion asking the Bankruptcy Court to set a briefing schedule on the HMIT Motion for Leave, indicating that Highland's proposed timetable for same was opposed by HMIT. DE # 3738. The Claims Purchaser and Mr. Seery joined in that motion. DE ## 3740 & 3747. HMIT subsequently filed a response unopposed to a briefing schedule and status conference. DE # 3748.

[4] This Count III has gone in and out of the various drafts HMIT has filed with the court and was included in the latest version of the proposed complaint that was filed at DE # 3816.

4/21/23: HMIT filed a Brief [DE # 3758] before the status conference indicating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the Bankruptcy Court did not need evidence in order to exercise its gatekeeping function and determine if HMIT has a "colorable" claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

4/24/23: The Bankruptcy Court held a status/scheduling conference; there was extensive discussion among all the parties regarding what type of hearing there needed to be on the HMIT Motion for Leave. HMIT was adamant there should be no evidence. Highland and Mr. Seery argued they ought to be able to cross-examine Mr. Dondero since his sworn declarations had been attached to the HMIT Motion for Leave as "objective evidence" that "supported" the HMIT Motion for Leave. DE #3699, p. 2. HMIT stated that it would withdraw Mr. Dondero's declarations, but not if the court was going to allow evidence.

5/11/23: Bankruptcy Court entered Order [DE # 3781] fixing a briefing schedule for the parties and stating that the court would "advise the parties on or reasonably after May 18, 2023, whether the Court intend[ed] to conduct the hearing on an evidentiary basis."

5/22/23: Bankruptcy Court issued an Order [DE # 3787] after receipt of briefing, stating that "the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave—and, in particular, pertaining to the court's required inquiry into whether 'colorable' claims may exist, as described in the Motion for Leave. Therefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing if they so choose. This may include examining any witness for whom a Declaration or Affidavit has already been filed. The parties will be allowed no more than three hours of presentation time each (allocated three hours to the movant and three hours to the aggregate respondents). This allocated presentation time may be spent in whatever manner the parties believe will be useful to the court (argument/evidence)."

5/24/23: HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing. [DE # 3788 & 3789]. HMIT continued to urge that it did not think presentation of evidence was appropriate in connection with the HMIT Motion for Leave, but that "subject to and without waiving its objections, HMIT requests immediate leave to obtain all of its requested discovery on or before the specific dates identified in each deposition notice (with duces tecum), failing which the hearing on HMIT's Motion for Leave should be continued until HMIT has obtained such discovery. The requested discovery is generally described in this Motion, but is set forth with particularity in the Deposition Notices with Duces Tecum attached as Exhibits A-E. [paragraph numbering omitted.] In summary, HMIT seeks expedited depositions of corporate representatives of Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup") and also seeks the deposition of James A. Seery, Jr. ("Seery")." Deposition Notices were attached for each of these five parties. Nothing was stated about a possible need for (or intention to present) expert testimony.

5/26/23: The Bankruptcy Court held yet another status conference in response to HMIT's newest emergency motion. The Bankruptcy Court referred to this as a "second hearing on what kind of hearing we were going to have" on the HMIT Motion for Leave. The court heard more discussions on whether it was appropriate to consider evidence at the hearing on the HMIT Motion for Leave. Nothing was mentioned about possible experts. The court, continuing to believe that

there could be mixed questions of fact and law inherent in deciding the HMIT Motion for Leave, granted in part and denied in part HMIT's request for expedited discovery it sought of Mr. Seery and the Claims Purchasers. The Bankruptcy Court issued a follow-up order [DE # 3800] that provided: "(1) To the extent any party would like to depose either James P. Seery, Jr. or James Dondero in advance of the June 8 hearing ("June 8 Hearing") on HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. 3760] (together, the "Motion for Leave"), Mr. Seery and Mr. Dondero shall be made available for depositions ("Depositions") on a date and at a time agreeable to the parties that is no earlier than May 31, 2023, and no later than June 7, 2023, and no discovery or depositions of any other party or witness will be permitted prior to the June 8 hearing; and (2) None of the parties shall be entitled to any other discovery, including the production of documents from Mr. Seery or Mr. Dondero, or any other party or witness pursuant to a subpoena duces tecum, or otherwise, prior to the conduct of the Depositions or to the court's ruling on the Motion for Leave following the June 8, 2023 hearing" The Bankruptcy Court issued this ruling with the expectation—based on everything it heard—that HMIT did not wish for the court to consider evidence but, if it did, it thought it should get to depose Mr. Seery and the Claims Purchasers. The court reached what seemed like appropriate middle ground by allowing the deposition of Mr. Seery and allowing the other parties to depose Mr. Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Mr. Dondero had been seeking discovery from the Claims Purchasers in state court "Rule 202" proceedings for approximately two years.

June 5, 2023 (10:10 pm): HMIT filed its Witness and Exhibit List disclosing two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony).

June 7, 2023 (4:07 pm): A Joint Motion to Exclude Expert Testimony and Documents was filed by Highland, Mr. Seery, and the Highland Claimant Trust ("Motion to Exclude Expert Evidence").

June 8, 2023 (8:12 am): HMIT filed a Response to the Motion to Exclude Expert Evidence.

June 8, 2023 (9:30 am): The Bankruptcy Court commenced its hearing on the HMIT Motion for Leave. The parties desired for court to rule on whether the expert testimony and exhibits should be allowed into the record. After much discussion, the court informed parties that it had not had the opportunity to study their eleventh-hour filings, and that the court would go forward with the hearing as the court had earlier contemplated (three hours per side; no experts for now) and the court would take the Motion to Exclude Expert Evidence under advisement and would schedule a "Day 2" for the hearing on the HMIT Motion for Leave for the experts if it determined that was appropriate. The court gave Highland, Mr. Seery, and the Highland Claimant Trust a deadline of 6/12/23 to reply to HMIT's Response. They filed a Reply (in which the Claims Purchasers joined). The Bankruptcy Court ordered no more pleadings would be considered. HMIT filed another pleading on this topic on 6/13/23 [DE # 3845] and Highland and Mr. Seery responded to the HMIT additional pleading [DE # 3846] and then HMIT replied to their response [DE # 3847].

IV. TURNING, FINALLY, TO THE MOTION TO EXCLUDE EXPERT EVIDENCE

As indicated in the timeline above, HMIT designated on June 5, 2023, at 10:10 pm CDT, two expert witnesses to testify at the hearing on the HMIT Motion for Leave. The first one was Mr. Scott Van Meter, stating that he "may provide opinion testimony on issues relating to Mr. Seery's compensation and claims trading." The second one was Mr. Steve Pully, stating that he "may provide opinion testimony on issues relating to Mr. Seery's claims trading." To be clear, Mr. Seery is not alleged to have engaged in claims trading (i.e., he is not alleged to have either sold or purchased any claims in the Highland case). Rather, it is surmised by HMIT that Mr. Seery might have shared MNPI with the Claims Purchasers. Details about the two proposed experts' education, experience, and the likely substance of their testimony were provided.

Further, with regard to Mr. Van Meter, HMIT disclosed that he had analyzed the claims trading in the Highland case and holds the opinion that there are "red flags" plausibly indicating the use of MNPI in connection with the claim purchasers' investment in their claims –primarily among them the fact that the claims purchasers allegedly did not undertake due diligence. He also would apparently opine that Mr. Seery's compensation is not reasonable or excessive because not based on any market study and because the Claims Purchasers, as large creditors on the post-confirmation oversight committee, have the ability to control it.

Further, with regard to Mr. Pully, HMIT disclosed that the projections in the publicly available information (presumably the Disclosure Statement and Plan and accompanying exhibits, the Bankruptcy Schedules, and Monthly Operating Reports) would not have rewarded the Claims Purchasers with the type of economic return that hedge funds/private equity firms would expect to realize. Thus, they must have had some MNPI to convince them that the claims purchasing was worthwhile.

There are procedural problems and substantive problems with the Proposed Experts (hereinafter so called).

A. The Procedural Problems.

The timeline set forth above is highly problematic. Highland, Mr. Seery, and the Highland Claimant Trust refer to the timeline here as tantamount to "trial by ambush."

HMIT counters that it, in fact, complied with this court's local rules and national rules as well. As to the local rules, Local Bankruptcy Rule 9014-1(c) of the Northern District of Texas requires, in contested matters, the exchange of exhibits and witness lists with opposing parties at least 3 calendar days before a scheduled hearing (unless a specific order otherwise applies). The hearing on the HMIT Motion for Leave was scheduled for June 8, 2023, at 9:30 am CDT, and HMIT filed its exhibit and witness list on June 5, 2023, at 10:10 pm CDT—technically three calendar days before the hearing, albeit less than 72 hours before the hearing. As for the national rules, HMIT states that it was under no duty to disclose the existence or substance of expert testimony prior to the exchange of witness lists, because national Rule 9014 of the Federal Rules of Bankruptcy Procedure ("FRBP"), applying to contested matters, does not incorporate Rule 26(a)(2) of the Federal Rules of Civil Procedure ("FRCP"), which defines the content and timing for expert disclosures (unless the court directs otherwise, which it did not here).

HMIT's focus on these rules is disingenuous. The court does not view the Proposed Experts as having been appropriately and timely disclosed in light of the two-and-a-half-month timeline set forth above and—most importantly—the bankruptcy court's multiple prior conferences and orders setting the scope of the hearing and associated discovery. HMIT's revelation (approximately 60 hours before the hearing on the HMIT Motion for Leave) that it

sought to offer expert testimony came far too late. HMIT never raised even the prospect of expert testimony at any point in its multiple filings with the bankruptcy court (which consisted of many hundreds of pages) or during the two status/scheduling conferences on the HMIT Motion for Leave. During the two status/scheduling conferences, this court repeatedly asked HMIT what it wanted to do at the hearing on the HMIT Motion for Leave (as far as there being evidence or no evidence—zeroing in on the inconvenient complication for HMIT that it had already put in some evidence, through the filing of the declarations of Mr. Dondero in support of its motion, and this, at the very least, would entitle the parties to cross-examine him on the statements contained in the declarations). HMIT represented that it desired for the hearing to be conducted "on the pleadings only" and that it had or would withdraw the declarations of Mr. Dondero (it had not withdrawn the declarations as of the status/scheduling conferences). But, alternatively, if there would be evidence, HMIT wanted to conduct expedited discovery of documents, fact depositions, and corporate representative depositions. [DE # 3791]. ***HMIT made no mention of any experts***. Only after the bankruptcy court had ruled on HMIT's request for expedited discovery—and expressly limited the scope of discovery—did HMIT reveal its Proposed Experts [DE # 3818]. Obviously, the court would have fully vetted with the parties at the status/scheduling conferences the need for experts and the need for any discovery of them if HMIT mentioned it as a possibility.

Additionally, while HMIT focuses on the fact that FRBP 9014 excludes FRCP 26(a)(2)(b)'s requirements regarding expert witness disclosures and reports (absent the court directing otherwise), FRBP 9014 ***does*** include ***FRCP 26(b)(4)(A)***, in contested matters, which provides that "[a] party may depose any person who has been identified as an expert whose opinions may be presented at trial." *See* FRBP 9014(b); FRBP 7026. As alluded to above, this bankruptcy court had limited pre-hearing discovery to "depositions of Mr. Dondero and/or Mr. Seery" in reliance on

HMIT's representations, which omitted any reference to expert witnesses. By waiting until roughly 60 hours before the hearing to disclose the Proposed Experts, this resulted in Highland, Mr. Seery, and the Highland Claimant Trust not having sufficient time to seek to modify the court's prior status/scheduling orders, let alone take two expert depositions.

B. *The Substantive Problems*.

Finally, on a substantive level, the Proposed Experts' testimony and documents are inadmissible because they will not "help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702(a). Federal Rule of Evidence 702(a) provides that a witness who is qualified as an expert may testify in the form of an opinion or otherwise if, among other requirements, "the expert's scientific, technical, or otherwise specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue."

The fact finder here at this stage, in the context of determining whether HMIT's proposed complaint asserts "colorable" claims under the gatekeeper provision of the Plan, obviously, is the bankruptcy judge. The judge, thus, may decide whether the Proposed Experts would help her analyze or understand an issue. This court is well within its discretion to conclude that the Proposed Experts would not advance the judge's analysis. This bankruptcy judge has had years of experience (both before and after her 17 years as a bankruptcy judge) with the topic of claims purchasing that sometimes occurs during a bankruptcy case. The court notes, anecdotally, that the activity of investing in distressed debt (which frequently even occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and has, indeed, been for a couple of decades. As noted by one scholar:

> The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in

> 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

ADAM J. LEVITIN, BANKRUPTCY MARKETS: MAKING SENSE OF CLAIMS TRADING, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010).

This judge has likewise had decades of experience with hedge funds and private equity funds. The court understands very well financial concepts such as return on investment, risk, and the handicapping of how certain events might impact recoveries. This court can take judicial notice that there was volatility in the capital markets during the time period of this case that would certainly factor into decisions to buy or sell claims.[5] This court understands the concepts of MNPI and fiduciary duties. The judge remembers very well when the possibility of an MGM-Amazon transaction flooded the news in late 2020 and 2021, and then became a reality. The court remembers asking the parties in the Highland case during open court about it, since it was widely known that Highland and its affiliates owned direct or indirect interests in MGM stock. This was before, by the way, certain of the claims purchases that are at issue here were made.

Finally, this judge has decades of experience with executive compensation in bankruptcy cases and in connection with post-confirmation trusts.[6] In fact, this court approved Mr. Seery's

[5] A court "can, of course, take judicial notice of stock prices." *Schweitzer v. Invs. Comm. of Phillips 66 Savings Plan*, 960 F.3d 190, 193 n.3 (5th Cir. 2020).

[6] This court even ran across one article that the above-signing judge published on the topic before she was a judge. *Bringing Home the Bacon, or Just Being a Hog? Employee and Executive Compensation Issues in Chapter 11*, 22nd Annual Bankruptcy Conference, The University of Texas School of Law (Nov. 2003) (co-authored with Frances Smith). The bankruptcy judge does not mean to suggest that a 20-year-old article makes anyone per se an expert. It

compensation early on during the bankruptcy case (in 2020), and his compensation was negotiated by the former members of the Official Unsecured Creditors Committee, among others. Mr. Seery's compensation during this bankruptcy case was obviously subject to a motion, notice and a hearing, and was fully disclosed. Mr. Seery's base compensation now is the same as what this court approved back in 2020. Certainly, in a bankruptcy case, one size does not fit all. Highland is a unique case that has involved great contentiousness and hundreds of millions of dollars of assets. Mr. Seery's compensation reflects these circumstances, among other things.

In summary, with all due respect to the Proposed Experts, it is hard for this court to conceive how they could help this court to understand the evidence or determine a fact in issue relative to the gatekeeping motion—as contemplated by Fed. R. Evid. 702(a)—when this court deals with the issues presented by motion, and similar issues, somewhat regularly.

Accordingly, the court will exercise its discretion under Fed. R. Evid 702(a) and exclude the Proposed Experts testimony and HMIT Exhibits 39-52 relating to same.

A further opinion and order will be forthcoming on the HMIT Motion for Leave.

END OF MEMORANDUM OPINION AND ORDER####

is merely to further the point that a long-term bankruptcy judge with Chapter 11 experience typically has developed expertise regarding executive compensation issues pre-and post-confirmation in Chapter 11 cases.

Exhibit 8

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 1, 2023

United States Bankruptcy Judge

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

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

ORDER STRIKING HMIT'S EVIDENTIARY PROFFER PURSUANT TO RULE 103(a)(2) AND LIMITING BRIEFING

The Court has reviewed Hunter Mountain Investment Trust's ("HMIT") *Evidentiary Proffer Pursuant to Rule 103(a)(2)* ("Proffer"; Dkt. No. 3858), the *Highland Parties' Joint Objections To And Motion To Strike HMIT's Evidentiary Proffer Pursuant to Rule 103(a)(2)* ("Motion"; Dkt. No. 3860) filed by Highland Capital Management, L.P., the Highland Claimant Trust, and James P. Seery, Jr. (collectively, the "Highland Parties"), and the *Claims Purchasers' Joinder to the Highland Parties' Objections and Motion to Strike HMIT's Purported Proffer* (Dkt. No. 3861) filed by Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management,

L.L.C., and Stonehill Capital Management LLC (collectively with HMIT and the Highland Parties, the "Parties"). After due deliberation, the Court has determined that good and sufficient cause has been shown for the relief requested in the Motion. It is therefore **ORDERED** that:

1. The Motion is **GRANTED**.

2. The Proffer and its accompanying declarations are stricken from the record for the reasons set forth in the Court's June 27, 2023 email (attached hereto as Exhibit A). The Court directs the Clerk to remove docket entry 3858 from the docket.

3. The Parties shall not file any additional briefs, motions, pleadings, proffers, or other submissions with the Court in connection with the Motion, the Highland Parties' *Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully* (Dkt. No. 3820), or any proposed/excluded expert evidence relative to HMIT's *Motion for Leave to File Verified Adversary Proceeding* (Dkt. No. 3699).

END OF ORDER

Exhibit A

From: Traci Ellison <Traci_Ellison@txnb.uscourts.gov>
Date: June 27, 2023 at 2:40:54 PM CDT
To: "Stancil, [illegible]" <[illegible]@[illegible]>, "Annable, Zachery" <zannable@haywardfirm.com>, "Sawnie A. McEntire" <smcentire@pmmlaw.com>, "Roger L. McCleary" <rmccleary@pmmlaw.com>, "Omar J. Alaniz" <OAlaniz@reedsmith.com>, "McIlwain, Brent R (DAL - X59481)" <Brent.McIlwain@hklaw.com>
Subject: 19-34054-sgj11 Highland Capital Management, L.P.

Dear Counsel:

Please see the following message from Judge Jernigan:

"With regard to the Evidentiary Proffer ("Proffer") of Hunter Mountain Investment Trust ("HMIT") filed at DE # 3858 on 6/19/23 (i.e., after the 6/8/23 hearing on HMIT's Motion for Leave to File Verified Adversary Proceeding [DE # 3699] and after the court's written 6/16/23 ruling regarding the admissibility of the proposed expert evidence), the court has determined that the Proffer is unnecessary. Rule 103(a)(2) does not apply if "the substance" of the excluded evidence "was apparent from the context." Fed. R. Evid. 103(a)(2). Here, "the substance" of the excluded evidence was quite apparent from the "context"--more specifically, the witness and exhibit list filed by HMIT, the proposed exhibits offered [see DE # 3818], and the statements of HMIT's counsel on the record at the 6/8/23 hearing.

The court is aware of the motion to strike the Proffer [DE # 3860] and the Joinder therein [DE # 3861]. The court concludes it is appropriate to grant the motion to strike. The court directs counsel for movants to upload a form of order that grants their motion to strike. The order shall direct the Clerk to mark DE # 3858 as stricken from the record as both filed without authority and unnecessary pursuant to FRE 103(a)(2).

The parties are directed to file no more pleadings in the bankruptcy court regarding this issue of the proposed/excluded expert evidence relative to DE # 3699. The court has ruled [at DE # 3854]."

Thank you,
Traci

The following constitutes the ruling of the court and has the force and effect therein described.

Signed August 25, 2023

United States Bankruptcy Judge

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

IN RE:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-sgj-11**
Reorganized Debtor.	§	

MEMORANDUM OPINION AND ORDER PURSUANT TO PLAN "GATEKEEPER PROVISION" AND PRE-CONFIRMATION "GATEKEEPER ORDERS": DENYING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING[1]
[BANKR. DKT. NOS. 3699, 3760, 3815, and 3816]

I. INTRODUCTION

BEFORE THIS COURT is yet another post-confirmation dispute relating to the Chapter 11 bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor").

[1] On August 2, 2023, this court signed an Order [Bankr. Dkt. No. 3897] that was agreed to among various parties, after the filing of a Motion to Stay and Compel Mediation [Bankr. Dkt. No. 3752] filed by James D. Dondero and related entities. Pursuant to paragraph 7 of that order, certain pending matters in the bankruptcy court are stayed pending mediation. The parties did not agree to stay the matter addressed in this Memorandum Opinion and Order.

It is now more than two and half years since the confirmation of Highland's Plan[2]—the Plan having been confirmed on February 22, 2021.[3] The Plan was never stayed; it went effective on August 11, 2021 ("Effective Date"), and it was affirmed almost in its entirety by the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit"), in late summer 2022, including an approval of the so-called Gatekeeper Provision[4] therein. The Gatekeeper Provision—and how and whether it should now be exercised or interpreted to allow a certain lawsuit to be filed—is at the heart of the current *Emergency Motion for Leave to File Verified Adversary Proceeding* [Bankr. Dkt. Nos. 3699, 3760, 3815, 3816] (collectively, the "Motion for Leave") filed by a movant known as Hunter Mountain Investment Trust ("HMIT").

A. Who is the Movant, HMIT?

Who is HMIT? It is undisputed that it is a former equity owner of Highland. It held 99.5% of Highland's Class B/C limited partnership interests and was classified in a Class 10 under the confirmed Plan, which class treatment provided it with a contingent interest in the Highland Claimant Trust ("Claimant Trust") created under the Plan, and as defined in the Claimant Trust Agreement. This means that HMIT could receive consideration under the Plan if all claims against Highland are ultimately paid in full, with interest. As later further discussed, it is undisputed that

[2] Capitalized terms not defined in this introduction shall have the meaning ascribed to them below.

[3] The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order")[Bankr. Dkt. No. 1943].

[4] In an initial opinion dated August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in large part, "revers[ing] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan's exculpation, and affirm[ing] on all remaining grounds." *In re Highland Capital Management, L.P.*, No. 21-10449, 2022 WL 3571094, at *1 (5th Cir. Aug. 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022, "for the limited purpose of clarifying and confirming one part of its August 19, 2022 opinion," the Fifth Circuit withdrew its original opinion and replaced it with its opinion reported at *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419, 424 (5th Cir. 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section "IV(E)(2) – *Injunction and Gatekeeper Provisions*" of the original opinion: "The injunction and gatekeeper provisions are, on the other hand, perfectly lawful." was replaced with "We now turn to the Plan's injunction and gatekeeper provisions." In all other respects, the Fifth Circuit panel's original ruling remained unchanged. Petitions for writs of certiorari regarding the Confirmation Order have been pending at the United States Supreme Court since January 2023.

HMIT's only asset is its contingent interest in the Claimant Trust. It has no employees or revenue. HMIT's representative has testified that HMIT is liable on more than $62 million of indebtedness owed to The Dugaboy Investment Trust ("Dugaboy"), a family trust of which James Dondero ("Dondero"), the co-founder and former chief executive officer ("CEO") of Highland, and his family members are beneficiaries, and that Dugaboy also is paying HMIT's legal fees. HMIT vehemently disputes the suggestion that it is controlled by Dondero.

B. What Does the Movant HMIT Seek Leave to File?

HMIT seeks leave to file an adversary proceeding ("Proposed Complaint")[5] in the bankruptcy court to bring claims on behalf of itself and, derivatively, on behalf of the Reorganized Debtor and the Claimant Trust for alleged breach of fiduciary duties by the Reorganized Debtor's CEO and Claimant Trustee, James P. Seery, Jr. ("Seery") and conspiracy against: (1) Seery; and (2) purchasers of $365 million face amount of ***allowed*** unsecured claims in this case, who purchased their claims post-confirmation but prior to the occurrence of the Effective Date of the Plan ("Claims Purchasers,"[6] and with Seery, the "Proposed Defendants"). To be clear (and as later further explained), the claims acquired by the Claims Purchasers were acquired by them after extensive litigation, mediation, and settlements were approved by the bankruptcy court and after the original claims-holders had voted on the Plan and after Plan confirmation. As later explained,

[5] In its original Motion for Leave filed at Bankruptcy Docket No. 3699 on March 28, 2023, HMIT sought leave to file the proposed complaint ("Initial Proposed Complaint") attached as Exhibit 1 to the Motion for Leave. Nearly a month later, on April 23, 2023, HMIT filed a *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* ("Supplement") [Bankr. Dkt. No. 3760], a revised proposed complaint as Exhibit 1-A, and stating that "[t]he Supplement is not intended to supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action." Supplement, ¶ 1 and Exhibit 1-A. It is this revised proposed complaint to which this court will refer, when it uses the defined term "Proposed Complaint," even though HMIT filed redacted versions of its Motion for Leave on June 5, 2023 at Bankruptcy Docket Nos. 3815 and 3816 that attached the Initial Proposed Complaint as Exhibit 1.

[6] The Claims Purchasers identified in the Proposed Complaint are Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which is a special purpose entity created by Farallon to purchase allowed unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which is a special purpose entity created by Stonehill to purchase allowed unsecured claims against Highland.

the Claims Purchasers filed notices of their purchases as required by Bankruptcy Rule 3001(e)(2), and no objections were filed thereto. In any event, various damages or remedies are sought against the Proposed Defendants revolving around the Claims Purchasers' claims purchasing activities.

C. Why Does HMIT Need to Seek Leave?

As alluded to above, HMIT filed its Motion for Leave to comply with the provision in the Plan known as a "gatekeeper" provision ("Gatekeeper Provision") and with this court's prior gatekeeper orders entered in January and July 2020, which all require that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain (1) a finding from the bankruptcy court that its proposed claims ("Proposed Claims") are "colorable"; and (2) specific authorization by the bankruptcy court to pursue the Proposed Claims.[7] The Gatekeeper Provision was not included in the Plan *sans raison*. Indeed, as the Fifth Circuit recognized in affirming confirmation of the Plan, the Gatekeeper Provision (along with the other "protection provisions" in the Plan) had been included in the Plan to address the "continued litigiousness" of Mr. James Dondero ("Dondero"), Highland's co-founder and former chief executive officer ("CEO"), that began prepetition and escalated following the post-petition "nasty breakup" between Highland and Dondero, by "screen[ing] and prevent[ing] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[8]

[7] To be clear, the Gatekeeper Provision in the Plan was not the first or even second injunction of its type issued in this bankruptcy case. The Gatekeeper Orders were entered by the bankruptcy court pre-confirmation: (a) in January 2020, just a few months into the case, as part of this court's order approving a corporate governance settlement between Highland and its unsecured creditors committee, in which Dondero, Highland's co-founder and former CEO, was removed from any management role at Highland and three independent directors ("Independent Directors") were appointed in lieu of a chapter 11 trustee being appointed ("January 2020 Order"); and (b) in July 2020, in this court's order authorizing the employment of Seery (one of the three Independent Directors) as the Debtor's new Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative ("July 2020 Order," together with the January 2020 Order, the "Gatekeeper Orders").

[8] *See Highland Capital*, 48 F.4th at 427, 435.

D. Some Further Context Regarding Post-Confirmation Litigation Generally.

Since confirmation of the Plan, hundreds of millions of dollars have been paid out to creditors under the Plan, and there are numerous adversary proceedings and contested matters still pending, at various stages of litigation, in the bankruptcy court, the district court, and the Fifth Circuit, almost exclusively involving Dondero and entities that he owns or controls. To be sure, the post-confirmation litigation in this case does not consist of the usual adversaries and contested matters one typically sees by and against a reorganized debtor and/or litigation trustee, such as preference or other avoidance actions and litigation over objections to claims that are still pending after confirmation of a plan. Indeed, the claims of the largest creditors in this case (with claims asserted in the aggregate of more than one billion dollars) were successfully mediated and incorporated into the Plan—a plan which was ultimately accepted by the votes of an overwhelming majority of Highland's non-insider creditors. Dondero and entities under his control were the only parties who appealed the Confirmation Order, and Dondero and entities under his control have been the appellants in virtually every appeal that has been filed regarding this bankruptcy case. Petitions for writs of mandamus (which have been denied) have been filed in the district court and in the Fifth Circuit by some of these same entities, including one by HMIT, when this court denied setting an ***emergency*** hearing on the instant Motion for Leave (HMIT had sought a setting on three-days' notice).

A recent list of active matters involving Dondero and/or entities and/or individuals affiliated or associated with him, filed in the bankruptcy case by Highland and the Claimant Trust, reveals that there were at least 30 pending and "Active Dondero-Related Litigation" matters as of July 14, 2023: six (6) proceedings in this court; six (6) active appeals or actions are pending in the District Court for the Northern District of Texas; seven (7) appeals in the Fifth Circuit; two (2)

petitions for writs of certiorari in the United States Supreme Court; and nine (9) other proceedings or actions with or affecting the Highland Parties ("Highland," the "Claimant Trust," and "Seery") in various other state, federal, and foreign jurisdictions.[9]

The above-described context is included because the Proposed Defendants assert that the Motion for Leave is just a continuation of Dondero's unrelenting barrage of meritless and harassing litigation, making good on his oft-mentioned alleged threat to "burn down the place" after not achieving the results he wanted in the Highland bankruptcy case. Indeed, the Motion for Leave was filed after two years of unsuccessful attempts by, first, Dondero personally, and then HMIT to obtain pre-suit discovery from the Proposed Defendants (i.e., the Claims Purchasers) through two different Texas state court proceedings, pursuant to Tex. R. Civ. P. 202 ("Rule 202"). In each of these Rule 202 proceedings, Dondero and HMIT espoused the same Seery/Claims

[9] *See* Bankr. Dkt. No. 3880 (filed on July 14, 2023, providing a list of "Active Dondero-Related Litigation" and noting that the list is "a summary of active pending actions only and does not include actions that were resolved by final orders, including actions finally resolved after appeals to the U.S. District Court for the Northern District of Texas and/or the U.S. Court of Appeals for the Fifth Circuit."). Just since the filing by the Highland Parties of the list, ***three*** of the appeals pending in the Fifth Circuit have been decided against the Dondero-related appellants, two of which upheld the district court's dismissal of appeals by Dondero-related entities of bankruptcy court orders based on the lack of bankruptcy appellate standing on behalf of the appellant. On July 19, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by NexPoint Advisors, L.P. ("NexPoint") of bankruptcy court orders approving professional compensation on the basis that NexPoint did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the orders. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, 74 F.4th 361 (5th Cir. 2023). On July 31, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy—the Dondero family trust that, like the movant here in this Motion for Leave, was the holder of a limited partnership interest in Highland, and, as such, now has a contingent interest in the Claimant Trust—which had appealed a bankruptcy court order approving a Rule 9019 settlement on the same basis: Dugaboy did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the settlement order. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10960, 2023 WL 4861770 (5th Cir. July 31, 2023). The July 31, 2023 ruling followed the Fifth Circuit's ruling on February 21, 2023, affirming the district court's dismissal of an appeal by Dugaboy of yet another bankruptcy court order for lack of bankruptcy appellate standing. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023). These rulings by the Fifth Circuit are discussed in greater detail below. The third ruling by the Fifth Circuit since July 14, 2023, was issued by the Fifth Circuit in a per curium opinion not designated for publication on July 26, 2023, this one affirming the district court's affirmance of yet another Rule 9019 settlement order of the bankruptcy court that was appealed by Dugaboy, agreeing with the district court that the bankruptcy court had jurisdiction to approve a settlement among the Debtor, an entity affiliated with the Debtor but not a debtor itself, and UBS (the Debtor's largest prepetition creditor and the seller of its claims to the Claims Purchasers, which is one of the claims trading transactions HMIT complains about in the Proposed Complaint). *See The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P.*, No. 22-10983, 2023 WL 4842320 (5th Cir. July 26, 2023).

Purchasers conspiracy theory espoused in the Motion for Leave—that Seery must have provided one or more of the Claims Purchasers with material nonpublic information to induce them to want to purchase large, allowed, unsecured claims at a discount; a *quid pro quo* is suggested, such that the Claims Purchasers were allegedly told they would make a hefty profit on the claims they purchased and, in return, they would gladly "rubber stamp" Seery's "excessive compensation" as the Claimant Trustee of the Claimant Trust. In sum, HMIT alleges this constituted wrongful "insider trading" of the bankruptcy claims. In addition, certain lawyers for Dondero and Dugaboy sent letters reporting this alleged conspiracy and "insider trading" to the Texas State Securities Board ("TSSB") and the Executive Office of the United States Trustee ("EOUST").

It is against this background and in this context that the court must analyze, in the exercise of its gatekeeping function under the confirmed Plan and its prior Gatekeeping Orders, whether HMIT should be allowed to pursue the Proposed Claims (i.e., whether the Proposed Claims are "colorable" claims as contemplated under the Gatekeeper Orders and the Gatekeeper Provision of the Plan). The court held an evidentiary hearing on the Motion for Leave on June 8, 2023 ("June 8 Hearing"), during which the court admitted exhibits and heard testimony from three witnesses both in support of and in opposition to the Motion for Leave. Having considered the Motion for Leave, the response of the Proposed Defendants thereto, HMIT's reply to the response, and the arguments and evidence presented at the hearing on the Motion for Leave, the court denies HMIT's request for leave to pursue its Proposed Claims. The court's reasoning is set forth below.

II. BACKGROUND

A. Highland's Bankruptcy Case, Dondero's Removal as CEO, and the Plan

Highland was co-founded in Dallas in 1993 by Dondero and Mark Okada ("Okada"). It operated as a global investment adviser that provided investment management and advisory services and managed billions of dollars of assets, both directly and indirectly through numerous

affiliates. Highland's equity interest holders included HMIT (99.5%), Dugaboy (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. ("Strand"), which was wholly owned by Dondero and was the only general partner of Highland (0.25%). On October 16, 2019 (the "Petition Date"), Highland, with Dondero in control[10] and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims – many of which had finally become or were about to be liquidated (after a decade or more of contentious litigation in multiple fora all over the world—filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019. The official committee of unsecured creditors (the "Committee") (and later, the United States Trustee) expressed a desire for the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the specter of a possible appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.[11] As a result of this settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,[12] and three independent directors ("Independent Directors") were

[10] Mark Okada resigned from his role with Highland prior to the Petition Date.

[11] This order is hereinafter referred to as the "January 2020 Order" and was entered by the court on January 9, 2020 [Bankr. Dkt. No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Bankr. Dkt. No. 281].

[12] Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland's motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Bankr. Dkt. No. 338].

chosen to lead Highland through its chapter 11 case: Seery, John S. Dubel, and retired bankruptcy judge Russell Nelms. Given the Debtor's perceived culture of constant litigation while Dondero was at the helm, it was purportedly not easy to get such highly qualified persons to serve as independent board members. At the hearing on the corporate governance settlement motion, the court heard credible testimony that none of the Independent Directors would have taken on the role without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation from mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the Independent Directors without the bankruptcy court's prior authority. The gatekeeper provision approved by the court in its January 9 Order states,[13]

> No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation and did so "subject at all times to the supervision, direction and authority of the Independent Directors" and to his agreement to "resign immediately" "[i]n the event the Independent Directors determine for any reason that the Debtor shall no longer retain Dondero as an employee"[14] and to "not cause any Related Entity to terminate any agreements with the Debtor."[15] The court later

[13] January 2020 Order, 3-4, ¶ 10.

[14] January 2020 Order, 3, ¶ 8.

[15] *Id.* at ¶ 9.

entered, on July 16, 2020, an order approving the appointment of Seery as Highland's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative,[16] which included essentially the same "gatekeeper" language with respect to the pursuit of claims against Seery acting in these roles. The gatekeeper provision in the July 2020 Order was essentially the same as the gatekeeper provision in the January 2020 Order:

> No entity may commence or pursue a claim or cause of action of any kind against Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

July 2020 Order, 3, ¶5. Neither the January 2020 Order nor the July 2020 Order were appealed.

Throughout the summer of 2020, Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Dondero's plans failed to gain support, he and entities under his control engaged in substantial, costly, and time-consuming litigation for Highland.[17] As the Fifth Circuit described the situation, after Dondero's plans failed "he and other creditors began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital's management, threatening employees, and canceling trades between Highland Capital and its clients."[18] On October 9, 2020, Dondero resigned from all positions with the Debtor and its

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[16] *See* the July 16, 2020 order approving the retention by Highland of Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020 ("July 2020 Order") [Bankr. Dkt. No. 854].

[17] According to Seery's credible testimony during the hearing on confirmation of the Plan that had been negotiated between the Committee and the Independent Directors, Dondero had threatened to "burn the place down" if his proposed plan was not accepted. *See* Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20. Bankr. Dkt. No. #1894.

[18] *Highland Capital*, 48 F.4th at 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at *1, *26 (Bankr. N.D. Tex.

affiliates in response to a demand by the Independent Directors made after Dondero's purported threats and disruptions to the Debtor's operations.[19]

The Independent Directors and the Committee had negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan") [Bankr. Dkt. No. 1808] on January 22, 2021.[20] Highland had negotiated settlements with most of its major creditors following mediation and had amended its initially proposed plan to address the objections of most of its creditors, leaving only the objections of Dondero and entities under his control (the "Dondero Parties") at the time of the confirmation hearing,[21] which was held over two days in early February 2021. The Plan is essentially an "asset monetization" plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). Highland's various servicing agreements were vested in the Reorganized Debtor, which continues to manage collateralized loan obligation vehicles ("CLOs") and various other investments postconfirmation. The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down the Reorganized Debtor over a three-year period by monetizing its assets and making

June 7, 2021) where this court "h[eld] Dondero in civil contempt, sanctioning him $100,000, and comparing this case to a 'nasty divorce.'").

[19] *See* Highland Ex. 13. The court shall refer to exhibits offered and admitted at the June 8 Hearing on the Motion for Leave by the Highland Parties as "Highland Ex. ___" and to exhibits offered and admitted by HMIT as "HMIT Ex. ___."

[20] The *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* was filed on November 24, 2020 ("Disclosure Statement") [Bankr. Dkt. No. 1473].

[21] The only other objection remaining was the objection of the United States Trustee to the Plan's exculpation, injunction, and release provisions.

distributions to Class 8 and Class 9 creditors as Claimant Trust Beneficiaries. The Claimant Trust is overseen by a Claimant Trust Oversight Board ("CTOB"), and pursuant to the terms of the Plan and the Claimant Trust Agreement ("CTA"),[22] the CTOB approved Seery's compensation package as the CEO of the Reorganized Debtor and the Claimant Trustee. Following their acquisition of their unsecured claims, representatives of Claims Purchasers Muck and Jessup became members of the CTOB.[23] Seery's compensation included the same base salary that he was receiving as CEO and CRO of Highland, plus an added incentive bonus tiered to recoveries and distributions to the creditors under the Plan. The Plan provides for the cancellation of the limited partnership interests in Highland held by HMIT, Dugaboy, and Okada and his family trusts in exchange for each holder's pro rata share of a contingent interest in the Claimant Trust ("Contingent Claimant Trust Interest"), as holders of allowed interests in Class 10 (holders of Class B/C limited partnership interests) or Class 11 (holders of Class A limited partnership interests) under the Plan.

B. Dondero Communicates Alleged Material Non-Public Information ("MNPI") to Seery, and Seery Allegedly Provides the MNPI to the Claims Purchasers in Furtherance of an Alleged Fraudulent Scheme to Have the Claims Purchasers "Rubber Stamp" His Compensation as Claimant Trustee Post-Confirmation

1. The December 17, 2020 MGM Email

Between Dondero's forced resignation from Highland in October 2020 and the confirmation hearing in February 2021, Dondero engaged in what appeared to be attempts to thwart, impede, and otherwise interfere with the Plan being proposed by the Independent Directors and the Committee. In the midst of this, on December 17, 2020, Dondero sent Seery[24] an email

[22] Highland Ex. 38

[23] The CTOB had three members: a representative of Muck (Michael Linn), a representative of Jessup (Christopher Provost), and an independent member (Richard Katz). *See* Joint Opposition ¶ 79.

[24] Dondero sent the email to others as well but did not copy counsel for the Independent Directors (including Seery) in violation of the terms of an existing temporary restraining order that enjoined Dondero from, among other things, "communicating . . . with any Board member" (including Seery) without including Debtor's counsel. Morris Dec. Ex. 23 ¶ 2(a). Citations to "Morris Dec. Ex. _" are to the exhibits attached to the *Declaration of John A. Morris in Support*

(the "MGM Email") that featured prominently in HMIT's Motion for Leave. According to HMIT and Dondero, the MGM Email contained material nonpublic information ("MNPI") regarding the possibility of an imminent acquisition of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"), likely by either Amazon or Apple.[25] At the time Dondero sent the MGM Email, Dondero sat on the board of directors of MGM, and the Debtor owned MGM stock directly. The Debtor also managed and partially owned a couple of other entities that owned MGM stock and managed various CLOs that owned some MGM stock as well. HMIT alleges now that Seery later misused and wrongfully disclosed to the Claims Purchasers this purported MNPI as part of a *quid pro quo* scheme, whereby the Claims Purchasers agreed to approve excessive compensation for Seery in the future (in exchange for him providing this allegedly "insider" information that inspired them to purchase unsecured claims with an alleged expectation of future large profits).[26] A timeline of events (in late 2020) in the weeks leading up to Dondero's MGM Email to Seery, following Dondero's departure from Highland, helps to put the email in full context:

- October 16: Dondero and his affiliates attempt to impede the Debtor's trading activities by demanding—with no legal basis—that Seery cease selling certain assets;[27]

- November 24: Bankruptcy Court enters an Order approving the Debtor's Disclosure Statement, scheduling the confirmation hearing on the Debtor's Plan for January 13, 2021, and granting related relief;[28]

- November 24–27: Dondero personally interferes with the Debtor's

of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding, Bankr. Dkt. No. 3784.

[25] *See* Proposed Complaint ¶ 45.

[26] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the [Claims Purchasers], with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims."); ¶ 4 ("As part of the scheme, the [Claims Purchasers] obtained a position to approve Seery's ongoing compensation – to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT.").

[27] *See* Highland Ex. 14, Dondero-Related Entities' October 16, 2020 Letter; Highland Ex. 15, *Memorandum Opinion and Order Holding Dondero in Contempt for Violation of TRO*, 13-15.

[28] *See* Bankr. Dkt. No. 1476.

implementation of certain securities trades ordered by Seery;[29]

- November 30: The Debtor provides written notice of termination of certain shared services agreements it had with Dondero's two non-debtor affiliates, NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"; together with NexPoint, the "Advisors");[30]

- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes they owed to the Debtor, that had an aggregate face amount of more than $60 million—this was part of creating liquidity for the Debtor's Plan;[31]

- December 3: Dondero responds with what appeared to be a threat of some sort to Seery in a text message: "***Be careful what you do -- last warning***;"[32]

- December 10: Dondero's interference and apparent threat cause the Debtor to seek and obtain a temporary restraining order ("TRO") against Dondero;[33]

- December 16: This court denies as "frivolous" a motion filed by certain affiliates of Dondero, in which they sought "temporary restrictions" on certain asset sales;[34] and

- December 17: Dondero sends the unsolicited MGM Email[35] to Seery, which violates the TRO entered just a week earlier.[36]

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[29] *See* Highland Ex. 15, 30-36.

[30] Morris Decl. Ex. 17; *see also* Transcript of June 8, 2023 Hearing on HMIT's Motion for Leave ("June 8 Hearing Transcript"), 273:23-24.

[31] Morris Decl. Exs. 18-21; *see also* June 8 Hearing Transcript, 273:23-274:1.

[32] Morris Decl. Ex. 22 (emphasis added); *see also* June 8 Hearing Transcript, 273:1-12 (where Seery testified about receiving the threat from Dondero: "A: [T]his came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.").

[33] *See* Morris Decl. Ex. 23, *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* entered December 10, 2020 [Adv. Pro. No. 20-3190 Dkt. No. 10].

[34] *See* Morris Decl. Ex. 24, Transcript of December 16, 2020 Hearing, 63:5-64:15.

[35] Highland Ex. 11.

[36] Seery testified at the June 8 Hearing that Dondero knowingly violated the TRO when he sent the MGM Email:

> [The MGM Email] . . . followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski [Debtor's counsel] being on it. Furthermore, Pachulski had advised Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics. And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

June 8 Hearing Transcript, 273:13-22.

The MGM Email had the subject line "Trading Restriction re MGM – material non public information" and stated:

> Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.[37]

Seery credibly testified at the June 8 Hearing that he was "highly suspicious" when he received the MGM Email. This was because, among other reasons, Dondero sent it ***after***: (i) unsuccessful efforts to impede the Debtor's trading activities (followed by the TRO); (ii) the "be careful what you do" text to Seery by Dondero: (iii) Highland's termination of its shared service arrangements with Dondero's various affiliated entities; (iv) the bankruptcy court's approval of the disclosure statement; and (v) Highland's demand to collect on the demand notes for which Dondero and his entities were liable.[38] Highland's Chapter 11 case was fast approaching the finish line. Moreover, MGM was already on the restricted list at Highland Capital, and had been for a long time, and Dondero would know this.[39] Still further, as of December 17, 2020 (the date Dondero sent the unsolicited MGM Email to Seery), Dondero no longer owed a duty of any kind to the Debtor or any entity controlled by the Debtor, having surrendered in January 2020 direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement[40] and having resigned from all roles at the Debtor and affiliates in October 2020. Still further, Dondero—to the extent he was sharing with Seery MNPI that he obtained as a member of the board of directors of MGM—would have been violating his own fiduciary duties to MGM.

[37] Highland Ex. 11.

[38] June 8 Hearing Transcript, 273:1-274:4.

[39] June 8 Hearing, 215:21-216:9.

[40] *See* Bankr. Dkt. Nos. 339, 354-1 (Term Sheet)).

In any event, in a declaration filed by Dondero in support of HMIT's Rule 202 petition in Texas state court for pre-suit discovery,[41] he indicated that his goal in sending the MGM E-mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

> On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple's interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades***.

It is noteworthy that ***Dondero's labeling of the MGM Email (in the subject line) as a communication containing "material non public information" did not make it so***. In fact, it appears from the credible evidence presented at the June 8, 2023 hearing on HMIT's Motion for Leave that the MGM Email did not disclose information to Seery that was not already made available to the public at the time it was sent. Seery testified that he did not think the MGM Email contained MNPI and that he did not personally "take any steps . . . to make sure that MGM stock was placed on a restricted list at Highland Capital after [he] received [the MGM Email]" because—as earlier noted—"MGM was already on the restricted list at Highland Capital . . . before I got to Highland."[42] Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months[43] and that was officially

[41] Highland Ex. 9 ¶ 3 (emphasis added).

[42] June 8 Hearing Transcript, 215:21-216:9. Seery elaborated upon further questioning from HMIT's counsel that he did not think the indications in the MGM Email (that came from a member of the board of directors of MGM) that "it was probably a first-quarter event" and that "Amazon and Apple were actively diligencing – are diligencing in the data room, both continue to express material interest" were not MNPI. *Id.*, 217:23-218:10. He testified that "it was clear [before he received the MGM Email] from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction would have to take place very quickly. And, in fact, the transaction did not take place in the first quarter." *Id.*, 219:3-7.

[43] *See* Highland Ex. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Ex. 26 (describing prospects of an MGM sale, noting that, among its largest

announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[44] For example, as early as January 2020, Apple and Amazon were identified as being among a new group of "Big 6" global media companies, and MGM was identified as being a leading media acquisition target. Indeed, according to at least one media report on January 26, 2020, "MGM, in particular, seems like a logical candidate to sell this year" having already held "preliminary talks with Apple, Netflix and other larger media companies."[45] In October 2020, the Wall Street Journal reported that MGM's largest shareholder, Anchorage Capital Group ("Anchorage"), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as Chairman of MGM's Board. The article reported that "[i]n recent months, Mr. Ulrich has said he is working toward a deal," and he specifically named Amazon and Apple as being among four possible buyers.[46] Thus, no one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed "material interest" in acquiring MGM. Dondero testified during the June 8 Hearing that, at the time he sent the MGM Email, he "knew with certainty from the board level that Amazon had hit our price, and it was going to close in the next couple of months,"[47] that "as of December 17th, Amazon had made an offer that was acceptable to MGM, [and that] that's what the board meeting was. We were going into exclusive negotiations to culminate the merger with

shareholders, was "Highland Capital Management, LP") (article October 11, 2020). *See also* Highland Exs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for $8.4 billion).

[44] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid.

[45] Highland Ex. 25.

[46] Highland Ex. 26.

[47] June 8 Hearing Transcript, 127:2-4.

them."[48] Notwithstanding this testimony, Dondero eventually admitted (after a lengthy and torturous cross examination) that he did not actually communicate this supposed "inside" information to Seery in the MGM Email. He did not "say anything about Amazon hitting the price." He did not say anything about the MGM board going into exclusive negotiations with Amazon "to culminate the merger with them." Rather, he communicated information that Seery and any member of the public who cared to look could have gleaned from publicly available information as of December 17, 2020, regarding a much-written-about potential MGM transaction that involved interest from numerous companies, including, specifically, Amazon and Apple. When questioned why "[he felt] the need to mention Apple [in the MGM Email] if Amazon had already hit the price," Dondero simply answered, "The only way you generally get something done at attractive levels in business is if two people are interested," suggesting that he specifically ***did not*** communicate the purported inside information he obtained as a MGM board member—that Amazon had met MGM's strike price and that the MGM board was moving forward with exclusive negotiations with Amazon—because he wanted it to appear that there was still a competitive process going on that included both Amazon and Apple.[49]

Even if the MGM Email contained MNPI on the day it was sent (four months prior to the first of the Claim Purchases that occurred in April 2021), the information was fully and publicly disclosed to the market in the days and weeks that followed. For example, on December 21, 2020, just four days later, a Wall Street Journal article titled *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale*, reported that MGM had "tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process," and had "a market value of around $5.5 billion, based on privately traded shares and including debt." The Wall Street Journal Article reiterated

[48] *Id.*, 161:10-14.

[49] June 8 Hearing Transcript, 162:2-6.

that (i) Anchorage "has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks," and (ii) "Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers."[50] (*Id*. Ex. 27.) The Wall Street Journal's reporting was picked up and expanded upon in other publications soon after. For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The world is net enough! Amazon joins other streaming services in £4bn bidding war for Bond films as MGM considers selling back catalogue*, cited the Wall Street Journal article and further reported that MGM "hopes to spark a battle that could interest streaming services such as Amazon Prime";[51]

- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that "it's now become apparent that MGM is actually up on the auction block," noting that the Wall Street Journal was "reporting that the studio has begun a formal sale process" and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder;[52] and

- On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition.[53]

Finally, Highland and entities it controlled did not sell their MGM stock while the MGM-Amazon deal was under discussion and/or not made public but, instead, they tendered their MGM holdings in connection with, and as part of, the ultimate MGM-Amazon transaction after it closed in March 2022.

[50] Highland Ex. 27.

[51] Highland Ex. 28.

[52] Highland Ex. 29.

[53] Highland Ex. 30.

2. No Evidence to Support HMIT/Dondero's Assumptions that Seery Shared Alleged MNPI in the MGM Email with Claims Purchasers

One of HMIT's allegations in the Proposed Complaint it seeks leave to file—which is central to HMIT's and Dondero's conspiracy theory—is that Seery shared the alleged MNPI from the MGM Email with the Claims Purchasers (or at least Farallon—the owner/affiliate of Muck, one of the Claims Purchasers) and that the Claims Purchasers only acquired the purchased claims ("Purchased Claims") based on, and because, of their receipt of the MNPI from Seery. HMIT essentially admits in the original version of its Motion for Leave that it has no direct evidence that Seery communicated the alleged MNPI to any of the Claims Purchasers. Rather, its allegation is based on inferences it wants the court to make based on "circumstantial" evidence and on the Dondero Declarations that were attached to the Motion for Leave, which described communications Dondero purportedly had with one or two representatives of Farallon in the "late spring" of 2021 concerning Farallon's recent acquisition of certain claims in the Highland bankruptcy case.[54] Based on these communications, HMIT and Dondero only assume Seery must have provided the MNPI about MGM to Farallon, which must have caused both Farallon and the other Claims Purchaser, Stonehill, to acquire the Purchased Claims.[55]

At the June 8 Hearing, HMIT offered Dondero's testimony that he had three telephone conversations with two representatives of Farallon, Mike Linn ("Linn") and Raj Patel ("Patel"),

[54] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 1 and Ex. 3; *see also* Highland Ex. 9, *Declaration of James Dondero* (with Exhibit 1) dated February 15, 2023.

[55] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 28. HMIT subsequently filed the final version of the Motion for Leave that was revised to withdraw the Dondero Declarations and delete all references therein to the Dondero Declarations (but, notably, leaving in the allegations that were based on the Dondero Declaration(s)). This was done after the court ruled that it would allow the Proposed Defendants to examine Dondero regarding his Declarations. HMIT contended at that point that the court should consider the Motion for Leave on a no-evidence Rule 12(b)(6) type basis (but could not explain why it had attached the Dondero Declarations as evidence that "supported" the Motion for Leave, if it believed no evidence should be considered). *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 28; *see also infra* pages 45 to 47 regarding the "sideshow" litigation that occurred prior to the June 8 Hearing over whether the hearing on the Motion for Leave would be an evidentiary hearing.

who allegedly told him that they purchased the claims without conducting any due diligence and based solely on Seery's assurances that the claims were valuable. These conversations allegedly took place on May 28, 2021—two days after the MGM-Amazon deal was officially announced to the public (on May 26, 2021). Dondero also testified that a photocopy of handwritten notes ("Dondero Notes")[56] (which were partially cut off) were notes he took contemporaneously with these short telephone conversations he initiated (one with Patel and two follow-up conversations with Linn).[57] He testified that his purpose in taking these notes and in initiating the phone calls was that "[w]e'd been trying nonstop to settle the case for two-plus years. . . . [a]nd when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case . . . [s]o I reached out [to] the Farallon guys,"[58] and further, on *voir dire* from the Proposed Defendants' counsel, that the purpose of taking the notes was so that he had "a written record of the important points that [he] discussed . . . so I know how to address it the next time."[59] The handwritten notes[60] stated:

Raj Patel bought it because of Seery	*1*
50-70¢ not compelling	*2*
Class 8	*3*
Asked what would be compelling	*4*
-- No Offer	*5*
Bought in Feb/March timeframe	*6*
Bought assets w/ Claims	*7*
Offered him 40-50% premium	*8*
130% of cost; "Not Compelling"	*9*
No Counter; Told Discovery coming	*10*

[56] HMIT Ex. 4. The handwritten notes were admitted into evidence after *voir dire*, not for the truth of anything Patel or Linn allegedly said to him during the three telephone conversations, but as Dondero's "present sense impression" of the telephone conversations.

[57] June 8 Hearing Transcript, 133:1-136:3.

[58] *See id.*, 133:13-23.

[59] *See id.* (on *voir dire*), 144:1838-145:4.

[60] HMIT Ex. 4. The court has placed in a table and numbered each line for ease of reference. The table does not include the separate apparent partial date from the top left corner that Dondero testified was the date that he made the initial call to Patel: May 28, 2021.

On direct examination, Dondero testified that line 1 is what he wrote contemporaneously with the short call he initiated to Patel of Farallon in which Patel allegedly told Dondero "that he bought it because Seery told him to buy it and they had made money with Seery before"[61] and that Farallon "bought [the claim] because he was very optimistic regarding MGM"[62] before referring him to Linn, a portfolio manager at Farallon. Dondero testified that the rest of the handwritten notes (reflected in lines 2 through 10 of the table) were notes he took contemporaneously with two telephone conversations he had with Linn following his call to Patel, with lines 2-8 referring to Dondero's first call with Linn and lines 9 and 10 referring to his second call with Linn.[63] Dondero testified that the "50-70¢" in line 2 referred to his offer to Linn to pay 70 cents on the dollar to buy Farallon's[64] claims because "[w]e knew that they had – that the claims had traded around 50 cents" and "[w]e wanted to prevent the $5 million-a-month burn" (referring to attorney's fees in the Highland case) and that "not compelling Class 8" in lines 2-3 referred to Linn's response to him that the offer was not compelling.[65] Dondero testified that lines 4-5 referred to him asking Linn what amount would be compelling and to Linn's response that "he had no offer."[66] Dondero testified that lines 6-8 referred to Linn telling Dondero that Farallon bought the claims in the February, March timeframe and that Dondero told Linn that, given that the estate was spending $5 million a month on legal fees, Farallon should want to sell its claims and Linn's alleged response that "Seery told him it was worth a lot more."[67] Lastly, Dondero testified on direct examination

[61] June 8 Hearing Transcript, 134:7-10, 135:13-22.

[62] *Id.*, 139:3-11.

[63] *Id.*, 136:4-138:16.

[64] As noted above, Farallon did not acquire any of the Purchased Claims; rather, Farallon created a special purpose entity, Muck, to acquire the claims.

[65] June 8 Hearing Transcript, 136:4-16.

[66] *Id.*, 136:17-23.

[67] *Id.*, 137:6-138:7.

that the last two lines referred to a second telephone conversation he had with Linn in which Dondero offered 130 percent of cost for the claims and that Linn told him that the offer was not compelling, and he would not give a price at which he would sell.[68]

On cross-examination, Dondero acknowledged that, though he had testified that the handwritten notes were intended to be a written record of the important points from the telephone conversations he had with Patel and Linn, there was no mention in the notes of: (1) MGM: (2) or that Farallon was very optimistic about MGM; (3) the sharing of MNPI; (4) a *quid pro quo;* or (5) Seery's compensation, and that his last note—"Told Discovery coming"—was a reference to Dondero telling Linn (not Linn telling Dondero) that discovery was coming in response to Dondero's own supposition that Farallon must have traded on MNPI.[69] Cross-examination also revealed that Farallon never told Dondero that Seery gave them MNPI, and that Dondero only ***believed*** Seery ***must have*** given Farallon MNPI, because Farallon (Patel and Linn) had told him that the only reason Farallon bought their claims was because of their prior dealings with Seery, which Dondero took to mean that they had conducted no due diligence on their own prior to acquiring the claims. Dondero also testified that he did not have any personal knowledge as to how Seery's compensation package, as CEO of the Reorganized Debtor and Claimant Trustee, was determined because he was "not involved" in the setting of Seery's compensation pursuant to the Claimant Trust[70] and that he never discussed Seery's compensation with Farallon.[71]

As noted earlier, Dondero attempted to obtain discovery from the Claims Purchasers in a Texas state court pursuant to Rule 202 of the Texas Rules of Civil Procedure. The Texas state

[68] *Id.*, 138:8-22.

[69] *Id.*, 190:14-191:25. Dondero testified that he told Linn that discovery "would be coming in the next few weeks" and noted that "this has been a couple years. . . . [w]e've been trying for two years to get . . . discovery in this."

[70] *Id.*, 200:13-201:1.

[71] *Id.*, 208:23-209:8.

court denied the First Rule 202 petition on June 1, 2022, after having considered the amended petition, the responses, the record, applicable authorities and having conducted a hearing on the petition on June 1, 2022.[72]

3. Dondero Unsuccessfully Seeks Discovery and to Have Various Agencies and Courts Outside of the Bankruptcy Court Acknowledge His Insider Trading Theories

Dondero acknowledged at the June 8 Hearing that the verified petition ("First Rule 202 Petition") he signed and filed on July 22, 2021, in the first Texas Rule 202 proceeding—just weeks after his telephone calls with Linn and Patel—was true and accurate. In it, he swore under oath as to what Linn told him in the telephone call concerning Farallon's purchase of the claims, and the only reason he gave for wanting discovery was that Linn told him Farallon bought the claims "sight unseen—relying entirely on Seery's advice solely because of their prior dealings."[73] Dondero acknowledged, as well, that his sworn statement that he filed in support of an amended verified Rule 202 petition filed in the same Texas Rule 202 proceeding, but nearly ten months later (in May 2022), described the same telephone conversation he had with Linn, and it did not mention MGM at all and did not say that Linn told him that Seery gave him MNPI; rather, the sworn statement stated only that "On a telephone call between Petitioner and Michael Lin[n], a representative of Farallon, Mr. Lin[n] informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Seery's say-so because they had made so much money in the past when Seery told them to purchase claims" and that Linn did not tell him that Seery gave them MNPI, but he concluded that Seery gave Farallon MNPI based on what Linn did tell him.[74]

[72] Highland Ex. 7.

[73] *Id.*, 193:8-194:16; Highland Ex. 3, *Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 21. The first Texas Rule 202 proceeding in which Dondero sought discovery regarding the Farallon acquisition of its claims was brought by Dondero, individually, in the 95th Judicial District, Dallas County, Texas.

[74] *Id.*, 195:11-197:17; Highland Ex. 4, *Amended Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 23.

Nine days later, Dondero filed a declaration in the same proceeding, in which he described the same call with Linn as follows:[75]

> Last year, I called Farallon's Michael Lin[n] about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin[n] of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Seery had testified in court, it made no sense to me that Mr. Lin[n] would think that the claims were worth more than what Seery testified under oath was the value of the bankruptcy claims.

Dondero further stated in his declaration that "I have an interest in ensuring that the claims purchased by [Farallon] are not used as a means to deprive the equity holders of their share of the funds," and that "[i]t has become obvious that despite the fact that the bankruptcy estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights. Accordingly, "I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee."[76] Dondero attached as Exhibit A to his declaration a letter from Douglas Draper ("Draper"), an attorney with the law firm of Heller, Draper & Horn, L.L.C. in New Orleans, to the office of the General Counsel, Executive Office for U.S. Trustees, dated October 5, 2021, in which Draper opens the letter by stating that "[t]he purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the [Creditors' Committee] in the bankruptcy of [Highland]," and later noted that he "became involved in Highland's bankruptcy through my representation of [Dugaboy], an irrevocable trust of which Dondero is the primary beneficiary."[77] Mr. Draper laid out the same allegations of insider claims trading, breach of

[75] Highland Ex. 5, ¶ 2.
[76] *Id.*, ¶¶ 3-4.
[77] *Id.*, Ex. A, 1-2.

fiduciary duties, and conspiracy that HMIT seeks to bring in the Proposed Complaint.[78] The U.S. Trustee's office took no action. Dondero made a second and third attempt to get the U.S. Trustee's office to conduct an investigation into the same allegations laid out in Draper's letter, this time in "follow-up" letters to the Office of the U.S. Trustee on November 3, 2021, and six months later, on May 11, 2022, through another lawyer, Davor Rukavina ("Rukavina"), in which Rukavina wrote "to provide additional information regarding the systemic abuses of bankruptcy process occasioned during the [Highland] bankruptcy."[79] Again, the U.S. Trustee's office took no action.

On February 15, 2023, Dondero filed yet another sworn statement about his alleged conversation with Linn, this time in support of a Verified Rule 202 Petition ***filed by HMIT*** ("Second Rule 202 Petition"), filed in a different Texas state court (Texas District Court, 191st Judicial District, Dallas County, Texas), following Dondero's unsuccessful attempts throughout 2021 and 2022 to obtain discovery in the First Rule 202 proceeding and based on the same allegations of misconduct by Seery and Farallon.[80] In this new sworn statement, Dondero describes for the first time the "call" he had with Linn as having been "phone calls" with Patel and Linn and ***mentions MGM*** and Farallon's alleged optimism about the ***expected sale of MGM***:[81]

> In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC ("Farallon"), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Seery because they had made significant profits when Seery told them to purchase other claims in the past. They also stated that they were particularly optimistic because of the expected sale of MGM.

[78] *Id.*, Ex. A, 6-11.

[79] HMIT Ex. 61.

[80] Highland Ex. 9.

[81] *Id.*, ¶ 4.

The Second Rule 202 Petition was also denied by the second Texas state court on March 8, 2023.[82]

HMIT, in an apparent attempt to provide support for its argument that the Proposed Claims are "colorable," stated in its Motion for Leave that "[t]he Court also should be aware that the Texas States [sic] Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely 'colorable.'"[83] But, two days before opposition briefing was due, on May 9, 2023, the TSSB issued a letter ("TSSB Letter") to Highland, informing it that "[t]he staff of the [TSSB] has completed its review of the complaint received by the Staff against [Highland]. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time."[84] HMIT's counsel (frankly, to the astonishment of the court) objected to the admission of the TSSB Letter at the June 8 Hearing "on the grounds of relevance, 403, hearsay, and authenticity . . . [a]nd I also . . . think it's important that the decision by a regulatory body has no bearing on this cause of action or the colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry."[85] The court overruled HMIT's objection to the relevance of this exhibit—considering, among other things, that HMIT, in its Motion for Leave, specifically mentioned the allegedly open TSSB "investigation" as relevant evidence the court "should be aware" of in making its determination of whether the Proposed Claims were "colorable."[86]

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[82] Highland Ex. 10.

[83] Motion for Leave, ¶ 37.

[84] *See* Highland Ex. 33.

[85] June 8 Hearing Transcript, 323:22-324:3.

[86] *Id.*, 324:4-328:2.

C. Claims Purchasers Purchase Claims and File Notices of Transfers of Claims

To be clear about the time line here, it was after confirmation of the Plan but prior to the Effective Date of the Plan, that the Claims Purchasers: (1) purchased several large unsecured claims that had been allowed following, and as part of, Rule 9019 settlements, each of which were approved by the bankruptcy court, after notice and hearing, prior to the confirmation hearing; and (2) filed notices of the transfers of those claims pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure. The noticing of the claims transfers began on April 16, 2021, with the notice of transfer of the claim held by Acis Capital Management to Muck, and ended on August 9, 2021, with the notices of transfers of the claims held by UBS Securities to Muck and Jessup:

Claimant(s)	**Date Filed/ Claim No.**	**Asserted Amount**	**Claim Settled/Allowed? If so, Amount**	**Date Filed/ Rule 3001 Notice Dkt. No.**
Acis Capital Management LP and Acis Capital Management, GP LLC (together, "Acis")	12/31/2019 Claim No. 23	$23,000,000	Yes[87] $23,000,000	4/16/2021 Bankr. Dkt. No. 2215 (Muck)
Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee")	4/3/2020 Claim No. 72	$190,824,557	Yes[88] $137,696,610	4/30/2021 Bankr. Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (the "HarbourVest Parties")	4/8/2020 Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes[89] $80,000,000 in aggregate ($45,000,000 General Unsecured Claim, and $35,000,000 subordinated claim)	4/30/2021 Bankr. Dkt. No. 2263 (Muck)

[87] Bankr. Dkt. No. 1302. The Debtor's settlement with Acis was approved over the objection of Dondero. Bankr. Dkt. No. 1121.

[88] Bankr. Dkt. No. 1273.

[89] Bankr. Dkt. No. 1788. The Debtor's settlement with the HarbourVest Parties was approved over the objections of Dondero, Bankr. Dkt. No. 1697, and Dugaboy and the Get Good Trust. Bankr. Dkt. No. 1706.

UBS Securities LLC, UBS AG, London Branch (the "UBS Parties")	6/26/2020 Claim Nos. 190, 191	$1,039,957,799.40	Yes[90] $125,000,000 in aggregate ($65,000,000 General	8/9/2021 Bankr. Dkt. No. 2698 (Muck) and Bankr. Dkt. No. 2697 (Jessup)

HMIT insists that it "made no sense" for the Claims Purchasers to buy the Purchased Claims because "the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk," and "their investment was projected to yield a small return with virtually no margin for error."[91] Dondero testified that it was ***his*** view that there was insufficient information in the public to justify the claims purchases.[92] But, HMIT's arguments here are contradicted by the information that was publicly available to Farallon and Stonehill at the time of their purchases and by HMIT's own allegations. In advance of Plan confirmation, Highland projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. In the Proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims.[93] Taking into account the face amount of the allowed claims, the Claims Purchasers' projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value[94]	Purchaser	Purchase Price	Projected Profit
Redeemer	$137.0	$0.0	$97.71	Stonehill	$78.0	$19.71
Acis	$23.0	$0.0	$16.4	Farallon	$8.0	$8.40

[90] Bankr. Dkt. No. 2389. The Debtor's settlement with the UBS Parties was approved over the objections of Dondero, Dkt. No. 2295, and Dugaboy and the Get Good Trust. Bankr. Dkt. Nos. 2268, 2293.

[91] Proposed Complaint, ¶ 3.

[92] June 8 Hearing Transcript, 187:3-7 ("Q: And it's your testimony that there wasn't sufficient information in the public for them to buy – this is your view – that there wasn't sufficient information in the public to justify their purchases. Is that your view? A: Correct.).

[93] *Id.*, ¶ 42.

[94] "Ascribed Value" is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

HarbourVest	$45.0	$35.0	$32.09	Farallon	$27.0	$5.09
UBS	$65.0	$60.0	$46.39	Stonehill & Farallon	$50.0	($3.61)

As HMIT acknowledges, by the time Dondero spoke with Farallon in the "late spring" of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest.[95] Based on an aggregate purchase price of $113 million for these three claims, the Claims Purchasers would have expected to net over $33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections, because they also purchased the Class 9 claims and would therefore capture any upside. In this context, HMIT's and Dondero's assertions that it did not "make any sense" for the Claims Purchasers to purchase their claims when they did does not pass muster—given the publicly available information about potential recoveries under the Plan. Dondero even acknowledged, on cross-examination, that he was prepared to pay ***30 percent more*** than Farallon had paid, even though he did not think there was sufficient public information available to justify Farallon's purchase of the claims.[96] Dondero essentially testified that he wanted to purchase Farallon's claims because he wanted to be in a position of control to force a settlement or resolution of the bankruptcy case, post-confirmation, under terms acceptable to him. He did not want to try to settle by negotiating with Farallon and Stonehill ***as creditors***, but instead he wanted to purchase the claims because "if we owned all the claims, it would settle the case."[97]

[95] *See* Complaint, ¶ 41 n.12. The UBS claims were not acquired until August 2021, long after the alleged "*quid pro quo*" was supposedly agreed upon and the MGM-Amazon deal was announced in the press in late May 2021. *See*, Highland Ex. 34, *Amazon's $8.45 Billion Deal for MGM is Historic But Feels Mundane* (dated May 26, 2021).

[96] June 8 Hearing Transcript, 187:8-11.

[97] *Id.*, 187:12-189:10.

D. Fifth Circuit's Approval of the Gatekeeper Provision in Plan, Recognition of Res Judicata Effect of the Prior Gatekeeper Orders, and the Bankruptcy Court's Order Approving Highland's Motion to Conform Plan

Harkening back to February 22, 2021, after a robust confirmation hearing, this court entered its order confirming the Plan, over the objections of Dondero and Dondero-Related Parties, specifically questioning the good faith of their objections. The court found, after noting "the remoteness of their economic interests" that "[it] has good reason to believe that [the Dondero Parties] are not objecting to protect economic interests they have in the Debtor but to be disruptors. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan."[94] The Plan became effective on August 11, 2021.

Of relevance to the Motion for Leave, the confirmed Plan included certain exculpations, releases, and injunctions designed to protect the Debtor and other bankruptcy participants from bad-faith litigation. These participants included: Highland's employees (with certain exceptions); Seery as Highland's CEO and CRO; Strand (after the appointment of the Independent Directors); the Independent Directors; the successor entities; the CTOB and its members; the Committee and its members; professionals retained in the case; and all "Related Persons." The injunction provisions contained a Gatekeeper Provision which is similar to the gatekeeper provisions in the prior Gatekeeper Orders in that it provided that the bankruptcy court will act as a "gatekeeper" to screen and prevent bad-faith litigation against the Protected Parties. The Gatekeeper Provision in the Plan states, in pertinent part:[98]

> No Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents ***a colorable claim of any kind***, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically

[98] Plan, 50-51 (emphasis added).

> authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

The Plan defines Protected Parties as,

> collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the [CTOB] (in their official capacities), (xiii) [HCMLP GP LLC], (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); [but excluding Dondero and Okada and various entities including HMIT and Dugaboy].

The court notes that the Gatekeeper Provision in the Plan provides protection to a broader number of persons than the persons protected under the January 2020 Order (addressing the Independent Directors and their agents and advisors) and the July 2020 Order (addressing Seery in his role as CEO and CRO of the Debtor). But, at the same time, it is less restrictive than the gatekeeping provisions under the Gatekeeper Orders, in that the gatekeeping provisions in the prior orders shield the protected parties from any claim that is not both "colorable" ***and*** a claim for "willful misconduct or gross negligence," effectively providing the protected parties under the prior orders with a limited immunity from claims of simple negligence or breach of contract that do not rise to the level of "willful misconduct or gross negligence," whereas the Gatekeeping Provision under the Plan does not act as a release or exculpation of the Protected Parties in any way because it does not prohibit any party from bringing ***any kind of claim*** against a Protected Party, provided the proposed claimant first obtains a finding in the bankruptcy court that its proposed claims are "colorable."[99]

[99] It should be noted that--as discussed further below--there are, separately in the Plan, exculpations as to a smaller universe of persons--*e.g.,* the Debtor, the Committee and its members, and the Independent Directors.

Dondero and some of the entities under his control appealed[100] the Confirmation Order directly to the Fifth Circuit, arguing, among other issues, that the Plan's exculpation, release, and injunction provisions, including the Gatekeeper Provision (collectively, the "Protection Provisions") impermissibly provide certain non-debtor bankruptcy participants with a discharge, purportedly in contravention of the provisions of Bankruptcy Code § 524(e)'s statutory bar on non-debtor discharges. As noted above, the Fifth Circuit, "affirm[ed] the confirmation order in large part" and "reverse[d] ***only insofar as the plan exculpates*** certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties ***from the plan's exculpation***, and affirm[ed] on all remaining grounds."[101] The Fifth Circuit specifically found the "injunction and gatekeeping provisions [to be] sound" and found that it was only "the ***exculpation*** of certain non-debtors" that "exceed[ed] the bankruptcy court's authority," agreeing with the bankruptcy court's conclusions that the Protection Provisions were legal, necessary under the circumstances, and in the best interest of all parties" in part, and only disagreeing to the extent that the ***exculpation*** provision improperly extended to certain bankruptcy participants other than Highland, the Committee and its members, and the Independent Directors and "revers[ing] and strik[ing] the few unlawful parts

[100] On appeal, the appellant funds ("Funds"), whom this court found to be "owned and/or controlled" by Dondero despite their purported independence, also asked the Fifth Circuit to vacate this court's factual finding "because it threatens the Funds' compliance with federal law and damages their reputations and values" and because "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him." *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th at 434. Applying the "clear error" standard of review, the Fifth Circuit "le[ft] the bankruptcy court's factual finding undisturbed" because "nothing in this record leaves us with a firm and definite conviction that the bankruptcy court made a mistake in finding that the Funds are 'owned and/or controlled by [Dondero]." *Id.* at 434-35.

[101] *See supra* note 4. The Fifth Circuit replaced its initial opinion with its final opinion a few days after certain appellants had filed a short (four-and-one-half pages) motion for rehearing (the "Motion for Rehearing") on September 2, 2022. The movants had asked the Fifth Circuit to "narrowly amend the [initial] Opinion in order to confirm the Court's holding that the impermissibly exculpated parties are similarly struck from the protections of the injunction and gatekeeper provisions of the plan (in other words, that such parties cannot constitute 'Protected Parties')." In the final Fifth Circuit opinion, same as the initial Fifth Circuit opinion, the Fifth Circuit stated that, with regard to the Confirmation Order, the panel would "reverse only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strike those few parties from the plan's exculpation, and affirm on all remaining grounds." *Highland Capital*, 48 F.4th at 424. No findings, discussion, or rulings regarding the injunction and gatekeeper provisions that were in the initial Fifth Circuit opinion were disturbed.

of the Plan's ***exculpation provision***."[102] The Fifth Circuit then remanded to the Bankruptcy Court "for further proceedings in accordance with the opinion."[103]

In the course of analyzing the Protection Provisions under the Plan, the Fifth Circuit noted that the protection provisions in the January and July 2020 Orders appointing the Independent Directors and Seery as CEO and CRO of Highland were *res judicata* and that "*those* orders have the effect of exculpating the Independent Directors and Seery in his executive capacities" such that "[d]espite removal from the exculpation provision in the confirmation order, the Independent Directors' agents, advisors, and employees, as well as Seery in his official capacities are all exculpated to the extent provided in the January and July 2020 Orders."[104]

The Reorganized Debtor filed a motion in the bankruptcy court to conform the plan to the Fifth Circuit's mandate, proposing that only one change was needed to make the Plan compliant with the Fifth Circuit's ruling: narrow the defined term for "Exculpated Parties" to read as follows:

> "Exculpated Parties" means, collectively, (i) the Debtor, (ii) the Independent Directors, (iii) the Committee, and (iv) members of the Committee (in their official capacities).

The Reorganized Debtor proposed that this one simple revision of this defined term removed the exculpations deemed by the Fifth Circuit to violate section 524(e) of the Bankruptcy Code, and that no other changes would be required to conform the Plan and Confirmation Order to the Fifth Circuit's mandate. Some of the Dondero-related entities objected to the motion to conform, arguing that the Fifth Circuit's ruling required more surgery on the Plan than simply narrowing the defined term "Exculpated Parties." On February 27, 2023, this court entered its order granting

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[102] *Id.* at 435.

[103] *Id.* at 440. The Fifth Circuit's docket reflects that it issued its Judgment and mandate on September 12, 2022.

[104] *Highland Capital*, 48 F.4th at 438 n.15. The Fifth Circuit stated, "To the extent Appellants seek to roll back the protections in the bankruptcy court's January 2020 and July 2020 orders (which is not clear from their briefing), such a collateral attack is precluded." *Id.*

Highland's motion to conform the Plan, ordering that one change be made to the Plan – revising the definition of "Exculpated Parties" – and no more.[105] The objecting parties' direct appeal of this order has been certified to the Fifth Circuit and is one of the numerous currently active appeals by Dondero-related parties pending in the Fifth Circuit.

E. HMIT's Motion for Leave

HMIT filed its emergency Motion for Leave on March 28, 2023, which, with attachments, as first filed, was 387 pages in length, including an initial proposed complaint ("Initial Proposed Complaint") and two sworn declarations of Dondero that were attached as "objective evidence" in "support[ ]" of the Motion for Leave,[106] and with it, an application for an emergency setting on the hearing on the Motion to Leave. On April 23, 2023, HMIT filed a pleading entitled a "supplement" to its Motion to Leave ("Supplement"),[107] to which it attached a revised proposed verified complaint ("Proposed Complaint")[108] as Exhibit 1-A to the Motion for Leave and stated that "[t]he Supplement is not intended to amend or supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action."[109] The HMIT Motion for Leave was later amended to eliminate the Dondero Declarations and references to the same (but not the underlying allegations that were supposedly supported by the Dondero Declarations).[110]

[105] Bankr. Dkt. No. 3672.

[106] Bankr. Dkt. No. 3699.

[107] Bankr. Dkt. No. 3760.

[108] *See supra* note 5.

[109] Supplement ¶ 1.

[110] Bankr. Dkt. Nos. 3815 and 3816. Both of these filings had the Initial Proposed Complaint attached as Exhibit 1 to the Motion for Leave.

As earlier noted, HMIT desires leave to sue the Proposed Defendants regarding ***the post-confirmation, pre-Effective Date purchase of allowed unsecured claims***. The Proposed Defendants would be:

> **Seery,** who was a stranger to Highland until approximately four months following the Petition Date when he was brought in as one of the three Independent Directors, and now serves as the CEO of the Reorganized Debtor and the Trustee of the Claimant Trust (and also was previously Highland's CRO during the case, then CEO, and, also, an Independent Board Member of Highland's general partner during the Highland case). Seery is best understood as the man who took Dondero's place running Highland—per the request of the Committee.
>
> **Claims Purchasers,** who were strangers to Highland until the end of the bankruptcy case. They are identified as Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the "Claims Purchasers"). The Claims Purchasers purchased $240 million face value of already-allowed unsecured claims post-confirmation and pre-Effective Date in the spring of 2021 and another $125 million face value of already-allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk's docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Committee during the Highland bankruptcy case).
>
> **John Doe Defendants Nos. 1-10**, which are described to be "currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue."
>
> **Highland,** as a nominal defendant. HMIT added Highland as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.
>
> **Claimant Trust**, as a nominal defendant. HMIT added the Claimant Trust as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

The proposed plaintiffs would be:

> **HMIT,** which, again, was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited partnership interests). HMIT is the holder of a Class 10 interest under the Plan, pursuant to which HMIT's limited partnership interest in Highland was extinguished as of the Effective Date in exchange for a pro rata share of a contingent interest in the Claimant Trust.

Highland, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

Claimant Trust, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Claimant Trust.

In the Proposed Complaint, HMIT asserts the following six counts: Count I (against Seery) for breach of fiduciary duties; Count II (against the Claims Purchasers and John Doe Defendants) for knowing participation in breach of fiduciary duties; Count III (against all Proposed Defendants) for conspiracy; Count IV (against Muck and Jessup) for equitable disallowance of their claims; Count V (against all Proposed Defendants) for unjust enrichment and constructive trust; and Count VI (against all Proposed Defendants) for declaratory relief.[111] The gist of the Proposed Complaint is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that "wrongful conduct occurred" and "improper trades" were made.[112] HMIT believes the Claims Purchasers paid around $160 million for the $365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland's Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. And, of course, Dondero purports to have concluded from the three phone conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Seery must have given these Claims Purchasers MNPI regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Seery must have shared

[111] In the Initial Proposed Complaint, HMIT proposed to bring claims against the various Proposed Defendants in seven counts, including a count for fraud by misrepresentation and material nondisclosure against all Proposed Defendants. In the Proposed Complaint, HMIT abandons its claim for fraud by misrepresentation and material nondisclosure.

[112] Motion for Leave, 7.

MNPI regarding the likely imminent sale of MGM, in which Highland had, directly and indirectly, substantial holdings. As noted earlier, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[113] In summary, while the Proposed Complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor's estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Seery, and are now happily approving Seery's allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages in the form of equitable disallowance of the Claims Purchasers' claims and disgorgement of distributions on account of those claims, the imposition of a constructive trust over all disgorged funds, and declaratory relief.

HMIT claims that, in seeking to file the Proposed Complaint, it is seeking to protect the rights and interests of the Reorganized Debtor, the Claimant Trust, and "innocent stakeholders" who were allegedly injured by Seery's and the Claims Purchasers' alleged conspiratorial and

[113] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid. Credible testimony from Seery at the June 8 Hearing revealed that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public).

fraudulent scheme to line Seery's pockets with excessive compensation for his role as Claimant Trustee. In its Motion for Leave, HMIT states that "[t]he attached Adversary Proceeding alleges claims which are substantially more than 'colorable' based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud, including a fraud upon innocent stakeholders, as well as breaches of fiduciary duties and knowing participation in (or aiding or abetting) breaches of fiduciary duty."[114]

F. Is HMIT Really Dondero by Another Name?

The Proposed Defendants argue that HMIT's Motion for Leave is nothing more than a continuation of the harassing and bad-faith litigation by Dondero and his related entities that the Gatekeeper Provisions were intended to prevent and, thus, this is one of multiple reasons that the Motion for Leave should be denied.

To be clear, HMIT asserts that it is controlled by Mark Patrick ("Patrick"), who has been HMIT's administrator since August 2022. Patrick asserts that he is not influenced or controlled by Dondero, in general, and specifically not in its efforts to pursue the Proposed Claims against Seery and the Claims Purchasers. However, the testimony elicited at the June 8 Hearing—the hearing at which HMIT had the burden of showing the court that its Proposed Claims were "colorable" such that it should be allowed to pursue them through the filing of the Proposed Complaint—paints a different picture. Somewhat tellingly, HMIT chose not to call Patrick—allegedly HMIT's only representative and control person—as a witness in support of its Motion for Leave. Rather, Dondero was HMIT's first witness called in support of its motion, and the first

[114] *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 3. HMIT notes, in a footnote 6, that "Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement."

questions on direct from HMIT's counsel were aimed at establishing that Dondero was not behind the filing of the Motion for Leave and the pursuit of the Proposed Claims.[115] Dondero testified that he did not (i) "have any current official position" with HMIT, (ii) "attempt to exercise [control] on the business affairs of [HMIT]," (iii) "have any official legal relationship with [HMIT] where [he] can attempt to exercise either direct or indirect control over [HMIT]," or (iv) "participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan."[116] After HMIT rested, Highland and the Claimant Trust called Patrick as a witness, and he testified that he was the administrator of HMIT, that HMIT does not have any employees, operations, or revenues, and, when asked if HMIT owned any assets, Patrick testified, with not a great deal of certainty, that "it's my understanding it has a contingent beneficiary interest in the Claimants [sic] Trust" and that is the only asset HMIT has.[117] Patrick testified that HMIT did not owe any money to Dondero personally, but acknowledged that in 2015, HMIT had issued a secured promissory note in favor of Dondero's family trust, Dugaboy, in the amount of approximately $62.6 million (the "Dugaboy Note") in exchange for Dugaboy transferring a portion of its limited partner interests in Highland to HMIT; the Dugaboy Note was secured in part by the Highland limited partnership interests purchased from Dugaboy.[118] Patrick admitted that, if HMIT's Class 10 interest has no value, HMIT would have no ability to pay the Dugaboy Note.[119] He further testified that neither he nor any representative of HMIT had ever spoken with any representative of Farallon or Stonehill, that he had no personal knowledge about any *quid pro quo*, the amount of due diligence Farallon or Stonehill conducted prior to buying their claims, or the terms of

[115] *See* June 8 Hearing Transcript, 113:10-25.

[116] *Id.*

[117] June 8 Hearing Transcript, 307:7-308:2.

[118] *Id.*, 303:11-305:1; Highland Ex. 51, HMIT's $62,657,647.27 *Secured Promissory Note* dated December 24, 2015, in favor of Dugaboy.

[119] *Id.*, 308:3-16.

Seery's compensation package (until the terms were disclosed to them in opposition to the Motion for Leave).[120] Patrick admitted that Dugaboy was paying HMIT's attorneys' fees pursuant to a settlement agreement between HMIT and Dugaboy.[121]

On cross-examination by HMIT's counsel, Patrick further testified that HMIT has not filed any litigation, as plaintiff, other than its efforts to be a plaintiff in the Motion for Leave and its action as a petitioner in the Texas Rule 202 proceeding filed earlier in 2023 in the Texas state court.[122] HMIT's counsel argued that the point of this questioning was that "they're just trying to draw Dondero into this and – this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed – attempting to file this action and a Rule 202 proceeding.[123] But, Dondero and HMIT's counsel referred during the June 8 Hearing to the First Rule 202 Petition (where Dondero was the petitioner) and the Second Rule 202 Petition (where HMIT was the petitioner) as "our" Rule 202 petitions, and also to the numerous attempts at getting the discovery (that Dondero had warned Linn was coming) in the collective. For example, in objecting to the admission of Highland's Exhibit 10 – the Texas state court order denying and dismissing the Second Rule 202 Petition – on the basis of relevance, HMIT's counsel referred to the order as "an order denying ***our second"*** Rule 202 Petition.[124] And, Dondero testified that his warning to Linn in May 2021 that "discovery was coming" was "my response to I knew they had traded on material nonpublic information" and that "I thought it would be a lot easier to get

[120] *Id.*, 308:18-312:12. This testimony from Patrick came after HMIT's counsel objection to counsel's line of questioning regarding Patrick's personal knowledge of the facts supporting the allegations in the Proposed Complaint on the basis that he was invading the attorney work product privilege, which was overruled by this court; HMIT's counsel argued (311:4-19) that the line of questioning was an "invasion of attorney work product . . . [b]ecause they might – he would have knowledge from the efforts and investigation through attorneys in the case."

[121] *Id.*, 312:24-313:18.

[122] *Id.*, 315:3-9.

[123] *Id.*, 316:6-11.

[124] *Id.*, 58:11-13. The court overruled HMIT's relevance objection and admitted Highland's Exhibit 10 into evidence. *Id.*, 58:14-15.

discovery on a situation like this than it has been for the last two years" and that "***we've*** been trying for two years to get . . . discovery."[125]

Dondero's use of an entity over which he exerts influence and control to pursue his own agenda in the bankruptcy case is not new. Rather, this has been part of Dondero's *modus operandi* since the "nasty breakup" between Dondero and Highland that culminated with Dondero's ouster in October 2020, whereby Dondero, after not getting his way in the bankruptcy court, continued to lob objections and create obstacles to Highland's implementation of the Plan through entities he owns or controls. As noted above, the Fifth Circuit specifically upheld this court's finding in the Confirmation Order that Dondero owned or controlled the various entities that had objected to confirmation of the Plan and appealed the Confirmation Order, where the Dondero-related appellants made similar protestations that they are not owned or controlled by Dondero and asked the Fifth Circuit to vacate this court's factual finding because, among other reasons, "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him."[126] Based on the totality of the evidence in this proceeding, the court finds that, contrary to the protestations of HMIT's counsel and Patrick otherwise, Dondero is the driving force behind HMIT's Motion for Leave and the Proposed Complaint. The Motion for Leave is just one more attempt by Dondero to press his conspiracy theory that he has pressed for over two years now, unsuccessfully, in Texas state court through Rule 202 proceedings, with the Texas State Securities Board, and with the United States Trustee's office.

[125] *Id.*, 191:5-25.

[126] *Highland Capital*, 48 F.4th at 434-435.

G. Opposition to Motion for Leave: Arguing No Standing and No "Colorable" Claims

Highland, the Claimant Trust, and Seery (together, the "Highland Parties") filed a joint opposition ("Joint Opposition") to HMIT's Motion for Leave on May 11, 2023.[127] The Claims Purchasers filed a separate objection ("Claims Purchasers' Objection") to the Motion for Leave on May 11, 2023, as well.[128] In the Joint Opposition, the Highland Parties urge the court to deny HMIT leave to pursue the Proposed Claims because, as a threshold matter, HMIT does not have standing to bring them, directly or derivatively against the Proposed Defendants. They argue, in the alternative, that the Motion for Leave should be denied even if HMIT had standing to pursue the Proposed Claims because none of the Proposed Claims are "colorable" claims as that term is used in the Gatekeeper Provision of the Plan (and Gatekeeper Orders).[129]

The Claims Purchasers likewise argue that HMIT lacks standing to complain about claims trading in the bankruptcy which occurred between sophisticated Claims Purchasers and sophisticated sellers ("Claims Sellers"), represented by skilled bankruptcy and transactional counsel. Moreover, they argue HMIT cannot show that it or the Reorganized Debtor or the Claimant Trust were injured by the claims trading at issue because the Purchased Claims had already been adjudicated as allowed claims in the bankruptcy case—thus, distributions under the Plan on account of the Purchased Claims remain the same, the only difference being who holds the claims. Moreover, even if HMIT could succeed in equitably subordinating the validly transferred ***allowed*** claims, HMIT would still be in the same position it is today: the holder of a

[127] Bankr. Dkt. Nos. 3783. Highland, the Claimant Trust, and Seery also filed on May 11 a *Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding* ("Morris Declaration") that attached 44 Exhibits in support of the Joint Opposition. Bankr. Dkt. No. 3784.

[128] Bankr. Dkt. No. 3780.

[129] *See* Joint Opposition ¶ 139 ("Because HMIT lacks standing, this Court need not reach the merits of HMIT's proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion.").

contingent, speculative Class 10 interest that would only be paid after payment, in full, with interest, of all creditors under the Plan. The Claims Purchasers argue in the alternative that the Proposed Claims are not "colorable."

Finally, the Proposed Defendants argue that the standard of review for assessing whether the Proposed Claims are "colorable" (as such term is used in the Gatekeeper Provision and Gatekeeping Orders) is a standard that is a higher than the "plausibility" standard applied to Rule 12(b)(6). They argue that HMIT should be required to meet a higher bar with respect to colorability that includes making a *prima facie* showing that the Proposed Claims have merit (and/or are not without foundation) which requires HMIT to do more than meet the liberal notice-pleading standards.

H. HMIT's Reply to the Proposed Defendants' Opposition to the Motion for Leave

In its reply brief ("Reply"), filed by HMIT on May 18, 2023,[130] it argues that it has constitutional standing as an "aggrieved party" to bring the Proposed Claims on behalf of itself.[131] HMIT also argues that it has standing under Delaware Trust law to bring a derivative action on behalf of the Claimant Trust and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to bring the claims.[132] Finally, HMIT maintains that the standard of review that the bankruptcy court should apply in assessing the "colorability" of the Proposed Claims is no greater than the standard of review applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), which would require the bankruptcy court to look only to the "four corners" of the Proposed Complaint

[130] Bankr. Dkt. No. 3785.

[131] *See* Reply ¶ 7.

[132] See, Reply ¶ 23 n.5, where HMIT argues "The nature of this injury, in addition to Seery's influence over the Claimant Trust, and the lack of prior action by the Claimant Trust to pursue the claims HMIT seeks to pursue derivatively, among other things, demonstrate that HMIT is not only a proper party to assert its derivative claims – but the best party to do so."

and "not weigh extraneous evidence,"[133] take all allegations as true, and view all allegations and inferences in a light most favorable to HMIT. As discussed in greater length below, HMIT argues that, under this standard, the bankruptcy court should not consider evidence in making its determination as to whether the Proposed Complaint presents "colorable" claims.

I. Litigation within the Litigation: The Pre- June 8 Hearing Skirmishes

Suffice it to say there was significant activity before the Motion for Leave actually was presented at the June 8 hearing. HMIT sought an emergency hearing on its Motion for Leave (wanting a hearing on three days' notice). When the bankruptcy court denied an emergency hearing, HMIT unsuccessfully pursued an interlocutory appeal of the denial of an emergency hearing to the district court. HMIT then petitioned for a writ of mandamus at the Fifth Circuit regarding the emergency hearing denial, which was denied by the Fifth Circuit on April 12, 2023.

Next, there were multiple pleadings and hearings regarding ***what kind of hearing*** the bankruptcy court should or should not hold on the Motion for Leave—particularly focusing on whether or not it would be an evidentiary hearing.[134] The resolution of this issue turned on what standard of review the court should apply in exercising its gatekeeping function and determining the colorability of the Proposed Claims. HMIT (although it had submitted two declarations of Dondero with its original Motion for Leave and approximately 350 pages of total evidentiary support) was adamant that there should be no evidence presented at the hearing on the Motion for Leave, arguing that the standard for review should be the plausibility standard under Rule 12(b)(6)

[133] *See* Reply ¶ 47.

[134] Highland, joined by Seery and the Claims Purchasers, had filed a motion asking the bankruptcy court to set a briefing schedule on the Motion for Leave and to schedule a status conference, indicating that Highland's proposed timetable for same was opposed by HMIT. HMIT subsequently filed a response unopposed to a briefing schedule and status conference, but, before the status conference, HMIT filed a brief, stating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the bankruptcy court did not need evidence to exercise its gatekeeping function and determine if HMIT has a "colorable" claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

motions to dismiss such that "the threshold inquiry is very, very low. Evidence is not allowed. . . . [S]imilar to a 12(b)(6) inquiry, [the court] is limited to the four corners of the principal pleading – in this case, the complaint, or now the revised complaint."[135] Counsel for the Proposed Defendants argued that the standard of review for colorability here, in the specific context of the court exercising its gatekeeping function under the Plan, is more akin to the standards applied under the Supreme Court's *Barton Doctrine*[136] pursuant to which that the bankruptcy court must apply a higher standard than the 12(b)(6) standard, including the consideration of evidence at the hearing on the motion for leave; if the standard of review presents no greater hurdle to the movant than the 12(b)(6) standard applied to every plaintiff in every case, then the gatekeeping provisions mean nothing and do nothing to protect the parties from the harassing, bad-faith litigation they were put in place to prevent.[137] On May 22, 2023, after receipt of post-hearing briefing on the issue, the court entered an order stating that "the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave" and "[t]herefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing [on the Motion to Leave] if they so choose."

Two days later, HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing, seeking expedited depositions of corporate

[135] Transcript of April 24, 2023 Status Conference, Bankr. Dkt. No. 3765 ("April 24 Transcript"), 14:6-11.

[136] The *Barton Doctrine* was established in the 19th century Supreme Court case of *Barton v. Barbour*, 104 U.S. 126 (1881), and states that a party wishing to sue a court-appointed trustee or receiver must first obtain leave of the appointing court by making a *prima facie* case that the claim it wishes to bring is not without foundation.

[137] *See* April 24 Transcript, 36:24-37:4 ("[W]e're exactly today where the Court had predicted in entering [the Confirmation Order], that the costs and distraction of this litigation are substantial. And if all we're doing is replicating a 12(b)(6) hearing on a motion for leave, we're actually not doing anything to reduce, as the Court made clear, the burdens, distractions, of litigation."); 37:5-13 ("The Fifth Circuit likewise cited *Barton* in its order affirming the confirmation order. Specifically, it also explained that the provisions, these gatekeeper provisions requiring advance approval were meant to 'screen and prevent bad-faith litigation.' Well that – if that means only what the Plaintiff[ ] say[s] it does, then it really doesn't do anything at all to screen. There's no gatekeeping because their version of what that means is always policed under 12(b)(6) standards.").

representatives of the Claims Purchasers and of Seery and production of documents pursuant to deposition notices and subpoenas duces tecum that HMIT had attached to the motion. On May 26, 2023, this court held yet another status conference. Following the status conference, the court granted in part and denied in part HMIT's request for expedited discovery by ordering only Seery and Dondero to be made available for depositions prior to the June 8 Hearing. The court reached what seemed like appropriate middle ground by allowing the deposition of Seery and allowing the other parties to depose Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Dondero had been seeking discovery relating to the very claims trades that are the subject of the Revised Proposed Complaint from the Claims Purchasers in Texas state court "Rule 202" proceedings for approximately two years, where their attempts were rebuffed.

Approximately 60 hours before the June 8 Hearing, HMIT filed its Witness and Exhibit List disclosing for the first time two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony). Highland, the Claimant Trust, and Seery filed a joint motion to exclude the expert testimony and documents ("Motion to Exclude"), which the court ultimately granted in a separate order.

During the full-day June 8 Hearing on the Motion to Leave, the court admitted over 50 HMIT exhibits and over 30 Highland/Claimant Trust exhibits. The court heard testimony from HMIT's witnesses Dondero and Seery (as an adverse witness) and from the Highland Parties' witness Mark Patrick, the administrator of HMIT since August 2022 (as an adverse witness). The bankruptcy court allowed HMIT to make a running objection to all evidence—as it continued to argue that evidence was not appropriate.

III. LEGAL ANALYSIS

In determining whether HMIT should be granted leave, pursuant to the Gatekeeper Provision of the Plan and the court's prior Gatekeeper Orders, to pursue the Proposed Claims, the court must address the issue of whether HMIT would have ***standing*** to bring the Proposed Claims in the first instance. If so, the next question is whether the Proposed Claims are "***colorable***." But prior to getting into the weeds on ***standing*** and "***colorability,***" some general discussion regarding the topic of claims trading in the bankruptcy world seems appropriate, given that HMIT's Proposed Claims are based, in large part, on allegations of ***improper*** claims trading.

A. Claims Trading in the Context of Bankruptcy Cases—Can It Be Tortious or Otherwise Actionable?

As noted, at the crux of HMIT's desired lawsuit is what this court will refer to as "claims trading activity" that occurred shortly after the Plan was confirmed, but before the Plan went effective. HMIT believes that the claims trading activity gave rise to various torts: breach of fiduciary duty on the part of Seery; knowing participation in breach of fiduciary duty by the other Proposed Defendants; and conspiracy by all Defendants. HMIT also believes that the following remedies should be imposed: equitable disallowance of the Purchased Claims; disgorgement of the alleged profits the Claims Purchasers made on their purchases; and disgorgement of all Seery's compensation received since the beginning of his "collusion" with the other Defendants. Without a doubt, the Motion for Leave and Proposed Complaint revolve almost entirely around the claims trading activity.

This begs the question: ***When (or under what circumstances) might claims trading activity during a bankruptcy case give rise to a cause of action that either the bankruptcy estate or an economic stakeholder in the case might have standing to bring?*** Here, the claims trading

wasn't even "during a bankruptcy case" really—it was post-confirmation and pre-effective date, and it happened to be: (a) after mediation of the claims, (b) after Rule 9019 settlement motions, (c) after objections by Dondero and certain of his family trusts were lodged, (d) after evidentiary hearings, and (e) after orders were ultimately entered ***allowing*** the claims (and in most cases, such orders were appealed). The further crux of HMIT's desired lawsuit is that Seery allegedly "wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends" by sharing ***material non-public information*** to them regarding the potential value of the claims (i.e., the potential value of the bankruptcy estate), and this is what made the claims trading activity particularly pernicious. The alleged sharing of MNPI allegedly caused the Claims Purchasers to purchase their claims without doing any due diligence and with knowledge that the claims would be worth much more than the Plan's "pessimistic" projections might have suggested, and also allowed Seery to plant friendly allies into the creditor constituency (and on the post-confirmation CTOB) that would "rubber stamp" his generous compensation. This is all referred to as "not arm's-length" and "collusive." Notably, the MNPI mostly pertained to a likely future acquisition of MGM by Amazon (which transaction, indeed, occurred in 2022, after being publicly announced in Spring of 2021); as noted earlier, Highland owned, directly and indirectly, common stock in MGM. Also notably, there had been rumors and media attention regarding a potential sale of MGM for many months.[138] In summary, to be clear, HMIT's desired lawsuit is laced with a theme of "insider trading"—although this isn't a situation of securities trading *per se* (i.e., the unsecured Purchased Claims were not securities), and, as noted earlier, the Texas State Securities Board has not seen fit to investigate the claims trading activity.

So, preliminarily, is claims trading in bankruptcy sinister *per se*? The answer is no.

[138] *E.g.,* Benjamin Mullin, *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale,* THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.).

The activity of investing in distressed debt (which frequently occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and, indeed, has been so for a very long time. As noted by one scholar:

> The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

Adam J. Levitin, *Bankruptcy* Markets*: Making Sense of Claims Trading*, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010) (hereinafter "*Bankruptcy Markets*").[139]

As a pure policy matter, some practitioners have bemoaned this claims trading phenomenon, suggesting that "distressed debt traders may sacrifice the long-term viability of a debtor for the ability to realize substantial and quick returns on their investments."[140] Others suggest that claims trading in bankruptcy is beneficial, in that it allows creditors of a debtor an early exit from a potentially long bankruptcy case, enabling them to save expense and administrative hassles, realize immediate liquidity on their claims (albeit discounted), and may

[139] *See also* Aaron Hammer & Michael Brandess, *Claims Trading: The Wild West of Chapter 11s*, AM. BANKR. INST. JOURNAL 62 (Jul./Aug. 2010); Chaim Fortgang & Thomas Mayer, *Trading Claims and Taking Control of Corporations in Chapter 11,* 12 CARDOZO L. REV. 1, 25 (1990) (noting that "the first recorded instance of American fiduciaries trading claims against insolvent debtors predates all federal bankruptcy laws and goes back to 1790" when the original 13 colonies were insolvent, owing tremendous amounts of debt to various parties in connection with the Revolutionary War; early American investors purchased these debts for approximately 25% of their par value, hoping the claims would be paid at face value by the American government).

[140] Harvey R. Miller, *Chapter 11 Reorganization Cases and the Delaware Myth*, 55 VAND. L. REV. 1987, 2016 (2002). *See also* Harvey R. Miller & Shai Y. Waisman, *Does Chapter 11 Reorganization Remain a Viable Option for Distressed Businesses for the Twenty-First Century?*, 78 AM. BANKR. L.J. 153 (2004); Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129 (2005).

even permit them to take advantage of a tax loss on their own desired timetable.[141] On the flipside, "[c]aims trading permits an entrance to the bankruptcy process for those investors who want to take the time and effort to monitor the debtor and contribute expertise to the reorganization process."[142]

So, what are the "rules of the road" here? What does the Bankruptcy Code dictate regarding claims trading? The answer is nothing. The Bankruptcy Code itself has no provisions whatsoever regarding claims trading. The only thing resembling any regulation of claims trading during a bankruptcy case is found at Federal Rule of Bankruptcy Procedure 3001(e)—the current version of which went into effect in 1991—and it imposes extremely light regulation—if it could even be called that. This rule requires, in pertinent part (at subsection (2)), that "[i]f a claim other than one based on a publicly traded note, bond, or debenture" is traded during the case after a proof of claim is filed, notice/evidence of that trade must be filed with the bankruptcy clerk by the transferee. The transferor shall then be notified and given 21 days to object. If there is an objection, the bankruptcy court will hold a hearing regarding whether a transfer, in fact, took place. If there is no objection, nothing further needs to happen, and the transferee will be considered substituted for the transferor.

There are several things noteworthy about Rule 3001(e)(2). First, the only party given the opportunity to object is the ***transferor*** of the claim (presumably, in the situation of a dispute regarding whether there was truly an agreement regarding the transfer of the claim). Second, there is no need for a bankruptcy court order approving the transfer (except in the event of an objection

[141] *See Bankruptcy Markets*, at 70. *See also In re Kreisler,* 546 F.3d 863, 864 (7th Cir. 2008) ("Claims trading allows creditors to opt out of the bankruptcy system, trading an uncertain future payment for an immediate one, so long as they can find a purchaser.").

[142] *Bankruptcy Markets* at 70 (citing, among other authorities, Edith S. Hotchkiss & Robert M. Mooradian, *Vulture Investors and the Market for Control of Distressed Firms*, 43 J. FIN. ECON. 401, 401 (1997) (finding that "vulture investors add value by disciplining managers of distressed firms").

by the alleged transferor). Third, the ***economic consideration paid need not be disclosed to the court or anyone***. Fourth, there is no requirement or definition of timeliness. Finally, it explicitly does not apply with regard to publicly traded debt. This, alone, means that many claims trades are not even reported in a bankruptcy case. But it is not just publicly traded debt that will not be reflected with a Rule 3001(e) filing. For example, bank debt, in modern times, is often syndicated (i.e., fragmented into many beneficial holders of portions of the debt) and only the administrative agent for the syndicate (or the "lead bank") will file a proof of claim in the bankruptcy—thus, as the syndicated interests (participations) change hands, and they frequently do, there typically will not be a Rule 3001(e) notice filed.[143] To be clear here, this syndication-of-bank-debt fact, along with the fact that there are financial products whereby bank debt might be carved up into economic interests separate and apart from legal title to the loan, means there are many situations in which trading of claims during a bankruptcy case is not necessarily transparent or, for that matter, policed by the bankruptcy court. This is the world of modern bankruptcy. Most of the claims trading that gets reported through a Rule 3001(e) notice is the trading of small vendor claims. And this is all regarded as private sale transactions for the most part.[144]

Suffice it to say that there is not a wealth of case law dealing with claims trading in a bankruptcy context. Perhaps this is not surprising, since it is not prohibited and ***is mostly a matter of private contract between buyer and seller***. The case law that does exist seems to arise in situations of perceived bad faith of a purchaser—for example, when there was an attempt to control voting and/or ultimate control of the debtor through the plan process (not always problematic, but

[143] Anne Marrs Huber & Thomas H. Young, *The Trading of Bank Debt in and Out of Chapter 11*, 15 J. BANKR. L. & PRAC. 1, 1, 3 (2006).

[144] Note that Bankruptcy Rule 3001(e) was very different before 1991. Between 1983-1991, the rule required that parties transferring claims inform the court that a transfer of claims was taking place and also disclose the consideration paid for the transferred claims. A hearing would take place prior to the execution of a trade. Judicial involvement was required and resulted in judicial scrutiny of transactions—something that simply does not exist today.

there are outlier cases where this was found to cross a line and result in consequences such as disallowing votes on a plan or even equitable subordination of a claim).[145] Another type of case that has generated case law is where the purchaser of claims occupied a fiduciary status with the debtor.[146] Still another type of case that has generated case law is where there is an attempt to cleanse claims that might have risks because of a seller's malfeasance, by trading the claim to a new claim holder.[147]

The following is a potpourri of the more notable cases that have addressed claims trading in different contexts. Most of them imposed no adverse consequences on claims traders: *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (where a corporation named Garlin, that was owned by the individual chapter 7 debtors' sister and close friend, purchased a $900,000 bank claim for $16,500, and there was no disclosure of Garlin's connections to debtors and no Rule 3001(e)(2) notice was filed, the Seventh Circuit reversed the bankruptcy court's invocation of the doctrine of equitable subordination to the claim, stating: "Equitable subordination is generally appropriate only if a creditor is guilty of misconduct that causes injury to the interests of other creditors;" the Seventh Circuit further stated that it could "put to one side whether the court's finding of inequitable conduct was correct" because even if there was misconduct, it did not harm the other creditors, who were in the same position whether the original creditor or Garlin happened to own the claim; the Seventh Circuit did note that Garlin's decision to purchase the original bank

[145] *In re Applegate Prop. Ltd.,* 133 B.R. 827, 836 (Bankr. W.D. Tex. 1991) (designating votes of an affiliate of the debtor that purchased a blocking position to thwart a creditor's plan because it was done in bad faith); *In re Allegheny Int'l, Inc.,* 118 B.R. 282, 289–90 (Bankr. W.D. Pa. 1990) (because of bad faith activities, the court designated votes of a claims purchaser who purchased to get a blocking position on a plan). *But see In re First Humanics Corp.,* 124 B.R. 87, 92 (Bankr. W.D. Mo. 1991) (claims purchased by debtor's former management company to gain standing to file a plan to protect interest of the debtor was in good faith).

[146] *See In re Exec. Office Ctrs., Inc.*, 96 B.R. 642, 649-650 (Bankr. E.D. La. 1988) (and numerous old cites therein).

[147] *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 340 B.R. 180 (Bankr. S.D.N.Y. 2006), *vacated, Enron Corp. v. Springfield Assocs., L.L.C. (In re Enron Corp.),* 379 B.R. 425 (S.D.N.Y 2007); *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 333 B.R. 205, 211 (Bankr. S.D.N.Y. 2005).

creditor's claim might have disadvantaged the other creditors if it interfered with the trustee's own potential settlement with the original bank creditor (note that the trustee argued that she had been negotiating a deal with bank under which bank might have reduced its claims); however, the trustee presented no evidence that any deal with the bank was imminent or even likely; thus, whether such a deal could have been reached was speculation; equitable subordination was therefore improper."); *Viking Assocs., L.L.C. v. Drewes (In re Olson),* 120 F.3d 98, 102 (8th Cir. 1997) (case involved the actions of an entity known as Viking in purchasing all of the unsecured claims against the bankruptcy estate of two chapter 7 debtors, Hugo and Jeraldine Olson; Viking was a related entity, owned by the debtors' children, and purchased $525,000 of unsecured claims for $67,000; while the bankruptcy court had discounted the claims down to the purchase amount and subordinated Viking's discounted claims to the claims of the other unsecured creditors, relying on section 105 of the Bankruptcy Code, the Eighth Circuit held that the bankruptcy court lacked the authority to do this, and, thus, reversed and remanded; the Eighth Circuit noted that in 1991, Bankruptcy Rule 3001(e)(2) was amended "to restrict the bankruptcy court's power to inspect the terms of" claims transfers. *Id.* at 101 (citing *In re SPM Mfg. Corp.,* 984 F.2d 1305, 1314 n. 9 (1st Cir. 1993)); the text of the rule makes clear that the existence of a "dispute" depends upon an objection by the ***transferor***; where there is no objection by the ***transferor***, there is no longer any role for the court); *Citicorp. Venture Capital, Ltd. v. Official Committee of Unsecured Creditors (In re Papercraft Corp.),* 160 F.3d 982 (3d Cir. 1998) (large investor who held seat on board of directors of debtor and debtor's parent, and who also had nonpublic information regarding the debtor's value, anonymously purchased 40% of the unsecured claims at a steep discount during the chapter 11 case, and then, having obtained a blocking position for plan voting purposes, proposed a plan to acquire debtor; the claims purchaser's claims were equitably reduced to amount

paid for the claims since investor was a fiduciary who was deemed to have engaged in inequitable conduct); *Figter Ltd. v. Teachers Ins. & Annuity Ass'n of Am. (In re Figter),* 118 F.3d 635 (9th Cir. 1997) (Ninth Circuit affirmed bankruptcy court's ruling that a secured creditor's purchase of 21 out of 34 unsecured claims in the case was in good faith and it would not be prohibited from voting such claims on the debtor's plan, pursuant to Bankruptcy Code section 1126(e)); *In re Lorraine Castle Apartments Bldg. Corp.,* 145 F.2d 55, 57 & 58 (7th Cir. 1945) (in a case under the old Bankruptcy Act, in which there were more restrictions on claims trading, a debtor and two of its stockholders argued that the claims of purchasers of bonds should be limited to the amounts they paid for them; bankruptcy court special master found, "that, though he did not approve generally the ethics reflected by speculation in such bonds," there was no cause for limitation of the amounts of their claims, pointing out that the persons who had dealt in the bonds were not officials, directors, or stockholders of the corporation and owed no fiduciary duty to the estate or its beneficiaries—rather they were investors or speculators who thought the bonds were selling too cheaply and that they might make a legitimate profit upon them; the district court agreed, as did the Seventh Circuit, noting that "[t]o reduce the participation to the amount paid for securities, in the absence of exceptional circumstances which are not present here, would reduce the value of such bonds to those who have them and want to sell them. This would result in unearned, undeserved profit for the debtor, destroy or impair the sales value of securities by abolishing the profit motive, which inspires purchasers."); *In re Washington Mutual, Inc.*, 461 B.R. 200 (Bankr. Del. 2011), *vacated in part*, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (discussion of an equity committee's potential standing to pursue equitable subordination or equitable disallowance of the claims of certain noteholders who had allegedly traded their claims during the chapter 11

case while having material non-public information; while bankruptcy court originally indicating these were viable tools, court later vacated its ruling on this after a settlement was reached).

Suffice it to say that the courts have, more often than not, been unwilling to impose legal consequences, for an actor's involvement with claims trading. At most, in outlier-type situations during a case, courts have taken steps to disallow claims for voting purposes or to subordinate claims to other unsecured creditors for distribution purposes.[148] But the case at bar does not present facts that are typical of any of the situations in reported cases.

For one thing, unlike in the reported cases this court has located, there ***seems to have been complete symmetry of sophistication among the claim sellers and claim purchasers here—and complete symmetry with HMIT for that matter***. All persons involved are highly sophisticated financial institutions, hedge funds, or private equity funds. No one was a "mom-and-pop" type business or vendor that might be vulnerable to chicanery. The claims ranged from being worth $10's of millions of dollars to $100's of millions of dollars in face value. And, of course, the sellers/transferors of the claims have never shown up, subsequent to the claims trading

[148] Note that, while some cases suggest that outright disallowance of an unsecured claim, in the case of "inequitable conduct" might be permitted (not merely equitable subordination to unsecured creditors)—usually citing to *Pepper v. Litton*, 308 U.S. 295 (1939)—the Fifth Circuit has suggested otherwise. *In re Mobile Steel Co., Inc.,* 563 F.2d 692, 699-700 (5th Cir. 1977) (cleaned up) (noting that "equitable considerations can justify only the subordination of claims, not their disallowance" and also noting that "three conditions must be satisfied before exercise of the power of equitable subordination is appropriate[:] (i) The claimant must have engaged in some type of inequitable conduct[;] (ii) The misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant[; and] (iii) Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act." In *Mobile Steel*, the Fifth Circuit held that the bankruptcy judge exceeded the bounds of his equitable jurisdiction by disallowing a group of claims and also reversed the subordination of certain claims, on the grounds that the bankruptcy court had made clearly erroneous findings regarding alleged inequitable conduct and other necessary facts. *Contrast In re Lothian Oil Inc.,* 650 F.3d 539 (5th Cir. 2011) (involving the question of whether a bankruptcy court may ***recharacterize*** a claim as equity rather than debt; the court held yes, but it has nothing to do with inequitable conduct *per se*; rather section 502(b)'s language that a claim should be allowed unless it is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law...." is the relevant authority; unlike equitable subordination, recharacterization is about looking at the true substance of a transaction not the conduct of a party (if it looks like a duck and quacks like a duck, it's a duck—i.e., equity); the court indicated that section 105 is not a basis to recharacterize debt as equity; it's a matter of looking at state law to determine if there is any basis and looking at the nature of the underlying transaction—as either a lending arrangement or equity infusion.

transactions, to complain about anything. Everyone involved here is, essentially, a behemoth and there is literally no sign of innocent creditors getting harmed. Second, the case at bar is unique in that the claims traded here ***had all been allowed after objections, mediation, and Rule 9019 settlements during the bankruptcy case***. Thus, the amounts that would be paid on them were "locked in," so to speak. There was no risk to a hypothetical claims-purchaser of disallowance, offset, or any "claw-back" litigation (or—one might have reasonably assumed—any type of litigation). Third, the terms for distributions on unsecured claims had been established in a confirmed plan (although the claims were purchased before the effective date of the Plan). Thus, there was a degree of certainty regarding return on investment for the Claims Purchasers here that was much higher than if the claims had been purchased early, during, or mid-way through the case.[149] ***This was post-confirmation, pre-effective date claims purchasing.*** Interestingly, all three of these facts might suggest that little due diligence would be undertaken by any hypothetical purchaser. The rules of the road had been set. The court makes this observation because HMIT has suggested there is something highly suspicious about the fact that Farallon allegedly told Dondero that it did no due diligence before purchasing its claims (leading him to conclude that the Claims Purchasers must have purchased their claims based on receiving MNPI from Seery). Not only has there been no colorable evidence suggesting that insider information was shared, but the lack of due diligence in this context does not reasonably seem suspicious. The claims purchases

[149] *See discussion* in BANKRUPTCY MARKETS, at 91:

> Some claims purchasers buy before the bankruptcy petition is filed, some at the beginning of the case, and some towards the end. For example, there are investors who look to purchase at low prices either when a business is failing or early in the bankruptcy and ride through the case until payouts are fairly certain. [Citations omitted.] These investors might be hoping to buy at 30 cents on the dollar and get a payout at 70 cents on the dollar. Perhaps if they waited another six months, the payout would be 74 cents on the dollar, but the additional 4 cents on the dollar for six months might not be a worthwhile return for the time value of the investment. Other investors might not want to assume the risk that exists in the early days of a case when the fate of the debtor is much less certain, but they would gladly purchase at 70 cents on the dollar at the end of the case to get a payout of 74 cents on the dollar six months later.

were almost like passive investments, at this point—there was no risk of a claim objection and there was a confirmed plan, with a lengthy disclosure statement that described not only plan payment terms and projections, but essentially anything that any investor might want to know.

To reiterate, here, HMIT seeks leave to assert the following causes of action:

I. Breach of Fiduciary Duties (Seery)

II. Knowing Participation in Breach of Fiduciary Duties (Claims Purchasers)

III. Conspiracy (all Proposed Defendants)

IV. Equitable Disallowance (Claims Purchasers)

V. Unjust Enrichment and Constructive Trust (all Proposed Defendants)

VI. Declaratory Judgment (all Proposed Defendants)

The court struggles to fathom how any of these proposed causes of action or remedies can be applied in the context of: (a) post-confirmation claims trading; (b) where the claims have all been litigated and allowed.

In reflecting on the case law and various Bankruptcy Code provisions, the court can fathom the following hypotheticals in which claims trading during a bankruptcy case might be somehow actionable:

> **Hypothetical #1**: The most obvious situation would be if a purchaser of a claim files a Rule 3001(e) Notice, and the seller/transferor then files an objection thereto. There would then be a contested hearing between purchaser and seller regarding the validity of the transfer with the bankruptcy court issuing an appropriate order after the hearing on the objection. ***As noted, there was no objection to the Rule 3001(e) notices here***.
>
> **Hypothetical #2:** Alternatively, there could be a breach of contract suit between purchaser and seller if one thinks the other breached the purchase-sale agreement somehow. Perhaps torts might also be alleged in such litigation. ***As noted, there is no dispute between purchasers and sellers here.***
>
> **Hypothetical #3:** If there is believed to be fraud in connection with a plan, a party in interest might, pursuant to section 1144 of the Bankruptcy Code, move for

revocation of the plan "at any time before 180 days after the date of entry of the order for confirmation" and the court "may revoke such order if and only if such order was procured by fraud." ***As noted, here HMIT has suggested that the "pessimistic" plan projections may have been fraudulent or misrepresentations somehow. The time elapsed long ago to seek revocation of the Plan.***

Hypothetical #4: As discussed above, in rare situations (bad faith), during a Chapter 11 case, before a plan is confirmed, a claims purchaser's claim might not be allowed for voting purposes. *See* Sections 1126(e) of the Bankruptcy Code ("the court may designate any entity whose acceptance or rejection of such plan was not in good faith"). ***Obviously, in this case, this is not applicable—the claims were purchased post-confirmation.***

Hypothetical #5: As discussed above, in rare situations (inequitable conduct), a court might equitably subordinate ***claims*** to ***other claims***. *See* Section 510(c) of the Bankruptcy Code. But here**,** HMIT is seeking either: (a) equitable subordination of the ***claims*** of the Claims Purchaser to HMIT's ***Class 10 former equity interest*** (in contravention of the explicit terms of section 510(c)) or, (b) ***equitable disallowance*** of the claims of the Claims Purchasers (in contravention of *Mobile Steel*).

Hypothetical #6: Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case may permit "recharacterization" of a claim from debt to equity in certain circumstances, but not in circumstances like the ones in this case. Here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). The problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). Here there was most definitely "a contest" with regard to all of these purchased claims. ***Thus, it would appear that any effort to have a court reconsider these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.***

Hypothetical #7: If a party believes "insider trading" occurred there are governmental agencies that investigate and police that. ***Here, the purchased claims (which were not based on bonds or certificated equity interests) would not be securities so as to fall under the SEC's purview. Moreover, there was evidence that HMIT or Dondero-Related entities requested that the Texas State Securities Board investigate the claims trading and the board did not find a basis to pursue anyone for wrongdoing***.

Hypothetical #8: The United States Trustee can investigate wrongdoing by a debtor or unsecured creditors committee. While the United States Trustee would naturally have concerns about members of an unsecured creditors committee (or an officer of a debtor-in-possession) adhering to fiduciary duties and not putting their

> own interests above those of the estate, here, there are a couple of points that seem noteworthy. One, the claims trading activity was post-confirmation so—while certain of the claim-sellers may have still been on the unsecured creditors committee, as the effective date of the plan had not yet occurred—the circumstances are very different than if this had all happened during the early, contentious stages of the case. It seems inconceivable that there was somehow a disparity of information that might be troubling—the Plan had been confirmed and it was available for the world to see. The whole notion of "insider information" (just after confirmation here) feels a bit off-point. Bankruptcy practitioners and judges sometimes call bankruptcy a fishbowl or use the "open kimono" metaphor for good reason. It is generally a very open process. And information-sharing on the part of a debtor-in-possession or unsecured creditors committee is intended to be robust. *See, e.g.,* Bankruptcy Code sections 521 and 1102(b)(3). In a way, HMIT here seems to be complaining about this very situation that the Code and Rules have designed.

In summary, claims trading is a highly ***unregulated*** activity in the bankruptcy world. ***HMIT is attempting to pursue causes of action here that, to this court's knowledge, have never been allowed in a context like this***.

B. Back to Standing—Would HMIT Have Standing to Bring the Proposed Claims?

The Proposed Defendants argue that HMIT lacks standing to bring the Proposed Claims, either: (a) derivatively on behalf of the Reorganized Debtor and Claimant Trust, or (b) directly on behalf of itself. Thus, they argue that this is one reason that the Motion for Leave should be denied.

In making their specific standing arguments, the parties analyze things slightly differently:

The Claims Purchasers focus primarily on HMIT's lack of ***constitutional*** standing but also argue that HMIT does not have ***prudential*** standing under Delaware trust law to bring the Proposed Claims either individually or derivatively. Why do they mention Delaware trust law? Because the Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29.[150]

The Highland Parties' standing arguments focus almost entirely on HMIT's lack of ***prudential*** standing under Delaware trust law to bring the Proposed Claims.

HMIT argues that the Proposed Defendants "play fast and loose with standing arguments" and that HMIT has ***constitutional*** standing as a "party aggrieved"[151] to bring the Proposed Claims on behalf of itself. HMIT also argues that it has standing under Delaware trust law to bring a

[150] *See* Proposed Complaint, ¶ 26.

[151] Proposed Complaint, ¶7.

derivative action on behalf of the Claimant Trust, and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to do so.

1. The Different Types of Standing: Constitutional Versus Prudential

The parties are addressing two concepts of standing that can sometimes be confused and misapplied by both attorneys and judges: ***constitutional Article III standing***, which implicates federal court subject matter jurisdiction,[152] and the narrower standing concept of ***prudential standing***, which does not implicate subject matter jurisdiction but nevertheless might prevent a party from having capacity to sue, pursuant to limitations set by courts, statutes or other law.

Article III constitutional standing works as follows: a plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing three elements: (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[153] "If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve."[154] These elements ensure that a plaintiff has "'such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf."[155]

[152] Article III, Section 2 of the U.S. Constitution gives federal courts jurisdiction over enumerated cases and controversies.

[153] *See Thole v. U.S. Bank, N.A.*, 140 S.Ct. 1615, 1618 (2020)(citing the Supreme Court's seminal case on the tripartite test for Article III constitutional standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), where the Supreme Court stated that "the irreducible constitutional minimum of standing contains [the] three elements"); *see also Spokeo*, 578 U.S. at 338; *Abraugh v. Altimus*, 26 F.4th 298, 302 (5th Cir. 2022) (citing *id.*).

[154] *Transunion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021)(cleaned up).

[155] *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Apart from this minimal constitutional mandate, courts and statutes have set other limits on the class of persons who may seek judicial remedies—and this is the concept of prudential standing. In its recent opinion in *Abraugh v. Altimus*,[156] the Fifth Circuit set forth a detailed analysis of the two types of "standing," noting that the term "standing" is often "misused" in our legal system, which has led to confusion for both attorneys and judges.[157] The constitutional standing that is necessary for a court to exercise subject matter jurisdiction is broader than prudential standing and is only the first hurdle a party must clear before pursuing a claim in federal court.

The Fifth Circuit explained that ***in addition to*** Article III constitutional standing, "courts have occasionally articulated other 'standing' requirements that plaintiffs must satisfy under certain conditions, ***beyond those imposed by Article III***,"[158] such as the "standing" requirement that might be imposed by a statute or by jurisprudence. The *Abraugh* case was a perfect example of the latter.

Abraugh involved the civil rights statutes that provide, among other things, that "a party must have standing under the state wrongful death or survival statutes to bring [a § 1983 cause of action]" and noted that these statutes impose additional "standing" requirements that are a matter of prudential standing, not constitutional standing.[159] In *Abraugh*, the Fifth Circuit reversed and remanded a district court's dismissal of a § 1983 civil rights cause of action—noting that the district court had stated that it was dismissing based on a "lack of subject matter jurisdiction" because the plaintiff in that action lacked standing.[160] The plaintiff was the mother of a prisoner

[156] 26 F.4th 298.
[157] *Id.* at 303.
[158] *Id.* at 302 (emphasis added).
[159] *Id.* at 302-303.
[160] *Id.* at 301.

who died by suicide while in custody who brought a § 1983 action against Louisiana correctional officers and officials. After finding that the plaintiff/mother lacked standing under Louisiana's wrongful death and survival statutes (because there had been a surviving child and wife of the prisoner who were the proper parties with capacity to sue), the district court held that it was dismissing for lack of subject matter jurisdiction. The Fifth Circuit pointed out that the plaintiff/mother may have lacked standing under Louisiana's wrongful death and survival statutes to bring the claim under § 1983, but that type of standing was matter of ***prudential*** standing, and the plaintiff/mother actually ***did*** have ***Article III*** constitutional standing ("a constitutionally cognizable interest in the life of her son").[161] Thus, the district court's error was ***not*** in finding that the plaintiff/mother lacked prudential standing but in improperly conflating the two standing concepts when it held that it had lacked ***subject matter jurisdiction*** to consider any of the plaintiff's/mother's amended complaints.[162] The Fifth Circuit noted specifically that[163]

> prudential standing does not present a jurisdictional question, but "a merits question: who, according to the governing substantive law, is entitled to enforce the right?" As the Federal Rules of Civil Procedure make clear, "an action must be prosecuted in the name of the real party in interest." FED. R. CIV. P. 17(a)(1). And a violation of this rule is a failure of "prudential" standing. "Not one of our precedents holds that the inquiry is jurisdictional." It goes only to the validity of the cause of action. And "the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction."

Somewhat relevant to this prudential standing discussion is the fact that, in this bankruptcy case, there have been dozens of appeals of bankruptcy court orders by Dondero and Dondero-related entities. In connection therewith, both the district court and the Fifth Circuit, in evaluating the ***appellate standing*** of the appellants, have taken pains to distinguish between the concepts of:

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[161] *Id.*

[162] *Id.* at 301, 303-304. The Fifth Circuit opined that "the district court did not err in describing [the mother's] inability to sue under Louisiana law as a defect of 'standing[, b]ut it is a defect of prudential standing, not Article III standing" thus technically not implicating the federal court's subject matter jurisdiction. *Id.* at 303.

[163] *Id.* at 304 (cleaned up).

(a) traditional, constitutional standing, and (b) a type of prudential standing known as the "person aggrieved" test, which is applied in the Fifth Circuit in determining whether a party has ***standing to appeal a bankruptcy court order***—which it describes as a narrower and "more exacting" standard than constitutional standing. As explained in a Fifth Circuit opinion addressing the standing of a Dondero-related entity called NexPoint to appeal bankruptcy court orders allowing professional fees, the "person aggrieved" standard that is typically applied to ascertain bankruptcy ***appellate*** standing originated in a statute in the Bankruptcy Act. The Fifth Circuit continued to apply it after Congress removed the provision when it enacted the Bankruptcy Code in 1978.[164] Because it is narrower and "more exacting" than the test for Article III constitutional standing, it involves application of prudential standing considerations.[165] The Fifth Circuit describes the "person aggrieved" test for bankruptcy appellant standing as requiring that an appellant show that it was "*directly and adversely affected pecuniarily* by the order of the bankruptcy court," requiring "a higher causal nexus between act and injury than traditional standing . . . that best deals with the unique posture of bankruptcy actions."[166] In affirming the district court's dismissal of NexPoint's appeal of the bankruptcy court's fee orders, due to NexPoint's lack of prudential standing under the "person aggrieved" test, the court rejected NexPoint's argument that it had standing to appeal

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[164] *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, No. 22-10575, 2023 WL 4621466, *2 (5th Cir. July 19, 2023)(citing *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004)(cleaned up)).

[165] *Id.* at *1, **4-6 (where the Fifth Circuit repeatedly throughout its opinion refers to the "person aggrieved" test for standing in bankruptcy actions as a test for "prudential standing."); *see also Dondero v. Highland Capital Mgt., L.P.*, Civ. Act. No. 3:20-cv-3390-X, 2002 WL 837208 (N.D. Tex. Mar. 18, 2022)(where the district court, in addressing Dondero's standing to appeal a bankruptcy court order approving a Rule 9019 settlement (between Highland and Acis Capital Management GP LLC), notes that "[i]t is substantially more difficult to have standing to appeal a bankruptcy court's order than it is to pursue a typical complaint under Article III of the U.S. Constitution" and that "the Fifth Circuit has long recognized that bankruptcy cases' wide-reaching scope calls for a more stringent standing test.").

[166] *See id.* at *3 (cleaned up). The court quotes its 2018 opinion in *Matter of Technicool Sys., Inc. (In re Technicool)*, 896 F.3d 382, 385 (5th Cir. 2018), which explains why the "person aggrieved" prudential standing standard is applied in bankruptcy actions: "Bankruptcy cases often involve numerous parties with conflicting and overlapping interests. Allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Given the specter of such sclerotic litigation, standing to appeal a bankruptcy court order is, of necessity, *quite limited*." *Id.* (cleaned up).

because "it meets traditional Article III standing requirements [and that the more exacting] prudential standing considerations such as the 'person aggrieved' standard" did not survive the Supreme Court's 2014 *Lexmark*[167] opinion,[168] which addressed standing issues in the context of false advertising claims under the Lanham Act and reminded that courts may not "limit a cause of action that Congress has created merely because 'prudence' dictates."[169] The Fifth Circuit held that the Supreme Court's reminder in *Lexmark* did not nullify the "person aggrieved" test for prudential standing in bankruptcy appeals, citing its own decision in *Superior MRI Services Inc. v. Alliance Healthcare Services, Inc.*[170] (rendered a year after *Lexmark* was decided), in which it held that *Lexmark* applied only to the circumstances of that case, "rather than broadly modifying—or undermining—*all* prudential standing concerns, such as the one animating the 'person aggrieved' standard in bankruptcy appeals."[171]

Similarly, in yet another appeal in this bankruptcy case involving three Dondero-related entities as appellants (NexPoint, Dugaboy, and HCMFA)—this one an appeal of a bankruptcy court order authorizing the creation of an indemnity subtrust and entry into an indemnity trust agreement—the district court noted the parties' confusion about the standing issue, as exemplified in the parties' reference to constitutional standing when they were actually arguing that they had prudential standing under the "person aggrieved" test: "Although the parties frame this issue as one of constitutional standing . . . they cite case law and present arguments about the prudential

[167] *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

[168] *Id.* at *2.

[169] *See id.* at *4 (cleaned up).

[170] 778 F.3d 502 (5th Cir. 2015).

[171] *NexPoint*, 2023 WL 4621466 at *4 (cleaned up). The Fifth Circuit explicitly stated that "*Lexmark* does not expressly reach prudential concerns in bankruptcy appeals and brought no change relevant here." *Id.* at *5 (cleaned up).

standing requirement embodied in the 'person aggrieved' test."[172] The district court noted that it had an "independent obligation to consider constitutional standing before reaching its prudential aspects."[173] The district court dismissed the appeal as to Dugaboy and HCMFA for lack of standing but, upon concluding that NexPoint did have standing, dismissed the appeal as to it on the merits. The Fifth Circuit affirmed.[174] Interestingly, the court noted that, while the parties did not contest the district court's determination that NexPoint had standing to pursue the appeal, it "may consider prudential standing issues *sua sponte*."[175] In doing so, the Fifth Circuit recognized the distinction between constitutional standing and the prudential "person aggrieved" test applied to bankruptcy appeals, which "is, of necessity, quite limited" and "an even more exacting standard than traditional constitutional standing," as it requires an appellant to show that it is "directly, adversely, and financially impacted by a bankruptcy order."[176]

In summary, in analyzing whether HMIT would have standing to bring the Proposed Claims, this court must ***first*** determine whether HMIT would have constitutional standing under Article III (which is a subject matter jurisdiction hurdle) and, assuming it does, then ***additionally*** address whether HMIT would also have prudential standing (i.e., capacity to sue) pursuant to any applicable statutes (e.g., Delaware statutes), jurisprudence, or other substantive law that might ***limit*** who may sue. Notwithstanding HMIT's argument that it has standing under the "person

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[172] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2002 WL 270862, *1 (N.D. Tex. Jan. 18, 2022)(cleaned up). The district court dismissed the appeals of two of the appellants, Dugaboy and HCMFA, finding that they lacked both constitutional standing and prudential standing under the "person aggrieved" test and affirmed the bankruptcy court's order after finding the third appellant, NexPoint, to have prudential standing under the "person aggrieved" test. *Id.* at **1-3 and *4.

[173] *Id.* at *1 n.2.

[174] *Highland Capital Mgt. Fund, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 57 F.4th 494 (5th Cir. 2023).

[175] *Id.* at 501 (cleaned up).

[176] *Id.*

aggrieved" test[177]—which, as discussed above, is a matter of prudential standing—this is applied only in the context of bankruptcy ***appellate*** matters.[178] As noted in its most recent opinion discussing standing in an appeal from the Highland bankruptcy case, the Fifth Circuit reiterated that the "person aggrieved" test is a test for bankruptcy ***appellate*** standing, which is narrower than a party in interest's right to be heard in bankruptcy cases in general.[179] The court rejected an argument that Bankruptcy Code § 1109, which provides that "[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter" confers ***appellate*** standing, noting that "one's standing to appear and be heard before the bankruptcy court [is] a concept distinct from standing to appeal the merits of a decision" and that the "person aggrieved" test for bankruptcy appellate standing is narrower than the test for determining one's standing to appear and be heard in a bankruptcy proceeding.[180]

Thus, the court will now analyze whether HMIT would, at a minimum, have constitutional standing to bring the Proposed Claims.

2. HMIT Would Lack Article III Constitutional Standing to Bring the Proposed Claims.

As noted above, the Supreme Court and the Fifth Circuit have made clear that constitutional standing is necessary for a court to exercise subject matter jurisdiction. It is only the first hurdle a party must clear before pursuing a claim in federal court. HMIT, as plaintiff, would bear the

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[177] HMIT insists that it has constitutional standing to bring claims on its individual behalf "as an aggrieved party." *See* Reply, ¶ 7.

[178] HMIT's argument in this matter that it has constitutional standing because it is a "party aggrieved" incorrectly conflates the prudential bankruptcy appellate "person aggrieved" test with the broader test that is applied to constitutional standing. The court is not being critical of this mistake. As noted at *supra* note 149, the Fifth Circuit in *Abraugh* pointed out that courts and attorneys alike have created confusion by misusing the term "standing" when they equate a lack of "standing," in all instances, with a lack of subject matter jurisdiction, even when the party is found to lack only prudential standing. Thus, HMIT is not alone in its confusion over the two different concepts of standing.

[179] *See NexPoint*, 2023 WL 4621466 at *6.

[180] *Id.* at *6 (cleaned up)("Because Section 1109(b) expands the right to be heard [in a bankruptcy proceeding] to a wider class than those who qualify under the 'person aggrieved' standard, courts considering the issue have concluded that merely being a party in interest is insufficient to confer ***appellate*** standing.")(emphasis added).

burden of establishing: (1) that it suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[181]

Concrete and Particularized; Actual or Imminent. As the Supreme Court made clear in the *Lujan* case, the injury in fact element requires a showing that the injury was "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."[182] The Supreme Court in the *Spokeo* case expounded on the "concrete and particularized" requirements of the "injury in fact" element. Particularization requires a showing that the injury "must affect the plaintiff in a personal and individual way," but while particularization is necessary, it alone is "not sufficient," because an injury in fact must also be "concrete."[183] And, concreteness is "quite different from particularization."[184] A "concrete" injury must be "real," and "not abstract," though it does not mean that the injury must be "tangible," as the injury can be intangible and nevertheless be concrete.[185] In addition to the concreteness and particularization requirements, an injury in fact must be "actual or imminent" such that "allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing."[186] "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly*

[181] *See supra* note 153.
[182] *Lujan*, 504 U.S. at 560 (cleaned up).
[183] *Spokeo*, 578 U.S. at 339.
[184] *Id.* at 340.
[185] *Id.*
[186] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

impending"; "allegations of *possible* future injury are not sufficient."[187]

Traceability - Causal Connection. As to the second element—that the injury was caused by the defendant—the Supreme Court in *Lujan* further described it as requiring a showing that "the injury has to be fairly traceable to the challenged action of the defendant."[188] The "fairly traceable" test requires an examination of "the causal connection between the assertedly unlawful conduct and the alleged injury."[189]

Redressability. The third element—redressability—requires the court to examine the connection "between the alleged injury and the judicial relief requested."[190] "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court."[191] "[A] court must determine that there is an available remedy which will have a 'substantial probability' of redressing the plaintiff's injury."[192]

The Claims Purchasers argue that HMIT lacks constitutional standing to pursue the claims asserted in the Proposed Complaint because: (i) neither HMIT nor the Bankruptcy Estate was injured by the Claim Purchasers' acquisition of the claims; and (ii) the Proposed Complaint lacks a theory of cognizable damages to the Reorganized Debtor, the Claimant Trust, and/or the beneficiaries of the Claimant Trust.[193]

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[187] *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013)(cleaned up); *see also Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir. 2023)("[Injury] cannot be speculative, conjectural, or hypothetical [and] [a]llegations of only a 'possible' future injury similarly will not suffice.")(cleaned up).

[188] *Lujan*, 504 U.S. at 560-61 (cleaned up).

[189] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

[190] *Id.* (noting "it is important to keep the ['fairly traceable' and 'redressability'] inquiries separate if the 'redressability' component is to focus on the requested relief.").

[191] *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998).

[192] *City of Los Angeles v. Lyons*, 461 U.S. 95, 129 n.20 (1983)(Marshall, J., dissenting)(cleaned up); *see also Ondrusek v. U.S. Army Corps of Engineers*, Civ. Act. No. 3:22-cv-1874-N, 2023 WL 2169908, at *5 ("Plaintiffs have not demonstrated that any available remedy would be sufficiently likely to relieve their alleged economic losses. Without a showing of redressability, those harms also cannot support Plaintiff's Article III standing.").

[193] As noted earlier, certain of the Proposed Defendants—the Highland Parties—do not focus on HMIT's lack of constitutional standing to pursue the Proposed Claims against them, but on its lack of prudential standing under

The court agrees with the Claims Purchasers' argument here. What is HMIT's concrete and particularized injury—that is "real" and is not abstract? That is not conjectural or hypothetical? That is actual or imminent?

Recall that, under the Plan, HMIT holds a Class 10 contingent interest in the Claimant Trust that only realizes value if all creditors are paid in full with interest. HMIT alleges the following injury: it has suffered a devaluation of its unvested Contingent Claimant Trust Interest by virtue of the alleged over-compensation of Seery as the Claimant Trustee—Seery's alleged over-compensation depletes the assets in the Claimant Trust available for distribution to creditors under the Plan, such that there is less likely a chance that HMIT ultimately receives any distributions on account of its Class 10 Contingent Claimant Trust Interest.[194] Yet, HMIT testified, through both witnesses Dondero and Patrick, that it had no personal knowledge of what Seery's actual compensation is under the CTA at the time HMIT filed its Motion for Leave. It was clear that HMIT's allegations regarding Seery's "excessive" compensation were based entirely on Dondero's pure speculation. In reality, Seery's base salary is exactly what the bankruptcy court approved during the bankruptcy case by a court order (after negotiations between Seery and the Committee). The CTA now further governs his compensation. The CTA, which was publicly filed ***in advance of*** the Plan confirmation hearing and approved by this court as part of the Plan

applicable law. Because constitutional standing is a matter of subject matter jurisdiction, the court has an independent duty to determine whether HMIT would have constitutional standing to pursue the Proposed Claims in federal court. The issue cannot be forfeited or waived by a party. *See Abraugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)("[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Moreover, courts . . . have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.")(cleaned up); *Abraugh*, 26 F.4th at 304 ("It is our constitutional duty, of course, to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.")(cleaned up).

[194] At the June 8 Hearing, HMIT's counsel was unable to identify any other injury HMIT has alleged to have suffered. HMIT's counsel acknowledged that claims trades, in and of themselves, would not "involve injury to the Reorganized Debtor and to the Claimant Trust" and that claims trades are "normally outside the purview of the bankruptcy court" but that "[h]ere, we have alleged . . . . injury [that] takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers." June 8 Hearing Transcript, 67:16-68:8. HMIT can only point to Seery's excess compensation as injury.

(which has been affirmed by the Fifth Circuit), specifically provides that Seery's post-Effective Date compensation would include a "Base Salary" (again, same as during the bankruptcy case), a "success fee," and "severance."[195] The CTA discussed the role of the Committee and then the CTOB in setting the success fee and severance and the like. A fully executed copy of the CTA was admitted into evidence at the June 8 Hearing. HMIT is essentially arguing that its injury (i.e., diminished likelihood of realizing value on its Contingent Claimant Trust Interest) stems from a court-sanctioned and creditor-approved process for approving compensation to Seery. Moreover, HMIT has failed to plead facts sufficient to show that, even if Seery received excessive compensation and that compensation is ordered to be returned, HMIT's Contingent Claimant Trust Interest will ever vest. The district court and the Fifth Circuit in various appeals by Dugaboy, another Dondero-related entity that, similar to HMIT, was a holder of a limited partnership interest in Highland whose interests were terminated as of the Effective Date of the Plan in exchange for a Contingent Claimant Trust Interest, have repeatedly rejected Dugaboy's claims to have standing based on the ***speculative nature of its alleged injuries as a contingent beneficiary of the Claimant Trust under the Plan***. For example, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy of the bankruptcy court's order authorizing the creation of an indemnity subtrust, wherein Judge Fitzwater found that, in addition to lacking prudential standing under the

[195] The Disclosure Statement that was approved by this court, after notice and a hearing, on November 24, 2020, provided that "The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement . . . ." The CTA was part of a Plan Supplement (as amended) that was filed in advance of the confirmation hearing and provided:

> Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

See Highland Ex. 38, at § 3.13(a)(i).

"person aggrieved" test to appeal the bankruptcy court's order, Dugaboy lacked constitutional standing "because they have not identified any injury fairly traceable to the Order: ***the injuries identified are speculative at best and nonexistent at worst***."[196] HMIT's allegations of injury are, without a doubt, "merely conjectural or hypothetical" and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests."[197] The court finds that HMIT would not meet the "concrete and particularized" or the "actual or imminent" requirements for an "injury in fact," and, thus, would lack constitutional standing to pursue the Proposed Claims.

With regard to the second requirement of constitutional standing—whether HMIT could show "traceability" with respect to the Claims Purchasers and/or Seery (i.e., a "causal connection between the assertedly unlawful conduct and the alleged injury"[198]), as noted above, there is only a speculative injury. Even if there is unlawful conduct asserted (i.e., sharing of MNPI to Claims Purchasers who then, as a *quid pro quo*, rubber stamped excessive compensation for Seery), there is nothing other than a hypothetical theory of an alleged injury (i.e., an allegedly less likelihood of a distribution on a Contingent Claimant Trust Interest).

With respect to the third requirement of constitutional standing—whether HMIT can show "redressability" (i.e., that it is likely, not speculative, that the injury can be redressed by a favorable

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[196] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, *1 n.2 (N.D. Tex. Jan. 28, 2022), *aff'd* 57 F.4th 494 (5th Cir. 2023)(emphasis added); *see also* Judge Scholer's opinion in *Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-2268-S, 2022 WL 3701720, *3 (N.D. Tex. Aug. 8, 2022)(cleaned up), *aff'd per curium*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023) (where Dugaboy had argued that "***its pecuniary interest is . . . a potential recovery under the Plan as one of Debtor's former equity holders***" and that "it ha[d] standing as a 'contingent beneficiary' under the Plan, or a beneficiary who will be entitled to payment after all creditors are paid in full," and Judge Scholer stated, "This assertion is premised on the assumption that Dugaboy's 0.1866% pre-bankruptcy limited partnership interest in Debtor—which was extinguished under the Plan—makes it a contingent beneficiary of the creditor trust created under the Plan. . . . [S]uch a 'speculative prospect of harm is far from a direct, adverse, pecuniary hit' as required to confer standing."

[197] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

[198] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

decision), there are multiple problems here.[199] The major remedy sought here is the equitable disallowance of the allowed Purchased Claims (and disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims). There is no such remedy available here. As noted earlier, there is a similar concept of ***equitable subordination*** of a claim to another claim, or of an interest to another interest, pursuant to Bankruptcy Code section 510(c). But under the literal terms of section 510(c), ***claims cannot be subordinated to interests***. Moreover, the Fifth Circuit noted in the *Mobile Steel* case,[200] that ***equitable disallowance*** of a claim (as opposed to equitable subordination of a claims) is not an available remedy. Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case might permit "recharacterization" of a claim from debt to equity in certain circumstances—but not based on inequitable conduct but rather on the nature of a financial transaction. In any event, here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). As noted earlier, the problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). As further noted earlier, here there was most definitely a "contest" with regard to all of these purchased claims. ***Thus, it would appear***

[199] *See supra* notes 182-184 and accompanying text. The court will note that, as discussed *supra* note 141 and pages 71-72, the remedy of equitable subordination (as to the Claims Purchasers) would not redress HMIT's alleged injury (because equitable subordination of claims to interests is not an available remedy in the Fifth Circuit and thus subordination of the Purchased Claims to other claims would not change HMIT's distributions from the Claimant Trust, if any), and because outright disallowance of all or part of the already allowed Purchased Claims is not an available remedy either, HMIT would not be able to meet the "redressability" requirement with respect to the Claims Purchasers.

[200] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

that any effort to have a court reconsider and potentially disallow these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.

3. HMIT Would Also Lack Prudential Standing to Bring the Proposed Claims.

Even if HMIT would have constitutional standing to bring the Proposed Claims in an adversary proceeding filed in the bankruptcy court, the Proposed Claims would still be barred if HMIT would lack prudential standing to bring them under applicable state or federal law. HMIT argues that it does have prudential standing under both federal bankruptcy law and Delaware law to pursue the Proposed Claims derivatively and also to bring the Proposed Claims in its individual capacity.

With regard to "federal bankruptcy law," HMIT argues that it has standing pursuant to: (a) Rule 23.1 of the Federal Rules of Civil Procedure, pertaining to derivative actions, which "applies to this proceeding pursuant to" Rule 7023.1 of the Federal Rules of Bankruptcy Procedure, and (b) *Louisiana World Exposition v. Federal Insurance Co. ("LWE")*,[201] the Fifth Circuit's leading case addressing when a creditors committee may be granted standing to bring causes of action on behalf of a bankruptcy estate. But, federal bankruptcy law does not confer standing ***where the plaintiff otherwise lacks standing under applicable state law***. In other words, whether HMIT would have prudential standing to sue under Delaware law is dispositive of the issue, regardless of the forum. Rule 23.1 "speaks only to the adequacy of the . . . pleadings," and "cannot be understood to 'abridge, enlarge, or modify any substantive right,'"[202] including a right (or lack thereof) to bring a derivative action under the substantive law of Delaware. Additionally, HMIT's reliance on *LWE* is misplaced: *LWE* permits creditors, in certain circumstances ***during*** a bankruptcy case, to "file

[201] 858 F.2d 233 (5th Cir. 1988).

[202] *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991)(quoting 28 U.S.C. § 2072(b)).

suit on behalf of a debtor-in-possession or a trustee"[203] and does not apply to a party's right to sue, derivatively, on behalf of the Reorganized Debtor or any entity that is the assignee of the former bankruptcy estate's assets. Upon confirmation of the Plan, the bankruptcy estate of Highland ceased to exist;[204] Highland is no longer a debtor-in-possession but a reorganized debtor, and the Claimant Trust is a new entity created under the Plan and Claimant Trust Agreement. Even if *LWE* did apply in this ***post***-confirmation context, it supports the application of Delaware law to the issue of prudential standing and does not supersede state-law requirements for standing. In *LWE*, before addressing the requirements a creditors' committee must meet to sue derivatively on behalf of a bankruptcy estate as a matter of federal bankruptcy law, the Fifth Circuit conducted a lengthy analysis to determine "as a threshold issue" whether the creditors' committee in that case could assert its claims under Louisiana law.[205] The court specifically addressed whether the creditors' committee could pursue a derivative action under Louisiana law and concluded that "there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions."[206] So, even under *LWE* (which the court does not think applies in this post-confirmation context), if HMIT would be barred from bringing a derivative action on behalf the Reorganized Debtor or Claimant Trust under state law, the analysis stops there.[207] Thus, the court looks to Delaware law to determine if HMIT would have prudential standing to pursue the derivative claims on behalf the Reorganized Debtor and the Claimant Trust.

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[203] *LWE*, 858 F.2d at 247.

[204] *See In re Craig's Stores*, 266 F.3d 388, 390 (5th Cir. 2001).

[205] *LWE*, 858 F.2d at 236-45.

[206] *Id.* at 243.

[207] *See In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 (where the Delaware bankruptcy court denied the creditors' committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act, stating, "To determine that the third party

HMIT acknowledges that both the Reorganized Debtor and the Claimant Trust are organized under Delaware law, and thus the cause of action against Seery alleging breach of fiduciary duties to the Reorganized Debtor and the Claimant Trust are governed by Delaware law under the "Internal Affairs Doctrine."[208] In addition, because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting theory of liability as to the Claims Purchasers is also governed by Delaware law.[209] For the reasons set forth below, the court finds that HMIT would lack prudential standing under Delaware law to bring the claims set forth in the Proposed Complaint, derivatively, on behalf of either the Claimant Trust or the Reorganized Debtor.

a) First, HMIT Would Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Claimant Trust.

The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29,[210] and "to proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement" such that "the plaintiff must be a beneficial owner" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[211] This requirement is "mandatory and exclusive" and only "a beneficial owner" "has standing to bring a derivative claim on behalf of the

may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors' state of incorporation or formation.").

[208] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[209] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

[210] *See* Proposed Complaint, ¶ 26.

[211] *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *19 n.123 (Del. Ch. June 15, 2011), *aff'd* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b).

Trust."[212] The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, would lack standing to bring derivative claims on behalf of the Claimant Trust. HMIT argues to the contrary: that it ***is*** currently, and was at all relevant times, a "beneficial owner" of the Claimant Trust under Delaware trust law such that it would have standing to bring derivative claims on behalf of the Claimant Trust if it were allowed to proceed with the filing of the Proposed Complaint. The disagreement turns on the nature of HMIT's interest under the Plan and the Claimant Trust Agreement and whether HMIT, as a holder of such interest, would be considered a "beneficial owner" of the Claimant Trust under Delaware trust law.

As noted, pursuant to the Plan, HMIT's former limited partnership interest in Highland was cancelled as of the Effective Date in exchange for its pro rata share of a "Contingent Claimant Trust Interest," as defined under the Plan.[213] HMIT argues that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present "beneficial owner" under Delaware trust law.

The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust; rather, the "beneficial owners" of the Claimant Trust are the "Claimant Trust Beneficiaries,"[214] which are defined in the Plan and the CTA as "the Holders of Allowed General Unsecured Claims" (which are in Class 8 under the Plan) and "Holders of Allowed Subordinated Claims" (which are in Class 9 under the Plan); [215] HMIT, a holder of a Class 10 interest under the Plan, is neither.

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[212] *In re Nat'l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)). HMIT acknowledges this requirement in its Reply: "Delaware statutory trust law provides that a plaintiff in a derivative action on behalf of a trust must be a beneficial owner at the time of the action and at the time of the transaction." Reply, ¶ 19 (citing 12 Del C. § 3816).

[213] *See* Plan Art. III.H.10 and Art. I.B.44.

[214] Section 2.8 of the CTA provides, "The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . . ." HMIT Ex. 26, § 2.8.

[215] *See* Plan Art. I.B.44 ("'*Claimant Trust Beneficiaries*' means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the

HMIT, as the holder of a "Contingent Claimant Trust Interest," has only an ***unvested*** contingent interest in the Claimant Trust and, as such, is not a "beneficial owner" of the Claimant Trust for standing purposes under Delaware trust law. HMIT argues that it "should be treated as a vested Claimant Trust Beneficiary due to [the Proposed Defendants'] wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein."[216] The court disagrees.

HMIT's status as a "beneficiary" of the Claimant Trust is defined by the CTA itself, pure and simple. The CTA specifically provides that "Contingent Trust Interests" "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA. It is undisputed that HMIT's Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested based on HMIT's unsupported allegation of wrongdoing on the part of Seery, the Claimant Trustee. Thus, the court finds that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, lacks prudential standing under Delaware law to bring derivative claims on behalf of the Claimant Trust.[217]

Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests."); CTA § 1.1(h). *See also*, CTA, 1 at n.2 ("For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan."). HMIT Ex. 26.

[216] Proposed Complaint ¶ 24.

[217] *See Nat'l Coll.*, 251 A.3d at 190–92 (dismissing creditors' derivative claims because they were not "beneficial owners of the Trusts"); *Hartsel*, 2011 WL 2421003, at *19 n.123 (dismissing derivative claims by investors that "no longer own shares" because "those investors no longer have standing to pursue a derivative claim").

b) HMIT Would Likewise Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Reorganized Debtor.

HMIT acknowledges that the Reorganized Debtor, Highland Capital Management, L.P., is a Delaware limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.*[218] To bring "a derivative action" on behalf of a limited partnership, "the plaintiff must be a partner or an assignee of a partnership interest" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[219]

HMIT is not a partner, general or limited, of the Reorganized Debtor limited partnership. HMIT ***was*** a limited partner in the original debtor (specifically, a holder of Class B/C Limited Partnership interests in Highland), but that limited partnership interest was extinguished on August 11, 2021 (the Effective Date of the Plan) per the terms of the Plan, and HMIT does not own any partnership interest in the newly created Reorganized Debtor limited partnership.[220] Because HMIT would not hold a partnership interest in the Reorganized Debtor at "the time of bringing the action," it "lacks derivative standing" to bring claims "on the partnership's behalf."[221] HMIT likewise cannot satisfy "the continuous ownership requirement"; when HMIT's limited partnership interest in the original Debtor was cancelled on the Plan's Effective Date, HMIT "los[t] standing to continue a derivative suit" on behalf of the Debtor.[222] Finally, to the extent HMIT

[218] Proposed Complaint ¶ 25.

[219] 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) ("The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another party's fiduciary duties to them.") (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff'd* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) ("The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.") (citing 6 Del. C. § 17-211(h)).

[220] *See* Plan Art. IV.A.

[221] *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

[222] *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff's partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re*

seeks to bring a "double derivative" action on behalf of the Claimant Trust based on claims purportedly held by its wholly owned subsidiary, the Reorganized Debtor, HMIT lacks standing. A "double derivative" action is a suit "brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled."[223] And, under Delaware law, "parent level standing is required to enforce a subsidiary's claim derivatively."[224] Because HMIT would lack derivative standing to bring claims on behalf of the parent Claimant Trust,[225] it also would lack standing to bring a double derivative action.

c) Finally, HMIT Would Also Lack Prudential Standing under Applicable Law to Bring the Proposed Claims As ***Direct*** Claims.

HMIT argues that it has "direct" standing to pursue the Proposed Claims on behalf of itself, individually.[226] But just because HMIT asserts that some or even all of the Proposed Claims are direct, not derivative claims, does not make it so: "a claim is not 'direct' simply because it is pleaded that way."[227] Rather, in determining whether claims are direct or derivative, a court must "look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs' characterization."[228] And, under Delaware law, "whether a claim is solely derivative or

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SkyPort Global Commcn's, Inc.), 2011 WL 111427, at *25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders "lack standing to bring a derivative claim" under Delaware law because they "had their equity interests in the company extinguished pursuant to the merger under the Plan"); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) ("[T]he cancellation of WorldCom shares under the Plan … prevents the required continuation of shareholder status through the litigation.") (cleaned up).

[223] *Lambrecht v. O'Neal*, 3 A.3d 277, 282 (Del. 2010).

[224] *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

[225] *See supra* pp. 80-82.

[226] *See e.g.*, Motion for Leave ¶ 10 ("HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . ."); *id.* ¶ 67 (arguing that "HMIT has [d]irect [s]tanding"); Proposed Complaint ¶ 24 ("HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.").

[227] *Schmermerhorn*, 2011 WL 111427, at *26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at *7 (Del. Ch. Nov. 5, 2004)).

[228] *See id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)); *see also Moore v. Simon Enters., Inc.*, 919 F.Supp. 1007, 1009 (N.D. Tex. 1995)("The determination of whether a claim is a derivative claim or a direct claim is made by reference to the nature of the wrongs alleged in the complaint, and is not limited by a [party's] characterization or stated intention.")(cleaned up).

may continue as a dual-natured claim 'must turn ***solely*** on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'"[229] "In addition, to prove that a claim is direct, a plaintiff 'must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.'"[230] Similarly, in the bankruptcy context, whether a creditor can assert a claim directly or whether the claim belongs to the estate turns on the nature of the injury for which relief is sought: "[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate," such that "only the bankruptcy trustee has standing to pursue the claim for the estate . . . ."[231] "To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate."[232]

As a reminder, HMIT argues that the injury it has suffered is a devaluation of its interests in the Claimant Trust by virtue of alleged over-compensation of Seery as the Claimant Trustee. HMIT was unable, when pressed during closing arguments, to identify any other injury. It essentially admitted that the claims trades, in and of themselves, would not have harmed the Claimant Trust, the Reorganized Debtor, or individual stakeholders, including HMIT, ***since the Claims Purchasers acquired already allowed unsecured claims, such that the distributions on those claims pursuant to the Plan would be unchanged in the hands of new holders of the claims***.

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[229] *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original).

[230] *Id.* (quoting *Tooley*, 845 A.2d at 1033); *see also Schmermerhorn*, 2011 WL 111427, at *24 (same).

[231] *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)).

[232] *Id.*; *see also Schertz-Cibolo-Universal City Indep. Sch. Dist. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994)("If a cause of action alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate.")(citations omitted).

Thus, by its own concessions, any alleged harm to HMIT (through devaluation of assets in the Claimant Trust) "comes about only because of harm to the debtor," so the alleged "injury is derivative."[233] The court concludes that all of the claims set forth in the Proposed Complaint allege derivative claims only, and that none would be direct claims against the Proposed Defendants. Thus, HMIT would lack prudential standing to bring any of the Proposed Claims in the Proposed Complaint, so its Motion for Leave should be denied.

d) Some Final Points Regarding Standing.

In this standing discussion, one should not lose sight of the fact that there are both procedural safeguards in place, as well as certain independent individuals in place with fiduciary duties that might act in the event of any shenanigans regarding Claimant Trust activities. Under section 4.1 of the CTA (approved as part of the Plan process), the CTOB, which includes an independent disinterested member in addition to representatives of the Claims Purchasers,[234] oversees the Claimant Trustee's performance of his duties, approves his compensation, and may remove him for cause. Moreover, there is a separate "Litigation Trustee" in this case who was brought in, post-confirmation, as an independent fiduciary to pursue claims and causes of action. These independent persons are checks and balances in the post-confirmation wind down of Highland. This is what creditors voted on in connection with the Plan. Seery and the Claims Purchasers are not in sole control of anything. The CTA, as well as Delaware law, very clearly set forth who can bring an action in the event of some colorable claim. This is the reality of prudential

[233] *Meridian*, 912 F.3d at 293–94 ("The creditors' injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties."); *see also El Paso,* 152 A.3d at 1260–61 & n.60 (holding that claim "claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative") (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at *12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had "not identified any independent harm suffered by the limited partners"; "the partnership suffered all the harm at issue—it paid too much").

[234] *See supra* note 23 and accompanying text.

standing. Just as in the *Abraugh* case, where Louisiana law dictated that a mother could not bring a wrongful death case when the deceased prisoner had a surviving wife and child, Delaware law and the CTA dictate here that a contingent beneficiary cannot bring the Proposed Claims here. This is separate and apart from whether the claims are colorable.

C. Are the Proposed Claims "Colorable"?

1. What is the Proper Standard of Review for a "Colorability" Determination?

Although the court has determined that HMIT would ***not*** have standing (constitutional or prudential) to bring the Proposed Claims, this court will nevertheless evaluate whether the claims—assuming HMIT somehow has standing—might be "colorable." This, in turn, requires the court to assess what the legal standard is to determine if a claim is "colorable." As a reminder, the Plan's Gatekeeper Provision and this court's prior Gatekeeper Orders entered in January and July 2020 each required that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain a finding from the bankruptcy court that its proposed claims are "colorable." The Gatekeeper Provision and Gatekeeper Orders did not specifically define "colorable" or what type of legal standard should apply.

HMIT argues that the standard for review to be applied by this court is the same as a simple "plausibility" standard used in connection with a Rule 12(b)(6) motions to dismiss. In other words, the court should simply assess whether the allegations of the Proposed Complaint, taken as true and with all inferences drawn in favor of the movant, state a ***plausible*** claim for relief (i.e., colorable equals plausible), and that this standard does not allow for the weighing of evidence by the court.[235] The Proposed Defendants, however, argue that the test for colorability should be more

[235] Reply, ¶ 5 ("[T]he determination of 'colorability' does not allow the 'weighing' of evidence. At most, a Rule 12(b)(6) 'plausibility' standard applies.").

akin to the test applied under the *Barton* doctrine,[236] under which a plaintiff must make a *prima facie* case that a proposed claim against a bankruptcy trustee is "not without foundation." In this regard, they argue that the court can and should consider evidence outside of the four corners of the complaint—especially since HMIT attached to its Motion for Leave, as "evidence" to support it, two declarations of Dondero (as part of a 350-page attachment) and only attempted to withdraw those declarations after the Highland Parties urged that they be permitted to cross-examine Dondero on them.

This court ultimately determined that the "colorability" standard was somewhat of a mixed question of fact and law and, therefore, the parties could put on evidence at the June 8 Hearing if they so-chose. The court would not require it. It was up to the parties. But, in any event, the Proposed Defendants should have an opportunity to cross-examine Dondero on the statements made in his declarations since the declarations had been filed on the docket and the court had reviewed them at this point. HMIT attempted to withdraw the declarations and any reference to them in the Motion for Leave, by filing redacted versions of the Motion for Leave,[237] less than 72 hours before the June 8 Hearing; however, the redacted versions did not redact any allegations in the Motion for Leave that were purportedly supported by the Dondero declarations. Also, HMIT called Dondero as a direct witness, in addition to calling Seery as an adverse witness at the June 8 Hearing, albeit subject to its running objection to the evidentiary format of the hearing.[238] HMIT also filed a witness and exhibit list attaching 80 exhibits and over 2850 pages of evidence and

[236] *Barton v. Barbour,* 104 U.S. 126 (1881).

[237] Bankr. Dkt. Nos. 3815 and 3816.

[238] *See* June 8 Hearing Transcript, 7:20-24, 112:11-13.

moved for the admission of those exhibits at the June 8 Hearing (again, subject to its running objection to the evidentiary format of the hearing).[239]

In determining what appropriate legal standard applies here in the "colorability" analysis, the context in which the Gatekeeper Provision of the Plan was approved seems very relevant. In determining that the Gatekeeper Provision was legal, necessary, and in the best interest of all of the parties, this court set forth in the Confirmation Order a lengthy discussion of the factual support for it, and made specific findings relating to Dondero's post-petition litigation and the need for inclusion of the Gatekeeper Provision in the Plan.[240] This court observed that "prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade" and that "[d]uring the last several months, Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor."[241] This court further found that: (1) Dondero's post-petition litigation "was a result of Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Seery's credible testimony, that if Dondero's plan proposal was not accepted, he would 'burn down the place,'"[242] (2) without the Gatekeeper Provision in place, "Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date" and that "the threat of continued litigation by Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result in lower distributions to creditors because of

[239] *See Hunter Mountain Investment Trust's Witness and Exhibit List in Connection with Its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* ("HMIT W&E List")[Bankr. Dkt. No. 3818] and n.1 thereto; *see also* June 8 Hearing Transcript, 33:7-10.

[240] *See* Confirmation Order ¶¶ 76-79.

[241] *Id.* ¶ 77.

[242] *Id.* ¶ 78. *See supra* note 12.

costs and distraction such litigation or the threats of such litigation would cause,"[243] and, (3) "unless the [court] approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance,[244] the absence of which will present unacceptable risks to parties currently willing to serve in such roles." Thus, as set forth in the Confirmation Order, the Gatekeeper Provision (and the Gatekeeper Orders as well, which were approved based on the same concerns regarding the threat of continued litigation by Dondero and his related entities) required Dondero and related entities to make a threshold showing of colorability, noting that the:

> Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC,* 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017)."[245]

The Fifth Circuit, in approving the Gatekeeper Provision on appeal, noted that that the Plan injunction and Gatekeeper Provision "screen and prevent bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[246]

Again, the court believes it is appropriate to consider the context in which—and the purpose for which—the Gatekeeper Orders and Gatekeeper Provision were entered in assessing

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[243] *Id.*

[244] Asd noted at ⁋ 79 of the Confirmation Order, the bankruptcy court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance for the post-confirmation parties implementing the Plan. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so ***without an exclusion for claims asserted by Mr. Dondero and his affiliates*** required that the Confirmation Order approve the Gatekeeper Provision.

[245] *Id.* ¶ 80.

[246] *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.* (*In re Highland Cap. Mgmt., L.P.*), 48 F.4th 419, 435 (5th Cir. 2022).

how "colorability" should work here. It seems that applying HMIT's proposed Rule 12(b)(6) "plausibility" standard would impose no hurdle at all to litigants and would render the threshold for bringing claims under the Gatekeeper Provision and Gatekeeper Orders entirely duplicative of the motion to dismiss standard that every litigant already faces.

The authorities cited by HMIT in support of its argument for applying a Rule 12(b)(6) standard are inapposite. HMIT has cited no authority that addresses the appropriate standard for assessing the "colorability" of claims in the context of a plan gatekeeper provision—specifically, one implemented in response to a demonstrated need to screen and prevent continued bad-faith, harassing litigation against a chapter 11 debtor that would impede the debtor's implementation of a plan, which is what we have here. HMIT relies on a bevy of cases that include benefits coverage disputes under ERISA, Medicare coverage disputes, and constitutional challenges[247]—none of which implicate the *Barton* doctrine and vexatious-litigant concerns that were referenced by the court in the Plan as justifications for the gatekeeping provisions at issue here.

In affirming the Plan's Gatekeeper Provision, the Fifth Circuit stated, "Courts have long recognized bankruptcy courts can perform a gatekeeping function" and noted, by way of example, that "[u]nder the '*Barton* doctrine,' the bankruptcy court may require a party to 'obtain leave of

[247] *See Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has "a colorable claim to vested benefits" such that the employee may be considered a "participant" under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting "claimants [with] no colorable legal claim" to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant's double jeopardy claim was "colorable" such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at *3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a "colorable claim" against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at *3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a "colorable claim" to warrant the district court's exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at *5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at *5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a "colorable constitutional claim" such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

the bankruptcy court before initiating an action in district court when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor's official capacity."[248] As noted above, the Fifth Circuit found that the Gatekeeper Provision, which "requires that, before any lawsuit is filed, the plaintiff must seek the bankruptcy court's approval of the claim as 'colorable'"—*i.e.*, to "screen and prevent bad-faith litigation,"—is "sound."[249]

On balance, the court views jurisprudence applying the *Barton* doctrine and vexatious litigant injunctions—while not specifically addressing the "colorability" standard under gatekeeping provisions in a plan[250]—as more informative on how to approach "colorability" than any of the other authorities presented by the parties. One example is *In re VistaCare Group, LLC*.[251]

In *VistaCare*, the Third Circuit noted that, under the *Barton* doctrine, "[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation," and emphasized that the "not without foundation" standard, while similar to the standard courts apply in evaluating Rule 12(b)(6) motions to dismiss, "involves a greater degree of flexibility" than a Rule 12(b)(6) motion to dismiss because "the bankruptcy court, which given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit," and "is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor's estate."[252] To satisfy the "*prima facie* case standard," "the movant must do more than meet the liberal notice-pleading

[248] *Id.* at 438 (cleaned up).

[249] *Id.* at 435.

[250] The court acknowledges that the *Barton* doctrine itself would not be directly applicable here because HMIT is proposing to bring the Proposed Complaint in the bankruptcy court – the "appointing" court of Seery.

[251] 678 F.3d 218 (3d Cir. 2012).

[252] *Id.* at 232-233 (cleaned up).

requirements of Rule 8."[253] "[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless."[254] This court agrees with the notion, that "[t]o apply a less stringent standard would eviscerate the protections" of the Gatekeeper Provision and Gatekeeper Orders.[255] The court notes, as well, that courts in the *Barton* doctrine context regularly hold evidentiary hearings on motions for leave to determine if the proposed complaint meets the necessary threshold for pursuing litigation. The Third Circuit in *VistaCare* noted that "[w]hether to hold a hearing [on a motion for leave to bring suit against a trustee] is within the sound discretion of the bankruptcy court,"[256] and that "the decision whether to grant leave may involve a 'balancing of the interests of all parties involved,'" which will ordinarily require an evidentiary hearing.[257] The Third Circuit applied "the deferential abuse of discretion standard" in considering whether the bankruptcy court's granting of leave should be affirmed on appeal.[258]

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[253] *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases).

[254] *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at *2 (N.D. Ill. Nov. 30, 2000).

[255] *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at *2).

[256] *VistaCare*, 678 F.3d at 232 n.12.

[257] *Id.* at 233 (quoting *In re Kashani*, 190 B.R. 875, 886–87 (9th Cir. BAP 1995)). The Third Circuit noted that the bankruptcy court's holding of an evidentiary hearing on the motion for leave was appropriate (though not required in every case)). *Id.* at 232 n.12.

[258] *Id.* at 224 ("We review a bankruptcy court's decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard.") (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)). Courts of appeal routinely apply the deferential abuse of discretion standard to a bankruptcy court's decision regarding whether leave should be granted to sue a trustee. Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. *See In re Bednar*, 2021 WL 1625399, at *3 (B.A.P. 10th Cir. Apr. 27, 2021) ("[T]he Bankruptcy Court's decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . . .") (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App'x 969, 973–74 (11th Cir. 2016) ("Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court's ruling on a *Barton* motion for an abuse of discretion.") (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at *3 (B.A.P. 1st Cir. Sept. 17, 2014) ("Appellate courts review a bankruptcy court's decision to deny a motion for leave to sue under the abuse of discretion standard.") (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

The Fifth Circuit has affirmed a bankruptcy court's conducting of an evidentiary hearing, in the context of applying a *Barton* doctrine analysis as to a proposed lawsuit against a trustee, without any concern that the inquiry was somehow improper.[259]

Similarly, courts in the vexatious litigant context, where there was an injunction requiring a movant to seek leave to pursue claims, have required movants to "show that the claims sought to be asserted have sufficient merit," including that "the proposed filing is both procedural and legally sound," and "that the claims are not brought for any improper purpose, such as harassment."[260] "For a prefiling injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review," such as the "plausibility" standard for a Rule 12(b)(6) motion.[261] Rather, courts apply "an additional layer of review," and "may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action" or that the "litigant's allegations are unlikely," especially "when prior cases have shown the litigant to be untrustworthy or not credible . . . ."[262]

In summary, the court rejects HMIT's positions: (a) that it need only show, at most, that the allegations in the Proposed Complaint are "plausible" under the Rule 12(b)(6) standard for motions to dismiss; and (b) that this court improperly conducted an evidentiary hearing on the Motion for Leave (i.e., that consideration of evidence in this context is impermissible). The court notes, again, that HMIT's argument that this court is not permitted to consider evidence in making its "colorability" determination is completely contradictory to HMIT's actions in filing the Motion

[259] *See Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at *4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after "a close examination" by the bankruptcy court of the evidence regarding the trustee's actions and finding that "the plaintiffs' allegations are not based in fact"), *aff'd* 799 F. App'x 271 (5th Cir. 2020).

[260] *Silver v. City of San Antonio*, 2020 WL 3803922, at *1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); *see also Silver v. Perez*, 2020 WL 3790489, at *1 (W.D. Tex. July 7, 2020) (same).

[261] *Silver*, 2020 WL 3803922, at *6.

[262] *Id.*

for Leave, where it attached two Dondero declarations as part of 350 pages of "objective evidence" that "supported" its motion.

The court concludes that the appropriate standard to be applied in making its "colorability" determination in ***this*** bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in ***this*** Plan, is a broader standard than the "plausibility" standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves ***an additional level of review***—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are ***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***. Additionally, this court may, and should, take into consideration its ***knowledge*** of the ***bankruptcy proceedings*** and ***the parties*** and any additional evidence presented at the hearing on the Motion for Leave. For ease of reference, the court will refer to this standard of "colorability" as the "Gatekeeper Colorability Test." The court considers this test as a sort of hybrid of what the *Barton* doctrine contemplates and what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place.

2. HMIT's Proposed Complaint Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test or Even Under a Rule 12(b)(6) "Plausibility" Standard.

The court finds, in the exercise of its gatekeeping function under the Gatekeeper Orders and the Gatekeeping Provision in the Plan, that the Motion for Leave should be denied as the claims set forth in the Proposed Complaint are not "colorable" claims. The court makes this determination after considering evidence admitted at the June 8 Hearing, including the testimony of Dondero, Patrick, and Seery, and the numerous exhibits offered by HMIT and the Highland Parties. HMIT's Proposed Claims lack foundation, are without merit, and appear to be motivated by the improper purposes of vexatiousness and harassment. But, even under the less stringent

"plausibility" standard under Rule 12(b)(6) motions to dismiss, where all allegations must be accepted as true, HMIT's "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," fail to "[]cross the line from conceivable to plausible."[263]

HMIT makes unsubstantiated and conclusory allegations in its Motion for Leave and Proposed Complaint that the Claims Purchasers purchased the large allowed unsecured claims only because Seery, while he was CEO of Highland prior to the Effective Date of the Plan, provided them with MNPI and assurances that the Purchased Claims were very valuable. This was allegedly in exchange for their agreement to approve, in their future capacities as members of the CTOB, excessive compensation for Seery in his capacity as the Claimant Trustee after the Effective Date of the Plan. This was an alleged *quid pro quo* that HMIT claims establishes Seery's breach of fiduciary duties and the Claims Purchasers' conspiracy to participate in that breach. As discussed below, these allegations are unsubstantiated and conclusory allegations, and they do not support the inferences that HMIT needs the court to make when it analyzes whether the Proposed Claims are "colorable"—or even merely plausible.

a) HMIT's Proposed Breach of Fiduciary Duties Claim Set Forth in Count I of the Proposed Complaint

Based on HMIT's Proposed Complaint and the evidence admitted at the June 8 Hearing, the court finds that HMIT has not pleaded facts that would support a "colorable" breach of fiduciary duties claim against Seery, under this court's Gatekeeper Colorability Test, nor a plausible claim pursuant to the Rule 12(b) standard. HMIT alleges that Seery breached his fiduciary duties (i) "[b]y disclosing material non-public information to Stonehill and Farallon"

[263] *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

before their purchase of certain Highland claims, and (ii) by receiving "compensation paid to him under the terms of the [CTA] since the Effective Date of the Plan in August 2021."[264]

As earlier noted, both the Reorganized Debtor and the Claimant Trust are organized under Delaware law and, thus, its proposed Count I against Seery for breach of fiduciary duties to these entities is governed by Delaware law under the "Internal Affairs Doctrine."[265] Under Delaware law, "[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege '(1) that a fiduciary duty existed and (2) that the defendant breached that duty.'"[266] HMIT fails to plausibly or sufficiently allege either element such that its breach of fiduciary duty claims against Seery could survive.

Under Delaware law, officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders.[267] Because Seery did not owe any "duty" to HMIT directly and individually, the Proposed Complaint fails to state a claim for breach of fiduciary duties to HMIT. HMIT's "legal conclusion[]" that Seery "owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate"[268] "do[es] not suffice" to plausibly allege the existence of any actionable fiduciary relationship.[269] And as discussed earlier in the standing section, HMIT does not have standing to assert a breach of fiduciary claim derivatively on behalf

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[264] Proposed Complaint ¶¶ 64–67.

[265] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[266] *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at *30 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at *8 (Del. Ch. Feb. 28, 2020)).

[267] *See Gilbert v El Paso Co.*, 1988 WL 124325, at *9 (Del. Ch. Nov. 21, 1988) ("[D]irectors' fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.") *aff'd,* 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at *11 (Del. Ch. Nov. 7, 2013) (same).

[268] Proposed Complaint ¶ 63.

[269] *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

of the Claimant Trust or Reorganized Debtor. But even if HMIT had sufficiently alleged the existence of a fiduciary duty by Seery to HMIT—or to the Reorganized Debtor or Claimant Trust that HMIT would have standing to assert—Seery's alleged communications with Farallon would not have breached those duties.

HMIT alleges that Seery ""disclose[d] material non-public information to Stonehill and Farallon," and they "acted on inside information and Seery's secret assurances of great profits."[270] But the Proposed Complaint does not make any factual allegations regarding HMIT's "conclusory allegations," and its "legal conclusions" are "purely speculative, devoid of factual support," and therefore "stop[] short of the line between possibility and plausibility of entitlement to relief"[271] (and certainly stop short of being "colorable"). HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, and what "assurances of great profits" he made to Farallon or to Stonehill. At the June 8 Hearing, Dondero could only clarify that he believed the MGM Email to have been MNPI and that he ***believed*** that Seery ***must have*** communicated that MNPI to Farallon at some point between December 17, 2020 (the date the MGM Email was sent) and May 28, 2021 (the day that Dondero alleges to have had three telephone calls with representatives of Farallon, Messrs. Patel and Linn, regarding Farallon's purchase of the bankruptcy claims). Dondero alleges that, during these phone calls, Patel and Linn gave Dondero no reason for their purchase of the claims that "made [any] sense." Dondero and Patrick also both testified that neither of them had any personal knowledge: (a) of a *quid pro quo* arrangement between Seery and the Claims Purchasers, (b) of Seery having actually communicated any information from the MGM Email to Farallon, or (c) whether Seery's post-Effective Date compensation had or had not been negotiated in an arms' length transaction. Dondero only

[270] Proposed Complaint ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.

[271] *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up).

speculates regarding these things, because it "made no sense" to him that the Claims Purchasers would have acquired the bankruptcy claims without having received the MNPI. But HMIT admits in the Proposed Complaint that Farallon and Stonehill purchased the Highland claims at discounts of 43% to 65% to their allowed amounts. Thus, they would receive at least an 18% return based on publicly available estimates in Highland's court-approved Disclosure Statement.[272] The evidence established that, if the acquisition of the UBS claims is excluded—recall that the UBS claims were not purchased until August 2021, which was after the May 28, 2021 phones calls that Dondero made to Farallon personnel—the Claims Purchasers would have expected to net over $33 million in profits, or nearly a 30% return on their investment, had Highland met its projections (this is based on the aggregate purchase price of $113 million for the non-UBS claims purchased in the Spring 2021).

To be clear, the only purported MNPI identified in HMIT's Proposed Complaint was the MGM Email Dondero sent to Seery containing "information regarding Amazon and Apple's interest in acquiring MGM." But, the evidence showed that this information was widely reported in the financial press at the time. Thus, it could not have constituted MNPI as a matter of law.[273] Moreover, the evidence showed that Dondero ***did not*** communicate in the MGM Email the actual inside information that he claimed to have obtained as a board member of MGM–which was that Amazon had met MGM's "strike price" and that the MGM board was going into exclusive negotiations with Amazon to culminate the merger with them (and, thus, Apple was no longer considered a potential purchaser). Dondero admitted that he included Apple in the MGM Email for the purpose of making it look like there was a competitive process still ongoing. In other

[272] Proposed Complaint ¶¶ 3, 37, 42.

[273] *See, e.g.*, *SEC v. Cuban*, 2013 WL 791405, at *10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not "material, nonpublic information" and "'becomes public when disclosed to achieve a broad dissemination to the investing public'") (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)).

words, the MGM Email, at the very least, did not include MNPI and, at worst, was deceptive regarding the status of the negotiations between MGM and potential purchasers.

As to HMIT's allegations that Seery's post-Effective Date compensation is "excessive" and that the negotiations between Seery and the CTOB "were not arm's-length,"[274] the evidence at the June 8 Hearing reflected that the allegations are completely speculative, without any foundation whatsoever, and lack merit. And they are also simply not plausible. HMIT fails to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty.[275]

b) HMIT's Proposed Claims Set Forth in Counts II (Knowing Participation in Breach of Fiduciaries) and III (Conspiracy)

HMIT seeks to hold the Claims Purchasers secondarily liable for Seery's alleged breach of fiduciaries duties on an aiding and abetting theory in Count II of the Proposed Complaint[276] and, along with Seery, on a civil conspiracy theory of liability in Count III of the Proposed Complaint.[277] Because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting breach of fiduciary duties claim against the Claims Purchasers (Count II) is also governed by Delaware law.[278] HMIT's conspiracy cause of action against the Claims

[274] Proposed Complaint ¶¶ 4, 13, 54, 74.

[275] *See Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]though the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation.").

[276] Proposed Complaint ¶¶ 69-74.

[277] Proposed Complaint ¶¶ 75-81.

[278] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

Purchasers and Seery (Count III), on the other hand, does not involve a matter of "internal affairs" or of corporate governance, so it is governed by Texas law under the Plan.[279]

As an initial matter, because HMIT does not present either a "colorable"—or even plausible claim—that Seery breached his fiduciary duties, it cannot show that it has alleged a "colorable" or plausible claim for secondary liability for the same alleged wrongdoing.[280] In addition, HMIT's civil conspiracy claim against the Claims Purchasers and Seery is based entirely on Dondero's speculation and unsupported inferences and, thus, HMIT has not "colorably" alleged, or even plausibly alleged, its conspiracy claim. Under Texas law, "civil conspiracy is a theory of vicarious liability and not an independent tort."[281] "[T]he elements of civil conspiracy [are] "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result."[282] While HMIT alleges that "Defendants conspired with each other to unlawfully breach fiduciary duties,"[283] it is simply a "legal conclusion" and not the kind of allegation that the court must assume to be true even for purposes of determining plausibility under a motion to dismiss.[284]

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[279] *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M)(which provides for the application of Texas law to "the rights and obligations arising under this Plan" except for "corporate governance matters.")

[280] *See English v. Narang*, 2019 WL 1300855, at *14 (Del. Ch. Mar. 20, 2019) ("As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.") (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at *10 (Tex. App. Jan. 25, 2022) ("[A] defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.") (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)). Because HMIT's breach of fiduciary duty claim is governed by Delaware law, its aiding and abetting theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas). By contrast, "conspiracy is not an internal affair" or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

[281] *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019).

[282] *Id.* at 141 (cleaned up).

[283] Proposed Complaint ¶ 76.

[284] *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66).

HMIT repeats four times that Seery provided MNPI to Farallon and Stonehill as a "as a *quid pro quo*" for "additional compensation,"[285] each time based upon conclusory allegations based "upon information and belief" and, frankly, pure speculation from Dondero that his imagined "scheme," "covert *quid pro quo,*" and secret "conspiracy" between Seery, on the one hand, and Farallon and Stonehill, on the other,[286] ***must have*** occurred because "[i]t made no sense for the [Claims] Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk" (i.e., "[t]he counter-intuitive nature of the purchases at issue compels the conclusion that the [Claims] Purchasers acted on inside information and Seery's assurance of great profits.")[287] Importantly, HMIT admits that the Claims Purchasers would have turned a profit based on the information available to them at the time of their acquisitions of the Purchased Claims.[288] HMIT's allegations about the level of potential profits were contradicted by their own allegations and other evidence admitted at the June 8 Hearing. But Dondero's speculation about what level of projected return would be sufficient to justify the acquisition of the claims by the Claims Purchasers, or any other third-party investor, does not give rise to a plausible inference that they acted improperly.[289] Thus, HMIT cannot meet

[285] Proposed Complaint ¶ 77; *see also id.* ¶¶ 4, 47, 74.

[286] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.").

[287] *Id.*

[288] *See, e.g.*, *id.* ¶ 3 (alleging that acquiring the claims "did not offer a ***sufficient*** potential profit to justify the publicly disclosed risk")(emphasis added); ¶ 43 ("Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . ."); ¶ 49 ("Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* ***significant*** profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.") (third emphasis added).

[289] In fact, the court did not allow Mr. Dondero to testify regarding what kind of information a hypothetical investor in bankruptcy claims would require or what level of potential profits would justify the purchase of bankruptcy claims by investors in the bankruptcy claims trading market because he was testifying as a fact witness, not an expert. Thus, the court only allowed Dondero to testify as to what data ***he*** (or entities he controls or controlled) would rely on, what ***his*** risk tolerance would have been, and what level of potential profits ***he*** would have required to purchase an allowed unsecured bankruptcy claim in a post-confirmation situation. June 8 Hearing Transcript, 129:6-130:4.

its burden, under the Gatekeeper Colorability Test, of making a prima facie showing that its allegations do not lack foundation or merit. Nor can it meet a plausibility standard.

In addition, contrary to the Proposed Complaint's statement that it would have been "***impossible*** for Stonehill and Farallon (in the absence of insider information) to forecast ***any*** significant profit at the time of their multi-million-dollar investments," the evidence showed there were already reports in the financial press that MGM was engaging with Amazon, Apple, and others in selling its media portfolio, and thus the prospect of an MGM transaction increasing the value of, and return on, the Purchased Claims, "at the time of their multi-million-dollar investments" was publicly available information.[290] HMIT's suggestion that the Claims Purchasers were in possession of inside information not publicly available when they acquired the Purchased Claims is simply not plausible. Nor is HMIT's allegation that "[u]pon information and belief" Farallon "conducted no due diligence but relied on Seery's profit guarantees" plausible. The allegations regarding Farallon not conducting any due diligence are based, again, entirely on Dondero's speculation and inferences he made from what Patel and Linn (of Farallon) allegedly told him on May 28, 2021; Dondero did not testify that either Patel or Linn ever told him specifically that they had conducted no due diligence. HMIT's allegations in the Proposed Complaint that ***Farallon*** "conducted no due diligence," are based on Dondero's speculation, unsubstantiated, and contradicted by the testimony of Seery, who testified that emails to him from Linn in June 2020 and later in January 2021 indicated to him that Farallon, at least, had been conducting some level of due diligence in that they had been following and paying attention to the

[290] The court notes, as well, that the Claim Purchasers acquired the UBS claims in August 2021—approximately two and a half months ***after*** the announcement of the MGM-Amazon transaction (which was on May 26, 2021)—a fact that HMIT makes no attempt to harmonize with its conspiracy theory that the Claims Purchasers profited from the misuse of MNPI allegedly given to them by Seery.

Highland case.[291] In addition, there are no allegations in the Proposed Complaint regarding whether Stonehill conducted due diligence or not, and Patrick testified that neither he nor HMIT had any personal knowledge of how much due diligence Farallon or Stonehill did prior to acquiring the Purchased Claims.[292] The court finds and concludes that HMIT's allegations of aiding and abetting and conspiracy in Counts II and III of the Proposed Complaint are based on unsubstantiated inferences and speculation, lack internal consistency, and lack consistency with verifiable public facts. Accordingly, HMIT has failed to show that these claims have a foundation and merit and has also failed to show that they are plausible.

c) HMIT's Proposed Claims Set Forth in Counts IV (Equitable Disallowance), V (Unjust Enrichment and Constructive Trust), and VI (Declaratory Relief) of the Proposed Complaint

i. Count IV (Equitable Disallowance).

In Count IV of its Proposed Complaint, HMIT seeks "equitable disallowance" of the claims acquired by Farallon's and Stonehill's special purpose entities Muck and Jessup, "to the extent over and above their initial investment," and, in the alternative, equitable subordination of their claims to all claims and interests, including HMIT's unvested Class 10 Contingent Claimant Trust Interest, "given [their] willful, inequitable, bad faith conduct" of allegedly "purchasing the Claims based on material non-public information" and being "unfairly advantaged" in "earning significant profits on their purchases."[293] As noted above, these remedies are not available to HMIT.[294]

First, HMIT's request to equitably subordinate the Purchased Claims to all claims and interests is not permitted because Bankruptcy Code § 510(c), by its terms, permits equitable

[291] *See* June 8 Hearing Transcript, 239:6-21.
[292] *See id.*, 310:19-312:2.
[293] Proposed Complaint ¶¶ 83-87.
[294] *See infra* pages 74-75.

subordination of a ***claim to other claims*** or an ***interest to other interests*** but does not permit equitable subordination of a ***claim to interests***.

Second, "equitable" disallowance of claims is not an available remedy in the Fifth Circuit pursuant to the *Mobile Steel* case.[295]

Third, reconsideration of an already-allowed claim in a bankruptcy case can only be accomplished through Bankruptcy Code § 502(j), which, pursuant to Federal Rule of Bankruptcy Procedure 9024, allows reconsideration of allowance of a claim that was allowed following ***a contest*** (which is certainly the case with respect to the Purchased Claims) based on the "equities of the case." But this is only if the request for reconsideration is made within the one-year limitation prescribed in Rule 60(c) of the Federal Rules of Civil Procedure. HMIT's request for disallowance of Muck and Jessup's Purchased Claims (if it could somehow be construed as a request for reconsideration of their claims), is clearly untimely, as it is being made well beyond a year since their allowance by this court following contests and approval of Rule 9019 settlements. Thus, the court finds that HMIT has not alleged a colorable or even plausible claim in Count IV of the Proposed Complaint and, therefore, the Motion for Leave should be denied.

ii. Count V (Unjust Enrichment and Constructive Trust)

In Count V of the Proposed Complaint, HMIT alleges that, "by acquiring the Claims using [MNPI], Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity" and that "[a]llowing [the Claims Purchasers] to retain their ill-gotten benefits would be unconscionable;" thus, HMIT alleges, the Claims Purchasers "should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment" and "a constructive trust should be imposed on such proceeds . . . ."[296]

[295] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

[296] Proposed Complaint ¶¶ 89-93.

HMIT alleges further that "Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restitute all compensation he has received from the outset of his collusive activities" and "[a]lternatively he should be required to disgorge and restitute all compensation received since the Effective Date" over which a constructive trust should be imposed.[297] HMIT has not alleged a colorable or even a plausible claim for unjust enrichment or constructive trust in Count V.

Under Texas law,[298] "[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay."[299] Thus, "when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory."[300] Here, as noted above, HMIT's only alleged injury is a diminution of the value of its unvested Contingent Claimant Trust Interest by virtue of Seery's allegedly having wrongfully obtained excessive compensation, with the help of the Claims Purchasers. ***Yet Seery's compensation is governed by express agreements*** (i.e., the Plan and the CTA). Thus, HMIT's claim based on unjust enrichment is not an available theory of recovery.

iii. Count VI (Declaratory Relief)

HMIT seeks declaratory relief in Count VI of the Proposed Complaint, essentially, that Dondero's conspiracy theory is correct and that HMIT's would succeed on the merits with respect

[297] *Id.* ¶ 94.

[298] Under the Plan, Texas law governs HMIT's "claim" for unjust enrichment because it is not a "corporate governance matter." (Plan Art. XII.M.) It also governs HMIT's "claim" for constructive trust, which "is merely a remedy used to grant relief on the underlying cause of action." *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

[299] *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).

[300] *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)).

to the Proposed Claims if it were permitted leave to bring them in an adversary proceeding.[301] But, a request for declaratory relief is not "an independent cause of action"[302] and "in the absence of any underlying viable claims such relief is unavailable."[303] This court has already found and concluded that HMIT would not have constitutional or prudential standing to bring the underlying causes of action in the Proposed Complaint. This court has also found and concluded that all of the Proposed Claims are without foundation or merit and are not even plausible and are all; being brought for the improper purpose of continuing Dondero's vexatious, harassing, bad-faith litigation. Thus, HMIT would not be entitled to pursue declaratory judgement relief as requested in Count VI of the Proposed Complaint.

d) HMIT Has No Basis to Seek Punitive Damages

HMIT separately alleges that the Claims Purchasers' and Seery's "misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others," thus entitling HMIT to an award of punitive damages under applicable law. But, HMIT abandoned its proposed fraud claim that was in its Original Proposed Complaint, so its sole claim for primary liability is Seery's alleged breach of his fiduciary duties. And under Delaware law, the "court cannot award punitive damages in [a] fiduciary duty action."[304]

[301] Proposed Complaint ¶¶ 96-99.

[302] *See Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 932 (5th Cir. 2023).

[303] *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at *2 (S.D. Tex. June 7, 2016) (citing *Collin Cty. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)); *see also Hopkins v. Cornerstone Am.*

[304] *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff'd* 682 F. App'x 24 (2d Cir. 2017).

3. HMIT Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test Because It Seeks to Bring the Proposed Complaint for Improper Purposes of Harassment and Bad-Faith, Vexatiousness.

Under this court's Gatekeeper Colorability Test, in addition to showing that its allegations and claims are not without foundation or merit, HMIT must also show that the Proposed Claims are not being brought for any improper purpose. Taking into consideration the court's knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, the court finds that HMIT is acting at the behest of, and under the control or influence of, Dondero in continuing to pursue harassing, bad faith, vexatious litigation to achieve his desired result in these bankruptcy proceedings. So, in addition to failing to show that its Proposed Claims have foundation and merit, HMIT cannot show that it is pursuing the Proposed Claims for a proper purpose and, thus, cannot meet the requirements under the Gatekeeper Colorability Test; HMIT's Motion for Leave should be denied.

IV. CONCLUSION

The court concludes, having taken into consideration both its knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, that HMIT's Motion for Leave should be denied for three independent reasons: (1) HMIT would lack constitutional standing to bring the Proposed Claims (and, thus, the federal courts would lack subject matter jurisdiction over the Proposed Claims); (2) even if HMIT would have constitutional standing to pursue the Proposed Claims, it would lack prudential standing to bring the Proposed Claims; and (3) even if HMIT would have both constitutional standing and prudential standing to bring the Proposed Claims, it has not met its burden under the Gatekeeper Colorability Test of showing that its Proposed Claims are "colorable" claims—that the Proposed Claims are not without foundation, not without merit, and not being pursued for an improper purpose. Moreover,

even if this court's Gatekeeper Colorability Test should be replaced with a Rule 12(b)(6) "plausibility" standard, the Proposed Claims are not plausible.

Accordingly,

IT IS ORDERED that HMIT's Motion for Leave be, and hereby is **DENIED**.

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

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

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

Assigned to: Chief Bankruptcy Jud Stacey G Jernigan
Chapter 11
Voluntary
Asset

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

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Filing Date	Docket Text
12/04/2019	1 (2 pgs) Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)

12/04/2019	2 (15 pgs) DOCKET SHEET filed in 19-12239 in the U.S. Bankruptcy Court for Delaware . (Okafor, M.)
12/04/2019	3 (106 pgs; 2 docs) Chapter 11 Voluntary Petition . Fee Amount $1717. Filed by Highland Capital Management, L.P.. (Attachments: # 1 Creditor Matrix) [ORIGINALLY FILED AS DOCUMENT #1 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	4 (31 pgs; 2 docs) Motion to Pay Employee Wages /Motion of the Debtors for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief Filed Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A - Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #2 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	5 (23 pgs; 2 docs) Motion to Pay Critical Trade Vendor Claims /Motion of the Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: # 1 Exhibit A - Proposed Order)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #3 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	6 (9 pgs; 2 docs) Motion to Extend Deadline to File Schedules or Provide Required Information Filed by Highland Capital Management, L.P.(Attachments: # 1 Exhibit A - Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #4 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	7 (24 pgs; 2 docs) Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: # 1 Exhibit A - Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	8 (32 pgs; 2 docs) **WITHDRAWN** - 10/29/2019. SEE DOCKET # 72. Motion to Approve Use of Cash Collateral /Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing Filed By Highland Capital Management, L.P. (Attachments: # 1 Exhibit A - Order)(O'Neill, James) Modified on 10/30/2019 (DMC) [ORIGINALLY FILED AS DOCUMENT #6 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	9 (36 pgs; 4 docs) Application to Appoint Claims/Noticing Agent KURTZMAN CARSON CONSULTANTS, LLC Filed By Highland Capital Management, L.P. (Attachments: # 1 Exhibit A - Engagement Agreement # 2 Exhibit B - Gershbein Declaration # 3 Exhibit C - Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #7 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	10 (10 pgs; 2 docs) Motion to File Under Seal/Motion of the Debtor for Entry of Interim and Final Orders Authorizing the Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A - Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #8 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)

12/04/2019	11 (44 pgs) Affidavit/Declaration in Support of First Day Motion /Declaration of Frank Waterhouse in Support of First Day Motions Filed By Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #9 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	12 (3 pgs) Notice of Hearing on First Day Motions (related document(s)2, 3, 5, 6, 7, 8, 9 [ON DELAWARE DOCKET]) Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #11 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	13 (15 pgs; 2 docs) Notice of Hearing // Notice of Interim Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # 1 Exhibit A) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #12 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	14 (3 pgs) Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #13 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	15 (3 pgs) Notice of appearance Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #14 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	16 (1 pg) Motion to Appear pro hac vice of Marshall R. King of Gibson, Dunn & Crutcher LLP. Receipt Number 2757354, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #15 ON 10/1/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	17 (1 pg) Motion to Appear pro hac vice of Michael A. Rosenthal of Gibson, Dunn & Crutcher LLP. Receipt Number 2624495, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #16 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	18 (1 pg) Motion to Appear pro hac vice of Alan Moskowitz of Gibson, Dunn & Crutcher LLP. Receipt Number 2624495, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean)) [ORIGINALLY FILED AS DOCUMENT #17 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	19 (1 pg) Motion to Appear pro hac vice of Matthew G. Bouslog of Gibson, Dunn & Crutcher LLP. Receipt Number 2581894, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean)) [ORIGINALLY FILED AS DOCUMENT #18 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	20 (3 pgs) Notice of Appearance and Request for Notice by Louis J. Cisz filed by Interested Party California Public Employees Retirement System (CalPERS) . (Okafor, M.) [ORIGINALLY FILED AS DOCUMENT #19 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]

12/04/2019	21 (1 pg) Motion to Appear pro hac vice (Jeffrey N. Pomerantz). Receipt Number 2564620, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #20 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	22 (1 pg) Motion to Appear pro hac vice (Maxim B. Litvak). Receipt Number 2564620, Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #21 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	23 (1 pg) Motion to Appear pro hac vice (Ira D. Kharasch). Receipt Number DEX032537, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #22 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	24 (1 pg) Motion to Appear pro hac vice (Gregory V. Demo). Receipt Number DEX032536, Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #23 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	25 (1 pg) Motion to Appear pro hac vice of Marc B. Hankin. Receipt Number 2757358, Filed by Redeemer Committee of the Highland Crusader Fund. (Miller, Curtis) [ORIGINALLY FILED AS DOCUMENT #24 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	26 (1 pg) Order Approving Motion for Admission pro hac vice Marshall R. King of Gibson(Related Doc # 15) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #25 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	27 (1 pg) Order Approving Motion for Admission pro hac vice Michael A. Rosenthal (Related Doc # 16) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #26 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	28 (1 pg) Order Approving Motion for Admission pro hac vice Alan Moskowitz (Related Doc # 17) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #27 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	29 (1 pg) Order Approving Motion for Admission pro hac vice Matthew G. Bouslog(Related Doc # 18) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #28 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	30 (1 pg) Order Approving Motion for Admission pro hac vice Jeffrey N. Pomerantz (Related Doc # 20) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #29 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	31 (1 pg) Order Approving Motion for Admission pro hac vice Maxim B. Litvak (Related Doc # 21) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #30 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	32 (1 pg) Order Approving Motion for Admission pro hac vice Ira D. Kharasch (Related Doc # 22) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #31 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	33 (1 pg) Order Approving Motion for Admission pro hac vice Gregory V. Demo(Related Doc # 23) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #32 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)

12/04/2019	34 (1 pg) Order Approving Motion for Admission pro hac vice Marc B. Hankin(Related Doc # 24) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #33 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	35 (7 pgs) Certificate of Service of: 1) Notice of Hearing on First Day Motions; 2) Notice of Interim Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing; and 3) Notice of Agenda for Hearing of First Day Motions Scheduled for October 18, 2019 at 10:00 a.m. (related document(s)11, 12, 13) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #34 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	36 (1 pg) Motion to Appear pro hac vice (John A. Morris). Receipt Number 2635868, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #35 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	37 (3 pgs) Notice of Appearance and Request for Notice by Richard B. Levin , Marc B. Hankin , Kevin M. Coen , Curtis S. Miller filed by Interested Party Redeemer Committee of the Highland Crusader Fund . (Miller, Curtis) [ORIGINALLY FILED AS DOCUMENT #36 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	38 (1 pg) Order Approving Motion for Admission pro hac vice John A. Morris(Related Doc # 35) Order Signed on 10/18/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #38 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	39 (5 pgs) Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief. (related document(s)2) Order Signed on 10/18/2019. (NAB) [ORIGINALLY FILED AS DOCUMENT #39 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	40 (9 pgs; 2 docs) Interim Order (A) Authorizing the Debtor to Pay Certain Prepetition Claims of Critical Vendors and (B) Granting Related Relief (Related Doc 3) Order Signed on 10/18/2019 (Attachments: # 1 Agreement)) (NAB) Modified Text on 10/21/2019 (LB) [ORIGINALLY FILED AS DOCUMENT #40 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	41 (3 pgs) Notice of Appearance and Request for Notice by Eric Thomas Haitz filed by Debtor Highland Capital Management, L.P.. (Haitz, Eric)
12/04/2019	42 (7 pgs) Interim Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief. (Related Doc 5) Order Signed on 10/18/2019. (JS) Modified Text on 10/21/2019 (LB). [ORIGINALLY FILED AS DOCUMENT #42 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	43 (6 pgs) Order Appointing Kurtzman Carson Consultants, LLC as Claims and Noticing Agent for the Debtors Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) (Related Doc # 7) Order Signed on 10/18/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #43 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	44 (3 pgs) Interim Order Authorizing the Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information. (Related Doc # 8) Order Signed on 10/18/2019. (JS)

	[ORIGINALLY FILED AS DOCUMENT #44 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	45 (1 pg) Notice of Appearance and Request for Notice by Elizabeth Weller filed by Irving ISD , Grayson County , Upshur County , Dallas County , Tarrant County , Kaufman County , Rockwall CAD , Allen ISD , Fannin CAD , Coleman County TAD . (Okafor, M.)
12/04/2019	46 (4 pgs) Notice of hearing/*scheduling conference* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1 Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)). Status Conference to be held on 12/6/2019 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Haitz, Eric)
12/04/2019	47 (40 pgs; 3 docs) Notice of Service // Notice of Entry of Order on Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief (related document(s)2, 39) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #47 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	48 (83 pgs; 4 docs) Notice of Service // Notice of Entry of Order on Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) (related document(s)7, 43) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #48 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/9/2019 (Okafor, M.).
12/04/2019	49 (13 pgs; 2 docs) Notice of Hearing // Notice of Motion of Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s)4) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019.(Attachments: # 1 Exhibit 1) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #49 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	50 (37 pgs; 3 docs) Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3, 40) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #50 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	51 (36 pgs; 3 docs) Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief (related document(s)5, 42) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019 (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #51 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	52 (22 pgs; 3 docs) Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its

	Creditor Matrix Containing Employee Address Information (related document(s)8, 44) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #52 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	53 (36 pgs; 2 docs) Notice of Hearing // Notice of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/7/2019 at 03:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 10/31/2019. (Attachments: # 1 Exhibit 1) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #53 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	54 (7 pgs) Affidavit/Declaration of Service for service of (1) [Signed] Order Approving Motion for Admission pro hac vice Jeffrey N. Pomerantz [Docket No. 29]; (2) [Signed] Order Approving Motion for Admission pro hac vice Maxim B. Litvak [Docket No. 30]; (3) [Signed] Order Approving Motion for Admission pro hac vice Ira D. Kharasch [Docket No. 31]; (4) [Signed] Order Approving Motion for Admission pro hac vice Gregory V. Demo [Docket No. 32]; (5) [Signed] Order Approving Motion for Admission pro hac vice John A. Morris [Docket No. 38]; (6) Notice of Entry of Order on Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief [Docket No. 47]; (7) Notice of Entry of Order on Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) [Docket No. 48]; (8) Notice of Motion of Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief [Docket No. 49]; (9) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief [Docket No. 50]; (10) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief [Docket No. 51]; (11) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information [Docket No. 52]; and (12) Notice of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing [Docket No. 53] (related document(s)29, 30, 31, 32, 38, 47, 48, 49, 50, 51, 52, 53) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #55 ON 10/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M)
12/04/2019	55 (4 pgs; 2 docs) Notice of Appearance and Request for Notice by Josef W. Mintz , John E. Lucian , Phillip L. Lamberson , Rakhee V. Patel filed by Acis Capital Management, L.P. , Acis Capital Management GP, LLC . (Attachments: # 1 Certificate of Service) (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #56 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	56 (1 pg) Motion to Appear pro hac vice of Rakhee V. Patel of Winstead PC. Receipt Number 3112761165, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #57 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	57 (1 pg) Motion to Appear pro hac vice of Phillip Lamberson of Winstead PC. Receipt Number 3112761165, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef)

	[ORIGINALLY FILED AS DOCUMENT #58 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	58 (1 pg) Motion to Appear pro hac vice of John E. Lucian of Blank Rome LLP. Receipt Number 3112548736, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #59 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	59 (4 pgs; 3 docs) Notice of Appearance and Request for Notice by Michael I. Baird filed by Interested Party Pension Benefit Guaranty Corporation . (Attachments: # 1 Certification of United States Government Attorney # 2 Certificate of Service) (Baird, Michael) [ORIGINALLY FILED AS DOCUMENT #60 ON 10/23/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	60 (1 pg) Order Granting Motion for Admission pro hac vice for Rakhee V. Patel (Related Doc # 57) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #61 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	61 (1 pg) Order Granting Motion for Admission pro hac vice of John E. Lucian (Related Doc # 59) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #62 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	62 (1 pg) Order Granting Motion for Admission pro hac vice of Phillip Lamberson (Related Doc # 58) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #63 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	63 (2 pgs) Notice of Appearance and Request for Notice by Michael L. Vild filed by Creditor Patrick Daugherty . (Vild, Michael) [ORIGINALLY FILED AS DOCUMENT #64 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	64 (1 pg) Notice of Appointment of Creditors' Committee Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #65 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	65 (1 pg) Request of US Trustee to Schedule Section 341 Meeting of Creditors November 20,2019 at 9:30 a.m. Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #66 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	66 (2 pgs) Notice of Meeting of Creditors/Commencement of Case Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 11/20/2019 at 09:30 AM at J. Caleb Boggs Federal Building, 844 King St., Room 3209, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #67 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	67 (27 pgs; 4 docs) Motion to Authorize /Motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A - Proposed Form of Order # 3 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #68 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	68 (48 pgs; 8 docs) Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware.

	Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C - Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	69 (37 pgs; 7 docs) **WITHDRAWN per #437. Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A - Hurst Declaration # 3 Exhibit B - Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 2/11/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	70 (35 pgs; 7 docs) Application/Motion to Employ/Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019(Attachments: # 1 Notice # 2 Rule 2016 Statement # 3 Declaration of Jeffrey N. Pomerantz in Support # 4 Declaration of Frank Waterhouse # 5 Proposed Form of Order # 6 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #71 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Main Document 70 replaced on 2/16/2022) (Okafor, Marcey). Additional attachment(s) added on 2/16/2022 (Okafor, Marcey). (Entered: 12/05/2019)
12/04/2019	71 (9 pgs; 2 docs) Notice of Withdrawal of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P. (Attachments: # 1 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #72 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	72 (28 pgs; 4 docs) Motion for Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A - Proposed Order # 3 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #73 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	73 (41 pgs; 5 docs) Application/Motion to Employ/Retain Kurtzman Carson Consultants as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A - Proposed Order # 3 Exhibit B - Gershbein Declaration # 4 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #74 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	74 (48 pgs; 6 docs) Application/Motion to Employ/Retain Development Specialists, Inc. as Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc As of the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A - Engagement Letter # 3 Exhibit B - Sharp Declaration # 4 Exhibit C - Proposed Order # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #75 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	75 (37 pgs; 6 docs) Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A - Proposed Order # 3 Exhibit B - OCP List # 4 Exhibit C - Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	76 (99 pgs; 6 docs) **WITHDRAWN by # 360** Motion to Approve /Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Appendix I # 3 Appendix II # 4 Proposed Form of Order # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #77 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 1/16/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	77 (2 pgs) Notice of Appearance and Request for Notice by William A. Hazeltine filed by Interested Party Hunter Mountain Trust . (Okafor, M.) (Hazeltine, William) [ORIGINALLY FILED AS DOCUMENT #78 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	78 (2 pgs) Notice of Meeting of Creditors/Commencement of Case (Corrected) Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 11/20/2019 at 09:30 AM at J. Caleb Boggs Federal Building, 844 King St., Room 3209, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #79 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	79 (1 pg) Motion to Appear pro hac vice of Brian P. Shaw of Rogge Dunn Group. Receipt Number 0311-27677, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #80 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	80 (4 pgs; 2 docs) Amended Notice of Appearance. The party has consented to electronic service. Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Attachments: # 1 Certificate of Service) (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #81 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	81 (3 pgs) Notice of Appearance and Request for Notice by Jessica Boelter , Alyssa Russell , Matthew A. Clemente , Bojan Guzina filed by Creditor Committee Official Committee of Unsecured Creditors . (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #82 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	82 (21 pgs; 2 docs) Initial Reporting Requirements /Initial Monthly Operating Report of Highland Capital Management, LP Filed by Highland Capital Management, L.P.. (Attachments: # 1 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #83 ON 10/31/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	83 (1 pg) Order Approving Motion for Admission pro hac vice Brian P. Shaw(Related Doc # 80) Order Signed on 11/1/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #84 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	84 (4 pgs; 2 docs) Notice of Appearance and Request for Notice by Sarah E. Silveira , Michael J. Merchant , Asif Attarwala , Jeffrey E. Bjork filed by Interested Parties UBS AG London Branch , UBS Securities LLC . (Attachments: # 1 Certificate of Service) (Merchant, Michael) [ORIGINALLY FILED AS DOCUMENT #85 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	85 (159 pgs; 6 docs) Motion to Change Venue/Inter-district Transfer Filed by Official Committee of Unsecured Creditors. (Attachments: # 1 Exhibit A - Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E - Certificate of Service) (Guzina, Bojan)[ORIGINALLY FILED AS DOCUMENT #86 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	86 (15 pgs; 3 docs) Emergency Motion to Shorten Notice With Respect To The Motion Of Official Committee Of Unsecured Creditors To Transfer Venue Of This Case To The United States Bankruptcy Court For The Northern District Of Texas (related document(s)86) Filed by Official Committee of Unsecured Creditors. (Attachments: # 1 Exhibit A - Proposed Order # 2 Exhibit B - Certificate of Service) (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #87 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	87 (1 pg) Order Denying Emergency Motion to Shorten Notice With Respect to The Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District Of Texas (Related Doc # 87) Order Signed on 11/4/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #88 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	88 (3 pgs) Notice of Appearance. The party has consented to electronic service. Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #89 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	89 (1 pg) Motion to Appear pro hac vice of Patrick C. Maxcy. Receipt Number 2770240, Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #90 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	90 (1 pg) Motion to Appear pro hac vice of Lauren Macksoud. Receipt Number 2770389, Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #91 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	91 (3 pgs) Notice of Appearance. The party has consented to electronic service. Filed by INTEGRATED FINANCIAL ASSOCIATES, INC. (Carlyon, Candace) [ORIGINALLY FILED AS DOCUMENT #92 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	92 (1 pg) Order Approving Motion for Admission pro hac vice Patrick C. Maxcy(Related Doc # 90) Order Signed on 11/5/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #93 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	93 (1 pg) Order Approving Motion for Admission pro hac vice Lauren Macksoud(Related Doc # 91) Order Signed on 11/5/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #94 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	94 (11 pgs; 2 docs) HEARING CANCELLED. Notice of Agenda of Matters not going forward. The following hearing has been cancelled. Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/7/2019 at 03:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # 1 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS

	DOCUMENT #95 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	95 (3 pgs; 2 docs) Notice of Appearance. The party has consented to electronic service. Filed by BET Investments, II, L.P.. (Attachments: # 1 Certificate of Service) (Kurtzman, Jeffrey) (Attachments: # 1 Certificate of Service) [ORIGINALLY FILED AS DOCUMENT #96 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	96 (3 pgs; 2 docs) Certification of Counsel Regarding Order Scheduling Omnibus Hearing Date Filed by Highland Capital Management, L.P.. (Attachments: # 1 Proposed Form of Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #97 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	98 (1 pg) Order Scheduling Omnibus Hearings. Omnibus Hearings scheduled for 12/17/2019 at 11:00 AM US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Signed on 11/7/2019. (CAS) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #98 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	101 (17 pgs; 4 docs) Exhibit(s) // Notice of Filing of Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #99 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	102 (8 pgs) Affidavit/Declaration of Service for service of [Signed] Order Scheduling Omnibus Hearing Date [Docket No. 98] (related document(s)98) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #100 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	103 (10 pgs) Notice of Deposition - Notice to Take Rule 30(b)(6) Deposition Upon Oral Examination of the Debtor, Highland Capital Management, L.P. Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #101 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	104 (2 pgs) Notice of Deposition of Frank Waterhouse Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #102 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	106 (2 pgs) Notice of Service - Notice of Intent to Serve Subpoena Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #103 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	107 (10 pgs; 2 docs) Notice of Substitution of Counsel Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Attachments: # 1 Certificate of Service) (Ryan, Jeremy) [ORIGINALLY FILED AS DOCUMENT #104 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	108 (3 pgs) Amended Notice of Appearance. The party has consented to electronic service. Filed by Official Committee of Unsecured Creditors. (Beach, Sean) . [ORIGINALLY FILED AS DOCUMENT #105 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	110 (1 pg) Motion to Appear pro hac vice Of Bojan Guzina of Sidley Austin LLP. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #106 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	111 (1 pg) Motion to Appear pro hac vice of Alyssa Russell of Sidley Austin LLP. Receipt Number 2620330, Filed by Official Committee of Unsecured Creditors. (Beach, Sean)[ORIGINALLY FILED AS DOCUMENT #107 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	112 (1 pg) Motion to Appear pro hac vice of Matthew A. Clemente of Sidley Austin LLP. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #108 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	113 (1 pg) Motion to Appear pro hac vice of Paige Holden Montgomery. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #109 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	114 (1 pg) Motion to Appear pro hac vice of Penny P. Reid of Sidley Austin. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #110 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	115 (1 pg) Order Approving Motion for Admission pro hac vice Bojan Guzina(Related Doc # 106) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #111 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	116 (1 pg) Order Approving Motion for Admission pro hac vice Alyssa Russell (Related Doc # 107) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #112 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	117 (1 pg) Order Approving Motion for Admission pro hac vice Matthew A. Clemente (Related Doc # 108) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #113 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	118 (1 pg) Order Approving Motion for Admission pro hac vice Paige Holden(Related Doc # 109) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #114 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	119 (1 pg) Order Approving Motion for Admission pro hac vice Penny P. Reid(Related Doc # 110) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #115 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	120 (94 pgs; 11 docs) Limited Objection to the Debtors: (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date; and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.

	(Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Certificate of Service) (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #116 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	121 (26 pgs; 3 docs) Limited Objection and Reservation of Rights of Jefferies LLC to Debtor's Motion for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business (related document(s)77) Filed by Jefferies LLC (Attachments: # 1 Exhibit A # 2 Certificate of Service) (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #117 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	122 (27 pgs) Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #118 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	123 (5 pgs) Limited Objection to Motion of the Debtor for an Order Authorizing the Debtor to Retain, Employee, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business (related document(s)76) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #119 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	124 (6 pgs) **WITHDRAWN per # 456** Limited Objection to the Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP and Lynn Pinker Cox & Hurst as Special Texas Counsel and Special Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #120 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 2/19/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	125 (4 pgs) Limited Objection to the Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #121 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	126 (11 pgs) Joinder to Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #122 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	127 (12 pgs; 3 docs) Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # 1 Notice # 2 Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	128 [SEALED in Delaware Bankruptcy Court] Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (related document(s)5, 75, 77, 123)

	Filed by Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #124 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	130 (162 pgs; 6 docs) Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (Redacted) (related document(s)5, 75, 77, 123, 124) Filed by Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E)(Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #125 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	131 (2 pgs) Notice of Service of Discovery Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #126 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	132 (5 pgs) Objection Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)8) Filed by U.S. Trustee (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #127 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	133 (7 pgs) Certificate of Service of Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)118) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #128 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) Modified text on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	134 (5 pgs) Certificate of Service of Acis's Joinder in Motion to Transfer Venue (related document(s)122) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #129 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	135 (7 pgs; 2 docs) Objection U.S. Trustee's Objection to the Motion of Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Provide a Chief Restructuring Officer, Additional Personnel and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date (related document(s)75) Filed by U.S. Trustee (Attachments: # 1 Certificate of Service)(Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #130 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	136 (1 pg) Certificate of Service of United States Trustees Objection to Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)127) Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #131 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	137 (17 pgs; 3 docs) Certification of Counsel Regarding Debtor's Motion Pursuant to Sections 105(A), 330 and 331 of the Bankruptcy Code for Administrative Order Establishing Procedures for the Interim Compensation and Reimbursement of Expenses of Professionals (related document(s)73) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A - Proposed Order # 2 Exhibit B - Blackline Order)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #132 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	138 (17 pgs; 2 docs) Certificate of No Objection Regarding Debtor's Application for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date (related document(s)74) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A - Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #133 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	139 (5 pgs; 2 docs) Certificate of No Objection Regarding Motion of the Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s)4) Filed by Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A - Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #134 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	140 (2 pgs) Notice of Appearance. The party has consented to electronic service. Filed by Crescent TC Investors, L.P.. (Held, Michael) [ORIGINALLY FILED AS DOCUMENT #135 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	141 (6 pgs) ORDER ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMI3URSEMENT OF EXPENSES OF PROFESSIONALS(Related Doc # 73) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #136 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	142 (14 pgs) ORDER AUTHORIZING THE DEBTOR TO EMPLOY AND RETAIN KURTZMAN CARSON CONSULTANTS LLC AS ADMINISTRATIVE ADVISOR EFFECTIVE NUNC PRO TUNC TO THE PETITION DATE (Related Doc # 74) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #137 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	143 (2 pgs) ORDER (I) EXTENDING TIME TO FILE SCHEDULES OF ASSETS AND LIABILITIES, SCHEDULES OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND STATEMENTOF FINANCIAL AFFAIRS, AND (II) GRANTING RELATED RELIEF (Related Doc # 4) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #138 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	144 (3 pgs) Notice of Appearance. The party has consented to electronic service. Filed by Intertrust Entities. (Desgrosseilliers, Mark) [ORIGINALLY FILED AS DOCUMENT #139 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	145 (3 pgs) Notice of Appearance. The party has consented to electronic service. Filed by CLO Entities. (Desgrosseilliers, Mark) [ORIGINALLY FILED AS DOCUMENT #140 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	146 (11 pgs) Notice of Deposition Upon Oral Examination Under Rules 30 and 30(b)(6) of the Debtor, Highland Capital Management, L.P. Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #141 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	147 (18 pgs; 2 docs) Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware (Attachments: # 1 Certificate of Service) [ORIGINALLY FILED AS DOCUMENT #142 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	148 (7 pgs) Affidavit/Declaration of Service for service of (1) [Signed] Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [Docket No. 136]; (2) [Signed] Order Authorizing the Debtor to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date [Docket No. 137]; and (3) [Signed] Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief [Docket No. 138] (related document(s)136, 137, 138) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #143 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	149 (2 pgs) Notice of Hearing regarding Motion to Change Venue/Inter-district Transfer (related document(s)86, 87, 88) Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #144 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	150 (9 pgs; 2 docs) Notice of Rescheduled 341 Meeting (related document(s)67, 79) Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 12/3/2019 at 10:30 AM (check with U.S. Trustee for location) (Attachments: # 1 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #145 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	151 (17 pgs; 2 docs) Agenda of Matters Scheduled for Telephonic Hearing (related document(s)142) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware.(Attachments: # 1 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #146 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	152 (2 pgs) Notice of Appearance. The party has consented to electronic service. Filed by CLO Holdco, Ltd.. (Kane, John) [ORIGINALLY FILED AS DOCUMENT #149 ON 11/19/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	153 (2 pgs) Amended Notice of Deposition of Frank Waterhouse Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #150 ON 11/19/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	154 (3 pgs) Notice of Appearance and Request for Notice by Sally T. Siconolfi , Joseph T. Moldovan filed by Interested Party Meta-e Discovery, LLC . (Moldovan, Joseph)[ORIGINALLY FILED AS DOCUMENT #152 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	156 (4 pgs) Affidavit/Declaration of Service regarding Notice of Hearing regarding Motion to Change Venue/Inter-district Transfer (related document(s)144) Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #153 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	158 (5 pgs; 2 docs) Motion to Appear pro hac vice of Annmarie Chiarello of Winstead PC. Receipt Number 0311-27843, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #154 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)

12/04/2019	159 (2 pgs; 2 docs) Order Approving Motion for Admission pro hac vice Annmarie Chiarello (Related Doc # 154) Order Signed on 11/21/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #155 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	162 (8 pgs) Reply in Support of Motion to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86, 118) Filed by Official Committee of Unsecured Creditors (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #156 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	163 (7 pgs) Reply in Support of the Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86, 118, 122, 156) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #157 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	164 (4 pgs) Response of the Debtor to Acis's Joinder to Motion to Transfer Venue (related document(s)86, 122) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #15

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

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APPELLEE RECORD

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Counsel for Highland Capital Management, L.P.

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

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III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

Vol. 12
002880
Vol. 15
003564
003639
Thru Vol. 20

Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
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06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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CASE NO. 3:23-cv-02071-E

IN THE UNITED STATES DISTRICT COURT
FOR THE NOTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: HIGHLAND CAPITAL MANAGEMENT, L.P.,
Debtor

HUNTER MOUNTAIN INVESTMENT TRUST,
Appellant,

v.

HIGHLAND CAPITAL MANAGEMENT, L.P., et al

On Appeal from the United States Bankruptcy Court for the Northern District of Texas, Case No. 19-34054-slg11
The Honorable Judge Jernigan, Presiding

APPELLANT BRIEF FILED BY HUNTER MOUNTAIN INVESTMENT TRUST

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I. CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. Bankr. P. 8012, Appellant Hunter Mountain Investment Trust ("HMIT") is a trust organized under the laws of Delaware, not a corporation, and does not need to make a corporate disclosure. HMIT also files this brief derivatively, on behalf of the Highland Claimant Trust ("Claimant Trust"), which is a trust organized under the laws of Delaware pursuant to a Claimant Trust Agreement ("CTA"), and does not need to make a corporate disclosure. HMIT also files this brief on behalf of the Reorganized Debtor, Highland Capital Management, L.P. ("HCM"), of which there are no publicly-held corporations that own 10% or more, and which is not a corporation. In the alternative only, HMIT files derivatively on behalf of the Litigation Sub-Trust, a Delaware trust, which does not need to make a corporate disclosure.

II. STATEMENT REGARDING ORAL ARGUMENT

This appeal involves a voluminous record from a one-day evidentiary hearing that also involved several other pre-hearing and post-hearing orders. The bankruptcy court's 105-page Memorandum Opinion and Order ("Order Denying Leave") creates an improper standard for determining the "colorability" of claims during the initial pleading stages of a case, compounded by a series of other harmful legal and factual errors. HMIT respectfully submits that oral argument would aid the Court's decisional process. *See* FED. R. BANKR. P. 8019.

III. LOCAL RULE 8012.1 CERTIFICATE OF INTERESTED PERSONS

HMIT certifies to the best of its knowledge that the following list is a complete list of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent corporations, and/or other legal entities who or which are financially interested in the outcome of this appeal. HMIT was seeking to bring this action on behalf of HCM and the Claimant Trust and objected to their separate representation.

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VI. JURISDICTIONAL STATEMENT

HMIT appeals from an order of the bankruptcy court denying HMIT's motion for leave to file an adversary proceeding raising breach of fiduciary duty and other tort claims (the "**Order Denying Leave**") (ROA.000835), associated rulings and an order denying HMIT's motion for reconsideration and other relief ("Motion to Alter") pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023 and 9024 (the "**Order Denying Post-Judgment Relief**"). ROA.001045.

The Order Denying Leave and the Order Denying Post-Judgment Relief are final and appealable. Accordingly, this Court has jurisdiction over this appeal. 28 U.S.C. § 158(a). HMIT timely appealed on September 8, 2023, and timely filed an amended notice of appeal following the Order Denying Post-Judgment Relief. ROA.000001, 000551; FED. R. BANKR. P. 8002.

VII. STATEMENT OF ISSUES PRESENTED AND APPLICABLE STANDARD OF REVIEW

1. Whether the bankruptcy court erred in determining that HMIT lacked constitutional and prudential standing to bring its claims in its individual and derivative capacities. ROA.000894-917.

   Standard of Review: Dismissal for lack of standing is reviewed *de novo*. *Moore v. Bryant*, 853 F.3d 245, 248 (5th Cir. 2017).

2. Whether the bankruptcy court erred in denying HMIT's Motion to Alter, which further confirmed HMIT's constitutional and prudential standing.

ROA.001045-001048.

Standard of Review: Dismissal for lack of standing is reviewed *de novo*. *Moore*, 853 F.3d at 248.

3. Whether the bankruptcy court erred when it crafted a new standard described as "***an additional level of review***," requiring HMIT to prove a ***prima facie*** case that HMIT's proposed claims are "***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***" (ROA.000925) to assess whether HMIT has asserted colorable claims under the Gatekeeper Provision in the Fifth Amended Plan of Reorganization, as modified (the "Plan").

   Standard of Review: Whether a court applied an incorrect legal standard is a question of law reviewed *de novo*. *Morales v. Garland*, 27 F.4th 370, 371–72 (5th Cir. 2022).

4. Whether the bankruptcy court erred when it held that HMIT did not assert plausible or colorable claims under the Gatekeeper Provision assuming a correct Rule 12(b)(6)-type analysis.

   Standard of Review: A dismissal for failure to state a claim is reviewed *de novo*. *In re Katrina Canal Breaches Litig.*, 495 F.3d 191 (5th Cir. 2007).

5. If the bankruptcy court correctly applied its "additional level of review," which included an evidentiary hearing, whether the bankruptcy court erred in

determining HMIT had not asserted colorable claims under the Gatekeeper Provision?

Standard of Review: A court's factual findings are reviewed for "clear error." *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 243 (5th Cir. 2002);

6. Whether the bankruptcy erred when it imposed a new hybrid standard on claims asserted by a non-debtor against non-debtors under *Stern v. Marshall* and its progeny.

   Standard of Review: Whether a matter is a core or non-core matter under *Stern v. Marshall* is subject to *de novo* review. *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 34 (2014).

7. If the bankruptcy court correctly applied its "additional level of review," which included an evidentiary hearing, whether the bankruptcy court violated HMIT's due process rights by denying HMIT's requested discovery and/or continuance.

   Standard of Review: Whether a court applied an incorrect legal standard is a question of law reviewed *de novo*. *Morales*, 27 F.4th at 371-372. Discovery rulings are reviewed for abuse of discretion. *Crosby v. Louisiana Health Serv. & Indem. Co.*, 647 F.3d 258, 261 (5th Cir. 2011).

8. If the bankruptcy court correctly applied its "additional level of review," which included an evidentiary hearing, whether the bankruptcy court erred by

excluding HMIT's experts' testimony without a *Daubert* hearing, and then striking from the record HMIT's proffer of expert testimony.

Standard of Review: A court's determination of admissibility of expert evidence is reviewed for abuse of discretion. *Pipitone*, 288 F.3d at 243 (5th Cir. 2002).

9. Whether the bankruptcy court committed clear error when it applied an "additional level of review," and judged the credibility of HMIT's claims, based upon unsupported findings that James Dondero ("Dondero") controls HMIT and is "Dondero by another name" and, as such, HMIT "cannot show that it is pursuing the Proposed Claims for a proper purpose" under its "additional level of review" standard.

Standard of Review: A court's factual findings are reviewed for "clear error." *Id.*

10. Whether the bankruptcy court erred when it rejected the punitive damage claim in the proposed pleadings.

Standard of Review: The application of state law is reviewed *de novo*. *City of Shreveport v. Shreve Town Corp.*, 314 F.3d 229, 234–35 (5th Cir. 2002)

VIII. INTRODUCTION

HMIT was the owner of a 99.5% limited partner interest in Highland Capital Management, LLC ("HCM" or "Debtor") when HCM filed for voluntary bankruptcy

in 2019. Following the Plan's Effective Date, HMIT's equity interest was exchanged for a Class 10 beneficial interest under the Highland Claimant Trust ("Claimant Trust"), which owned the Debtor's assets following the Effective Date.

By its Motion for Leave, HMIT sought to bring an adversary proceeding subject to the Plan's Gatekeeper Provision. (ROA 001660).[1] That provision required HMIT to allege "colorable" claims against the proposed defendants and obtain leave to sue. More specifically, HMIT was seeking permission to file an adversary proceeding against HCM's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"), James Seery ("Seery"), who conspired with non-creditors to use material non-public information ("MNPI") in connection with their purchases of large unsecured claims in HCM's bankruptcy. HMIT alleged that Seery provided friendly business allies with MNPI allowing them to make enormous profits, and then placed these allies on an oversight board with authority to approve Seery's excessive compensation. The proposed pleadings included claims for breaches of fiduciary duty, aiding and abetting, conspiracy, unjust enrichment, constructive trust, equitable disallowance, and declaratory relief.

Viewed through an objective lens, the proceedings in the bankruptcy court were stripped of due process. The bankruptcy court disregarded binding precedent

[1] The Order Denying Leave refers to the Plan "Gatekeeping Provision" and other similar orders which preceded the Plan. References to "Gatekeeping Provision" herein refers to all such orders.

and fabricated an erroneous standard of review, which the bankruptcy court described as a "***hybrid***" or "***additional level of review***" for "***this bankruptcy case.***" By doing so, the bankruptcy court singled-out HMIT and imposed a uniquely heightened burden for "colorability" that neither the Plan nor any governing authority contemplates.

The bankruptcy court's application of this "hybrid" standard, as well as conducting an inappropriate evidentiary hearing, constitutes reversible error. Under the *correct* legal standard—analogous to Federal Rule of Civil Procedure 12(b)(6)—HMIT asserted plausible and colorable claims, and the bankruptcy court erred in concluding otherwise, and further erred when it determined there were "mixed issues of law and fact."

At an initial pleading stage, the bankruptcy court refused to accept HMIT's well-pleaded factual allegations as true. Instead, the bankruptcy court required HMIT to *prove* its claims at an improper evidentiary hearing under the "hybrid" standard—without basic discovery or expert opinions. The bankruptcy court also relied on "background and context" that had *nothing* to do with HMIT to impugn HMIT's claims and motivations. By doing so, the bankruptcy court denied HMIT a basic right – the right to pursue colorable claims for itself and derivatively on behalf of the Reorganized Debtor and the Highland Claimant Trust (the "Claimant Trust").

HMIT had and continues to have standing as a real party interest and as an

aggrieved party to assure that properly held claims are paid timely and fairly. The proposed claims are colorable, HMIT has direct and derivative standing to pursue these claims, and the bankruptcy court erred by shutting the courthouse doors. This Court should reverse.

IX. STATEMENT OF THE CASE

A. HCM Files for Bankruptcy

On October 16, 2019, HCM filed a voluntary petition under chapter 11 of the Bankruptcy Code.[2] Seery was later appointed as HCM's CEO, in place of Mr. James Dondero ("Dondero"), as well as the Debtor's CRO.[3]

B. The Purchase of the Largest Unsecured Claims was Tainted

As the Debtor's new CEO and CRO, Seery obtained bankruptcy court approval for settlements with the largest unsecured creditors who also served on the Unsecured Creditors Committee ("UCC"). This included the Redeemer Committee, Acis, UBS, and HarbourVest (collectively, the "Settling Parties"), as follows:[4]

Creditor	**Class 8**	**Class 9**
Redeemer	$137 mm	$0 mm
Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm
UBS	$65 mm	$60 mm
(TOTALS)	**$270**	**$95**

[2] ROA.003345; ROA.001897.

[3] ROA.003346; ROA.001897

[4] *See* Order Confirming the Plan. ROA.001660

As reflected in these settlements, HarbourVest and UBS owned unsecured claims that would become Class 9 claims and Class 8 Claims following the Effective Date.[5] Class 9 Claims were subordinated to Class 8 Claims in the distribution waterfall.[6] As a holder of Class 10 Claims, HMIT is entitled to distributions from the Claimant Trust after Class 8 and Class 9 Claims are paid in full with interest.[7]

Each of the Settling Parties subsequently sold their claims to third parties who were Seery's professional acquaintances, but who were strangers to HCM's bankruptcy otherwise. The claims were acquired by Muck Holdings, LLC ("Muck") and Jessup Holdings, LLC ("Jessup"), which were shell entities created by two large hedge funds, Farallon Capital Management, L.L.C. ("Farallon") and Stonehill Capital Management LLC ("Stonehill") (collectively Muck, Jessup, Farallon, and Stonehill, the "**Outside Purchasers**").[8] Muck and Jessup were organized on the eve of taking title to the claims at issue (the "**Disputed Claims**"). By virtue of these purchases, the Outside Purchasers ascended to powerful positions on the Claimant Trust's Oversight Board following the Plan's Effective Date.[9] Each of the Disputed Claims were purchased, however, prior to the Effective Date.[10]

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[5] ROA.003346-47; ROA.001864-65.

[6] ROA.003347. ROA.001685-1687.

[7] ROA.003339; ROA.007392-93.

[8] ROA.003340; ROA.003344; ROA.001861; ROA.009706; ROA.008578-81; ROA.007465-7499.

[9] ROA.003354; ROA.007446.

[10] ROA.003348; ROA.001855, ROA.1864-65, ROA.007465-7499.

HMIT alleges, and the Outside Purchasers have ***never*** denied, that the Outside Purchasers invested over $160 million to acquire the Disputed Claims,[11] and they did so without conducting due diligence.[12] Seery (the Debtor's CEO) testified at the June 8 Hearing that the Debtor had no due diligence data room.[13]

When the Outside Purchasers made their investments, the ***only*** public information relating to the Debtor's financial condition was pessimistic—including projections that Class 8 Claims would receive only partial payments while subordinated Class 9 claims would receive nothing.[14] The Debtor's Disclosure Statement publicly projected payment of only 71.32% for Class 8 claims, and 0% for claims in Classes 9-11.[15]

As well-pled in HMIT's proposed pleadings, despite these pessimistic public projections, Farallon rejected selling its claims for a significant premium above what it initially paid ***just weeks before***, because Seery improperly provided Farallon with MNPI which included Seery's assurances that the Disputed Claims were *even more valuable*.[16] This factual allegation was further evidenced by hand-written notes

[11] ROA.003348; ROA.001864-65.

[12] ROA.003348-54; ROA.003357-63. The bankruptcy court incorrectly stated that there were no allegations that Stonehill failed to conduct due diligence. But, the proposed pleadings alleges otherwise. ROA.003334, 003348, 003352.

[13] ROA.009696.

[14] ROA.003348-49; ROA.001864-65, ROA.009563-9564.

[15] ROA.003348-49; ROA.001866.

[16] ROA.003349-50; ROA.009594-95; ROA.006693-96.

prepared by Dondero, which the Outside Purchasers never controverted.[17]

The relevant math is compelling. The Outside Purchasers invested an estimated $160 million to acquire unsecured claims when the Debtor's public disclosures indicated a $0 return for Class 9 Claims and substantially less than par value on Class 8 Claims.[18] On this basis alone, the Outside Purchasers could never justify the risks of their investments to their own investors.[19]

C. The Outside Purchasers' Had Prior Relationships with Seery

HMIT's proposed pleadings make clear that the Outside Purchasers enjoyed prior business relationships with Seery.[20] Seery admitted to scheduling and travelling to private "meet and greets" with Farallon and exchanging email communications with Farallon regarding HCM's bankruptcy.[21] Likewise, Seery had a longstanding relationship with Stonehill's founder; Seery represented Stonehill in prior bankruptcy proceedings; Seery served as a co-chair for a charitable event for Stonehill in New York; and (similar to Farallon) Stonehill contacted Seery seeking to become involved in HCM's bankruptcy even though Stonehill was not a

[17] ROA.006693-95; ROA.009590-96.

[18] ROA.003348-49; ROA.001866.

[19] ROA.003334; ROA.009944-010012.

[20] ROA.003350-54.

[21] ROA.009681-86.

creditor.[22]

D. Material Non-Public Information

On December 17, 2020, Seery received an email containing MNPI from Dondero concerning interest in acquiring MGM.[23] Dondero, who was HCM's original founder and former CEO, also served on MGM's Board of Directors due to HCM's stake in MGM.[24] Dondero's email to Seery (the "Dondero Email") stated:[25]

From: Jim Dondero <JDondero@highlandcapital.com>
To: Thomas Surgent <TSurgent@HighlandCapital.com>, Jim Seery <jpseeryjr@gmail.com>, Scott Ellington <SEllington@HighlandCapital.com>, "Joe Sowin" <JSowin@HighlandCapital.com>, Jason Post <JPost@NexpointAdvisors.com>
Cc: "D. Lynn (\"Judge Lynn\")" <michael.lynn@bondsellis.com>, Bryan Assink <bryan.assink@bondsellis.com>
Subject: Trading restriction re MGM - material non public information
Date: Thu, 17 Dec 2020 14:14:39 -0600
Importance: Normal

Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest.
Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.

Although media rumors had been swirling around a potential MGM sale for years, the information Seery received from Dondero, an active member of MGM's Board, was qualitatively different[26] – the Dondero Email described an MGM sale in

[22] ROA.009686-96.

[23] ROA.003350; ROA.006692.

[24] ROA.003350; ROA.9574-9584.

[25] ROA.006691 (Emphasis added).

[26] ROA.009583-84. *Compare* ROA.008890 *with* ROA.004326 *with* ROA.004282.

terms of "*probability*" within a certain time frame. The materiality of this information is reinforced because it came from an active member of MGM's Board.[27]

Upon receipt of this MNPI, Seery should have halted all transactions involving MGM stock. Yet, just six days later, Seery filed a motion and obtained bankruptcy court approval of HCM's settlement with HarbourVest – resulting in a transfer to the HCM's Estate of HarbourVest's interest in Highland CLO Funding, Ltd. ("HCLOF"), which held substantial MGM debt and equity.[28] Then, on April 7, 2021, HCM *removed* MGM from HCM's "Restricted List," suggesting that HCM did not possess MNPI regarding MGM—which was untrue.[29]

Importantly, HMIT's proposed pleadings made clear that the Outside Purchasers also acted on *additional* MNPI.[30] HMIT's proposed pleadings assert well-pleaded factual allegations that Seery communicated insider knowledge that the publicly disclosed projections were *too* low, and that the Disputed Claims were worth substantially more.[31] In particular, the pleadings make non-conclusory factual

[27] *See U.S. v. Contorinas*, 672 F.3d 136 (2nd Cir. 2012) for a discussion concerning distinctions between media reports and MNPI data. The Order Denying Leave distorts this distinction.

[28] ROA.003350-51; ROA.009753. ROA.009750; ROA.009751; ROA.009751-52.

[29] ROA.003350, ROA.003352-54; ROA.009575-76; ROA.009582-83.

[30] ROA.003338; ROA.003347-3356.

[31] ROA.003347-3356.

allegations that Farallon refused to sell at a substantial premium because Seery said the claims were worth more.[32] These assurances constitute MNPI.[33]

E. The Plan's Gatekeeper Provision

The confirmed Plan created the Reorganized Debtor and provided for the Highland Claimant Trust ("Claimant Trust"), which was created to hold both monetized and non-monetized assets previously held by the Debtor. Following the Effective Date, Seery became the Trustee of the Claimant Trust.[34]

The Plan provided that each of the "Released Parties" (including Seery) was released and discharged by the Debtor and the estate (including the Claimant Trust) from any and all causes of action, including derivative claims ***except*** "any Causes of Action arising from the willful misconduct, criminal misconduct, actual fraud or gross negligence."[35] The Plan also included the Gatekeeping Provision which precluded claims against a "Protected Party" unless the bankruptcy court granted leave to file the claim.

F. Beneficiaries Under the Claimant Trust

HMIT is an allowed Class 10 Class B/C Limited Partnership Interest and

[32] ROA.003349-50; ROA.009594-96.

[33] ROA.006693-95; ROA.009592-96. *See U.S. v. Contorinas*, 672 F.3d 136 (2nd Cir. 2012)

[34] ROA.001693; ROA.003346.

[35] ROA.001708, 1733-34, 001760-1761. *See generally*, ROA.001660; ROA.001724.

Contingent Trust Interest holder under the Claimant Trust.[36] HMIT's rights in the waterfall are subordinated to the other allowed unsecured creditors in Class 8 and Class 9.[37] However, the vast majority of these "superior" claims consist of the Disputed Claims acquired by the Outsider Purchasers through their wrongful conduct.[38]

G. HMIT Filed Its Emergency Motion for Leave

On March 28, 2023, HMIT filed its Motion for Leave in both its individual and derivative capacities seeking leave under the Gatekeeper Provision to file an adversary proceeding against the Outside Purchasers and Seery (collectively, the "Proposed Defendants").[39] HMIT's Motion for Leave attached a draft complaint,[40] asserting claims based upon factual averments identifying the *who, when and what* facts to satisfy relevant pleading requirements. These claims included allegations of willful and knowing breaches of fiduciary duty, participation (or aiding and abetting) in breaches of fiduciary duty, and conspiracy concerning the Disputed Trades.[41] In addition to seeking declarations of HMIT's rights as a "vested" beneficiary under

[36] ROA.003339; ROA.007393.

[37] ROA.003339; ROA.001685-1687.

[38] *See* ROA.003346-47; ROA.007464-7499; ROA.006952.

[39] ROA.001849.

[40] The Motion for Leave was supplemented and attached a revised complaint. ROA.003323.

[41] ROA.003349-54 ("who"); ROA.003348-50 ("when"); ROA.003349-54 ("what"). ROA.003354; ROA.003349-49; ROA.010062-10134.

the Claimant Trust, the proposed adversary proceeding also seeks other redress, including actual damages, punitive damages, disgorgement, imposition of a constructive trust, equitable disallowance or, alternatively, equitable subordination.[42]

H. The Bankruptcy Court Rejected a Rule 12(b)(6)-Type Analysis.

Following communications from the bankruptcy court suggesting an evidentiary format for the hearing, HMIT filed a written objection making clear that any determination concerning "colorability" was based upon a standard that *does not require evidence*. An evidentiary hearing would improperly shift the gatekeeping analysis from "whether the underlying proposed complaint presents colorable claims to whether HMIT will ultimately be successful in its prosecution of the asserted claims."[43] HMIT restated its objections on April 24, 2023, during a court-ordered status conference.[44] HMIT should not have been required to participate in ***a trial on the merits to determine whether HMIT could proceed to a trial on the merits***.[45]

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[42] ROA.003357-3367.

[43] ROA.003309.

[44] ROA.003379-81; ROA.003421-22.

[45] At page 20 of the Order Denying Leave (ROA.000854), the bankruptcy court attempted to justify an evidentiary hearing because the original Motion for Leave attached affidavits. There is no case law suggesting that a motion seeking leave cannot be supported by affidavits, and this does not trigger an evidentiary hearing. Regardless, HMIT supplemented its Motion for Leave withdrawing these affidavits. *See generally*, ROA.003223, ROA.004984. The Court also criticized HMIT for failing to "redact allegations in the proposed complaint" that were supported by the withdrawn affidavits. *See* Order Denying Relief at 84. But, there is no procedural requirement to do so.

On May 22, 2023, the Court entered an order holding that "there may be mixed questions of fact and law" whether HMIT's claims are colorable, and ordering that "the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing."[46] Importantly, this order did not limit or exclude *who* could be called to testify.[47]

HMIT subsequently filed an emergency motion for expedited discovery or a continuance, specifically seeking expedited depositions of Seery and the corporate representatives of the Outside Purchasers – along with relevant documents related to the factual background of HMIT's claims.[48] The document requests focused on, *inter alia*, relevant communications between the Outside Purchasers and Seery in connection with the Disputed Claims, use of MNPI regarding the acquisition of the Disputed Claims, and valuation of the Disputed Claims.[49]

On May 26, 2023, the bankruptcy court denied HMIT's motion for continuance, ordered that the parties were limited to ***two*** depositions ***only*** – Seery and/or Dondero – and that "[n]one of the other parties shall be entitled to any other discovery, including the production of documents from Mr. Seery or Dondero."[50]

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[46] ROA.004712.

[47] ROA.004712-13.

[48] ROA.004836.

[49] *See* ROA.004845-4914.

[50] ROA.004959.

On June 2, 2023, HMIT took Serry's deposition via videoconference, *but was forced to do so without any document discovery from any party,* even though HMIT had requested document discovery.[51] HMIT was *prevented from taking the depositions of the Outside Purchasers*.[52]

I. The June 8 Hearing and Exclusion of HMIT's Expert Testimony and Strike of Proffer

On June 5, 2023, HMIT timely filed its Witness and Exhibit List related to June 8 Hearing, which included potential witnesses Seery, Dondero, Mark Patrick,[53] and two expert witnesses, Scott Van Meter and Steve Pully ("HMIT's Experts").[54] HMIT's Experts, who were experienced in claims trading and bankruptcy reorganization, were timely disclosed in compliance with the relevant briefing schedule and Bankruptcy Rule 9014. Even though not required, HMIT's witness disclosures attached the experts' CV's and provided an outline of the expert's opinions concerning, *inter alia,* the economic risks associated with the Disputed

[51] *See* ROA.004845-4914.

[52] ROA.004959-60. At Page 26 (ROA.000860), The Order Denying Leave references HMIT's prior Rule 202 Petition in Texas state court, which was denied *without prejudice* —presumably based upon arguments of the Outside Purchasers that the bankruptcy court was a more efficient forum to address discovery. *See* ROA.002191-92 When HMIT requested discovery in the bankruptcy court, the Opposing Purchasers still opposed it, and it was denied. ROA.004959. *See* ROA.009884.

[53] Mark Patrick was the Administrator of HMIT. ROA.009764.

[54] ROA.006608-6621.

Trades, Seery's excessive compensation, and the probable use of MNPI.[55] In response, on June 7, 2023, HCM and Seery filed a motion to exclude the testimony of HMIT's Experts.[56]

At the outset of the June 8 Hearing, and over HMIT's objections, the bankruptcy court denied a continuance, proceeded with an evidentiary hearing without a *Daubert* inquiry, refused to permit HMIT's Experts to testify, and took the Motion to Exclude under advisement.[57]

At the June 8 hearing, Dondero provided testimony as a live witness, which included:

- Dondero was a Board Member of MGM, and had a duty to disclose material information he received concerning HCM related to the imminent sale of MGM, which was not publicly available;[58]
- In a telephone call in the Spring 2021, Farallon effectively admitted it had not conducted due diligence and relied on Seery's assurances regarding the value of the Disputed Claims; Farallon also rejected a premium to sell the Disputed Claims because Seery represented that the Disputed Claims were far more valuable;[59]
- Farallon stated that it was "optimistic" about MGM;[60]

[55] ROA.006608-6621; ROA.007500-7539.

[56] ROA.9273.

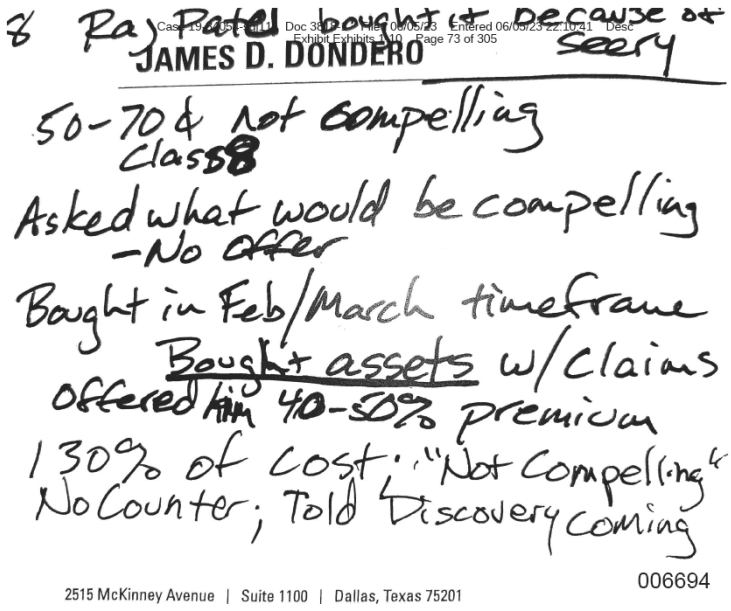
[57] ROA.009912.

[58] ROA.009573-75; ROA.009583-84.

[59] ROA.009589-96.

[60] ROA.009595-96.

A copy of Dondero's handwritten notes reflecting his conversation with Farallon is set forth below:



The Outside Purchasers did not present any evidence controverting Dondero or his notes.

J. The Bankruptcy Court's Orders Excluding Experts

On June 16, 2023, the bankruptcy court entered an order excluding HMIT's Experts and characterized HMIT's discovery requests and expert tender as a "sideshow," [61] even though the requested discovery and expert witness were necessitated by the decision to hold a one-of-a-kind evidentiary hearing.

On June 19, 2023, HMIT filed its Evidentiary Proffer Pursuant to Rule

[61] ROA.009914.

103(a)(2), offering declarations from HMIT's Experts.[62] *See also* FED. R. BANKR. P. 9017. But the bankruptcy court struck this proffer stating that the "substance of the excluded evidence was quite apparent from the context"—despite the Court having never heard their opinions.[63]

K. The Bankruptcy Court Entered Its Order Denying HMTI's Motion for Leave and its Order Denying HMIT's Motion to Alter

On August 25, 2023, the bankruptcy court issued its Order Denying Leave [Bankr. Dkt. Nos. 3903 and 3904].[64] Among other erroneous holdings, the Court concluded that HMIT lacked standing to bring the proposed claims, and the proposed claims were not "colorable" under a newly crafted standard for "***an additional level of review***," that required HMIT to prove a ***prima facie*** *case* that its proposed claims are "***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***."[65]

On September 8, 2023, HMIT filed it Motion to Alter,[66] seeking modification of the Order Denying Leave. This post-hearing motion was predicated upon new financial data disclosed in July 2023, which corroborated HMIT's "*in the money*"

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[62] ROA.009944.

[63] *See* ROA.009474-75, ROA.009477 ("[P]lease note our objection."), ROA.009481 ("No experts today").

[64] ROA.000835.

[65] ROA.000925.

[66] ROA.010062.

status and as a real party in interest.[67] These financial disclosures[68] showed that the Claimant Trust had $247 million in assets and $139 million in remaining, unpaid Class 8 and 9 Claims.[69] Thus, these disclosures reinforced HMIT's standing because all Class 8 and Class 9 creditors could be paid in full with interest with surplus assets.

On October 4, 2023, the bankruptcy court denied HMIT's Motion to Alter, holding that the post-hearing financial disclosures were "not materially different than information that was already on file in the bankruptcy case," and the disclosures did not evidence that HMIT was "*in the money*."[70] The bankruptcy court ostensibly made this latter determination based upon unspecified future expenses despite, on the face of the disclosures, the Claimant Trust had $247 million in assets to pay only $139 million in Class 8 and 9 claims.[71]

X. SUMMARY OF ARGUMENT

The bankruptcy court committed reversible error as a matter of law and abused its discretion in multiple respects:

- when holding that HMIT lacked constitutional standing (both in its individual and derivative capacities) even though HMIT pled injuries that are fairly traceable to the Proposed Defendants' wrongful conduct, are redressable and are, actual, concrete, and

[67] ROA.010064-66; ROA.010070-010083.

[68] ROA.010029-30, ROA.010062.

[69] ROA.010033-34.

[70] ROA.001046-48.

[71] ROA.010064-66; ROA.001047.

imminent.[72] As such, HMIT also has appellate standing as an aggrieved party.[73]

- when holding that HMIT lacked prudential standing (both in its individual and derivative capacities), even though HMIT holds a beneficial interest under relevant Delaware trust law and, accordingly, is a real-party-in-interest, and has held this interest *continuously* since the date of the transactions at issue through the filing of this appeal.

- when it denied HMIT's Motion to Alter which demonstrated that HMIT was "in the money" corroborating HMIT's constitutional and prudential standing.

- when it applied its "hybrid" evidentiary standard for "this" case to evaluate whether HMIT's claims were "colorable."

- when it conducted an evidentiary hearing, over HMIT's objections, and then rejected HMIT's request to conduct relevant discovery or present relevant expert opinions.

- when it ignored well-pleaded factual allegations[74] that established the "colorability" of HMIT's individual and derivative claims.

- when it made sweeping, unsupported generalizations concerning a purported, but disputed relationship between Dondero and HMIT to support the Order Denying Relief.

In sum, the bankruptcy court's holdings and actions leading up to, during and following the June 8 Hearing rendered the entire proceedings an exercise in

[72] *See* ROA.003335; ROA.003341; *see also,* ROA.003357-67. ROA.001854-55, ROA.001880-82.

[73] *Id. See also*, *Matter of Highland Capital Management, L.P.*, 74 F.4th 361, 370 (5th Cir. 2023) (a party qualifies as a "person aggrieved" if the decision in question adversely affects the party's pecuniary interest.") (*citing* 7 Collier on Bankruptcy, para. 1109.08 (16th ed. 2022).

[74] ROA.003349-54; ROA.003348-50; ROA.003349-54.

procedural irregularities. The bankruptcy court allowed the Proposed Defendants to cherry-pick their evidence without being subject to meaningful discovery or cross-examination, while forcing HMIT new "additional level of review." From start to finish, the deck was unfairly stacked against HMIT.

XI. ARGUMENT & AUTHORITIES

A. HMIT has Constitutional and Prudential Standing to Bring Its Claims in Its Individual and Derivative Capacities

To have constitutional standing, a plaintiff "must allege an injury in fact that is fairly traceable to the defendant's conduct and likely to be redressed by a favorable ruling. *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 795 (5th Cir. 2011), *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). Constitutional standing at the pleading stage is based on the pleadings, and not the merits. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (Where, as here, a case is at the pleading stage, the plaintiff must "clearly ... allege facts demonstrating" each element" of standing) (citation omitted); *see Maxim Crane Works, L.P. v. Zurich Am. Ins. Co.*, 11 F.4th 345, 350 (5th Cir. 2021) (similar). On the other hand, prudential standing focuses on capacity and requires that a party be a "real party in interest."[75]

(i) HMIT Has Constitutional Standing

[75] *See BCC Merch. Sols., Inc. v. Jet Pay, LLC*, 129 F. Supp. 3d 440, 447 (N.D. Tex. 2015), FED. R. CIV. P. RULE 17.

HMIT has constitutional standing because it has alleged, both directly and derivatively, an injury in fact —that is, an actual, real, imminent, concrete harm "fairly traceable to the defendant's conduct and likely to be redressed by a favorable ruling."[76] The bankruptcy court's finding that the claimed injury is speculative, conjectural or hypothetical ignores the record and mischaracterized HMIT's claims.[77]

By holding that HMIT's stated injury is "a devaluation of its ***unvested*** Contingent Claimant Trust Interest,"[78] the bankruptcy court ignored the actual harm which the estate, Claimant Trust and HMIT suffered, and also ignored Delaware statutory law and caselaw and HMIT's request for declaration that it was "vested." HMIT suffered actual harm by a diminution of value of HMIT's interest in the Claimant Trust.[79] This was and is caused by allowing Seery, as Trustee, to receive excessive compensation.[80]

Because HMIT is "*in the money*," every dollar paid to Seery in excessive compensation is one dollar that will never flow (but should flow) to HMIT. No conjecture or speculation is required. No hypothetical scenario is presented. Rather,

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[76] *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 795 (5th Cir. 2011),

[77] ROA.003357-003363.

[78] ROA.000904 (Emphasis added).

[79] ROA.003362-67.

[80] ROA.003335; ROA.003354; ROA.003358-59; ROA.001855.

HMIT suffered and continues to suffer actual, real and imminent harm as a result of the conspiracy at issue—the Outside Purchasers received a windfall by exploiting MNPI, and Seery is handsomely rewarded to the detriment of HMIT and the Claimant Trust.[81] The same is true for the Claimant Trust.

To avoid the impact of this nexus (*i.e.* the traceability of harm to wrongful conduct), the Order Denying Leave devotes significant energy (and twelve pages) to a discussion of the claims trading process as being beyond the purview of the bankruptcy court, and that there are "no rules of the road."[82] Therefore, according to the bankruptcy court, there can be no traceable harm.[83]

But this analysis is irrelevant because it does not account for the allegations of the collusive *quid-pro-quo* between Seery and the Outside Purchasers in awarding excessive compensation to Seery. The latter constitutes real, actual, and imminent damage to the Claimant Trust and to HMIT. Whether claims trading is or is not within the purview of the bankruptcy court is not the issue.

The bankruptcy court also seeks to justify its holding concerning

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[81] ROA.003335; ROA.003354; ROA.003358-59; ROA.001890-91, ROA.1908-1909; ROA.009708-09.

[82] ROA.000885.

[83] The Order Denying Leave states at page 101, that if HMIT wanted "reconsideration" of the allowed claims it was required to do so within one year But, HMIT is not challenging the underlying settlement of the claims as approved by the bankruptcy court. Rather, HMIT seeks redress because of a collusive bargain between the Outside Purchasers and Seery unrelated to the approvals.

constitutional standing by arguing that Seery's excessive compensation "stems from a court-sanctioned and creditor approved process for approving compensation."[84] But this "finding" confounds HMIT's allegations—the proposed claims do not attack the Court's earlier process or approvals; rather, the proposed claims arise out of a tortious *abuse* of that process—an abuse that occurred outside of the bankruptcy court.[85]

Lastly, the Order Denying Leave seeks to minimize HMIT's claims concerning Seery's excessive compensation by characterizing the allegations as speculative. But HMIT's proposed pleadings set forth well-pleaded factual allegations, which, contrary to the Bankruptcy Court's statement, were not "threadbare" recitals,[86] but included the "who, what and when" of the claims.[87] Evidence at the June 8 Hearing also supported actual harm regarding Seery's compensation, including:

- Seery admitted he had done no market study to support the reasonableness of his Post-Effective Date compensation as Trustee;[88]

- Seery testified he was unaware whether the Outside Purchasers (who controlled the Oversight Board and his financial package) had undertaken any market studies to support his compensation

[84] ROA.000905.

[85] *See* ROA.003335; ROA.009708-09.

[86] ROA.000926.

[87] ROA.003349-54 ("who"); ROA.003348-50 ("when"); ROA.003349-54 ("what").

[88] ROA.009711.

as Trustee;[89]

- Seery's compensation as Trustee was supposed to be reduced in 2022, but then never happened.[90]

- There is no evidence to justify Seery's ongoing compensation as Trustee despite, admittedly, the Trustee's tasks are diminishing.[91]

Moreover, although HMIT's Experts were prepared to offer opinions that Seery's compensation was excessive, the bankruptcy court struck their opinions as "unhelpful," and then struck a proffer of their opinions.[92] So, on the one hand, the bankruptcy court ignored appropriate pleading standards of review, opting instead to consider evidence, and then severely limited or struck HMIT's evidence. To be clear, HMIT plausibly alleged a collusive *quid quo pro* by which Seery was assured undeserved compensation, which includes annual Base Compensation of $1.8 million and bonuses up to $8 million.[93] HMIT's pleadings were more than sufficient to support constitutional standing at this stage of the case. So was the evidence.

(ii) ***Constitutional Standing and Prudential Standing are Supported by***

[89] ROA.009711

[90] ROA.009708-9709.

[91] The bankruptcy court held Seery's compensation could not be excessive because "HMIT testified…it had no personal knowledge" of Seery actual compensation when HMIT filed its Motion for Leave. ROA.000904. But this misstates the appropriate burden at a pleading stage. HMIT is entitled to plead on "information and belief," which is the proper in the Fifth Circuit. *See League of United Latin Am. Citizens v. Abbott*, 604 F. Supp 463, 496-97 (W.D. Tex. 2022) (citing *Johnson v. Johnson*, 385 F.3d 503, 531 n.19 (5th Cir. 2004).

[92] ROA.006609-11, ROA.009944-010012.

[93] ROA.003354; ROA.007551-56, ROA.009709.

HMIT's "in the money" Status

HMIT's constitutional and prudential standing is also confirmed by recent financial disclosures described in HMIT's Motion to Alter.[94] As shown in that motion, HMIT is "*in the money*." As such, there is no reasonable argument that HMIT's claims are speculative, conjectural or hypothetical. Rather, by being "*in the money*," every dollar lost due to Seery's collusion is a dollar lost to the Claimant Trust and HMIT.

Despite recognizing that these financial disclosures were "not materially different" to disclosures when HMIT filed its Motion for Leave[95] (thus HMIT was "*in the money*" much earlier), the bankruptcy court disregarded simple mathematical truisms and stretched to support its holding by discussing "supplemental notes" which included undisclosed, indefinite "administrative expenses and legal fees" – most of which are being incurred by the Litigation Trustee in a lawsuit against HMIT, among others. However, there is *no evidence* quantifying the amount of these *potential* and *speculative* fees, nor is there any evidence these fees cannot be paid before the Class 8 and Class 9 beneficiaries are fully paid.

Seery's duties under the CTA also have not been fulfilled, and these breaches further support standing. Seery is obligated to: (a) pay the remaining Class 8 and 9

[94] ROA.010062-010128.

[95] ROA.001046-47.

claims in full, (b) file the beneficiary certification, (c) vest the Class 10 and 11 Equity Interests, [96] and (d) "not unduly prolong the duration of the Claimant Trust."[97] Thus, not only has HMIT demonstrated that it is "*in the money*," even accepting the Court's reasoning that there is *potentially* other, non-specific, undisclosed financial information, HMIT has standing to pursue its current claims and is also entitled to seek declaratory relief concerning the "vesting" of its interests under the CTA.

(iii) ***Prudential Standing Exists Under Delaware Law***

Here, HMIT is a "real party in interest," and enjoys prudential standing to bring its claims (both individually and derivatively) because it is a "beneficial owner" in the Claimant Trust. DEL. CODE. ANN. tit. 12, § 3816. Here, HMIT was and remains a beneficial owner because it is a contingent beneficiary under Delaware law and also should be deemed "vested.".[98] HMIT also had prudential standing to bring the proposed claims derivatively under Delaware law.[99]

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[96] *See* ROA.7369-70, ROA.007392-95.

[97] *See* ROA.007377-81.

[98] ROA.007393. *See Estate of Cornell v. Johnson*, 367 P.3d 173, 178 (Idaho 2016) ("[V]esting cannot be postponed by unreasonable delay in distributing an estate and [] when there is such delay, contingent interests vest at the time distribution ***should*** have been made." (emphasis added)).

[99] *See* RESTATEMENT (SECOND) OF TRUSTS Sec. 199; *Scanlon v. Eisenberg*, 2012 WL 169765 (7th Cir. Jan. 20, 2012); *Mayfield v. Peek*, 446 S.W.3d 253 (Tex. App.—El Paso 2017, no pet.); *Siefert v. Leonhardt*, 975 S.W.2d 489, 492–93 (Mo. Ct. App. 1998) (holders of contingent interest in trust have standing to bring suit against trustee); *Smith v. Bank of Clearwater*, 479 So. 2d 755 (Fla. Dist. Ct. App. 1985) (contingent beneficiary was entitled to bring suit against trustee for alleged mismanagement of trust); *Giagnorio v. Emmett C. Torkelson Tr.*, 292 Ill. App. 3d 318, 686 N.E.2d 42 (1997) (contingent beneficiary had standing to bring action for breach of fiduciary duty).

Under Delaware law, even if HMIT's interest in the Claimant Trust is deemed "contingent," HMIT is an intended beneficiary of the Claimant Trust, and HMIT enjoyed this status when it filed its Motion for Leave, and enjoys this status today. HMIT also has separate standing to bring derivative claims because it is a beneficial owner of the Claimant Trust. DEL. CODE ANN. Tit. 12, § 3816.

The bankruptcy court's holding that HMIT failed to satisfy a "continuous ownership requirement" is likewise misplaced.[100] HMIT held a continuous ownership interest at the time of all relevant transactions. HMIT had an ownership interest *before and after* the Effective Date; the type of interest merely changed.[101] Prior to the Effective Date, HMIT held a limited partnership interest; after the Effective Date, that interest was exchanged for a beneficial ownership interest under the CTA. *Id.*. The bankruptcy court cited no authority holding that a plaintiff fails the "continuous ownership requirement" when, in fact, it remains a continuous interest owner, as here. Regardless, HMIT also is suing for "transactions" that occurred post-Effective Date—*i.e.*, Seery's revised and excessive compensation awards—during which HMIT's post-Effective Date beneficial interest existed from start to finish.

Under Delaware law, a "beneficial owner" means "***any*** owner of a beneficial

[100] ROA.000910.

[101] ROA.000870-72. *See* ROA.003339, ROA003342.

interest in a statutory trust . . ..” DEL. CODE. ANN. Tit. 12, § 3801 (emphasis added). A “beneficial interest” is the “profit, benefit, or advantage resulting from a contract.” *Mangano v. Pericor Therapeutics*, No. CIV.A. 3777-VCN, 2009 WL 4345149, at *5 (Del. Ch. Dec. 1, 2009). In evaluating beneficial interests relating to derivative standing, Delaware courts recognize that the statute “use[s] … the general term beneficiary, without any language restricting the class of beneficiary to whom it refers…” *Est. of Tigani*, No. CV 7339-ML, 2016 WL 593169, at *14 (Del. Ch. Feb. 12, 2016).

Although the Delaware Code does not define “beneficiary,” Delaware courts follow the RESTATEMENT (THIRD) OF TRUSTS,[102] which defines beneficiaries as both “vested and contingent beneficiaries.”[103] Moreover, when interpreting undefined statutory terms, Delaware law requires that such terms be given “reasonable and sensible meaning in light of their intent and purpose.” *Angstadt v. Red Clay Consol. Sch. Dist.*, 4 A.3d 382, 390 (Del. 2010). When doing so, Delaware courts traditionally rely on dictionaries. *See id.*

Here, Black’s Law Dictionary defines “beneficiary” to include, “[s]omeone who is designated to receive the advantages from an action or change . . . or to

[102] *See, e.g.*, *In re Tr. Under Will of Flint for the Benefit of Shadek*, 118 A.3d 182, 195 (Del. Ch. 2015); *Tigani v. Tigani*, No. CV 2017-0786-KSJM, 2021 WL 1197576, at *14 (Del. Ch. Mar. 30, 2021), *aff’d,* 271 A.3d 741 (Del. 2022).

[103] RESTATEMENT (THIRD) OF TRUSTS, § 48 cmt. a (2003) (emphasis added).

receive something as a result of a legal arrangement or instrument" and includes both "contingent benficiar[ies]" and "direct benficiar[ies]."[104] By contrast, Black's Law Dictionary distinguishes "incidental beneficiary" as a "third-party beneficiary, who, though benefiting indirectly, is not intended to benefit from a contract and thus does not acquire rights under the contract."[105] Here, there should be no doubt HMIT is an intended beneficiary due to its place in the distribution waterfall.

In light of the RESTATEMENT and Black's Law Dictionary, the only reasonable interpretation of the word "beneficiary," as used in Section 3327 of the Delaware Code, includes contingent beneficiaries. As the Delaware Supreme Court explained, a court "may not engraft upon a statute language which has been clearly excluded therefrom by the Legislature." *Giuiricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982) (citing *Wilmington Trust Co. v. Barry*, 338 A.2d 575, 578 (Del Super. Ct. 1975), *aff'd*, 359 A.2d 664 (Del. 1976)). But, the bankruptcy court erred when it did just that. *See Estate of Tigani*, No. CV 7339-ML, 2016 WL 593169, at *14 (Del. Ch. Feb. 12, 2016); *Estate of Necastro*, No. C.A. 10,538, 1991 WL 29958, at *1 (Del. Ch. Feb. 28, 1991) (rejecting a "restrictive reading" of "beneficiary" under 12 DEL. CODE. § 2302(d) and instead holding that "contingent beneficiaries" have standing.)

HMIT's proposed claims include willful misconduct that occurred while

[104] *Black's Law Dictionary* (11th ed. 2019).
[105] *Id.*

Seery owed fiduciary duties to the Debtor, and continued to owe duties as Trustee of the Claimant Trust.[106] Pursuant to the Plan, the estate's causes of action against Seery were assigned to the Claimant Trust.[107] Therefore, the Plan does not impede HMIT's standing to bring its derivative claims but specifically allows such claims on behalf of the Claimant Trust. To the extent these claims accrued post-Effective Date, then the Claimant Trust owns those claims and HMIT is a beneficial owner under the Claimant Trust. Thus, HMIT has both derivative and prudential standing.[108]

(iv) ***HMIT Also Has a Direct Claim***

The bankruptcy court incorrectly held that HMIT had no prudential standing to assert a direct claim because HMIT's alleged harm "comes about only because the harm to the Debtor," so the alleged "injury is derivative." But, HMIT does have viable claims.

The bankruptcy court relied on authority addressing a creditor or shareholder's right to bring direct and derivative claims against third

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[106] *See Rende v. Rende*, No. 2021-0734-SEM, 2023 WL 2180572, at *11 (Del. Ch. Feb. 23, 2023) (Delaware trustee owes fiduciary duties); *See In re Xtreme Power Inc.*, 563 B.R. 614, 632-33 (Bankr. W.D. Tex. 2016) (fiduciary duties owed by corporate officers and directors under Delaware law); *Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 245-46 (5th Cir. 1988) (duties owed by debtors-in-possession) ("*LWE*").

[107] ROA.007369, 001708, 001733-34, 001760-1761. *See generally*, ROA.001660.

[108] The bankruptcy court's statements, at ROA.000916, regarding purported "checks and balances" under the CTA are inapposite because of massive conflicts; it ignores that the Proposed Claims are against the Outside Purchasers, who control the Oversight Board under the CTA, and the Litigation Sub-Trustee continues to pursue litigation against HMIT.

parties.[109] But here, HMIT—who holds a beneficial interest—is asserting claims against the trustee of a trust for harms the trustee inflicted specifically upon HMIT. Under established law, a beneficial interest owner has standing and a right to assert individual claims against a trustee for misconduct and mismanagement, as HMIT pleaded. RESTATEMENT (SECOND) OF TRUSTS SEC. 199; *see, e.g.*, *Scanlan v. Eisenberg*, 669 F.3d 838, 843 (7th Cir. 2012).

The bankruptcy court also held that HMIT would not have standing under *Louisiana World* ("LWE").[110] But HMIT relied on LWE for the colorability standard and the duties owed to HMIT. Regardless, LWE supports that standing or capacity to sue is derived from state law, and HMIT has demonstrated its standing to bring the proposed action individually and derivatively under Delaware law.

(v) ***Seery's Duties under Delaware Law***

The trustee of a Delaware statutory trust has duties of loyalty, good faith, and due care. *See* DEL. CODE ANN. Tit. 12, § 3809; *Rende v. Rende*, No. 2021-0734-SEM, 2023 WL 2180572, at *11 (Del. Ch. Feb. 23, 2023). Delaware law also prohibits any disclaimer of the duty of good faith and fair dealing. *See In re National Collegiate Student Loan Trusts Litigation*, 251 A.3d 116, 185-86 (Del. Ch. 2020) (" . . . the DSTA forbids parties from eliminating the "implied contractual covenant of

[109] ROA.000927.

[110] ROA.000908-09.

good faith and fair dealing.") (*citing* DEL. CODE. ANN. Tit. 12, § 3806).

Here, Seery's duties of good faith and fair dealing are relevant because the Proposed Defendants argue that HMIT's status as a "beneficiary" under the CTA is conditional upon Seery's affirmative act of filing a certification declaring HMIT "vested." Although this makes Seery the proverbial "*fox guarding the hen house*," Delaware law is clear: "[s]tated in its most general terms, the implied covenant requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain." *Dunlap v. State Farm Fire and Cas. Co.*, 878 A.2d 434, 442 (Del. 2005) (internal quotations omitted).

Seery's refusal to perform a simple ministerial task to "vest" Class 10 warrants treating HMIT as fully vested, and this is precisely what HMIT's request for declaratory relief sought.[111] "[V]esting cannot be postponed by unreasonable delay in distributing an estate and [] when there is such delay, contingent interests vest at the time distribution ***should*** have been made." *Estate of Cornell v. Johnson*, 367 P.3d 173, 178 (Idaho 2016) (emphasis added) (discussed in RESTATEMENT (SECOND) OF TRUSTS § 198 (1959)); *see also Edwards v. Gillis*, 146 Cal.Rptr.3d 256, 263 (Cal. Ct. App. 4 Dist., 2012). But the bankruptcy court mischaracterized the declaratory judgment action and committed reversible error when it did so. HMIT seeks

[111] ROA.003362.

declaratory relief concerning, *inter alia*, its rights as a "vested" beneficiary under the Claimant Trust. This was one of many claims for declaratory relief which the bankruptcy court ignored.[112]

The Claimant Trust has had sufficient assets to pay unsecured creditors in Classes 8 and 9 in full with interest.[113] Indeed, according to the bankruptcy court, these resources existed even earlier and at least when HMIT filed its Motion for Leave.[114] And, the CTA required Seery, as Trustee, to "make timely distributions and not unduly prolong the duration of the Claimant Trust."[115]

The bankruptcy court's reliance on *In re Nat'l Coll. Student Loan Tr. Litig.*,[116] is misplaced,[117] because that case did not involve *contingent* beneficial interests. Instead, it involved creditors seeking to assert a security interest against collateral owned by the trust - but that is not the same as having a contingent beneficial interest. Therefore, the bankruptcy court's statement that it is "pure and simple" HMIT does

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[112] Declaratory judgment relief is proper when there is an actual controversy that has arisen and exists relating to the rights and duties of the parties. *In re Coral Petroleum, Inc.*, 50 B.R. 830, 835-36 (Bk. S.D. Tex. 1985) (*citing Allstate Insurance Co. v. Employers Liability Assurance Corp.,* 445 F.2d 1278, 1280 (5th Cir.1971).

[113] ROA.010064-66, *see* ROA.010029, ROA.010035.

[114] ROA.001046-47.

[115] CTA, Dkt. 3521-5 at § 3.2(a). ROA.007377.

[116] 251 A.3d 116, 191 (Del. Ch. 2020).

[117] Courts reject "the argument that an investor cannot be considered a beneficial owner of an equity security when the investor's right to acquire the security is contingent upon a future event." § 22:28. *Beneficial ownership and convertible securities*, 1F Going Public Corp. § 22:28 (collecting cases).

not have an interest under the CTA is wrong.

(vi) ***HMIT Has Legally Redressable Remedies Which Supports Standing***

Contrary to the Order Denying Leave, constitutional standing is also supported by the redressable nature of the harm that HMIT and the Claimant Trust have suffered. HMIT's proposed pleading asserts entitlement to equitable remedies, such as disgorgement and constructive trust, which are available to deter and rectify the type of willful misconduct alleged in HMIT's Motion for Leave. The requested remedies also include equitable disallowance.[118] All of these remedies provide viable redress.

In the Matter of Mobile Steel Co,[119] which is cited in the Order Denying Leave, the Fifth Circuit generally limited the court's equitable powers to subordination rather than equitable disallowance but ***did not foreclose*** the viability of equitable disallowance in some circumstances. *See* 563 F.2d 692, 699 n. 10 (5th Cir. 1977). Furthermore, the U.S. Supreme Court's decision in *Pepper v. Litton* empowers bankruptcy courts to fashion disallowance remedies. 308 U.S. 295, 304-11 (1939). Bankruptcy Code § 510 is "intended to codify case law, such as Pepper v. Litton . . . and is not intended to limit the court's power in any way…. Nor does [it] preclude a bankruptcy court from completely disallowing a claim in appropriate

[118] ROA.003360-61.

[119] 563 F.2d 692 (5th Cir. 1977).

circumstances." *In re Adelphia Commun. Corp.*, 365 B.R. 24, 71-72 (Bankr. S.D.N.Y. 2007), *aff'd in part sub nom. Adelphia Recovery Tr. v. Bank of Am., N.A.*, 390 B.R. 64 (S.D.N.Y. 2008), *adhered to on reconsideration,* 05 CIV. 9050 (LMM), 2008 WL 1959542 (S.D.N.Y. May 5, 2008) (emphasis and omissions in original).

The Fifth Circuit's decision in *Mobile Steel* was premised on the notion that equitable disallowance was not necessary because creditors typically "are fully protected by subordination" and "[i]f the misconduct directed against the bankrupt is so extreme that disallowance might appear to be warranted, then *surely* the claim is either invalid or the bankrupt possesses a clear defense against it." *Mobile Steel*, 563 F.2d at 699 n. 10 (emphasis added). However, the facts in *Mobile Steel* are not present here.

The Outside Purchasers effectively occupy more than 94% of Class 8 claims.[120] Thus, subordination makes no sense because it would effectively require the Outside Purchasers to subordinate to themselves, and this would never effectively address their wrongful conduct. They would still profit from their wrongdoing.

In addition to equitable disallowance, HMIT also alleges disgorgement and seeks a constructive trust, both of which are viable forms of redress.[121] The

[120] ROA.003356.

[121] *Infra* at Section XI.A.iv.

bankruptcy court erred when holding that unjust enrichment is not an independent cause of action under Texas law,[122] and in doing so directly disregarded established Fifth Circuit authority. *See*, *e.g.*, *King v. Baylor Univ.*, 46 F.4th 344, 367 (5th Cir. 2022). The same is true under Delaware law. *See Garfield on behalf of ODP Corp. v. Allen*, 277 A.3d 296 (Del. Ch. 2022). Also, contrary to the bankruptcy court's statements,[123] Seery's compensation is fixed by his allies on the Oversight Board and the amount, *i.e.*, the excessiveness of Seery's compensation, is not limited by an express contract, precluding unjust enrichment as a viable remedy. Simply put, there is no express contract at issue here. The same is true under Delaware law.[124]

Here, disgorgement is an appropriate remedy for breach of fiduciary duty under both Texas law[125] and Delaware law.[126] Disgorgement is also an appropriate remedy for unjust enrichment under Texas law and under Delaware law.[127] Lastly, disgorgement is an appropriate remedy for aiding and abetting a breach of fiduciary

[122] ROA.000936.

[123] ROA.000936.

[124] *See Prospect Street Energy v. Bhargava*, 2016 WL 446202 at *8 (Del. S. Ct. January 27, 2016) (undisclosed kickback agreement was not claim subject to separate contract between parties).
[125] *See Kobach Tool Co. v. Corbett-Wallace Corporation*, 160 S.W. 2d 509 (Tex. 1942).

[126] *See Metro Storage International, LLC v. Herron*, 275 A.3d 810 (Del. Ch. 2022); *see also In re: Mobilactive Media, LLC*, 2013 WL297950 at 24 (Dec. Ch. Jan. 25, 2013), *Prospect Street Energy v. Bhargava*, 2016 WL 446202 at *8 (Del. S. Ct. January 27, 2016) (disgorgement, constructive trust and unjust enrichment available under Delaware law); .
[127] *Hunter v. Shell Oil Co.*, 198 F.2d 485 (5th Cir. 1952).

duty, which is precisely what has been asserted against the Outsider Purchasers.[128]

Lastly, HMIT properly alleged punitive damages which, contrary to the Order Denying Leave,[129] are recoverable as alleged in this case under Delaware law. *See Niehoff v. Maynard,* 299 F.3d 41 (1st Cirt. 2002).

B. *The Bankruptcy Court's Application of a Heightened "Hybrid" Barton Analysis was Erroneous*

The bankruptcy court applied an erroneous standard for defining a "colorable" claim. In effect, the bankruptcy court fashioned an incorrect standard for "***this bankruptcy case***" that forced HMIT to present *prima facie* evidence on the merits of its claims – while concurrently depriving HMIT of basic discovery that due process required under the evidentiary scenario ordered by the bankruptcy court.

1. The Gatekeeping Provision Does Not Support a Heightened *Barton* Standard

The bankruptcy court committed reversible error when it fabricated a one-off standard to determine "colorability"—which it described as "***an additional level of review***," for "***this bankruptcy case***" requiring HMIT to prove *prima facie* that its proposed claims are "***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***."[130] The bankruptcy

[128] *See US Bank Assoc. v. Verizon Commun., Inc.*, 817 F.Supp. 934, 944 (N.D. Tex. 2011) (applying Delaware law). *See also*, ROA.003357-3367.

[129] Order Denying Leave at 103.

[130] ROA.000925.

court incorporated as part of this new standard the *prima facie* proof standard under the *Barton* doctrine.[131] But, *Barton* only applies when there is a claim in a non-appointing court that "requires a party to obtain leave from the appointing court before bringing suit against a court-appointed receiver." *See In re Provider Meds, LP*, 514 B.R. 473, 475 (Bankr. N.D. Tex. 2014).[132]

To justify this newly-fabricated standard, the bankruptcy court relied on *Silver v. City of San Antonio*.[133] However, this reliance is misplaced because, unlike the plaintiff in *Silver*, HMIT *is not and has never been deemed a vexatious litigant;* HMIT fully complied with the bankruptcy court's Gatekeeping Provision; HMIT has not filed the same claims over and over.[134] Thus, the bankruptcy court's creation of an *heightened* standard was wholly inappropriate at this initial pleading stage.

2. The Bankruptcy Court's Impermissible Extension of the *Barton* Doctrine

[131] ROA.000925.

[132] Here, the drafters also opted to use the "colorable" standard, not a *Barton* standard, and this choice must be construed as having a consequence. *In re Phoenix Petroleum Co*., 278 B.R. 385 (Bankr. E.D. Pa. 2001); *In re Deepwater Horizon*, 732 F.3d 326, 34[2] (5th Cir. 2013).

[133] *Silver v. City of San Antonio*, No. SA-19-MC-1490-JKP, 2020 WL 3803922, at *6 (W.D. Tex. July 7, 2020). *See* Order Denying Leave. ROA.000924.

[134] The standard in the *Silver* matters are inapposite because the plaintiff was *in forma pauperis* ("IFP"), which the court stated is statutorily broader. *Silver v. Perez*, No. SA-20-MC-0655-JKP, 2020 WL 3790489, at *4 (W.D. Tex. July 7, 2020)

The *Barton* Doctrine is limited to protect court-appointed trustees.[135] Neither the *Carroll* case nor any other Fifth Circuit case has applied the *Barton* doctrine to cloak corporate officers with judicial immunity and exculpate them from entire categories of claims if filed within the appointing court, *i.e.,* the bankruptcy court.[136] *In re Provider Meds, LP*, 514 B.R. 473, 476 (N.D. Tex. 2014) (parties do not need leave of court to assert claims against trustees in bankruptcy court that appointed them)

The Fifth Circuit also noted that the *Barton* doctrine is rooted in the "concern that if debtors could sue the trustee in a foreign jurisdiction, the foreign 'court would have the practical power to turn bankruptcy losers into bankruptcy winners.'" *Carroll*, 788 F.3d at 506 (*quoting In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998)). Here, however, HMIT sought leave to file the proposed claims in the *same* bankruptcy court that appointed the trustee—a circumstance in which this Court has held a *Barton* inquiry to be inappropriate. *See In re Provider Meds, LP*, 514 B.R. 473, 476 (N.D. Tex. 2014).

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[135] *See In re Vistacare Group, LLC*, 678 F.3d 218, 234 (3d Cir. 2012) (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984).

[136] The cases relied upon by the bankruptcy court were in the distinct context of protecting a bankruptcy trustee in an action ***outside*** the bankruptcy court--facts which do not exist here, Even then, not all of those courts found that an evidentiary hearing was necessary. *Vistacare*, 678 F.3d at 233. *Accord In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) *Leighton Holdings, Ltd. v. Belofsky* (In re Kids Creek Partners, L.P.), 2000 WL 1761020, at *2 (N.D. Ill. Nov. 30, 2000) (same).

Other policy arguments for expanding *Barton* are unavailing. The bankruptcy court's articulated concern that none of the Independent Directors would have taken the role without a gatekeeper provision[137] does not justify a *Barton* standard. "[T]he Barton doctrine is grounded in the exclusive nature of *in rem* jurisdiction. The need to attract qualified individuals to serve as receivers and bankruptcy trustees might be a legitimate policy concern, but it has nothing to do with subject-matter jurisdiction." *Chua v. Ekonomou*, 1 F.4th 948, 954 (11th Cir. 2021).

3. A "Colorable" Claim Need Only Have "Some Possible Validity"

By imposing an elevated standard, the bankruptcy court ignored binding Fifth Circuit authority. Citing *Richardson v. United States*, 468 U.S. 317 (1984), the Fifth Circuit held that a "colorable" claim is one with "*some possible validity*." *In re Deepwater Horizon*, 732 F.3d 326, 340 (5th Cir. 2013) (quoting *Richardson*, 468 U.S. at 326 n. 6). In *Deepwater Horizon*, the Fifth Circuit made clear that whether a claim is colorable is based on *allegations* and not merits-based proof: "A plaintiff's claim is colorable if he can *allege* standing and the elements necessary to state a claim on which relief can be granted—whether or not his claim is ultimately meritorious" *Id*. At 341 (emphasis in original).

[137] ROA.000843.

Other courts also apply the "colorable" standard in the same manner as in *Deepwater Horizon* in a variety of contexts – without requiring an evidentiary hearing and instead relying on the four-corners of a proposed claim. *See, e.g., Richardson v. United States*, 468 U.S. 317 (1984); *Becker v. Noe*, No. CV ELH-18-00931, 2019 WL 1415483, at *18 (D. Md. Mar. 27, 2019); *Trippodo v. SP Plus Corp*., No. 4:20-CV-04063, 2021 WL 2446204, at *3 (S.D. Tex. May 21, 2021), report and recommendation adopted, No. 4:20-CV-04063, 2021 WL 2446191 (S.D. Tex. June 15, 2021). Here, the bankruptcy court should not have required an evidentiary hearing to judge the "merits" or credibility of HMIT's claims. *See Louisiana World Exposition v. Fed. Ins. Co*., 858 F.2d 233, 252-53 and n. 15 (5th Cir. 1988) (no evidentiary hearing was necessary to determine "colorability").

C. HMIT Pled "Colorable" and Plausible Claims Under the Proper, Non-Evidentiary Standard

HMIT alleged "colorable" claims with "some possible validity," [138] and otherwise satisfied the plausibility standards under FED. R. CIV. P. 12(b)(6). *See Smith v. Bank of Am., NA*, 615 F.App'x 830, 833 (5th Cir. 2015). A Rule 12(b)(6) motion is appropriate if the plaintiff has not provided fair notice of its claim or factual allegations that — when accepted as true — are plausible and rise above mere speculation. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v.*

[138] *See In re Deepwater Horizon*, 732 F.3d 326, 340 (5th Cir. 2013).

Twombly, 550 U.S. 544, 555-56 & n.3 (2007). A claim has facial plausibility when the plaintiff pleads sufficient factual content that, when accepted as true, allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 129 S.Ct. at 1949.[139]

1. HMIT's Factual Averments are Well-Plead and are "Colorable" and Plausible.

Although the bankruptcy court alternatively criticized HMIT's factual allegations as "threadbare," "conclusory," "speculative," "devoid of merit," or include "unsubstantiated inferences,"[140] it is clear upon any fair review that the factual averments reveal substantial detail concerning that exchange of MNPI , the lack of due diligence, the collusive nature of the bargain to award Seery excessive compensation, and more. The factual averments supporting HMIT's claims for breach of fiduciary duty against Seery are both plausible and "colorable." The factual averments supporting the claims against the Outside Purchasers are equally plausible and "colorable." The proposed pleadings provide fair notice of HMIT's claims and, when accepted as true, rise far beyond mere speculation allowing the bankruptcy court the ability to infer liability.

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[139] All of the claims set forth in the proposed pleading: in Count I (breach of fiduciary duty), Count II (knowing participation in breach of fiduciary duties), Count III (conspiracy), Count IV (equitable disallowance), Count V (unjust enrichment and constructive trust), and Count VI (declaratory relief) are founded upon well pleaded allegations, which state plausible and colorable claims, which the bankruptcy court denied and committed reversible error when it did so.

[140] ROA.00925-26.

Under Count 1 of the proposed pleading, HMIT alleged breach of fiduciary duty against Seery. Under Count 2, HMIT alleged that the Outside Purchasers knowingly participated in (or aided and abetted) Seery's breaches. HMIT also alleged conspiracy, unjust enrichment, constructive trust, disgorgement, and sought declaratory relief.[141] The proposed pleading accurately states the elements of each claim and each claim is factually supported.[142]

To bring a claim for fiduciary duty, Delaware law requires "a plaintiff must allege '(1) that a fiduciary duty existed and (2) that the defendant breached that duty.'"[143] To bring a claim for aiding and abetting a breach of fiduciary duty, Delaware law provides "the plaintiff must plead that: (1) a fiduciary relationship existed, (2) the fiduciary breached its duty, (3) the non-fiduciary defendant knowingly participated in that breach, and (4) damages to the plaintiff resulted from the concerted actions of the defendant and the fiduciary."[144]

Here, HMIT pled that Seery, as CEO and CRO of a debtor-in-possession, owed fiduciary duties to the Debtor, the Debtor's Estate and HMIT, as equity.[145]

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[141] ROA.003357-3367.

[142] ROA.003357-67.

[143] *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at *30 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at *8 (Del. Ch. Feb. 28, 2020)).

[144] *Atl. NWI, LLC v. Carlyle Group Inc.*, No. 2021-0944-SG, 2022 WL 15800272, at *6 (Del. Ch. Oct. 28, 2022).

[145] ROA.003338-41, 3357. The bankruptcy court quoted *Gilbert v El Paso Co.*, 1988 WL 124325,

These duties included, without limitation, the duty of loyalty and the duty to avoid conflicts of interests.[146] Seery also owed fiduciary duties to act in the best interest of Debtor's estate, and HMIT, to maximize the value of the Debtor's Estate. *See In re Johnson*, 433 B.R. 626 (S.D. Tex. 2010) *Cheng v. K & S Diversified Investments (In re Cheng)*, 308 B.R. 448, 45[5] (9th Cir. BAP 2004),'*aff'd*, 160 Fed.Appx. 64[4] (9th Cir.2005); *Yellowhouse Machinery Co. v. Mack (In re Hughes)*, 704 F.2d 820, 82[2] (5th Cir.1983). Following the Effective Date, Seery also owed fiduciary duties as the Trustee under Delaware law and under the terms of the CTA.[147]

HMIT's proposed pleadings set forth plausible factual allegations that Seery breached his fiduciary duties, including by: (a) falsely representing the value of the Debtor's estate to be less than it actually was,[148] (b) disclosing MNPI to third-parties with the intent to place "allies" on the Oversight Board,[149] (c) accepting excessive compensation from his business allies (the Outside Purchasers) on the Oversight

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at *9 (Del. Ch. Nov. 21, 1988) to hold Seery did not owe fiduciary duties but the bankruptcy court neglected to include other significant language from that case *See Gilbert* at *9. HMIT was not some ordinary stakeholder, HMIT was, ostensibly, *the* 99.5% stakeholder in the Debtor. *See also, Eisenberg v. Chicago Milwaukee Corp.,* Del.Ch., 537 A.2d 1051, 1062 (1987).

[146] *See In re Xtreme Power Inc.*, 563 B.R. 614, 632-33 (Bankr. W.D. Tex. 2016); *LWE*, 858 F.2d 233, 245-46 (5th Cir. 1988). The bankruptcy court's assertion that "[u]pon confirmation of the Plan, the bankruptcy estate of Highland ceased to exist" is inapposite. ROA.00909. The duties still existed when they were breached, and those claims survive confirmation.

[147] *See Rende v. Rende*, No. 2021-0734-SEM, 2023 WL 2180572, at *11 (Del. Ch. Feb. 23, 2023); *see also*, *In re Xtreme Power Inc.*, 563 B.R. 614, 632-33 (Bankr. W.D. Tex. 2016); *LWE*, 858 F.2d 233, 245-46 (5th Cir. 1988).

[148] ROA.003354; ROA.003348-54; ROA.010062-10134.

[149] ROA.003354; ROA.003348-54; ROA.010062-10134.

Board,[150] and (d) de-valuing the estate and the Claimant Trust due to his financial self-interest and excessive compensation.[151]

The proposed pleading also sets forth plausible factual allegations that the Outside Purchasers knowingly participated in the breaches of Seery's fiduciary duties and knowingly traded on MNPI. The Outside Purchasers were sophisticated hedge funds who held fiduciary positions vis-vis their own investors and they were no strangers to fiduciary relationships.[152] And, at least circumstantially, the Outside Purchasers' multimillion-dollar investments made no rational economic sense unless MNPI was improperly exploited.

The proposed pleadings also set forth factual averments, which taken as true, plausibly reflect Farallon's admissions that it relied upon Seery, did no due diligence, and expected huge profits when publicly available information suggested otherwise.[153] Lastly, the proposed pleading sets forth plausible factual allegations that the Outside Purchasers and Seery undertook their collusive conduct in secret. Indeed, shell entities were created to acquire the Disputed Claims to conceal Farallon and Stonehill's involvement. This is a red flag characteristic of a conspiracy.

These allegations satisfy a 12(b)(6) standard because they were more than

[150] ROA.003354; ROA.003348-54; ROA.010062-10134.

[151] ROA.003357.

[152] ROA.003334.

[153] ROA.003347-54

"speculation" and provided concrete averments from which liability can be reasonably inferred. The evidence presented at the June 8 Hearing supported these pleadings.

D. Alternatively, if the Bankruptcy Court Correctly Determined that Its "Hybrid" *Barton* Analysis Controls, the Bankruptcy Court Abused Its Discretion When It Denied HMIT's Requested Discovery and Continuance

The bankruptcy court's errors were compounded when it denied HMIT's requested discovery or a continuance to conduct proper discovery. Forcing a party to present evidence on the merits of a case, while depriving that party from undertaking discovery to present evidence on the merits, violates due process. Indeed, in any proceedings where a court is making factual determinations, the court must give the plaintiff *an opportunity* for discovery. *See McAllister v. FDIC*, 87 F.3d 762, 76[6] (5th Cir. 1996). A "blanket denial of discovery is an abuse of discretion if discovery is 'indispensable to a fair, rounded, development of the material facts.'" *Wiwa v. Royal Dutch Petroleum Co.,* 392 F.3d 812, 818 n.3[5] (5th Cir. 2004) (citation omitted).

Although courts have certain discretion regarding what discovery will be allowed, this discretion is not unlimited. *Id*. The Fifth Circuit has held that in early-pleading proceedings it "is "reversible error" and "an abuse of discretion" to deny a plaintiff discovery related to issues before the court or a continuance to obtain that discovery. *See*, e.g., *McAllister v. FDIC*, 87 F.3d 762, 76[6] (5th Cir. 1996). Here, the

bankruptcy court's discretion did not permit a denial of discovery when discovery could "verify allegations of specific facts." *Box v. Dallas Mexican Consulate Gen.*, 487 Fed. Appx. 880, 884–85 (5th Cir. 2012).

Here, the bankruptcy court prevented HMIT from conducting relevant document discovery of any kind.[154] Instead, the bankruptcy court allowed Seery to "cherry pick" information that might help him, and then withhold and redact information that would not. Moreover, the bankruptcy court prevented HMIT from obtaining *any* discovery from Farallon and Stonehill.[155] These rulings amount to reversible error.

E. Alternatively, HMIT's Claims are "Colorable" Under the Heightened Standard Applied by the Bankruptcy Court

The bankruptcy court conducted an evidentiary hearing over HMIT's objections, but the details of the bankruptcy court's ultimate standard of review were never articulated before the Order Denying Leave. This failure kept HMIT in the dark depriving HMIT of due process.

Even then, HMIT's evidence at the June 8 hearing was substantial and demonstrated, without limitation, the following:

- Farallon rejected a significant premium over its multimillion-dollar investment because Seery assured Farallon that the

[154] By way of example, HMIT requested discovery concerning communications between Seery and the Outside Purchasers, documents relating to due diligence, claim evaluations, etc. ROA.4836-4914.

[155] *See generally*, ROA.004836; ROA.004959; ROA.009912.

Disputed Claims had more value;[156]

- Farallon conducted no due diligence and Seery admitted in testimony that there was no due diligence data room;[157]

- Farallon was "optimistic" about MGM;[158]

- The Debtor's disclosures that were publicly available to the Outside Purchasers did not economically justify the magnitude of their investment;

- The Debtor's financial disclosures suggested that the claim purchasers would receive less than par value; Stonehill rejected an opportunity to provide DIP financing at an even higher rate of return, strongly suggesting that Stonehill had expectations of large windfall from the Disputed Claims purchase;[159]

- Muck and Jessup were shell entities created immediately before the acquisition of the Disputed Claims; further evidencing Farallon and Stonehill's motivation to conceal their involvement;[160]

- Seery admitted he had done no market study to support the reasonableness of his compensation as Trustee;[161]

- Seery testified he had no knowledge whether the Outside Purchasers (who controlled the Oversight Board and his financial package) had undertaken any studies to support his Trustee compensation;[162]

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[156] ROA. 006693-95; ROA.009589-96.

[157] ROA.009696-97.

[158] ROA.009596.

[159] ROA.009698-99.

[160] ROA.008578-81; ROA.009591.

[161] ROA.009711.

[162] ROA.009711

- Seery's compensation as Trustee was supposed to be reduced in 2022, but that never happened.[163]

Even under the *Barton* Doctrine, this evidence presents more than a *prima facie* case that the Proposed Defendants are liable for their wrongdoing. Their evidence also supports the factual averments in the proposed pleading that Seery breached his fiduciary duties, and that the Outside Purchasers knowingly participated in this breach and otherwise engaged in a conspiracy that harmed the Claimant Trust and other innocent stakeholders, including HMIT.

F. The Bankruptcy Court Erred When it Imposed a New "Colorability" Standard on Claims Asserted by a Non-Debtor Against Non-Debtors Under *Stern v. Marshall,* and is progeny.

Bankruptcy courts are courts of limited jurisdiction. *In re Paso Del Norte Oil Co.*, 755 F.2d 421, 423–24 (5th Cir. 1985). In *Stern v. Marshall*, the Supreme Court held that Article III of the Constitution prevents bankruptcy courts from entering final judgment on claims that derive from state law and do not invoke substantive rights provided by title 11. *Stern v. Marshall*, 564 U.S. 462 (2011). HMIT's claims for breach of fiduciary duty, aiding and abetting, conspiracy, and unjust enrichment are such claims. *See In re Allied Sys. Holdings, Inc.*, 524 B.R. 598 (Bankr. D. Del. 2015). That a case may result in augmenting the estate's resources does not convert it to a core proceeding that the bankruptcy court may finally resolve. *In re BP RE,*

[163] ROA.009708-9709.

L.P., 735 F.3d 279, 291 (5th Cir. 2013). Rather, bankruptcy courts lack constitutional authority to enter final orders or judgments in non-core claims as well as in a subclass of statutorily core claims, which have come to be known as "*Stern* claims." *See Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 31 (2014).

Subsequent to *Stern*, the Supreme Court determined that a bankruptcy court may decide a "*Stern* claim" only if all parties consent to entry of a final judgment. *Wellness Int'l. Network, Ltd. v. Sharif*, 135 S.Ct. 1932 (2015), which has not occurred here. Here, the bankruptcy court's unfounded interpretation of the Gatekeeping Provision—*i.e.* the newly crafted standard for "an additional level of review"—converts what should be an issue of law, subject to *de novo* review, into a trial exercise. This impermissibly transforms the bankruptcy court into the trier of fact in contravention of *Stern*.

G. Alternatively, if the Bankruptcy Court Correctly Determined that Its "Hybrid" *Barton* Analysis Controls, the Bankruptcy Court Erroneously Excluded Appellant's Expert Testimony And Struck Appellant's Proffer

The bankruptcy court abused its discretion by excluding timely designated expert testimony. When HMIT tried to make a record for appeal, the bankruptcy court denied that as well. In the event this Court determines that the bankruptcy court's elevated standard was appropriate, then this exclusion was an abuse of discretion and reversible error.

1. HMIT's Experts were designated timely.

The disclosure of HMIT's experts exceeded procedural requirements.[164] Bankruptcy Rule of Procedure 9014 governs this contested matter, and specifically excludes Rule 26(a)(2)(b) requirements regarding expert witness disclosures and reports. *See* BANK. R. PROC. 9014.

Here, the bankruptcy court limited pre-hearing discovery before the June 8, 2023 Hearing—not the evidence that could be submitted. Nothing in the bankruptcy court's pre-hearing orders limited any party's right to call other witnesses, including expert witnesses.[165] Thus, HMIT's designation of expert witnesses was timely pursuant to the Bankruptcy Rules – three days before the hearing as part of the exchange of witness lists.[166] Although the bankruptcy court's order striking HMIT's expert evidence states that HMIT's expert evidence was not "appropriately and timely disclosed" and was "too late," the bankruptcy court does not cite any rule or order with which HMIT did not comply.[167]

2. Insufficient Record to Exclude Experts

Under Fifth Circuit precedent, the bankruptcy court was required to perform a *Daubert* inquiry and "articulate its basis" for excluding expert testimony. *Rodriguez v. Riddell Sports, Inc.*, 242 S.W.3d 567, 581-8[2] (5th Cir. 2001). A failure

[164] *See* ROA.006608; ROA.009437-9440.

[165] ROA.009898.

[166] ROA.009437-9442.

[167] ROA.009923-24.

to conduct a proper *Daubert* inquiry, and "articulate" the basis for a ruling based on a sufficiently developed record, is error. *See id.*; *see also Dodge v. Cotter Corp.*, 328 F.3d 1212, 1223 (10th Cir. 2003).

HMIT also was entitled to make an offer of proof on what its experts would opine for purposes of appellate review—a requirement for error preservation that the *Daubert* hearing ordinarily would fulfill. FED. R. EVID. 103(c). Thus, HMIT's evidentiary proffer under Rule 103(a)(2) was appropriate because the evidence clearly supported the "colorability" of HMIT's claims and was procedurally required because the bankruptcy court refused to conduct a *Daubert* proceeding. Hence, the bankruptcy court's subsequent determination to *strike* HMIT's proffer because the "substance" of the expert testimony was purportedly "apparent from the context'" was clear error and an abuse of discretion.

3. The Bankruptcy Court Abused its Discretion by Determining Testimony "Not Helpful"

Ultimately, the bankruptcy court abused its discretion when determining HMIT's expert testimony was inadmissible because the experts would not "help the trier of fact to understand the evidence or to determine a fact in issue."[168] "The requirement that the testimony 'assist the trier of fact' means the evidence must be relevant,"[169] and "Rule 401 defines relevant evidence as that which has 'any

[168] ROA.009925.

[169] *Mathis v. Exxon Corp.*, 302 F.3d 448, 460 (5th Cir. 2002).

tendency to make any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'"[170] The proposed testimony was clearly "relevant."

The unfairness of the bankruptcy court's holding is readily shown by just a few examples:

- Shockingly, the bankruptcy court stated it was not "surprised" that the Outside Purchasers did no due diligence.[171] HMIT's Experts, however, would have testified that due diligence was necessary, and the absence of due diligence was a "*red flag*" that MNPI was wrongfully used.[172]

- The Order Denying Leave stated that HMIT's claims concerning Seery's compensation was speculative because Mark Patrick and Dondero did not have personal knowledge.[173] Yet again, the bankruptcy court excluded HMIT's Experts who would have expressed relevant opinions that Seery's compensation was excessive.[174]

- On Pages 28 through 30 of its Order Denying Leave, the bankruptcy provided a chart that omitted the UBS investment thereby skewing the expected returns. The Bankruptcy Court seeks to justify this omission because the UBS claims were purchased after the announcement of the MGM sale. But this exclusion is misleading because the Outside Purchasers had ***other*** MNPI concerning the estate's assets.[175] Moreover, HMIT's Experts were prepared to testify that the expected returns based on public information were minimal and far below the desired rates of return

[170] *Mathis v. Exxon Corp.*, 302 F.3d 448, 460 (5th Cir. 2002) (*quoting* FED. R. EVID. 401).
[171] ROA.000891.

[172] ROA.006610.

[173] ROA.000904.

[174] ROA.006609-11.

[175] *See* ROA.003350, ROA.003352, ROA.003354.

for hedge funds like Farallon and Stonehill.[176]

Because the bankruptcy court never conducted an inquiry, it was impossible for that court to know if these opinions would be "helpful." To determine an expert's admissibility, a hearing should have been held. *See, e.g.*, G*ruca v. Alpha Therapeutic Corp*., 51 F.3d 638, 64[3] (7th Cir.1995); *see also Hose v. Chicago Nw. Transp*., 70 F.3d 968, 973 n.[3] (8th Cir.1995); *United Fire & Cas. Co. v. Whirlpool Corp.,* 704 F.3d 1338, 1341–42 (11th Cir.2013); *United States v. Schiff*, 538 F. Supp. 2d 818, 844 fn. 26 (D.N.J. 2008),'*aff'd*, 602 F.3d 152 (3d Cir. 2010) ("expert testimony may 'assist the trier of fact to understand the facts already in the record, even if all it does is put those facts in context.'").

H. The Bankruptcy Court Erroneously Determined Appellant "Cannot Show It is Pursuing the Proposed Claims for a Proper Purpose"

Finally, the bankruptcy court erred in its sweeping, unsupported "findings" that HMIT's proposed claims were "brought for the improper purpose of continuing Dondero's vexatious, harassing, bad-faith litigation." [177] This determination was unsupported by the record, and it was wholly improper at this early stage in the proceedings, *i.e.* before claims are even filed.

It is undisputed that Dondero has no legal control of HMIT, and whatever

[176] ROA.006609-11.

[177] ROA.000937.

"control" the bankruptcy court found is legally irrelevant and factually unsupported. This error is based upon the bankruptcy court's claims of background "knowledge" about Dondero, but was inconsistent with the actual evidence offered at the hearing. It also has no place in a plausibility inquiry. Indeed, it is a primary basis why the bankruptcy court invoked a heightened standard of review to determine that HMIT—a separate, non-litigious entity who has never been labeled "vexatious"—should be burdened with the court's "opinions" about Dondero and thus precluded HMIT from bringing its claims. Still worse, it purportedly is based on a "totality of the evidence in this proceeding"—despite that "colorability" is non-evidentiary, and no evidence supports the bankruptcy court's finding that HMIT is "*Dondero by Another Name*."

To be clear, HMIT has never been found to be a vexatious litigant; HMIT is not "controlled" by Dondero;[178] the only evidence in the case is that Dondero does not control HMIT;[179] there was no evidence of alter ego; and no evidence that HMIT and Dondero were one and the same.[180] Rather, the bankruptcy court's "fact findings" were based on irrelevant matters outside the record and, thus, an improper basis for judicial notice, particularly because the purported relationship is hotly

[178] ROA.9570-71.

[179] ROA.9570-71.

[180] *See* ROA.009570-71.

disputed and the alleged "context" did not involve HMIT.

It was also an abuse of discretion for the bankruptcy court—*before* HMIT has filed its claims or conducted any discovery on those claims—to weigh the credibility and testimony of witnesses. Even when courts have weighed credibility at later stages of litigation, such as summary judgment proceedings, courts have held that was inappropriate before *trial*. *See, In re Yormak*, 640 B.R. 491, 508 (M.D. Fla. 2022), *appeal dismissed*, No. 22-11636-BB, 2022 WL 3270056 (11th Cir. July 27, 2022).

Here, the bankruptcy court determined that Dondero's testimony was not credible, despite being unrebutted, and supported by contemporaneous notes.[181] The bankruptcy court's blanket determination that Dondero was "not credible" was plainly wrong.[182] The bankruptcy court committed a reversible wrong when it attributed this purported "lack of credibility" to HMIT.

XII. CONCLUSION AND RELIEF SOUGHT

The bankruptcy court erred in the creation and application of its "hybrid" standard to determine the colorability of HMIT's claims because HMIT has plead colorable and plausible claims; the bankruptcy court violated HMIT's due process rights in denying basic discovery and striking relevant evidence; the bankruptcy

[181] ROA.009564.

[182] ROA.009564.

court abused its discretion at this pre-filing stage by ignoring the facts in the record and determining that HMIT—a separate, non-litigious entity that has never been labeled "vexatious"—is burdened with the bankruptcy court's "opinions" about Dondero. For all of the reasons stated in this brief, this Court should reverse the Order Denying Leave, reverse the Order Denying Further Relief, and render a decision granting HMIT leave to bring its claims individually and derivatively.

XIII. CERTIFICATE OF COMPLIANCE

This document complies with the word limit of FED. R. BANKR. P. 8015(a)(7)(B) because, excluding the parts of the document exempted by FED. R. BANKR. P. 8015(g), this document contains 12,992 words; and

This document complies with the typeface requirements of FED. R. BANKR. P. 8015(a)(5) and the type-style requirements of FED. R. BANKR. P. 8015(a)(6) because: this document has been prepared in a proportionally spaced typeface Microsoft Word in size 14 font, Times New Roman.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

CASE NO. 3:23-cv-02071-E

IN THE UNITED STATES DISTRICT COURT
FOR THE NOTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: HIGHLAND CAPITAL MANAGEMENT, L.P.,
Debtor

HUNTER MOUNTAIN INVESTMENT TRUST,
Appellant,

v.

HIGHLAND CAPITAL MANAGEMENT, L.P., et al

On Appeal from the United States Bankruptcy Court for the Northern District of Texas, Case No. 19-34054-slg11
The Honorable Judge Jernigan, Presiding

APPENDIX IN SUPPORT OF APPELLANT BRIEF FILED BY HUNTER MOUNTAIN INVESTMENT TRUST

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Appellant Hunter Mountain Investment Trust hereby files this *Appendix in Support of Appellant Brief filed by Hunter Mountain Investment* Trust, pursuant to Fed. R. Bankr. P. 8018.

DESCRIPTION	RECORD CITE (ROA)
Relevant Docket Entries	ROA.001307; ROA.001325; ROA.001541; ROA.001561; ROA.001564-ROA.001590
Hunter Mountain Investment Trust's Notice of Appeal	ROA.000001 – ROA.000004
Hunter Mountain Investment Trust's Second Amended Notice of Appeal	ROA.000551 – ROA.000834
Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding	ROA.000835-ROA.000939
Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024	ROA.001045-ROA.001048
Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified) and (II) Granting Related Relief	ROA.001660-ROA.001820
Hunter Mountain Investment Trust's Emergency Motion For Leave to File Verified Adversary Proceeding	ROA.001849-ROA.001885
Proposed Verified Adversary Complaint	ROA.001886-

	ROA.002235
Reporter's Record - Petitioner Hunter Mountain Investment Trust's Rule 202 Petition which was heard on Wednesday, February 22, 20234	ROA.002146-ROA.002224
Hunter Mountain Investment Trust's Objection Regarding Evidentiary Hearing and Brief Concerning Gatekeeper Proceedings Relating to "Colorability"	ROA.003302-ROA.003310
Hunter Mountain Investment Trust's Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding	ROA.003323-ROA.003330
Supplemental Proposed Verified Adversary Complaint	ROA.003331-ROA.003367
Transcript of Proceedings Before the Honorable Stacey G.C. Jernigan on April 24, 2023	ROA.003368-ROA.003429
Claim Purchasers' Objection to Hunter Mountain Investment Trust's (I) Emergency Motion For Leave To File Verified Adversary Proceeding; and (II) Supplement To Emergency Motion For Leave To File Verified Adversary Proceeding	ROA.003430 – ROA.003457
Order Fixing Briefing Schedule and Hearing Date With Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding as Supplemented	ROA.003458-ROA.003462
Highland Capital Management, L.P., Highland Claimant Trust, And James P. Seery, Jr.'s Joint Opposition To Hunter Mountain Investment Trust's Motion For Leave To File Verified Adversary Proceeding	ROA.003463 – ROA.003536
Hunter Mountain Investment Trust's Reply Brief In Support of Emergency Motion for Leave to File Adversary Proceeding	ROA.004665-ROA.004711

Order Pertaining to the Hearing on Hunter Mountain Investment Trust's Motion for Leave to File Adversary Proceeding [DE ## 3699 & 3760]	ROA.004712-ROA.004713
Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing	ROA.004836-ROA.004914
Order Regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing [Dkt. Nos. 3788 and 3791]	ROA.004959-ROA.004960
Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding	ROA.004984-ROA.005048
Hunter Mountain Investment Trust's Witness and Exhibit List in Connection with its Emergency Motion for Leave to File Verified Adversary Proceeding and Supplement	ROA.006608-ROA.006621
Proposed Verified Adversary Complaint	ROA.006651-ROA.006688
December17, 2020 Email regarding Trading Restriction MGM – material non public information	ROA.006689-ROA.006691
James D. Dondero's Notes	ROA.006692-ROA.006695
Order (I) Confirming the Fifth Amended Plan of Organization of Highland Capital Management, L.P. (As Modified) and (II) Granting Related Relief	ROA.006702-ROA.006863
Claimant Trust Agreement	ROA.007366-ROA.007405
Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust	ROA.007446-ROA.007449

Management Incentive Compensation Agreed Terms Reorganized Highland Capital Management, L.P. and Highland Claimant Trust, (the "Trust") December 2, 2021	ROA.007450-ROA.007456
Notice of Transfer of Claim Other Than For Security	ROA.007464-ROA.007466
Notice of Transfer of Claim Other Than For Security	ROA.007467-ROA.007469
Notice of Transfer of Claim Other Than For Security	ROA.007470-ROA.007472
Notice of Transfer of Claim Other Than For Security	ROA.007473-ROA.007482
Notice of Transfer of Claim Other Than For Security	ROA.007483-ROA.007485
Notice of Transfer of Claim Other Than For Security	ROA.007486-ROA.007490
Notice of Transfer of Claim Other Than For Security	ROA.007491-ROA.007494
Notice of Transfer of Claim Other Than For Security	ROA.007495-ROA.007499
Hunter Mountain Investment Trust's Response to Highland Claimant Trust and James P. Seery, Jr.'s Joint Motion to Exclude Testimony and Documents of Experts Scott Van Meter and Steve Pully	ROA.009436-ROA.009443
June 8, 2023 HMIT's Motion for Leave to File Verified Adversary Proceeding (3699) - Transcript of Proceedings Before The Honorable Stacy G.C. Jernigan, United States Bankruptcy Court	ROA.009458-ROA.009846
Hunter Mountain Investment Trust's Request for Oral Hearing Or, Alternatively, A Schedule For Evidentiary Proffer	ROA.009901-ROA.009904
Hunter Mountain Investment Trust's Reply To The Highland Parties' Response To Request For Oral Hearing	ROA.009908-ROA.009911
Memorandum Opinion and Order Granting Joint Motion To Exclude Expert Evidence [DE # 3820]	ROA.009912-ROA.009927

Transcript of Proceedings Before the Honorable Stacey G.C. Jernigan on May 26, 2023.	ROA.009847-ROA.009900
Order Striking HMIT's Evidentiary Proffer Pursuant to Rule 103(a)(2) And Limiting Briefing	ROA.010025-ROA.010028
Notice Of Filing Of The Current Balance Sheet Of The Highland Claimant Trust	ROA.010029-ROA.010034
Hunter Mountain Investment Trust's Motion To Alter Or Amend Order, To Amend Or Make Additional Findings, For Relief From Order, Or, Alternatively, For New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Brief	ROA.010062-ROA.010134

Respectfully Submitted,

By: */s/ Sawnie A. McEntire*

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document, and the underlying brief, were sent via electronic mail via the Court's ECF system to parties authorized to receive electronic notice in this case on January 22, 2024.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

	Daugherty.). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). (Annable, Zachery)
01/22/2021	1809 Support/supplemental document *(Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Annable, Zachery)
01/22/2021	1810 Witness and Exhibit List [Exhibits 1−2 and 12−17] filed by Creditor CLO Holdco, Ltd. (RE: related document(s)1797 List (witness/exhibit/generic)). (Attachments: # 1 CLO Exhibit 2 # 2 CLO Exhibit 12 # 3 CLO Exhibit 13 # 4 CLO Exhibit 14 # 5 CLO Exhibit 15 # 6 CLO Exhibit 16 # 7 CLO Exhibit 17) (Kane, John) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	1811 NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD) (Annable, Zachery) Modified text on 1/25/2021 (Ecker, C.).
01/22/2021	1812 **SEALED document regarding: CLO Exhibit 3 − Aberdeen Loan Funding, Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1813 **SEALED document regarding: CLO Exhibit 4 − Brentwood CLO Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1814 Memorandum of Law in support of confirmation filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Annable, Zachery) Modified on 1/25/2021 (Ecker, C.).
01/22/2021	1815 **SEALED document regarding: CLO Exhibit 5 − Grayson CLO Ltd. Servicing Agreement and Amendment to Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1816 **SEALED document regarding: CLO Exhibit 6 − Liberty CLO, Ltd. Portfolio Management Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1817 **SEALED document regarding: CLO Exhibit 7 − Red River CLO Ltd. Servicing Agreement and Amendment to Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order). (Kane, John)
01/22/2021	1818 **SEALED document regarding: CLO Exhibit 8 − Rockwall CDO Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order** filed by Creditor CLO Holdco, Ltd. (RE: related

02/17/2021	1937 Order granting motion to continue hearing on (related document 1933) (related documents Application for administrative expenses) The Status Conference is hereby continued from March 22, 2021 at 9:30 a.m. to to such date and time on or after March 29, 2021 that is determined by the Court. (Okafor, M.) MODIFIED to correct hearing setting on 2/17/2021 (Okafor, M.).
02/18/2021	1938 Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1745 Motion to appoint trustee*Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)*). (Annable, Zachery)
02/18/2021	1939 Certificate of service re: *Agreed Order on Motion to Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P.* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1931 Agreed Order granting motion to assume nonresidential real property lease with Crescent TC Investors, L.P. (related document 1624) Entered on 2/12/2021. (Okafor, M.)). (Kass, Albert)
02/19/2021	1940 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1842 Application for compensation *Fourteenth Monthly Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2020 to 12/31/2020, Fee: $416,359.08, Expenses:). (Hoffman, Juliana)
02/22/2021	1941 Certificate of Counsel filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1924 Hearing held). (Annable, Zachery)
02/22/2021	1942 Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1870 Notice of appeal, 1889 Amended notice of appeal, 1899 Notice of docketing notice of appeal/record, 1900 Certificate of mailing regarding appeal, 1901 Notice regarding the record for a bankruptcy appeal). (Annable, Zachery)
02/22/2021	1943 Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
02/22/2021	1944 Application for compensation *Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: $2,557,604.00, Expenses: $32,906.65. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 3/15/2021. (Pomerantz, Jeffrey)
02/23/2021	1945 Certificate of service re: *Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1938 Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1745 Motion to appoint trustee*Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)*). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/24/2021	1946 Clerk's correspondence requesting from attorney for appellant. (RE: related document(s)1928 Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)1910 Appellant designation).) Responses due by 3/10/2021. (Blanco, J.)
02/24/2021	1947 Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1878 Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document

	Management, L.P.). (Kass, Albert)
09/09/2022	3503 Motion for leave *(Motion to Conform Plan)* (related document(s) 1943 Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/09/2022	3504 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3503 Motion for leave *(Motion to Conform Plan)* (related document(s) 1943 Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2022 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 3503, (Annable, Zachery)
09/09/2022	3505 Reply to (related document(s): 3487 Response filed by Debtor Highland Capital Management, L.P.) *MOTION TO WITHDRAW PROOF OF CLAIM* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
09/09/2022	3506 Reply to (related document(s): 3483 Response filed by Debtor Highland Capital Management, L.P.) *MOTION TO QUASH AND FOR PROTECTION* filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
09/09/2022	3507 Motion for leave *to File Proceeding* Filed by Creditor CLO Holdco, Ltd. Objections due by 9/30/2022. (Attachments: # 1 Exhibit A − Affidavit in support of the Application with Exhibits (1 of 2) # 2 Exhibit A − Affidavit in support of the Application with Exhibits (2 of 2)) (Phillips, Louis)
09/09/2022	3508 Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3443 Motion by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)., 3484 Motion to compel re: discovery Depositions *(Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition)*). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) (Annable, Zachery)
09/12/2022	3509 Request for transcript regarding a hearing held on 9/12/2022. The requested turn−around time is hourly. (Edmond, Michael)
09/12/2022	3510 Hearing held on 9/12/2022. (RE: related document(s)3443 Motion to withdraw proof of claim #146 by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). (Appearances: C. Gameros for HCRE; J. Morris for Reorganized Debtor. Evidentiary hearing. Motion denied. Counsel to upload order.) (Edmond, Michael)
09/12/2022	3511 Hearing held on 9/12/2022. (RE: related document(s)3484 Motion to compel re: discovery Depositions, (Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition), filed by Debtor Highland Capital Management, L.P.) (Appearances: C. Gameros for HCRE; J. Morris for Reorganized Debtor. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael)
09/12/2022	3512 Court admitted exhibits date of hearing September 12, 2022 (RE: related document(s)3484 Motion to compel re: discovery Depositions (Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross−Motion to Enforce Subpoenas and to Compel a Deposition), filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEFENDANT'S EXHIBIT'S #1 THROUGH #6 THAT APPEAR AT DOC. #3485 & #3486, OFFERED BY JOHN A. MORRIS.) (Edmond, Michael)
09/12/2022	3513 Court admitted exhibits date of hearing September 12, 2022 (RE: related document(s)3443 Motion to withdraw proof of claim #146 by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), (COURT ADMITTED DEFENDANT'S EXHIBIT'S

	Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3643 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3665 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3664 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3643 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 3/7/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3664, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
02/27/2023	3671 Memorandum of Opinion and Order on Reorganized Debtor's Motion to Conform Plan (RE: related document(s)3503 Motion for leave filed by Debtor Highland Capital Management, L.P.). Entered on 2/27/2023 (Okafor, Marcey)
02/27/2023	3672 Order Granting Motion to Conform Plan and Orders that one change be made to the Plan to conform it to the mandate of the Fifth Circuit: revise the definition of Exculpated Parties as proposed in the Motion and no more. (related document # 3503) Entered on 2/27/2023. (Okafor, Marcey)
03/03/2023	3673 Brief in support filed by Interested Party James Dondero (RE: related document(s)3570 Motion to recuse Judge Stacey G. C. Jernigan − AMENDED). (Lang, Michael)
03/04/2023	3674 Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3664 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3643 Order on motion to extend/shorten time)). (Annable, Zachery)
03/06/2023	3675 Memorandum of Opinion and Order Denying Amended Renewed Motion to Recuse Pursuant to 28 U.S.C. Section 455 (RE: related document(s)3570 Motion to recuse Judge filed by Interested Party James Dondero). Entered on 3/6/2023 (Okafor, Marcey)
03/06/2023	3676 Order Denying Amended Renewed Motion to Recuse Pursuant to U.S.C. Section 455 (related document #3570) Entered on 3/6/2023. (Okafor, Marcey)
03/06/2023	Adversary case 3:22−ap−3052 closed Pursuant to LBR 9070−1, any exhibits that were admitted by the Court may be claimed and removed from the Clerks Office during the 60−day period following final disposition of a case by the attorney or party who introduced the exhibits. Any exhibit not removed within the 60−day period may be destroyed or otherwise disposed of by the Bankruptcy Clerk. (Ecker, C.)
03/07/2023	3677 Order further extending period within which the Reorganized Debtor may remove actions pursuant to 28 U.S.C. Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related doc. #3664 Motion to extend time.) Entered on 3/7/2023. (Okafor, Marcey)
03/08/2023	3678 Certificate of service re: Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3677 Order further extending period within which the Reorganized Debtor may remove actions pursuant to 28 U.S.C. Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related doc. #3664 Motion to extend time.) Entered on 3/7/2023.). (Kass, Albert)
03/10/2023	Adversary case 3:21−ap−3020 closed Pursuant to LBR 9070−1, any exhibits that were admitted by the Court may be claimed and removed from the Clerks Office during the 60−day period following final disposition of a case by the attorney or party who introduced

03/28/2023	3697 Certificate of service re: Response to Motion for Leave to File Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3692 Response opposed to (related document(s): 3662 Motion for leave *to File Proceeding* filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/28/2023	3698 Clerk's correspondence requesting file an amended designation from attorney for appellant . (RE: related document(s)3694 Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3682 Notice of appeal, 3685 Notice of docketing notice of appeal/record, 3693 Statement of issues on appeal). Appellee designation due by 04/10/2023.) Responses due by 3/31/2023. (Blanco, J.)
03/28/2023	3699 Motion for leave *to File Verified Adversary Proceeding* Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order) (McEntire, Sawnie)
03/28/2023	3700 Motion for expedited hearing(related documents 3699 Motion for leave) Filed by Creditor Hunter Mountain Investment Trust (Attachments: # 1 Proposed Order Proposed Order) (McEntire, Sawnie)
03/28/2023	3701 Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3694 Appellant designation). (Berghman, Thomas)
03/29/2023	3702 INCORRECT ENTY; Notice *of Motion to Stay and Response Plaintiff's Motion to Stay* filed by Interested Party James Dondero, Get Good Trust, The Dugaboy Investment Trust. (Attachments: # 1 Proposed Order) (Hopkins, Jason) Modified on 3/30/2023 (Chambers, Deanna).
03/29/2023	3703 INCORRECT ENTRY. Filed in error. Motion for expedited hearing(related documents 3702 Notice (generic)) *The Dondero Defendants' Motion to Stay and Response to Plaintiff's Motion to Stay* Filed by Interested Party James Dondero, Get Good Trust, The Dugaboy Investment Trust (Attachments: # 1 Proposed Order) (Hopkins, Jason) Modified on 3/30/2023 (Spelmon, T).
03/30/2023	3704 Objection to (related document(s): 3700 Motion for expedited hearing(related documents 3699 Motion for leave) filed by Creditor Hunter Mountain Investment Trust) filed by Farallon Capital Management, LLC, Stonehill Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC. (Bailey, Christopher)
03/30/2023	3705 Certificate AMENDED CERTIFICATE OF CONFERENCE filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3699 Motion for leave *to File Verified Adversary Proceeding*). (McEntire, Sawnie)
03/30/2023	3706 Certificate AMENDED CERTIFICATE OF CONFERENCE filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3704 Objection). (McEntire, Sawnie)
03/30/2023	3707 Response opposed to (related document(s): 3700 Motion for expedited hearing(related documents 3699 Motion for leave) filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/30/2023	3708 Declaration re: *(Declaration of John A. Morris in Support of the Highland Parties' Objection to Hunter Mountain Investment Trust's Opposed Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding)* filed by

03/28/2023	3697 Certificate of service re: Response to Motion for Leave to File Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3692 Response opposed to (related document(s): 3662 Motion for leave *to File Proceeding* filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/28/2023	3698 Clerk's correspondence requesting file an amended designation from attorney for appellant . (RE: related document(s)3694 Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3682 Notice of appeal, 3685 Notice of docketing notice of appeal/record, 3693 Statement of issues on appeal). Appellee designation due by 04/10/2023.) Responses due by 3/31/2023. (Blanco, J.)
03/28/2023	3699 Motion for leave *to File Verified Adversary Proceeding* Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order) (McEntire, Sawnie)
03/28/2023	3700 Motion for expedited hearing(related documents 3699 Motion for leave) Filed by Creditor Hunter Mountain Investment Trust (Attachments: # 1 Proposed Order Proposed Order) (McEntire, Sawnie)
03/28/2023	3701 Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3694 Appellant designation). (Berghman, Thomas)
03/29/2023	3702 INCORRECT ENTY; Notice *of Motion to Stay and Response Plaintiff's Motion to Stay* filed by Interested Party James Dondero, Get Good Trust, The Dugaboy Investment Trust. (Attachments: # 1 Proposed Order) (Hopkins, Jason) Modified on 3/30/2023 (Chambers, Deanna).
03/29/2023	3703 INCORRECT ENTRY. Filed in error. Motion for expedited hearing(related documents 3702 Notice (generic)) *The Dondero Defendants' Motion to Stay and Response to Plaintiff's Motion to Stay* Filed by Interested Party James Dondero, Get Good Trust, The Dugaboy Investment Trust (Attachments: # 1 Proposed Order) (Hopkins, Jason) Modified on 3/30/2023 (Spelmon, T).
03/30/2023	3704 Objection to (related document(s): 3700 Motion for expedited hearing(related documents 3699 Motion for leave) filed by Creditor Hunter Mountain Investment Trust) filed by Farallon Capital Management, LLC, Stonehill Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC. (Bailey, Christopher)
03/30/2023	3705 Certificate AMENDED CERTIFICATE OF CONFERENCE filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3699 Motion for leave *to File Verified Adversary Proceeding*). (McEntire, Sawnie)
03/30/2023	3706 Certificate AMENDED CERTIFICATE OF CONFERENCE filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3704 Objection). (McEntire, Sawnie)
03/30/2023	3707 Response opposed to (related document(s): 3700 Motion for expedited hearing(related documents 3699 Motion for leave) filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/30/2023	3708 Declaration re: *(Declaration of John A. Morris in Support of the Highland Parties' Objection to Hunter Mountain Investment Trust's Opposed Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding)* filed by

	Debtor Highland Capital Management, L.P. (RE: related document(s)3707 Response). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (Annable, Zachery)
03/30/2023	3709 BNC certificate of mailing. (RE: related document(s)3698 Clerk's correspondence requesting file an amended designation from attorney for appellant . (RE: related document(s)3694 Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3682 Notice of appeal, 3685 Notice of docketing notice of appeal/record, 3693 Statement of issues on appeal). Appellee designation due by 04/10/2023.) Responses due by 3/31/2023. (Blanco, J.)) No. of Notices: 1. Notice Date 03/30/2023. (Admin.)
03/31/2023	3712 Reply to (related document(s): 3704 Objection filed by Creditor Muck Holdings LLC, Creditor Jessup Holdings LLC, Creditor Stonehill Capital Management LLC, Creditor Farallon Capital Management, LLC, 3707 Response filed by Debtor Highland Capital Management, L.P.) *and in Support of Application for Expedited Hearing* filed by Creditor Hunter Mountain Investment Trust. (McEntire, Sawnie)
03/31/2023	3713 Order denying motion for expedited hearing (Related Doc# 3700) Entered on 3/31/2023. (Okafor, Marcey)
04/03/2023	3714 INCORRECT ENTRY: REFILED WITH CORRECT LINKAGE AS DOC. 3715. Response opposed to (related document(s): 3704 Objection filed by Creditor Muck Holdings LLC, Creditor Jessup Holdings LLC, Creditor Stonehill Capital Management LLC, Creditor Farallon Capital Management, LLC) filed by Interested Party Highland CLO Management Ltd. (Deitsch−Perez, Deborah) Modified on 4/4/2023 (Tello, Chris).
04/03/2023	3715 Response opposed to (related document(s): 3657 Objection to claim filed by Debtor Highland Capital Management, L.P.) *HCLOM Response to HCMLP Objection to Scheduled Claims 3.65 and 3.66* filed by Interested Party Highland CLO Management Ltd. (Deitsch−Perez, Deborah)
04/03/2023	3716 Support/supplemental document*Appendix in Support of HCLOM Response to HCMLP Objection to Scheduled Claims 3.65 and 3.66* filed by Interested Party Highland CLO Management Ltd (RE: related document(s)3715 Response to objection to claim). (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Exhibit Exhibit 5 # 6 Exhibit Exhibit 6 # 7 Exhibit Exhibit 7 # 8 Exhibit Exhibit 8 # 9 Exhibit Exhibit 9 # 10 Exhibit Exhibit 10 # 11 Exhibit Exhibit 11 # 12 Exhibit Exhibit 12 # 13 Exhibit Exhibit 13 # 14 Exhibit Exhibit 14 # 15 Exhibit Exhibit 15 # 16 Exhibit Exhibit 16 # 17 Exhibit Exhibit 17 # 18 Exhibit Exhibit 18 # 19 Exhibit Exhibit 19) (Deitsch−Perez, Deborah)
04/03/2023	3717 Response unopposed to (related document(s): 3657 Objection to claim filed by Debtor Highland Capital Management, L.P.) *ACIS CAPITAL MANAGEMENT, L.P.S RESPONSE TO SCHEDULED CLAIMS 3.65 AND 3.66 OF HIGHLAND CLO MANAGEMENT, LTD. SUBJECT TO PENDING MOTION TO INTERVENE* filed by Creditor Acis Capital Management, L.P.. (Attachments: # 1 Exhibit Ex. A # 2 Exhibit Ex. B # 3 Exhibit Ex. C # 4 Exhibit Ex. D # 5 Ex. E # 6 Exhibit Ex. G # 7 Exhibit Ex. H # 8 Exhibit Ex. I # 9 Exhibit Ex. J # 10 Exhibit Ex. L) (Cooke, Thomas)
04/04/2023	3718 Motion for leave to appeal (related document(s): 3713 Order on motion for expedited hearing) Filed by Interested Party Hunter Mountain Trust Objections due by 4/7/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex 2 # 3 Exhibit Ex 3 # 4 Proposed Order Prop Order) (McEntire, Sawnie)
04/04/2023	3719 Motion for expedited hearing(related documents 3718 Motion for leave to appeal) Filed by Interested Party Hunter Mountain Trust (Attachments: # 1 Proposed Order Prop Order) (McEntire, Sawnie)

04/05/2023	3720 Order denying Hunter Mountain Investment Trust's opposed motion for expedited hearing (Related Doc# 3719) Entered on 4/5/2023. (Okafor, Marcey)
04/05/2023	3721 Notice of appeal . Fee Amount $298 filed by Interested Party Hunter Mountain Trust (RE: related document(s)3713 Order on motion for expedited hearing). Appellant Designation due by 04/19/2023. (Attachments: # 1 Exhibit Order Denying Application for Expedited Hearing # 2 Exhibit HMIT Emergency Motion for Leave to File Interlocutory Appeal)(McEntire, Sawnie)
04/05/2023	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number A30302491, amount $ 298.00 (re: Doc# 3721). (U.S. Treasury)
04/05/2023	3722 Motion to file document under seal.*ACIS CAPITAL MANAGEMENT, L.P.S MOTION FOR LEAVE TO FILE UNDER SEAL EXHIBITS F AND K TO ITS RESPONSE* Filed by Creditor Acis Capital Management, L.P. (Cooke, Thomas)
04/06/2023	3726 Certificate of mailing regarding appeal (RE: related document(s)3721 Notice of appeal . filed by Interested Party Hunter Mountain Trust (RE: related document(s)3713 Order on motion for expedited hearing). Appellant Designation due by 04/19/2023. (Attachments: # 1 Exhibit Order Denying Application for Expedited Hearing # 2 Exhibit HMIT Emergency Motion for Leave to File Interlocutory Appeal)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
04/06/2023	3730 Certificate of service re: 1) The Highland Parties Objection to Hunter Mountain Investment Trusts Opposed Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding; and 2) Declaration of John A. Morris in Support of the Highland Parties Objection to Hunter Mountain Investment Trusts Opposed Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3707 Response opposed to (related document(s): 3700 Motion for expedited hearing(related documents 3699 Motion for leave) filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3708 Declaration re: *(Declaration of John A. Morris in Support of the Highland Parties' Objection to Hunter Mountain Investment Trust's Opposed Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3707 Response). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/07/2023	3731 Notice of docketing transmittal of notice of appeal. Civil Action Number: 3:23−cv−00737−N. (RE: related document(s)3721 Notice of appeal . filed by Interested Party Hunter Mountain Trust (RE: related document(s)3713 Order on motion for expedited hearing). Appellant Designation due by 04/19/2023. (Attachments: # 1 Exhibit Order Denying Application for Expedited Hearing # 2 Exhibit HMIT Emergency Motion for Leave to File Interlocutory Appeal)) (Whitaker, Sheniqua)
04/10/2023	3732 Stipulation by Acis Capital Management GP, LLC, Acis Capital Management, L.P., Highland CLO Management Ltd and Highland CLO Managemet, LTD.. filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P., Interested Party Highland CLO Management Ltd (RE: related document(s)3717 Response to objection to claim). (Attachments: # 1 Proposed Order) (Aigen, Michael)
04/10/2023	3733 Omnibus Reply to (related document(s): 3715 Response to objection to claim filed by Interested Party Highland CLO Management Ltd, 3717 Response to objection to claim filed by Creditor Acis Capital Management, L.P.) *(Omnibus Reply in Further Support of Highland Capital Management, L.P.'s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd.)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

04/10/2023	3734 INCORRECT ENTRY: Attorney to refile. Brief in support filed by Creditor Acis Capital Management, L.P. (RE: related document(s)3722 Motion to file document under seal.*ACIS CAPITAL MANAGEMENT, L.P.S MOTION FOR LEAVE TO FILE UNDER SEAL EXHIBITS F AND K TO ITS RESPONSE*). (Cooke, Thomas) Modified on 4/11/2023 (Ecker, C.).
04/11/2023	3779 DISTRICT COURT Order denying motion for leave to appeal (related document # 3718) Entered on 4/11/2023. Civil Action No. 3:23−CV−737−N (Whitaker, Sheniqua) (Entered: 05/11/2023)
04/12/2023	3735 Stipulation by Highland Capital Management, L.P. and Highland CLO Management, Ltd. and Acis Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3657 Objection to claim and 3695 Motion to intervene *and Brief in Support* filed by Creditor Acis Capital Management, L.P..). (Annable, Zachery). MODIFIED linkage on 4/12/2023 (Okafor, Marcey).
04/13/2023	3736 Order approving Stipulation staying contested matter concerning Highland Capital Management L.P.'s objection to schedule claims 3.65 and 3.66 of Highland CLO Management, LTD and related matters (RE: related document(s)3695 Motion to intervene filed by Creditor Acis Capital Management, L.P.). Entered on 4/13/2023 (Okafor, Marcey)
04/13/2023	3737 Certificate of service re: Omnibus Reply in Further Support of Highland Capital Management. L.P.s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3733 Omnibus Reply to (related document(s): 3715 Response to objection to claim filed by Interested Party Highland CLO Management Ltd, 3717 Response to objection to claim filed by Creditor Acis Capital Management, L.P.) *(Omnibus Reply in Further Support of Highland Capital Management, L.P.'s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd.)* filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/13/2023	3738 Motion to set hearing(related documents 3699 Motion for leave) *(Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Annable, Zachery)
04/13/2023	3739 Motion for expedited hearing(related documents 3738 Motion to set hearing) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/13/2023	3740 Joinder by *Joinder to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date With Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding* filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC (RE: related document(s)3738 Motion to set hearing(related documents 3699 Motion for leave) *(Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leav, 3739 Motion for expedited hearing(related documents 3738 Motion to set hearing)). (Bailey, Christopher)*
04/13/2023	3741 Notice of hearing filed by Interested Party Hunter Mountain Trust (RE: related document(s)3699 Motion for leave *to File Verified Adversary Proceeding* Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order)). Hearing to be held on 4/24/2023 at 01:30 PM Dallas Judge Jernigan Ctrm for 3699, (McEntire, Sawnie)
04/13/2023	3742 Amended Notice of hearing filed by Interested Party Hunter Mountain Trust (RE: related document(s)3699 Motion for leave *to File Verified Adversary Proceeding* Filed by

	Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order)). Hearing to be held on 4/24/2023 at 01:30 PM Dallas Judge Jernigan Ctrm for 3699, (McEntire, Sawnie)
04/13/2023	3743 Motion to appear pro hac vice for Mark T. Stancil. Fee Amount $100 Filed by Creditor James P. Seery Jr. (Robin, Lindsey)
04/13/2023	3744 Motion to appear pro hac vice for Joshua S. Levy. Fee Amount $100 Filed by Other Professional James P. Seery Jr. (Robin, Lindsey)
04/13/2023	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A30323645, amount $ 100.00 (re: Doc# 3743). (U.S. Treasury)
04/13/2023	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A30323645, amount $ 100.00 (re: Doc# 3744). (U.S. Treasury)
04/13/2023	3745 Notice of Appearance and Request for Notice by Omar Jesus Alaniz filed by Other Professional James P. Seery Jr.. (Alaniz, Omar)
04/14/2023	3746 Brief in support filed by Creditor Acis Capital Management, L.P. (RE: related document(s)3722 Motion to file document under seal.*ACIS CAPITAL MANAGEMENT, L.P.S MOTION FOR LEAVE TO FILE UNDER SEAL EXHIBITS F AND K TO ITS RESPONSE*). (Cooke, Thomas)
04/15/2023	3747 Joinder by *James P. Seery Jr. to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date with Respect to Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Proceeding* filed by Other Professional James P. Seery Jr. (RE: related document(s)3738 Motion to set hearing(related documents 3699 Motion for leave) *(Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leav, 3739 Motion for expedited hearing(related documents 3738 Motion to set hearing)). (Robin, Lindsey)*
04/17/2023	3748 Response unopposed to (related document(s): 3738 Motion to set hearing(related documents 3699 Motion for leave) *(Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leav filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Hunter Mountain Trust. (McEntire, Sawnie)*
04/17/2023	3749 Certificate of service re: re Stipulation Staying Contested Matter Concerning Highland Capital Management, L.P.s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd. [DE # 3657] and Related Matters [DE # 3691] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3735 Stipulation by Highland Capital Management, L.P. and Highland CLO Management, Ltd. and Acis Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3657 Objection to claim and 3695 Motion to intervene *and Brief in Support* filed by Creditor Acis Capital Management, L.P..). (Annable, Zachery). MODIFIED linkage on 4/12/2023. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/17/2023	3750 Certificate of service re: 1) Highlands Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Proceeding; and 2) Highlands Emergency Motion to Expedite Hearing on Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related

	document(s)3738 Motion to set hearing(related documents 3699 Motion for leave) *(Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding)* Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., 3739 Motion for expedited hearing(related documents 3738 Motion to set hearing) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/19/2023	3751 Notice *of Status Conference* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3699 Motion for leave *to File Verified Adversary Proceeding* Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order)). (McEntire, Sawnie)
04/20/2023	3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Hopkins, Jason)
04/20/2023	3753 Declaration re: *of Davor Rukavina in Support of The Dondero Defendants' Motion to Stay and to Compel Mediation* filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation*). (Hopkins, Jason)
04/20/2023	3754 Order granting motion to appear pro hac vice adding Mark Stancil for James P. Seery, Jr. (related document # 3743) Entered on 4/20/2023. (Rielly, Bill)
04/20/2023	3755 Order granting motion to appear pro hac vice adding Joshua Seth Levy for James P. Seery, Jr. (related document # 3744) Entered on 4/20/2023. (Rielly, Bill)
04/21/2023	3756 Chapter 11 Post−Confirmation Report for the Quarter Ending: 03/31/2023 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/21/2023	3757 Chapter 11 Post−Confirmation Report for the Quarter Ending: 03/31/2023 filed by Other Professional Highland Claimant Trust. (Annable, Zachery)
04/21/2023	3758 Brief in support filed by Interested Party Hunter Mountain Trust (RE: related document(s)3751 Notice (generic)). (McEntire, Sawnie)
04/21/2023	3759 Notice *of Rescheduling of Hearing* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3699 Motion for leave *to File Verified Adversary Proceeding* Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order)). (McEntire, Sawnie)
04/21/2023	3761 Objection to (related document(s): 3751 Notice (generic) filed by Interested Party Hunter Mountain Trust) filed by Interested Party Hunter Mountain Trust . (Ecker, C.) (Entered: 04/24/2023)
04/23/2023	3760 Support/supplemental document *to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3699 Motion for leave *to File Verified Adversary Proceeding*). (Attachments: # 1 Exhibit Verified Adversary Complaint) (McEntire, Sawnie)
04/24/2023	3762 Request for transcript regarding a hearing held on 4/24/2023. The requested turn−around time is hourly. (Edmond, Michael)

04/24/2023	3763 Hearing held on 4/24/2023. (RE: related document(s)3662 Motion for leave to File Proceeding, filed by Creditor The Dugaboy Investment Trust.) (Appearances: D. Deitsch−Perez for Movants; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Motion will either be withdrawn or resolved with an agreed order (Reorganized Debtor has provided documentation to Movants which was filed on docket 4/21/23; parties agree no leave of court is necessary for a declaratory judgment regarding valuation). (Edmond, Michael)
04/24/2023	3764 Hearing held on 4/24/2023. (RE: related document(s)3699 Motion for leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust.) (Appearances: S. McEntire and R. McClary for Movant; J. Morris for Reorganized Debtor; M. Stancil and O. Alaniz for J. Seery; B. McIlwaine for claims purchasers. Nonevidentiary status conference. Court announced scheduling order that contemplates a May 11 deadline for objections with briefs; a May 18 deadline for a reply with briefing; and a hearing June 8 at 9:30 am (court to notify parties shortly after May 18 whether evidence will be allowed). No other pleadings should be filed except witness and exhibit lists (3 days before hearing) if evidence is allowed. Parties should upload a scheduling order that reflects this.) (Edmond, Michael)
04/25/2023	3765 Transcript regarding Hearing Held 04/24/2023 before Judge Stacey G.C. Jernigan (62 pages) RE: Dugaboy Investment Trust and Hunter Mountain Investment Trust's Motion for Leave to File Proceeding (3662) and Status Conference re: Motion for Leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust (3699). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 07/24/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3763 Hearing held on 4/24/2023. (RE: related document(s)3662 Motion for leave to File Proceeding, filed by Creditor The Dugaboy Investment Trust.) (Appearances: D. Deitsch−Perez for Movants; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Motion will either be withdrawn or resolved with an agreed order (Reorganized Debtor has provided documentation to Movants which was filed on docket 4/21/23; parties agree no leave of court is necessary for a declaratory judgment regarding valuation)., 3764 Hearing held on 4/24/2023. (RE: related document(s)3699 Motion for leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust.) (Appearances: S. McEntire and R. McClary for Movant; J. Morris for Reorganized Debtor; M. Stancil and O. Alaniz for J. Seery; B. McIlwaine for claims purchasers. Nonevidentiary status conference. Court announced scheduling order that contemplates a May 11 deadline for objections with briefs; a May 18 deadline for a reply with briefing; and a hearing June 8 at 9:30 am (court to notify parties shortly after May 18 whether evidence will be allowed). No other pleadings should be filed except witness and exhibit lists (3 days before hearing) if evidence is allowed. Parties should upload a scheduling order that reflects this.)). Transcript to be made available to the public on 07/24/2023. (Rehling, Kathy)
04/28/2023	3766 Memorandum of opinion regarding Debtor's objection to proof of claim #146 (RE: related document(s)906 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/28/2023 (Okafor, Marcey)
04/28/2023	3767 Order sustaining Debter's objection to, and disallowing, proof of claim number 146 (RE: related document(s)906 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/28/2023 (Okafor, Marcey)
05/02/2023	3769 Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 3 . Civil Case Number: 3:23−CV−00573E (RE: related document(s)3682 Notice of appeal *(RE: related document(s)3671 Memorandum of opinion, 3672 Order on motion for leave). (Blanco, J.)*
05/02/2023	

	3770 Notice of docketing COMPLETE record on appeal. 3:23−cv−00573−E (RE: related document(s)3682 Notice of appeal < (RE: related document(s)3671 Memorandum of opinion, 3672 Order on motion for leave).) (Blanco, J.)
05/04/2023	3771 Notice *of Withdrawal of Motion for Leave to File Proceeding* filed by Hunter Mountain Investment Trust, The Dugaboy Investment Trust (RE: related document(s)3662 Motion for leave *to File Proceeding* Filed by Creditor The Dugaboy Investment Trust Objections due by 2/27/2023. (Attachments: # 1 Exhibit Exhibit A)). (Deitsch−Perez, Deborah)
05/10/2023	3772 PDF with attached Audio File. Court Date & Time [04/24/2023 02:23:07 PM]. File Size [10249 KB]. Run Time [01:32:41]. (admin).
05/10/2023	3773 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3677 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/10/2023	3774 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3773 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3677 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3773, (Annable, Zachery)
05/10/2023	3775 Stipulation by Hunter Mountain Investment Trust, The Dugaboy Investment Trust and Highland Capital Management, L.P.. filed by Hunter Mountain Investment Trust, The Dugaboy Investment Trust (RE: related document(s)3662 Motion for leave *to File Proceeding*). (Attachments: # 1 Proposed Order Granting Stipulation Withdrawing Movants' Motion for Leave to File Proceeding [Dkt. No. 3662]) (Aigen, Michael)
05/10/2023	3776 Stipulation by James Dondero, Get Good Trust, Strand Advisors, Inc. and Highland Capital Management, L.P.. filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc. (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation*). (Hopkins, Jason)
05/10/2023	3777 Notice of hearing filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc. (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 6/26/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3752, (Attachments: # 1 Exhibit A) (Hopkins, Jason)
05/10/2023	3778 Adversary case 23−03038. Complaint by Dugaboy Investment Trust, Hunter Mountain Investment Trust against Highland Capital Management, L.P. and Highland Claimant Trust. Fee Amount $350. Nature(s) of suit: 91 (Declaratory judgment). (Deitsch−Perez, Deborah) Modified to add Defendant Highland Claimant Trust on 5/11/2023 (Okafor, Marcey).
05/11/2023	3780 Objection to (related document(s): 3699 Motion for leave *to File Verified Adversary Proceeding* filed by Creditor Hunter Mountain Investment Trust) *Objection to Hunter Mountain Investment Trusts (i) Emergency Motion for Leave to File Verified Adversary Proceeding; and (ii) Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC. (Bailey, Christopher)
05/11/2023	

	3781 Order granting motion to set hearing (related document # 3738) Hearing to be held on 6/8/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3699 Emergency Motion for Leave to File Verified Adversary Proceeding and 3670 Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding. Entered on 5/11/2023. (Okafor, Marcey)
05/11/2023	3782 Certificate of service re: 1) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3773 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3677 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3774 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3773 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3677 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3773, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/11/2023	3783 Joint Response opposed to (related document(s): 3699 Motion for leave *to File Verified Adversary Proceeding* filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. (Annable, Zachery)
05/11/2023	3784 Declaration re: *(Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding)* filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s)3783 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 (part 1) # 6 Exhibit 5 (part 2) # 7 Exhibit 6 # 8 Exhibit 7 # 9 Exhibit 8 # 10 Exhibit 9 # 11 Exhibit 10 # 12 Exhibit 11 # 13 Exhibit 12 # 14 Exhibit 13 # 15 Exhibit 14 # 16 Exhibit 15 # 17 Exhibit 16 # 18 Exhibit 17 # 19 Exhibit 18 # 20 Exhibit 19 # 21 Exhibit 20 # 22 Exhibit 21 # 23 Exhibit 22 # 24 Exhibit 23 # 25 Exhibit 24 # 26 Exhibit 25 # 27 Exhibit 26 # 28 Exhibit 27 # 29 Exhibit 28 # 30 Exhibit 29 # 31 Exhibit 30 # 32 Exhibit 31 # 33 Exhibit 31a # 34 Exhibit 32 # 35 Exhibit 33 # 36 Exhibit 34 # 37 Exhibit 35 # 38 Exhibit 36 # 39 Exhibit 37 # 40 Exhibit 38 # 41 Exhibit 39 # 42 Exhibit 40 # 43 Exhibit 41 # 44 Exhibit 42 # 45 Exhibit 43 # 46 Exhibit 44) (Annable, Zachery)
05/18/2023	3785 Reply to (related document(s): 3780 Objection filed by Creditor Muck Holdings LLC, Creditor Jessup Holdings LLC, Creditor Stonehill Capital Management LLC, Creditor Farallon Capital Management, LLC, 3783 Response filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) *in Support of Emergency Motion for Leave to File Adversary Proceeding* filed by Interested Party Hunter Mountain Trust. (McEntire, Sawnie)
05/18/2023	3829 DISTRICT COURT MEMORANDUM OPINION AND ORDER: The Court finds that the bankruptcy court did not abuse its discretion in denying CLO Holdco's amendment to its proof of claim. Accordingly, the bankruptcy court's denial of CLO Holdco's Motion to Ratify is AFFIRMED. The appeal is DISMISSED WITH PREJUDICE. (Ordered by Judge Jane J Boyle on 5/18/2023) re: appeal on Civil Action number: 3:22−cv−02051−B, AFFIRMED and DISMISSED with prejudice (RE: related document(s)3457 Order on motion (generic)). Entered on 5/18/2023 (Whitaker, Sheniqua) (Entered: 06/08/2023)
05/22/2023	

	3786 Certificate of service re: 1) Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.s Joint Opposition to Hunter Mountain Investment Trusts Motion for Leave to File Verified Adversary Proceeding; and 2) Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.s Joint Opposition to Hunter Mountain Investment Trusts Motion for Leave to File Verified Adversary Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3783 Joint Response opposed to (related document(s): 3699 Motion for leave *to File Verified Adversary Proceeding* filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust, 3784 Declaration re: *(Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding)* filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s)3783 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 (part 1) # 6 Exhibit 5 (part 2) # 7 Exhibit 6 # 8 Exhibit 7 # 9 Exhibit 8 # 10 Exhibit 9 # 11 Exhibit 10 # 12 Exhibit 11 # 13 Exhibit 12 # 14 Exhibit 13 # 15 Exhibit 14 # 16 Exhibit 15 # 17 Exhibit 16 # 18 Exhibit 17 # 19 Exhibit 18 # 20 Exhibit 19 # 21 Exhibit 20 # 22 Exhibit 21 # 23 Exhibit 22 # 24 Exhibit 23 # 25 Exhibit 24 # 26 Exhibit 25 # 27 Exhibit 26 # 28 Exhibit 27 # 29 Exhibit 28 # 30 Exhibit 29 # 31 Exhibit 30 # 32 Exhibit 31 # 33 Exhibit 31a # 34 Exhibit 32 # 35 Exhibit 33 # 36 Exhibit 34 # 37 Exhibit 35 # 38 Exhibit 36 # 39 Exhibit 37 # 40 Exhibit 38 # 41 Exhibit 39 # 42 Exhibit 40 # 43 Exhibit 41 # 44 Exhibit 42 # 45 Exhibit 43 # 46 Exhibit 44) filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust). (Kass, Albert)
05/22/2023	3787 Order pertaining to the hearing on motion for leave to file adversary proceeding (RE: related document(s)3699 Motion for leave filed by Creditor Hunter Mountain Investment Trust, 3760 Support/supplemental document filed by Interested Party Hunter Mountain Trust). Entered on 5/22/2023 (Rielly, Bill)
05/24/2023	3788 Motion to shorten time to Expedited Discovery Filed by Interested Party Hunter Mountain Trust (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit) (McEntire, Sawnie)
05/24/2023	3789 Motion for expedited hearing(related documents 3788 Motion to extend/shorten time) Filed by Interested Party Hunter Mountain Trust (McEntire, Sawnie)
05/24/2023	3790 BNC certificate of mailing − PDF document. (RE: related document(s)3787 Order pertaining to the hearing on motion for leave to file adversary proceeding (RE: related document(s)3699 Motion for leave filed by Creditor Hunter Mountain Investment Trust, 3760 Support/supplemental document filed by Interested Party Hunter Mountain Trust). Entered on 5/22/2023) No. of Notices: 1. Notice Date 05/24/2023. (Admin.)
05/25/2023	3791 Motion to continue hearing on (related documents 3760 Support/supplemental document)*in the Alternative* Filed by Interested Party Hunter Mountain Trust (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit) (McEntire, Sawnie)
05/25/2023	3792 Order setting expedited hearing (RE: related document(s)3788 Motion to extend/shorten time filed by Interested Party Hunter Mountain Trust, 3789 Motion for expedited hearing filed by Interested Party Hunter Mountain Trust, 3791 Motion to continue filed by Interested Party Hunter Mountain Trust). Hearing to be held on 5/26/2023 at 09:30 AM at https://us−courts.webex.com/meet/jerniga for 3788 and for 3791 and for 3789, Entered on 5/25/2023 (Rielly, Bill)
05/25/2023	3795 Objection to (related document(s): 3788 Motion to shorten time to Expedited Discovery filed by Interested Party Hunter Mountain Trust, 3791 Motion to continue hearing on (related documents 3760 Support/supplemental document)*in the Alternative* filed

	by Interested Party Hunter Mountain Trust) *Objection to Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing* filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC. (Bailey, Christopher)
05/25/2023	3796 Response opposed to (related document(s): 3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust. (Annable, Zachery)
05/25/2023	3797 Declaration re: *(Declaration of John A. Morris in Support of Highland Parties' Objection to Motion to Stay and Motion to Compel Mediation)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3796 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) (Annable, Zachery)
05/25/2023	3798 Joint Response opposed to (related document(s): 3788 Motion to shorten time to Expedited Discovery filed by Interested Party Hunter Mountain Trust, 3791 Motion to continue hearing on (related documents 3760 Support/supplemental document)*in the Alternative* filed by Interested Party Hunter Mountain Trust) filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. (Attachments: # 1 Exhibit 1) (Stancil, Mark)
05/26/2023	3799 Request for transcript regarding a hearing held on 5/26/2023. The requested turn−around time is hourly. (Edmond, Michael)
05/26/2023	3800 Order Granting In Part Hunter Mountain Investment Trust's Emergency motion for Expedited Discovery (related document #3788) and Denying Motion to Continue June 8, 2023 Hearing (related document # 3791) Entered on 5/26/2023. (Okafor, Marcey)
05/26/2023	3825 Hearing held on 5/26/2023. (RE: related document(s)3789 Motion for expedited hearing(related documents 3788 Motion to extend/shorten time) filed by Interested Party Hunter Mountain Trust), (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Court issued parameters for 6/8/23 hearing.) (Edmond, Michael) (Entered: 06/08/2023)
05/26/2023	3826 Hearing held on 5/26/2023. (RE: related document(s)3791 Motion to continue hearing on (related documents 3760 Support/supplemental document) in the Alternative filed by Interested Party Hunter Mountain Trust (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Motion denied.) (Edmond, Michael) (Entered: 06/08/2023)
05/26/2023	3827 Hearing held on 5/26/2023. (RE: related document(s)3788 Motion to shorten time to Expedited Discovery Filed by Interested Party Hunter Mountain Trust, (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Motion granted in part.) (Edmond, Michael) (Entered: 06/08/2023)
05/28/2023	3801 BNC certificate of mailing − PDF document. (RE: related document(s)3800 Order Granting In Part Hunter Mountain Investment Trust's Emergency motion for Expedited Discovery (related document #3788) and Denying Motion to Continue June 8, 2023 Hearing (related document 3791) Entered on 5/26/2023.) No. of Notices: 1. Notice Date 05/28/2023. (Admin.)
05/31/2023	3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone. Filed by Creditor The Dugaboy Investment Trust Objections due by 6/21/2023. (Aigen, Michael)

05/31/2023	3803 Declaration re: *Declaration of Hartmann in Support of Motion to Compel* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone.). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit) (Aigen, Michael)
05/31/2023	3804 Declaration re: *Declaration of Laykin in Support of Motion to Compel* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone.). (Attachments: # 1 Exhibit) (Aigen, Michael)
05/31/2023	3805 Declaration re: *Declaration of Smith in Support of Motion to Compel* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone.). (Attachments: # 1 Exhibit) (Aigen, Michael)
05/31/2023	3806 Declaration re: *Declaration of Aigen in Support of Motion to Compel* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone.). (Aigen, Michael)
05/31/2023	3807 Support/supplemental document*Appendix in Support of Motion to Compel* filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone.). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit # 9 Exhibit # 10 Exhibit # 11 Exhibit # 12 Exhibit # 13 Exhibit # 14 Exhibit # 15 Exhibit # 16 Exhibit # 17 Exhibit # 18 Exhibit # 19 Exhibit # 20 Exhibit # 21 Exhibit # 22 Exhibit # 23 Exhibit # 24 Exhibit # 25 Exhibit # 26 Exhibit # 27 Exhibit # 28 Exhibit # 29 Exhibit # 30 Exhibit # 31 Exhibit # 32 Exhibit # 33 Exhibit) (Aigen, Michael)
05/31/2023	3808 CIRCUIT COURT letter in re: Order granting motion for leave to appeal. Circuit Court Case 23−10534 (RE: related document(s)3685 Notice of docketing notice of appeal. Civil Action Number: 3:23−cv−00573−E. (RE: related document(s)3682 Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3671 Memorandum of opinion, 3672 Order on motion for leave). (Whitaker, Sheniqua)
05/31/2023	3809 Order granting motion to seal exhibits F and K (related document # 3722) Entered on 5/31/2023. (Okafor, Marcey)
05/31/2023	3810 DUPLICATE ENTRY: See #3809 − Order granting motion to seal exhibits F and K (related document 3722) Entered on 5/31/2023. (Okafor, Marcey) Modified on 6/1/2023 (Okafor, Marcey).
05/31/2023	3811 Certificate of service re: *1) Highland Parties' Objection to Motion to Stay and Motion to Compel Mediation; and 2) Declaration of John A. Morris in Support of Highland Parties' Objection to Motion to Stay and Motion to Compel Mediation* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3796 Response opposed to (related document(s): 3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust. filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, 3797 Declaration re: *(Declaration of John A. Morris in Support of Highland Parties' Objection to Motion to Stay and Motion to Compel Mediation)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3796 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). (Kass, Albert)
06/01/2023	

	3812 Certificate of no objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3773 Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)3677 Order on motion to extend/shorten time)). (Annable, Zachery)
06/01/2023	3813 Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. (Annable, Zachery)
06/01/2023	3814 Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. (Annable, Zachery)
06/01/2023	Receipt Number 339719, Fee Amount $207.00 (RE: related document(s)3808 CIRCUIT COURT letter in re: Order granting motion for leave to appeal. Circuit Court Case 23−10534 (RE: related document(s)3685 Notice of docketing notice of appeal. Civil Action Number: 3:23−cv−00573−E. (RE: related document(s)3682 Notice of appeal. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)3671 Memorandum of opinion, 3672 Order on motion for leave). (Whitaker, Sheniqua)) (Okafor, Marcey). (Entered: 06/02/2023)
06/05/2023	3815 Support/supplemental document*Doc 3699 − Emergency Motion for Leave to File Verified Adversary Proceeding with Redaction* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3760 Support/supplemental document). (Attachments: # 1 Exhibit) (McEntire, Sawnie)
06/05/2023	3816 Support/supplemental document*to Doc 3699 − Emergency Motion for Leave to File Verified Adversary Proceeding with Redaction* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3760 Support/supplemental document, 3815 Support/supplemental document). (Attachments: # 1 Exhibit) (McEntire, Sawnie)
06/05/2023	3817 Witness and Exhibit List *for hearing on June 8, 2023 on Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Petition [Docket No. 3699] and Hunter Mountain Investment Trusts Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3760]* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3783 Response). (Attachments: # 1 Exhibits 1−4 # 2 Exhibit 5 part 1 # 3 Exhibit 5 part 2 # 4 Exhibits 6−42 # 5 Exhibits 43−60) (Annable, Zachery)
06/05/2023	3818 Witness and Exhibit List *in Connection with HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3783 Response). (Attachments: # 1 Exhibit Exhibits 1−10 # 2 Exhibit Exhibits 11−30 # 3 Exhibit Exhibits 31−52 # 4 Exhibit Exhibits 53−58 # 5 Exhibit Exhibits 59 # 6 Exhibit Exhibits 60 # 7 Exhibit Exhibits 61−72 # 8 Exhibit Exhibit 73 # 9 Exhibit Exhibits 74−80) (McEntire, Sawnie)
06/07/2023	3819 Order further extending period within which the Reorganized Debtor may remove actions pursuant to 28 U.S.C. Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure. (re: 3773 Motion to extend time.) Entered on 6/7/2023. (Okafor, Marcey)
06/07/2023	3820 Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully Filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. Objections due by 6/8/2023. (Stancil, Mark) Modified text on 6/8/2023 (Tello, Chris).
06/07/2023	3821 Declaration re: *Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully* filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s)3820 Motion for leave */ Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully*). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Levy, Joshua)

06/07/2023	3822 WITHDRAWN at docket #3901. Motion to file document under seal.*Exhibit* Filed by Interested Party Hunter Mountain Trust (Attachments: # 1 Proposed Order) (McEntire, Sawnie) Modified on 8/18/2023 (Ecker, C.).
06/07/2023	3823 Joinder by *Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully* filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC (RE: related document(s)3820 Motion for leave */ Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully*). (Bailey, Christopher)
06/07/2023	3824 Objection to (related document(s): 3817 List (witness/exhibit/generic) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Hunter Mountain Trust. (McEntire, Sawnie)
06/08/2023	3828 Response opposed to (related document(s): 3820 Motion for leave */ Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully* filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) filed by Creditor Hunter Mountain Investment Trust. (McEntire, Sawnie)
06/08/2023	3830 Certificate of service re: 1) The Highland Parties Notice of Service of a Subpoena for James Dondero to Appear and Testify at a Hearing in a Bankruptcy Case; and 2) The Highland Parties Notice of Service of a Subpoena for Mark Patrick to Appear and Testify at a Hearing in a Bankruptcy Case Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3813 Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust, 3814 Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust). (Kass, Albert)
06/08/2023	3839 Hearing held on 6/8/2023. (RE: related document(s)3699 Motion for leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust) (Appearances: S. McIntire, R. McCleary, and T. Miller for Movant; J. Morris and J. Pomeranz for Reorganized Debtor; M. Stancil and J. Levy for J. Seery; B. McIlwaine for Claims Purchasers. Evidentiary hearing. Court took matter under advisement. Court will review motion to exclude and response and reply (the latter of which is due 6/12/23) and decide whether a second day of evidence (30 minutes each side) will be permitted for expert testimony. Court will notify parties of ruling on this through CRD as soon as possible after 6/12/23.) (Edmond, Michael) (Entered: 06/12/2023)
06/09/2023	3831 PDF with attached Audio File. Court Date & Time [05/26/2023 12:53:45 PM]. File Size [12260 KB]. Run Time [01:52:51]. (admin).
06/09/2023	3832 PDF with attached Audio File. Court Date & Time [06/08/2023 02:01:09 PM]. File Size [10250 KB]. Run Time [01:32:41]. (admin).
06/09/2023	3833 PDF with attached Audio File. Court Date & Time [06/08/2023 02:02:00 PM]. File Size [53640 KB]. Run Time [03:49:59]. (admin).
06/09/2023	3834 PDF with attached Audio File. Court Date & Time [06/08/2023 02:02:56 PM]. File Size [76934 KB]. Run Time [05:29:29]. (admin).
06/09/2023	3835 PDF with attached Audio File. Court Date & Time [06/08/2023 02:03:54 PM]. File Size [36710 KB]. Run Time [02:37:00]. (admin).

06/09/2023	3836 PDF with attached Audio File. Court Date & Time [06/08/2023 02:04:32 PM]. File Size [36702 KB]. Run Time [02:36:58]. (admin).
06/09/2023	3837 Request for transcript regarding a hearing held on 6/8/2023. The requested turn−around time is hourly. (Edmond, Michael)
06/12/2023	3838 Court admitted exhibits date of hearing June 8, 2023 (RE: related document(s)3699 Motion for leave to File Verified Adversary Proceeding, filed by Creditor Hunter Mountain Investment Trust; (COURT ADMITTED THE FOLLOWING MOVANT/HUNTER MOUNTAIN INVESTMENT TRUST EXHIBITS; EXHIBITS #3, #4, #7, #8, #9, 10, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, #26 Through #38, #53 Through #75, #77 Through #80; Exhibits #24 & #25 Were Not Admitted; Exhibits #29 Through #52 Were Carried & Exhibit #76 Carried/BY ATTY SAWNIE A. MCINTIRE; COURT ADMITTED DEFENDANT/HIGHLAND CAPITAL MANAGEMENT, L.P., AND THE HIGHLAND CLAIMANT TRUST FOLLOWING EXHIBITS: EXHIBITS #1 THROUGH #16, EXHIBITS #25 THROUGH #31A, EXHIBITS #32, #33, 34, #36, #39, #40, #41, #45, #51, #59, & #60, BY ATTY JOHN MORRIS) (Edmond, Michael)
06/12/2023	3840 Notice *to Withdraw Certain Filings* filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Get Good Trust, NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC, The Dugaboy Investment Trust (RE: related document(s)3629 Motion to redact/restrict Redact (related document(s): 3623) (Fee Amount $26) filed by Interested Party James Dondero (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order), 3632 Motion to file document under seal. Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). (Lang, Michael)
06/12/2023	3841 Reply to (related document(s): 3828 Response filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, Creditor James P. Seery Jr.. (Stancil, Mark)
06/12/2023	3842 Joinder by *Claim Purchasers' Joinder to Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery Jr.'s Reply in Further Support of Their Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully* filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC (RE: related document(s)3841 Reply). (Bailey, Christopher)
06/13/2023	3843 Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/11/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3839 Hearing held on 6/8/2023. (RE: related document(s)3699 Motion for leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust) (Appearances: S. McIntire, R. McCleary, and T. Miller for Movant; J. Morris and J. Pomeranz for Reorganized Debtor; M. Stancil and J. Levy for J. Seery; B. McIlwaine for Claims Purchasers. Evidentiary hearing. Court took matter under advisement. Court will review motion to exclude and response and reply (the latter of which is due 6/12/23) and decide whether a second day of evidence (30 minutes each side) will be permitted for expert testimony. Court will notify parties of ruling on this through CRD as soon as possible after 6/12/23.)). Transcript to be made available to the public on 09/11/2023. (Rehling, Kathy)
06/13/2023	3844 Transcript regarding Hearing Held 05/26/2023 Before Judge Stacey G.C. Jernigan (54 Pages) RE: Motion for Expedited Hearing filed by Interested Party Hunter Mountain Trust (3789); Motion to Continue Hearing filed by Interested Party Hunter Mountain Trust (3791); and Motion for Expedited Discovery filed by Interested Party Hunter Mountain

	Trust (3788). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/11/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3825 Hearing held on 5/26/2023. (RE: related document(s)3789 Motion for expedited hearing(related documents 3788 Motion to extend/shorten time) filed by Interested Party Hunter Mountain Trust), (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Court issued parameters for 6/8/23 hearing.), 3826 Hearing held on 5/26/2023. (RE: related document(s)3791 Motion to continue hearing on (related documents 3760 Support/supplemental document) in the Alternative filed by Interested Party Hunter Mountain Trust (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Motion denied.), 3827 Hearing held on 5/26/2023. (RE: related document(s)3788 Motion to shorten time to Expedited Discovery Filed by Interested Party Hunter Mountain Trust, (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Motion granted in part.)). Transcript to be made available to the public on 09/11/2023. (Rehling, Kathy)
06/13/2023	3845 Request for hearing filed by Interested Party Hunter Mountain Trust (RE: related document(s)3820 Motion for leave */ Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully*). (McEntire, Sawnie)
06/13/2023	3846 Support/supplemental document*/ Response in Opposition to Hunter Mountain Investment Trust's Request for Oral Argument or, Alternatively, a Schedule for Evidentiary Proffer* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, Creditor James P. Seery Jr. (RE: related document(s)3845 Request for hearing). (Stancil, Mark)
06/14/2023	3847 Support/supplemental document*Reply to Highland Parties Response in Opposition [Doc. 3846]* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3845 Request for hearing, 3846 Support/supplemental document). (McEntire, Sawnie)
06/15/2023	3848 Notice of hearing filed by Creditor The Dugaboy Investment Trust (RE: related document(s)3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone. Filed by Creditor The Dugaboy Investment Trust Objections due by 6/21/2023.). Hearing to be held on 8/14/2023 at 02:30 PM at https://us−courts.webex.com/meet/jerniga for 3802, (Aigen, Michael)
06/15/2023	3849 Stipulation by James P. Seery Jr.and The Dugaboy Investment Trust. filed by Creditor James P. Seery Jr. (RE: related document(s)3802 Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone.). (Alaniz, Omar)
06/15/2023	3850 Certificate of service re: Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3819 Order further extending period within which the Reorganized Debtor may remove actions pursuant to 28 U.S.C. Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure. (re: 3773 Motion to extend time.) Entered on 6/7/2023.). (Kass, Albert)
06/16/2023	3851 Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Annable, Zachery)
06/16/2023	

	3852 Declaration re: *(Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3851 Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I) (Annable, Zachery)
06/16/2023	3853 Memorandum of opinion regarding joint motion to exclude expert evidence (RE: related document(s)3820 Motion for leave filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust). Entered on 6/16/2023 (Okafor, Marcey)
06/16/2023	3854 Order granting joint motion to exclude testimony and documents of Scott Van Meter and Steve Pully filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (related document # 3820) Entered on 6/16/2023. (Okafor, Marcey)
06/16/2023	3855 Order approving stipulation extending James P. Seery, Jr.'s deadline to file a response to The Dugaboy Investment Trust's Motion to preserve evidence and compel forensic imaging (RE: related document(s)3849 Stipulation filed by Creditor James P. Seery, Other Professional James P. Seery). Entered on 6/16/2023 (Okafor, Marcey)
06/16/2023	3856 DUPLICATE ENTRY: See #3855 − Order approving stipulation extending James P. Seery, Jr.'s deadline to file a response to The Dugaboy Investment Trust's Motion to preserve evidence and compel forensic imaging (RE: related document(s)3849 Stipulation filed by Creditor James P. Seery, Other Professional James P. Seery). Entered on 6/16/2023 (Okafor, Marcey) Modified on 6/16/2023 (Okafor, Marcey).
06/16/2023	3857 Reply to (related document(s): 3796 Response filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust) filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Proposed Order) (Hopkins, Jason)
06/19/2023	3858 PUBLIC ACCESS RESTRICTED PER ORDER #3689 STRIKING FROM DOCKET: Support/supplemental document*Evidentiary Proffer Pursuant to Rule 103(a)(2)* filed by Interested Party Hunter Mountain Trust (RE: related document(s)3760 Support/supplemental document, 3854 Order on motion for leave). (Attachments: # 1 Exhibit Declaration of Scott Van Meter # 2 Exhibit Declaration of Steven Pully) (McEntire, Sawnie) Modified on 7/6/2023 (Okafor, Marcey).
06/19/2023	3859 DISTRICT COURT NOTICE OF APPEAL as to 18 Memorandum Opinion and Order, to the Fifth Circuit by CLO Holdco Ltd (RE: related document(s)3527 Notice of docketing notice of appeal. Civil Action Number: 3:22−cv−02051−B. (RE: related document(s)3495 Amended notice of appeal filed by Creditor CLO Holdco, Ltd. (RE: related document(s)3475 Notice of appeal). (Attachments: # 1 Exhibit A − Order Denying Motion to Ratify Second Amended Proof of Claim and Expunging Claim # 2 Exhibit B Notice of Appeal))) (Whitaker, Sheniqua) (Entered: 06/21/2023)
06/23/2023	3860 Motion to strike (related document(s): 3858 Support/supplemental document filed by Interested Party Hunter Mountain Trust) *The Highland Parties' Objections to and Motion to Strike Hunter Mountain Investment Trust's Purported Proffer* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, Creditor James P. Seery Jr. (Stancil, Mark)
06/23/2023	

	3861 Joinder by filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC (RE: related document(s)3860 Motion to strike (related document(s): 3858 Support/supplemental document filed by Interested Party Hunter Mountain Trust) *The Highland Parties' Objections to and Motion to Strike Hunter Mountain Investment Trust's Purported Proffer*
06/23/2023	3862 Joinder by filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation*). (Deitsch−Perez, Deborah)
06/26/2023	3863 Request for transcript regarding a hearing held on 6/26/2023. The requested turn−around time is hourly (Smith, C)
06/26/2023	3864 Hearing held on 6/26/2023. (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)) Appearances: A. Ruhland for Movants; D. Deitsch−Perez for Hunter Mountain Trust; J. Morris for Reorganized Debtor. Nonevidentiary hearing (written evidence only). Court continued matter to 7/7/23 at 1:00 pm and directed submission of list of all pending litigation in any court involving the Reorganized Debtor in some capacity and a balance sheet for trust assets before next hearing. Court also directed Movants/Mr. Dondero to make a good faith starting offer to Reorganized Debtor before then. Court will decide at next hearing whether to order mediation. (Ellison, Traci) (Entered: 06/28/2023)
06/26/2023	3865 Hearing continued (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)) Hearing to be held on 7/7/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, (Ellison, Traci) (Entered: 06/28/2023)
06/28/2023	3866 Certificate of service re: 1) Highland Capital Management, L.P.s Motion for (A) Bad Faith Finding and (B) Attorneys Fees Against Nexpoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146; and 2) Declaration of John A. Morris in Support of Highland Capital Management, L.P.s Motion for (A) Bad Faith Finding and (B) Attorneys Fees Against Nexpoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3851 Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., 3852 Declaration re: *(Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3851 Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/29/2023	3867 Order granting stipulation withdrawing Movants' motion for leave to file proceeding (RE: related document(s)3775 Stipulation filed by Creditor Hunter Mountain Investment Trust, Creditor The Dugaboy Investment Trust). Entered on 6/29/2023 (Okafor, Marcey)
06/29/2023	3868 Motion to continue hearing on (related documents 3752 Motion to compel)*(Unopposed Motion to Continue)* Filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (Hopkins, Jason)

07/05/2023	3869 Order granting(document # 3860) motion to strike(regarding document:3858 HMIT's Evidentiary Proffer filed by Interested Party Hunter Mountain Trust) Entered on 7/5/2023. (Okafor, Marcey)
07/05/2023	3870 Order granting motion to continue hearing on (related document # 3868) (related documents Motion to compel Mediation. *Motion to Stay and to Compel Mediation*) Hearing to be held on 7/21/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, Entered on 7/5/2023. (Okafor, Marcey)
07/05/2023	3871 DUPLICATE ENTRY: SEE #3870− Order granting motion to continue hearing on (related document 3868) (related documents Motion to compel Mediation. *Motion to Stay and to Compel Mediation*) Hearing to be held on 7/21/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, Entered on 7/5/2023. (Okafor, Marcey) Modified on 7/5/2023 (Okafor, Marcey).
07/06/2023	3872 Notice *(Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3870 Order granting motion to continue hearing on (related document 3868) (related documents Motion to compel Mediation. *Motion to Stay and to Compel Mediation*) Hearing to be held on 7/21/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, Entered on 7/5/2023.). (Annable, Zachery)
07/06/2023	3873 Notice *(Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3870 Order granting motion to continue hearing on (related document 3868) (related documents Motion to compel Mediation. *Motion to Stay and to Compel Mediation*) Hearing to be held on 7/21/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, Entered on 7/5/2023.). (Annable, Zachery)
07/06/2023	3874 Stipulation by James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust and Highland Capital Management, L.P.. filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation*). (Attachments: # 1 Proposed Order) (Hopkins, Jason)
07/07/2023	3875 PDF with attached Audio File. Court Date & Time [06/26/2023 03:52:42 PM]. File Size [32789 KB]. Run Time [02:20:26]. (admin).
07/12/2023	3876 Order approving joint stipulation of the parties suspending certain deadlines until the Bankruptcy Court determines the Mediaition Motion (RE: related document(s)3874 Stipulation filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.). Entered on 7/12/2023 (Okafor, Marcey)
07/12/2023	3877 DUPLICATE ENTRY: SEE #3876 − Order approving joint stipulation of the parties suspending certain deadlines until the Bankruptcy Court determines the Mediaition Motion (RE: related document(s)3874 Stipulation filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.). Entered on 7/12/2023 (Okafor, Marcey) Modified on 7/13/2023 (Okafor, Marcey).
07/13/2023	3878 Notice *(Notice of Filing of Order Adopting Report and Recommendation and Final Judgment Against James Dondero and Certain Affiliates)* filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/13/2023	3879 Notice *(Notice of Filing of Order Adopting Report and Recommendation and Final Judgment Against NexPoint Asset Management, L.P.)* filed by Debtor Highland Capital

	Management, L.P.. (Annable, Zachery)
07/14/2023	3880 Amended Notice *(Amended Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3873 Notice *(Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties)* filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)3870 Order granting motion to continue hearing on (related document 3868) (related documents Motion to compel Mediation. *Motion to Stay and to Compel Mediation*) Hearing to be held on 7/21/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, Entered on 7/5/2023.).). (Annable, Zachery)
07/18/2023	3881 INCORRECT EVENT: Amended Notice *of Hearing* filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)). (Attachments: # 1 Exhibit A) (Hopkins, Jason) Modified on 7/19/2023 (Ecker, C.).
07/19/2023	3882 Amended Notice of hearing filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/21/2023 at 12:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, (Attachments: # 1 Exhibit A) (Hopkins, Jason)
07/19/2023	3883 Amended Notice of hearing*Correcting Hearing Day Listed on Previous Hearing Notice 3882* filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/21/2023 at 12:00 PM at https://us−courts.webex.com/meet/jerniga for 3752, (Attachments: # 1 Exhibit A) (Hopkins, Jason)
07/19/2023	3884 Notice *(Notice of Filing of Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief)* filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Annable, Zachery)
07/20/2023	3885 Notice *of Change of Firm Affiliation* filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust. (Hopkins, Jason)
07/21/2023	3886 PDF with attached Audio File. Court Date & Time [07/21/2023 03:54:16 PM]. File Size [14727 KB]. Run Time [01:03:18]. (admin).
07/21/2023	3887 Order approving joint stipulation of the parties suspending certain deadlines until The Bankruptcy Court determines the mediation motion (RE: related document(s)3874 Stipulation filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.). Entered on 7/21/2023 (Okafor, Marcey)
07/21/2023	3888 Chapter 11 Post−Confirmation Report for the Quarter Ending: 06/30/2023 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)

07/21/2023	3889 Chapter 11 Post−Confirmation Report for the Quarter Ending: 06/30/2023 filed by Other Professional Highland Claimant Trust. (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)
07/21/2023	3891 Hearing held on 7/21/2023. (RE: related document(s)3752 Motion to compel Mediation / Motion to Stay and to Compel Mediation, filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero; (Appearances: A. Ruhland for Movants; D. Deitsche−Perez for HMIT; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Mediation will be ordered (and stay of pending bankruptcy matters for 90 days), as announced orally. Counsel to upload order.) (Edmond, Michael) (Entered: 07/25/2023)
07/24/2023	3890 Request for transcript regarding a hearing held on 7/21/2023. The requested turn−around time is ordinary 30 day (Jeng, Hawaii)
07/27/2023	3892 Transcript regarding Hearing Held 6/26/2023 RE: Motions Hearing. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/25/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Dipti Patel/Liberty Transcripts, Telephone number (847) 848−4907. (RE: related document(s) 3864 Hearing held on 6/26/2023. (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)) Appearances: A. Ruhland for Movants; D. Deitsch−Perez for Hunter Mountain Trust; J. Morris for Reorganized Debtor. Nonevidentiary hearing (written evidence only). Court continued matter to 7/7/23 at 1:00 pm and directed submission of list of all pending litigation in any court involving the Reorganized Debtor in some capacity and a balance sheet for trust assets before next hearing. Court also directed Movants/Mr. Dondero to make a good faith starting offer to Reorganized Debtor before then. Court will decide at next hearing whether to order mediation., 3865 Hearing continued (RE: related document(s)3752 Motion to compel Mediation. *Motion to Stay and to Compel Mediation* Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)) Hearing to be held on 7/7/2023 at 01:00 PM at https://us−courts.webex.com/meet/jerniga for 3752,). Transcript to be made available to the public on 10/25/2023. (Patel, Dipti)
07/28/2023	3894 Hearing held on 7/28/2023. (RE: related document(s)3752 Motion to compel Mediation. Motion to Stay and to Compel Mediation filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero.) (Appearances: A. Ruhland for Movants; D. Deitsch−Perez for HMIT; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Court accepted announcement of an agreed order regarding mediation. Order will be submitted electronically when parties selection of mediator has been finalized.) (Edmond, Michael)
07/31/2023	3896 PDF with attached Audio File. Court Date & Time [07/28/2023 09:36:01 AM]. File Size [4616 KB]. Run Time [00:19:45]. (admin).
08/02/2023	3897 Order granting in part, denying in part motion to stay and to compel mediation (related document # 3752) Entered on 8/2/2023. (Okafor, Marcey)
08/10/2023	3899 DISTRICT COURT Opinion of USCA in accordance with USCA judgment re 39 Notice of Appeal filed by NexPoint Advisors LP. re: appeal on appellate case number: 22−10575, AFFIRMED (RE: related document(s)3077 Notice of appeal filed by Interested Party NexPoint Real Estate Advisors, L.P.). Civil case 3:21−cv−03086−K Entered on 8/10/2023 (Whitaker, Sheniqua) (Entered: 08/16/2023)
08/10/2023	

	3900 DISTRICT COURT JUDGMENT/MANDATE of USCA as to 39 Notice of Appeal filed by NexPoint Advisors LP. IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED re: appeal on appellate case number: 22−10575, AFFIRMED (RE: related document(s)3077 Notice of appeal filed by Interested Party NexPoint Real Estate Advisors, L.P.). Civil case 3:21−cv−03086−K Entered on 8/10/2023 (Whitaker, Sheniqua) (Entered: 08/16/2023)
08/15/2023	3898 Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)3822 Motion to file document under seal.*Exhibit* Filed by Interested Party Hunter Mountain Trust (Attachments: # 1 Proposed Order)) Responses due by 8/22/2023. (Ecker, C.)
08/17/2023	3901 Withdrawal *of HMIT's Unopposed Motion to File Exhibit Under Seal* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3822 Motion to file document under seal.*Exhibit*). (McEntire, Sawnie)
08/21/2023	3921 DISCTRICT COURT Opinion from circuit court re: appeal on appellate case number: 22−10983, AFFIRMED (RE: related document(s)2398 Notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust). Civil Case 3:21−cv−01295−X Entered on 8/21/2023 (Whitaker, Sheniqua) (Entered: 09/20/2023)
08/21/2023	3922 DISTRICT COURT Order from circuit court re: appeal on appellate case number: 22−10983, AFFIRMED (RE: related document(s)2398 Notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust). Civil Case 3:21−cv−01295−X Entered on 8/21/2023 (Whitaker, Sheniqua) (Entered: 09/20/2023)
08/22/2023	3902 Transcript regarding Hearing Held 07/21/2023 Before Judge Stacey G.C. Jernigan (26 pages) RE: Motion to Stay and to Compel Mediation (#3752). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/20/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3891 Hearing held on 7/21/2023. (RE: related document(s)3752 Motion to compel Mediation / Motion to Stay and to Compel Mediation, filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero; (Appearances: A. Ruhland for Movants; D. Deitsche−Perez for HMIT; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Mediation will be ordered (and stay of pending bankruptcy matters for 90 days), as announced orally. Counsel to upload order.)). Transcript to be made available to the public on 11/20/2023. (Rehling, Kathy)
08/22/2023	3919 DISTRICT COURT Opinion from circuit court re: appeal on appellate case number: 22−10960, AFFIRMED (RE: related document(s) 1889 Amended notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust. Civil Case 3:21−cv−00261−L Entered on 8/22/2023 (Whitaker, Sheniqua). (Entered: 09/20/2023)
08/22/2023	3920 DISTRICT COURT Order from circuit court re: appeal on appellate case number: 22−10960, AFFIRMED (RE: related document(s) 1889 Amended notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust. Civil Case 3:21−cv−00261− Entered on 8/22/2023 (Whitaker, Sheniqua). (Entered: 09/20/2023)
08/25/2023	3903 Memorandum of Opinion Pursuant to Plan "Gatekeeper Provision" and Pre−Confirmation "Gatekeeper Orders"; Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding (RE: related document(s)3699 Motion for leave filed by Creditor Hunter Mountain Investment Trust and Supplemental documents #3760, 3815,3816). Entered on 8/25/2023 (Okafor, Marcey)
08/25/2023	3904 Order Pursuant to Plan "Gatekeeper Provision" and Pre−Confirmation "Gatekeeper Orders" Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File

	Verified Adversary Proceeding (RE: related document(s)3699 Motion for leave filed by Creditor Hunter Mountain Investment Trust and Supplemental documents #3760, 3815,3816) Entered on 8/25/2023. (Okafor, Marcey)
09/08/2023	3905 Motion to Reconsider(related documents 3903 Memorandum of opinion, 3904 Order on motion for leave)*to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Relief* Filed by Creditor Hunter Mountain Investment Trust (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Proposed Order) (McEntire, Sawnie)
09/08/2023	3906 Notice of appeal *of Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre−Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding*. Fee Amount $298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3904 Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)(McEntire, Sawnie)
09/08/2023	Receipt of filing fee for Notice of appeal(19−34054−sgj11) [appeal,ntcapl] (298.00). Receipt number C30715984, amount $ 298.00 (re: Doc# 3906). (U.S. Treasury)
09/11/2023	3907 Clerk's correspondence requesting to amend notice of appeal from attorney for creditor. (RE: related document(s)3906 Notice of appeal *of Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre−Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding*. Fee Amount $298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3904 Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)) Responses due by 9/13/2023. (Whitaker, Sheniqua)
09/12/2023	3908 Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)(McEntire, Sawnie)
09/13/2023	3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders Filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (Attachments: # 1 Exhibit A − Proposed Order) (Stancil, Mark)
09/13/2023	3911 Trustee's motion *to be included in mediation (Order Doc. No. 3897). Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P.* (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4)(Seidel, Scott)
09/13/2023	3912 Declaration re: *Motion for Contempt* filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s)3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14) (Levy, Joshua)
09/13/2023	3913 Notice of Appearance and Request for Notice by Scott M. Seidel filed by Attorney Scott M. Seidel. (Seidel, Scott)
09/13/2023	3914 Declaration re: *Motion for Contempt* filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related

	document(s)3910 Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9) (Stancil, Mark)
09/15/2023	3915 Certificate of mailing regarding appeal (RE: related document(s)3908 Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)) (Attachments: # 1 Service List) (Whitaker, Sheniqua)
09/15/2023	3916 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)3908 Amended Notice of appeal *of Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre−Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding*. Fee Amount $298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3904 Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)) (Whitaker, Sheniqua) (Entered: 09/19/2023)
09/15/2023	3917 Notice of docketing notice of appeal. Civil Action Number: 3:23−cv−02071−E. (RE: related document(s)3908 Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)) (Whitaker, Sheniqua) (Entered: 09/19/2023)
09/20/2023	3918 Notice of Appearance and Request for Notice *Hogan Lovells US LLP* by Susan B. Hersh filed by Interested Parties John S. Dubel, Hon.Russell F. Nelms (Ret.). (Hersh, Susan)
09/21/2023	3923 Notice of Appearance and Request for Notice by Jerry C. Alexander filed by Attorney Scott M. Seidel. (Alexander, Jerry)
09/21/2023	3924 Motion for ex parte relief *Request for Hearing on Trustee Scott Seidel's Motion to Be Included in Mediation* Filed by Attorney Scott M. Seidel (Attachments: # 1 Exhibit A # 2 Exhibit B) (Alexander, Jerry)
09/21/2023	3925 BNC certificate of mailing. (RE: related document(s)3916 Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)3908 Amended Notice of appeal *of Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre−Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding*. Fee Amount $298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3904 Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit))) No. of Notices: 1. Notice Date 09/21/2023. (Admin.)
09/22/2023	3926 Notice of hearing filed by Attorney Scott M. Seidel (RE: related document(s)3911 Trustee's motion *to be included in mediation (Order Doc. No. 3897). Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P.* (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4)). Hearing to be held on 10/2/2023 at 02:30 PM Dallas Judge Jernigan Ctrm for 3911, (Alexander, Jerry)
09/22/2023	3927 Response unopposed to (related document(s): 3911 Trustee's motion *to be included in mediation (Order Doc. No. 3897). Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P.*) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant

	Trust. (Annable, Zachery)
09/22/2023	3928 Notice *Regarding Appeal and Pending Post−Judgment Motion* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3905 Motion to Reconsider(related documents 3903 Memorandum of opinion, 3904 Order on motion for leave)*to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Relief* Filed by Creditor Hunter Mountain Investment Trust (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Proposed Order), 3906 Notice of appeal *of Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre−Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding*. Fee Amount $298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3904 Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit), 3908 Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit), 3917 Notice of docketing notice of appeal. Civil Action Number: 3:23−cv−02071−E. (RE: related document(s)3908 Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit))). (McEntire, Sawnie)
09/25/2023	3929 Order setting hearing (RE: related document(s)3924 Motion for ex parte relief filed by Attorney Scott M. Seidel). Hearing to be held on 10/2/2023 at 02:30 PM Dallas Judge Jernigan Ctrm for 3924, Entered on 9/25/2023 (Okafor, Marcey)
09/27/2023	3930 Response unopposed to (related document(s): 3911 Trustee's motion *to be included in mediation (Order Doc. No. 3897). Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P.*) filed by Interested Party James Dondero, Get Good Trust, Hunter Mountain Investment Trust, Strand Advisors, Inc., The Dugaboy Investment Trust. (Deitsch−Perez, Deborah)
09/28/2023	3931 Certificate of service re: The Highland Parties Response to Trustees Motion to Be Included in Mediation Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3927 Response unopposed to (related document(s): 3911 Trustee's motion *to be included in mediation (Order Doc. No. 3897). Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P.*) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust. filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). (Kass, Albert)
10/02/2023	3932 Hearing held on 10/2/2023. (RE: related document(s) 3911 Trustee's motion to be included in mediation (Order Doc. No. 3897), filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P., (Appearances: J. Alexander, for and with S. Seidel, Chapter 7 Trustee, G. Demo for Highland parties; D. Deitsche−Perez for Dugaboy and other Respondants. Nonevidentiary hearing. Motoin denied. Counsel to upload order.) (Edmond, Michael)
10/03/2023	3933 Request for transcript regarding a hearing held on 10/2/2023. The requested turn−around time is hourly. (Edmond, Michael)
10/03/2023	3934 Order on Trustee's motion to be included in mediation (related document # 3911) Entered on 10/3/2023. (Okafor, Marcey)
10/03/2023	3935 Transcript regarding Hearing Held 10/02/2023 Before Judge Stacey G.C. Jernigan (34 Pages) RE: Trustee's Motion to be Included in Mediation (#3911). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90

	DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/1/2024. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972−786−3063. (RE: related document(s) 3932 Hearing held on 10/2/2023. (RE: related document(s) 3911 Trustee's motion to be included in mediation (Order Doc. No. 3897), filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P., (Appearances: J. Alexander, for and with S. Seidel, Chapter 7 Trustee, G. Demo for Highland parties; D. Deitsche−Perez for Dugaboy and other Respondants. Nonevidentiary hearing. Motoin denied. Counsel to upload order.)). Transcript to be made available to the public on 01/1/2024. (Rehling, Kathy)
10/05/2023	3936 Order denying motion of Hunter Mountain Investment Trust seeking relief pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Proposed Order) (related document # 3905) Entered on 10/5/2023. (Okafor, Marcey)
10/05/2023	3937 BNC certificate of mailing − PDF document. (RE: related document(s)3934 Order on Trustee's motion to be included in mediation (related document 3911) Entered on 10/3/2023.) No. of Notices: 0. Notice Date 10/05/2023. (Admin.)
10/09/2023	3938 Motion to appear pro hac vice for Richard L. Wynne. Fee Amount $100 Filed by Interested Parties John S. Dubel, Hon.Russell F. Nelms (Ret.) (Wynne, Richard)
10/10/2023	3939 Motion to appear pro hac vice for Edward J. McNeilly. Fee Amount $100 Filed by Interested Parties John S. Dubel , Hon.Russell F. Nelms (Ret.) (Ecker, C.) Additional attachment(s) added on 10/11/2023 (Ecker, C.).
10/10/2023	Receipt of Pro Hac Vice Filing Fee − $100.00 by CE. Receipt Number 339899. (admin)
10/16/2023	3940 Order granting motion to appear pro hac vice adding Richard L. Wynne for John S. Dubel and Hon.Russell F. Nelms (Ret.) (related document # 3938) Entered on 10/16/2023. (Okafor, Marcey)
10/16/2023	3941 Order granting motion to appear pro hac vice adding Edward J. McNeilly for John S. Dubel and Hon.Russell F. Nelms (Ret.) (related document 3939) Entered on 10/16/2023. (Okafor, Marcey) Modified to add party on 10/16/2023 (Okafor, Marcey).
10/17/2023	Receipt of filing fee for Motion to Appear pro hac vice(19−34054−sgj11) [motion,mprohac] (100.00). Receipt number A30817329, amount $ 100.00 (re: Doc# 3938). (U.S. Treasury)
10/18/2023	3942 BNC certificate of mailing − PDF document. (RE: related document(s)3940 Order granting motion to appear pro hac vice adding Richard L. Wynne for John S. Dubel and Hon.Russell F. Nelms (Ret.) (related document 3938) Entered on 10/16/2023.) No. of Notices: 1. Notice Date 10/18/2023. (Admin.)
10/18/2023	3943 BNC certificate of mailing − PDF document. (RE: related document(s)3941 Order granting motion to appear pro hac vice adding Edward J. McNeilly for John S. Dubel and Hon.Russell F. Nelms (Ret.) (related document 3939) Entered on 10/16/2023. (Okafor, Marcey) Modified to add party on 10/16/2023 .) No. of Notices: 1. Notice Date 10/18/2023. (Admin.)
10/19/2023	3944 PDF with attached Audio File. Court Date & Time [10/02/2023 02:02:15 PM]. File Size [13137 KB]. Run Time [00:56:07]. (admin).
10/19/2023	3945 Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit Ex. 1 # 2

	Exhibit Ex. 2 # 3 Exhibit Ex. 3 # 4 Exhibit Ex. 4 # 5 Exhibit Ex. 5 # 6 Exhibit Ex. 5a # 7 Exhibit Ex. 6 # 8 Exhibit Ex. 7 # 9 Exhibit Ex. 8 # 10 Exhibit Ex. 9)(McEntire, Sawnie)
10/19/2023	3946 INCORRECT ENTRY. Incorrect event code. Statement of issues on appeal, *and Designation of Items for Inclusion in the Appellate Record* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal, 3945 Amended notice of appeal). (McEntire, Sawnie) Modified on 10/20/2023 (Whitaker, Sheniqua).
10/20/2023	3947 INCORRECT ENTRY. Incomplete Form. Clerk's correspondence regarding second amended notice of appeal from attorney for appellant. (RE: related document(s)3945 Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit Ex. 3 # 4 Exhibit Ex. 4 # 5 Exhibit Ex. 5 # 6 Exhibit Ex. 5a # 7 Exhibit Ex. 6 # 8 Exhibit Ex. 7 # 9 Exhibit Ex. 8 # 10 Exhibit Ex. 9)) Responses due by 10/23/2023. (Whitaker, Sheniqua)
10/20/2023	3948 INCORRECT ENTRY. Clerk's correspondence submitted incorrectly. (RE: related document(s)3945 Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal). (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit Ex. 3 # 4 Exhibit Ex. 4 # 5 Exhibit Ex. 5 # 6 Exhibit Ex. 5a # 7 Exhibit Ex. 6 # 8 Exhibit Ex. 7 # 9 Exhibit Ex. 8 # 10 Exhibit Ex. 9)) Responses due by 10/23/2023. (Whitaker, Sheniqua) Modified on 10/20/2023 (Whitaker, Sheniqua).
10/20/2023	3949 Clerk's correspondence requesting to refile document from attorney for appellant. (RE: related document(s)3946 INCORRECT ENTRY. Incorrect event code. Statement of issues on appeal, *and Designation of Items for Inclusion in the Appellate Record* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal, 3945 Amended notice of appeal). (McEntire, Sawnie) Modified on 10/20/2023 .) Responses due by 10/23/2023. (Whitaker, Sheniqua)
10/20/2023	3950 Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. *Supplemental* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal, 3908 Amended notice of appeal, 3945 Amended notice of appeal). Appellee designation due by 11/3/2023. (McEntire, Sawnie)
10/23/2023	3951 Amended Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. *Second Supplemental* filed by Creditor Hunter Mountain Investment Trust (RE: related document(s)3906 Notice of appeal, 3908 Amended notice of appeal, 3945 Amended notice of appeal). Appellee designation due by 11/6/2023. (McEntire, Sawnie) Modified TEXT on 10/24/2023 (Blanco, J.).
10/23/2023	3952 Notice of Appearance and Request for Notice by James Jay Lee filed by Interested Parties The Pettit Law Firm, Lynn Pinker Hurst & Schwegmann, LLP. (Lee, James)
10/23/2023	3953 Chapter 11 Post−Confirmation Report for the Quarter Ending: 09/30/2023 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit Global Notes to Post−Confirmation Report) (Annable, Zachery)
10/23/2023	3954 Chapter 11 Post−Confirmation Report for the Quarter Ending: 09/30/2023 filed by Other Professional Highland Claimant Trust. (Attachments: # 1 Exhibit Global Notes to Post−Confirmation Report) (Annable, Zachery)
10/23/2023	3955 Amended Chapter 11 Post−Confirmation Report for the Quarter Ending: 09/30/2023 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3953 Chapter 11 Post−Confirmation Report). (Attachments: # 1 Global Notes to Post−Confirmation Report) (Annable, Zachery)

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

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

HUNTER MOUNTAIN INVESTMENT TRUST'S NOTICE OF APPEAL

Pursuant to 28 U.S.C. § 158(a) and Federal Rules of Bankruptcy Procedure 8001-8002, Movant Hunter Mountain Investment Trust ("HMIT"), both in its individual capacity and derivatively on behalf of the Reorganized Debtor, Highland Capital Management, L.P., and the Highland Claimant Trust,[1] appeals to the United States District Court for the Northern District of Texas, Dallas Division, from this Court's August 25, 2023 Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding (Docs. 3903-3904) (attached to this notice as Exhibits 1 and 2) (the "Final Order"), and all associated interlocutory orders or decisions that merged into or preceded the Final Order, including but not limited to the following:

- March 31, 2023 Order Denying Application for Expedited Hearing (Doc. 3713) (attached to this notice as Exhibit 3);
- May 11, 2023 Order Fixing Briefing Schedule and Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding as Supplemented (Doc. 3781) (attached to this notice as Exhibit 4);

[1] And, in all capacities and alternative derivative capacities asserted in HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Bankr. Dkt. Nos. 3699, 3815, and 3816] ("Emergency Motion"), and the supplement to the Emergency Motion [Bankr. Dkt. No. 3760] and the draft Complaint attached to the same [Bankr. Dkt. No. 3760-1].

- May 24, 2023 Order Pertaining to the Hearing on Hunter Mountain Investment Trust's Motion for Leave to File Adversary Proceeding (Doc. 3790) (attached to this notice as Exhibit 5);

- May 26, 2023 Order Regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery Or, Alternatively, For Continuance of the June 8, 2023 Hearing (Doc. 3800) (attached to this notice as Exhibit 6);

- Evidentiary and other oral rulings, including but not limited to rulings associated with expert testimony, made at the June 8, 2023 Hearing;

- June 16, 2023 Memorandum Opinion and Order Granting Joint Motion to Exclude Expert Evidence (Doc. 3853) (attached to this notice as Exhibit 7); and,

- July 5, 2023 Order Striking HMIT's Evidentiary Proffer Pursuant to Rule 103(a)(2) and Limiting Briefing (Doc. 3869), including the appended email ruling (attached to this notice as Exhibit 8).

The names of all other parties to the Orders and their respective counsel are as follows:

- Movant HMIT, represented by:

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- Non-movants Highland Capital Management, L.P., and the Highland Claimant Trust, represented by:

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Dated: September 8, 2023

Respectfully Submitted,

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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served via ECF notification on September 8, 2023, on all parties receiving electronic notification.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

3130663.1

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

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

HUNTER MOUNTAIN INVESTMENT TRUST'S
SECOND AMENDED NOTICE OF APPEAL

Pursuant to 28 U.S.C. § 158(a) and Federal Rules of Bankruptcy Procedure 8001-8002, Appellant/Movant Hunter Mountain Investment Trust ("HMIT"), both in its individual capacity and derivatively on behalf of the Reorganized Debtor, Highland Capital Management, L.P., and the Highland Claimant Trust,[1] appeals to the United States District Court for the Northern District of Texas, Dallas Division, from this Court's August 25, 2023 Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding (Docs. 3903-3904) (attached to this notice as Exhibits 1 and 2) (the "Final Order"), and all associated interlocutory orders or decisions that merged into or preceded the Final Order, including but not limited to the following:

- March 31, 2023 Order Denying Application for Expedited Hearing (Doc. 3713) (attached to this notice as Exhibit 3);
- May 11, 2023 Order Fixing Briefing Schedule and Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding as Supplemented (Doc. 3781) (attached to this notice as Exhibit 4);

[1] And, in all capacities and alternative derivative capacities asserted in HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. Nos. 3699, 3815, and 3816] ("Emergency Motion"), and the supplement to the Emergency Motion [Dkt. No. 3760] and the draft Complaint attached to the same [Dkt. No. 3760-1].

- May 22, 2023 Order Pertaining to the Hearing on Hunter Mountain Investment Trust's Motion for Leave to File Adversary Proceeding (Doc. 3787) (attached to this notice as Exhibit 5) and (Doc. 3790) (attached to this notice as Exhibit 5a);

- May 26, 2023 Order Regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery Or, Alternatively, For Continuance of the June 8, 2023 Hearing (Doc. 3800) (attached to this notice as Exhibit 6);

- Evidentiary and other oral rulings, including but not limited to rulings that did not admit evidence and exhibits offered by HMIT, or admitted the same for only limited purposes, and rulings associated with expert testimony, made at the June 8, 2023 Hearing;

- June 16, 2023 Memorandum Opinion and Order Granting Joint Motion to Exclude Expert Evidence (Doc. 3853) (attached to this notice as Exhibit 7); and

- July 5, 2023 Order Striking HMIT's Evidentiary Proffer Pursuant to Rule 103(a)(2) and Limiting Briefing (Doc. 3869), including the appended email ruling (attached to this notice as Exhibit 8).

HMIT also appeals the October 4, 2023 Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 (Doc. 3936) (attached to this notice as Exhibit 9).

The names of all other parties to the orders and decisions appealed from and their respective counsel are as follows:

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- Appellees/Non-movants Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management, L.L.C., and Stonehill Capital Management LLC, represented by:

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Dated: October 19, 2023

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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was served via ECF notification on October 19, 2023, on all parties receiving electronic notification.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

3133169.1

Exhibit 1

The following constitutes the ruling of the court and has the force and effect therein described.

Signed August 25, 2023

United States Bankruptcy Judge

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

IN RE:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-sgj-11**
Reorganized Debtor.	§	

MEMORANDUM OPINION AND ORDER PURSUANT TO PLAN "GATEKEEPER PROVISION" AND PRE-CONFIRMATION "GATEKEEPER ORDERS": DENYING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING[1]
[BANKR. DKT. NOS. 3699, 3760, 3815, and 3816]

I. INTRODUCTION

BEFORE THIS COURT is yet another post-confirmation dispute relating to the Chapter 11 bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor").

[1] On August 2, 2023, this court signed an Order [Bankr. Dkt. No. 3897] that was agreed to among various parties, after the filing of a Motion to Stay and Compel Mediation [Bankr. Dkt. No. 3752] filed by James D. Dondero and related entities. Pursuant to paragraph 7 of that order, certain pending matters in the bankruptcy court are stayed pending mediation. The parties did not agree to stay the matter addressed in this Memorandum Opinion and Order.

It is now more than two and half years since the confirmation of Highland's Plan[2]—the Plan having been confirmed on February 22, 2021.[3] The Plan was never stayed; it went effective on August 11, 2021 ("Effective Date"), and it was affirmed almost in its entirety by the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit"), in late summer 2022, including an approval of the so-called Gatekeeper Provision[4] therein. The Gatekeeper Provision—and how and whether it should now be exercised or interpreted to allow a certain lawsuit to be filed—is at the heart of the current *Emergency Motion for Leave to File Verified Adversary Proceeding* [Bankr. Dkt. Nos. 3699, 3760, 3815, 3816] (collectively, the "Motion for Leave") filed by a movant known as Hunter Mountain Investment Trust ("HMIT").

A. Who is the Movant, HMIT?

Who is HMIT? It is undisputed that it is a former equity owner of Highland. It held 99.5% of Highland's Class B/C limited partnership interests and was classified in a Class 10 under the confirmed Plan, which class treatment provided it with a contingent interest in the Highland Claimant Trust ("Claimant Trust") created under the Plan, and as defined in the Claimant Trust Agreement. This means that HMIT could receive consideration under the Plan if all claims against Highland are ultimately paid in full, with interest. As later further discussed, it is undisputed that

[2] Capitalized terms not defined in this introduction shall have the meaning ascribed to them below.

[3] The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order")[Bankr. Dkt. No. 1943].

[4] In an initial opinion dated August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in large part, "revers[ing] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan's exculpation, and affirm[ing] on all remaining grounds." *In re Highland Capital Management, L.P.*, No. 21-10449, 2022 WL 3571094, at *1 (5th Cir. Aug. 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022, "for the limited purpose of clarifying and confirming one part of its August 19, 2022 opinion," the Fifth Circuit withdrew its original opinion and replaced it with its opinion reported at *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419, 424 (5th Cir. 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section "IV(E)(2) – *Injunction and Gatekeeper Provisions*" of the original opinion: "The injunction and gatekeeper provisions are, on the other hand, perfectly lawful." was replaced with "We now turn to the Plan's injunction and gatekeeper provisions." In all other respects, the Fifth Circuit panel's original ruling remained unchanged. Petitions for writs of certiorari regarding the Confirmation Order have been pending at the United States Supreme Court since January 2023.

HMIT's only asset is its contingent interest in the Claimant Trust. It has no employees or revenue. HMIT's representative has testified that HMIT is liable on more than $62 million of indebtedness owed to The Dugaboy Investment Trust ("Dugaboy"), a family trust of which James Dondero ("Dondero"), the co-founder and former chief executive officer ("CEO") of Highland, and his family members are beneficiaries, and that Dugaboy also is paying HMIT's legal fees. HMIT vehemently disputes the suggestion that it is controlled by Dondero.

B. What Does the Movant HMIT Seek Leave to File?

HMIT seeks leave to file an adversary proceeding ("Proposed Complaint")[5] in the bankruptcy court to bring claims on behalf of itself and, derivatively, on behalf of the Reorganized Debtor and the Claimant Trust for alleged breach of fiduciary duties by the Reorganized Debtor's CEO and Claimant Trustee, James P. Seery, Jr. ("Seery") and conspiracy against: (1) Seery; and (2) purchasers of $365 million face amount of ***allowed*** unsecured claims in this case, who purchased their claims post-confirmation but prior to the occurrence of the Effective Date of the Plan ("Claims Purchasers,"[6] and with Seery, the "Proposed Defendants"). To be clear (and as later further explained), the claims acquired by the Claims Purchasers were acquired by them after extensive litigation, mediation, and settlements were approved by the bankruptcy court and after the original claims-holders had voted on the Plan and after Plan confirmation. As later explained,

[5] In its original Motion for Leave filed at Bankruptcy Docket No. 3699 on March 28, 2023, HMIT sought leave to file the proposed complaint ("Initial Proposed Complaint") attached as Exhibit 1 to the Motion for Leave. Nearly a month later, on April 23, 2023, HMIT filed a *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* ("Supplement") [Bankr. Dkt. No. 3760], a revised proposed complaint as Exhibit 1-A, and stating that "[t]he Supplement is not intended to supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action." Supplement, ¶ 1 and Exhibit 1-A. It is this revised proposed complaint to which this court will refer, when it uses the defined term "Proposed Complaint," even though HMIT filed redacted versions of its Motion for Leave on June 5, 2023 at Bankruptcy Docket Nos. 3815 and 3816 that attached the Initial Proposed Complaint as Exhibit 1.

[6] The Claims Purchasers identified in the Proposed Complaint are Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which is a special purpose entity created by Farallon to purchase allowed unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which is a special purpose entity created by Stonehill to purchase allowed unsecured claims against Highland.

the Claims Purchasers filed notices of their purchases as required by Bankruptcy Rule 3001(e)(2), and no objections were filed thereto. In any event, various damages or remedies are sought against the Proposed Defendants revolving around the Claims Purchasers' claims purchasing activities.

C. Why Does HMIT Need to Seek Leave?

As alluded to above, HMIT filed its Motion for Leave to comply with the provision in the Plan known as a "gatekeeper" provision ("Gatekeeper Provision") and with this court's prior gatekeeper orders entered in January and July 2020, which all require that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain (1) a finding from the bankruptcy court that its proposed claims ("Proposed Claims") are "colorable"; and (2) specific authorization by the bankruptcy court to pursue the Proposed Claims.[7] The Gatekeeper Provision was not included in the Plan *sans raison*. Indeed, as the Fifth Circuit recognized in affirming confirmation of the Plan, the Gatekeeper Provision (along with the other "protection provisions" in the Plan) had been included in the Plan to address the "continued litigiousness" of Mr. James Dondero ("Dondero"), Highland's co-founder and former chief executive officer ("CEO"), that began prepetition and escalated following the post-petition "nasty breakup" between Highland and Dondero, by "screen[ing] and prevent[ing] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[8]

[7] To be clear, the Gatekeeper Provision in the Plan was not the first or even second injunction of its type issued in this bankruptcy case. The Gatekeeper Orders were entered by the bankruptcy court pre-confirmation: (a) in January 2020, just a few months into the case, as part of this court's order approving a corporate governance settlement between Highland and its unsecured creditors committee, in which Dondero, Highland's co-founder and former CEO, was removed from any management role at Highland and three independent directors ("Independent Directors") were appointed in lieu of a chapter 11 trustee being appointed ("January 2020 Order"); and (b) in July 2020, in this court's order authorizing the employment of Seery (one of the three Independent Directors) as the Debtor's new Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative ("July 2020 Order," together with the January 2020 Order, the "Gatekeeper Orders").

[8] *See Highland Capital*, 48 F.4th at 427, 435.

D. Some Further Context Regarding Post-Confirmation Litigation Generally.

Since confirmation of the Plan, hundreds of millions of dollars have been paid out to creditors under the Plan, and there are numerous adversary proceedings and contested matters still pending, at various stages of litigation, in the bankruptcy court, the district court, and the Fifth Circuit, almost exclusively involving Dondero and entities that he owns or controls. To be sure, the post-confirmation litigation in this case does not consist of the usual adversaries and contested matters one typically sees by and against a reorganized debtor and/or litigation trustee, such as preference or other avoidance actions and litigation over objections to claims that are still pending after confirmation of a plan. Indeed, the claims of the largest creditors in this case (with claims asserted in the aggregate of more than one billion dollars) were successfully mediated and incorporated into the Plan—a plan which was ultimately accepted by the votes of an overwhelming majority of Highland's non-insider creditors. Dondero and entities under his control were the only parties who appealed the Confirmation Order, and Dondero and entities under his control have been the appellants in virtually every appeal that has been filed regarding this bankruptcy case. Petitions for writs of mandamus (which have been denied) have been filed in the district court and in the Fifth Circuit by some of these same entities, including one by HMIT, when this court denied setting an ***emergency*** hearing on the instant Motion for Leave (HMIT had sought a setting on three-days' notice).

A recent list of active matters involving Dondero and/or entities and/or individuals affiliated or associated with him, filed in the bankruptcy case by Highland and the Claimant Trust, reveals that there were at least 30 pending and "Active Dondero-Related Litigation" matters as of July 14, 2023: six (6) proceedings in this court; six (6) active appeals or actions are pending in the District Court for the Northern District of Texas; seven (7) appeals in the Fifth Circuit; two (2)

petitions for writs of certiorari in the United States Supreme Court; and nine (9) other proceedings or actions with or affecting the Highland Parties ("Highland," the "Claimant Trust," and "Seery") in various other state, federal, and foreign jurisdictions.[9]

The above-described context is included because the Proposed Defendants assert that the Motion for Leave is just a continuation of Dondero's unrelenting barrage of meritless and harassing litigation, making good on his oft-mentioned alleged threat to "burn down the place" after not achieving the results he wanted in the Highland bankruptcy case. Indeed, the Motion for Leave was filed after two years of unsuccessful attempts by, first, Dondero personally, and then HMIT to obtain pre-suit discovery from the Proposed Defendants (i.e., the Claims Purchasers) through two different Texas state court proceedings, pursuant to Tex. R. Civ. P. 202 ("Rule 202"). In each of these Rule 202 proceedings, Dondero and HMIT espoused the same Seery/Claims

[9] *See* Bankr. Dkt. No. 3880 (filed on July 14, 2023, providing a list of "Active Dondero-Related Litigation" and noting that the list is "a summary of active pending actions only and does not include actions that were resolved by final orders, including actions finally resolved after appeals to the U.S. District Court for the Northern District of Texas and/or the U.S. Court of Appeals for the Fifth Circuit."). Just since the filing by the Highland Parties of the list, ***three*** of the appeals pending in the Fifth Circuit have been decided against the Dondero-related appellants, two of which upheld the district court's dismissal of appeals by Dondero-related entities of bankruptcy court orders based on the lack of bankruptcy appellate standing on behalf of the appellant. On July 19, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by NexPoint Advisors, L.P. ("NexPoint") of bankruptcy court orders approving professional compensation on the basis that NexPoint did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the orders. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, 74 F.4th 361 (5th Cir. 2023). On July 31, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy—the Dondero family trust that, like the movant here in this Motion for Leave, was the holder of a limited partnership interest in Highland, and, as such, now has a contingent interest in the Claimant Trust—which had appealed a bankruptcy court order approving a Rule 9019 settlement on the same basis: Dugaboy did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the settlement order. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10960, 2023 WL 4861770 (5th Cir. July 31, 2023). The July 31, 2023 ruling followed the Fifth Circuit's ruling on February 21, 2023, affirming the district court's dismissal of an appeal by Dugaboy of yet another bankruptcy court order for lack of bankruptcy appellate standing. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023). These rulings by the Fifth Circuit are discussed in greater detail below. The third ruling by the Fifth Circuit since July 14, 2023, was issued by the Fifth Circuit in a per curium opinion not designated for publication on July 26, 2023, this one affirming the district court's affirmance of yet another Rule 9019 settlement order of the bankruptcy court that was appealed by Dugaboy, agreeing with the district court that the bankruptcy court had jurisdiction to approve a settlement among the Debtor, an entity affiliated with the Debtor but not a debtor itself, and UBS (the Debtor's largest prepetition creditor and the seller of its claims to the Claims Purchasers, which is one of the claims trading transactions HMIT complains about in the Proposed Complaint). *See The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P.*, No. 22-10983, 2023 WL 4842320 (5th Cir. July 26, 2023).

Purchasers conspiracy theory espoused in the Motion for Leave—that Seery must have provided one or more of the Claims Purchasers with material nonpublic information to induce them to want to purchase large, allowed, unsecured claims at a discount; a *quid pro quo* is suggested, such that the Claims Purchasers were allegedly told they would make a hefty profit on the claims they purchased and, in return, they would gladly "rubber stamp" Seery's "excessive compensation" as the Claimant Trustee of the Claimant Trust. In sum, HMIT alleges this constituted wrongful "insider trading" of the bankruptcy claims. In addition, certain lawyers for Dondero and Dugaboy sent letters reporting this alleged conspiracy and "insider trading" to the Texas State Securities Board ("TSSB") and the Executive Office of the United States Trustee ("EOUST").

It is against this background and in this context that the court must analyze, in the exercise of its gatekeeping function under the confirmed Plan and its prior Gatekeeping Orders, whether HMIT should be allowed to pursue the Proposed Claims (i.e., whether the Proposed Claims are "colorable" claims as contemplated under the Gatekeeper Orders and the Gatekeeper Provision of the Plan). The court held an evidentiary hearing on the Motion for Leave on June 8, 2023 ("June 8 Hearing"), during which the court admitted exhibits and heard testimony from three witnesses both in support of and in opposition to the Motion for Leave. Having considered the Motion for Leave, the response of the Proposed Defendants thereto, HMIT's reply to the response, and the arguments and evidence presented at the hearing on the Motion for Leave, the court denies HMIT's request for leave to pursue its Proposed Claims. The court's reasoning is set forth below.

II. BACKGROUND

A. Highland's Bankruptcy Case, Dondero's Removal as CEO, and the Plan

Highland was co-founded in Dallas in 1993 by Dondero and Mark Okada ("Okada"). It operated as a global investment adviser that provided investment management and advisory services and managed billions of dollars of assets, both directly and indirectly through numerous

affiliates. Highland's equity interest holders included HMIT (99.5%), Dugaboy (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. ("Strand"), which was wholly owned by Dondero and was the only general partner of Highland (0.25%). On October 16, 2019 (the "Petition Date"), Highland, with Dondero in control[10] and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims – many of which had finally become or were about to be liquidated (after a decade or more of contentious litigation in multiple fora all over the world—filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019. The official committee of unsecured creditors (the "Committee") (and later, the United States Trustee) expressed a desire for the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the specter of a possible appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.[11] As a result of this settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,[12] and three independent directors ("Independent Directors") were

[10] Mark Okada resigned from his role with Highland prior to the Petition Date.

[11] This order is hereinafter referred to as the "January 2020 Order" and was entered by the court on January 9, 2020 [Bankr. Dkt. No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Bankr. Dkt. No. 281].

[12] Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland's motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Bankr. Dkt. No. 338].

chosen to lead Highland through its chapter 11 case: Seery, John S. Dubel, and retired bankruptcy judge Russell Nelms. Given the Debtor's perceived culture of constant litigation while Dondero was at the helm, it was purportedly not easy to get such highly qualified persons to serve as independent board members. At the hearing on the corporate governance settlement motion, the court heard credible testimony that none of the Independent Directors would have taken on the role without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation from mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the Independent Directors without the bankruptcy court's prior authority. The gatekeeper provision approved by the court in its January 9 Order states,[13]

> No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation and did so "subject at all times to the supervision, direction and authority of the Independent Directors" and to his agreement to "resign immediately" "[i]n the event the Independent Directors determine for any reason that the Debtor shall no longer retain Dondero as an employee"[14] and to "not cause any Related Entity to terminate any agreements with the Debtor."[15] The court later

[13] January 2020 Order, 3-4, ¶ 10.
[14] January 2020 Order, 3, ¶ 8.
[15] *Id.* at ¶ 9.

entered, on July 16, 2020, an order approving the appointment of Seery as Highland's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative,[16] which included essentially the same "gatekeeper" language with respect to the pursuit of claims against Seery acting in these roles. The gatekeeper provision in the July 2020 Order was essentially the same as the gatekeeper provision in the January 2020 Order:

> No entity may commence or pursue a claim or cause of action of any kind against Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

July 2020 Order, 3, ¶5. Neither the January 2020 Order nor the July 2020 Order were appealed.

Throughout the summer of 2020, Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Dondero's plans failed to gain support, he and entities under his control engaged in substantial, costly, and time-consuming litigation for Highland.[17] As the Fifth Circuit described the situation, after Dondero's plans failed "he and other creditors began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital's management, threatening employees, and canceling trades between Highland Capital and its clients."[18] On October 9, 2020, Dondero resigned from all positions with the Debtor and its

[16] *See* the July 16, 2020 order approving the retention by Highland of Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020 ("July 2020 Order") [Bankr. Dkt. No. 854].

[17] According to Seery's credible testimony during the hearing on confirmation of the Plan that had been negotiated between the Committee and the Independent Directors, Dondero had threatened to "burn the place down" if his proposed plan was not accepted. *See* Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20. Bankr. Dkt. No. #1894.

[18] *Highland Capital*, 48 F.4th at 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at *1, *26 (Bankr. N.D. Tex.

affiliates in response to a demand by the Independent Directors made after Dondero's purported threats and disruptions to the Debtor's operations.[19]

The Independent Directors and the Committee had negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan") [Bankr. Dkt. No. 1808] on January 22, 2021.[20] Highland had negotiated settlements with most of its major creditors following mediation and had amended its initially proposed plan to address the objections of most of its creditors, leaving only the objections of Dondero and entities under his control (the "Dondero Parties") at the time of the confirmation hearing,[21] which was held over two days in early February 2021. The Plan is essentially an "asset monetization" plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). Highland's various servicing agreements were vested in the Reorganized Debtor, which continues to manage collateralized loan obligation vehicles ("CLOs") and various other investments postconfirmation. The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down the Reorganized Debtor over a three-year period by monetizing its assets and making

June 7, 2021) where this court "h[eld] Dondero in civil contempt, sanctioning him $100,000, and comparing this case to a 'nasty divorce.'").

[19] *See* Highland Ex. 13. The court shall refer to exhibits offered and admitted at the June 8 Hearing on the Motion for Leave by the Highland Parties as "Highland Ex. ___" and to exhibits offered and admitted by HMIT as "HMIT Ex. ___."

[20] The *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* was filed on November 24, 2020 ("Disclosure Statement") [Bankr. Dkt. No. 1473].

[21] The only other objection remaining was the objection of the United States Trustee to the Plan's exculpation, injunction, and release provisions.

distributions to Class 8 and Class 9 creditors as Claimant Trust Beneficiaries. The Claimant Trust is overseen by a Claimant Trust Oversight Board ("CTOB"), and pursuant to the terms of the Plan and the Claimant Trust Agreement ("CTA"),[22] the CTOB approved Seery's compensation package as the CEO of the Reorganized Debtor and the Claimant Trustee. Following their acquisition of their unsecured claims, representatives of Claims Purchasers Muck and Jessup became members of the CTOB.[23] Seery's compensation included the same base salary that he was receiving as CEO and CRO of Highland, plus an added incentive bonus tiered to recoveries and distributions to the creditors under the Plan. The Plan provides for the cancellation of the limited partnership interests in Highland held by HMIT, Dugaboy, and Okada and his family trusts in exchange for each holder's pro rata share of a contingent interest in the Claimant Trust ("Contingent Claimant Trust Interest"), as holders of allowed interests in Class 10 (holders of Class B/C limited partnership interests) or Class 11 (holders of Class A limited partnership interests) under the Plan.

B. Dondero Communicates Alleged Material Non-Public Information ("MNPI") to Seery, and Seery Allegedly Provides the MNPI to the Claims Purchasers in Furtherance of an Alleged Fraudulent Scheme to Have the Claims Purchasers "Rubber Stamp" His Compensation as Claimant Trustee Post-Confirmation

1. The December 17, 2020 MGM Email

Between Dondero's forced resignation from Highland in October 2020 and the confirmation hearing in February 2021, Dondero engaged in what appeared to be attempts to thwart, impede, and otherwise interfere with the Plan being proposed by the Independent Directors and the Committee. In the midst of this, on December 17, 2020, Dondero sent Seery[24] an email

[22] Highland Ex. 38

[23] The CTOB had three members: a representative of Muck (Michael Linn), a representative of Jessup (Christopher Provost), and an independent member (Richard Katz). *See* Joint Opposition ¶ 79.

[24] Dondero sent the email to others as well but did not copy counsel for the Independent Directors (including Seery) in violation of the terms of an existing temporary restraining order that enjoined Dondero from, among other things, "communicating . . . with any Board member" (including Seery) without including Debtor's counsel. Morris Dec. Ex. 23 ¶ 2(a). Citations to "Morris Dec. Ex. _" are to the exhibits attached to the *Declaration of John A. Morris in Support*

(the "MGM Email") that featured prominently in HMIT's Motion for Leave. According to HMIT and Dondero, the MGM Email contained material nonpublic information ("MNPI") regarding the possibility of an imminent acquisition of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"), likely by either Amazon or Apple.[25] At the time Dondero sent the MGM Email, Dondero sat on the board of directors of MGM, and the Debtor owned MGM stock directly. The Debtor also managed and partially owned a couple of other entities that owned MGM stock and managed various CLOs that owned some MGM stock as well. HMIT alleges now that Seery later misused and wrongfully disclosed to the Claims Purchasers this purported MNPI as part of a *quid pro quo* scheme, whereby the Claims Purchasers agreed to approve excessive compensation for Seery in the future (in exchange for him providing this allegedly "insider" information that inspired them to purchase unsecured claims with an alleged expectation of future large profits).[26] A timeline of events (in late 2020) in the weeks leading up to Dondero's MGM Email to Seery, following Dondero's departure from Highland, helps to put the email in full context:

- October 16: Dondero and his affiliates attempt to impede the Debtor's trading activities by demanding—with no legal basis—that Seery cease selling certain assets;[27]
- November 24: Bankruptcy Court enters an Order approving the Debtor's Disclosure Statement, scheduling the confirmation hearing on the Debtor's Plan for January 13, 2021, and granting related relief;[28]
- November 24–27: Dondero personally interferes with the Debtor's

of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding, Bankr. Dkt. No. 3784.

[25] *See* Proposed Complaint ¶ 45.

[26] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the [Claims Purchasers], with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims."); ¶ 4 ("As part of the scheme, the [Claims Purchasers] obtained a position to approve Seery's ongoing compensation – to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT.").

[27] *See* Highland Ex. 14, Dondero-Related Entities' October 16, 2020 Letter; Highland Ex. 15, *Memorandum Opinion and Order Holding Dondero in Contempt for Violation of TRO*, 13-15.

[28] *See* Bankr. Dkt. No. 1476.

implementation of certain securities trades ordered by Seery;[29]

- November 30: The Debtor provides written notice of termination of certain shared services agreements it had with Dondero's two non-debtor affiliates, NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"; together with NexPoint, the "Advisors");[30]

- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes they owed to the Debtor, that had an aggregate face amount of more than $60 million—this was part of creating liquidity for the Debtor's Plan;[31]

- December 3: Dondero responds with what appeared to be a threat of some sort to Seery in a text message: "***Be careful what you do -- last warning***;"[32]

- December 10: Dondero's interference and apparent threat cause the Debtor to seek and obtain a temporary restraining order ("TRO") against Dondero;[33]

- December 16: This court denies as "frivolous" a motion filed by certain affiliates of Dondero, in which they sought "temporary restrictions" on certain asset sales;[34] and

- December 17: Dondero sends the unsolicited MGM Email[35] to Seery, which violates the TRO entered just a week earlier.[36]

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[29] *See* Highland Ex. 15, 30-36.

[30] Morris Decl. Ex. 17; *see also* Transcript of June 8, 2023 Hearing on HMIT's Motion for Leave ("June 8 Hearing Transcript"), 273:23-24.

[31] Morris Decl. Exs. 18-21; *see also* June 8 Hearing Transcript, 273:23-274:1.

[32] Morris Decl. Ex. 22 (emphasis added); *see also* June 8 Hearing Transcript, 273:1-12 (where Seery testified about receiving the threat from Dondero: "A: [T]his came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.").

[33] *See* Morris Decl. Ex. 23, *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* entered December 10, 2020 [Adv. Pro. No. 20-3190 Dkt. No. 10].

[34] *See* Morris Decl. Ex. 24, Transcript of December 16, 2020 Hearing, 63:5-64:15.

[35] Highland Ex. 11.

[36] Seery testified at the June 8 Hearing that Dondero knowingly violated the TRO when he sent the MGM Email:

> [The MGM Email] . . . followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski [Debtor's counsel] being on it. Furthermore, Pachulski had advised Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics. And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

June 8 Hearing Transcript, 273:13-22.

The MGM Email had the subject line "Trading Restriction re MGM – material non public information" and stated:

> Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.[37]

Seery credibly testified at the June 8 Hearing that he was "highly suspicious" when he received the MGM Email. This was because, among other reasons, Dondero sent it ***after***: (i) unsuccessful efforts to impede the Debtor's trading activities (followed by the TRO); (ii) the "be careful what you do" text to Seery by Dondero: (iii) Highland's termination of its shared service arrangements with Dondero's various affiliated entities; (iv) the bankruptcy court's approval of the disclosure statement; and (v) Highland's demand to collect on the demand notes for which Dondero and his entities were liable.[38] Highland's Chapter 11 case was fast approaching the finish line. Moreover, MGM was already on the restricted list at Highland Capital, and had been for a long time, and Dondero would know this.[39] Still further, as of December 17, 2020 (the date Dondero sent the unsolicited MGM Email to Seery), Dondero no longer owed a duty of any kind to the Debtor or any entity controlled by the Debtor, having surrendered in January 2020 direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement[40] and having resigned from all roles at the Debtor and affiliates in October 2020. Still further, Dondero—to the extent he was sharing with Seery MNPI that he obtained as a member of the board of directors of MGM—would have been violating his own fiduciary duties to MGM.

[37] Highland Ex. 11.

[38] June 8 Hearing Transcript, 273:1-274:4.

[39] June 8 Hearing, 215:21-216:9.

[40] *See* Bankr. Dkt. Nos. 339, 354-1 (Term Sheet)).

In any event, in a declaration filed by Dondero in support of HMIT's Rule 202 petition in Texas state court for pre-suit discovery,[41] he indicated that his goal in sending the MGM E-mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

> On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple's interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades***.

It is noteworthy that ***Dondero's labeling of the MGM Email (in the subject line) as a communication containing "material non public information" did not make it so***. In fact, it appears from the credible evidence presented at the June 8, 2023 hearing on HMIT's Motion for Leave that the MGM Email did not disclose information to Seery that was not already made available to the public at the time it was sent. Seery testified that he did not think the MGM Email contained MNPI and that he did not personally "take any steps . . . to make sure that MGM stock was placed on a restricted list at Highland Capital after [he] received [the MGM Email]" because—as earlier noted—"MGM was already on the restricted list at Highland Capital . . . before I got to Highland."[42] Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months[43] and that was officially

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[41] Highland Ex. 9 ¶ 3 (emphasis added).

[42] June 8 Hearing Transcript, 215:21-216:9. Seery elaborated upon further questioning from HMIT's counsel that he did not think the indications in the MGM Email (that came from a member of the board of directors of MGM) that "it was probably a first-quarter event" and that "Amazon and Apple were actively diligencing – are diligencing in the data room, both continue to express material interest" were not MNPI. *Id.*, 217:23-218:10. He testified that "it was clear [before he received the MGM Email] from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction would have to take place very quickly. And, in fact, the transaction did not take place in the first quarter." *Id.*, 219:3-7.

[43] *See* Highland Ex. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Ex. 26 (describing prospects of an MGM sale, noting that, among its largest

announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[44] For example, as early as January 2020, Apple and Amazon were identified as being among a new group of "Big 6" global media companies, and MGM was identified as being a leading media acquisition target. Indeed, according to at least one media report on January 26, 2020, "MGM, in particular, seems like a logical candidate to sell this year" having already held "preliminary talks with Apple, Netflix and other larger media companies."[45] In October 2020, the Wall Street Journal reported that MGM's largest shareholder, Anchorage Capital Group ("Anchorage"), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as Chairman of MGM's Board. The article reported that "[i]n recent months, Mr. Ulrich has said he is working toward a deal," and he specifically named Amazon and Apple as being among four possible buyers.[46] Thus, no one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed "material interest" in acquiring MGM. Dondero testified during the June 8 Hearing that, at the time he sent the MGM Email, he "knew with certainty from the board level that Amazon had hit our price, and it was going to close in the next couple of months,"[47] that "as of December 17th, Amazon had made an offer that was acceptable to MGM, [and that] that's what the board meeting was. We were going into exclusive negotiations to culminate the merger with

shareholders, was "Highland Capital Management, LP") (article October 11, 2020). *See also* Highland Exs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for $8.4 billion).

[44] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid.

[45] Highland Ex. 25.

[46] Highland Ex. 26.

[47] June 8 Hearing Transcript, 127:2-4.

them."[48] Notwithstanding this testimony, Dondero eventually admitted (after a lengthy and torturous cross examination) that he did not actually communicate this supposed "inside" information to Seery in the MGM Email. He did not "say anything about Amazon hitting the price." He did not say anything about the MGM board going into exclusive negotiations with Amazon "to culminate the merger with them." Rather, he communicated information that Seery and any member of the public who cared to look could have gleaned from publicly available information as of December 17, 2020, regarding a much-written-about potential MGM transaction that involved interest from numerous companies, including, specifically, Amazon and Apple. When questioned why "[he felt] the need to mention Apple [in the MGM Email] if Amazon had already hit the price," Dondero simply answered, "The only way you generally get something done at attractive levels in business is if two people are interested," suggesting that he specifically ***did not*** communicate the purported inside information he obtained as a MGM board member—that Amazon had met MGM's strike price and that the MGM board was moving forward with exclusive negotiations with Amazon—because he wanted it to appear that there was still a competitive process going on that included both Amazon and Apple.[49]

Even if the MGM Email contained MNPI on the day it was sent (four months prior to the first of the Claim Purchases that occurred in April 2021), the information was fully and publicly disclosed to the market in the days and weeks that followed. For example, on December 21, 2020, just four days later, a Wall Street Journal article titled *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale*, reported that MGM had "tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process," and had "a market value of around $5.5 billion, based on privately traded shares and including debt." The Wall Street Journal Article reiterated

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[48] *Id.*, 161:10-14.

[49] June 8 Hearing Transcript, 162:2-6.

that (i) Anchorage "has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks," and (ii) "Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers."[50] (*Id*. Ex. 27.) The Wall Street Journal's reporting was picked up and expanded upon in other publications soon after. For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The world is net enough! Amazon joins other streaming services in £4bn bidding war for Bond films as MGM considers selling back catalogue*, cited the Wall Street Journal article and further reported that MGM "hopes to spark a battle that could interest streaming services such as Amazon Prime";[51]

- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that "it's now become apparent that MGM is actually up on the auction block," noting that the Wall Street Journal was "reporting that the studio has begun a formal sale process" and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder;[52] and

- On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition.[53]

Finally, Highland and entities it controlled did not sell their MGM stock while the MGM-Amazon deal was under discussion and/or not made public but, instead, they tendered their MGM holdings in connection with, and as part of, the ultimate MGM-Amazon transaction after it closed in March 2022.

[50] Highland Ex. 27.

[51] Highland Ex. 28.

[52] Highland Ex. 29.

[53] Highland Ex. 30.

2. <u>No Evidence to Support HMIT/Dondero's Assumptions that Seery Shared Alleged MNPI in the MGM Email with Claims Purchasers</u>

One of HMIT's allegations in the Proposed Complaint it seeks leave to file—which is central to HMIT's and Dondero's conspiracy theory—is that Seery shared the alleged MNPI from the MGM Email with the Claims Purchasers (or at least Farallon—the owner/affiliate of Muck, one of the Claims Purchasers) and that the Claims Purchasers only acquired the purchased claims ("Purchased Claims") based on, and because, of their receipt of the MNPI from Seery. HMIT essentially admits in the original version of its Motion for Leave that it has no direct evidence that Seery communicated the alleged MNPI to any of the Claims Purchasers. Rather, its allegation is based on inferences it wants the court to make based on "circumstantial" evidence and on the Dondero Declarations that were attached to the Motion for Leave, which described communications Dondero purportedly had with one or two representatives of Farallon in the "late spring" of 2021 concerning Farallon's recent acquisition of certain claims in the Highland bankruptcy case.[54] Based on these communications, HMIT and Dondero only assume Seery must have provided the MNPI about MGM to Farallon, which must have caused both Farallon and the other Claims Purchaser, Stonehill, to acquire the Purchased Claims.[55]

At the June 8 Hearing, HMIT offered Dondero's testimony that he had three telephone conversations with two representatives of Farallon, Mike Linn ("Linn") and Raj Patel ("Patel"),

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[54] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 1 and Ex. 3; *see also* Highland Ex. 9, *Declaration of James Dondero* (with Exhibit 1) dated February 15, 2023.

[55] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 28. HMIT subsequently filed the final version of the Motion for Leave that was revised to withdraw the Dondero Declarations and delete all references therein to the Dondero Declarations (but, notably, leaving in the allegations that were based on the Dondero Declaration(s)). This was done after the court ruled that it would allow the Proposed Defendants to examine Dondero regarding his Declarations. HMIT contended at that point that the court should consider the Motion for Leave on a no-evidence Rule 12(b)(6) type basis (but could not explain why it had attached the Dondero Declarations as evidence that "supported" the Motion for Leave, if it believed no evidence should be considered). *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 28; *see also infra* pages 45 to 47 regarding the "sideshow" litigation that occurred prior to the June 8 Hearing over whether the hearing on the Motion for Leave would be an evidentiary hearing.

who allegedly told him that they purchased the claims without conducting any due diligence and based solely on Seery's assurances that the claims were valuable. These conversations allegedly took place on May 28, 2021—two days after the MGM-Amazon deal was officially announced to the public (on May 26, 2021). Dondero also testified that a photocopy of handwritten notes ("Dondero Notes")[56] (which were partially cut off) were notes he took contemporaneously with these short telephone conversations he initiated (one with Patel and two follow-up conversations with Linn).[57] He testified that his purpose in taking these notes and in initiating the phone calls was that "[w]e'd been trying nonstop to settle the case for two-plus years. . . . [a]nd when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case . . . [s]o I reached out [to] the Farallon guys,"[58] and further, on *voir dire* from the Proposed Defendants' counsel, that the purpose of taking the notes was so that he had "a written record of the important points that [he] discussed . . . so I know how to address it the next time."[59] The handwritten notes[60] stated:

Raj Patel bought it because of Seery	*1*
50-70¢ not compelling	*2*
Class 8	*3*
Asked what would be compelling	*4*
-- No Offer	*5*
Bought in Feb/March timeframe	*6*
Bought assets w/ Claims	*7*
Offered him 40-50% premium	*8*
130% of cost; "Not Compelling"	*9*
No Counter; Told Discovery coming	*10*

[56] HMIT Ex. 4. The handwritten notes were admitted into evidence after *voir dire*, not for the truth of anything Patel or Linn allegedly said to him during the three telephone conversations, but as Dondero's "present sense impression" of the telephone conversations.

[57] June 8 Hearing Transcript, 133:1-136:3.

[58] *See id.*, 133:13-23.

[59] *See id.* (on *voir dire*), 144:1838-145:4.

[60] HMIT Ex. 4. The court has placed in a table and numbered each line for ease of reference. The table does not include the separate apparent partial date from the top left corner that Dondero testified was the date that he made the initial call to Patel: May 28, 2021.

On direct examination, Dondero testified that line 1 is what he wrote contemporaneously with the short call he initiated to Patel of Farallon in which Patel allegedly told Dondero "that he bought it because Seery told him to buy it and they had made money with Seery before"[61] and that Farallon "bought [the claim] because he was very optimistic regarding MGM"[62] before referring him to Linn, a portfolio manager at Farallon. Dondero testified that the rest of the handwritten notes (reflected in lines 2 through 10 of the table) were notes he took contemporaneously with two telephone conversations he had with Linn following his call to Patel, with lines 2-8 referring to Dondero's first call with Linn and lines 9 and 10 referring to his second call with Linn.[63] Dondero testified that the "50-70¢" in line 2 referred to his offer to Linn to pay 70 cents on the dollar to buy Farallon's[64] claims because "[w]e knew that they had – that the claims had traded around 50 cents" and "[w]e wanted to prevent the $5 million-a-month burn" (referring to attorney's fees in the Highland case) and that "not compelling Class 8" in lines 2-3 referred to Linn's response to him that the offer was not compelling.[65] Dondero testified that lines 4-5 referred to him asking Linn what amount would be compelling and to Linn's response that "he had no offer."[66] Dondero testified that lines 6-8 referred to Linn telling Dondero that Farallon bought the claims in the February, March timeframe and that Dondero told Linn that, given that the estate was spending $5 million a month on legal fees, Farallon should want to sell its claims and Linn's alleged response that "Seery told him it was worth a lot more."[67] Lastly, Dondero testified on direct examination

[61] June 8 Hearing Transcript, 134:7-10, 135:13-22.

[62] *Id.*, 139:3-11.

[63] *Id.*, 136:4-138:16.

[64] As noted above, Farallon did not acquire any of the Purchased Claims; rather, Farallon created a special purpose entity, Muck, to acquire the claims.

[65] June 8 Hearing Transcript, 136:4-16.

[66] *Id.*, 136:17-23.

[67] *Id.*, 137:6-138:7.

that the last two lines referred to a second telephone conversation he had with Linn in which Dondero offered 130 percent of cost for the claims and that Linn told him that the offer was not compelling, and he would not give a price at which he would sell.[68]

On cross-examination, Dondero acknowledged that, though he had testified that the handwritten notes were intended to be a written record of the important points from the telephone conversations he had with Patel and Linn, there was no mention in the notes of: (1) MGM: (2) or that Farallon was very optimistic about MGM; (3) the sharing of MNPI; (4) a *quid pro quo;* or (5) Seery's compensation, and that his last note—"Told Discovery coming"—was a reference to Dondero telling Linn (not Linn telling Dondero) that discovery was coming in response to Dondero's own supposition that Farallon must have traded on MNPI.[69] Cross-examination also revealed that Farallon never told Dondero that Seery gave them MNPI, and that Dondero only ***believed*** Seery ***must have*** given Farallon MNPI, because Farallon (Patel and Linn) had told him that the only reason Farallon bought their claims was because of their prior dealings with Seery, which Dondero took to mean that they had conducted no due diligence on their own prior to acquiring the claims. Dondero also testified that he did not have any personal knowledge as to how Seery's compensation package, as CEO of the Reorganized Debtor and Claimant Trustee, was determined because he was "not involved" in the setting of Seery's compensation pursuant to the Claimant Trust[70] and that he never discussed Seery's compensation with Farallon.[71]

As noted earlier, Dondero attempted to obtain discovery from the Claims Purchasers in a Texas state court pursuant to Rule 202 of the Texas Rules of Civil Procedure. The Texas state

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[68] *Id.*, 138:8-22.

[69] *Id.*, 190:14-191:25. Dondero testified that he told Linn that discovery "would be coming in the next few weeks" and noted that "this has been a couple years. . . . [w]e've been trying for two years to get . . . discovery in this."

[70] *Id.*, 200:13-201:1.

[71] *Id.*, 208:23-209:8.

court denied the First Rule 202 petition on June 1, 2022, after having considered the amended petition, the responses, the record, applicable authorities and having conducted a hearing on the petition on June 1, 2022.[72]

3. Dondero Unsuccessfully Seeks Discovery and to Have Various Agencies and Courts Outside of the Bankruptcy Court Acknowledge His Insider Trading Theories

Dondero acknowledged at the June 8 Hearing that the verified petition ("First Rule 202 Petition") he signed and filed on July 22, 2021, in the first Texas Rule 202 proceeding—just weeks after his telephone calls with Linn and Patel—was true and accurate. In it, he swore under oath as to what Linn told him in the telephone call concerning Farallon's purchase of the claims, and the only reason he gave for wanting discovery was that Linn told him Farallon bought the claims "sight unseen—relying entirely on Seery's advice solely because of their prior dealings."[73] Dondero acknowledged, as well, that his sworn statement that he filed in support of an amended verified Rule 202 petition filed in the same Texas Rule 202 proceeding, but nearly ten months later (in May 2022), described the same telephone conversation he had with Linn, and it did not mention MGM at all and did not say that Linn told him that Seery gave him MNPI; rather, the sworn statement stated only that "On a telephone call between Petitioner and Michael Lin[n], a representative of Farallon, Mr. Lin[n] informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Seery's say-so because they had made so much money in the past when Seery told them to purchase claims" and that Linn did not tell him that Seery gave them MNPI, but he concluded that Seery gave Farallon MNPI based on what Linn did tell him.[74]

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[72] Highland Ex. 7.

[73] *Id.*, 193:8-194:16; Highland Ex. 3, *Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 21. The first Texas Rule 202 proceeding in which Dondero sought discovery regarding the Farallon acquisition of its claims was brought by Dondero, individually, in the 95th Judicial District, Dallas County, Texas.

[74] *Id.*, 195:11-197:17; Highland Ex. 4, *Amended Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 23.

Nine days later, Dondero filed a declaration in the same proceeding, in which he described the same call with Linn as follows:[75]

> Last year, I called Farallon's Michael Lin[n] about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin[n] of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Seery had testified in court, it made no sense to me that Mr. Lin[n] would think that the claims were worth more than what Seery testified under oath was the value of the bankruptcy claims.

Dondero further stated in his declaration that "I have an interest in ensuring that the claims purchased by [Farallon] are not used as a means to deprive the equity holders of their share of the funds," and that "[i]t has become obvious that despite the fact that the bankruptcy estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights. Accordingly, "I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee."[76] Dondero attached as Exhibit A to his declaration a letter from Douglas Draper ("Draper"), an attorney with the law firm of Heller, Draper & Horn, L.L.C. in New Orleans, to the office of the General Counsel, Executive Office for U.S. Trustees, dated October 5, 2021, in which Draper opens the letter by stating that "[t]he purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the [Creditors' Committee] in the bankruptcy of [Highland]," and later noted that he "became involved in Highland's bankruptcy through my representation of [Dugaboy], an irrevocable trust of which Dondero is the primary beneficiary."[77] Mr. Draper laid out the same allegations of insider claims trading, breach of

[75] Highland Ex. 5, ¶ 2.
[76] *Id.*, ¶¶ 3-4.
[77] *Id.*, Ex. A, 1-2.

fiduciary duties, and conspiracy that HMIT seeks to bring in the Proposed Complaint.[78] The U.S. Trustee's office took no action. Dondero made a second and third attempt to get the U.S. Trustee's office to conduct an investigation into the same allegations laid out in Draper's letter, this time in "follow-up" letters to the Office of the U.S. Trustee on November 3, 2021, and six months later, on May 11, 2022, through another lawyer, Davor Rukavina ("Rukavina"), in which Rukavina wrote "to provide additional information regarding the systemic abuses of bankruptcy process occasioned during the [Highland] bankruptcy."[79] Again, the U.S. Trustee's office took no action.

On February 15, 2023, Dondero filed yet another sworn statement about his alleged conversation with Linn, this time in support of a Verified Rule 202 Petition ***filed by HMIT*** ("Second Rule 202 Petition"), filed in a different Texas state court (Texas District Court, 191st Judicial District, Dallas County, Texas), following Dondero's unsuccessful attempts throughout 2021 and 2022 to obtain discovery in the First Rule 202 proceeding and based on the same allegations of misconduct by Seery and Farallon.[80] In this new sworn statement, Dondero describes for the first time the "call" he had with Linn as having been "phone calls" with Patel and Linn and ***mentions MGM*** and Farallon's alleged optimism about the ***expected sale of MGM***:[81]

> In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC ("Farallon"), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Seery because they had made significant profits when Seery told them to purchase other claims in the past. They also stated that they were particularly optimistic because of the expected sale of MGM.

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[78] *Id.*, Ex. A, 6-11.

[79] HMIT Ex. 61.

[80] Highland Ex. 9.

[81] *Id.*, ¶ 4.

The Second Rule 202 Petition was also denied by the second Texas state court on March 8, 2023.[82]

HMIT, in an apparent attempt to provide support for its argument that the Proposed Claims are "colorable," stated in its Motion for Leave that "[t]he Court also should be aware that the Texas States [sic] Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely 'colorable.'"[83] But, two days before opposition briefing was due, on May 9, 2023, the TSSB issued a letter ("TSSB Letter") to Highland, informing it that "[t]he staff of the [TSSB] has completed its review of the complaint received by the Staff against [Highland]. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time."[84] HMIT's counsel (frankly, to the astonishment of the court) objected to the admission of the TSSB Letter at the June 8 Hearing "on the grounds of relevance, 403, hearsay, and authenticity . . . [a]nd I also . . . think it's important that the decision by a regulatory body has no bearing on this cause of action or the colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry."[85] The court overruled HMIT's objection to the relevance of this exhibit—considering, among other things, that HMIT, in its Motion for Leave, specifically mentioned the allegedly open TSSB "investigation" as relevant evidence the court "should be aware" of in making its determination of whether the Proposed Claims were "colorable."[86]

[82] Highland Ex. 10.
[83] Motion for Leave, ¶ 37.
[84] *See* Highland Ex. 33.
[85] June 8 Hearing Transcript, 323:22-324:3.
[86] *Id.*, 324:4-328:2.

C. Claims Purchasers Purchase Claims and File Notices of Transfers of Claims

To be clear about the time line here, it was after confirmation of the Plan but prior to the Effective Date of the Plan, that the Claims Purchasers: (1) purchased several large unsecured claims that had been allowed following, and as part of, Rule 9019 settlements, each of which were approved by the bankruptcy court, after notice and hearing, prior to the confirmation hearing; and (2) filed notices of the transfers of those claims pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure. The noticing of the claims transfers began on April 16, 2021, with the notice of transfer of the claim held by Acis Capital Management to Muck, and ended on August 9, 2021, with the notices of transfers of the claims held by UBS Securities to Muck and Jessup:

Claimant(s)	**Date Filed/ Claim No.**	**Asserted Amount**	**Claim Settled/Allowed? If so, Amount**	**Date Filed/ Rule 3001 Notice Dkt. No.**
Acis Capital Management LP and Acis Capital Management, GP LLC (together, "Acis")	12/31/2019 Claim No. 23	$23,000,000	Yes[87] $23,000,000	4/16/2021 Bankr. Dkt. No. 2215 (Muck)
Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee")	4/3/2020 Claim No. 72	$190,824,557	Yes[88] $137,696,610	4/30/2021 Bankr. Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (the "HarbourVest Parties")	4/8/2020 Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes[89] $80,000,000 in aggregate ($45,000,000 General Unsecured Claim, and $35,000,000 subordinated claim)	4/30/2021 Bankr. Dkt. No. 2263 (Muck)

87 Bankr. Dkt. No. 1302. The Debtor's settlement with Acis was approved over the objection of Dondero. Bankr. Dkt. No. 1121.

88 Bankr. Dkt. No. 1273.

89 Bankr. Dkt. No. 1788. The Debtor's settlement with the HarbourVest Parties was approved over the objections of Dondero, Bankr. Dkt. No. 1697, and Dugaboy and the Get Good Trust. Bankr. Dkt. No. 1706.

UBS Securities LLC, UBS AG, London Branch (the "UBS Parties")	6/26/2020 Claim Nos. 190, 191	$1,039,957,799.40	Yes[90] $125,000,000 in aggregate ($65,000,000 General	8/9/2021 Bankr. Dkt. No. 2698 (Muck) and Bankr. Dkt. No. 2697 (Jessup)

HMIT insists that it "made no sense" for the Claims Purchasers to buy the Purchased Claims because "the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk," and "their investment was projected to yield a small return with virtually no margin for error."[91] Dondero testified that it was ***his*** view that there was insufficient information in the public to justify the claims purchases.[92] But, HMIT's arguments here are contradicted by the information that was publicly available to Farallon and Stonehill at the time of their purchases and by HMIT's own allegations. In advance of Plan confirmation, Highland projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. In the Proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims.[93] Taking into account the face amount of the allowed claims, the Claims Purchasers' projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value[94]	Purchaser	Purchase Price	Projected Profit
Redeemer	$137.0	$0.0	$97.71	Stonehill	$78.0	$19.71
Acis	$23.0	$0.0	$16.4	Farallon	$8.0	$8.40

[90] Bankr. Dkt. No. 2389. The Debtor's settlement with the UBS Parties was approved over the objections of Dondero, Dkt. No. 2295, and Dugaboy and the Get Good Trust. Bankr. Dkt. Nos. 2268, 2293.

[91] Proposed Complaint, ¶ 3.

[92] June 8 Hearing Transcript, 187:3-7 ("Q: And it's your testimony that there wasn't sufficient information in the public for them to buy – this is your view – that there wasn't sufficient information in the public to justify their purchases. Is that your view? A: Correct.).

[93] *Id.*, ¶ 42.

[94] "Ascribed Value" is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

HarbourVest	$45.0	$35.0	$32.09	Farallon	$27.0	$5.09
UBS	$65.0	$60.0	$46.39	Stonehill & Farallon	$50.0	($3.61)

As HMIT acknowledges, by the time Dondero spoke with Farallon in the "late spring" of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest.[95] Based on an aggregate purchase price of $113 million for these three claims, the Claims Purchasers would have expected to net over $33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections, because they also purchased the Class 9 claims and would therefore capture any upside. In this context, HMIT's and Dondero's assertions that it did not "make any sense" for the Claims Purchasers to purchase their claims when they did does not pass muster—given the publicly available information about potential recoveries under the Plan. Dondero even acknowledged, on cross-examination, that he was prepared to pay ***30 percent more*** than Farallon had paid, even though he did not think there was sufficient public information available to justify Farallon's purchase of the claims.[96] Dondero essentially testified that he wanted to purchase Farallon's claims because he wanted to be in a position of control to force a settlement or resolution of the bankruptcy case, post-confirmation, under terms acceptable to him. He did not want to try to settle by negotiating with Farallon and Stonehill ***as creditors***, but instead he wanted to purchase the claims because "if we owned all the claims, it would settle the case."[97]

[95] *See* Complaint, ¶ 41 n.12. The UBS claims were not acquired until August 2021, long after the alleged "*quid pro quo*" was supposedly agreed upon and the MGM-Amazon deal was announced in the press in late May 2021. *See*, Highland Ex. 34, *Amazon's $8.45 Billion Deal for MGM is Historic But Feels Mundane* (dated May 26, 2021).

[96] June 8 Hearing Transcript, 187:8-11.

[97] *Id.*, 187:12-189:10.

D. Fifth Circuit's Approval of the Gatekeeper Provision in Plan, Recognition of Res Judicata Effect of the Prior Gatekeeper Orders, and the Bankruptcy Court's Order Approving Highland's Motion to Conform Plan

Harkening back to February 22, 2021, after a robust confirmation hearing, this court entered its order confirming the Plan, over the objections of Dondero and Dondero-Related Parties, specifically questioning the good faith of their objections. The court found, after noting "the remoteness of their economic interests" that "[it] has good reason to believe that [the Dondero Parties] are not objecting to protect economic interests they have in the Debtor but to be disruptors. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan."[94] The Plan became effective on August 11, 2021.

Of relevance to the Motion for Leave, the confirmed Plan included certain exculpations, releases, and injunctions designed to protect the Debtor and other bankruptcy participants from bad-faith litigation. These participants included: Highland's employees (with certain exceptions); Seery as Highland's CEO and CRO; Strand (after the appointment of the Independent Directors); the Independent Directors; the successor entities; the CTOB and its members; the Committee and its members; professionals retained in the case; and all "Related Persons." The injunction provisions contained a Gatekeeper Provision which is similar to the gatekeeper provisions in the prior Gatekeeper Orders in that it provided that the bankruptcy court will act as a "gatekeeper" to screen and prevent bad-faith litigation against the Protected Parties. The Gatekeeper Provision in the Plan states, in pertinent part:[98]

> No Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents ***a colorable claim of any kind***, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically

[98] Plan, 50-51 (emphasis added).

> authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

The Plan defines Protected Parties as,

> collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the [CTOB] (in their official capacities), (xiii) [HCMLP GP LLC], (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); [but excluding Dondero and Okada and various entities including HMIT and Dugaboy].

The court notes that the Gatekeeper Provision in the Plan provides protection to a broader number of persons than the persons protected under the January 2020 Order (addressing the Independent Directors and their agents and advisors) and the July 2020 Order (addressing Seery in his role as CEO and CRO of the Debtor). But, at the same time, it is less restrictive than the gatekeeping provisions under the Gatekeeper Orders, in that the gatekeeping provisions in the prior orders shield the protected parties from any claim that is not both "colorable" ***and*** a claim for "willful misconduct or gross negligence," effectively providing the protected parties under the prior orders with a limited immunity from claims of simple negligence or breach of contract that do not rise to the level of "willful misconduct or gross negligence," whereas the Gatekeeping Provision under the Plan does not act as a release or exculpation of the Protected Parties in any way because it does not prohibit any party from bringing ***any kind of claim*** against a Protected Party, provided the proposed claimant first obtains a finding in the bankruptcy court that its proposed claims are "colorable."[99]

[99] It should be noted that--as discussed further below--there are, separately in the Plan, exculpations as to a smaller universe of persons--*e.g.,* the Debtor, the Committee and its members, and the Independent Directors.

Dondero and some of the entities under his control appealed[100] the Confirmation Order directly to the Fifth Circuit, arguing, among other issues, that the Plan's exculpation, release, and injunction provisions, including the Gatekeeper Provision (collectively, the "Protection Provisions") impermissibly provide certain non-debtor bankruptcy participants with a discharge, purportedly in contravention of the provisions of Bankruptcy Code § 524(e)'s statutory bar on non-debtor discharges. As noted above, the Fifth Circuit, "affirm[ed] the confirmation order in large part" and "reverse[d] ***only insofar as the plan exculpates*** certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties ***from the plan's exculpation***, and affirm[ed] on all remaining grounds."[101] The Fifth Circuit specifically found the "injunction and gatekeeping provisions [to be] sound" and found that it was only "the ***exculpation*** of certain non-debtors" that "exceed[ed] the bankruptcy court's authority," agreeing with the bankruptcy court's conclusions that the Protection Provisions were legal, necessary under the circumstances, and in the best interest of all parties" in part, and only disagreeing to the extent that the ***exculpation*** provision improperly extended to certain bankruptcy participants other than Highland, the Committee and its members, and the Independent Directors and "revers[ing] and strik[ing] the few unlawful parts

[100] On appeal, the appellant funds ("Funds"), whom this court found to be "owned and/or controlled" by Dondero despite their purported independence, also asked the Fifth Circuit to vacate this court's factual finding "because it threatens the Funds' compliance with federal law and damages their reputations and values" and because "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him." *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th at 434. Applying the "clear error" standard of review, the Fifth Circuit "le[ft] the bankruptcy court's factual finding undisturbed" because "nothing in this record leaves us with a firm and definite conviction that the bankruptcy court made a mistake in finding that the Funds are 'owned and/or controlled by [Dondero]." *Id.* at 434-35.

[101] *See supra* note 4. The Fifth Circuit replaced its initial opinion with its final opinion a few days after certain appellants had filed a short (four-and-one-half pages) motion for rehearing (the "Motion for Rehearing") on September 2, 2022. The movants had asked the Fifth Circuit to "narrowly amend the [initial] Opinion in order to confirm the Court's holding that the impermissibly exculpated parties are similarly struck from the protections of the injunction and gatekeeper provisions of the plan (in other words, that such parties cannot constitute 'Protected Parties')." In the final Fifth Circuit opinion, same as the initial Fifth Circuit opinion, the Fifth Circuit stated that, with regard to the Confirmation Order, the panel would "reverse only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strike those few parties from the plan's exculpation, and affirm on all remaining grounds." *Highland Capital*, 48 F.4th at 424. No findings, discussion, or rulings regarding the injunction and gatekeeper provisions that were in the initial Fifth Circuit opinion were disturbed.

of the Plan's ***exculpation provision***."[102] The Fifth Circuit then remanded to the Bankruptcy Court "for further proceedings in accordance with the opinion."[103]

In the course of analyzing the Protection Provisions under the Plan, the Fifth Circuit noted that the protection provisions in the January and July 2020 Orders appointing the Independent Directors and Seery as CEO and CRO of Highland were *res judicata* and that "*those* orders have the effect of exculpating the Independent Directors and Seery in his executive capacities" such that "[d]espite removal from the exculpation provision in the confirmation order, the Independent Directors' agents, advisors, and employees, as well as Seery in his official capacities are all exculpated to the extent provided in the January and July 2020 Orders."[104]

The Reorganized Debtor filed a motion in the bankruptcy court to conform the plan to the Fifth Circuit's mandate, proposing that only one change was needed to make the Plan compliant with the Fifth Circuit's ruling: narrow the defined term for "Exculpated Parties" to read as follows:

> "Exculpated Parties" means, collectively, (i) the Debtor, (ii) the Independent Directors, (iii) the Committee, and (iv) members of the Committee (in their official capacities).

The Reorganized Debtor proposed that this one simple revision of this defined term removed the exculpations deemed by the Fifth Circuit to violate section 524(e) of the Bankruptcy Code, and that no other changes would be required to conform the Plan and Confirmation Order to the Fifth Circuit's mandate. Some of the Dondero-related entities objected to the motion to conform, arguing that the Fifth Circuit's ruling required more surgery on the Plan than simply narrowing the defined term "Exculpated Parties." On February 27, 2023, this court entered its order granting

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[102] *Id.* at 435.

[103] *Id.* at 440. The Fifth Circuit's docket reflects that it issued its Judgment and mandate on September 12, 2022.

[104] *Highland Capital*, 48 F.4th at 438 n.15. The Fifth Circuit stated, "To the extent Appellants seek to roll back the protections in the bankruptcy court's January 2020 and July 2020 orders (which is not clear from their briefing), such a collateral attack is precluded." *Id.*

Highland's motion to conform the Plan, ordering that one change be made to the Plan – revising the definition of "Exculpated Parties" – and no more.[105] The objecting parties' direct appeal of this order has been certified to the Fifth Circuit and is one of the numerous currently active appeals by Dondero-related parties pending in the Fifth Circuit.

E. HMIT's Motion for Leave

HMIT filed its emergency Motion for Leave on March 28, 2023, which, with attachments, as first filed, was 387 pages in length, including an initial proposed complaint ("Initial Proposed Complaint") and two sworn declarations of Dondero that were attached as "objective evidence" in "support[ ]" of the Motion for Leave,[106] and with it, an application for an emergency setting on the hearing on the Motion to Leave. On April 23, 2023, HMIT filed a pleading entitled a "supplement" to its Motion to Leave ("Supplement"),[107] to which it attached a revised proposed verified complaint ("Proposed Complaint")[108] as Exhibit 1-A to the Motion for Leave and stated that "[t]he Supplement is not intended to amend or supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action."[109] The HMIT Motion for Leave was later amended to eliminate the Dondero Declarations and references to the same (but not the underlying allegations that were supposedly supported by the Dondero Declarations).[110]

[105] Bankr. Dkt. No. 3672.

[106] Bankr. Dkt. No. 3699.

[107] Bankr. Dkt. No. 3760.

[108] *See supra* note 5.

[109] Supplement ¶ 1.

[110] Bankr. Dkt. Nos. 3815 and 3816. Both of these filings had the Initial Proposed Complaint attached as Exhibit 1 to the Motion for Leave.

As earlier noted, HMIT desires leave to sue the Proposed Defendants regarding ***the post-confirmation, pre-Effective Date purchase of allowed unsecured claims***. The Proposed Defendants would be:

> **Seery,** who was a stranger to Highland until approximately four months following the Petition Date when he was brought in as one of the three Independent Directors, and now serves as the CEO of the Reorganized Debtor and the Trustee of the Claimant Trust (and also was previously Highland's CRO during the case, then CEO, and, also, an Independent Board Member of Highland's general partner during the Highland case). Seery is best understood as the man who took Dondero's place running Highland—per the request of the Committee.
>
> **Claims Purchasers,** who were strangers to Highland until the end of the bankruptcy case. They are identified as Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the "Claims Purchasers"). The Claims Purchasers purchased $240 million face value of already-allowed unsecured claims post-confirmation and pre-Effective Date in the spring of 2021 and another $125 million face value of already-allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk's docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Committee during the Highland bankruptcy case).
>
> **John Doe Defendants Nos. 1-10**, which are described to be "currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue."
>
> **Highland,** as a nominal defendant. HMIT added Highland as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.
>
> **Claimant Trust**, as a nominal defendant. HMIT added the Claimant Trust as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

The proposed plaintiffs would be:

> **HMIT,** which, again, was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited partnership interests). HMIT is the holder of a Class 10 interest under the Plan, pursuant to which HMIT's limited partnership interest in Highland was extinguished as of the Effective Date in exchange for a pro rata share of a contingent interest in the Claimant Trust.

Highland, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

Claimant Trust, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Claimant Trust.

In the Proposed Complaint, HMIT asserts the following six counts: Count I (against Seery) for breach of fiduciary duties; Count II (against the Claims Purchasers and John Doe Defendants) for knowing participation in breach of fiduciary duties; Count III (against all Proposed Defendants) for conspiracy; Count IV (against Muck and Jessup) for equitable disallowance of their claims; Count V (against all Proposed Defendants) for unjust enrichment and constructive trust; and Count VI (against all Proposed Defendants) for declaratory relief.[111] The gist of the Proposed Complaint is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that "wrongful conduct occurred" and "improper trades" were made.[112] HMIT believes the Claims Purchasers paid around $160 million for the $365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland's Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. And, of course, Dondero purports to have concluded from the three phone conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Seery must have given these Claims Purchasers MNPI regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Seery must have shared

[111] In the Initial Proposed Complaint, HMIT proposed to bring claims against the various Proposed Defendants in seven counts, including a count for fraud by misrepresentation and material nondisclosure against all Proposed Defendants. In the Proposed Complaint, HMIT abandons its claim for fraud by misrepresentation and material nondisclosure.

[112] Motion for Leave, 7.

MNPI regarding the likely imminent sale of MGM, in which Highland had, directly and indirectly, substantial holdings. As noted earlier, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[113] In summary, while the Proposed Complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor's estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Seery, and are now happily approving Seery's allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages in the form of equitable disallowance of the Claims Purchasers' claims and disgorgement of distributions on account of those claims, the imposition of a constructive trust over all disgorged funds, and declaratory relief.

HMIT claims that, in seeking to file the Proposed Complaint, it is seeking to protect the rights and interests of the Reorganized Debtor, the Claimant Trust, and "innocent stakeholders" who were allegedly injured by Seery's and the Claims Purchasers' alleged conspiratorial and

[113] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid. Credible testimony from Seery at the June 8 Hearing revealed that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public).

fraudulent scheme to line Seery's pockets with excessive compensation for his role as Claimant Trustee. In its Motion for Leave, HMIT states that "[t]he attached Adversary Proceeding alleges claims which are substantially more than 'colorable' based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud, including a fraud upon innocent stakeholders, as well as breaches of fiduciary duties and knowing participation in (or aiding or abetting) breaches of fiduciary duty."[114]

F. Is HMIT Really Dondero by Another Name?

The Proposed Defendants argue that HMIT's Motion for Leave is nothing more than a continuation of the harassing and bad-faith litigation by Dondero and his related entities that the Gatekeeper Provisions were intended to prevent and, thus, this is one of multiple reasons that the Motion for Leave should be denied.

To be clear, HMIT asserts that it is controlled by Mark Patrick ("Patrick"), who has been HMIT's administrator since August 2022. Patrick asserts that he is not influenced or controlled by Dondero, in general, and specifically not in its efforts to pursue the Proposed Claims against Seery and the Claims Purchasers. However, the testimony elicited at the June 8 Hearing—the hearing at which HMIT had the burden of showing the court that its Proposed Claims were "colorable" such that it should be allowed to pursue them through the filing of the Proposed Complaint—paints a different picture. Somewhat tellingly, HMIT chose not to call Patrick—allegedly HMIT's only representative and control person—as a witness in support of its Motion for Leave. Rather, Dondero was HMIT's first witness called in support of its motion, and the first

[114] *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 3. HMIT notes, in a footnote 6, that "Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement."

questions on direct from HMIT's counsel were aimed at establishing that Dondero was not behind the filing of the Motion for Leave and the pursuit of the Proposed Claims.[115] Dondero testified that he did not (i) "have any current official position" with HMIT, (ii) "attempt to exercise [control] on the business affairs of [HMIT]," (iii) "have any official legal relationship with [HMIT] where [he] can attempt to exercise either direct or indirect control over [HMIT]," or (iv) "participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan."[116] After HMIT rested, Highland and the Claimant Trust called Patrick as a witness, and he testified that he was the administrator of HMIT, that HMIT does not have any employees, operations, or revenues, and, when asked if HMIT owned any assets, Patrick testified, with not a great deal of certainty, that "it's my understanding it has a contingent beneficiary interest in the Claimants [sic] Trust" and that is the only asset HMIT has.[117] Patrick testified that HMIT did not owe any money to Dondero personally, but acknowledged that in 2015, HMIT had issued a secured promissory note in favor of Dondero's family trust, Dugaboy, in the amount of approximately $62.6 million (the "Dugaboy Note") in exchange for Dugaboy transferring a portion of its limited partner interests in Highland to HMIT; the Dugaboy Note was secured in part by the Highland limited partnership interests purchased from Dugaboy.[118] Patrick admitted that, if HMIT's Class 10 interest has no value, HMIT would have no ability to pay the Dugaboy Note.[119] He further testified that neither he nor any representative of HMIT had ever spoken with any representative of Farallon or Stonehill, that he had no personal knowledge about any *quid pro quo*, the amount of due diligence Farallon or Stonehill conducted prior to buying their claims, or the terms of

[115] *See* June 8 Hearing Transcript, 113:10-25.

[116] *Id.*

[117] June 8 Hearing Transcript, 307:7-308:2.

[118] *Id.*, 303:11-305:1; Highland Ex. 51, HMIT's $62,657,647.27 *Secured Promissory Note* dated December 24, 2015, in favor of Dugaboy.

[119] *Id.*, 308:3-16.

Seery's compensation package (until the terms were disclosed to them in opposition to the Motion for Leave).[120] Patrick admitted that Dugaboy was paying HMIT's attorneys' fees pursuant to a settlement agreement between HMIT and Dugaboy.[121]

On cross-examination by HMIT's counsel, Patrick further testified that HMIT has not filed any litigation, as plaintiff, other than its efforts to be a plaintiff in the Motion for Leave and its action as a petitioner in the Texas Rule 202 proceeding filed earlier in 2023 in the Texas state court.[122] HMIT's counsel argued that the point of this questioning was that "they're just trying to draw Dondero into this and – this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed – attempting to file this action and a Rule 202 proceeding.[123] But, Dondero and HMIT's counsel referred during the June 8 Hearing to the First Rule 202 Petition (where Dondero was the petitioner) and the Second Rule 202 Petition (where HMIT was the petitioner) as "our" Rule 202 petitions, and also to the numerous attempts at getting the discovery (that Dondero had warned Linn was coming) in the collective. For example, in objecting to the admission of Highland's Exhibit 10 – the Texas state court order denying and dismissing the Second Rule 202 Petition – on the basis of relevance, HMIT's counsel referred to the order as "an order denying ***our second"*** Rule 202 Petition.[124] And, Dondero testified that his warning to Linn in May 2021 that "discovery was coming" was "my response to I knew they had traded on material nonpublic information" and that "I thought it would be a lot easier to get

[120] *Id.*, 308:18-312:12. This testimony from Patrick came after HMIT's counsel objection to counsel's line of questioning regarding Patrick's personal knowledge of the facts supporting the allegations in the Proposed Complaint on the basis that he was invading the attorney work product privilege, which was overruled by this court; HMIT's counsel argued (311:4-19) that the line of questioning was an "invasion of attorney work product . . . [b]ecause they might – he would have knowledge from the efforts and investigation through attorneys in the case."

[121] *Id.*, 312:24-313:18.

[122] *Id.*, 315:3-9.

[123] *Id.*, 316:6-11.

[124] *Id.*, 58:11-13. The court overruled HMIT's relevance objection and admitted Highland's Exhibit 10 into evidence. *Id.*, 58:14-15.

discovery on a situation like this than it has been for the last two years" and that "***we've*** been trying for two years to get . . . discovery."[125]

Dondero's use of an entity over which he exerts influence and control to pursue his own agenda in the bankruptcy case is not new. Rather, this has been part of Dondero's *modus operandi* since the "nasty breakup" between Dondero and Highland that culminated with Dondero's ouster in October 2020, whereby Dondero, after not getting his way in the bankruptcy court, continued to lob objections and create obstacles to Highland's implementation of the Plan through entities he owns or controls. As noted above, the Fifth Circuit specifically upheld this court's finding in the Confirmation Order that Dondero owned or controlled the various entities that had objected to confirmation of the Plan and appealed the Confirmation Order, where the Dondero-related appellants made similar protestations that they are not owned or controlled by Dondero and asked the Fifth Circuit to vacate this court's factual finding because, among other reasons, "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him."[126] Based on the totality of the evidence in this proceeding, the court finds that, contrary to the protestations of HMIT's counsel and Patrick otherwise, Dondero is the driving force behind HMIT's Motion for Leave and the Proposed Complaint. The Motion for Leave is just one more attempt by Dondero to press his conspiracy theory that he has pressed for over two years now, unsuccessfully, in Texas state court through Rule 202 proceedings, with the Texas State Securities Board, and with the United States Trustee's office.

[125] *Id.*, 191:5-25.

[126] *Highland Capital*, 48 F.4th at 434-435.

G. Opposition to Motion for Leave: Arguing No Standing and No "Colorable" Claims

Highland, the Claimant Trust, and Seery (together, the "Highland Parties") filed a joint opposition ("Joint Opposition") to HMIT's Motion for Leave on May 11, 2023.[127] The Claims Purchasers filed a separate objection ("Claims Purchasers' Objection") to the Motion for Leave on May 11, 2023, as well.[128] In the Joint Opposition, the Highland Parties urge the court to deny HMIT leave to pursue the Proposed Claims because, as a threshold matter, HMIT does not have standing to bring them, directly or derivatively against the Proposed Defendants. They argue, in the alternative, that the Motion for Leave should be denied even if HMIT had standing to pursue the Proposed Claims because none of the Proposed Claims are "colorable" claims as that term is used in the Gatekeeper Provision of the Plan (and Gatekeeper Orders).[129]

The Claims Purchasers likewise argue that HMIT lacks standing to complain about claims trading in the bankruptcy which occurred between sophisticated Claims Purchasers and sophisticated sellers ("Claims Sellers"), represented by skilled bankruptcy and transactional counsel. Moreover, they argue HMIT cannot show that it or the Reorganized Debtor or the Claimant Trust were injured by the claims trading at issue because the Purchased Claims had already been adjudicated as allowed claims in the bankruptcy case—thus, distributions under the Plan on account of the Purchased Claims remain the same, the only difference being who holds the claims. Moreover, even if HMIT could succeed in equitably subordinating the validly transferred ***allowed*** claims, HMIT would still be in the same position it is today: the holder of a

[127] Bankr. Dkt. Nos. 3783. Highland, the Claimant Trust, and Seery also filed on May 11 a *Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding* ("Morris Declaration") that attached 44 Exhibits in support of the Joint Opposition. Bankr. Dkt. No. 3784.

[128] Bankr. Dkt. No. 3780.

[129] *See* Joint Opposition ¶ 139 ("Because HMIT lacks standing, this Court need not reach the merits of HMIT's proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion.").

contingent, speculative Class 10 interest that would only be paid after payment, in full, with interest, of all creditors under the Plan. The Claims Purchasers argue in the alternative that the Proposed Claims are not "colorable."

Finally, the Proposed Defendants argue that the standard of review for assessing whether the Proposed Claims are "colorable" (as such term is used in the Gatekeeper Provision and Gatekeeping Orders) is a standard that is a higher than the "plausibility" standard applied to Rule 12(b)(6). They argue that HMIT should be required to meet a higher bar with respect to colorability that includes making a *prima facie* showing that the Proposed Claims have merit (and/or are not without foundation) which requires HMIT to do more than meet the liberal notice-pleading standards.

H. HMIT's Reply to the Proposed Defendants' Opposition to the Motion for Leave

In its reply brief ("Reply"), filed by HMIT on May 18, 2023,[130] it argues that it has constitutional standing as an "aggrieved party" to bring the Proposed Claims on behalf of itself.[131] HMIT also argues that it has standing under Delaware Trust law to bring a derivative action on behalf of the Claimant Trust and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to bring the claims.[132] Finally, HMIT maintains that the standard of review that the bankruptcy court should apply in assessing the "colorability" of the Proposed Claims is no greater than the standard of review applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), which would require the bankruptcy court to look only to the "four corners" of the Proposed Complaint

[130] Bankr. Dkt. No. 3785.

[131] *See* Reply ¶ 7.

[132] See, Reply ¶ 23 n.5, where HMIT argues "The nature of this injury, in addition to Seery's influence over the Claimant Trust, and the lack of prior action by the Claimant Trust to pursue the claims HMIT seeks to pursue derivatively, among other things, demonstrate that HMIT is not only a proper party to assert its derivative claims – but the best party to do so."

and "not weigh extraneous evidence,"[133] take all allegations as true, and view all allegations and inferences in a light most favorable to HMIT. As discussed in greater length below, HMIT argues that, under this standard, the bankruptcy court should not consider evidence in making its determination as to whether the Proposed Complaint presents "colorable" claims.

I. Litigation within the Litigation: The Pre- June 8 Hearing Skirmishes

Suffice it to say there was significant activity before the Motion for Leave actually was presented at the June 8 hearing. HMIT sought an emergency hearing on its Motion for Leave (wanting a hearing on three days' notice). When the bankruptcy court denied an emergency hearing, HMIT unsuccessfully pursued an interlocutory appeal of the denial of an emergency hearing to the district court. HMIT then petitioned for a writ of mandamus at the Fifth Circuit regarding the emergency hearing denial, which was denied by the Fifth Circuit on April 12, 2023.

Next, there were multiple pleadings and hearings regarding ***what kind of hearing*** the bankruptcy court should or should not hold on the Motion for Leave—particularly focusing on whether or not it would be an evidentiary hearing.[134] The resolution of this issue turned on what standard of review the court should apply in exercising its gatekeeping function and determining the colorability of the Proposed Claims. HMIT (although it had submitted two declarations of Dondero with its original Motion for Leave and approximately 350 pages of total evidentiary support) was adamant that there should be no evidence presented at the hearing on the Motion for Leave, arguing that the standard for review should be the plausibility standard under Rule 12(b)(6)

[133] *See* Reply ¶ 47.

[134] Highland, joined by Seery and the Claims Purchasers, had filed a motion asking the bankruptcy court to set a briefing schedule on the Motion for Leave and to schedule a status conference, indicating that Highland's proposed timetable for same was opposed by HMIT. HMIT subsequently filed a response unopposed to a briefing schedule and status conference, but, before the status conference, HMIT filed a brief, stating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the bankruptcy court did not need evidence to exercise its gatekeeping function and determine if HMIT has a "colorable" claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

motions to dismiss such that "the threshold inquiry is very, very low. Evidence is not allowed. . . . [S]imilar to a 12(b)(6) inquiry, [the court] is limited to the four corners of the principal pleading – in this case, the complaint, or now the revised complaint."[135] Counsel for the Proposed Defendants argued that the standard of review for colorability here, in the specific context of the court exercising its gatekeeping function under the Plan, is more akin to the standards applied under the Supreme Court's *Barton Doctrine*[136] pursuant to which that the bankruptcy court must apply a higher standard than the 12(b)(6) standard, including the consideration of evidence at the hearing on the motion for leave; if the standard of review presents no greater hurdle to the movant than the 12(b)(6) standard applied to every plaintiff in every case, then the gatekeeping provisions mean nothing and do nothing to protect the parties from the harassing, bad-faith litigation they were put in place to prevent.[137] On May 22, 2023, after receipt of post-hearing briefing on the issue, the court entered an order stating that "the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave" and "[t]herefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing [on the Motion to Leave] if they so choose."

Two days later, HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing, seeking expedited depositions of corporate

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[135] Transcript of April 24, 2023 Status Conference, Bankr. Dkt. No. 3765 ("April 24 Transcript"), 14:6-11.

[136] The *Barton Doctrine* was established in the 19th century Supreme Court case of *Barton v. Barbour*, 104 U.S. 126 (1881), and states that a party wishing to sue a court-appointed trustee or receiver must first obtain leave of the appointing court by making a *prima facie* case that the claim it wishes to bring is not without foundation.

[137] *See* April 24 Transcript, 36:24-37:4 ("[W]e're exactly today where the Court had predicted in entering [the Confirmation Order], that the costs and distraction of this litigation are substantial. And if all we're doing is replicating a 12(b)(6) hearing on a motion for leave, we're actually not doing anything to reduce, as the Court made clear, the burdens, distractions, of litigation."); 37:5-13 ("The Fifth Circuit likewise cited *Barton* in its order affirming the confirmation order. Specifically, it also explained that the provisions, these gatekeeper provisions requiring advance approval were meant to 'screen and prevent bad-faith litigation.' Well that – if that means only what the Plaintiff[ ] say[s] it does, then it really doesn't do anything at all to screen. There's no gatekeeping because their version of what that means is always policed under 12(b)(6) standards.").

representatives of the Claims Purchasers and of Seery and production of documents pursuant to deposition notices and subpoenas duces tecum that HMIT had attached to the motion. On May 26, 2023, this court held yet another status conference. Following the status conference, the court granted in part and denied in part HMIT's request for expedited discovery by ordering only Seery and Dondero to be made available for depositions prior to the June 8 Hearing. The court reached what seemed like appropriate middle ground by allowing the deposition of Seery and allowing the other parties to depose Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Dondero had been seeking discovery relating to the very claims trades that are the subject of the Revised Proposed Complaint from the Claims Purchasers in Texas state court "Rule 202" proceedings for approximately two years, where their attempts were rebuffed.

Approximately 60 hours before the June 8 Hearing, HMIT filed its Witness and Exhibit List disclosing for the first time two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony). Highland, the Claimant Trust, and Seery filed a joint motion to exclude the expert testimony and documents ("Motion to Exclude"), which the court ultimately granted in a separate order.

During the full-day June 8 Hearing on the Motion to Leave, the court admitted over 50 HMIT exhibits and over 30 Highland/Claimant Trust exhibits. The court heard testimony from HMIT's witnesses Dondero and Seery (as an adverse witness) and from the Highland Parties' witness Mark Patrick, the administrator of HMIT since August 2022 (as an adverse witness). The bankruptcy court allowed HMIT to make a running objection to all evidence—as it continued to argue that evidence was not appropriate.

III. LEGAL ANALYSIS

In determining whether HMIT should be granted leave, pursuant to the Gatekeeper Provision of the Plan and the court's prior Gatekeeper Orders, to pursue the Proposed Claims, the court must address the issue of whether HMIT would have ***standing*** to bring the Proposed Claims in the first instance. If so, the next question is whether the Proposed Claims are "***colorable***." But prior to getting into the weeds on ***standing*** and "***colorability,***" some general discussion regarding the topic of claims trading in the bankruptcy world seems appropriate, given that HMIT's Proposed Claims are based, in large part, on allegations of ***improper*** claims trading.

A. Claims Trading in the Context of Bankruptcy Cases—Can It Be Tortious or Otherwise Actionable?

As noted, at the crux of HMIT's desired lawsuit is what this court will refer to as "claims trading activity" that occurred shortly after the Plan was confirmed, but before the Plan went effective. HMIT believes that the claims trading activity gave rise to various torts: breach of fiduciary duty on the part of Seery; knowing participation in breach of fiduciary duty by the other Proposed Defendants; and conspiracy by all Defendants. HMIT also believes that the following remedies should be imposed: equitable disallowance of the Purchased Claims; disgorgement of the alleged profits the Claims Purchasers made on their purchases; and disgorgement of all Seery's compensation received since the beginning of his "collusion" with the other Defendants. Without a doubt, the Motion for Leave and Proposed Complaint revolve almost entirely around the claims trading activity.

This begs the question: ***When (or under what circumstances) might claims trading activity during a bankruptcy case give rise to a cause of action that either the bankruptcy estate or an economic stakeholder in the case might have standing to bring?*** Here, the claims trading

wasn't even "during a bankruptcy case" really—it was post-confirmation and pre-effective date, and it happened to be: (a) after mediation of the claims, (b) after Rule 9019 settlement motions, (c) after objections by Dondero and certain of his family trusts were lodged, (d) after evidentiary hearings, and (e) after orders were ultimately entered ***allowing*** the claims (and in most cases, such orders were appealed). The further crux of HMIT's desired lawsuit is that Seery allegedly "wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends" by sharing ***material non-public information*** to them regarding the potential value of the claims (i.e., the potential value of the bankruptcy estate), and this is what made the claims trading activity particularly pernicious. The alleged sharing of MNPI allegedly caused the Claims Purchasers to purchase their claims without doing any due diligence and with knowledge that the claims would be worth much more than the Plan's "pessimistic" projections might have suggested, and also allowed Seery to plant friendly allies into the creditor constituency (and on the post-confirmation CTOB) that would "rubber stamp" his generous compensation. This is all referred to as "not arm's-length" and "collusive." Notably, the MNPI mostly pertained to a likely future acquisition of MGM by Amazon (which transaction, indeed, occurred in 2022, after being publicly announced in Spring of 2021); as noted earlier, Highland owned, directly and indirectly, common stock in MGM. Also notably, there had been rumors and media attention regarding a potential sale of MGM for many months.[138] In summary, to be clear, HMIT's desired lawsuit is laced with a theme of "insider trading"—although this isn't a situation of securities trading *per se* (i.e., the unsecured Purchased Claims were not securities), and, as noted earlier, the Texas State Securities Board has not seen fit to investigate the claims trading activity.

So, preliminarily, is claims trading in bankruptcy sinister *per se*? The answer is no.

[138] *E.g.,* Benjamin Mullin, *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale,* THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.).

The activity of investing in distressed debt (which frequently occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and, indeed, has been so for a very long time. As noted by one scholar:

> The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

Adam J. Levitin, *Bankruptcy* Markets*: Making Sense of Claims Trading*, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010) (hereinafter "*Bankruptcy Markets*").[139]

As a pure policy matter, some practitioners have bemoaned this claims trading phenomenon, suggesting that "distressed debt traders may sacrifice the long-term viability of a debtor for the ability to realize substantial and quick returns on their investments."[140] Others suggest that claims trading in bankruptcy is beneficial, in that it allows creditors of a debtor an early exit from a potentially long bankruptcy case, enabling them to save expense and administrative hassles, realize immediate liquidity on their claims (albeit discounted), and may

[139] *See also* Aaron Hammer & Michael Brandess, *Claims Trading: The Wild West of Chapter 11s*, AM. BANKR. INST. JOURNAL 62 (Jul./Aug. 2010); Chaim Fortgang & Thomas Mayer, *Trading Claims and Taking Control of Corporations in Chapter 11,* 12 CARDOZO L. REV. 1, 25 (1990) (noting that "the first recorded instance of American fiduciaries trading claims against insolvent debtors predates all federal bankruptcy laws and goes back to 1790" when the original 13 colonies were insolvent, owing tremendous amounts of debt to various parties in connection with the Revolutionary War; early American investors purchased these debts for approximately 25% of their par value, hoping the claims would be paid at face value by the American government).

[140] Harvey R. Miller, *Chapter 11 Reorganization Cases and the Delaware Myth*, 55 VAND. L. REV. 1987, 2016 (2002). *See also* Harvey R. Miller & Shai Y. Waisman, *Does Chapter 11 Reorganization Remain a Viable Option for Distressed Businesses for the Twenty-First Century?*, 78 AM. BANKR. L.J. 153 (2004); Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129 (2005).

even permit them to take advantage of a tax loss on their own desired timetable.[141] On the flipside, "[c]aims trading permits an entrance to the bankruptcy process for those investors who want to take the time and effort to monitor the debtor and contribute expertise to the reorganization process."[142]

So, what are the "rules of the road" here? What does the Bankruptcy Code dictate regarding claims trading? The answer is nothing. The Bankruptcy Code itself has no provisions whatsoever regarding claims trading. The only thing resembling any regulation of claims trading during a bankruptcy case is found at Federal Rule of Bankruptcy Procedure 3001(e)—the current version of which went into effect in 1991—and it imposes extremely light regulation—if it could even be called that. This rule requires, in pertinent part (at subsection (2)), that "[i]f a claim other than one based on a publicly traded note, bond, or debenture" is traded during the case after a proof of claim is filed, notice/evidence of that trade must be filed with the bankruptcy clerk by the transferee. The transferor shall then be notified and given 21 days to object. If there is an objection, the bankruptcy court will hold a hearing regarding whether a transfer, in fact, took place. If there is no objection, nothing further needs to happen, and the transferee will be considered substituted for the transferor.

There are several things noteworthy about Rule 3001(e)(2). First, the only party given the opportunity to object is the ***transferor*** of the claim (presumably, in the situation of a dispute regarding whether there was truly an agreement regarding the transfer of the claim). Second, there is no need for a bankruptcy court order approving the transfer (except in the event of an objection

[141]*See Bankruptcy Markets*, at 70. *See also In re Kreisler,* 546 F.3d 863, 864 (7th Cir. 2008) ("Claims trading allows creditors to opt out of the bankruptcy system, trading an uncertain future payment for an immediate one, so long as they can find a purchaser.").

[142] *Bankruptcy Markets* at 70 (citing, among other authorities, Edith S. Hotchkiss & Robert M. Mooradian, *Vulture Investors and the Market for Control of Distressed Firms*, 43 J. FIN. ECON. 401, 401 (1997) (finding that "vulture investors add value by disciplining managers of distressed firms").

by the alleged transferor). Third, the ***economic consideration paid need not be disclosed to the court or anyone***. Fourth, there is no requirement or definition of timeliness. Finally, it explicitly does not apply with regard to publicly traded debt. This, alone, means that many claims trades are not even reported in a bankruptcy case. But it is not just publicly traded debt that will not be reflected with a Rule 3001(e) filing. For example, bank debt, in modern times, is often syndicated (i.e., fragmented into many beneficial holders of portions of the debt) and only the administrative agent for the syndicate (or the "lead bank") will file a proof of claim in the bankruptcy—thus, as the syndicated interests (participations) change hands, and they frequently do, there typically will not be a Rule 3001(e) notice filed.[143] To be clear here, this syndication-of-bank-debt fact, along with the fact that there are financial products whereby bank debt might be carved up into economic interests separate and apart from legal title to the loan, means there are many situations in which trading of claims during a bankruptcy case is not necessarily transparent or, for that matter, policed by the bankruptcy court. This is the world of modern bankruptcy. Most of the claims trading that gets reported through a Rule 3001(e) notice is the trading of small vendor claims. And this is all regarded as private sale transactions for the most part.[144]

Suffice it to say that there is not a wealth of case law dealing with claims trading in a bankruptcy context. Perhaps this is not surprising, since it is not prohibited and ***is mostly a matter of private contract between buyer and seller***. The case law that does exist seems to arise in situations of perceived bad faith of a purchaser—for example, when there was an attempt to control voting and/or ultimate control of the debtor through the plan process (not always problematic, but

[143] Anne Marrs Huber & Thomas H. Young, *The Trading of Bank Debt in and Out of Chapter 11*, 15 J. BANKR. L. & PRAC. 1, 1, 3 (2006).

[144] Note that Bankruptcy Rule 3001(e) was very different before 1991. Between 1983-1991, the rule required that parties transferring claims inform the court that a transfer of claims was taking place and also disclose the consideration paid for the transferred claims. A hearing would take place prior to the execution of a trade. Judicial involvement was required and resulted in judicial scrutiny of transactions—something that simply does not exist today.

there are outlier cases where this was found to cross a line and result in consequences such as disallowing votes on a plan or even equitable subordination of a claim).[145] Another type of case that has generated case law is where the purchaser of claims occupied a fiduciary status with the debtor.[146] Still another type of case that has generated case law is where there is an attempt to cleanse claims that might have risks because of a seller's malfeasance, by trading the claim to a new claim holder.[147]

The following is a potpourri of the more notable cases that have addressed claims trading in different contexts. Most of them imposed no adverse consequences on claims traders: *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (where a corporation named Garlin, that was owned by the individual chapter 7 debtors' sister and close friend, purchased a $900,000 bank claim for $16,500, and there was no disclosure of Garlin's connections to debtors and no Rule 3001(e)(2) notice was filed, the Seventh Circuit reversed the bankruptcy court's invocation of the doctrine of equitable subordination to the claim, stating: "Equitable subordination is generally appropriate only if a creditor is guilty of misconduct that causes injury to the interests of other creditors;" the Seventh Circuit further stated that it could "put to one side whether the court's finding of inequitable conduct was correct" because even if there was misconduct, it did not harm the other creditors, who were in the same position whether the original creditor or Garlin happened to own the claim; the Seventh Circuit did note that Garlin's decision to purchase the original bank

[145] *In re Applegate Prop. Ltd.,* 133 B.R. 827, 836 (Bankr. W.D. Tex. 1991) (designating votes of an affiliate of the debtor that purchased a blocking position to thwart a creditor's plan because it was done in bad faith); *In re Allegheny Int'l, Inc.,* 118 B.R. 282, 289–90 (Bankr. W.D. Pa. 1990) (because of bad faith activities, the court designated votes of a claims purchaser who purchased to get a blocking position on a plan). *But see In re First Humanics Corp.,* 124 B.R. 87, 92 (Bankr. W.D. Mo. 1991) (claims purchased by debtor's former management company to gain standing to file a plan to protect interest of the debtor was in good faith).

[146] *See In re Exec. Office Ctrs., Inc.*, 96 B.R. 642, 649-650 (Bankr. E.D. La. 1988) (and numerous old cites therein).

[147] *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 340 B.R. 180 (Bankr. S.D.N.Y. 2006), *vacated, Enron Corp. v. Springfield Assocs., L.L.C. (In re Enron Corp.),* 379 B.R. 425 (S.D.N.Y 2007); *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 333 B.R. 205, 211 (Bankr. S.D.N.Y. 2005).

creditor's claim might have disadvantaged the other creditors if it interfered with the trustee's own potential settlement with the original bank creditor (note that the trustee argued that she had been negotiating a deal with bank under which bank might have reduced its claims); however, the trustee presented no evidence that any deal with the bank was imminent or even likely; thus, whether such a deal could have been reached was speculation; equitable subordination was therefore improper."); *Viking Assocs., L.L.C. v. Drewes (In re Olson),* 120 F.3d 98, 102 (8th Cir. 1997) (case involved the actions of an entity known as Viking in purchasing all of the unsecured claims against the bankruptcy estate of two chapter 7 debtors, Hugo and Jeraldine Olson; Viking was a related entity, owned by the debtors' children, and purchased $525,000 of unsecured claims for $67,000; while the bankruptcy court had discounted the claims down to the purchase amount and subordinated Viking's discounted claims to the claims of the other unsecured creditors, relying on section 105 of the Bankruptcy Code, the Eighth Circuit held that the bankruptcy court lacked the authority to do this, and, thus, reversed and remanded; the Eighth Circuit noted that in 1991, Bankruptcy Rule 3001(e)(2) was amended "to restrict the bankruptcy court's power to inspect the terms of" claims transfers. *Id.* at 101 (citing *In re SPM Mfg. Corp.,* 984 F.2d 1305, 1314 n. 9 (1st Cir. 1993)); the text of the rule makes clear that the existence of a "dispute" depends upon an objection by the ***transferor***; where there is no objection by the ***transferor***, there is no longer any role for the court); *Citicorp. Venture Capital, Ltd. v. Official Committee of Unsecured Creditors (In re Papercraft Corp.),* 160 F.3d 982 (3d Cir. 1998) (large investor who held seat on board of directors of debtor and debtor's parent, and who also had nonpublic information regarding the debtor's value, anonymously purchased 40% of the unsecured claims at a steep discount during the chapter 11 case, and then, having obtained a blocking position for plan voting purposes, proposed a plan to acquire debtor; the claims purchaser's claims were equitably reduced to amount

paid for the claims since investor was a fiduciary who was deemed to have engaged in inequitable conduct); *Figter Ltd. v. Teachers Ins. & Annuity Ass'n of Am. (In re Figter),* 118 F.3d 635 (9th Cir. 1997) (Ninth Circuit affirmed bankruptcy court's ruling that a secured creditor's purchase of 21 out of 34 unsecured claims in the case was in good faith and it would not be prohibited from voting such claims on the debtor's plan, pursuant to Bankruptcy Code section 1126(e)); *In re Lorraine Castle Apartments Bldg. Corp.,* 145 F.2d 55, 57 & 58 (7th Cir. 1945) (in a case under the old Bankruptcy Act, in which there were more restrictions on claims trading, a debtor and two of its stockholders argued that the claims of purchasers of bonds should be limited to the amounts they paid for them; bankruptcy court special master found, "that, though he did not approve generally the ethics reflected by speculation in such bonds," there was no cause for limitation of the amounts of their claims, pointing out that the persons who had dealt in the bonds were not officials, directors, or stockholders of the corporation and owed no fiduciary duty to the estate or its beneficiaries—rather they were investors or speculators who thought the bonds were selling too cheaply and that they might make a legitimate profit upon them; the district court agreed, as did the Seventh Circuit, noting that "[t]o reduce the participation to the amount paid for securities, in the absence of exceptional circumstances which are not present here, would reduce the value of such bonds to those who have them and want to sell them. This would result in unearned, undeserved profit for the debtor, destroy or impair the sales value of securities by abolishing the profit motive, which inspires purchasers."); *In re Washington Mutual, Inc.*, 461 B.R. 200 (Bankr. Del. 2011), *vacated in part*, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (discussion of an equity committee's potential standing to pursue equitable subordination or equitable disallowance of the claims of certain noteholders who had allegedly traded their claims during the chapter 11

case while having material non-public information; while bankruptcy court originally indicating these were viable tools, court later vacated its ruling on this after a settlement was reached).

Suffice it to say that the courts have, more often than not, been unwilling to impose legal consequences, for an actor's involvement with claims trading. At most, in outlier-type situations during a case, courts have taken steps to disallow claims for voting purposes or to subordinate claims to other unsecured creditors for distribution purposes.[148] But the case at bar does not present facts that are typical of any of the situations in reported cases.

For one thing, unlike in the reported cases this court has located, there ***seems to have been complete symmetry of sophistication among the claim sellers and claim purchasers here—and complete symmetry with HMIT for that matter***. All persons involved are highly sophisticated financial institutions, hedge funds, or private equity funds. No one was a "mom-and-pop" type business or vendor that might be vulnerable to chicanery. The claims ranged from being worth $10's of millions of dollars to $100's of millions of dollars in face value. And, of course, the sellers/transferors of the claims have never shown up, subsequent to the claims trading

[148] Note that, while some cases suggest that outright disallowance of an unsecured claim, in the case of "inequitable conduct" might be permitted (not merely equitable subordination to unsecured creditors)—usually citing to *Pepper v. Litton*, 308 U.S. 295 (1939)—the Fifth Circuit has suggested otherwise. *In re Mobile Steel Co., Inc.,* 563 F.2d 692, 699-700 (5th Cir. 1977) (cleaned up) (noting that "equitable considerations can justify only the subordination of claims, not their disallowance" and also noting that "three conditions must be satisfied before exercise of the power of equitable subordination is appropriate[:] (i) The claimant must have engaged in some type of inequitable conduct[;] (ii) The misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant[; and] (iii) Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act." In *Mobile Steel*, the Fifth Circuit held that the bankruptcy judge exceeded the bounds of his equitable jurisdiction by disallowing a group of claims and also reversed the subordination of certain claims, on the grounds that the bankruptcy court had made clearly erroneous findings regarding alleged inequitable conduct and other necessary facts. *Contrast In re Lothian Oil Inc.,* 650 F.3d 539 (5th Cir. 2011) (involving the question of whether a bankruptcy court may ***recharacterize*** a claim as equity rather than debt; the court held yes, but it has nothing to do with inequitable conduct *per se*; rather section 502(b)'s language that a claim should be allowed unless it is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law...." is the relevant authority; unlike equitable subordination, recharacterization is about looking at the true substance of a transaction not the conduct of a party (if it looks like a duck and quacks like a duck, it's a duck—i.e., equity); the court indicated that section 105 is not a basis to recharacterize debt as equity; it's a matter of looking at state law to determine if there is any basis and looking at the nature of the underlying transaction—as either a lending arrangement or equity infusion.

transactions, to complain about anything. Everyone involved here is, essentially, a behemoth and there is literally no sign of innocent creditors getting harmed. Second, the case at bar is unique in that the claims traded here ***had all been allowed after objections, mediation, and Rule 9019 settlements during the bankruptcy case***. Thus, the amounts that would be paid on them were "locked in," so to speak. There was no risk to a hypothetical claims-purchaser of disallowance, offset, or any "claw-back" litigation (or—one might have reasonably assumed—any type of litigation). Third, the terms for distributions on unsecured claims had been established in a confirmed plan (although the claims were purchased before the effective date of the Plan). Thus, there was a degree of certainty regarding return on investment for the Claims Purchasers here that was much higher than if the claims had been purchased early, during, or mid-way through the case.[149] ***This was post-confirmation, pre-effective date claims purchasing.*** Interestingly, all three of these facts might suggest that little due diligence would be undertaken by any hypothetical purchaser. The rules of the road had been set. The court makes this observation because HMIT has suggested there is something highly suspicious about the fact that Farallon allegedly told Dondero that it did no due diligence before purchasing its claims (leading him to conclude that the Claims Purchasers must have purchased their claims based on receiving MNPI from Seery). Not only has there been no colorable evidence suggesting that insider information was shared, but the lack of due diligence in this context does not reasonably seem suspicious. The claims purchases

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[149] *See discussion* in BANKRUPTCY MARKETS, at 91:

> Some claims purchasers buy before the bankruptcy petition is filed, some at the beginning of the case, and some towards the end. For example, there are investors who look to purchase at low prices either when a business is failing or early in the bankruptcy and ride through the case until payouts are fairly certain. [Citations omitted.] These investors might be hoping to buy at 30 cents on the dollar and get a payout at 70 cents on the dollar. Perhaps if they waited another six months, the payout would be 74 cents on the dollar, but the additional 4 cents on the dollar for six months might not be a worthwhile return for the time value of the investment. Other investors might not want to assume the risk that exists in the early days of a case when the fate of the debtor is much less certain, but they would gladly purchase at 70 cents on the dollar at the end of the case to get a payout of 74 cents on the dollar six months later.

were almost like passive investments, at this point—there was no risk of a claim objection and there was a confirmed plan, with a lengthy disclosure statement that described not only plan payment terms and projections, but essentially anything that any investor might want to know.

To reiterate, here, HMIT seeks leave to assert the following causes of action:

I. Breach of Fiduciary Duties (Seery)

II. Knowing Participation in Breach of Fiduciary Duties (Claims Purchasers)

III. Conspiracy (all Proposed Defendants)

IV. Equitable Disallowance (Claims Purchasers)

V. Unjust Enrichment and Constructive Trust (all Proposed Defendants)

VI. Declaratory Judgment (all Proposed Defendants)

The court struggles to fathom how any of these proposed causes of action or remedies can be applied in the context of: (a) post-confirmation claims trading; (b) where the claims have all been litigated and allowed.

In reflecting on the case law and various Bankruptcy Code provisions, the court can fathom the following hypotheticals in which claims trading during a bankruptcy case might be somehow actionable:

> **<u>Hypothetical #1</u>**: The most obvious situation would be if a purchaser of a claim files a Rule 3001(e) Notice, and the seller/transferor then files an objection thereto. There would then be a contested hearing between purchaser and seller regarding the validity of the transfer with the bankruptcy court issuing an appropriate order after the hearing on the objection. ***As noted, there was no objection to the Rule 3001(e) notices here***.

> **<u>Hypothetical #2:</u>** Alternatively, there could be a breach of contract suit between purchaser and seller if one thinks the other breached the purchase-sale agreement somehow. Perhaps torts might also be alleged in such litigation. ***As noted, there is no dispute between purchasers and sellers here.***

> **<u>Hypothetical #3:</u>** If there is believed to be fraud in connection with a plan, a party in interest might, pursuant to section 1144 of the Bankruptcy Code, move for

revocation of the plan "at any time before 180 days after the date of entry of the order for confirmation" and the court "may revoke such order if and only if such order was procured by fraud." ***As noted, here HMIT has suggested that the "pessimistic" plan projections may have been fraudulent or misrepresentations somehow. The time elapsed long ago to seek revocation of the Plan.***

Hypothetical #4: As discussed above, in rare situations (bad faith), during a Chapter 11 case, before a plan is confirmed, a claims purchaser's claim might not be allowed for voting purposes. *See* Sections 1126(e) of the Bankruptcy Code ("the court may designate any entity whose acceptance or rejection of such plan was not in good faith"). ***Obviously, in this case, this is not applicable—the claims were purchased post-confirmation.***

Hypothetical #5: As discussed above, in rare situations (inequitable conduct), a court might equitably subordinate ***claims*** to ***other claims***. *See* Section 510(c) of the Bankruptcy Code. But here**,** HMIT is seeking either: (a) equitable subordination of the ***claims*** of the Claims Purchaser to HMIT's ***Class 10 former equity interest*** (in contravention of the explicit terms of section 510(c)) or, (b) ***equitable disallowance*** of the claims of the Claims Purchasers (in contravention of *Mobile Steel*).

Hypothetical #6: Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case may permit "recharacterization" of a claim from debt to equity in certain circumstances, but not in circumstances like the ones in this case. Here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). The problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). Here there was most definitely "a contest" with regard to all of these purchased claims. ***Thus, it would appear that any effort to have a court reconsider these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.***

Hypothetical #7: If a party believes "insider trading" occurred there are governmental agencies that investigate and police that. ***Here, the purchased claims (which were not based on bonds or certificated equity interests) would not be securities so as to fall under the SEC's purview. Moreover, there was evidence that HMIT or Dondero-Related entities requested that the Texas State Securities Board investigate the claims trading and the board did not find a basis to pursue anyone for wrongdoing***.

Hypothetical #8: The United States Trustee can investigate wrongdoing by a debtor or unsecured creditors committee. While the United States Trustee would naturally have concerns about members of an unsecured creditors committee (or an officer of a debtor-in-possession) adhering to fiduciary duties and not putting their

> own interests above those of the estate, here, there are a couple of points that seem noteworthy. One, the claims trading activity was post-confirmation so—while certain of the claim-sellers may have still been on the unsecured creditors committee, as the effective date of the plan had not yet occurred—the circumstances are very different than if this had all happened during the early, contentious stages of the case. It seems inconceivable that there was somehow a disparity of information that might be troubling—the Plan had been confirmed and it was available for the world to see. The whole notion of "insider information" (just after confirmation here) feels a bit off-point. Bankruptcy practitioners and judges sometimes call bankruptcy a fishbowl or use the "open kimono" metaphor for good reason. It is generally a very open process. And information-sharing on the part of a debtor-in-possession or unsecured creditors committee is intended to be robust. *See, e.g.,* Bankruptcy Code sections 521 and 1102(b)(3). In a way, HMIT here seems to be complaining about this very situation that the Code and Rules have designed.

In summary, claims trading is a highly ***unregulated*** activity in the bankruptcy world. ***HMIT is attempting to pursue causes of action here that, to this court's knowledge, have never been allowed in a context like this***.

B. Back to Standing—Would HMIT Have Standing to Bring the Proposed Claims?

The Proposed Defendants argue that HMIT lacks standing to bring the Proposed Claims, either: (a) derivatively on behalf of the Reorganized Debtor and Claimant Trust, or (b) directly on behalf of itself. Thus, they argue that this is one reason that the Motion for Leave should be denied.

In making their specific standing arguments, the parties analyze things slightly differently:

The Claims Purchasers focus primarily on HMIT's lack of ***constitutional*** standing but also argue that HMIT does not have ***prudential*** standing under Delaware trust law to bring the Proposed Claims either individually or derivatively. Why do they mention Delaware trust law? Because the Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29.[150]

The Highland Parties' standing arguments focus almost entirely on HMIT's lack of ***prudential*** standing under Delaware trust law to bring the Proposed Claims.

HMIT argues that the Proposed Defendants "play fast and loose with standing arguments" and that HMIT has ***constitutional*** standing as a "party aggrieved"[151] to bring the Proposed Claims on behalf of itself. HMIT also argues that it has standing under Delaware trust law to bring a

[150] *See* Proposed Complaint, ¶ 26.

[151] Proposed Complaint, ¶7.

derivative action on behalf of the Claimant Trust, and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to do so.

1. <u>The Different Types of Standing: Constitutional Versus Prudential</u>

The parties are addressing two concepts of standing that can sometimes be confused and misapplied by both attorneys and judges: ***constitutional Article III standing***, which implicates federal court subject matter jurisdiction,[152] and the narrower standing concept of ***prudential standing***, which does not implicate subject matter jurisdiction but nevertheless might prevent a party from having capacity to sue, pursuant to limitations set by courts, statutes or other law.

Article III constitutional standing works as follows: a plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing three elements: (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[153] "If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve."[154] These elements ensure that a plaintiff has "'such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf."[155]

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[152] Article III, Section 2 of the U.S. Constitution gives federal courts jurisdiction over enumerated cases and controversies.

[153] *See Thole v. U.S. Bank, N.A.*, 140 S.Ct. 1615, 1618 (2020)(citing the Supreme Court's seminal case on the tripartite test for Article III constitutional standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), where the Supreme Court stated that "the irreducible constitutional minimum of standing contains [the] three elements"); *see also Spokeo*, 578 U.S. at 338; *Abraugh v. Altimus*, 26 F.4th 298, 302 (5th Cir. 2022) (citing *id.*).

[154] *Transunion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021)(cleaned up).

[155] *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Apart from this minimal constitutional mandate, courts and statutes have set other limits on the class of persons who may seek judicial remedies—and this is the concept of prudential standing. In its recent opinion in *Abraugh v. Altimus*,[156] the Fifth Circuit set forth a detailed analysis of the two types of "standing," noting that the term "standing" is often "misused" in our legal system, which has led to confusion for both attorneys and judges.[157] The constitutional standing that is necessary for a court to exercise subject matter jurisdiction is broader than prudential standing and is only the first hurdle a party must clear before pursuing a claim in federal court.

The Fifth Circuit explained that ***in addition to*** Article III constitutional standing, "courts have occasionally articulated other 'standing' requirements that plaintiffs must satisfy under certain conditions, ***beyond those imposed by Article III***,"[158] such as the "standing" requirement that might be imposed by a statute or by jurisprudence. The *Abraugh* case was a perfect example of the latter.

Abraugh involved the civil rights statutes that provide, among other things, that "a party must have standing under the state wrongful death or survival statutes to bring [a § 1983 cause of action]" and noted that these statutes impose additional "standing" requirements that are a matter of prudential standing, not constitutional standing.[159] In *Abraugh*, the Fifth Circuit reversed and remanded a district court's dismissal of a § 1983 civil rights cause of action—noting that the district court had stated that it was dismissing based on a "lack of subject matter jurisdiction" because the plaintiff in that action lacked standing.[160] The plaintiff was the mother of a prisoner

[156] 26 F.4th 298.
[157] *Id.* at 303.
[158] *Id.* at 302 (emphasis added).
[159] *Id.* at 302-303.
[160] *Id.* at 301.

who died by suicide while in custody who brought a § 1983 action against Louisiana correctional officers and officials. After finding that the plaintiff/mother lacked standing under Louisiana's wrongful death and survival statutes (because there had been a surviving child and wife of the prisoner who were the proper parties with capacity to sue), the district court held that it was dismissing for lack of subject matter jurisdiction. The Fifth Circuit pointed out that the plaintiff/mother may have lacked standing under Louisiana's wrongful death and survival statutes to bring the claim under § 1983, but that type of standing was matter of ***prudential*** standing, and the plaintiff/mother actually ***did*** have ***Article III*** constitutional standing ("a constitutionally cognizable interest in the life of her son").[161] Thus, the district court's error was ***not*** in finding that the plaintiff/mother lacked prudential standing but in improperly conflating the two standing concepts when it held that it had lacked ***subject matter jurisdiction*** to consider any of the plaintiff's/mother's amended complaints.[162] The Fifth Circuit noted specifically that[163]

> prudential standing does not present a jurisdictional question, but "a merits question: who, according to the governing substantive law, is entitled to enforce the right?" As the Federal Rules of Civil Procedure make clear, "an action must be prosecuted in the name of the real party in interest." FED. R. CIV. P. 17(a)(1). And a violation of this rule is a failure of "prudential" standing. "Not one of our precedents holds that the inquiry is jurisdictional." It goes only to the validity of the cause of action. And "the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction."

Somewhat relevant to this prudential standing discussion is the fact that, in this bankruptcy case, there have been dozens of appeals of bankruptcy court orders by Dondero and Dondero-related entities. In connection therewith, both the district court and the Fifth Circuit, in evaluating the ***appellate standing*** of the appellants, have taken pains to distinguish between the concepts of:

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[161] *Id.*

[162] *Id.* at 301, 303-304. The Fifth Circuit opined that "the district court did not err in describing [the mother's] inability to sue under Louisiana law as a defect of 'standing[, b]ut it is a defect of prudential standing, not Article III standing" thus technically not implicating the federal court's subject matter jurisdiction. *Id.* at 303.

[163] *Id.* at 304 (cleaned up).

(a) traditional, constitutional standing, and (b) a type of prudential standing known as the "person aggrieved" test, which is applied in the Fifth Circuit in determining whether a party has ***standing to appeal a bankruptcy court order***—which it describes as a narrower and "more exacting" standard than constitutional standing. As explained in a Fifth Circuit opinion addressing the standing of a Dondero-related entity called NexPoint to appeal bankruptcy court orders allowing professional fees, the "person aggrieved" standard that is typically applied to ascertain bankruptcy ***appellate*** standing originated in a statute in the Bankruptcy Act. The Fifth Circuit continued to apply it after Congress removed the provision when it enacted the Bankruptcy Code in 1978.[164] Because it is narrower and "more exacting" than the test for Article III constitutional standing, it involves application of prudential standing considerations.[165] The Fifth Circuit describes the "person aggrieved" test for bankruptcy appellant standing as requiring that an appellant show that it was "*directly and adversely affected pecuniarily* by the order of the bankruptcy court," requiring "a higher causal nexus between act and injury than traditional standing . . . that best deals with the unique posture of bankruptcy actions."[166] In affirming the district court's dismissal of NexPoint's appeal of the bankruptcy court's fee orders, due to NexPoint's lack of prudential standing under the "person aggrieved" test, the court rejected NexPoint's argument that it had standing to appeal

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[164] *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, No. 22-10575, 2023 WL 4621466, *2 (5th Cir. July 19, 2023)(citing *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004)(cleaned up)).

[165] *Id.* at *1, **4-6 (where the Fifth Circuit repeatedly throughout its opinion refers to the "person aggrieved" test for standing in bankruptcy actions as a test for "prudential standing."); *see also Dondero v. Highland Capital Mgt., L.P.*, Civ. Act. No. 3:20-cv-3390-X, 2002 WL 837208 (N.D. Tex. Mar. 18, 2022)(where the district court, in addressing Dondero's standing to appeal a bankruptcy court order approving a Rule 9019 settlement (between Highland and Acis Capital Management GP LLC), notes that "[i]t is substantially more difficult to have standing to appeal a bankruptcy court's order than it is to pursue a typical complaint under Article III of the U.S. Constitution" and that "the Fifth Circuit has long recognized that bankruptcy cases' wide-reaching scope calls for a more stringent standing test.").

[166] *See id.* at *3 (cleaned up). The court quotes its 2018 opinion in *Matter of Technicool Sys., Inc. (In re Technicool)*, 896 F.3d 382, 385 (5th Cir. 2018), which explains why the "person aggrieved" prudential standing standard is applied in bankruptcy actions: "Bankruptcy cases often involve numerous parties with conflicting and overlapping interests. Allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Given the specter of such sclerotic litigation, standing to appeal a bankruptcy court order is, of necessity, *quite limited*." *Id.* (cleaned up).

because "it meets traditional Article III standing requirements [and that the more exacting] prudential standing considerations such as the 'person aggrieved' standard" did not survive the Supreme Court's 2014 *Lexmark*[167] opinion,[168] which addressed standing issues in the context of false advertising claims under the Lanham Act and reminded that courts may not "limit a cause of action that Congress has created merely because 'prudence' dictates."[169] The Fifth Circuit held that the Supreme Court's reminder in *Lexmark* did not nullify the "person aggrieved" test for prudential standing in bankruptcy appeals, citing its own decision in *Superior MRI Services Inc. v. Alliance Healthcare Services, Inc.*[170] (rendered a year after *Lexmark* was decided), in which it held that *Lexmark* applied only to the circumstances of that case, "rather than broadly modifying—or undermining—*all* prudential standing concerns, such as the one animating the 'person aggrieved' standard in bankruptcy appeals."[171]

Similarly, in yet another appeal in this bankruptcy case involving three Dondero-related entities as appellants (NexPoint, Dugaboy, and HCMFA)—this one an appeal of a bankruptcy court order authorizing the creation of an indemnity subtrust and entry into an indemnity trust agreement—the district court noted the parties' confusion about the standing issue, as exemplified in the parties' reference to constitutional standing when they were actually arguing that they had prudential standing under the "person aggrieved" test: "Although the parties frame this issue as one of constitutional standing . . . they cite case law and present arguments about the prudential

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[167] *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

[168] *Id.* at *2.

[169] *See id.* at *4 (cleaned up).

[170] 778 F.3d 502 (5th Cir. 2015).

[171] *NexPoint*, 2023 WL 4621466 at *4 (cleaned up). The Fifth Circuit explicitly stated that "*Lexmark* does not expressly reach prudential concerns in bankruptcy appeals and brought no change relevant here." *Id.* at *5 (cleaned up).

standing requirement embodied in the 'person aggrieved' test."[172] The district court noted that it had an "independent obligation to consider constitutional standing before reaching its prudential aspects."[173] The district court dismissed the appeal as to Dugaboy and HCMFA for lack of standing but, upon concluding that NexPoint did have standing, dismissed the appeal as to it on the merits. The Fifth Circuit affirmed.[174] Interestingly, the court noted that, while the parties did not contest the district court's determination that NexPoint had standing to pursue the appeal, it "may consider prudential standing issues *sua sponte*."[175] In doing so, the Fifth Circuit recognized the distinction between constitutional standing and the prudential "person aggrieved" test applied to bankruptcy appeals, which "is, of necessity, quite limited" and "an even more exacting standard than traditional constitutional standing," as it requires an appellant to show that it is "directly, adversely, and financially impacted by a bankruptcy order."[176]

In summary, in analyzing whether HMIT would have standing to bring the Proposed Claims, this court must ***first*** determine whether HMIT would have constitutional standing under Article III (which is a subject matter jurisdiction hurdle) and, assuming it does, then ***additionally*** address whether HMIT would also have prudential standing (i.e., capacity to sue) pursuant to any applicable statutes (e.g., Delaware statutes), jurisprudence, or other substantive law that might ***limit*** who may sue. Notwithstanding HMIT's argument that it has standing under the "person

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[172] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2002 WL 270862, *1 (N.D. Tex. Jan. 18, 2022)(cleaned up). The district court dismissed the appeals of two of the appellants, Dugaboy and HCMFA, finding that they lacked both constitutional standing and prudential standing under the "person aggrieved" test and affirmed the bankruptcy court's order after finding the third appellant, NexPoint, to have prudential standing under the "person aggrieved" test. *Id.* at **1-3 and *4.

[173] *Id.* at *1 n.2.

[174] *Highland Capital Mgt. Fund, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 57 F.4th 494 (5th Cir. 2023).

[175] *Id.* at 501 (cleaned up).

[176] *Id.*

aggrieved" test[177]—which, as discussed above, is a matter of prudential standing—this is applied only in the context of bankruptcy ***appellate*** matters.[178] As noted in its most recent opinion discussing standing in an appeal from the Highland bankruptcy case, the Fifth Circuit reiterated that the "person aggrieved" test is a test for bankruptcy ***appellate*** standing, which is narrower than a party in interest's right to be heard in bankruptcy cases in general.[179] The court rejected an argument that Bankruptcy Code § 1109, which provides that "[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter" confers ***appellate*** standing, noting that "one's standing to appear and be heard before the bankruptcy court [is] a concept distinct from standing to appeal the merits of a decision" and that the "person aggrieved" test for bankruptcy appellate standing is narrower than the test for determining one's standing to appear and be heard in a bankruptcy proceeding.[180]

Thus, the court will now analyze whether HMIT would, at a minimum, have constitutional standing to bring the Proposed Claims.

2. HMIT Would Lack Article III Constitutional Standing to Bring the Proposed Claims.

As noted above, the Supreme Court and the Fifth Circuit have made clear that constitutional standing is necessary for a court to exercise subject matter jurisdiction. It is only the first hurdle a party must clear before pursuing a claim in federal court. HMIT, as plaintiff, would bear the

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[177] HMIT insists that it has constitutional standing to bring claims on its individual behalf "as an aggrieved party." *See* Reply, ¶ 7.

[178] HMIT's argument in this matter that it has constitutional standing because it is a "party aggrieved" incorrectly conflates the prudential bankruptcy appellate "person aggrieved" test with the broader test that is applied to constitutional standing. The court is not being critical of this mistake. As noted at *supra* note 149, the Fifth Circuit in *Abraugh* pointed out that courts and attorneys alike have created confusion by misusing the term "standing" when they equate a lack of "standing," in all instances, with a lack of subject matter jurisdiction, even when the party is found to lack only prudential standing. Thus, HMIT is not alone in its confusion over the two different concepts of standing.

[179] *See NexPoint*, 2023 WL 4621466 at *6.

[180] *Id.* at *6 (cleaned up)("Because Section 1109(b) expands the right to be heard [in a bankruptcy proceeding] to a wider class than those who qualify under the 'person aggrieved' standard, courts considering the issue have concluded that merely being a party in interest is insufficient to confer ***appellate*** standing.")(emphasis added).

burden of establishing: (1) that it suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[181]

Concrete and Particularized; Actual or Imminent. As the Supreme Court made clear in the *Lujan* case, the injury in fact element requires a showing that the injury was "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."[182] The Supreme Court in the *Spokeo* case expounded on the "concrete and particularized" requirements of the "injury in fact" element. Particularization requires a showing that the injury "must affect the plaintiff in a personal and individual way," but while particularization is necessary, it alone is "not sufficient," because an injury in fact must also be "concrete."[183] And, concreteness is "quite different from particularization."[184] A "concrete" injury must be "real," and "not abstract," though it does not mean that the injury must be "tangible," as the injury can be intangible and nevertheless be concrete.[185] In addition to the concreteness and particularization requirements, an injury in fact must be "actual or imminent" such that "allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing."[186] "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly*

[181] *See supra* note 153.
[182] *Lujan*, 504 U.S. at 560 (cleaned up).
[183] *Spokeo*, 578 U.S. at 339.
[184] *Id.* at 340.
[185] *Id.*
[186] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

impending"; "allegations of *possible* future injury are not sufficient."[187]

Traceability - Causal Connection. As to the second element—that the injury was caused by the defendant—the Supreme Court in *Lujan* further described it as requiring a showing that "the injury has to be fairly traceable to the challenged action of the defendant."[188] The "fairly traceable" test requires an examination of "the causal connection between the assertedly unlawful conduct and the alleged injury."[189]

Redressability. The third element—redressability—requires the court to examine the connection "between the alleged injury and the judicial relief requested."[190] "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court."[191] "[A] court must determine that there is an available remedy which will have a 'substantial probability' of redressing the plaintiff's injury."[192]

The Claims Purchasers argue that HMIT lacks constitutional standing to pursue the claims asserted in the Proposed Complaint because: (i) neither HMIT nor the Bankruptcy Estate was injured by the Claim Purchasers' acquisition of the claims; and (ii) the Proposed Complaint lacks a theory of cognizable damages to the Reorganized Debtor, the Claimant Trust, and/or the beneficiaries of the Claimant Trust.[193]

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[187] *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013)(cleaned up); *see also Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir. 2023)("[Injury] cannot be speculative, conjectural, or hypothetical [and] [a]llegations of only a 'possible' future injury similarly will not suffice.")(cleaned up).

[188] *Lujan*, 504 U.S. at 560-61 (cleaned up).

[189] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

[190] *Id.* (noting "it is important to keep the ['fairly traceable' and 'redressability'] inquiries separate if the 'redressability' component is to focus on the requested relief.").

[191] *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998).

[192] *City of Los Angeles v. Lyons*, 461 U.S. 95, 129 n.20 (1983)(Marshall, J., dissenting)(cleaned up); *see also Ondrusek v. U.S. Army Corps of Engineers*, Civ. Act. No. 3:22-cv-1874-N, 2023 WL 2169908, at *5 ("Plaintiffs have not demonstrated that any available remedy would be sufficiently likely to relieve their alleged economic losses. Without a showing of redressability, those harms also cannot support Plaintiff's Article III standing.").

[193] As noted earlier, certain of the Proposed Defendants—the Highland Parties—do not focus on HMIT's lack of constitutional standing to pursue the Proposed Claims against them, but on its lack of prudential standing under

The court agrees with the Claims Purchasers' argument here. What is HMIT's concrete and particularized injury—that is "real" and is not abstract? That is not conjectural or hypothetical? That is actual or imminent?

Recall that, under the Plan, HMIT holds a Class 10 contingent interest in the Claimant Trust that only realizes value if all creditors are paid in full with interest. HMIT alleges the following injury: it has suffered a devaluation of its unvested Contingent Claimant Trust Interest by virtue of the alleged over-compensation of Seery as the Claimant Trustee—Seery's alleged over-compensation depletes the assets in the Claimant Trust available for distribution to creditors under the Plan, such that there is less likely a chance that HMIT ultimately receives any distributions on account of its Class 10 Contingent Claimant Trust Interest.[194] Yet, HMIT testified, through both witnesses Dondero and Patrick, that it had no personal knowledge of what Seery's actual compensation is under the CTA at the time HMIT filed its Motion for Leave. It was clear that HMIT's allegations regarding Seery's "excessive" compensation were based entirely on Dondero's pure speculation. In reality, Seery's base salary is exactly what the bankruptcy court approved during the bankruptcy case by a court order (after negotiations between Seery and the Committee). The CTA now further governs his compensation. The CTA, which was publicly filed ***in advance of*** the Plan confirmation hearing and approved by this court as part of the Plan

applicable law. Because constitutional standing is a matter of subject matter jurisdiction, the court has an independent duty to determine whether HMIT would have constitutional standing to pursue the Proposed Claims in federal court. The issue cannot be forfeited or waived by a party. *See Abraugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)("[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Moreover, courts . . . have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.")(cleaned up); *Abraugh*, 26 F.4th at 304 ("It is our constitutional duty, of course, to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.")(cleaned up).

[194] At the June 8 Hearing, HMIT's counsel was unable to identify any other injury HMIT has alleged to have suffered. HMIT's counsel acknowledged that claims trades, in and of themselves, would not "involve injury to the Reorganized Debtor and to the Claimant Trust" and that claims trades are "normally outside the purview of the bankruptcy court" but that "[h]ere, we have alleged . . . . injury [that] takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers." June 8 Hearing Transcript, 67:16-68:8. HMIT can only point to Seery's excess compensation as injury.

(which has been affirmed by the Fifth Circuit), specifically provides that Seery's post-Effective Date compensation would include a "Base Salary" (again, same as during the bankruptcy case), a "success fee," and "severance."[195] The CTA discussed the role of the Committee and then the CTOB in setting the success fee and severance and the like. A fully executed copy of the CTA was admitted into evidence at the June 8 Hearing. HMIT is essentially arguing that its injury (i.e., diminished likelihood of realizing value on its Contingent Claimant Trust Interest) stems from a court-sanctioned and creditor-approved process for approving compensation to Seery. Moreover, HMIT has failed to plead facts sufficient to show that, even if Seery received excessive compensation and that compensation is ordered to be returned, HMIT's Contingent Claimant Trust Interest will ever vest. The district court and the Fifth Circuit in various appeals by Dugaboy, another Dondero-related entity that, similar to HMIT, was a holder of a limited partnership interest in Highland whose interests were terminated as of the Effective Date of the Plan in exchange for a Contingent Claimant Trust Interest, have repeatedly rejected Dugaboy's claims to have standing based on the ***speculative nature of its alleged injuries as a contingent beneficiary of the Claimant Trust under the Plan***. For example, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy of the bankruptcy court's order authorizing the creation of an indemnity subtrust, wherein Judge Fitzwater found that, in addition to lacking prudential standing under the

[195] The Disclosure Statement that was approved by this court, after notice and a hearing, on November 24, 2020, provided that "The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement . . . ." The CTA was part of a Plan Supplement (as amended) that was filed in advance of the confirmation hearing and provided:

> Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

See Highland Ex. 38, at § 3.13(a)(i).

"person aggrieved" test to appeal the bankruptcy court's order, Dugaboy lacked constitutional standing "because they have not identified any injury fairly traceable to the Order: ***the injuries identified are speculative at best and nonexistent at worst***."[196] HMIT's allegations of injury are, without a doubt, "merely conjectural or hypothetical" and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests."[197] The court finds that HMIT would not meet the "concrete and particularized" or the "actual or imminent" requirements for an "injury in fact," and, thus, would lack constitutional standing to pursue the Proposed Claims.

With regard to the second requirement of constitutional standing—whether HMIT could show "traceability" with respect to the Claims Purchasers and/or Seery (i.e., a "causal connection between the assertedly unlawful conduct and the alleged injury"[198]), as noted above, there is only a speculative injury. Even if there is unlawful conduct asserted (i.e., sharing of MNPI to Claims Purchasers who then, as a *quid pro quo*, rubber stamped excessive compensation for Seery), there is nothing other than a hypothetical theory of an alleged injury (i.e., an allegedly less likelihood of a distribution on a Contingent Claimant Trust Interest).

With respect to the third requirement of constitutional standing—whether HMIT can show "redressability" (i.e., that it is likely, not speculative, that the injury can be redressed by a favorable

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[196] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, *1 n.2 (N.D. Tex. Jan. 28, 2022), *aff'd* 57 F.4th 494 (5th Cir. 2023)(emphasis added); *see also* Judge Scholer's opinion in *Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-2268-S, 2022 WL 3701720, *3 (N.D. Tex. Aug. 8, 2022)(cleaned up), *aff'd per curium*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023) (where Dugaboy had argued that "***its pecuniary interest is** . . . **a potential recovery under the Plan as one of Debtor's former equity holders***" and that "it ha[d] standing as a 'contingent beneficiary' under the Plan, or a beneficiary who will be entitled to payment after all creditors are paid in full," and Judge Scholer stated, "This assertion is premised on the assumption that Dugaboy's 0.1866% pre-bankruptcy limited partnership interest in Debtor—which was extinguished under the Plan—makes it a contingent beneficiary of the creditor trust created under the Plan. . . . [S]uch a 'speculative prospect of harm is far from a direct, adverse, pecuniary hit' as required to confer standing."

[197] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

[198] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

decision), there are multiple problems here.[199] The major remedy sought here is the equitable disallowance of the allowed Purchased Claims (and disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims). There is no such remedy available here. As noted earlier, there is a similar concept of ***equitable subordination*** of a claim to another claim, or of an interest to another interest, pursuant to Bankruptcy Code section 510(c). But under the literal terms of section 510(c), ***claims cannot be subordinated to interests***. Moreover, the Fifth Circuit noted in the *Mobile Steel* case,[200] that ***equitable disallowance*** of a claim (as opposed to equitable subordination of a claims) is not an available remedy. Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case might permit "recharacterization" of a claim from debt to equity in certain circumstances—but not based on inequitable conduct but rather on the nature of a financial transaction. In any event, here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). As noted earlier, the problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). As further noted earlier, here there was most definitely a "contest" with regard to all of these purchased claims. ***Thus, it would appear***

[199] *See supra* notes 182-184 and accompanying text. The court will note that, as discussed *supra* note 141 and pages 71-72, the remedy of equitable subordination (as to the Claims Purchasers) would not redress HMIT's alleged injury (because equitable subordination of claims to interests is not an available remedy in the Fifth Circuit and thus subordination of the Purchased Claims to other claims would not change HMIT's distributions from the Claimant Trust, if any), and because outright disallowance of all or part of the already allowed Purchased Claims is not an available remedy either, HMIT would not be able to meet the "redressability" requirement with respect to the Claims Purchasers.

[200] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

that any effort to have a court reconsider and potentially disallow these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.

3. HMIT Would Also Lack Prudential Standing to Bring the Proposed Claims.

Even if HMIT would have constitutional standing to bring the Proposed Claims in an adversary proceeding filed in the bankruptcy court, the Proposed Claims would still be barred if HMIT would lack prudential standing to bring them under applicable state or federal law. HMIT argues that it does have prudential standing under both federal bankruptcy law and Delaware law to pursue the Proposed Claims derivatively and also to bring the Proposed Claims in its individual capacity.

With regard to "federal bankruptcy law," HMIT argues that it has standing pursuant to: (a) Rule 23.1 of the Federal Rules of Civil Procedure, pertaining to derivative actions, which "applies to this proceeding pursuant to" Rule 7023.1 of the Federal Rules of Bankruptcy Procedure, and (b) *Louisiana World Exposition v. Federal Insurance Co. ("LWE")*,[201] the Fifth Circuit's leading case addressing when a creditors committee may be granted standing to bring causes of action on behalf of a bankruptcy estate. But, federal bankruptcy law does not confer standing ***where the plaintiff otherwise lacks standing under applicable state law***. In other words, whether HMIT would have prudential standing to sue under Delaware law is dispositive of the issue, regardless of the forum. Rule 23.1 "speaks only to the adequacy of the . . . pleadings," and "cannot be understood to 'abridge, enlarge, or modify any substantive right,'"[202] including a right (or lack thereof) to bring a derivative action under the substantive law of Delaware. Additionally, HMIT's reliance on *LWE* is misplaced: *LWE* permits creditors, in certain circumstances ***during*** a bankruptcy case, to "file

[201] 858 F.2d 233 (5th Cir. 1988).

[202] *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991)(quoting 28 U.S.C. § 2072(b)).

suit on behalf of a debtor-in-possession or a trustee"[203] and does not apply to a party's right to sue, derivatively, on behalf of the Reorganized Debtor or any entity that is the assignee of the former bankruptcy estate's assets. Upon confirmation of the Plan, the bankruptcy estate of Highland ceased to exist;[204] Highland is no longer a debtor-in-possession but a reorganized debtor, and the Claimant Trust is a new entity created under the Plan and Claimant Trust Agreement. Even if *LWE* did apply in this ***post***-confirmation context, it supports the application of Delaware law to the issue of prudential standing and does not supersede state-law requirements for standing. In *LWE*, before addressing the requirements a creditors' committee must meet to sue derivatively on behalf of a bankruptcy estate as a matter of federal bankruptcy law, the Fifth Circuit conducted a lengthy analysis to determine "as a threshold issue" whether the creditors' committee in that case could assert its claims under Louisiana law.[205] The court specifically addressed whether the creditors' committee could pursue a derivative action under Louisiana law and concluded that "there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions."[206] So, even under *LWE* (which the court does not think applies in this post-confirmation context), if HMIT would be barred from bringing a derivative action on behalf the Reorganized Debtor or Claimant Trust under state law, the analysis stops there.[207] Thus, the court looks to Delaware law to determine if HMIT would have prudential standing to pursue the derivative claims on behalf the Reorganized Debtor and the Claimant Trust.

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[203] *LWE*, 858 F.2d at 247.

[204] *See In re Craig's Stores*, 266 F.3d 388, 390 (5th Cir. 2001).

[205] *LWE*, 858 F.2d at 236-45.

[206] *Id.* at 243.

[207] *See In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 (where the Delaware bankruptcy court denied the creditors' committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act, stating, "To determine that the third party

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

Volume 16

APPELLEE RECORD

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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HMIT acknowledges that both the Reorganized Debtor and the Claimant Trust are organized under Delaware law, and thus the cause of action against Seery alleging breach of fiduciary duties to the Reorganized Debtor and the Claimant Trust are governed by Delaware law under the "Internal Affairs Doctrine."[208] In addition, because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting theory of liability as to the Claims Purchasers is also governed by Delaware law.[209] For the reasons set forth below, the court finds that HMIT would lack prudential standing under Delaware law to bring the claims set forth in the Proposed Complaint, derivatively, on behalf of either the Claimant Trust or the Reorganized Debtor.

a) First, HMIT Would Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Claimant Trust.

The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29,[210] and "to proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement" such that "the plaintiff must be a beneficial owner" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[211] This requirement is "mandatory and exclusive" and only "a beneficial owner" "has standing to bring a derivative claim on behalf of the

may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors' state of incorporation or formation.").

[208] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[209] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

[210] *See* Proposed Complaint, ¶ 26.

[211] *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *19 n.123 (Del. Ch. June 15, 2011), *aff'd* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b).

Trust."[212] The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, would lack standing to bring derivative claims on behalf of the Claimant Trust. HMIT argues to the contrary: that it ***is*** currently, and was at all relevant times, a "beneficial owner" of the Claimant Trust under Delaware trust law such that it would have standing to bring derivative claims on behalf of the Claimant Trust if it were allowed to proceed with the filing of the Proposed Complaint. The disagreement turns on the nature of HMIT's interest under the Plan and the Claimant Trust Agreement and whether HMIT, as a holder of such interest, would be considered a "beneficial owner" of the Claimant Trust under Delaware trust law.

As noted, pursuant to the Plan, HMIT's former limited partnership interest in Highland was cancelled as of the Effective Date in exchange for its pro rata share of a "Contingent Claimant Trust Interest," as defined under the Plan.[213] HMIT argues that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present "beneficial owner" under Delaware trust law.

The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust; rather, the "beneficial owners" of the Claimant Trust are the "Claimant Trust Beneficiaries,"[214] which are defined in the Plan and the CTA as "the Holders of Allowed General Unsecured Claims" (which are in Class 8 under the Plan) and "Holders of Allowed Subordinated Claims" (which are in Class 9 under the Plan);[215] HMIT, a holder of a Class 10 interest under the Plan, is neither.

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[212] *In re Nat'l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)). HMIT acknowledges this requirement in its Reply: "Delaware statutory trust law provides that a plaintiff in a derivative action on behalf of a trust must be a beneficial owner at the time of the action and at the time of the transaction." Reply, ¶ 19 (citing 12 Del C. § 3816).

[213] *See* Plan Art. III.H.10 and Art. I.B.44.

[214] Section 2.8 of the CTA provides, "The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . . ." HMIT Ex. 26, § 2.8.

[215] *See* Plan Art. I.B.44 ("'*Claimant Trust Beneficiaries*' means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the

HMIT, as the holder of a "Contingent Claimant Trust Interest," has only an ***unvested*** contingent interest in the Claimant Trust and, as such, is not a "beneficial owner" of the Claimant Trust for standing purposes under Delaware trust law. HMIT argues that it "should be treated as a vested Claimant Trust Beneficiary due to [the Proposed Defendants'] wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein."[216] The court disagrees.

HMIT's status as a "beneficiary" of the Claimant Trust is defined by the CTA itself, pure and simple. The CTA specifically provides that "Contingent Trust Interests" "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA. It is undisputed that HMIT's Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested based on HMIT's unsupported allegation of wrongdoing on the part of Seery, the Claimant Trustee. Thus, the court finds that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, lacks prudential standing under Delaware law to bring derivative claims on behalf of the Claimant Trust.[217]

Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests."); CTA § 1.1(h). *See also*, CTA, 1 at n.2 ("For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan."). HMIT Ex. 26.

[216] Proposed Complaint ¶ 24.

[217] *See Nat'l Coll.*, 251 A.3d at 190–92 (dismissing creditors' derivative claims because they were not "beneficial owners of the Trusts"); *Hartsel*, 2011 WL 2421003, at *19 n.123 (dismissing derivative claims by investors that "no longer own shares" because "those investors no longer have standing to pursue a derivative claim").

b) HMIT Would Likewise Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Reorganized Debtor.

HMIT acknowledges that the Reorganized Debtor, Highland Capital Management, L.P., is a Delaware limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.*[218] To bring "a derivative action" on behalf of a limited partnership, "the plaintiff must be a partner or an assignee of a partnership interest" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[219]

HMIT is not a partner, general or limited, of the Reorganized Debtor limited partnership. HMIT ***was*** a limited partner in the original debtor (specifically, a holder of Class B/C Limited Partnership interests in Highland), but that limited partnership interest was extinguished on August 11, 2021 (the Effective Date of the Plan) per the terms of the Plan, and HMIT does not own any partnership interest in the newly created Reorganized Debtor limited partnership.[220] Because HMIT would not hold a partnership interest in the Reorganized Debtor at "the time of bringing the action," it "lacks derivative standing" to bring claims "on the partnership's behalf."[221] HMIT likewise cannot satisfy "the continuous ownership requirement"; when HMIT's limited partnership interest in the original Debtor was cancelled on the Plan's Effective Date, HMIT "los[t] standing to continue a derivative suit" on behalf of the Debtor.[222] Finally, to the extent HMIT

[218] Proposed Complaint ¶ 25.

[219] 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) ("The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another party's fiduciary duties to them.") (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff'd* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) ("The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.") (citing 6 Del. C. § 17-211(h)).

[220] *See* Plan Art. IV.A.

[221] *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

[222] *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff's partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re*

seeks to bring a "double derivative" action on behalf of the Claimant Trust based on claims purportedly held by its wholly owned subsidiary, the Reorganized Debtor, HMIT lacks standing. A "double derivative" action is a suit "brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled."[223] And, under Delaware law, "parent level standing is required to enforce a subsidiary's claim derivatively."[224] Because HMIT would lack derivative standing to bring claims on behalf of the parent Claimant Trust,[225] it also would lack standing to bring a double derivative action.

c) Finally, HMIT Would Also Lack Prudential Standing under Applicable Law to Bring the Proposed Claims As ***Direct*** Claims.

HMIT argues that it has "direct" standing to pursue the Proposed Claims on behalf of itself, individually.[226] But just because HMIT asserts that some or even all of the Proposed Claims are direct, not derivative claims, does not make it so: "a claim is not 'direct' simply because it is pleaded that way."[227] Rather, in determining whether claims are direct or derivative, a court must "look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs' characterization."[228] And, under Delaware law, "whether a claim is solely derivative or

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SkyPort Global Commcn's, Inc.), 2011 WL 111427, at *25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders "lack standing to bring a derivative claim" under Delaware law because they "had their equity interests in the company extinguished pursuant to the merger under the Plan"); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) ("[T]he cancellation of WorldCom shares under the Plan … prevents the required continuation of shareholder status through the litigation.") (cleaned up).

[223] *Lambrecht v. O'Neal*, 3 A.3d 277, 282 (Del. 2010).

[224] *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

[225] *See supra* pp. 80-82.

[226] *See e.g.*, Motion for Leave ¶ 10 ("HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . ."); *id.* ¶ 67 (arguing that "HMIT has [d]irect [s]tanding"); Proposed Complaint ¶ 24 ("HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.").

[227] *Schmermerhorn*, 2011 WL 111427, at *26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at *7 (Del. Ch. Nov. 5, 2004)).

[228] *See id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)); *see also Moore v. Simon Enters., Inc.*, 919 F.Supp. 1007, 1009 (N.D. Tex. 1995)("The determination of whether a claim is a derivative claim or a direct claim is made by reference to the nature of the wrongs alleged in the complaint, and is not limited by a [party's] characterization or stated intention.")(cleaned up).

may continue as a dual-natured claim 'must turn ***solely*** on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'"[229] "In addition, to prove that a claim is direct, a plaintiff 'must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.'"[230] Similarly, in the bankruptcy context, whether a creditor can assert a claim directly or whether the claim belongs to the estate turns on the nature of the injury for which relief is sought: "[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate," such that "only the bankruptcy trustee has standing to pursue the claim for the estate . . . ."[231] "To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate."[232]

As a reminder, HMIT argues that the injury it has suffered is a devaluation of its interests in the Claimant Trust by virtue of alleged over-compensation of Seery as the Claimant Trustee. HMIT was unable, when pressed during closing arguments, to identify any other injury. It essentially admitted that the claims trades, in and of themselves, would not have harmed the Claimant Trust, the Reorganized Debtor, or individual stakeholders, including HMIT, ***since the Claims Purchasers acquired already allowed unsecured claims, such that the distributions on those claims pursuant to the Plan would be unchanged in the hands of new holders of the claims***.

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[229] *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original).

[230] *Id.* (quoting *Tooley*, 845 A.2d at 1033); *see also Schmermerhorn*, 2011 WL 111427, at *24 (same).

[231] *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)).

[232] *Id.*; *see also Schertz-Cibolo-Universal City Indep. Sch. Dist. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994)("If a cause of action alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate.")(citations omitted).

Thus, by its own concessions, any alleged harm to HMIT (through devaluation of assets in the Claimant Trust) "comes about only because of harm to the debtor," so the alleged "injury is derivative."[233] The court concludes that all of the claims set forth in the Proposed Complaint allege derivative claims only, and that none would be direct claims against the Proposed Defendants. Thus, HMIT would lack prudential standing to bring any of the Proposed Claims in the Proposed Complaint, so its Motion for Leave should be denied.

d) Some Final Points Regarding Standing.

In this standing discussion, one should not lose sight of the fact that there are both procedural safeguards in place, as well as certain independent individuals in place with fiduciary duties that might act in the event of any shenanigans regarding Claimant Trust activities. Under section 4.1 of the CTA (approved as part of the Plan process), the CTOB, which includes an independent disinterested member in addition to representatives of the Claims Purchasers,[234] oversees the Claimant Trustee's performance of his duties, approves his compensation, and may remove him for cause. Moreover, there is a separate "Litigation Trustee" in this case who was brought in, post-confirmation, as an independent fiduciary to pursue claims and causes of action. These independent persons are checks and balances in the post-confirmation wind down of Highland. This is what creditors voted on in connection with the Plan. Seery and the Claims Purchasers are not in sole control of anything. The CTA, as well as Delaware law, very clearly set forth who can bring an action in the event of some colorable claim. This is the reality of prudential

[233] *Meridian*, 912 F.3d at 293–94 ("The creditors' injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties."); *see also El Paso,* 152 A.3d at 1260–61 & n.60 (holding that claim "claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative") (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at *12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had "not identified any independent harm suffered by the limited partners"; "the partnership suffered all the harm at issue—it paid too much").

[234] *See supra* note 23 and accompanying text.

standing. Just as in the *Abraugh* case, where Louisiana law dictated that a mother could not bring a wrongful death case when the deceased prisoner had a surviving wife and child, Delaware law and the CTA dictate here that a contingent beneficiary cannot bring the Proposed Claims here. This is separate and apart from whether the claims are colorable.

C. Are the Proposed Claims "Colorable"?

1. What is the Proper Standard of Review for a "Colorability" Determination?

Although the court has determined that HMIT would ***not*** have standing (constitutional or prudential) to bring the Proposed Claims, this court will nevertheless evaluate whether the claims—assuming HMIT somehow has standing—might be "colorable." This, in turn, requires the court to assess what the legal standard is to determine if a claim is "colorable." As a reminder, the Plan's Gatekeeper Provision and this court's prior Gatekeeper Orders entered in January and July 2020 each required that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain a finding from the bankruptcy court that its proposed claims are "colorable." The Gatekeeper Provision and Gatekeeper Orders did not specifically define "colorable" or what type of legal standard should apply.

HMIT argues that the standard for review to be applied by this court is the same as a simple "plausibility" standard used in connection with a Rule 12(b)(6) motions to dismiss. In other words, the court should simply assess whether the allegations of the Proposed Complaint, taken as true and with all inferences drawn in favor of the movant, state a ***plausible*** claim for relief (i.e., colorable equals plausible), and that this standard does not allow for the weighing of evidence by the court.[235] The Proposed Defendants, however, argue that the test for colorability should be more

[235] Reply, ¶ 5 ("[T]he determination of 'colorability' does not allow the 'weighing' of evidence. At most, a Rule 12(b)(6) 'plausibility' standard applies.").

akin to the test applied under the *Barton* doctrine,[236] under which a plaintiff must make a *prima facie* case that a proposed claim against a bankruptcy trustee is "not without foundation." In this regard, they argue that the court can and should consider evidence outside of the four corners of the complaint—especially since HMIT attached to its Motion for Leave, as "evidence" to support it, two declarations of Dondero (as part of a 350-page attachment) and only attempted to withdraw those declarations after the Highland Parties urged that they be permitted to cross-examine Dondero on them.

This court ultimately determined that the "colorability" standard was somewhat of a mixed question of fact and law and, therefore, the parties could put on evidence at the June 8 Hearing if they so-chose. The court would not require it. It was up to the parties. But, in any event, the Proposed Defendants should have an opportunity to cross-examine Dondero on the statements made in his declarations since the declarations had been filed on the docket and the court had reviewed them at this point. HMIT attempted to withdraw the declarations and any reference to them in the Motion for Leave, by filing redacted versions of the Motion for Leave,[237] less than 72 hours before the June 8 Hearing; however, the redacted versions did not redact any allegations in the Motion for Leave that were purportedly supported by the Dondero declarations. Also, HMIT called Dondero as a direct witness, in addition to calling Seery as an adverse witness at the June 8 Hearing, albeit subject to its running objection to the evidentiary format of the hearing.[238] HMIT also filed a witness and exhibit list attaching 80 exhibits and over 2850 pages of evidence and

[236] *Barton v. Barbour,* 104 U.S. 126 (1881).

[237] Bankr. Dkt. Nos. 3815 and 3816.

[238] *See* June 8 Hearing Transcript, 7:20-24, 112:11-13.

moved for the admission of those exhibits at the June 8 Hearing (again, subject to its running objection to the evidentiary format of the hearing).[239]

In determining what appropriate legal standard applies here in the "colorability" analysis, the context in which the Gatekeeper Provision of the Plan was approved seems very relevant. In determining that the Gatekeeper Provision was legal, necessary, and in the best interest of all of the parties, this court set forth in the Confirmation Order a lengthy discussion of the factual support for it, and made specific findings relating to Dondero's post-petition litigation and the need for inclusion of the Gatekeeper Provision in the Plan.[240] This court observed that "prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade" and that "[d]uring the last several months, Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor."[241] This court further found that: (1) Dondero's post-petition litigation "was a result of Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Seery's credible testimony, that if Dondero's plan proposal was not accepted, he would 'burn down the place,'"[242] (2) without the Gatekeeper Provision in place, "Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date" and that "the threat of continued litigation by Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result in lower distributions to creditors because of

[239] *See Hunter Mountain Investment Trust's Witness and Exhibit List in Connection with Its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* ("HMIT W&E List")[Bankr. Dkt. No. 3818] and n.1 thereto; *see also* June 8 Hearing Transcript, 33:7-10.

[240] *See* Confirmation Order ¶¶ 76-79.

[241] *Id.* ¶ 77.

[242] *Id.* ¶ 78. *See supra* note 12.

costs and distraction such litigation or the threats of such litigation would cause,"[243] and, (3) "unless the [court] approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance,[244] the absence of which will present unacceptable risks to parties currently willing to serve in such roles." Thus, as set forth in the Confirmation Order, the Gatekeeper Provision (and the Gatekeeper Orders as well, which were approved based on the same concerns regarding the threat of continued litigation by Dondero and his related entities) required Dondero and related entities to make a threshold showing of colorability, noting that the:

> Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC,* 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017)."[245]

The Fifth Circuit, in approving the Gatekeeper Provision on appeal, noted that that the Plan injunction and Gatekeeper Provision "screen and prevent bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[246]

Again, the court believes it is appropriate to consider the context in which—and the purpose for which—the Gatekeeper Orders and Gatekeeper Provision were entered in assessing

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[243] *Id.*

[244] Asd noted at ⁋ 79 of the Confirmation Order, the bankruptcy court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance for the post-confirmation parties implementing the Plan. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so ***without an exclusion for claims asserted by Mr. Dondero and his affiliates*** required that the Confirmation Order approve the Gatekeeper Provision.

[245] *Id.* ¶ 80.

[246] *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.* (*In re Highland Cap. Mgmt., L.P.*), 48 F.4th 419, 435 (5th Cir. 2022).

how "colorability" should work here. It seems that applying HMIT's proposed Rule 12(b)(6) "plausibility" standard would impose no hurdle at all to litigants and would render the threshold for bringing claims under the Gatekeeper Provision and Gatekeeper Orders entirely duplicative of the motion to dismiss standard that every litigant already faces.

The authorities cited by HMIT in support of its argument for applying a Rule 12(b)(6) standard are inapposite. HMIT has cited no authority that addresses the appropriate standard for assessing the "colorability" of claims in the context of a plan gatekeeper provision—specifically, one implemented in response to a demonstrated need to screen and prevent continued bad-faith, harassing litigation against a chapter 11 debtor that would impede the debtor's implementation of a plan, which is what we have here. HMIT relies on a bevy of cases that include benefits coverage disputes under ERISA, Medicare coverage disputes, and constitutional challenges[247]—none of which implicate the *Barton* doctrine and vexatious-litigant concerns that were referenced by the court in the Plan as justifications for the gatekeeping provisions at issue here.

In affirming the Plan's Gatekeeper Provision, the Fifth Circuit stated, "Courts have long recognized bankruptcy courts can perform a gatekeeping function" and noted, by way of example, that "[u]nder the '*Barton* doctrine,' the bankruptcy court may require a party to 'obtain leave of

[247] *See Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has "a colorable claim to vested benefits" such that the employee may be considered a "participant" under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting "claimants [with] no colorable legal claim" to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant's double jeopardy claim was "colorable" such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at *3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a "colorable claim" against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at *3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a "colorable claim" to warrant the district court's exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at *5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at *5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a "colorable constitutional claim" such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

the bankruptcy court before initiating an action in district court when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor's official capacity."[248] As noted above, the Fifth Circuit found that the Gatekeeper Provision, which "requires that, before any lawsuit is filed, the plaintiff must seek the bankruptcy court's approval of the claim as 'colorable'"—*i.e.*, to "screen and prevent bad-faith litigation,"—is "sound."[249]

On balance, the court views jurisprudence applying the *Barton* doctrine and vexatious litigant injunctions—while not specifically addressing the "colorability" standard under gatekeeping provisions in a plan[250]—as more informative on how to approach "colorability" than any of the other authorities presented by the parties. One example is *In re VistaCare Group, LLC*.[251]

In *VistaCare*, the Third Circuit noted that, under the *Barton* doctrine, "[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation," and emphasized that the "not without foundation" standard, while similar to the standard courts apply in evaluating Rule 12(b)(6) motions to dismiss, "involves a greater degree of flexibility" than a Rule 12(b)(6) motion to dismiss because "the bankruptcy court, which given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit," and "is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor's estate."[252] To satisfy the "*prima facie* case standard," "the movant must do more than meet the liberal notice-pleading

[248] *Id.* at 438 (cleaned up).

[249] *Id.* at 435.

[250] The court acknowledges that the *Barton* doctrine itself would not be directly applicable here because HMIT is proposing to bring the Proposed Complaint in the bankruptcy court – the "appointing" court of Seery.

[251] 678 F.3d 218 (3d Cir. 2012).

[252] *Id.* at 232-233 (cleaned up).

requirements of Rule 8."[253] "[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless."[254] This court agrees with the notion, that "[t]o apply a less stringent standard would eviscerate the protections" of the Gatekeeper Provision and Gatekeeper Orders.[255] The court notes, as well, that courts in the *Barton* doctrine context regularly hold evidentiary hearings on motions for leave to determine if the proposed complaint meets the necessary threshold for pursuing litigation. The Third Circuit in *VistaCare* noted that "[w]hether to hold a hearing [on a motion for leave to bring suit against a trustee] is within the sound discretion of the bankruptcy court,"[256] and that "the decision whether to grant leave may involve a 'balancing of the interests of all parties involved,'" which will ordinarily require an evidentiary hearing.[257] The Third Circuit applied "the deferential abuse of discretion standard" in considering whether the bankruptcy court's granting of leave should be affirmed on appeal.[258]

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[253] *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases).

[254] *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at *2 (N.D. Ill. Nov. 30, 2000).

[255] *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at *2).

[256] *VistaCare*, 678 F.3d at 232 n.12.

[257] *Id.* at 233 (quoting *In re Kashani*, 190 B.R. 875, 886–87 (9th Cir. BAP 1995)). The Third Circuit noted that the bankruptcy court's holding of an evidentiary hearing on the motion for leave was appropriate (though not required in every case)). *Id.* at 232 n.12.

[258] *Id.* at 224 ("We review a bankruptcy court's decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard.") (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)). Courts of appeal routinely apply the deferential abuse of discretion standard to a bankruptcy court's decision regarding whether leave should be granted to sue a trustee. Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. *See In re Bednar*, 2021 WL 1625399, at *3 (B.A.P. 10th Cir. Apr. 27, 2021) ("[T]he Bankruptcy Court's decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . . .") (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App'x 969, 973–74 (11th Cir. 2016) ("Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court's ruling on a *Barton* motion for an abuse of discretion.") (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at *3 (B.A.P. 1st Cir. Sept. 17, 2014) ("Appellate courts review a bankruptcy court's decision to deny a motion for leave to sue under the abuse of discretion standard.") (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

The Fifth Circuit has affirmed a bankruptcy court's conducting of an evidentiary hearing, in the context of applying a *Barton* doctrine analysis as to a proposed lawsuit against a trustee, without any concern that the inquiry was somehow improper.[259]

Similarly, courts in the vexatious litigant context, where there was an injunction requiring a movant to seek leave to pursue claims, have required movants to "show that the claims sought to be asserted have sufficient merit," including that "the proposed filing is both procedural and legally sound," and "that the claims are not brought for any improper purpose, such as harassment."[260] "For a prefiling injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review," such as the "plausibility" standard for a Rule 12(b)(6) motion.[261] Rather, courts apply "an additional layer of review," and "may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action" or that the "litigant's allegations are unlikely," especially "when prior cases have shown the litigant to be untrustworthy or not credible . . . ."[262]

In summary, the court rejects HMIT's positions: (a) that it need only show, at most, that the allegations in the Proposed Complaint are "plausible" under the Rule 12(b)(6) standard for motions to dismiss; and (b) that this court improperly conducted an evidentiary hearing on the Motion for Leave (i.e., that consideration of evidence in this context is impermissible). The court notes, again, that HMIT's argument that this court is not permitted to consider evidence in making its "colorability" determination is completely contradictory to HMIT's actions in filing the Motion

[259] *See Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at *4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after "a close examination" by the bankruptcy court of the evidence regarding the trustee's actions and finding that "the plaintiffs' allegations are not based in fact"), *aff'd* 799 F. App'x 271 (5th Cir. 2020).

[260] *Silver v. City of San Antonio*, 2020 WL 3803922, at *1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); *see also Silver v. Perez*, 2020 WL 3790489, at *1 (W.D. Tex. July 7, 2020) (same).

[261] *Silver*, 2020 WL 3803922, at *6.

[262] *Id.*

for Leave, where it attached two Dondero declarations as part of 350 pages of "objective evidence" that "supported" its motion.

The court concludes that the appropriate standard to be applied in making its "colorability" determination in ***this*** bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in ***this*** Plan, is a broader standard than the "plausibility" standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves ***an additional level of review***—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are ***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***. Additionally, this court may, and should, take into consideration its ***knowledge*** of the ***bankruptcy proceedings*** and ***the parties*** and any additional evidence presented at the hearing on the Motion for Leave. For ease of reference, the court will refer to this standard of "colorability" as the "Gatekeeper Colorability Test." The court considers this test as a sort of hybrid of what the *Barton* doctrine contemplates and what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place.

2. HMIT's Proposed Complaint Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test or Even Under a Rule 12(b)(6) "Plausibility" Standard.

The court finds, in the exercise of its gatekeeping function under the Gatekeeper Orders and the Gatekeeping Provision in the Plan, that the Motion for Leave should be denied as the claims set forth in the Proposed Complaint are not "colorable" claims. The court makes this determination after considering evidence admitted at the June 8 Hearing, including the testimony of Dondero, Patrick, and Seery, and the numerous exhibits offered by HMIT and the Highland Parties. HMIT's Proposed Claims lack foundation, are without merit, and appear to be motivated by the improper purposes of vexatiousness and harassment. But, even under the less stringent

"plausibility" standard under Rule 12(b)(6) motions to dismiss, where all allegations must be accepted as true, HMIT's "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," fail to "[]cross the line from conceivable to plausible."[263]

HMIT makes unsubstantiated and conclusory allegations in its Motion for Leave and Proposed Complaint that the Claims Purchasers purchased the large allowed unsecured claims only because Seery, while he was CEO of Highland prior to the Effective Date of the Plan, provided them with MNPI and assurances that the Purchased Claims were very valuable. This was allegedly in exchange for their agreement to approve, in their future capacities as members of the CTOB, excessive compensation for Seery in his capacity as the Claimant Trustee after the Effective Date of the Plan. This was an alleged *quid pro quo* that HMIT claims establishes Seery's breach of fiduciary duties and the Claims Purchasers' conspiracy to participate in that breach. As discussed below, these allegations are unsubstantiated and conclusory allegations, and they do not support the inferences that HMIT needs the court to make when it analyzes whether the Proposed Claims are "colorable"—or even merely plausible.

a) HMIT's Proposed Breach of Fiduciary Duties Claim Set Forth in Count I of the Proposed Complaint

Based on HMIT's Proposed Complaint and the evidence admitted at the June 8 Hearing, the court finds that HMIT has not pleaded facts that would support a "colorable" breach of fiduciary duties claim against Seery, under this court's Gatekeeper Colorability Test, nor a plausible claim pursuant to the Rule 12(b) standard. HMIT alleges that Seery breached his fiduciary duties (i) "[b]y disclosing material non-public information to Stonehill and Farallon"

[263] *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

before their purchase of certain Highland claims, and (ii) by receiving "compensation paid to him under the terms of the [CTA] since the Effective Date of the Plan in August 2021."[264]

As earlier noted, both the Reorganized Debtor and the Claimant Trust are organized under Delaware law and, thus, its proposed Count I against Seery for breach of fiduciary duties to these entities is governed by Delaware law under the "Internal Affairs Doctrine."[265] Under Delaware law, "[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege '(1) that a fiduciary duty existed and (2) that the defendant breached that duty.'"[266] HMIT fails to plausibly or sufficiently allege either element such that its breach of fiduciary duty claims against Seery could survive.

Under Delaware law, officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders.[267] Because Seery did not owe any "duty" to HMIT directly and individually, the Proposed Complaint fails to state a claim for breach of fiduciary duties to HMIT. HMIT's "legal conclusion[]" that Seery "owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate"[268] "do[es] not suffice" to plausibly allege the existence of any actionable fiduciary relationship.[269] And as discussed earlier in the standing section, HMIT does not have standing to assert a breach of fiduciary claim derivatively on behalf

[264] Proposed Complaint ¶¶ 64–67.

[265] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[266] *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at *30 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at *8 (Del. Ch. Feb. 28, 2020)).

[267] *See Gilbert v El Paso Co.*, 1988 WL 124325, at *9 (Del. Ch. Nov. 21, 1988) ("[D]irectors' fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.") *aff'd,* 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at *11 (Del. Ch. Nov. 7, 2013) (same).

[268] Proposed Complaint ¶ 63.

[269] *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

of the Claimant Trust or Reorganized Debtor. But even if HMIT had sufficiently alleged the existence of a fiduciary duty by Seery to HMIT—or to the Reorganized Debtor or Claimant Trust that HMIT would have standing to assert—Seery's alleged communications with Farallon would not have breached those duties.

HMIT alleges that Seery ""disclose[d] material non-public information to Stonehill and Farallon," and they "acted on inside information and Seery's secret assurances of great profits."[270] But the Proposed Complaint does not make any factual allegations regarding HMIT's "conclusory allegations," and its "legal conclusions" are "purely speculative, devoid of factual support," and therefore "stop[] short of the line between possibility and plausibility of entitlement to relief"[271] (and certainly stop short of being "colorable"). HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, and what "assurances of great profits" he made to Farallon or to Stonehill. At the June 8 Hearing, Dondero could only clarify that he believed the MGM Email to have been MNPI and that he ***believed*** that Seery ***must have*** communicated that MNPI to Farallon at some point between December 17, 2020 (the date the MGM Email was sent) and May 28, 2021 (the day that Dondero alleges to have had three telephone calls with representatives of Farallon, Messrs. Patel and Linn, regarding Farallon's purchase of the bankruptcy claims). Dondero alleges that, during these phone calls, Patel and Linn gave Dondero no reason for their purchase of the claims that "made [any] sense." Dondero and Patrick also both testified that neither of them had any personal knowledge: (a) of a *quid pro quo* arrangement between Seery and the Claims Purchasers, (b) of Seery having actually communicated any information from the MGM Email to Farallon, or (c) whether Seery's post-Effective Date compensation had or had not been negotiated in an arms' length transaction. Dondero only

[270] Proposed Complaint ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.

[271] *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up).

speculates regarding these things, because it "made no sense" to him that the Claims Purchasers would have acquired the bankruptcy claims without having received the MNPI. But HMIT admits in the Proposed Complaint that Farallon and Stonehill purchased the Highland claims at discounts of 43% to 65% to their allowed amounts. Thus, they would receive at least an 18% return based on publicly available estimates in Highland's court-approved Disclosure Statement.[272] The evidence established that, if the acquisition of the UBS claims is excluded—recall that the UBS claims were not purchased until August 2021, which was after the May 28, 2021 phones calls that Dondero made to Farallon personnel—the Claims Purchasers would have expected to net over $33 million in profits, or nearly a 30% return on their investment, had Highland met its projections (this is based on the aggregate purchase price of $113 million for the non-UBS claims purchased in the Spring 2021).

To be clear, the only purported MNPI identified in HMIT's Proposed Complaint was the MGM Email Dondero sent to Seery containing "information regarding Amazon and Apple's interest in acquiring MGM." But, the evidence showed that this information was widely reported in the financial press at the time. Thus, it could not have constituted MNPI as a matter of law.[273] Moreover, the evidence showed that Dondero ***did not*** communicate in the MGM Email the actual inside information that he claimed to have obtained as a board member of MGM–which was that Amazon had met MGM's "strike price" and that the MGM board was going into exclusive negotiations with Amazon to culminate the merger with them (and, thus, Apple was no longer considered a potential purchaser). Dondero admitted that he included Apple in the MGM Email for the purpose of making it look like there was a competitive process still ongoing. In other

[272] Proposed Complaint ¶¶ 3, 37, 42.

[273] *See, e.g.*, *SEC v. Cuban*, 2013 WL 791405, at *10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not "material, nonpublic information" and "'becomes public when disclosed to achieve a broad dissemination to the investing public'") (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)).

words, the MGM Email, at the very least, did not include MNPI and, at worst, was deceptive regarding the status of the negotiations between MGM and potential purchasers.

As to HMIT's allegations that Seery's post-Effective Date compensation is "excessive" and that the negotiations between Seery and the CTOB "were not arm's-length,"[274] the evidence at the June 8 Hearing reflected that the allegations are completely speculative, without any foundation whatsoever, and lack merit. And they are also simply not plausible. HMIT fails to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty.[275]

b) HMIT's Proposed Claims Set Forth in Counts II (Knowing Participation in Breach of Fiduciaries) and III (Conspiracy)

HMIT seeks to hold the Claims Purchasers secondarily liable for Seery's alleged breach of fiduciaries duties on an aiding and abetting theory in Count II of the Proposed Complaint[276] and, along with Seery, on a civil conspiracy theory of liability in Count III of the Proposed Complaint.[277] Because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting breach of fiduciary duties claim against the Claims Purchasers (Count II) is also governed by Delaware law.[278] HMIT's conspiracy cause of action against the Claims

[274] Proposed Complaint ¶¶ 4, 13, 54, 74.

[275] *See Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]though the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation.").

[276] Proposed Complaint ¶¶ 69-74.

[277] Proposed Complaint ¶¶ 75-81.

[278] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

Purchasers and Seery (Count III), on the other hand, does not involve a matter of "internal affairs" or of corporate governance, so it is governed by Texas law under the Plan.[279]

As an initial matter, because HMIT does not present either a "colorable"—or even plausible claim—that Seery breached his fiduciary duties, it cannot show that it has alleged a "colorable" or plausible claim for secondary liability for the same alleged wrongdoing.[280] In addition, HMIT's civil conspiracy claim against the Claims Purchasers and Seery is based entirely on Dondero's speculation and unsupported inferences and, thus, HMIT has not "colorably" alleged, or even plausibly alleged, its conspiracy claim. Under Texas law, "civil conspiracy is a theory of vicarious liability and not an independent tort."[281] "[T]he elements of civil conspiracy [are] "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result."[282] While HMIT alleges that "Defendants conspired with each other to unlawfully breach fiduciary duties,"[283] it is simply a "legal conclusion" and not the kind of allegation that the court must assume to be true even for purposes of determining plausibility under a motion to dismiss.[284]

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[279] *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M)(which provides for the application of Texas law to "the rights and obligations arising under this Plan" except for "corporate governance matters.")

[280] *See English v. Narang*, 2019 WL 1300855, at *14 (Del. Ch. Mar. 20, 2019) ("As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.") (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at *10 (Tex. App. Jan. 25, 2022) ("[A] defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.") (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)). Because HMIT's breach of fiduciary duty claim is governed by Delaware law, its aiding and abetting theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas). By contrast, "conspiracy is not an internal affair" or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

[281] *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019).

[282] *Id.* at 141 (cleaned up).

[283] Proposed Complaint ¶ 76.

[284] *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66).

HMIT repeats four times that Seery provided MNPI to Farallon and Stonehill as a "as a *quid pro quo*" for "additional compensation,"[285] each time based upon conclusory allegations based "upon information and belief" and, frankly, pure speculation from Dondero that his imagined "scheme," "covert *quid pro quo,*" and secret "conspiracy" between Seery, on the one hand, and Farallon and Stonehill, on the other,[286] ***must have*** occurred because "[i]t made no sense for the [Claims] Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk" (i.e., "[t]he counter-intuitive nature of the purchases at issue compels the conclusion that the [Claims] Purchasers acted on inside information and Seery's assurance of great profits.")[287] Importantly, HMIT admits that the Claims Purchasers would have turned a profit based on the information available to them at the time of their acquisitions of the Purchased Claims.[288] HMIT's allegations about the level of potential profits were contradicted by their own allegations and other evidence admitted at the June 8 Hearing. But Dondero's speculation about what level of projected return would be sufficient to justify the acquisition of the claims by the Claims Purchasers, or any other third-party investor, does not give rise to a plausible inference that they acted improperly.[289] Thus, HMIT cannot meet

[285] Proposed Complaint ¶ 77; *see also id.* ¶¶ 4, 47, 74.

[286] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.").

[287] *Id.*

[288] *See, e.g.*, *id.* ¶ 3 (alleging that acquiring the claims "did not offer a ***sufficient*** potential profit to justify the publicly disclosed risk")(emphasis added); ¶ 43 ("Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . ."); ¶ 49 ("Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* ***significant*** profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.") (third emphasis added).

[289] In fact, the court did not allow Mr. Dondero to testify regarding what kind of information a hypothetical investor in bankruptcy claims would require or what level of potential profits would justify the purchase of bankruptcy claims by investors in the bankruptcy claims trading market because he was testifying as a fact witness, not an expert. Thus, the court only allowed Dondero to testify as to what data ***he*** (or entities he controls or controlled) would rely on, what ***his*** risk tolerance would have been, and what level of potential profits ***he*** would have required to purchase an allowed unsecured bankruptcy claim in a post-confirmation situation. June 8 Hearing Transcript, 129:6-130:4.

its burden, under the Gatekeeper Colorability Test, of making a prima facie showing that its allegations do not lack foundation or merit. Nor can it meet a plausibility standard.

In addition, contrary to the Proposed Complaint's statement that it would have been "***impossible*** for Stonehill and Farallon (in the absence of insider information) to forecast ***any*** significant profit at the time of their multi-million-dollar investments," the evidence showed there were already reports in the financial press that MGM was engaging with Amazon, Apple, and others in selling its media portfolio, and thus the prospect of an MGM transaction increasing the value of, and return on, the Purchased Claims, "at the time of their multi-million-dollar investments" was publicly available information.[290] HMIT's suggestion that the Claims Purchasers were in possession of inside information not publicly available when they acquired the Purchased Claims is simply not plausible. Nor is HMIT's allegation that "[u]pon information and belief" Farallon "conducted no due diligence but relied on Seery's profit guarantees" plausible. The allegations regarding Farallon not conducting any due diligence are based, again, entirely on Dondero's speculation and inferences he made from what Patel and Linn (of Farallon) allegedly told him on May 28, 2021; Dondero did not testify that either Patel or Linn ever told him specifically that they had conducted no due diligence. HMIT's allegations in the Proposed Complaint that ***Farallon*** "conducted no due diligence," are based on Dondero's speculation, unsubstantiated, and contradicted by the testimony of Seery, who testified that emails to him from Linn in June 2020 and later in January 2021 indicated to him that Farallon, at least, had been conducting some level of due diligence in that they had been following and paying attention to the

[290] The court notes, as well, that the Claim Purchasers acquired the UBS claims in August 2021—approximately two and a half months ***after*** the announcement of the MGM-Amazon transaction (which was on May 26, 2021)—a fact that HMIT makes no attempt to harmonize with its conspiracy theory that the Claims Purchasers profited from the misuse of MNPI allegedly given to them by Seery.

Highland case.[291] In addition, there are no allegations in the Proposed Complaint regarding whether Stonehill conducted due diligence or not, and Patrick testified that neither he nor HMIT had any personal knowledge of how much due diligence Farallon or Stonehill did prior to acquiring the Purchased Claims.[292] The court finds and concludes that HMIT's allegations of aiding and abetting and conspiracy in Counts II and III of the Proposed Complaint are based on unsubstantiated inferences and speculation, lack internal consistency, and lack consistency with verifiable public facts. Accordingly, HMIT has failed to show that these claims have a foundation and merit and has also failed to show that they are plausible.

c) HMIT's Proposed Claims Set Forth in Counts IV (Equitable Disallowance), V (Unjust Enrichment and Constructive Trust), and VI (Declaratory Relief) of the Proposed Complaint

i. Count IV (Equitable Disallowance).

In Count IV of its Proposed Complaint, HMIT seeks "equitable disallowance" of the claims acquired by Farallon's and Stonehill's special purpose entities Muck and Jessup, "to the extent over and above their initial investment," and, in the alternative, equitable subordination of their claims to all claims and interests, including HMIT's unvested Class 10 Contingent Claimant Trust Interest, "given [their] willful, inequitable, bad faith conduct" of allegedly "purchasing the Claims based on material non-public information" and being "unfairly advantaged" in "earning significant profits on their purchases."[293] As noted above, these remedies are not available to HMIT.[294]

First, HMIT's request to equitably subordinate the Purchased Claims to all claims and interests is not permitted because Bankruptcy Code § 510(c), by its terms, permits equitable

[291] *See* June 8 Hearing Transcript, 239:6-21.
[292] *See id.*, 310:19-312:2.
[293] Proposed Complaint ¶¶ 83-87.
[294] *See infra* pages 74-75.

subordination of a ***claim to other claims*** or an ***interest to other interests*** but does not permit equitable subordination of a ***claim to interests***.

Second, "equitable" disallowance of claims is not an available remedy in the Fifth Circuit pursuant to the *Mobile Steel* case.[295]

Third, reconsideration of an already-allowed claim in a bankruptcy case can only be accomplished through Bankruptcy Code § 502(j), which, pursuant to Federal Rule of Bankruptcy Procedure 9024, allows reconsideration of allowance of a claim that was allowed following ***a contest*** (which is certainly the case with respect to the Purchased Claims) based on the "equities of the case." But this is only if the request for reconsideration is made within the one-year limitation prescribed in Rule 60(c) of the Federal Rules of Civil Procedure. HMIT's request for disallowance of Muck and Jessup's Purchased Claims (if it could somehow be construed as a request for reconsideration of their claims), is clearly untimely, as it is being made well beyond a year since their allowance by this court following contests and approval of Rule 9019 settlements. Thus, the court finds that HMIT has not alleged a colorable or even plausible claim in Count IV of the Proposed Complaint and, therefore, the Motion for Leave should be denied.

ii. Count V (Unjust Enrichment and Constructive Trust)

In Count V of the Proposed Complaint, HMIT alleges that, "by acquiring the Claims using [MNPI], Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity" and that "[a]llowing [the Claims Purchasers] to retain their ill-gotten benefits would be unconscionable;" thus, HMIT alleges, the Claims Purchasers "should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment" and "a constructive trust should be imposed on such proceeds . . . ."[296]

[295] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

[296] Proposed Complaint ¶¶ 89-93.

HMIT alleges further that "Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restitute all compensation he has received from the outset of his collusive activities" and "[a]lternatively he should be required to disgorge and restitute all compensation received since the Effective Date" over which a constructive trust should be imposed.[297] HMIT has not alleged a colorable or even a plausible claim for unjust enrichment or constructive trust in Count V.

Under Texas law,[298] "[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay."[299] Thus, "when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory."[300] Here, as noted above, HMIT's only alleged injury is a diminution of the value of its unvested Contingent Claimant Trust Interest by virtue of Seery's allegedly having wrongfully obtained excessive compensation, with the help of the Claims Purchasers. ***Yet Seery's compensation is governed by express agreements*** (i.e., the Plan and the CTA). Thus, HMIT's claim based on unjust enrichment is not an available theory of recovery.

iii. Count VI (Declaratory Relief)

HMIT seeks declaratory relief in Count VI of the Proposed Complaint, essentially, that Dondero's conspiracy theory is correct and that HMIT's would succeed on the merits with respect

[297] *Id.* ¶ 94.

[298] Under the Plan, Texas law governs HMIT's "claim" for unjust enrichment because it is not a "corporate governance matter." (Plan Art. XII.M.) It also governs HMIT's "claim" for constructive trust, which "is merely a remedy used to grant relief on the underlying cause of action." *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

[299] *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).

[300] *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)).

to the Proposed Claims if it were permitted leave to bring them in an adversary proceeding.[301] But, a request for declaratory relief is not "an independent cause of action"[302] and "in the absence of any underlying viable claims such relief is unavailable."[303] This court has already found and concluded that HMIT would not have constitutional or prudential standing to bring the underlying causes of action in the Proposed Complaint. This court has also found and concluded that all of the Proposed Claims are without foundation or merit and are not even plausible and are all; being brought for the improper purpose of continuing Dondero's vexatious, harassing, bad-faith litigation. Thus, HMIT would not be entitled to pursue declaratory judgement relief as requested in Count VI of the Proposed Complaint.

d) HMIT Has No Basis to Seek Punitive Damages

HMIT separately alleges that the Claims Purchasers' and Seery's "misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others," thus entitling HMIT to an award of punitive damages under applicable law. But, HMIT abandoned its proposed fraud claim that was in its Original Proposed Complaint, so its sole claim for primary liability is Seery's alleged breach of his fiduciary duties. And under Delaware law, the "court cannot award punitive damages in [a] fiduciary duty action."[304]

[301] Proposed Complaint ¶¶ 96-99.

[302] *See Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 932 (5th Cir. 2023).

[303] *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at *2 (S.D. Tex. June 7, 2016) (citing *Collin Cty. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)); *see also Hopkins v. Cornerstone Am.*

[304] *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff'd* 682 F. App'x 24 (2d Cir. 2017).

3. HMIT Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test Because It Seeks to Bring the Proposed Complaint for Improper Purposes of Harassment and Bad-Faith, Vexatiousness.

Under this court's Gatekeeper Colorability Test, in addition to showing that its allegations and claims are not without foundation or merit, HMIT must also show that the Proposed Claims are not being brought for any improper purpose. Taking into consideration the court's knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, the court finds that HMIT is acting at the behest of, and under the control or influence of, Dondero in continuing to pursue harassing, bad faith, vexatious litigation to achieve his desired result in these bankruptcy proceedings. So, in addition to failing to show that its Proposed Claims have foundation and merit, HMIT cannot show that it is pursuing the Proposed Claims for a proper purpose and, thus, cannot meet the requirements under the Gatekeeper Colorability Test; HMIT's Motion for Leave should be denied.

IV. CONCLUSION

The court concludes, having taken into consideration both its knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, that HMIT's Motion for Leave should be denied for three independent reasons: (1) HMIT would lack constitutional standing to bring the Proposed Claims (and, thus, the federal courts would lack subject matter jurisdiction over the Proposed Claims); (2) even if HMIT would have constitutional standing to pursue the Proposed Claims, it would lack prudential standing to bring the Proposed Claims; and (3) even if HMIT would have both constitutional standing and prudential standing to bring the Proposed Claims, it has not met its burden under the Gatekeeper Colorability Test of showing that its Proposed Claims are "colorable" claims—that the Proposed Claims are not without foundation, not without merit, and not being pursued for an improper purpose. Moreover,

even if this court's Gatekeeper Colorability Test should be replaced with a Rule 12(b)(6) "plausibility" standard, the Proposed Claims are not plausible.

Accordingly,

IT IS ORDERED that HMIT's Motion for Leave be, and hereby is **DENIED**.

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

Exhibit 2

The following constitutes the ruling of the court and has the force and effect therein described.

Signed August 25, 2023

United States Bankruptcy Judge

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

IN RE:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-sgj-11**
Reorganized Debtor.	§	

MEMORANDUM OPINION AND ORDER PURSUANT TO PLAN "GATEKEEPER PROVISION" AND PRE-CONFIRMATION "GATEKEEPER ORDERS": DENYING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING[1]
[BANKR. DKT. NOS. 3699, 3760, 3815, and 3816]

I. INTRODUCTION

BEFORE THIS COURT is yet another post-confirmation dispute relating to the Chapter 11 bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor").

[1] On August 2, 2023, this court signed an Order [Bankr. Dkt. No. 3897] that was agreed to among various parties, after the filing of a Motion to Stay and Compel Mediation [Bankr. Dkt. No. 3752] filed by James D. Dondero and related entities. Pursuant to paragraph 7 of that order, certain pending matters in the bankruptcy court are stayed pending mediation. The parties did not agree to stay the matter addressed in this Memorandum Opinion and Order.

It is now more than two and half years since the confirmation of Highland's Plan[2]—the Plan having been confirmed on February 22, 2021.[3] The Plan was never stayed; it went effective on August 11, 2021 ("Effective Date"), and it was affirmed almost in its entirety by the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit"), in late summer 2022, including an approval of the so-called Gatekeeper Provision[4] therein. The Gatekeeper Provision—and how and whether it should now be exercised or interpreted to allow a certain lawsuit to be filed—is at the heart of the current *Emergency Motion for Leave to File Verified Adversary Proceeding* [Bankr. Dkt. Nos. 3699, 3760, 3815, 3816] (collectively, the "Motion for Leave") filed by a movant known as Hunter Mountain Investment Trust ("HMIT").

A. Who is the Movant, HMIT?

Who is HMIT? It is undisputed that it is a former equity owner of Highland. It held 99.5% of Highland's Class B/C limited partnership interests and was classified in a Class 10 under the confirmed Plan, which class treatment provided it with a contingent interest in the Highland Claimant Trust ("Claimant Trust") created under the Plan, and as defined in the Claimant Trust Agreement. This means that HMIT could receive consideration under the Plan if all claims against Highland are ultimately paid in full, with interest. As later further discussed, it is undisputed that

[2] Capitalized terms not defined in this introduction shall have the meaning ascribed to them below.

[3] The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order")[Bankr. Dkt. No. 1943].

[4] In an initial opinion dated August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in large part, "revers[ing] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan's exculpation, and affirm[ing] on all remaining grounds." *In re Highland Capital Management, L.P.*, No. 21-10449, 2022 WL 3571094, at *1 (5th Cir. Aug. 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022, "for the limited purpose of clarifying and confirming one part of its August 19, 2022 opinion," the Fifth Circuit withdrew its original opinion and replaced it with its opinion reported at *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419, 424 (5th Cir. 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section "IV(E)(2) – *Injunction and Gatekeeper Provisions*" of the original opinion: "The injunction and gatekeeper provisions are, on the other hand, perfectly lawful." was replaced with "We now turn to the Plan's injunction and gatekeeper provisions." In all other respects, the Fifth Circuit panel's original ruling remained unchanged. Petitions for writs of certiorari regarding the Confirmation Order have been pending at the United States Supreme Court since January 2023.

HMIT's only asset is its contingent interest in the Claimant Trust. It has no employees or revenue. HMIT's representative has testified that HMIT is liable on more than $62 million of indebtedness owed to The Dugaboy Investment Trust ("Dugaboy"), a family trust of which James Dondero ("Dondero"), the co-founder and former chief executive officer ("CEO") of Highland, and his family members are beneficiaries, and that Dugaboy also is paying HMIT's legal fees. HMIT vehemently disputes the suggestion that it is controlled by Dondero.

B. What Does the Movant HMIT Seek Leave to File?

HMIT seeks leave to file an adversary proceeding ("Proposed Complaint")[5] in the bankruptcy court to bring claims on behalf of itself and, derivatively, on behalf of the Reorganized Debtor and the Claimant Trust for alleged breach of fiduciary duties by the Reorganized Debtor's CEO and Claimant Trustee, James P. Seery, Jr. ("Seery") and conspiracy against: (1) Seery; and (2) purchasers of $365 million face amount of ***allowed*** unsecured claims in this case, who purchased their claims post-confirmation but prior to the occurrence of the Effective Date of the Plan ("Claims Purchasers,"[6] and with Seery, the "Proposed Defendants"). To be clear (and as later further explained), the claims acquired by the Claims Purchasers were acquired by them after extensive litigation, mediation, and settlements were approved by the bankruptcy court and after the original claims-holders had voted on the Plan and after Plan confirmation. As later explained,

[5] In its original Motion for Leave filed at Bankruptcy Docket No. 3699 on March 28, 2023, HMIT sought leave to file the proposed complaint ("Initial Proposed Complaint") attached as Exhibit 1 to the Motion for Leave. Nearly a month later, on April 23, 2023, HMIT filed a *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* ("Supplement") [Bankr. Dkt. No. 3760], a revised proposed complaint as Exhibit 1-A, and stating that "[t]he Supplement is not intended to supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action." Supplement, ¶ 1 and Exhibit 1-A. It is this revised proposed complaint to which this court will refer, when it uses the defined term "Proposed Complaint," even though HMIT filed redacted versions of its Motion for Leave on June 5, 2023 at Bankruptcy Docket Nos. 3815 and 3816 that attached the Initial Proposed Complaint as Exhibit 1.

[6] The Claims Purchasers identified in the Proposed Complaint are Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which is a special purpose entity created by Farallon to purchase allowed unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which is a special purpose entity created by Stonehill to purchase allowed unsecured claims against Highland.

the Claims Purchasers filed notices of their purchases as required by Bankruptcy Rule 3001(e)(2), and no objections were filed thereto. In any event, various damages or remedies are sought against the Proposed Defendants revolving around the Claims Purchasers' claims purchasing activities.

C. Why Does HMIT Need to Seek Leave?

As alluded to above, HMIT filed its Motion for Leave to comply with the provision in the Plan known as a "gatekeeper" provision ("Gatekeeper Provision") and with this court's prior gatekeeper orders entered in January and July 2020, which all require that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain (1) a finding from the bankruptcy court that its proposed claims ("Proposed Claims") are "colorable"; and (2) specific authorization by the bankruptcy court to pursue the Proposed Claims.[7] The Gatekeeper Provision was not included in the Plan *sans raison*. Indeed, as the Fifth Circuit recognized in affirming confirmation of the Plan, the Gatekeeper Provision (along with the other "protection provisions" in the Plan) had been included in the Plan to address the "continued litigiousness" of Mr. James Dondero ("Dondero"), Highland's co-founder and former chief executive officer ("CEO"), that began prepetition and escalated following the post-petition "nasty breakup" between Highland and Dondero, by "screen[ing] and prevent[ing] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[8]

[7] To be clear, the Gatekeeper Provision in the Plan was not the first or even second injunction of its type issued in this bankruptcy case. The Gatekeeper Orders were entered by the bankruptcy court pre-confirmation: (a) in January 2020, just a few months into the case, as part of this court's order approving a corporate governance settlement between Highland and its unsecured creditors committee, in which Dondero, Highland's co-founder and former CEO, was removed from any management role at Highland and three independent directors ("Independent Directors") were appointed in lieu of a chapter 11 trustee being appointed ("January 2020 Order"); and (b) in July 2020, in this court's order authorizing the employment of Seery (one of the three Independent Directors) as the Debtor's new Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative ("July 2020 Order," together with the January 2020 Order, the "Gatekeeper Orders").

[8] *See Highland Capital*, 48 F.4th at 427, 435.

D. Some Further Context Regarding Post-Confirmation Litigation Generally.

Since confirmation of the Plan, hundreds of millions of dollars have been paid out to creditors under the Plan, and there are numerous adversary proceedings and contested matters still pending, at various stages of litigation, in the bankruptcy court, the district court, and the Fifth Circuit, almost exclusively involving Dondero and entities that he owns or controls. To be sure, the post-confirmation litigation in this case does not consist of the usual adversaries and contested matters one typically sees by and against a reorganized debtor and/or litigation trustee, such as preference or other avoidance actions and litigation over objections to claims that are still pending after confirmation of a plan. Indeed, the claims of the largest creditors in this case (with claims asserted in the aggregate of more than one billion dollars) were successfully mediated and incorporated into the Plan—a plan which was ultimately accepted by the votes of an overwhelming majority of Highland's non-insider creditors. Dondero and entities under his control were the only parties who appealed the Confirmation Order, and Dondero and entities under his control have been the appellants in virtually every appeal that has been filed regarding this bankruptcy case. Petitions for writs of mandamus (which have been denied) have been filed in the district court and in the Fifth Circuit by some of these same entities, including one by HMIT, when this court denied setting an ***emergency*** hearing on the instant Motion for Leave (HMIT had sought a setting on three-days' notice).

A recent list of active matters involving Dondero and/or entities and/or individuals affiliated or associated with him, filed in the bankruptcy case by Highland and the Claimant Trust, reveals that there were at least 30 pending and "Active Dondero-Related Litigation" matters as of July 14, 2023: six (6) proceedings in this court; six (6) active appeals or actions are pending in the District Court for the Northern District of Texas; seven (7) appeals in the Fifth Circuit; two (2)

petitions for writs of certiorari in the United States Supreme Court; and nine (9) other proceedings or actions with or affecting the Highland Parties ("Highland," the "Claimant Trust," and "Seery") in various other state, federal, and foreign jurisdictions.[9]

The above-described context is included because the Proposed Defendants assert that the Motion for Leave is just a continuation of Dondero's unrelenting barrage of meritless and harassing litigation, making good on his oft-mentioned alleged threat to "burn down the place" after not achieving the results he wanted in the Highland bankruptcy case. Indeed, the Motion for Leave was filed after two years of unsuccessful attempts by, first, Dondero personally, and then HMIT to obtain pre-suit discovery from the Proposed Defendants (i.e., the Claims Purchasers) through two different Texas state court proceedings, pursuant to Tex. R. Civ. P. 202 ("Rule 202"). In each of these Rule 202 proceedings, Dondero and HMIT espoused the same Seery/Claims

[9] *See* Bankr. Dkt. No. 3880 (filed on July 14, 2023, providing a list of "Active Dondero-Related Litigation" and noting that the list is "a summary of active pending actions only and does not include actions that were resolved by final orders, including actions finally resolved after appeals to the U.S. District Court for the Northern District of Texas and/or the U.S. Court of Appeals for the Fifth Circuit."). Just since the filing by the Highland Parties of the list, ***three*** of the appeals pending in the Fifth Circuit have been decided against the Dondero-related appellants, two of which upheld the district court's dismissal of appeals by Dondero-related entities of bankruptcy court orders based on the lack of bankruptcy appellate standing on behalf of the appellant. On July 19, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by NexPoint Advisors, L.P. ("NexPoint") of bankruptcy court orders approving professional compensation on the basis that NexPoint did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the orders. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, 74 F.4th 361 (5th Cir. 2023). On July 31, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy—the Dondero family trust that, like the movant here in this Motion for Leave, was the holder of a limited partnership interest in Highland, and, as such, now has a contingent interest in the Claimant Trust—which had appealed a bankruptcy court order approving a Rule 9019 settlement on the same basis: Dugaboy did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the settlement order. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10960, 2023 WL 4861770 (5th Cir. July 31, 2023). The July 31, 2023 ruling followed the Fifth Circuit's ruling on February 21, 2023, affirming the district court's dismissal of an appeal by Dugaboy of yet another bankruptcy court order for lack of bankruptcy appellate standing. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023). These rulings by the Fifth Circuit are discussed in greater detail below. The third ruling by the Fifth Circuit since July 14, 2023, was issued by the Fifth Circuit in a per curium opinion not designated for publication on July 26, 2023, this one affirming the district court's affirmance of yet another Rule 9019 settlement order of the bankruptcy court that was appealed by Dugaboy, agreeing with the district court that the bankruptcy court had jurisdiction to approve a settlement among the Debtor, an entity affiliated with the Debtor but not a debtor itself, and UBS (the Debtor's largest prepetition creditor and the seller of its claims to the Claims Purchasers, which is one of the claims trading transactions HMIT complains about in the Proposed Complaint). *See The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P.*, No. 22-10983, 2023 WL 4842320 (5th Cir. July 26, 2023).

Purchasers conspiracy theory espoused in the Motion for Leave—that Seery must have provided one or more of the Claims Purchasers with material nonpublic information to induce them to want to purchase large, allowed, unsecured claims at a discount; a *quid pro quo* is suggested, such that the Claims Purchasers were allegedly told they would make a hefty profit on the claims they purchased and, in return, they would gladly "rubber stamp" Seery's "excessive compensation" as the Claimant Trustee of the Claimant Trust. In sum, HMIT alleges this constituted wrongful "insider trading" of the bankruptcy claims. In addition, certain lawyers for Dondero and Dugaboy sent letters reporting this alleged conspiracy and "insider trading" to the Texas State Securities Board ("TSSB") and the Executive Office of the United States Trustee ("EOUST").

It is against this background and in this context that the court must analyze, in the exercise of its gatekeeping function under the confirmed Plan and its prior Gatekeeping Orders, whether HMIT should be allowed to pursue the Proposed Claims (i.e., whether the Proposed Claims are "colorable" claims as contemplated under the Gatekeeper Orders and the Gatekeeper Provision of the Plan). The court held an evidentiary hearing on the Motion for Leave on June 8, 2023 ("June 8 Hearing"), during which the court admitted exhibits and heard testimony from three witnesses both in support of and in opposition to the Motion for Leave. Having considered the Motion for Leave, the response of the Proposed Defendants thereto, HMIT's reply to the response, and the arguments and evidence presented at the hearing on the Motion for Leave, the court denies HMIT's request for leave to pursue its Proposed Claims. The court's reasoning is set forth below.

II. BACKGROUND

A. Highland's Bankruptcy Case, Dondero's Removal as CEO, and the Plan

Highland was co-founded in Dallas in 1993 by Dondero and Mark Okada ("Okada"). It operated as a global investment adviser that provided investment management and advisory services and managed billions of dollars of assets, both directly and indirectly through numerous

affiliates. Highland's equity interest holders included HMIT (99.5%), Dugaboy (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. ("Strand"), which was wholly owned by Dondero and was the only general partner of Highland (0.25%). On October 16, 2019 (the "Petition Date"), Highland, with Dondero in control[10] and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims – many of which had finally become or were about to be liquidated (after a decade or more of contentious litigation in multiple fora all over the world—filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019. The official committee of unsecured creditors (the "Committee") (and later, the United States Trustee) expressed a desire for the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the specter of a possible appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.[11] As a result of this settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,[12] and three independent directors ("Independent Directors") were

[10] Mark Okada resigned from his role with Highland prior to the Petition Date.

[11] This order is hereinafter referred to as the "January 2020 Order" and was entered by the court on January 9, 2020 [Bankr. Dkt. No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Bankr. Dkt. No. 281].

[12] Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland's motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Bankr. Dkt. No. 338].

chosen to lead Highland through its chapter 11 case: Seery, John S. Dubel, and retired bankruptcy judge Russell Nelms. Given the Debtor's perceived culture of constant litigation while Dondero was at the helm, it was purportedly not easy to get such highly qualified persons to serve as independent board members. At the hearing on the corporate governance settlement motion, the court heard credible testimony that none of the Independent Directors would have taken on the role without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation from mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the Independent Directors without the bankruptcy court's prior authority. The gatekeeper provision approved by the court in its January 9 Order states,[13]

> No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation and did so "subject at all times to the supervision, direction and authority of the Independent Directors" and to his agreement to "resign immediately" "[i]n the event the Independent Directors determine for any reason that the Debtor shall no longer retain Dondero as an employee"[14] and to "not cause any Related Entity to terminate any agreements with the Debtor."[15] The court later

[13] January 2020 Order, 3-4, ¶ 10.

[14] January 2020 Order, 3, ¶ 8.

[15] *Id.* at ¶ 9.

entered, on July 16, 2020, an order approving the appointment of Seery as Highland's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative,[16] which included essentially the same "gatekeeper" language with respect to the pursuit of claims against Seery acting in these roles. The gatekeeper provision in the July 2020 Order was essentially the same as the gatekeeper provision in the January 2020 Order:

> No entity may commence or pursue a claim or cause of action of any kind against Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

July 2020 Order, 3, ¶5. Neither the January 2020 Order nor the July 2020 Order were appealed.

Throughout the summer of 2020, Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Dondero's plans failed to gain support, he and entities under his control engaged in substantial, costly, and time-consuming litigation for Highland.[17] As the Fifth Circuit described the situation, after Dondero's plans failed "he and other creditors began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital's management, threatening employees, and canceling trades between Highland Capital and its clients."[18] On October 9, 2020, Dondero resigned from all positions with the Debtor and its

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[16] *See* the July 16, 2020 order approving the retention by Highland of Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020 ("July 2020 Order") [Bankr. Dkt. No. 854].

[17] According to Seery's credible testimony during the hearing on confirmation of the Plan that had been negotiated between the Committee and the Independent Directors, Dondero had threatened to "burn the place down" if his proposed plan was not accepted. *See* Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20. Bankr. Dkt. No. #1894.

[18] *Highland Capital*, 48 F.4th at 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at *1, *26 (Bankr. N.D. Tex.

affiliates in response to a demand by the Independent Directors made after Dondero's purported threats and disruptions to the Debtor's operations.[19]

The Independent Directors and the Committee had negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan") [Bankr. Dkt. No. 1808] on January 22, 2021.[20] Highland had negotiated settlements with most of its major creditors following mediation and had amended its initially proposed plan to address the objections of most of its creditors, leaving only the objections of Dondero and entities under his control (the "Dondero Parties") at the time of the confirmation hearing,[21] which was held over two days in early February 2021. The Plan is essentially an "asset monetization" plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). Highland's various servicing agreements were vested in the Reorganized Debtor, which continues to manage collateralized loan obligation vehicles ("CLOs") and various other investments postconfirmation. The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down the Reorganized Debtor over a three-year period by monetizing its assets and making

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June 7, 2021) where this court "h[eld] Dondero in civil contempt, sanctioning him $100,000, and comparing this case to a 'nasty divorce.'").

[19] *See* Highland Ex. 13. The court shall refer to exhibits offered and admitted at the June 8 Hearing on the Motion for Leave by the Highland Parties as "Highland Ex. ___" and to exhibits offered and admitted by HMIT as "HMIT Ex. ___."

[20] The *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* was filed on November 24, 2020 ("Disclosure Statement") [Bankr. Dkt. No. 1473].

[21] The only other objection remaining was the objection of the United States Trustee to the Plan's exculpation, injunction, and release provisions.

distributions to Class 8 and Class 9 creditors as Claimant Trust Beneficiaries. The Claimant Trust is overseen by a Claimant Trust Oversight Board ("CTOB"), and pursuant to the terms of the Plan and the Claimant Trust Agreement ("CTA"),[22] the CTOB approved Seery's compensation package as the CEO of the Reorganized Debtor and the Claimant Trustee. Following their acquisition of their unsecured claims, representatives of Claims Purchasers Muck and Jessup became members of the CTOB.[23] Seery's compensation included the same base salary that he was receiving as CEO and CRO of Highland, plus an added incentive bonus tiered to recoveries and distributions to the creditors under the Plan. The Plan provides for the cancellation of the limited partnership interests in Highland held by HMIT, Dugaboy, and Okada and his family trusts in exchange for each holder's pro rata share of a contingent interest in the Claimant Trust ("Contingent Claimant Trust Interest"), as holders of allowed interests in Class 10 (holders of Class B/C limited partnership interests) or Class 11 (holders of Class A limited partnership interests) under the Plan.

B. Dondero Communicates Alleged Material Non-Public Information ("MNPI") to Seery, and Seery Allegedly Provides the MNPI to the Claims Purchasers in Furtherance of an Alleged Fraudulent Scheme to Have the Claims Purchasers "Rubber Stamp" His Compensation as Claimant Trustee Post-Confirmation

1. The December 17, 2020 MGM Email

Between Dondero's forced resignation from Highland in October 2020 and the confirmation hearing in February 2021, Dondero engaged in what appeared to be attempts to thwart, impede, and otherwise interfere with the Plan being proposed by the Independent Directors and the Committee. In the midst of this, on December 17, 2020, Dondero sent Seery[24] an email

[22] Highland Ex. 38

[23] The CTOB had three members: a representative of Muck (Michael Linn), a representative of Jessup (Christopher Provost), and an independent member (Richard Katz). *See* Joint Opposition ¶ 79.

[24] Dondero sent the email to others as well but did not copy counsel for the Independent Directors (including Seery) in violation of the terms of an existing temporary restraining order that enjoined Dondero from, among other things, "communicating . . . with any Board member" (including Seery) without including Debtor's counsel. Morris Dec. Ex. 23 ¶ 2(a). Citations to "Morris Dec. Ex. _" are to the exhibits attached to the *Declaration of John A. Morris in Support*

(the "MGM Email") that featured prominently in HMIT's Motion for Leave. According to HMIT and Dondero, the MGM Email contained material nonpublic information ("MNPI") regarding the possibility of an imminent acquisition of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"), likely by either Amazon or Apple.[25] At the time Dondero sent the MGM Email, Dondero sat on the board of directors of MGM, and the Debtor owned MGM stock directly. The Debtor also managed and partially owned a couple of other entities that owned MGM stock and managed various CLOs that owned some MGM stock as well. HMIT alleges now that Seery later misused and wrongfully disclosed to the Claims Purchasers this purported MNPI as part of a *quid pro quo* scheme, whereby the Claims Purchasers agreed to approve excessive compensation for Seery in the future (in exchange for him providing this allegedly "insider" information that inspired them to purchase unsecured claims with an alleged expectation of future large profits).[26] A timeline of events (in late 2020) in the weeks leading up to Dondero's MGM Email to Seery, following Dondero's departure from Highland, helps to put the email in full context:

- <u>October 16</u>: Dondero and his affiliates attempt to impede the Debtor's trading activities by demanding—with no legal basis—that Seery cease selling certain assets;[27]

- <u>November 24</u>: Bankruptcy Court enters an Order approving the Debtor's Disclosure Statement, scheduling the confirmation hearing on the Debtor's Plan for January 13, 2021, and granting related relief;[28]

- <u>November 24–27</u>: Dondero personally interferes with the Debtor's

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of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding, Bankr. Dkt. No. 3784.

[25] *See* Proposed Complaint ¶ 45.

[26] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the [Claims Purchasers], with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims."); ¶ 4 ("As part of the scheme, the [Claims Purchasers] obtained a position to approve Seery's ongoing compensation – to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT.").

[27] *See* Highland Ex. 14, Dondero-Related Entities' October 16, 2020 Letter; Highland Ex. 15, *Memorandum Opinion and Order Holding Dondero in Contempt for Violation of TRO*, 13-15.

[28] *See* Bankr. Dkt. No. 1476.

implementation of certain securities trades ordered by Seery;[29]

- November 30: The Debtor provides written notice of termination of certain shared services agreements it had with Dondero's two non-debtor affiliates, NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"; together with NexPoint, the "Advisors");[30]

- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes they owed to the Debtor, that had an aggregate face amount of more than $60 million—this was part of creating liquidity for the Debtor's Plan;[31]

- December 3: Dondero responds with what appeared to be a threat of some sort to Seery in a text message: "***Be careful what you do -- last warning***;"[32]

- December 10: Dondero's interference and apparent threat cause the Debtor to seek and obtain a temporary restraining order ("TRO") against Dondero;[33]

- December 16: This court denies as "frivolous" a motion filed by certain affiliates of Dondero, in which they sought "temporary restrictions" on certain asset sales;[34] and

- December 17: Dondero sends the unsolicited MGM Email[35] to Seery, which violates the TRO entered just a week earlier.[36]

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[29] *See* Highland Ex. 15, 30-36.

[30] Morris Decl. Ex. 17; *see also* Transcript of June 8, 2023 Hearing on HMIT's Motion for Leave ("June 8 Hearing Transcript"), 273:23-24.

[31] Morris Decl. Exs. 18-21; *see also* June 8 Hearing Transcript, 273:23-274:1.

[32] Morris Decl. Ex. 22 (emphasis added); *see also* June 8 Hearing Transcript, 273:1-12 (where Seery testified about receiving the threat from Dondero: "A: [T]his came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.").

[33] *See* Morris Decl. Ex. 23, *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* entered December 10, 2020 [Adv. Pro. No. 20-3190 Dkt. No. 10].

[34] *See* Morris Decl. Ex. 24, Transcript of December 16, 2020 Hearing, 63:5-64:15.

[35] Highland Ex. 11.

[36] Seery testified at the June 8 Hearing that Dondero knowingly violated the TRO when he sent the MGM Email:

> [The MGM Email] . . . followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski [Debtor's counsel] being on it. Furthermore, Pachulski had advised Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics. And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

June 8 Hearing Transcript, 273:13-22.

The MGM Email had the subject line "Trading Restriction re MGM – material non public information" and stated:

> Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.[37]

Seery credibly testified at the June 8 Hearing that he was "highly suspicious" when he received the MGM Email. This was because, among other reasons, Dondero sent it ***after***: (i) unsuccessful efforts to impede the Debtor's trading activities (followed by the TRO); (ii) the "be careful what you do" text to Seery by Dondero: (iii) Highland's termination of its shared service arrangements with Dondero's various affiliated entities; (iv) the bankruptcy court's approval of the disclosure statement; and (v) Highland's demand to collect on the demand notes for which Dondero and his entities were liable.[38] Highland's Chapter 11 case was fast approaching the finish line. Moreover, MGM was already on the restricted list at Highland Capital, and had been for a long time, and Dondero would know this.[39] Still further, as of December 17, 2020 (the date Dondero sent the unsolicited MGM Email to Seery), Dondero no longer owed a duty of any kind to the Debtor or any entity controlled by the Debtor, having surrendered in January 2020 direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement[40] and having resigned from all roles at the Debtor and affiliates in October 2020. Still further, Dondero—to the extent he was sharing with Seery MNPI that he obtained as a member of the board of directors of MGM—would have been violating his own fiduciary duties to MGM.

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[37] Highland Ex. 11.

[38] June 8 Hearing Transcript, 273:1-274:4.

[39] June 8 Hearing, 215:21-216:9.

[40] *See* Bankr. Dkt. Nos. 339, 354-1 (Term Sheet)).

In any event, in a declaration filed by Dondero in support of HMIT's Rule 202 petition in Texas state court for pre-suit discovery,[41] he indicated that his goal in sending the MGM E-mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

> On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple's interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades***.

It is noteworthy that ***Dondero's labeling of the MGM Email (in the subject line) as a communication containing "material non public information" did not make it so***. In fact, it appears from the credible evidence presented at the June 8, 2023 hearing on HMIT's Motion for Leave that the MGM Email did not disclose information to Seery that was not already made available to the public at the time it was sent. Seery testified that he did not think the MGM Email contained MNPI and that he did not personally "take any steps . . . to make sure that MGM stock was placed on a restricted list at Highland Capital after [he] received [the MGM Email]" because—as earlier noted—"MGM was already on the restricted list at Highland Capital . . . before I got to Highland."[42] Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months[43] and that was officially

[41] Highland Ex. 9 ¶ 3 (emphasis added).

[42] June 8 Hearing Transcript, 215:21-216:9. Seery elaborated upon further questioning from HMIT's counsel that he did not think the indications in the MGM Email (that came from a member of the board of directors of MGM) that "it was probably a first-quarter event" and that "Amazon and Apple were actively diligencing – are diligencing in the data room, both continue to express material interest" were not MNPI. *Id.*, 217:23-218:10. He testified that "it was clear [before he received the MGM Email] from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction would have to take place very quickly. And, in fact, the transaction did not take place in the first quarter." *Id.*, 219:3-7.

[43] *See* Highland Ex. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Ex. 26 (describing prospects of an MGM sale, noting that, among its largest

announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[44] For example, as early as January 2020, Apple and Amazon were identified as being among a new group of "Big 6" global media companies, and MGM was identified as being a leading media acquisition target. Indeed, according to at least one media report on January 26, 2020, "MGM, in particular, seems like a logical candidate to sell this year" having already held "preliminary talks with Apple, Netflix and other larger media companies."[45] In October 2020, the Wall Street Journal reported that MGM's largest shareholder, Anchorage Capital Group ("Anchorage"), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as Chairman of MGM's Board. The article reported that "[i]n recent months, Mr. Ulrich has said he is working toward a deal," and he specifically named Amazon and Apple as being among four possible buyers.[46] Thus, no one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed "material interest" in acquiring MGM. Dondero testified during the June 8 Hearing that, at the time he sent the MGM Email, he "knew with certainty from the board level that Amazon had hit our price, and it was going to close in the next couple of months,"[47] that "as of December 17th, Amazon had made an offer that was acceptable to MGM, [and that] that's what the board meeting was. We were going into exclusive negotiations to culminate the merger with

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shareholders, was "Highland Capital Management, LP") (article October 11, 2020). *See also* Highland Exs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for $8.4 billion).

[44] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid.

[45] Highland Ex. 25.

[46] Highland Ex. 26.

[47] June 8 Hearing Transcript, 127:2-4.

them."[48] Notwithstanding this testimony, Dondero eventually admitted (after a lengthy and torturous cross examination) that he did not actually communicate this supposed "inside" information to Seery in the MGM Email. He did not "say anything about Amazon hitting the price." He did not say anything about the MGM board going into exclusive negotiations with Amazon "to culminate the merger with them." Rather, he communicated information that Seery and any member of the public who cared to look could have gleaned from publicly available information as of December 17, 2020, regarding a much-written-about potential MGM transaction that involved interest from numerous companies, including, specifically, Amazon and Apple. When questioned why "[he felt] the need to mention Apple [in the MGM Email] if Amazon had already hit the price," Dondero simply answered, "The only way you generally get something done at attractive levels in business is if two people are interested," suggesting that he specifically ***did not*** communicate the purported inside information he obtained as a MGM board member—that Amazon had met MGM's strike price and that the MGM board was moving forward with exclusive negotiations with Amazon—because he wanted it to appear that there was still a competitive process going on that included both Amazon and Apple.[49]

Even if the MGM Email contained MNPI on the day it was sent (four months prior to the first of the Claim Purchases that occurred in April 2021), the information was fully and publicly disclosed to the market in the days and weeks that followed. For example, on December 21, 2020, just four days later, a Wall Street Journal article titled *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale*, reported that MGM had "tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process," and had "a market value of around $5.5 billion, based on privately traded shares and including debt." The Wall Street Journal Article reiterated

[48] *Id.*, 161:10-14.

[49] June 8 Hearing Transcript, 162:2-6.

that (i) Anchorage "has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks," and (ii) "Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers."[50] (*Id*. Ex. 27.) The Wall Street Journal's reporting was picked up and expanded upon in other publications soon after. For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The world is net enough! Amazon joins other streaming services in £4bn bidding war for Bond films as MGM considers selling back catalogue*, cited the Wall Street Journal article and further reported that MGM "hopes to spark a battle that could interest streaming services such as Amazon Prime";[51]

- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that "it's now become apparent that MGM is actually up on the auction block," noting that the Wall Street Journal was "reporting that the studio has begun a formal sale process" and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder;[52] and

- On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition.[53]

Finally, Highland and entities it controlled did not sell their MGM stock while the MGM-Amazon deal was under discussion and/or not made public but, instead, they tendered their MGM holdings in connection with, and as part of, the ultimate MGM-Amazon transaction after it closed in March 2022.

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[50] Highland Ex. 27.

[51] Highland Ex. 28.

[52] Highland Ex. 29.

[53] Highland Ex. 30.

2. <u>No Evidence to Support HMIT/Dondero's Assumptions that Seery Shared Alleged MNPI in the MGM Email with Claims Purchasers</u>

One of HMIT's allegations in the Proposed Complaint it seeks leave to file—which is central to HMIT's and Dondero's conspiracy theory—is that Seery shared the alleged MNPI from the MGM Email with the Claims Purchasers (or at least Farallon—the owner/affiliate of Muck, one of the Claims Purchasers) and that the Claims Purchasers only acquired the purchased claims ("Purchased Claims") based on, and because, of their receipt of the MNPI from Seery. HMIT essentially admits in the original version of its Motion for Leave that it has no direct evidence that Seery communicated the alleged MNPI to any of the Claims Purchasers. Rather, its allegation is based on inferences it wants the court to make based on "circumstantial" evidence and on the Dondero Declarations that were attached to the Motion for Leave, which described communications Dondero purportedly had with one or two representatives of Farallon in the "late spring" of 2021 concerning Farallon's recent acquisition of certain claims in the Highland bankruptcy case.[54] Based on these communications, HMIT and Dondero only assume Seery must have provided the MNPI about MGM to Farallon, which must have caused both Farallon and the other Claims Purchaser, Stonehill, to acquire the Purchased Claims.[55]

At the June 8 Hearing, HMIT offered Dondero's testimony that he had three telephone conversations with two representatives of Farallon, Mike Linn ("Linn") and Raj Patel ("Patel"),

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[54] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 1 and Ex. 3; *see also* Highland Ex. 9, *Declaration of James Dondero* (with Exhibit 1) dated February 15, 2023.

[55] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 28. HMIT subsequently filed the final version of the Motion for Leave that was revised to withdraw the Dondero Declarations and delete all references therein to the Dondero Declarations (but, notably, leaving in the allegations that were based on the Dondero Declaration(s)). This was done after the court ruled that it would allow the Proposed Defendants to examine Dondero regarding his Declarations. HMIT contended at that point that the court should consider the Motion for Leave on a no-evidence Rule 12(b)(6) type basis (but could not explain why it had attached the Dondero Declarations as evidence that "supported" the Motion for Leave, if it believed no evidence should be considered). *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 28; *see also infra* pages 45 to 47 regarding the "sideshow" litigation that occurred prior to the June 8 Hearing over whether the hearing on the Motion for Leave would be an evidentiary hearing.

who allegedly told him that they purchased the claims without conducting any due diligence and based solely on Seery's assurances that the claims were valuable. These conversations allegedly took place on May 28, 2021—two days after the MGM-Amazon deal was officially announced to the public (on May 26, 2021). Dondero also testified that a photocopy of handwritten notes ("Dondero Notes")[56] (which were partially cut off) were notes he took contemporaneously with these short telephone conversations he initiated (one with Patel and two follow-up conversations with Linn).[57] He testified that his purpose in taking these notes and in initiating the phone calls was that "[w]e'd been trying nonstop to settle the case for two-plus years. . . . [a]nd when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case . . . [s]o I reached out [to] the Farallon guys,"[58] and further, on *voir dire* from the Proposed Defendants' counsel, that the purpose of taking the notes was so that he had "a written record of the important points that [he] discussed . . . so I know how to address it the next time."[59] The handwritten notes[60] stated:

Raj Patel bought it because of Seery	*1*
50-70¢ not compelling	*2*
Class 8	*3*
Asked what would be compelling	*4*
-- No Offer	*5*
Bought in Feb/March timeframe	*6*
Bought assets w/ Claims	*7*
Offered him 40-50% premium	*8*
130% of cost; "Not Compelling"	*9*
No Counter; Told Discovery coming	*10*

[56] HMIT Ex. 4. The handwritten notes were admitted into evidence after *voir dire*, not for the truth of anything Patel or Linn allegedly said to him during the three telephone conversations, but as Dondero's "present sense impression" of the telephone conversations.

[57] June 8 Hearing Transcript, 133:1-136:3.

[58] *See id.*, 133:13-23.

[59] *See id.* (on *voir dire*), 144:1838-145:4.

[60] HMIT Ex. 4. The court has placed in a table and numbered each line for ease of reference. The table does not include the separate apparent partial date from the top left corner that Dondero testified was the date that he made the initial call to Patel: May 28, 2021.

On direct examination, Dondero testified that line 1 is what he wrote contemporaneously with the short call he initiated to Patel of Farallon in which Patel allegedly told Dondero "that he bought it because Seery told him to buy it and they had made money with Seery before"[61] and that Farallon "bought [the claim] because he was very optimistic regarding MGM"[62] before referring him to Linn, a portfolio manager at Farallon. Dondero testified that the rest of the handwritten notes (reflected in lines 2 through 10 of the table) were notes he took contemporaneously with two telephone conversations he had with Linn following his call to Patel, with lines 2-8 referring to Dondero's first call with Linn and lines 9 and 10 referring to his second call with Linn.[63] Dondero testified that the "50-70¢" in line 2 referred to his offer to Linn to pay 70 cents on the dollar to buy Farallon's[64] claims because "[w]e knew that they had – that the claims had traded around 50 cents" and "[w]e wanted to prevent the $5 million-a-month burn" (referring to attorney's fees in the Highland case) and that "not compelling Class 8" in lines 2-3 referred to Linn's response to him that the offer was not compelling.[65] Dondero testified that lines 4-5 referred to him asking Linn what amount would be compelling and to Linn's response that "he had no offer."[66] Dondero testified that lines 6-8 referred to Linn telling Dondero that Farallon bought the claims in the February, March timeframe and that Dondero told Linn that, given that the estate was spending $5 million a month on legal fees, Farallon should want to sell its claims and Linn's alleged response that "Seery told him it was worth a lot more."[67] Lastly, Dondero testified on direct examination

[61] June 8 Hearing Transcript, 134:7-10, 135:13-22.

[62] *Id.*, 139:3-11.

[63] *Id.*, 136:4-138:16.

[64] As noted above, Farallon did not acquire any of the Purchased Claims; rather, Farallon created a special purpose entity, Muck, to acquire the claims.

[65] June 8 Hearing Transcript, 136:4-16.

[66] *Id.*, 136:17-23.

[67] *Id.*, 137:6-138:7.

that the last two lines referred to a second telephone conversation he had with Linn in which Dondero offered 130 percent of cost for the claims and that Linn told him that the offer was not compelling, and he would not give a price at which he would sell.[68]

On cross-examination, Dondero acknowledged that, though he had testified that the handwritten notes were intended to be a written record of the important points from the telephone conversations he had with Patel and Linn, there was no mention in the notes of: (1) MGM: (2) or that Farallon was very optimistic about MGM; (3) the sharing of MNPI; (4) a *quid pro quo;* or (5) Seery's compensation, and that his last note—"Told Discovery coming"—was a reference to Dondero telling Linn (not Linn telling Dondero) that discovery was coming in response to Dondero's own supposition that Farallon must have traded on MNPI.[69] Cross-examination also revealed that Farallon never told Dondero that Seery gave them MNPI, and that Dondero only ***believed*** Seery ***must have*** given Farallon MNPI, because Farallon (Patel and Linn) had told him that the only reason Farallon bought their claims was because of their prior dealings with Seery, which Dondero took to mean that they had conducted no due diligence on their own prior to acquiring the claims. Dondero also testified that he did not have any personal knowledge as to how Seery's compensation package, as CEO of the Reorganized Debtor and Claimant Trustee, was determined because he was "not involved" in the setting of Seery's compensation pursuant to the Claimant Trust[70] and that he never discussed Seery's compensation with Farallon.[71]

As noted earlier, Dondero attempted to obtain discovery from the Claims Purchasers in a Texas state court pursuant to Rule 202 of the Texas Rules of Civil Procedure. The Texas state

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[68] *Id.*, 138:8-22.

[69] *Id.*, 190:14-191:25. Dondero testified that he told Linn that discovery "would be coming in the next few weeks" and noted that "this has been a couple years. . . . [w]e've been trying for two years to get . . . discovery in this."

[70] *Id.*, 200:13-201:1.

[71] *Id.*, 208:23-209:8.

court denied the First Rule 202 petition on June 1, 2022, after having considered the amended petition, the responses, the record, applicable authorities and having conducted a hearing on the petition on June 1, 2022.[72]

3. Dondero Unsuccessfully Seeks Discovery and to Have Various Agencies and Courts Outside of the Bankruptcy Court Acknowledge His Insider Trading Theories

Dondero acknowledged at the June 8 Hearing that the verified petition ("First Rule 202 Petition") he signed and filed on July 22, 2021, in the first Texas Rule 202 proceeding—just weeks after his telephone calls with Linn and Patel—was true and accurate. In it, he swore under oath as to what Linn told him in the telephone call concerning Farallon's purchase of the claims, and the only reason he gave for wanting discovery was that Linn told him Farallon bought the claims "sight unseen—relying entirely on Seery's advice solely because of their prior dealings."[73] Dondero acknowledged, as well, that his sworn statement that he filed in support of an amended verified Rule 202 petition filed in the same Texas Rule 202 proceeding, but nearly ten months later (in May 2022), described the same telephone conversation he had with Linn, and it did not mention MGM at all and did not say that Linn told him that Seery gave him MNPI; rather, the sworn statement stated only that "On a telephone call between Petitioner and Michael Lin[n], a representative of Farallon, Mr. Lin[n] informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Seery's say-so because they had made so much money in the past when Seery told them to purchase claims" and that Linn did not tell him that Seery gave them MNPI, but he concluded that Seery gave Farallon MNPI based on what Linn did tell him.[74]

[72] Highland Ex. 7.

[73] *Id.*, 193:8-194:16; Highland Ex. 3, *Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 21. The first Texas Rule 202 proceeding in which Dondero sought discovery regarding the Farallon acquisition of its claims was brought by Dondero, individually, in the 95th Judicial District, Dallas County, Texas.

[74] *Id.*, 195:11-197:17; Highland Ex. 4, *Amended Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 23.

Nine days later, Dondero filed a declaration in the same proceeding, in which he described the same call with Linn as follows:[75]

> Last year, I called Farallon's Michael Lin[n] about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin[n] of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Seery had testified in court, it made no sense to me that Mr. Lin[n] would think that the claims were worth more than what Seery testified under oath was the value of the bankruptcy claims.

Dondero further stated in his declaration that "I have an interest in ensuring that the claims purchased by [Farallon] are not used as a means to deprive the equity holders of their share of the funds," and that "[i]t has become obvious that despite the fact that the bankruptcy estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights. Accordingly, "I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee."[76] Dondero attached as Exhibit A to his declaration a letter from Douglas Draper ("Draper"), an attorney with the law firm of Heller, Draper & Horn, L.L.C. in New Orleans, to the office of the General Counsel, Executive Office for U.S. Trustees, dated October 5, 2021, in which Draper opens the letter by stating that "[t]he purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the [Creditors' Committee] in the bankruptcy of [Highland]," and later noted that he "became involved in Highland's bankruptcy through my representation of [Dugaboy], an irrevocable trust of which Dondero is the primary beneficiary."[77] Mr. Draper laid out the same allegations of insider claims trading, breach of

[75] Highland Ex. 5, ¶ 2.
[76] *Id.*, ¶¶ 3-4.
[77] *Id.*, Ex. A, 1-2.

fiduciary duties, and conspiracy that HMIT seeks to bring in the Proposed Complaint.[78] The U.S. Trustee's office took no action. Dondero made a second and third attempt to get the U.S. Trustee's office to conduct an investigation into the same allegations laid out in Draper's letter, this time in "follow-up" letters to the Office of the U.S. Trustee on November 3, 2021, and six months later, on May 11, 2022, through another lawyer, Davor Rukavina ("Rukavina"), in which Rukavina wrote "to provide additional information regarding the systemic abuses of bankruptcy process occasioned during the [Highland] bankruptcy."[79] Again, the U.S. Trustee's office took no action.

On February 15, 2023, Dondero filed yet another sworn statement about his alleged conversation with Linn, this time in support of a Verified Rule 202 Petition ***filed by HMIT*** ("Second Rule 202 Petition"), filed in a different Texas state court (Texas District Court, 191st Judicial District, Dallas County, Texas), following Dondero's unsuccessful attempts throughout 2021 and 2022 to obtain discovery in the First Rule 202 proceeding and based on the same allegations of misconduct by Seery and Farallon.[80] In this new sworn statement, Dondero describes for the first time the "call" he had with Linn as having been "phone calls" with Patel and Linn and ***mentions MGM*** and Farallon's alleged optimism about the ***expected sale of MGM***:[81]

> In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC ("Farallon"), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Seery because they had made significant profits when Seery told them to purchase other claims in the past. They also stated that they were particularly optimistic because of the expected sale of MGM.

[78] *Id.*, Ex. A, 6-11.

[79] HMIT Ex. 61.

[80] Highland Ex. 9.

[81] *Id.*, ¶ 4.

The Second Rule 202 Petition was also denied by the second Texas state court on March 8, 2023.[82]

HMIT, in an apparent attempt to provide support for its argument that the Proposed Claims are "colorable," stated in its Motion for Leave that "[t]he Court also should be aware that the Texas States [sic] Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely 'colorable.'"[83] But, two days before opposition briefing was due, on May 9, 2023, the TSSB issued a letter ("TSSB Letter") to Highland, informing it that "[t]he staff of the [TSSB] has completed its review of the complaint received by the Staff against [Highland]. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time."[84] HMIT's counsel (frankly, to the astonishment of the court) objected to the admission of the TSSB Letter at the June 8 Hearing "on the grounds of relevance, 403, hearsay, and authenticity . . . [a]nd I also . . . think it's important that the decision by a regulatory body has no bearing on this cause of action or the colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry."[85] The court overruled HMIT's objection to the relevance of this exhibit—considering, among other things, that HMIT, in its Motion for Leave, specifically mentioned the allegedly open TSSB "investigation" as relevant evidence the court "should be aware" of in making its determination of whether the Proposed Claims were "colorable."[86]

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[82] Highland Ex. 10.

[83] Motion for Leave, ¶ 37.

[84] *See* Highland Ex. 33.

[85] June 8 Hearing Transcript, 323:22-324:3.

[86] *Id.*, 324:4-328:2.

C. Claims Purchasers Purchase Claims and File Notices of Transfers of Claims

To be clear about the time line here, it was after confirmation of the Plan but prior to the Effective Date of the Plan, that the Claims Purchasers: (1) purchased several large unsecured claims that had been allowed following, and as part of, Rule 9019 settlements, each of which were approved by the bankruptcy court, after notice and hearing, prior to the confirmation hearing; and (2) filed notices of the transfers of those claims pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure. The noticing of the claims transfers began on April 16, 2021, with the notice of transfer of the claim held by Acis Capital Management to Muck, and ended on August 9, 2021, with the notices of transfers of the claims held by UBS Securities to Muck and Jessup:

Claimant(s)	**Date Filed/ Claim No.**	**Asserted Amount**	**Claim Settled/Allowed? If so, Amount**	**Date Filed/ Rule 3001 Notice Dkt. No.**
Acis Capital Management LP and Acis Capital Management, GP LLC (together, "Acis")	12/31/2019 Claim No. 23	$23,000,000	Yes[87] $23,000,000	4/16/2021 Bankr. Dkt. No. 2215 (Muck)
Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee")	4/3/2020 Claim No. 72	$190,824,557	Yes[88] $137,696,610	4/30/2021 Bankr. Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (the "HarbourVest Parties")	4/8/2020 Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes[89] $80,000,000 in aggregate ($45,000,000 General Unsecured Claim, and $35,000,000 subordinated claim)	4/30/2021 Bankr. Dkt. No. 2263 (Muck)

[87] Bankr. Dkt. No. 1302. The Debtor's settlement with Acis was approved over the objection of Dondero. Bankr. Dkt. No. 1121.

[88] Bankr. Dkt. No. 1273.

[89] Bankr. Dkt. No. 1788. The Debtor's settlement with the HarbourVest Parties was approved over the objections of Dondero, Bankr. Dkt. No. 1697, and Dugaboy and the Get Good Trust. Bankr. Dkt. No. 1706.

UBS Securities LLC, UBS AG, London Branch (the "UBS Parties")	6/26/2020 Claim Nos. 190, 191	$1,039,957,799.40	Yes[90] $125,000,000 in aggregate ($65,000,000 General	8/9/2021 Bankr. Dkt. No. 2698 (Muck) and Bankr. Dkt. No. 2697 (Jessup)

HMIT insists that it "made no sense" for the Claims Purchasers to buy the Purchased Claims because "the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk," and "their investment was projected to yield a small return with virtually no margin for error."[91] Dondero testified that it was ***his*** view that there was insufficient information in the public to justify the claims purchases.[92] But, HMIT's arguments here are contradicted by the information that was publicly available to Farallon and Stonehill at the time of their purchases and by HMIT's own allegations. In advance of Plan confirmation, Highland projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. In the Proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims.[93] Taking into account the face amount of the allowed claims, the Claims Purchasers' projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value[94]	Purchaser	Purchase Price	Projected Profit
Redeemer	$137.0	$0.0	$97.71	Stonehill	$78.0	$19.71
Acis	$23.0	$0.0	$16.4	Farallon	$8.0	$8.40

[90] Bankr. Dkt. No. 2389. The Debtor's settlement with the UBS Parties was approved over the objections of Dondero, Dkt. No. 2295, and Dugaboy and the Get Good Trust. Bankr. Dkt. Nos. 2268, 2293.

[91] Proposed Complaint, ¶ 3.

[92] June 8 Hearing Transcript, 187:3-7 ("Q: And it's your testimony that there wasn't sufficient information in the public for them to buy – this is your view – that there wasn't sufficient information in the public to justify their purchases. Is that your view? A: Correct.).

[93] *Id.*, ¶ 42.

[94] "Ascribed Value" is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

HarbourVest	$45.0	$35.0	$32.09	Farallon	$27.0	$5.09
UBS	$65.0	$60.0	$46.39	Stonehill & Farallon	$50.0	($3.61)

As HMIT acknowledges, by the time Dondero spoke with Farallon in the "late spring" of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest.[95] Based on an aggregate purchase price of $113 million for these three claims, the Claims Purchasers would have expected to net over $33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections, because they also purchased the Class 9 claims and would therefore capture any upside. In this context, HMIT's and Dondero's assertions that it did not "make any sense" for the Claims Purchasers to purchase their claims when they did does not pass muster—given the publicly available information about potential recoveries under the Plan. Dondero even acknowledged, on cross-examination, that he was prepared to pay ***30 percent more*** than Farallon had paid, even though he did not think there was sufficient public information available to justify Farallon's purchase of the claims.[96] Dondero essentially testified that he wanted to purchase Farallon's claims because he wanted to be in a position of control to force a settlement or resolution of the bankruptcy case, post-confirmation, under terms acceptable to him. He did not want to try to settle by negotiating with Farallon and Stonehill ***as creditors***, but instead he wanted to purchase the claims because "if we owned all the claims, it would settle the case."[97]

[95] *See* Complaint, ¶ 41 n.12. The UBS claims were not acquired until August 2021, long after the alleged "*quid pro quo*" was supposedly agreed upon and the MGM-Amazon deal was announced in the press in late May 2021. *See*, Highland Ex. 34, *Amazon's $8.45 Billion Deal for MGM is Historic But Feels Mundane* (dated May 26, 2021).

[96] June 8 Hearing Transcript, 187:8-11.

[97] *Id.*, 187:12-189:10.

D. Fifth Circuit's Approval of the Gatekeeper Provision in Plan, Recognition of Res Judicata Effect of the Prior Gatekeeper Orders, and the Bankruptcy Court's Order Approving Highland's Motion to Conform Plan

Harkening back to February 22, 2021, after a robust confirmation hearing, this court entered its order confirming the Plan, over the objections of Dondero and Dondero-Related Parties, specifically questioning the good faith of their objections. The court found, after noting "the remoteness of their economic interests" that "[it] has good reason to believe that [the Dondero Parties] are not objecting to protect economic interests they have in the Debtor but to be disruptors. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan."[94] The Plan became effective on August 11, 2021.

Of relevance to the Motion for Leave, the confirmed Plan included certain exculpations, releases, and injunctions designed to protect the Debtor and other bankruptcy participants from bad-faith litigation. These participants included: Highland's employees (with certain exceptions); Seery as Highland's CEO and CRO; Strand (after the appointment of the Independent Directors); the Independent Directors; the successor entities; the CTOB and its members; the Committee and its members; professionals retained in the case; and all "Related Persons." The injunction provisions contained a Gatekeeper Provision which is similar to the gatekeeper provisions in the prior Gatekeeper Orders in that it provided that the bankruptcy court will act as a "gatekeeper" to screen and prevent bad-faith litigation against the Protected Parties. The Gatekeeper Provision in the Plan states, in pertinent part:[98]

> No Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents ***a colorable claim of any kind***, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically

[98] Plan, 50-51 (emphasis added).

> authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

The Plan defines Protected Parties as,

> collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the [CTOB] (in their official capacities), (xiii) [HCMLP GP LLC], (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); [but excluding Dondero and Okada and various entities including HMIT and Dugaboy].

The court notes that the Gatekeeper Provision in the Plan provides protection to a broader number of persons than the persons protected under the January 2020 Order (addressing the Independent Directors and their agents and advisors) and the July 2020 Order (addressing Seery in his role as CEO and CRO of the Debtor). But, at the same time, it is less restrictive than the gatekeeping provisions under the Gatekeeper Orders, in that the gatekeeping provisions in the prior orders shield the protected parties from any claim that is not both "colorable" ***and*** a claim for "willful misconduct or gross negligence," effectively providing the protected parties under the prior orders with a limited immunity from claims of simple negligence or breach of contract that do not rise to the level of "willful misconduct or gross negligence," whereas the Gatekeeping Provision under the Plan does not act as a release or exculpation of the Protected Parties in any way because it does not prohibit any party from bringing ***any kind of claim*** against a Protected Party, provided the proposed claimant first obtains a finding in the bankruptcy court that its proposed claims are "colorable."[99]

[99] It should be noted that--as discussed further below--there are, separately in the Plan, exculpations as to a smaller universe of persons--*e.g.,* the Debtor, the Committee and its members, and the Independent Directors.

Dondero and some of the entities under his control appealed[100] the Confirmation Order directly to the Fifth Circuit, arguing, among other issues, that the Plan's exculpation, release, and injunction provisions, including the Gatekeeper Provision (collectively, the "Protection Provisions") impermissibly provide certain non-debtor bankruptcy participants with a discharge, purportedly in contravention of the provisions of Bankruptcy Code § 524(e)'s statutory bar on non-debtor discharges. As noted above, the Fifth Circuit, "affirm[ed] the confirmation order in large part" and "reverse[d] ***only insofar as the plan exculpates*** certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties ***from the plan's exculpation***, and affirm[ed] on all remaining grounds."[101] The Fifth Circuit specifically found the "injunction and gatekeeping provisions [to be] sound" and found that it was only "the ***exculpation*** of certain non-debtors" that "exceed[ed] the bankruptcy court's authority," agreeing with the bankruptcy court's conclusions that the Protection Provisions were legal, necessary under the circumstances, and in the best interest of all parties" in part, and only disagreeing to the extent that the ***exculpation*** provision improperly extended to certain bankruptcy participants other than Highland, the Committee and its members, and the Independent Directors and "revers[ing] and strik[ing] the few unlawful parts

[100] On appeal, the appellant funds ("Funds"), whom this court found to be "owned and/or controlled" by Dondero despite their purported independence, also asked the Fifth Circuit to vacate this court's factual finding "because it threatens the Funds' compliance with federal law and damages their reputations and values" and because "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him." *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th at 434. Applying the "clear error" standard of review, the Fifth Circuit "le[ft] the bankruptcy court's factual finding undisturbed" because "nothing in this record leaves us with a firm and definite conviction that the bankruptcy court made a mistake in finding that the Funds are 'owned and/or controlled by [Dondero]." *Id.* at 434-35.

[101] *See supra* note 4. The Fifth Circuit replaced its initial opinion with its final opinion a few days after certain appellants had filed a short (four-and-one-half pages) motion for rehearing (the "Motion for Rehearing") on September 2, 2022. The movants had asked the Fifth Circuit to "narrowly amend the [initial] Opinion in order to confirm the Court's holding that the impermissibly exculpated parties are similarly struck from the protections of the injunction and gatekeeper provisions of the plan (in other words, that such parties cannot constitute 'Protected Parties')." In the final Fifth Circuit opinion, same as the initial Fifth Circuit opinion, the Fifth Circuit stated that, with regard to the Confirmation Order, the panel would "reverse only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strike those few parties from the plan's exculpation, and affirm on all remaining grounds." *Highland Capital*, 48 F.4th at 424. No findings, discussion, or rulings regarding the injunction and gatekeeper provisions that were in the initial Fifth Circuit opinion were disturbed.

of the Plan's ***exculpation provision***."[102] The Fifth Circuit then remanded to the Bankruptcy Court "for further proceedings in accordance with the opinion."[103]

In the course of analyzing the Protection Provisions under the Plan, the Fifth Circuit noted that the protection provisions in the January and July 2020 Orders appointing the Independent Directors and Seery as CEO and CRO of Highland were *res judicata* and that "*those* orders have the effect of exculpating the Independent Directors and Seery in his executive capacities" such that "[d]espite removal from the exculpation provision in the confirmation order, the Independent Directors' agents, advisors, and employees, as well as Seery in his official capacities are all exculpated to the extent provided in the January and July 2020 Orders."[104]

The Reorganized Debtor filed a motion in the bankruptcy court to conform the plan to the Fifth Circuit's mandate, proposing that only one change was needed to make the Plan compliant with the Fifth Circuit's ruling: narrow the defined term for "Exculpated Parties" to read as follows:

> "Exculpated Parties" means, collectively, (i) the Debtor, (ii) the Independent Directors, (iii) the Committee, and (iv) members of the Committee (in their official capacities).

The Reorganized Debtor proposed that this one simple revision of this defined term removed the exculpations deemed by the Fifth Circuit to violate section 524(e) of the Bankruptcy Code, and that no other changes would be required to conform the Plan and Confirmation Order to the Fifth Circuit's mandate. Some of the Dondero-related entities objected to the motion to conform, arguing that the Fifth Circuit's ruling required more surgery on the Plan than simply narrowing the defined term "Exculpated Parties." On February 27, 2023, this court entered its order granting

[102] *Id.* at 435.

[103] *Id.* at 440. The Fifth Circuit's docket reflects that it issued its Judgment and mandate on September 12, 2022.

[104] *Highland Capital*, 48 F.4th at 438 n.15. The Fifth Circuit stated, "To the extent Appellants seek to roll back the protections in the bankruptcy court's January 2020 and July 2020 orders (which is not clear from their briefing), such a collateral attack is precluded." *Id.*

Highland's motion to conform the Plan, ordering that one change be made to the Plan – revising the definition of "Exculpated Parties" – and no more.[105] The objecting parties' direct appeal of this order has been certified to the Fifth Circuit and is one of the numerous currently active appeals by Dondero-related parties pending in the Fifth Circuit.

E. HMIT's Motion for Leave

HMIT filed its emergency Motion for Leave on March 28, 2023, which, with attachments, as first filed, was 387 pages in length, including an initial proposed complaint ("Initial Proposed Complaint") and two sworn declarations of Dondero that were attached as "objective evidence" in "support[ ]" of the Motion for Leave,[106] and with it, an application for an emergency setting on the hearing on the Motion to Leave. On April 23, 2023, HMIT filed a pleading entitled a "supplement" to its Motion to Leave ("Supplement"),[107] to which it attached a revised proposed verified complaint ("Proposed Complaint")[108] as Exhibit 1-A to the Motion for Leave and stated that "[t]he Supplement is not intended to amend or supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action."[109] The HMIT Motion for Leave was later amended to eliminate the Dondero Declarations and references to the same (but not the underlying allegations that were supposedly supported by the Dondero Declarations).[110]

[105] Bankr. Dkt. No. 3672.

[106] Bankr. Dkt. No. 3699.

[107] Bankr. Dkt. No. 3760.

[108] *See supra* note 5.

[109] Supplement ¶ 1.

[110] Bankr. Dkt. Nos. 3815 and 3816. Both of these filings had the Initial Proposed Complaint attached as Exhibit 1 to the Motion for Leave.

As earlier noted, HMIT desires leave to sue the Proposed Defendants regarding ***the post-confirmation, pre-Effective Date purchase of allowed unsecured claims***. The Proposed Defendants would be:

> **Seery,** who was a stranger to Highland until approximately four months following the Petition Date when he was brought in as one of the three Independent Directors, and now serves as the CEO of the Reorganized Debtor and the Trustee of the Claimant Trust (and also was previously Highland's CRO during the case, then CEO, and, also, an Independent Board Member of Highland's general partner during the Highland case). Seery is best understood as the man who took Dondero's place running Highland—per the request of the Committee.
>
> **Claims Purchasers,** who were strangers to Highland until the end of the bankruptcy case. They are identified as Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the "Claims Purchasers"). The Claims Purchasers purchased $240 million face value of already-allowed unsecured claims post-confirmation and pre-Effective Date in the spring of 2021 and another $125 million face value of already-allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk's docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Committee during the Highland bankruptcy case).
>
> **John Doe Defendants Nos. 1-10**, which are described to be "currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue."
>
> **Highland,** as a nominal defendant. HMIT added Highland as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.
>
> **Claimant Trust**, as a nominal defendant. HMIT added the Claimant Trust as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

The proposed plaintiffs would be:

> **HMIT,** which, again, was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited partnership interests). HMIT is the holder of a Class 10 interest under the Plan, pursuant to which HMIT's limited partnership interest in Highland was extinguished as of the Effective Date in exchange for a pro rata share of a contingent interest in the Claimant Trust.

Highland, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

Claimant Trust, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Claimant Trust.

In the Proposed Complaint, HMIT asserts the following six counts: Count I (against Seery) for breach of fiduciary duties; Count II (against the Claims Purchasers and John Doe Defendants) for knowing participation in breach of fiduciary duties; Count III (against all Proposed Defendants) for conspiracy; Count IV (against Muck and Jessup) for equitable disallowance of their claims; Count V (against all Proposed Defendants) for unjust enrichment and constructive trust; and Count VI (against all Proposed Defendants) for declaratory relief.[111] The gist of the Proposed Complaint is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that "wrongful conduct occurred" and "improper trades" were made.[112] HMIT believes the Claims Purchasers paid around $160 million for the $365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland's Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. And, of course, Dondero purports to have concluded from the three phone conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Seery must have given these Claims Purchasers MNPI regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Seery must have shared

[111] In the Initial Proposed Complaint, HMIT proposed to bring claims against the various Proposed Defendants in seven counts, including a count for fraud by misrepresentation and material nondisclosure against all Proposed Defendants. In the Proposed Complaint, HMIT abandons its claim for fraud by misrepresentation and material nondisclosure.

[112] Motion for Leave, 7.

MNPI regarding the likely imminent sale of MGM, in which Highland had, directly and indirectly, substantial holdings. As noted earlier, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[113] In summary, while the Proposed Complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor's estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Seery, and are now happily approving Seery's allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages in the form of equitable disallowance of the Claims Purchasers' claims and disgorgement of distributions on account of those claims, the imposition of a constructive trust over all disgorged funds, and declaratory relief.

HMIT claims that, in seeking to file the Proposed Complaint, it is seeking to protect the rights and interests of the Reorganized Debtor, the Claimant Trust, and "innocent stakeholders" who were allegedly injured by Seery's and the Claims Purchasers' alleged conspiratorial and

[113] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid. Credible testimony from Seery at the June 8 Hearing revealed that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public).

fraudulent scheme to line Seery's pockets with excessive compensation for his role as Claimant Trustee. In its Motion for Leave, HMIT states that "[t]he attached Adversary Proceeding alleges claims which are substantially more than 'colorable' based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud, including a fraud upon innocent stakeholders, as well as breaches of fiduciary duties and knowing participation in (or aiding or abetting) breaches of fiduciary duty."[114]

F. Is HMIT Really Dondero by Another Name?

The Proposed Defendants argue that HMIT's Motion for Leave is nothing more than a continuation of the harassing and bad-faith litigation by Dondero and his related entities that the Gatekeeper Provisions were intended to prevent and, thus, this is one of multiple reasons that the Motion for Leave should be denied.

To be clear, HMIT asserts that it is controlled by Mark Patrick ("Patrick"), who has been HMIT's administrator since August 2022. Patrick asserts that he is not influenced or controlled by Dondero, in general, and specifically not in its efforts to pursue the Proposed Claims against Seery and the Claims Purchasers. However, the testimony elicited at the June 8 Hearing—the hearing at which HMIT had the burden of showing the court that its Proposed Claims were "colorable" such that it should be allowed to pursue them through the filing of the Proposed Complaint—paints a different picture. Somewhat tellingly, HMIT chose not to call Patrick—allegedly HMIT's only representative and control person—as a witness in support of its Motion for Leave. Rather, Dondero was HMIT's first witness called in support of its motion, and the first

[114] *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 3. HMIT notes, in a footnote 6, that "Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement."

questions on direct from HMIT's counsel were aimed at establishing that Dondero was not behind the filing of the Motion for Leave and the pursuit of the Proposed Claims.[115] Dondero testified that he did not (i) "have any current official position" with HMIT, (ii) "attempt to exercise [control] on the business affairs of [HMIT]," (iii) "have any official legal relationship with [HMIT] where [he] can attempt to exercise either direct or indirect control over [HMIT]," or (iv) "participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan."[116] After HMIT rested, Highland and the Claimant Trust called Patrick as a witness, and he testified that he was the administrator of HMIT, that HMIT does not have any employees, operations, or revenues, and, when asked if HMIT owned any assets, Patrick testified, with not a great deal of certainty, that "it's my understanding it has a contingent beneficiary interest in the Claimants [sic] Trust" and that is the only asset HMIT has.[117] Patrick testified that HMIT did not owe any money to Dondero personally, but acknowledged that in 2015, HMIT had issued a secured promissory note in favor of Dondero's family trust, Dugaboy, in the amount of approximately $62.6 million (the "Dugaboy Note") in exchange for Dugaboy transferring a portion of its limited partner interests in Highland to HMIT; the Dugaboy Note was secured in part by the Highland limited partnership interests purchased from Dugaboy.[118] Patrick admitted that, if HMIT's Class 10 interest has no value, HMIT would have no ability to pay the Dugaboy Note.[119] He further testified that neither he nor any representative of HMIT had ever spoken with any representative of Farallon or Stonehill, that he had no personal knowledge about any *quid pro quo*, the amount of due diligence Farallon or Stonehill conducted prior to buying their claims, or the terms of

[115] *See* June 8 Hearing Transcript, 113:10-25.

[116] *Id.*

[117] June 8 Hearing Transcript, 307:7-308:2.

[118] *Id.*, 303:11-305:1; Highland Ex. 51, HMIT's $62,657,647.27 *Secured Promissory Note* dated December 24, 2015, in favor of Dugaboy.

[119] *Id.*, 308:3-16.

Seery's compensation package (until the terms were disclosed to them in opposition to the Motion for Leave).[120] Patrick admitted that Dugaboy was paying HMIT's attorneys' fees pursuant to a settlement agreement between HMIT and Dugaboy.[121]

On cross-examination by HMIT's counsel, Patrick further testified that HMIT has not filed any litigation, as plaintiff, other than its efforts to be a plaintiff in the Motion for Leave and its action as a petitioner in the Texas Rule 202 proceeding filed earlier in 2023 in the Texas state court.[122] HMIT's counsel argued that the point of this questioning was that "they're just trying to draw Dondero into this and – this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed – attempting to file this action and a Rule 202 proceeding.[123] But, Dondero and HMIT's counsel referred during the June 8 Hearing to the First Rule 202 Petition (where Dondero was the petitioner) and the Second Rule 202 Petition (where HMIT was the petitioner) as "our" Rule 202 petitions, and also to the numerous attempts at getting the discovery (that Dondero had warned Linn was coming) in the collective. For example, in objecting to the admission of Highland's Exhibit 10 – the Texas state court order denying and dismissing the Second Rule 202 Petition – on the basis of relevance, HMIT's counsel referred to the order as "an order denying ***our second"*** Rule 202 Petition.[124] And, Dondero testified that his warning to Linn in May 2021 that "discovery was coming" was "my response to I knew they had traded on material nonpublic information" and that "I thought it would be a lot easier to get

[120] *Id.*, 308:18-312:12. This testimony from Patrick came after HMIT's counsel objection to counsel's line of questioning regarding Patrick's personal knowledge of the facts supporting the allegations in the Proposed Complaint on the basis that he was invading the attorney work product privilege, which was overruled by this court; HMIT's counsel argued (311:4-19) that the line of questioning was an "invasion of attorney work product . . . [b]ecause they might – he would have knowledge from the efforts and investigation through attorneys in the case."

[121] *Id.*, 312:24-313:18.

[122] *Id.*, 315:3-9.

[123] *Id.*, 316:6-11.

[124] *Id.*, 58:11-13. The court overruled HMIT's relevance objection and admitted Highland's Exhibit 10 into evidence. *Id.*, 58:14-15.

discovery on a situation like this than it has been for the last two years" and that "***we've*** been trying for two years to get . . . discovery."[125]

Dondero's use of an entity over which he exerts influence and control to pursue his own agenda in the bankruptcy case is not new. Rather, this has been part of Dondero's *modus operandi* since the "nasty breakup" between Dondero and Highland that culminated with Dondero's ouster in October 2020, whereby Dondero, after not getting his way in the bankruptcy court, continued to lob objections and create obstacles to Highland's implementation of the Plan through entities he owns or controls. As noted above, the Fifth Circuit specifically upheld this court's finding in the Confirmation Order that Dondero owned or controlled the various entities that had objected to confirmation of the Plan and appealed the Confirmation Order, where the Dondero-related appellants made similar protestations that they are not owned or controlled by Dondero and asked the Fifth Circuit to vacate this court's factual finding because, among other reasons, "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him."[126] Based on the totality of the evidence in this proceeding, the court finds that, contrary to the protestations of HMIT's counsel and Patrick otherwise, Dondero is the driving force behind HMIT's Motion for Leave and the Proposed Complaint. The Motion for Leave is just one more attempt by Dondero to press his conspiracy theory that he has pressed for over two years now, unsuccessfully, in Texas state court through Rule 202 proceedings, with the Texas State Securities Board, and with the United States Trustee's office.

[125] *Id.*, 191:5-25.

[126] *Highland Capital*, 48 F.4th at 434-435.

G. Opposition to Motion for Leave: Arguing No Standing and No "Colorable" Claims

Highland, the Claimant Trust, and Seery (together, the "Highland Parties") filed a joint opposition ("Joint Opposition") to HMIT's Motion for Leave on May 11, 2023.[127] The Claims Purchasers filed a separate objection ("Claims Purchasers' Objection") to the Motion for Leave on May 11, 2023, as well.[128] In the Joint Opposition, the Highland Parties urge the court to deny HMIT leave to pursue the Proposed Claims because, as a threshold matter, HMIT does not have standing to bring them, directly or derivatively against the Proposed Defendants. They argue, in the alternative, that the Motion for Leave should be denied even if HMIT had standing to pursue the Proposed Claims because none of the Proposed Claims are "colorable" claims as that term is used in the Gatekeeper Provision of the Plan (and Gatekeeper Orders).[129]

The Claims Purchasers likewise argue that HMIT lacks standing to complain about claims trading in the bankruptcy which occurred between sophisticated Claims Purchasers and sophisticated sellers ("Claims Sellers"), represented by skilled bankruptcy and transactional counsel. Moreover, they argue HMIT cannot show that it or the Reorganized Debtor or the Claimant Trust were injured by the claims trading at issue because the Purchased Claims had already been adjudicated as allowed claims in the bankruptcy case—thus, distributions under the Plan on account of the Purchased Claims remain the same, the only difference being who holds the claims. Moreover, even if HMIT could succeed in equitably subordinating the validly transferred ***allowed*** claims, HMIT would still be in the same position it is today: the holder of a

[127] Bankr. Dkt. Nos. 3783. Highland, the Claimant Trust, and Seery also filed on May 11 a *Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding* ("Morris Declaration") that attached 44 Exhibits in support of the Joint Opposition. Bankr. Dkt. No. 3784.

[128] Bankr. Dkt. No. 3780.

[129] *See* Joint Opposition ¶ 139 ("Because HMIT lacks standing, this Court need not reach the merits of HMIT's proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion.").

contingent, speculative Class 10 interest that would only be paid after payment, in full, with interest, of all creditors under the Plan. The Claims Purchasers argue in the alternative that the Proposed Claims are not "colorable."

Finally, the Proposed Defendants argue that the standard of review for assessing whether the Proposed Claims are "colorable" (as such term is used in the Gatekeeper Provision and Gatekeeping Orders) is a standard that is a higher than the "plausibility" standard applied to Rule 12(b)(6). They argue that HMIT should be required to meet a higher bar with respect to colorability that includes making a *prima facie* showing that the Proposed Claims have merit (and/or are not without foundation) which requires HMIT to do more than meet the liberal notice-pleading standards.

H. HMIT's Reply to the Proposed Defendants' Opposition to the Motion for Leave

In its reply brief ("Reply"), filed by HMIT on May 18, 2023,[130] it argues that it has constitutional standing as an "aggrieved party" to bring the Proposed Claims on behalf of itself.[131] HMIT also argues that it has standing under Delaware Trust law to bring a derivative action on behalf of the Claimant Trust and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to bring the claims.[132] Finally, HMIT maintains that the standard of review that the bankruptcy court should apply in assessing the "colorability" of the Proposed Claims is no greater than the standard of review applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), which would require the bankruptcy court to look only to the "four corners" of the Proposed Complaint

[130] Bankr. Dkt. No. 3785.

[131] *See* Reply ¶ 7.

[132] See, Reply ¶ 23 n.5, where HMIT argues "The nature of this injury, in addition to Seery's influence over the Claimant Trust, and the lack of prior action by the Claimant Trust to pursue the claims HMIT seeks to pursue derivatively, among other things, demonstrate that HMIT is not only a proper party to assert its derivative claims – but the best party to do so."

and "not weigh extraneous evidence,"[133] take all allegations as true, and view all allegations and inferences in a light most favorable to HMIT. As discussed in greater length below, HMIT argues that, under this standard, the bankruptcy court should not consider evidence in making its determination as to whether the Proposed Complaint presents "colorable" claims.

I. Litigation within the Litigation: The Pre- June 8 Hearing Skirmishes

Suffice it to say there was significant activity before the Motion for Leave actually was presented at the June 8 hearing. HMIT sought an emergency hearing on its Motion for Leave (wanting a hearing on three days' notice). When the bankruptcy court denied an emergency hearing, HMIT unsuccessfully pursued an interlocutory appeal of the denial of an emergency hearing to the district court. HMIT then petitioned for a writ of mandamus at the Fifth Circuit regarding the emergency hearing denial, which was denied by the Fifth Circuit on April 12, 2023.

Next, there were multiple pleadings and hearings regarding ***what kind of hearing*** the bankruptcy court should or should not hold on the Motion for Leave—particularly focusing on whether or not it would be an evidentiary hearing.[134] The resolution of this issue turned on what standard of review the court should apply in exercising its gatekeeping function and determining the colorability of the Proposed Claims. HMIT (although it had submitted two declarations of Dondero with its original Motion for Leave and approximately 350 pages of total evidentiary support) was adamant that there should be no evidence presented at the hearing on the Motion for Leave, arguing that the standard for review should be the plausibility standard under Rule 12(b)(6)

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[133] *See* Reply ¶ 47.

[134] Highland, joined by Seery and the Claims Purchasers, had filed a motion asking the bankruptcy court to set a briefing schedule on the Motion for Leave and to schedule a status conference, indicating that Highland's proposed timetable for same was opposed by HMIT. HMIT subsequently filed a response unopposed to a briefing schedule and status conference, but, before the status conference, HMIT filed a brief, stating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the bankruptcy court did not need evidence to exercise its gatekeeping function and determine if HMIT has a "colorable" claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

motions to dismiss such that "the threshold inquiry is very, very low. Evidence is not allowed. . . . [S]imilar to a 12(b)(6) inquiry, [the court] is limited to the four corners of the principal pleading – in this case, the complaint, or now the revised complaint."[135] Counsel for the Proposed Defendants argued that the standard of review for colorability here, in the specific context of the court exercising its gatekeeping function under the Plan, is more akin to the standards applied under the Supreme Court's *Barton Doctrine*[136] pursuant to which that the bankruptcy court must apply a higher standard than the 12(b)(6) standard, including the consideration of evidence at the hearing on the motion for leave; if the standard of review presents no greater hurdle to the movant than the 12(b)(6) standard applied to every plaintiff in every case, then the gatekeeping provisions mean nothing and do nothing to protect the parties from the harassing, bad-faith litigation they were put in place to prevent.[137] On May 22, 2023, after receipt of post-hearing briefing on the issue, the court entered an order stating that "the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave" and "[t]herefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing [on the Motion to Leave] if they so choose."

Two days later, HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing, seeking expedited depositions of corporate

[135] Transcript of April 24, 2023 Status Conference, Bankr. Dkt. No. 3765 ("April 24 Transcript"), 14:6-11.

[136] The *Barton Doctrine* was established in the 19th century Supreme Court case of *Barton v. Barbour*, 104 U.S. 126 (1881), and states that a party wishing to sue a court-appointed trustee or receiver must first obtain leave of the appointing court by making a *prima facie* case that the claim it wishes to bring is not without foundation.

[137] *See* April 24 Transcript, 36:24-37:4 ("[W]e're exactly today where the Court had predicted in entering [the Confirmation Order], that the costs and distraction of this litigation are substantial. And if all we're doing is replicating a 12(b)(6) hearing on a motion for leave, we're actually not doing anything to reduce, as the Court made clear, the burdens, distractions, of litigation."); 37:5-13 ("The Fifth Circuit likewise cited *Barton* in its order affirming the confirmation order. Specifically, it also explained that the provisions, these gatekeeper provisions requiring advance approval were meant to 'screen and prevent bad-faith litigation.' Well that – if that means only what the Plaintiff[ ] say[s] it does, then it really doesn't do anything at all to screen. There's no gatekeeping because their version of what that means is always policed under 12(b)(6) standards.").

representatives of the Claims Purchasers and of Seery and production of documents pursuant to deposition notices and subpoenas duces tecum that HMIT had attached to the motion. On May 26, 2023, this court held yet another status conference. Following the status conference, the court granted in part and denied in part HMIT's request for expedited discovery by ordering only Seery and Dondero to be made available for depositions prior to the June 8 Hearing. The court reached what seemed like appropriate middle ground by allowing the deposition of Seery and allowing the other parties to depose Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Dondero had been seeking discovery relating to the very claims trades that are the subject of the Revised Proposed Complaint from the Claims Purchasers in Texas state court "Rule 202" proceedings for approximately two years, where their attempts were rebuffed.

Approximately 60 hours before the June 8 Hearing, HMIT filed its Witness and Exhibit List disclosing for the first time two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony). Highland, the Claimant Trust, and Seery filed a joint motion to exclude the expert testimony and documents ("Motion to Exclude"), which the court ultimately granted in a separate order.

During the full-day June 8 Hearing on the Motion to Leave, the court admitted over 50 HMIT exhibits and over 30 Highland/Claimant Trust exhibits. The court heard testimony from HMIT's witnesses Dondero and Seery (as an adverse witness) and from the Highland Parties' witness Mark Patrick, the administrator of HMIT since August 2022 (as an adverse witness). The bankruptcy court allowed HMIT to make a running objection to all evidence—as it continued to argue that evidence was not appropriate.

III. LEGAL ANALYSIS

In determining whether HMIT should be granted leave, pursuant to the Gatekeeper Provision of the Plan and the court's prior Gatekeeper Orders, to pursue the Proposed Claims, the court must address the issue of whether HMIT would have ***standing*** to bring the Proposed Claims in the first instance. If so, the next question is whether the Proposed Claims are "***colorable***." But prior to getting into the weeds on ***standing*** and "***colorability,***" some general discussion regarding the topic of claims trading in the bankruptcy world seems appropriate, given that HMIT's Proposed Claims are based, in large part, on allegations of ***improper*** claims trading.

A. Claims Trading in the Context of Bankruptcy Cases—Can It Be Tortious or Otherwise Actionable?

As noted, at the crux of HMIT's desired lawsuit is what this court will refer to as "claims trading activity" that occurred shortly after the Plan was confirmed, but before the Plan went effective. HMIT believes that the claims trading activity gave rise to various torts: breach of fiduciary duty on the part of Seery; knowing participation in breach of fiduciary duty by the other Proposed Defendants; and conspiracy by all Defendants. HMIT also believes that the following remedies should be imposed: equitable disallowance of the Purchased Claims; disgorgement of the alleged profits the Claims Purchasers made on their purchases; and disgorgement of all Seery's compensation received since the beginning of his "collusion" with the other Defendants. Without a doubt, the Motion for Leave and Proposed Complaint revolve almost entirely around the claims trading activity.

This begs the question: ***When (or under what circumstances) might claims trading activity during a bankruptcy case give rise to a cause of action that either the bankruptcy estate or an economic stakeholder in the case might have standing to bring?*** Here, the claims trading

wasn't even "during a bankruptcy case" really—it was post-confirmation and pre-effective date, and it happened to be: (a) after mediation of the claims, (b) after Rule 9019 settlement motions, (c) after objections by Dondero and certain of his family trusts were lodged, (d) after evidentiary hearings, and (e) after orders were ultimately entered ***allowing*** the claims (and in most cases, such orders were appealed). The further crux of HMIT's desired lawsuit is that Seery allegedly "wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends" by sharing ***material non-public information*** to them regarding the potential value of the claims (i.e., the potential value of the bankruptcy estate), and this is what made the claims trading activity particularly pernicious. The alleged sharing of MNPI allegedly caused the Claims Purchasers to purchase their claims without doing any due diligence and with knowledge that the claims would be worth much more than the Plan's "pessimistic" projections might have suggested, and also allowed Seery to plant friendly allies into the creditor constituency (and on the post-confirmation CTOB) that would "rubber stamp" his generous compensation. This is all referred to as "not arm's-length" and "collusive." Notably, the MNPI mostly pertained to a likely future acquisition of MGM by Amazon (which transaction, indeed, occurred in 2022, after being publicly announced in Spring of 2021); as noted earlier, Highland owned, directly and indirectly, common stock in MGM. Also notably, there had been rumors and media attention regarding a potential sale of MGM for many months.[138] In summary, to be clear, HMIT's desired lawsuit is laced with a theme of "insider trading"—although this isn't a situation of securities trading *per se* (i.e., the unsecured Purchased Claims were not securities), and, as noted earlier, the Texas State Securities Board has not seen fit to investigate the claims trading activity.

So, preliminarily, is claims trading in bankruptcy sinister *per se*? The answer is no.

[138] *E.g.,* Benjamin Mullin, *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale,* THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.).

The activity of investing in distressed debt (which frequently occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and, indeed, has been so for a very long time. As noted by one scholar:

> The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

Adam J. Levitin, *Bankruptcy* Markets*: Making Sense of Claims Trading*, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010) (hereinafter "*Bankruptcy Markets*").[139]

As a pure policy matter, some practitioners have bemoaned this claims trading phenomenon, suggesting that "distressed debt traders may sacrifice the long-term viability of a debtor for the ability to realize substantial and quick returns on their investments."[140] Others suggest that claims trading in bankruptcy is beneficial, in that it allows creditors of a debtor an early exit from a potentially long bankruptcy case, enabling them to save expense and administrative hassles, realize immediate liquidity on their claims (albeit discounted), and may

[139] *See also* Aaron Hammer & Michael Brandess, *Claims Trading: The Wild West of Chapter 11s*, AM. BANKR. INST. JOURNAL 62 (Jul./Aug. 2010); Chaim Fortgang & Thomas Mayer, *Trading Claims and Taking Control of Corporations in Chapter 11,* 12 CARDOZO L. REV. 1, 25 (1990) (noting that "the first recorded instance of American fiduciaries trading claims against insolvent debtors predates all federal bankruptcy laws and goes back to 1790" when the original 13 colonies were insolvent, owing tremendous amounts of debt to various parties in connection with the Revolutionary War; early American investors purchased these debts for approximately 25% of their par value, hoping the claims would be paid at face value by the American government).

[140] Harvey R. Miller, *Chapter 11 Reorganization Cases and the Delaware Myth*, 55 VAND. L. REV. 1987, 2016 (2002). *See also* Harvey R. Miller & Shai Y. Waisman, *Does Chapter 11 Reorganization Remain a Viable Option for Distressed Businesses for the Twenty-First Century?*, 78 AM. BANKR. L.J. 153 (2004); Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129 (2005).

even permit them to take advantage of a tax loss on their own desired timetable.[141] On the flipside, "[c]aims trading permits an entrance to the bankruptcy process for those investors who want to take the time and effort to monitor the debtor and contribute expertise to the reorganization process."[142]

So, what are the "rules of the road" here? What does the Bankruptcy Code dictate regarding claims trading? The answer is nothing. The Bankruptcy Code itself has no provisions whatsoever regarding claims trading. The only thing resembling any regulation of claims trading during a bankruptcy case is found at Federal Rule of Bankruptcy Procedure 3001(e)—the current version of which went into effect in 1991—and it imposes extremely light regulation—if it could even be called that. This rule requires, in pertinent part (at subsection (2)), that "[i]f a claim other than one based on a publicly traded note, bond, or debenture" is traded during the case after a proof of claim is filed, notice/evidence of that trade must be filed with the bankruptcy clerk by the transferee. The transferor shall then be notified and given 21 days to object. If there is an objection, the bankruptcy court will hold a hearing regarding whether a transfer, in fact, took place. If there is no objection, nothing further needs to happen, and the transferee will be considered substituted for the transferor.

There are several things noteworthy about Rule 3001(e)(2). First, the only party given the opportunity to object is the ***transferor*** of the claim (presumably, in the situation of a dispute regarding whether there was truly an agreement regarding the transfer of the claim). Second, there is no need for a bankruptcy court order approving the transfer (except in the event of an objection

[141] *See Bankruptcy Markets*, at 70. *See also In re Kreisler,* 546 F.3d 863, 864 (7th Cir. 2008) ("Claims trading allows creditors to opt out of the bankruptcy system, trading an uncertain future payment for an immediate one, so long as they can find a purchaser.").

[142] *Bankruptcy Markets* at 70 (citing, among other authorities, Edith S. Hotchkiss & Robert M. Mooradian, *Vulture Investors and the Market for Control of Distressed Firms*, 43 J. FIN. ECON. 401, 401 (1997) (finding that "vulture investors add value by disciplining managers of distressed firms").

by the alleged transferor). Third, the ***economic consideration paid need not be disclosed to the court or anyone***. Fourth, there is no requirement or definition of timeliness. Finally, it explicitly does not apply with regard to publicly traded debt. This, alone, means that many claims trades are not even reported in a bankruptcy case. But it is not just publicly traded debt that will not be reflected with a Rule 3001(e) filing. For example, bank debt, in modern times, is often syndicated (i.e., fragmented into many beneficial holders of portions of the debt) and only the administrative agent for the syndicate (or the "lead bank") will file a proof of claim in the bankruptcy—thus, as the syndicated interests (participations) change hands, and they frequently do, there typically will not be a Rule 3001(e) notice filed.[143] To be clear here, this syndication-of-bank-debt fact, along with the fact that there are financial products whereby bank debt might be carved up into economic interests separate and apart from legal title to the loan, means there are many situations in which trading of claims during a bankruptcy case is not necessarily transparent or, for that matter, policed by the bankruptcy court. This is the world of modern bankruptcy. Most of the claims trading that gets reported through a Rule 3001(e) notice is the trading of small vendor claims. And this is all regarded as private sale transactions for the most part.[144]

Suffice it to say that there is not a wealth of case law dealing with claims trading in a bankruptcy context. Perhaps this is not surprising, since it is not prohibited and ***is mostly a matter of private contract between buyer and seller***. The case law that does exist seems to arise in situations of perceived bad faith of a purchaser—for example, when there was an attempt to control voting and/or ultimate control of the debtor through the plan process (not always problematic, but

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[143] Anne Marrs Huber & Thomas H. Young, *The Trading of Bank Debt in and Out of Chapter 11*, 15 J. BANKR. L. & PRAC. 1, 1, 3 (2006).

[144] Note that Bankruptcy Rule 3001(e) was very different before 1991. Between 1983-1991, the rule required that parties transferring claims inform the court that a transfer of claims was taking place and also disclose the consideration paid for the transferred claims. A hearing would take place prior to the execution of a trade. Judicial involvement was required and resulted in judicial scrutiny of transactions—something that simply does not exist today.

there are outlier cases where this was found to cross a line and result in consequences such as disallowing votes on a plan or even equitable subordination of a claim).[145] Another type of case that has generated case law is where the purchaser of claims occupied a fiduciary status with the debtor.[146] Still another type of case that has generated case law is where there is an attempt to cleanse claims that might have risks because of a seller's malfeasance, by trading the claim to a new claim holder.[147]

The following is a potpourri of the more notable cases that have addressed claims trading in different contexts. Most of them imposed no adverse consequences on claims traders: *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (where a corporation named Garlin, that was owned by the individual chapter 7 debtors' sister and close friend, purchased a $900,000 bank claim for $16,500, and there was no disclosure of Garlin's connections to debtors and no Rule 3001(e)(2) notice was filed, the Seventh Circuit reversed the bankruptcy court's invocation of the doctrine of equitable subordination to the claim, stating: "Equitable subordination is generally appropriate only if a creditor is guilty of misconduct that causes injury to the interests of other creditors;" the Seventh Circuit further stated that it could "put to one side whether the court's finding of inequitable conduct was correct" because even if there was misconduct, it did not harm the other creditors, who were in the same position whether the original creditor or Garlin happened to own the claim; the Seventh Circuit did note that Garlin's decision to purchase the original bank

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[145] *In re Applegate Prop. Ltd.,* 133 B.R. 827, 836 (Bankr. W.D. Tex. 1991) (designating votes of an affiliate of the debtor that purchased a blocking position to thwart a creditor's plan because it was done in bad faith); *In re Allegheny Int'l, Inc.,* 118 B.R. 282, 289–90 (Bankr. W.D. Pa. 1990) (because of bad faith activities, the court designated votes of a claims purchaser who purchased to get a blocking position on a plan). *But see In re First Humanics Corp.,* 124 B.R. 87, 92 (Bankr. W.D. Mo. 1991) (claims purchased by debtor's former management company to gain standing to file a plan to protect interest of the debtor was in good faith).

[146] *See In re Exec. Office Ctrs., Inc.*, 96 B.R. 642, 649-650 (Bankr. E.D. La. 1988) (and numerous old cites therein).

[147] *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 340 B.R. 180 (Bankr. S.D.N.Y. 2006), *vacated, Enron Corp. v. Springfield Assocs., L.L.C. (In re Enron Corp.),* 379 B.R. 425 (S.D.N.Y 2007); *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 333 B.R. 205, 211 (Bankr. S.D.N.Y. 2005).

creditor's claim might have disadvantaged the other creditors if it interfered with the trustee's own potential settlement with the original bank creditor (note that the trustee argued that she had been negotiating a deal with bank under which bank might have reduced its claims); however, the trustee presented no evidence that any deal with the bank was imminent or even likely; thus, whether such a deal could have been reached was speculation; equitable subordination was therefore improper."); *Viking Assocs., L.L.C. v. Drewes (In re Olson),* 120 F.3d 98, 102 (8th Cir. 1997) (case involved the actions of an entity known as Viking in purchasing all of the unsecured claims against the bankruptcy estate of two chapter 7 debtors, Hugo and Jeraldine Olson; Viking was a related entity, owned by the debtors' children, and purchased $525,000 of unsecured claims for $67,000; while the bankruptcy court had discounted the claims down to the purchase amount and subordinated Viking's discounted claims to the claims of the other unsecured creditors, relying on section 105 of the Bankruptcy Code, the Eighth Circuit held that the bankruptcy court lacked the authority to do this, and, thus, reversed and remanded; the Eighth Circuit noted that in 1991, Bankruptcy Rule 3001(e)(2) was amended "to restrict the bankruptcy court's power to inspect the terms of" claims transfers. *Id.* at 101 (citing *In re SPM Mfg. Corp.,* 984 F.2d 1305, 1314 n. 9 (1st Cir. 1993)); the text of the rule makes clear that the existence of a "dispute" depends upon an objection by the ***transferor***; where there is no objection by the ***transferor***, there is no longer any role for the court); *Citicorp. Venture Capital, Ltd. v. Official Committee of Unsecured Creditors (In re Papercraft Corp.),* 160 F.3d 982 (3d Cir. 1998) (large investor who held seat on board of directors of debtor and debtor's parent, and who also had nonpublic information regarding the debtor's value, anonymously purchased 40% of the unsecured claims at a steep discount during the chapter 11 case, and then, having obtained a blocking position for plan voting purposes, proposed a plan to acquire debtor; the claims purchaser's claims were equitably reduced to amount

paid for the claims since investor was a fiduciary who was deemed to have engaged in inequitable conduct); *Figter Ltd. v. Teachers Ins. & Annuity Ass'n of Am. (In re Figter),* 118 F.3d 635 (9th Cir. 1997) (Ninth Circuit affirmed bankruptcy court's ruling that a secured creditor's purchase of 21 out of 34 unsecured claims in the case was in good faith and it would not be prohibited from voting such claims on the debtor's plan, pursuant to Bankruptcy Code section 1126(e)); *In re Lorraine Castle Apartments Bldg. Corp.,* 145 F.2d 55, 57 & 58 (7th Cir. 1945) (in a case under the old Bankruptcy Act, in which there were more restrictions on claims trading, a debtor and two of its stockholders argued that the claims of purchasers of bonds should be limited to the amounts they paid for them; bankruptcy court special master found, "that, though he did not approve generally the ethics reflected by speculation in such bonds," there was no cause for limitation of the amounts of their claims, pointing out that the persons who had dealt in the bonds were not officials, directors, or stockholders of the corporation and owed no fiduciary duty to the estate or its beneficiaries—rather they were investors or speculators who thought the bonds were selling too cheaply and that they might make a legitimate profit upon them; the district court agreed, as did the Seventh Circuit, noting that "[t]o reduce the participation to the amount paid for securities, in the absence of exceptional circumstances which are not present here, would reduce the value of such bonds to those who have them and want to sell them. This would result in unearned, undeserved profit for the debtor, destroy or impair the sales value of securities by abolishing the profit motive, which inspires purchasers."); *In re Washington Mutual, Inc.*, 461 B.R. 200 (Bankr. Del. 2011), *vacated in part*, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (discussion of an equity committee's potential standing to pursue equitable subordination or equitable disallowance of the claims of certain noteholders who had allegedly traded their claims during the chapter 11

case while having material non-public information; while bankruptcy court originally indicating these were viable tools, court later vacated its ruling on this after a settlement was reached).

Suffice it to say that the courts have, more often than not, been unwilling to impose legal consequences, for an actor's involvement with claims trading. At most, in outlier-type situations during a case, courts have taken steps to disallow claims for voting purposes or to subordinate claims to other unsecured creditors for distribution purposes.[148] But the case at bar does not present facts that are typical of any of the situations in reported cases.

For one thing, unlike in the reported cases this court has located, there ***seems to have been complete symmetry of sophistication among the claim sellers and claim purchasers here—and complete symmetry with HMIT for that matter***. All persons involved are highly sophisticated financial institutions, hedge funds, or private equity funds. No one was a "mom-and-pop" type business or vendor that might be vulnerable to chicanery. The claims ranged from being worth $10's of millions of dollars to $100's of millions of dollars in face value. And, of course, the sellers/transferors of the claims have never shown up, subsequent to the claims trading

[148] Note that, while some cases suggest that outright disallowance of an unsecured claim, in the case of "inequitable conduct" might be permitted (not merely equitable subordination to unsecured creditors)—usually citing to *Pepper v. Litton*, 308 U.S. 295 (1939)—the Fifth Circuit has suggested otherwise. *In re Mobile Steel Co., Inc.,* 563 F.2d 692, 699-700 (5th Cir. 1977) (cleaned up) (noting that "equitable considerations can justify only the subordination of claims, not their disallowance" and also noting that "three conditions must be satisfied before exercise of the power of equitable subordination is appropriate[:] (i) The claimant must have engaged in some type of inequitable conduct[;] (ii) The misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant[; and] (iii) Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act." In *Mobile Steel*, the Fifth Circuit held that the bankruptcy judge exceeded the bounds of his equitable jurisdiction by disallowing a group of claims and also reversed the subordination of certain claims, on the grounds that the bankruptcy court had made clearly erroneous findings regarding alleged inequitable conduct and other necessary facts. *Contrast In re Lothian Oil Inc.,* 650 F.3d 539 (5th Cir. 2011) (involving the question of whether a bankruptcy court may ***recharacterize*** a claim as equity rather than debt; the court held yes, but it has nothing to do with inequitable conduct *per se*; rather section 502(b)'s language that a claim should be allowed unless it is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law...." is the relevant authority; unlike equitable subordination, recharacterization is about looking at the true substance of a transaction not the conduct of a party (if it looks like a duck and quacks like a duck, it's a duck—i.e., equity); the court indicated that section 105 is not a basis to recharacterize debt as equity; it's a matter of looking at state law to determine if there is any basis and looking at the nature of the underlying transaction—as either a lending arrangement or equity infusion.

transactions, to complain about anything. Everyone involved here is, essentially, a behemoth and there is literally no sign of innocent creditors getting harmed. Second, the case at bar is unique in that the claims traded here ***had all been allowed after objections, mediation, and Rule 9019 settlements during the bankruptcy case***. Thus, the amounts that would be paid on them were "locked in," so to speak. There was no risk to a hypothetical claims-purchaser of disallowance, offset, or any "claw-back" litigation (or—one might have reasonably assumed—any type of litigation). Third, the terms for distributions on unsecured claims had been established in a confirmed plan (although the claims were purchased before the effective date of the Plan). Thus, there was a degree of certainty regarding return on investment for the Claims Purchasers here that was much higher than if the claims had been purchased early, during, or mid-way through the case.[149] ***This was post-confirmation, pre-effective date claims purchasing.*** Interestingly, all three of these facts might suggest that little due diligence would be undertaken by any hypothetical purchaser. The rules of the road had been set. The court makes this observation because HMIT has suggested there is something highly suspicious about the fact that Farallon allegedly told Dondero that it did no due diligence before purchasing its claims (leading him to conclude that the Claims Purchasers must have purchased their claims based on receiving MNPI from Seery). Not only has there been no colorable evidence suggesting that insider information was shared, but the lack of due diligence in this context does not reasonably seem suspicious. The claims purchases

[149] *See discussion* in BANKRUPTCY MARKETS, at 91:

> Some claims purchasers buy before the bankruptcy petition is filed, some at the beginning of the case, and some towards the end. For example, there are investors who look to purchase at low prices either when a business is failing or early in the bankruptcy and ride through the case until payouts are fairly certain. [Citations omitted.] These investors might be hoping to buy at 30 cents on the dollar and get a payout at 70 cents on the dollar. Perhaps if they waited another six months, the payout would be 74 cents on the dollar, but the additional 4 cents on the dollar for six months might not be a worthwhile return for the time value of the investment. Other investors might not want to assume the risk that exists in the early days of a case when the fate of the debtor is much less certain, but they would gladly purchase at 70 cents on the dollar at the end of the case to get a payout of 74 cents on the dollar six months later.

were almost like passive investments, at this point—there was no risk of a claim objection and there was a confirmed plan, with a lengthy disclosure statement that described not only plan payment terms and projections, but essentially anything that any investor might want to know.

To reiterate, here, HMIT seeks leave to assert the following causes of action:

I. Breach of Fiduciary Duties (Seery)

II. Knowing Participation in Breach of Fiduciary Duties (Claims Purchasers)

III. Conspiracy (all Proposed Defendants)

IV. Equitable Disallowance (Claims Purchasers)

V. Unjust Enrichment and Constructive Trust (all Proposed Defendants)

VI. Declaratory Judgment (all Proposed Defendants)

The court struggles to fathom how any of these proposed causes of action or remedies can be applied in the context of: (a) post-confirmation claims trading; (b) where the claims have all been litigated and allowed.

In reflecting on the case law and various Bankruptcy Code provisions, the court can fathom the following hypotheticals in which claims trading during a bankruptcy case might be somehow actionable:

> **Hypothetical #1**: The most obvious situation would be if a purchaser of a claim files a Rule 3001(e) Notice, and the seller/transferor then files an objection thereto. There would then be a contested hearing between purchaser and seller regarding the validity of the transfer with the bankruptcy court issuing an appropriate order after the hearing on the objection. ***As noted, there was no objection to the Rule 3001(e) notices here***.
>
> **Hypothetical #2:** Alternatively, there could be a breach of contract suit between purchaser and seller if one thinks the other breached the purchase-sale agreement somehow. Perhaps torts might also be alleged in such litigation. ***As noted, there is no dispute between purchasers and sellers here.***
>
> **Hypothetical #3:** If there is believed to be fraud in connection with a plan, a party in interest might, pursuant to section 1144 of the Bankruptcy Code, move for

revocation of the plan "at any time before 180 days after the date of entry of the order for confirmation" and the court "may revoke such order if and only if such order was procured by fraud." ***As noted, here HMIT has suggested that the "pessimistic" plan projections may have been fraudulent or misrepresentations somehow. The time elapsed long ago to seek revocation of the Plan.***

Hypothetical #4: As discussed above, in rare situations (bad faith), during a Chapter 11 case, before a plan is confirmed, a claims purchaser's claim might not be allowed for voting purposes. *See* Sections 1126(e) of the Bankruptcy Code ("the court may designate any entity whose acceptance or rejection of such plan was not in good faith"). ***Obviously, in this case, this is not applicable—the claims were purchased post-confirmation.***

Hypothetical #5: As discussed above, in rare situations (inequitable conduct), a court might equitably subordinate ***claims*** to ***other claims***. *See* Section 510(c) of the Bankruptcy Code. But here**,** HMIT is seeking either: (a) equitable subordination of the ***claims*** of the Claims Purchaser to HMIT's ***Class 10 former equity interest*** (in contravention of the explicit terms of section 510(c)) or, (b) ***equitable disallowance*** of the claims of the Claims Purchasers (in contravention of *Mobile Steel*).

Hypothetical #6: Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case may permit "recharacterization" of a claim from debt to equity in certain circumstances, but not in circumstances like the ones in this case. Here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). The problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). Here there was most definitely "a contest" with regard to all of these purchased claims. ***Thus, it would appear that any effort to have a court reconsider these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.***

Hypothetical #7: If a party believes "insider trading" occurred there are governmental agencies that investigate and police that. ***Here, the purchased claims (which were not based on bonds or certificated equity interests) would not be securities so as to fall under the SEC's purview. Moreover, there was evidence that HMIT or Dondero-Related entities requested that the Texas State Securities Board investigate the claims trading and the board did not find a basis to pursue anyone for wrongdoing***.

Hypothetical #8: The United States Trustee can investigate wrongdoing by a debtor or unsecured creditors committee. While the United States Trustee would naturally have concerns about members of an unsecured creditors committee (or an officer of a debtor-in-possession) adhering to fiduciary duties and not putting their

> own interests above those of the estate, here, there are a couple of points that seem noteworthy. One, the claims trading activity was post-confirmation so—while certain of the claim-sellers may have still been on the unsecured creditors committee, as the effective date of the plan had not yet occurred—the circumstances are very different than if this had all happened during the early, contentious stages of the case. It seems inconceivable that there was somehow a disparity of information that might be troubling—the Plan had been confirmed and it was available for the world to see. The whole notion of "insider information" (just after confirmation here) feels a bit off-point. Bankruptcy practitioners and judges sometimes call bankruptcy a fishbowl or use the "open kimono" metaphor for good reason. It is generally a very open process. And information-sharing on the part of a debtor-in-possession or unsecured creditors committee is intended to be robust. *See, e.g.,* Bankruptcy Code sections 521 and 1102(b)(3). In a way, HMIT here seems to be complaining about this very situation that the Code and Rules have designed.

In summary, claims trading is a highly ***unregulated*** activity in the bankruptcy world. ***HMIT is attempting to pursue causes of action here that, to this court's knowledge, have never been allowed in a context like this***.

B. Back to Standing—Would HMIT Have Standing to Bring the Proposed Claims?

The Proposed Defendants argue that HMIT lacks standing to bring the Proposed Claims, either: (a) derivatively on behalf of the Reorganized Debtor and Claimant Trust, or (b) directly on behalf of itself. Thus, they argue that this is one reason that the Motion for Leave should be denied.

In making their specific standing arguments, the parties analyze things slightly differently:

The Claims Purchasers focus primarily on HMIT's lack of ***constitutional*** standing but also argue that HMIT does not have ***prudential*** standing under Delaware trust law to bring the Proposed Claims either individually or derivatively. Why do they mention Delaware trust law? Because the Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29.[150]

The Highland Parties' standing arguments focus almost entirely on HMIT's lack of ***prudential*** standing under Delaware trust law to bring the Proposed Claims.

HMIT argues that the Proposed Defendants "play fast and loose with standing arguments" and that HMIT has ***constitutional*** standing as a "party aggrieved"[151] to bring the Proposed Claims on behalf of itself. HMIT also argues that it has standing under Delaware trust law to bring a

[150] *See* Proposed Complaint, ¶ 26.

[151] Proposed Complaint, ¶7.

derivative action on behalf of the Claimant Trust, and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to do so.

1. The Different Types of Standing: Constitutional Versus Prudential

The parties are addressing two concepts of standing that can sometimes be confused and misapplied by both attorneys and judges: ***constitutional Article III standing***, which implicates federal court subject matter jurisdiction,[152] and the narrower standing concept of ***prudential standing***, which does not implicate subject matter jurisdiction but nevertheless might prevent a party from having capacity to sue, pursuant to limitations set by courts, statutes or other law.

Article III constitutional standing works as follows: a plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing three elements: (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[153] "If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve."[154] These elements ensure that a plaintiff has "'such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf."[155]

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[152] Article III, Section 2 of the U.S. Constitution gives federal courts jurisdiction over enumerated cases and controversies.

[153] *See Thole v. U.S. Bank, N.A.*, 140 S.Ct. 1615, 1618 (2020)(citing the Supreme Court's seminal case on the tripartite test for Article III constitutional standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), where the Supreme Court stated that "the irreducible constitutional minimum of standing contains [the] three elements"); *see also Spokeo*, 578 U.S. at 338; *Abraugh v. Altimus*, 26 F.4th 298, 302 (5th Cir. 2022) (citing *id.*).

[154] *Transunion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021)(cleaned up).

[155] *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Apart from this minimal constitutional mandate, courts and statutes have set other limits on the class of persons who may seek judicial remedies—and this is the concept of prudential standing. In its recent opinion in *Abraugh v. Altimus*,[156] the Fifth Circuit set forth a detailed analysis of the two types of "standing," noting that the term "standing" is often "misused" in our legal system, which has led to confusion for both attorneys and judges.[157] The constitutional standing that is necessary for a court to exercise subject matter jurisdiction is broader than prudential standing and is only the first hurdle a party must clear before pursuing a claim in federal court.

The Fifth Circuit explained that ***in addition to*** Article III constitutional standing, "courts have occasionally articulated other 'standing' requirements that plaintiffs must satisfy under certain conditions, ***beyond those imposed by Article III***,"[158] such as the "standing" requirement that might be imposed by a statute or by jurisprudence. The *Abraugh* case was a perfect example of the latter.

Abraugh involved the civil rights statutes that provide, among other things, that "a party must have standing under the state wrongful death or survival statutes to bring [a § 1983 cause of action]" and noted that these statutes impose additional "standing" requirements that are a matter of prudential standing, not constitutional standing.[159] In *Abraugh*, the Fifth Circuit reversed and remanded a district court's dismissal of a § 1983 civil rights cause of action—noting that the district court had stated that it was dismissing based on a "lack of subject matter jurisdiction" because the plaintiff in that action lacked standing.[160] The plaintiff was the mother of a prisoner

[156] 26 F.4th 298.
[157] *Id.* at 303.
[158] *Id.* at 302 (emphasis added).
[159] *Id.* at 302-303.
[160] *Id.* at 301.

who died by suicide while in custody who brought a § 1983 action against Louisiana correctional officers and officials. After finding that the plaintiff/mother lacked standing under Louisiana's wrongful death and survival statutes (because there had been a surviving child and wife of the prisoner who were the proper parties with capacity to sue), the district court held that it was dismissing for lack of subject matter jurisdiction. The Fifth Circuit pointed out that the plaintiff/mother may have lacked standing under Louisiana's wrongful death and survival statutes to bring the claim under § 1983, but that type of standing was matter of ***prudential*** standing, and the plaintiff/mother actually ***did*** have ***Article III*** constitutional standing ("a constitutionally cognizable interest in the life of her son").[161] Thus, the district court's error was ***not*** in finding that the plaintiff/mother lacked prudential standing but in improperly conflating the two standing concepts when it held that it had lacked ***subject matter jurisdiction*** to consider any of the plaintiff's/mother's amended complaints.[162] The Fifth Circuit noted specifically that[163]

> prudential standing does not present a jurisdictional question, but "a merits question: who, according to the governing substantive law, is entitled to enforce the right?" As the Federal Rules of Civil Procedure make clear, "an action must be prosecuted in the name of the real party in interest." FED. R. CIV. P. 17(a)(1). And a violation of this rule is a failure of "prudential" standing. "Not one of our precedents holds that the inquiry is jurisdictional." It goes only to the validity of the cause of action. And "the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction."

Somewhat relevant to this prudential standing discussion is the fact that, in this bankruptcy case, there have been dozens of appeals of bankruptcy court orders by Dondero and Dondero-related entities. In connection therewith, both the district court and the Fifth Circuit, in evaluating the ***appellate standing*** of the appellants, have taken pains to distinguish between the concepts of:

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[161] *Id.*

[162] *Id.* at 301, 303-304. The Fifth Circuit opined that "the district court did not err in describing [the mother's] inability to sue under Louisiana law as a defect of 'standing[, b]ut it is a defect of prudential standing, not Article III standing" thus technically not implicating the federal court's subject matter jurisdiction. *Id.* at 303.

[163] *Id.* at 304 (cleaned up).

(a) traditional, constitutional standing, and (b) a type of prudential standing known as the "person aggrieved" test, which is applied in the Fifth Circuit in determining whether a party has ***standing to appeal a bankruptcy court order***—which it describes as a narrower and "more exacting" standard than constitutional standing. As explained in a Fifth Circuit opinion addressing the standing of a Dondero-related entity called NexPoint to appeal bankruptcy court orders allowing professional fees, the "person aggrieved" standard that is typically applied to ascertain bankruptcy ***appellate*** standing originated in a statute in the Bankruptcy Act. The Fifth Circuit continued to apply it after Congress removed the provision when it enacted the Bankruptcy Code in 1978.[164] Because it is narrower and "more exacting" than the test for Article III constitutional standing, it involves application of prudential standing considerations.[165] The Fifth Circuit describes the "person aggrieved" test for bankruptcy appellant standing as requiring that an appellant show that it was "*directly and adversely affected pecuniarily* by the order of the bankruptcy court," requiring "a higher causal nexus between act and injury than traditional standing . . . that best deals with the unique posture of bankruptcy actions."[166] In affirming the district court's dismissal of NexPoint's appeal of the bankruptcy court's fee orders, due to NexPoint's lack of prudential standing under the "person aggrieved" test, the court rejected NexPoint's argument that it had standing to appeal

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[164] *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, No. 22-10575, 2023 WL 4621466, *2 (5th Cir. July 19, 2023)(citing *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004)(cleaned up)).

[165] *Id.* at *1, **4-6 (where the Fifth Circuit repeatedly throughout its opinion refers to the "person aggrieved" test for standing in bankruptcy actions as a test for "prudential standing."); *see also Dondero v. Highland Capital Mgt., L.P.*, Civ. Act. No. 3:20-cv-3390-X, 2002 WL 837208 (N.D. Tex. Mar. 18, 2022)(where the district court, in addressing Dondero's standing to appeal a bankruptcy court order approving a Rule 9019 settlement (between Highland and Acis Capital Management GP LLC), notes that "[i]t is substantially more difficult to have standing to appeal a bankruptcy court's order than it is to pursue a typical complaint under Article III of the U.S. Constitution" and that "the Fifth Circuit has long recognized that bankruptcy cases' wide-reaching scope calls for a more stringent standing test.").

[166] *See id.* at *3 (cleaned up). The court quotes its 2018 opinion in *Matter of Technicool Sys., Inc. (In re Technicool)*, 896 F.3d 382, 385 (5th Cir. 2018), which explains why the "person aggrieved" prudential standing standard is applied in bankruptcy actions: "Bankruptcy cases often involve numerous parties with conflicting and overlapping interests. Allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Given the specter of such sclerotic litigation, standing to appeal a bankruptcy court order is, of necessity, *quite limited*." *Id.* (cleaned up).

because "it meets traditional Article III standing requirements [and that the more exacting] prudential standing considerations such as the 'person aggrieved' standard" did not survive the Supreme Court's 2014 *Lexmark*[167] opinion,[168] which addressed standing issues in the context of false advertising claims under the Lanham Act and reminded that courts may not "limit a cause of action that Congress has created merely because 'prudence' dictates."[169] The Fifth Circuit held that the Supreme Court's reminder in *Lexmark* did not nullify the "person aggrieved" test for prudential standing in bankruptcy appeals, citing its own decision in *Superior MRI Services Inc. v. Alliance Healthcare Services, Inc.*[170] (rendered a year after *Lexmark* was decided), in which it held that *Lexmark* applied only to the circumstances of that case, "rather than broadly modifying—or undermining—*all* prudential standing concerns, such as the one animating the 'person aggrieved' standard in bankruptcy appeals."[171]

Similarly, in yet another appeal in this bankruptcy case involving three Dondero-related entities as appellants (NexPoint, Dugaboy, and HCMFA)—this one an appeal of a bankruptcy court order authorizing the creation of an indemnity subtrust and entry into an indemnity trust agreement—the district court noted the parties' confusion about the standing issue, as exemplified in the parties' reference to constitutional standing when they were actually arguing that they had prudential standing under the "person aggrieved" test: "Although the parties frame this issue as one of constitutional standing . . . they cite case law and present arguments about the prudential

[167] *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).
[168] *Id.* at *2.
[169] *See id.* at *4 (cleaned up).
[170] 778 F.3d 502 (5th Cir. 2015).
[171] *NexPoint*, 2023 WL 4621466 at *4 (cleaned up). The Fifth Circuit explicitly stated that "*Lexmark* does not expressly reach prudential concerns in bankruptcy appeals and brought no change relevant here." *Id.* at *5 (cleaned up).

standing requirement embodied in the 'person aggrieved' test."[172] The district court noted that it had an "independent obligation to consider constitutional standing before reaching its prudential aspects."[173] The district court dismissed the appeal as to Dugaboy and HCMFA for lack of standing but, upon concluding that NexPoint did have standing, dismissed the appeal as to it on the merits. The Fifth Circuit affirmed.[174] Interestingly, the court noted that, while the parties did not contest the district court's determination that NexPoint had standing to pursue the appeal, it "may consider prudential standing issues *sua sponte*."[175] In doing so, the Fifth Circuit recognized the distinction between constitutional standing and the prudential "person aggrieved" test applied to bankruptcy appeals, which "is, of necessity, quite limited" and "an even more exacting standard than traditional constitutional standing," as it requires an appellant to show that it is "directly, adversely, and financially impacted by a bankruptcy order."[176]

In summary, in analyzing whether HMIT would have standing to bring the Proposed Claims, this court must ***first*** determine whether HMIT would have constitutional standing under Article III (which is a subject matter jurisdiction hurdle) and, assuming it does, then ***additionally*** address whether HMIT would also have prudential standing (i.e., capacity to sue) pursuant to any applicable statutes (e.g., Delaware statutes), jurisprudence, or other substantive law that might ***limit*** who may sue. Notwithstanding HMIT's argument that it has standing under the "person

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[172] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2002 WL 270862, *1 (N.D. Tex. Jan. 18, 2022)(cleaned up). The district court dismissed the appeals of two of the appellants, Dugaboy and HCMFA, finding that they lacked both constitutional standing and prudential standing under the "person aggrieved" test and affirmed the bankruptcy court's order after finding the third appellant, NexPoint, to have prudential standing under the "person aggrieved" test. *Id.* at **1-3 and *4.

[173] *Id.* at *1 n.2.

[174] *Highland Capital Mgt. Fund, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 57 F.4th 494 (5th Cir. 2023).

[175] *Id.* at 501 (cleaned up).

[176] *Id.*

aggrieved" test[177]—which, as discussed above, is a matter of prudential standing—this is applied only in the context of bankruptcy ***appellate*** matters.[178] As noted in its most recent opinion discussing standing in an appeal from the Highland bankruptcy case, the Fifth Circuit reiterated that the "person aggrieved" test is a test for bankruptcy ***appellate*** standing, which is narrower than a party in interest's right to be heard in bankruptcy cases in general.[179] The court rejected an argument that Bankruptcy Code § 1109, which provides that "[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter" confers ***appellate*** standing, noting that "one's standing to appear and be heard before the bankruptcy court [is] a concept distinct from standing to appeal the merits of a decision" and that the "person aggrieved" test for bankruptcy appellate standing is narrower than the test for determining one's standing to appear and be heard in a bankruptcy proceeding.[180]

Thus, the court will now analyze whether HMIT would, at a minimum, have constitutional standing to bring the Proposed Claims.

2. HMIT Would Lack Article III Constitutional Standing to Bring the Proposed Claims.

As noted above, the Supreme Court and the Fifth Circuit have made clear that constitutional standing is necessary for a court to exercise subject matter jurisdiction. It is only the first hurdle a party must clear before pursuing a claim in federal court. HMIT, as plaintiff, would bear the

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[177] HMIT insists that it has constitutional standing to bring claims on its individual behalf "as an aggrieved party." *See* Reply, ¶ 7.

[178] HMIT's argument in this matter that it has constitutional standing because it is a "party aggrieved" incorrectly conflates the prudential bankruptcy appellate "person aggrieved" test with the broader test that is applied to constitutional standing. The court is not being critical of this mistake. As noted at *supra* note 149, the Fifth Circuit in *Abraugh* pointed out that courts and attorneys alike have created confusion by misusing the term "standing" when they equate a lack of "standing," in all instances, with a lack of subject matter jurisdiction, even when the party is found to lack only prudential standing. Thus, HMIT is not alone in its confusion over the two different concepts of standing.

[179] *See NexPoint*, 2023 WL 4621466 at *6.

[180] *Id.* at *6 (cleaned up)("Because Section 1109(b) expands the right to be heard [in a bankruptcy proceeding] to a wider class than those who qualify under the 'person aggrieved' standard, courts considering the issue have concluded that merely being a party in interest is insufficient to confer ***appellate*** standing.")(emphasis added).

burden of establishing: (1) that it suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[181]

Concrete and Particularized; Actual or Imminent. As the Supreme Court made clear in the *Lujan* case, the injury in fact element requires a showing that the injury was "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."[182] The Supreme Court in the *Spokeo* case expounded on the "concrete and particularized" requirements of the "injury in fact" element. Particularization requires a showing that the injury "must affect the plaintiff in a personal and individual way," but while particularization is necessary, it alone is "not sufficient," because an injury in fact must also be "concrete."[183] And, concreteness is "quite different from particularization."[184] A "concrete" injury must be "real," and "not abstract," though it does not mean that the injury must be "tangible," as the injury can be intangible and nevertheless be concrete.[185] In addition to the concreteness and particularization requirements, an injury in fact must be "actual or imminent" such that "allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing."[186] "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly*

[181] *See supra* note 153.
[182] *Lujan*, 504 U.S. at 560 (cleaned up).
[183] *Spokeo*, 578 U.S. at 339.
[184] *Id.* at 340.
[185] *Id.*
[186] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

impending"; "allegations of *possible* future injury are not sufficient."[187]

Traceability - Causal Connection. As to the second element—that the injury was caused by the defendant—the Supreme Court in *Lujan* further described it as requiring a showing that "the injury has to be fairly traceable to the challenged action of the defendant."[188] The "fairly traceable" test requires an examination of "the causal connection between the assertedly unlawful conduct and the alleged injury."[189]

Redressability. The third element—redressability—requires the court to examine the connection "between the alleged injury and the judicial relief requested."[190] "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court."[191] "[A] court must determine that there is an available remedy which will have a 'substantial probability' of redressing the plaintiff's injury."[192]

The Claims Purchasers argue that HMIT lacks constitutional standing to pursue the claims asserted in the Proposed Complaint because: (i) neither HMIT nor the Bankruptcy Estate was injured by the Claim Purchasers' acquisition of the claims; and (ii) the Proposed Complaint lacks a theory of cognizable damages to the Reorganized Debtor, the Claimant Trust, and/or the beneficiaries of the Claimant Trust.[193]

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[187] *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013)(cleaned up); *see also Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir. 2023)("[Injury] cannot be speculative, conjectural, or hypothetical [and] [a]llegations of only a 'possible' future injury similarly will not suffice.")(cleaned up).

[188] *Lujan*, 504 U.S. at 560-61 (cleaned up).

[189] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

[190] *Id.* (noting "it is important to keep the ['fairly traceable' and 'redressability'] inquiries separate if the 'redressability' component is to focus on the requested relief.").

[191] *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998).

[192] *City of Los Angeles v. Lyons*, 461 U.S. 95, 129 n.20 (1983)(Marshall, J., dissenting)(cleaned up); *see also Ondrusek v. U.S. Army Corps of Engineers*, Civ. Act. No. 3:22-cv-1874-N, 2023 WL 2169908, at *5 ("Plaintiffs have not demonstrated that any available remedy would be sufficiently likely to relieve their alleged economic losses. Without a showing of redressability, those harms also cannot support Plaintiff's Article III standing.").

[193] As noted earlier, certain of the Proposed Defendants—the Highland Parties—do not focus on HMIT's lack of constitutional standing to pursue the Proposed Claims against them, but on its lack of prudential standing under

The court agrees with the Claims Purchasers' argument here. What is HMIT's concrete and particularized injury—that is "real" and is not abstract? That is not conjectural or hypothetical? That is actual or imminent?

Recall that, under the Plan, HMIT holds a Class 10 contingent interest in the Claimant Trust that only realizes value if all creditors are paid in full with interest. HMIT alleges the following injury: it has suffered a devaluation of its unvested Contingent Claimant Trust Interest by virtue of the alleged over-compensation of Seery as the Claimant Trustee—Seery's alleged over-compensation depletes the assets in the Claimant Trust available for distribution to creditors under the Plan, such that there is less likely a chance that HMIT ultimately receives any distributions on account of its Class 10 Contingent Claimant Trust Interest.[194] Yet, HMIT testified, through both witnesses Dondero and Patrick, that it had no personal knowledge of what Seery's actual compensation is under the CTA at the time HMIT filed its Motion for Leave. It was clear that HMIT's allegations regarding Seery's "excessive" compensation were based entirely on Dondero's pure speculation. In reality, Seery's base salary is exactly what the bankruptcy court approved during the bankruptcy case by a court order (after negotiations between Seery and the Committee). The CTA now further governs his compensation. The CTA, which was publicly filed ***in advance of*** the Plan confirmation hearing and approved by this court as part of the Plan

applicable law. Because constitutional standing is a matter of subject matter jurisdiction, the court has an independent duty to determine whether HMIT would have constitutional standing to pursue the Proposed Claims in federal court. The issue cannot be forfeited or waived by a party. *See Abraugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)("[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Moreover, courts . . . have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.")(cleaned up); *Abraugh*, 26 F.4th at 304 ("It is our constitutional duty, of course, to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.")(cleaned up).

[194] At the June 8 Hearing, HMIT's counsel was unable to identify any other injury HMIT has alleged to have suffered. HMIT's counsel acknowledged that claims trades, in and of themselves, would not "involve injury to the Reorganized Debtor and to the Claimant Trust" and that claims trades are "normally outside the purview of the bankruptcy court" but that "[h]ere, we have alleged . . . . injury [that] takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers." June 8 Hearing Transcript, 67:16-68:8. HMIT can only point to Seery's excess compensation as injury.

(which has been affirmed by the Fifth Circuit), specifically provides that Seery's post-Effective Date compensation would include a "Base Salary" (again, same as during the bankruptcy case), a "success fee," and "severance."[195] The CTA discussed the role of the Committee and then the CTOB in setting the success fee and severance and the like. A fully executed copy of the CTA was admitted into evidence at the June 8 Hearing. HMIT is essentially arguing that its injury (i.e., diminished likelihood of realizing value on its Contingent Claimant Trust Interest) stems from a court-sanctioned and creditor-approved process for approving compensation to Seery. Moreover, HMIT has failed to plead facts sufficient to show that, even if Seery received excessive compensation and that compensation is ordered to be returned, HMIT's Contingent Claimant Trust Interest will ever vest. The district court and the Fifth Circuit in various appeals by Dugaboy, another Dondero-related entity that, similar to HMIT, was a holder of a limited partnership interest in Highland whose interests were terminated as of the Effective Date of the Plan in exchange for a Contingent Claimant Trust Interest, have repeatedly rejected Dugaboy's claims to have standing based on the ***speculative nature of its alleged injuries as a contingent beneficiary of the Claimant Trust under the Plan***. For example, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy of the bankruptcy court's order authorizing the creation of an indemnity subtrust, wherein Judge Fitzwater found that, in addition to lacking prudential standing under the

[195] The Disclosure Statement that was approved by this court, after notice and a hearing, on November 24, 2020, provided that "The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement . . . ." The CTA was part of a Plan Supplement (as amended) that was filed in advance of the confirmation hearing and provided:

> Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

See Highland Ex. 38, at § 3.13(a)(i).

"person aggrieved" test to appeal the bankruptcy court's order, Dugaboy lacked constitutional standing "because they have not identified any injury fairly traceable to the Order: ***the injuries identified are speculative at best and nonexistent at worst***."[196] HMIT's allegations of injury are, without a doubt, "merely conjectural or hypothetical" and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests."[197] The court finds that HMIT would not meet the "concrete and particularized" or the "actual or imminent" requirements for an "injury in fact," and, thus, would lack constitutional standing to pursue the Proposed Claims.

With regard to the second requirement of constitutional standing—whether HMIT could show "traceability" with respect to the Claims Purchasers and/or Seery (i.e., a "causal connection between the assertedly unlawful conduct and the alleged injury"[198]), as noted above, there is only a speculative injury. Even if there is unlawful conduct asserted (i.e., sharing of MNPI to Claims Purchasers who then, as a *quid pro quo*, rubber stamped excessive compensation for Seery), there is nothing other than a hypothetical theory of an alleged injury (i.e., an allegedly less likelihood of a distribution on a Contingent Claimant Trust Interest).

With respect to the third requirement of constitutional standing—whether HMIT can show "redressability" (i.e., that it is likely, not speculative, that the injury can be redressed by a favorable

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[196] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, *1 n.2 (N.D. Tex. Jan. 28, 2022), *aff'd* 57 F.4th 494 (5th Cir. 2023)(emphasis added); *see also* Judge Scholer's opinion in *Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-2268-S, 2022 WL 3701720, *3 (N.D. Tex. Aug. 8, 2022)(cleaned up), *aff'd per curium*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023) (where Dugaboy had argued that "***its pecuniary interest is . . . a potential recovery under the Plan as one of Debtor's former equity holders***" and that "it ha[d] standing as a 'contingent beneficiary' under the Plan, or a beneficiary who will be entitled to payment after all creditors are paid in full," and Judge Scholer stated, "This assertion is premised on the assumption that Dugaboy's 0.1866% pre-bankruptcy limited partnership interest in Debtor—which was extinguished under the Plan—makes it a contingent beneficiary of the creditor trust created under the Plan. . . . [S]uch a 'speculative prospect of harm is far from a direct, adverse, pecuniary hit' as required to confer standing."

[197] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

[198] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

decision), there are multiple problems here.[199] The major remedy sought here is the equitable disallowance of the allowed Purchased Claims (and disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims). There is no such remedy available here. As noted earlier, there is a similar concept of ***equitable subordination*** of a claim to another claim, or of an interest to another interest, pursuant to Bankruptcy Code section 510(c). But under the literal terms of section 510(c), ***claims cannot be subordinated to interests***. Moreover, the Fifth Circuit noted in the *Mobile Steel* case,[200] that ***equitable disallowance*** of a claim (as opposed to equitable subordination of a claims) is not an available remedy. Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case might permit "recharacterization" of a claim from debt to equity in certain circumstances—but not based on inequitable conduct but rather on the nature of a financial transaction. In any event, here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). As noted earlier, the problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). As further noted earlier, here there was most definitely a "contest" with regard to all of these purchased claims. ***Thus, it would appear***

[199] *See supra* notes 182-184 and accompanying text. The court will note that, as discussed *supra* note 141 and pages 71-72, the remedy of equitable subordination (as to the Claims Purchasers) would not redress HMIT's alleged injury (because equitable subordination of claims to interests is not an available remedy in the Fifth Circuit and thus subordination of the Purchased Claims to other claims would not change HMIT's distributions from the Claimant Trust, if any), and because outright disallowance of all or part of the already allowed Purchased Claims is not an available remedy either, HMIT would not be able to meet the "redressability" requirement with respect to the Claims Purchasers.

[200] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

that any effort to have a court reconsider and potentially disallow these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.

3. HMIT Would Also Lack Prudential Standing to Bring the Proposed Claims.

Even if HMIT would have constitutional standing to bring the Proposed Claims in an adversary proceeding filed in the bankruptcy court, the Proposed Claims would still be barred if HMIT would lack prudential standing to bring them under applicable state or federal law. HMIT argues that it does have prudential standing under both federal bankruptcy law and Delaware law to pursue the Proposed Claims derivatively and also to bring the Proposed Claims in its individual capacity.

With regard to "federal bankruptcy law," HMIT argues that it has standing pursuant to: (a) Rule 23.1 of the Federal Rules of Civil Procedure, pertaining to derivative actions, which "applies to this proceeding pursuant to" Rule 7023.1 of the Federal Rules of Bankruptcy Procedure, and (b) *Louisiana World Exposition v. Federal Insurance Co. ("LWE")*,[201] the Fifth Circuit's leading case addressing when a creditors committee may be granted standing to bring causes of action on behalf of a bankruptcy estate. But, federal bankruptcy law does not confer standing ***where the plaintiff otherwise lacks standing under applicable state law***. In other words, whether HMIT would have prudential standing to sue under Delaware law is dispositive of the issue, regardless of the forum. Rule 23.1 "speaks only to the adequacy of the . . . pleadings," and "cannot be understood to 'abridge, enlarge, or modify any substantive right,'"[202] including a right (or lack thereof) to bring a derivative action under the substantive law of Delaware. Additionally, HMIT's reliance on *LWE* is misplaced: *LWE* permits creditors, in certain circumstances ***during*** a bankruptcy case, to "file

[201] 858 F.2d 233 (5th Cir. 1988).

[202] *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991)(quoting 28 U.S.C. § 2072(b)).

suit on behalf of a debtor-in-possession or a trustee"[203] and does not apply to a party's right to sue, derivatively, on behalf of the Reorganized Debtor or any entity that is the assignee of the former bankruptcy estate's assets. Upon confirmation of the Plan, the bankruptcy estate of Highland ceased to exist;[204] Highland is no longer a debtor-in-possession but a reorganized debtor, and the Claimant Trust is a new entity created under the Plan and Claimant Trust Agreement. Even if *LWE* did apply in this ***post***-confirmation context, it supports the application of Delaware law to the issue of prudential standing and does not supersede state-law requirements for standing. In *LWE*, before addressing the requirements a creditors' committee must meet to sue derivatively on behalf of a bankruptcy estate as a matter of federal bankruptcy law, the Fifth Circuit conducted a lengthy analysis to determine "as a threshold issue" whether the creditors' committee in that case could assert its claims under Louisiana law.[205] The court specifically addressed whether the creditors' committee could pursue a derivative action under Louisiana law and concluded that "there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions."[206] So, even under *LWE* (which the court does not think applies in this post-confirmation context), if HMIT would be barred from bringing a derivative action on behalf the Reorganized Debtor or Claimant Trust under state law, the analysis stops there.[207] Thus, the court looks to Delaware law to determine if HMIT would have prudential standing to pursue the derivative claims on behalf the Reorganized Debtor and the Claimant Trust.

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[203] *LWE*, 858 F.2d at 247.

[204] *See In re Craig's Stores*, 266 F.3d 388, 390 (5th Cir. 2001).

[205] *LWE*, 858 F.2d at 236-45.

[206] *Id.* at 243.

[207] *See In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 (where the Delaware bankruptcy court denied the creditors' committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act, stating, "To determine that the third party

HMIT acknowledges that both the Reorganized Debtor and the Claimant Trust are organized under Delaware law, and thus the cause of action against Seery alleging breach of fiduciary duties to the Reorganized Debtor and the Claimant Trust are governed by Delaware law under the "Internal Affairs Doctrine."[208] In addition, because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting theory of liability as to the Claims Purchasers is also governed by Delaware law.[209] For the reasons set forth below, the court finds that HMIT would lack prudential standing under Delaware law to bring the claims set forth in the Proposed Complaint, derivatively, on behalf of either the Claimant Trust or the Reorganized Debtor.

a) First, HMIT Would Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Claimant Trust.

The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29,[210] and "to proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement" such that "the plaintiff must be a beneficial owner" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[211] This requirement is "mandatory and exclusive" and only "a beneficial owner" "has standing to bring a derivative claim on behalf of the

may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors' state of incorporation or formation.").

[208] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[209] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

[210] *See* Proposed Complaint, ¶ 26.

[211] *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *19 n.123 (Del. Ch. June 15, 2011), *aff'd* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b).

Trust."[212] The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, would lack standing to bring derivative claims on behalf of the Claimant Trust. HMIT argues to the contrary: that it ***is*** currently, and was at all relevant times, a "beneficial owner" of the Claimant Trust under Delaware trust law such that it would have standing to bring derivative claims on behalf of the Claimant Trust if it were allowed to proceed with the filing of the Proposed Complaint. The disagreement turns on the nature of HMIT's interest under the Plan and the Claimant Trust Agreement and whether HMIT, as a holder of such interest, would be considered a "beneficial owner" of the Claimant Trust under Delaware trust law.

As noted, pursuant to the Plan, HMIT's former limited partnership interest in Highland was cancelled as of the Effective Date in exchange for its pro rata share of a "Contingent Claimant Trust Interest," as defined under the Plan.[213] HMIT argues that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present "beneficial owner" under Delaware trust law.

The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust; rather, the "beneficial owners" of the Claimant Trust are the "Claimant Trust Beneficiaries,"[214] which are defined in the Plan and the CTA as "the Holders of Allowed General Unsecured Claims" (which are in Class 8 under the Plan) and "Holders of Allowed Subordinated Claims" (which are in Class 9 under the Plan);[215] HMIT, a holder of a Class 10 interest under the Plan, is neither.

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[212] *In re Nat'l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)). HMIT acknowledges this requirement in its Reply: "Delaware statutory trust law provides that a plaintiff in a derivative action on behalf of a trust must be a beneficial owner at the time of the action and at the time of the transaction." Reply, ¶ 19 (citing 12 Del C. § 3816).

[213] *See* Plan Art. III.H.10 and Art. I.B.44.

[214] Section 2.8 of the CTA provides, "The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . . ." HMIT Ex. 26, § 2.8.

[215] *See* Plan Art. I.B.44 ("'*Claimant Trust Beneficiaries*' means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the

HMIT, as the holder of a "Contingent Claimant Trust Interest," has only an ***unvested*** contingent interest in the Claimant Trust and, as such, is not a "beneficial owner" of the Claimant Trust for standing purposes under Delaware trust law. HMIT argues that it "should be treated as a vested Claimant Trust Beneficiary due to [the Proposed Defendants'] wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein."[216] The court disagrees.

HMIT's status as a "beneficiary" of the Claimant Trust is defined by the CTA itself, pure and simple. The CTA specifically provides that "Contingent Trust Interests" "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA. It is undisputed that HMIT's Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested based on HMIT's unsupported allegation of wrongdoing on the part of Seery, the Claimant Trustee. Thus, the court finds that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, lacks prudential standing under Delaware law to bring derivative claims on behalf of the Claimant Trust.[217]

Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests."); CTA § 1.1(h). *See also*, CTA, 1 at n.2 ("For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan."). HMIT Ex. 26.

[216] Proposed Complaint ¶ 24.

[217] *See Nat'l Coll.*, 251 A.3d at 190–92 (dismissing creditors' derivative claims because they were not "beneficial owners of the Trusts"); *Hartsel*, 2011 WL 2421003, at *19 n.123 (dismissing derivative claims by investors that "no longer own shares" because "those investors no longer have standing to pursue a derivative claim").

b) HMIT Would Likewise Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Reorganized Debtor.

HMIT acknowledges that the Reorganized Debtor, Highland Capital Management, L.P., is a Delaware limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.*[218] To bring "a derivative action" on behalf of a limited partnership, "the plaintiff must be a partner or an assignee of a partnership interest" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[219]

HMIT is not a partner, general or limited, of the Reorganized Debtor limited partnership. HMIT ***was*** a limited partner in the original debtor (specifically, a holder of Class B/C Limited Partnership interests in Highland), but that limited partnership interest was extinguished on August 11, 2021 (the Effective Date of the Plan) per the terms of the Plan, and HMIT does not own any partnership interest in the newly created Reorganized Debtor limited partnership.[220] Because HMIT would not hold a partnership interest in the Reorganized Debtor at "the time of bringing the action," it "lacks derivative standing" to bring claims "on the partnership's behalf."[221] HMIT likewise cannot satisfy "the continuous ownership requirement"; when HMIT's limited partnership interest in the original Debtor was cancelled on the Plan's Effective Date, HMIT "los[t] standing to continue a derivative suit" on behalf of the Debtor.[222] Finally, to the extent HMIT

[218] Proposed Complaint ¶ 25.

[219] 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) ("The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another party's fiduciary duties to them.") (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff'd* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) ("The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.") (citing 6 Del. C. § 17-211(h)).

[220] *See* Plan Art. IV.A.

[221] *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

[222] *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff's partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re*

seeks to bring a "double derivative" action on behalf of the Claimant Trust based on claims purportedly held by its wholly owned subsidiary, the Reorganized Debtor, HMIT lacks standing. A "double derivative" action is a suit "brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled."[223] And, under Delaware law, "parent level standing is required to enforce a subsidiary's claim derivatively."[224] Because HMIT would lack derivative standing to bring claims on behalf of the parent Claimant Trust,[225] it also would lack standing to bring a double derivative action.

c) Finally, HMIT Would Also Lack Prudential Standing under Applicable Law to Bring the Proposed Claims As ***Direct*** Claims.

HMIT argues that it has "direct" standing to pursue the Proposed Claims on behalf of itself, individually.[226] But just because HMIT asserts that some or even all of the Proposed Claims are direct, not derivative claims, does not make it so: "a claim is not 'direct' simply because it is pleaded that way."[227] Rather, in determining whether claims are direct or derivative, a court must "look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs' characterization."[228] And, under Delaware law, "whether a claim is solely derivative or

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SkyPort Global Commcn's, Inc.), 2011 WL 111427, at *25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders "lack standing to bring a derivative claim" under Delaware law because they "had their equity interests in the company extinguished pursuant to the merger under the Plan"); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) ("[T]he cancellation of WorldCom shares under the Plan … prevents the required continuation of shareholder status through the litigation.") (cleaned up).

[223] *Lambrecht v. O'Neal*, 3 A.3d 277, 282 (Del. 2010).

[224] *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

[225] *See supra* pp. 80-82.

[226] *See e.g.*, Motion for Leave ¶ 10 ("HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . ."); *id.* ¶ 67 (arguing that "HMIT has [d]irect [s]tanding"); Proposed Complaint ¶ 24 ("HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.").

[227] *Schmermerhorn*, 2011 WL 111427, at *26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at *7 (Del. Ch. Nov. 5, 2004)).

[228] *See id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)); *see also Moore v. Simon Enters., Inc.*, 919 F.Supp. 1007, 1009 (N.D. Tex. 1995)("The determination of whether a claim is a derivative claim or a direct claim is made by reference to the nature of the wrongs alleged in the complaint, and is not limited by a [party's] characterization or stated intention.")(cleaned up).

may continue as a dual-natured claim 'must turn ***solely*** on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'"[229] "In addition, to prove that a claim is direct, a plaintiff 'must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.'"[230] Similarly, in the bankruptcy context, whether a creditor can assert a claim directly or whether the claim belongs to the estate turns on the nature of the injury for which relief is sought: "[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate," such that "only the bankruptcy trustee has standing to pursue the claim for the estate . . . ."[231] "To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate."[232]

As a reminder, HMIT argues that the injury it has suffered is a devaluation of its interests in the Claimant Trust by virtue of alleged over-compensation of Seery as the Claimant Trustee. HMIT was unable, when pressed during closing arguments, to identify any other injury. It essentially admitted that the claims trades, in and of themselves, would not have harmed the Claimant Trust, the Reorganized Debtor, or individual stakeholders, including HMIT, ***since the Claims Purchasers acquired already allowed unsecured claims, such that the distributions on those claims pursuant to the Plan would be unchanged in the hands of new holders of the claims***.

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[229] *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original).

[230] *Id.* (quoting *Tooley*, 845 A.2d at 1033); *see also Schmermerhorn*, 2011 WL 111427, at *24 (same).

[231] *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)).

[232] *Id.*; *see also Schertz-Cibolo-Universal City Indep. Sch. Dist. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994)("If a cause of action alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate.")(citations omitted).

Thus, by its own concessions, any alleged harm to HMIT (through devaluation of assets in the Claimant Trust) "comes about only because of harm to the debtor," so the alleged "injury is derivative."[233] The court concludes that all of the claims set forth in the Proposed Complaint allege derivative claims only, and that none would be direct claims against the Proposed Defendants. Thus, HMIT would lack prudential standing to bring any of the Proposed Claims in the Proposed Complaint, so its Motion for Leave should be denied.

d) Some Final Points Regarding Standing.

In this standing discussion, one should not lose sight of the fact that there are both procedural safeguards in place, as well as certain independent individuals in place with fiduciary duties that might act in the event of any shenanigans regarding Claimant Trust activities. Under section 4.1 of the CTA (approved as part of the Plan process), the CTOB, which includes an independent disinterested member in addition to representatives of the Claims Purchasers,[234] oversees the Claimant Trustee's performance of his duties, approves his compensation, and may remove him for cause. Moreover, there is a separate "Litigation Trustee" in this case who was brought in, post-confirmation, as an independent fiduciary to pursue claims and causes of action. These independent persons are checks and balances in the post-confirmation wind down of Highland. This is what creditors voted on in connection with the Plan. Seery and the Claims Purchasers are not in sole control of anything. The CTA, as well as Delaware law, very clearly set forth who can bring an action in the event of some colorable claim. This is the reality of prudential

[233] *Meridian*, 912 F.3d at 293–94 ("The creditors' injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties."); *see also El Paso,* 152 A.3d at 1260–61 & n.60 (holding that claim "claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative") (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at *12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had "not identified any independent harm suffered by the limited partners"; "the partnership suffered all the harm at issue—it paid too much").

[234] *See supra* note 23 and accompanying text.

standing. Just as in the *Abraugh* case, where Louisiana law dictated that a mother could not bring a wrongful death case when the deceased prisoner had a surviving wife and child, Delaware law and the CTA dictate here that a contingent beneficiary cannot bring the Proposed Claims here. This is separate and apart from whether the claims are colorable.

C. Are the Proposed Claims "Colorable"?

1. <u>What is the Proper Standard of Review for a "Colorability" Determination?</u>

Although the court has determined that HMIT would ***not*** have standing (constitutional or prudential) to bring the Proposed Claims, this court will nevertheless evaluate whether the claims—assuming HMIT somehow has standing—might be "colorable." This, in turn, requires the court to assess what the legal standard is to determine if a claim is "colorable." As a reminder, the Plan's Gatekeeper Provision and this court's prior Gatekeeper Orders entered in January and July 2020 each required that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain a finding from the bankruptcy court that its proposed claims are "colorable." The Gatekeeper Provision and Gatekeeper Orders did not specifically define "colorable" or what type of legal standard should apply.

HMIT argues that the standard for review to be applied by this court is the same as a simple "plausibility" standard used in connection with a Rule 12(b)(6) motions to dismiss. In other words, the court should simply assess whether the allegations of the Proposed Complaint, taken as true and with all inferences drawn in favor of the movant, state a ***plausible*** claim for relief (i.e., colorable equals plausible), and that this standard does not allow for the weighing of evidence by the court.[235] The Proposed Defendants, however, argue that the test for colorability should be more

[235] Reply, ¶ 5 ("[T]he determination of 'colorability' does not allow the 'weighing' of evidence. At most, a Rule 12(b)(6) 'plausibility' standard applies.").

akin to the test applied under the *Barton* doctrine,[236] under which a plaintiff must make a *prima facie* case that a proposed claim against a bankruptcy trustee is "not without foundation." In this regard, they argue that the court can and should consider evidence outside of the four corners of the complaint—especially since HMIT attached to its Motion for Leave, as "evidence" to support it, two declarations of Dondero (as part of a 350-page attachment) and only attempted to withdraw those declarations after the Highland Parties urged that they be permitted to cross-examine Dondero on them.

This court ultimately determined that the "colorability" standard was somewhat of a mixed question of fact and law and, therefore, the parties could put on evidence at the June 8 Hearing if they so-chose. The court would not require it. It was up to the parties. But, in any event, the Proposed Defendants should have an opportunity to cross-examine Dondero on the statements made in his declarations since the declarations had been filed on the docket and the court had reviewed them at this point. HMIT attempted to withdraw the declarations and any reference to them in the Motion for Leave, by filing redacted versions of the Motion for Leave,[237] less than 72 hours before the June 8 Hearing; however, the redacted versions did not redact any allegations in the Motion for Leave that were purportedly supported by the Dondero declarations. Also, HMIT called Dondero as a direct witness, in addition to calling Seery as an adverse witness at the June 8 Hearing, albeit subject to its running objection to the evidentiary format of the hearing.[238] HMIT also filed a witness and exhibit list attaching 80 exhibits and over 2850 pages of evidence and

[236] *Barton v. Barbour,* 104 U.S. 126 (1881).

[237] Bankr. Dkt. Nos. 3815 and 3816.

[238] *See* June 8 Hearing Transcript, 7:20-24, 112:11-13.

moved for the admission of those exhibits at the June 8 Hearing (again, subject to its running objection to the evidentiary format of the hearing).[239]

In determining what appropriate legal standard applies here in the "colorability" analysis, the context in which the Gatekeeper Provision of the Plan was approved seems very relevant. In determining that the Gatekeeper Provision was legal, necessary, and in the best interest of all of the parties, this court set forth in the Confirmation Order a lengthy discussion of the factual support for it, and made specific findings relating to Dondero's post-petition litigation and the need for inclusion of the Gatekeeper Provision in the Plan.[240] This court observed that "prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade" and that "[d]uring the last several months, Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor."[241] This court further found that: (1) Dondero's post-petition litigation "was a result of Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Seery's credible testimony, that if Dondero's plan proposal was not accepted, he would 'burn down the place,'"[242] (2) without the Gatekeeper Provision in place, "Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date" and that "the threat of continued litigation by Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result in lower distributions to creditors because of

[239] *See Hunter Mountain Investment Trust's Witness and Exhibit List in Connection with Its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* ("HMIT W&E List")[Bankr. Dkt. No. 3818] and n.1 thereto; *see also* June 8 Hearing Transcript, 33:7-10.

[240] *See* Confirmation Order ¶¶ 76-79.

[241] *Id.* ¶ 77.

[242] *Id.* ¶ 78. *See supra* note 12.

costs and distraction such litigation or the threats of such litigation would cause,"[243] and, (3) "unless the [court] approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance,[244] the absence of which will present unacceptable risks to parties currently willing to serve in such roles." Thus, as set forth in the Confirmation Order, the Gatekeeper Provision (and the Gatekeeper Orders as well, which were approved based on the same concerns regarding the threat of continued litigation by Dondero and his related entities) required Dondero and related entities to make a threshold showing of colorability, noting that the:

> Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC,* 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017)."[245]

The Fifth Circuit, in approving the Gatekeeper Provision on appeal, noted that that the Plan injunction and Gatekeeper Provision "screen and prevent bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[246]

Again, the court believes it is appropriate to consider the context in which—and the purpose for which—the Gatekeeper Orders and Gatekeeper Provision were entered in assessing

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[243] *Id.*

[244] Asd noted at ⁋ 79 of the Confirmation Order, the bankruptcy court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance for the post-confirmation parties implementing the Plan. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so ***without an exclusion for claims asserted by Mr. Dondero and his affiliates*** required that the Confirmation Order approve the Gatekeeper Provision.

[245] *Id.* ¶ 80.

[246] *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.* (*In re Highland Cap. Mgmt., L.P.*), 48 F.4th 419, 435 (5th Cir. 2022).

how "colorability" should work here. It seems that applying HMIT's proposed Rule 12(b)(6) "plausibility" standard would impose no hurdle at all to litigants and would render the threshold for bringing claims under the Gatekeeper Provision and Gatekeeper Orders entirely duplicative of the motion to dismiss standard that every litigant already faces.

The authorities cited by HMIT in support of its argument for applying a Rule 12(b)(6) standard are inapposite. HMIT has cited no authority that addresses the appropriate standard for assessing the "colorability" of claims in the context of a plan gatekeeper provision—specifically, one implemented in response to a demonstrated need to screen and prevent continued bad-faith, harassing litigation against a chapter 11 debtor that would impede the debtor's implementation of a plan, which is what we have here. HMIT relies on a bevy of cases that include benefits coverage disputes under ERISA, Medicare coverage disputes, and constitutional challenges[247]—none of which implicate the *Barton* doctrine and vexatious-litigant concerns that were referenced by the court in the Plan as justifications for the gatekeeping provisions at issue here.

In affirming the Plan's Gatekeeper Provision, the Fifth Circuit stated, "Courts have long recognized bankruptcy courts can perform a gatekeeping function" and noted, by way of example, that "[u]nder the '*Barton* doctrine,' the bankruptcy court may require a party to 'obtain leave of

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[247] *See Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has "a colorable claim to vested benefits" such that the employee may be considered a "participant" under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting "claimants [with] no colorable legal claim" to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant's double jeopardy claim was "colorable" such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at *3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a "colorable claim" against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at *3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a "colorable claim" to warrant the district court's exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at *5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at *5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a "colorable constitutional claim" such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

the bankruptcy court before initiating an action in district court when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor's official capacity."[248] As noted above, the Fifth Circuit found that the Gatekeeper Provision, which "requires that, before any lawsuit is filed, the plaintiff must seek the bankruptcy court's approval of the claim as 'colorable'"—*i.e.*, to "screen and prevent bad-faith litigation,"—is "sound."[249]

On balance, the court views jurisprudence applying the *Barton* doctrine and vexatious litigant injunctions—while not specifically addressing the "colorability" standard under gatekeeping provisions in a plan[250]—as more informative on how to approach "colorability" than any of the other authorities presented by the parties. One example is *In re VistaCare Group, LLC.*[251]

In *VistaCare*, the Third Circuit noted that, under the *Barton* doctrine, "[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation," and emphasized that the "not without foundation" standard, while similar to the standard courts apply in evaluating Rule 12(b)(6) motions to dismiss, "involves a greater degree of flexibility" than a Rule 12(b)(6) motion to dismiss because "the bankruptcy court, which given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit," and "is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor's estate."[252] To satisfy the "*prima facie* case standard," "the movant must do more than meet the liberal notice-pleading

[248] *Id.* at 438 (cleaned up).

[249] *Id.* at 435.

[250] The court acknowledges that the *Barton* doctrine itself would not be directly applicable here because HMIT is proposing to bring the Proposed Complaint in the bankruptcy court – the "appointing" court of Seery.

[251] 678 F.3d 218 (3d Cir. 2012).

[252] *Id.* at 232-233 (cleaned up).

requirements of Rule 8."[253] "[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless."[254] This court agrees with the notion, that "[t]o apply a less stringent standard would eviscerate the protections" of the Gatekeeper Provision and Gatekeeper Orders.[255] The court notes, as well, that courts in the *Barton* doctrine context regularly hold evidentiary hearings on motions for leave to determine if the proposed complaint meets the necessary threshold for pursuing litigation. The Third Circuit in *VistaCare* noted that "[w]hether to hold a hearing [on a motion for leave to bring suit against a trustee] is within the sound discretion of the bankruptcy court,"[256] and that "the decision whether to grant leave may involve a 'balancing of the interests of all parties involved,'" which will ordinarily require an evidentiary hearing.[257] The Third Circuit applied "the deferential abuse of discretion standard" in considering whether the bankruptcy court's granting of leave should be affirmed on appeal.[258]

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[253] *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases).

[254] *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at *2 (N.D. Ill. Nov. 30, 2000).

[255] *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at *2).

[256] *VistaCare*, 678 F.3d at 232 n.12.

[257] *Id.* at 233 (quoting *In re Kashani*, 190 B.R. 875, 886–87 (9th Cir. BAP 1995)). The Third Circuit noted that the bankruptcy court's holding of an evidentiary hearing on the motion for leave was appropriate (though not required in every case)). *Id.* at 232 n.12.

[258] *Id.* at 224 ("We review a bankruptcy court's decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard.") (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)). Courts of appeal routinely apply the deferential abuse of discretion standard to a bankruptcy court's decision regarding whether leave should be granted to sue a trustee. Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. *See In re Bednar*, 2021 WL 1625399, at *3 (B.A.P. 10th Cir. Apr. 27, 2021) ("[T]he Bankruptcy Court's decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . . .") (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App'x 969, 973–74 (11th Cir. 2016) ("Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court's ruling on a *Barton* motion for an abuse of discretion.") (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at *3 (B.A.P. 1st Cir. Sept. 17, 2014) ("Appellate courts review a bankruptcy court's decision to deny a motion for leave to sue under the abuse of discretion standard.") (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

The Fifth Circuit has affirmed a bankruptcy court's conducting of an evidentiary hearing, in the context of applying a *Barton* doctrine analysis as to a proposed lawsuit against a trustee, without any concern that the inquiry was somehow improper.[259]

Similarly, courts in the vexatious litigant context, where there was an injunction requiring a movant to seek leave to pursue claims, have required movants to "show that the claims sought to be asserted have sufficient merit," including that "the proposed filing is both procedural and legally sound," and "that the claims are not brought for any improper purpose, such as harassment."[260] "For a prefiling injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review," such as the "plausibility" standard for a Rule 12(b)(6) motion.[261] Rather, courts apply "an additional layer of review," and "may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action" or that the "litigant's allegations are unlikely," especially "when prior cases have shown the litigant to be untrustworthy or not credible . . . ."[262]

In summary, the court rejects HMIT's positions: (a) that it need only show, at most, that the allegations in the Proposed Complaint are "plausible" under the Rule 12(b)(6) standard for motions to dismiss; and (b) that this court improperly conducted an evidentiary hearing on the Motion for Leave (i.e., that consideration of evidence in this context is impermissible). The court notes, again, that HMIT's argument that this court is not permitted to consider evidence in making its "colorability" determination is completely contradictory to HMIT's actions in filing the Motion

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[259] *See Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at *4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after "a close examination" by the bankruptcy court of the evidence regarding the trustee's actions and finding that "the plaintiffs' allegations are not based in fact"), *aff'd* 799 F. App'x 271 (5th Cir. 2020).

[260] *Silver v. City of San Antonio*, 2020 WL 3803922, at *1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); *see also Silver v. Perez*, 2020 WL 3790489, at *1 (W.D. Tex. July 7, 2020) (same).

[261] *Silver*, 2020 WL 3803922, at *6.

[262] *Id.*

for Leave, where it attached two Dondero declarations as part of 350 pages of "objective evidence" that "supported" its motion.

The court concludes that the appropriate standard to be applied in making its "colorability" determination in ***this*** bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in ***this*** Plan, is a broader standard than the "plausibility" standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves ***an additional level of review***—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are ***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***. Additionally, this court may, and should, take into consideration its ***knowledge*** of the ***bankruptcy proceedings*** and ***the parties*** and any additional evidence presented at the hearing on the Motion for Leave. For ease of reference, the court will refer to this standard of "colorability" as the "Gatekeeper Colorability Test." The court considers this test as a sort of hybrid of what the *Barton* doctrine contemplates and what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place.

2. HMIT's Proposed Complaint Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test or Even Under a Rule 12(b)(6) "Plausibility" Standard.

The court finds, in the exercise of its gatekeeping function under the Gatekeeper Orders and the Gatekeeping Provision in the Plan, that the Motion for Leave should be denied as the claims set forth in the Proposed Complaint are not "colorable" claims. The court makes this determination after considering evidence admitted at the June 8 Hearing, including the testimony of Dondero, Patrick, and Seery, and the numerous exhibits offered by HMIT and the Highland Parties. HMIT's Proposed Claims lack foundation, are without merit, and appear to be motivated by the improper purposes of vexatiousness and harassment. But, even under the less stringent

"plausibility" standard under Rule 12(b)(6) motions to dismiss, where all allegations must be accepted as true, HMIT's "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," fail to "[]cross the line from conceivable to plausible."[263]

HMIT makes unsubstantiated and conclusory allegations in its Motion for Leave and Proposed Complaint that the Claims Purchasers purchased the large allowed unsecured claims only because Seery, while he was CEO of Highland prior to the Effective Date of the Plan, provided them with MNPI and assurances that the Purchased Claims were very valuable. This was allegedly in exchange for their agreement to approve, in their future capacities as members of the CTOB, excessive compensation for Seery in his capacity as the Claimant Trustee after the Effective Date of the Plan. This was an alleged *quid pro quo* that HMIT claims establishes Seery's breach of fiduciary duties and the Claims Purchasers' conspiracy to participate in that breach. As discussed below, these allegations are unsubstantiated and conclusory allegations, and they do not support the inferences that HMIT needs the court to make when it analyzes whether the Proposed Claims are "colorable"—or even merely plausible.

a) HMIT's Proposed Breach of Fiduciary Duties Claim Set Forth in Count I of the Proposed Complaint

Based on HMIT's Proposed Complaint and the evidence admitted at the June 8 Hearing, the court finds that HMIT has not pleaded facts that would support a "colorable" breach of fiduciary duties claim against Seery, under this court's Gatekeeper Colorability Test, nor a plausible claim pursuant to the Rule 12(b) standard. HMIT alleges that Seery breached his fiduciary duties (i) "[b]y disclosing material non-public information to Stonehill and Farallon"

[263] *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

before their purchase of certain Highland claims, and (ii) by receiving "compensation paid to him under the terms of the [CTA] since the Effective Date of the Plan in August 2021."[264]

As earlier noted, both the Reorganized Debtor and the Claimant Trust are organized under Delaware law and, thus, its proposed Count I against Seery for breach of fiduciary duties to these entities is governed by Delaware law under the "Internal Affairs Doctrine."[265] Under Delaware law, "[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege '(1) that a fiduciary duty existed and (2) that the defendant breached that duty.'"[266] HMIT fails to plausibly or sufficiently allege either element such that its breach of fiduciary duty claims against Seery could survive.

Under Delaware law, officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders.[267] Because Seery did not owe any "duty" to HMIT directly and individually, the Proposed Complaint fails to state a claim for breach of fiduciary duties to HMIT. HMIT's "legal conclusion[]" that Seery "owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate"[268] "do[es] not suffice" to plausibly allege the existence of any actionable fiduciary relationship.[269] And as discussed earlier in the standing section, HMIT does not have standing to assert a breach of fiduciary claim derivatively on behalf

[264] Proposed Complaint ¶¶ 64–67.

[265] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[266] *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at *30 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at *8 (Del. Ch. Feb. 28, 2020)).

[267] *See Gilbert v El Paso Co.*, 1988 WL 124325, at *9 (Del. Ch. Nov. 21, 1988) ("[D]irectors' fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.") *aff'd,* 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at *11 (Del. Ch. Nov. 7, 2013) (same).

[268] Proposed Complaint ¶ 63.

[269] *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

of the Claimant Trust or Reorganized Debtor. But even if HMIT had sufficiently alleged the existence of a fiduciary duty by Seery to HMIT—or to the Reorganized Debtor or Claimant Trust that HMIT would have standing to assert—Seery's alleged communications with Farallon would not have breached those duties.

HMIT alleges that Seery ""disclose[d] material non-public information to Stonehill and Farallon," and they "acted on inside information and Seery's secret assurances of great profits."[270] But the Proposed Complaint does not make any factual allegations regarding HMIT's "conclusory allegations," and its "legal conclusions" are "purely speculative, devoid of factual support," and therefore "stop[] short of the line between possibility and plausibility of entitlement to relief"[271] (and certainly stop short of being "colorable"). HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, and what "assurances of great profits" he made to Farallon or to Stonehill. At the June 8 Hearing, Dondero could only clarify that he believed the MGM Email to have been MNPI and that he ***believed*** that Seery ***must have*** communicated that MNPI to Farallon at some point between December 17, 2020 (the date the MGM Email was sent) and May 28, 2021 (the day that Dondero alleges to have had three telephone calls with representatives of Farallon, Messrs. Patel and Linn, regarding Farallon's purchase of the bankruptcy claims). Dondero alleges that, during these phone calls, Patel and Linn gave Dondero no reason for their purchase of the claims that "made [any] sense." Dondero and Patrick also both testified that neither of them had any personal knowledge: (a) of a *quid pro quo* arrangement between Seery and the Claims Purchasers, (b) of Seery having actually communicated any information from the MGM Email to Farallon, or (c) whether Seery's post-Effective Date compensation had or had not been negotiated in an arms' length transaction. Dondero only

[270] Proposed Complaint ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.

[271] *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up).

speculates regarding these things, because it "made no sense" to him that the Claims Purchasers would have acquired the bankruptcy claims without having received the MNPI. But HMIT admits in the Proposed Complaint that Farallon and Stonehill purchased the Highland claims at discounts of 43% to 65% to their allowed amounts. Thus, they would receive at least an 18% return based on publicly available estimates in Highland's court-approved Disclosure Statement.[272] The evidence established that, if the acquisition of the UBS claims is excluded—recall that the UBS claims were not purchased until August 2021, which was after the May 28, 2021 phones calls that Dondero made to Farallon personnel—the Claims Purchasers would have expected to net over $33 million in profits, or nearly a 30% return on their investment, had Highland met its projections (this is based on the aggregate purchase price of $113 million for the non-UBS claims purchased in the Spring 2021).

To be clear, the only purported MNPI identified in HMIT's Proposed Complaint was the MGM Email Dondero sent to Seery containing "information regarding Amazon and Apple's interest in acquiring MGM." But, the evidence showed that this information was widely reported in the financial press at the time. Thus, it could not have constituted MNPI as a matter of law.[273] Moreover, the evidence showed that Dondero ***did not*** communicate in the MGM Email the actual inside information that he claimed to have obtained as a board member of MGM–which was that Amazon had met MGM's "strike price" and that the MGM board was going into exclusive negotiations with Amazon to culminate the merger with them (and, thus, Apple was no longer considered a potential purchaser). Dondero admitted that he included Apple in the MGM Email for the purpose of making it look like there was a competitive process still ongoing. In other

[272] Proposed Complaint ¶¶ 3, 37, 42.

[273] *See, e.g.*, *SEC v. Cuban*, 2013 WL 791405, at *10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not "material, nonpublic information" and "'becomes public when disclosed to achieve a broad dissemination to the investing public'") (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)).

words, the MGM Email, at the very least, did not include MNPI and, at worst, was deceptive regarding the status of the negotiations between MGM and potential purchasers.

As to HMIT's allegations that Seery's post-Effective Date compensation is "excessive" and that the negotiations between Seery and the CTOB "were not arm's-length,"[274] the evidence at the June 8 Hearing reflected that the allegations are completely speculative, without any foundation whatsoever, and lack merit. And they are also simply not plausible. HMIT fails to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty.[275]

b) HMIT's Proposed Claims Set Forth in Counts II (Knowing Participation in Breach of Fiduciaries) and III (Conspiracy)

HMIT seeks to hold the Claims Purchasers secondarily liable for Seery's alleged breach of fiduciaries duties on an aiding and abetting theory in Count II of the Proposed Complaint[276] and, along with Seery, on a civil conspiracy theory of liability in Count III of the Proposed Complaint.[277] Because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting breach of fiduciary duties claim against the Claims Purchasers (Count II) is also governed by Delaware law.[278] HMIT's conspiracy cause of action against the Claims

[274] Proposed Complaint ¶¶ 4, 13, 54, 74.

[275] *See Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]though the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation.").

[276] Proposed Complaint ¶¶ 69-74.

[277] Proposed Complaint ¶¶ 75-81.

[278] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

Purchasers and Seery (Count III), on the other hand, does not involve a matter of "internal affairs" or of corporate governance, so it is governed by Texas law under the Plan.[279]

As an initial matter, because HMIT does not present either a "colorable"—or even plausible claim—that Seery breached his fiduciary duties, it cannot show that it has alleged a "colorable" or plausible claim for secondary liability for the same alleged wrongdoing.[280] In addition, HMIT's civil conspiracy claim against the Claims Purchasers and Seery is based entirely on Dondero's speculation and unsupported inferences and, thus, HMIT has not "colorably" alleged, or even plausibly alleged, its conspiracy claim. Under Texas law, "civil conspiracy is a theory of vicarious liability and not an independent tort."[281] "[T]he elements of civil conspiracy [are] "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result."[282] While HMIT alleges that "Defendants conspired with each other to unlawfully breach fiduciary duties,"[283] it is simply a "legal conclusion" and not the kind of allegation that the court must assume to be true even for purposes of determining plausibility under a motion to dismiss.[284]

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[279] *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M)(which provides for the application of Texas law to "the rights and obligations arising under this Plan" except for "corporate governance matters.")

[280] *See English v. Narang*, 2019 WL 1300855, at *14 (Del. Ch. Mar. 20, 2019) ("As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.") (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at *10 (Tex. App. Jan. 25, 2022) ("[A] defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.") (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)). Because HMIT's breach of fiduciary duty claim is governed by Delaware law, its aiding and abetting theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas). By contrast, "conspiracy is not an internal affair" or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

[281] *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019).

[282] *Id.* at 141 (cleaned up).

[283] Proposed Complaint ¶ 76.

[284] *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66).

HMIT repeats four times that Seery provided MNPI to Farallon and Stonehill as a "as a *quid pro quo*" for "additional compensation,"[285] each time based upon conclusory allegations based "upon information and belief" and, frankly, pure speculation from Dondero that his imagined "scheme," "covert *quid pro quo,*" and secret "conspiracy" between Seery, on the one hand, and Farallon and Stonehill, on the other,[286] ***must have*** occurred because "[i]t made no sense for the [Claims] Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk" (i.e., "[t]he counter-intuitive nature of the purchases at issue compels the conclusion that the [Claims] Purchasers acted on inside information and Seery's assurance of great profits.")[287] Importantly, HMIT admits that the Claims Purchasers would have turned a profit based on the information available to them at the time of their acquisitions of the Purchased Claims.[288] HMIT's allegations about the level of potential profits were contradicted by their own allegations and other evidence admitted at the June 8 Hearing. But Dondero's speculation about what level of projected return would be sufficient to justify the acquisition of the claims by the Claims Purchasers, or any other third-party investor, does not give rise to a plausible inference that they acted improperly.[289] Thus, HMIT cannot meet

[285] Proposed Complaint ¶ 77; *see also id.* ¶¶ 4, 47, 74.

[286] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.").

[287] *Id.*

[288] *See, e.g.*, *id.* ¶ 3 (alleging that acquiring the claims "did not offer a ***sufficient*** potential profit to justify the publicly disclosed risk")(emphasis added); ¶ 43 ("Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . ."); ¶ 49 ("Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* ***significant*** profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.") (third emphasis added).

[289] In fact, the court did not allow Mr. Dondero to testify regarding what kind of information a hypothetical investor in bankruptcy claims would require or what level of potential profits would justify the purchase of bankruptcy claims by investors in the bankruptcy claims trading market because he was testifying as a fact witness, not an expert. Thus, the court only allowed Dondero to testify as to what data ***he*** (or entities he controls or controlled) would rely on, what ***his*** risk tolerance would have been, and what level of potential profits ***he*** would have required to purchase an allowed unsecured bankruptcy claim in a post-confirmation situation. June 8 Hearing Transcript, 129:6-130:4.

its burden, under the Gatekeeper Colorability Test, of making a prima facie showing that its allegations do not lack foundation or merit. Nor can it meet a plausibility standard.

In addition, contrary to the Proposed Complaint's statement that it would have been "***impossible*** for Stonehill and Farallon (in the absence of insider information) to forecast ***any*** significant profit at the time of their multi-million-dollar investments," the evidence showed there were already reports in the financial press that MGM was engaging with Amazon, Apple, and others in selling its media portfolio, and thus the prospect of an MGM transaction increasing the value of, and return on, the Purchased Claims, "at the time of their multi-million-dollar investments" was publicly available information.[290] HMIT's suggestion that the Claims Purchasers were in possession of inside information not publicly available when they acquired the Purchased Claims is simply not plausible. Nor is HMIT's allegation that "[u]pon information and belief" Farallon "conducted no due diligence but relied on Seery's profit guarantees" plausible. The allegations regarding Farallon not conducting any due diligence are based, again, entirely on Dondero's speculation and inferences he made from what Patel and Linn (of Farallon) allegedly told him on May 28, 2021; Dondero did not testify that either Patel or Linn ever told him specifically that they had conducted no due diligence. HMIT's allegations in the Proposed Complaint that ***Farallon*** "conducted no due diligence," are based on Dondero's speculation, unsubstantiated, and contradicted by the testimony of Seery, who testified that emails to him from Linn in June 2020 and later in January 2021 indicated to him that Farallon, at least, had been conducting some level of due diligence in that they had been following and paying attention to the

[290] The court notes, as well, that the Claim Purchasers acquired the UBS claims in August 2021—approximately two and a half months ***after*** the announcement of the MGM-Amazon transaction (which was on May 26, 2021)—a fact that HMIT makes no attempt to harmonize with its conspiracy theory that the Claims Purchasers profited from the misuse of MNPI allegedly given to them by Seery.

Highland case.[291] In addition, there are no allegations in the Proposed Complaint regarding whether Stonehill conducted due diligence or not, and Patrick testified that neither he nor HMIT had any personal knowledge of how much due diligence Farallon or Stonehill did prior to acquiring the Purchased Claims.[292] The court finds and concludes that HMIT's allegations of aiding and abetting and conspiracy in Counts II and III of the Proposed Complaint are based on unsubstantiated inferences and speculation, lack internal consistency, and lack consistency with verifiable public facts. Accordingly, HMIT has failed to show that these claims have a foundation and merit and has also failed to show that they are plausible.

c) HMIT's Proposed Claims Set Forth in Counts IV (Equitable Disallowance), V (Unjust Enrichment and Constructive Trust), and VI (Declaratory Relief) of the Proposed Complaint

i. Count IV (Equitable Disallowance).

In Count IV of its Proposed Complaint, HMIT seeks "equitable disallowance" of the claims acquired by Farallon's and Stonehill's special purpose entities Muck and Jessup, "to the extent over and above their initial investment," and, in the alternative, equitable subordination of their claims to all claims and interests, including HMIT's unvested Class 10 Contingent Claimant Trust Interest, "given [their] willful, inequitable, bad faith conduct" of allegedly "purchasing the Claims based on material non-public information" and being "unfairly advantaged" in "earning significant profits on their purchases."[293] As noted above, these remedies are not available to HMIT.[294]

First, HMIT's request to equitably subordinate the Purchased Claims to all claims and interests is not permitted because Bankruptcy Code § 510(c), by its terms, permits equitable

[291] *See* June 8 Hearing Transcript, 239:6-21.
[292] *See id.*, 310:19-312:2.
[293] Proposed Complaint ¶¶ 83-87.
[294] *See infra* pages 74-75.

subordination of a ***claim to other claims*** or an ***interest to other interests*** but does not permit equitable subordination of a ***claim to interests***.

Second, "equitable" disallowance of claims is not an available remedy in the Fifth Circuit pursuant to the *Mobile Steel* case.[295]

Third, reconsideration of an already-allowed claim in a bankruptcy case can only be accomplished through Bankruptcy Code § 502(j), which, pursuant to Federal Rule of Bankruptcy Procedure 9024, allows reconsideration of allowance of a claim that was allowed following ***a contest*** (which is certainly the case with respect to the Purchased Claims) based on the "equities of the case." But this is only if the request for reconsideration is made within the one-year limitation prescribed in Rule 60(c) of the Federal Rules of Civil Procedure. HMIT's request for disallowance of Muck and Jessup's Purchased Claims (if it could somehow be construed as a request for reconsideration of their claims), is clearly untimely, as it is being made well beyond a year since their allowance by this court following contests and approval of Rule 9019 settlements. Thus, the court finds that HMIT has not alleged a colorable or even plausible claim in Count IV of the Proposed Complaint and, therefore, the Motion for Leave should be denied.

ii. Count V (Unjust Enrichment and Constructive Trust)

In Count V of the Proposed Complaint, HMIT alleges that, "by acquiring the Claims using [MNPI], Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity" and that "[a]llowing [the Claims Purchasers] to retain their ill-gotten benefits would be unconscionable;" thus, HMIT alleges, the Claims Purchasers "should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment" and "a constructive trust should be imposed on such proceeds . . . ."[296]

[295] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

[296] Proposed Complaint ¶¶ 89-93.

HMIT alleges further that "Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restitute all compensation he has received from the outset of his collusive activities" and "[a]lternatively he should be required to disgorge and restitute all compensation received since the Effective Date" over which a constructive trust should be imposed.[297] HMIT has not alleged a colorable or even a plausible claim for unjust enrichment or constructive trust in Count V.

Under Texas law,[298] "[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay."[299] Thus, "when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory."[300] Here, as noted above, HMIT's only alleged injury is a diminution of the value of its unvested Contingent Claimant Trust Interest by virtue of Seery's allegedly having wrongfully obtained excessive compensation, with the help of the Claims Purchasers. ***Yet Seery's compensation is governed by express agreements*** (i.e., the Plan and the CTA). Thus, HMIT's claim based on unjust enrichment is not an available theory of recovery.

iii. Count VI (Declaratory Relief)

HMIT seeks declaratory relief in Count VI of the Proposed Complaint, essentially, that Dondero's conspiracy theory is correct and that HMIT's would succeed on the merits with respect

[297] *Id.* ¶ 94.

[298] Under the Plan, Texas law governs HMIT's "claim" for unjust enrichment because it is not a "corporate governance matter." (Plan Art. XII.M.) It also governs HMIT's "claim" for constructive trust, which "is merely a remedy used to grant relief on the underlying cause of action." *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

[299] *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).

[300] *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)).

to the Proposed Claims if it were permitted leave to bring them in an adversary proceeding.[301] But, a request for declaratory relief is not "an independent cause of action"[302] and "in the absence of any underlying viable claims such relief is unavailable."[303] This court has already found and concluded that HMIT would not have constitutional or prudential standing to bring the underlying causes of action in the Proposed Complaint. This court has also found and concluded that all of the Proposed Claims are without foundation or merit and are not even plausible and are all; being brought for the improper purpose of continuing Dondero's vexatious, harassing, bad-faith litigation. Thus, HMIT would not be entitled to pursue declaratory judgement relief as requested in Count VI of the Proposed Complaint.

d) HMIT Has No Basis to Seek Punitive Damages

HMIT separately alleges that the Claims Purchasers' and Seery's "misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others," thus entitling HMIT to an award of punitive damages under applicable law. But, HMIT abandoned its proposed fraud claim that was in its Original Proposed Complaint, so its sole claim for primary liability is Seery's alleged breach of his fiduciary duties. And under Delaware law, the "court cannot award punitive damages in [a] fiduciary duty action."[304]

[301] Proposed Complaint ¶¶ 96-99.

[302] *See Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 932 (5th Cir. 2023).

[303] *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at *2 (S.D. Tex. June 7, 2016) (citing *Collin Cty. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)); *see also Hopkins v. Cornerstone Am.*

[304] *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff'd* 682 F. App'x 24 (2d Cir. 2017).

3. <u>HMIT Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test Because It Seeks to Bring the Proposed Complaint for Improper Purposes of Harassment and Bad-Faith, Vexatiousness</u>.

Under this court's Gatekeeper Colorability Test, in addition to showing that its allegations and claims are not without foundation or merit, HMIT must also show that the Proposed Claims are not being brought for any improper purpose. Taking into consideration the court's knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, the court finds that HMIT is acting at the behest of, and under the control or influence of, Dondero in continuing to pursue harassing, bad faith, vexatious litigation to achieve his desired result in these bankruptcy proceedings. So, in addition to failing to show that its Proposed Claims have foundation and merit, HMIT cannot show that it is pursuing the Proposed Claims for a proper purpose and, thus, cannot meet the requirements under the Gatekeeper Colorability Test; HMIT's Motion for Leave should be denied.

IV. CONCLUSION

The court concludes, having taken into consideration both its knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, that HMIT's Motion for Leave should be denied for three independent reasons: (1) HMIT would lack constitutional standing to bring the Proposed Claims (and, thus, the federal courts would lack subject matter jurisdiction over the Proposed Claims); (2) even if HMIT would have constitutional standing to pursue the Proposed Claims, it would lack prudential standing to bring the Proposed Claims; and (3) even if HMIT would have both constitutional standing and prudential standing to bring the Proposed Claims, it has not met its burden under the Gatekeeper Colorability Test of showing that its Proposed Claims are "colorable" claims—that the Proposed Claims are not without foundation, not without merit, and not being pursued for an improper purpose. Moreover,

even if this court's Gatekeeper Colorability Test should be replaced with a Rule 12(b)(6) "plausibility" standard, the Proposed Claims are not plausible.

Accordingly,

IT IS ORDERED that HMIT's Motion for Leave be, and hereby is **DENIED**.

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

Exhibit 3

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 31, 2023

United States Bankruptcy Judge

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

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

ORDER DENYING APPLICATION FOR EXPEDITED HEARING [DE # 3700]

This Order is issued in response to the *Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding* ("Expedited Haring Request") [DE # 3700] filed by Hunter Mountain Investment Trust ("HMIT" or "Movant") on March 28, 2023, at 4:09 p.m. C.D.T. The Expedited Hearing Request seeks a hearing within three days, or as soon thereafter as counsel can be heard, on HMIT's *Emergency Motion for Leave to File Verified Adversary Proceeding* ("Motion for Leave") which was filed on March 28, 2023, at 4:02 p.m. C.D.T.

The court has concluded that no emergency or other good cause exists, pursuant to Fed. R. Bankr. Proc. 9006, and the *Expedited Hearing Request* will be denied. The *Motion for Leave* will be set in the ordinary course (after 21 days' notice to affected parties)—i.e., after April 18, 2023.

The *Motion for Leave* is 37 pages in length and contains 350 pages of attachments. It seeks leave from the bankruptcy court—pursuant to the bankruptcy court's "gatekeeping" role[1] under the confirmed Chapter 11 plan of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor")—to sue at least the following parties: Muck Holdings, LLC ("Muck"); Jessup Holdings, LLC ("Jessup"); Farallon Capital Management, LLC ("Farallon"); Stonehill Capital Management, LLC ("Stonehill"); James P. Seery, Jr. ("Seery"); and John Doe Defendant Nos. 1-10 (collectively, the "Affected Parties"). The conduct that is described as a basis for the desired lawsuit is certain trading of unsecured claims that occurred in 2021 during the Highland bankruptcy case.[2] It appears that millions of dollars of damages are sought by Movant, who was formerly the largest indirect (ultimate) equity holder of Highland. The legal theories (e.g., breaches of fiduciary duties; fraud; conspiracy; equitable disallowance) are novel in the bankruptcy claims trading context. The bankruptcy court, pursuant to the Highland plan, will need to analyze whether such claims are "colorable" such that leave to sue should be granted.

The Affected Parties—and other parties in interest in the underlying bankruptcy case, for that matter—should be afforded a reasonable opportunity to respond to the *Motion for Leave*. While Movant, HMIT, has alleged that it may be facing a statute of limitations defense as to

[1] The bankruptcy court's "gatekeeping" role was recently affirmed by the Fifth Circuit in *In re Highland Capital Management, L.P.*, 48 F.4th 419, 438 (5th Cir. 2022).
[2] Notice of the claims trading was provided in filings in Highland bankruptcy case, as follows: Claim No. 23 (DE ## 2211, 2212, and 2215), Claim Nos. 190 and 191 (DE ## 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (DE # 2263), Claim No. 81 (DE # 2262), Claim No. 72 (DE # 2261).

some claims after April 16, 2023, it appears that Movant has known about the conduct underlying the desired lawsuit for well over a year, based on activity that has occurred in the bankruptcy court. *See, e.g., Memorandum Opinion and Order Granting James Dondero's Motion to Remand Adversary Proceeding to State Court, Denying Fee Reimbursement Request, and Related Rulings, Dondero v. Alvarez & Marsal CRF Management, LLC and Farallon Capital Management LLC* [DE # 22], in Adv. Proc. # 21-03051 (January 4, 2022). Thus, the need for an emergency hearing is dubious. Accordingly

IT IS ORDERED that the Expedited Hearing Request is denied.

Counsel shall contact the Courtroom Deputy for a setting on the *Motion for Leave*, which setting shall be no sooner than April 19, 2023.

* * * END OF ORDER * * *

Exhibit 4

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 10, 2023

United States Bankruptcy Judge

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

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

ORDER FIXING BRIEFING SCHEDULE AND HEARING DATE WITH RESPECT TO HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING AS SUPPLEMENTED

The Court conducted a status conference on April 24, 2023, concerning the final scheduling of *Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3760] (collectively, the "Underlying Motion"), as well as whether the hearing on the Underlying Motion would be evidentiary, and the Court having considered (i) the *Opposed Emergency Motion*

to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3738] (the "Motion")[1] filed by Highland Capital Management, L.P., and the Highland Claimant Trust; (ii) the *Joinder to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3740] filed by Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management, L.L.C., and Stonehill Capital Management LLC; (iii) the *Response and Reservation of Rights* [Docket No. 3748] filed by Hunter Mountain Investment Trust; (iv) the *Objection Regarding Evidentiary Hearing and Brief Concerning Gatekeeper Proceedings Relating to "Colorability"* [Docket No. 3758] filed by Hunter Mountain Investment Trust, and (v) the arguments of counsel,

IT IS HEREBY ORDERED that:

1. The hearing on Hunter Mountain Investment Trust's *Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3760] (collectively, the "Underlying Motion") shall be held in person on **June 8, 2023, at 9:30 a.m. (Central Time)** before the Honorable Stacey G. C. Jernigan, at **1100 Commerce Street, 14th Floor, Courtroom 1, Dallas, Texas**, and by Webex for those interested but not directly participating in the hearing.

2. Any responses to the Underlying Motion shall be filed no later than May 11, 2023.

3. Any replies in support of the Underlying Motion shall be filed no later than May 18, 2023.

4. The Court will advise the parties on or reasonably after May 18, 2023, whether the Court intends to conduct the hearing on an evidentiary basis.

###End of Order###

[1] All capitalized terms used but not defined herein have the meanings given to them in the Motion.

Approved as Form Only:

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Counsel for James P. Seery, Jr.

Exhibit 5

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 22, 2023

United States Bankruptcy Judge

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

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

ORDER PERTAINING TO THE HEARING ON HUNTER MOUNTAIN INVESTMENT TRUST'S MOTION FOR LEAVE TO FILE ADVERSARY PROCEEDING

[DE ## 3699 & 3760]

Based on the court's review of all of the parties' pleadings and briefing relating to the above-referenced motion and supplemental motion ("Motion for Leave"), the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave—and, in particular, pertaining to the court's required inquiry into whether "colorable" claims may exist, as described in the Motion for Leave. Therefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing if they so choose. This may include

examining any witness for whom a Declaration or Affidavit has already been filed. The parties will be allowed no more than three hours of presentation time each (allocated three hours to the movant and three hours to the aggregate respondents). This allocated presentation time may be spent in whatever manner the parties believe will be useful to the court (argument/evidence).

 # # # END OF ORDER # # #

Exhibit 5a

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 22, 2023

United States Bankruptcy Judge

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

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

ORDER PERTAINING TO THE HEARING ON HUNTER MOUNTAIN INVESTMENT TRUST'S MOTION FOR LEAVE TO FILE ADVERSARY PROCEEDING

[DE ## 3699 & 3760]

Based on the court's review of all of the parties' pleadings and briefing relating to the above-referenced motion and supplemental motion ("Motion for Leave"), the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave—and, in particular, pertaining to the court's required inquiry into whether "colorable" claims may exist, as described in the Motion for Leave. Therefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing if they so choose. This may include

examining any witness for whom a Declaration or Affidavit has already been filed. The parties will be allowed no more than three hours of presentation time each (allocated three hours to the movant and three hours to the aggregate respondents). This allocated presentation time may be spent in whatever manner the parties believe will be useful to the court (argument/evidence).

 # # # END OF ORDER # # #

United States Bankruptcy Court
Northern District of Texas

In re: Highland Capital Management, L.P.
Debtor

Case No. 19-34054-sgj
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0539-3 | User: admin | Page 1 of 21
Date Rcvd: May 23, 2023 | Form ID: pdf012 | Total Noticed: 1

The following symbols are used throughout this certificate:

Symbol	**Definition**
+	Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on May 24, 2023:

Recip ID		**Recipient Name and Address**
aty	+	Alan J. Kornfeld, Pachulski Stang Ziehl & Jones LLPL, 10100 Santa Monica Blvd., 13 Fl, Los Angeles, CA 90067-4114

TOTAL: 1

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI).

NONE

BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

NONE

NOTICE CERTIFICATION

I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 24, 2023 Signature: /s/Gustava Winters

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on May 22, 2023 at the address(es) listed below:

Name	**Email Address**
A. Lee Hogewood, III	on behalf of Interested Party NexPoint Real Estate Strategies Fund lee.hogewood@klgates.com matthew.houston@klgates.com;Sarah.bryant@klgates.com;Mary-Beth.pearson@klgates.com;litigation.docketing@klgates.com;Emily.mather@klgates.com;Artoush.varshosaz@klgates.com
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Exhibit 6

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 26, 2023

United States Bankruptcy Judge

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

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

ORDER REGARDING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR EXPEDITED DISCOVERY OR, ALTERNATIVELY, FOR CONTINUANCE OF THE JUNE 8, 2023 HEARING

[Dkt. Nos. 3788 and 3791]

Having considered the *Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing* of Hunter Mountain Investment Trust ("HMIT") filed on May 24, 2023, at Dkt. No. 3788 ("Motion for Expedited Discovery"), and, separately, on May 25, 2023, at Dkt. No. 3791 ("Motion for Continuance," and, together with the Motion for Expedited Discovery, the "Motions"), and the arguments of counsel at the emergency hearing on the Motions held on Friday May 26, 2023, at 9:30 a.m.,

IT IS ORDERED that the Motion for Continuance be, and hereby is, **DENIED**;

IT IS FURTHER ORDERED that the Motion for Expedited Discovery be, and hereby is, **GRANTED**, in part and only to the extent as set forth below:

(1) To the extent any party would like to depose either James P. Seery, Jr. or James Dondero in advance of the June 8 hearing ("June 8 Hearing") on HMIT's *Emergency Motion for Leave to File Verified Adversary Proceeding* [Dkt. No. 3699] and *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* [Dkt. 3760] (together, the "Motion for Leave"), Mr. Seery and Mr. Dondero shall be made available for depositions ("Depositions") on a date and at a time agreeable to the parties that is no earlier than May 31, 2023, and no later than June 7, 2023, and no discovery or depositions of any other party or witness will be permitted prior to the June 8 hearing; and

(2) None of the parties shall be entitled to any other discovery, including the production of documents from Mr. Seery or Mr. Dondero, or any other party or witness pursuant to a subpoena *duces tecum*, or otherwise, prior to the conduct of the Depositions or to the court's ruling on the Motion for Leave following the June 8, 2023 hearing;

IT IS FURTHER ORDERED that, except as specifically set forth in this Order, HMIT's Motion for Expedited Discovery be, and hereby is, **DENIED**.

 # # # END OF ORDER # # #

Exhibit 7

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 16, 2023

United States Bankruptcy Judge

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

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

MEMORANDUM OPINION AND ORDER GRANTING JOINT MOTION TO EXCLUDE EXPERT EVIDENCE [DE # 3820]

I. INTRODUCTION.

BEFORE THIS COURT is yet another dispute in the continuing saga of the Chapter 11 bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor").

The Reorganized Debtor has been operating under a confirmed Chapter 11 plan for approximately two years now—a plan having been confirmed on February 22, 2021. The plan was never stayed; it went effective in August 2021; and it was affirmed almost in its entirety by

the United States Court of Appeals for the Fifth Circuit (in late summer 2022). A petition for writ of certiorari regarding the plan confirmation order has been pending at the United States Supreme Court since January 2023. Millions of dollars have been paid out to creditors under the plan, although the plan has not been completed.

This court uses the words "continuing saga" because there is a mountain of litigation that is still pending. First, there are numerous adversary proceedings still pending, in which the Reorganized Debtor and a Litigation Trustee appointed under the plan are seeking to liquidate claims that Highland has against others, in order to augment the pot of money available for unsecured creditors. Some of these adversary proceedings involve what seem like simple suits on promissory notes (albeit very large promissory notes), and others involve highly complex torts. There are numerous appeals pending and, from time to time, petitions for writs of mandamus have been filed post-confirmation. And there are new lawsuits popping up around every corner it seems.

To be sure, this post-confirmation litigation is not the "usual stuff," and the adverse parties in this ongoing post-confirmation litigation are not the "usual suspects." For example, the numerous post-confirmation adversary proceedings do not involve preference lawsuits or other Chapter 5 avoidance actions against non-insider creditors—as we so often see proliferate in Chapter 11 cases post-confirmation. And we do not have long-running proof of claim objections pending post-confirmation—because all of the proof of claim objections regarding non-insider creditors were resolved long ago (with major compromises reached and settlements approved by the court—some after formal mediation). And as for the myriad appeals, the non-insider creditors in this case—with proofs of claim asserted in the hundreds of millions of dollars—overwhelmingly supported Highland's confirmed plan and, therefore, they have not been appellants on any of the aforementioned appeals.

So who has been the adverse party in this deluge of post-confirmation litigation? The founder and former Chief Executive Officer ("CEO") of Highland, Mr. James Dondero personally, and entities that he controls (*e.g.,* family trusts; investment advisory firms; managed funds; and other entities—frequently organized offshore—that were not themselves debtors in the Highland Chapter 11 case but assert party-in-interest status in various capacities). To be clear, Mr. Dondero takes umbrage at the suggestion that ***all*** of the adverse parties in these numerous post-confirmation scuffles are controlled by him.

Which brings us to the current, post-confirmation contested matter before the court. Currently, a party called Hunter Mountain Investment Trust ("HMIT"), a Delaware trust, has filed a "gatekeeper motion"—that is, a motion seeking leave from this court to file an adversary proceeding in the bankruptcy court against the Reorganized Debtor's CEO and certain investors who purchased allowed unsecured claims in this case post-confirmation and pre-Effective Date (as further described below). HMIT's gatekeeper motion has given birth to a sideshow, so to speak, regarding ***what, if any, evidence the court ought to consider in connection with HMIT's gatekeeper motion—the latest "act" in such sideshow focusing on the propriety of considering expert testimony.***

Who or what exactly is HMIT? HMIT is an entity with no employees and no income whose only asset is a contingent right of recovery under the Highland confirmed plan—by virtue of HMIT having held a majority (99.5%) of the limited partnership interests in Highland pre-confirmation, which interests were classified in the plan in a "Class 10" (that was projected to receive no recovery). Mr. Dondero asserts that he does not control HMIT. HMIT represents that, since on or about August 2022, it has been solely controlled by a Mr. Mark Patrick (a former employee of Highland who left Highland one week after its Plan was confirmed and went to work for an entity

called "Skyview Group," that was formed by certain former Highland employees, and apparently now advises various affiliate entities of Mr. Dondero).[1] While HMIT only has one asset (the "Class 10" contingent interest), Mark Patrick has testified that HMIT is liable on a $62.6 million-dollar indebtedness that it owes to The Dugaboy Investment Trust (a family trust of which Mr. Dondero is the lifetime beneficiary), pursuant to a promissory note made by HMIT in favor of Dugaboy, in 2015, in exchange for Dugaboy transferring to HMIT an ownership interest in Highland. *See* Transcript 6/8/23 Hearing, at pp. 304-308 [DE # 3843]. *See also* Highland Exh. 51 from 6/8/23 Hearing [DE # 3817]. Mr. Patrick has testified that Dugaboy and HMIT have a settlement, pursuant to which, Dugaboy is paying HMIT's attorney's fees. Transcript 6/8/23 Hearing, at p. at 313:2-18 [DE # 3843].

II. HMIT'S MOTION FOR LEAVE TO FILE LAWSUIT (a.k.a. THE "GATEKEEPER MOTION").

To understand the procedural motion now before the court—***which deals with whether or not the bankruptcy court should allow or exclude expert witness testimony and documents*** (more fully described below)—one must understand the context in which it is being considered, which is the hearing on HMIT's *Emergency Motion for Leave to File Verified Adversary Proceeding* that was filed by HMIT (the "HMIT Motion for Leave"), which this court loosely refers to sometimes as the "Gatekeeping Motion."

The HMIT Motion for Leave, as alluded to, requests leave from the bankruptcy court to file a post-confirmation, post-Effective Date adversary proceeding pursuant to this bankruptcy court's "gatekeeping" orders and, specifically, the gatekeeping, injunction, and exculpation

[1] *See* DE # 2440 (Transcript of a 6/8/21 Hearing, at pp. 95:18-96:10).

provisions of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [DE # 1943], as modified (the "Plan"). The HMIT Motion for Leave, with attachments, as first filed, was 387 pages in length, and the attachments included a proposed complaint and two sworn declarations of the aforementioned former CEO of the Reorganized Debtor, Mr. Dondero. The HMIT Motion for Leave was later amended to eliminate the declarations of Mr. Dondero. DE ## 3815 & 3816. In a nutshell, HMIT desires leave to sue certain parties regarding ***the post-confirmation, pre-Effective Date purchase of allowed unsecured claims***. The proposed defendants would be:

> **Mr. James P. Seery, Jr.,** who now serves as the CEO of the Reorganized Debtor and also serves as the Trustee of the Highland Claimant Trust created pursuant to the Plan, and also was previously Highland's Chief Restructuring Officer ("CRO") during the case, then CEO, and, also, an Independent Board Member of Highland's general partner during the Highland case. Mr. Seery is best understood as the man who took Mr. Dondero's place running Highland—per the request of the Official Unsecured Creditors Committee.
>
> **Certain Claims Purchasers,** known as Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the "Claims Purchasers"). The Claims Purchasers purchased $240 million face value of unsecured claims post-confirmation and pre-Effective Date—which claims had already been allowed during the Highland case—in the spring of 2021 and another $125 million face value allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk's docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Official Unsecured Creditors Committee during the Highland bankruptcy case).
>
> **John Doe Defendant Nos. 1-10**, which are described to be "currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue."

The proposed plaintiffs would be:

> **HMIT,** which represents that it was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited

partnership interests). HMIT represents that it currently holds a Class 10 interest under the confirmed Highland plan, which gives it a contingent interest in the Claimant Trust created under the plan, and as defined in the Claimant Trust Agreement ("CTA").

Reorganized Debtor, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

Highland Claimant Trust, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Highland Claimant Trust.

The gist of the complaint that HMIT seeks leave to file is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that "wrongful conduct occurred" and "improper trades" were made. HMIT Motion for Leave, 7. HMIT believes the Claim Purchasers paid around $160 million for the $365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland's Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. Also, Mr. Dondero purports to have concluded from conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Mr. Seery must have given these claims purchasers material nonpublic information ("MNPI") regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Mr. Seery shared MNPI regarding the likely imminent sale of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"), in which Highland had, directly and indirectly, substantial holdings. Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in

media reports for several months[2] and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[3] Note that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public). In summary, while HMIT's proposed complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Mr. Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor's estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors (who, incidentally, are not complaining) to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Mr. Seery, and are now happily approving Mr. Seery's allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Mr. Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages.

The individual counts that HMIT wants to allege are:

I. Breach of Fiduciary Duty (as to Mr. Seery)

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[2] *See* Highland Exh. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Exh. 26 (describing prospects of an MGM sale noting that, among its largest shareholders, was "Highland Capital Management, LP") (article October 11, 2020). *See also* Highland Exhs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for $8.4 billion).

[3] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid.

II. Breach of Fiduciary Duty and Knowing Participation in Breach of Fiduciary Duty (as to Claims Purchasers)

III. Fraud by Misrepresentation and Material Nondisclosure (as to all proposed defendants)[4]

IV. Conspiracy (as to all proposed defendants)

V. Equitable Disallowance (as to Muck and Jessup)

VI. Unjust Enrichment and Constructive Trust (as to all proposed defendants)

V. Declaratory Judgment (as to all proposed defendants)

III. NEXT, THE DELUGE OF ACTIVITY, IN MULTIPLE COURTS, AFTER THE FILING OF THE HMIT MOTION FOR LEAVE.

After the HMIT Motion for Leave was filed on March 28, 2023, there was two-and-a-half months of activity regarding ***what type of hearing the bankruptcy court would hold and when*** on the HMIT Motion for Leave. A timeline is set forth below.

3/28/23: The HMIT Motion for Leave was filed, along with a request for emergency hearing on same. DE ## 3699 & 3700. HMIT requested that the court schedule a hearing on the motion "on three (3) days' notice, and that any responses be filed no later than twenty-four hours before the scheduled hearing sought." DE # 3700, 2. The HMIT Motion for Leave was 37 pages in length, plus another 350 pages of supporting exhibits, including two sworn declarations of Mr. Dondero.

3/31/23: Bankruptcy Court entered order denying an emergency hearing on the HMIT Motion for Leave. DE # 3713. The court stated that it would set the hearing on normal notice (at least 21 days' notice), seeing no emergency.

4/4/23-4/12/23: HMIT pursued an unsuccessful interlocutory appeal and then a petition for writ of mandamus regarding the Bankruptcy Court's denial of an emergency hearing at first the District Court and then the Fifth Circuit.

4/13/23: Highland filed a motion asking the Bankruptcy Court to set a briefing schedule on the HMIT Motion for Leave, indicating that Highland's proposed timetable for same was opposed by HMIT. DE # 3738. The Claims Purchaser and Mr. Seery joined in that motion. DE ## 3740 & 3747. HMIT subsequently filed a response unopposed to a briefing schedule and status conference. DE # 3748.

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[4] This Count III has gone in and out of the various drafts HMIT has filed with the court and was included in the latest version of the proposed complaint that was filed at DE # 3816.

4/21/23: HMIT filed a Brief [DE # 3758] before the status conference indicating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the Bankruptcy Court did not need evidence in order to exercise its gatekeeping function and determine if HMIT has a "colorable" claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

4/24/23: The Bankruptcy Court held a status/scheduling conference; there was extensive discussion among all the parties regarding what type of hearing there needed to be on the HMIT Motion for Leave. HMIT was adamant there should be no evidence. Highland and Mr. Seery argued they ought to be able to cross-examine Mr. Dondero since his sworn declarations had been attached to the HMIT Motion for Leave as "objective evidence" that "supported" the HMIT Motion for Leave. DE #3699, p. 2. HMIT stated that it would withdraw Mr. Dondero's declarations, but not if the court was going to allow evidence.

5/11/23: Bankruptcy Court entered Order [DE # 3781] fixing a briefing schedule for the parties and stating that the court would "advise the parties on or reasonably after May 18, 2023, whether the Court intend[ed] to conduct the hearing on an evidentiary basis."

5/22/23: Bankruptcy Court issued an Order [DE # 3787] after receipt of briefing, stating that "the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave—and, in particular, pertaining to the court's required inquiry into whether 'colorable' claims may exist, as described in the Motion for Leave. Therefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing if they so choose. This may include examining any witness for whom a Declaration or Affidavit has already been filed. The parties will be allowed no more than three hours of presentation time each (allocated three hours to the movant and three hours to the aggregate respondents). This allocated presentation time may be spent in whatever manner the parties believe will be useful to the court (argument/evidence)."

5/24/23: HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing. [DE # 3788 & 3789]. HMIT continued to urge that it did not think presentation of evidence was appropriate in connection with the HMIT Motion for Leave, but that "subject to and without waiving its objections, HMIT requests immediate leave to obtain all of its requested discovery on or before the specific dates identified in each deposition notice (with duces tecum), failing which the hearing on HMIT's Motion for Leave should be continued until HMIT has obtained such discovery. The requested discovery is generally described in this Motion, but is set forth with particularity in the Deposition Notices with Duces Tecum attached as Exhibits A-E. [paragraph numbering omitted.] In summary, HMIT seeks expedited depositions of corporate representatives of Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup") and also seeks the deposition of James A. Seery, Jr. ("Seery")." Deposition Notices were attached for each of these five parties. Nothing was stated about a possible need for (or intention to present) expert testimony.

5/26/23: The Bankruptcy Court held yet another status conference in response to HMIT's newest emergency motion. The Bankruptcy Court referred to this as a "second hearing on what kind of hearing we were going to have" on the HMIT Motion for Leave. The court heard more discussions on whether it was appropriate to consider evidence at the hearing on the HMIT Motion for Leave. Nothing was mentioned about possible experts. The court, continuing to believe that

there could be mixed questions of fact and law inherent in deciding the HMIT Motion for Leave, granted in part and denied in part HMIT's request for expedited discovery it sought of Mr. Seery and the Claims Purchasers. The Bankruptcy Court issued a follow-up order [DE # 3800] that provided: "(1) To the extent any party would like to depose either James P. Seery, Jr. or James Dondero in advance of the June 8 hearing ("June 8 Hearing") on HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. 3760] (together, the "Motion for Leave"), Mr. Seery and Mr. Dondero shall be made available for depositions ("Depositions") on a date and at a time agreeable to the parties that is no earlier than May 31, 2023, and no later than June 7, 2023, and no discovery or depositions of any other party or witness will be permitted prior to the June 8 hearing; and (2) None of the parties shall be entitled to any other discovery, including the production of documents from Mr. Seery or Mr. Dondero, or any other party or witness pursuant to a subpoena duces tecum, or otherwise, prior to the conduct of the Depositions or to the court's ruling on the Motion for Leave following the June 8, 2023 hearing" The Bankruptcy Court issued this ruling with the expectation—based on everything it heard—that HMIT did not wish for the court to consider evidence but, if it did, it thought it should get to depose Mr. Seery and the Claims Purchasers. The court reached what seemed like appropriate middle ground by allowing the deposition of Mr. Seery and allowing the other parties to depose Mr. Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Mr. Dondero had been seeking discovery from the Claims Purchasers in state court "Rule 202" proceedings for approximately two years.

June 5, 2023 (10:10 pm): HMIT filed its Witness and Exhibit List disclosing two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony).

June 7, 2023 (4:07 pm): A Joint Motion to Exclude Expert Testimony and Documents was filed by Highland, Mr. Seery, and the Highland Claimant Trust ("Motion to Exclude Expert Evidence").

June 8, 2023 (8:12 am): HMIT filed a Response to the Motion to Exclude Expert Evidence.

June 8, 2023 (9:30 am): The Bankruptcy Court commenced its hearing on the HMIT Motion for Leave. The parties desired for court to rule on whether the expert testimony and exhibits should be allowed into the record. After much discussion, the court informed parties that it had not had the opportunity to study their eleventh-hour filings, and that the court would go forward with the hearing as the court had earlier contemplated (three hours per side; no experts for now) and the court would take the Motion to Exclude Expert Evidence under advisement and would schedule a "Day 2" for the hearing on the HMIT Motion for Leave for the experts if it determined that was appropriate. The court gave Highland, Mr. Seery, and the Highland Claimant Trust a deadline of 6/12/23 to reply to HMIT's Response. They filed a Reply (in which the Claims Purchasers joined). The Bankruptcy Court ordered no more pleadings would be considered. HMIT filed another pleading on this topic on 6/13/23 [DE # 3845] and Highland and Mr. Seery responded to the HMIT additional pleading [DE # 3846] and then HMIT replied to their response [DE # 3847].

IV. TURNING, FINALLY, TO THE MOTION TO EXCLUDE EXPERT EVIDENCE

As indicated in the timeline above, HMIT designated on June 5, 2023, at 10:10 pm CDT, two expert witnesses to testify at the hearing on the HMIT Motion for Leave. The first one was Mr. Scott Van Meter, stating that he "may provide opinion testimony on issues relating to Mr. Seery's compensation and claims trading." The second one was Mr. Steve Pully, stating that he "may provide opinion testimony on issues relating to Mr. Seery's claims trading." To be clear, Mr. Seery is not alleged to have engaged in claims trading (i.e., he is not alleged to have either sold or purchased any claims in the Highland case). Rather, it is surmised by HMIT that Mr. Seery might have shared MNPI with the Claims Purchasers. Details about the two proposed experts' education, experience, and the likely substance of their testimony were provided.

Further, with regard to Mr. Van Meter, HMIT disclosed that he had analyzed the claims trading in the Highland case and holds the opinion that there are "red flags" plausibly indicating the use of MNPI in connection with the claim purchasers' investment in their claims –primarily among them the fact that the claims purchasers allegedly did not undertake due diligence. He also would apparently opine that Mr. Seery's compensation is not reasonable or excessive because not based on any market study and because the Claims Purchasers, as large creditors on the post-confirmation oversight committee, have the ability to control it.

Further, with regard to Mr. Pully, HMIT disclosed that the projections in the publicly available information (presumably the Disclosure Statement and Plan and accompanying exhibits, the Bankruptcy Schedules, and Monthly Operating Reports) would not have rewarded the Claims Purchasers with the type of economic return that hedge funds/private equity firms would expect to realize. Thus, they must have had some MNPI to convince them that the claims purchasing was worthwhile.

There are procedural problems and substantive problems with the Proposed Experts (hereinafter so called).

A. The Procedural Problems.

The timeline set forth above is highly problematic. Highland, Mr. Seery, and the Highland Claimant Trust refer to the timeline here as tantamount to "trial by ambush."

HMIT counters that it, in fact, complied with this court's local rules and national rules as well. As to the local rules, Local Bankruptcy Rule 9014-1(c) of the Northern District of Texas requires, in contested matters, the exchange of exhibits and witness lists with opposing parties at least 3 calendar days before a scheduled hearing (unless a specific order otherwise applies). The hearing on the HMIT Motion for Leave was scheduled for June 8, 2023, at 9:30 am CDT, and HMIT filed its exhibit and witness list on June 5, 2023, at 10:10 pm CDT—technically three calendar days before the hearing, albeit less than 72 hours before the hearing. As for the national rules, HMIT states that it was under no duty to disclose the existence or substance of expert testimony prior to the exchange of witness lists, because national Rule 9014 of the Federal Rules of Bankruptcy Procedure ("FRBP"), applying to contested matters, does not incorporate Rule 26(a)(2) of the Federal Rules of Civil Procedure ("FRCP"), which defines the content and timing for expert disclosures (unless the court directs otherwise, which it did not here).

HMIT's focus on these rules is disingenuous. The court does not view the Proposed Experts as having been appropriately and timely disclosed in light of the two-and-a-half-month timeline set forth above and—most importantly—the bankruptcy court's multiple prior conferences and orders setting the scope of the hearing and associated discovery. HMIT's revelation (approximately 60 hours before the hearing on the HMIT Motion for Leave) that it

sought to offer expert testimony came far too late. HMIT never raised even the prospect of expert testimony at any point in its multiple filings with the bankruptcy court (which consisted of many hundreds of pages) or during the two status/scheduling conferences on the HMIT Motion for Leave. During the two status/scheduling conferences, this court repeatedly asked HMIT what it wanted to do at the hearing on the HMIT Motion for Leave (as far as there being evidence or no evidence—zeroing in on the inconvenient complication for HMIT that it had already put in some evidence, through the filing of the declarations of Mr. Dondero in support of its motion, and this, at the very least, would entitle the parties to cross-examine him on the statements contained in the declarations). HMIT represented that it desired for the hearing to be conducted "on the pleadings only" and that it had or would withdraw the declarations of Mr. Dondero (it had not withdrawn the declarations as of the status/scheduling conferences). But, alternatively, if there would be evidence, HMIT wanted to conduct expedited discovery of documents, fact depositions, and corporate representative depositions. [DE # 3791]. ***HMIT made no mention of any experts***. Only after the bankruptcy court had ruled on HMIT's request for expedited discovery—and expressly limited the scope of discovery—did HMIT reveal its Proposed Experts [DE # 3818]. Obviously, the court would have fully vetted with the parties at the status/scheduling conferences the need for experts and the need for any discovery of them if HMIT mentioned it as a possibility.

Additionally, while HMIT focuses on the fact that FRBP 9014 excludes FRCP 26(a)(2)(b)'s requirements regarding expert witness disclosures and reports (absent the court directing otherwise), FRBP 9014 ***does*** include ***FRCP 26(b)(4)(A)***, in contested matters, which provides that "[a] party may depose any person who has been identified as an expert whose opinions may be presented at trial." *See* FRBP 9014(b); FRBP 7026. As alluded to above, this bankruptcy court had limited pre-hearing discovery to "depositions of Mr. Dondero and/or Mr. Seery" in reliance on

HMIT's representations, which omitted any reference to expert witnesses. By waiting until roughly 60 hours before the hearing to disclose the Proposed Experts, this resulted in Highland, Mr. Seery, and the Highland Claimant Trust not having sufficient time to seek to modify the court's prior status/scheduling orders, let alone take two expert depositions.

B. *The Substantive Problems.*

Finally, on a substantive level, the Proposed Experts' testimony and documents are inadmissible because they will not "help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702(a). Federal Rule of Evidence 702(a) provides that a witness who is qualified as an expert may testify in the form of an opinion or otherwise if, among other requirements, "the expert's scientific, technical, or otherwise specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue."

The fact finder here at this stage, in the context of determining whether HMIT's proposed complaint asserts "colorable" claims under the gatekeeper provision of the Plan, obviously, is the bankruptcy judge. The judge, thus, may decide whether the Proposed Experts would help her analyze or understand an issue. This court is well within its discretion to conclude that the Proposed Experts would not advance the judge's analysis. This bankruptcy judge has had years of experience (both before and after her 17 years as a bankruptcy judge) with the topic of claims purchasing that sometimes occurs during a bankruptcy case. The court notes, anecdotally, that the activity of investing in distressed debt (which frequently even occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and has, indeed, been for a couple of decades. As noted by one scholar:

> The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in

> 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

ADAM J. LEVITIN, BANKRUPTCY MARKETS: MAKING SENSE OF CLAIMS TRADING, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010).

This judge has likewise had decades of experience with hedge funds and private equity funds. The court understands very well financial concepts such as return on investment, risk, and the handicapping of how certain events might impact recoveries. This court can take judicial notice that there was volatility in the capital markets during the time period of this case that would certainly factor into decisions to buy or sell claims.[5] This court understands the concepts of MNPI and fiduciary duties. The judge remembers very well when the possibility of an MGM-Amazon transaction flooded the news in late 2020 and 2021, and then became a reality. The court remembers asking the parties in the Highland case during open court about it, since it was widely known that Highland and its affiliates owned direct or indirect interests in MGM stock. This was before, by the way, certain of the claims purchases that are at issue here were made.

Finally, this judge has decades of experience with executive compensation in bankruptcy cases and in connection with post-confirmation trusts.[6] In fact, this court approved Mr. Seery's

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[5] A court "can, of course, take judicial notice of stock prices." *Schweitzer v. Invs. Comm. of Phillips 66 Savings Plan*, 960 F.3d 190, 193 n.3 (5th Cir. 2020).

[6] This court even ran across one article that the above-signing judge published on the topic before she was a judge. *Bringing Home the Bacon, or Just Being a Hog? Employee and Executive Compensation Issues in Chapter 11*, 22nd Annual Bankruptcy Conference, The University of Texas School of Law (Nov. 2003) (co-authored with Frances Smith). The bankruptcy judge does not mean to suggest that a 20-year-old article makes anyone per se an expert. It

compensation early on during the bankruptcy case (in 2020), and his compensation was negotiated by the former members of the Official Unsecured Creditors Committee, among others. Mr. Seery's compensation during this bankruptcy case was obviously subject to a motion, notice and a hearing, and was fully disclosed. Mr. Seery's base compensation now is the same as what this court approved back in 2020. Certainly, in a bankruptcy case, one size does not fit all. Highland is a unique case that has involved great contentiousness and hundreds of millions of dollars of assets. Mr. Seery's compensation reflects these circumstances, among other things.

In summary, with all due respect to the Proposed Experts, it is hard for this court to conceive how they could help this court to understand the evidence or determine a fact in issue relative to the gatekeeping motion—as contemplated by Fed. R. Evid. 702(a)—when this court deals with the issues presented by motion, and similar issues, somewhat regularly.

Accordingly, the court will exercise its discretion under Fed. R. Evid 702(a) and exclude the Proposed Experts testimony and HMIT Exhibits 39-52 relating to same.

A further opinion and order will be forthcoming on the HMIT Motion for Leave.

END OF MEMORANDUM OPINION AND ORDER####

is merely to further the point that a long-term bankruptcy judge with Chapter 11 experience typically has developed expertise regarding executive compensation issues pre-and post-confirmation in Chapter 11 cases.

Exhibit 8

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 1, 2023

United States Bankruptcy Judge

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

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

ORDER STRIKING HMIT'S EVIDENTIARY PROFFER PURSUANT TO RULE 103(a)(2) AND LIMITING BRIEFING

The Court has reviewed Hunter Mountain Investment Trust's ("HMIT") *Evidentiary Proffer Pursuant to Rule 103(a)(2)* ("Proffer"; Dkt. No. 3858), the *Highland Parties' Joint Objections To And Motion To Strike HMIT's Evidentiary Proffer Pursuant to Rule 103(a)(2)* ("Motion"; Dkt. No. 3860) filed by Highland Capital Management, L.P., the Highland Claimant Trust, and James P. Seery, Jr. (collectively, the "Highland Parties"), and the *Claims Purchasers' Joinder to the Highland Parties' Objections and Motion to Strike HMIT's Purported Proffer* (Dkt. No. 3861) filed by Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management,

L.L.C., and Stonehill Capital Management LLC (collectively with HMIT and the Highland Parties, the "Parties"). After due deliberation, the Court has determined that good and sufficient cause has been shown for the relief requested in the Motion. It is therefore **ORDERED** that:

1. The Motion is **GRANTED**.

2. The Proffer and its accompanying declarations are stricken from the record for the reasons set forth in the Court's June 27, 2023 email (attached hereto as Exhibit A). The Court directs the Clerk to remove docket entry 3858 from the docket.

3. The Parties shall not file any additional briefs, motions, pleadings, proffers, or other submissions with the Court in connection with the Motion, the Highland Parties' *Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully* (Dkt. No. 3820), or any proposed/excluded expert evidence relative to HMIT's *Motion for Leave to File Verified Adversary Proceeding* (Dkt. No. 3699).

END OF ORDER

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

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APPELLEE RECORD

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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Counsel for Highland Capital Management, L.P.

Exhibit A

From: Traci Ellison <Traci_Ellison@txnb.uscourts.gov>
Date: June 27, [illegible]
To: "Stancil, [illegible]
<zannable@haywardfirm.com>, "Sawnie A. McEntire" <smcentire@pmmlaw.com>, "Roger L. McCleary" <rmccleary@pmmlaw.com>, "Omar J. Alaniz" <OAlaniz@reedsmith.com>, "McIlwain, Brent R (DAL - X59481)" <Brent.McIlwain@hklaw.com>
Subject: 19-34054-sgj11 Highland Capital Management, L.P.

Dear Counsel:

Please see the following message from Judge Jernigan:

"With regard to the Evidentiary Proffer ("Proffer") of Hunter Mountain Investment Trust ("HMIT") filed at DE # 3858 on 6/19/23 (i.e., after the 6/8/23 hearing on HMIT's Motion for Leave to File Verified Adversary Proceeding [DE # 3699] and after the court's written 6/16/23 ruling regarding the admissibility of the proposed expert evidence), the court has determined that the Proffer is unnecessary. Rule 103(a)(2) does not apply if "the substance" of the excluded evidence "was apparent from the context." Fed. R. Evid. 103(a)(2). Here, "the substance" of the excluded evidence was quite apparent from the "context"--more specifically, the witness and exhibit list filed by HMIT, the proposed exhibits offered [see DE # 3818], and the statements of HMIT's counsel on the record at the 6/8/23 hearing.

The court is aware of the motion to strike the Proffer [DE # 3860] and the Joinder therein [DE # 3861]. The court concludes it is appropriate to grant the motion to strike. The court directs counsel for movants to upload a form of order that grants their motion to strike. The order shall direct the Clerk to mark DE # 3858 as stricken from the record as both filed without authority and unnecessary pursuant to FRE 103(a)(2).

The parties are directed to file no more pleadings in the bankruptcy court regarding this issue of the proposed/excluded expert evidence relative to DE # 3699. The court has ruled [at DE # 3854]."

Thank you,
Traci

Exhibit 9

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed October 4, 2023

United States Bankruptcy Judge

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

IN RE:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-sgj-11**
Reorganized Debtor.	§	

<u>ORDER DENYING MOTION OF HUNTER MOUNTAIN INVESTMENT TRUST SEEKING RELIEF PURSUANT TO FEDERAL RULES OF BANKRUPTCY PROCEDURE 7052, 9023, AND 9024</u>

On September 8, 2023, Hunter Mountain Investment Trust ("HMIT") filed its *Motion to Alter or Amend Order, To Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Brief* (hereinafter, the "Motion").[1] In the Motion, HMIT requests that the court alter or amend its findings set forth in its 105-page Memorandum Opinion and Order, dated August

[1] Bankr. Dkt. No. 3905

25, 2023 (hereinafter, the "Order Denying HMIT's Motion for Leave")[2] in which this court, in the exercise of its "gatekeeping" function pursuant to the Gatekeeper Provision[3] of the Debtors' confirmed Plan[4] and pre-confirmation Gatekeeper Orders, denied HMIT's *Emergency Motion for Leave To File Verified Adversary Proceeding*.[5] The Order Denying HMIT's Motion for Leave was issued following an evidentiary hearing on June 8, 2023.

HMIT now wants the bankruptcy court to reconsider certain findings and conclusions (or make additional ones—or even grant a new hearing) with regard to the Order Denying HMIT's Motion for Leave—specifically pertaining to the subject of HMIT's lack of standing (which was one of multiple reasons the court gave for issuing the Order Denying HMIT's Motion for Leave). The ground articulated by HMIT is as follows: "because post-hearing financial disclosure filings in the bankruptcy matter further evidence [sic] that the court's standing determinations are incorrect and should be corrected." Motion, at ⁋ 3.[6] In other words, HMIT suggests that certain "post-hearing financial disclosure filings" filed in the main Highland bankruptcy case by the Reorganized Debtor (on July 6, 2023[7] and July 21, 2023[8]) somehow now demonstrate that HMIT, indeed, has standing to pursue the adversary proceeding that it sought leave to file.

The Motion is denied. First, the court sees no reasonable grounds to reopen the record with these "post-hearing financial disclosures." For one thing, the "post-hearing financial disclosure filings" are not materially different than information that was already on file in the bankruptcy

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[2] Bankr. Dkt. Nos. 3903 & 3904.
[3] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Order Denying HMIT's Motion for Leave.
[4] The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* [Bankr. Dkt. No. 1943] on February 22, 2021.
[5] Bankr. Dkt. Nos. 3699, 3815, 3816, and 3760.
[6] HMIT attached the "post-hearing financial disclosure filings in the bankruptcy matter" as exhibits to the Motion. *See* Exhibits 2 and 3 to the Motion.
[7] Bankr. Dkt. No. 3872.
[8] Bankr. Dkt. Nos. 3888 and 3889.

case for all to see, before the June 8, 2023 hearing. *See* Bankr. Dkt. Nos. 3756 & 3757 (routine Post-Confirmation Reports, filed by the Reorganized Debtor on April 21, 2023, which show liabilities, disbursements, and "Remaining investments, notes, and other assets"—albeit without specific values ascribed to the latter). So, to the extent HMIT is arguing that the "post-hearing financial disclosure filings" are something akin to newly discovered evidence or otherwise a ground for granting a new hearing or altering findings, HMIT's argument lacks merit. Moreover, even if this court were to consider the "post-hearing financial disclosure filings," the court disagrees with HMIT's central argument that they demonstrate that HMIT's contingent interest is "in the money" and, thus, that it has both constitutional and prudential standing to pursue the adversary proceeding it wants to file. Notably, HMIT does not give proper attention to the voluminous supplemental notes in the "post-hearing financial disclosure filings" that are integral to understanding the numbers therein. For example, as mentioned in Note 5 therein, the administrative expenses and legal fees of the Reorganized Highland and the post-confirmation trust continue to deplete their assets, due to the fact that "(b) approximately twenty (20) matters are being actively litigated in at least 9 different forums; and (c) based on history, new litigation can be expected." This significant and widespread litigation results in massive indemnification obligations, as well as massive, continuing legal fees and expenses. The assets shown in the "post-hearing financial disclosure filings" will only be available for distribution after satisfaction of all legal fees and expenses and indemnity obligations. As also noted in Note 5 therein, it is expected that the Highland post-confirmation trust and its subsidiaries will operate at an operating loss prospectively. The information in the "adjustments" column of the assets section of the post-hearing financial disclosures "does not assume any expected future operating cash burn, which is expected to be significant." Additionally, as indicated in Note 6, sometimes Highland has been

unable to obtain full and complete information regarding asset values for inclusion in the post-hearing financial disclosures—thus impacting the accuracy of some valuations used. For example,

> The value of SE Multifamily Holdings LLC maintained on this balance sheet is $15.7 million, which is a component of the "Investments" line item and is based on a several years stale book-basis balance sheet. Notwithstanding Dondero-entities' previous disclosures of this interest at values of $20 million and $12 million, Highland also received interest from Dondero to acquire the interest for $3.8 million, among other assets. . . . Highland has initiated proceedings in Delaware to receive books and records relating to SE Multifamily Holdings LLC, for which it has the contractual right and has been seeking for approximately a year, but for which Dondero controlled entities have not provided to date.

In summary, HMIT argues no reasonable grounds to justify any of the relief sought in the Motion.

Accordingly,

IT IS ORDERED that the Motion be, and hereby is, **DENIED**.

###END OF ORDER###

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed August 25, 2023

United States Bankruptcy Judge

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

IN RE:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-sgj-11**
Reorganized Debtor.	§	

MEMORANDUM OPINION AND ORDER PURSUANT TO PLAN "GATEKEEPER PROVISION" AND PRE-CONFIRMATION "GATEKEEPER ORDERS": DENYING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING[1]
[BANKR. DKT. NOS. 3699, 3760, 3815, and 3816]

I. INTRODUCTION

BEFORE THIS COURT is yet another post-confirmation dispute relating to the Chapter 11 bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor").

[1] On August 2, 2023, this court signed an Order [Bankr. Dkt. No. 3897] that was agreed to among various parties, after the filing of a Motion to Stay and Compel Mediation [Bankr. Dkt. No. 3752] filed by James D. Dondero and related entities. Pursuant to paragraph 7 of that order, certain pending matters in the bankruptcy court are stayed pending mediation. The parties did not agree to stay the matter addressed in this Memorandum Opinion and Order.

It is now more than two and half years since the confirmation of Highland's Plan[2]—the Plan having been confirmed on February 22, 2021.[3] The Plan was never stayed; it went effective on August 11, 2021 ("Effective Date"), and it was affirmed almost in its entirety by the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit"), in late summer 2022, including an approval of the so-called Gatekeeper Provision[4] therein. The Gatekeeper Provision—and how and whether it should now be exercised or interpreted to allow a certain lawsuit to be filed—is at the heart of the current *Emergency Motion for Leave to File Verified Adversary Proceeding* [Bankr. Dkt. Nos. 3699, 3760, 3815, 3816] (collectively, the "Motion for Leave") filed by a movant known as Hunter Mountain Investment Trust ("HMIT").

A. Who is the Movant, HMIT?

Who is HMIT? It is undisputed that it is a former equity owner of Highland. It held 99.5% of Highland's Class B/C limited partnership interests and was classified in a Class 10 under the confirmed Plan, which class treatment provided it with a contingent interest in the Highland Claimant Trust ("Claimant Trust") created under the Plan, and as defined in the Claimant Trust Agreement. This means that HMIT could receive consideration under the Plan if all claims against Highland are ultimately paid in full, with interest. As later further discussed, it is undisputed that

[2] Capitalized terms not defined in this introduction shall have the meaning ascribed to them below.

[3] The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order")[Bankr. Dkt. No. 1943].

[4] In an initial opinion dated August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in large part, "revers[ing] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan's exculpation, and affirm[ing] on all remaining grounds." *In re Highland Capital Management, L.P.*, No. 21-10449, 2022 WL 3571094, at *1 (5th Cir. Aug. 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022, "for the limited purpose of clarifying and confirming one part of its August 19, 2022 opinion," the Fifth Circuit withdrew its original opinion and replaced it with its opinion reported at *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419, 424 (5th Cir. 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section "IV(E)(2) – *Injunction and Gatekeeper Provisions*" of the original opinion: "The injunction and gatekeeper provisions are, on the other hand, perfectly lawful." was replaced with "We now turn to the Plan's injunction and gatekeeper provisions." In all other respects, the Fifth Circuit panel's original ruling remained unchanged. Petitions for writs of certiorari regarding the Confirmation Order have been pending at the United States Supreme Court since January 2023.

HMIT's only asset is its contingent interest in the Claimant Trust. It has no employees or revenue. HMIT's representative has testified that HMIT is liable on more than $62 million of indebtedness owed to The Dugaboy Investment Trust ("Dugaboy"), a family trust of which James Dondero ("Dondero"), the co-founder and former chief executive officer ("CEO") of Highland, and his family members are beneficiaries, and that Dugaboy also is paying HMIT's legal fees. HMIT vehemently disputes the suggestion that it is controlled by Dondero.

B. What Does the Movant HMIT Seek Leave to File?

HMIT seeks leave to file an adversary proceeding ("Proposed Complaint")[5] in the bankruptcy court to bring claims on behalf of itself and, derivatively, on behalf of the Reorganized Debtor and the Claimant Trust for alleged breach of fiduciary duties by the Reorganized Debtor's CEO and Claimant Trustee, James P. Seery, Jr. ("Seery") and conspiracy against: (1) Seery; and (2) purchasers of $365 million face amount of ***allowed*** unsecured claims in this case, who purchased their claims post-confirmation but prior to the occurrence of the Effective Date of the Plan ("Claims Purchasers,"[6] and with Seery, the "Proposed Defendants"). To be clear (and as later further explained), the claims acquired by the Claims Purchasers were acquired by them after extensive litigation, mediation, and settlements were approved by the bankruptcy court and after the original claims-holders had voted on the Plan and after Plan confirmation. As later explained,

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[5] In its original Motion for Leave filed at Bankruptcy Docket No. 3699 on March 28, 2023, HMIT sought leave to file the proposed complaint ("Initial Proposed Complaint") attached as Exhibit 1 to the Motion for Leave. Nearly a month later, on April 23, 2023, HMIT filed a *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* ("Supplement") [Bankr. Dkt. No. 3760], a revised proposed complaint as Exhibit 1-A, and stating that "[t]he Supplement is not intended to supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action." Supplement, ¶ 1 and Exhibit 1-A. It is this revised proposed complaint to which this court will refer, when it uses the defined term "Proposed Complaint," even though HMIT filed redacted versions of its Motion for Leave on June 5, 2023 at Bankruptcy Docket Nos. 3815 and 3816 that attached the Initial Proposed Complaint as Exhibit 1.

[6] The Claims Purchasers identified in the Proposed Complaint are Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which is a special purpose entity created by Farallon to purchase allowed unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which is a special purpose entity created by Stonehill to purchase allowed unsecured claims against Highland.

the Claims Purchasers filed notices of their purchases as required by Bankruptcy Rule 3001(e)(2), and no objections were filed thereto. In any event, various damages or remedies are sought against the Proposed Defendants revolving around the Claims Purchasers' claims purchasing activities.

C. Why Does HMIT Need to Seek Leave?

As alluded to above, HMIT filed its Motion for Leave to comply with the provision in the Plan known as a "gatekeeper" provision ("Gatekeeper Provision") and with this court's prior gatekeeper orders entered in January and July 2020, which all require that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain (1) a finding from the bankruptcy court that its proposed claims ("Proposed Claims") are "colorable"; and (2) specific authorization by the bankruptcy court to pursue the Proposed Claims.[7] The Gatekeeper Provision was not included in the Plan *sans raison*. Indeed, as the Fifth Circuit recognized in affirming confirmation of the Plan, the Gatekeeper Provision (along with the other "protection provisions" in the Plan) had been included in the Plan to address the "continued litigiousness" of Mr. James Dondero ("Dondero"), Highland's co-founder and former chief executive officer ("CEO"), that began prepetition and escalated following the post-petition "nasty breakup" between Highland and Dondero, by "screen[ing] and prevent[ing] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[8]

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[7] To be clear, the Gatekeeper Provision in the Plan was not the first or even second injunction of its type issued in this bankruptcy case. The Gatekeeper Orders were entered by the bankruptcy court pre-confirmation: (a) in January 2020, just a few months into the case, as part of this court's order approving a corporate governance settlement between Highland and its unsecured creditors committee, in which Dondero, Highland's co-founder and former CEO, was removed from any management role at Highland and three independent directors ("Independent Directors") were appointed in lieu of a chapter 11 trustee being appointed ("January 2020 Order"); and (b) in July 2020, in this court's order authorizing the employment of Seery (one of the three Independent Directors) as the Debtor's new Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative ("July 2020 Order," together with the January 2020 Order, the "Gatekeeper Orders").

[8] *See Highland Capital*, 48 F.4th at 427, 435.

D. Some Further Context Regarding Post-Confirmation Litigation Generally.

Since confirmation of the Plan, hundreds of millions of dollars have been paid out to creditors under the Plan, and there are numerous adversary proceedings and contested matters still pending, at various stages of litigation, in the bankruptcy court, the district court, and the Fifth Circuit, almost exclusively involving Dondero and entities that he owns or controls. To be sure, the post-confirmation litigation in this case does not consist of the usual adversaries and contested matters one typically sees by and against a reorganized debtor and/or litigation trustee, such as preference or other avoidance actions and litigation over objections to claims that are still pending after confirmation of a plan. Indeed, the claims of the largest creditors in this case (with claims asserted in the aggregate of more than one billion dollars) were successfully mediated and incorporated into the Plan—a plan which was ultimately accepted by the votes of an overwhelming majority of Highland's non-insider creditors. Dondero and entities under his control were the only parties who appealed the Confirmation Order, and Dondero and entities under his control have been the appellants in virtually every appeal that has been filed regarding this bankruptcy case. Petitions for writs of mandamus (which have been denied) have been filed in the district court and in the Fifth Circuit by some of these same entities, including one by HMIT, when this court denied setting an ***emergency*** hearing on the instant Motion for Leave (HMIT had sought a setting on three-days' notice).

A recent list of active matters involving Dondero and/or entities and/or individuals affiliated or associated with him, filed in the bankruptcy case by Highland and the Claimant Trust, reveals that there were at least 30 pending and "Active Dondero-Related Litigation" matters as of July 14, 2023: six (6) proceedings in this court; six (6) active appeals or actions are pending in the District Court for the Northern District of Texas; seven (7) appeals in the Fifth Circuit; two (2)

petitions for writs of certiorari in the United States Supreme Court; and nine (9) other proceedings or actions with or affecting the Highland Parties ("Highland," the "Claimant Trust," and "Seery") in various other state, federal, and foreign jurisdictions.[9]

The above-described context is included because the Proposed Defendants assert that the Motion for Leave is just a continuation of Dondero's unrelenting barrage of meritless and harassing litigation, making good on his oft-mentioned alleged threat to "burn down the place" after not achieving the results he wanted in the Highland bankruptcy case. Indeed, the Motion for Leave was filed after two years of unsuccessful attempts by, first, Dondero personally, and then HMIT to obtain pre-suit discovery from the Proposed Defendants (i.e., the Claims Purchasers) through two different Texas state court proceedings, pursuant to Tex. R. Civ. P. 202 ("Rule 202"). In each of these Rule 202 proceedings, Dondero and HMIT espoused the same Seery/Claims

[9] *See* Bankr. Dkt. No. 3880 (filed on July 14, 2023, providing a list of "Active Dondero-Related Litigation" and noting that the list is "a summary of active pending actions only and does not include actions that were resolved by final orders, including actions finally resolved after appeals to the U.S. District Court for the Northern District of Texas and/or the U.S. Court of Appeals for the Fifth Circuit."). Just since the filing by the Highland Parties of the list, ***three*** of the appeals pending in the Fifth Circuit have been decided against the Dondero-related appellants, two of which upheld the district court's dismissal of appeals by Dondero-related entities of bankruptcy court orders based on the lack of bankruptcy appellate standing on behalf of the appellant. On July 19, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by NexPoint Advisors, L.P. ("NexPoint") of bankruptcy court orders approving professional compensation on the basis that NexPoint did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the orders. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, 74 F.4th 361 (5th Cir. 2023). On July 31, 2023, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy—the Dondero family trust that, like the movant here in this Motion for Leave, was the holder of a limited partnership interest in Highland, and, as such, now has a contingent interest in the Claimant Trust—which had appealed a bankruptcy court order approving a Rule 9019 settlement on the same basis: Dugaboy did not meet the bankruptcy appellate standing test of being a "person aggrieved" by the entry of the settlement order. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10960, 2023 WL 4861770 (5th Cir. July 31, 2023). The July 31, 2023 ruling followed the Fifth Circuit's ruling on February 21, 2023, affirming the district court's dismissal of an appeal by Dugaboy of yet another bankruptcy court order for lack of bankruptcy appellate standing. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023). These rulings by the Fifth Circuit are discussed in greater detail below. The third ruling by the Fifth Circuit since July 14, 2023, was issued by the Fifth Circuit in a per curium opinion not designated for publication on July 26, 2023, this one affirming the district court's affirmance of yet another Rule 9019 settlement order of the bankruptcy court that was appealed by Dugaboy, agreeing with the district court that the bankruptcy court had jurisdiction to approve a settlement among the Debtor, an entity affiliated with the Debtor but not a debtor itself, and UBS (the Debtor's largest prepetition creditor and the seller of its claims to the Claims Purchasers, which is one of the claims trading transactions HMIT complains about in the Proposed Complaint). *See The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P.*, No. 22-10983, 2023 WL 4842320 (5th Cir. July 26, 2023).

Purchasers conspiracy theory espoused in the Motion for Leave—that Seery must have provided one or more of the Claims Purchasers with material nonpublic information to induce them to want to purchase large, allowed, unsecured claims at a discount; a *quid pro quo* is suggested, such that the Claims Purchasers were allegedly told they would make a hefty profit on the claims they purchased and, in return, they would gladly "rubber stamp" Seery's "excessive compensation" as the Claimant Trustee of the Claimant Trust. In sum, HMIT alleges this constituted wrongful "insider trading" of the bankruptcy claims. In addition, certain lawyers for Dondero and Dugaboy sent letters reporting this alleged conspiracy and "insider trading" to the Texas State Securities Board ("TSSB") and the Executive Office of the United States Trustee ("EOUST").

It is against this background and in this context that the court must analyze, in the exercise of its gatekeeping function under the confirmed Plan and its prior Gatekeeping Orders, whether HMIT should be allowed to pursue the Proposed Claims (i.e., whether the Proposed Claims are "colorable" claims as contemplated under the Gatekeeper Orders and the Gatekeeper Provision of the Plan). The court held an evidentiary hearing on the Motion for Leave on June 8, 2023 ("June 8 Hearing"), during which the court admitted exhibits and heard testimony from three witnesses both in support of and in opposition to the Motion for Leave. Having considered the Motion for Leave, the response of the Proposed Defendants thereto, HMIT's reply to the response, and the arguments and evidence presented at the hearing on the Motion for Leave, the court denies HMIT's request for leave to pursue its Proposed Claims. The court's reasoning is set forth below.

II. BACKGROUND

A. Highland's Bankruptcy Case, Dondero's Removal as CEO, and the Plan

Highland was co-founded in Dallas in 1993 by Dondero and Mark Okada ("Okada"). It operated as a global investment adviser that provided investment management and advisory services and managed billions of dollars of assets, both directly and indirectly through numerous

affiliates. Highland's equity interest holders included HMIT (99.5%), Dugaboy (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. ("Strand"), which was wholly owned by Dondero and was the only general partner of Highland (0.25%). On October 16, 2019 (the "Petition Date"), Highland, with Dondero in control[10] and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims – many of which had finally become or were about to be liquidated (after a decade or more of contentious litigation in multiple fora all over the world—filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019. The official committee of unsecured creditors (the "Committee") (and later, the United States Trustee) expressed a desire for the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the specter of a possible appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.[11] As a result of this settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,[12] and three independent directors ("Independent Directors") were

[10] Mark Okada resigned from his role with Highland prior to the Petition Date.

[11] This order is hereinafter referred to as the "January 2020 Order" and was entered by the court on January 9, 2020 [Bankr. Dkt. No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Bankr. Dkt. No. 281].

[12] Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland's motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Bankr. Dkt. No. 338].

chosen to lead Highland through its chapter 11 case: Seery, John S. Dubel, and retired bankruptcy judge Russell Nelms. Given the Debtor's perceived culture of constant litigation while Dondero was at the helm, it was purportedly not easy to get such highly qualified persons to serve as independent board members. At the hearing on the corporate governance settlement motion, the court heard credible testimony that none of the Independent Directors would have taken on the role without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation from mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the Independent Directors without the bankruptcy court's prior authority. The gatekeeper provision approved by the court in its January 9 Order states,[13]

> No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation and did so "subject at all times to the supervision, direction and authority of the Independent Directors" and to his agreement to "resign immediately" "[i]n the event the Independent Directors determine for any reason that the Debtor shall no longer retain Dondero as an employee"[14] and to "not cause any Related Entity to terminate any agreements with the Debtor."[15] The court later

[13] January 2020 Order, 3-4, ¶ 10.

[14] January 2020 Order, 3, ¶ 8.

[15] *Id.* at ¶ 9.

entered, on July 16, 2020, an order approving the appointment of Seery as Highland's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative,[16] which included essentially the same "gatekeeper" language with respect to the pursuit of claims against Seery acting in these roles. The gatekeeper provision in the July 2020 Order was essentially the same as the gatekeeper provision in the January 2020 Order:

> No entity may commence or pursue a claim or cause of action of any kind against Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

July 2020 Order, 3, ¶5. Neither the January 2020 Order nor the July 2020 Order were appealed.

Throughout the summer of 2020, Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Dondero's plans failed to gain support, he and entities under his control engaged in substantial, costly, and time-consuming litigation for Highland.[17] As the Fifth Circuit described the situation, after Dondero's plans failed "he and other creditors began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital's management, threatening employees, and canceling trades between Highland Capital and its clients."[18] On October 9, 2020, Dondero resigned from all positions with the Debtor and its

[16] *See* the July 16, 2020 order approving the retention by Highland of Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020 ("July 2020 Order") [Bankr. Dkt. No. 854].

[17] According to Seery's credible testimony during the hearing on confirmation of the Plan that had been negotiated between the Committee and the Independent Directors, Dondero had threatened to "burn the place down" if his proposed plan was not accepted. *See* Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20. Bankr. Dkt. No. #1894.

[18] *Highland Capital*, 48 F.4th at 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at *1, *26 (Bankr. N.D. Tex.

affiliates in response to a demand by the Independent Directors made after Dondero's purported threats and disruptions to the Debtor's operations.[19]

The Independent Directors and the Committee had negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan") [Bankr. Dkt. No. 1808] on January 22, 2021.[20] Highland had negotiated settlements with most of its major creditors following mediation and had amended its initially proposed plan to address the objections of most of its creditors, leaving only the objections of Dondero and entities under his control (the "Dondero Parties") at the time of the confirmation hearing,[21] which was held over two days in early February 2021. The Plan is essentially an "asset monetization" plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). Highland's various servicing agreements were vested in the Reorganized Debtor, which continues to manage collateralized loan obligation vehicles ("CLOs") and various other investments postconfirmation. The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down the Reorganized Debtor over a three-year period by monetizing its assets and making

June 7, 2021) where this court "h[eld] Dondero in civil contempt, sanctioning him $100,000, and comparing this case to a 'nasty divorce.'").

[19] *See* Highland Ex. 13. The court shall refer to exhibits offered and admitted at the June 8 Hearing on the Motion for Leave by the Highland Parties as "Highland Ex. ___" and to exhibits offered and admitted by HMIT as "HMIT Ex. ___."

[20] The *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* was filed on November 24, 2020 ("Disclosure Statement") [Bankr. Dkt. No. 1473].

[21] The only other objection remaining was the objection of the United States Trustee to the Plan's exculpation, injunction, and release provisions.

distributions to Class 8 and Class 9 creditors as Claimant Trust Beneficiaries. The Claimant Trust is overseen by a Claimant Trust Oversight Board ("CTOB"), and pursuant to the terms of the Plan and the Claimant Trust Agreement ("CTA"),[22] the CTOB approved Seery's compensation package as the CEO of the Reorganized Debtor and the Claimant Trustee. Following their acquisition of their unsecured claims, representatives of Claims Purchasers Muck and Jessup became members of the CTOB.[23] Seery's compensation included the same base salary that he was receiving as CEO and CRO of Highland, plus an added incentive bonus tiered to recoveries and distributions to the creditors under the Plan. The Plan provides for the cancellation of the limited partnership interests in Highland held by HMIT, Dugaboy, and Okada and his family trusts in exchange for each holder's pro rata share of a contingent interest in the Claimant Trust ("Contingent Claimant Trust Interest"), as holders of allowed interests in Class 10 (holders of Class B/C limited partnership interests) or Class 11 (holders of Class A limited partnership interests) under the Plan.

B. Dondero Communicates Alleged Material Non-Public Information ("MNPI") to Seery, and Seery Allegedly Provides the MNPI to the Claims Purchasers in Furtherance of an Alleged Fraudulent Scheme to Have the Claims Purchasers "Rubber Stamp" His Compensation as Claimant Trustee Post-Confirmation

1. The December 17, 2020 MGM Email

Between Dondero's forced resignation from Highland in October 2020 and the confirmation hearing in February 2021, Dondero engaged in what appeared to be attempts to thwart, impede, and otherwise interfere with the Plan being proposed by the Independent Directors and the Committee. In the midst of this, on December 17, 2020, Dondero sent Seery[24] an email

[22] Highland Ex. 38

[23] The CTOB had three members: a representative of Muck (Michael Linn), a representative of Jessup (Christopher Provost), and an independent member (Richard Katz). *See* Joint Opposition ¶ 79.

[24] Dondero sent the email to others as well but did not copy counsel for the Independent Directors (including Seery) in violation of the terms of an existing temporary restraining order that enjoined Dondero from, among other things, "communicating . . . with any Board member" (including Seery) without including Debtor's counsel. Morris Dec. Ex. 23 ¶ 2(a). Citations to "Morris Dec. Ex. _" are to the exhibits attached to the *Declaration of John A. Morris in Support*

(the "MGM Email") that featured prominently in HMIT's Motion for Leave. According to HMIT and Dondero, the MGM Email contained material nonpublic information ("MNPI") regarding the possibility of an imminent acquisition of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"), likely by either Amazon or Apple.[25] At the time Dondero sent the MGM Email, Dondero sat on the board of directors of MGM, and the Debtor owned MGM stock directly. The Debtor also managed and partially owned a couple of other entities that owned MGM stock and managed various CLOs that owned some MGM stock as well. HMIT alleges now that Seery later misused and wrongfully disclosed to the Claims Purchasers this purported MNPI as part of a *quid pro quo* scheme, whereby the Claims Purchasers agreed to approve excessive compensation for Seery in the future (in exchange for him providing this allegedly "insider" information that inspired them to purchase unsecured claims with an alleged expectation of future large profits).[26] A timeline of events (in late 2020) in the weeks leading up to Dondero's MGM Email to Seery, following Dondero's departure from Highland, helps to put the email in full context:

- October 16: Dondero and his affiliates attempt to impede the Debtor's trading activities by demanding—with no legal basis—that Seery cease selling certain assets;[27]

- November 24: Bankruptcy Court enters an Order approving the Debtor's Disclosure Statement, scheduling the confirmation hearing on the Debtor's Plan for January 13, 2021, and granting related relief;[28]

- November 24–27: Dondero personally interferes with the Debtor's

of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding, Bankr. Dkt. No. 3784.

[25] *See* Proposed Complaint ¶ 45.

[26] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the [Claims Purchasers], with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims."); ¶ 4 ("As part of the scheme, the [Claims Purchasers] obtained a position to approve Seery's ongoing compensation – to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT.").

[27] *See* Highland Ex. 14, Dondero-Related Entities' October 16, 2020 Letter; Highland Ex. 15, *Memorandum Opinion and Order Holding Dondero in Contempt for Violation of TRO*, 13-15.

[28] *See* Bankr. Dkt. No. 1476.

implementation of certain securities trades ordered by Seery;[29]

- November 30: The Debtor provides written notice of termination of certain shared services agreements it had with Dondero's two non-debtor affiliates, NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"; together with NexPoint, the "Advisors");[30]

- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes they owed to the Debtor, that had an aggregate face amount of more than $60 million—this was part of creating liquidity for the Debtor's Plan;[31]

- December 3: Dondero responds with what appeared to be a threat of some sort to Seery in a text message: "***Be careful what you do -- last warning***;"[32]

- December 10: Dondero's interference and apparent threat cause the Debtor to seek and obtain a temporary restraining order ("TRO") against Dondero;[33]

- December 16: This court denies as "frivolous" a motion filed by certain affiliates of Dondero, in which they sought "temporary restrictions" on certain asset sales;[34] and

- December 17: Dondero sends the unsolicited MGM Email[35] to Seery, which violates the TRO entered just a week earlier.[36]

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[29] *See* Highland Ex. 15, 30-36.

[30] Morris Decl. Ex. 17; *see also* Transcript of June 8, 2023 Hearing on HMIT's Motion for Leave ("June 8 Hearing Transcript"), 273:23-24.

[31] Morris Decl. Exs. 18-21; *see also* June 8 Hearing Transcript, 273:23-274:1.

[32] Morris Decl. Ex. 22 (emphasis added); *see also* June 8 Hearing Transcript, 273:1-12 (where Seery testified about receiving the threat from Dondero: "A: [T]his came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.").

[33] *See* Morris Decl. Ex. 23, *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* entered December 10, 2020 [Adv. Pro. No. 20-3190 Dkt. No. 10].

[34] *See* Morris Decl. Ex. 24, Transcript of December 16, 2020 Hearing, 63:5-64:15.

[35] Highland Ex. 11.

[36] Seery testified at the June 8 Hearing that Dondero knowingly violated the TRO when he sent the MGM Email:

> [The MGM Email] . . . followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski [Debtor's counsel] being on it. Furthermore, Pachulski had advised Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics. And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

June 8 Hearing Transcript, 273:13-22.

The MGM Email had the subject line "Trading Restriction re MGM – material non public information" and stated:

> Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.[37]

Seery credibly testified at the June 8 Hearing that he was "highly suspicious" when he received the MGM Email. This was because, among other reasons, Dondero sent it ***after***: (i) unsuccessful efforts to impede the Debtor's trading activities (followed by the TRO); (ii) the "be careful what you do" text to Seery by Dondero: (iii) Highland's termination of its shared service arrangements with Dondero's various affiliated entities; (iv) the bankruptcy court's approval of the disclosure statement; and (v) Highland's demand to collect on the demand notes for which Dondero and his entities were liable.[38] Highland's Chapter 11 case was fast approaching the finish line. Moreover, MGM was already on the restricted list at Highland Capital, and had been for a long time, and Dondero would know this.[39] Still further, as of December 17, 2020 (the date Dondero sent the unsolicited MGM Email to Seery), Dondero no longer owed a duty of any kind to the Debtor or any entity controlled by the Debtor, having surrendered in January 2020 direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement[40] and having resigned from all roles at the Debtor and affiliates in October 2020. Still further, Dondero—to the extent he was sharing with Seery MNPI that he obtained as a member of the board of directors of MGM—would have been violating his own fiduciary duties to MGM.

[37] Highland Ex. 11.

[38] June 8 Hearing Transcript, 273:1-274:4.

[39] June 8 Hearing, 215:21-216:9.

[40] *See* Bankr. Dkt. Nos. 339, 354-1 (Term Sheet)).

In any event, in a declaration filed by Dondero in support of HMIT's Rule 202 petition in Texas state court for pre-suit discovery,[41] he indicated that his goal in sending the MGM E-mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

> On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple's interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades***.

It is noteworthy that ***Dondero's labeling of the MGM Email (in the subject line) as a communication containing "material non public information" did not make it so***. In fact, it appears from the credible evidence presented at the June 8, 2023 hearing on HMIT's Motion for Leave that the MGM Email did not disclose information to Seery that was not already made available to the public at the time it was sent. Seery testified that he did not think the MGM Email contained MNPI and that he did not personally "take any steps . . . to make sure that MGM stock was placed on a restricted list at Highland Capital after [he] received [the MGM Email]" because—as earlier noted—"MGM was already on the restricted list at Highland Capital . . . before I got to Highland."[42] Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months[43] and that was officially

[41] Highland Ex. 9 ¶ 3 (emphasis added).

[42] June 8 Hearing Transcript, 215:21-216:9. Seery elaborated upon further questioning from HMIT's counsel that he did not think the indications in the MGM Email (that came from a member of the board of directors of MGM) that "it was probably a first-quarter event" and that "Amazon and Apple were actively diligencing – are diligencing in the data room, both continue to express material interest" were not MNPI. *Id.*, 217:23-218:10. He testified that "it was clear [before he received the MGM Email] from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction would have to take place very quickly. And, in fact, the transaction did not take place in the first quarter." *Id.*, 219:3-7.

[43] *See* Highland Ex. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Ex. 26 (describing prospects of an MGM sale, noting that, among its largest

announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[44] For example, as early as January 2020, Apple and Amazon were identified as being among a new group of "Big 6" global media companies, and MGM was identified as being a leading media acquisition target. Indeed, according to at least one media report on January 26, 2020, "MGM, in particular, seems like a logical candidate to sell this year" having already held "preliminary talks with Apple, Netflix and other larger media companies."[45] In October 2020, the Wall Street Journal reported that MGM's largest shareholder, Anchorage Capital Group ("Anchorage"), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as Chairman of MGM's Board. The article reported that "[i]n recent months, Mr. Ulrich has said he is working toward a deal," and he specifically named Amazon and Apple as being among four possible buyers.[46] Thus, no one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed "material interest" in acquiring MGM. Dondero testified during the June 8 Hearing that, at the time he sent the MGM Email, he "knew with certainty from the board level that Amazon had hit our price, and it was going to close in the next couple of months,"[47] that "as of December 17th, Amazon had made an offer that was acceptable to MGM, [and that] that's what the board meeting was. We were going into exclusive negotiations to culminate the merger with

shareholders, was "Highland Capital Management, LP") (article October 11, 2020). *See also* Highland Exs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for $8.4 billion).

[44] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid.

[45] Highland Ex. 25.

[46] Highland Ex. 26.

[47] June 8 Hearing Transcript, 127:2-4.

them."[48] Notwithstanding this testimony, Dondero eventually admitted (after a lengthy and torturous cross examination) that he did not actually communicate this supposed "inside" information to Seery in the MGM Email. He did not "say anything about Amazon hitting the price." He did not say anything about the MGM board going into exclusive negotiations with Amazon "to culminate the merger with them." Rather, he communicated information that Seery and any member of the public who cared to look could have gleaned from publicly available information as of December 17, 2020, regarding a much-written-about potential MGM transaction that involved interest from numerous companies, including, specifically, Amazon and Apple. When questioned why "[he felt] the need to mention Apple [in the MGM Email] if Amazon had already hit the price," Dondero simply answered, "The only way you generally get something done at attractive levels in business is if two people are interested," suggesting that he specifically ***did not*** communicate the purported inside information he obtained as a MGM board member—that Amazon had met MGM's strike price and that the MGM board was moving forward with exclusive negotiations with Amazon—because he wanted it to appear that there was still a competitive process going on that included both Amazon and Apple.[49]

Even if the MGM Email contained MNPI on the day it was sent (four months prior to the first of the Claim Purchases that occurred in April 2021), the information was fully and publicly disclosed to the market in the days and weeks that followed. For example, on December 21, 2020, just four days later, a Wall Street Journal article titled *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale*, reported that MGM had "tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process," and had "a market value of around $5.5 billion, based on privately traded shares and including debt." The Wall Street Journal Article reiterated

[48] *Id.*, 161:10-14.

[49] June 8 Hearing Transcript, 162:2-6.

that (i) Anchorage "has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks," and (ii) "Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers."[50] (*Id*. Ex. 27.) The Wall Street Journal's reporting was picked up and expanded upon in other publications soon after. For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The world is net enough! Amazon joins other streaming services in £4bn bidding war for Bond films as MGM considers selling back catalogue*, cited the Wall Street Journal article and further reported that MGM "hopes to spark a battle that could interest streaming services such as Amazon Prime";[51]

- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that "it's now become apparent that MGM is actually up on the auction block," noting that the Wall Street Journal was "reporting that the studio has begun a formal sale process" and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder;[52] and

- On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition.[53]

Finally, Highland and entities it controlled did not sell their MGM stock while the MGM-Amazon deal was under discussion and/or not made public but, instead, they tendered their MGM holdings in connection with, and as part of, the ultimate MGM-Amazon transaction after it closed in March 2022.

[50] Highland Ex. 27.

[51] Highland Ex. 28.

[52] Highland Ex. 29.

[53] Highland Ex. 30.

2. No Evidence to Support HMIT/Dondero's Assumptions that Seery Shared Alleged MNPI in the MGM Email with Claims Purchasers

One of HMIT's allegations in the Proposed Complaint it seeks leave to file—which is central to HMIT's and Dondero's conspiracy theory—is that Seery shared the alleged MNPI from the MGM Email with the Claims Purchasers (or at least Farallon—the owner/affiliate of Muck, one of the Claims Purchasers) and that the Claims Purchasers only acquired the purchased claims ("Purchased Claims") based on, and because, of their receipt of the MNPI from Seery. HMIT essentially admits in the original version of its Motion for Leave that it has no direct evidence that Seery communicated the alleged MNPI to any of the Claims Purchasers. Rather, its allegation is based on inferences it wants the court to make based on "circumstantial" evidence and on the Dondero Declarations that were attached to the Motion for Leave, which described communications Dondero purportedly had with one or two representatives of Farallon in the "late spring" of 2021 concerning Farallon's recent acquisition of certain claims in the Highland bankruptcy case.[54] Based on these communications, HMIT and Dondero only assume Seery must have provided the MNPI about MGM to Farallon, which must have caused both Farallon and the other Claims Purchaser, Stonehill, to acquire the Purchased Claims.[55]

At the June 8 Hearing, HMIT offered Dondero's testimony that he had three telephone conversations with two representatives of Farallon, Mike Linn ("Linn") and Raj Patel ("Patel"),

[54] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 1 and Ex. 3; *see also* Highland Ex. 9, *Declaration of James Dondero* (with Exhibit 1) dated February 15, 2023.

[55] Motion for Leave (Bankr. Dkt. No. 3699) ¶ 28. HMIT subsequently filed the final version of the Motion for Leave that was revised to withdraw the Dondero Declarations and delete all references therein to the Dondero Declarations (but, notably, leaving in the allegations that were based on the Dondero Declaration(s)). This was done after the court ruled that it would allow the Proposed Defendants to examine Dondero regarding his Declarations. HMIT contended at that point that the court should consider the Motion for Leave on a no-evidence Rule 12(b)(6) type basis (but could not explain why it had attached the Dondero Declarations as evidence that "supported" the Motion for Leave, if it believed no evidence should be considered). *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 28; *see also infra* pages 45 to 47 regarding the "sideshow" litigation that occurred prior to the June 8 Hearing over whether the hearing on the Motion for Leave would be an evidentiary hearing.

who allegedly told him that they purchased the claims without conducting any due diligence and based solely on Seery's assurances that the claims were valuable. These conversations allegedly took place on May 28, 2021—two days after the MGM-Amazon deal was officially announced to the public (on May 26, 2021). Dondero also testified that a photocopy of handwritten notes ("Dondero Notes")[56] (which were partially cut off) were notes he took contemporaneously with these short telephone conversations he initiated (one with Patel and two follow-up conversations with Linn).[57] He testified that his purpose in taking these notes and in initiating the phone calls was that "[w]e'd been trying nonstop to settle the case for two-plus years. . . . [a]nd when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case . . . [s]o I reached out [to] the Farallon guys,"[58] and further, on *voir dire* from the Proposed Defendants' counsel, that the purpose of taking the notes was so that he had "a written record of the important points that [he] discussed . . . so I know how to address it the next time."[59] The handwritten notes[60] stated:

Raj Patel bought it because of Seery	*1*
50-70¢ not compelling	*2*
Class 8	*3*
Asked what would be compelling	*4*
-- No Offer	*5*
Bought in Feb/March timeframe	*6*
Bought assets w/ Claims	*7*
Offered him 40-50% premium	*8*
130% of cost; "Not Compelling"	*9*
No Counter; Told Discovery coming	*10*

[56] HMIT Ex. 4. The handwritten notes were admitted into evidence after *voir dire*, not for the truth of anything Patel or Linn allegedly said to him during the three telephone conversations, but as Dondero's "present sense impression" of the telephone conversations.

[57] June 8 Hearing Transcript, 133:1-136:3.

[58] *See id.*, 133:13-23.

[59] *See id.* (on *voir dire*), 144:1838-145:4.

[60] HMIT Ex. 4. The court has placed in a table and numbered each line for ease of reference. The table does not include the separate apparent partial date from the top left corner that Dondero testified was the date that he made the initial call to Patel: May 28, 2021.

On direct examination, Dondero testified that line 1 is what he wrote contemporaneously with the short call he initiated to Patel of Farallon in which Patel allegedly told Dondero "that he bought it because Seery told him to buy it and they had made money with Seery before"[61] and that Farallon "bought [the claim] because he was very optimistic regarding MGM"[62] before referring him to Linn, a portfolio manager at Farallon. Dondero testified that the rest of the handwritten notes (reflected in lines 2 through 10 of the table) were notes he took contemporaneously with two telephone conversations he had with Linn following his call to Patel, with lines 2-8 referring to Dondero's first call with Linn and lines 9 and 10 referring to his second call with Linn.[63] Dondero testified that the "50-70¢" in line 2 referred to his offer to Linn to pay 70 cents on the dollar to buy Farallon's[64] claims because "[w]e knew that they had – that the claims had traded around 50 cents" and "[w]e wanted to prevent the $5 million-a-month burn" (referring to attorney's fees in the Highland case) and that "not compelling Class 8" in lines 2-3 referred to Linn's response to him that the offer was not compelling.[65] Dondero testified that lines 4-5 referred to him asking Linn what amount would be compelling and to Linn's response that "he had no offer."[66] Dondero testified that lines 6-8 referred to Linn telling Dondero that Farallon bought the claims in the February, March timeframe and that Dondero told Linn that, given that the estate was spending $5 million a month on legal fees, Farallon should want to sell its claims and Linn's alleged response that "Seery told him it was worth a lot more."[67] Lastly, Dondero testified on direct examination

[61] June 8 Hearing Transcript, 134:7-10, 135:13-22.

[62] *Id.*, 139:3-11.

[63] *Id.*, 136:4-138:16.

[64] As noted above, Farallon did not acquire any of the Purchased Claims; rather, Farallon created a special purpose entity, Muck, to acquire the claims.

[65] June 8 Hearing Transcript, 136:4-16.

[66] *Id.*, 136:17-23.

[67] *Id.*, 137:6-138:7.

that the last two lines referred to a second telephone conversation he had with Linn in which Dondero offered 130 percent of cost for the claims and that Linn told him that the offer was not compelling, and he would not give a price at which he would sell.[68]

On cross-examination, Dondero acknowledged that, though he had testified that the handwritten notes were intended to be a written record of the important points from the telephone conversations he had with Patel and Linn, there was no mention in the notes of: (1) MGM: (2) or that Farallon was very optimistic about MGM; (3) the sharing of MNPI; (4) a *quid pro quo;* or (5) Seery's compensation, and that his last note—"Told Discovery coming"—was a reference to Dondero telling Linn (not Linn telling Dondero) that discovery was coming in response to Dondero's own supposition that Farallon must have traded on MNPI.[69] Cross-examination also revealed that Farallon never told Dondero that Seery gave them MNPI, and that Dondero only ***believed*** Seery ***must have*** given Farallon MNPI, because Farallon (Patel and Linn) had told him that the only reason Farallon bought their claims was because of their prior dealings with Seery, which Dondero took to mean that they had conducted no due diligence on their own prior to acquiring the claims. Dondero also testified that he did not have any personal knowledge as to how Seery's compensation package, as CEO of the Reorganized Debtor and Claimant Trustee, was determined because he was "not involved" in the setting of Seery's compensation pursuant to the Claimant Trust[70] and that he never discussed Seery's compensation with Farallon.[71]

As noted earlier, Dondero attempted to obtain discovery from the Claims Purchasers in a Texas state court pursuant to Rule 202 of the Texas Rules of Civil Procedure. The Texas state

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[68] *Id.*, 138:8-22.

[69] *Id.*, 190:14-191:25. Dondero testified that he told Linn that discovery "would be coming in the next few weeks" and noted that "this has been a couple years. . . . [w]e've been trying for two years to get . . . discovery in this."

[70] *Id.*, 200:13-201:1.

[71] *Id.*, 208:23-209:8.

court denied the First Rule 202 petition on June 1, 2022, after having considered the amended petition, the responses, the record, applicable authorities and having conducted a hearing on the petition on June 1, 2022.[72]

3. Dondero Unsuccessfully Seeks Discovery and to Have Various Agencies and Courts Outside of the Bankruptcy Court Acknowledge His Insider Trading Theories

Dondero acknowledged at the June 8 Hearing that the verified petition ("First Rule 202 Petition") he signed and filed on July 22, 2021, in the first Texas Rule 202 proceeding—just weeks after his telephone calls with Linn and Patel—was true and accurate. In it, he swore under oath as to what Linn told him in the telephone call concerning Farallon's purchase of the claims, and the only reason he gave for wanting discovery was that Linn told him Farallon bought the claims "sight unseen—relying entirely on Seery's advice solely because of their prior dealings."[73] Dondero acknowledged, as well, that his sworn statement that he filed in support of an amended verified Rule 202 petition filed in the same Texas Rule 202 proceeding, but nearly ten months later (in May 2022), described the same telephone conversation he had with Linn, and it did not mention MGM at all and did not say that Linn told him that Seery gave him MNPI; rather, the sworn statement stated only that "On a telephone call between Petitioner and Michael Lin[n], a representative of Farallon, Mr. Lin[n] informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Seery's say-so because they had made so much money in the past when Seery told them to purchase claims" and that Linn did not tell him that Seery gave them MNPI, but he concluded that Seery gave Farallon MNPI based on what Linn did tell him.[74]

[72] Highland Ex. 7.

[73] *Id.*, 193:8-194:16; Highland Ex. 3, *Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 21. The first Texas Rule 202 proceeding in which Dondero sought discovery regarding the Farallon acquisition of its claims was brought by Dondero, individually, in the 95th Judicial District, Dallas County, Texas.

[74] *Id.*, 195:11-197:17; Highland Ex. 4, *Amended Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 23.

Nine days later, Dondero filed a declaration in the same proceeding, in which he described the same call with Linn as follows:[75]

> Last year, I called Farallon's Michael Lin[n] about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin[n] of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Seery had testified in court, it made no sense to me that Mr. Lin[n] would think that the claims were worth more than what Seery testified under oath was the value of the bankruptcy claims.

Dondero further stated in his declaration that "I have an interest in ensuring that the claims purchased by [Farallon] are not used as a means to deprive the equity holders of their share of the funds," and that "[i]t has become obvious that despite the fact that the bankruptcy estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights. Accordingly, "I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee."[76] Dondero attached as Exhibit A to his declaration a letter from Douglas Draper ("Draper"), an attorney with the law firm of Heller, Draper & Horn, L.L.C. in New Orleans, to the office of the General Counsel, Executive Office for U.S. Trustees, dated October 5, 2021, in which Draper opens the letter by stating that "[t]he purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the [Creditors' Committee] in the bankruptcy of [Highland]," and later noted that he "became involved in Highland's bankruptcy through my representation of [Dugaboy], an irrevocable trust of which Dondero is the primary beneficiary."[77] Mr. Draper laid out the same allegations of insider claims trading, breach of

[75] Highland Ex. 5, ¶ 2.
[76] *Id.*, ¶¶ 3-4.
[77] *Id.*, Ex. A, 1-2.

fiduciary duties, and conspiracy that HMIT seeks to bring in the Proposed Complaint.[78] The U.S. Trustee's office took no action. Dondero made a second and third attempt to get the U.S. Trustee's office to conduct an investigation into the same allegations laid out in Draper's letter, this time in "follow-up" letters to the Office of the U.S. Trustee on November 3, 2021, and six months later, on May 11, 2022, through another lawyer, Davor Rukavina ("Rukavina"), in which Rukavina wrote "to provide additional information regarding the systemic abuses of bankruptcy process occasioned during the [Highland] bankruptcy."[79] Again, the U.S. Trustee's office took no action.

On February 15, 2023, Dondero filed yet another sworn statement about his alleged conversation with Linn, this time in support of a Verified Rule 202 Petition ***filed by HMIT*** ("Second Rule 202 Petition"), filed in a different Texas state court (Texas District Court, 191st Judicial District, Dallas County, Texas), following Dondero's unsuccessful attempts throughout 2021 and 2022 to obtain discovery in the First Rule 202 proceeding and based on the same allegations of misconduct by Seery and Farallon.[80] In this new sworn statement, Dondero describes for the first time the "call" he had with Linn as having been "phone calls" with Patel and Linn and ***mentions MGM*** and Farallon's alleged optimism about the ***expected sale of MGM***:[81]

> In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC ("Farallon"), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Seery because they had made significant profits when Seery told them to purchase other claims in the past. They also stated that they were particularly optimistic because of the expected sale of MGM.

[78] *Id.*, Ex. A, 6-11.

[79] HMIT Ex. 61.

[80] Highland Ex. 9.

[81] *Id.*, ¶ 4.

The Second Rule 202 Petition was also denied by the second Texas state court on March 8, 2023.[82]

HMIT, in an apparent attempt to provide support for its argument that the Proposed Claims are "colorable," stated in its Motion for Leave that "[t]he Court also should be aware that the Texas States [sic] Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely 'colorable.'"[83] But, two days before opposition briefing was due, on May 9, 2023, the TSSB issued a letter ("TSSB Letter") to Highland, informing it that "[t]he staff of the [TSSB] has completed its review of the complaint received by the Staff against [Highland]. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time."[84] HMIT's counsel (frankly, to the astonishment of the court) objected to the admission of the TSSB Letter at the June 8 Hearing "on the grounds of relevance, 403, hearsay, and authenticity . . . [a]nd I also . . . think it's important that the decision by a regulatory body has no bearing on this cause of action or the colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry."[85] The court overruled HMIT's objection to the relevance of this exhibit—considering, among other things, that HMIT, in its Motion for Leave, specifically mentioned the allegedly open TSSB "investigation" as relevant evidence the court "should be aware" of in making its determination of whether the Proposed Claims were "colorable."[86]

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[82] Highland Ex. 10.

[83] Motion for Leave, ¶ 37.

[84] *See* Highland Ex. 33.

[85] June 8 Hearing Transcript, 323:22-324:3.

[86] *Id.*, 324:4-328:2.

C. Claims Purchasers Purchase Claims and File Notices of Transfers of Claims

To be clear about the time line here, it was after confirmation of the Plan but prior to the Effective Date of the Plan, that the Claims Purchasers: (1) purchased several large unsecured claims that had been allowed following, and as part of, Rule 9019 settlements, each of which were approved by the bankruptcy court, after notice and hearing, prior to the confirmation hearing; and (2) filed notices of the transfers of those claims pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure. The noticing of the claims transfers began on April 16, 2021, with the notice of transfer of the claim held by Acis Capital Management to Muck, and ended on August 9, 2021, with the notices of transfers of the claims held by UBS Securities to Muck and Jessup:

Claimant(s)	**Date Filed/ Claim No.**	**Asserted Amount**	**Claim Settled/Allowed? If so, Amount**	**Date Filed/ Rule 3001 Notice Dkt. No.**
Acis Capital Management LP and Acis Capital Management, GP LLC (together, "Acis")	12/31/2019 Claim No. 23	$23,000,000	Yes[87] $23,000,000	4/16/2021 Bankr. Dkt. No. 2215 (Muck)
Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee")	4/3/2020 Claim No. 72	$190,824,557	Yes[88] $137,696,610	4/30/2021 Bankr. Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (the "HarbourVest Parties")	4/8/2020 Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes[89] $80,000,000 in aggregate ($45,000,000 General Unsecured Claim, and $35,000,000 subordinated claim)	4/30/2021 Bankr. Dkt. No. 2263 (Muck)

[87] Bankr. Dkt. No. 1302. The Debtor's settlement with Acis was approved over the objection of Dondero. Bankr. Dkt. No. 1121.

[88] Bankr. Dkt. No. 1273.

[89] Bankr. Dkt. No. 1788. The Debtor's settlement with the HarbourVest Parties was approved over the objections of Dondero, Bankr. Dkt. No. 1697, and Dugaboy and the Get Good Trust. Bankr. Dkt. No. 1706.

UBS Securities LLC, UBS AG, London Branch (the "UBS Parties")	6/26/2020 Claim Nos. 190, 191	$1,039,957,799.40	Yes[90] $125,000,000 in aggregate ($65,000,000 General	8/9/2021 Bankr. Dkt. No. 2698 (Muck) and Bankr. Dkt. No. 2697 (Jessup)

HMIT insists that it "made no sense" for the Claims Purchasers to buy the Purchased Claims because "the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk," and "their investment was projected to yield a small return with virtually no margin for error."[91] Dondero testified that it was ***his*** view that there was insufficient information in the public to justify the claims purchases.[92] But, HMIT's arguments here are contradicted by the information that was publicly available to Farallon and Stonehill at the time of their purchases and by HMIT's own allegations. In advance of Plan confirmation, Highland projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. In the Proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims.[93] Taking into account the face amount of the allowed claims, the Claims Purchasers' projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value[94]	Purchaser	Purchase Price	Projected Profit
Redeemer	$137.0	$0.0	$97.71	Stonehill	$78.0	$19.71
Acis	$23.0	$0.0	$16.4	Farallon	$8.0	$8.40

[90] Bankr. Dkt. No. 2389. The Debtor's settlement with the UBS Parties was approved over the objections of Dondero, Dkt. No. 2295, and Dugaboy and the Get Good Trust. Bankr. Dkt. Nos. 2268, 2293.

[91] Proposed Complaint, ¶ 3.

[92] June 8 Hearing Transcript, 187:3-7 ("Q: And it's your testimony that there wasn't sufficient information in the public for them to buy – this is your view – that there wasn't sufficient information in the public to justify their purchases. Is that your view? A: Correct.).

[93] *Id.*, ¶ 42.

[94] "Ascribed Value" is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

HarbourVest	$45.0	$35.0	$32.09	Farallon	$27.0	$5.09
UBS	$65.0	$60.0	$46.39	Stonehill & Farallon	$50.0	($3.61)

As HMIT acknowledges, by the time Dondero spoke with Farallon in the "late spring" of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest.[95] Based on an aggregate purchase price of $113 million for these three claims, the Claims Purchasers would have expected to net over $33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections, because they also purchased the Class 9 claims and would therefore capture any upside. In this context, HMIT's and Dondero's assertions that it did not "make any sense" for the Claims Purchasers to purchase their claims when they did does not pass muster—given the publicly available information about potential recoveries under the Plan. Dondero even acknowledged, on cross-examination, that he was prepared to pay ***30 percent more*** than Farallon had paid, even though he did not think there was sufficient public information available to justify Farallon's purchase of the claims.[96] Dondero essentially testified that he wanted to purchase Farallon's claims because he wanted to be in a position of control to force a settlement or resolution of the bankruptcy case, post-confirmation, under terms acceptable to him. He did not want to try to settle by negotiating with Farallon and Stonehill ***as creditors***, but instead he wanted to purchase the claims because "if we owned all the claims, it would settle the case."[97]

[95] *See* Complaint, ¶ 41 n.12. The UBS claims were not acquired until August 2021, long after the alleged "*quid pro quo*" was supposedly agreed upon and the MGM-Amazon deal was announced in the press in late May 2021. *See*, Highland Ex. 34, *Amazon's $8.45 Billion Deal for MGM is Historic But Feels Mundane* (dated May 26, 2021).

[96] June 8 Hearing Transcript, 187:8-11.

[97] *Id.*, 187:12-189:10.

D. Fifth Circuit's Approval of the Gatekeeper Provision in Plan, Recognition of Res Judicata Effect of the Prior Gatekeeper Orders, and the Bankruptcy Court's Order Approving Highland's Motion to Conform Plan

Harkening back to February 22, 2021, after a robust confirmation hearing, this court entered its order confirming the Plan, over the objections of Dondero and Dondero-Related Parties, specifically questioning the good faith of their objections. The court found, after noting "the remoteness of their economic interests" that "[it] has good reason to believe that [the Dondero Parties] are not objecting to protect economic interests they have in the Debtor but to be disruptors. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan."[94] The Plan became effective on August 11, 2021.

Of relevance to the Motion for Leave, the confirmed Plan included certain exculpations, releases, and injunctions designed to protect the Debtor and other bankruptcy participants from bad-faith litigation. These participants included: Highland's employees (with certain exceptions); Seery as Highland's CEO and CRO; Strand (after the appointment of the Independent Directors); the Independent Directors; the successor entities; the CTOB and its members; the Committee and its members; professionals retained in the case; and all "Related Persons." The injunction provisions contained a Gatekeeper Provision which is similar to the gatekeeper provisions in the prior Gatekeeper Orders in that it provided that the bankruptcy court will act as a "gatekeeper" to screen and prevent bad-faith litigation against the Protected Parties. The Gatekeeper Provision in the Plan states, in pertinent part:[98]

> No Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents ***a colorable claim of any kind***, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically

[98] Plan, 50-51 (emphasis added).

> authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

The Plan defines Protected Parties as,

> collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the [CTOB] (in their official capacities), (xiii) [HCMLP GP LLC], (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); [but excluding Dondero and Okada and various entities including HMIT and Dugaboy].

The court notes that the Gatekeeper Provision in the Plan provides protection to a broader number of persons than the persons protected under the January 2020 Order (addressing the Independent Directors and their agents and advisors) and the July 2020 Order (addressing Seery in his role as CEO and CRO of the Debtor). But, at the same time, it is less restrictive than the gatekeeping provisions under the Gatekeeper Orders, in that the gatekeeping provisions in the prior orders shield the protected parties from any claim that is not both "colorable" ***and*** a claim for "willful misconduct or gross negligence," effectively providing the protected parties under the prior orders with a limited immunity from claims of simple negligence or breach of contract that do not rise to the level of "willful misconduct or gross negligence," whereas the Gatekeeping Provision under the Plan does not act as a release or exculpation of the Protected Parties in any way because it does not prohibit any party from bringing ***any kind of claim*** against a Protected Party, provided the proposed claimant first obtains a finding in the bankruptcy court that its proposed claims are "colorable."[99]

[99] It should be noted that--as discussed further below--there are, separately in the Plan, exculpations as to a smaller universe of persons--*e.g.,* the Debtor, the Committee and its members, and the Independent Directors.

Dondero and some of the entities under his control appealed[100] the Confirmation Order directly to the Fifth Circuit, arguing, among other issues, that the Plan's exculpation, release, and injunction provisions, including the Gatekeeper Provision (collectively, the "Protection Provisions") impermissibly provide certain non-debtor bankruptcy participants with a discharge, purportedly in contravention of the provisions of Bankruptcy Code § 524(e)'s statutory bar on non-debtor discharges. As noted above, the Fifth Circuit, "affirm[ed] the confirmation order in large part" and "reverse[d] ***only insofar as the plan exculpates*** certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties ***from the plan's exculpation***, and affirm[ed] on all remaining grounds."[101] The Fifth Circuit specifically found the "injunction and gatekeeping provisions [to be] sound" and found that it was only "the ***exculpation*** of certain non-debtors" that "exceed[ed] the bankruptcy court's authority," agreeing with the bankruptcy court's conclusions that the Protection Provisions were legal, necessary under the circumstances, and in the best interest of all parties" in part, and only disagreeing to the extent that the ***exculpation*** provision improperly extended to certain bankruptcy participants other than Highland, the Committee and its members, and the Independent Directors and "revers[ing] and strik[ing] the few unlawful parts

[100] On appeal, the appellant funds ("Funds"), whom this court found to be "owned and/or controlled" by Dondero despite their purported independence, also asked the Fifth Circuit to vacate this court's factual finding "because it threatens the Funds' compliance with federal law and damages their reputations and values" and because "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him." *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th at 434. Applying the "clear error" standard of review, the Fifth Circuit "le[ft] the bankruptcy court's factual finding undisturbed" because "nothing in this record leaves us with a firm and definite conviction that the bankruptcy court made a mistake in finding that the Funds are 'owned and/or controlled by [Dondero]." *Id.* at 434-35.

[101] *See supra* note 4. The Fifth Circuit replaced its initial opinion with its final opinion a few days after certain appellants had filed a short (four-and-one-half pages) motion for rehearing (the "Motion for Rehearing") on September 2, 2022. The movants had asked the Fifth Circuit to "narrowly amend the [initial] Opinion in order to confirm the Court's holding that the impermissibly exculpated parties are similarly struck from the protections of the injunction and gatekeeper provisions of the plan (in other words, that such parties cannot constitute 'Protected Parties')." In the final Fifth Circuit opinion, same as the initial Fifth Circuit opinion, the Fifth Circuit stated that, with regard to the Confirmation Order, the panel would "reverse only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strike those few parties from the plan's exculpation, and affirm on all remaining grounds." *Highland Capital*, 48 F.4th at 424. No findings, discussion, or rulings regarding the injunction and gatekeeper provisions that were in the initial Fifth Circuit opinion were disturbed.

of the Plan's ***exculpation provision***."[102] The Fifth Circuit then remanded to the Bankruptcy Court "for further proceedings in accordance with the opinion."[103]

In the course of analyzing the Protection Provisions under the Plan, the Fifth Circuit noted that the protection provisions in the January and July 2020 Orders appointing the Independent Directors and Seery as CEO and CRO of Highland were *res judicata* and that "*those* orders have the effect of exculpating the Independent Directors and Seery in his executive capacities" such that "[d]espite removal from the exculpation provision in the confirmation order, the Independent Directors' agents, advisors, and employees, as well as Seery in his official capacities are all exculpated to the extent provided in the January and July 2020 Orders."[104]

The Reorganized Debtor filed a motion in the bankruptcy court to conform the plan to the Fifth Circuit's mandate, proposing that only one change was needed to make the Plan compliant with the Fifth Circuit's ruling: narrow the defined term for "Exculpated Parties" to read as follows:

> "Exculpated Parties" means, collectively, (i) the Debtor, (ii) the Independent Directors, (iii) the Committee, and (iv) members of the Committee (in their official capacities).

The Reorganized Debtor proposed that this one simple revision of this defined term removed the exculpations deemed by the Fifth Circuit to violate section 524(e) of the Bankruptcy Code, and that no other changes would be required to conform the Plan and Confirmation Order to the Fifth Circuit's mandate. Some of the Dondero-related entities objected to the motion to conform, arguing that the Fifth Circuit's ruling required more surgery on the Plan than simply narrowing the defined term "Exculpated Parties." On February 27, 2023, this court entered its order granting

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[102] *Id.* at 435.

[103] *Id.* at 440. The Fifth Circuit's docket reflects that it issued its Judgment and mandate on September 12, 2022.

[104] *Highland Capital*, 48 F.4th at 438 n.15. The Fifth Circuit stated, "To the extent Appellants seek to roll back the protections in the bankruptcy court's January 2020 and July 2020 orders (which is not clear from their briefing), such a collateral attack is precluded." *Id.*

Highland's motion to conform the Plan, ordering that one change be made to the Plan – revising the definition of "Exculpated Parties" – and no more.[105] The objecting parties' direct appeal of this order has been certified to the Fifth Circuit and is one of the numerous currently active appeals by Dondero-related parties pending in the Fifth Circuit.

E. HMIT's Motion for Leave

HMIT filed its emergency Motion for Leave on March 28, 2023, which, with attachments, as first filed, was 387 pages in length, including an initial proposed complaint ("Initial Proposed Complaint") and two sworn declarations of Dondero that were attached as "objective evidence" in "support[ ]" of the Motion for Leave,[106] and with it, an application for an emergency setting on the hearing on the Motion to Leave. On April 23, 2023, HMIT filed a pleading entitled a "supplement" to its Motion to Leave ("Supplement"),[107] to which it attached a revised proposed verified complaint ("Proposed Complaint")[108] as Exhibit 1-A to the Motion for Leave and stated that "[t]he Supplement is not intended to amend or supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action."[109] The HMIT Motion for Leave was later amended to eliminate the Dondero Declarations and references to the same (but not the underlying allegations that were supposedly supported by the Dondero Declarations).[110]

[105] Bankr. Dkt. No. 3672.

[106] Bankr. Dkt. No. 3699.

[107] Bankr. Dkt. No. 3760.

[108] *See supra* note 5.

[109] Supplement ¶ 1.

[110] Bankr. Dkt. Nos. 3815 and 3816. Both of these filings had the Initial Proposed Complaint attached as Exhibit 1 to the Motion for Leave.

As earlier noted, HMIT desires leave to sue the Proposed Defendants regarding ***the post-confirmation, pre-Effective Date purchase of allowed unsecured claims***. The Proposed Defendants would be:

> **Seery,** who was a stranger to Highland until approximately four months following the Petition Date when he was brought in as one of the three Independent Directors, and now serves as the CEO of the Reorganized Debtor and the Trustee of the Claimant Trust (and also was previously Highland's CRO during the case, then CEO, and, also, an Independent Board Member of Highland's general partner during the Highland case). Seery is best understood as the man who took Dondero's place running Highland—per the request of the Committee.
>
> **Claims Purchasers,** who were strangers to Highland until the end of the bankruptcy case. They are identified as Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the "Claims Purchasers"). The Claims Purchasers purchased $240 million face value of already-allowed unsecured claims post-confirmation and pre-Effective Date in the spring of 2021 and another $125 million face value of already-allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk's docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Committee during the Highland bankruptcy case).
>
> **John Doe Defendants Nos. 1-10**, which are described to be "currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue."
>
> **Highland,** as a nominal defendant. HMIT added Highland as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.
>
> **Claimant Trust**, as a nominal defendant. HMIT added the Claimant Trust as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

The proposed plaintiffs would be:

> **HMIT,** which, again, was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited partnership interests). HMIT is the holder of a Class 10 interest under the Plan, pursuant to which HMIT's limited partnership interest in Highland was extinguished as of the Effective Date in exchange for a pro rata share of a contingent interest in the Claimant Trust.

Highland, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

Claimant Trust, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Claimant Trust.

In the Proposed Complaint, HMIT asserts the following six counts: Count I (against Seery) for breach of fiduciary duties; Count II (against the Claims Purchasers and John Doe Defendants) for knowing participation in breach of fiduciary duties; Count III (against all Proposed Defendants) for conspiracy; Count IV (against Muck and Jessup) for equitable disallowance of their claims; Count V (against all Proposed Defendants) for unjust enrichment and constructive trust; and Count VI (against all Proposed Defendants) for declaratory relief.[111] The gist of the Proposed Complaint is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that "wrongful conduct occurred" and "improper trades" were made.[112] HMIT believes the Claims Purchasers paid around $160 million for the $365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland's Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. And, of course, Dondero purports to have concluded from the three phone conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Seery must have given these Claims Purchasers MNPI regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Seery must have shared

[111] In the Initial Proposed Complaint, HMIT proposed to bring claims against the various Proposed Defendants in seven counts, including a count for fraud by misrepresentation and material nondisclosure against all Proposed Defendants. In the Proposed Complaint, HMIT abandons its claim for fraud by misrepresentation and material nondisclosure.

[112] Motion for Leave, 7.

MNPI regarding the likely imminent sale of MGM, in which Highland had, directly and indirectly, substantial holdings. As noted earlier, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[113] In summary, while the Proposed Complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor's estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Seery, and are now happily approving Seery's allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages in the form of equitable disallowance of the Claims Purchasers' claims and disgorgement of distributions on account of those claims, the imposition of a constructive trust over all disgorged funds, and declaratory relief.

HMIT claims that, in seeking to file the Proposed Complaint, it is seeking to protect the rights and interests of the Reorganized Debtor, the Claimant Trust, and "innocent stakeholders" who were allegedly injured by Seery's and the Claims Purchasers' alleged conspiratorial and

[113] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid. Credible testimony from Seery at the June 8 Hearing revealed that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public).

fraudulent scheme to line Seery's pockets with excessive compensation for his role as Claimant Trustee. In its Motion for Leave, HMIT states that "[t]he attached Adversary Proceeding alleges claims which are substantially more than 'colorable' based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud, including a fraud upon innocent stakeholders, as well as breaches of fiduciary duties and knowing participation in (or aiding or abetting) breaches of fiduciary duty."[114]

F. Is HMIT Really Dondero by Another Name?

The Proposed Defendants argue that HMIT's Motion for Leave is nothing more than a continuation of the harassing and bad-faith litigation by Dondero and his related entities that the Gatekeeper Provisions were intended to prevent and, thus, this is one of multiple reasons that the Motion for Leave should be denied.

To be clear, HMIT asserts that it is controlled by Mark Patrick ("Patrick"), who has been HMIT's administrator since August 2022. Patrick asserts that he is not influenced or controlled by Dondero, in general, and specifically not in its efforts to pursue the Proposed Claims against Seery and the Claims Purchasers. However, the testimony elicited at the June 8 Hearing—the hearing at which HMIT had the burden of showing the court that its Proposed Claims were "colorable" such that it should be allowed to pursue them through the filing of the Proposed Complaint—paints a different picture. Somewhat tellingly, HMIT chose not to call Patrick—allegedly HMIT's only representative and control person—as a witness in support of its Motion for Leave. Rather, Dondero was HMIT's first witness called in support of its motion, and the first

[114] *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 3. HMIT notes, in a footnote 6, that "Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement."

questions on direct from HMIT's counsel were aimed at establishing that Dondero was not behind the filing of the Motion for Leave and the pursuit of the Proposed Claims.[115] Dondero testified that he did not (i) "have any current official position" with HMIT, (ii) "attempt to exercise [control] on the business affairs of [HMIT]," (iii) "have any official legal relationship with [HMIT] where [he] can attempt to exercise either direct or indirect control over [HMIT]," or (iv) "participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan."[116] After HMIT rested, Highland and the Claimant Trust called Patrick as a witness, and he testified that he was the administrator of HMIT, that HMIT does not have any employees, operations, or revenues, and, when asked if HMIT owned any assets, Patrick testified, with not a great deal of certainty, that "it's my understanding it has a contingent beneficiary interest in the Claimants [sic] Trust" and that is the only asset HMIT has.[117] Patrick testified that HMIT did not owe any money to Dondero personally, but acknowledged that in 2015, HMIT had issued a secured promissory note in favor of Dondero's family trust, Dugaboy, in the amount of approximately $62.6 million (the "Dugaboy Note") in exchange for Dugaboy transferring a portion of its limited partner interests in Highland to HMIT; the Dugaboy Note was secured in part by the Highland limited partnership interests purchased from Dugaboy.[118] Patrick admitted that, if HMIT's Class 10 interest has no value, HMIT would have no ability to pay the Dugaboy Note.[119] He further testified that neither he nor any representative of HMIT had ever spoken with any representative of Farallon or Stonehill, that he had no personal knowledge about any *quid pro quo*, the amount of due diligence Farallon or Stonehill conducted prior to buying their claims, or the terms of

[115] *See* June 8 Hearing Transcript, 113:10-25.

[116] *Id.*

[117] June 8 Hearing Transcript, 307:7-308:2.

[118] *Id.*, 303:11-305:1; Highland Ex. 51, HMIT's $62,657,647.27 *Secured Promissory Note* dated December 24, 2015, in favor of Dugaboy.

[119] *Id.*, 308:3-16.

Seery's compensation package (until the terms were disclosed to them in opposition to the Motion for Leave).[120] Patrick admitted that Dugaboy was paying HMIT's attorneys' fees pursuant to a settlement agreement between HMIT and Dugaboy.[121]

On cross-examination by HMIT's counsel, Patrick further testified that HMIT has not filed any litigation, as plaintiff, other than its efforts to be a plaintiff in the Motion for Leave and its action as a petitioner in the Texas Rule 202 proceeding filed earlier in 2023 in the Texas state court.[122] HMIT's counsel argued that the point of this questioning was that "they're just trying to draw Dondero into this and – this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed – attempting to file this action and a Rule 202 proceeding.[123] But, Dondero and HMIT's counsel referred during the June 8 Hearing to the First Rule 202 Petition (where Dondero was the petitioner) and the Second Rule 202 Petition (where HMIT was the petitioner) as "our" Rule 202 petitions, and also to the numerous attempts at getting the discovery (that Dondero had warned Linn was coming) in the collective. For example, in objecting to the admission of Highland's Exhibit 10 – the Texas state court order denying and dismissing the Second Rule 202 Petition – on the basis of relevance, HMIT's counsel referred to the order as "an order denying ***our second"*** Rule 202 Petition.[124] And, Dondero testified that his warning to Linn in May 2021 that "discovery was coming" was "my response to I knew they had traded on material nonpublic information" and that "I thought it would be a lot easier to get

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[120] *Id.*, 308:18-312:12. This testimony from Patrick came after HMIT's counsel objection to counsel's line of questioning regarding Patrick's personal knowledge of the facts supporting the allegations in the Proposed Complaint on the basis that he was invading the attorney work product privilege, which was overruled by this court; HMIT's counsel argued (311:4-19) that the line of questioning was an "invasion of attorney work product . . . [b]ecause they might – he would have knowledge from the efforts and investigation through attorneys in the case."

[121] *Id.*, 312:24-313:18.

[122] *Id.*, 315:3-9.

[123] *Id.*, 316:6-11.

[124] *Id.*, 58:11-13. The court overruled HMIT's relevance objection and admitted Highland's Exhibit 10 into evidence. *Id.*, 58:14-15.

discovery on a situation like this than it has been for the last two years" and that "***we've*** been trying for two years to get . . . discovery."[125]

Dondero's use of an entity over which he exerts influence and control to pursue his own agenda in the bankruptcy case is not new. Rather, this has been part of Dondero's *modus operandi* since the "nasty breakup" between Dondero and Highland that culminated with Dondero's ouster in October 2020, whereby Dondero, after not getting his way in the bankruptcy court, continued to lob objections and create obstacles to Highland's implementation of the Plan through entities he owns or controls. As noted above, the Fifth Circuit specifically upheld this court's finding in the Confirmation Order that Dondero owned or controlled the various entities that had objected to confirmation of the Plan and appealed the Confirmation Order, where the Dondero-related appellants made similar protestations that they are not owned or controlled by Dondero and asked the Fifth Circuit to vacate this court's factual finding because, among other reasons, "[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him."[126] Based on the totality of the evidence in this proceeding, the court finds that, contrary to the protestations of HMIT's counsel and Patrick otherwise, Dondero is the driving force behind HMIT's Motion for Leave and the Proposed Complaint. The Motion for Leave is just one more attempt by Dondero to press his conspiracy theory that he has pressed for over two years now, unsuccessfully, in Texas state court through Rule 202 proceedings, with the Texas State Securities Board, and with the United States Trustee's office.

[125] *Id.*, 191:5-25.

[126] *Highland Capital*, 48 F.4th at 434-435.

G. Opposition to Motion for Leave: Arguing No Standing and No "Colorable" Claims

Highland, the Claimant Trust, and Seery (together, the "Highland Parties") filed a joint opposition ("Joint Opposition") to HMIT's Motion for Leave on May 11, 2023.[127] The Claims Purchasers filed a separate objection ("Claims Purchasers' Objection") to the Motion for Leave on May 11, 2023, as well.[128] In the Joint Opposition, the Highland Parties urge the court to deny HMIT leave to pursue the Proposed Claims because, as a threshold matter, HMIT does not have standing to bring them, directly or derivatively against the Proposed Defendants. They argue, in the alternative, that the Motion for Leave should be denied even if HMIT had standing to pursue the Proposed Claims because none of the Proposed Claims are "colorable" claims as that term is used in the Gatekeeper Provision of the Plan (and Gatekeeper Orders).[129]

The Claims Purchasers likewise argue that HMIT lacks standing to complain about claims trading in the bankruptcy which occurred between sophisticated Claims Purchasers and sophisticated sellers ("Claims Sellers"), represented by skilled bankruptcy and transactional counsel. Moreover, they argue HMIT cannot show that it or the Reorganized Debtor or the Claimant Trust were injured by the claims trading at issue because the Purchased Claims had already been adjudicated as allowed claims in the bankruptcy case—thus, distributions under the Plan on account of the Purchased Claims remain the same, the only difference being who holds the claims. Moreover, even if HMIT could succeed in equitably subordinating the validly transferred ***allowed*** claims, HMIT would still be in the same position it is today: the holder of a

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[127] Bankr. Dkt. Nos. 3783. Highland, the Claimant Trust, and Seery also filed on May 11 a *Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding* ("Morris Declaration") that attached 44 Exhibits in support of the Joint Opposition. Bankr. Dkt. No. 3784.

[128] Bankr. Dkt. No. 3780.

[129] *See* Joint Opposition ¶ 139 ("Because HMIT lacks standing, this Court need not reach the merits of HMIT's proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion.").

contingent, speculative Class 10 interest that would only be paid after payment, in full, with interest, of all creditors under the Plan. The Claims Purchasers argue in the alternative that the Proposed Claims are not "colorable."

Finally, the Proposed Defendants argue that the standard of review for assessing whether the Proposed Claims are "colorable" (as such term is used in the Gatekeeper Provision and Gatekeeping Orders) is a standard that is a higher than the "plausibility" standard applied to Rule 12(b)(6). They argue that HMIT should be required to meet a higher bar with respect to colorability that includes making a *prima facie* showing that the Proposed Claims have merit (and/or are not without foundation) which requires HMIT to do more than meet the liberal notice-pleading standards.

H. HMIT's Reply to the Proposed Defendants' Opposition to the Motion for Leave

In its reply brief ("Reply"), filed by HMIT on May 18, 2023,[130] it argues that it has constitutional standing as an "aggrieved party" to bring the Proposed Claims on behalf of itself.[131] HMIT also argues that it has standing under Delaware Trust law to bring a derivative action on behalf of the Claimant Trust and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to bring the claims.[132] Finally, HMIT maintains that the standard of review that the bankruptcy court should apply in assessing the "colorability" of the Proposed Claims is no greater than the standard of review applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), which would require the bankruptcy court to look only to the "four corners" of the Proposed Complaint

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[130] Bankr. Dkt. No. 3785.

[131] *See* Reply ¶ 7.

[132] See, Reply ¶ 23 n.5, where HMIT argues "The nature of this injury, in addition to Seery's influence over the Claimant Trust, and the lack of prior action by the Claimant Trust to pursue the claims HMIT seeks to pursue derivatively, among other things, demonstrate that HMIT is not only a proper party to assert its derivative claims – but the best party to do so."

and "not weigh extraneous evidence,"[133] take all allegations as true, and view all allegations and inferences in a light most favorable to HMIT. As discussed in greater length below, HMIT argues that, under this standard, the bankruptcy court should not consider evidence in making its determination as to whether the Proposed Complaint presents "colorable" claims.

I. Litigation within the Litigation: The Pre- June 8 Hearing Skirmishes

Suffice it to say there was significant activity before the Motion for Leave actually was presented at the June 8 hearing. HMIT sought an emergency hearing on its Motion for Leave (wanting a hearing on three days' notice). When the bankruptcy court denied an emergency hearing, HMIT unsuccessfully pursued an interlocutory appeal of the denial of an emergency hearing to the district court. HMIT then petitioned for a writ of mandamus at the Fifth Circuit regarding the emergency hearing denial, which was denied by the Fifth Circuit on April 12, 2023.

Next, there were multiple pleadings and hearings regarding ***what kind of hearing*** the bankruptcy court should or should not hold on the Motion for Leave—particularly focusing on whether or not it would be an evidentiary hearing.[134] The resolution of this issue turned on what standard of review the court should apply in exercising its gatekeeping function and determining the colorability of the Proposed Claims. HMIT (although it had submitted two declarations of Dondero with its original Motion for Leave and approximately 350 pages of total evidentiary support) was adamant that there should be no evidence presented at the hearing on the Motion for Leave, arguing that the standard for review should be the plausibility standard under Rule 12(b)(6)

[133] *See* Reply ¶ 47.

[134] Highland, joined by Seery and the Claims Purchasers, had filed a motion asking the bankruptcy court to set a briefing schedule on the Motion for Leave and to schedule a status conference, indicating that Highland's proposed timetable for same was opposed by HMIT. HMIT subsequently filed a response unopposed to a briefing schedule and status conference, but, before the status conference, HMIT filed a brief, stating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the bankruptcy court did not need evidence to exercise its gatekeeping function and determine if HMIT has a "colorable" claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

motions to dismiss such that "the threshold inquiry is very, very low. Evidence is not allowed. . . . [S]imilar to a 12(b)(6) inquiry, [the court] is limited to the four corners of the principal pleading – in this case, the complaint, or now the revised complaint."[135] Counsel for the Proposed Defendants argued that the standard of review for colorability here, in the specific context of the court exercising its gatekeeping function under the Plan, is more akin to the standards applied under the Supreme Court's *Barton Doctrine*[136] pursuant to which that the bankruptcy court must apply a higher standard than the 12(b)(6) standard, including the consideration of evidence at the hearing on the motion for leave; if the standard of review presents no greater hurdle to the movant than the 12(b)(6) standard applied to every plaintiff in every case, then the gatekeeping provisions mean nothing and do nothing to protect the parties from the harassing, bad-faith litigation they were put in place to prevent.[137] On May 22, 2023, after receipt of post-hearing briefing on the issue, the court entered an order stating that "the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave" and "[t]herefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing [on the Motion to Leave] if they so choose."

Two days later, HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing, seeking expedited depositions of corporate

[135] Transcript of April 24, 2023 Status Conference, Bankr. Dkt. No. 3765 ("April 24 Transcript"), 14:6-11.

[136] The *Barton Doctrine* was established in the 19th century Supreme Court case of *Barton v. Barbour*, 104 U.S. 126 (1881), and states that a party wishing to sue a court-appointed trustee or receiver must first obtain leave of the appointing court by making a *prima facie* case that the claim it wishes to bring is not without foundation.

[137] *See* April 24 Transcript, 36:24-37:4 ("[W]e're exactly today where the Court had predicted in entering [the Confirmation Order], that the costs and distraction of this litigation are substantial. And if all we're doing is replicating a 12(b)(6) hearing on a motion for leave, we're actually not doing anything to reduce, as the Court made clear, the burdens, distractions, of litigation."); 37:5-13 ("The Fifth Circuit likewise cited *Barton* in its order affirming the confirmation order. Specifically, it also explained that the provisions, these gatekeeper provisions requiring advance approval were meant to 'screen and prevent bad-faith litigation.' Well that – if that means only what the Plaintiff[ ] say[s] it does, then it really doesn't do anything at all to screen. There's no gatekeeping because their version of what that means is always policed under 12(b)(6) standards.").

representatives of the Claims Purchasers and of Seery and production of documents pursuant to deposition notices and subpoenas duces tecum that HMIT had attached to the motion. On May 26, 2023, this court held yet another status conference. Following the status conference, the court granted in part and denied in part HMIT's request for expedited discovery by ordering only Seery and Dondero to be made available for depositions prior to the June 8 Hearing. The court reached what seemed like appropriate middle ground by allowing the deposition of Seery and allowing the other parties to depose Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Dondero had been seeking discovery relating to the very claims trades that are the subject of the Revised Proposed Complaint from the Claims Purchasers in Texas state court "Rule 202" proceedings for approximately two years, where their attempts were rebuffed.

Approximately 60 hours before the June 8 Hearing, HMIT filed its Witness and Exhibit List disclosing for the first time two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony). Highland, the Claimant Trust, and Seery filed a joint motion to exclude the expert testimony and documents ("Motion to Exclude"), which the court ultimately granted in a separate order.

During the full-day June 8 Hearing on the Motion to Leave, the court admitted over 50 HMIT exhibits and over 30 Highland/Claimant Trust exhibits. The court heard testimony from HMIT's witnesses Dondero and Seery (as an adverse witness) and from the Highland Parties' witness Mark Patrick, the administrator of HMIT since August 2022 (as an adverse witness). The bankruptcy court allowed HMIT to make a running objection to all evidence—as it continued to argue that evidence was not appropriate.

III. LEGAL ANALYSIS

In determining whether HMIT should be granted leave, pursuant to the Gatekeeper Provision of the Plan and the court's prior Gatekeeper Orders, to pursue the Proposed Claims, the court must address the issue of whether HMIT would have ***standing*** to bring the Proposed Claims in the first instance. If so, the next question is whether the Proposed Claims are "***colorable***." But prior to getting into the weeds on ***standing*** and "***colorability,***" some general discussion regarding the topic of claims trading in the bankruptcy world seems appropriate, given that HMIT's Proposed Claims are based, in large part, on allegations of ***improper*** claims trading.

A. Claims Trading in the Context of Bankruptcy Cases—Can It Be Tortious or Otherwise Actionable?

As noted, at the crux of HMIT's desired lawsuit is what this court will refer to as "claims trading activity" that occurred shortly after the Plan was confirmed, but before the Plan went effective. HMIT believes that the claims trading activity gave rise to various torts: breach of fiduciary duty on the part of Seery; knowing participation in breach of fiduciary duty by the other Proposed Defendants; and conspiracy by all Defendants. HMIT also believes that the following remedies should be imposed: equitable disallowance of the Purchased Claims; disgorgement of the alleged profits the Claims Purchasers made on their purchases; and disgorgement of all Seery's compensation received since the beginning of his "collusion" with the other Defendants. Without a doubt, the Motion for Leave and Proposed Complaint revolve almost entirely around the claims trading activity.

This begs the question: ***When (or under what circumstances) might claims trading activity during a bankruptcy case give rise to a cause of action that either the bankruptcy estate or an economic stakeholder in the case might have standing to bring?*** Here, the claims trading

wasn't even "during a bankruptcy case" really—it was post-confirmation and pre-effective date, and it happened to be: (a) after mediation of the claims, (b) after Rule 9019 settlement motions, (c) after objections by Dondero and certain of his family trusts were lodged, (d) after evidentiary hearings, and (e) after orders were ultimately entered ***allowing*** the claims (and in most cases, such orders were appealed). The further crux of HMIT's desired lawsuit is that Seery allegedly "wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends" by sharing ***material non-public information*** to them regarding the potential value of the claims (i.e., the potential value of the bankruptcy estate), and this is what made the claims trading activity particularly pernicious. The alleged sharing of MNPI allegedly caused the Claims Purchasers to purchase their claims without doing any due diligence and with knowledge that the claims would be worth much more than the Plan's "pessimistic" projections might have suggested, and also allowed Seery to plant friendly allies into the creditor constituency (and on the post-confirmation CTOB) that would "rubber stamp" his generous compensation. This is all referred to as "not arm's-length" and "collusive." Notably, the MNPI mostly pertained to a likely future acquisition of MGM by Amazon (which transaction, indeed, occurred in 2022, after being publicly announced in Spring of 2021); as noted earlier, Highland owned, directly and indirectly, common stock in MGM. Also notably, there had been rumors and media attention regarding a potential sale of MGM for many months.[138] In summary, to be clear, HMIT's desired lawsuit is laced with a theme of "insider trading"—although this isn't a situation of securities trading *per se* (i.e., the unsecured Purchased Claims were not securities), and, as noted earlier, the Texas State Securities Board has not seen fit to investigate the claims trading activity.

So, preliminarily, is claims trading in bankruptcy sinister *per se*? The answer is no.

[138] *E.g.,* Benjamin Mullin, *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale,* THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.).

The activity of investing in distressed debt (which frequently occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and, indeed, has been so for a very long time. As noted by one scholar:

> The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

Adam J. Levitin, *Bankruptcy* Markets*: Making Sense of Claims Trading*, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010) (hereinafter "*Bankruptcy Markets*").[139]

As a pure policy matter, some practitioners have bemoaned this claims trading phenomenon, suggesting that "distressed debt traders may sacrifice the long-term viability of a debtor for the ability to realize substantial and quick returns on their investments."[140] Others suggest that claims trading in bankruptcy is beneficial, in that it allows creditors of a debtor an early exit from a potentially long bankruptcy case, enabling them to save expense and administrative hassles, realize immediate liquidity on their claims (albeit discounted), and may

[139] *See also* Aaron Hammer & Michael Brandess, *Claims Trading: The Wild West of Chapter 11s*, AM. BANKR. INST. JOURNAL 62 (Jul./Aug. 2010); Chaim Fortgang & Thomas Mayer, *Trading Claims and Taking Control of Corporations in Chapter 11,* 12 CARDOZO L. REV. 1, 25 (1990) (noting that "the first recorded instance of American fiduciaries trading claims against insolvent debtors predates all federal bankruptcy laws and goes back to 1790" when the original 13 colonies were insolvent, owing tremendous amounts of debt to various parties in connection with the Revolutionary War; early American investors purchased these debts for approximately 25% of their par value, hoping the claims would be paid at face value by the American government).

[140] Harvey R. Miller, *Chapter 11 Reorganization Cases and the Delaware Myth*, 55 VAND. L. REV. 1987, 2016 (2002). *See also* Harvey R. Miller & Shai Y. Waisman, *Does Chapter 11 Reorganization Remain a Viable Option for Distressed Businesses for the Twenty-First Century?*, 78 AM. BANKR. L.J. 153 (2004); Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129 (2005).

even permit them to take advantage of a tax loss on their own desired timetable.[141] On the flipside, "[c]aims trading permits an entrance to the bankruptcy process for those investors who want to take the time and effort to monitor the debtor and contribute expertise to the reorganization process."[142]

So, what are the "rules of the road" here? What does the Bankruptcy Code dictate regarding claims trading? The answer is nothing. The Bankruptcy Code itself has no provisions whatsoever regarding claims trading. The only thing resembling any regulation of claims trading during a bankruptcy case is found at Federal Rule of Bankruptcy Procedure 3001(e)—the current version of which went into effect in 1991—and it imposes extremely light regulation—if it could even be called that. This rule requires, in pertinent part (at subsection (2)), that "[i]f a claim other than one based on a publicly traded note, bond, or debenture" is traded during the case after a proof of claim is filed, notice/evidence of that trade must be filed with the bankruptcy clerk by the transferee. The transferor shall then be notified and given 21 days to object. If there is an objection, the bankruptcy court will hold a hearing regarding whether a transfer, in fact, took place. If there is no objection, nothing further needs to happen, and the transferee will be considered substituted for the transferor.

There are several things noteworthy about Rule 3001(e)(2). First, the only party given the opportunity to object is the ***transferor*** of the claim (presumably, in the situation of a dispute regarding whether there was truly an agreement regarding the transfer of the claim). Second, there is no need for a bankruptcy court order approving the transfer (except in the event of an objection

[141] *See Bankruptcy Markets*, at 70. *See also In re Kreisler,* 546 F.3d 863, 864 (7th Cir. 2008) ("Claims trading allows creditors to opt out of the bankruptcy system, trading an uncertain future payment for an immediate one, so long as they can find a purchaser.").

[142] *Bankruptcy Markets* at 70 (citing, among other authorities, Edith S. Hotchkiss & Robert M. Mooradian, *Vulture Investors and the Market for Control of Distressed Firms*, 43 J. FIN. ECON. 401, 401 (1997) (finding that "vulture investors add value by disciplining managers of distressed firms").

by the alleged transferor). Third, the ***economic consideration paid need not be disclosed to the court or anyone***. Fourth, there is no requirement or definition of timeliness. Finally, it explicitly does not apply with regard to publicly traded debt. This, alone, means that many claims trades are not even reported in a bankruptcy case. But it is not just publicly traded debt that will not be reflected with a Rule 3001(e) filing. For example, bank debt, in modern times, is often syndicated (i.e., fragmented into many beneficial holders of portions of the debt) and only the administrative agent for the syndicate (or the "lead bank") will file a proof of claim in the bankruptcy—thus, as the syndicated interests (participations) change hands, and they frequently do, there typically will not be a Rule 3001(e) notice filed.[143] To be clear here, this syndication-of-bank-debt fact, along with the fact that there are financial products whereby bank debt might be carved up into economic interests separate and apart from legal title to the loan, means there are many situations in which trading of claims during a bankruptcy case is not necessarily transparent or, for that matter, policed by the bankruptcy court. This is the world of modern bankruptcy. Most of the claims trading that gets reported through a Rule 3001(e) notice is the trading of small vendor claims. And this is all regarded as private sale transactions for the most part.[144]

Suffice it to say that there is not a wealth of case law dealing with claims trading in a bankruptcy context. Perhaps this is not surprising, since it is not prohibited and ***is mostly a matter of private contract between buyer and seller***. The case law that does exist seems to arise in situations of perceived bad faith of a purchaser—for example, when there was an attempt to control voting and/or ultimate control of the debtor through the plan process (not always problematic, but

[143] Anne Marrs Huber & Thomas H. Young, *The Trading of Bank Debt in and Out of Chapter 11*, 15 J. BANKR. L. & PRAC. 1, 1, 3 (2006).

[144] Note that Bankruptcy Rule 3001(e) was very different before 1991. Between 1983-1991, the rule required that parties transferring claims inform the court that a transfer of claims was taking place and also disclose the consideration paid for the transferred claims. A hearing would take place prior to the execution of a trade. Judicial involvement was required and resulted in judicial scrutiny of transactions—something that simply does not exist today.

there are outlier cases where this was found to cross a line and result in consequences such as disallowing votes on a plan or even equitable subordination of a claim).[145] Another type of case that has generated case law is where the purchaser of claims occupied a fiduciary status with the debtor.[146] Still another type of case that has generated case law is where there is an attempt to cleanse claims that might have risks because of a seller's malfeasance, by trading the claim to a new claim holder.[147]

The following is a potpourri of the more notable cases that have addressed claims trading in different contexts. Most of them imposed no adverse consequences on claims traders: *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (where a corporation named Garlin, that was owned by the individual chapter 7 debtors' sister and close friend, purchased a $900,000 bank claim for $16,500, and there was no disclosure of Garlin's connections to debtors and no Rule 3001(e)(2) notice was filed, the Seventh Circuit reversed the bankruptcy court's invocation of the doctrine of equitable subordination to the claim, stating: "Equitable subordination is generally appropriate only if a creditor is guilty of misconduct that causes injury to the interests of other creditors;" the Seventh Circuit further stated that it could "put to one side whether the court's finding of inequitable conduct was correct" because even if there was misconduct, it did not harm the other creditors, who were in the same position whether the original creditor or Garlin happened to own the claim; the Seventh Circuit did note that Garlin's decision to purchase the original bank

[145] *In re Applegate Prop. Ltd.,* 133 B.R. 827, 836 (Bankr. W.D. Tex. 1991) (designating votes of an affiliate of the debtor that purchased a blocking position to thwart a creditor's plan because it was done in bad faith); *In re Allegheny Int'l, Inc.,* 118 B.R. 282, 289–90 (Bankr. W.D. Pa. 1990) (because of bad faith activities, the court designated votes of a claims purchaser who purchased to get a blocking position on a plan). *But see In re First Humanics Corp.,* 124 B.R. 87, 92 (Bankr. W.D. Mo. 1991) (claims purchased by debtor's former management company to gain standing to file a plan to protect interest of the debtor was in good faith).

[146] *See In re Exec. Office Ctrs., Inc.*, 96 B.R. 642, 649-650 (Bankr. E.D. La. 1988) (and numerous old cites therein).

[147] *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 340 B.R. 180 (Bankr. S.D.N.Y. 2006), *vacated, Enron Corp. v. Springfield Assocs., L.L.C. (In re Enron Corp.),* 379 B.R. 425 (S.D.N.Y 2007); *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.),* 333 B.R. 205, 211 (Bankr. S.D.N.Y. 2005).

creditor's claim might have disadvantaged the other creditors if it interfered with the trustee's own potential settlement with the original bank creditor (note that the trustee argued that she had been negotiating a deal with bank under which bank might have reduced its claims); however, the trustee presented no evidence that any deal with the bank was imminent or even likely; thus, whether such a deal could have been reached was speculation; equitable subordination was therefore improper."); *Viking Assocs., L.L.C. v. Drewes (In re Olson),* 120 F.3d 98, 102 (8th Cir. 1997) (case involved the actions of an entity known as Viking in purchasing all of the unsecured claims against the bankruptcy estate of two chapter 7 debtors, Hugo and Jeraldine Olson; Viking was a related entity, owned by the debtors' children, and purchased $525,000 of unsecured claims for $67,000; while the bankruptcy court had discounted the claims down to the purchase amount and subordinated Viking's discounted claims to the claims of the other unsecured creditors, relying on section 105 of the Bankruptcy Code, the Eighth Circuit held that the bankruptcy court lacked the authority to do this, and, thus, reversed and remanded; the Eighth Circuit noted that in 1991, Bankruptcy Rule 3001(e)(2) was amended "to restrict the bankruptcy court's power to inspect the terms of" claims transfers. *Id.* at 101 (citing *In re SPM Mfg. Corp.,* 984 F.2d 1305, 1314 n. 9 (1st Cir. 1993)); the text of the rule makes clear that the existence of a "dispute" depends upon an objection by the ***transferor***; where there is no objection by the ***transferor***, there is no longer any role for the court); *Citicorp. Venture Capital, Ltd. v. Official Committee of Unsecured Creditors (In re Papercraft Corp.),* 160 F.3d 982 (3d Cir. 1998) (large investor who held seat on board of directors of debtor and debtor's parent, and who also had nonpublic information regarding the debtor's value, anonymously purchased 40% of the unsecured claims at a steep discount during the chapter 11 case, and then, having obtained a blocking position for plan voting purposes, proposed a plan to acquire debtor; the claims purchaser's claims were equitably reduced to amount

paid for the claims since investor was a fiduciary who was deemed to have engaged in inequitable conduct); *Figter Ltd. v. Teachers Ins. & Annuity Ass'n of Am. (In re Figter),* 118 F.3d 635 (9th Cir. 1997) (Ninth Circuit affirmed bankruptcy court's ruling that a secured creditor's purchase of 21 out of 34 unsecured claims in the case was in good faith and it would not be prohibited from voting such claims on the debtor's plan, pursuant to Bankruptcy Code section 1126(e)); *In re Lorraine Castle Apartments Bldg. Corp.,* 145 F.2d 55, 57 & 58 (7th Cir. 1945) (in a case under the old Bankruptcy Act, in which there were more restrictions on claims trading, a debtor and two of its stockholders argued that the claims of purchasers of bonds should be limited to the amounts they paid for them; bankruptcy court special master found, "that, though he did not approve generally the ethics reflected by speculation in such bonds," there was no cause for limitation of the amounts of their claims, pointing out that the persons who had dealt in the bonds were not officials, directors, or stockholders of the corporation and owed no fiduciary duty to the estate or its beneficiaries—rather they were investors or speculators who thought the bonds were selling too cheaply and that they might make a legitimate profit upon them; the district court agreed, as did the Seventh Circuit, noting that "[t]o reduce the participation to the amount paid for securities, in the absence of exceptional circumstances which are not present here, would reduce the value of such bonds to those who have them and want to sell them. This would result in unearned, undeserved profit for the debtor, destroy or impair the sales value of securities by abolishing the profit motive, which inspires purchasers."); *In re Washington Mutual, Inc.*, 461 B.R. 200 (Bankr. Del. 2011), *vacated in part*, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (discussion of an equity committee's potential standing to pursue equitable subordination or equitable disallowance of the claims of certain noteholders who had allegedly traded their claims during the chapter 11

case while having material non-public information; while bankruptcy court originally indicating these were viable tools, court later vacated its ruling on this after a settlement was reached).

Suffice it to say that the courts have, more often than not, been unwilling to impose legal consequences, for an actor's involvement with claims trading. At most, in outlier-type situations during a case, courts have taken steps to disallow claims for voting purposes or to subordinate claims to other unsecured creditors for distribution purposes.[148] But the case at bar does not present facts that are typical of any of the situations in reported cases.

For one thing, unlike in the reported cases this court has located, there ***seems to have been complete symmetry of sophistication among the claim sellers and claim purchasers here—and complete symmetry with HMIT for that matter***. All persons involved are highly sophisticated financial institutions, hedge funds, or private equity funds. No one was a "mom-and-pop" type business or vendor that might be vulnerable to chicanery. The claims ranged from being worth $10's of millions of dollars to $100's of millions of dollars in face value. And, of course, the sellers/transferors of the claims have never shown up, subsequent to the claims trading

[148] Note that, while some cases suggest that outright disallowance of an unsecured claim, in the case of "inequitable conduct" might be permitted (not merely equitable subordination to unsecured creditors)—usually citing to *Pepper v. Litton*, 308 U.S. 295 (1939)—the Fifth Circuit has suggested otherwise. *In re Mobile Steel Co., Inc.,* 563 F.2d 692, 699-700 (5th Cir. 1977) (cleaned up) (noting that "equitable considerations can justify only the subordination of claims, not their disallowance" and also noting that "three conditions must be satisfied before exercise of the power of equitable subordination is appropriate[:] (i) The claimant must have engaged in some type of inequitable conduct[;] (ii) The misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant[; and] (iii) Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act." In *Mobile Steel*, the Fifth Circuit held that the bankruptcy judge exceeded the bounds of his equitable jurisdiction by disallowing a group of claims and also reversed the subordination of certain claims, on the grounds that the bankruptcy court had made clearly erroneous findings regarding alleged inequitable conduct and other necessary facts. *Contrast In re Lothian Oil Inc.,* 650 F.3d 539 (5th Cir. 2011) (involving the question of whether a bankruptcy court may ***recharacterize*** a claim as equity rather than debt; the court held yes, but it has nothing to do with inequitable conduct *per se*; rather section 502(b)'s language that a claim should be allowed unless it is "unenforceable against the debtor and property of the debtor, under any agreement or applicable law...." is the relevant authority; unlike equitable subordination, recharacterization is about looking at the true substance of a transaction not the conduct of a party (if it looks like a duck and quacks like a duck, it's a duck—i.e., equity); the court indicated that section 105 is not a basis to recharacterize debt as equity; it's a matter of looking at state law to determine if there is any basis and looking at the nature of the underlying transaction—as either a lending arrangement or equity infusion.

transactions, to complain about anything. Everyone involved here is, essentially, a behemoth and there is literally no sign of innocent creditors getting harmed. Second, the case at bar is unique in that the claims traded here ***had all been allowed after objections, mediation, and Rule 9019 settlements during the bankruptcy case***. Thus, the amounts that would be paid on them were "locked in," so to speak. There was no risk to a hypothetical claims-purchaser of disallowance, offset, or any "claw-back" litigation (or—one might have reasonably assumed—any type of litigation). Third, the terms for distributions on unsecured claims had been established in a confirmed plan (although the claims were purchased before the effective date of the Plan). Thus, there was a degree of certainty regarding return on investment for the Claims Purchasers here that was much higher than if the claims had been purchased early, during, or mid-way through the case.[149] ***This was post-confirmation, pre-effective date claims purchasing.*** Interestingly, all three of these facts might suggest that little due diligence would be undertaken by any hypothetical purchaser. The rules of the road had been set. The court makes this observation because HMIT has suggested there is something highly suspicious about the fact that Farallon allegedly told Dondero that it did no due diligence before purchasing its claims (leading him to conclude that the Claims Purchasers must have purchased their claims based on receiving MNPI from Seery). Not only has there been no colorable evidence suggesting that insider information was shared, but the lack of due diligence in this context does not reasonably seem suspicious. The claims purchases

[149] *See discussion* in BANKRUPTCY MARKETS, at 91:

> Some claims purchasers buy before the bankruptcy petition is filed, some at the beginning of the case, and some towards the end. For example, there are investors who look to purchase at low prices either when a business is failing or early in the bankruptcy and ride through the case until payouts are fairly certain. [Citations omitted.] These investors might be hoping to buy at 30 cents on the dollar and get a payout at 70 cents on the dollar. Perhaps if they waited another six months, the payout would be 74 cents on the dollar, but the additional 4 cents on the dollar for six months might not be a worthwhile return for the time value of the investment. Other investors might not want to assume the risk that exists in the early days of a case when the fate of the debtor is much less certain, but they would gladly purchase at 70 cents on the dollar at the end of the case to get a payout of 74 cents on the dollar six months later.

were almost like passive investments, at this point—there was no risk of a claim objection and there was a confirmed plan, with a lengthy disclosure statement that described not only plan payment terms and projections, but essentially anything that any investor might want to know.

To reiterate, here, HMIT seeks leave to assert the following causes of action:

I. Breach of Fiduciary Duties (Seery)

II. Knowing Participation in Breach of Fiduciary Duties (Claims Purchasers)

III. Conspiracy (all Proposed Defendants)

IV. Equitable Disallowance (Claims Purchasers)

V. Unjust Enrichment and Constructive Trust (all Proposed Defendants)

VI. Declaratory Judgment (all Proposed Defendants)

The court struggles to fathom how any of these proposed causes of action or remedies can be applied in the context of: (a) post-confirmation claims trading; (b) where the claims have all been litigated and allowed.

In reflecting on the case law and various Bankruptcy Code provisions, the court can fathom the following hypotheticals in which claims trading during a bankruptcy case might be somehow actionable:

> **Hypothetical #1**: The most obvious situation would be if a purchaser of a claim files a Rule 3001(e) Notice, and the seller/transferor then files an objection thereto. There would then be a contested hearing between purchaser and seller regarding the validity of the transfer with the bankruptcy court issuing an appropriate order after the hearing on the objection. ***As noted, there was no objection to the Rule 3001(e) notices here***.
>
> **Hypothetical #2:** Alternatively, there could be a breach of contract suit between purchaser and seller if one thinks the other breached the purchase-sale agreement somehow. Perhaps torts might also be alleged in such litigation. ***As noted, there is no dispute between purchasers and sellers here.***
>
> **Hypothetical #3:** If there is believed to be fraud in connection with a plan, a party in interest might, pursuant to section 1144 of the Bankruptcy Code, move for

revocation of the plan "at any time before 180 days after the date of entry of the order for confirmation" and the court "may revoke such order if and only if such order was procured by fraud." ***As noted, here HMIT has suggested that the "pessimistic" plan projections may have been fraudulent or misrepresentations somehow. The time elapsed long ago to seek revocation of the Plan.***

Hypothetical #4: As discussed above, in rare situations (bad faith), during a Chapter 11 case, before a plan is confirmed, a claims purchaser's claim might not be allowed for voting purposes. *See* Sections 1126(e) of the Bankruptcy Code ("the court may designate any entity whose acceptance or rejection of such plan was not in good faith"). ***Obviously, in this case, this is not applicable—the claims were purchased post-confirmation.***

Hypothetical #5: As discussed above, in rare situations (inequitable conduct), a court might equitably subordinate ***claims*** to ***other claims***. *See* Section 510(c) of the Bankruptcy Code. But here**,** HMIT is seeking either: (a) equitable subordination of the ***claims*** of the Claims Purchaser to HMIT's ***Class 10 former equity interest*** (in contravention of the explicit terms of section 510(c)) or, (b) ***equitable disallowance*** of the claims of the Claims Purchasers (in contravention of *Mobile Steel*).

Hypothetical #6: Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case may permit "recharacterization" of a claim from debt to equity in certain circumstances, but not in circumstances like the ones in this case. Here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). The problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). Here there was most definitely "a contest" with regard to all of these purchased claims. ***Thus, it would appear that any effort to have a court reconsider these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.***

Hypothetical #7: If a party believes "insider trading" occurred there are governmental agencies that investigate and police that. ***Here, the purchased claims (which were not based on bonds or certificated equity interests) would not be securities so as to fall under the SEC's purview. Moreover, there was evidence that HMIT or Dondero-Related entities requested that the Texas State Securities Board investigate the claims trading and the board did not find a basis to pursue anyone for wrongdoing***.

Hypothetical #8: The United States Trustee can investigate wrongdoing by a debtor or unsecured creditors committee. While the United States Trustee would naturally have concerns about members of an unsecured creditors committee (or an officer of a debtor-in-possession) adhering to fiduciary duties and not putting their

> own interests above those of the estate, here, there are a couple of points that seem noteworthy. One, the claims trading activity was post-confirmation so—while certain of the claim-sellers may have still been on the unsecured creditors committee, as the effective date of the plan had not yet occurred—the circumstances are very different than if this had all happened during the early, contentious stages of the case. It seems inconceivable that there was somehow a disparity of information that might be troubling—the Plan had been confirmed and it was available for the world to see. The whole notion of "insider information" (just after confirmation here) feels a bit off-point. Bankruptcy practitioners and judges sometimes call bankruptcy a fishbowl or use the "open kimono" metaphor for good reason. It is generally a very open process. And information-sharing on the part of a debtor-in-possession or unsecured creditors committee is intended to be robust. *See, e.g.,* Bankruptcy Code sections 521 and 1102(b)(3). In a way, HMIT here seems to be complaining about this very situation that the Code and Rules have designed.

In summary, claims trading is a highly ***unregulated*** activity in the bankruptcy world. ***HMIT is attempting to pursue causes of action here that, to this court's knowledge, have never been allowed in a context like this***.

B. Back to Standing—Would HMIT Have Standing to Bring the Proposed Claims?

The Proposed Defendants argue that HMIT lacks standing to bring the Proposed Claims, either: (a) derivatively on behalf of the Reorganized Debtor and Claimant Trust, or (b) directly on behalf of itself. Thus, they argue that this is one reason that the Motion for Leave should be denied.

In making their specific standing arguments, the parties analyze things slightly differently:

The Claims Purchasers focus primarily on HMIT's lack of ***constitutional*** standing but also argue that HMIT does not have ***prudential*** standing under Delaware trust law to bring the Proposed Claims either individually or derivatively. Why do they mention Delaware trust law? Because the Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29.[150]

The Highland Parties' standing arguments focus almost entirely on HMIT's lack of ***prudential*** standing under Delaware trust law to bring the Proposed Claims.

HMIT argues that the Proposed Defendants "play fast and loose with standing arguments" and that HMIT has ***constitutional*** standing as a "party aggrieved"[151] to bring the Proposed Claims on behalf of itself. HMIT also argues that it has standing under Delaware trust law to bring a

[150] *See* Proposed Complaint, ¶ 26.

[151] Proposed Complaint, ¶7.

derivative action on behalf of the Claimant Trust, and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to do so.

1. The Different Types of Standing: Constitutional Versus Prudential

The parties are addressing two concepts of standing that can sometimes be confused and misapplied by both attorneys and judges: ***constitutional Article III standing***, which implicates federal court subject matter jurisdiction,[152] and the narrower standing concept of ***prudential standing***, which does not implicate subject matter jurisdiction but nevertheless might prevent a party from having capacity to sue, pursuant to limitations set by courts, statutes or other law.

Article III constitutional standing works as follows: a plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing three elements: (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[153] "If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve."[154] These elements ensure that a plaintiff has "'such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf."[155]

[152] Article III, Section 2 of the U.S. Constitution gives federal courts jurisdiction over enumerated cases and controversies.

[153] *See Thole v. U.S. Bank, N.A.*, 140 S.Ct. 1615, 1618 (2020)(citing the Supreme Court's seminal case on the tripartite test for Article III constitutional standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), where the Supreme Court stated that "the irreducible constitutional minimum of standing contains [the] three elements"); *see also Spokeo*, 578 U.S. at 338; *Abraugh v. Altimus*, 26 F.4th 298, 302 (5th Cir. 2022) (citing *id.*).

[154] *Transunion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021)(cleaned up).

[155] *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Apart from this minimal constitutional mandate, courts and statutes have set other limits on the class of persons who may seek judicial remedies—and this is the concept of prudential standing. In its recent opinion in *Abraugh v. Altimus*,[156] the Fifth Circuit set forth a detailed analysis of the two types of "standing," noting that the term "standing" is often "misused" in our legal system, which has led to confusion for both attorneys and judges.[157] The constitutional standing that is necessary for a court to exercise subject matter jurisdiction is broader than prudential standing and is only the first hurdle a party must clear before pursuing a claim in federal court.

The Fifth Circuit explained that ***in addition to*** Article III constitutional standing, "courts have occasionally articulated other 'standing' requirements that plaintiffs must satisfy under certain conditions, ***beyond those imposed by Article III***,"[158] such as the "standing" requirement that might be imposed by a statute or by jurisprudence. The *Abraugh* case was a perfect example of the latter.

Abraugh involved the civil rights statutes that provide, among other things, that "a party must have standing under the state wrongful death or survival statutes to bring [a § 1983 cause of action]" and noted that these statutes impose additional "standing" requirements that are a matter of prudential standing, not constitutional standing.[159] In *Abraugh*, the Fifth Circuit reversed and remanded a district court's dismissal of a § 1983 civil rights cause of action—noting that the district court had stated that it was dismissing based on a "lack of subject matter jurisdiction" because the plaintiff in that action lacked standing.[160] The plaintiff was the mother of a prisoner

[156] 26 F.4th 298.
[157] *Id.* at 303.
[158] *Id.* at 302 (emphasis added).
[159] *Id.* at 302-303.
[160] *Id.* at 301.

who died by suicide while in custody who brought a § 1983 action against Louisiana correctional officers and officials. After finding that the plaintiff/mother lacked standing under Louisiana's wrongful death and survival statutes (because there had been a surviving child and wife of the prisoner who were the proper parties with capacity to sue), the district court held that it was dismissing for lack of subject matter jurisdiction. The Fifth Circuit pointed out that the plaintiff/mother may have lacked standing under Louisiana's wrongful death and survival statutes to bring the claim under § 1983, but that type of standing was matter of ***prudential*** standing, and the plaintiff/mother actually ***did*** have ***Article III*** constitutional standing ("a constitutionally cognizable interest in the life of her son").[161] Thus, the district court's error was ***not*** in finding that the plaintiff/mother lacked prudential standing but in improperly conflating the two standing concepts when it held that it had lacked ***subject matter jurisdiction*** to consider any of the plaintiff's/mother's amended complaints.[162] The Fifth Circuit noted specifically that[163]

> prudential standing does not present a jurisdictional question, but "a merits question: who, according to the governing substantive law, is entitled to enforce the right?" As the Federal Rules of Civil Procedure make clear, "an action must be prosecuted in the name of the real party in interest." FED. R. CIV. P. 17(a)(1). And a violation of this rule is a failure of "prudential" standing. "Not one of our precedents holds that the inquiry is jurisdictional." It goes only to the validity of the cause of action. And "the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction."

Somewhat relevant to this prudential standing discussion is the fact that, in this bankruptcy case, there have been dozens of appeals of bankruptcy court orders by Dondero and Dondero-related entities. In connection therewith, both the district court and the Fifth Circuit, in evaluating the ***appellate standing*** of the appellants, have taken pains to distinguish between the concepts of:

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[161] *Id.*

[162] *Id.* at 301, 303-304. The Fifth Circuit opined that "the district court did not err in describing [the mother's] inability to sue under Louisiana law as a defect of 'standing[, b]ut it is a defect of prudential standing, not Article III standing" thus technically not implicating the federal court's subject matter jurisdiction. *Id.* at 303.

[163] *Id.* at 304 (cleaned up).

(a) traditional, constitutional standing, and (b) a type of prudential standing known as the "person aggrieved" test, which is applied in the Fifth Circuit in determining whether a party has ***standing to appeal a bankruptcy court order***—which it describes as a narrower and "more exacting" standard than constitutional standing. As explained in a Fifth Circuit opinion addressing the standing of a Dondero-related entity called NexPoint to appeal bankruptcy court orders allowing professional fees, the "person aggrieved" standard that is typically applied to ascertain bankruptcy ***appellate*** standing originated in a statute in the Bankruptcy Act. The Fifth Circuit continued to apply it after Congress removed the provision when it enacted the Bankruptcy Code in 1978.[164] Because it is narrower and "more exacting" than the test for Article III constitutional standing, it involves application of prudential standing considerations.[165] The Fifth Circuit describes the "person aggrieved" test for bankruptcy appellant standing as requiring that an appellant show that it was "*directly and adversely affected pecuniarily* by the order of the bankruptcy court," requiring "a higher causal nexus between act and injury than traditional standing . . . that best deals with the unique posture of bankruptcy actions."[166] In affirming the district court's dismissal of NexPoint's appeal of the bankruptcy court's fee orders, due to NexPoint's lack of prudential standing under the "person aggrieved" test, the court rejected NexPoint's argument that it had standing to appeal

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[164] *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, No. 22-10575, 2023 WL 4621466, *2 (5th Cir. July 19, 2023)(citing *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004)(cleaned up)).

[165] *Id.* at *1, **4-6 (where the Fifth Circuit repeatedly throughout its opinion refers to the "person aggrieved" test for standing in bankruptcy actions as a test for "prudential standing."); *see also Dondero v. Highland Capital Mgt., L.P.*, Civ. Act. No. 3:20-cv-3390-X, 2002 WL 837208 (N.D. Tex. Mar. 18, 2022)(where the district court, in addressing Dondero's standing to appeal a bankruptcy court order approving a Rule 9019 settlement (between Highland and Acis Capital Management GP LLC), notes that "[i]t is substantially more difficult to have standing to appeal a bankruptcy court's order than it is to pursue a typical complaint under Article III of the U.S. Constitution" and that "the Fifth Circuit has long recognized that bankruptcy cases' wide-reaching scope calls for a more stringent standing test.").

[166] *See id.* at *3 (cleaned up). The court quotes its 2018 opinion in *Matter of Technicool Sys., Inc. (In re Technicool)*, 896 F.3d 382, 385 (5th Cir. 2018), which explains why the "person aggrieved" prudential standing standard is applied in bankruptcy actions: "Bankruptcy cases often involve numerous parties with conflicting and overlapping interests. Allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Given the specter of such sclerotic litigation, standing to appeal a bankruptcy court order is, of necessity, *quite limited*." *Id.* (cleaned up).

because "it meets traditional Article III standing requirements [and that the more exacting] prudential standing considerations such as the 'person aggrieved' standard" did not survive the Supreme Court's 2014 *Lexmark*[167] opinion,[168] which addressed standing issues in the context of false advertising claims under the Lanham Act and reminded that courts may not "limit a cause of action that Congress has created merely because 'prudence' dictates."[169] The Fifth Circuit held that the Supreme Court's reminder in *Lexmark* did not nullify the "person aggrieved" test for prudential standing in bankruptcy appeals, citing its own decision in *Superior MRI Services Inc. v. Alliance Healthcare Services, Inc.*[170] (rendered a year after *Lexmark* was decided), in which it held that *Lexmark* applied only to the circumstances of that case, "rather than broadly modifying—or undermining—*all* prudential standing concerns, such as the one animating the 'person aggrieved' standard in bankruptcy appeals."[171]

Similarly, in yet another appeal in this bankruptcy case involving three Dondero-related entities as appellants (NexPoint, Dugaboy, and HCMFA)—this one an appeal of a bankruptcy court order authorizing the creation of an indemnity subtrust and entry into an indemnity trust agreement—the district court noted the parties' confusion about the standing issue, as exemplified in the parties' reference to constitutional standing when they were actually arguing that they had prudential standing under the "person aggrieved" test: "Although the parties frame this issue as one of constitutional standing . . . they cite case law and present arguments about the prudential

[167] *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

[168] *Id.* at *2.

[169] *See id.* at *4 (cleaned up).

[170] 778 F.3d 502 (5th Cir. 2015).

[171] *NexPoint*, 2023 WL 4621466 at *4 (cleaned up). The Fifth Circuit explicitly stated that "*Lexmark* does not expressly reach prudential concerns in bankruptcy appeals and brought no change relevant here." *Id.* at *5 (cleaned up).

standing requirement embodied in the 'person aggrieved' test."[172] The district court noted that it had an "independent obligation to consider constitutional standing before reaching its prudential aspects."[173] The district court dismissed the appeal as to Dugaboy and HCMFA for lack of standing but, upon concluding that NexPoint did have standing, dismissed the appeal as to it on the merits. The Fifth Circuit affirmed.[174] Interestingly, the court noted that, while the parties did not contest the district court's determination that NexPoint had standing to pursue the appeal, it "may consider prudential standing issues *sua sponte*."[175] In doing so, the Fifth Circuit recognized the distinction between constitutional standing and the prudential "person aggrieved" test applied to bankruptcy appeals, which "is, of necessity, quite limited" and "an even more exacting standard than traditional constitutional standing," as it requires an appellant to show that it is "directly, adversely, and financially impacted by a bankruptcy order."[176]

In summary, in analyzing whether HMIT would have standing to bring the Proposed Claims, this court must ***first*** determine whether HMIT would have constitutional standing under Article III (which is a subject matter jurisdiction hurdle) and, assuming it does, then ***additionally*** address whether HMIT would also have prudential standing (i.e., capacity to sue) pursuant to any applicable statutes (e.g., Delaware statutes), jurisprudence, or other substantive law that might ***limit*** who may sue. Notwithstanding HMIT's argument that it has standing under the "person

[172] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2002 WL 270862, *1 (N.D. Tex. Jan. 18, 2022)(cleaned up). The district court dismissed the appeals of two of the appellants, Dugaboy and HCMFA, finding that they lacked both constitutional standing and prudential standing under the "person aggrieved" test and affirmed the bankruptcy court's order after finding the third appellant, NexPoint, to have prudential standing under the "person aggrieved" test. *Id.* at **1-3 and *4.

[173] *Id.* at *1 n.2.

[174] *Highland Capital Mgt. Fund, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 57 F.4th 494 (5th Cir. 2023).

[175] *Id.* at 501 (cleaned up).

[176] *Id.*

aggrieved" test[177]—which, as discussed above, is a matter of prudential standing—this is applied only in the context of bankruptcy ***appellate*** matters.[178] As noted in its most recent opinion discussing standing in an appeal from the Highland bankruptcy case, the Fifth Circuit reiterated that the "person aggrieved" test is a test for bankruptcy ***appellate*** standing, which is narrower than a party in interest's right to be heard in bankruptcy cases in general.[179] The court rejected an argument that Bankruptcy Code § 1109, which provides that "[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter" confers ***appellate*** standing, noting that "one's standing to appear and be heard before the bankruptcy court [is] a concept distinct from standing to appeal the merits of a decision" and that the "person aggrieved" test for bankruptcy appellate standing is narrower than the test for determining one's standing to appear and be heard in a bankruptcy proceeding.[180]

Thus, the court will now analyze whether HMIT would, at a minimum, have constitutional standing to bring the Proposed Claims.

2. HMIT Would Lack Article III Constitutional Standing to Bring the Proposed Claims.

As noted above, the Supreme Court and the Fifth Circuit have made clear that constitutional standing is necessary for a court to exercise subject matter jurisdiction. It is only the first hurdle a party must clear before pursuing a claim in federal court. HMIT, as plaintiff, would bear the

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[177] HMIT insists that it has constitutional standing to bring claims on its individual behalf "as an aggrieved party." *See* Reply, ¶ 7.

[178] HMIT's argument in this matter that it has constitutional standing because it is a "party aggrieved" incorrectly conflates the prudential bankruptcy appellate "person aggrieved" test with the broader test that is applied to constitutional standing. The court is not being critical of this mistake. As noted at *supra* note 149, the Fifth Circuit in *Abraugh* pointed out that courts and attorneys alike have created confusion by misusing the term "standing" when they equate a lack of "standing," in all instances, with a lack of subject matter jurisdiction, even when the party is found to lack only prudential standing. Thus, HMIT is not alone in its confusion over the two different concepts of standing.

[179] *See NexPoint*, 2023 WL 4621466 at *6.

[180] *Id.* at *6 (cleaned up)("Because Section 1109(b) expands the right to be heard [in a bankruptcy proceeding] to a wider class than those who qualify under the 'person aggrieved' standard, courts considering the issue have concluded that merely being a party in interest is insufficient to confer ***appellate*** standing.")(emphasis added).

burden of establishing: (1) that it suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.[181]

Concrete and Particularized; Actual or Imminent. As the Supreme Court made clear in the *Lujan* case, the injury in fact element requires a showing that the injury was "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."[182] The Supreme Court in the *Spokeo* case expounded on the "concrete and particularized" requirements of the "injury in fact" element. Particularization requires a showing that the injury "must affect the plaintiff in a personal and individual way," but while particularization is necessary, it alone is "not sufficient," because an injury in fact must also be "concrete."[183] And, concreteness is "quite different from particularization."[184] A "concrete" injury must be "real," and "not abstract," though it does not mean that the injury must be "tangible," as the injury can be intangible and nevertheless be concrete.[185] In addition to the concreteness and particularization requirements, an injury in fact must be "actual or imminent" such that "allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing."[186] "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly*

[181] *See supra* note 153.
[182] *Lujan*, 504 U.S. at 560 (cleaned up).
[183] *Spokeo*, 578 U.S. at 339.
[184] *Id.* at 340.
[185] *Id.*
[186] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

impending"; "allegations of *possible* future injury are not sufficient."[187]

Traceability - Causal Connection. As to the second element—that the injury was caused by the defendant—the Supreme Court in *Lujan* further described it as requiring a showing that "the injury has to be fairly traceable to the challenged action of the defendant."[188] The "fairly traceable" test requires an examination of "the causal connection between the assertedly unlawful conduct and the alleged injury."[189]

Redressability. The third element—redressability—requires the court to examine the connection "between the alleged injury and the judicial relief requested."[190] "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court."[191] "[A] court must determine that there is an available remedy which will have a 'substantial probability' of redressing the plaintiff's injury."[192]

The Claims Purchasers argue that HMIT lacks constitutional standing to pursue the claims asserted in the Proposed Complaint because: (i) neither HMIT nor the Bankruptcy Estate was injured by the Claim Purchasers' acquisition of the claims; and (ii) the Proposed Complaint lacks a theory of cognizable damages to the Reorganized Debtor, the Claimant Trust, and/or the beneficiaries of the Claimant Trust.[193]

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[187] *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013)(cleaned up); *see also Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir. 2023)("[Injury] cannot be speculative, conjectural, or hypothetical [and] [a]llegations of only a 'possible' future injury similarly will not suffice.")(cleaned up).

[188] *Lujan*, 504 U.S. at 560-61 (cleaned up).

[189] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

[190] *Id.* (noting "it is important to keep the ['fairly traceable' and 'redressability'] inquiries separate if the 'redressability' component is to focus on the requested relief.").

[191] *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998).

[192] *City of Los Angeles v. Lyons*, 461 U.S. 95, 129 n.20 (1983)(Marshall, J., dissenting)(cleaned up); *see also Ondrusek v. U.S. Army Corps of Engineers*, Civ. Act. No. 3:22-cv-1874-N, 2023 WL 2169908, at *5 ("Plaintiffs have not demonstrated that any available remedy would be sufficiently likely to relieve their alleged economic losses. Without a showing of redressability, those harms also cannot support Plaintiff's Article III standing.").

[193] As noted earlier, certain of the Proposed Defendants—the Highland Parties—do not focus on HMIT's lack of constitutional standing to pursue the Proposed Claims against them, but on its lack of prudential standing under

The court agrees with the Claims Purchasers' argument here. What is HMIT's concrete and particularized injury—that is "real" and is not abstract? That is not conjectural or hypothetical? That is actual or imminent?

Recall that, under the Plan, HMIT holds a Class 10 contingent interest in the Claimant Trust that only realizes value if all creditors are paid in full with interest. HMIT alleges the following injury: it has suffered a devaluation of its unvested Contingent Claimant Trust Interest by virtue of the alleged over-compensation of Seery as the Claimant Trustee—Seery's alleged over-compensation depletes the assets in the Claimant Trust available for distribution to creditors under the Plan, such that there is less likely a chance that HMIT ultimately receives any distributions on account of its Class 10 Contingent Claimant Trust Interest.[194] Yet, HMIT testified, through both witnesses Dondero and Patrick, that it had no personal knowledge of what Seery's actual compensation is under the CTA at the time HMIT filed its Motion for Leave. It was clear that HMIT's allegations regarding Seery's "excessive" compensation were based entirely on Dondero's pure speculation. In reality, Seery's base salary is exactly what the bankruptcy court approved during the bankruptcy case by a court order (after negotiations between Seery and the Committee). The CTA now further governs his compensation. The CTA, which was publicly filed ***in advance of*** the Plan confirmation hearing and approved by this court as part of the Plan

applicable law. Because constitutional standing is a matter of subject matter jurisdiction, the court has an independent duty to determine whether HMIT would have constitutional standing to pursue the Proposed Claims in federal court. The issue cannot be forfeited or waived by a party. *See Abraugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)("[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Moreover, courts . . . have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.")(cleaned up); *Abraugh*, 26 F.4th at 304 ("It is our constitutional duty, of course, to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.")(cleaned up).

[194] At the June 8 Hearing, HMIT's counsel was unable to identify any other injury HMIT has alleged to have suffered. HMIT's counsel acknowledged that claims trades, in and of themselves, would not "involve injury to the Reorganized Debtor and to the Claimant Trust" and that claims trades are "normally outside the purview of the bankruptcy court" but that "[h]ere, we have alleged . . . . injury [that] takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers." June 8 Hearing Transcript, 67:16-68:8. HMIT can only point to Seery's excess compensation as injury.

(which has been affirmed by the Fifth Circuit), specifically provides that Seery's post-Effective Date compensation would include a "Base Salary" (again, same as during the bankruptcy case), a "success fee," and "severance."[195] The CTA discussed the role of the Committee and then the CTOB in setting the success fee and severance and the like. A fully executed copy of the CTA was admitted into evidence at the June 8 Hearing. HMIT is essentially arguing that its injury (i.e., diminished likelihood of realizing value on its Contingent Claimant Trust Interest) stems from a court-sanctioned and creditor-approved process for approving compensation to Seery. Moreover, HMIT has failed to plead facts sufficient to show that, even if Seery received excessive compensation and that compensation is ordered to be returned, HMIT's Contingent Claimant Trust Interest will ever vest. The district court and the Fifth Circuit in various appeals by Dugaboy, another Dondero-related entity that, similar to HMIT, was a holder of a limited partnership interest in Highland whose interests were terminated as of the Effective Date of the Plan in exchange for a Contingent Claimant Trust Interest, have repeatedly rejected Dugaboy's claims to have standing based on the ***speculative nature of its alleged injuries as a contingent beneficiary of the Claimant Trust under the Plan***. For example, the Fifth Circuit affirmed the district court's dismissal of an appeal by Dugaboy of the bankruptcy court's order authorizing the creation of an indemnity subtrust, wherein Judge Fitzwater found that, in addition to lacking prudential standing under the

[195] The Disclosure Statement that was approved by this court, after notice and a hearing, on November 24, 2020, provided that "The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement . . . ." The CTA was part of a Plan Supplement (as amended) that was filed in advance of the confirmation hearing and provided:

> Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

See Highland Ex. 38, at § 3.13(a)(i).

"person aggrieved" test to appeal the bankruptcy court's order, Dugaboy lacked constitutional standing "because they have not identified any injury fairly traceable to the Order: ***the injuries identified are speculative at best and nonexistent at worst***."[196] HMIT's allegations of injury are, without a doubt, "merely conjectural or hypothetical" and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests."[197] The court finds that HMIT would not meet the "concrete and particularized" or the "actual or imminent" requirements for an "injury in fact," and, thus, would lack constitutional standing to pursue the Proposed Claims.

With regard to the second requirement of constitutional standing—whether HMIT could show "traceability" with respect to the Claims Purchasers and/or Seery (i.e., a "causal connection between the assertedly unlawful conduct and the alleged injury"[198]), as noted above, there is only a speculative injury. Even if there is unlawful conduct asserted (i.e., sharing of MNPI to Claims Purchasers who then, as a *quid pro quo*, rubber stamped excessive compensation for Seery), there is nothing other than a hypothetical theory of an alleged injury (i.e., an allegedly less likelihood of a distribution on a Contingent Claimant Trust Interest).

With respect to the third requirement of constitutional standing—whether HMIT can show "redressability" (i.e., that it is likely, not speculative, that the injury can be redressed by a favorable

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[196] *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, *1 n.2 (N.D. Tex. Jan. 28, 2022), *aff'd* 57 F.4th 494 (5th Cir. 2023)(emphasis added); *see also* Judge Scholer's opinion in *Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-2268-S, 2022 WL 3701720, *3 (N.D. Tex. Aug. 8, 2022)(cleaned up), *aff'd per curium*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023) (where Dugaboy had argued that "***its pecuniary interest is . . . a potential recovery under the Plan as one of Debtor's former equity holders***" and that "it ha[d] standing as a 'contingent beneficiary' under the Plan, or a beneficiary who will be entitled to payment after all creditors are paid in full," and Judge Scholer stated, "This assertion is premised on the assumption that Dugaboy's 0.1866% pre-bankruptcy limited partnership interest in Debtor—which was extinguished under the Plan—makes it a contingent beneficiary of the creditor trust created under the Plan. . . . [S]uch a 'speculative prospect of harm is far from a direct, adverse, pecuniary hit' as required to confer standing."

[197] *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

[198] *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

decision), there are multiple problems here.[199] The major remedy sought here is the equitable disallowance of the allowed Purchased Claims (and disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims). There is no such remedy available here. As noted earlier, there is a similar concept of ***equitable subordination*** of a claim to another claim, or of an interest to another interest, pursuant to Bankruptcy Code section 510(c). But under the literal terms of section 510(c), ***claims cannot be subordinated to interests***. Moreover, the Fifth Circuit noted in the *Mobile Steel* case,[200] that ***equitable disallowance*** of a claim (as opposed to equitable subordination of a claims) is not an available remedy. Bankruptcy Code section 502(b)(1) and the Fifth Circuit's *Lothian Oil* case might permit "recharacterization" of a claim from debt to equity in certain circumstances—but not based on inequitable conduct but rather on the nature of a financial transaction. In any event, here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) ("A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case."). As noted earlier, the problem here is that Bankruptcy Rule 9024 provides that a motion for "reconsideration of an order allowing or disallowing a claim against the estate ***entered without a contest*** is not subject to the one year limitation prescribed in Rule 60(c)" (emphasis added). As further noted earlier, here there was most definitely a "contest" with regard to all of these purchased claims. ***Thus, it would appear***

[199] *See supra* notes 182-184 and accompanying text. The court will note that, as discussed *supra* note 141 and pages 71-72, the remedy of equitable subordination (as to the Claims Purchasers) would not redress HMIT's alleged injury (because equitable subordination of claims to interests is not an available remedy in the Fifth Circuit and thus subordination of the Purchased Claims to other claims would not change HMIT's distributions from the Claimant Trust, if any), and because outright disallowance of all or part of the already allowed Purchased Claims is not an available remedy either, HMIT would not be able to meet the "redressability" requirement with respect to the Claims Purchasers.

[200] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

that any effort to have a court reconsider and potentially disallow these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.

3. HMIT Would Also Lack Prudential Standing to Bring the Proposed Claims.

Even if HMIT would have constitutional standing to bring the Proposed Claims in an adversary proceeding filed in the bankruptcy court, the Proposed Claims would still be barred if HMIT would lack prudential standing to bring them under applicable state or federal law. HMIT argues that it does have prudential standing under both federal bankruptcy law and Delaware law to pursue the Proposed Claims derivatively and also to bring the Proposed Claims in its individual capacity.

With regard to "federal bankruptcy law," HMIT argues that it has standing pursuant to: (a) Rule 23.1 of the Federal Rules of Civil Procedure, pertaining to derivative actions, which "applies to this proceeding pursuant to" Rule 7023.1 of the Federal Rules of Bankruptcy Procedure, and (b) *Louisiana World Exposition v. Federal Insurance Co. ("LWE")*,[201] the Fifth Circuit's leading case addressing when a creditors committee may be granted standing to bring causes of action on behalf of a bankruptcy estate. But, federal bankruptcy law does not confer standing ***where the plaintiff otherwise lacks standing under applicable state law***. In other words, whether HMIT would have prudential standing to sue under Delaware law is dispositive of the issue, regardless of the forum. Rule 23.1 "speaks only to the adequacy of the . . . pleadings," and "cannot be understood to 'abridge, enlarge, or modify any substantive right,'"[202] including a right (or lack thereof) to bring a derivative action under the substantive law of Delaware. Additionally, HMIT's reliance on *LWE* is misplaced: *LWE* permits creditors, in certain circumstances ***during*** a bankruptcy case, to "file

[201] 858 F.2d 233 (5th Cir. 1988).

[202] *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991)(quoting 28 U.S.C. § 2072(b)).

suit on behalf of a debtor-in-possession or a trustee"[203] and does not apply to a party's right to sue, derivatively, on behalf of the Reorganized Debtor or any entity that is the assignee of the former bankruptcy estate's assets. Upon confirmation of the Plan, the bankruptcy estate of Highland ceased to exist;[204] Highland is no longer a debtor-in-possession but a reorganized debtor, and the Claimant Trust is a new entity created under the Plan and Claimant Trust Agreement. Even if *LWE* did apply in this ***post***-confirmation context, it supports the application of Delaware law to the issue of prudential standing and does not supersede state-law requirements for standing. In *LWE*, before addressing the requirements a creditors' committee must meet to sue derivatively on behalf of a bankruptcy estate as a matter of federal bankruptcy law, the Fifth Circuit conducted a lengthy analysis to determine "as a threshold issue" whether the creditors' committee in that case could assert its claims under Louisiana law.[205] The court specifically addressed whether the creditors' committee could pursue a derivative action under Louisiana law and concluded that "there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions."[206] So, even under *LWE* (which the court does not think applies in this post-confirmation context), if HMIT would be barred from bringing a derivative action on behalf the Reorganized Debtor or Claimant Trust under state law, the analysis stops there.[207] Thus, the court looks to Delaware law to determine if HMIT would have prudential standing to pursue the derivative claims on behalf the Reorganized Debtor and the Claimant Trust.

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[203] *LWE*, 858 F.2d at 247.

[204] *See In re Craig's Stores*, 266 F.3d 388, 390 (5th Cir. 2001).

[205] *LWE*, 858 F.2d at 236-45.

[206] *Id.* at 243.

[207] *See In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 (where the Delaware bankruptcy court denied the creditors' committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act, stating, "To determine that the third party

HMIT acknowledges that both the Reorganized Debtor and the Claimant Trust are organized under Delaware law, and thus the cause of action against Seery alleging breach of fiduciary duties to the Reorganized Debtor and the Claimant Trust are governed by Delaware law under the "Internal Affairs Doctrine."[208] In addition, because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting theory of liability as to the Claims Purchasers is also governed by Delaware law.[209] For the reasons set forth below, the court finds that HMIT would lack prudential standing under Delaware law to bring the claims set forth in the Proposed Complaint, derivatively, on behalf of either the Claimant Trust or the Reorganized Debtor.

a) First, HMIT Would Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Claimant Trust.

The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29,[210] and "to proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement" such that "the plaintiff must be a beneficial owner" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[211] This requirement is "mandatory and exclusive" and only "a beneficial owner" "has standing to bring a derivative claim on behalf of the

may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors' state of incorporation or formation.").

[208] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[209] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

[210] *See* Proposed Complaint, ¶ 26.

[211] *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *19 n.123 (Del. Ch. June 15, 2011), *aff'd* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b).

Trust."[212] The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, would lack standing to bring derivative claims on behalf of the Claimant Trust. HMIT argues to the contrary: that it ***is*** currently, and was at all relevant times, a "beneficial owner" of the Claimant Trust under Delaware trust law such that it would have standing to bring derivative claims on behalf of the Claimant Trust if it were allowed to proceed with the filing of the Proposed Complaint. The disagreement turns on the nature of HMIT's interest under the Plan and the Claimant Trust Agreement and whether HMIT, as a holder of such interest, would be considered a "beneficial owner" of the Claimant Trust under Delaware trust law.

As noted, pursuant to the Plan, HMIT's former limited partnership interest in Highland was cancelled as of the Effective Date in exchange for its pro rata share of a "Contingent Claimant Trust Interest," as defined under the Plan.[213] HMIT argues that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present "beneficial owner" under Delaware trust law.

The Highland Parties argue that HMIT is not a "beneficial owner" of the Claimant Trust; rather, the "beneficial owners" of the Claimant Trust are the "Claimant Trust Beneficiaries,"[214] which are defined in the Plan and the CTA as "the Holders of Allowed General Unsecured Claims" (which are in Class 8 under the Plan) and "Holders of Allowed Subordinated Claims" (which are in Class 9 under the Plan); [215] HMIT, a holder of a Class 10 interest under the Plan, is neither.

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[212] *In re Nat'l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)). HMIT acknowledges this requirement in its Reply: "Delaware statutory trust law provides that a plaintiff in a derivative action on behalf of a trust must be a beneficial owner at the time of the action and at the time of the transaction." Reply, ¶ 19 (citing 12 Del C. § 3816).

[213] *See* Plan Art. III.H.10 and Art. I.B.44.

[214] Section 2.8 of the CTA provides, "The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . . ." HMIT Ex. 26, § 2.8.

[215] *See* Plan Art. I.B.44 ("'*Claimant Trust Beneficiaries*' means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the

HMIT, as the holder of a "Contingent Claimant Trust Interest," has only an ***unvested*** contingent interest in the Claimant Trust and, as such, is not a "beneficial owner" of the Claimant Trust for standing purposes under Delaware trust law. HMIT argues that it "should be treated as a vested Claimant Trust Beneficiary due to [the Proposed Defendants'] wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein."[216] The court disagrees.

HMIT's status as a "beneficiary" of the Claimant Trust is defined by the CTA itself, pure and simple. The CTA specifically provides that "Contingent Trust Interests" "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA. It is undisputed that HMIT's Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested based on HMIT's unsupported allegation of wrongdoing on the part of Seery, the Claimant Trustee. Thus, the court finds that HMIT is not a "beneficial owner" of the Claimant Trust and, therefore, lacks prudential standing under Delaware law to bring derivative claims on behalf of the Claimant Trust.[217]

Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests."); CTA § 1.1(h). *See also*, CTA, 1 at n.2 ("For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan."). HMIT Ex. 26.

[216] Proposed Complaint ¶ 24.

[217] *See Nat'l Coll.*, 251 A.3d at 190–92 (dismissing creditors' derivative claims because they were not "beneficial owners of the Trusts"); *Hartsel*, 2011 WL 2421003, at *19 n.123 (dismissing derivative claims by investors that "no longer own shares" because "those investors no longer have standing to pursue a derivative claim").

b) HMIT Would Likewise Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Reorganized Debtor.

HMIT acknowledges that the Reorganized Debtor, Highland Capital Management, L.P., is a Delaware limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.*[218] To bring "a derivative action" on behalf of a limited partnership, "the plaintiff must be a partner or an assignee of a partnership interest" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action."[219]

HMIT is not a partner, general or limited, of the Reorganized Debtor limited partnership. HMIT ***was*** a limited partner in the original debtor (specifically, a holder of Class B/C Limited Partnership interests in Highland), but that limited partnership interest was extinguished on August 11, 2021 (the Effective Date of the Plan) per the terms of the Plan, and HMIT does not own any partnership interest in the newly created Reorganized Debtor limited partnership.[220] Because HMIT would not hold a partnership interest in the Reorganized Debtor at "the time of bringing the action," it "lacks derivative standing" to bring claims "on the partnership's behalf."[221] HMIT likewise cannot satisfy "the continuous ownership requirement"; when HMIT's limited partnership interest in the original Debtor was cancelled on the Plan's Effective Date, HMIT "los[t] standing to continue a derivative suit" on behalf of the Debtor.[222] Finally, to the extent HMIT

[218] Proposed Complaint ¶ 25.

[219] 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) ("The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another party's fiduciary duties to them.") (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff'd* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) ("The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.") (citing 6 Del. C. § 17-211(h)).

[220] *See* Plan Art. IV.A.

[221] *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

[222] *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff's partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re*

seeks to bring a "double derivative" action on behalf of the Claimant Trust based on claims purportedly held by its wholly owned subsidiary, the Reorganized Debtor, HMIT lacks standing. A "double derivative" action is a suit "brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled."[223] And, under Delaware law, "parent level standing is required to enforce a subsidiary's claim derivatively."[224] Because HMIT would lack derivative standing to bring claims on behalf of the parent Claimant Trust,[225] it also would lack standing to bring a double derivative action.

c) Finally, HMIT Would Also Lack Prudential Standing under Applicable Law to Bring the Proposed Claims As ***Direct*** Claims.

HMIT argues that it has "direct" standing to pursue the Proposed Claims on behalf of itself, individually.[226] But just because HMIT asserts that some or even all of the Proposed Claims are direct, not derivative claims, does not make it so: "a claim is not 'direct' simply because it is pleaded that way."[227] Rather, in determining whether claims are direct or derivative, a court must "look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs' characterization."[228] And, under Delaware law, "whether a claim is solely derivative or

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SkyPort Global Commcn's, Inc.), 2011 WL 111427, at *25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders "lack standing to bring a derivative claim" under Delaware law because they "had their equity interests in the company extinguished pursuant to the merger under the Plan"); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) ("[T]he cancellation of WorldCom shares under the Plan … prevents the required continuation of shareholder status through the litigation.") (cleaned up).

[223] *Lambrecht v. O'Neal*, 3 A.3d 277, 282 (Del. 2010).

[224] *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

[225] *See supra* pp. 80-82.

[226] *See e.g.*, Motion for Leave ¶ 10 ("HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . ."); *id.* ¶ 67 (arguing that "HMIT has [d]irect [s]tanding"); Proposed Complaint ¶ 24 ("HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.").

[227] *Schmermerhorn*, 2011 WL 111427, at *26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at *7 (Del. Ch. Nov. 5, 2004)).

[228] *See id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)); *see also Moore v. Simon Enters., Inc.*, 919 F.Supp. 1007, 1009 (N.D. Tex. 1995)("The determination of whether a claim is a derivative claim or a direct claim is made by reference to the nature of the wrongs alleged in the complaint, and is not limited by a [party's] characterization or stated intention.")(cleaned up).

may continue as a dual-natured claim 'must turn ***solely*** on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'"[229] "In addition, to prove that a claim is direct, a plaintiff 'must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.'"[230] Similarly, in the bankruptcy context, whether a creditor can assert a claim directly or whether the claim belongs to the estate turns on the nature of the injury for which relief is sought: "[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate," such that "only the bankruptcy trustee has standing to pursue the claim for the estate . . . ."[231] "To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate."[232]

As a reminder, HMIT argues that the injury it has suffered is a devaluation of its interests in the Claimant Trust by virtue of alleged over-compensation of Seery as the Claimant Trustee. HMIT was unable, when pressed during closing arguments, to identify any other injury. It essentially admitted that the claims trades, in and of themselves, would not have harmed the Claimant Trust, the Reorganized Debtor, or individual stakeholders, including HMIT, ***since the Claims Purchasers acquired already allowed unsecured claims, such that the distributions on those claims pursuant to the Plan would be unchanged in the hands of new holders of the claims***.

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[229] *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original).

[230] *Id.* (quoting *Tooley*, 845 A.2d at 1033); *see also Schmermerhorn*, 2011 WL 111427, at *24 (same).

[231] *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)).

[232] *Id.*; *see also Schertz-Cibolo-Universal City Indep. Sch. Dist. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994)("If a cause of action alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate.")(citations omitted).

Thus, by its own concessions, any alleged harm to HMIT (through devaluation of assets in the Claimant Trust) "comes about only because of harm to the debtor," so the alleged "injury is derivative."[233] The court concludes that all of the claims set forth in the Proposed Complaint allege derivative claims only, and that none would be direct claims against the Proposed Defendants. Thus, HMIT would lack prudential standing to bring any of the Proposed Claims in the Proposed Complaint, so its Motion for Leave should be denied.

d) Some Final Points Regarding Standing.

In this standing discussion, one should not lose sight of the fact that there are both procedural safeguards in place, as well as certain independent individuals in place with fiduciary duties that might act in the event of any shenanigans regarding Claimant Trust activities. Under section 4.1 of the CTA (approved as part of the Plan process), the CTOB, which includes an independent disinterested member in addition to representatives of the Claims Purchasers,[234] oversees the Claimant Trustee's performance of his duties, approves his compensation, and may remove him for cause. Moreover, there is a separate "Litigation Trustee" in this case who was brought in, post-confirmation, as an independent fiduciary to pursue claims and causes of action. These independent persons are checks and balances in the post-confirmation wind down of Highland. This is what creditors voted on in connection with the Plan. Seery and the Claims Purchasers are not in sole control of anything. The CTA, as well as Delaware law, very clearly set forth who can bring an action in the event of some colorable claim. This is the reality of prudential

[233] *Meridian*, 912 F.3d at 293–94 ("The creditors' injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties."); *see also El Paso,* 152 A.3d at 1260–61 & n.60 (holding that claim "claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative") (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at *12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had "not identified any independent harm suffered by the limited partners"; "the partnership suffered all the harm at issue—it paid too much").

[234] *See supra* note 23 and accompanying text.

standing. Just as in the *Abraugh* case, where Louisiana law dictated that a mother could not bring a wrongful death case when the deceased prisoner had a surviving wife and child, Delaware law and the CTA dictate here that a contingent beneficiary cannot bring the Proposed Claims here. This is separate and apart from whether the claims are colorable.

C. Are the Proposed Claims "Colorable"?

1. What is the Proper Standard of Review for a "Colorability" Determination?

Although the court has determined that HMIT would ***not*** have standing (constitutional or prudential) to bring the Proposed Claims, this court will nevertheless evaluate whether the claims—assuming HMIT somehow has standing—might be "colorable." This, in turn, requires the court to assess what the legal standard is to determine if a claim is "colorable." As a reminder, the Plan's Gatekeeper Provision and this court's prior Gatekeeper Orders entered in January and July 2020 each required that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain a finding from the bankruptcy court that its proposed claims are "colorable." The Gatekeeper Provision and Gatekeeper Orders did not specifically define "colorable" or what type of legal standard should apply.

HMIT argues that the standard for review to be applied by this court is the same as a simple "plausibility" standard used in connection with a Rule 12(b)(6) motions to dismiss. In other words, the court should simply assess whether the allegations of the Proposed Complaint, taken as true and with all inferences drawn in favor of the movant, state a ***plausible*** claim for relief (i.e., colorable equals plausible), and that this standard does not allow for the weighing of evidence by the court.[235] The Proposed Defendants, however, argue that the test for colorability should be more

[235] Reply, ¶ 5 ("[T]he determination of 'colorability' does not allow the 'weighing' of evidence. At most, a Rule 12(b)(6) 'plausibility' standard applies.").

akin to the test applied under the *Barton* doctrine,[236] under which a plaintiff must make a *prima facie* case that a proposed claim against a bankruptcy trustee is "not without foundation." In this regard, they argue that the court can and should consider evidence outside of the four corners of the complaint—especially since HMIT attached to its Motion for Leave, as "evidence" to support it, two declarations of Dondero (as part of a 350-page attachment) and only attempted to withdraw those declarations after the Highland Parties urged that they be permitted to cross-examine Dondero on them.

This court ultimately determined that the "colorability" standard was somewhat of a mixed question of fact and law and, therefore, the parties could put on evidence at the June 8 Hearing if they so-chose. The court would not require it. It was up to the parties. But, in any event, the Proposed Defendants should have an opportunity to cross-examine Dondero on the statements made in his declarations since the declarations had been filed on the docket and the court had reviewed them at this point. HMIT attempted to withdraw the declarations and any reference to them in the Motion for Leave, by filing redacted versions of the Motion for Leave,[237] less than 72 hours before the June 8 Hearing; however, the redacted versions did not redact any allegations in the Motion for Leave that were purportedly supported by the Dondero declarations. Also, HMIT called Dondero as a direct witness, in addition to calling Seery as an adverse witness at the June 8 Hearing, albeit subject to its running objection to the evidentiary format of the hearing.[238] HMIT also filed a witness and exhibit list attaching 80 exhibits and over 2850 pages of evidence and

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[236] *Barton v. Barbour,* 104 U.S. 126 (1881).

[237] Bankr. Dkt. Nos. 3815 and 3816.

[238] *See* June 8 Hearing Transcript, 7:20-24, 112:11-13.

moved for the admission of those exhibits at the June 8 Hearing (again, subject to its running objection to the evidentiary format of the hearing).[239]

In determining what appropriate legal standard applies here in the "colorability" analysis, the context in which the Gatekeeper Provision of the Plan was approved seems very relevant. In determining that the Gatekeeper Provision was legal, necessary, and in the best interest of all of the parties, this court set forth in the Confirmation Order a lengthy discussion of the factual support for it, and made specific findings relating to Dondero's post-petition litigation and the need for inclusion of the Gatekeeper Provision in the Plan.[240] This court observed that "prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade" and that "[d]uring the last several months, Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor."[241] This court further found that: (1) Dondero's post-petition litigation "was a result of Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Seery's credible testimony, that if Dondero's plan proposal was not accepted, he would 'burn down the place,'"[242] (2) without the Gatekeeper Provision in place, "Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date" and that "the threat of continued litigation by Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result in lower distributions to creditors because of

[239] *See Hunter Mountain Investment Trust's Witness and Exhibit List in Connection with Its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* ("HMIT W&E List")[Bankr. Dkt. No. 3818] and n.1 thereto; *see also* June 8 Hearing Transcript, 33:7-10.

[240] *See* Confirmation Order ¶¶ 76-79.

[241] *Id.* ¶ 77.

[242] *Id.* ¶ 78. *See supra* note 12.

costs and distraction such litigation or the threats of such litigation would cause,"[243] and, (3) "unless the [court] approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance,[244] the absence of which will present unacceptable risks to parties currently willing to serve in such roles." Thus, as set forth in the Confirmation Order, the Gatekeeper Provision (and the Gatekeeper Orders as well, which were approved based on the same concerns regarding the threat of continued litigation by Dondero and his related entities) required Dondero and related entities to make a threshold showing of colorability, noting that the:

> Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC,* 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017)."[245]

The Fifth Circuit, in approving the Gatekeeper Provision on appeal, noted that that the Plan injunction and Gatekeeper Provision "screen and prevent bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."[246]

Again, the court believes it is appropriate to consider the context in which—and the purpose for which—the Gatekeeper Orders and Gatekeeper Provision were entered in assessing

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[243] *Id.*

[244] Asd noted at ⁋ 79 of the Confirmation Order, the bankruptcy court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance for the post-confirmation parties implementing the Plan. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so ***without an exclusion for claims asserted by Mr. Dondero and his affiliates*** required that the Confirmation Order approve the Gatekeeper Provision.

[245] *Id.* ¶ 80.

[246] *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.* (*In re Highland Cap. Mgmt., L.P.*), 48 F.4th 419, 435 (5th Cir. 2022).

how "colorability" should work here. It seems that applying HMIT's proposed Rule 12(b)(6) "plausibility" standard would impose no hurdle at all to litigants and would render the threshold for bringing claims under the Gatekeeper Provision and Gatekeeper Orders entirely duplicative of the motion to dismiss standard that every litigant already faces.

The authorities cited by HMIT in support of its argument for applying a Rule 12(b)(6) standard are inapposite. HMIT has cited no authority that addresses the appropriate standard for assessing the "colorability" of claims in the context of a plan gatekeeper provision—specifically, one implemented in response to a demonstrated need to screen and prevent continued bad-faith, harassing litigation against a chapter 11 debtor that would impede the debtor's implementation of a plan, which is what we have here. HMIT relies on a bevy of cases that include benefits coverage disputes under ERISA, Medicare coverage disputes, and constitutional challenges[247]—none of which implicate the *Barton* doctrine and vexatious-litigant concerns that were referenced by the court in the Plan as justifications for the gatekeeping provisions at issue here.

In affirming the Plan's Gatekeeper Provision, the Fifth Circuit stated, "Courts have long recognized bankruptcy courts can perform a gatekeeping function" and noted, by way of example, that "[u]nder the '*Barton* doctrine,' the bankruptcy court may require a party to 'obtain leave of

[247] *See Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has "a colorable claim to vested benefits" such that the employee may be considered a "participant" under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting "claimants [with] no colorable legal claim" to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant's double jeopardy claim was "colorable" such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at *3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a "colorable claim" against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at *3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a "colorable claim" to warrant the district court's exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at *5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at *5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a "colorable constitutional claim" such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

the bankruptcy court before initiating an action in district court when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor's official capacity."[248] As noted above, the Fifth Circuit found that the Gatekeeper Provision, which "requires that, before any lawsuit is filed, the plaintiff must seek the bankruptcy court's approval of the claim as 'colorable'"—*i.e.*, to "screen and prevent bad-faith litigation,"—is "sound."[249]

On balance, the court views jurisprudence applying the *Barton* doctrine and vexatious litigant injunctions—while not specifically addressing the "colorability" standard under gatekeeping provisions in a plan[250]—as more informative on how to approach "colorability" than any of the other authorities presented by the parties. One example is *In re VistaCare Group, LLC*.[251]

In *VistaCare*, the Third Circuit noted that, under the *Barton* doctrine, "[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation," and emphasized that the "not without foundation" standard, while similar to the standard courts apply in evaluating Rule 12(b)(6) motions to dismiss, "involves a greater degree of flexibility" than a Rule 12(b)(6) motion to dismiss because "the bankruptcy court, which given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit," and "is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor's estate."[252] To satisfy the "*prima facie* case standard," "the movant must do more than meet the liberal notice-pleading

[248] *Id.* at 438 (cleaned up).

[249] *Id.* at 435.

[250] The court acknowledges that the *Barton* doctrine itself would not be directly applicable here because HMIT is proposing to bring the Proposed Complaint in the bankruptcy court – the "appointing" court of Seery.

[251] 678 F.3d 218 (3d Cir. 2012).

[252] *Id.* at 232-233 (cleaned up).

requirements of Rule 8."[253] "[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless."[254] This court agrees with the notion, that "[t]o apply a less stringent standard would eviscerate the protections" of the Gatekeeper Provision and Gatekeeper Orders.[255] The court notes, as well, that courts in the *Barton* doctrine context regularly hold evidentiary hearings on motions for leave to determine if the proposed complaint meets the necessary threshold for pursuing litigation. The Third Circuit in *VistaCare* noted that "[w]hether to hold a hearing [on a motion for leave to bring suit against a trustee] is within the sound discretion of the bankruptcy court,"[256] and that "the decision whether to grant leave may involve a 'balancing of the interests of all parties involved,'" which will ordinarily require an evidentiary hearing.[257] The Third Circuit applied "the deferential abuse of discretion standard" in considering whether the bankruptcy court's granting of leave should be affirmed on appeal.[258]

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[253] *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases).

[254] *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at *2 (N.D. Ill. Nov. 30, 2000).

[255] *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at *2).

[256] *VistaCare*, 678 F.3d at 232 n.12.

[257] *Id.* at 233 (quoting *In re Kashani*, 190 B.R. 875, 886–87 (9th Cir. BAP 1995)). The Third Circuit noted that the bankruptcy court's holding of an evidentiary hearing on the motion for leave was appropriate (though not required in every case)). *Id.* at 232 n.12.

[258] *Id.* at 224 ("We review a bankruptcy court's decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard.") (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)). Courts of appeal routinely apply the deferential abuse of discretion standard to a bankruptcy court's decision regarding whether leave should be granted to sue a trustee. Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. *See In re Bednar*, 2021 WL 1625399, at *3 (B.A.P. 10th Cir. Apr. 27, 2021) ("[T]he Bankruptcy Court's decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . . .") (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App'x 969, 973–74 (11th Cir. 2016) ("Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court's ruling on a *Barton* motion for an abuse of discretion.") (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at *3 (B.A.P. 1st Cir. Sept. 17, 2014) ("Appellate courts review a bankruptcy court's decision to deny a motion for leave to sue under the abuse of discretion standard.") (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

The Fifth Circuit has affirmed a bankruptcy court's conducting of an evidentiary hearing, in the context of applying a *Barton* doctrine analysis as to a proposed lawsuit against a trustee, without any concern that the inquiry was somehow improper.[259]

Similarly, courts in the vexatious litigant context, where there was an injunction requiring a movant to seek leave to pursue claims, have required movants to "show that the claims sought to be asserted have sufficient merit," including that "the proposed filing is both procedural and legally sound," and "that the claims are not brought for any improper purpose, such as harassment."[260] "For a prefiling injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review," such as the "plausibility" standard for a Rule 12(b)(6) motion.[261] Rather, courts apply "an additional layer of review," and "may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action" or that the "litigant's allegations are unlikely," especially "when prior cases have shown the litigant to be untrustworthy or not credible . . . ."[262]

In summary, the court rejects HMIT's positions: (a) that it need only show, at most, that the allegations in the Proposed Complaint are "plausible" under the Rule 12(b)(6) standard for motions to dismiss; and (b) that this court improperly conducted an evidentiary hearing on the Motion for Leave (i.e., that consideration of evidence in this context is impermissible). The court notes, again, that HMIT's argument that this court is not permitted to consider evidence in making its "colorability" determination is completely contradictory to HMIT's actions in filing the Motion

[259] *See Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at *4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after "a close examination" by the bankruptcy court of the evidence regarding the trustee's actions and finding that "the plaintiffs' allegations are not based in fact"), *aff'd* 799 F. App'x 271 (5th Cir. 2020).

[260] *Silver v. City of San Antonio*, 2020 WL 3803922, at *1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); *see also Silver v. Perez*, 2020 WL 3790489, at *1 (W.D. Tex. July 7, 2020) (same).

[261] *Silver*, 2020 WL 3803922, at *6.

[262] *Id.*

for Leave, where it attached two Dondero declarations as part of 350 pages of "objective evidence" that "supported" its motion.

The court concludes that the appropriate standard to be applied in making its "colorability" determination in ***this*** bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in ***this*** Plan, is a broader standard than the "plausibility" standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves ***an additional level of review***—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are ***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***. Additionally, this court may, and should, take into consideration its ***knowledge*** of the ***bankruptcy proceedings*** and ***the parties*** and any additional evidence presented at the hearing on the Motion for Leave. For ease of reference, the court will refer to this standard of "colorability" as the "Gatekeeper Colorability Test." The court considers this test as a sort of hybrid of what the *Barton* doctrine contemplates and what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place.

2. <u>HMIT's Proposed Complaint Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test or Even Under a Rule 12(b)(6) "Plausibility" Standard.</u>

The court finds, in the exercise of its gatekeeping function under the Gatekeeper Orders and the Gatekeeping Provision in the Plan, that the Motion for Leave should be denied as the claims set forth in the Proposed Complaint are not "colorable" claims. The court makes this determination after considering evidence admitted at the June 8 Hearing, including the testimony of Dondero, Patrick, and Seery, and the numerous exhibits offered by HMIT and the Highland Parties. HMIT's Proposed Claims lack foundation, are without merit, and appear to be motivated by the improper purposes of vexatiousness and harassment. But, even under the less stringent

"plausibility" standard under Rule 12(b)(6) motions to dismiss, where all allegations must be accepted as true, HMIT's "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," fail to "[]cross the line from conceivable to plausible."[263]

HMIT makes unsubstantiated and conclusory allegations in its Motion for Leave and Proposed Complaint that the Claims Purchasers purchased the large allowed unsecured claims only because Seery, while he was CEO of Highland prior to the Effective Date of the Plan, provided them with MNPI and assurances that the Purchased Claims were very valuable. This was allegedly in exchange for their agreement to approve, in their future capacities as members of the CTOB, excessive compensation for Seery in his capacity as the Claimant Trustee after the Effective Date of the Plan. This was an alleged *quid pro quo* that HMIT claims establishes Seery's breach of fiduciary duties and the Claims Purchasers' conspiracy to participate in that breach. As discussed below, these allegations are unsubstantiated and conclusory allegations, and they do not support the inferences that HMIT needs the court to make when it analyzes whether the Proposed Claims are "colorable"—or even merely plausible.

a) HMIT's Proposed Breach of Fiduciary Duties Claim Set Forth in Count I of the Proposed Complaint

Based on HMIT's Proposed Complaint and the evidence admitted at the June 8 Hearing, the court finds that HMIT has not pleaded facts that would support a "colorable" breach of fiduciary duties claim against Seery, under this court's Gatekeeper Colorability Test, nor a plausible claim pursuant to the Rule 12(b) standard. HMIT alleges that Seery breached his fiduciary duties (i) "[b]y disclosing material non-public information to Stonehill and Farallon"

[263] *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

before their purchase of certain Highland claims, and (ii) by receiving "compensation paid to him under the terms of the [CTA] since the Effective Date of the Plan in August 2021."[264]

As earlier noted, both the Reorganized Debtor and the Claimant Trust are organized under Delaware law and, thus, its proposed Count I against Seery for breach of fiduciary duties to these entities is governed by Delaware law under the "Internal Affairs Doctrine."[265] Under Delaware law, "[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege '(1) that a fiduciary duty existed and (2) that the defendant breached that duty.'"[266] HMIT fails to plausibly or sufficiently allege either element such that its breach of fiduciary duty claims against Seery could survive.

Under Delaware law, officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders.[267] Because Seery did not owe any "duty" to HMIT directly and individually, the Proposed Complaint fails to state a claim for breach of fiduciary duties to HMIT. HMIT's "legal conclusion[]" that Seery "owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate"[268] "do[es] not suffice" to plausibly allege the existence of any actionable fiduciary relationship.[269] And as discussed earlier in the standing section, HMIT does not have standing to assert a breach of fiduciary claim derivatively on behalf

[264] Proposed Complaint ¶¶ 64–67.

[265] Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

[266] *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at *30 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at *8 (Del. Ch. Feb. 28, 2020)).

[267] *See Gilbert v El Paso Co.*, 1988 WL 124325, at *9 (Del. Ch. Nov. 21, 1988) ("[D]irectors' fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.") *aff'd,* 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at *11 (Del. Ch. Nov. 7, 2013) (same).

[268] Proposed Complaint ¶ 63.

[269] *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

of the Claimant Trust or Reorganized Debtor. But even if HMIT had sufficiently alleged the existence of a fiduciary duty by Seery to HMIT—or to the Reorganized Debtor or Claimant Trust that HMIT would have standing to assert—Seery's alleged communications with Farallon would not have breached those duties.

HMIT alleges that Seery ""disclose[d] material non-public information to Stonehill and Farallon," and they "acted on inside information and Seery's secret assurances of great profits."[270] But the Proposed Complaint does not make any factual allegations regarding HMIT's "conclusory allegations," and its "legal conclusions" are "purely speculative, devoid of factual support," and therefore "stop[] short of the line between possibility and plausibility of entitlement to relief"[271] (and certainly stop short of being "colorable"). HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, and what "assurances of great profits" he made to Farallon or to Stonehill. At the June 8 Hearing, Dondero could only clarify that he believed the MGM Email to have been MNPI and that he ***believed*** that Seery ***must have*** communicated that MNPI to Farallon at some point between December 17, 2020 (the date the MGM Email was sent) and May 28, 2021 (the day that Dondero alleges to have had three telephone calls with representatives of Farallon, Messrs. Patel and Linn, regarding Farallon's purchase of the bankruptcy claims). Dondero alleges that, during these phone calls, Patel and Linn gave Dondero no reason for their purchase of the claims that "made [any] sense." Dondero and Patrick also both testified that neither of them had any personal knowledge: (a) of a *quid pro quo* arrangement between Seery and the Claims Purchasers, (b) of Seery having actually communicated any information from the MGM Email to Farallon, or (c) whether Seery's post-Effective Date compensation had or had not been negotiated in an arms' length transaction. Dondero only

[270] Proposed Complaint ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.

[271] *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up).

speculates regarding these things, because it "made no sense" to him that the Claims Purchasers would have acquired the bankruptcy claims without having received the MNPI. But HMIT admits in the Proposed Complaint that Farallon and Stonehill purchased the Highland claims at discounts of 43% to 65% to their allowed amounts. Thus, they would receive at least an 18% return based on publicly available estimates in Highland's court-approved Disclosure Statement.[272] The evidence established that, if the acquisition of the UBS claims is excluded—recall that the UBS claims were not purchased until August 2021, which was after the May 28, 2021 phones calls that Dondero made to Farallon personnel—the Claims Purchasers would have expected to net over $33 million in profits, or nearly a 30% return on their investment, had Highland met its projections (this is based on the aggregate purchase price of $113 million for the non-UBS claims purchased in the Spring 2021).

To be clear, the only purported MNPI identified in HMIT's Proposed Complaint was the MGM Email Dondero sent to Seery containing "information regarding Amazon and Apple's interest in acquiring MGM." But, the evidence showed that this information was widely reported in the financial press at the time. Thus, it could not have constituted MNPI as a matter of law.[273] Moreover, the evidence showed that Dondero ***did not*** communicate in the MGM Email the actual inside information that he claimed to have obtained as a board member of MGM–which was that Amazon had met MGM's "strike price" and that the MGM board was going into exclusive negotiations with Amazon to culminate the merger with them (and, thus, Apple was no longer considered a potential purchaser). Dondero admitted that he included Apple in the MGM Email for the purpose of making it look like there was a competitive process still ongoing. In other

[272] Proposed Complaint ¶¶ 3, 37, 42.

[273] *See, e.g.*, *SEC v. Cuban*, 2013 WL 791405, at *10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not "material, nonpublic information" and "'becomes public when disclosed to achieve a broad dissemination to the investing public'") (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)).

words, the MGM Email, at the very least, did not include MNPI and, at worst, was deceptive regarding the status of the negotiations between MGM and potential purchasers.

As to HMIT's allegations that Seery's post-Effective Date compensation is "excessive" and that the negotiations between Seery and the CTOB "were not arm's-length,"[274] the evidence at the June 8 Hearing reflected that the allegations are completely speculative, without any foundation whatsoever, and lack merit. And they are also simply not plausible. HMIT fails to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty.[275]

b) HMIT's Proposed Claims Set Forth in Counts II (Knowing Participation in Breach of Fiduciaries) and III (Conspiracy)

HMIT seeks to hold the Claims Purchasers secondarily liable for Seery's alleged breach of fiduciaries duties on an aiding and abetting theory in Count II of the Proposed Complaint[276] and, along with Seery, on a civil conspiracy theory of liability in Count III of the Proposed Complaint.[277] Because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting breach of fiduciary duties claim against the Claims Purchasers (Count II) is also governed by Delaware law.[278] HMIT's conspiracy cause of action against the Claims

[274] Proposed Complaint ¶¶ 4, 13, 54, 74.

[275] *See Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]though the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation.").

[276] Proposed Complaint ¶¶ 69-74.

[277] Proposed Complaint ¶¶ 75-81.

[278] *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

Purchasers and Seery (Count III), on the other hand, does not involve a matter of "internal affairs" or of corporate governance, so it is governed by Texas law under the Plan.[279]

As an initial matter, because HMIT does not present either a "colorable"—or even plausible claim—that Seery breached his fiduciary duties, it cannot show that it has alleged a "colorable" or plausible claim for secondary liability for the same alleged wrongdoing.[280] In addition, HMIT's civil conspiracy claim against the Claims Purchasers and Seery is based entirely on Dondero's speculation and unsupported inferences and, thus, HMIT has not "colorably" alleged, or even plausibly alleged, its conspiracy claim. Under Texas law, "civil conspiracy is a theory of vicarious liability and not an independent tort."[281] "[T]he elements of civil conspiracy [are] "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result."[282] While HMIT alleges that "Defendants conspired with each other to unlawfully breach fiduciary duties,"[283] it is simply a "legal conclusion" and not the kind of allegation that the court must assume to be true even for purposes of determining plausibility under a motion to dismiss.[284]

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[279] *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M)(which provides for the application of Texas law to "the rights and obligations arising under this Plan" except for "corporate governance matters.")

[280] *See English v. Narang*, 2019 WL 1300855, at *14 (Del. Ch. Mar. 20, 2019) ("As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.") (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at *10 (Tex. App. Jan. 25, 2022) ("[A] defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.") (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)). Because HMIT's breach of fiduciary duty claim is governed by Delaware law, its aiding and abetting theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas). By contrast, "conspiracy is not an internal affair" or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

[281] *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019).

[282] *Id.* at 141 (cleaned up).

[283] Proposed Complaint ¶ 76.

[284] *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66).

HMIT repeats four times that Seery provided MNPI to Farallon and Stonehill as a "as a *quid pro quo*" for "additional compensation,"[285] each time based upon conclusory allegations based "upon information and belief" and, frankly, pure speculation from Dondero that his imagined "scheme," "covert *quid pro quo,*" and secret "conspiracy" between Seery, on the one hand, and Farallon and Stonehill, on the other,[286] ***must have*** occurred because "[i]t made no sense for the [Claims] Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk" (i.e., "[t]he counter-intuitive nature of the purchases at issue compels the conclusion that the [Claims] Purchasers acted on inside information and Seery's assurance of great profits.")[287] Importantly, HMIT admits that the Claims Purchasers would have turned a profit based on the information available to them at the time of their acquisitions of the Purchased Claims.[288] HMIT's allegations about the level of potential profits were contradicted by their own allegations and other evidence admitted at the June 8 Hearing. But Dondero's speculation about what level of projected return would be sufficient to justify the acquisition of the claims by the Claims Purchasers, or any other third-party investor, does not give rise to a plausible inference that they acted improperly.[289] Thus, HMIT cannot meet

[285] Proposed Complaint ¶ 77; *see also id.* ¶¶ 4, 47, 74.

[286] *See id.* ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.").

[287] *Id.*

[288] *See, e.g.*, *id.* ¶ 3 (alleging that acquiring the claims "did not offer a ***sufficient*** potential profit to justify the publicly disclosed risk")(emphasis added); ¶ 43 ("Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . ."); ¶ 49 ("Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* ***significant*** profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.") (third emphasis added).

[289] In fact, the court did not allow Mr. Dondero to testify regarding what kind of information a hypothetical investor in bankruptcy claims would require or what level of potential profits would justify the purchase of bankruptcy claims by investors in the bankruptcy claims trading market because he was testifying as a fact witness, not an expert. Thus, the court only allowed Dondero to testify as to what data ***he*** (or entities he controls or controlled) would rely on, what ***his*** risk tolerance would have been, and what level of potential profits ***he*** would have required to purchase an allowed unsecured bankruptcy claim in a post-confirmation situation. June 8 Hearing Transcript, 129:6-130:4.

its burden, under the Gatekeeper Colorability Test, of making a prima facie showing that its allegations do not lack foundation or merit. Nor can it meet a plausibility standard.

In addition, contrary to the Proposed Complaint's statement that it would have been "***impossible*** for Stonehill and Farallon (in the absence of insider information) to forecast ***any*** significant profit at the time of their multi-million-dollar investments," the evidence showed there were already reports in the financial press that MGM was engaging with Amazon, Apple, and others in selling its media portfolio, and thus the prospect of an MGM transaction increasing the value of, and return on, the Purchased Claims, "at the time of their multi-million-dollar investments" was publicly available information.[290] HMIT's suggestion that the Claims Purchasers were in possession of inside information not publicly available when they acquired the Purchased Claims is simply not plausible. Nor is HMIT's allegation that "[u]pon information and belief" Farallon "conducted no due diligence but relied on Seery's profit guarantees" plausible. The allegations regarding Farallon not conducting any due diligence are based, again, entirely on Dondero's speculation and inferences he made from what Patel and Linn (of Farallon) allegedly told him on May 28, 2021; Dondero did not testify that either Patel or Linn ever told him specifically that they had conducted no due diligence. HMIT's allegations in the Proposed Complaint that ***Farallon*** "conducted no due diligence," are based on Dondero's speculation, unsubstantiated, and contradicted by the testimony of Seery, who testified that emails to him from Linn in June 2020 and later in January 2021 indicated to him that Farallon, at least, had been conducting some level of due diligence in that they had been following and paying attention to the

[290] The court notes, as well, that the Claim Purchasers acquired the UBS claims in August 2021—approximately two and a half months ***after*** the announcement of the MGM-Amazon transaction (which was on May 26, 2021)—a fact that HMIT makes no attempt to harmonize with its conspiracy theory that the Claims Purchasers profited from the misuse of MNPI allegedly given to them by Seery.

Highland case.[291] In addition, there are no allegations in the Proposed Complaint regarding whether Stonehill conducted due diligence or not, and Patrick testified that neither he nor HMIT had any personal knowledge of how much due diligence Farallon or Stonehill did prior to acquiring the Purchased Claims.[292] The court finds and concludes that HMIT's allegations of aiding and abetting and conspiracy in Counts II and III of the Proposed Complaint are based on unsubstantiated inferences and speculation, lack internal consistency, and lack consistency with verifiable public facts. Accordingly, HMIT has failed to show that these claims have a foundation and merit and has also failed to show that they are plausible.

c) HMIT's Proposed Claims Set Forth in Counts IV (Equitable Disallowance), V (Unjust Enrichment and Constructive Trust), and VI (Declaratory Relief) of the Proposed Complaint

i. Count IV (Equitable Disallowance).

In Count IV of its Proposed Complaint, HMIT seeks "equitable disallowance" of the claims acquired by Farallon's and Stonehill's special purpose entities Muck and Jessup, "to the extent over and above their initial investment," and, in the alternative, equitable subordination of their claims to all claims and interests, including HMIT's unvested Class 10 Contingent Claimant Trust Interest, "given [their] willful, inequitable, bad faith conduct" of allegedly "purchasing the Claims based on material non-public information" and being "unfairly advantaged" in "earning significant profits on their purchases."[293] As noted above, these remedies are not available to HMIT.[294]

First, HMIT's request to equitably subordinate the Purchased Claims to all claims and interests is not permitted because Bankruptcy Code § 510(c), by its terms, permits equitable

[291] *See* June 8 Hearing Transcript, 239:6-21.

[292] *See id.*, 310:19-312:2.

[293] Proposed Complaint ¶¶ 83-87.

[294] *See infra* pages 74-75.

subordination of a ***claim to other claims*** or an ***interest to other interests*** but does not permit equitable subordination of a ***claim to interests***.

Second, "equitable" disallowance of claims is not an available remedy in the Fifth Circuit pursuant to the *Mobile Steel* case.[295]

Third, reconsideration of an already-allowed claim in a bankruptcy case can only be accomplished through Bankruptcy Code § 502(j), which, pursuant to Federal Rule of Bankruptcy Procedure 9024, allows reconsideration of allowance of a claim that was allowed following ***a contest*** (which is certainly the case with respect to the Purchased Claims) based on the "equities of the case." But this is only if the request for reconsideration is made within the one-year limitation prescribed in Rule 60(c) of the Federal Rules of Civil Procedure. HMIT's request for disallowance of Muck and Jessup's Purchased Claims (if it could somehow be construed as a request for reconsideration of their claims), is clearly untimely, as it is being made well beyond a year since their allowance by this court following contests and approval of Rule 9019 settlements. Thus, the court finds that HMIT has not alleged a colorable or even plausible claim in Count IV of the Proposed Complaint and, therefore, the Motion for Leave should be denied.

ii. Count V (Unjust Enrichment and Constructive Trust)

In Count V of the Proposed Complaint, HMIT alleges that, "by acquiring the Claims using [MNPI], Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity" and that "[a]llowing [the Claims Purchasers] to retain their ill-gotten benefits would be unconscionable;" thus, HMIT alleges, the Claims Purchasers "should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment" and "a constructive trust should be imposed on such proceeds . . . ."[296]

[295] *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

[296] Proposed Complaint ¶¶ 89-93.

HMIT alleges further that "Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restitute all compensation he has received from the outset of his collusive activities" and "[a]lternatively he should be required to disgorge and restitute all compensation received since the Effective Date" over which a constructive trust should be imposed.[297] HMIT has not alleged a colorable or even a plausible claim for unjust enrichment or constructive trust in Count V.

Under Texas law,[298] "[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay."[299] Thus, "when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory."[300] Here, as noted above, HMIT's only alleged injury is a diminution of the value of its unvested Contingent Claimant Trust Interest by virtue of Seery's allegedly having wrongfully obtained excessive compensation, with the help of the Claims Purchasers. ***Yet Seery's compensation is governed by express agreements*** (i.e., the Plan and the CTA). Thus, HMIT's claim based on unjust enrichment is not an available theory of recovery.

iii. Count VI (Declaratory Relief)

HMIT seeks declaratory relief in Count VI of the Proposed Complaint, essentially, that Dondero's conspiracy theory is correct and that HMIT's would succeed on the merits with respect

[297] *Id.* ¶ 94.

[298] Under the Plan, Texas law governs HMIT's "claim" for unjust enrichment because it is not a "corporate governance matter." (Plan Art. XII.M.) It also governs HMIT's "claim" for constructive trust, which "is merely a remedy used to grant relief on the underlying cause of action." *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

[299] *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).

[300] *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)).

to the Proposed Claims if it were permitted leave to bring them in an adversary proceeding.[301] But, a request for declaratory relief is not "an independent cause of action"[302] and "in the absence of any underlying viable claims such relief is unavailable."[303] This court has already found and concluded that HMIT would not have constitutional or prudential standing to bring the underlying causes of action in the Proposed Complaint. This court has also found and concluded that all of the Proposed Claims are without foundation or merit and are not even plausible and are all; being brought for the improper purpose of continuing Dondero's vexatious, harassing, bad-faith litigation. Thus, HMIT would not be entitled to pursue declaratory judgement relief as requested in Count VI of the Proposed Complaint.

d) HMIT Has No Basis to Seek Punitive Damages

HMIT separately alleges that the Claims Purchasers' and Seery's "misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others," thus entitling HMIT to an award of punitive damages under applicable law. But, HMIT abandoned its proposed fraud claim that was in its Original Proposed Complaint, so its sole claim for primary liability is Seery's alleged breach of his fiduciary duties. And under Delaware law, the "court cannot award punitive damages in [a] fiduciary duty action."[304]

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[301] Proposed Complaint ¶¶ 96-99.

[302] *See Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 932 (5th Cir. 2023).

[303] *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at *2 (S.D. Tex. June 7, 2016) (citing *Collin Cty. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)); *see also Hopkins v. Cornerstone Am.*

[304] *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff'd* 682 F. App'x 24 (2d Cir. 2017).

3. HMIT Does Not Present "Colorable" Claims Under this Court's Gatekeeper Colorability Test Because It Seeks to Bring the Proposed Complaint for Improper Purposes of Harassment and Bad-Faith, Vexatiousness.

Under this court's Gatekeeper Colorability Test, in addition to showing that its allegations and claims are not without foundation or merit, HMIT must also show that the Proposed Claims are not being brought for any improper purpose. Taking into consideration the court's knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, the court finds that HMIT is acting at the behest of, and under the control or influence of, Dondero in continuing to pursue harassing, bad faith, vexatious litigation to achieve his desired result in these bankruptcy proceedings. So, in addition to failing to show that its Proposed Claims have foundation and merit, HMIT cannot show that it is pursuing the Proposed Claims for a proper purpose and, thus, cannot meet the requirements under the Gatekeeper Colorability Test; HMIT's Motion for Leave should be denied.

IV. CONCLUSION

The court concludes, having taken into consideration both its knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, that HMIT's Motion for Leave should be denied for three independent reasons: (1) HMIT would lack constitutional standing to bring the Proposed Claims (and, thus, the federal courts would lack subject matter jurisdiction over the Proposed Claims); (2) even if HMIT would have constitutional standing to pursue the Proposed Claims, it would lack prudential standing to bring the Proposed Claims; and (3) even if HMIT would have both constitutional standing and prudential standing to bring the Proposed Claims, it has not met its burden under the Gatekeeper Colorability Test of showing that its Proposed Claims are "colorable" claims—that the Proposed Claims are not without foundation, not without merit, and not being pursued for an improper purpose. Moreover,

even if this court's Gatekeeper Colorability Test should be replaced with a Rule 12(b)(6) "plausibility" standard, the Proposed Claims are not plausible.

Accordingly,

IT IS ORDERED that HMIT's Motion for Leave be, and hereby is **DENIED**.

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

The following constitutes the ruling of the court and has the force and effect therein described.

Signed October 4, 2023

United States Bankruptcy Judge

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

IN RE:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-sgj-11**
Reorganized Debtor.	§	

ORDER DENYING MOTION OF HUNTER MOUNTAIN INVESTMENT TRUST SEEKING RELIEF PURSUANT TO FEDERAL RULES OF BANKRUPTCY PROCEDURE 7052, 9023, AND 9024

On September 8, 2023, Hunter Mountain Investment Trust ("HMIT") filed its *Motion to Alter or Amend Order, To Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Brief* (hereinafter, the "Motion").[1] In the Motion, HMIT requests that the court alter or amend its findings set forth in its 105-page Memorandum Opinion and Order, dated August

[1] Bankr. Dkt. No. 3905

25, 2023 (hereinafter, the "Order Denying HMIT's Motion for Leave")[2] in which this court, in the exercise of its "gatekeeping" function pursuant to the Gatekeeper Provision[3] of the Debtors' confirmed Plan[4] and pre-confirmation Gatekeeper Orders, denied HMIT's *Emergency Motion for Leave To File Verified Adversary Proceeding*.[5] The Order Denying HMIT's Motion for Leave was issued following an evidentiary hearing on June 8, 2023.

HMIT now wants the bankruptcy court to reconsider certain findings and conclusions (or make additional ones—or even grant a new hearing) with regard to the Order Denying HMIT's Motion for Leave—specifically pertaining to the subject of HMIT's lack of standing (which was one of multiple reasons the court gave for issuing the Order Denying HMIT's Motion for Leave). The ground articulated by HMIT is as follows: "because post-hearing financial disclosure filings in the bankruptcy matter further evidence [sic] that the court's standing determinations are incorrect and should be corrected." Motion, at ¶ 3.[6] In other words, HMIT suggests that certain "post-hearing financial disclosure filings" filed in the main Highland bankruptcy case by the Reorganized Debtor (on July 6, 2023[7] and July 21, 2023[8]) somehow now demonstrate that HMIT, indeed, has standing to pursue the adversary proceeding that it sought leave to file.

The Motion is denied. First, the court sees no reasonable grounds to reopen the record with these "post-hearing financial disclosures." For one thing, the "post-hearing financial disclosure filings" are not materially different than information that was already on file in the bankruptcy

[2] Bankr. Dkt. Nos. 3903 & 3904.
[3] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Order Denying HMIT's Motion for Leave.
[4] The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* [Bankr. Dkt. No. 1943] on February 22, 2021.
[5] Bankr. Dkt. Nos. 3699, 3815, 3816, and 3760.
[6] HMIT attached the "post-hearing financial disclosure filings in the bankruptcy matter" as exhibits to the Motion. *See* Exhibits 2 and 3 to the Motion.
[7] Bankr. Dkt. No. 3872.
[8] Bankr. Dkt. Nos. 3888 and 3889.

case for all to see, before the June 8, 2023 hearing. *See* Bankr. Dkt. Nos. 3756 & 3757 (routine Post-Confirmation Reports, filed by the Reorganized Debtor on April 21, 2023, which show liabilities, disbursements, and "Remaining investments, notes, and other assets"—albeit without specific values ascribed to the latter). So, to the extent HMIT is arguing that the "post-hearing financial disclosure filings" are something akin to newly discovered evidence or otherwise a ground for granting a new hearing or altering findings, HMIT's argument lacks merit. Moreover, even if this court were to consider the "post-hearing financial disclosure filings," the court disagrees with HMIT's central argument that they demonstrate that HMIT's contingent interest is "in the money" and, thus, that it has both constitutional and prudential standing to pursue the adversary proceeding it wants to file. Notably, HMIT does not give proper attention to the voluminous supplemental notes in the "post-hearing financial disclosure filings" that are integral to understanding the numbers therein. For example, as mentioned in Note 5 therein, the administrative expenses and legal fees of the Reorganized Highland and the post-confirmation trust continue to deplete their assets, due to the fact that "(b) approximately twenty (20) matters are being actively litigated in at least 9 different forums; and (c) based on history, new litigation can be expected." This significant and widespread litigation results in massive indemnification obligations, as well as massive, continuing legal fees and expenses. The assets shown in the "post-hearing financial disclosure filings" will only be available for distribution after satisfaction of all legal fees and expenses and indemnity obligations. As also noted in Note 5 therein, it is expected that the Highland post-confirmation trust and its subsidiaries will operate at an operating loss prospectively. The information in the "adjustments" column of the assets section of the post-hearing financial disclosures "does not assume any expected future operating cash burn, which is expected to be significant." Additionally, as indicated in Note 6, sometimes Highland has been

unable to obtain full and complete information regarding asset values for inclusion in the post-hearing financial disclosures—thus impacting the accuracy of some valuations used. For example,

> The value of SE Multifamily Holdings LLC maintained on this balance sheet is $15.7 million, which is a component of the "Investments" line item and is based on a several years stale book-basis balance sheet. Notwithstanding Dondero-entities' previous disclosures of this interest at values of $20 million and $12 million, Highland also received interest from Dondero to acquire the interest for $3.8 million, among other assets. . . . Highland has initiated proceedings in Delaware to receive books and records relating to SE Multifamily Holdings LLC, for which it has the contractual right and has been seeking for approximately a year, but for which Dondero controlled entities have not provided to date.

In summary, HMIT argues no reasonable grounds to justify any of the relief sought in the Motion.

Accordingly,

IT IS ORDERED that the Motion be, and hereby is, **DENIED**.

###END OF ORDER###

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

United States Bankruptcy Judge

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

ORDER (I) CONFIRMING THE FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF

The Bankruptcy Court[2] having:

a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the "Disclosure Statement Order"), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.

Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. 1473] (the "Disclosure Statement") under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the "Objection Deadline"), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (*As Modified*) [Docket No. 1808] (as amended, supplemented or modified, the "Plan");

c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the "Voting Deadline") in accordance with the Disclosure Statement Order;

d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;

e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the "Confirmation Hearing Notice"), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;

f. reviewed: (i) the *Debtor's Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)t* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the "Plan Supplements");

g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as "List of Assumed Contracts");

h. reviewed: (i) the *Debtor's Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the "Confirmation Brief"); (ii) the *Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the "Voting Certifications").

i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

Certificate of Service dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021[Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the "Affidavits of Service and Publication");

j. reviewed all filed[3] pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;

k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the "Confirmation Hearing");

l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and

m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;[4] (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. ("Strand"), the Debtor's general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the "Witnesses"); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

[3] Unless otherwise indicated, use of the term "filed" herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

[4] The Court admitted the following exhibits into evidence: (a) all of the Debtor's exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor's exhibits lodged at Docket No. 1866; (c) all of the Debtor's exhibits lodged at Docket No. 1877; (d) all of the Debtor's exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor's Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an "asset monetization plan" because it involves the orderly wind-down of the Debtor's estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under $1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor**. The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the "Petition Date"). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor**. The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor's general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles ("CLOs"), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor's affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee**. The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a "serial litigator." The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

a. **The Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee").** This Committee member obtained an arbitration award against the Debtor in the amount of $190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor's claim was settled during this Chapter 11 Case in the amount of approximately $137,696,610 (subject to other adjustments and details not relevant for this purpose).

b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC ("Acis").** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately $8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland's alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately $23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

c. **UBS Securities LLC and UBS AG London Branch ("UBS").** UBS is a Committee member that filed a proof of claim in the amount of $1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.

d. **Meta-E Discovery ("Meta-E").** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than $779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for $40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive $750,000 in cash on the Effective Date of the Plan, an $8.25 million general unsecured claim, and a $2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than $70 million with an entity in the Highland complex and asserted a $300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a $45 million general unsecured claim and a $35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure**. Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.[5] As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,[6] and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as "gatekeeper" prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor's restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the "gatekeeper" provision to those alleging willful misconduct and gross negligence.

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[5] This order is hereinafter referred to as the "January 9 Order" and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the "Settlement Motion").

[6] *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the "Stipulation").

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court's order authorizing the appointment of Mr. Seery as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.[7] The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called "Barton Doctrine" (first articulated in an old Supreme Court case captioned *Barton v. Barbour,* 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

[7] *See Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the "July 16 Order")

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a $300 million claim) and Patrick Daugherty (who asserted a $40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain)**. Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase "not your garden variety", which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];

b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund)* [Docket No. 1670];

c. A *Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];

d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC)* [Docket No. 1673]; and

e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank)* [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

17. **Questionability of Good Faith as to Outstanding Confirmation Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;

b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;

c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;

d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;

e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and

f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the "Plan Supplement Documents").

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the $13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an "opt out" mechanism to allow holders of liquidated Class 8 Claims at or below a $1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm's-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.

b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

c. **The Reorganized Debtor**. The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of $250,000 for his first year of service, and $150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid $150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid $40,000 per month for the first three months and $20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

46. **Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).** Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

47. **Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the "Liquidation Analysis") to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.

c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.

d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.

e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].

f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of* Reorganization *of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.

g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.

h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.

i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).** Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The "best interests" test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery's deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor's projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as "HCLOF" that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at $22.5 million; (2) an increase in the value of certain of the Debtor's assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor's continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.

b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.

c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced "fire sale" of assets; and

e. The Debtor's employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors' argument that the Claimant Trust Agreement's disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee's liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides "retiree benefits" and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the "Contingent Interests"), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapuetics* 429 B.R 570 (Bankr. W.D. Tex. 2010).

b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3))**. The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the "Assumed Contracts"). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.[8] Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

[8] *See Notice of Withdrawal of James Dondero's Objection Debtor's Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith* [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the "Release Conditions"). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery's testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor's efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties' significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately $200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the "Exculpation Provision"). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co*., 584 F.3d 229 (5th Cir. 2009), for several reasons:

a. First, the statutory basis for *Pacific Lumber*'s denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties…. [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15th Ed. 2008]). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber's* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.[9]

b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumbe*r, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

[9] The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan inunction to implement and enforce the Plan's release, discharge and release provisions (the "Injunction Provision"). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor's assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor's assets and those assets could be monetized for less money to the detriment of the Debtor's creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a "third-party release." The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms "implementation" and "consummation" are neither vague nor ambiguous

76. **Gatekeeper Provision**. Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the "Gatekeeper Provision"). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr, Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour,* 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5th Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P'Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5th Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court's jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall.* The Bankruptcy Court's determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon**. Each of Scott Ellington ("Mr. Ellington") and Isaac Leventon ("Mr. Leventon") (each, a "Senior Employee Claimant") has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669] (the "Senior Employees' Objection") (for each of Mr. Ellington and Mr. Leventon, the "Liquidated Bonus Claims").

a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of $1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of $598,198.00. Mr. Ellington received two Ballots[10] – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees' Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be $1,000,000.

b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.

c. The Senior Employees' Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon's entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

[10] As defined in the Plan, "Ballot" means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").

e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive $701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive $413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.

f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be $600,000 and in Mr. Leventon's case, would be $358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.

h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.

i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.

j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).

k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

A. Confirmation of the Plan. The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.[11]

B. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

C. Objections. Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

D. Plan Supplements and Plan Modifications. The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

[11] The Plan is attached hereto as **Exhibit A**.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

E. Deemed Acceptance of Plan. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

F. Vesting of Assets in the Reorganized Debtor. Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

G. Effectiveness of All Actions. All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

H. Restructuring Transactions. The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

I. Preservation of Causes of Action. Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

J. Independent Board of Directors of Strand. The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

K. Cancellation of Equity Interests and Issuance of New Partnership Interests. On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

L. Transfer of Assets to Claimant Trust. On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

M. Transfer of Estate Claims to Litigation Sub-Trust. On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

N. Compromise of Controversies. In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

O. Objections to Claims. The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

P. Assumption of Contracts and Leases. Effective as of the date of this Confirmation Order, each of the Assumed Contacts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

Q. Rejection of Contracts and Leases. Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

R. Assumption of Issuer Executory Contracts. On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the "Issuer Executory Contracts") pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the "Portfolio Manager") will pay to the Issuers[12] a cumulative amount of $525,000 (the "Cure Amount") as follows:

a. $200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP ("SRZ") in the amount of $85,714.29, Jones Walker LLP ("JW") in the amount of $72,380.95, and Maples Group ("Maples" and collectively with SRZ and JW, the "Issuers' Counsel") in the amount of $41,904.76 as reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case; and

b. $325,000 in four equal quarterly payments of $81,250.00 (each, a "Payment"), which amounts shall be paid to SRZ in the amount of $34,821.43, JW in the amount of $29,404.76, and Maples in the amount of $17,023.81 as additional reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the "Management Fees"), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the "Payment Dates"), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers' Counsel, allocated in the proportion set forth in such agreement; *provided, however,* that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor's liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers' Counsel to the Debtor, in the event of any failure to make any Payment.

S. Release of Issuer Claims. Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

[12] The "Issuers" are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

T. Release of Debtor Claims against Issuer Released Parties. Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Ferona Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the "Issuer Released Parties"),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however,* that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

U. Authorization to Consummate. The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

V. Professional Compensation. All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

W. Release, Exculpation, Discharge, and Injunction Provisions. The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

X. Discharge of Claims and Termination of Interests. To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

Y. Exculpation. Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

provided, however, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

Z. Releases by the Debtor. On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

AA. Injunction. Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

BB. Duration of Injunction and Stays. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

CC. Continuance of January 9 Order and July 16 Order. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, entered by the Bankruptcy Court on January 9, 2020* [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

DD. No Governmental Releases. Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

EE. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

FF. Cancellation of Notes, Certificates and Instruments. Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

GG. Documents, Mortgages, and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

HH. Post-Confirmation Modifications. Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

II. Applicable Nonbankruptcy Law. The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

JJ. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

KK. Notice of Effective Date. As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked "undeliverable as addressed," "moved, left no forwarding address" or "forwarding order expired," or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity's new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

LL. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

MM. Waiver of Stay. For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

NN. References to and Omissions of Plan Provisions. References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

OO. Headings. Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

PP. Effect of Conflict. This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

QQ. Resolution of Objection of Texas Taxing Authorities. Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the "Tax Authorities") assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.

b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

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

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

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APPELLEE RECORD

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

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III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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RR. Resolution of Objections of Scott Ellington and Isaac Leventon. Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.

b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.

c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.

d. The Senior Employees' Objection is deemed withdrawn.

SS. No Release of Claims Against Senior Employee Claimants. For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a "Released Party" under the Plan.

TT. Resolution of Objection of Internal Revenue Service. Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service ("IRS") and all of its claims, including any administrative claim (the "IRS Claim"):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor's, the Reorganized Debtor's and/ or any successor- in-interest's obligations under the Plan, then entire prepetition liability of an IRS' Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term "any payment required to be made on federal taxes," as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term "any required tax return," as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

UU. IRS Proof of Claim. Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS's proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS' assessment of the Debtor's unpaid priority and general unsecured taxes, penalties and interest.

VV. CLO Holdco, Ltd. Settlement Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25,2021* [Docket No. 1838-1] (the "CLOH Settlement Agreement"). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

WW. Retention of Jurisdiction. The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

XX. Payment of Statutory Fees; Filing of Quarterly Reports. All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

YY. Dissolution of the Committee. On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

ZZ. Miscellaneous. After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided*, *however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

###END OF ORDER###

Exhibit A

Fifth Amended Plan (as Modified)

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED)

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[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however,* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or Equity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. "*Business Day*" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however,* the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*Claimant Trust Assets*" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust Oversight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation Order*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. "*Convenience Claim*" means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests"* means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. "*Delaware Bankruptcy Court"* means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. "*Employees*" means the employees of the Debtor set forth in the Plan Supplement.

56. "*Enjoined Parties*" means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero ("Dondero"), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. "*Entity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. "*Equity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

60. "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

63. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. "*Final Order*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

70. "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

72. "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

78. "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. "*Litigation Sub-Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. "*Litigation Sub-Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. "*New Frontier Note*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. "*New GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. "*New GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

88. "*Ordinary Course Professionals Order*" means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. "*Other Unsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. "*Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. "Petition *Date*" means October 16, 2019.

92. "*Plan*" means this *Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. "*Priority Non-Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. "*Professional Fee Claims Objection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided*, *however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

106. "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. "*Reduced Employee Claims*" has the meaning set forth in ARTICLE IX.D.

108. "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. "*Rejection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. "*Related Entity*" means, without duplication, (a) Dondero, (b) Mark Okada ("Okada"), (c) Grant Scott ("Scott"), (d) Hunter Covitz ("Covitz"), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. "*Related Entity List*" means that list of Entities filed with the Plan Supplement.

112. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. "*Reorganized Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. "*Reorganized Debtor Assets*" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. "*Reorganized Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

123. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

126. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

127. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. "*Subordinated Claim*" means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

133. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

134. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. "*Voting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided*, *however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. *Class 1 – Jefferies Secured Claim*

- *Classification*: Class 1 consists of the Jefferies Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

  Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. *Class 11 – Class A Limited Partnership Interests*

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. *Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however,* that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. *Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. *Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,

ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. Waiver of Conditions

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
<u>EXCULPATION, INJUNCTION AND RELATED PROVISIONS</u>

A. <u>General</u>

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. <u>Discharge of Claims</u>

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. <u>Exculpation</u>

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however,* the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. *Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. *Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however,* the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

G. Duration of Injunctions and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

ARTICLE X.
BINDING NATURE OF PLAN

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided*, *however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof*; provided*, *however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however,* that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

Prepared by:

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ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

Exhibit B

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.

20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.

21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.

22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.

23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al

24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd

25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd

26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association

27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.

28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company

29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company

30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company

32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association

33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.

34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company

35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association

37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company

38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.

44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association

45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust

46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.

47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.

48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.

49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association

50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.

53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association

54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company

55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association

56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street

57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank

58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.

59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company

60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

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

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

HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERARY PROCEEDING

Hunter Mountain Investment Trust ("HMIT"), Movant, files this Emergency Motion for Leave to File Verified Adversary Proceeding ("Motion"), both in its individual capacity and as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management, L.P. ("HCM" or "Reorganized Debtor") and the Highland Claimant Trust against Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup"), Farallon

Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), James P. Seery, Jr. ("Seery") and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendant Nos. 11-10 are collectively "Respondents" or "Proposed Defendants").

I. Good Cause for Expedited Relief

1. HMIT seeks leave to file an Adversary Proceeding pursuant to the Court's "gatekeeping" orders, as well as the injunction and exculpation provisions in the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (Doc. 1943), as modified (the "Plan").[1] A copy of HMIT's proposed Verified Adversary Proceeding ("Adversary Proceeding") is attached as Exhibit 1 to this Motion. This Motion is separately supported by objective evidence derived from historical filings in the bankruptcy proceedings,[2] as well as the declarations of James Dondero, dated May 2022 (Ex. 2), James Dondero, dated February 2023 (Ex. 3), and Sawnie A. McEntire with attached evidence (Ex. 4). [3]

[1] The exculpation provisions were recently modified by a decision of the Fifth Circuit. Such provisions apply to James P. Seery, Jr. only and are limited to his capacity as an Independent Director. *Matter of Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 438 (5th Cir. 2022).

[2] Unless otherwise referenced, all references to evidence involving documents filed in the Debtor's bankruptcy proceedings (Case No. 19-34054-sgj11 (Bankr. N.D. Tex.)) are cited by "Doc." reference. HMIT asks the Court to take judicial notice of the documents identified by such entries.

[3] The supporting declarations will be cited as Dondero 2022 Dec. (Ex. 2), Dondero 2023 Dec. (Ex. 3), and McEntire Dec. (Ex. 4).

2. The expedited nature of this Motion is permitted under Fed. R. Bank P. 9006 (c)(1), which authorizes a shortened time for a response and hearing for good cause. For the reasons set forth herein, HMIT has shown good cause and requests that the Court schedule a hearing on this Motion on three (3) days' notice, and that any responses be filed no later than twenty-four hours before the scheduled hearing.[4]

3. HMIT brings this Motion on behalf of itself and derivatively on behalf of the Reorganized Debtor and the Highland Claimant Trust ("Claimant Trust"), as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").[5] Upon the Plan's Effective Date, Highland Capital Management, LP, as the original Debtor ("Original Debtor"), transferred its assets, including its causes of action, to the Claimant Trust, including the causes of action set forth in the attached Adversary Proceeding. The attached Adversary Proceeding alleges claims which are substantially more than "colorable" based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud,[6] including a fraud upon innocent stakeholders, as well as breaches of fiduciary

[4] Expedited action on this Motion is also warranted to hasten Movants' opportunity to file suit, pursue prompt relevant discovery, and reduce the threat of loss of potentially key evidence. Upon information and belief, Seery has been deleting text messages on his personal iPhone via a rolling, automatic deletion setting.

[5] Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate.

[6] Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the

duties and knowing participation in (or aiding and abetting) breaches of fiduciary duty. The Adversary Proceeding also alleges that the Proposed Defendants did so collectively by falsely representing the value of the Debtor's Estate, failing to timely disclose accurate values of the Debtor's Estate, and trading on material non-public information regarding such values. HMIT also alleges that the Proposed Defendants colluded to manipulate the Debtor's Estate—providing Seery the opportunity to plant close business allies into positions of control to approve Seery's compensation demands following the Effective Date.

4. Emergency relief is needed because of a fast-approaching date (April 16, 2023) that one or more of the Proposed Defendants *may* argue, depending upon choice of law, constitutes the expiration of the statute of limitations concerning some of the common law claims available to the Claimant Trust, as well as to HMIT.[7] Although HMIT offered to enter tolling agreements from each of the Proposed Defendants, they either rejected HMIT's requests or have not confirmed their willingness to do so, thereby necessitating the expedited nature of this Motion.[8] Because this Motion is subject to the

proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement.

[7] The first insider trade at issue involved the sale and transfer of Claim 23 in the amount of $23 million held by ACMLD Claim, LLC to Muck on April 16, 2021 (Doc. 2215).

[8] HMIT has been diligent in its efforts to investigate the claims described in this Motion, including the filing of a Tex. R. Civ. P. Rule 202 proceeding in January 2023, which was not adjudicated until recently in March 2023. Those proceeding were conducted in the 191st Judicial District Court in Dallas County, Texas, under Cause DC-23-01004. *See* McEntire Dec. Ex. 4 and the attached Ex. 4-A. Farallon and Stonehill defended those proceedings by aggressively arguing, in significant part, that the discovery issues were better undertaken in this Court.[8] The Rule 202 Petition was recently dismissed (**necessarily without prejudice**)

Court's "gatekeeping" orders and the injunction provisions of the Plan, emergency leave is required.

5. This Motion will come as no surprise to the Proposed Defendants. Farallon and Stonehill were involved in recent pre-suit discovery proceedings under Rule 202 of the Texas Rules of Civil Procedure relating to the same insider trading allegations described in this Motion. Muck and Jessup, special purpose entities created and ostensibly controlled by Farallon and Stonehill, respectively, also were provided notice of these Rule 202 Proceedings in February 2023.[9] Like this Motion, the Rule 202 Proceedings focused on Muck, Jessup, Farallon, and Stonehill and their wrongful purchase of large, allowed claims in the Original Debtor's bankruptcy based upon material non-public information. Seery is also aware of these insider trading allegations because of a prior written demand.

6. In light of the Proposed Defendants' apparent refusal to enter tolling agreements, or their failure to fully affirm their willingness to do so, HMIT is forced to seek emergency relief from this Court to proceed timely with the proposed Adversary Proceeding before the expiration of any *arguable* limitations period.[10]

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on March 8, 2023, ostensibly based on such arguments. However, it is telling that Stonehill and Farallon admitted during the Rule 202 Proceedings to their "affiliation" with Muck and Jessup and that they bought the Claims through these entities.

[9] *See* Dec. of Sawnie McEntire, Ex. 4.

[10] HMIT respectfully requests that this Motion be addressed and decided on an expedited basis that provides HMIT sufficient time to bring the proposed action timely. In the event the Court denies the requested relief, HMIT respectfully requests prompt notice of the Court's ruling to allow HMIT sufficient

II. Summary of Claims

7. HMIT requests leave to commence the proposed Adversary Proceeding, attached as Exhibit 1, seeking redress for breaches of duty owed to HMIT, breaches of duties owed to the Original Debtor's Estate, aiding and abetting breaches of those fiduciary duties, conspiracy, unjust enrichment, and fraud. HMIT also alleges several viable remedies, including (i) imposition of a constructive trust; (ii) equitable disallowance of any unpaid balance on the claims at issue;[11] (iii) disgorgement of ill-gotten profits (received by Farallon, Stonehill, Muck and Jessup) to be restituted to the Claimant Trust; (iv) disgorgement of ill-gotten compensation (received by Seery) to be restituted to the Claimant Trust; (v) declaratory judgment relief; (vi) actual damages; and (vii) punitive damages.

III. Standing

8. **HMIT.** Prior to the Plan's Effective Date, HMIT was the largest equity holder in the Original Debtor and held a 99.5% limited partnership interest. HMIT currently holds a Class 10 Claim as a contingent Claimant Trust Interest under the CTA

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time to seek, if necessary, appropriate relief in the United States District Court. In order to have a fair opportunity to seek such relief on a timely basis and protect HMIT's rights and the rights of the Reorganized Debtor, HMIT will need to seek such relief on or before Wednesday, April 5, 2023, if this Motion has not been resolved.

[11] In the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

(Doc. 3521-5). Upon information and belief, all conditions precedent to HMIT's certification as a vested Claimant Trust Beneficiary would be readily satisfied but for the Defendants' wrongful actions and conduct described in this Motion and the attached Adversary Proceeding.

9. **Reorganized Debtor.** Although HMIT has standing as a former Class B/C Equity Holder, Class 10 claimant, and now contingent Claimant Trust Interest under the CTA,[12] this Motion separately seeks authorization to prosecute the Adversary Proceeding derivatively on behalf of the Reorganized Debtor and Claimant Trust. All conditions precedent to bringing a derivative action are satisfied.

10. Fed. R. Civ. P. 23.1 provides the procedural steps for "derivative actions," and applies to this proceeding pursuant to Fed. R. Bank. P. 7023.1. Applying Rule 7023.1, the Proposed Defendants' wrongful conduct occurred, and the improper trades consummated, in the spring and early summer of 2021, before the Effective Date in August 2021. During this period, HMIT was the 99.5% Class B/C limited partner in the original Debtor. As such, HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time, and the other Proposed Defendants aided and abetted breaches of those duties at that time.

[12] The last transaction at issue involved Claim 190, the Notice for which was filed on August 9, 2021. (Doc. 2698).

11. The derivative nature of this proceeding is also appropriate because any demand on Seery would be futile.[13] Seery is the Claimant Trustee under the terms of the CTA. Furthermore, any demand on the Oversight Board to prosecute these claims would be equally futile because Muck and Jessup, both of whom are Proposed Defendants, dominate the Oversight Board.[14]

12. The "classic example" of a proper derivative action is when a debtor-in-possession is "unable or unwilling to fulfill its obligations" to prosecute an otherwise colorable claim where a conflict of interest exists. *Cooper*, 405 B.R. at 815 (quoting *Louisiana World*, 858 F.2d at 252). Here, because HMIT's proposed Adversary Proceeding includes claims against Seery, Muck, and Jessup, the conflicts of interest are undeniable. Seery is the Trustee of the Claimant Trust Assets under the CTA, and he also serves as the "Estate Representative."[15] Muck and Jessup, as successors to Acis, the Redeemer Committee and UBS, effectively control the Oversight Board, with the responsibility to "monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance . . . ."[16]

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[13] Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed herein, since the Litigation Trustee serves at the direction of the Oversight Board.

[14] *See* Footnote 8, *infra.* In December 2021, several stakeholders made a demand on the Debtor through James Seery, in his capacity as Trustee to the Claimant Trust, to pursue claims related to these insider trades.

[15] *See* Claimant Trust Agreement (Doc. 3521-5), Sec. 3.11.

[16] *Id.* at Sec. 4.2(a) and (b).

13. Creditors' committees frequently bring suit on behalf of bankruptcy estates. Yet, it is clear that any ***appropriately designated party*** also may bring derivative claims. *In re Reserve Prod., Inc.*, 232 B.R. 899, 902 (Bankr. E.D. Tex. 1999) (citations omitted); *see In re Enron Corp.*, 319 B.R. 128, 131 (Bankr. S.D. Tex. 2004). As this Court has held in *In Re Cooper*:

> In Chapter 11 [cases], there is both a textual basis . . . and, frequently, a non-textual, equitable rationale for granting a creditor or creditors committee derivative standing to pursue estate actions (*i.e.*, the equitable rationale coming into play when the debtor-in-possession has a conflict of interest in pursuing an action, such as in the situation of an insider-defendant).

In re Cooper, 405 B.R. 801, 803 (Bankr. N.D. Tex. 2009) (also noting that "[c]onflicts of interest are, of course, frequently encountered in Chapter 11, where the metaphor of the 'fox guarding the hen house' is often apropos"); *see also In re McConnell*, 122 B.R. 41, 43-44 (Bankr. S.D. Tex. 1989) ("[I]ndividual creditors can also act in lieu of the trustee or debtor-in-possession . . . ."). Here, the Proposed Defendants are the "*foxes guarding the hen house*," and their conflicts of interest abound.[17] Proceeding in a derivative capacity is necessary, if not critical.

[17] *See Citicorp Venture Cap., Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 987 (3d Cir. 1998) (settlement noteholders purchased Debtors' securities with "the benefit of non-public information acquired as a fiduciary" for the "dual purpose of making a profit and influenc[ing] the reorganization in [their] own self-interest."), *see also, Wolf v. Weinstein*, 372 U.S. 633, 642, 83 S.Ct. 969, 10 L.Ed.2d 33 (1963) ("Access to inside information or strategic position in a corporate reorganization renders the temptation to profit by trading in the Debtor's stock particularly pernicious.").

14. The proposed Adversary Proceeding also sets forth claims that readily satisfy the Court's threshold standards requiring "colorable" claims, as well as the requirements for a derivative action. This Motion, which is supported by objective evidence contained in historical filings in the bankruptcy proceedings, also incorporates sworn declarations. At the very least, this additional evidence satisfies the Court's threshold requirements of willful misconduct and fraud set forth in the "gatekeeping" orders, as well as the injunction and exculpation provisions in the Plan.[18] This evidence also supports well-pleaded allegations exempted from the scope of the releases included in the Plan.

15. HMIT is an appropriate party to bring this action on behalf of the Reorganized Debtor and the Claimant Trust. If successful, the Adversary Proceeding will likely recover well over $100 million for the Claimant Trust, thereby enabling the Reorganized Debtor and Claimant Trust to pay off any remaining innocent creditors and make significant distributions to HMIT as a vested Claimant Trust Beneficiary.

16. As of December 31, 2022, the Claimant Trust had distributed 64.2% of the total $397,485,568 par value of all Class 8 and Class 9 unsecured creditor claims. The

[18] HMIT recognizes that it is an "Enjoined Party" under the Plan. The Plan requires a showing, *inter alia*, of bad faith, willful misconduct, or fraud against a "Protected Party." Seery is a "Protected Party" and an "Exculpated Party" in his capacity as an Independent Director. Muck and Jessup *may* be "Protected Parties" as members of the Oversight Committee, but they were not "protected" when they purchased the Claims before the Effective Date. While it is HMIT's position that Farallon and Stonehill do not qualify as "Protected Parties," they are included in this Motion in the interest of judicial economy.

Claims acquired by Muck and Jessup have an allowed par value of $365,000,000. Based on these numbers, the innocent unsecured creditors hold approximately $32 million in allowed claims.[19]

17. As of December 31, 2022, the Claimant Trust has distributed $255,201,228.[20] On a *pro rata* basis, that means that innocent creditors have received approximately $22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately $9,627,000.

18. Muck and Jessup already have received approximately $232.8 million on their Claims. Assuming and original investment of approximately $160 million, this represents over $72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary. The benefits to the Reorganized Debtor, the Claimant Trust and innocent stakeholders are undeniable.[21]

19. Seery and the Oversight Board should be estopped from challenging HMIT's status to bring this derivative action on behalf of the Claimant Trust. Seery, Muck and Jessup have committed fraud, acted in bad faith and have unclean hands, and they should not be allowed to undermine the proposed Adversary Proceeding - which seeks

[19] Doc. 3653.

[20] *Id.*

[21] Further, under the present circumstances and time constraints, this Motion should be granted to avoid the prospect of the loss of some of HMIT's and the Claimant Trust's claims and denial of due process.

to rectify significant wrongdoing. To hold otherwise would allow Seery, Muck, Jessup, Stonehill, and Farallon the opportunity to not just "guard the hen house," but to also open the door and take what they want.[22] HMIT seeks a declaratory judgment of its rights, accordingly.

IV. The Proposed Defendants

20. Seery acted in several capacities during relevant times. He served as the Debtor's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"). He also served as member of the Debtor's Independent Board.[23] He currently serves as Claimant Trustee under the CTA and remains the CEO of the Reorganized Debtor.

21. There is no doubt Seery owed the Original Debtor's Estate, as well as equity, fiduciary duties, including the duty of loyalty and the duty to avoid conflicts of interest. *See In re Xtreme Power Inc.*, 563 B.R. 614, 632-33 (Bankr. W.D. Tex. 2016) (detailing fiduciary duties owed by corporate officers and directors under Delaware law); *Louisiana World*, 858 F.2d at 245-46 (detailing duties owed by debtors-in-possession).[24]

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[22] "The doctrine of 'unclean hands' provides that "a litigant who engages in reprehensible conduct in relation to the matter in controversy ... forfeits his right to have the court hear his claim, regardless of its merit. [T]he purpose of the clean hands maxim is to protect the court against misuse by one who, because of his conduct, has forfeited his right to have the court consider his claims, regardless of their merit. As such it is not a matter of defense to be applied on behalf of a litigant; rather it is a rule of public policy." *Portnoy v. Cryo-Cell Int'l, Inc.*, 940 A.2d 43, 80–81 (Del. Ch. 2008) (citations omitted) (internal quotations omitted for clarity).

[23] Seery is the beneficiary of the Court's "gatekeeping" orders and is an "exculpated" party in his capacity as an Independent Director. He is also a "Protected Party."

[24] The Internal Affairs Doctrine dictates choice of law. Here, the Debtor, Highland Capital Management, was organized under the law of Delaware. As much, Seery's fiduciary duties and claims involving breaches of those duties will be governed by Delaware law.

22. Farallon and Stonehill are capital management companies which manage hedge funds; they are also Seery's close business allies with a long history of business ventures and close affiliation. Although they were strangers to the Original Debtor's bankruptcy on the petition date, and were not original creditors, they became entangled in this bankruptcy at Seery's invitation and encouragement—and then knowingly participated in the wrongful insider trades at issue. By doing so, Seery was able to plant friendly allies onto the Oversight Board to rubber stamp compensation demands. The proposed Adversary Proceeding alleges that Farallon and Stonehill bargained to receive handsome pay days in exchange.

23. Muck and Jessup are special purpose entities, admittedly created by Farallon and Stonehill on the eve of the alleged insider trades, and they were used as vehicles to assume ownership of the purchased claims.[25] The record is clear that Muck and Jessup ***did not exist*** before confirmation of the Plan in February 2021.[26] Now, however, Muck and Jessup serve on the Oversight Board with immense powers under the CTA.[27] When they purchased the claims at issue, Muck and Jessup were ***not*** acting in their official capacities on the Oversight Committee and, therefore, they were not "Protected Persons" under the Plan.

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[25] *See* Ex. 4-B, Rule 202 Transcript at 55:22-25.

[26] *See* McEntire Dec., Ex. 4, Ex. 4-D, Ex. 4-E. Muck was created on March 9, 2021 before the Effective Date. Jessup was created on April 8, 2021, before the Effective Date.

[27] *See* Doc. 3521-5, Sec. 4(a) and 4(b).

24. By trading on the alleged material non-public information, Farallon, Stonehill, Muck, and Jessup became non-statutory "insiders" with duties owed directly to HMIT at a time when HMIT was the largest equity holder.[28] *See S.E.C. v. Cuban*, 620 F.3d 551, 554 (5th Cir. 2010) ("The corporate insider is under a duty to 'disclose or abstain'—he must tell the shareholders of his knowledge and intention to trade or abstain from trading altogether."). In this context, there is no credible doubt that Farallon's and Stonehill's dealings with Seery were ***not*** arms-length. Again, Farallon and Stonehill were Seery's past business partners and close allies.[29] By virtue of the insider trades at issue, Farallon and Stonehill acquired control (acting through Muck and Jessup) over the Original Debtor and Reorganized Debtor through Seery's compensation agreement and awards, as well as supervisory powers over the Claimant Trust. This makes Farallon and Stonehill paradigm non-statutory insiders.

25. HMIT also seeks recovery against John Doe Defendant Nos. 1 through 10.[30] It is clear Farallon and Stonehill refuse to disclose the precise details of their legal

[28] Because of their "insider" status, this Court should closely scrutinize the transactions at issue.

[29] Farallon and Stonehill are two capital management firms (similar to HCM) with whom Seery has had substantial business relationships. Also, Seery previously served as legal counsel to Farallon. Seery also has a long-standing relationship with Stonehill. GCM Grosvenor, a global asset management firm, held four seats on the Redeemer Committee (an original member of the Unsecured Creditors Committee in HCM's bankruptcy). Upon information and belief, GCM Grosvenor is a significant investor in Stonehill and Farallon. GCM Grosvenor, through Redeemer, also played a large part in appointing Seery as a director of Strand Advisors and approved his appointment as HCM's CEO and CRO.

[30] Farallon and Stonehill consummated their trades concealing their actual involvement through Muck and Jessup as shell companies. Farallon's and Stonehill's identities were not discovered until much later after the fact.

relationships with Muck and Jessup. They resisted such discovery in the prior Rule 202 Proceedings in state district court.[31] They also refused to disclose such details in response to a prior inquiry to their counsel.[32] Furthermore, the corporate filings of both Muck and Farallon conspicuously omit the identity of their respective members or managing members.[33] Accordingly, HMIT intends to prosecute claims against John Doe Defendant Nos. 1 -- 10 seeking equitable tolling pending further discovery whether Farallon and Stonehill inserted intermediate corporate layers between themselves and the special purpose entities (Muck and Jessup) they created. *See In re ATP Oil & Gas Corp.*, No. 12-36187, 2017 WL 2123867, *4 (Bankr. S.D. Tex. May 16, 2017) (lsgur .J.); *see also In re IFS Fin. Corp.* No. 02-39553, 2010 WL 4614293, *3 (Bankr. S.D. Tex. No. 2, 2010) ("The identity of the party concealing the fraud is immaterial, the critical factor is whether any of the parties involved concealed property of the estate." "In either case, the trustee must demonstrate that despite exercising diligence, he could not have discovered the identity of the [unnamed] defendants prior to the expiration of the limitations period.") *ATP Oil*, 2017 WL 2123867 at *4. That burden is easily satisfied here.

[31] *See* McEntire Dec., Ex. 4.

[32] *See* McEntire Dec., Ex. 4, *see also*, Ex. 4-F.

[33] *See* Ex. 4-D, Ex. 4-E.

V. Background

26. As part of this Court's Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditor's Committee—was appointed to the Board of Directors (the "Board") of Strand Advisors, Inc., ("Strand Advisors"), the Original Debtor's general partner. Following approval of the Governance Order, the Board then appointed Seery as the Original Debtor's CEO and CRO. [34] Following the Effective Date of the Plan, Seery now serves as Trustee of the Claimant Trust (the Reorganized Debtor's sole post-reorganization limited partner), and continues to serve as the Reorganized Debtor's CEO. [35]

27. Imbued with his powers as CEO and CRO, Seery negotiated and obtained bankruptcy court approval of several settlements prior to the Effective Date, resulting in the following approximate allowed claims (hereinafter "Claims"):[36]

Creditor	**Class 8**	**Class 9**
Redeemer	$137 mm	$0 mm
Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm
UBS	$65 mm	$60 mm
(Totals)	$270 mm	$95 mm

[34] Doc. 854, Order Approving Retention of Seery as CEO/CRO.

[35] *See* Doc. 1943, Order Approving Plan, p. 34.

[36] Orders Approving Settlements [Doc. 1273, Doc. 1302, Doc. 1788, Doc. 2389].

Each of the settling parties curiously sold their Claims to Farallon or Stonehill (or their affiliated special purpose entities) shortly after they obtained court approval of their settlements. One of these "trades" occurred within just a few weeks before the Effective Date. Farallon and Stonehill coordinated and controlled the purchase of these Claims through Muck and Jessup, and they admitted in open court that Muck and Jessup were created to allow their purchase of the Claims.[37]

28. HMIT alleges that Seery filed (or caused to be filed) deflated, misleading projections regarding the value of the Debtor's Estate,[38] while inducing unsecured creditors to discount and sell their Claims to Farallon and Stonehill. But as reflected in the attached declarations, it is now known that Seery provided material, non-public information to Farallon. The circumstantial evidence is also clear that both Farallon and Stonehill had access to and used this non-public information in connection with their purchase decisions.

29. Farallon and Stonehill are registered investment advisors who have their own fiduciary duties to their investors, and they are acutely aware of what these duties entail. Yet, upon information and belief, they collectively invested over $160 million dollars to purchase the Claims in the absence of any publicly available information that

[37] *See* Ex. 4-B, Rule 202 Transcript at 55:22-25.

[38] The pessimistic projections were issued as part of the Plan Analysis on February 2, 2021. [Doc. 1875-1]. The Debtor projected 0% return on Class 9 claims and only 71.32% return on Class 8 Claims.

could rationally justify such investments. These "trades" become even more suspect because, at the time of confirmation, the Plan provided pessimistic projections advising stakeholders that the Claim holders would never receive full satisfaction:

- From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the valuation of HCM's assets dropped over $200 million from $566 million to $328.3 million.[39]
- HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11;[40]
  - This meant that Farallon and Stonehill invested more than $103 million in Claims ***when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims***.
- In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% *to 54%*;[41]

30. In the third financial quarter of 2021, just over $6 million of the projected $205 million available to satisfy general unsecured creditors was disbursed.[42] No additional distributions were made to the unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—**$45 million more than was *ever* projected**.[43]

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[39] Doc. 1473, Disclosure Statement, p. 18.

[40] Doc. 1875-1, Plan Supplement, p. 4.

[41] Doc 2949.

[42] Doc 3200.

[43] Doc 3582.

31. According to Highland Capital's Motion for Exit Financing,[44] and a recent motion filed by Dugaboy Investment Trust,[45] there remain ***substantial*** assets to be monetized for the benefit of the Reorganized Debtor's creditors. Thus, upon information and belief, Stonehill and Farallon, stand to realize significant profits on their wrongful investments. In turn, Stonehill and Farallon will garner (and already have garnered) substantial fees – both base fees and performance fees – as the result of their acquiring and/or managing the Claims. Upon information and belief, HMIT also alleges that Seery has received excessive compensation and bonuses approved by Farallon (Muck) and Stonehill (Jessup) as members of the Oversight Board.

32. As evidenced in the supporting declarations (Exs. 2 and 3):

- Farallon admitted it conducted no due diligence and relied upon Seery in making its multi-million-dollar investment decisions at issue.[46]

- Farallon admitted it was unwilling to sell its stake in these Claims at any price because Seery assured Farallon that the Claims were tremendously valuable.[47]

- Farallon bragged about the value of its investment referencing non-public information regarding Amazon, Inc.'s ("Amazon") interest in acquiring Metro-Goldwyn-Mayer Studios Inc. ("MGM").[48]

[44] Doc 2229.

[45] Doc 3382.

[46] *See* Ex. 2, 2022 Dondero Declaration.

[47] *See* Ex. 2, 2022 Dondero Declaration, Ex. 3, 2023 Dondero Declaration.

[48] *See* Ex. 3, 2023 Dondero Declaration.

- Farallon was unwilling to sell its stake in the newly acquired Claims even though publicly available information suggested that Farallon would lose millions of dollars on its investment.[49]

Farallon can offer ***no credible explanation*** to explain its significant investment, and its refusal to sell at any price, ***except*** Farallon's access to material non-public information. In essence, Seery became the guarantor of Farallon's significant investment. Farallon admitted as much in its statements to James Dondero.

33. The same holds true for Stonehill. Given the negative, publicly available information, Stonehill's multi-million-dollar investments make no rational sense unless Stonehill had access to material non-public information.

34. Fed. R. Bank. P. 2015.3 requires debtors to "file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." However, no public reports required by Rule 2015.3 were filed. Seery testified they simply "fell through the cracks." [50]

35. Six days prior to the filing of the motion seeking approval of the HarbourVest Settlement, Seery acquired material non-public information regarding Amazon's interest in acquiring MGM.[51] Upon receipt of this material non-public

[49] *See* Ex. 3, 2023 Dondero Declaration, *see also* Doc. 1875-1.

[50] Doc. 1905, February 3, 2021, Hearing Transcript, 49:5-21.

[51] *See* Adversary No. 20-3190-sgj11, Doc. 150-1.

information, MGM should have been placed on the Original Debtor's "restricted list," but Seery continued to move forward with deals that involved MGM stock and notes.[52] Because the Original Debtor additionally held direct interests in MGM,[53] the value of MGM was of paramount importance to the value of the estate.

36. Armed with this and other insider information, Farallon—through Muck—proceeded to invest in the Claims and, acting through Muck, acceded to a powerful position on the Oversight Board to oversee future distributions to Muck and itself. It is no coincidence Seery invited his business allies into these bankruptcy proceedings with promises of great profits. Seery's allies now oversee his compensation.[54]

37. The Court also should be aware that the Texas States Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation

[52] As part of the HarbourVest Settlement, Seery negotiated the purchase of HarbourVest's interest in HCLOF for approximately $22.5 million as part of the transaction. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM. The HCLOF interest was not to be transferred to the Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements. Doc. 1625, p. 9, n. 5. Doc. 1625.

[53] *See* Doc. 2229, Motion for Exit Financing.

[54] Amazon closed on its acquisition of MGM in March 2022, but the evidence strongly suggests that agreements for the trades already had been reached - while announcement of the trades occurred strategically after the MGM news became public. Now, as a result of their wrongful conduct, Stonehill and Farallon profited significantly on their investments, and they stand to gain substantially more profits.

underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely "colorable."

VI. Argument

A. HMIT has asserted Colorable Claims against Seery, Stonehill, Farallon, Muck, and Jessup.

38. Unlike the terms "Enjoined Party," "Protected Party," or "Exculpated Party," the Plan does not define what constitutes a "colorable" claim. Nor does the Bankruptcy Code define the term. However, relevant authorities suggest that a Rule 12(b)(6) standard is an appropriate analogue.

39. The Fifth Circuit has held that a "colorable" claim standard is met if a [movant], such as HMIT, has asserted claims for relief that, on appropriate proof, would allow a recovery. A court need not and should not conduct an evidentiary hearing but must ensure that the claims do not lack any merit whatsoever. *Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 248 (5th Cir. 1988). Stated differently, the Court need not be satisfied there is an evidentiary basis for the asserted claims but instead should allow the claims if they ***appear*** to have ***some*** merit.

40. Other federal appellate courts have reached similar conclusions. For example, the Eighth Circuit holds that "creditors' claims are colorable if they would survive a motion to dismiss." *In re Racing Services, Inc.*, 540 F.3d 892, 900 (8th Cir. 2008); *accord In Re Foster*, 516 B.R. 537, 542 (B.A.P. 8th Cir. 2014), aff'd 602 Fed. Appx. 356 (8th Cir. 2015) (*per curiam*). The Sixth Circuit has adopted a similar test requiring that the court

look ***only*** to the face of the complaint to determine if claims are colorable. *In re The Gibson Group, Inc.*, 66 F.3d 1436, 1446 (6th Cir. 1995) (emphasis added).

41. Although there is a dearth of federal court authorities in Texas, other federal courts have adopted the same standard—*i.e.*, a claim is colorable if it is "plausible" and could survive a motion to dismiss. *See In re America's Hobby Center, Inc.*, 223 B.R. 273, 282 (S.D.N.Y 1998). In addition, in the non-bankruptcy context, the District Court for the Northern District of Texas explained that "[t]he requirement of a 'colorable claim' means only that the plaintiff must have an '*arguable* claim' and not that the plaintiff must be able to succeed on that claim." *Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (Emphasis added).

42. Thus, in this instance, this Court's gatekeeping inquiry is properly limited to whether HMIT has stated a plausible claim on the face of the proposed pleadings involving "bad faith," "willful misconduct," or "fraud." Because the face of the Adversary Complaint alleges plausible facts, HMIT's Motion is properly granted. Clearly, the attached Adversary Proceeding would survive a Rule 12(b)(6) challenge. Furthermore, the supporting declarations and documentary evidence provide additional support, and the circumstantial evidence proves that Farallon and Stonehill, strangers to the bankruptcy on the petition date, would not have leaped into these proceedings without undisclosed assurances of profit.

B. Fraud

43. As set forth in the proposed Adversary Proceeding, HMIT alleges a colorable claim for fraud—both fraud by knowing misrepresentation and fraud by omission of material fact. Here, these allegations of fraud are appropriately governed by Texas law under appropriate choice of law principals.[55]

44. Seery had a duty to not provide material inside information to his business allies. But, he did so. At the latest, Seery became aware of the potential sale of MGM in December 2020 when he received an email from Jim Dondero.[56] Thus, Seery knew at that time that this potential sale would likely yield significant value to the Original Debtor's Estate. Yet, the financial disclosures associated with the Plan's confirmation, which were provided only a month later, presented an entirely different outlook for both Class 8 and Class 9 unsecured creditors.[57] Seery knew at that time that these pessimistic disclosures were misleading, if not inaccurate.

45. There is no credible doubt Seery intended that innocent stakeholders would rely upon the pessimistic projections set forth in the Plan Analysis. Indeed, the singular purpose of the Plan Analysis was to advise stakeholders. As such, HMIT alleges that Seery knowingly made misrepresentations with the intention that innocent stakeholders

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[55] However, Delaware law is substantially similar on the elements of fraud. *See Malinals v. Kramer*, No. CIV.A. CPU 6-11002145, 2012 WL 174958, at 2 (Del. Com. PI. Jan. 5, 2012)

[56] *See*, Dondero 2022 Dec., Ex. 2-1.

[57] *See* Doc. 1875-1, Plan Analysis, February 1, 2021.

would rely, and that he failed to disclose material information concerning his entanglements with Farallon and Stonehill, as well as the related negotiations that were chock full of conflicts of interest.

46. On the flip side of this conspiracy coin, Farallon and Stonehill were engaged in negotiations to acquire the Claims at discounted prices; and, they successfully did so. HMIT alleges that their success was based on knowledge that the financial disclosures associated with the Plan Analysis were significantly understated. Otherwise, it would make no financial sense for Farallon and Stonehill to do the deals at issue. Indeed, Farallon admitted that it would not sell the Claims at any price, expressing great confidence in the substantial profits it expected even in the absence of any supporting, publicly available information.[58]

47. All of the Proposed Defendants had a duty of affirmative disclosure under these circumstances. Seery always had this duty. Muck, Jessup, Farallon, and Stonehill assumed this duty when they became non-statutory "insiders." Thus, all of the Proposed Defendants are liable for conspiring to perpetrate a fraud by omission of material facts.

48. HMIT also claims that Seery and the other Proposed Defendants failed to disclose material information concerning Seery's involvement in brokering the Claims in exchange for *quid pro quo* assurances of enhanced compensation. Seery's compensation

[58] Ex. 3, 2023 Dondero Declaration.

should be disgorged or, alternatively, such compensation constitutes a damage recoverable by the Reorganized Debtor and Claimant Trust as assignees (or transferees) of the Original Debtor's causes of action. This compensation was the product of the alleged self-dealing, breaches of fiduciary duty, and fraud.

C. Breaches and Aiding and Abetting Breaches of Fiduciary Duties

49. It is beyond dispute Seery owed fiduciary duties to the Estate. *See Xtreme Power*, 563 B.R. at 632-33 (detailing fiduciary duties owed by corporate officers and directors under Delaware law);[59] *Louisiana World*, 858 F.2d at 245-46 (5th Cir. 1988) (detailing duties owed by debtors-in-possession). Although Seery did not buy the Claims at issue, he stood to profit from these sales because his close business allies would do his bidding after they had acceded to positions of power and control on the Oversight Board. Muck and Jessup were essentially stepping into the shoes of three of the largest unsecured creditors who were already slated to serve on the Oversight Board. Thus, by acquiring their Claims, all of the Proposed Defendants knew that Muck and Jessup would occupy these powerful oversight positions after the Effective Date.

50. Thus, the alleged conspiracy was successfully implemented before the Effective Date. Farallon and Stonehill now occupy control positions through the shell

[59] The *Xtreme* case also notes that "several Delaware courts have recognized that 'directors who are corporate employees lack independence because of their substantial interest in retaining their employment." 563 B.R. at 633-34. Because Muck and Jessup are now in control of Seery's compensation, it follows that Seery is beholden to them, and Seery's disclosure of inside information to Stonehill and Farallon confirms his conflict of interest.

entities (Muck and Jessup) overseeing large compensation packages for Seery. Of course, this control (and the opportunity to control) presented a patent conflict of interest which Seery should have avoided, but instead knowingly created, fostered, and encouraged. HMIT alleges that Seery breached his duty to avoid this conflict or otherwise disclose this conflict and Farallon and Stonehill aided and abetted this breach.

51. The Original Debtor, as an investment adviser registered with the SEC, is also required to make public disclosures on its Form ADV, the uniform registration form for investment advisers required by the SEC. These Form ADV disclosures, which were in effect at the time of the insider trades at issue, explicitly forbade "any access person from trading either personally or on behalf of others . . . on material non-public information or communicating material non-public information to others in violation of the law or duty owed to another party."[60] It now appears these representations were false when made. Seery's alleged conduct also violated, at minimum, the duties Seery owed in his various capacities with the Original Debtor under the Form ADV disclosures.

52. Although initially strangers to the original bankruptcy, by accepting and using inside information, Farallon and Stonehill became "temporary insiders" and thus owed separate duties to the Estate. *See S.E.C. v. Cuban*, 620 F.3d 551 (5th Cir. 2010) ("[E]ven

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[60] *See, e.g.,* https://files.adviserinfo.sec.gov/IAPD/Content/Common/crd_iapd_Brochure.aspx?BRCHR_VRSN_ID=777026.

an individual who does not qualify as a traditional insider may become a 'temporary insider' if by entering 'into a special confidential relationship in the conduct of the business of the enterprise [they] are given access to information solely for corporate purposes." *In re Washington Mut., Inc.*, 461 B.R. 200 (Bankr. D. Del. 2011), *vacated in part*, 08-12229 MFW, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (finding that equity committee stated colorable claim for equitable disallowance against creditors who "became temporary insiders of the Debtors when the Debtors gave them confidential information and allowed them to participate in negotiations with JPMC for the shared goal of reaching a settlement that would form the basis of a consensual plan of reorganization"; vacated in part as a condition of settlement only);[61] *See also, In re Smith*, 415 B.R. 222, 232-33 (Bankr. N.D. Tex. 2009) ("[a]n insider is an entity or person with 'a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arm's length with the debtor.' 'Thus, the term "insider" is viewed to encompass two classes: (1) per se insiders as listed in the Code and (2) extra-statutory insiders that do not deal at arm's length.'" (citations omitted)). Farallon, Stonehill, Muck, and Jessup clearly fall into this latter category.

[61] Although the *Washington Mutual* case was subsequently vacated, the Court's intellectual reasoning remains valid because the vacatur was mandated by a mediated settlement, not because the court's logic was flawed or changed, and the court expressly noted that the parties' settlement was conditioned on vacatur. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, *8 (Bankr. D. Del. Feb. 24, 2012) ("grant[ing] partial vacatur . . . *in furtherance of the settlement embodied in the Plan*," and noting that "absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement." (emphasis added)).

53. Because Farallon and Stonehill (acting through Muck and Jessup) now hold the majority of the seats on the Oversight Board, they, along with Seery, exercise control of the reorganization proceedings. At no time were Farallon, Stonehill, or Seery's plans disclosed to the other creditors or equity. In fact, the only inference that can be reasonably drawn is that Farallon and Stonehill brazenly sought to conceal their involvement by establishing shell entities—Muck and Jessup—to nominally hold the Claims and create an opaque barrier to any effort to identify the "*Oz behind the curtain*." Such conduct aligns precisely with the inequitable conduct detailed in *Citicorp* and *Adelphia* (discussed below).

54. In sum, the proposed Adversary Proceeding sets forth plausible allegations that Stonehill and Farallon were aware of Seery's fiduciary duties. Indeed, as registered investment advisors, both Farallon and Stonehill were acutely aware of Seery's fiduciary obligations, including, without limitation, the duty to act in the best interests of the Original Debtor's Estate and the duty not to engage in insider trading that would benefit Seery, as an insider, and themselves, as non-statutory insiders. By accepting and then acting on material non-public information, Farallon and Stonehill (as well as Muck and Jessup) aided and abetted breaches of these fiduciary duties. By placing themselves in positions to control Seery's compensation, Farallon and Stonehill (acting through Muck and Jessup) induced, encouraged, aided and abetted Seery's self-dealing.

D. Equitable Disallowance is an Appropriate Remedy

55. HMIT also seeks equitable disallowance. Although the Fifth Circuit in *Matter of Mobile Steel Co.* generally limited the court's equitable powers to subordination rather than disallowance,[62] the Fifth Circuit **did *not* foreclose** the viability of equitable disallowance as a potential remedy. *See* 563 F.2d 692, 699 n. 10 (5th Cir. 1977). Binding U.S. Supreme Court precedent in *Pepper v. Litton* also permits bankruptcy courts to fashion disallowance remedies. 308 U.S. 295, 304-11 (1939). Bankruptcy Code § 510, which supplies the authority for equitable subordination, was "intended to codify case law, such as *Pepper v. Litton . . . and is not intended to limit the court's power in any way…. Nor does [it] preclude a bankruptcy court from completely disallowing a claim in appropriate circumstances*." *In re Adelphia Commun. Corp.*, 365 B.R. 24, 71-72 (Bankr. S.D.N.Y. 2007), *aff'd in part sub nom. Adelphia Recovery Tr. v. Bank of Am., N.A.*, 390 B.R. 64 (S.D.N.Y. 2008), *adhered to on reconsideration*, 05 CIV. 9050 (LMM), 2008 WL 1959542 (S.D.N.Y. May 5, 2008) (emphasis and omissions in original).[63]

56. The Fifth Circuit's decision in *Mobile Steel* also was premised on the notion that disallowance would not add to the quiver of defenses to fight unfairness because

[62] Equitable subordination is an inadequate remedy in this instance.

[63] In *Washington Mutual*, the Court's intellectual reasoning when imposing disallowance is instructive. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, *8 (Bankr. D. Del. Feb. 24, 2012) ("grant[ing] partial vacatur . . . *in furtherance of the settlement embodied in the Plan*," and noting that "absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement." (emphasis added)).

creditors "are fully protected by subordination" and "[i]f the misconduct directed against the bankrupt is so extreme that disallowance might appear to be warranted, then *surely* the claim is either invalid or the bankrupt possesses a clear defense against it." *Mobile Steel*, 563 F.2d at 699 n. 10 (emphasis added). Importantly, however, the factual scenarios considered in *Mobile Steel* do not exist here.

57. Here, Muck and Jessup purchased both Class 8 and Class 9 Claims, and they now effectively occupy more than 90% of the entire field of unsecured creditors in these two claimant tiers. Thus, subordination cannot effectively address the current facts where the Original Debtor's CEO and CRO conspired directly with close business allies who acquired the largest unsecured claims to the detriment of other innocent creditors and *former equity*. The reasoning in published cases from other circuits supports this conclusion. *See Adelphia*, 365 B.R. at 71-73; *Citicorp Venture Capital, Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 991 n. 7 (3d Cir. 1998).

58. The purpose of equitable subordination is to assure that the wrongdoer does not profit from bad conduct. In the typical case, subordination to other creditors will achieve this deterrence. But, it is clear that the Third Circuit's decision in *Citicorp* was structured to use subordination as just one tool in a larger tool box to make sure "at a minimum, the remedy here should deprive – [the fiduciary] of its profit on the purchase of the notes." *Id* at 991. In *Adelphia*, the Southern District of New York also used equitable

subordination as a remedy to address wrongs of non-insiders who aided and abetted breaches a fiduciary duty by the debtor's management. 365 B.R. at 32.

59. But subordination cannot adequately address the wrongful conduct at issue. This is because subordination is typically limited to instances where one creditor is subordinated to other creditors, not equity. Here, for all practical purposes, there are only a few other unsecured creditors with relatively small stakes. Therefore, subordination as a weapon of deterrence is neutered.

60. In sum, by engaging in the alleged wrongful acts, including aiding and abetting Seery's breaches of fiduciary duty, Farallon, Stonehill, Muck, and Jessup should not be rewarded. The Proposed Defendants engaged in alleged conduct which damaged the Original Debtor's estate, including improper agreements to compensate Seery under the terms of the CTA. Equitable disallowance is an appropriate remedy which, when combined with disgorgement of all ill-gotten profits, will deprive the Proposed Defendants of their ill-gotten gains.

E. Disgorgement and Unjust Enrichment

61. The law is clear that disgorgement is an available remedy for breach of fiduciary duty both under Texas Law, see *Kinzbach Tool Co. v. Corbett-Wallace Corporation*, 160 S.W. 2d 509 (Tex. 1942), and under Delaware law, see *Metro Storage International, LLC v. Harron*, 275 A.3d 810 (Del. Ch. 2022). Disgorgement is also an appropriate remedy for unjust enrichment under Texas law, *Hunter v. Shell Oil Co.*, 198 F.2d 485 (5th Cir. 1952),

and under Delaware law, *In re Tyson Foods, Inc. Consolidated Shareholder Litigation*, 919 A.2d 563 (Del. Ch. 2007).[64]

62. Likewise, the imposition of a constructive trust is proper for addressing unjust enrichment under both Delaware and Texas law, see *Teacher's Retirement System of Louisiana v. Aidinoff*, 900 A.2d 654 (Del. Ch. 2006) and *Hsin-Chi-Su v. Vantage Drilling Company*, 474 S.W. 3d 384 (Tex. App. – 14th Dist. 2015), pet. denied. The elements of unjust enrichment are: (1) the defendant must have gained a benefit (2) at the expense of plaintiff, (3) and retention of that benefit must be shown to be unjust. *See Restatement (Third) of Restitution and Unjust Enrichment* §321, cmt. e (2011).

63. Here, the imposition of a constructive trust and disgorgement are clearly appropriate to provide redress for the alleged breaches of fiduciary duty and the knowing participation in (or aiding and abetting) those breaches. Furthermore, the imposition of a constructive trust and disgorgement are appropriate to disgorge the improper benefits that all of the Proposed Defendants received by virtue of collusion and insider trading.

64. As set forth in the proposed Adversary Proceeding, Seery gained the opportunity to have his compensation demands rubber stamped. The other Defendants gained the opportunity to purchase valuable claims at a discount knowing that

[64] It is likely that the Internal Affairs Doctrine will dictate that Delaware choice of law governs the breach of fiduciary duty claims.

pessimistic financial projections were false and that the upside investment potential was great. Retention of the benefits they received would be unjust and inequitable.

65. Clearly, the Debtor's Estate was damaged by virtue of the claimed conduct. Seery obtained profits and compensation to the detriment of that estate as well as the estate of the Reorganized Debtor, other innocent creditors and HMIT, as former equity and as a contingent Claimant Trust Beneficiary.

F. Declaratory Relief

66. HMIT also seeks declaratory relief pursuant to Fed. R. Bank P. 7001(9). Specifically, HMIT seeks a declaratory judgment that: (a) there is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement; (b) as a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered "contingent;" (c) HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill; (d) HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments; (e) Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of fraudulent conduct, bad faith, willful misconduct, and unclean hands; (f) Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized

Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct, and unclean hands; and (g) all of the Proposed Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct, and unclean hands.

G. HMIT has Direct Standing.

67. The Texas Supreme Court recently held that "a partner or other stakeholder in a business organization has constitutional standing to sue for an alleged loss in the value of its interest in the organization." *Pike v. Texas EMC Mgt., LLC*, 610 S.W.3d 763, 778 (Tex. 2020). In so holding, the Court considered federal law and found that the traditional "incantation that a shareholder may not sue for the corporation's injury" is really a question of capacity, which goes to the merits of a claim, rather than an issue of standing that would impact subject matter jurisdiction. *Id.* at 777 (noting that the 5th Circuit and "[o]ther federal circuits agree that a plaintiff has standing to sue for the lost value of its investment in a corporation"). Because Seery, Muck, Jessup, Stonehill, Farallon's alleged actions devalued HMIT's interest in the Debtor's Estate, including, without limitation, payment of excessive compensation to Seery, HMIT has standing to pursue its common law claims directly. HMIT also has direct standing to seek declaratory relief as set forth in the proposed Adversary Proceeding.

VII. Prayer

WHEREFORE, PREMISES CONSIDERED, Hunter Mountain Investment Trust respectfully requests this Court grant HMIT leave authorizing it to file the Adversary Complaint, attached as Exhibit 1, as an Adversary Proceeding in this United States Bankruptcy Court for the Northern District of Texas, in its own name and as a derivative action on behalf of the Debtor Highland Capital Management, L.P., against Muck Holdings, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, Stonehill Capital Management, LLC, James P. Seery, Jr., and John Doe Defendants Nos. 1 – 10, and further grant HMIT all such other and further relief to which HMIT may be justly entitled.

Dated: March 28, 2023

Respectfully Submitted,
PARSONS MCENTIRE MCCLEARY PLLC

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CERTIFICATE OF CONFERENCE

Beginning on March 24, 2023, and also on March 27, 2023, the undersigned counsel conferred either by telephone or via email with all counsel for all Respondents regarding the relief requested in the foregoing Motion, including John A. Morris on behalf of James P. Seery, and Brent McIlwain on behalf of Muck Holdings LLC, Jessup Holdings LLC, Stonehill Capital Management, and Farallon Capital Management. Mr. Seery is opposed to this Motion. Based upon all communications with Mr. McIlwain, it is reasonably believed his clients are also opposed and we advised him that this recitation would be placed in the certificate of conference.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

CERTIFICATE OF SERVICE

I certify that on the 28th day of March 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

Exhibit 1

Exhibit 1 to Emergency Motion

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

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Case No. 19-34054-sgj11**
Debtor.	§	
HUNTER MOUNTAIN INVESTMENT TRUST, INDIVIDUALLY, AND ON BEHALF OF THE DEBTOR HIGHLAND CAPITAL MANAGEMENT, L.P. AND THE HIGHLAND CLAIMANT TRUST	§	**Adversary Proceeding No. _____**
PLAINTIFFS,	§	

v.	§
	§
MUCK HOLDINGS, LLC, JESSUP HOLDINGS, LLC, FARALLON CAPITAL MANAGEMENT, LLC, STONEHILL CAPITAL MANAGEMENT, LLC, JAMES P. SEERY, JR., AND JOHN DOE DEFENDANTS NOS. 1-10	§
DEFENDANTS.	§

VERIFIED ADVERSARY COMPLAINT

Hunter Mountain Investment Trust ("HMIT") files this Verified Adversary Complaint in its individual capacity and, as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management L.P. ("HCM" or "Reorganized Debtor") and the Highland Claimant Trust (collectively "Plaintiffs"), complaining of Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup"), Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), James P. Seery, Jr., ("Seery") and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendants Nos. 1-10 are collectively "Defendants"), and would show:

I. Introduction

1. HMIT brings this Verified Adversary Complaint ("Complaint") on behalf of itself, individually, and as a derivative action benefitting the Reorganized Debtor and

on behalf of the Highland Claimant Trust ("Claimant Trust"), as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").[1] This derivative action is specifically brought pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and B. R. Rule 7023.1. At the time of the transactions at issue, HMIT held a 99.5% limited partnership in Highland Capital Management, LP, the Original Debtor, as described herein. This derivative action is not a collusive effort to confer jurisdiction that the Court would otherwise lack.

2. Upon the Effective Date, the assets of the bankruptcy estate of Highland Capital Management, L.P., as the Original Debtor (the "Debtor's Estate") were transferred to the Highland Claimant Trust under the terms of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Doc. 1943, Exhibit A] (the "Plan") and as defined in the CTA. These assets include all "causes of action" that the Debtor's Estate had before the Effective Date including, without limitation, the causes of action set forth in this Adversary Proceeding. Furthermore, the Claimant Trust is managed by the Claimant Trustee, Seery. Therefore, any demand upon Seery to prosecute the claims set forth in this Complaint would be futile because Seery is a Defendant. Similarly, the Oversight Board exercises supervision over Seery as Claimant

[1] Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate. Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed in HMIT's Emergency Motion for Leave (Doc. __).

Trustee, and Muck and Jessup are members of the Oversight Board. Any demand upon Muck and Jessup to prosecute these claims would be equally futile. All conditions precedent to bringing this derivative action have otherwise been satisfied.

3. This action has become necessary because of Defendants' tortious conduct. This tortious conduct occurred before the Effective Date of the Plan, but its effects have caused damage both before and after the Effective Date. Prior to the Effective Date, HMIT owned 99.5% of the limited partnership interest in the Original Debtor and was the beneficiary of fiduciary duties owed by Seery.

4. Seery, the Original Debtor's CEO and former Chief Restructuring Officer ("CRO"), wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends, Farallon and Stonehill. He did so by providing material non-public information to them concerning the value of the Original Debtor's Estate that other stakeholders did not know. Farallon and Stonehill, who were otherwise strangers to the bankruptcy proceedings, wrongfully purchased the claims through their special purpose entities, Muck and Jessup, based upon this inside information, and they are now profiting from their misconduct. Seery's dealings with the other Defendants were not arm's length, but instead were covert, undisclosed, and collusive.

5. Motivated by corporate greed, the other Defendants aided and abetted or, alternatively, knowingly participated in Seery's wrongful conduct. They also breached their own duties as "non-statutory insiders." Because of their long-standing, historical

relationships with Seery, and their use of material non-public information, Farallon, Stonehill, Muck, and Jessup assumed positions of control over the affairs of the Debtor's bankruptcy, including compensation awards to Seery. As such, they became non-statutory insiders.

6. HMIT was formerly the largest equity holder in the Debtor, holding a 99.5% limited partnership interest. HMIT now holds an Allowed Class 10 Class B/C Limited Partnership Interest and a Contingent Trust Interest under the CTA. Given HMIT's' position as former equity, HMIT's right to recover from the Claimant Trust is junior to the Reorganized Debtor's unsecured creditors, now known as Claimant Trust Beneficiaries. However, the vast majority of the approved unsecured claims superior to HMIT's interest are the claims wrongfully acquired by insider trading and the breaches of duty at issue in this proceeding.

7. By wrongfully soliciting, fostering, and encouraging the wrongful insider trades, Seery violated his fiduciary duties to the Debtor's Estate, specifically his duty of loyalty and his duty to maximize the value of the Estate with corresponding recovery by legitimate creditors and former equity. Seery was motivated out of self-interest to garner personal benefit (to the detriment of the Debtor's Estate) by strategically benefitting his business allies with non-public information. He then successfully "planted" his allies onto the Oversight Board, which, as a consequence does not act as an independent board in the exercise of its responsibilities. Rather, imbued with powers to oversee Seery's

future compensation, the other Defendants are postured to reward Seery financially regarding Defendants' illicit dealings and, upon information and belief, they have done so.

8. By receiving and acting upon material non-public information concerning the financial condition of the Debtor's Estate, Stonehill and Farallon, acting individually and through special purpose shell entities they created and controlled, directly or indirectly, are also liable for aiding and abetting Seery's breaches of fiduciary duties. By acquiring the claims at issue, Muck and Jessup, the shell entities created and controlled by Stonehill and Farallon, also became non-statutory insiders owing duties of disclosure which they also breached.

9. HMIT separately seeks recovery against John Doe Defendant Nos. 1-10. Farallon actively concealed the precise legal relationship between Farallon and Muck. Stonehill actively concealed the precise legal relationship between Stonehill and Jessup. What is known, however, is that Farallon and Stonehill created these special purpose shell entities on the eve of the insider trades to acquire ownership of the claims and to otherwise control the affairs of the Oversight Board. Both Farallon and Stonehill rejected inquiries concerning the exact nature of their relationship with these special purpose entities. Accordingly, HMIT seeks equitable tolling of any statute of limitations concerning claims against unknown business entities that Farallon and Stonehill may have created and inserted as intermediate corporate layers in the transactions at issue.

10. HMIT seeks to disgorge all Defendants' ill-gotten profits and equitable disallowance of the remaining unpaid balances on the following allowed claims: Claim Nos. 23, 72, 81, 143, 147, 149, 150, 153, 154, 190, and 191 (the "Claims") currently held by Muck and Jessup. Because Defendants received substantial distributions from the Claimant Trust in connection with these Claims, HMIT seeks to disgorge all such distributions above Defendants' initial investment—compelling restitution of such funds to the Claimant Trust for the benefit of innocent creditors and former equity pursuant to the waterfall established under the Plan and the CTA. HMIT also seeks to disgorge Seery's compensation from the date his collusive conduct first occurred. Alternatively, HMIT seeks damages on behalf of the Claimant Trust in an amount equal to all compensation paid to Seery from the onset of his collusive conduct to present.

II. Jurisdiction and Venue

11. Pursuant to *Misc. Order No. 33 Order of Reference of Bankruptcy Cases, U.S. District Court for N.D. Texas* (the "Order of Reference"), this Complaint is commenced in the Bankruptcy Court because it is "related to a case under Title 11." The filing of this Complaint is expressly subject to and without waiver of Plaintiff' rights and ability to seek withdrawal of the reference pursuant to 28 U.S.C. § 157(d), FED. R. BANKR. P. 5011, and Local Bankruptcy Rule 5011-1. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein and nothing in this Complaint, nor Plaintiffs' compliance with the Order of Reference, shall be deemed a waiver of this right.

12. This Court has jurisdiction of the subject matter and the parties as a "related to" proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and Articles IX.F, and XI. of the Plan.

13. Pursuant to Rule 7008 of the Bankruptcy Rules, Plaintiffs do **not** consent to the entry of final orders or judgment by the bankruptcy court.

14. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 1408 and 1409, and Articles IX.F, and XI. of the Plan.

III. Parties

15. HMIT is a Delaware statutory trust that was the largest equity holder in the Original Debtor, holding a 99.5% limited partnership interest. HMIT is also the holder of a Contingent Trust Interest in the Claimant Trust, but should be treated as a vested Claimant Trust Beneficiary due to Defendants' wrongful conduct.

16. Pursuant to the Plan and the CTA, the Claimant Trust holds the assets of the Reorganized Debtor, including the causes of action that accrued to the Original Debtor before the Effective Date. The Claimant Trust is established in accordance with the Delaware Statutory Trust Act and Treasury Regulatory Section 301.7701-4(d).

17. Muck is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Muck has made prior appearances in the Debtor's bankruptcy.

18. Jessup is a Delaware limited liability company, with its principal office in New York, and may be served with process via its registered agent, Vcorp Services, LLC, at 108 W. 13th Street Suite 100, Wilmington, Delaware 19801. Jessup has made prior appearances in the Debtor's bankruptcy.

19. Farallon is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Farallon is a capital management company that manages hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Farallon because Farallon's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts requirements and due process considerations.

20. Stonehill is a Delaware limited liability company, with its principal office in New York, and may be served with process at 320 Park Avenue, 26th Floor, New York, NY 10022. Stonehill is a capital management company managing hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Stonehill because Stonehill's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts and all due process considerations.

21. Seery is an individual citizen and resident of the State of New York. Mr. Seery may be served with process at 100 Crescent Court, Suite 1805, Dallas, Texas 75201.

22. John Doe Defendant Nos. 1-10 are currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.

IV. Facts

A. *Procedural Background*

23. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court,[2] which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.[3]

24. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee of the Highland Crusader Fund ("Redeemer"); Acis Capital Management, L.P. and Acis Capital Management GP, LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS")—and an unpaid vendor, Meta-E Discovery.

25. Following the venue transfer to Texas, on December 27, 2019, the Debtor filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of*

[2] Doc. 3. Unless otherwise referenced, all documents referencing "Doc." refer to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

[3] Doc. 1.

Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ("Governance Motion").[4] On January 9, 2020, the Court signed a Governance Order granting the Governance Motion.[5]

26. As part of the Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditors Committee—was appointed to the Board of Directors (the "Board") of Strand, the Original Debtor's general partner. The Board then appointed Seery as the Chief Executive Officer in place of the previous CEO, Mr. James Dondero, as well as the CRO.[6] Seery currently serves as Trustee of the Claimant Trust under the terms of the CTA and the CEO of the Reorganized Debtor.[7]

B. *The Targeted Claims*

27. In his capacity as the Original Debtor's CEO and CRO, Seery negotiated and obtained court approval for settlements with several large unsecured creditors including Redeemer, Acis, UBS, and another major unsecured creditor, HarbourVest (Redeemer, Acis, UBS, and HarbourVest are collectively the "Settling Parties"), resulting in the following allowed Claims:

Creditor	**Class 8**	**Class 9**
Redeemer	$137 mm	$0 mm

[4] Doc. 281.

[5] Doc. 339.

[6] Doc. 854, Order Approving Retention of Seery as CEO/CRO.

[7] *See* Doc. 1943, Order Approving Plan, p. 34.

Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm
UBS	$65 mm	$60 mm
(Totals)	$270 mm	$95 mm

As reflected in these settlements, HarbourVest and UBS owned Class 9 claims in addition to Class 8 Claims. Class 9 Claims were subordinated to Class 8 Claims in the distribution waterfall in the Plan.

28. Each of the Settling Parties sold their Claims to Farallon and Stonehill (or affiliated special purpose entities) shortly after receiving court approval of the settlements. One of these "trades" took place within just a few weeks before the Plan's Effective Date.[8] All of these trades occurred when HMIT held its 99.5% equity stake in the Debtor. Notice of these trades was first provided in filings in the records of the Original Debtor's bankruptcy proceedings, as follows: Claim No. 23 (Doc. 2211, 2212, and 2215), Claim Nos. 190 and 191 (Doc. 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (Doc. 2263), Claim No. 81 (Doc. 2262), Claim No. 72 (Doc. 2261).

29. Farallon and Stonehill, both of whom are registered investment advisors that manage hedge funds, have fiduciary duties to their own investors. As such, they are acutely aware of their duties and obligation as fiduciaries. Yet, they both invested many tens of millions of dollars, directly or indirectly, to acquire the Claims in the absence of

[8] Docs. 2697, 2698.

any publicly available information that could provide any economic justification for their investment decisions.

30. Upon information and belief, Stonehill and Farallon collectively invested an estimated $160 million to acquire the Claims with a face amount of $365 million, and they did so in the absence of any meaningful due diligence. Indeed, Farallon has admitted that it conducted no due diligence but relied on Seery's guarantees.

31. Stonehill and Farallon's investments become even more suspicious because the Plan provided the ***only*** publicly available information, which, at the time, included pessimistic projections that the Claims would ever receive full payment:

a. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the projected value of HCM's assets dropped over $200 million from $566 million to $364 million.[9]

b. HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11.[10]

- This meant that Farallon and Stonehill invested more than $163 million in Claims when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims.

c. In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% to 54%.

[9] Doc. 1473, Disclosure Statement, p. 18.

[10] Doc. 1875-1, Plan Supplement, Ex. A, p. 4.

d. Despite the stark decline in the value of the estate and in the midst of substantial reductions in the percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively, again, the "Claims") in April and August of 2021 in the combined amount of $163 million.[11]

32. Upon information and belief, Stonehill, through its special purpose entity, Jessup, acquired the Redeemer Committee's claim for $78 million.[12] Upon information and belief, the $23 million Acis claim[13] was sold to Farallon/Muck for $8 million. Upon information and belief, HarbourVest sold its combined $80 million in claims to Farallon/Muck for $27 million. UBS sold its combined $125 million in claims for $50 million to both Stonehill/Jessup and Farallon/Muck. In the instance of UBS, ***the total projected payout was only $35 million***. Indeed, as part of these transactions, both Farallon and Stonehill purchased Class 9 Claims at a time when the Debtor's Estate projected a zero dollar return on all such Claims.

[11] Notices of Transfers [Docs. 2212, 2215, 2261, 2262, 2263, 2215, 2297, 2298]. The Acis claim was transferred on April 16, 2021; the Redeemer, Crusader, and HarbourVest claims were transferred on April 30, 2021; and the UBS claims were transferred on August 9, 2021.

[12] July 6, 2021, letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

[13] Seery/HCM have argued that $10 million of the Acis claim is self-funding.

C. *Material Non-Public Information is Disclosed to Seery's Affiliates at Stonehill and Farallon.*

33. One of the significant assets of the Debtor's Estate was the Debtor's direct and indirect holdings in Metro-Goldwyn-Mayer Studios, Inc. ("MGM").[14]

34. On December 17, 2020, James Dondero, sent an email to Seery. At that time, Dondero was a member of the MGM board, and the email contained material non-public information regarding Amazon and Apple's interest in acquiring MGM.[15] Of course, any such sale would significantly enhance the value of the Original Debtor's estate.

35. Upon receipt of this material non-public information, Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in this Court seeking approval of the Original Debtor's settlement with HarbourVest - resulting in a transfer to the Original Debtor of HarbourVest's interest in a Debtor-advised fund, Highland CLO Funding, Ltd. ("HCLOF"), which held substantial MGM debt and equity.[16] Conspicuously, the HCLOF interest was not transferred to the Original Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements.[17]

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[14] *See* Doc. 2229, p. 6.

[15] *See* Adversary Case No. 20-3190-sgj11, Doc. 150-1, p. 1674.

[16] Doc. 1625. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM.

[17] Doc. 1625.

36. Upon information and belief, aware that the Debtor's stake in MGM afforded a new profit center, Seery saw an opportunity to increase his own compensation and enlisted the help of Stonehill and Farallon to extract further value from the Original Debtor's Estate at the expense of other innocent creditors and equity. This *quid pro quo* included, at a minimum, a tacit, if not express, understanding that Seery would be well-compensated.

37. Until 2009, Seery was the Global Head of Fixed Income Loans at Lehman Brothers[18] where, on information and belief, he conducted substantial business with Farallon. Following the collapse of Lehman Brothers, Seery continued to work with, and indeed represented Farallon as its legal counsel. Seery ultimately joined a hedge fund, River Birch Capital,[19] which, along with Stonehill, served on the creditors committee in other bankruptcy proceedings. GCM Grovesnor, a global asset management firm, held four seats on the Redeemer Committee[20] and, upon information and belief, is a significant investor in Stonehill and Farallon. Grovesnor, through Redeemer, played a large part in appointing Seery as a director of Strand Advisors. Seery was beholden to Grovesnor from the outset, and, by extension, Grovesnor's affiliates Stonehill and Farallon.

[18] Seery Resume [Doc. 281-2].

[19] *Id*.

[20] Declaration of John A. Morris [Doc. 1090], Ex. 1, pp. 15.

38. As successful capital management firms, with advisory and fiduciary duties to their own clients, Stonehill and Farallon typically engage in robust due diligence before making significant investments. Yet, in this case, it would have been *impossible* for Stonehill and Farallon to forecast *any* profit at the time of their multi-million-dollar investments given the negative financial information disclosed by the Original Debtor's Estate. Seery, as the CEO, was aware of and involved in approving these negative financial projections. In doing so, Seery intentionally caused the publication of misleading, false information.

39. Seery shared with Stonehill and Farallon *non-public* information concerning the value of the Original Debtor's Estate which was higher than publicly available information. Thus, the only logical conclusion is that all Defendants knew that the publicly available projections, which accompanied the Plan, were understated, false, and misleading. Otherwise, Farallon, Muck, Stonehill and Jessup would not have made their multi-million-dollar investments. None of the Defendants disclosed their knowledge of the misleading nature of these financial projections when they had a duty to do so. None of the Defendants disclosed the nature of their dealings in acquiring the Claims.

40. By wrongfully exploiting non-public insider information, Stonehill and Farallon—acting through Muck and Jessup—became the largest holders of unsecured claims in the Debtor's Estate with resulting control over the Oversight Board and a front row seat to the reorganization and distribution of Claimant Trust Assets. As such, they

were given control (through Muck and Jessup) to approve discretionary bonuses and success fees for Seery from these assets.

D. ***Distributions***

41. The MGM sale was ultimately consummated in March 2022 for $6.1 billion in cash, plus $2.5 billion in debt that Amazon assumed and immediately repaid.[21]

42. By the end of Q3 2021, just over $6 million of the projected $205 million available for general unsecured claimants had been disbursed.[22] No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—$45 million more than was *ever* projected.[23] Thus, Stonehill (Jessup) and Farallon (Muck) have already received returns that far eclipse their investment. They also stand to make further significant profits on their investments, including payments on Class 9 Claims.

43. As of December 31, 2022, the Claimant Trust has distributed $255,201,228. On a pro rata basis, that means that innocent creditors have received approximately $22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately $9,627,000.

[21] Amazon Q1 2022 10-Q.

[22] Doc. 3200.

[23] Doc. 3582.

44. Muck and Jessup already have received approximately $232.8 million on their Claims. Assuming and original investment of approximately $160 million, this represents over $72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary.

45. It is clear Seery facilitated the sale of the Claims to Stonehill (Jessup) and Farallon (Muck) at discounted prices and used misleading financial projections to facilitate these trades. This was part of a larger strategy to install Stonehill (Jessup) and Farallon (Muck), his business allies, onto the Oversight Board where they would oversee lucrative bonuses and other compensation for Seery in exchange for hefty profits they expected to receive.

V. Causes of Action

A. Count I (against Seery): Breach of Fiduciary Duty

46. The allegations in paragraphs 1-45 above are incorporated herein as if set forth verbatim.

47. As CEO and CRO of a debtor-in-possession, Seery owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate, including, without limitation, the duty of loyalty. Seery also was under a duty to avoid conflicts of interests, but Seery willfully and knowingly engaged in conduct which conflicted with his fiduciary duties—and he did so out of financial self-interest.

48. By fraudulently providing and/or approving negative projections of the Debtor's Estate when he knew otherwise, Seery willfully and knowingly breached his fiduciary duties.

49. By misusing and disclosing confidential, material non-public information to Stonehill and Farallon, Seery willfully and knowingly breached his fiduciary duties.

50. By failing to disclose his role in the inside trades at issue, Seery willfully and knowingly breached his fiduciary duties.

51. As a result of his willful misconduct, Seery was unfairly advantaged by receiving additional undisclosed compensation and bonuses from the assets of the Debtor's Estate and from the Claimant Trust Assets—to the detriment of other innocent stakeholders, including HMIT, as former equity and a contingent Claimant Trust Beneficiary.

52. To remedy these breaches, Seery is liable for disgorgement of all compensation he received since his collusion with Farallon and Stonehill first began. Alternatively, Seery should be disgorged of all compensation paid to him under the terms of the CTA since the Effective Date of the Plan in August 2021.

53. Alternatively, Plaintiffs are entitled to recover damages measured by all ill-gotten compensation which Seery has received since his first collusive conduct began.

B. Count II (against Stonehill, Farallon, Jessup and Muck): Breaches of Fiduciary Duty and Knowing Participation in Breach of Fiduciary Duty

54. The allegations in paragraphs 1-53 above are incorporated herein as if set forth verbatim.

55. Seery owed fiduciary duties to HMIT and the Debtor's Estate, and he willfully and knowingly breached these duties. Without limiting the foregoing, Seery owed a duty of loyalty which he willfully and knowingly breached. Seery also owed a duty to not engage in self-interested conduct to the detriment of the Debtor's Estate and innocent stakeholders. Seery also willfully and knowingly breached this duty.

56. Stonehill and Farallon were aware of Seery's fiduciary duties and, by purchasing the Claims and approving bonuses and other compensation for Seery, Stonehill (acting through Jessup) and Farallon (acting through Muck), willfully and knowingly participated in Seery's breaches or, alternatively, willfully aided and abetted such breaches.

57. Stonehill (Jessup) and Farallon (Muck) unfairly received many millions of dollars in profits and fees—and stand to earn even more profits and fees—to the detriment of innocent stakeholders, including HMIT.

58. Stonehill and Farallon are liable for disgorgement of all profits earned from their purchase of the Claims. In addition, they are liable in damages for excessive compensation paid to Seery as part of the covert *quid pro quo* with Seery.

C. Count III (against all Defendants): Fraud by Misrepresentation and Material Nondisclosure

59. The allegations in paragraphs 1-58 above are incorporated herein as if set forth verbatim.

60. Based on Seery's duties as CEO and CRO of a debtor-in-possession, and the other Defendants' duties as non-statutory insiders, Seery, Stonehill (Jessup), and Farallon (Muck) had a duty to disclose Stonehill and Farallon's plans to purchase the Claims, but they deliberately failed to do so. Seery also had a duty to disclose correct financial projections but, rather, misrepresented such values or failed to correct false and misleading projections. These factual misrepresentations and omissions were material.

61. The withheld financial information was material because it has had an adverse impact on control over the eventual distributions to creditors and former equity, as well as the right to control Seery's compensation. By withholding such information, Seery was able to plant friendly business allies on the Oversight Board to the detriment of innocent stakeholders.

62. Defendants knew that HMIT and other creditors were ignorant of their plans, and HMIT and other stakeholders did not have an equal opportunity to discover their scheme. HMIT and the other innocent stakeholders justifiably relied on misleading information relating to the value of the Original Debtor's Estate.

63. By failing to disclose material information, and by making or aiding and abetting material misrepresentations, Seery, Stonehill, Farallon, Muck, and Jessup intended to induce HMIT to take no affirmative action.

64. HMIT justifiably relied on Seery, Stonehill, Farallon, Muck, and Jessup's nondisclosures and representations, and HMIT was injured as a result and the Debtor's Estate was also injured.

65. As a result of their frauds, all Defendants should be disgorged of all profits and ill-gotten compensation derived from their fraudulent scheme. Seery is also liable for damages measured by excessive compensation he has received since he first engaged in willful misconduct.

D. Count IV (against all Defendants): Conspiracy

66. The allegations in paragraphs 1-65 above are incorporated herein as if incorporated herein verbatim.

67. Defendants conspired with each other to unlawfully breach fiduciary duties to HMIT and the Debtor's Estate, to conceal their fraudulent trades, and to interfere with HMIT's entitlement to the residual of the Claimant Trust Asset.

68. Seery's disclosure of material non-public information to Stonehill and Farallon, and Muck and Jessup's purchase of the Claims, are each overt acts in furtherance of the conspiracy.

69. HMIT's interest in the residual of the Claimant Trust Assets has been adversely impacted by this conspiracy. The assets have been depleted by virtue of Seery's compensation awards.

E. Count V (against Muck and Jessup): Equitable Disallowance

70. The allegations in paragraphs 1-69 above are incorporated herein as if set forth verbatim.

71. By purchasing the Claims based on material non-public information, Stonehill and Farallon, through Jessup and Muck, engaged in inequitable conduct.

72. By earning significant profits on their purchases, Muck and Jessup have been unfairly advantaged to the detriment of the remaining stakeholders, including HMIT.

73. Given this inequitable conduct, equitable disallowance of Muck's and Jessup's Claims to the extent over and above their initial investment is appropriate and consistent with the purposes of the Bankruptcy Code.

74. Pleading in the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

F. Count VI (against all Defendants): Unjust Enrichment and Constructive **Trust**

75. The allegations in paragraphs 1-74 above are incorporated herein as if set forth verbatim.

76. By acquiring the Claims using material non-public information, Stonehill and Farallon breached a relationship of trust with the Original Debtor's Estate and other innocent stakeholders and were unjustly enriched and gained an undue advantage over other creditors and former equity.

77. Allowing Stonehill, Farallon, Muck and Jessup to retain their ill-gotten benefits at the expense of other innocent stakeholders and HMIT, as former equity, would be unconscionable.

78. Stonehill, Farallon, Muck, and Jessup should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment.

79. The proceeds Stonehill, Farallon, Muck, and Jessup have received from the Claimant Trust are traceable and identifiable. A constructive trust should be imposed on such proceeds to secure the restitution of these improperly retained benefits.

F. Count VI (Against all Defendants): Declaratory Relief

80. The allegations in paragraphs 1-79 are incorporated herein as if set forth verbatim.

81. HMIT seeks declaratory relief. The Court has jurisdiction to provide declaratory judgment relief when there is an actual controversy that has arisen and exists relating to the rights and duties of the parties.

82. Bankruptcy Rule 7001 provides that "a proceeding to recover property or money," may include declaratory relief. *See*, Fed. R. Bank P. 7001(1), (9).

83. The Claimant Trust Agreement is governed under Delaware law. The Claimant Trust Agreement incorporates and is subject to Delaware trust law. HMIT seeks a declaration, as follows:

a. There is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement;

b. As a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered contingent;

c. HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill;

d. HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments. Alternatively, HMIT's status as a Claimant Trust Beneficiary is fully vested when all of Muck's and Jessup's trust interests are subordinated to the trust interests held by HMIT;

e. Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of Seery's fraudulent conduct, bad faith, willful misconduct and unclean hands;

f. Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct and unclean hands;

g. All Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct and unclean hands.

VI. Punitive Damages

84. The allegations in paragraphs 1-74 are incorporated herein as if set forth verbatim.

85. The Defendants' misconduct was intentional, knowing, willful and fraudulent and in total disregard of the rights of others. An award of punitive damages is appropriate and necessary under the facts of this case.

86. All conditions precedent to recovery herein have been satisfied.

VII. Prayer

WHEREFORE, HMIT prays for judgment as follows:

1. Equitable disallowance of the Claims over and above Muck's and Jessup's original investments (or, alternatively, subordination of their Claimant Trust Interests, as addressed herein);

2. Disgorgement of all funds distributed from the Claimant Trust to Muck and/or Jessup over and above their original investments;

3. Disgorgement of compensation paid to Seery in managing or administering the Original and Reorganized Debtor's Estate;

4. Imposition of a constructive trust;

5. Declaratory relief as described herein;

6. An award of actual damages as described herein;

7. An award of exemplary damages as allowed by law;

8. Pre- and post-judgment interest; and,

9. All such other and further relief to which HMIT may be justly entitled.

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: /s/

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Attorneys for Hunter Mountain Investment Trust

Exhibit 2

CAUSE NO. DC-21-09534

IN RE JAMES DONDERO,	§	**IN THE DISTRICT COURT**
	§	
Petitioner.	§	**95th JUDICIAL DISTRICT**
	§	
	§	**DALLAS COUNTY, TEXAS**

DECLARATION OF JAMES DONDERO

COUNTY OF DALLAS §
§
STATE OF TEXAS §

Mr. James Dondero provides this unsworn declaration under TEXAS CIVIL PRACTICE & REMEDIES CODE § 132.001.

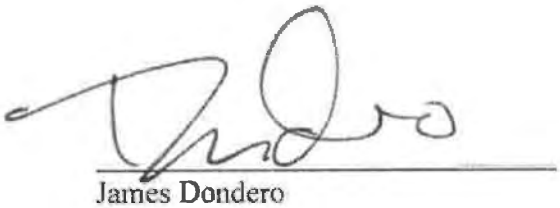
1. My name is James Dondero. I declare under penalty of perjury that I am over the age of 18 and of sound mind and competent to make this declaration.

2. Earlier this year I retained investigators to look into certain activities involving the respondents in the above-styled case and the related bankruptcy proceedings. Last year, I called Farallon's Michael Lin about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Mr. Seery had testified in court, it made no sense to me that Mr. Lin would think that the claims were worth more than what Mr. Seery testified under oath was the value of the bankruptcy claims.

3. In addition to my role as equity holder in the Crusader Funds, I have an interest in ensuring that the claims purchased by Respondents are not used as a means to deprive the equity holders of their share of the funds. It has become obvious that despite the fact that the bankrupt estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights.

4. Accordingly, I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee. True and correct copies of the reports, which were created in the ordinary course, and their attachments, are attached hereto as Exhibits A and B. A true and correct copy of the letter I received from Alverez and Marsal is attached as Exhibit C hereto.

My name is James Dondero, my birthday is on June 29, 1962. My address is 300 Crescent Court, Suite 700, Dallas, Texas 75201. I declare under penalty of perjury that the foregoing testimony is true and correct and is within my personal knowledge.



James Dondero

May 31, 2022

Date

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EDWARD M. HELLER
(1926-2013)

October 5, 2021

Mrs. Nan R. Eitel
Office of the General Counsel
Executive Office for U.S. Trustees
20 Massachusetts Avenue, NW
8th Floor
Washington, DC 20530

Re: Highland Capital Management, L.P. – USBC Case No. 19-34054sgj11

Dear Nan,

The purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the Official Committee of Unsecured Creditors ("Creditors' Committee") in the bankruptcy of Highland Capital Management, L.P. ("Highland" or "Debtor"). As described in detail below, there is sufficient evidence to warrant an immediate investigation into whether non-public inside information was furnished to claims purchasers. Further, there is reason to suspect that selling Creditors' Committee members may have violated their fiduciary duties to the estate by tying themselves to claims sales at a time when they should have been considering meaningful offers to resolve the bankruptcy. Indeed, three of four Committee members sold their claims without advance disclosure, in violation of applicable guidelines from the U.S. Trustee's Office. This letter contains a description of information and evidence we have been able to gather, and which we hope your office will take seriously.

By way of background, Highland, an SEC-registered investment adviser, filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Delaware on October 16, 2019, listing over $550 million in assets and net $110 million in liabilities. The case eventually was transferred to the Northern District of Texas, to Judge Stacey G.C. Jernigan. Highland's decision to seek bankruptcy protection primarily was driven by an expected net $110 million arbitration award in favor of the "Redeemer Committee."[1] After nearly 30 years of successful operations, Highland and its co-founder, James Dondero, were advised by Debtor's counsel that a court-approved restructuring of the award in Delaware was in Highland's best interest.

[1] The "Redeemer Committee" was a group of investors in a Debtor-managed fund called the "Crusader Fund" that sought to redeem their interests during the global financial crisis. To avoid a run on the fund at low-watermark prices, the fund manager temporarily suspended redemptions, which resulted in a dispute between the investors and the fund manager. The ultimate resolution involved the formation of the "Redeemer Committee" and an orderly liquidation of the fund, which resulted in the investors receiving their investment plus a return versus the 20 cents on the dollar they would have received had the fund been liquidated when the redemption requests were made.

EXHIBIT
A
004306
exhibitsticker.com

I became involved in Highland's bankruptcy through my representation of The Dugaboy Investment Trust ("Dugaboy"), an irrevocable trust of which Mr. Dondero is the primary beneficiary. Although there were many issues raised by Dugaboy and others in the case where we disagreed with the Court's rulings, we will address those issues through the appeals process.

From the outset of the case, the Creditors' Committee and the U.S. Trustee's Office in Dallas pushed to replace the existing management of the Debtor. To avoid a protracted dispute and to facilitate the restructuring, on January 9, 2020, Mr. Dondero reached an agreement with the Creditors' Committee to resign as the sole director of the Debtor's general partner, on the condition that he would be replaced by three independent directors who would act as fiduciaries of the estate and work to restructure Highland's business so it could continue operating and emerge from bankruptcy as a going concern. The agreement approved by the Bankruptcy Court allowed Mr. Dondero, UBS (which held one of the largest claims against the estate), and the Redeemer Committee each to choose one director and also established protocols for operations going forward. Mr. Dondero chose The Honorable Former Judge Russell F. Nelms, UBS chose John Dubel, and the Redeemer Committee chose James Seery.[2] It was expected that the new, independent management would not only preserve Highland's business but would also preserve jobs and enable continued collaboration with charitable causes supported by Highland and Mr. Dondero.

Judge Jernigan confirmed Highland's Fifth Amended Plan of Reorganization on February 22, 2021 (the "Plan"). We have appealed certain aspects of the Plan and will rely upon the Fifth Circuit Court of Appeals to determine whether our arguments have merit. I write instead to call to your attention the possible disclosure of non-public information by Committee members and other insiders and to seek review of actions by Committee members that may have breached their fiduciary duties—both serious abuses of process.

1. The Bankruptcy Proceedings Lacked The Required Transparency, Due In Part To the Debtor's Failure To File Rule 2015.3 Reports

Congress, when it drafted the Bankruptcy Code and created the Office of the United States Trustee, intended to ensure that an impartial party oversaw the enforcement of all rules and guidelines in bankruptcy. Since that time, the Executive Office for United States Trustees (the "EOUST") has issued guidance and published rules designed to effectuate that purpose. To that end, EOUST recently published a final rule entitled "*Procedures for Completing Uniform Periodic Reports in Non-Small Business Cases Filed Under Chapter 11 of Title 11*" (the "Periodic Reporting Requirements"). The Periodic Reporting Requirements reaffirmed the EOUST's commitment to maintaining "uniformity and transparency regarding a debtor's financial condition and business activities" and "to inform creditors and other interested parties of the debtor's financial affairs." 85 Fed. Reg. 82906. The goal of the Periodic Reporting Requirements is to "assist the court and parties in interest in ascertaining, [among other things], the following: (1) Whether there is a substantial or continuing loss to or diminution of the bankruptcy estate; . . . (3) whether there exists gross mismanagement of the bankruptcy estate; . . . [and] (6) whether the debtor is engaging in the unauthorized disposition of assets through sales or otherwise . . . ." *Id.*

Transparency has long been an important feature of federal bankruptcy proceedings. The EOUST instructs that "Debtors-in-possession and trustees must account for the receipt, administration, and disposition of all property; provide information concerning the estate and the estate's administration as parties in interest request; and file periodic reports and summaries of a debtor's business, including a statement of receipts and disbursements, and such other

[2] *See* Appendix, pp. A-3 - A-14.

information as the United States Trustee or the United States Bankruptcy Court requires." *See* http://justice.gov/ust/chapter-11-information (citing 11 U.S.C. § 1106(a)(1), 1107(a)). And Federal Rule of Bankruptcy Procedure 2015.3(a) states that "the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." This rule requires the trustee or a debtor in possession to file a report for each non-debtor affiliate prior to the first meeting of creditors and every six months thereafter until the effective date of a plan of reorganization. Fed R. Bankr. P. 2015.3(b). Importantly, the rule does not absolve a debtor from filing reports due prior to the effective date merely because a plan has become effective.[3] Notably, the U.S. Trustee has the duty to ensure that debtors in possession properly and timely file all required reports. 28 U.S.C. § 1112(b)(4)(F), (H).

The entire purpose of these guidelines and rules is to ensure that external stakeholders can fairly evaluate the progress of bankruptcy proceedings, including compliance with legal requirements. In fact, 11 U.S.C. § 1102(b)(3) requires a creditors' committee to share information it receives with those who "hold claims of the kind represented by the committee" but who are not appointed to the committee. In the case of the Highland bankruptcy, the transparency that the EOUST mandates and that creditors' committees are supposed to facilitate has been conspicuously absent. I have been involved in a number of bankruptcy cases representing publicly-traded debtors with affiliated non-debtor entities, much akin to Highland's structure here. In those cases, when asked by third parties (shareholders or potential claims purchasers) for information, I directed them to the schedules, monthly reports, and Rule 2015.3 reports. In this case, however, no Rule 2015.3 reports were filed, and financial information that might otherwise be gleaned from the Bankruptcy Court record is unavailable because a large number of documents were filed under seal or heavily redacted. As a result, the only means to make an informed decision as to whether to purchase creditor claims and what to pay for those claims had to be obtained from non-public sources.

It bears repeating that the Debtor and its related and affiliated entities failed to file *any* of the reports required under Bankruptcy Rule 2015.3. There should have been at least four such reports filed on behalf of the Debtor and its affiliates during the bankruptcy proceedings. The U.S. Trustee's Office in Dallas did nothing to compel compliance with the rule.

The Debtor's failure to file the required Rule 2015.3 reports was brought to the attention of the Debtor, the Bankruptcy Court, and the U.S. Trustee's Office. During the hearing on Plan confirmation, the Debtor was questioned about the failure to file the reports. The sole excuse offered by the Debtor's Chief Restructuring Officer and Chief Executive Officer, Mr. Seery, was that the task "fell through the cracks."[4] This excuse makes no sense in light of the years of bankruptcy experience of the Debtor's counsel and financial advisors. Nor did the Debtor or its counsel ever attempt to show "cause" to gain exemption from the reporting requirement. That is because there was no good reason for the Debtor's failure to file the required reports. In fact, although the Debtor and the Creditors' Committee often refer to the Debtor's structure as a "byzantine empire," the assets of the estate fall into a handful of discrete investments, most of which have audited financials and/or are required to make monthly or quarterly net-asset-value or fair-value determinations.[5] Rather than disclose financial information that was readily

[3] After notice and a hearing, the bankruptcy court may grant relief from the Rule 2015.3 disclosure requirement "for cause," including that "the trustee or debtor in possession is not able, after a good faith effort, to comply with th[e] reporting requirements, or that the information required by subdivision (a) is publicly available." Fed. R. Bankr. 2015.3(d).

[4] *See* Doc. 1905 (Feb. 3, 2021 Hr'g Tr. at 49:5-21).

[5] During a deposition, the Debtor's Chief Restructuring Officer, Mr. Seery, identified most of the Debtor's assets "[o]ff the top of [his] head" and acknowledged that he had a subsidiary ledger that detailed the assets held by entities

available, the Debtor appears to have taken deliberate and strategic steps to avoid transparency, and the U.S. Trustee's Office did nothing to rectify the problem.

By contrast, the Debtor provided the Creditors' Committee with robust weekly information regarding (i) transactions involving assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly owned subsidiaries, (ii) transactions involving entities managed by the Debtor and in which the Debtor holds a direct or indirect interest, (iii) transactions involving entities managed by the Debtor but in which the Debtor does not hold a direct or indirect interest, (iv) transactions involving entities not managed by the Debtor but in which the Debtor holds a direct or indirect interest, (v) transactions involving entities not managed by the Debtor and in which the Debtor does not hold a direct or indirect interest, (vi) transactions involving non-discretionary accounts, and (vii) weekly budget-to-actuals reports referencing non-Debtor affiliates' 13-week cash flow budget. In other words, the Committee had real-time, actual information with respect to the financial affairs of non-debtor affiliates, and this is precisely the type of information that should have been disclosed to the public pursuant to Rule 2015.3.

After the claims at issue were sold, I filed a Motion to Compel compliance with the reporting requirement. Judge Jernigan held a hearing on the motion on June 10, 2021. Astoundingly, the U.S. Trustee's Office took no position on the Motion and did not even bother to attend the hearing. Ultimately, on September 7, 2021, the Court denied the Motion as "moot" because the Plan had by then gone effective. I have appealed that ruling because, again, the Plan becoming effective does not alleviate the Debtor's burden of filing the requisite reports.

The U.S. Trustee's Office also failed to object to the Court's order confirming the Debtor's Plan, in which the Court appears to have released the Debtor from its obligation to file any reports after the effective date of the Plan that were due for any period prior to the effective date, an order that likewise defeats any effort to demand transparency from the Debtor. The U.S. Trustee's failure to object to this portion of the Court's order is directly at odds with the spirit and mandate of the Periodic Reporting Requirements, which recognize the U.S. Trustee's duty to ensure that debtors timely file all required reports.

2. There Was No Transparency Regarding The Financial Affairs Of Non-Debtor Affiliates Or Transactions Between The Debtor And Its Affiliates

The Debtor's failure to file Rule 2015.3 reports for affiliate entities created additional transparency problems for interested parties and creditors wishing to evaluate assets held in non-Debtor subsidiaries. In making an investment decision, it would be important to know if the assets of a subsidiary consisted of cash, marketable securities, other liquid assets, or operating businesses/other illiquid assets. The Debtor's failure to file Rule 2015.3 reports hid from public view the composition of the assets and the corresponding liabilities at the subsidiary level. During the course of proceedings, the Debtor sold $172 million in assets, which altered the asset mix and liabilities of the Debtor's affiliates and controlled entities. Although Judge Jernigan held that such sales did not require Court approval, a Rule 2015.3 report would have revealed the mix of assets and the corresponding reduction in liabilities of the affiliated or controlled entity. In the Appendix, I have included a schedule of such sales.

Of particular note, the Court authorized the Debtor to place assets that it acquired with "allowed claim dollars" from HarbourVest (a creditor with a contested claim against the estate) into a specially-created non-debtor entity ("SPE").[6] The Debtor's motion to settle the

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below the Debtor. *See* Appendix, p. A-19 (Jan. 29, 2021 Dep. Tr. at 22:4-10; 23:1-29:10).

[6] Prior to Highland's bankruptcy, HarbourVest had invested $80 million into a Highland fund called Acis Loan Funding, later rebranded as Highland CLO Funding, Ltd. ("HCLOF"). A dispute later arose between HarbourVest

HarbourVest claim valued the asset acquired (HarbourVest's interest in HCLOF) at $22 million. In reality, that asset had a value of $40 million, and had the asset been placed in the Debtor entity, its true value would have been reflected in the Debtor's subsequent reporting. By instead placing the asset into an SPE, the Debtor hid from public view the true value of the asset as well as information relating to its disposition; all the public saw was the filed valuation of the asset. The U.S. Trustee did not object to the Debtor's placement of the HarbourVest assets into an SPE and apparently just deferred to the judgment of the Creditors' Committee about whether this was appropriate.[7] Again, when the U.S. Trustee's Office does not require transparency, lack of transparency significantly increases the need for non-public information. Because the HarbourVest assets were placed in a non-reporting entity, no potential claims buyer without insider information could possibly ascertain how the acquisition would impact the estate.

3. The Plan's Improper Releases And Exculpation Provisions Destroyed Third-Party Rights

In addition, the Debtor's Plan contains sweeping release, exculpation provisions, and a channeling injunction requiring that any permitted causes of action to be vetted and resolved by the Bankruptcy Court. On their face, these provisions violate *Pacific Lumber*, in with the United States Court of Appeals for the Fifth Circuit rejected similarly broad exculpation clauses. The U.S. Trustee's Office in Dallas has, in all cases but this one, vigorously protected the rights of third parties against such exculpation clauses. In this case, the U.S. Trustee's Office objected to the Plan, but it did not pursue that objection at the confirmation hearing (nor even bother to attend the first day of the hearing),[8] nor did it appeal the order of the Bankruptcy Court approving the Plan and its exculpation clauses.

As a result of this failure, third-party investors in entities managed by the Debtor are now barred from asserting or channeled into the Bankruptcy Court to assert any claim against the Debtor or its management for transactions that occurred at the non-debtor affiliate level. Those investors' claims are barred notwithstanding that they were not notified of the releases and have never been given any information with which to evaluate their potential claims, nor given the opportunity to "opt out." Conversely, the releases insulate claims purchasers from the risk of potential actions by investors in funds managed by the Debtor (for breach of fiduciary duty, diminution in value, or otherwise). These releases are directly at odds with investors' expectations when they invest in managed funds—i.e., that fund managers will act in a fiduciary capacity to maximize investors' returns and that investors will have recourse for any failure to do so. While the agreements executed by investors may limit the exposure of fund managers, typically those provisions require the fund manager to obtain a third-party fairness opinion where there is a conflict between the manager's duty to the estate and his duty to fund investors.

As an example, the Court approved the settlement of UBS's claim against the Debtor and two funds managed by the Debtor (collectively referred to as "MultiStrat"). Pursuant to that settlement, MultiStrat agreed to pay UBS $18.5 million and represented that it was advised by "independent legal counsel" in the negotiation of the settlement.[9] That representation is untrue;

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and Highland, and HarbourVest filed claims in the Highland bankruptcy approximating $300 million in relation to damages allegedly due to HarbourVest as a result of that dispute. Although the Debtor initially placed no value on HarbourVest's claim (the Debtor's monthly operating report for December 2020 indicated that HarbourVest's allowed claims would be $0), eventually the Debtor entered into a settlement with HarbourVest—approved by the Bankruptcy Court—which entitled HarbourVest to $80 million in claims. In return, HarbourVest agreed to convey its interest in HCLOF to the SPE designated by the Debtor and to vote in favor of the Debtor's Plan.

[7] Dugaboy has appealed the Bankruptcy Court's ruling approving the placement of the HarbourVest assets into a non-reporting SPE.

[8] *See* Doc. 1894 (Feb. 2, 2021 Hr'g Tr. at 10:7-14).

[9] *See* Doc. 2389 (Order Approving Debtor's Settlement With UBS Securities LLC and UBS AG London Branch) at

MultiStrat did not have separate legal counsel and instead was represented only by the Debtor's counsel.[10] If that representation and/or the terms of the UBS/MultiStrat settlement in some way unfairly impacted MultiStrat's investors, they now have no recourse against the Debtor. The release and exculpation provisions in Highland's Plan do not afford third parties any meaningful recourse to third parties, even when they are negatively impacted by misrepresentations of the type contained in the UBS/MultiStrat settlement or when their interests are impaired by fund managers' failure to obtain fairness opinions to resolve conflicts of interest.

The U.S. Trustee's Office recently has argued in the context of the bankruptcy of Purdue Pharmaceuticals that release and exculpations clauses akin to those contained in Highland's Plan violate both the Bankruptcy Code and the Due Process Clause of the United States Constitution.[11] It has been the U.S. Trustee's position that where, as here, third parties whose claims are being released did not receive notice of the releases and had no way of knowing, based on the Plan's language, what claims were extinguished, third-party releases are contrary to law.[12] This position comports with Fifth Circuit case law, which makes clear that releases must be consensual, and that the released party must make a substantial contribution in exchange for any release. Highland's Plan does not provide for consent by third parties (or an opt-out provision), nor does it require that released parties provide value for their releases. Under these circumstances, it is difficult to understand why the U.S. Trustee's Office in Dallas did not lodge an objection to the Plan's release and exculpation provisions. Several parties have appealed this issue to the Fifth Circuit.

4. The Lack Of Transparency Facilitated Potential Insider Trading

The biggest problem with the lack of transparency at every step is that it created a need for access to non-public confidential information. The Debtor (as well as its advisors and professionals) and the Creditors' Committee (and its counsel) were the only parties with access to critical information upon which any reasonable investor would rely. But the public did not.

In the context of this non-transparency, it is notable that three of the four members of the Creditors' Committee and one non-committee member sold their claims to two buyers, Muck Holdings LLC ("Muck") and Jessup Holdings LLC ("Jessup"). The four claims that were sold comprise the largest four claims in the Highland bankruptcy by a substantial margin,[13] collectively totaling almost $270 million in Class 8 claims and $95 million in Class 9 claims[14]:

Claimant	Class 8 Claim	Class 9 Claims	Date Claim Settled
Redeemer Committee	$136,696,610	N/A	October 28, 2020
Acis Capital	$23,000,000	N/A	October 28, 2020
HarbourVest	$45,000,000	$35,000,000	January 21, 2021
UBS	$65,000,000	$60,000,000	May 27, 2021
TOTAL:	**$269,6969,610**	**$95,000,000**	

Muck is owned and controlled by Farallon Capital Management ("Farallon"), and we have reason to believe that Jessup is owned and controlled by Stonehill Capital Management ("Stonehill"). As the purchasers of the four largest claims in the bankruptcy, Muck (Farallon)

Ex. 1, §§ 1(b), 11; *see* Appendix, p. A-57.

[10] The Court's order approving the UBS settlement is under appeal in part based on MultiStrat's lack of independent legal counsel.

[11] *See* Memorandum of Law in Support of United States Trustee's Expedited Motion for Stay of Confirmation Order, *In re Purdue Pharma, L.P.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y.), Doc. 3778 at 17-25.

[12] *See id.* at 22.

[13] *See* Appendix, p. A-25.

[14] Class 8 consists of general unsecured claims; Class 9 consists of subordinated claims.

and Jessup (Stonehill) will oversee the liquidation of the Reorganized Debtor and the payment over time to creditors who have not sold their claims.

This is concerning because there is substantial evidence that Farallon and Stonehill may have been provided material, non-public information to induce their purchase of these claims.[15] In particular, there are three primary reasons we believe that non-public information was made available to facilitate these claims purchases:

- The scant publicly-available information regarding the Debtor's estate ordinarily would have dissuaded sizeable investment in purchases of creditors' claims;
- The information that actually was publicly available ordinarily would have compelled a prudent investor to conduct robust due diligence prior to purchasing the claims;
- Yet these claims purchasers spent in excess of $100 million (and likely closer to $150 million) on claims, ostensibly without any idea of what they were purchasing.

We believe the claims purchases of Stonehill and Farallon can be summarized as follows:

Creditor	Class 8	Class 9	Purchaser	Purchase Price
Redeemer	$137.0	$0.0	Stonehill	$78.0[16]
ACIS	$23.0	$0.0	Farallon	$8.0
HarbourVest	$45.0	$35.0	Farallon	$27.0
UBS	$65.0	$60.0	Stonehill and Farallon	$50.0[17]

To elaborate on our reasons for suspicion, an analysis of publicly-available information would have revealed to any potential investor that:

- There was a $200 million dissipation in the estate's asset value, which started at a scheduled amount of $556 million on October 16, 2019, then plummeted to $328 million as of September 30, 2020, and then increased only slightly to $364 million as of January 31, 2021.[18]

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[15] A timeline of relevant events can be found at Appendix, p. A-26.

[16] *See* Appendix, pp. A-70 – A-71. Because the transaction included "the majority of the remaining investments held by the Crusader Funds," the net amount paid by Stonehill for the Claims was approximately $65 million.

[17] Based on the publicly-available information at the time Stonehill and Farallon purchased the UBS claim, the purchase made no economic sense. At the time, the publicly-disclosed Plan Analysis estimated that there would be a 71.32% distribution to Class 8 creditors and a 0.00% distribution to Class 9 creditors, which would mean that Stonehill and Farallon paid $50 million for claims worth only $46.4 million. *See* Appendix, p. A-28. If, however, Stonehill and Farallon had access to information that only came to light later—i.e., that the estate was actually worth much, much more (between $472-600 million as opposed to $364 million)—then it makes sense that they would pay what they did to buy the UBS claim.

[18] *Compare* Jan. 31, 2021 Monthly Operating Report [Doc. 2030], *with* Disclosure Statement (approved on Nov. 24, 2020) [Doc. 1473]. The increase in value between September 2020 and January 2021 is attributable to the Debtor's settlement with HarbourVest, which granted HarbourVest a Class 8 claim of $45 million and a Class 9 Claim of $35 million, and in exchange the Debtor received HarbourVest's interest in HCLOF, which we believe was worth approximately $44.3 million as of January 31, 2021. *See* Appendix, p. A-25. It is also notable that the January 2021

- The total amount of allowed claims against the estate increased by $236 million; indeed, just between the time the Debtor's disclosure statement was approved on November 24, 2020, and the time the Debtor's exhibits were introduced at the confirmation hearing, the amount of allowed claims increased by $100 million.

- Due to the decrease in the value of the Debtor's assets and the increase in the allowed claims amount, the ultimate projected recovery for creditors in bankruptcy went from 87.44% to 62.99% in just a matter of months.[19]

No prudent investor or hedge fund investing third-party money would purchase substantial claims out of the Highland estate based on this publicly-available information without conducting thorough due diligence to be satisfied that the assets of the estate would not continue to deteriorate or that the allowed claims against the estate would not continue to grow.

There are other good reasons to investigate whether Muck and Jessup (through Farallon and Stonehill) had access to material, non-public information that influenced their claims purchasing. In particular, there are close relationships between the claims purchasers, on the one hand, and the selling Creditors' Committee members and the Debtor's management, on the other hand. What follows is our understanding of those relationships:

- Farallon and Stonehill have long-standing, material, undisclosed relationships with the members of the Creditors' Committee and Mr. Seery.[20] Mr. Seery formerly was the Global Head of Fixed Income Loans at Lehman Bros. until its collapse in 2009. While at Lehman, Mr. Seery did a substantial amount of business with Farallon. After the Lehman collapse, Mr. Seery joined Sidley & Austin as co-head of the corporate restructuring and bankruptcy group, where he worked with Matt Clemente, counsel to the Creditors' Committee in these bankruptcy proceedings.

- In addition, Grovesnor, one of the lead investors in the Crusader Fund from the Redeemer Committee (which appointed Seery as its independent director) both played a substantial role on the Creditors' Committee and is a large investor in Farallon and Stonehill.

- According to Farallon principals Raj Patel and Michael Linn, while at Sidley, Mr. Seery represented Farallon in its acquisition of claims in the Lehman estate.

- Also while at Sidley, Mr. Seery represented the Steering Committee in the Blockbuster Video bankruptcy; Stonehill (through its Managing Member, John Motulsky) was one of the five members of the Steering Committee.

- Mr. Seery left Sidley in 2013 to become the President and Senior Investment Partner of River Birch Capital, a hedge fund founded by his former Lehman colleagues. He left River Birch in October 2017 just before the fund imploded. In 2017, River Birch and Stonehill Capital were two of the biggest note holders in the Toys R Us bankruptcy and were members of the Toys R Us creditors'

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monthly financial report values Class 8 claims at $267 million, an exponential increase over their estimated value of $74 million in December 2020.

19 *See* Appendix, pp. A-25, A-28.

20 *See* Appendix, pp. A-2; A-62 – A-69.

committee.

It does not seem a coincidence that two firms with such significant ties to Mr. Seery have purchased $365 million in claims. The nature of the relationships and the absence of public data warrants an investigation into whether the claims purchasers may have had access to non-public information.

Other transactions occurring during the Highland bankruptcy also reinforce the suspicion that insider trading occurred. In particular, it appears that one of the claims buyers, Stonehill, used non-public information obtained incident to the bankruptcy to purchase stock in NexPoint Strategic Opportunities Fund (NYSE: NHF), a publicly traded, closed-end '40 Act fund with many holdings in common with assets held in the Highland estate outlined above. Stonehill is a registered investment adviser with $3 billion under management that has historically owned very few equity interests, particularly equity interests in a closed-end fund. As disclosed in SEC filings, Stonehill acquired enough stock in NHF during the second quarter of 2021 to make it Stonehill's eighth largest equity position.

The timing of the acquisitions of claims by Farallon and Stonehill also warrants investigation. In particular, although notices of the transfer of the claims were filed immediately after the confirmation of the Debtor's Plan and prior to the effective date of the Plan, it seems likely that negotiations began much earlier. Transactions of this magnitude do not take place overnight and typically require robust due diligence. We know, for example, that Muck was formed on March 9, 2021, more than a month before it filed notice that it was purchasing the Acis claim. If the negotiation or execution of a definitive agreement for the purchase began before or contemporaneously with Muck's formation, then there is every reason to investigate whether selling Creditors' Committee members and/or Debtor management provided Farallon with critical non-public information well before the Creditors' Committee members sold their claims and withdrew from the Committee. Indeed, Mr. Patel and Mr. Linn have stated to others that they purchased the Acis and HarbourVest claims in late January or early February. We believe an investigation will reveal whether negotiations of the sale and the purchase of claims from Creditors' Committee members preceded the confirmation of the Debtor's Plan and the resignation of those members from the Committee.

Likewise, correspondence from the fund adviser to the Crusader Fund indicates that the Crusader Fund and the Redeemer Committee had "consummated" the sale of the Redeemer Committee's claims and other assets on April 30, 2021, "for $78 million in cash, which was paid in full to the Crusader Funds at closing."[21] We also know that there was a written agreement among Stonehill, the Crusader Fund, and the Redeemer Committee that potentially dates back to the fourth quarter of 2020. Presumably such an agreement, if it existed, would impose affirmative and negative covenants upon the seller and grant the purchaser discretionary approval rights during the pendency of the sale. An investigation by your office is necessary to determine whether there were any such agreement, which would necessarily conflict with the Creditors' Committee members' fiduciary obligations.

The sale of the claims by the members of the Creditors' Committee also violates the guidelines provided to committee members that require a selling committee member to obtain approval from the Bankruptcy Court prior to any sale of such member's claim. The instructions provided by the U.S. Trustee's Office (in this instance the Delaware Office) state:

[21] *See* Appendix, pp. A-70 – A-71.

> **In the event you are appointed to an official committee of creditors, the United States Trustee may require periodic certifications of your claims while the bankruptcy case is pending. Creditors wishing to serve as fiduciaries on any official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court. By submitting the enclosed Questionnaire and accepting membership on an official committee of creditors, you agree to this prohibition. The United States Trustee reserves the right to take appropriate action, including removing a creditor from any committee, if the information provided in the Questionnaire is inaccurate, if the foregoing prohibition is violated, or for any other reason the United States Trustee believes is proper in the exercise of her discretion. You are hereby notified that the United States Trustee may share this information with the Securities and Exchange Commission if deemed appropriate.**

In this case, no Court approval was ever sought or obtained, and the Dallas U.S. Trustee's Office took no action to enforce this guideline. The Creditors' Committee members were sophisticated entities, and they were privy to inside information that was not available to other unsecured creditors. For example, valuations of assets placed into a specially-created affiliated entities, such as the assets acquired in the HarbourVest settlement, and valuations of assets held by other entities owned or controlled by the Debtor, were available to the selling Creditors' Committee members, but not other creditors or parties-in-interest.

While claims trading itself is not necessarily prohibited, the circumstances surrounding claims trading often times prompt investigation due to the potential for abuse. This case warrants such an investigation due to the following:

a) The selling parties were *three* of the four Creditors' Committee members, and each one had access to information they received in a fiduciary capacity;

b) Some of the information they received would have been available to other parties-in-interest if Rule 2015.3 had been enforced;

c) The sales allegedly occurred after the Plan was confirmed, and certain other matters immediately thereafter came to light, such as the Debtor's need for an exit loan (although the Debtor testified at the confirmation hearing that no loan was needed) and the inability of the Debtor to obtain Directors and Officer insurance;

d) The Debtor settled a dispute with UBS and obligated itself (using estate assets) to pursue claims and transfers and to transfer certain recoveries to UBS, as opposed to distributing those recoveries to creditors, and the Debtor used third-party assets as consideration for the settlement[22];

e) The projected recovery to creditors changed significantly between the approval of the Disclosure Statement and the confirmation of the Debtor's Plan; and

f) There was a suspicious purchase of stock by Stonehill in NHF, a closed-end fund that is publicly traded on the New York stock exchange. The Debtor's assets and the positions held by the closed-end fund are similar.

Further, there is reason to believe that insider claims-trading negatively impacted the estate's ultimate recovery. Immediately prior to the Plan confirmation hearing, Judge Jernigan suggested that the Creditors' Committee and Mr. Dondero attempt to reach a settlement. Mr. Dondero, through counsel, made numerous offers of settlement that would have maximized the estate's recovery, even going so far as to file a proposed Plan of Reorganization. The Creditors' Committee did not timely respond to these efforts. It was not until The Honorable Former Judge D. Michael Lynn, counsel for Mr. Dondero, reminded the Creditors' Committee counsel that its

members had a fiduciary duty to respond that a response was forthcoming. Mr. Dondero's proposed plan offered a greater recovery than what the Debtor had reported would be the expected Plan recovery. The Creditors' Committee's failure to timely respond to that offer suggests that some members may have been contractually constrained from doing so, which itself warrants investigation.

We encourage the EOUST to question and explore whether, at the time that Mr. Dondero's proposed plan was filed, the Creditors' Committee members already had committed to sell their claims and therefore were contractually restricted from accepting Mr. Dondero's materially better offer. If that were the case, the contractual tie-up would have been a violation of the Committee members' fiduciary duties. The reason for the U.S. Trustee's guideline concerning the sale of claims by Committee members was to allow a public hearing on whether Committee members were acting within the bounds of their fiduciary duties to the estate incident to the sale of any claim. The failure to enforce this guideline has left open questions about sale of Committee members' claims that should have been disclosed and vetted in open court.

In summary, the failure of the U.S. Trustee's Office to demand appropriate reporting and transparency created an environment where parties needed to obtain and use non-public information to facilitate claims trading and potential violations of the fiduciary duties owed by Creditors' Committee members. At the very least, there is enough credible evidence to warrant an investigation. It is up to the bankruptcy bar to alert your office to any perceived abuses to ensure that the system is fair and transparent. The Bankruptcy Code is not written for those who hold the largest claims but, rather, it is designed to protect all stakeholders. A second Neiman Marcus should not be allowed to occur.

We would appreciate a meeting with your office at your earliest possible convenience to discuss the contents of this letter and to provide additional information and color that we believe will be valuable in making a determination about whether and what to investigate. In the interim, if you need any additional information or copies of any particular pleading, we would be happy to provide those at your request.

Very truly yours,

/s/Douglas S. Draper

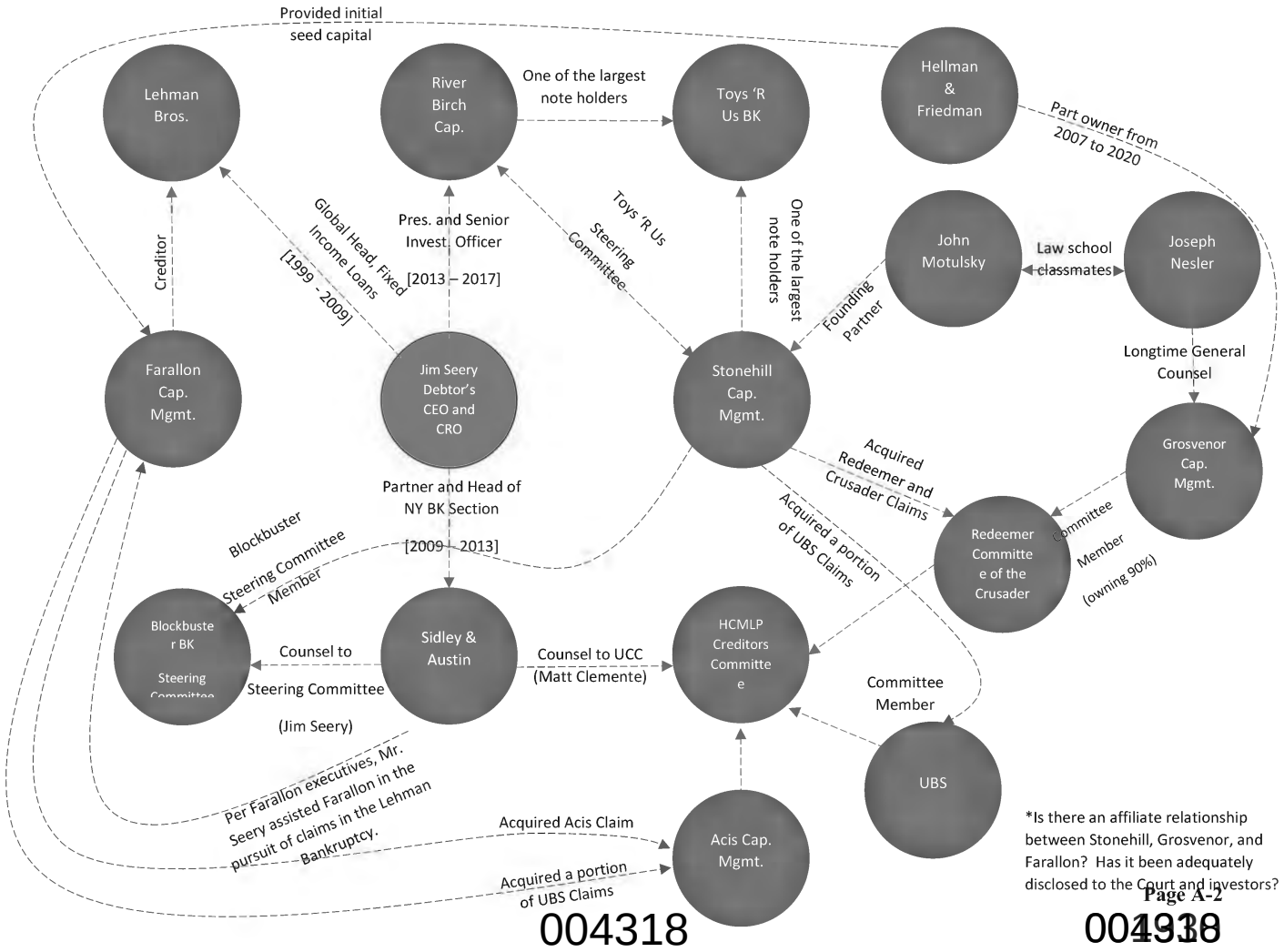
Douglas S. Draper

DSD:dh

Appendix

Table of Contents

Relationships Among Debtor's CEO/CRO, the UCC, and Claims Purchasers



*Is there an affiliate relationship between Stonehill, Grosvenor, and Farallon? Has it been adequately disclosed to the Court and investors?

004318

Debtor Protocols [Doc. 466-1]

I. **Definitions**

A. "Court" means the United States Bankruptcy Court for the Northern District of Texas.

B. "NAV" means (A) with respect to an entity that is not a CLO, the value of such entity's assets less the value of its liabilities calculated as of the month end prior to any Transaction; and (B) with respect to a CLO, the CLO's gross assets less expenses calculated as of the quarter end prior to any Transaction.

C. "Non-Discretionary Account" means an account that is managed by the Debtor pursuant to the terms of an agreement providing, among other things, that the ultimate investment discretion does not rest with the Debtor but with the entity whose assets are being managed through the account.

D. "Related Entity" means collectively (A)(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor) has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor); (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative (as defined in Section 101 of the Bankruptcy Code) of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, including any "non-statutory" insider; and (viii) to the extent not included in (A)(i)-(vii), any entity included in the listing of related entities in **Schedule B** hereto (the "Related Entities Listing"); and (B) the following Transactions, (x) any intercompany Transactions with certain affiliates referred to in paragraphs 16.a through 16.e of the Debtor's cash management motion [Del. Docket No. 7]; and (y) any Transactions with Charitable DAF Fund, L.P. (provided, however, that additional parties may be added to this subclause (y) with the mutual consent of the Debtor and the Committee, such consent not to be unreasonably withheld).

E. "Stage 1" means the time period from the date of execution of a term sheet incorporating the protocols contained below the ("Term Sheet") by all applicable parties until approval of the Term Sheet by the Court.

F. "Stage 2" means the date from the appointment of a Board of Independent Directors at Strand Advisors, Inc. until 45 days after such appointment, such appointment being effective upon Court approval.

G. "Stage 3" means any date after Stage 2 while there is a Board of Independent Directors at Strand Advisors, Inc.

H. "Transaction" means (i) any purchase, sale, or exchange of assets, (ii) any lending or borrowing of money, including the direct payment of any obligations of another entity, (iii) the satisfaction of any capital call or other contractual

requirement to pay money, including the satisfaction of any redemption requests, (iv) funding of affiliates and (v) the creation of any lien or encumbrance.

I. "Ordinary Course Transaction" means any transaction with any third party which is not a Related Entity and that would otherwise constitute an "ordinary course transaction" under section 363(c) of the Bankruptcy Code.

J. "Notice" means notification or communication in a written format and shall include supporting documents necessary to evaluate the propriety of the proposed transaction.

K. "Specified Entity" means any of the following entities: ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

II. Transactions involving the (i) assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly-owned subsidiaries, including Jefferies Prime Account, and (ii) the Highland Select Equity Fund, L.P., Highland Multi Strategy Credit Fund, L.P., and Highland Restoration Capital Partners

A. **Covered Entities**: N/A (See entities above).

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

   a) Stage 1 and Stage 2: ordinary course determined by the CRO.

   b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

   a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

   b) Stage 3:

      (1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

III. Transactions involving entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above)

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above).[1]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

[1] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

IV. Transactions involving entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest.[2]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

   a) Stage 1 and Stage 2: ordinary course determined by the CRO.

   b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

   a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

   b) Stage 3:

      (1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

      (2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages):

   a) Except (x) as set forth in (b) and (c) below and (y) for any Transaction involving a Specified Entity and the sale or purchase by such Specified Entity of an asset that is not an obligation or security issued or guaranteed by any of the Debtor, a Related Entity or a fund, account, portfolio company owned, controlled or managed by the Debtor or a Related Entity, where such Transaction is effected in compliance with the collateral management agreement to which such Specified Entity is party, any Transaction that decreases the NAV of an entity managed by the Debtor in excess of the greater of (i) 10% of NAV or (ii) $3,000,000 requires five business days advance notice to

[2] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may take such steps as may be reasonably necessary to winddown any managed entity and make distributions as may be required in connection with such winddown to any required parties. The Debtor will provide the Committee with five business days advance notice of any distributions to be made to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category. Such reports will include Transactions involving a Specified Entity unless the Debtor is prohibited from doing so under applicable law or regulation or any agreement governing the Debtor's relationship with such Specified Entity.

V. Transactions involving entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest.[3]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

[3] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

VI. **Transactions involving entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest**

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest.[4]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VII. **Transactions involving Non-Discretionary Accounts**

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all non-discretionary accounts.[5]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VIII. **Additional Reporting Requirements – All Stages (to the extent applicable)**

A. DSI will provide detailed lists and descriptions of internal financial and operational controls being applied on a daily basis for a full understanding by the Committee and its professional advisors three (3) business days in advance of the hearing on the approval of the Term Sheet and details of proposed amendments to said financial and operational controls no later than seven (7) days prior to their implementation.

B. The Debtor will continue to provide weekly budget to actuals reports referencing their 13-week cash flow budget, such reports to be inclusive of all Transactions with Related Entities.

IX. **Shared Services**

A. The Debtor shall not modify any shared services agreement without approval of the CRO and Independent Directors and seven business days' advance notice to counsel for the Committee.

B. The Debtor may otherwise continue satisfying its obligations under the shared services agreements.

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[4] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

[5] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

X. **Representations and Warranties**

A. The Debtor represents that the Related Entities Listing included as **Schedule B** attached hereto lists all known persons and entities other than natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

B. The Debtor represents that the list included as **Schedule C** attached hereto lists all known natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

C. The Debtor represents that, if at any time the Debtor becomes aware of any person or entity, including natural persons, meeting the definition of Related Entities covered by Section I.D parts A(1)-(vii) above that is not included in the Related Entities Listing or Schedule C, the Debtor shall update the Related Entities Listing or Schedule C, as appropriate, to include such entity or person and shall give notice to the Committee thereof.

Schedule A[6]

Entities the Debtor manages and in which the Debtor holds a direct or indirect interest

1. Highland CLO Funding, Ltd. (0.63% Ownership Interest)
2. Dynamic Income Fund (0.26% Ownership Interest)

Entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

1. Highland Prometheus Master Fund L.P.
2. NexAnnuity Life Insurance Company
3. PensionDanmark
4. Highland Argentina Regional Opportunity Fund
5. Longhorn A
6. Longhorn B
7. Collateralized Loan Obligations
   a) Rockwall II CDO Ltd.
   b) Grayson CLO Ltd.
   c) Eastland CLO Ltd.
   d) Westchester CLO, Ltd.
   e) Brentwood CLO Ltd.
   f) Greenbriar CLO Ltd.
   g) Highland Park CDO Ltd.
   h) Liberty CLO Ltd.
   i) Gleneagles CLO Ltd.
   j) Stratford CLO Ltd.
   k) Jasper CLO Ltd.
   l) Rockwall DCO Ltd.
   m) Red River CLO Ltd.
   n) Hi V CLO Ltd.
   o) Valhalla CLO Ltd.
   p) Aberdeen CLO Ltd.
   q) South Fork CLO Ltd.
   r) Legacy CLO Ltd.
   s) Pam Capital
   t) Pamco Cayman

Entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

1. Highland Opportunistic Credit Fund
2. Highland Healthcare Opportunities Fund f/k/a Highland Long/Short Healthcare Fund
3. NexPoint Real Estate Strategies Fund
4. Highland Merger Arbitrage Fund
5. NexPoint Strategic Opportunities Fund
6. Highland Small Cap Equity Fund
7. Highland Global Allocation Fund

[6] NTD: Schedule A is work in process and may be supplemented or amended.

8. Highland Socially Responsible Equity Fund
9. Highland Income Fund
10. Stonebridge-Highland Healthcare Private Equity Fund ("Korean Fund")
11. SE Multifamily, LLC

Entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

1. The Dugaboy Investment Trust
2. NexPoint Capital LLC
3. NexPoint Capital, Inc.
4. Highland IBoxx Senior Loan ETF
5. Highland Long/Short Equity Fund
6. Highland Energy MLP Fund
7. Highland Fixed Income Fund
8. Highland Total Return Fund
9. NexPoint Advisors, L.P.
10. Highland Capital Management Services, Inc.
11. Highland Capital Management Fund Advisors L.P.
12. ACIS CLO Management LLC
13. Governance RE Ltd
14. PCMG Trading Partners XXIII LP
15. NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC
16. NexPoint Real Estate Advisors II LP
17. NexPoint Healthcare Opportunities Fund
18. NexPoint Securities
19. Highland Diversified Credit Fund
20. BB Votorantim Highland Infrastructure LLC
21. ACIS CLO 2017 Ltd.

Transactions involving Non-Discretionary Accounts

1. NexBank SSB Account
2. Charitable DAF Fund LP

Schedule B

Related Entities Listing (other than natural persons)

Schedule C

1. James Dondero
2. Mark Okada
3. Grant Scott
4. John Honis
5. Nancy Dondero
6. Pamela Okada
7. Thomas Surgent
8. Scott Ellington
9. Frank Waterhouse
10. Lee (Trey) Parker

Seery Jan. 29, 2021 Testimony

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

In Re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, LP,	Case No. 19-34054-SGJ 11
Debtor	

REMOTE DEPOSITION OF JAMES P. SEERY, JR.

January 29, 2021

10:11 a.m. EST

Reported by:
Debra Stevens, RPR-CRR
JOB NO. 189212

January 29, 2021
9:00 a.m. EST

Remote Deposition of JAMES P. SEERY, JR., held via Zoom conference, before Debra Stevens, RPR/CRR and a Notary Public of the State of New York.

REMOTE APPEARANCES:

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EXAMINATIONS

EXHIBITS

SEERY DYD

INFORMATION/PRODUCTION REQUESTS

MARKED FOR RULING

COURT REPORTER: My name is Debra Stevens, court reporter for TSG Reporting and notary public of the State of New York. Due to the severity of the COVID-19 pandemic and following the practice of social distancing, I will not be in the same room with the witness but will report this deposition remotely and will swear the witness in remotely. If any party has any objection, please so state before we proceed.

Whereupon,

JAMES SEERY,

having been first duly sworn/affirmed, was examined and testified as follows:

EXAMINATION BY
MR. DRAPER:

Q. Mr. Seery, my name is Douglas Draper, representing the Dugaboy Trust. I have series of questions today in connection with the 30(b) Notice that we filed. The first question I have for you, have you seen the Notice of Deposition

J. SEERY

the screen, please?
A. Page what?
Q. I think it is page 174.
A. Of the PDF or of the document?
Q. Of the disclosure statement that was filed. It is up on the screen right now.
COURT REPORTER: Do you intend this as another exhibit for today's deposition?
MR. DRAPER: We'll mark this Exhibit 2.
(So marked for identification as Seery Exhibit 2.)
Q. If you look to the recovery to Class 8 creditors in the November 2020 disclosure statement was a recovery of 87.44 percent?
A. That actually says the percent distribution to general unsecured creditors was 87.44 percent. Yes.
Q. And in the new document that was filed, given to us yesterday, the recovery is 62.5 percent?

J. SEERY

A. It says the percent distribution to general unsecured creditors is 62.14 percent.
Q. Have you communicated the reduced recovery to anybody prior to the date -- to yesterday?
MR. MORRIS: Objection to the form of the question.
A. I believe generally, yes. I don't know if we have a specific number, but generally yes.
Q. And would that be members of the Creditors' Committee who you gave that information to?
A. Yes.
Q. Did you give it to anybody other than members of the Creditors' Committee?
A. Yes.
Q. Who?
A. HarbourVest.
Q. And when was that?
A. Within the last two months.
Q. You did not feel the need to communicate the change in recovery to

J. SEERY

anybody else?
A. I said Mr. Doherty.
Q. In looking at the two elements, and what I have asked you to look at is the claims pool. If you look at the November disclosure statement, if you look down Class 8, unsecured claims?
A. Yes.
Q. You have 176,000 roughly?
A. Million.
Q. 176 million. I am sorry. And the number in the new document is 313 million?
A. Correct.
Q. What accounts for the difference?
A. An increase in claims.
Q. When did those increases occur? Were they yesterday? A month ago? Two months ago?
A. Over the last couple months.
Q. So in fact over the last couple months you knew in fact that the recovery in the November disclosure statement was

J. SEERY

not accurate?
A. Yes. We secretly disclosed it to the Bankruptcy Court in open court hearings.
Q. But you never did bother to calculate the reduced recovery; you just increased --
(Reporter interruption.)
Q. You just advised as to the increased claims pool. Correct?
MR. MORRIS: Objection to the form of the question.
A. I don't understand your question.
Q. What I am trying to get at is, as you increase the claims pool, the recovery reduces. Correct?
A. No. That is not how a fraction works.
Q. Well, if the denominator increases, doesn't the recovery ultimately decrease if --
A. No.
Q. -- if the numerator stays the

J. SEERY

were amended without consideration a few years ago. So, for our purposes we didn't make the assumption, which I am sure will happen, a fraudulent conveyance claim on those notes, that a fraudulent conveyance action would be brought. We just assumed that we'd have to discount the notes heavily to sell them because nobody would respect the ability of the counterparties to fairly pay.

Q. And the same discount was applied in the liquidation analysis to those notes?

A. Yes.

Q. Now --

A. The difference -- there would be a difference, though, because they would pay for a while because they wouldn't want to accelerate them. So there would be some collections on the notes for P and I.

Q. But in fact as of January you have accelerated those notes?

A. Just one of them, I believe.

Q. Which note was that?

J. SEERY

A. NexPoint, I said. They defaulted on the note and we accelerated it.

Q. So there is no need to file a fraudulent conveyance suit with respect to that note. Correct, Mr. Seery?

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

A. Disagree. Since it was likely intentional fraud, there may be other recoveries on it. But to collect on the note, no.

Q. My question was with respect to that note. Since you have accelerated it, you don't need to deal with the issue of when it's due?

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

A. That wasn't your question. But to that question, yes, I don't need to deal with when it's due.

Q. Let me go over certain assets. I am not going to ask you for the valuation of them but I am going to ask

J. SEERY

you whether they are included in the asset portion of your $257 million number, all right? Mr. Morris didn't want me to go into specific asset value, and I don't intend to do that.

The first question I have for you is, the equity in Trustway Highland Holdings, is that included in the $257 million number?

A. There is no such entity.

Q. Then I will do it in a different way. In connection with the sale of the hard assets, what assets are included in there specifically?

A. Off the top of my head -- it is [redacted] Trustway Holdings and all the value that flows up from Trustway Holdings. It [redacted] flows up from Targa. It includes CCS [redacted] to the Debtor from CCS Medical. It includes Cornerstone and all the value that would flow from Cornerstone. It

J. SEERY

includes any other securities and all the value that would flow from Cornerstone. It includes HCLOF and all the value that would flow up from HCLOF. It includes [redacted] from Korea.

There may be others off the top of my head. I don't recall them. I don't have a list in front of me.

Q. Now, with respect to those assets, have you started the sale process of those assets?

A. No. Well, each asset is different. So, the answer is, with respect to any securities, we do seek to sell those regularly and we do seek to monetize those assets where we can depending on whether there is a restriction or not and whether there is liquidity in the market.

With respect to the PE assets or the companies I described -- Targa, CCS, Cornerstone, JHT -- we have not -- Trustway. We have not sought to sell

J. SEERY

A. I don't recall the specific limitation on the trust. But if there was a reason to hold on to the asset, if there is a limitation, we can seek an extension.

Q. Let me ask a question. With respect to these businesses, the Debtor merely owns an equity interest in them. Correct?

A. Which business?

Q. The ones you have identified as operating businesses earlier?

A. It depends on the business.

Q. Well, let me -- again, let's try to be specific. With respect to SSP, it was your position that you did not need to get court approval for the sale. Correct?

A. That's correct.

Q. Which one of the operating businesses that are here, that you have identified, do you need court authority for a sale?

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

A.

J. SEERY

different analysis that we'll undertake with bankruptcy counsel to determine what we would need depending on when it is

either under the code are or under the plan.

Q. Is there anything that would stop you from selling these businesses if the Chapter 11 went on for a year or two years?

MR. MORRIS: Objection to form of the question.

A. Is there anything that would stop me? We'd have to follow the strictures of the code and the protocols, but there would be no prohibition -- let me finish, please.

There would be no prohibition that I am aware of.

Q. Now, in connection with your differential between the liquidation of what I will call the operating businesses under the liquidation analysis and the plan analysis, who arrived at the discount

J. SEERY

or determined the discount that has been placed between the two, plan analysis versus liquidation analysis?

MR. MORRIS: Objection to form of the question.

A. To which document are you referring?

Q. Both the June -- the January and the November analysis has a different estimated proceeds for monetization for the plan analysis versus the liquidation analysis. Do you see that?

A. Yes.

Q. And there is a note under there. "Assumes Chapter 7 trustee will not be able to achieve the same sales proceeds as Claimant trustee."

A. I see that, yes.

Q. Do you see that note?

A. Yes.

Q. Who arrived at that discount?

A. I did.

Q. What percentage did you use?

A. Depended on the asset. Each one

J. SEERY

is different.

Q. Is the discount a function of capability of a trustee versus your capability, or is the discount a function of timing?

MR. MORRIS: Objection to form.

A. It could be a combination.

Q. So, let's -- let me walk through this. Your plan analysis has an assumption that everything is sold by December 2022. Correct?

A. Correct.

Q. And the valuations that you have used here for the monetization assume a sale between -- a sale prior to December of 2022. Correct?

A. Sorry. I don't quite understand your question.

Q. The 257 number, and then let's take out the notes. Let's use the 210 number.

MR. MORRIS: Can we put the document back on the screen, please? Sorry, Douglas, to interrupt, but it

J. SEERY

would be helpful.

MR. DRAPER: That is fine, John.

(Pause.)

MR. MORRIS: Thank you very much.

Q. Mr. Seery, do you see the 257?

A. In the one from yesterday?

Q. Yes.

A. Second line, 257,941. Yes.

Q. That assumes a monetization of all assets by December of 2022?

A. Correct.

Q. And so everything has been sold by that time; correct?

A. Yes.

Q. So, what I am trying to get at is, there is both the capability between you and a trustee, and then the second issue is timing. So, what discount was put on for timing, Mr. Seery, between when a trustee would sell it versus when you would sell it?

MR. MORRIS: Objection.

Q. What is the percentage you

J. SEERY

applied?

A. Each of the assets is different.

Q. Is there a general discount that you used?

A. Not a general discount, no. We looked at each individual asset and went through and made an assessment.

Q. Did you apply a discount for your capability versus the capability of a trustee?

A. No.

Q. So a trustee would be as capable as you are in monetizing these assets?

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

Q. Excuse me? The answer is?

A. The answer is maybe.

Q. Couldn't a trustee hire somebody as capable as you are?

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

A. Perhaps.

Q. Sir, that is a yes or no question. Could the trustee hire somebody

J. SEERY

as capable as you are?

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

A. I don't know.

Q. Is there anybody as capable as you are?

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

A. Certainly.

Q. And they could be hired. Correct?

A. Perhaps. I don't know.

Q. And if you go back to the November 2020 liquidation analysis versus plan analysis, it is also the same note about that a trustee would bring less, and there is the same sort of discount between the estimated proceeds under the plan and under the liquidation analysis.

MR. MORRIS: If that is a question, I object.

Q. Is that correct, Mr. Seery, looking at the document?

A. There are discounts, yes.

J. SEERY

Q. Again, the discounts are applied for timing and capability?

A. Yes.

Q. Now, in looking at the November plan analysis number of $190 million and the January number of $257 million, what accounts for the increase between the two dates? What assets specifically?

A. There are a number of assets. Firstly, the HCLOF assets are added.

Q. How much are those?

A. Approximately 22 and a half million dollars.

Q. Okay.

A. Secondly, there is a significant [redacted] assets over this time period.

Q. Which assets, Mr. Seery?

A. There are a number. They include MGM stock, they include Trustway, they include Targa.

Q. And what is the percentage increase from November to January, November of 2020 to January of 2021?

J. SEERY

A. Do you mean what is the percentage increase from 190 to 257?

Q. No. You just identified three assets. MGM stock, we can go look at the exchange and figure out what the price increase is; correct?

A. No.

Q. Why not? Is the MGM stock publicly traded?

A. Yes. It doesn't trade on --

Q. Excuse me?

A. It doesn't trade on an exchange.

Q. Is there a public market for the MGM stock that we could calculate the increase?

A. There is a semipublic market; yes.

Q. So it is a number that is readily available between the two dates?

A. It's available.

Q. Now, you identified Targa and Trustway. Correct?

A. Yes.

Q. Those are not readily available

J. SEERY

markets; correct?

A. No.

Q. Those are operating businesses?

A. Correct.

Q. [redacted] the November 2020 liquidation analysis?

A. We use a combination of the value that we get from Houlihan Lokey for [redacted]

Q. And the adjustment was up or down?

A. When?

Q. [redacted] adjusted it. Did you adjust it up or did you adjust it down?

MR. MORRIS: Objection to form of the question.

A. [redacted] adjusted it down, and for January we adjusted it down. I don't recall off the [redacted]

J. SEERY

Q. [redacted] valuation for those two businesses showed a significant increase between November of [redacted]

MR. MORRIS: Objection to form of the question.

A. I didn't say that.

Q. I am trying to account for the [redacted] identified three assets. You identified MGM stock, which has, I can guess, as you [redacted] Then you identified two others that the valuation is based upon something Houlihan Lokey provided you. Correct?

A. I gave you three examples. I never said "readily." That is your word, [redacted] had a significant change in their valuation.

Q. So let's now go back to the question. There is an increase in value [redacted]

J. SEERY

of 2021, the magnitude being roughly 60 some odd million dollars. Correct?

A. Correct.

Q. We can account for $22 million [redacted]

MR. MORRIS: Objection to form.

A. Correct.

Q. [redacted] settlement, so that leaves roughly [redacted]

MR. MORRIS: Objection to the form of the question if that is a question. It is accounted for.

Q. What makes up that difference, Mr. Seery?

A. A change in the plan value of the assets.

Q. Okay. Which assets? Let's sort [redacted]

A. There are numerous assets in the plan formulation. I gave you three examples of the operating businesses. The securities, I believe, have increased in [redacted]

J. SEERY

for one. On the operating businesses, we looked at each of them and made an assessment based upon where the market is

have moved those valuations.

Q. Let me look at some numbers again. In the liquidation analysis in November of 2020, the liquidation value is $149 million. Correct?

A. Yes.

Q. And in the liquidation analysis in January of 2021, you have $191 million?

A. Yes.

Q. You see that number. So there is $51 million there, right?

A. No.

Q. What is the difference between 191 and -- sorry. My math may be a little off. What is the difference between the two numbers, Mr. Seery?

A. Your math is off.

Q. Sorry. It is 41 million?

A. Correct.

Q. $22 million of that is the

J. SEERY

HarbourVest settlement, right?

A. I believe that's correct.

Q. Is that fair, Mr. Seery?

A. I believe that is correct, yes.

Q. And part of that differential are publicly traded or ascertainable securities. Correct?

A. Yes.

Q. And basically you can get, or under the plan analysis or trustee analysis, if it is a marketable security or where there is a market, the liquidation number should be the same for both. Is that fair?

A. No.

Q. And why not?

A. We might have a different price target for a particular security than the current trading value.

Q. I understand that, but I mean that is based upon the capability of the person making the decision as to when to sell. Correct?

MR. MORRIS: Objection to form

J. SEERY

of the question.

Q. Mr. Seery, yes or no?

A. I said no.

Q. What is that based on, then?

A. The person's ability to assess the market and timing.

Q. Okay. And again, couldn't a trustee hire somebody as capable as you to both, A, assess the market and, B, make a determination as to when to sell?

MR. MORRIS: Objection to form of the question.

A. I suppose a trustee could.

Q. And there are better people or people equally or better than you at assessing a market. Correct?

A. Yes.

MR. MORRIS: Objection to form of the question.

Q. So, again, let's go back to that. We have accounted for, out of $41 million where the liquidation analysis increases between the two dates, $22 million of it. That leaves

J. SEERY

$18 million. How much of that is publicly traded or ascertainable assets versus operating businesses?

A. I don't know off the top of my head the percentages.

Q. All right. The same question for the plan analysis where you have the differential between the November number and the January number. How much of it is marketable securities versus an operating business?

A. I don't recall off the top of my head.

MR. DRAPER: Let me take a few-minute break. Can we take a ten-minute break here?

THE WITNESS: Sure.

(Recess.)

BY MR. DRAPER:

Q. Mr. Seery, what I am going to show you and what I would ask you to look at is in the note E, in the statement of assumptions for the November 2020 disclosure statement. It discusses fixed

Sale of Assets of Affiliates or Controlled Entities

Asset	Sales Price
Structural Steel Products	$50 million
Life Settlements	$35 million
OmniMax	$50 million
Targa	$37 million

- These assets were sold over the contemporaneous objections of James Dondero, who was the Portfolio Manager and key-man on the funds.
- Mr. Seery admitted[1] that he must comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Protocols for the sale of major assets of the estate. We believe that a competitive bid process and court approval should have been required for the sale of each of these assets (as was done for the sale of the building at 2817 Maple Ave. [a $9 million asset] and the sale of the interest in PetroCap [a $3 million asset]).

[1] *See* Mr. Seery's Jan. 29, 2021 deposition testimony, Appendix p. A-20.

20 Largest Unsecured Creditors

Name of Claimant	Allowed Class 8	Allowed Class 9
Redeemer Committee of the Highland Crusader Fund	$136,696,610.00	
UBS AG, London Branch and UBS Securities LLC	$65,000,000.00	$60,000,000
HarbourVest entities	$45,000,000.00	$35,000,000
Acis Capital Management, L.P. and Acis Capital Management GP, LLC	$23,000,000.00	
CLO Holdco Ltd	$11,340,751.26	
Patrick Daugherty	$8,250,000.00	$2,750,000 (+$750,000 cash payment on Effective Date of Plan)
Todd Travers (Claim based on unpaid bonus due for Feb 2009)	$2,618,480.48	
McKool Smith PC	$2,163,976.00	
Davis Deadman (Claim based on unpaid bonus due for Feb 2009)	$1,749,836.44	
Jack Yang (Claim based on unpaid bonus due for Feb 2009)	$1,731,813.00	
Paul Kauffman (Claim based on unpaid bonus due for Feb 2009)	$1,715,369.73	
Kurtis Plumer (Claim based on unpaid bonus due for Feb 2009)	$1,470,219.80	
Foley Gardere	$1,446,136.66	
DLA Piper	$1,318,730.36	
Brad Borud (Claim based on unpaid bonus due for Feb 2009)	$1,252,250.00	
Stinson LLP (successor to Lackey Hershman LLP)	$895,714.90	
Meta-E Discovery LLC	$779,969.87	
Andrews Kurth LLP	$677,075.65	
Markit WSO Corp	$572,874.53	
Duff & Phelps, LLC	$449,285.00	
Lynn Pinker Cox Hurst	$436,538.06	
Joshua and Jennifer Terry	$425,000.00	
Joshua Terry	$355,000.00	
CPCM LLC (bought claims of certain former HCMLP employees)	Several million	
TOTAL:	**$309,345,631.74**	**$95,000,000**

Timeline of Relevant Events

Date	Description
10/29/2019	UCC appointed; members agree to fiduciary duties and not sell claims.
9/23/2020	Acis 9019 filed
9/23/2020	Redeemer 9019 filed
10/28/2020	Redeemer settlement approved
10/28/2020	Acis settlement approved
12/24/2020	HarbourVest 9019 filed
1/14/2021	Motion to appoint examiner filed
1/21/2021	HarbourVest settlement approved; transferred its interest in HCLOF to HCMLP assignee, valued at $22 million per Seery
1/28/2021	Debtor discloses that it has reached an agreement in principle with UBS
2/3/2021	Failure to comply with Rule 2015.3 raised
2/24/2021	Plan confirmed
3/9/2021	Farallon Cap. Mgmt. forms "Muck Holdings LLC" in Delaware
3/15/2021	Debtor files Jan. '21 monthly operating report indicating assets of $364 million, liabilities of $335 million (**inclusive of $267,607,000 in Class 8 claims, but exclusive of any Class 9 claims**), the last publicly filed summary of the Debtor's assets. The MOR states that no Class 9 distributions are anticipated at this time and Class 9 recoveries are not expected.
3/31/2021	UBS files friendly suit against HCMLP under seal
4/8/2021	Stonehill Cap. Mgmt. forms "Jessup Holdings LLC" in Delaware
4/15/2021	UBS 9019 filed
4/16/2021	Notice of Transfer of Claim - Acis to Muck (Farallon Capital)
4/29/2021	Motion to Compel Compliance with Rule 2015.3 Filed
4/30/2021	Notice of Transfer of Claim - Redeemer to Jessup (Stonehill Capital)
4/30/2021	Notice of Transfer of Claim - HarbourVest to Muck (Farallon Capital)
4/30/2021	Sale of Redeemer claim to Jessup (Stonehill Capital) "consummated"
5/27/2021	UBS settlement approved; included $18.5 million in cash from Multi-Strat
6/14/2021	UBS dismisses appeal of Redeemer award
8/9/2021	Notice of Transfer of Claim - UBS to Jessup (Stonehill Capital)
8/9/2021	Notice of Transfer of Claim - UBS to Muck (Farallon Capital)

Critical unknown dates and information:

- The date on which Muck entered into agreements with HarbourVest and Acis to acquire their claims and what negative and affirmative covenants those agreements contained.
- The date on which Jessup entered into an agreement with the Redeemer Committee and the Crusader Fund to acquire their claim and what negative and affirmative covenants the agreement contained.
- The date on which the sales actually closed versus the date on which notice of the transfer was filed (i.e., did UCC members continue to serve on the committee after they had sold their claims).

Debtor's October 15, 2020 Liquidation Analysis [Doc. 1173-1]

	Plan Analysis		**Liquidation Analysis**
Estimated cash on hand at 12/31/2020	$26,496		$26,496
Estimated proceeds from monetization of assets [1][2]	198,662		154,618
Estimated expenses through final distribution [1][3]	(29,864)		(33,804)
Total estimated $ available for distribution	**195,294**		**147,309**
Less: Claims paid in full			
Administrative claims [4]	(10,533)		(10,533)
Priority Tax/Settled Amount [10]	(1,237)		(1,237)
Class 1 – Jefferies Secured Claim	-		-
Class 2 – Frontier Secured Claim [5]	(5,560)		(5,560)
Class 3 – Priority non-tax claims [10]	(16)		(16)
Class 4 – Retained employee claims	-		-
Class 5 – Convenience claims [6][10]	(13,455)		-
Class 6 – Unpaid employee claims [7]	(2,955)		-
Subtotal	(33,756)		(17,346)
Estimated amount remaining for distribution to general unsecured claims	161,538		129,962
Class 5 – Convenience claims [8]	-		17,940
Class 6 – Unpaid employee claims	-		3,940
Class 7 – General unsecured claims [9]	174,609		174,609
Subtotal	174,609		196,489
% Distribution to general unsecured claims	92.51%		66.14%
Estimated amount remaining for distribution	-		-
Class 8 – Subordinated claims	*no distribution*		*no distribution*
Class 9 – Class B/C limited partnership interests	*no distribution*		*no distribution*
Class 10 – Class A limited partnership interests	*no distribution*		*no distribution*

Notable notations/disclosures in the Oct. 15, 2020 liquidation analysis include:

- Note [9]: General unsecured claims estimated using $0 allowed claims for HarbourVest and UBS. Ultimately, those two creditors were awarded $105 million of general unsecured claims and $95 million of subordinated claims.

Updated Liquidation Analysis (Feb. 1, 2021)[2]

	Plan Analysis		**Liquidation Analysis**
Estimated cash on hand at 1/31/2020 [sic]	$24,290		$24,290
Estimated proceeds from monetization of assets [1][2]	257,941		191,946
Estimated expenses through final distribution [1][3]	(59,573)		(41,488)
Total estimated $ available for distribution	**222,658**		**174,178**
Less: Claims paid in full			
Unclassified [4]	(1,080)		(1,080)
Administrative claims [5]	(10,574)		(10,574)
Class 1 – Jefferies Secured Claim	-		-
Class 2 – Frontier Secured Claim [6]	(5,781)		(5,781)
Class 3 – Other Secured Claims	(62)		(62)
Class 4 – Priority non-tax claims	(16)		(16)
Class 5 – Retained employee claims	-		-
Class 6 – PTO Claims [5]	-		-
Class 7 – Convenience claims [7][8]	(10,280)		-
Subtotal	**(27,793)**		**(17,514)**
Estimated amount remaining for distribution to general unsecured claims	194,865		157,235
% Distribution to Class 7 (Class 7 claims including in Class 8 in Liquidation scenario)	85.00%		0.00%
Class 8 – General unsecured claims [8] [10]	273,219		286,100
Subtotal	273,219		286,100
% Distribution to general unsecured claims	71.32%		54.96%
Estimated amount remaining for distribution	-		-
Class 9 – Subordinated claims	*no distribution*		*no distribution*
Class 10 – Class B/C limited partnership interests	*no distribution*		*no distribution*
Class 11 – Class A limited partnership interests	*no distribution*		*no distribution*

Notable notations/disclosures in the Feb. 1, 2021 liquidation analysis include:

- claim amounts in Class 8 assume $0 for IFA and HM, $50.0 million for UBS and $45 million HV.
- Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets

[2] Doc. 1895.

Summary of Debtor's January 31, 2021 Monthly Operating Report[3]

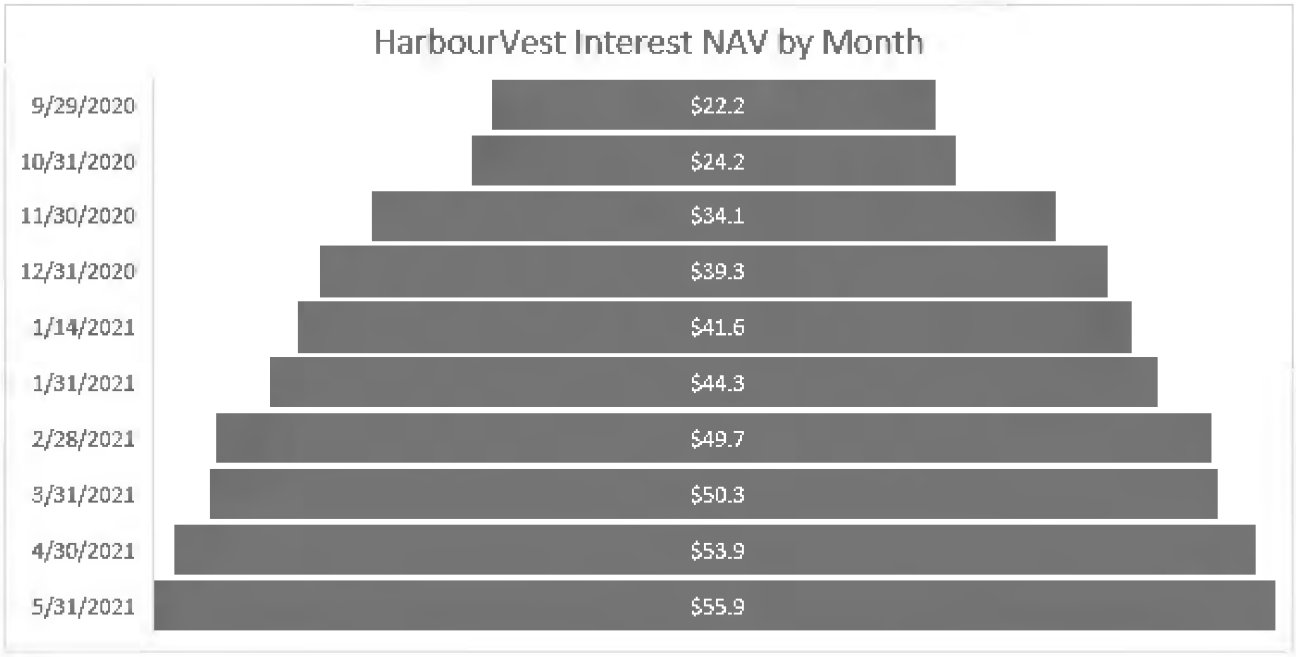
	10/15/2019	12/31/2020	1/31/2021
Assets			
Cash and cash equivalents	$2,529,000	$12,651,000	$10,651,000
Investments, at fair value	$232,620,000	$109,211,000	$142,976,000
Equity method investees	$161,819,000	$103,174,000	$105,293,000
mgmt and incentive fee receivable	$2,579,000	$2,461,000	$2,857,000
fixed assets, net	$3,754,000	$2,594,000	$2,518,000
due from affiliates	$151,901,000	$152,449,000	$152,538,000
reserve against notices receivable		($61,039,000)	($61,167,000)
other assets	$11,311,000	$8,258,000	$8,651,000
Total Assets	**$566,513,000**	**$329,759,000**	**$364,317,000**
Liabilities and Partners' Capital			
pre-petition accounts payable	$1,176,000	$1,077,000	$1,077,000
post-petition accounts payable		$900,000	$3,010,000
Secured debt			
Frontier	$5,195,000	$5,195,000	$5,195,000
Jefferies	$30,328,000	$0	$0
Accrued expenses and other liabilities	$59,203,000	$60,446,000	$49,445,000
Accrued re-organization related fees		$5,795,000	$8,944,000
Class 8 general unsecured claims	$73,997,000	$73,997,000	$267,607,000
Partners' Capital	$396,614,000	$182,347,000	$29,039,000
Total liabilities and partners' capital	**$566,513,000**	**$329,757,000**	**$364,317,000**

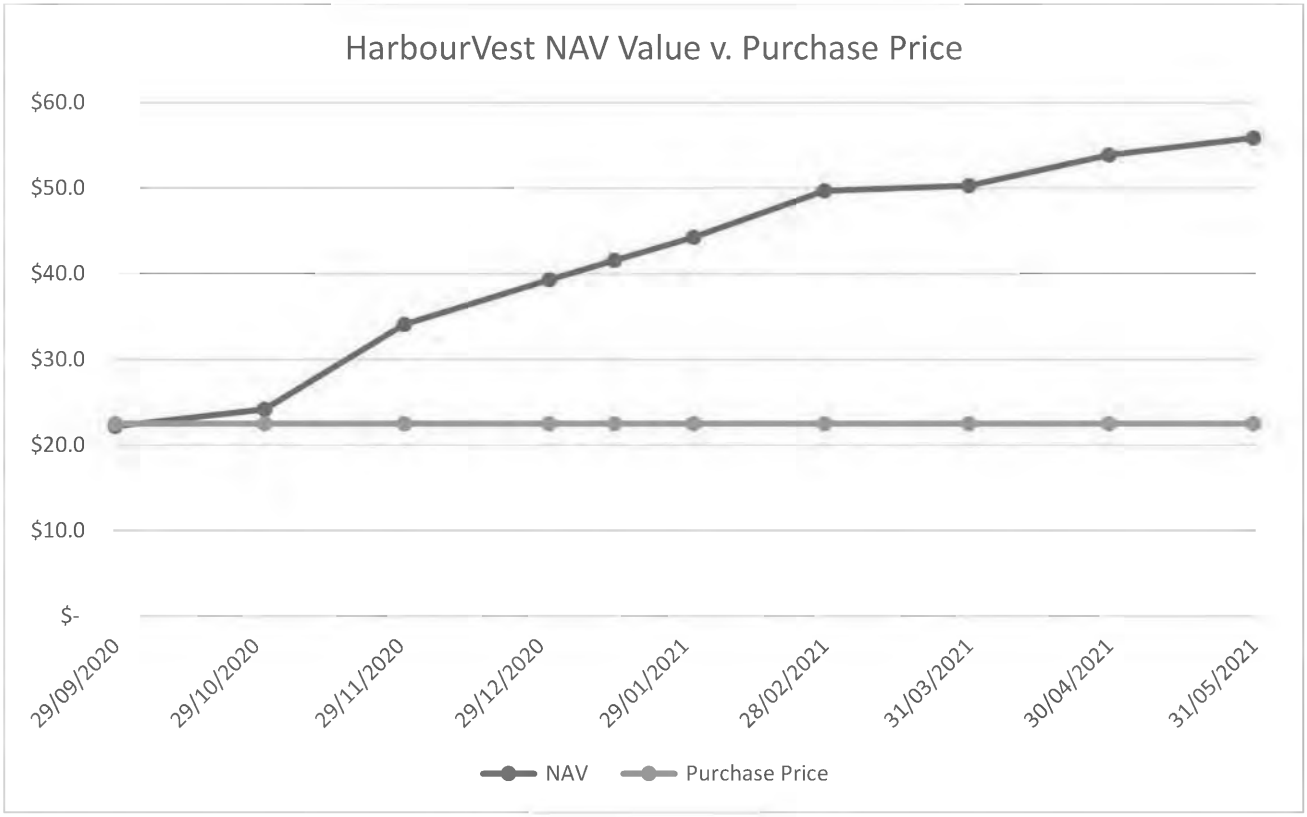
Notable notations/disclosures in the Jan. 31, 2021 MOR include:

- Class 8 claims totaled $267 million, a jump from $74 million in the prior month's MOR
- The MOR stated that no Class 9 recovery was expected, which was based on the then existing $267 million in Class 8 Claims.
- Currently, there are roughly $310 million of Allowed Class 8 Claims.

[3] [Doc. 2030] Filed on March 15, 2021, the last publicly disclosed information regarding the value of assets in the estate.

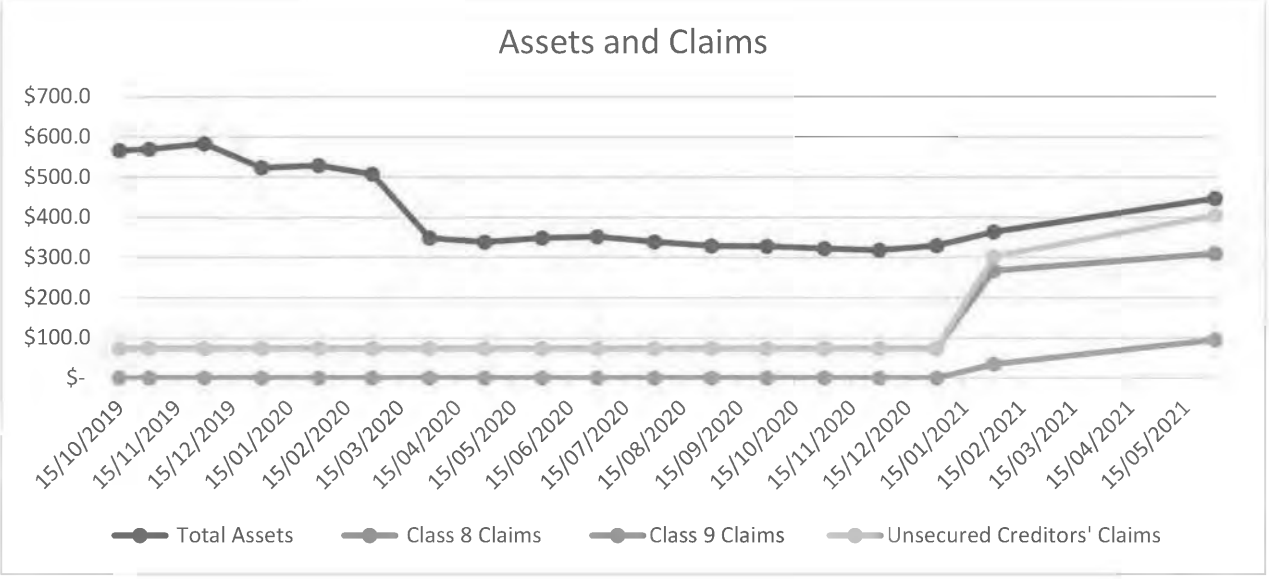
Value of HarbourVest Claim





Estate Value as of August 1, 2021 (in millions)[4]

Asset	Low	High
Cash as of 6/30/2021	$17.9	$17.9
Targa Sale	$37.0	$37.0
8/1 CLO Flows	$10.0	$10.0
Uchi Bldg. Sale	$9.0	$9.0
Siepe Sale	$3.5	$3.5
PetroCap Sale	$3.2	$3.2
HarbourVest trapped cash	$25.0	$25.0
Total Cash	**$105.6**	**$105.6**
Trussway	$180.0	$180.0
Cornerstone (125mm; 16%)	$18.0	$18.0
HarbourVest CLOs	$40.0	$40.0
CCS Medical (in CLOs and Highland Restoration)	$20.0	$20.0
MGM (direct ownership)	$32.0	$32.0
Multi-Strat (45% of 100mm; MGM; CCS)	$45.0	$45.0
Korea Fund	$18.0	$18.0
Celtic (in Credit-Strat)	$12.0	$40.0
SE Multifamily	$0.0	$20.0
Affiliate Notes	$0.0	$70.0
Other	$2.0	$10.0
TOTAL	**$472.6**	**$598.6**



[4] Values are based upon historical knowledge of the Debtor's assets (including cross-holdings) and publicly filed information.

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Counsel for the Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	

DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154) AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

[1] The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession ("Highland" or the "Debtor"), files this motion (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement agreement (the "Settlement Agreement"),[2] a copy of which is attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* being filed simultaneously with this Motion ("Morris Dec."), that, among other things, fully and finally resolves the proofs of claim filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, "HarbourVest"). In support of this Motion, the Debtor represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code"), and Rule 9019 of the Bankruptcy Rules.

[2] All capitalized terms used but not defined herein shall have the meanings given to them in the Settlement Agreement.

RELEVANT BACKGROUND

A. Procedural Background

3. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

4. On October 29, 2019, the official committee of unsecured creditors (the "Committee") was appointed by the U.S. Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's case to this Court [Docket No. 186].[3]

6. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

7. In connection with the Settlement Order, an independent board of directors was constituted at the Debtor's general partner, Strand Advisors, Inc., and certain operating protocols were instituted.

8. On July 16, 2020, this Court entered an order appointing James P. Seery, Jr., as the Debtor's chief executive officer and chief restructuring officer [Docket No. 854].

9. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

[3] All docket numbers refer to the docket maintained by this Court.

B. Overview of HarbourVest's Claims

10. HarbourVest's claims against the Debtor's estate arise from its $80 million investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. ("HCLOF"), pursuant to which HarbourVest obtained a 49 percent interest in HCLOF (the "Investment").

11. In brief, HarbourVest contends that it was fraudulently induced into entering into the Investment based on the Debtor's misrepresentations and omissions concerning certain material facts, including that the Debtor: (1) failed to disclose that it never intended to pay an arbitration award obtained by a former portfolio manager, (2) failed to disclose that it engaged in a series of fraudulent transfers for the purpose of preventing the former portfolio manager from collecting on his arbitration award and misrepresented the reasons changing the portfolio manager for HCLOF immediately prior to the Investment, (3) indicated that the dispute with the former portfolio manager would not impact investment activities, and (4) expressed confidence in the ability of HCLOF to reset or redeem the collateralized loan obligations ("CLOs") under its control.

12. HarbourVest seeks to rescind its Investment and claims damages in excess of $300 million based on theories of fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, and breach of fiduciary duty (under Guernsey law), and on alleged violations of state securities laws and the Racketeer Influenced Corrupt Organization Act ("RICO").

13. HarbourVest's allegations are summarized below.[4]

[4] Solely for purposes of this Motion, and not for any other reason, the facts set forth herein are adopted largely from the *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "Response").

C. **Summary of HarbourVest's Factual Allegations**

14. At the time HarbourVest made its Investment, the Debtor was embroiled in an arbitration against Joshua Terry ("Mr. Terry"), a former employee of the Debtor and limited partner of Acis Capital Management, L.P. ("Acis LP"). Through Acis LP, Mr. Terry managed Highland's CLO business, including CLO-related investments held by Acis Loan Funding, Ltd. ("Acis Funding").

15. The litigation between Mr. Terry and the Debtor began in 2016, after the Debtor terminated Mr. Terry and commenced an action against him in Texas state court. Mr. Terry asserted counterclaims for wrongful termination and for the wrongful taking of his ownership interest in Acis LP and subsequently had certain claims referred to arbitration where he obtained an award of approximately $8 million (the "Arbitration Award") on October 20, 2017.

16. HarbourVest alleges that the Debtor responded to the Arbitration Award by engaging in a series of fraudulent transfers and corporate restructurings, the true purposes of which were fraudulently concealed from HarbourVest.

17. For example, according to HarbourVest, the Debtor changed the name of the target fund from Acis Funding to "Highland CLO Funding, Ltd." ("HCLOF") and "swapped out" Acis LP for Highland HCF Advisor, Ltd. as portfolio manager (the "Structural Changes"). The Debtor allegedly told HarbourVest that it made these changes because of the "reputational harm" to Acis LP resulting from the Arbitration Award. The Debtor further told HarbourVest that in lieu of redemptions, resetting the CLOs was necessary, and that it would be easier to reset them under the "Highland" CLO brand instead of the Acis CLO brand.

18. In addition, HarbourVest also alleges that the Debtor had no intention of allowing Mr. Terry to collect on his Arbitration Award, and orchestrated a scheme to "denude"

Acis of assets by fraudulently transferring virtually all of its assets and attempting to transfer its profitable portfolio management contracts to non-Acis, Debtor-related entities.

19. Unaware of the fraudulent transfers or the true purposes of the Structural Changes, and in reliance on representations made by the Debtor, HarbourVest closed on its Investment in HCLOF on November 15, 2017.

20. After discovering the transfers that occurred between Highland and Acis between October and December 2017 following the Arbitration Award (the "Transfers"), on January 24, 2018, Terry moved for a temporary restraining order (the "TRO") from the Texas state court on the grounds that the Transfers were pursued for the purpose of rendering Acis LP judgment-proof. The state court granted the TRO, enjoining the Debtor from transferring any CLO management contracts or other assets away from Acis LP.

21. On January 30, 2018, Mr. Terry filed involuntary bankruptcy petitions against Acis LP and its general partner, Acis Capital Management GP, LLC. *See In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018) and *In re Acis Capital Management GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018) (collectively, the "Acis Bankruptcy Case"). The Bankruptcy Court overruled the Debtor's objection, granted the involuntary petitions, and appointed a chapter 11 trustee (the "Acis Trustee"). A long sequence of events subsequently transpired, all of which relate to HarbourVest's claims, including:

- On May 31, 2018, the Court issued a *sua sponte* TRO preventing any actions in furtherance of the optional redemptions or other liquidation of the Acis CLOs.
- On June 14, 2018, HCLOF withdrew optional redemption notices.
- The TRO expired on June 15, 2018, and HCLOF noticed the Acis Trustee that it was requesting an optional redemption.

- HCLOF's request was withdrawn on July 6, 2018, and on June 21, 2018, the Acis Trustee sought an injunction preventing Highland/HCLOF from seeking further redemptions (the "Preliminary Injunction").

- The Court granted the Preliminary Injunction on July 10, 2018, pending the Acis Trustee's attempts to confirm a plan or resolve the Acis Bankruptcy.

- On August 30, 2018, the Court denied confirmation of the First Amended Joint Plan for Acis, and held that the Preliminary Injunction must stay in place on the ground that the "evidence thus far has been compelling that numerous transfers after the Josh Terry judgment denuded Acis of value."

- After the Debtor made various statements implicating HarbourVest in the Transfers, the Acis Trustee investigated HarbourVest's involvement in such Transfers, including extensive discovery and taking a 30(b)(6) deposition of HarbourVest's managing director, Michael Pugatch, on November 17, 2018.

- On March 20, 2019, HCLOF sent a letter to Acis LP stating that it was not interested in pursuing, or able to pursue, a CLO reset transaction.

D. The Parties' Pleadings and Positions Concerning HarbourVest's Proofs of Claim

22. On April 8, 2020, HarbourVest filed proofs of claim against Highland that were subsequently denoted by the Debtor's claims agents as claim numbers 143, 147, 149, 150, 153, and 154, respectively (collectively, the "Proofs of Claim"). Morris Dec. Exhibits 2-7.

23. The Proofs of Claim assert, among other things, that HarbourVest suffered significant harm due to conduct undertaken by the Debtor and the Debtor's employees, including "financial harm resulting from (i) court orders in the Acis Bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise relegated the activity of HCLOF [*i.e.*, the Preliminary Injunction]; and (ii) significant fees and expenses related to the Acis Bankruptcy that were charged to HCLOF." *See, e.g.*, Morris Dec. Exhibit 2 ¶3.

24. HarbourVest also asserted "any and all of its right to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the forgoing harm, including for any amounts due or owed under the various

agreements with the Debtor in connection with relating to" the Operative Documents "and any and all legal and equitable claims or causes of action relating to the forgoing harm." *See, e.g.*, Morris Dec. Exhibit 2 ¶4.

25. Highland subsequently objected to HarbourVest's Proofs of Claim on the grounds that they were no-liability claims. [Docket No. 906] (the "Claim Objection").

26. On September 11, 2020, HarbourVest filed its Response. The Response articulated specified claims under U.S. federal and state and Guernsey law, including claims for fraud, fraudulent concealment, fraudulent inducement, fraudulent misrepresentation, negligent misrepresentation (collectively, the "Fraud Claims"), U.S. State and Federal Securities Law Claims (the "Securities Claims"), violations of the Federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), breach of fiduciary duty and misuse of fund assets, and an unfair prejudice claim under Guernsey law (collectively, with the Proofs of Claim, the "HarbourVest Claims").

27. On October 18, 2020, HarbourVest filed its *Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the "3018 Motion"). In its 3018 Motion, HarbourVest sought for its Claims to be temporarily allowed for voting purposes in the amount of more than $300 million (based largely on a theory of treble damages).

E. Settlement Discussions

28. In October, the parties discussed the possibility of resolving the Rule 3018 Motion.

29. In November, the parties broadened the discussions in an attempt to reach a global resolution of the HarbourVest Claims. In the pursuit thereof, the parties and their

counsel participated in several conference calls where they engaged in a spirited exchange of perspectives concerning the facts and the law.

30. During follow up meetings, the parties' interests became more defined. Specifically, HarbourVest sought to maximize its recovery while fully extracting itself from the Investment, while the Debtor sought to minimize the HarbourVest Claims consistent with its perceptions of the facts and law.

31. After the parties' interests became more defined, the principals engaged in a series of direct, arm's-length, telephonic negotiations that ultimately lead to the settlement, whose terms are summarized below.

F. Summary of Settlement Terms

32. The Settlement Agreement contains the following material terms, among others:

- HarbourVest shall transfer its entire interest in HCLOF to an entity to be designated by the Debtor;[5]
- HarbourVest shall receive an allowed, general unsecured, non-priority claim in the amount of $45 million and shall vote its Class 8 claim in that amount to support the Plan;
- HarbourVest shall receive a subordinated, allowed, general unsecured, non-priority claim in the amount of $35 million and shall vote its Class 9 claim in that amount to support the Plan;
- HarbourVest will support confirmation of the Debtor's Plan, including, but not limited to, voting its claims in support of the Plan;
- The HarbourVest Claims shall be allowed in the aggregate amount of $45 million for voting purposes;
- HarbourVest will support the Debtor's pursuit of its pending Plan of Reorganization; and
- The parties shall exchange mutual releases.

[5] The NAV for HarbourVest's 49.98% interest in HCLOF was estimated to be approximately $22 million as of December 1, 2020.

See generally Morris Dec. Exhibit 1.

BASIS FOR RELIEF REQUESTED

33. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

> On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

34. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, "approval of a compromise is within the sound discretion of the bankruptcy court." *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

35. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test, "with a focus on comparing 'the terms of the compromise with the rewards of litigation.'" *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*, 624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: "(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any

attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise." *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider "the paramount interest of creditors with proper deference to their reasonable views." *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the "extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

36. There is ample basis to approve the proposed Settlement Agreement based on the Rule 9019 factors set forth by the Fifth Circuit.

37. First, although the Debtor believes that it has valid defenses to the HarbourVest Claims, there is no guarantee that the Debtor would succeed in its litigation with HarbourVest. Indeed, to establish its defenses, the Debtor would be required to rely, at least in part, on the credibility of witnesses whose veracity has already been called into question by this Court. Moreover, it will be difficult to dispute that the Transfers precipitated the Acis Bankruptcy, and, ultimately, the imposition of the Bankruptcy Court's TRO that restricted HCLOF's ability to reset or redeem the CLOs and that is at the core of the HarbourVest Claims.

38. The second factor—the complexity, duration, and costs of litigation—also weighs heavily in favor of approving the Settlement Agreement. As this Court is aware, the events forming the basis of the HarbourVest Claims—including the Terry Litigation and Acis Bankruptcy—proceeded *for years* in this Court and in multiple other forums, and has already cost the Debtor's estate millions of dollars in legal fees. If the Settlement Agreement is not approved, then the parties will expend significant resources litigating a host of fact-intensive

issues including, among other things, the substance and materiality of the Debtor's alleged fraudulent statements and omissions and whether HarbourVest reasonably relied on those statements and omissions.

39. Third, approval of the Settlement Agreement is justified by the paramount interest of creditors. Specifically, the settlement will enable the Debtor to: (a) avoid incurring substantial litigation costs; (b) avoid the litigation risk associated with HarbourVest's $300 million claim; and (c) through the plan support provisions, increase the likelihood that the Debtor's pending plan of reorganization will be confirmed.

40. Finally, the Settlement Agreement was unquestionably negotiated at arm's-length. The terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and their counsel and represent neither party's "best case scenario." Indeed, the Settlement Agreement should be approved as a rational exercise of the Debtor's business judgment made after due deliberation of the facts and circumstances concerning HarbourVest's Claims.

NO PRIOR REQUEST

41. No previous request for the relief sought herein has been made to this, or any other, Court.

NOTICE

42. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for HarbourVest; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; (d) the Debtor's principal secured parties; (e) counsel to the Committee; and (f) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

Volume 19

APPELLEE RECORD

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

I INDEX

APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

002805

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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Counsel for Highland Capital Management, L.P.

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: December 23, 2020.

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Counsel for the Debtor and Debtor-in-Possession

Exhibit 1

Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of March 30, 2021, by and among (i) Highland Capital Management, L.P. ("HCMLP" or the "Debtor"), (ii) Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) ("Multi-Strat," and together with its general partner and its direct and indirect wholly-owned subsidiaries, the "MSCF Parties"), (iii) Strand Advisors, Inc. ("Strand"), and (iv) UBS Securities LLC and UBS AG London Branch (collectively, "UBS").

Each of HCMLP, the MSCF Parties, Strand, and UBS are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, in 2007, UBS entered into certain contracts with HCMLP and two funds managed by HCMLP—Highland CDO Opportunity Master Fund, L.P. ("CDO Fund") and Highland Special Opportunities Holding Company ("SOHC," and together with CDO Fund, the "Funds") related to a securitization transaction (the "Knox Agreement");

WHEREAS, in 2008, the parties to the Knox Agreement restructured the Knox Agreement;

WHEREAS, UBS terminated the Knox Agreement and, on February 24, 2009, UBS filed a complaint in the Supreme Court of the State of New York, County of New York (the "State Court") against HCMLP and the Funds seeking to recover damages related to the Knox Agreement, in an action captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) (the "2009 Action");

WHEREAS, UBS's lone claim against HCMLP in the 2009 Action for indemnification was dismissed in early 2010, and thereafter UBS amended its complaint in the 2009 Action to add five new defendants, Highland Financial Partners, L.P. ("HFP"), Highland Credit Strategies Master Funds, L.P. ("Credit-Strat"), Highland Crusader Offshore Partners, L.P. ("Crusader"), Multi-Strat, and Strand, and to add new claims for fraudulent inducement, fraudulent conveyance, tortious interference with contract, alter ego, and general partner liability;

WHEREAS, UBS filed a new, separate action against HCMLP on June 28, 2010, for, *inter alia*, fraudulent conveyance and breach of the implied covenant of good faith and fair dealing, captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.) (the "2010 Action");

WHEREAS, in November 2010, the State Court consolidated the 2009 Action and the 2010 Action (hereafter referred to as the "State Court Action"), and on May 11, 2011, UBS filed a Second Amended Complaint in the 2009 Action;

WHEREAS, in 2015, UBS entered into settlement agreements with Crusader and Credit-Strat, and thereafter UBS filed notices with the State Court in the State Court Action dismissing its claims against Crusader and Credit-Strat;

EXECUTION VERSION

WHEREAS, the State Court bifurcated claims asserted in the State Court Action for purposes of trial, with the Phase I bench trial deciding UBS's breach of contract claims against the Funds and HCMLP's counterclaims against UBS;

WHEREAS, on August 7, 2017, the Funds, along with Highland CDO Opportunity Fund, Ltd., Highland CDO Holding Company, Highland Financial Corp., and HFP, purportedly sold assets with a purported collective fair market value of $105,647,679 (the "Transferred Assets") and purported face value of over $300,000,000 to Sentinel Reinsurance, Ltd. ("Sentinel") pursuant to a purported asset purchase agreement (the "Purchase Agreement");

WHEREAS, Sentinel treated the Transferred Assets as payment for a $25,000,000 premium on a document entitled "Legal Liability Insurance Policy" (the "Insurance Policy");

WHEREAS, the Insurance Policy purports to provide coverage to the Funds for up to $100,000,000 for any legal liability resulting from the State Court Action (the "Insurance Proceeds");

WHEREAS, one of the Transferred Assets CDO Fund transferred to Sentinel was CDO Fund's limited partnership interests in Multi-Strat (the "CDOF Interests");

WHEREAS, Sentinel had also received from HCMLP limited partnership interests in Multi-Strat for certain cash consideration (together with the CDOF Interests, the "MSCF Interests");

WHEREAS, the existence of the Purchase Agreement and Insurance Policy were unknown to Strand's independent directors and the Debtor's bankruptcy advisors prior to late January 2021;

WHEREAS, in early February 2021, the Debtor disclosed the existence of the Purchase Agreement and Insurance Policy to UBS;

WHEREAS, prior to such disclosure, the Purchase Agreement and Insurance Policy were unknown to UBS;

WHEREAS, on November 14, 2019, following the Phase I trial, the State Court issued its decision determining that the Funds breached the Knox Agreement on December 5, 2008 and dismissing HCMLP's counterclaims;

WHEREAS, Sentinel purportedly redeemed the MSCF Interests in November 2019 and the redeemed MSCF Interests are currently valued at approximately $32,823,423.50 (the "Sentinel Redemption");

WHEREAS, on February 10, 2020, the State Court entered a Phase I trial judgment against the Funds in the amount of $1,039,957,799.44 as of January 22, 2020 (the "Phase I Judgment");

WHEREAS, Phase II of the trial of the State Court Action, includes, *inter alia*, UBS's claim for breach of implied covenant of good faith and fair dealing against HCMLP, UBS's

fraudulent transfer claims against HCMLP, HFP, and Multi-Strat, and UBS's general partner claim against Strand;

WHEREAS, on October 16, 2019, HCMLP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Case"). The Bankruptcy Case was transferred to the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") on December 4, 2019;

WHEREAS, Phase II of the trial of the State Court Action was automatically stayed as to HCMLP by HCMLP's bankruptcy filing;

WHEREAS, on May 11, 2020, UBS, Multi-Strat, Highland Credit Opportunities CDO, Ltd., and Highland Credit Opportunities CDO Asset Holdings, L.P. (collectively, the "May Settlement Parties"), entered into a Settlement Agreement (the "May Settlement") pursuant to which the May Settlement Parties agreed to the allocation of the proceeds of certain sales of assets held by Multi-Strat, including escrowing a portion of such funds, and restrictions on Multi-Strat's actions;

WHEREAS, on June 26, 2020, UBS timely filed two substantively identical claims in the Bankruptcy Case: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch (hereinafter collectively referred to as the "UBS Claim"). The UBS Claim asserts a general unsecured claim against HCMLP for $1,039,957,799.40;

WHEREAS, on August 3, 2020, the Bankruptcy Court entered an *Order Directing Mediation* [Docket No. 912] pursuant to which HCMLP, UBS, and several other parties were directed to mediate their Bankruptcy Case disputes before two experienced third-party mediators, Retired Judge Allan Gropper and Sylvia Mayer (together, the "Mediators"). HCMLP and UBS formally met with the Mediators together and separately on numerous occasions, including on August 27, September 2, 3, and 4, and December 17, 2020, and had numerous other informal discussions outside of the presence of the Mediators, in an attempt to resolve the UBS Claim;

WHEREAS, on August 7, 2020, HCMLP filed an objection to the UBS Claim [Docket No. 928]. Also on August 7, 2020, the Redeemer Committee of the Highland Crusader Fund, and Crusader, Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Redeemer Committee"), objected to the UBS Claim [Docket No. 933]. On September 25, 2020, UBS filed its response to these objections [Docket No. 1105];

WHEREAS, on October 16, 2020, HCMLP and the Redeemer Committee each moved for partial summary judgment on the UBS Claim [Docket Nos. 1180 and 1183, respectively], and on November 6, 2020, UBS opposed these motions [Docket No. 1337];

WHEREAS, by Order dated December 9, 2020, the Bankruptcy Court granted, as set forth therein, the motions for partial summary judgment filed by HCMLP and the Redeemer Committee and denied UBS's request for leave to file an amended proof of claim [Docket No. 1526];

WHEREAS, on November 6, 2020, UBS filed *UBS's Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Docket No. 1338] (the "3018 Motion"), and on November 16, 2020, HCMLP and the Redeemer Committee each opposed the 3018 Motion [Docket Nos. 1404 and 1409, respectively];

WHEREAS, by Order dated December 8, 2020, the Bankruptcy Court granted the 3018 Motion and allowed the UBS Claim, on a temporary basis and for voting purposes only, in the amount of $94,761,076 [Docket No. 1518];

WHEREAS, on January 22, 2021, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, and as may be further amended, supplemented, or otherwise modified, the "Plan");

WHEREAS, on March 29, 2021, the Debtor caused CDO Fund to make a claim on the Insurance Policy to collect the Insurance Proceeds pursuant to the Phase I Judgment;

WHEREAS, on March 29, 2021, UBS filed an adversary proceeding seeking injunctive relief and a motion for a temporary restraining order and preliminary injunction to, among other things, enjoin the Debtor from allowing Multi-Strat to distribute the Sentinel Redemption to Sentinel or any transferee of Sentinel (the "Multi-Strat Proceeding"), which relief the Debtor, in its capacity as Multi-Strat's investment manager and general partner, does not oppose;

WHEREAS, the Parties wish to enter into this Agreement to settle all claims and disputes between and among them, to the extent and on the terms and conditions set forth herein, and to exchange the mutual releases set forth herein, without any admission of fault, liability, or wrongdoing on the part of any Party; and

WHEREAS, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Rule 9019") and section 363 of the Bankruptcy Code;

NOW THEREFORE, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Settlement of Claims. In full and complete satisfaction of the UBS Released Claims (as defined below):

(a) The UBS Claim will be allowed as (i) a single, general unsecured claim in the amount of $65,000,000 against HCMLP, which shall be treated as a Class 8 General Unsecured Claim under the Plan;[1] and (ii) a single, subordinated unsecured claim in the amount of $60,000,000 against HCMLP, which shall be treated as a Class 9 Subordinated General Unsecured Claim under the Plan.

[1] Capitalized terms used but not defined herein shall have the meanings attributed to them in the Plan.

(b) Multi-Strat will pay UBS the sum of $18,500,000 (the "Multi-Strat Payment") as follows: (i) within two (2) business days after the Order Date, the May Settlement Parties will submit a Joint Release Instruction (as defined in the May Settlement) for the release of the amounts held in the Escrow Account (as defined in the May Settlement) to be paid to UBS in partial satisfaction of the Multi-Strat Payment on the date that is ten (10) business days following the Order Date; and (ii) Multi-Strat will pay UBS the remainder of the Multi-Strat Payment in immediately available funds on the date that is ten (10) business days following the Order Date, provided that, for the avoidance of doubt, the amounts held in the Escrow Account will not be paid to UBS until and unless the remainder of the Multi-Strat Payment is made.

(c) Subject to applicable law, HCMLP will use reasonable efforts to (i) cause CDO Fund to pay the Insurance Proceeds in full to UBS as soon as practicable, but no later than within 5 business days of CDO Fund actually receiving the Insurance Proceeds from or on behalf of Sentinel; (ii) if Sentinel refuses to pay the Insurance Proceeds, take legal action reasonably designed to recover the Insurance Proceeds or the MSCF Interests or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment and in addition shall provide reasonable assistance to UBS in connection with any legal action UBS takes to recover the Insurance Proceeds or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment or obtain rights to the MSCF interests, including but not limited to the redemption payments in connection with the MSCF Interests; (iii) cooperate with UBS and participate (as applicable) in the investigation or prosecution of claims or requests for injunctive relief against the Funds, Multi-Strat, Sentinel, James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, Transferred Assets, the transfer of the MSCF Interests, or any potentially fraudulent transfer of assets from the Funds to Sentinel, excluding the individuals listed on the schedule provided to UBS on March 25, 2021 (the "HCMLP Excluded Employees"); (iv) as soon as reasonably practicable, provide UBS with all business and trustee contacts at the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, if any, that are actually known by the Debtor after reasonable inquiry; (v) as soon as reasonably practicable, provide UBS with a copy of the governing documents, prospectuses, and indenture agreements for the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, as applicable, that are in the Debtor's actual possession, custody, or control, (vi) as soon as reasonably practicable, provide, to the extent possible, any CUSIP numbers of the securities of the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd., as applicable, including information regarding the location and amount of any cash related to those entities' holdings, in each case only to the extent actually known by the Debtor after reasonable inquiry; (vii) cooperate with UBS to assign or convey any such assets described in Section 1(c)(vi) or any other assets owned or controlled by the Funds and/or HFP, including for avoidance of doubt any additional assets currently unknown to the Debtor that the Debtor discovers in the future after the Agreement Effective Date; (viii) respond as promptly as reasonably possible to requests by UBS for access to relevant documents and approve as promptly as reasonably possible requests for access to relevant documents from third parties as needed with respect to the Transferred Assets, the Purchase Agreement, the Insurance Policy, the

MSCF Interests and any other assets currently or formerly held by the Funds or HFP, including without limitation the requests listed in **Appendix A** (provided, however, that the provision of any such documents or access will be subject to the common interest privilege and will not constitute a waiver of any attorney-client or other privilege in favor of HCMLP) that are in the Debtor's actual possession, custody, or control; (ix) preserve all documents in HCMLP's possession, custody, or control regarding or relating to the Purchase Agreement, the Insurance Policy, the MSCF Interests, or any transfer of assets from the Funds to Sentinel, including but not limited to the documents requested in Appendix A, from 2016 to present, and issue a litigation hold to all individuals deemed reasonably necessary regarding the same; and (x) otherwise use reasonable efforts to assist UBS to collect its Phase I Judgment against the Funds and HFP and assets the Funds and/or HFP may own, or have a claim to under applicable law ahead of all other creditors of the Funds and HFP; provided, however, that, from and after the date hereof, HCMLP shall not be required to incur any out-of-pocket fees or expenses, including, but not limited to, those fees and expenses for outside consultants and professionals (the "Reimbursable Expenses"), in connection with any provision of this Section 1(c) in excess of $3,000,000 (the "Expense Cap"), and provided further that, for every dollar UBS recovers from the Funds (other than the assets related to Greenbriar CLO Ltd. or Greenbriar CLO Corp.), Sentinel, Multi-Strat (other than the amounts set forth in Section 1(b) hereof), or any other person or entity described in Section 1(c)(iii) in connection with any claims UBS has that arise out of or relate to the Phase I Judgment, the Purchase Agreement, the Insurance Policy, the Transferred Assets, the MSCF Interests, or the Insurance Proceeds (the "UBS Recovery"), UBS will reimburse HCMLP ten percent of the UBS Recovery for the Reimbursable Expenses incurred by HCMLP, subject to: (1) the occurrence of the Agreement Effective Date and (2) UBS's receipt and review of invoices and time records (which may be redacted as reasonably necessary) for outside consultants and professionals in connection with such efforts described in this Section 1(c), up to but not exceeding the Expense Cap after any disputes regarding the Reimbursable Expenses have been resolved pursuant to procedures to be agreed upon, or absent an agreement, in a manner directed by the Bankruptcy Court; and provided further that in any proceeding over the reasonableness of the Reimbursable Expenses, the losing party shall be obligated to pay the reasonable fees and expenses of the prevailing party; and provided further that any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c) shall be conducted in consultation with UBS, including but not limited to the selection of necessary outside consultants and professionals to assist in such litigation; and provided further that UBS shall have the right to approve HCMLP's selection of outside consultants and professionals to assist in any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c).

(d) Redeemer Appeal.

(i) On the Agreement Effective Date, provided that neither the Redeemer Committee nor any entities acting on its behalf or with any assistance from or coordination with the Redeemer Committee have objected to this Agreement or the 9019 Motion (as defined below), UBS shall withdraw with prejudice its appeal of the *Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Docket No. 1273] (the "Redeemer Appeal"); and

(ii) The Parties have stipulated to extend the deadline for the filing of any briefs in the Redeemer Appeal to June 30, 2021 and will agree to such further extensions as necessary to facilitate this Settlement Agreement.

(e) As of the Agreement Effective Date, the restrictions and obligations set forth in the May Settlement, other than those in Section 7 thereof, shall be extinguished in their entirety and be of no further force or effect.

(f) On the Agreement Effective Date, the Debtor shall instruct the claims agent in the Bankruptcy Case to adjust the claims register in accordance with this Agreement.

(g) On the Agreement Effective Date, any claim the Debtor may have against Sentinel or any other party, and any recovery related thereto, with respect to the MSCF Interests shall be automatically transferred to UBS, without any further action required by the Debtor. For the avoidance of doubt, the Debtor shall retain any and all other claims it may have against Sentinel or any other party, and the recovery related thereto, unrelated to the MSCF Interests.

2. Definitions.

(a) "Agreement Effective Date" shall mean the date the full amount of the Multi-Strat Payment defined in Section 1(b) above, including without limitation the amounts held in the Escrow Account (as defined in the May Settlement), is actually paid to UBS.

(b) "HCMLP Parties" shall mean (a) HCMLP, in its individual capacity; (b) HCMLP, as manager of Multi-Strat; and (c) Strand.

(c) "Order Date" shall mean the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019 and section 363 of the Bankruptcy Code.

(d) "UBS Parties" shall mean UBS Securities LLC and UBS AG London Branch.

3. Releases.

(a) UBS Releases. Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the UBS Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue (A) the HCMLP Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, and (B) the MSCF Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known

or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "UBS Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to (1) the obligations of the HCMLP Parties and MSCF Parties under this Agreement, including without limitation the allowance of or distributions on account of the UBS Claim or the settlement terms described in Sections 1(a)-(g) above; (2) the Funds or HFP, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy, or such prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy by UBS; (3) James Dondero or Mark Okada, or any entities, including without limitation Hunter Mountain Investment Trust, Dugaboy Investment Trust, and NexBank, SSB, owned or controlled by either of them, other than the HCMLP Parties and MSCF Parties (but for the avoidance of doubt, such releases of the HCMLP Parties and MSCF Parties shall be solely with respect to such entities and shall not extend in any way to James Dondero or Mark Okada in their individual capacity or in any other capacity, including but not limited to as an investor, officer, trustee, or director in the HCMLP Parties or MSCF Parties); (4) Sentinel or its subsidiaries, parents, affiliates, successors, designees, assigns, employees, or directors, including James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, MSCF Interests, or Transferred Assets, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, the MSCF Interests, any potentially fraudulent transfer of assets from the Funds to Sentinel and/or Insurance Policy, excluding the HCMLP Excluded Employees; (5) the economic rights or interests of UBS in its capacity as an investor, directly or indirectly (including in its capacity as an investment manager and/or investment advisor), in any HCMLP-affiliated entity, including without limitation in the Redeemer Committee and Credit Strat, and/or in such entities' past, present or future subsidiaries and feeders funds (the "UBS Unrelated Investments"); and (6) any actions taken by UBS against any person or entity, including any HCMLP Party or MSCF Party, to enjoin a distribution on the Sentinel Redemption or the transfer of any assets currently held by or within the control of CDO Fund to Sentinel or a subsequent transferee or to seek to compel any action that only such person or entity has standing to pursue or authorize in order to permit UBS to recover the Insurance Proceeds, Transferred Assets, the Phase I Judgment or any recovery against HFP; provided, however, that, from and after the date hereof, any out-of-pocket fees or expenses incurred by HCMLP in connection with this Section 3(a)(6) will be considered Reimbursable Expenses and shall be subject to, and applied against, the Expense Cap as if they were incurred by HCMLP pursuant to Section 1(c) subject to the occurrence of the Agreement Effective Date and after any disputes regarding such Reimbursable Expenses have been resolved in the manner described in Section 1(c).

(b) **HCMLP Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the HCMLP Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of

their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "HCMLP Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement; and (b) the obligations of the UBS Parties in connection with the UBS Unrelated Investments.

(c) **Multi-Strat Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the MSCF Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "Multi-Strat Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement.

4. **No Third Party Beneficiaries.** Except for the parties released by this Agreement, no other person or entity shall be deemed a third-party beneficiary of this Agreement.

5. **UBS Covenant Not to Sue.** Subject to the occurrence of the Agreement Effective date, if UBS ever controls any HCMLP-affiliated defendant in the State Court Action by virtue of the prosecution, enforcement, or collection of the Phase I Judgment (collectively, the "Controlled State Court Defendants"), UBS covenants on behalf of itself and the Controlled State Court Defendants, if any, that neither UBS nor the Controlled State Court Defendants will assert or pursue any claims that any Controlled State Court Defendant has or may have against any of the HCMLP Parties; provided, however, that nothing shall prohibit UBS or a Controlled State Court Defendant from taking any of the actions set forth in Section 3(a)(1)-(6); provided further, however, if and to the extent UBS receives any distribution from any Controlled State Court Defendant that is derived from a claim by a Controlled State Court Defendant against the Debtor, subject to the exceptions set forth in Section 3(a), which distribution is directly

attributable to any property the Controlled State Court Defendant receives from the Debtor and separate and distinct from property owned or controlled by CDO Fund, SOHC, or Multi-Strat, then such recovery shall be credited against all amounts due from the Debtor's estate on account of the UBS Claim allowed pursuant to Section 1(a) of this Agreement, or if such claim has been paid in full, shall be promptly turned over to the Debtor or its successors or assigns.

6. **Agreement Subject to Bankruptcy Court Approval.**

(a) The force and effect of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement and the releases herein by the Bankruptcy Court. The Parties agree to use reasonable efforts to have this Agreement expeditiously approved by the Bankruptcy Court by cooperating in the preparation and prosecution of a mutually agreeable motion and proposed order (the "9019 Motion") to be filed by the Debtor no later than five business days after execution of this Agreement by all Parties unless an extension is agreed to by both parties.

7. **Representations and Warranties**.

(a) Each UBS Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the UBS Released Claims and has not sold, transferred, or assigned any UBS Released Claim to any other person or entity, and (ii) no person or entity other than such UBS Party has been, is, or will be authorized to bring, pursue, or enforce any UBS Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such UBS Party.

(b) Each HCMLP Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HCMLP Released Claims and has not sold, transferred, or assigned any HCMLP Released Claim to any other person or entity, and (ii) no person or entity other than such HCMLP Party has been, is, or will be authorized to bring, pursue, or enforce any HCMLP Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such HCMLP Party.

(c) Each MSCF Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the Multi-Strat Released Claims and has not sold, transferred, or assigned any Multi-Strat Released Claim to any other person or entity, and (ii) no person or entity other than such MSCF Party has been, is, or will be authorized to bring, pursue, or enforce any Multi-Strat Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such MSCF Party.

8. **No Admission of Liability**. The Parties acknowledge that there is a bona fide dispute with respect to the UBS Claim. Nothing in this Agreement shall be construed, expressly or by implication, as an admission of liability, fault, or wrongdoing by HCMLP, the MSCF Parties, Strand, UBS, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of HCMLP, the MSCF Parties, Strand, UBS, or any other person.

9. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their representatives, successors, and assigns.

10. **Notice**. Each notice and other communication hereunder shall be in writing and will, unless otherwise subsequently directed in writing, be delivered by email and overnight delivery, as set forth below, and will be deemed to have been given on the date following such mailing.

HCMLP Parties or the MSCF Parties

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Telephone No.: 972-628-4100
E-mail: notices@HighlandCapital.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP
Attention: Jeffrey Pomerantz, Esq.
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone No.: 310-277-6910
E-mail: jpomerantz@pszjlaw.com

UBS

UBS Securities LLC
UBS AG London Branch
Attention: Elizabeth Kozlowski, Executive Director and Counsel
1285 Avenue of the Americas
New York, NY 10019
Telephone No.: 212-713-9007
E-mail: elizabeth.kozlowski@ubs.com

UBS Securities LLC
UBS AG London Branch
Attention: John Lantz, Executive Director
1285 Avenue of the Americas
New York, NY 10019

Telephone No.: 212-713-1371
E-mail: john.lantz@ubs.com

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP
Attention: Andrew Clubok
Sarah Tomkowiak
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004-1304
Telephone No.: 202-637-3323
Email: andrew.clubok@lw.com
sarah.tomkowiak@lw.com

11. **Advice of Counsel**. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

12. **Entire Agreement**. This Agreement contains the entire agreement and understanding concerning the subject matter of this Agreement, and supersedes and replaces all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation, or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation, or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

13. **No Party Deemed Drafter**. The Parties acknowledge that the terms of this Agreement are contractual and are the result of arm's-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

14. **Future Cooperation**. The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

15. **Counterparts**. This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement.

Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

16. Governing Law; Venue; Attorneys' Fees and Costs. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of New York without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan, New York, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

[Remainder of Page Intentionally Blank]

IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: James P. Seery, Jr.
Its: Authorized Signatory

HIGHLAND MULTI STRATEGY CREDIT FUND, L.P. (f/k/a Highland Credit Opportunities CDO, L.P.)

By: _____
Name: James P. Seery, Jr
Its: Authorized Signatory

HIGHLAND CREDIT OPPORTUNITIES CDO, Ltd.

By: _____
Name: James P. Seery, Jr
Its: Authorized Signatory

HIGHLAND CREDIT OPPORTUNITIES CDO ASSET HOLDINGS, L.P.

By: _____
Name: James P. Seery, Jr
Its: Authorized Signatory

STRAND ADVISORS, INC.

By: _____
Name: James P. Seery, Jr.
Its: Authorized Signatory

EXECUTION VERSION

UBS SECURITIES LLC

By: _____
Name: John Lantz
Its: Authorized Signatory

By: _____
Name: Elizabeth Kozlowski
Its: Authorized Signatory

UBS AG LONDON BRANCH

By: _____
Name: William Chandler
Its: Authorized Signatory

By: _____
Name: Elizabeth Kozlowski
Its: Authorized Signatory

EXECUTION VERSION

APPENDIX A

- The search parameters (custodians, date ranges, search terms) used to locate the documents produced to UBS on February 27, 2021 (and any additional parameters used for the previous requests from UBS);
- Identity of counsel to, and trustees of, CDO Fund or SOHC;
- Current or last effective investment manager agreements for CDO Fund and SOHC, including any management fee schedule, and any documentation regarding the termination of those agreements;
- The tax returns for the CDO Fund and SOHC from 2017-present;
- Communications between any employees of Sentinel (or its affiliates) and any employees of the HCMLP Parties, CDO Fund, SOHC, or any of Dondero, Leventon, or Ellington from 2017-present;
- Documents or communications regarding or relating to the Purchase Agreement, Insurance Policy, or June 30, 2018 Memorandum entitled "Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets" (the "Tax Memo"), including without limitation (i) amendments to these documents, (ii) transfer of assets pursuant to these documents, (iii) board minutes or resolutions regarding or relating to these documents, (iv) claims made on the Insurance Policy; (v) communications with the IRS regarding the asset transfer pursuant to these documents; and (vi) any similar asset purchase agreements, capital transfer agreements, or similar agreements;
- Documents or communications regarding or relating to the value of any assets transferred pursuant to the Insurance Policy or Purchase Agreement, including without limitation those assets listed in Schedule A to the Purchase Agreement, from 2017 to present, including documentation supporting the $105,647,679 value of those assets as listed in the Tax Memo;
- Documents showing the organizational structure of Sentinel and its affiliated entities, including information on Dondero's relationship to Sentinel;
- Any factual information provided by current or former employees of the HCMLP Parties, CDO Fund, SOHC, or Sentinel regarding or relating to the Purchase Agreement, Insurance Policy, Tax Memo, and/or transfer of assets pursuant to those documents;
- Debtor's settlement agreements with Ellington and Leventon;
- Copies of all prior and future Monthly Reports and Valuation Reports (as defined in the Indenture, dated as of December 20, 2007, among Greenbriar CLO Ltd., Greenbriar CLO Corp., and State Street Bank and Trust Company); and
- Identity of any creditors of CDO Fund, SOHC, or HFP and amount of debts owed to those creditors by CDO Fund, SOHC, or HFP, including without limitation any debts owed to the Debtor.

Hellman & Friedman Seeded Farallon Capital Management

OUR FOUNDER

RETURN TO ABOUT (/ABOUT/)

Warren Hellman: One of the good guys

Warren Hellman was a devoted family man, highly successful businessman, active philanthropist, dedicated musician, arts patron, endurance athlete and all-around good guy. Born in New York City in 1934, he grew up in the Bay Area, graduating from the University of California at Berkeley. After serving in the U.S. Army and attending Harvard Business School, Warren began his finance career at Lehman Brothers, becoming the youngest partner in the firm's history at age 26 and subsequently serving as President. After a distinguished career on Wall Street, Warren moved back west and co-founded Hellman & Friedman, building it into one of the industry's leading private equity firms.

Warren deeply believed in the power of people to accomplish incredible things and used his success to improve and enrich the lives of countless people. Throughout his career, Warren helped found or seed many successful businesses including Matrix Partners, Jordan Management Company, Farallon Capital Management and Hall Capital Partners.

Within the community, Warren and his family were generous supporters of dozens of organizations and causes in the arts, public education, civic life, and public health, including creating and running the San Francisco Free Clinic. Later in life, Warren became an accomplished 5-string banjo player and found great joy in sharing the love of music with others. In true form, he made something larger of this avocation to benefit others by founding the Hardly Strictly Bluegrass Festival, an annual three-day, free music festival that draws hundreds of thousands of people together from around the Bay Area.

An accomplished endurance athlete, Warren regularly completed 100-mile runs, horseback rides and combinations of the two. He also was an avid skier and national caliber master ski racer and served as president of the U.S. Ski Team in the late 1970s, and is credited with helping revitalize the Sugar Bowl ski resort in the California Sierras.

In short, Warren Hellman embodied the ideal of living life to the fullest. He had an active mind and body, and a huge heart. We are lucky to call him our founder. **Read more about Warren. (https://hf.com/wp-content/uploads/2015/09/Warren-Hellman-News-Release.pdf)**

SFChronicle/SFGate/Liz Hafalia

Robert Holmgren

no caption

Hellman & Friedman Owned a Portion of Grosvenor until 2020

Grosvenor Capital Management

GCM GROSVENOR

In 2007, H&F invested in Grosvenor, one of the world's largest and most diversified independent alternative asset management firms. The Company offers comprehensive public and private markets solutions and a broad suite of investment and advisory choices that span hedge funds, private equity, and various credit and specialty strategies. Grosvenor specializes in developing customized investment programs tailored to each client's specific investment goals.

SECTOR

Financial Services

STATUS

Past

www.gcmlp.com (http://www.gcmlp.com)

CORNER OFFICE

GCM Grosvenor to Go Public

Julie Segal

The $57 billion alternatives manager will become a public company after merging with a SPAC backed by Cantor Fitzgerald.

August 03, 2020

Chicago, IL (Tim Boyle/Bloomberg)

In a sign of the times, GCM Grosvenor will become a public company through a SPAC.

The Chicago-based alternative investments firm is planning to go public by merging with a special purpose acquisition company in a deal valued at $2 billion. The 50-year-old firm has $57 billion in assets in private equity, infrastructure, real estate, credit, and absolute return investments.

"We have long valued having external shareholders and we wanted to preserve the accountability and focus that comes with that," Michael Sacks, GCM Grosvenor's chairman and CEO, said in a statement.

GCM Grosvenor will combine with CF Finance Special Acquisition Corp, a SPAC backed by Cantor Fitzgerald, according to an announcement from both companies on Monday. After the company goes public, Sacks will continue to lead GCM Grosvenor, which is owned by management and Hellman & Friedman, a private equity firm. Hellman & Friedman, which has owned a minority stake of the Chicago asset manager since 2007, will sell its equity as

Farallon was a Significant Borrower for Lehman

Case Study – Large Loan Origination

Debt origination for an affiliate of Simon Property Group Inc. and Farallon Capital Management

Date	June 2007
Asset Class	Retail
Asset Size	1,808,506 Sq. Ft.
Sponsor	Simon Property Group Inc. / Farallon Capital Management
Transaction Type	Refinance
Total Debt Amount	Lehman Brothers: $121 million JP Morgan: $200 million

Transaction Overview

- In June 2007, Lehman Brothers co-originated a loan in the aggregate amount of $321 million (Lehman portion: $121 million) with JP Morgan to a special purpose affiliate of a joint venture between Simon Property Group Inc ("Simon") and Farallon Capital Management ("Farallon") secured by the shopping center known as Gurnee Mills Mall (the "Property") located in Gurnee, IL .
- The Property consists of a one-story, 200 store discount mega-mall comprised of 1,808,506 square feet anchored by Burlington Coat Factory, Marshalls, Bed Bath & Beyond and Kohls among other national retailers. Built in 1991, the Property underwent a $5 million interior renovation in addition to a $71 million redevelopment between 2004 and 2005. As of March 2007, the Property had a in-line occupancy of 99.5%.

Lehman Brothers Role

- Simon and Farallon comprised the sponsorship which eventually merged with The Mills Corporation in early 2007 for $25.25 per common share in cash. The total value of the transaction was approximately $1.64 billion for all of the outstanding common stock, and approximately $7.9 billion including assumed debt and preferred equity.
- Lehman and JP Morgan subsequently co-originated $321 million loan at 79.2% LTV based on an appraisal completed in March by Cushman & Wakefield. The Loan was used to refinance the indebtedness secured by the Property.

Sponsorship Overview

- The Mills Corporation, based in Chevy Chase MD is a developer owner and manager of a diversified portfolio of retail destinations including regional shopping malls and entertainment centers. They currently own 38 properties in the United States totaling 47 million square feet.

LEHMAN BROTHERS 32

Mr. Seery Represented Stonehill While at Sidley

James P. Seery, Jr.
John G. Hutchinson
John J. Lavelle
Martin B. Jackson
Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
(212) 839-5300 (tel)
(212) 839-5599 (fax)

Attorneys for the Steering Group

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

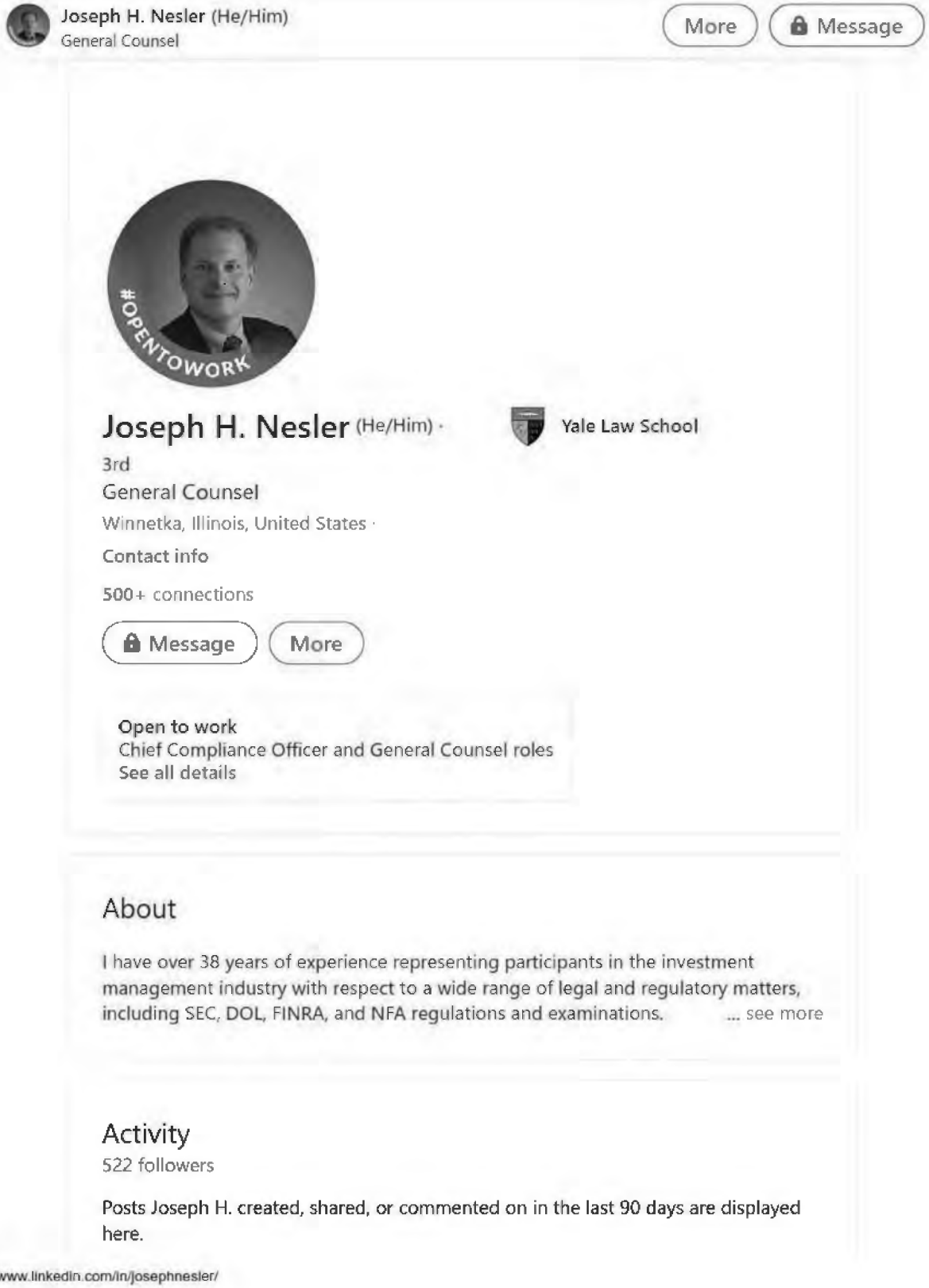
In re:	:	Chapter 11
BLOCKBUSTER INC., *et al.*,	:	Case No. 10-14997 (BRL)
Debtors.	:	(Jointly Administered)

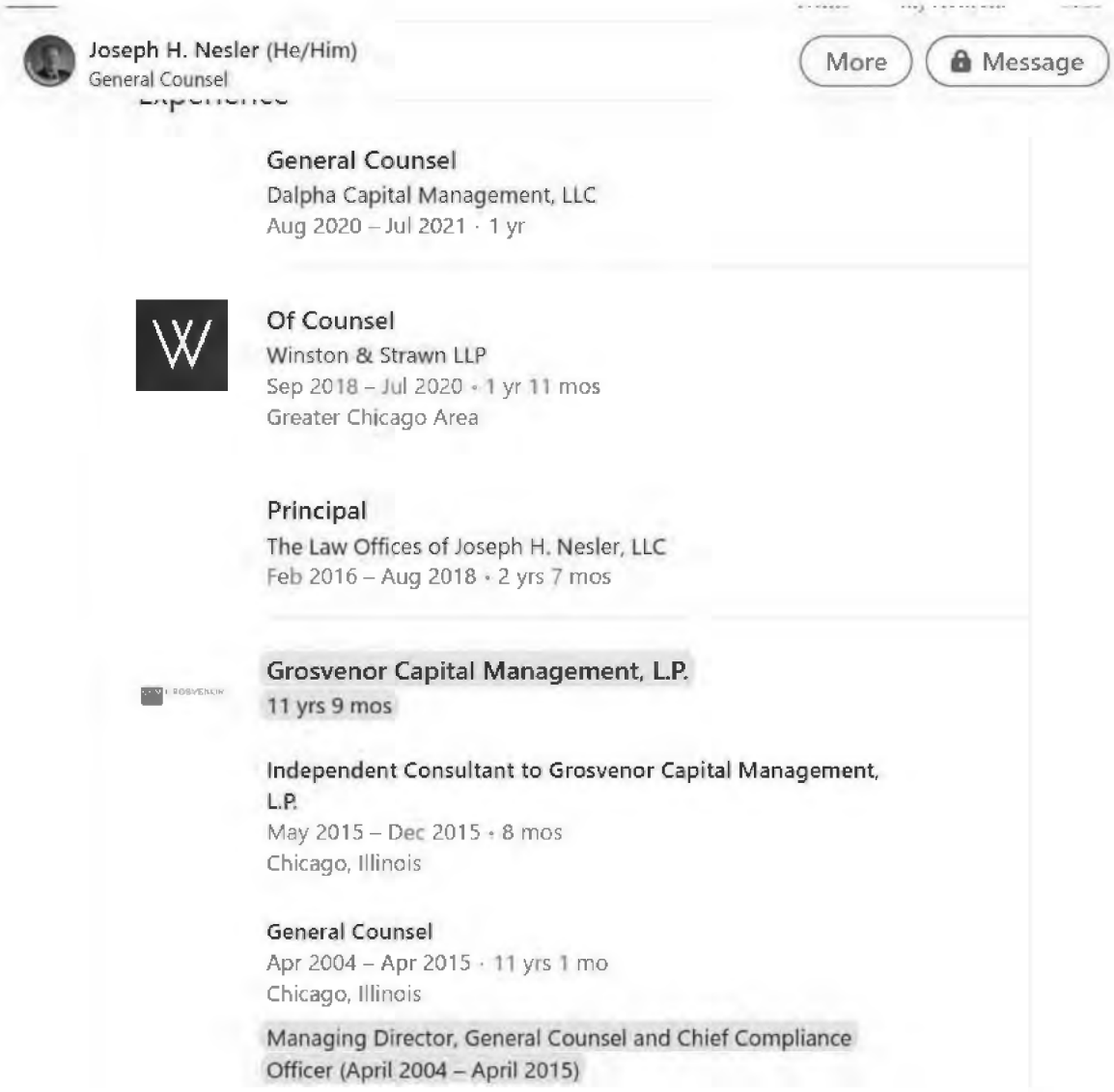
THE BACKSTOP LENDERS' OBJECTION TO THE MOTION OF LYME REGIS TO ABANDON CERTAIN CAUSES OF ACTION OR, IN THE ALTERNATIVE, TO GRANT STANDING TO LYME REGIS TO PURSUE CLAIMS ON BEHALF OF THE ESTATE

1. The Steering Group of Senior Secured Noteholders who are Backstop Lenders -- Icahn Capital LP, Monarch Alternative Capital LP, Owl Creek Asset Management, L.P., Stonehill Capital Management LLC, and Värde Partners, Inc. (collectively, the "Backstop Lenders") -- hereby file this objection (the "Objection") to the Motion of Lyme Regis Partners, LLC ("Lyme Regis") to Abandon Certain Causes of Action or, in the Alternative, to Grant Standing to Lyme Regis to Pursue Claims on Behalf of the Estate (the "Motion") [Docket No. 593].

Stonehill Founder (Motulsky) and Grosvenor's G.C. (Nesler) Were Law School Classmates

Over 25 years earlier, here is a group at a party. From the left, Bob Zinn, Dave Lowenthal, Rory Little, Joe Nesler, Jon Polonsky (in front of Joe), John Motulsky and Mark Windfeld-Hansen (behind bottle!) Motulsky circulated this photo at the reunion. Thanks John!


Joseph H. Nesler (He/Him)
General Counsel
More
Message
#OPENTOWORK
Joseph H. Nesler (He/Him) ·
3rd
General Counsel
Winnetka, Illinois, United States ·
Contact info
500+ connections
Message
More
Yale Law School
Open to work
Chief Compliance Officer and General Counsel roles
See all details
About
I have over 38 years of experience representing participants in the investment management industry with respect to a wide range of legal and regulatory matters, including SEC, DOL, FINRA, and NFA regulations and examinations. ... see more
Activity
522 followers
Posts Joseph H. created, shared, or commented on in the last 90 days are displayed here.
https://www.linkedin.com/in/josephnesler/



Joseph H. Nesler (He/Him)
General Counsel

More | Message

General Counsel
Dalpha Capital Management, LLC
Aug 2020 – Jul 2021 · 1 yr

Of Counsel
Winston & Strawn LLP
Sep 2018 – Jul 2020 · 1 yr 11 mos
Greater Chicago Area

Principal
The Law Offices of Joseph H. Nesler, LLC
Feb 2016 – Aug 2018 · 2 yrs 7 mos

Grosvenor Capital Management, L.P.
11 yrs 9 mos

Independent Consultant to Grosvenor Capital Management, L.P.
May 2015 – Dec 2015 · 8 mos
Chicago, Illinois

General Counsel
Apr 2004 – Apr 2015 · 11 yrs 1 mo
Chicago, Illinois

Managing Director, General Counsel and Chief Compliance Officer (April 2004 – April 2015)

Investor Communication to Highland Crusader Funds Stakeholders

Alvarez & Marsal
Management, LLC 2029 Ce
Park East Suite 2060
Angeles, CA 9

July 6, 2021

Re: Update & Notice of Distribution

Dear Highland Crusader Funds Stakeholder,

As you know, in October 2020, the Bankruptcy Court approved a settlement of the Redeemer Committee's and the Crusader Funds' claims against Highland Capital Management L.P. ("HCM"), as a result of which the Redeemer Committee was allowed a general unsecured claim of $137,696,610 against HCM and the Crusader Funds were allowed a general unsecured claim of $50,000 against HCM (collectively, the "Claims"). In addition, as part of the settlement, various interests in the Crusader Funds held by HCM and certain of its affiliates are to be extinguished (the "Extinguished Interests"), and the Redeemer Committee and the Crusader Funds received a general release from HCM and a waiver by HCM of any claim to distributions or fees that it might otherwise receive from the Crusader Funds (the "Released Claims" and, collectively with the Extinguished Interests, the "Retained Rights").

A timely appeal of the settlement was taken by UBS (the "UBS Appeal) in the United States District Court for the Northern District of Texas, Dallas Division. However, the Bankruptcy Court subsequently approved a settlement between HCM and UBS, resulting in dismissal of the UBS Appeal with prejudice on June 14, 2021.

On April 30, 2021, the Crusader Funds and the Redeemer Committee consummated the sale of the Claims against HCM and the majority of the remaining investments held by the Crusader Funds to Jessup Holdings LLC ("Jessup") for $78 million in cash, which was paid in full to the Crusader Funds at closing. The sale specifically excluded the Crusader Funds' investment in Cornerstone Healthcare Group Holding Inc. and excluded certain specified provisions of the settlement agreement with HCM (the "Settlement Agreement"), including, but not limited to, the Retained Rights. The sale of the Claims and investments was made with no holdbacks or escrows.

The sale to Jessup resulted from a solicitation of offers to purchase the Claims commenced by Alvarez & Marsal CRF Management LLC ("A&M CRF"), as Investment Manager of the Crusader Funds, in consultation with the Redeemer Committee. Ultimately, the Crusader Funds and the Redeemer Committee entered exclusive negotiations with Jessup, culminating in the sale to Jessup.

A&M CRF, pursuant to the Plan and Scheme and with the approval of House Hanover, the Redeemer Committee and the Board of the Master Fund, now intends to distribute the proceeds from the Jessup transaction ($78 million), net of any applicable tax withholdings and with no reserves for the Extinguished Claims or the Released Claims. In addition, the distribution will include approximately $9.4 million in proceeds that have been redistributed due to the cancellation

and extinguishment of the interests and shares in the Crusader Funds held by HCM, Charitable DAF and Eames in connection with the Settlement Agreement, resulting in a total gross distribution of $87.4 million. Distributions will be based on net asset value as of June 30, 2021.

Please note that A&M CRF intends to make the distributions by wire transfer no later than July 31, 2021. Please confirm your wire instructions on or before **July 20, 2021.** If there are any revisions to your wire information, please use the attached template to provide SEI and A&M CRF your updated information on investor letterhead. This information should be sent on or before **July 20, 2021** to Alvarez & Marsal CRF and SEI at CRFInvestor@alvarezandmarsal.com and AIFS-IS_Crusader@seic.com, respectively.

The wire payments will be made to the investor bank account on file with an effective and record date of July 1, 2021. Should you have any questions, please contact SEI or A&M CRF at the e-mail addresses listed above.

Sincerely,

Alvarez & Marsal CRF Management, LLC

By: _____
Steven Varner
Managing Director

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November 3, 2021

Via E-Mail and Federal Express
Ms. Nan R. Eitel
Office of the General Counsel
Executive Office for U.S. Trustees
20 Massachusetts Avenue, NW
8th Floor
Washington, DC 20530
Nan.r.Eitel@usdoj.gov

Re: Highland Capital Management, L.P. Bankruptcy Case
Case No. 19-34054 (SGJ) Bankr. N.D. Tex.

Dear Ms. Eitel:

I am a senior bankruptcy practitioner who has worked closely with Douglas Draper (representing separate, albeit aligned, clients) in the above-referenced Chapter 11 case. I have represented debtors-in-possession on multiple occasions, have served as an adjunct professor of law teaching advanced corporate restructuring, and consider myself not only a bankruptcy expert, but an expert on the practicalities and realities of how estates and cases are administered and, therefore, how they could be manipulated for personal interests. I write to follow up on the letter that Douglas sent to your offices on October 4, 2021, on account of additional information my clients have learned in this matter. So that you understand, my clients in the case are NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P., both of whom are affiliated with and controlled by James Dondero, and I write this letter on their behalf and based on information they have obtained.

I share Douglas' view that serious abuses of the bankruptcy process occurred during the bankruptcy of Texas-headquartered Highland Capital Management, L.P. ("Highland" or the "Debtor") which, left uninvestigated and unaddressed, may represent a systemic issue that I believe would be of concern to your office and within your office's sphere of authority. Those abuses include potential insider trading and breaches of fiduciary duty by those charged with protecting creditors, understated estimations of estate value seemingly designed to benefit insiders and management, gross mistreatment of employees who were key to the bankruptcy process, and ultimately a plan aimed at liquidating an otherwise viable estate, to the detriment of third-party investors in Debtor-managed funds. To be clear, I recognize that the Bankruptcy Court has ruled the way that it has and I am not criticizing the Bankruptcy Court or seeking to attack any of its orders. Rather, as has been and will be shown, the Bankruptcy Court acted on misinformation presented to it, intentional lack of transparency, and manipulation of the facts and circumstances by the fiduciaries of the estate. I therefore wish to add my voice to Douglas' aforementioned letter, provide additional information, encourage your investigation, and offer whatever information or assistance I can.

The abuses here are akin to the type of systemic abuse of process that took place in the bankruptcy of Neiman Marcus (in which a core member of the creditors' committee admittedly attempted to perpetrate a massive fraud on creditors), and which is something that lawmakers should be concerned

about, particularly to the extent that debtor management and creditors' committee members are using the federal bankruptcy process to shield themselves from liability for otherwise harmful, illegal, or fraudulent acts.

BACKGROUND

Highland Capital Management and its Founder, James Dondero

Highland Capital Management, L.P. is an SEC-registered investment advisor co-founded by James Dondero in 1993. A graduate of the University of Virginia with highest honors, Mr. Dondero has over thirty years of experience successfully overseeing investment and business activities across a range of investment platforms. Of note, Mr. Dondero is chiefly responsible for ensuring that Highland weathered the global financial crisis, evolving the firm's focus from high-yield credit to other areas, including real estate, private equity, and alternative investments. Prior to its bankruptcy, Highland served as advisor to a suite of registered funds, including open-end mutual funds, closed-end funds, and an exchange-traded fund.

In addition to managing Highland, Mr. Dondero is a dedicated philanthropist who has actively supported initiatives in education, veterans' affairs, and public policy. He currently serves as a member of the Executive Board of the Southern Methodist University Cox School of Business and sits on the Executive Advisory Council of the George W. Bush Presidential Center.

Circumstances Precipitating Bankruptcy

Notwithstanding Highland's historical success with Mr. Dondero at the helm, Highland's funds—like many other investment platforms—suffered losses during the financial crisis, leading to myriad lawsuits by investors. One of the most contentious disputes involved a group of investors who had invested in Highland-managed funds collectively termed the "Crusader Funds." During the financial crisis, to avoid a run on the Crusader Funds at low-watermark prices, the funds' manager temporarily suspended redemptions, leading investors to sue. That dispute resolved with the formation of an investor committee self-named the "Redeemer Committee" and the orderly liquidation of the Crusader Funds, which resulted in investors' receiving a return of their investments plus a return, as opposed to the 20 cents on the dollar they would have received had their redemption requests been honored when made.

Despite this successful liquidation, the Redeemer Committee sued Highland again several years later, claiming that Highland had improperly delayed the liquidation and paid itself fees not authorized under the parties' earlier settlement agreement. The dispute went to arbitration, ultimately resulting in an arbitration award against Highland of $189 million (of which Highland expected to make a net payment of $110 million once the award was confirmed).

Believing that a restructuring of its judgment liabilities was in Highland's best interest, on October 16, 2019, Highland—a Delaware limited partnership—filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware.[1]

On October 29, 2019, the Bankruptcy Court appointed the Official Committee of Unsecured Creditors ("Creditors' Committee"). The Creditors' Committee Members (and the contact individuals for those members) are: (1) The Redeemer Committee of the Highland Crusader Fund (Eric Felton), (2) Meta e-Discovery (Paul McVoy), (3) UBS Securities LLC and UBS AG London Branch (Elizabeth

[1] *In re Highland Capital Mgmt., L.P.*, Case No. 19-12239-CSS (Bankr. D. Del.) ("Del. Case"), Dkt. 1.

Kozlowski), and (4) Acis Capital Management, L.P. and Acis Capital Management GP, LLP (Joshua Terry).[2] At the time of their appointment, creditors agreeing to serve on the Creditors' Committee were given an Instruction Sheet by the Office of the United States Trustee, instructing as follows:

> **Creditors wishing to serve as fiduciaries on any official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court. By submitting the enclosed Questionnaire and accepting membership on an official committee of creditors, you agree to this prohibition. The United States Trustee reserves the right to take appropriate action, including removing the creditor from any committee, if the information provided in the Questionnaire is inaccurate, if the foregoing prohibition is violated, or for any other reason the United States Trustee believes is proper in the exercise of her discretion.**

See Instruction Sheet, Ex. A (emphasis in original).

In response to a motion by the Creditors' Committee, on December 4, 2019, the Delaware Bankruptcy Court unexpectedly transferred the bankruptcy case to the Northern District of Texas, to Judge Stacey G.C. Jernigan's court.[3]

SYSTEMIC PROBLEMS OCCURRING IN THE CONTEXT OF HIGHLAND'S COURT-ADMINISTERED BANKRUPTCY

Mr. Dondero Gets Pushed Out of Management and New Debtor Management Announces Plans to Liquidate the Estate

From the outset of the case, the Creditors' Committee and the U.S. Trustee's Office in Dallas pushed to replace Mr. Dondero as the sole director of the Debtor's general partner, Strand Advisors, Inc. ("Strand"). To avoid a protracted dispute and to facilitate the restructuring, on January 9, 2020, Mr. Dondero agreed to resign as the sole director, on the condition that he would be replaced by three independent directors who would act as fiduciaries of the estate and work to restructure Highland's business so it could continue operating and emerge from bankruptcy as a going concern. As Mr. Draper previously has explained, the agreement approved by the Bankruptcy Court allowed Mr. Dondero, UBS (which held one of the largest claims against the estate), and the Redeemer Committee each to choose one director, and also established protocols for operations going forward. Mr. Dondero chose The Honorable Former Judge Russell F. Nelms, UBS chose John Dubel, and the Redeemer Committee chose James Seery.[4]

In brokering the agreement, Mr. Dondero made clear his expectations that new, independent management would not only preserve Highland's business by expediting an exit from bankruptcy in three to six months, but would also preserve jobs and enable continued collaboration with charitable causes supported by Highland and Mr. Dondero. Unfortunately, those expectations did not materialize. Rather, it quickly became clear that Strand's and Highland's management was being dominated by one of the

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[2] Del. Case, Dkt. 65.

[3] *See In re Highland Capital Mgmt., L.P.*, Case No. 19-34054 (Bankr. N.D. Tex.), Dkt. 186. All subsequent docket references are to the docket of the Bankruptcy Court for the Northern District of Texas.

[4] *See* Stipulation in Support of Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, Dkt. 338; Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, Dkt. 339.

independent directors, Mr. Seery (as will be seen, for his self-gain). Shortly after his placement on the Board, on March 15, 2020, Mr. Seery became de facto Chief Executive Officer, after which he immediately took steps to freeze Mr. Dondero out of operations completely, to the detriment of Highland's business and its employees. The Bankruptcy Court formally approved Mr. Seery's appointment as CEO and Chief Restructuring Officer on July 14, 2020.[5] Although Mr. Seery publicly represented that his goal was to restructure the Debtor's business and enable it to emerge as a going concern, privately he was engineering a much different plan. Less than two months after Mr. Seery's appointment as CEO/CRO, the Debtor filed its initial plan of reorganization, disclosing for the first time its intention to terminate substantially all employees by the end of 2020 and to liquidate Highland's assets by 2022.[6]

Over objections by Mr. Dondero and numerous other stakeholders, the Bankruptcy Court confirmed Highland's Fifth Amended Plan of Reorganization on February 22, 2021 (the "Plan").[7] There are appeals of that Plan, as well as many of the other rulings made by the Bankruptcy Court, currently pending before the United States District Court and the Court of Appeals for the Fifth Circuit.

Transparency Problems Pervade the Bankruptcy Proceedings

The Regulatory Framework

As you are aware, one of the most important features of federal bankruptcy proceedings is transparency. The EOUST instructs that "Debtors-in-possession and trustees must account for the receipt, administration, and disposition of all property; provide information concerning the estate and the estate's administration as parties in interest request; and file periodic reports and summaries of a debtor's business, including a statement of receipts and disbursements, and such other information as the United States Trustee or the United States Bankruptcy Court requires." *See* http://justice.gov/ust/chapter-11-information (citing 11 U.S.C. § 1106(a)(1), 1107(a)). And Federal Rule of Bankruptcy Procedure 2015.3(a) states that "the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." This rule requires the trustee or a debtor in possession to file a report for each non-debtor affiliate prior to the first meeting of creditors and every six months thereafter until the effective date of a plan of reorganization. Fed R. Bankr. P. 2015.3(b). Importantly, the rule does not absolve a debtor from filing reports due prior to the effective date merely because a plan has become effective.[8] Notably, the U.S. Trustee has the duty to ensure that debtors in possession properly and timely file all required reports. 28 U.S.C. § 1112(b)(4)(F), (H).

The entire purpose of these guidelines and rules is to ensure that external stakeholders can fairly evaluate the progress of bankruptcy proceedings, including compliance with legal requirements. Particularly in large bankruptcies, creditors and investors alike should expect that debtors, their

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[5] *See* Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020, Dkt. 854.

[6] *See* Plan of Reorganization of Highland Capital Management, L.P. dated August 12, 2020, Dkt. 944.

[7] *See* Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified); and (II) Granting Related Relief, Dkt. 1943.

[8] After notice and a hearing, the bankruptcy court may grant relief from the Rule 2015.3 disclosure requirement "for cause," including that "the trustee or debtor in possession is not able, after a good faith effort, to comply with th[e] reporting requirements, or that the information required by subdivision (a) is publicly available." Fed. R. Bankr. 2015.3(d).

management, and representatives on creditors' committees abide by their reporting obligations and all other legal requirements. Bankruptcy is not meant to be a safe haven for lawlessness, nor is it designed to obfuscate the operations of the debtor. Instead, transparency is mandatory so that the debtor is accountable to stakeholders and so that stakeholders can ensure that all insiders are operating for the benefit of the estate.

In Highland's Bankruptcy, the Regulatory Framework Is Ignored

Against this regulatory backdrop, and on the heels of high-profile bankruptcy abuses like those that occurred in the context of the Neiman Marcus bankruptcy, the Highland bankruptcy offered almost no transparency to stakeholders. Traditional reporting requirements were ignored. This opened the door to numerous abuses of process and potential violations of federal law, as detailed below.

As Mr. Draper already has highlighted, one significant problem in Highland's bankruptcy was the Debtor's failure to file *any* of the reports required under Bankruptcy Rule 2015.3, either on behalf of itself or its affiliated entities. Typically, such reports would include information like asset value, income from financial operations, profits, and losses for each non-publicly traded entity in which the estate has a substantial or controlling interest. This was very important here, where the Debtor held the bulk of its value—hundreds of millions of dollars—in non-debtor subsidiaries. The Debtor's failure to file the required Rule 2015.3 reports was brought to the attention of the Debtor, the Bankruptcy Court, and the U.S. Trustee's Office. During the hearing on Plan confirmation, the Debtor was questioned about the failure to file the reports. The sole excuse offered by the Debtor's Chief Restructuring Officer and Chief Executive Officer, Mr. Seery, was that the task "fell through the cracks."[9] Nor did the Debtor or its counsel ever attempt to show "cause" to gain exemption from the reporting requirement. That is because there was no good reason for the Debtor's failure to file the required reports. In fact, although the Debtor and the Creditors' Committee often refer to the Debtor's structure as a "byzantine empire," the assets of the estate fall into a handful of discrete investments, most of which have audited financials and/or are required to make monthly or quarterly net-asset-value or fair-value determinations.[10] Rather than disclose financial information that was readily available, the Debtor appears to have taken deliberate and strategic steps to avoid transparency.

In stark contrast to its non-existent public disclosures, the Debtor provided the Creditors' Committee with robust weekly information regarding transactions involving assets held by the Debtor or its wholly-owned subsidiaries, transactions involving managed entities and non-managed entities in which the Debtor held an interest, transactions involving non-discretionary accounts, and weekly budget-to-actuals reports referencing non-Debtor affiliates' 13-week cash flow budget. In other words, the Committee member had real-time financial information with respect to the affairs of non-debtor affiliates, which is precisely the type of information that should have been disclosed to the public pursuant to Rule 2015.3. Yet, the fact that the Committee members alone had this information enabled some of them to trade on it, for their personal benefit.

The Debtor's management failed and refused to make other critical disclosures as well. As explained in detail below, during the bankruptcy proceedings, the Debtor sold off sizeable assets without any notice and without seeking Bankruptcy Court approval. The Debtor characterized these transactions as the "ordinary course of business" (allowing it to avoid the Bankruptcy Court approval process), but

[9] *See* Dkt. 1905 (Feb. 3, 2021 Hr'g Tr. at 49:5-21).

[10] During a deposition, Mr. Seery identified most of the Debtor's assets "[o]ff the top of [his] head" and acknowledged that he had a subsidiary ledger that detailed the assets held by entities below the Debtor. *See* Exh. A (Jan. 29, 2021 Dep. Tr. at 22:4-10; 23:1-29:10).

they were anything but ordinary. In addition, the Debtor settled the claims of at least one creditor—former Highland employee Patrick Daugherty—without seeking court approval of the settlement pursuant to Federal Rule of Bankruptcy Procedure 9019. We understand that the Debtor paid Mr. Daugherty $750,000 in cash as part of that settlement, done as a "settlement" to obtain Mr. Daugherty's withdrawal of his objection to the Debtor's plan.

Despite all of these transparency problems, the Debtor's confirmed Plan contains provisions that effectively release the Debtor from its obligation to file *any* of the reports due for *any* period prior to the effective date—thereby sanctioning the Debtor's failure and refusal to follow the rules. The U.S. Trustee also failed to object to this portion of the Court's order of confirmation, which is directly at odds with the spirit and mandate of the Periodic Reporting Requirements recently adopted by the EOUST and historical rules mandating transparency.[11]

As will become apparent, because neither the federal Bankruptcy Court nor the U.S. Trustee advocated or demanded compliance with the rules, the Debtor, its newly-appointed management, and the Creditors' Committee charged with protecting the interests of all creditors were able to manipulate the estate for the benefit of a handful of insiders, seemingly in contravention of law.

Debtor And Debtor-Affiliate Assets Were Deliberately Hidden and Mischaracterized

Largely because of the Debtor's failure to file Rule 2015.3 reports for affiliate entities, interested parties and creditors wishing to evaluate the worth and mix of assets held in non-Debtor affiliates could not do so. This is particularly problematic, because during proceedings, the Debtor sold $172 million in assets, which altered the mix of assets and liabilities of the Debtor's affiliates and controlled entities. In addition, the estate's asset value decreased by approximately $200 million in a matter of months. Absent financial reporting, it was impossible for stakeholders to determine whether the $200 impairment in asset value reflected actual realized losses or merely temporary mark-downs precipitated by problems experienced by certain assets during the pandemic (including labor shortages, supply-chain issues, travel interruptions, and the like). Although the Bankruptcy Court held that such sales did not require Court approval, a Rule 2015.3 report would have revealed the mix of assets and the corresponding reduction in liabilities of the affiliated or controlled entity—information that was critical in evaluating the worth of claims against the estate or future investments into it.

One transaction that was particularly problematic involved alleged creditor HarbourVest, a private equity fund with approximately $75 billion under management. Prior to Highland's bankruptcy, HarbourVest had invested $80 million into (and obtained 49.98% of the outstanding shares of) a Highland fund called Acis Loan Funding, later rebranded as Highland CLO Funding, Ltd. ("HCLOF"). A charitable fund called Charitable DAF Fund, L.P. ("DAF") held 49.02% member interests in HCLOF, and the remaining □2.00% was held by Highland and certain of its employees. Prior to Highland's bankruptcy proceedings, a dispute arose between HarbourVest and Highland, in which HarbourVest claimed it was duped into making the investment because Highland allegedly failed to disclose key facts relating to the investment (namely, that Highland was engaged in ongoing litigation with former employee, Josh Terry,

[11] *See "Procedures for Completing Uniform Periodic Reports in Non-Small Business Cases Filed Under Chapter 11 of Title 11"* (the "Periodic Reporting Requirements"). The Periodic Reporting Requirements reaffirmed the EOUST's commitment to maintaining "uniformity and transparency regarding a debtor's financial condition and business activities" and "to inform creditors and other interested parties of the debtor's financial affairs." 85 Fed. Reg. 82906.

which would result in HCLOF's incurring legal fees and costs). HarbourVest alleged that, as a result of the Terry lawsuit, HCLOF incurred approximately $15 million in legal fees and costs.[12]

In the context of Highland's bankruptcy, however, HarbourVest filed a proof of claim alleging that it was due over $300 million in damages in the dispute, a claim that bore no relationship to economic reality. As a result, Debtor management initially valued HarbourVest's claims at $0, a value consistently reflected in the Debtor's publicly-filed financial statements, up through and including its December 2020 Monthly Operating Report.[13] Eventually, however, the Debtor announced a settlement with HarbourVest which entitled HarbourVest to $45 million in Class 8 claims and $35 million in Class 9 claims.[14] At the time, the Debtor's public disclosures reflected that Class 8 creditors could expect to receive approximately 70% payout on their claims, and Class 9 creditors could expect 0.00%. In other words, HarbourVest's total $80 million in allowed claims would allow HarbourVest to realize a $31.5 million return.[15]

As consideration for this potential payout, HarbourVest agreed to convey its interest in HCLOF to a special-purpose entity ("SPE") designated by the Debtor (a transaction that involved a trade of securities) and to vote in favor of the Debtor's Plan. In its pleadings and testimony in support of the settlement, the Debtor represented that the value of HarbourVest's interest in HCLOF was $22.5 million. It later came to light, however, that the actual value of that asset was at least $44 million.

There are numerous problems with this transaction which may not have occurred with the requisite transparency. As a registered investment advisor, the Debtor had a fiduciary obligation to disclose the true value of HarbourVest's interest in HCLOF to investors in that fund. The Debtor also had a fiduciary obligation to offer the investment opportunity to the other investors prior to purchasing HarbourVest's interest for itself. Mr. Seery has acknowledged that his fiduciary duties to the Debtor's managed funds and investors supersedes any fiduciary duties owed to the Debtor and its creditors in bankruptcy. Nevertheless, the Debtor and its management appear to have misrepresented the value of the HarbourVest asset, brokered a purchase of the asset without disclosure to investors, and thereafter placed the HarbourVest interest into a non-reporting SPE.[16] This meant that no outside stakeholder had any ability to assess the value of that interest, nor could any outsider possibly ascertain how the acquisition of that interest impacted the bankruptcy estate. In the absence of Rule 2015.3 reports or listing of the HCLOF interest on the Debtor's balance sheet, it was impossible to determine at the time of the HarbourVest settlement (or thereafter) whether the Debtor properly accounted for the asset on its balance sheet.

Highland engaged in several other asset sales in bankruptcy without disclosing those sales in advance to outside stakeholders or investors, and without offering investors in funds impacted by the sales the opportunity to purchase the assets. For example:

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[12] Assuming that HarbourVest were entitled to fraud damages as it claimed, the true amount of its damages was less than $7.5 million (because HarbourVest only would have borne 49.98% of the $15 million in legal fees).
[13] *See* Monthly Operating Report for Highland Capital Management for the Month Ending December 2020, Dkt. 1949.
[14] Class 8 consists of general unsecured claims; Class 9 consists of subordinated claims.
[15] We have reason to believe that HarbourVest's Class 8 and Class 9 claims were contemporaneously sold to Farallon Capital Management—an SEC-registered investment advisor—for approximately $28 million.
[16] Even former Highland employee Patrick Daugherty recognized the problematic nature of asset dispositions like the one involving HarbourVest, commenting that such transactions "have left [Mr. Seery] and Highland vulnerable to a counter-attack under the [Investment] Advisors Act." *See* Ex. B.

- The Debtor sold approximately $25 million of NexPoint Residential Trust shares that today are valued at over $70 million; the Debtor likewise sold $6 million of PTLA shares that were taken over less than 60 days later for $18 million.

- The Debtor divested interests worth $145 million held in certain life settlements (which paid on the death of the individuals covered, whose average age was 90) for $35 million rather than continuing to pay premiums on the policies, and did so without obtaining updated estimates of the life settlements' value, to the detriment of the fund and investors (today two of the covered individuals have a life expectancy of less than one year);

- The Debtor sold interests in OmniMax without informing the Bankruptcy Court, without engaging in a competitive bidding process, and without cooperating with other funds managed by Mr. Dondero, resulting in what we believe is substantially lesser value to investors;

- The Debtor sold interests in Structural Steel Products (worth $50 million) and Targa (worth $37 million), again without any process or notice to the Bankruptcy Court or outside stakeholders, resulting in what we believe is diminished value for the estate and investors.

Because the Bankruptcy Code does not define what constitutes a transaction in the "ordinary course of business," the Debtor's management was able to characterize these massive sales as ordinary course transactions when they were anything but ordinary, resulting in diminution in value to the estate and its creditors.

In summary, the consistent lack of transparency throughout bankruptcy proceedings facilitated sales and deal-making that failed to maximize value for the estate and precluded outside stakeholders from evaluating or participating in asset purchases or claims trading that might have benefitted the estate and outside investors in Debtor-managed funds.

The Debtor Reneged on Its Promise to Pay Key Employees, Contrary to Sworn Testimony

Highland's bankruptcy also diverges from the norm in its treatment of key employees, who usually can expect to be fairly compensated for pre-petition work and post-petition work done for the benefit of the estate. That did not happen here, despite the Debtor's representation to the Bankruptcy Court that it would.

By way of background, prior to its bankruptcy, Highland offered employees two bonus plans: an Annual Bonus Plan and a Deferred Bonus Plan. Under the Annual Bonus Plan, all of Highland's employees were eligible for a yearly bonus payable in up to four equal installments, at six-month intervals, on the last business day of each February and August. Under the Deferred Bonus Plan, Highland's employees were awarded shares of a designated publicly traded stock, the right to which vested 39 months later. Under both bonus plans, the only condition to payment was that the employee be employed by Highland at the time the award (or any portion of it) vested.

At the outset of the bankruptcy proceedings, the Debtor promised that pre-petition bonus plans would be honored. Specifically, in its Motion For Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief, the Debtor informed the Court that employee bonuses "continue[d] to be earned on a post-petition basis," and that "employee compensation under the Bonus Plans [was] critical to the Debtor's ongoing

operations and that any threat of nonpayment under such plans *would have a potentially catastrophic impact on the Debtor's reorganization efforts.*"[17] Significantly, the Debtor explained to the Court that its operations were leanly staffed, such that all employees were critical to ongoing operations and such that it expected to compensate all employees. As a result of these representations, key employees continued to work for the Debtor, some of whom invested significant hours at work ensuring that the Debtor's new management had access to critical information for purposes of reorganizing the estate.

Having induced Highland's employees to continue their employment, the Debtor abruptly changed course, refusing to pay key employees awards earned pre-petition under the Annual Bonus Plan and bonuses earned pre-petition under the Deferred Bonus Plan that vested post-petition. In fact, Mr. Seery chose to terminate four key employees just before the vesting date in an effort to avoid payment, despite his repeated assurances to the employees that they would be "made whole." Worse still, notwithstanding the Debtor's failure and refusal to pay bonuses earned and promised to these terminated employees, in Monthly Operating Reports signed by Mr. Seery under penalty of perjury, the Debtor continued to treat the amounts owed to the employees as post-petition obligations, which the Debtor continued to accrue as post-petition liabilities even after termination of their employment.

The Debtor's misrepresentations to the Bankruptcy Court and to the employees themselves fly in the face of usual bankruptcy procedure. As the Fifth Circuit has explained, administrative expenses like key employee salaries are an "'actual and necessary cost'" that provides a "benefit to the state and its creditors."[18] It is undisputed that these employees continued to work for the Debtor, providing an unquestionable benefit to the estate post-petition, but were not provided the promised compensation, for reasons known only to the Debtor.

Again, this is not business as usual in bankruptcy proceedings, and if we are to ensure the continued success of debtors in reorganization proceedings, it is important that key employees be paid in the ordinary course for their efforts in assisting debtors and that debtor management be made to live up to promises made under penalty of perjury to the bankruptcy courts.

There Is Substantial Evidence that Insider Trading Occurred

Perhaps one of the biggest problems with the lack of transparency at every step is that it facilitated potential insider trading. The Debtor (as well as its advisors and professionals) and the Creditors' Committee (and its counsel) had access to critical information upon which any reasonable investor would rely. But because of the lack of reporting, the public did not.

Mr. Draper's October 4, 2021 letter sets forth in detail the reasons for suspecting that insider trading occurred, but his explanation bears repeating here. In the context of a non-transparent bankruptcy proceeding, three of the four members of the Creditors' Committee and one non-committee member sold their claims to two buyers, Muck Holdings LLC ("Muck") and Jessup Holdings LLC ("Jessup"). The four claims sold comprise the largest four claims in the Highland bankruptcy by a substantial margin,[19] collectively totaling almost $270 million in Class 8 claims and $95 million in Class 9 claims:

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[17] *See* Dkt. 177, ¶ 25 (emphasis added).
[18] *Texas v. Lowe (In re H.L.S. Energy Co.)*, 151 F.3d 434, 437 (5th Cir. 1998) (quoting *Transamerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992)).
[19] *See* Ex. C.

Claimant	Class 8 Claim	Class 9 Claims	Date Claim Settled
Redeemer Committee	$136,696,610	N/A	October 28, 2020
Acis Capital	$23,000,000	N/A	October 28, 2020
HarbourVest	$45,000,000	$35,000,000	January 21, 2021
UBS	$65,000,000	$60,000,000	May 27, 2021
TOTAL:	**$269,6969,610**	**$95,000,000**	

Muck is owned and controlled by Farallon Capital Management ("Farallon"), and we believe Jessup is owned and controlled by Stonehill Capital Management ("Stonehill"). As the purchasers of the four largest claims in the bankruptcy, Muck (Farallon) and Jessup (Stonehill) will oversee the liquidation of the reorganized Debtor and the payment over time to creditors who have not sold their claims. These two hedge funds also will determine the performance bonus due to Mr. Seery for liquidating the estate. As set forth in the attached balance sheet dated August 31, 2021, we estimate that the estate today is worth nearly $600 million,[20] which could result in Mr. Seery's receipt of a performance bonus approximating $50 million.

This is concerning because there is substantial evidence that Farallon and Stonehill may have been provided material, non-public information to induce their purchase of these claims. We agree with Mr. Draper that there are three primary reasons to believe that non-public information was made available to facilitate these claims purchases:

- The scant publicly-available information regarding the Debtor's estate ordinarily would have dissuaded sizeable investment in purchases of creditors' claims;
- The information that actually was publicly available ordinarily would have compelled a prudent investor to conduct robust due diligence prior to purchasing the claims;
- Yet these claims purchasers spent in excess of $100 million (and likely closer to $150 million) on claims, ostensibly without any idea of what they were purchasing.

Credible information indicates that the claims purchases of Stonehill and Farallon can be summarized as follows:

Creditor	Class 8	Class 9	Purchaser	Purchase Price
Redeemer	$137.0	$0.0	Stonehill	$78.0[21]
ACIS	$23.0	$0.0	Farallon	$8.0
HarbourVest	$45.0	$35.0	Farallon	$27.0
UBS	$65.0	$60.0	Stonehill and Farallon	$50.0

[20] *See* Ex. D.
[21] *See* Ex. E. Because the transaction included "the majority of the remaining investments held by the Crusader Funds," the net amount paid by Stonehill for the Claims was approximately $65 million.

An analysis of publicly-available information would have revealed to any potential investor that:

- The estate's asset value had decreased by $200 million, from $556 million on October 16, 2019, to $328 million as of September 30, 2020 (increasing only slightly to $364 million as of January 31, 2021).[22]

- Allowed claims against the estate increased by a total amount of $236 million.

- Due to the decrease in the value of the Debtor's assets and the increase in the allowed claims amount, the ultimate projected recovery for creditors in bankruptcy decreased from 87.44% to 62.99% in just a matter of months.[23]

No prudent investor or hedge fund investing third-party money would purchase substantial claims out of the Highland estate based on this publicly-available information absent robust due diligence demonstrating that the investment was sound.

As discussed by Mr. Draper, the very close relationships between the claims purchasers, on the one hand, and the selling Creditors' Committee members and the Debtor's management, on the other hand also raise red flags. In particular:

- Farallon and Stonehill have long-standing, material relationships with the members of the Creditors' Committee and Mr. Seery. Mr. Seery formerly was the Global Head of Fixed Income Loans at Lehman Bros. until its collapse in 2009. While Mr. Seery was Global Head, Lehman Bros. did substantial business with Farallon. After Lehman's collapse, Mr. Seery joined Sidley & Austin as co-head of the corporate restructuring and bankruptcy group, where he worked with Matt Clemente, counsel to the Creditors' Committee in Highland's bankruptcy proceedings.

- In addition, Grovesnor, one of the lead investors in the Crusader Funds from the Redeemer Committee (which appointed Seery as its independent director) both played a substantial role on the Creditors' Committee and is a large investor in Farallon and Stonehill. It is unclear whether Grovesnor, a registered investment advisor, notified minority investors in the Crusader Funds or Farallon and Stonehill of these facts.

- According to Farallon principals Raj Patel and Michael Linn, while at Sidley, Mr. Seery assisted Farallon in its acquisition of claims in the Lehman estate, and Farallon realized more than $100 million in claims on those trades.

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[22] *Compare* Jan. 31, 2021 Monthly Operating Report [Dkt. 2030], *with* Disclosure Statement (approved on Nov. 24, 2020) [Dkt. 1473]. The increase in value between September 2020 and January 2021 is attributable to the Debtor's settlement with HarbourVest, which granted HarbourVest a Class 8 claim of $45 million and a Class 9 Claim of $35 million, and in exchange the Debtor received HarbourVest's interest in HCLOF, which in reality was worth approximately $44.3 million as of January 31, 2021. *See* Ex. C. It is also notable that the January 2021 monthly financial report values Class 8 claims at $267 million, an exponential increase over their estimated value of $74 million in December 2020.

[23] *See* Ex. F.

- Also while at Sidley, Mr. Seery represented the Steering Committee in the Blockbuster Video bankruptcy; Stonehill (through its Managing Member, John Motulsky) was one of the five members of the Steering Committee.

- Mr. Seery left Sidley in 2013 to become the President and Senior Investment Partner of River Birch Capital, a hedge fund founded by his former Lehman colleagues. He left River Birch in October 2017 just before the fund imploded. In 2017, River Birch and Stonehill Capital were two of the biggest note holders in the Toys R Us bankruptcy and were members of the Toys R Us creditors' committee.

I strongly agree with Mr. Draper that it is suspicious that two firms with such significant ties to Mr. Seery have purchased $365 million in claims. The aggregate $150 million purchase price paid by Farallon and Stonehill is 56% of all Class 8 claims, virtually the full plan value expected to be realized after two years. We believe it is worth investigating whether these claims buyers had access to material, non-public information regarding the actual value of the estate.

Other transactions occurring during the Highland bankruptcy also reinforce the suspicion that insider trading occurred. In particular, it appears that one of the claims buyers, Stonehill, used non-public information obtained incident to the bankruptcy to purchase stock in NexPoint Strategic Opportunities Fund (NYSE: NHF), a publicly traded, closed-end '40 Act fund with many holdings in common with assets held in the Highland estate outlined above. Stonehill is a registered investment adviser with $3 billion under management that has historically owned very few equity interests, particularly equity interests in a closed-end fund. As disclosed in SEC filings, Stonehill acquired enough stock in NHF during the second quarter of 2021 to make it Stonehill's eighth largest equity position.

The timing of the acquisitions of claims by Farallon and Stonehill also raises suspicion. For example, although notices of the transfer of the claims were filed immediately after the confirmation of the Debtor's Plan and prior to the effective date of the Plan, it seems likely that negotiations began much earlier. Transactions of this magnitude do not take place overnight and typically require robust due diligence. Muck was formed on March 9, 2021, more than a month before it filed notice that it was purchasing the Acis claim. If the negotiation or execution of a definitive agreement for the purchase began before or contemporaneously with Muck's formation, then there is every reason to believe that selling Creditors' Committee members and/or Debtor management provided Farallon with critical non-public information well before the Creditors' Committee members sold their claims and withdrew from the Committee. Indeed, Mr. Patel and Mr. Linn have stated to others that they purchased the Acis and HarbourVest claims in late January or early February. This is strong evidence that negotiation and/or agreements relating to the purchase of claims from Creditors' Committee members preceded the confirmation of the Debtor's Plan and the resignation of those members from the Committee.

Likewise, correspondence from the fund adviser to the Crusader Funds indicates that the Crusader Funds and the Redeemer Committee had "consummated" the sale of the Redeemer Committee's claims and other assets on April 30, 2021, "for $78 million in cash, which was paid in full to the Crusader Funds at closing."[24] In addition, that there was a written agreement among Stonehill, the Crusader Funds, and the Redeemer Committee that sources indicate dates back to the fourth quarter of 2020. That agreement presumably imposed affirmative and negative covenants upon the seller and granted the purchaser discretionary approval rights during the pendency of the sale. Such an agreement would necessarily conflict with the Creditors' Committee members' fiduciary obligations.

[24] *See* Ex. E.

The sale of the claims by the members of the Creditors' Committee also violates the instructions provided to committee members by the U.S. Trustee that required a selling committee member to obtain approval from the Bankruptcy Court prior to any sale of such member's claim. No such Court approval was ever sought or obtained, and the Dallas U.S. Trustee's Office took no action to enforce this guideline. The Creditors' Committee members were sophisticated entities, and they were privy to inside information that was not available to other unsecured creditors. For example, valuations of assets placed into a specially-created affiliated entities, such as the assets acquired in the HarbourVest settlement, and valuations of assets held by other entities owned or controlled by the Debtor, were available to the selling Creditors' Committee members, but not to other creditors or parties-in-interest.

While claims trading itself is not prohibited, there is reason to believe that the claims trading that occurred in the Highland bankruptcy violated federal law:

a) The selling parties were *three* of the four Creditors' Committee members, and each one had access to information they received in a fiduciary capacity;

b) Some of the information they received would have been available to other parties-in-interest if Rule 2015.3 had been enforced;

c) The projected recovery to creditors decreased significantly between the approval of the Disclosure Statement and the confirmation of the Debtor's Plan; and

d) There was a suspicious purchase of stock by Stonehill in NHF, a closed-end fund previously affiliated with Highland (and now managed by NexPoint Advisors, L.P.) that is publicly traded on the New York stock exchange.The Debtor's assets and the positions held by the closed-end fund are similar.

Mr. Seery's Compensation Structure Encouraged Misrepresentations Regarding the Value of the Estate and Assets of the Estate

An additional problem in Highland's bankruptcy is that Mr. Seery, as an Independent Director as well as the Debtor's CEO and CRO, received financial incentives that encouraged claims trading and dealing in insider information.

Mr. Seery received sizeable compensation for his heavy-handed role in Highland's bankruptcy. Upon his appointment as an Independent Director in January 2020, Mr. Seery received compensation from the Debtor of $60,000 per month for the first three months, $50,000 per month for the following three months, and $30,000 per month for remaining months, subject to adjustment by agreement with the Debtor.[25] When Mr. Seery subsequently was appointed the Debtor's CEO and CRO in July 2020, he received additional compensation, including base compensation of $150,000 per month retroactive to March 2020 and for so long as he served in those roles, as well as a "Restructuring Fee."[26] Mr. Seery's employment agreement contemplated that the Restructuring Fee could be calculated in one of two ways:

(1) If Mr. Seery were able to resolve a material amount of outstanding claims against the estate, he would be entitled to $1 million on confirmation of what the Debtor termed a

[25] *See* Dkt. 339, ¶ 3.
[26] *See* Dkt. 854, Ex. 1.

"Case Resolution Plan," $500,000 at the effective date of the Case Resolution Plan, and $750,000 upon completion of distributions to creditors under the plan.

(2) If, by contrast, Mr. Seery were not able to resolve the estate and instead achieved a "Monetization Vehicle Plan," he would be entitled to $500,000 on confirmation of the Monetization Vehicle Plan, $250,000 at the effective date of that plan, and—most importantly—a to-be-determined "contingent restructuring fee" based on "performance under the plan after all material distributions" were made.

The Restructuring Fee owed for a Case Resolution Plan was materially higher than that payable under the Monetization Vehicle Plan and provided a powerful economic incentive for Mr. Seery to resolve creditor claims in any way possible. Notably, at the time of Mr. Seery's formal appointment as CEO/CRO, he had already negotiated settlements in principle with Acis and the Redeemer Committee, leaving only the HarbourVest and UBS claims to resolve.

Further, after the Plan's effective date, as appointed Claimant Trustee, Mr. Seery was promised compensation of $150,000 per month (termed his "Base Salary"), subject to the negotiation of additional "go-forward" compensation, including a "success fee" and severance pay.[27] Mr. Seery's success fee presumably will be based on whether the Plan outperforms what was disclosed in the Plan Analysis. In other words, Mr. Seery had a financial incentive to grossly understate the value of the estate in public disclosures, not only to facilitate claims trading and resolution of the biggest claims in bankruptcy (for purposes of obtaining the larger Case Resolution Fee) but also to ensure that he eventually receives a large "success fee." Again, we estimate that, based on the estate's nearly $600 million value today, Mr. Seery's success fee could approximate $50 million.

One excellent example of the way in which Mr. Seery facilitated claims trading and thereby lined his own pockets is the sale of UBS's claim. Based on the publicly-available information at the time Stonehill and Farallon purchased the UBS claim, the purchase made no economic sense. At the time, the publicly-disclosed Plan Analysis estimated that there would be a 71.32% distribution to Class 8 creditors and a 0.00% distribution to Class 9 creditors, which would mean believe is that, at the time of their claims purchase, the estate actually was worth much, much more (between $472-$600 million). If, prior to their claims purchases, Mr. Seery (or others in the Debtor's management) apprised Stonehill and Farallon of the true estate value (which was material, non-public information at the time), then the value they paid for the UBS claim made sense, because they would have known they were likely to recover close to 100% on Class 8 and Class 9 claims.

But perhaps the most important evidence of mismanagement of this bankruptcy proceeding and misalignment of financial incentives is the Debtor's repeated refusal to resolve the estate in full despite dozens of opportunities to do so. Immediately prior to the Plan confirmation hearing, Judge Jernigan suggested that the Creditors' Committee and Mr. Dondero attempt to reach a settlement. Mr. Dondero, through counsel, already had made 35 offers of settlement that would have maximized the estate's recovery, even going so far as to file a proposed plan of reorganization. Some of these offers were valued between $150 and $232 million. And we now believe that as of August 1, 2020, the Debtor's estate had an actual value of at least $460 million, including $105 million in cash and a $50 million revolving credit facility. With Mr. Dondero's offer, the Debtor's cash and the credit facility could have resolved the estate, which would have enabled the Debtor to pay all proofs of claim, leave a residual estate intact for equity holders, and allow the company to continue to operate as a going concern.

[27] *See* Plan Supplement, Dkt. 1875, § 3.13(a)(i).

Nonetheless, neither the Debtor nor the Creditors' Committee responded to Mr. Dondero's offers. It was not until The Honorable Former Judge D. Michael Lynn, counsel for Mr. Dondero, reminded the Creditors' Committee counsel that its members had a fiduciary duty to respond that a response was forthcoming. We believe Mr. Dondero's proposed plan offered a materially greater recovery than what the Debtor had reported would be the expected Plan recovery. The Creditors' Committee's failure to timely respond to that offer suggests that Debtor management, the Creditors' Committee, or both were financially disincentivized from accepting a case resolution offer and that some members of the Creditors' Committee were contractually constrained from doing so.

What happened instead was that the Debtor, its management, and the Creditors' Committee brokered deals that allowed grossly inflated claims and sales of those claims to a small group of investors with significant ties to Debtor management. In a transparent bankruptcy proceeding, we question whether any of this could have happened. What we do know is that the Debtor's non-transparent bankruptcy has ensured there will be nothing left for residual stakeholders, while enriching a handful of intimately connected individuals and investors.

The Debtor's Management and Advisors Are Almost Totally Insulated From Liability

Despite the mismanagement of bankruptcy proceedings, the Bankruptcy Court has issued a series of orders ensuring that the Debtor and its management cannot not be held liable for their actions in bankruptcy.

In particular, the Court issued a series of orders protecting Mr. Seery from potential liability for any act undertaken in the management of the Debtor or the disposition of its assets:

- In its order approving the settlement between the Creditors' Committee and Mr. Dondero, the Court barred any Debtor entity "from commenc[ing] or pursu[ing] a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director" unless the Court first (1) determined the claim was a "colorable" claim for willful misconduct or gross negligence, and (2) authorized an entity to bring the claim. The Court also retained "sole jurisdiction" over any such claim.[28]

- In its order approving the Debtor's retention of Mr. Seery as its Chief Executive Officer and Chief Restructuring Officer, the Court issued an identical injunction barring any claims against Mr. Seery in his capacity as CEO/CRO without prior court approval.[29] The same order authorized the Debtor to indemnify Mr. Seery for any claims or losses arising out of his engagement as CEO/CRO.[30]

Worse still, the Plan approved by the Bankruptcy Court contains sweeping release and exculpation provisions that make it virtually impossible for third parties, including investors in the Debtor's managed funds, to file claims against the Debtor, its related entities, or their management. The Plan's exculpation provisions contain also contain a requirement that any potential claims be vetted and approved by the Bankruptcy Court. As Mr. Draper already explained, these provisions violate the holding

[28] Dkt. 339, ¶ 10.
[29] Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr. as Chief Executive Office, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020, Dkt. 854, ¶ 5.
[30] Dkt. 854, ¶ 4 & Exh. 1.

of *In re Pacific Lumber Co.*, in which the United States Court of Appeals for the Fifth Circuit rejected similarly broad exculpation clauses.[31]

The fundamental problem with the Plan's broad exculpation and release provisions has been brought into sharp focus in recent days, with the filing of a lawsuit by the Litigation Trustee against Mr. Dondero, other individuals formerly affiliated with Highland, and several trusts and entities affiliated with Mr. Dondero.[32] Among other false accusations, that lawsuit alleges that the aggregate amount of allowed claims in bankruptcy was high because the Debtor and its management were forced to settle with various purported judgment creditors who had engaged in pre-petition litigation with Mr. Dondero and Highland. But it was Mr. Seery and Debtor's management, not Mr. Dondero and the other defendants, who negotiated those settlements with creditors in bankruptcy and who decided what value to assign to their claims. Ordinarily, Mr. Dondero and the other defendants could and would file compulsory counterclaims against the Debtor and its management for their role in brokering and settling claims in bankruptcy. But the Bankruptcy Court has effectively precluded such counterclaims (absent the defendants obtaining the Court's advance permission to assert them) by releasing the Debtor and its management from virtually all liability in relation to their roles in the bankruptcy case. That is a violation of due process.

Notably, the U.S. Trustee's Office recently has argued in the context of the bankruptcy of Purdue Pharma that release and exculpations clauses akin to those contained in Highland's Plan violate both the Bankruptcy Code and the Due Process Clause of the United States Constitution.[33] In addition, the U.S. Trustee explained that the bankruptcy courts lack constitutional authority to release state-law causes of action against debtor management and non-debtor entities.[34] Indeed, it has been the U.S. Trustee's position that where, as here, third parties whose claims are being released did not receive notice of the releases and had no way of knowing, based on the applicable plan's language, what claims were extinguished, third-party releases are contrary to law.[35] This position comports with Fifth Circuit case law, which makes clear that releases must be consensual, and that the released party must make a substantial contribution in exchange for any release.

As a result of the release and exculpation provisions of the Plan, employees and third-party investors in entities managed by the Debtor who are harmed by actions taken by the Debtor and its management in bankruptcy are barred from asserting their claims without prior Bankruptcy Court approval. Those third parties' claims are barred notwithstanding that they were not notified of the releases and have never been given any information with which to evaluate their potential claims (as mentioned, the Debtor has not disclosed several major assets sales, nor does the Plan require the Debtor to disclose post-confirmation asset sales). Conversely, the releases insulate claims purchasers from the risk of potential actions by investors in funds managed by the Debtor (for breach of fiduciary duty, diminution in value, or otherwise). These releases are directly at odds with investors' expectations and the written documents delivered to and approved by investors when they invest in managed funds—i.e., that fund managers will act in a fiduciary capacity to maximize investors' returns and that investors will have recourse for any failure to do so.

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[31] 584 F.3d 229 (5th Cir. 2009).
[32] The Plan created a Litigation Sub-Trust to be managed by a Litigation Trustee, whose sole mandate is to file lawsuits in an effort to realize additional value for the estate.
[33] *See* Memorandum of Law in Support of United States Trustee's Expedited Motion for Stay of Confirmation Order, *In re Purdue Pharma, L.P.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y.), Doc. 3778 at 17-25.
[34] *Id.* at 26-28.
[35] *See id.* at 22.

As an example, the Court approved the settlement of UBS's claim against the Debtor and two funds managed by the Debtor (collectively referred to as "MultiStrat"). Pursuant to that settlement, MultiStrat agreed to pay UBS $18.5 million. But the settlement made no sense for several reasons. First, Highland owns approximately 48% of MultiStrat, so causing MultiStrat to make such a substantial payment to settle a claim in Highland's bankruptcy necessarily negatively impacted its other non-Debtor investors. Second, in its lawsuit, UBS alleged that MultiStrat wrongfully received a $6 million payment, but MultiStrat paid more than three times this amount to settle allegations against it—a deal that made little economic sense. Finally, as part of the settlement, MultiStrat represented that it was advised by "independent legal counsel" in the negotiation of the settlement, a representation that was patently untrue.[36] In reality, the only legal counsel advising MultiStrat was the Debtor's counsel, who had economic incentives to broker the deal in a manner that benefited the Debtor rather than MultiStrat and its investors.[37] If (as it seems) that representation and/or the terms of the UBS/MultiStrat settlement unfairly impacted MultiStrat's investors, they now have no recourse against the Debtor. The release and exculpation provisions in Highland's Plan do not afford third parties any meaningful recourse, even when they are negatively impacted by misrepresentations of the type contained in the UBS/MultiStrat settlement or when their interests are impaired by fund managers' failure to obtain fairness opinions to resolve conflicts of interest.

Bankruptcy Proceedings Are Used As an End-Run Around Applicable Legal Duties

The UBS deal is but one example of how Highland's bankruptcy proceedings, including the settlement of claims and claims trading that occurred, seemingly provided a safe harbor for violations of multiple state and federal laws. For example, the Investment Advisors Act of 1940 requires registered investment advisors like the Debtor to act as fiduciaries of the funds that they manage. Indeed, the Act imposes an "affirmative duty of 'utmost good faith' and full and fair disclosure of material facts" as part of advisors' duties of loyalty and care to investors. *See* 17 C.F.R. Part 275. Adherence to these duties means that investment advisors cannot buy securities for their account prior to buying them for a client, cannot make trades that may result in higher commissions for the advisor or their investment firm, and cannot trade using material, non-public information. In addition, investment advisors must ensure that they provide investors with full and accurate information regarding the assets managed.

State blue sky laws similarly prohibit firms holding themselves out as investment advisors from breaching these core fiduciary duties to investors. For example, the Texas Securities Act prohibits any registered investment advisor from trading on material, non-public information. The Act also conveys a private right of action to investors harmed by breaches of an investment advisor's fiduciary duties.

As explained above, Highland executed numerous transactions during its bankruptcy that may have violated the Investment Advisors Act and state blue sky laws. Among other things:

- Highland facilitated the purchase of HarbourVest's interest in HCLOF (placing that interest in an SPE designated by the Debtor) without disclosing the true value of the interest and without first offering it to other investors in the fund;

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[36] *See* Doc. 2389 (Order Approving Debtor's Settlement With UBS Securities LLC and UBS AG London Branch) at Ex. 1, §§ 1(b), 11; *see* Appendix, p. A-57.

[37] The Court's order approving the UBS settlement is under appeal in part based on MultiStrat's lack of independent legal counsel.

- Highland concealed the estate's true value from investors in its managed funds, making it impossible for those investors to fairly evaluate the estate or its assets during bankruptcy;

- Highland facilitated the settlement of UBS's claim by causing MultiStrat, a non-Debtor managed entity, to pay $18.5 million to the Debtor, to the detriment of MultiStrat's investors; and

- Highland and its CEO/CRO, Mr. Seery, brokered deals between three of four Creditors' Committee members and Farallon and Stonehill—deals that made no sense unless Farallon and Stonehill were supplied material, non-public information regarding the true value of the estate.

In short, Mr. Seery effectuated trades that seemingly lined his own pockets, in transactions that we believe detrimentally impacted investors in the Debtor's managed funds.

CONCLUSION

The Highland bankruptcy is an example of the abuses that can occur if the Bankruptcy Code and Bankruptcy Rules are not enforced and are allowed to be manipulated, and if federal law enforcement and federal lawmakers abdicate their responsibilities. Bankruptcy should not be a safe haven for perjury, breaches of fiduciary duty, and insider trading, with a plan containing third-party releases and sweeping exculpation sweeping everything under the rug. Nor should it be an avenue for opportunistic venturers to prey upon companies, their investors, and their creditors to the detriment of third-party stakeholders and the bankruptcy estate. My clients and I join Mr. Draper in encouraging your office to investigate, fight, and ultimately eliminate this type of abuse, now and in the future.

Best regards,

MUNSCH HARDT KOPF & HARR, P.C.

By: _____
Davor Rukavina, Esq.

DR:pdm

Appendix

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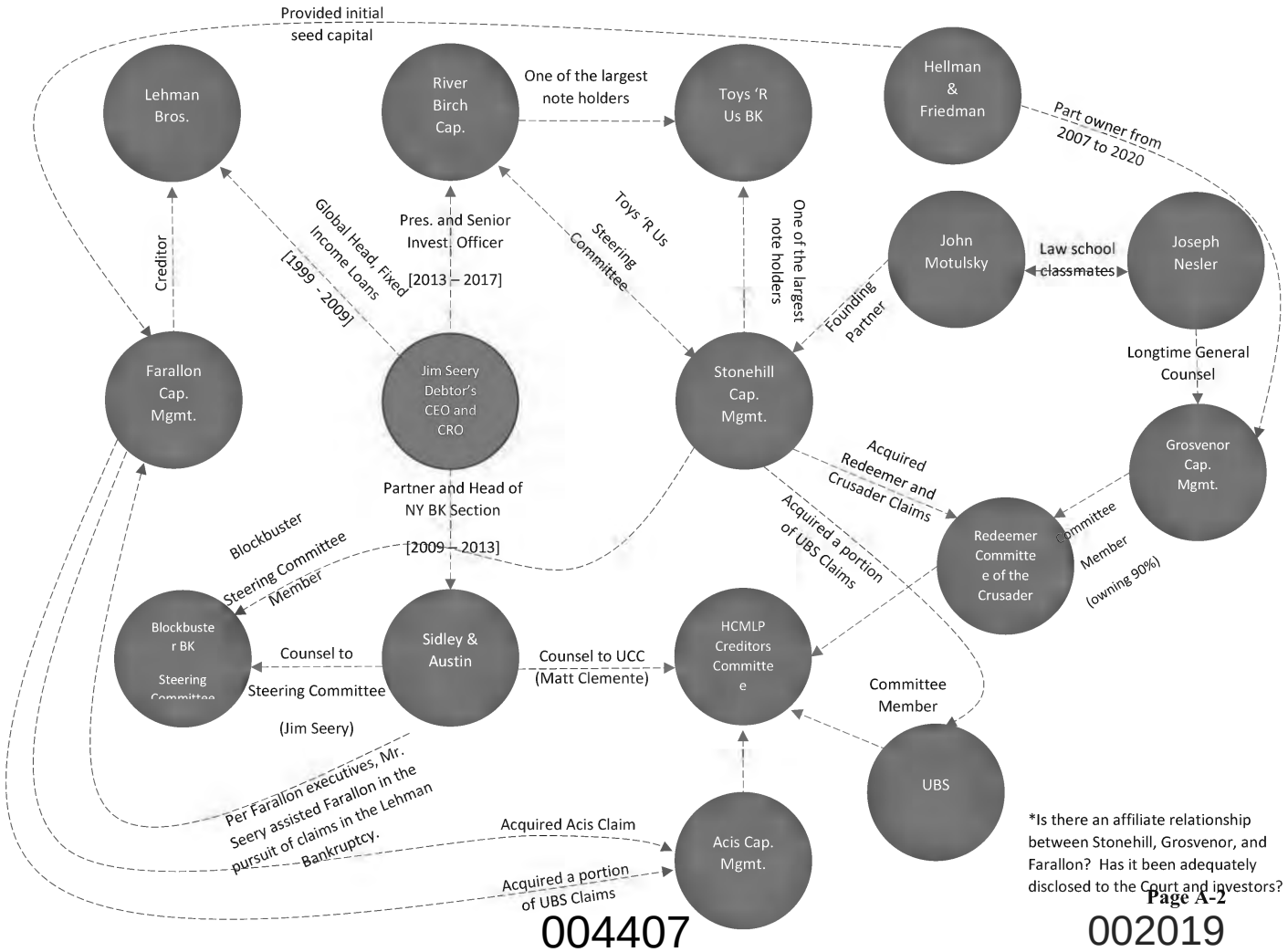
Relationships Among Debtor's CEO/CRO, the UCC, and Claims Purchasers



*Is there an affiliate relationship between Stonehill, Grosvenor, and Farallon? Has it been adequately disclosed to the Court and investors?

Debtor Protocols [Doc. 466-1]

I. **Definitions**

A. "Court" means the United States Bankruptcy Court for the Northern District of Texas.

B. "NAV" means (A) with respect to an entity that is not a CLO, the value of such entity's assets less the value of its liabilities calculated as of the month end prior to any Transaction; and (B) with respect to a CLO, the CLO's gross assets less expenses calculated as of the quarter end prior to any Transaction.

C. "Non-Discretionary Account" means an account that is managed by the Debtor pursuant to the terms of an agreement providing, among other things, that the ultimate investment discretion does not rest with the Debtor but with the entity whose assets are being managed through the account.

D. "Related Entity" means collectively (A)(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor) has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor); (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative (as defined in Section 101 of the Bankruptcy Code) of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, including any "non-statutory" insider; and (viii) to the extent not included in (A)(i)-(vii), any entity included in the listing of related entities in **Schedule B** hereto (the "Related Entities Listing"); and (B) the following Transactions, (x) any intercompany Transactions with certain affiliates referred to in paragraphs 16.a through 16.e of the Debtor's cash management motion [Del. Docket No. 7]; and (y) any Transactions with Charitable DAF Fund, L.P. (provided, however, that additional parties may be added to this subclause (y) with the mutual consent of the Debtor and the Committee, such consent not to be unreasonably withheld).

E. "Stage 1" means the time period from the date of execution of a term sheet incorporating the protocols contained below the ("Term Sheet") by all applicable parties until approval of the Term Sheet by the Court.

F. "Stage 2" means the date from the appointment of a Board of Independent Directors at Strand Advisors, Inc. until 45 days after such appointment, such appointment being effective upon Court approval.

G. "Stage 3" means any date after Stage 2 while there is a Board of Independent Directors at Strand Advisors, Inc.

H. "Transaction" means (i) any purchase, sale, or exchange of assets, (ii) any lending or borrowing of money, including the direct payment of any obligations of another entity, (iii) the satisfaction of any capital call or other contractual

requirement to pay money, including the satisfaction of any redemption requests, (iv) funding of affiliates and (v) the creation of any lien or encumbrance.

I. "Ordinary Course Transaction" means any transaction with any third party which is not a Related Entity and that would otherwise constitute an "ordinary course transaction" under section 363(c) of the Bankruptcy Code.

J. "Notice" means notification or communication in a written format and shall include supporting documents necessary to evaluate the propriety of the proposed transaction.

K. "Specified Entity" means any of the following entities: ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

II. Transactions involving the (i) assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly-owned subsidiaries, including Jefferies Prime Account, and (ii) the Highland Select Equity Fund, L.P., Highland Multi Strategy Credit Fund, L.P., and Highland Restoration Capital Partners

A. **Covered Entities**: N/A (See entities above).

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

   a) Stage 1 and Stage 2: ordinary course determined by the CRO.

   b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

   a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

   b) Stage 3:

      (1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

III. Transactions involving entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above)

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above).[1]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

a) Stage 1 and Stage 2: ordinary course determined by the CRO.

b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

[1] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) Stage 3:

(1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

(2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

a) Except as set forth in (b) and (c) below, Transactions in excess of $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

IV. Transactions involving entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

A. **Covered Entities**: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest.[2]

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).

   a) Stage 1 and Stage 2: ordinary course determined by the CRO.

   b) Stage 3: ordinary course determined by the Debtor.

2. Related Entity Transactions

   a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

   b) Stage 3:

      (1) Transactions with Related Entities greater than $1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

      (2) Transactions with Related Entities greater than $2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages):

   a) Except (x) as set forth in (b) and (c) below and (y) for any Transaction involving a Specified Entity and the sale or purchase by such Specified Entity of an asset that is not an obligation or security issued or guaranteed by any of the Debtor, a Related Entity or a fund, account, portfolio company owned, controlled or managed by the Debtor or a Related Entity, where such Transaction is effected in compliance with the collateral management agreement to which such Specified Entity is party, any Transaction that decreases the NAV of an entity managed by the Debtor in excess of the greater of (i) 10% of NAV or (ii) $3,000,000 requires five business days advance notice to

[2] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

c) The Debtor may take such steps as may be reasonably necessary to winddown any managed entity and make distributions as may be required in connection with such winddown to any required parties. The Debtor will provide the Committee with five business days advance notice of any distributions to be made to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

C. **Weekly Reporting**: The Debtor will provide the Committee with weekly reports showing all Transactions under this category. Such reports will include Transactions involving a Specified Entity unless the Debtor is prohibited from doing so under applicable law or regulation or any agreement governing the Debtor's relationship with such Specified Entity.

V. Transactions involving entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest.[3]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

[3] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

VI. **Transactions involving entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest**

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest.[4]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VII. **Transactions involving Non-Discretionary Accounts**

A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all non-discretionary accounts.[5]

B. Ordinary Course Transactions (All Stages): N/A

C. Operating Requirements: N/A

D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VIII. **Additional Reporting Requirements – All Stages (to the extent applicable)**

A. DSI will provide detailed lists and descriptions of internal financial and operational controls being applied on a daily basis for a full understanding by the Committee and its professional advisors three (3) business days in advance of the hearing on the approval of the Term Sheet and details of proposed amendments to said financial and operational controls no later than seven (7) days prior to their implementation.

B. The Debtor will continue to provide weekly budget to actuals reports referencing their 13-week cash flow budget, such reports to be inclusive of all Transactions with Related Entities.

IX. **Shared Services**

A. The Debtor shall not modify any shared services agreement without approval of the CRO and Independent Directors and seven business days' advance notice to counsel for the Committee.

B. The Debtor may otherwise continue satisfying its obligations under the shared services agreements.

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[4] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

[5] The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

X. Representations and Warranties

A. The Debtor represents that the Related Entities Listing included as **Schedule B** attached hereto lists all known persons and entities other than natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

B. The Debtor represents that the list included as **Schedule C** attached hereto lists all known natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.

C. The Debtor represents that, if at any time the Debtor becomes aware of any person or entity, including natural persons, meeting the definition of Related Entities covered by Section I.D parts A(1)-(vii) above that is not included in the Related Entities Listing or Schedule C, the Debtor shall update the Related Entities Listing or Schedule C, as appropriate, to include such entity or person and shall give notice to the Committee thereof.

Schedule A[6]

Entities the Debtor manages and in which the Debtor holds a direct or indirect interest

1. Highland CLO Funding, Ltd. (0.63% Ownership Interest)
2. Dynamic Income Fund (0.26% Ownership Interest)

Entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

1. Highland Prometheus Master Fund L.P.
2. NexAnnuity Life Insurance Company
3. PensionDanmark
4. Highland Argentina Regional Opportunity Fund
5. Longhorn A
6. Longhorn B
7. Collateralized Loan Obligations
   a) Rockwall II CDO Ltd.
   b) Grayson CLO Ltd.
   c) Eastland CLO Ltd.
   d) Westchester CLO, Ltd.
   e) Brentwood CLO Ltd.
   f) Greenbriar CLO Ltd.
   g) Highland Park CDO Ltd.
   h) Liberty CLO Ltd.
   i) Gleneagles CLO Ltd.
   j) Stratford CLO Ltd.
   k) Jasper CLO Ltd.
   l) Rockwall DCO Ltd.
   m) Red River CLO Ltd.
   n) Hi V CLO Ltd.
   o) Valhalla CLO Ltd.
   p) Aberdeen CLO Ltd.
   q) South Fork CLO Ltd.
   r) Legacy CLO Ltd.
   s) Pam Capital
   t) Pamco Cayman

Entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

1. Highland Opportunistic Credit Fund
2. Highland Healthcare Opportunities Fund f/k/a Highland Long/Short Healthcare Fund
3. NexPoint Real Estate Strategies Fund
4. Highland Merger Arbitrage Fund
5. NexPoint Strategic Opportunities Fund
6. Highland Small Cap Equity Fund
7. Highland Global Allocation Fund

[6] NTD: Schedule A is work in process and may be supplemented or amended.

8. Highland Socially Responsible Equity Fund
9. Highland Income Fund
10. Stonebridge-Highland Healthcare Private Equity Fund ("Korean Fund")
11. SE Multifamily, LLC

Entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

1. The Dugaboy Investment Trust
2. NexPoint Capital LLC
3. NexPoint Capital, Inc.
4. Highland IBoxx Senior Loan ETF
5. Highland Long/Short Equity Fund
6. Highland Energy MLP Fund
7. Highland Fixed Income Fund
8. Highland Total Return Fund
9. NexPoint Advisors, L.P.
10. Highland Capital Management Services, Inc.
11. Highland Capital Management Fund Advisors L.P.
12. ACIS CLO Management LLC
13. Governance RE Ltd
14. PCMG Trading Partners XXIII LP
15. NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC
16. NexPoint Real Estate Advisors II LP
17. NexPoint Healthcare Opportunities Fund
18. NexPoint Securities
19. Highland Diversified Credit Fund
20. BB Votorantim Highland Infrastructure LLC
21. ACIS CLO 2017 Ltd.

Transactions involving Non-Discretionary Accounts

1. NexBank SSB Account
2. Charitable DAF Fund LP

Schedule B

Related Entities Listing (other than natural persons)

Schedule C

1. James Dondero
2. Mark Okada
3. Grant Scott
4. John Honis
5. Nancy Dondero
6. Pamela Okada
7. Thomas Surgent
8. Scott Ellington
9. Frank Waterhouse
10. Lee (Trey) Parker

Seery Jan. 29, 2021 Testimony

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, LP,	Case No. 19-34054-SGJ 11
Debtor	

REMOTE DEPOSITION OF JAMES P. SEERY, JR.

January 29, 2021

10:11 a.m. EST

Reported by:
Debra Stevens, RPR-CRR
JOB NO. 189212

January 29, 2021
9:00 a.m. EST

Remote Deposition of JAMES P. SEERY, JR., held via Zoom conference, before Debra Stevens, RPR/CRR and a Notary Public of the State of New York.

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EXAMINATIONS

EXHIBITS

SEERY DYD

INFORMATION/PRODUCTION REQUESTS

MARKED FOR RULING

COURT REPORTER: My name is Debra Stevens, court reporter for TSG Reporting and notary public of the State of New York. Due to the severity of the COVID-19 pandemic and following the practice of social distancing, I will not be in the same room with the witness but will report this deposition remotely and will swear the witness in remotely. If any party has any objection, please so state before we proceed.

Whereupon,

JAMES SEERY,

having been first duly sworn/affirmed, was examined and testified as follows:

EXAMINATION BY
MR. DRAPER:

Q. Mr. Seery, my name is Douglas Draper, representing the Dugaboy Trust. I have series of questions today in connection with the 30(b) Notice that we filed. The first question I have for you, have you seen the Notice of Deposition

J. SEERY

the screen, please?
A. Page what?
Q. I think it is page 174.
A. Of the PDF or of the document?
Q. Of the disclosure statement that was filed. It is up on the screen right now.
COURT REPORTER: Do you intend this as another exhibit for today's deposition?
MR. DRAPER: We'll mark this Exhibit 2.
(So marked for identification as Seery Exhibit 2.)
Q. If you look to the recovery to Class 8 creditors in the November 2020 disclosure statement was a recovery of 87.44 percent?
A. That actually says the percent distribution to general unsecured creditors was 87.44 percent. Yes.
Q. And in the new document that was filed, given to us yesterday, the recovery is 62.5 percent?

J. SEERY

A. It says the percent distribution to general unsecured creditors is 62.14 percent.
Q. Have you communicated the reduced recovery to anybody prior to the date -- to yesterday?
MR. MORRIS: Objection to the form of the question.
A. I believe generally, yes. I don't know if we have a specific number, but generally yes.
Q. And would that be members of the Creditors' Committee who you gave that information to?
A. Yes.
Q. Did you give it to anybody other than members of the Creditors' Committee?
A. Yes.
Q. Who?
A. HarbourVest.
Q. And when was that?
A. Within the last two months.
Q. You did not feel the need to communicate the change in recovery to

J. SEERY

anybody else?
A. I said Mr. Dondero.
Q. In looking at the two elements, and what I have asked you to look at is the claims pool. If you look at the November disclosure statement, if you look down Class 8, unsecured claims?
A. Yes.
Q. You have 176,000 roughly?
A. Million.
Q. 176 million. I am sorry. And the number in the new document is 313 million?
A. Correct.
Q. What accounts for the difference?
A. An increase in claims.
Q. When did those increases occur? Were they yesterday? A month ago? Two months ago?
A. Over the last couple months.
Q. So in fact over the last couple months you knew in fact that the recovery in the November disclosure statement was

J. SEERY

not accurate?
A. Yes. We secretly disclosed it to the Bankruptcy Court in open court hearings.
Q. But you never did bother to calculate the reduced recovery; you just increased --
(Reporter interruption.)
Q. You just advised as to the increased claims pool. Correct?
MR. MORRIS: Objection to the form of the question.
A. I don't understand your question.
Q. What I am trying to get at is, as you increase the claims pool, the recovery reduces. Correct?
A. No. That is not how a fraction works.
Q. Well, if the denominator increases, doesn't the recovery ultimately decrease if --
A. No.
Q. -- if the numerator stays the

J. SEERY

were amended without consideration a few years ago. So, for our purposes we didn't make the assumption, which I am sure will happen, a fraudulent conveyance claim on those notes, that a fraudulent conveyance action would be brought. We just assumed that we'd have to discount the notes heavily to sell them because nobody would respect the ability of the counterparties to fairly pay.

Q. And the same discount was applied in the liquidation analysis to those notes?

A. Yes.

Q. Now --

A. The difference -- there would be a difference, though, because they would pay for a while because they wouldn't want to accelerate them. So there would be some collections on the notes for P and I.

Q. But in fact as of January you have accelerated those notes?

A. Just one of them, I believe.

Q. Which note was that?

J. SEERY

A. NexPoint, I said. They defaulted on the note and we accelerated it.

Q. So there is no need to file a fraudulent conveyance suit with respect to that note. Correct, Mr. Seery?

MR. MORRIS: Objection to the form of the question.

A. Disagree. Since it was likely intentional fraud, there may be other recoveries on it. But to collect on the note, no.

Q. My question was with respect to that note. Since you have accelerated it, you don't need to deal with the issue of when it's due?

MR. MORRIS: Objection to the form of the question.

A. That wasn't your question. But to that question, yes, I don't need to deal with when it's due.

Q. Let me go over certain assets. I am not going to ask you for the valuation of them but I am going to ask

J. SEERY

you whether they are included in the asset portion of your $257 million number, all right? Mr. Morris didn't want me to go into specific asset value, and I don't intend to do that.

The first question I have for you is, the equity in Trustway Highland Holdings, is that included in the $257 million number?

A. There is no such entity.

Q. Then I will do it in a different way. In connection with the sale of the hard assets, what assets are included in there specifically?

A. Off the top of my head -- it is all of the assets, but it includes Trustway Holdings and all the value that flows up from Trustway Holdings. It includes Targa and all the value that flows up from Targa. It includes CCS Medical and all the value that would flow to the Debtor from CCS Medical. It includes Cornerstone and all the value that would flow from Cornerstone. It

J. SEERY

includes any other securities and all the value that would flow from Cornerstone. It includes HCLOF and all the value that would flow up from HCLOF. It includes Korea and all the value that would flow up from Korea.

There may be others off the top of my head. I don't recall them. I don't have a list in front of me.

Q. Now, with respect to those assets, have you started the sale process of those assets?

A. No. Well, each asset is different. So, the answer is, with respect to any securities, we do seek to sell those regularly and we do seek to monetize those assets where we can depending on whether there is a restriction or not and whether there is liquidity in the market.

With respect to the PE assets or the companies I described -- Targa, CCS, Cornerstone, JHT -- we have not -- Trustway. We have not sought to sell

J. SEERY

A. I don't recall the specific limitation on the trust. But if there was a reason to hold on to the asset, if there is a limitation, we can seek an extension.

Q. Let me ask a question. With respect to these businesses, the Debtor merely owns an equity interest in them. Correct?

A. Which business?

Q. The ones you have identified as operating businesses earlier?

A. It depends on the business.

Q. Well, let me -- again, let's try to be specific. With respect to SSP, it was your position that you did not need to get court approval for the sale. Correct?

A. That's correct.

Q. Which one of the operating businesses that are here, that you have identified, do you need court authority for a sale?

MR. MORRIS: Objection to the form of the question.

A. [illegible]

J. SEERY

different analysis that we'll undertake with bankruptcy counsel to determine what we would need depending [illegible] going to happen and what the restrictions either under the code are or under the plan.

Q. Is there anything that would stop you from selling these businesses if the Chapter 11 went on for a year or two years?

MR. MORRIS: Objection to form of the question.

A. Is there anything that would stop me? We'd have to follow the strictures of the code and the protocols, but there would be no prohibition -- let [illegible], please.

There would be no prohibition that I am aware of.

Q. Now, in connection with your differential between the liquidation of what I will call the operating businesses under the liquidation analysis and the plan analysis, who arrived at the discount

J. SEERY

or determined the discount that has been placed between the two, plan analysis versus liquidation analysis?

MR. MORRIS: Objection to form of the question.

A. To which document are you referring?

Q. Both the June -- the January and the November analysis has a different estimated proceeds for monetization for the plan analysis versus the liquidation analysis. Do you see that?

A. Yes.

Q. And there is a note under there. "Assumes Chapter 7 trustee will not be able to achieve the same sales proceeds as Claimant trustee."

A. I see that, yes.

Q. Do you see that note?

A. Yes.

Q. Who arrived at that discount?

A. I did.

Q. What percentage did you use?

A. Depended on the asset. Each one

J. SEERY

is different.

Q. Is the discount a function of capability of a trustee versus your capability, or is the discount a function of timing?

MR. MORRIS: Objection to form.

A. It could be a combination.

Q. So, let's -- let me walk through this. Your plan analysis has an assumption that everything is sold by December 2022. Correct?

A. Correct.

Q. And the valuations that you have used here for the monetization assume a sale between -- a sale prior to December of 2022. Correct?

A. Sorry. I don't quite understand your question.

Q. The 257 number, and then let's take out the notes. Let's use the 210 number.

MR. MORRIS: Can we put the document back on the screen, please? Sorry, Douglas, to interrupt, but it

J. SEERY

would be helpful.

MR. DRAPER: That is fine, John.

(Pause.)

MR. MORRIS: Thank you very much.

Q. Mr. Seery, do you see the 257?

A. In the one from yesterday?

Q. Yes.

A. Second line, 257,941. Yes.

Q. That assumes a monetization of all assets by December of 2022?

A. Correct.

Q. And so everything has been sold by that time; correct?

A. Yes.

Q. So, what I am trying to get at is, there is both the capability between you and a trustee, and then the second issue is timing. So, what discount was put on for timing, Mr. Seery, between when a trustee would sell it versus when you would sell it?

MR. MORRIS: Objection.

Q. What is the percentage you

J. SEERY

applied?

A. Each of the assets is different.

Q. Is there a general discount that you used?

A. Not a general discount, no. We looked at each individual asset and went through and made an assessment.

Q. Did you apply a discount for your capability versus the capability of a trustee?

A. No.

Q. So a trustee would be as capable as you are in monetizing these assets?

MR. MORRIS: Objection to the form of the question.

Q. Excuse me? The answer is?

A. The answer is maybe.

Q. Couldn't a trustee hire somebody as capable as you are?

MR. MORRIS: Objection to the form of the question.

A. Perhaps.

Q. Sir, that is a yes or no question. Could the trustee hire somebody

J. SEERY

as capable as you are?

MR. MORRIS: Objection to the form of the question.

A. I don't know.

Q. Is there anybody as capable as you are?

MR. MORRIS: Objection to the form of the question.

A. Certainly.

Q. And they could be hired. Correct?

A. Perhaps. I don't know.

Q. And if you go back to the November 2020 liquidation analysis versus plan analysis, it is also the same note about that a trustee would bring less, and there is the same sort of discount between the estimated proceeds under the plan and under the liquidation analysis.

MR. MORRIS: If that is a question, I object.

Q. Is that correct, Mr. Seery, looking at the document?

A. There are discounts, yes.

J. SEERY

Q. Again, the discounts are applied for timing and capability?

A. Yes.

Q. Now, in looking at the November plan analysis number of $190 million and the January number of $257 million, what accounts for the increase between the two dates? What assets specifically?

A. There are a number of assets. Firstly, the HCLOF assets are added.

Q. How much are those?

A. Approximately 22 and a half million dollars.

Q. Okay.

A. Secondly, there is a significant increase in the value of certain of the assets over this time period.

Q. Which assets, Mr. Seery?

A. There are a number. They include MGM stock, they include Trustway, they include Targa.

Q. And what is the percentage increase from November to January, November of 2020 to January of 2021?

J. SEERY

A. Do you mean what is the percentage increase from 190 to 257?

Q. No. You just identified three assets. MGM stock, we can go look at the exchange and figure out what the price increase is; correct?

A. No.

Q. Why not? Is the MGM stock publicly traded?

A. Yes. It doesn't trade on --

Q. Excuse me?

A. It doesn't trade on an exchange.

Q. Is there a public market for the MGM stock that we could calculate the increase?

A. There is a semipublic market; yes.

Q. So it is a number that is readily available between the two dates?

A. It's available.

Q. Now, you identified Targa and Trustway. Correct?

A. Yes.

Q. Those are not readily available

J. SEERY

markets; correct?

A. No.

Q. Those are operating businesses?

A. Correct.

Q. Who provided the valuation for the November 2020 liquidation analysis?

A. We use a combination of the value that we get from Houlihan Lokey for mark purposes and then we adjust it for plan purposes.

Q. And the adjustment was up or down?

A. When?

Q. For both November and January. You got a number from Houlihan Lokey. You adjusted it. Did you adjust it up or did you adjust it down?

MR. MORRIS: Objection to form of the question.

A. I believe that for November we adjusted it down, and for January we adjusted it down. I don't recall off the top of my head but I believe both of them were adjusted down.

J. SEERY

Q. And if I understand what you just said, it is that the Houlihan Lokey valuation for those two businesses showed a significant increase between November of 2020 and January of 2021?

MR. MORRIS: Objection to form of the question.

A. I didn't say that.

Q. I am trying to account for the increase between the two dates, and you identified three assets. You identified MGM stock, which has, I can guess, as you have said, a readily ascertainable value. Then you identified two others that the valuation is based upon something Houlihan Lokey provided you. Correct?

A. I gave you three examples. I never said "readily." That is your word, not mine. And I didn't say that Houlihan had a significant change in their valuation.

Q. So let's now go back to the question. There is an increase in value from November 24th of 2020 to January 28th

J. SEERY

of 2021, the magnitude being roughly 60 some odd million dollars. Correct?

A. Correct.

Q. We can account for $22 million of it easily, right?

MR. MORRIS: Objection to form.

A. Correct.

Q. That is the Harbourvest settlement, so that leaves roughly $40 million unaccounted for?

MR. MORRIS: Objection to the form of the question if that is a question. It is accounted for.

Q. What makes up that difference, Mr. Seery?

A. A change in the plan value of the assets.

Q. Okay. Which assets? Let's sort of go back to where we were.

A. There are numerous assets in the plan formulation. I gave you three examples of the operating businesses. The securities, I believe, have increased in value since the plan, so those would go up

J. SEERY

for one. On the operating businesses, we looked at each of them and made an assessment based upon where the market is and what we believe the values are, and we have moved those valuations.

Q. Let me look at some numbers again. In the liquidation analysis in November of 2020, the liquidation value is $149 million. Correct?

A. Yes.

Q. And in the liquidation analysis in January of 2021, you have $191 million?

A. Yes.

Q. You see that number. So there is $51 million there, right?

A. No.

Q. What is the difference between 191 and -- sorry. My math may be a little off. What is the difference between the two numbers, Mr. Seery?

A. Your math is off.

Q. Sorry. It is 41 million?

A. Correct.

Q. $22 million of that is the

J. SEERY

HarbourVest settlement, right?

A. I believe that's correct.

Q. Is that fair, Mr. Seery?

A. I believe that is correct, yes.

Q. And part of that differential are publicly traded or ascertainable securities. Correct?

A. Yes.

Q. And basically you can get, or under the plan analysis or trustee analysis, if it is a marketable security or where there is a market, the liquidation number should be the same for both. Is that fair?

A. No.

Q. And why not?

A. We might have a different price target for a particular security than the current trading value.

Q. I understand that, but I mean that is based upon the capability of the person making the decision as to when to sell. Correct?

MR. MORRIS: Objection to form

J. SEERY

of the question.

Q. Mr. Seery, yes or no?

A. I said no.

Q. What is that based on, then?

A. The person's ability to assess the market and timing.

Q. Okay. And again, couldn't a trustee hire somebody as capable as you to both, A, assess the market and, B, make a determination as to when to sell?

MR. MORRIS: Objection to form of the question.

A. I suppose a trustee could.

Q. And there are better people or people equally or better than you at assessing a market. Correct?

A. Yes.

MR. MORRIS: Objection to form of the question.

Q. So, again, let's go back to that. We have accounted for, out of $41 million where the liquidation analysis increases between the two dates, $22 million of it. That leaves

J. SEERY

$18 million. How much of that is publicly traded or ascertainable assets versus operating businesses?

A. I don't know off the top of my head the percentages.

Q. All right. The same question for the plan analysis where you have the differential between the November number and the January number. How much of it is marketable securities versus an operating business?

A. I don't recall off the top of my head.

MR. DRAPER: Let me take a few-minute break. Can we take a ten-minute break here?

THE WITNESS: Sure.

(Recess.)

BY MR. DRAPER:

Q. Mr. Seery, what I am going to show you and what I would ask you to look at is in the note E, in the statement of assumptions for the November 2020 disclosure statement. It discusses fixed

Sale of Assets of Affiliates or Controlled Entities

Asset	Sales Price
Structural Steel Products	$50 million
Life Settlements	$35 million
OmniMax	$50 million
Targa	$37 million

- These assets were sold over the contemporaneous objections of James Dondero, who was the Portfolio Manager and key-man on the funds.
- Mr. Seery admitted[1] that he must comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Protocols for the sale of major assets of the estate. We believe that a competitive bid process and court approval should have been required for the sale of each of these assets (as was done for the sale of the building at 2817 Maple Ave. [a $9 million asset] and the sale of the interest in PetroCap [a $3 million asset]).

[1] *See* Mr. Seery's Jan. 29, 2021 deposition testimony, Appendix p. A-20.

20 Largest Unsecured Creditors

Name of Claimant	Allowed Class 8	Allowed Class 9
Redeemer Committee of the Highland Crusader Fund	$136,696,610.00	
UBS AG, London Branch and UBS Securities LLC	$65,000,000.00	$60,000,000
HarbourVest entities	$45,000,000.00	$35,000,000
Acis Capital Management, L.P. and Acis Capital Management GP, LLC	$23,000,000.00	
CLO Holdco Ltd	$11,340,751.26	
Patrick Daugherty	$8,250,000.00	$2,750,000 (+$750,000 cash payment on Effective Date of Plan)
Todd Travers (Claim based on unpaid bonus due for Feb 2009)	$2,618,480.48	
McKool Smith PC	$2,163,976.00	
Davis Deadman (Claim based on unpaid bonus due for Feb 2009)	$1,749,836.44	
Jack Yang (Claim based on unpaid bonus due for Feb 2009)	$1,731,813.00	
Paul Kauffman (Claim based on unpaid bonus due for Feb 2009)	$1,715,369.73	
Kurtis Plumer (Claim based on unpaid bonus due for Feb 2009)	$1,470,219.80	
Foley Gardere	$1,446,136.66	
DLA Piper	$1,318,730.36	
Brad Borud (Claim based on unpaid bonus due for Feb 2009)	$1,252,250.00	
Stinson LLP (successor to Lackey Hershman LLP)	$895,714.90	
Meta-E Discovery LLC	$779,969.87	
Andrews Kurth LLP	$677,075.65	
Markit WSO Corp	$572,874.53	
Duff & Phelps, LLC	$449,285.00	
Lynn Pinker Cox Hurst	$436,538.06	
Joshua and Jennifer Terry	$425,000.00	
Joshua Terry	$355,000.00	
CPCM LLC (bought claims of certain former HCMLP employees)	Several million	
TOTAL:	**$309,345,631.74**	**$95,000,000**

Timeline of Relevant Events

Date	Description
10/29/2019	UCC appointed; members agree to fiduciary duties and not sell claims.
9/23/2020	Acis 9019 filed
9/23/2020	Redeemer 9019 filed
10/28/2020	Redeemer settlement approved
10/28/2020	Acis settlement approved
12/24/2020	HarbourVest 9019 filed
1/14/2021	Motion to appoint examiner filed
1/21/2021	HarbourVest settlement approved; transferred its interest in HCLOF to HCMLP assignee, valued at $22 million per Seery
1/28/2021	Debtor discloses that it has reached an agreement in principle with UBS
2/3/2021	Failure to comply with Rule 2015.3 raised
2/24/2021	Plan confirmed
3/9/2021	Farallon Cap. Mgmt. forms "Muck Holdings LLC" in Delaware
3/15/2021	Debtor files Jan. '21 monthly operating report indicating assets of $364 million, liabilities of $335 million (**inclusive of $267,607,000 in Class 8 claims, but exclusive of any Class 9 claims**), the last publicly filed summary of the Debtor's assets. The MOR states that no Class 9 distributions are anticipated at this time and Class 9 recoveries are not expected.
3/31/2021	UBS files friendly suit against HCMLP under seal
4/8/2021	Stonehill Cap. Mgmt. forms "Jessup Holdings LLC" in Delaware
4/15/2021	UBS 9019 filed
4/16/2021	Notice of Transfer of Claim - Acis to Muck (Farallon Capital)
4/29/2021	Motion to Compel Compliance with Rule 2015.3 Filed
4/30/2021	Notice of Transfer of Claim - Redeemer to Jessup (Stonehill Capital)
4/30/2021	Notice of Transfer of Claim - HarbourVest to Muck (Farallon Capital)
4/30/2021	Sale of Redeemer claim to Jessup (Stonehill Capital) "consummated"
5/27/2021	UBS settlement approved; included $18.5 million in cash from Multi-Strat
6/14/2021	UBS dismisses appeal of Redeemer award
8/9/2021	Notice of Transfer of Claim - UBS to Jessup (Stonehill Capital)
8/9/2021	Notice of Transfer of Claim - UBS to Muck (Farallon Capital)

Critical unknown dates and information:

- The date on which Muck entered into agreements with HarbourVest and Acis to acquire their claims and what negative and affirmative covenants those agreements contained.
- The date on which Jessup entered into an agreement with the Redeemer Committee and the Crusader Fund to acquire their claim and what negative and affirmative covenants the agreement contained.
- The date on which the sales actually closed versus the date on which notice of the transfer was filed (i.e., did UCC members continue to serve on the committee after they had sold their claims).

Debtor's October 15, 2020 Liquidation Analysis [Doc. 1173-1]

	Plan Analysis		**Liquidation Analysis**
Estimated cash on hand at 12/31/2020	$26,496		$26,496
Estimated proceeds from monetization of assets [1][2]	198,662		154,618
Estimated expenses through final distribution [1][3]	(29,864)		(33,804)
Total estimated $ available for distribution	**195,294**		**147,309**
Less: Claims paid in full			
Administrative claims [4]	(10,533)		(10,533)
Priority Tax/Settled Amount [10]	(1,237)		(1,237)
Class 1 – Jefferies Secured Claim	-		-
Class 2 – Frontier Secured Claim [5]	(5,560)		(5,560)
Class 3 – Priority non-tax claims [10]	(16)		(16)
Class 4 – Retained employee claims	-		-
Class 5 – Convenience claims [6][10]	(13,455)		-
Class 6 – Unpaid employee claims [7]	(2,955)		-
Subtotal	(33,756)		(17,346)
Estimated amount remaining for distribution to general unsecured claims	161,538		129,962
Class 5 – Convenience claims [8]	-		17,940
Class 6 – Unpaid employee claims	-		3,940
Class 7 – General unsecured claims [9]	174,609		174,609
Subtotal	174,609		196,489
% Distribution to general unsecured claims	92.51%		66.14%
Estimated amount remaining for distribution	-		-
Class 8 – Subordinated claims	*no distribution*		*no distribution*
Class 9 – Class B/C limited partnership interests	*no distribution*		*no distribution*
Class 10 – Class A limited partnership interests	*no distribution*		*no distribution*

Notable notations/disclosures in the Oct. 15, 2020 liquidation analysis include:

- Note [9]: General unsecured claims estimated using $0 allowed claims for HarbourVest and UBS. Ultimately, those two creditors were awarded $105 million of general unsecured claims and $95 million of subordinated claims.

Updated Liquidation Analysis (Feb. 1, 2021)[2]

	Plan Analysis		Liquidation Analysis
Estimated cash on hand at 1/31/2020 [sic]	$24,290		$24,290
Estimated proceeds from monetization of assets [1][2]	257,941		191,946
Estimated expenses through final distribution [1][3]	(59,573)		(41,488)
Total estimated $ available for distribution	**222,658**		**174,178**
Less: Claims paid in full			
Unclassified [4]	(1,080)		(1,080)
Administrative claims [5]	(10,574)		(10,574)
Class 1 – Jefferies Secured Claim	-		-
Class 2 – Frontier Secured Claim [6]	(5,781)		(5,781)
Class 3 – Other Secured Claims	(62)		(62)
Class 4 – Priority non-tax claims	(16)		(16)
Class 5 – Retained employee claims	-		-
Class 6 – PTO Claims [5]	-		-
Class 7 – Convenience claims [7][8]	(10,280)		-
Subtotal	**(27,793)**		**(17,514)**
Estimated amount remaining for distribution to general unsecured claims	194,865		157,235
% Distribution to Class 7 (Class 7 claims including in Class 8 in Liquidation scenario)	85.00%		0.00%
Class 8 – General unsecured claims [8] [10]	273,219		286,100
Subtotal	273,219		286,100
% Distribution to general unsecured claims	71.32%		54.96%
Estimated amount remaining for distribution	-		-
Class 9 – Subordinated claims	*no distribution*		*no distribution*
Class 10 – Class B/C limited partnership interests	*no distribution*		*no distribution*
Class 11 – Class A limited partnership interests	*no distribution*		*no distribution*

Notable notations/disclosures in the Feb. 1, 2021 liquidation analysis include:

- claim amounts in Class 8 assume $0 for IFA and HM, $50.0 million for UBS and $45 million HV.
- Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets

[2] Doc. 1895.

Summary of Debtor's January 31, 2021 Monthly Operating Report[3]

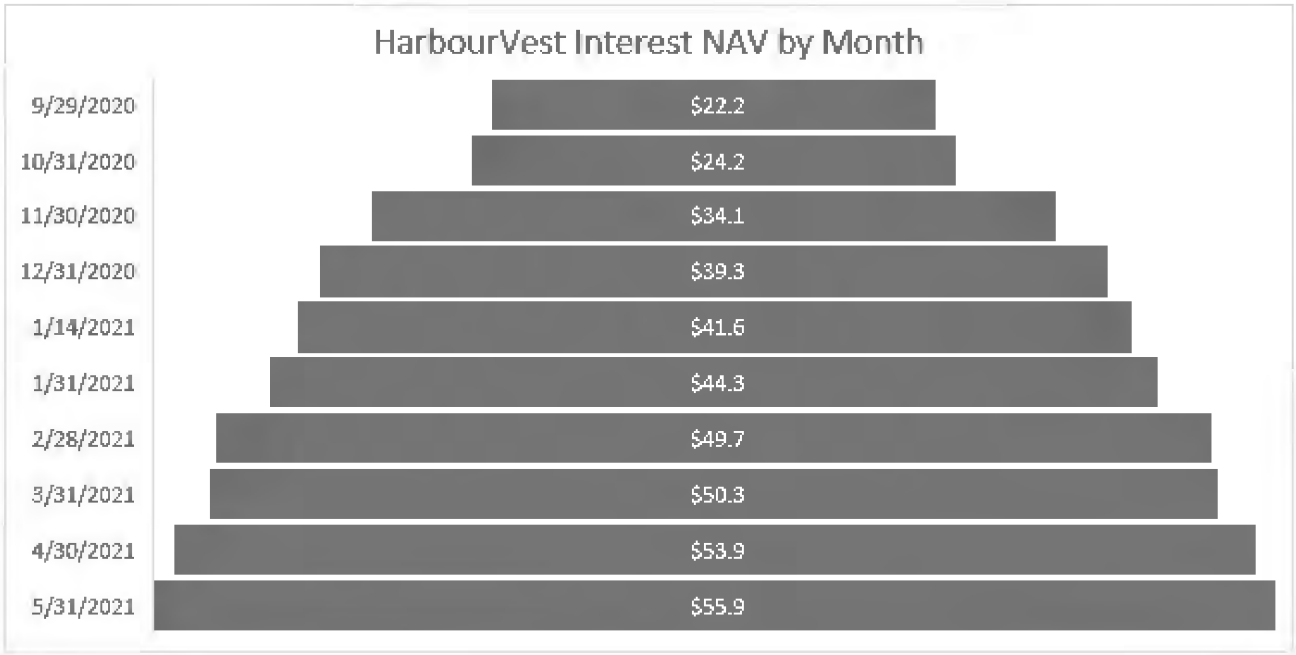
	10/15/2019	12/31/2020	1/31/2021
Assets			
Cash and cash equivalents	$2,529,000	$12,651,000	$10,651,000
Investments, at fair value	$232,620,000	$109,211,000	$142,976,000
Equity method investees	$161,819,000	$103,174,000	$105,293,000
mgmt and incentive fee receivable	$2,579,000	$2,461,000	$2,857,000
fixed assets, net	$3,754,000	$2,594,000	$2,518,000
due from affiliates	$151,901,000	$152,449,000	$152,538,000
reserve against notices receivable		($61,039,000)	($61,167,000)
other assets	$11,311,000	$8,258,000	$8,651,000
Total Assets	**$566,513,000**	**$329,759,000**	**$364,317,000**
Liabilities and Partners' Capital			
pre-petition accounts payable	$1,176,000	$1,077,000	$1,077,000
post-petition accounts payable		$900,000	$3,010,000
Secured debt			
Frontier	$5,195,000	$5,195,000	$5,195,000
Jefferies	$30,328,000	$0	$0
Accrued expenses and other liabilities	$59,203,000	$60,446,000	$49,445,000
Accrued re-organization related fees		$5,795,000	$8,944,000
Class 8 general unsecured claims	$73,997,000	$73,997,000	$267,607,000
Partners' Capital	$396,614,000	$182,347,000	$29,039,000
Total liabilities and partners' capital	**$566,513,000**	**$329,757,000**	**$364,317,000**

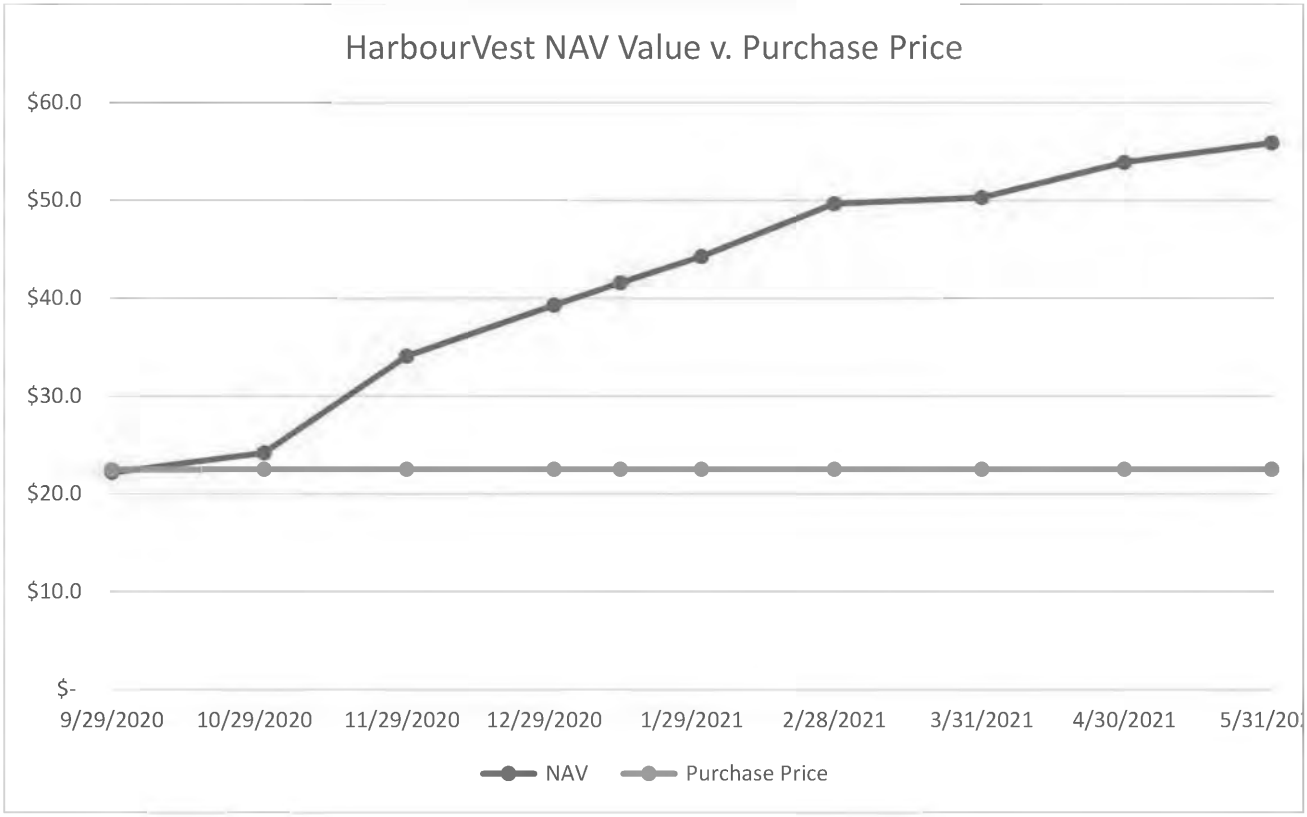
Notable notations/disclosures in the Jan. 31, 2021 MOR include:

- Class 8 claims totaled $267 million, a jump from $74 million in the prior month's MOR
- The MOR stated that no Class 9 recovery was expected, which was based on the then existing $267 million in Class 8 Claims.
- Currently, there are roughly $310 million of Allowed Class 8 Claims.

[3] [Doc. 2030] Filed on March 15, 2021, the last publicly disclosed information regarding the value of assets in the estate.

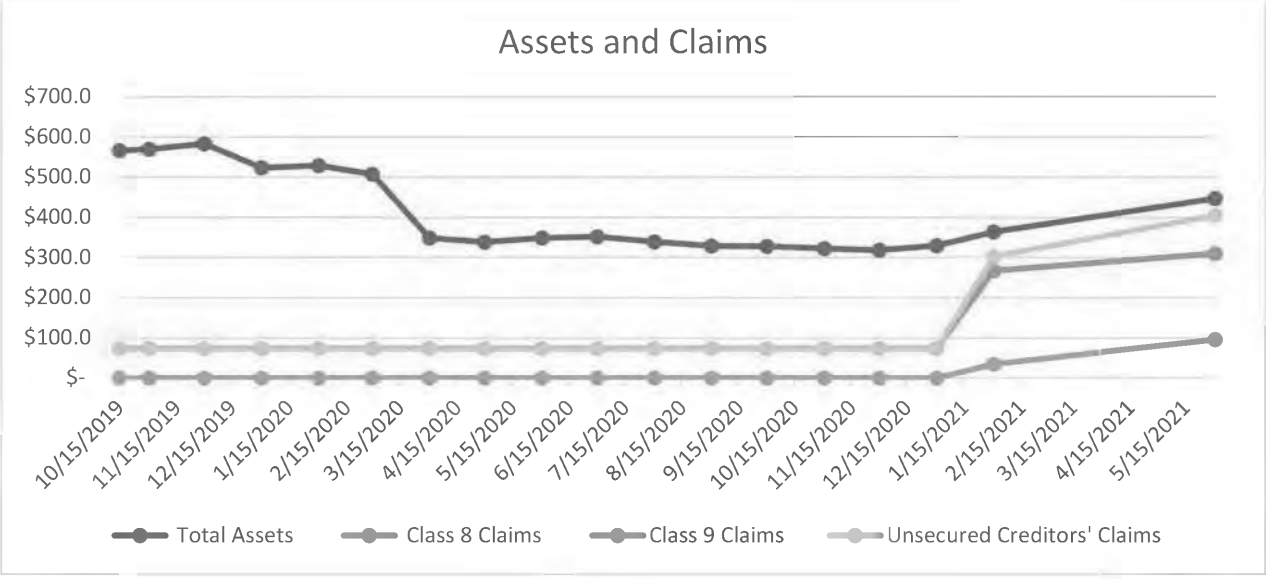
Value of HarbourVest Claim





Estate Value as of August 1, 2021 (in millions)[4]

Asset	Low	High
Cash as of 6/30/2021	$17.9	$17.9
Targa Sale	$37.0	$37.0
8/1 CLO Flows	$10.0	$10.0
Uchi Bldg. Sale	$9.0	$9.0
Siepe Sale	$3.5	$3.5
PetroCap Sale	$3.2	$3.2
HarbourVest trapped cash	$25.0	$25.0
Total Cash	**$105.6**	**$105.6**
Trussway	$180.0	$180.0
Cornerstone (125mm; 16%)	$18.0	$18.0
HarbourVest CLOs	$40.0	$40.0
CCS Medical (in CLOs and Highland Restoration)	$20.0	$20.0
MGM (direct ownership)	$32.0	$32.0
Multi-Strat (45% of 100mm; MGM; CCS)	$45.0	$45.0
Korea Fund	$18.0	$18.0
Celtic (in Credit-Strat)	$12.0	$40.0
SE Multifamily	$0.0	$20.0
Affiliate Notes	$0.0	$70.0
Other	$2.0	$10.0
TOTAL	**$472.6**	**$598.6**



[4] Values are based upon historical knowledge of the Debtor's assets (including cross-holdings) and publicly filed information.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	

DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154) AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

[1] The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession ("Highland" or the "Debtor"), files this motion (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement agreement (the "Settlement Agreement"),[2] a copy of which is attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* being filed simultaneously with this Motion ("Morris Dec."), that, among other things, fully and finally resolves the proofs of claim filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, "HarbourVest"). In support of this Motion, the Debtor represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code"), and Rule 9019 of the Bankruptcy Rules.

[2] All capitalized terms used but not defined herein shall have the meanings given to them in the Settlement Agreement.

RELEVANT BACKGROUND

A. Procedural Background

3. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

4. On October 29, 2019, the official committee of unsecured creditors (the "Committee") was appointed by the U.S. Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's case to this Court [Docket No. 186].[3]

6. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

7. In connection with the Settlement Order, an independent board of directors was constituted at the Debtor's general partner, Strand Advisors, Inc., and certain operating protocols were instituted.

8. On July 16, 2020, this Court entered an order appointing James P. Seery, Jr., as the Debtor's chief executive officer and chief restructuring officer [Docket No. 854].

9. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

[3] All docket numbers refer to the docket maintained by this Court.

B. Overview of HarbourVest's Claims

10. HarbourVest's claims against the Debtor's estate arise from its $80 million investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. ("HCLOF"), pursuant to which HarbourVest obtained a 49 percent interest in HCLOF (the "Investment").

11. In brief, HarbourVest contends that it was fraudulently induced into entering into the Investment based on the Debtor's misrepresentations and omissions concerning certain material facts, including that the Debtor: (1) failed to disclose that it never intended to pay an arbitration award obtained by a former portfolio manager, (2) failed to disclose that it engaged in a series of fraudulent transfers for the purpose of preventing the former portfolio manager from collecting on his arbitration award and misrepresented the reasons changing the portfolio manager for HCLOF immediately prior to the Investment, (3) indicated that the dispute with the former portfolio manager would not impact investment activities, and (4) expressed confidence in the ability of HCLOF to reset or redeem the collateralized loan obligations ("CLOs") under its control.

12. HarbourVest seeks to rescind its Investment and claims damages in excess of $300 million based on theories of fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, and breach of fiduciary duty (under Guernsey law), and on alleged violations of state securities laws and the Racketeer Influenced Corrupt Organization Act ("RICO").

13. HarbourVest's allegations are summarized below.[4]

[4] Solely for purposes of this Motion, and not for any other reason, the facts set forth herein are adopted largely from the *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "Response").

C. **Summary of HarbourVest's Factual Allegations**

14. At the time HarbourVest made its Investment, the Debtor was embroiled in an arbitration against Joshua Terry ("Mr. Terry"), a former employee of the Debtor and limited partner of Acis Capital Management, L.P. ("Acis LP"). Through Acis LP, Mr. Terry managed Highland's CLO business, including CLO-related investments held by Acis Loan Funding, Ltd. ("Acis Funding").

15. The litigation between Mr. Terry and the Debtor began in 2016, after the Debtor terminated Mr. Terry and commenced an action against him in Texas state court. Mr. Terry asserted counterclaims for wrongful termination and for the wrongful taking of his ownership interest in Acis LP and subsequently had certain claims referred to arbitration where he obtained an award of approximately $8 million (the "Arbitration Award") on October 20, 2017.

16. HarbourVest alleges that the Debtor responded to the Arbitration Award by engaging in a series of fraudulent transfers and corporate restructurings, the true purposes of which were fraudulently concealed from HarbourVest.

17. For example, according to HarbourVest, the Debtor changed the name of the target fund from Acis Funding to "Highland CLO Funding, Ltd." ("HCLOF") and "swapped out" Acis LP for Highland HCF Advisor, Ltd. as portfolio manager (the "Structural Changes"). The Debtor allegedly told HarbourVest that it made these changes because of the "reputational harm" to Acis LP resulting from the Arbitration Award. The Debtor further told HarbourVest that in lieu of redemptions, resetting the CLOs was necessary, and that it would be easier to reset them under the "Highland" CLO brand instead of the Acis CLO brand.

18. In addition, HarbourVest also alleges that the Debtor had no intention of allowing Mr. Terry to collect on his Arbitration Award, and orchestrated a scheme to "denude"

Acis of assets by fraudulently transferring virtually all of its assets and attempting to transfer its profitable portfolio management contracts to non-Acis, Debtor-related entities.

19. Unaware of the fraudulent transfers or the true purposes of the Structural Changes, and in reliance on representations made by the Debtor, HarbourVest closed on its Investment in HCLOF on November 15, 2017.

20. After discovering the transfers that occurred between Highland and Acis between October and December 2017 following the Arbitration Award (the "Transfers"), on January 24, 2018, Terry moved for a temporary restraining order (the "TRO") from the Texas state court on the grounds that the Transfers were pursued for the purpose of rendering Acis LP judgment-proof. The state court granted the TRO, enjoining the Debtor from transferring any CLO management contracts or other assets away from Acis LP.

21. On January 30, 2018, Mr. Terry filed involuntary bankruptcy petitions against Acis LP and its general partner, Acis Capital Management GP, LLC. *See In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018) and *In re Acis Capital Management GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018) (collectively, the "Acis Bankruptcy Case"). The Bankruptcy Court overruled the Debtor's objection, granted the involuntary petitions, and appointed a chapter 11 trustee (the "Acis Trustee"). A long sequence of events subsequently transpired, all of which relate to HarbourVest's claims, including:

- On May 31, 2018, the Court issued a *sua sponte* TRO preventing any actions in furtherance of the optional redemptions or other liquidation of the Acis CLOs.
- On June 14, 2018, HCLOF withdrew optional redemption notices.
- The TRO expired on June 15, 2018, and HCLOF noticed the Acis Trustee that it was requesting an optional redemption.

- HCLOF's request was withdrawn on July 6, 2018, and on June 21, 2018, the Acis Trustee sought an injunction preventing Highland/HCLOF from seeking further redemptions (the "Preliminary Injunction").

- The Court granted the Preliminary Injunction on July 10, 2018, pending the Acis Trustee's attempts to confirm a plan or resolve the Acis Bankruptcy.

- On August 30, 2018, the Court denied confirmation of the First Amended Joint Plan for Acis, and held that the Preliminary Injunction must stay in place on the ground that the "evidence thus far has been compelling that numerous transfers after the Josh Terry judgment denuded Acis of value."

- After the Debtor made various statements implicating HarbourVest in the Transfers, the Acis Trustee investigated HarbourVest's involvement in such Transfers, including extensive discovery and taking a 30(b)(6) deposition of HarbourVest's managing director, Michael Pugatch, on November 17, 2018.

- On March 20, 2019, HCLOF sent a letter to Acis LP stating that it was not interested in pursuing, or able to pursue, a CLO reset transaction.

D. The Parties' Pleadings and Positions Concerning HarbourVest's Proofs of Claim

22. On April 8, 2020, HarbourVest filed proofs of claim against Highland that were subsequently denoted by the Debtor's claims agents as claim numbers 143, 147, 149, 150, 153, and 154, respectively (collectively, the "Proofs of Claim"). Morris Dec. Exhibits 2-7.

23. The Proofs of Claim assert, among other things, that HarbourVest suffered significant harm due to conduct undertaken by the Debtor and the Debtor's employees, including "financial harm resulting from (i) court orders in the Acis Bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise relegated the activity of HCLOF [*i.e.*, the Preliminary Injunction]; and (ii) significant fees and expenses related to the Acis Bankruptcy that were charged to HCLOF." *See, e.g.*, Morris Dec. Exhibit 2 ¶3.

24. HarbourVest also asserted "any and all of its right to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the forgoing harm, including for any amounts due or owed under the various

agreements with the Debtor in connection with relating to" the Operative Documents "and any and all legal and equitable claims or causes of action relating to the forgoing harm." *See, e.g.*, Morris Dec. Exhibit 2 ¶4.

25. Highland subsequently objected to HarbourVest's Proofs of Claim on the grounds that they were no-liability claims. [Docket No. 906] (the "Claim Objection").

26. On September 11, 2020, HarbourVest filed its Response. The Response articulated specified claims under U.S. federal and state and Guernsey law, including claims for fraud, fraudulent concealment, fraudulent inducement, fraudulent misrepresentation, negligent misrepresentation (collectively, the "Fraud Claims"), U.S. State and Federal Securities Law Claims (the "Securities Claims"), violations of the Federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), breach of fiduciary duty and misuse of fund assets, and an unfair prejudice claim under Guernsey law (collectively, with the Proofs of Claim, the "HarbourVest Claims").

27. On October 18, 2020, HarbourVest filed its *Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the "3018 Motion"). In its 3018 Motion, HarbourVest sought for its Claims to be temporarily allowed for voting purposes in the amount of more than $300 million (based largely on a theory of treble damages).

E. Settlement Discussions

28. In October, the parties discussed the possibility of resolving the Rule 3018 Motion.

29. In November, the parties broadened the discussions in an attempt to reach a global resolution of the HarbourVest Claims. In the pursuit thereof, the parties and their

counsel participated in several conference calls where they engaged in a spirited exchange of perspectives concerning the facts and the law.

30. During follow up meetings, the parties' interests became more defined. Specifically, HarbourVest sought to maximize its recovery while fully extracting itself from the Investment, while the Debtor sought to minimize the HarbourVest Claims consistent with its perceptions of the facts and law.

31. After the parties' interests became more defined, the principals engaged in a series of direct, arm's-length, telephonic negotiations that ultimately lead to the settlement, whose terms are summarized below.

F. Summary of Settlement Terms

32. The Settlement Agreement contains the following material terms, among others:

- HarbourVest shall transfer its entire interest in HCLOF to an entity to be designated by the Debtor;[5]
- HarbourVest shall receive an allowed, general unsecured, non-priority claim in the amount of $45 million and shall vote its Class 8 claim in that amount to support the Plan;
- HarbourVest shall receive a subordinated, allowed, general unsecured, non-priority claim in the amount of $35 million and shall vote its Class 9 claim in that amount to support the Plan;
- HarbourVest will support confirmation of the Debtor's Plan, including, but not limited to, voting its claims in support of the Plan;
- The HarbourVest Claims shall be allowed in the aggregate amount of $45 million for voting purposes;
- HarbourVest will support the Debtor's pursuit of its pending Plan of Reorganization; and
- The parties shall exchange mutual releases.

[5] The NAV for HarbourVest's 49.98% interest in HCLOF was estimated to be approximately $22 million as of December 1, 2020.

See generally Morris Dec. Exhibit 1.

BASIS FOR RELIEF REQUESTED

33. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

> On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

34. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, "approval of a compromise is within the sound discretion of the bankruptcy court." *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

35. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test, "with a focus on comparing 'the terms of the compromise with the rewards of litigation.'" *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*, 624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: "(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any

attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise." *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider "the paramount interest of creditors with proper deference to their reasonable views." *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the "extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

36. There is ample basis to approve the proposed Settlement Agreement based on the Rule 9019 factors set forth by the Fifth Circuit.

37. First, although the Debtor believes that it has valid defenses to the HarbourVest Claims, there is no guarantee that the Debtor would succeed in its litigation with HarbourVest. Indeed, to establish its defenses, the Debtor would be required to rely, at least in part, on the credibility of witnesses whose veracity has already been called into question by this Court. Moreover, it will be difficult to dispute that the Transfers precipitated the Acis Bankruptcy, and, ultimately, the imposition of the Bankruptcy Court's TRO that restricted HCLOF's ability to reset or redeem the CLOs and that is at the core of the HarbourVest Claims.

38. The second factor—the complexity, duration, and costs of litigation—also weighs heavily in favor of approving the Settlement Agreement. As this Court is aware, the events forming the basis of the HarbourVest Claims—including the Terry Litigation and Acis Bankruptcy—proceeded *for years* in this Court and in multiple other forums, and has already cost the Debtor's estate millions of dollars in legal fees. If the Settlement Agreement is not approved, then the parties will expend significant resources litigating a host of fact-intensive

issues including, among other things, the substance and materiality of the Debtor's alleged fraudulent statements and omissions and whether HarbourVest reasonably relied on those statements and omissions.

39. Third, approval of the Settlement Agreement is justified by the paramount interest of creditors. Specifically, the settlement will enable the Debtor to: (a) avoid incurring substantial litigation costs; (b) avoid the litigation risk associated with HarbourVest's $300 million claim; and (c) through the plan support provisions, increase the likelihood that the Debtor's pending plan of reorganization will be confirmed.

40. Finally, the Settlement Agreement was unquestionably negotiated at arm's-length. The terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and their counsel and represent neither party's "best case scenario." Indeed, the Settlement Agreement should be approved as a rational exercise of the Debtor's business judgment made after due deliberation of the facts and circumstances concerning HarbourVest's Claims.

NO PRIOR REQUEST

41. No previous request for the relief sought herein has been made to this, or any other, Court.

NOTICE

42. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for HarbourVest; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; (d) the Debtor's principal secured parties; (e) counsel to the Committee; and (f) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: December 23, 2020.

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Counsel for the Debtor and Debtor-in-Possession

Exhibit 1

Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of March 30, 2021, by and among (i) Highland Capital Management, L.P. ("HCMLP" or the "Debtor"), (ii) Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) ("Multi-Strat," and together with its general partner and its direct and indirect wholly-owned subsidiaries, the "MSCF Parties"), (iii) Strand Advisors, Inc. ("Strand"), and (iv) UBS Securities LLC and UBS AG London Branch (collectively, "UBS").

Each of HCMLP, the MSCF Parties, Strand, and UBS are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, in 2007, UBS entered into certain contracts with HCMLP and two funds managed by HCMLP—Highland CDO Opportunity Master Fund, L.P. ("CDO Fund") and Highland Special Opportunities Holding Company ("SOHC," and together with CDO Fund, the "Funds") related to a securitization transaction (the "Knox Agreement");

WHEREAS, in 2008, the parties to the Knox Agreement restructured the Knox Agreement;

WHEREAS, UBS terminated the Knox Agreement and, on February 24, 2009, UBS filed a complaint in the Supreme Court of the State of New York, County of New York (the "State Court") against HCMLP and the Funds seeking to recover damages related to the Knox Agreement, in an action captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) (the "2009 Action");

WHEREAS, UBS's lone claim against HCMLP in the 2009 Action for indemnification was dismissed in early 2010, and thereafter UBS amended its complaint in the 2009 Action to add five new defendants, Highland Financial Partners, L.P. ("HFP"), Highland Credit Strategies Master Funds, L.P. ("Credit-Strat"), Highland Crusader Offshore Partners, L.P. ("Crusader"), Multi-Strat, and Strand, and to add new claims for fraudulent inducement, fraudulent conveyance, tortious interference with contract, alter ego, and general partner liability;

WHEREAS, UBS filed a new, separate action against HCMLP on June 28, 2010, for, *inter alia*, fraudulent conveyance and breach of the implied covenant of good faith and fair dealing, captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.) (the "2010 Action");

WHEREAS, in November 2010, the State Court consolidated the 2009 Action and the 2010 Action (hereafter referred to as the "State Court Action"), and on May 11, 2011, UBS filed a Second Amended Complaint in the 2009 Action;

WHEREAS, in 2015, UBS entered into settlement agreements with Crusader and Credit-Strat, and thereafter UBS filed notices with the State Court in the State Court Action dismissing its claims against Crusader and Credit-Strat;

EXECUTION VERSION

WHEREAS, the State Court bifurcated claims asserted in the State Court Action for purposes of trial, with the Phase I bench trial deciding UBS's breach of contract claims against the Funds and HCMLP's counterclaims against UBS;

WHEREAS, on August 7, 2017, the Funds, along with Highland CDO Opportunity Fund, Ltd., Highland CDO Holding Company, Highland Financial Corp., and HFP, purportedly sold assets with a purported collective fair market value of $105,647,679 (the "Transferred Assets") and purported face value of over $300,000,000 to Sentinel Reinsurance, Ltd. ("Sentinel") pursuant to a purported asset purchase agreement (the "Purchase Agreement");

WHEREAS, Sentinel treated the Transferred Assets as payment for a $25,000,000 premium on a document entitled "Legal Liability Insurance Policy" (the "Insurance Policy");

WHEREAS, the Insurance Policy purports to provide coverage to the Funds for up to $100,000,000 for any legal liability resulting from the State Court Action (the "Insurance Proceeds");

WHEREAS, one of the Transferred Assets CDO Fund transferred to Sentinel was CDO Fund's limited partnership interests in Multi-Strat (the "CDOF Interests");

WHEREAS, Sentinel had also received from HCMLP limited partnership interests in Multi-Strat for certain cash consideration (together with the CDOF Interests, the "MSCF Interests");

WHEREAS, the existence of the Purchase Agreement and Insurance Policy were unknown to Strand's independent directors and the Debtor's bankruptcy advisors prior to late January 2021;

WHEREAS, in early February 2021, the Debtor disclosed the existence of the Purchase Agreement and Insurance Policy to UBS;

WHEREAS, prior to such disclosure, the Purchase Agreement and Insurance Policy were unknown to UBS;

WHEREAS, on November 14, 2019, following the Phase I trial, the State Court issued its decision determining that the Funds breached the Knox Agreement on December 5, 2008 and dismissing HCMLP's counterclaims;

WHEREAS, Sentinel purportedly redeemed the MSCF Interests in November 2019 and the redeemed MSCF Interests are currently valued at approximately $32,823,423.50 (the "Sentinel Redemption");

WHEREAS, on February 10, 2020, the State Court entered a Phase I trial judgment against the Funds in the amount of $1,039,957,799.44 as of January 22, 2020 (the "Phase I Judgment");

WHEREAS, Phase II of the trial of the State Court Action, includes, *inter alia*, UBS's claim for breach of implied covenant of good faith and fair dealing against HCMLP, UBS's

fraudulent transfer claims against HCMLP, HFP, and Multi-Strat, and UBS's general partner claim against Strand;

WHEREAS, on October 16, 2019, HCMLP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Case"). The Bankruptcy Case was transferred to the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") on December 4, 2019;

WHEREAS, Phase II of the trial of the State Court Action was automatically stayed as to HCMLP by HCMLP's bankruptcy filing;

WHEREAS, on May 11, 2020, UBS, Multi-Strat, Highland Credit Opportunities CDO, Ltd., and Highland Credit Opportunities CDO Asset Holdings, L.P. (collectively, the "May Settlement Parties"), entered into a Settlement Agreement (the "May Settlement") pursuant to which the May Settlement Parties agreed to the allocation of the proceeds of certain sales of assets held by Multi-Strat, including escrowing a portion of such funds, and restrictions on Multi-Strat's actions;

WHEREAS, on June 26, 2020, UBS timely filed two substantively identical claims in the Bankruptcy Case: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch (hereinafter collectively referred to as the "UBS Claim"). The UBS Claim asserts a general unsecured claim against HCMLP for $1,039,957,799.40;

WHEREAS, on August 3, 2020, the Bankruptcy Court entered an *Order Directing Mediation* [Docket No. 912] pursuant to which HCMLP, UBS, and several other parties were directed to mediate their Bankruptcy Case disputes before two experienced third-party mediators, Retired Judge Allan Gropper and Sylvia Mayer (together, the "Mediators"). HCMLP and UBS formally met with the Mediators together and separately on numerous occasions, including on August 27, September 2, 3, and 4, and December 17, 2020, and had numerous other informal discussions outside of the presence of the Mediators, in an attempt to resolve the UBS Claim;

WHEREAS, on August 7, 2020, HCMLP filed an objection to the UBS Claim [Docket No. 928]. Also on August 7, 2020, the Redeemer Committee of the Highland Crusader Fund, and Crusader, Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Redeemer Committee"), objected to the UBS Claim [Docket No. 933]. On September 25, 2020, UBS filed its response to these objections [Docket No. 1105];

WHEREAS, on October 16, 2020, HCMLP and the Redeemer Committee each moved for partial summary judgment on the UBS Claim [Docket Nos. 1180 and 1183, respectively], and on November 6, 2020, UBS opposed these motions [Docket No. 1337];

WHEREAS, by Order dated December 9, 2020, the Bankruptcy Court granted, as set forth therein, the motions for partial summary judgment filed by HCMLP and the Redeemer Committee and denied UBS's request for leave to file an amended proof of claim [Docket No. 1526];

EXECUTION VERSION

WHEREAS, on November 6, 2020, UBS filed *UBS's Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Docket No. 1338] (the "3018 Motion"), and on November 16, 2020, HCMLP and the Redeemer Committee each opposed the 3018 Motion [Docket Nos. 1404 and 1409, respectively];

WHEREAS, by Order dated December 8, 2020, the Bankruptcy Court granted the 3018 Motion and allowed the UBS Claim, on a temporary basis and for voting purposes only, in the amount of $94,761,076 [Docket No. 1518];

WHEREAS, on January 22, 2021, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, and as may be further amended, supplemented, or otherwise modified, the "Plan");

WHEREAS, on March 29, 2021, the Debtor caused CDO Fund to make a claim on the Insurance Policy to collect the Insurance Proceeds pursuant to the Phase I Judgment;

WHEREAS, on March 29, 2021, UBS filed an adversary proceeding seeking injunctive relief and a motion for a temporary restraining order and preliminary injunction to, among other things, enjoin the Debtor from allowing Multi-Strat to distribute the Sentinel Redemption to Sentinel or any transferee of Sentinel (the "Multi-Strat Proceeding"), which relief the Debtor, in its capacity as Multi-Strat's investment manager and general partner, does not oppose;

WHEREAS, the Parties wish to enter into this Agreement to settle all claims and disputes between and among them, to the extent and on the terms and conditions set forth herein, and to exchange the mutual releases set forth herein, without any admission of fault, liability, or wrongdoing on the part of any Party; and

WHEREAS, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Rule 9019") and section 363 of the Bankruptcy Code;

NOW THEREFORE, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

A G R E E M E N T

1. Settlement of Claims. In full and complete satisfaction of the UBS Released Claims (as defined below):

(a) The UBS Claim will be allowed as (i) a single, general unsecured claim in the amount of $65,000,000 against HCMLP, which shall be treated as a Class 8 General Unsecured Claim under the Plan;[1] and (ii) a single, subordinated unsecured claim in the amount of $60,000,000 against HCMLP, which shall be treated as a Class 9 Subordinated General Unsecured Claim under the Plan.

[1] Capitalized terms used but not defined herein shall have the meanings attributed to them in the Plan.

(b) Multi-Strat will pay UBS the sum of $18,500,000 (the "Multi-Strat Payment") as follows: (i) within two (2) business days after the Order Date, the May Settlement Parties will submit a Joint Release Instruction (as defined in the May Settlement) for the release of the amounts held in the Escrow Account (as defined in the May Settlement) to be paid to UBS in partial satisfaction of the Multi-Strat Payment on the date that is ten (10) business days following the Order Date; and (ii) Multi-Strat will pay UBS the remainder of the Multi-Strat Payment in immediately available funds on the date that is ten (10) business days following the Order Date, provided that, for the avoidance of doubt, the amounts held in the Escrow Account will not be paid to UBS until and unless the remainder of the Multi-Strat Payment is made.

(c) Subject to applicable law, HCMLP will use reasonable efforts to (i) cause CDO Fund to pay the Insurance Proceeds in full to UBS as soon as practicable, but no later than within 5 business days of CDO Fund actually receiving the Insurance Proceeds from or on behalf of Sentinel; (ii) if Sentinel refuses to pay the Insurance Proceeds, take legal action reasonably designed to recover the Insurance Proceeds or the MSCF Interests or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment and in addition shall provide reasonable assistance to UBS in connection with any legal action UBS takes to recover the Insurance Proceeds or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment or obtain rights to the MSCF interests, including but not limited to the redemption payments in connection with the MSCF Interests; (iii) cooperate with UBS and participate (as applicable) in the investigation or prosecution of claims or requests for injunctive relief against the Funds, Multi-Strat, Sentinel, James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, Transferred Assets, the transfer of the MSCF Interests, or any potentially fraudulent transfer of assets from the Funds to Sentinel, excluding the individuals listed on the schedule provided to UBS on March 25, 2021 (the "HCMLP Excluded Employees"); (iv) as soon as reasonably practicable, provide UBS with all business and trustee contacts at the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, if any, that are actually known by the Debtor after reasonable inquiry; (v) as soon as reasonably practicable, provide UBS with a copy of the governing documents, prospectuses, and indenture agreements for the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, as applicable, that are in the Debtor's actual possession, custody, or control, (vi) as soon as reasonably practicable, provide, to the extent possible, any CUSIP numbers of the securities of the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd., as applicable, including information regarding the location and amount of any cash related to those entities' holdings, in each case only to the extent actually known by the Debtor after reasonable inquiry; (vii) cooperate with UBS to assign or convey any such assets described in Section 1(c)(vi) or any other assets owned or controlled by the Funds and/or HFP, including for avoidance of doubt any additional assets currently unknown to the Debtor that the Debtor discovers in the future after the Agreement Effective Date; (viii) respond as promptly as reasonably possible to requests by UBS for access to relevant documents and approve as promptly as reasonably possible requests for access to relevant documents from third parties as needed with respect to the Transferred Assets, the Purchase Agreement, the Insurance Policy, the

MSCF Interests and any other assets currently or formerly held by the Funds or HFP, including without limitation the requests listed in **Appendix A** (provided, however, that the provision of any such documents or access will be subject to the common interest privilege and will not constitute a waiver of any attorney-client or other privilege in favor of HCMLP) that are in the Debtor's actual possession, custody, or control; (ix) preserve all documents in HCMLP's possession, custody, or control regarding or relating to the Purchase Agreement, the Insurance Policy, the MSCF Interests, or any transfer of assets from the Funds to Sentinel, including but not limited to the documents requested in Appendix A, from 2016 to present, and issue a litigation hold to all individuals deemed reasonably necessary regarding the same; and (x) otherwise use reasonable efforts to assist UBS to collect its Phase I Judgment against the Funds and HFP and assets the Funds and/or HFP may own, or have a claim to under applicable law ahead of all other creditors of the Funds and HFP; provided, however, that, from and after the date hereof, HCMLP shall not be required to incur any out-of-pocket fees or expenses, including, but not limited to, those fees and expenses for outside consultants and professionals (the "Reimbursable Expenses"), in connection with any provision of this Section 1(c) in excess of $3,000,000 (the "Expense Cap"), and provided further that, for every dollar UBS recovers from the Funds (other than the assets related to Greenbriar CLO Ltd. or Greenbriar CLO Corp.), Sentinel, Multi-Strat (other than the amounts set forth in Section 1(b) hereof), or any other person or entity described in Section 1(c)(iii) in connection with any claims UBS has that arise out of or relate to the Phase I Judgment, the Purchase Agreement, the Insurance Policy, the Transferred Assets, the MSCF Interests, or the Insurance Proceeds (the "UBS Recovery"), UBS will reimburse HCMLP ten percent of the UBS Recovery for the Reimbursable Expenses incurred by HCMLP, subject to: (1) the occurrence of the Agreement Effective Date and (2) UBS's receipt and review of invoices and time records (which may be redacted as reasonably necessary) for outside consultants and professionals in connection with such efforts described in this Section 1(c), up to but not exceeding the Expense Cap after any disputes regarding the Reimbursable Expenses have been resolved pursuant to procedures to be agreed upon, or absent an agreement, in a manner directed by the Bankruptcy Court; and provided further that in any proceeding over the reasonableness of the Reimbursable Expenses, the losing party shall be obligated to pay the reasonable fees and expenses of the prevailing party; and provided further that any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c) shall be conducted in consultation with UBS, including but not limited to the selection of necessary outside consultants and professionals to assist in such litigation; and provided further that UBS shall have the right to approve HCMLP's selection of outside consultants and professionals to assist in any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c).

(d) Redeemer Appeal.

(i) On the Agreement Effective Date, provided that neither the Redeemer Committee nor any entities acting on its behalf or with any assistance from or coordination with the Redeemer Committee have objected to this Agreement or the 9019 Motion (as defined below), UBS shall withdraw with prejudice its appeal of the *Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Docket No. 1273] (the "Redeemer Appeal"); and

(ii) The Parties have stipulated to extend the deadline for the filing of any briefs in the Redeemer Appeal to June 30, 2021 and will agree to such further extensions as necessary to facilitate this Settlement Agreement.

(e) As of the Agreement Effective Date, the restrictions and obligations set forth in the May Settlement, other than those in Section 7 thereof, shall be extinguished in their entirety and be of no further force or effect.

(f) On the Agreement Effective Date, the Debtor shall instruct the claims agent in the Bankruptcy Case to adjust the claims register in accordance with this Agreement.

(g) On the Agreement Effective Date, any claim the Debtor may have against Sentinel or any other party, and any recovery related thereto, with respect to the MSCF Interests shall be automatically transferred to UBS, without any further action required by the Debtor. For the avoidance of doubt, the Debtor shall retain any and all other claims it may have against Sentinel or any other party, and the recovery related thereto, unrelated to the MSCF Interests.

2. Definitions.

(a) "Agreement Effective Date" shall mean the date the full amount of the Multi-Strat Payment defined in Section 1(b) above, including without limitation the amounts held in the Escrow Account (as defined in the May Settlement), is actually paid to UBS.

(b) "HCMLP Parties" shall mean (a) HCMLP, in its individual capacity; (b) HCMLP, as manager of Multi-Strat; and (c) Strand.

(c) "Order Date" shall mean the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019 and section 363 of the Bankruptcy Code.

(d) "UBS Parties" shall mean UBS Securities LLC and UBS AG London Branch.

3. Releases.

(a) UBS Releases. Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the UBS Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue (A) the HCMLP Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, and (B) the MSCF Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known

or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "UBS Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to (1) the obligations of the HCMLP Parties and MSCF Parties under this Agreement, including without limitation the allowance of or distributions on account of the UBS Claim or the settlement terms described in Sections 1(a)-(g) above; (2) the Funds or HFP, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy, or such prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy by UBS; (3) James Dondero or Mark Okada, or any entities, including without limitation Hunter Mountain Investment Trust, Dugaboy Investment Trust, and NexBank, SSB, owned or controlled by either of them, other than the HCMLP Parties and MSCF Parties (but for the avoidance of doubt, such releases of the HCMLP Parties and MSCF Parties shall be solely with respect to such entities and shall not extend in any way to James Dondero or Mark Okada in their individual capacity or in any other capacity, including but not limited to as an investor, officer, trustee, or director in the HCMLP Parties or MSCF Parties); (4) Sentinel or its subsidiaries, parents, affiliates, successors, designees, assigns, employees, or directors, including James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, MSCF Interests, or Transferred Assets, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, the MSCF Interests, any potentially fraudulent transfer of assets from the Funds to Sentinel and/or Insurance Policy, excluding the HCMLP Excluded Employees; (5) the economic rights or interests of UBS in its capacity as an investor, directly or indirectly (including in its capacity as an investment manager and/or investment advisor), in any HCMLP-affiliated entity, including without limitation in the Redeemer Committee and Credit Strat, and/or in such entities' past, present or future subsidiaries and feeders funds (the "UBS Unrelated Investments"); and (6) any actions taken by UBS against any person or entity, including any HCMLP Party or MSCF Party, to enjoin a distribution on the Sentinel Redemption or the transfer of any assets currently held by or within the control of CDO Fund to Sentinel or a subsequent transferee or to seek to compel any action that only such person or entity has standing to pursue or authorize in order to permit UBS to recover the Insurance Proceeds, Transferred Assets, the Phase I Judgment or any recovery against HFP; provided, however, that, from and after the date hereof, any out-of-pocket fees or expenses incurred by HCMLP in connection with this Section 3(a)(6) will be considered Reimbursable Expenses and shall be subject to, and applied against, the Expense Cap as if they were incurred by HCMLP pursuant to Section 1(c) subject to the occurrence of the Agreement Effective Date and after any disputes regarding such Reimbursable Expenses have been resolved in the manner described in Section 1(c).

(b) **HCMLP Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the HCMLP Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of

their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "HCMLP Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement; and (b) the obligations of the UBS Parties in connection with the UBS Unrelated Investments.

(c) **Multi-Strat Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the MSCF Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "Multi-Strat Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement.

4. **No Third Party Beneficiaries.** Except for the parties released by this Agreement, no other person or entity shall be deemed a third-party beneficiary of this Agreement.

5. **UBS Covenant Not to Sue.** Subject to the occurrence of the Agreement Effective date, if UBS ever controls any HCMLP-affiliated defendant in the State Court Action by virtue of the prosecution, enforcement, or collection of the Phase I Judgment (collectively, the "Controlled State Court Defendants"), UBS covenants on behalf of itself and the Controlled State Court Defendants, if any, that neither UBS nor the Controlled State Court Defendants will assert or pursue any claims that any Controlled State Court Defendant has or may have against any of the HCMLP Parties; provided, however, that nothing shall prohibit UBS or a Controlled State Court Defendant from taking any of the actions set forth in Section 3(a)(1)-(6); provided further, however, if and to the extent UBS receives any distribution from any Controlled State Court Defendant that is derived from a claim by a Controlled State Court Defendant against the Debtor, subject to the exceptions set forth in Section 3(a), which distribution is directly

attributable to any property the Controlled State Court Defendant receives from the Debtor and separate and distinct from property owned or controlled by CDO Fund, SOHC, or Multi-Strat, then such recovery shall be credited against all amounts due from the Debtor's estate on account of the UBS Claim allowed pursuant to Section 1(a) of this Agreement, or if such claim has been paid in full, shall be promptly turned over to the Debtor or its successors or assigns.

6. **Agreement Subject to Bankruptcy Court Approval.**

(a) The force and effect of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement and the releases herein by the Bankruptcy Court. The Parties agree to use reasonable efforts to have this Agreement expeditiously approved by the Bankruptcy Court by cooperating in the preparation and prosecution of a mutually agreeable motion and proposed order (the "9019 Motion") to be filed by the Debtor no later than five business days after execution of this Agreement by all Parties unless an extension is agreed to by both parties.

7. **Representations and Warranties**.

(a) Each UBS Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the UBS Released Claims and has not sold, transferred, or assigned any UBS Released Claim to any other person or entity, and (ii) no person or entity other than such UBS Party has been, is, or will be authorized to bring, pursue, or enforce any UBS Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such UBS Party.

(b) Each HCMLP Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HCMLP Released Claims and has not sold, transferred, or assigned any HCMLP Released Claim to any other person or entity, and (ii) no person or entity other than such HCMLP Party has been, is, or will be authorized to bring, pursue, or enforce any HCMLP Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such HCMLP Party.

(c) Each MSCF Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the Multi-Strat Released Claims and has not sold, transferred, or assigned any Multi-Strat Released Claim to any other person or entity, and (ii) no person or entity other than such MSCF Party has been, is, or will be authorized to bring, pursue, or enforce any Multi-Strat Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such MSCF Party.

8. **No Admission of Liability**. The Parties acknowledge that there is a bona fide dispute with respect to the UBS Claim. Nothing in this Agreement shall be construed, expressly or by implication, as an admission of liability, fault, or wrongdoing by HCMLP, the MSCF Parties, Strand, UBS, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of HCMLP, the MSCF Parties, Strand, UBS, or any other person.

9. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their representatives, successors, and assigns.

10. **Notice**. Each notice and other communication hereunder shall be in writing and will, unless otherwise subsequently directed in writing, be delivered by email and overnight delivery, as set forth below, and will be deemed to have been given on the date following such mailing.

HCMLP Parties or the MSCF Parties

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Telephone No.: 972-628-4100
E-mail: notices@HighlandCapital.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP
Attention: Jeffrey Pomerantz, Esq.
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone No.: 310-277-6910
E-mail: jpomerantz@pszjlaw.com

UBS

UBS Securities LLC
UBS AG London Branch
Attention: Elizabeth Kozlowski, Executive Director and Counsel
1285 Avenue of the Americas
New York, NY 10019
Telephone No.: 212-713-9007
E-mail: elizabeth.kozlowski@ubs.com

UBS Securities LLC
UBS AG London Branch
Attention: John Lantz, Executive Director
1285 Avenue of the Americas
New York, NY 10019

Telephone No.: 212-713-1371
E-mail: john.lantz@ubs.com

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP
Attention: Andrew Clubok
Sarah Tomkowiak
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004-1304
Telephone No.: 202-637-3323
Email: andrew.clubok@lw.com
sarah.tomkowiak@lw.com

11. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

12. Entire Agreement. This Agreement contains the entire agreement and understanding concerning the subject matter of this Agreement, and supersedes and replaces all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation, or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation, or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

13. No Party Deemed Drafter. The Parties acknowledge that the terms of this Agreement are contractual and are the result of arm's-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

14. Future Cooperation. The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

15. Counterparts. This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement.

Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

16. Governing Law; Venue; Attorneys' Fees and Costs. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of New York without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan, New York, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

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IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: ________________
Name: James P. Seery Jr.
Its: Authorized Signatory

HIGHLAND MULTI STRATEGY CREDIT FUND, L.P. (f/k/a Highland Credit Opportunities CDO, L.P.)

By: ________________
Name: James P. Seery, Jr
Its: Authorized Signatory

HIGHLAND CREDIT OPPORTUNITIES CDO, Ltd.

By: ________________
Name: James P. Seery Jr
Its: Authorized Signatory

HIGHLAND CREDIT OPPORTUNITIES CDO ASSET HOLDINGS, L.P.

By: ________________
Name: James P. Seery, Jr
Its: Authorized Signatory

STRAND ADVISORS, INC.

By: ________________
Name: James P. Seery Jr.
Its: Authorized Signatory

EXECUTION VERSION

UBS SECURITIES LLC

By: _____
Name: John Lantz
Its: Authorized Signatory

By: _____
Name: Elizabeth Kozlowski
Its: Authorized Signatory

UBS AG LONDON BRANCH

By: _____
Name: William Chandler
Its: Authorized Signatory

By: _____
Name: Elizabeth Kozlowski
Its: Authorized Signatory

EXECUTION VERSION

APPENDIX A

- The search parameters (custodians, date ranges, search terms) used to locate the documents produced to UBS on February 27, 2021 (and any additional parameters used for the previous requests from UBS);
- Identity of counsel to, and trustees of, CDO Fund or SOHC;
- Current or last effective investment manager agreements for CDO Fund and SOHC, including any management fee schedule, and any documentation regarding the termination of those agreements;
- The tax returns for the CDO Fund and SOHC from 2017-present;
- Communications between any employees of Sentinel (or its affiliates) and any employees of the HCMLP Parties, CDO Fund, SOHC, or any of Dondero, Leventon, or Ellington from 2017-present;
- Documents or communications regarding or relating to the Purchase Agreement, Insurance Policy, or June 30, 2018 Memorandum entitled "Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets" (the "Tax Memo"), including without limitation (i) amendments to these documents, (ii) transfer of assets pursuant to these documents, (iii) board minutes or resolutions regarding or relating to these documents, (iv) claims made on the Insurance Policy; (v) communications with the IRS regarding the asset transfer pursuant to these documents; and (vi) any similar asset purchase agreements, capital transfer agreements, or similar agreements;
- Documents or communications regarding or relating to the value of any assets transferred pursuant to the Insurance Policy or Purchase Agreement, including without limitation those assets listed in Schedule A to the Purchase Agreement, from 2017 to present, including documentation supporting the $105,647,679 value of those assets as listed in the Tax Memo;
- Documents showing the organizational structure of Sentinel and its affiliated entities, including information on Dondero's relationship to Sentinel;
- Any factual information provided by current or former employees of the HCMLP Parties, CDO Fund, SOHC, or Sentinel regarding or relating to the Purchase Agreement, Insurance Policy, Tax Memo, and/or transfer of assets pursuant to those documents;
- Debtor's settlement agreements with Ellington and Leventon;
- Copies of all prior and future Monthly Reports and Valuation Reports (as defined in the Indenture, dated as of December 20, 2007, among Greenbriar CLO Ltd., Greenbriar CLO Corp., and State Street Bank and Trust Company); and
- Identity of any creditors of CDO Fund, SOHC, or HFP and amount of debts owed to those creditors by CDO Fund, SOHC, or HFP, including without limitation any debts owed to the Debtor.

Hellman & Friedman Seeded Farallon Capital Management

OUR FOUNDER

RETURN TO ABOUT (/ABOUT/)

Warren Hellman: One of the good guys

Warren Hellman was a devoted family man, highly successful businessman, active philanthropist, dedicated musician, arts patron, endurance athlete and all-around good guy. Born in New York City in 1934, he grew up in the Bay Area, graduating from the University of California at Berkeley. After serving in the U.S. Army and attending Harvard Business School, Warren began his finance career at Lehman Brothers, becoming the youngest partner in the firm's history at age 26 and subsequently serving as President. After a distinguished career on Wall Street, Warren moved back west and co-founded Hellman & Friedman, building it into one of the industry's leading private equity firms.

Warren deeply believed in the power of people to accomplish incredible things and used his success to improve and enrich the lives of countless people. Throughout his career, Warren helped found or seed many successful businesses including Matrix Partners, Jordan Management Company, Farallon Capital Management and Hall Capital Partners.

Within the community, Warren and his family were generous supporters of dozens of organizations and causes in the arts, public education, civic life, and public health, including creating and running the San Francisco Free Clinic. Later in life, Warren became an accomplished 5-string banjo player and found great joy in sharing the love of music with others. In true form, he made something larger of this avocation to benefit others by founding the Hardly Strictly Bluegrass Festival, an annual three-day, free music festival that draws hundreds of thousands of people together from around the Bay Area.

An accomplished endurance athlete, Warren regularly completed 100-mile runs, horseback rides and combinations of the two. He also was an avid skier and national caliber master ski racer and served as president of the U.S. Ski Team in the late 1970s, and is credited with helping revitalize the Sugar Bowl ski resort in the California Sierras.

In short, Warren Hellman embodied the ideal of living life to the fullest. He had an active mind and body, and a huge heart. We are lucky to call him our founder. **Read more about Warren. (https://hf.com/wp-content/uploads/2015/09/Warren-Hellman-News-Release.pdf)**

SFChronicle/SFGate/Liz Hafalia

Robert Holmgren

no caption

Hellman & Friedman Owned a Portion of Grosvenor until 2020

GCM GROSVENOR

Grosvenor Capital Management

In 2007, H&F invested in Grosvenor, one of the world's largest and most diversified independent alternative asset management firms. The Company offers comprehensive public and private markets solutions and a broad suite of investment and advisory choices that span hedge funds, private equity, and various credit and specialty strategies. Grosvenor specializes in developing customized investment programs tailored to each client's specific investment goals.

SECTOR

Financial Services

STATUS

Past

www.gcmlp.com (http://www.gcmlp.com)

CORNER OFFICE

Julie Segal

GCM Grosvenor to Go Public

The $57 billion alternatives manager will become a public company after merging with a SPAC backed by Cantor Fitzgerald.

August 03, 2020

Chicago, IL (Tim Boyle/Bloomberg)

In a sign of the times, GCM Grosvenor will become a public company through a SPAC.

The Chicago-based alternative investments firm is planning to go public by merging with a special purpose acquisition company in a deal valued at $2 billion. The 50-year-old firm has $57 billion in assets in private equity, infrastructure, real estate, credit, and absolute return investments.

"We have long valued having external shareholders and we wanted to preserve the accountability and focus that comes with that," Michael Sacks, GCM Grosvenor's chairman and CEO, said in a statement.

GCM Grosvenor will combine with CF Finance Special Acquisition Corp, a SPAC backed by Cantor Fitzgerald, according to an announcement from both companies on Monday. After the company goes public, Sacks will continue to lead GCM Grosvenor, which is owned by management and Hellman & Friedman, a private equity firm. Hellman & Friedman, which has owned a minority stake of the Chicago asset manager since 2007, will sell its equity as

Farallon was a Significant Borrower for Lehman

Case Study – Large Loan Origination

Debt origination for an affiliate of Simon Property Group Inc. and Farallon Capital Management

Date	June 2007
Asset Class	Retail
Asset Size	1,808,506 Sq. Ft.
Sponsor	Simon Property Group Inc. / Farallon Capital Management
Transaction Type	Refinance
Total Debt Amount	Lehman Brothers: $121 million JP Morgan: $200 million

Transaction Overview

- In June 2007, Lehman Brothers co-originated a loan in the aggregate amount of $321 million (Lehman portion: $121 million) with JP Morgan to a special purpose affiliate of a joint venture between Simon Property Group Inc ("Simon") and Farallon Capital Management ("Farallon") secured by the shopping center known as Gurnee Mills Mall (the "Property") located in Gurnee, IL .
- The Property consists of a one-story, 200 store discount mega-mall comprised of 1,808,506 square feet anchored by Burlington Coat Factory, Marshalls, Bed Bath & Beyond and Kohls among other national retailers. Built in 1991, the Property underwent a $5 million interior renovation in addition to a $71 million redevelopment between 2004 and 2005. As of March 2007, the Property had a in-line occupancy of 99.5%.

Lehman Brothers Role

- Simon and Farallon comprised the sponsorship which eventually merged with The Mills Corporation in early 2007 for $25.25 per common share in cash. The total value of the transaction was approximately $1.64 billion for all of the outstanding common stock, and approximately $7.9 billion including assumed debt and preferred equity.
- Lehman and JP Morgan subsequently co-originated $321 million loan at 79.2% LTV based on an appraisal completed in March by Cushman & Wakefield. The Loan was used to refinance the indebtedness secured by the Property.

Sponsorship Overview

- The Mills Corporation, based in Chevy Chase MD is a developer owner and manager of a diversified portfolio of retail destinations including regional shopping malls and entertainment centers. They currently own 38 properties in the United States totaling 47 million square feet.

LEHMAN BROTHERS 32

Mr. Seery Represented Stonehill While at Sidley

James P. Seery, Jr.
John G. Hutchinson
John J. Lavelle
Martin B. Jackson
Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
(212) 839-5300 (tel)
(212) 839-5599 (fax)

Attorneys for the Steering Group

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
BLOCKBUSTER INC., *et al.*,	:	Case No. 10-14997 (BRL)
Debtors.	:	(Jointly Administered)

THE BACKSTOP LENDERS' OBJECTION TO THE MOTION OF LYME REGIS TO ABANDON CERTAIN CAUSES OF ACTION OR, IN THE ALTERNATIVE, TO GRANT STANDING TO LYME REGIS TO PURSUE CLAIMS ON BEHALF OF THE ESTATE

1. The Steering Group of Senior Secured Noteholders who are Backstop Lenders -- Icahn Capital LP, Monarch Alternative Capital LP, Owl Creek Asset Management, L.P., Stonehill Capital Management LLC, and Värde Partners, Inc. (collectively, the "Backstop Lenders") -- hereby file this objection (the "Objection") to the Motion of Lyme Regis Partners, LLC ("Lyme Regis") to Abandon Certain Causes of Action or, in the Alternative, to Grant Standing to Lyme Regis to Pursue Claims on Behalf of the Estate (the "Motion") [Docket No. 593].

Stonehill Founder (Motulsky) and Grosvenor's G.C. (Nesler) Were Law School Classmates

Over 25 years earlier, here is a group at a party. From the left, Bob Zinn, Dave Lowenthal, Rory Little, Joe Nesler, Jon Polonsky (in front of Joe), John Motulsky and Mark Windfeld-Hansen (behind bottle!) Motulsky circulated this photo at the reunion. Thanks John!

Joseph H. Nesler (He/Him)
General Counsel

More | Message

Joseph H. Nesler (He/Him) · 3rd

Yale Law School

General Counsel

Winnetka, Illinois, United States ·

Contact info

500+ connections

Message | More

Open to work
Chief Compliance Officer and General Counsel roles
See all details

About

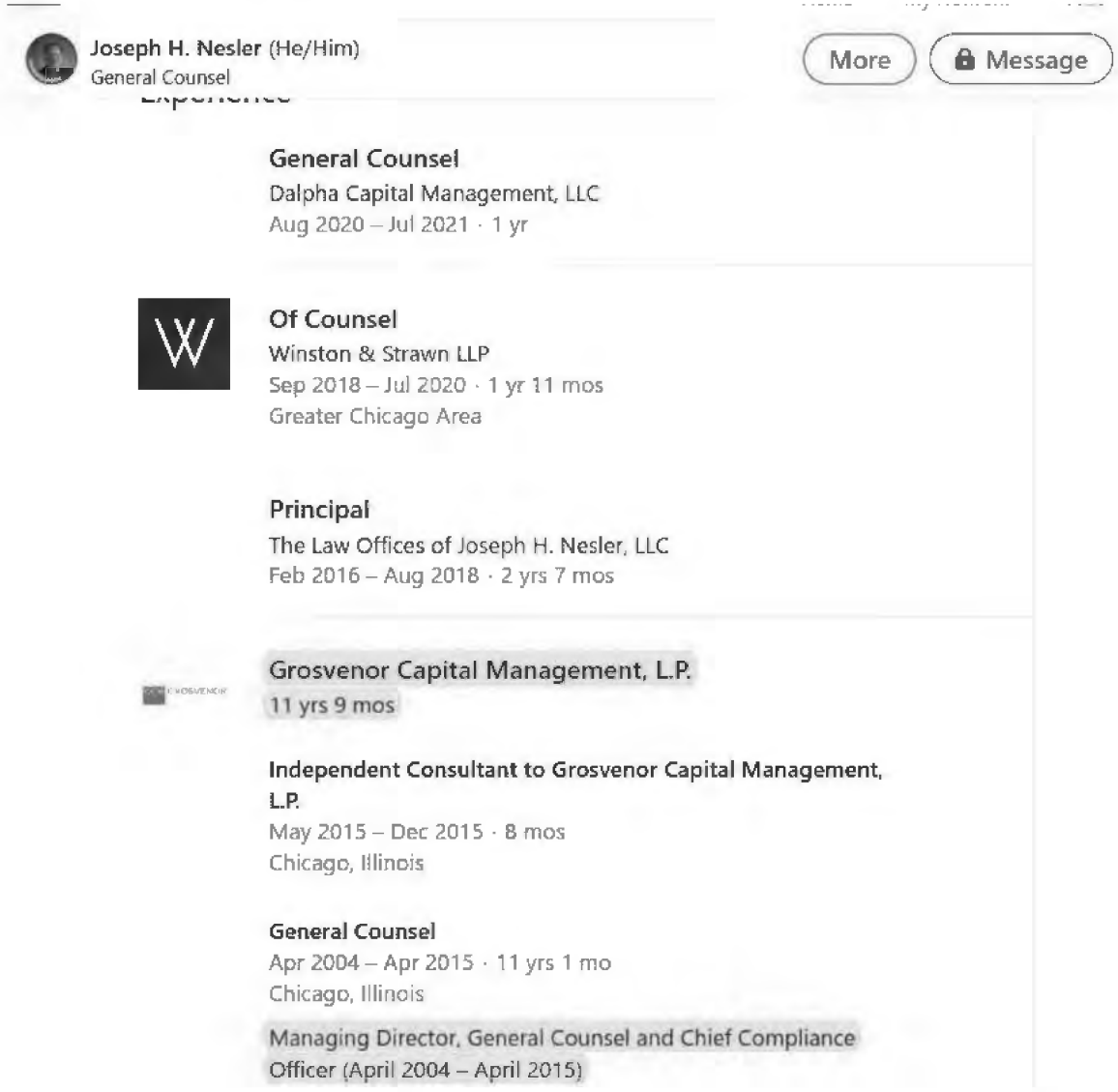
I have over 38 years of experience representing participants in the investment management industry with respect to a wide range of legal and regulatory matters, including SEC, DOL, FINRA, and NFA regulations and examinations. ... see more

Activity

522 followers

Posts Joseph H. created, shared, or commented on in the last 90 days are displayed here.

https://www.linkedin.com/in/josephnesler/



Joseph H. Nesler (He/Him)
General Counsel

More | Message

General Counsel
Dalpha Capital Management, LLC
Aug 2020 – Jul 2021 · 1 yr

Of Counsel
Winston & Strawn LLP
Sep 2018 – Jul 2020 · 1 yr 11 mos
Greater Chicago Area

Principal
The Law Offices of Joseph H. Nesler, LLC
Feb 2016 – Aug 2018 · 2 yrs 7 mos

Grosvenor Capital Management, L.P.
11 yrs 9 mos

Independent Consultant to Grosvenor Capital Management, L.P.
May 2015 – Dec 2015 · 8 mos
Chicago, Illinois

General Counsel
Apr 2004 – Apr 2015 · 11 yrs 1 mo
Chicago, Illinois

Managing Director, General Counsel and Chief Compliance Officer (April 2004 – April 2015)

Investor Communication to Highland Crusader Funds Stakeholders

Alvarez & Marsal
Management, LLC 2029 Ce
Park East Suite 2060
Angeles, CA 9

July 6, 2021

Re: Update & Notice of Distribution

Dear Highland Crusader Funds Stakeholder,

As you know, in October 2020, the Bankruptcy Court approved a settlement of the Redeemer Committee's and the Crusader Funds' claims against Highland Capital Management L.P. ("HCM"), as a result of which the Redeemer Committee was allowed a general unsecured claim of $137,696,610 against HCM and the Crusader Funds were allowed a general unsecured claim of $50,000 against HCM (collectively, the "Claims"). In addition, as part of the settlement, various interests in the Crusader Funds held by HCM and certain of its affiliates are to be extinguished (the "Extinguished Interests"), and the Redeemer Committee and the Crusader Funds received a general release from HCM and a waiver by HCM of any claim to distributions or fees that it might otherwise receive from the Crusader Funds (the "Released Claims" and, collectively with the Extinguished Interests, the "Retained Rights").

A timely appeal of the settlement was taken by UBS (the "UBS Appeal) in the United States District Court for the Northern District of Texas, Dallas Division. However, the Bankruptcy Court subsequently approved a settlement between HCM and UBS, resulting in dismissal of the UBS Appeal with prejudice on June 14, 2021.

On April 30, 2021, the Crusader Funds and the Redeemer Committee consummated the sale of the Claims against HCM and the majority of the remaining investments held by the Crusader Funds to Jessup Holdings LLC ("Jessup") for $78 million in cash, which was paid in full to the Crusader Funds at closing. The sale specifically excluded the Crusader Funds' investment in Cornerstone Healthcare Group Holding Inc. and excluded certain specified provisions of the settlement agreement with HCM (the "Settlement Agreement"), including, but not limited to, the Retained Rights. The sale of the Claims and investments was made with no holdbacks or escrows.

The sale to Jessup resulted from a solicitation of offers to purchase the Claims commenced by Alvarez & Marsal CRF Management LLC ("A&M CRF"), as Investment Manager of the Crusader Funds, in consultation with the Redeemer Committee. Ultimately, the Crusader Funds and the Redeemer Committee entered exclusive negotiations with Jessup, culminating in the sale to Jessup.

A&M CRF, pursuant to the Plan and Scheme and with the approval of House Hanover, the Redeemer Committee and the Board of the Master Fund, now intends to distribute the proceeds from the Jessup transaction ($78 million), net of any applicable tax withholdings and with no reserves for the Extinguished Claims or the Released Claims. In addition, the distribution will include approximately $9.4 million in proceeds that have been redistributed due to the cancellation

and extinguishment of the interests and shares in the Crusader Funds held by HCM, Charitable DAF and Eames in connection with the Settlement Agreement, resulting in a total gross distribution of $87.4 million. Distributions will be based on net asset value as of June 30, 2021.

Please note that A&M CRF intends to make the distributions by wire transfer no later than July 31, 2021. Please confirm your wire instructions on or before **July 20, 2021.** If there are any revisions to your wire information, please use the attached template to provide SEI and A&M CRF your updated information on investor letterhead. This information should be sent on or before **July 20, 2021** to Alvarez & Marsal CRF and SEI at CRFInvestor@alvarezandmarsal.com and AIFS-IS_Crusader@seic.com, respectively.

The wire payments will be made to the investor bank account on file with an effective and record date of July 1, 2021. Should you have any questions, please contact SEI or A&M CRF at the e-mail addresses listed above.

Sincerely,

Alvarez & Marsal CRF Management, LLC

By: _____
Steven Varner
Managing Director

Alvarez & Marsal CRF Management, LLC 2029 Century Park East Suite 2060 Los Angeles, CA 90067

July 6, 2021

Re: Update & Notice of Distribution

Dear Highland Crusader Funds Stakeholder,

As you know, in October 2020, the Bankruptcy Court approved a settlement of the Redeemer Committee's and the Crusader Funds' claims against Highland Capital Management L.P. ("HCM"), as a result of which the Redeemer Committee was allowed a general unsecured claim of $137,696,610 against HCM and the Crusader Funds were allowed a general unsecured claim of $50,000 against HCM (collectively, the "Claims"). In addition, as part of the settlement, various interests in the Crusader Funds held by HCM and certain of its affiliates are to be extinguished (the "Extinguished Interests"), and the Redeemer Committee and the Crusader Funds received a general release from HCM and a waiver by HCM of any claim to distributions or fees that it might otherwise receive from the Crusader Funds (the "Released Claims" and, collectively with the Extinguished Interests, the "Retained Rights").

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The wire payments will be made to the investor bank account on file with an effective and record date of July 1, 2021. Should you have any questions, please contact SEI or A&M CRF at the e-mail addresses listed above.

Sincerely,

Alvarez & Marsal CRF Management, LLC

By: _____
Steven Varner
Managing Director

On investor letterhead, please use the template below to provide Alvarez & Marsal CRF Management, LLC and SEI your updated wire information.

Information Needed	**Wire Information Input**
Investor name (as it reads on monthly statements) Fund(s) Invested Contact Information (Phone No. and Email) Updated Wire Information • Beneficiary Bank • Bank Address • Beneficiary (Account) Name • ABA/Routing # • Account # • SWIFT Code International Wires • Correspondent Bank • ABA/Routing # • SWIFT Code	

Signed By: ________________________________ Date: ________________

Exhibit 3

CAUSE NO. DC-23-01004

IN RE:	§	**IN THE DISTRICT COURT**
	§	
HUNTER MOUNTAIN	§	
INVESTMENT TRUST	§	**191ST JUDICIAL DISTRICT**
	§	
Petitioner,	§	
	§	**DALLAS COUNTY, TEXAS**

DECLARATION OF JAMES DONDERO

STATE OF TEXAS §
§
COUNTY OF DALLAS §

The undersigned provides this Declaration pursuant to Texas Civil Practice & Remedies Code § 132.001 and declares as follows:

1. My name is James Dondero. I am over twenty-one (21) years of age. I am of sound mind and body, and I am competent to make this declaration. The facts stated within this declaration are based upon my personal knowledge and are true and correct.

2. I previously served as the Chief Executive Officer ("CEO") of Highland Capital Management, L.P. ("HCM"). Jim Seery succeeded me in this capacity following the entry of various orders in the bankruptcy proceedings styled *In re Highland Capital Management, L.P.*, Case No. 19-34054 ("HCM Bankruptcy Proceedings").

3. On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple's interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. My purpose was to alert Mr. Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades. A true and correct copy of this email is attached hereto as Exhibit "1".

4. In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC ("Farallon"), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Mr. Seery because they had made significant profits when Mr. Seery told them to purchase other claims in the past. They also stated they were particularly optimistic because of the expected sale of MGM.

5. During one of these calls involving Mr. Linn, I asked whether they would sell the claims for 30% more than they had paid. Mr. Linn said no because Mr. Seery said they were worth a lot more. I asked Mr. Linn if he would sell at any price and he said that he was unwilling to do so. I believe these conversations with Farallon were taped by Farallon.

6. My name is James Dondero, my date of birth is June 29, 1962, and my address is 3807 Miramar Ave., Dallas, Texas 75205, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER DECLARANT SAYETH NOT.

Executed in Dallas County, State of Texas, on the 15th day of February 2023.

JAMES DONDERO

Exhibit 1

From: Jim Dondero <JDondero@highlandcapital.com>
To: Thomas Surgent <TSurgent@HighlandCapital.com>, Jim Seery <jpseeryjr@gmail.com>, Scott Ellington <SEllington@HighlandCapital.com>, "Joe Sowin" <JSowin@HighlandCapital.com>, Jason Post <JPost@NexpointAdvisors.com>
Cc: "D. Lynn (\"Judge Lynn\")" <michael.lynn@bondsellis.com>, Bryan Assink <bryan.assink@bondsellis.com>
Subject: Trading restriction re MGM - material non public information
Date: Thu, 17 Dec 2020 14:14:39 -0600
Importance: Normal

Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest.
Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.

Sent from my iPhone

Exhibit 4

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

DECLARATION OF SAWNIE A. MCENTIRE

STATE OF TEXAS	§	
	§	
COUNTY OF DALLAS	§	

The undersigned provides this Declaration pursuant to 28 U.S.C. 1746 and declares as follows:

1. My name is Sawnie A. McEntire. I am over 21 years of age. I am of sound mind and body and I am competent to make this declaration. Unless otherwise, indicated, the facts stated within this declaration are based upon my personal knowledge and are true and correct.

2. I am a licensed attorney in good standing with the State Bar of Texas. I am a Director and Shareholder at the firm Parsons McEntire McCleary PLLC. I serve as lead counsel for Hunter Mountain Investment Trust ("HMIT") in these proceedings in regard to the motion described in Paragraph 3 below. I also served as lead counsel for HMIT in Rule 202 Proceedings filed in the 191st District Court of Dallas County, Texas, Cause No. DC-23-01004 ("Rule 202 Proceedings").

3. I submit this declaration in support of HMIT's Emergency Motion for Leave to File Adversary Proceeding ("Emergency Motion") to which this Declaration is attached.

4. On January 20, 2023, HMIT filed its Verified Rule 202 Petition in the 191st District Court of Dallas County, Texas, Cause No. DC-23-01004. **A true and correct copy of HMIT's Verified Rule 202 Petition, with accompanying exhibits, is attached to this declaration as Exhibit 4-A.**

5. HMIT served notice of the Rule 202 Petition and hearing on Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), Muck Holdings LLC ("Muck"), and Jessup Holdings LLC ("Jessup") in February 2023. Farallon and Stonehill entered an appearance, responded to the proceedings, and were represented by David Shulte of the law firm of Holland & Knight. Among other things, the Rule 202 Petition sought discovery related to Farallon and Stonehill's due diligence, if any, concerning the sale and transfer of four allowed bankruptcy claims in the above-referenced bankruptcy proceedings from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively the "Claims") in April and August of 2021.[1]

6. On February 22, 2023, HMIT's Verified Rule 202 Petition was heard by the Honorable Gena Slaughter of the 191st District Court of Dallas County, Texas. **A true and correct copy of the Hearing Transcript of the Rule 202 Proceedings on February 22, 2023, is attached to this declaration as Exhibit 4-B** ("Transcript'). At this hearing, I argued on behalf of HMIT and Mr. Shulte argued on behalf of Farallon and Stonehill. During this hearing, Farallon and Stonehill admitted they acquired the Claims through their respective "special purpose entities," as reflected in the Transcript. Farallon resisted the requested discovery in the state district court.

7. A true and correct copy of a certified copy of Muck's formation papers in the State of Delaware, showing Muck was created on March 9, 2021, is attached to this Declaration as **Exhibit 4-D**. A true and correct copy of a certified copy of Jessup's formation papers in Delaware, showing Jessup was created on April 8, 2021, is attached to this Declaration as **Exhibit 4-E**. Muck and Jessup's corporate formation documents do not identify their respective members or managing members. *See* Exhibit 4-D and 4-E.

8. On March 8, 2023, the state district court denied and dismissed HMIT's Verified Rule 202 Petition. This ruling was necessarily without prejudice. A true and correct copy of the related Order, dated March 8, 2023, is attached to this declaration as **Exhibit 4-C**.

---

[1] *See* Notices of Transfers [Docs. 2211, 2212, 2261, 2262, 2263, 2215, 2697, 2698].

9. On March 9, 2023, my law partner, Roger McCleary sent correspondence to Mr. Schulte, as Farallon and Stonehill's counsel, requesting disclosure of the details of their respective legal relationships to Muck and Jessup. Farallon and Stonehill never responded to this inquiry. A true and correct copy of this email correspondence, dated March 9, 2023, is attached to this declaration as **Exhibit 4-F.**

10. I declare under the penalty of perjury that the foregoing is true and correct. Executed on March 27, 2023.

FURTHER DECLARANT SAYETH NOT.

Executed in Dallas County, State of Texas, on the 27th day of March 2023.

Dawnie A. McEntire

Exhibit 4-A

DC-23-01004

CAUSE NO. _____

IN RE:	§	**IN THE DISTRICT COURT**
	§	191st
HUNTER MOUNTAIN	§	
INVESTMENT TRUST	§	**____th JUDICIAL DISTRICT**
	§	
Petitioner,	§	
	§	**DALLAS COUNTY, TEXAS**

PETITIONER HUNTER MOUNTAIN INVESTMENT TRUST'S
VERIFIED RULE 202 PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioner, Hunter Mountain Investment Trust ("HMIT"), files this Verified Petition ("Petition") pursuant to Rule 202 of the Texas Rules of Civil Procedure, seeking pre-suit discovery from Respondent Farallon Capital Management, LLC ("Farallon") and Respondent Stonehill Capital Management, LLC ("Stonehill") (collectively "Respondents"), to allow HMIT to investigate potential claims against Respondents and other potentially adverse entities, and would respectfully show:

PARTIES

1. HMIT is a Delaware statutory trust that was the largest equity holder in Highland Capital Management, L.P. ("HCM"), holding a 99.5% limited partnership interest. HCM filed chapter 11 bankruptcy proceedings in 2019 and, as a result of these

proceedings,[1] HMIT held a Class 10 claim which, post-confirmation, was converted to a Contingent Trust Interest in HCM's post-reorganization sole limited partner.

2. Farallon is a Delaware limited liability company with its principal office in California, which is located at One Maritime Plaza, Suite 2100, San Francisco, CA 94111.

3. Stonehill is a Delaware limited liability company with its principal office in New York, which is located at 320 Park Avenue, 26th Floor, New York, NY 10022.

VENUE AND JURISDICTION

4. Venue is proper in Dallas County, Texas, because all or substantially all of the events or omissions giving rise to HMIT's potential common law claims occurred in Dallas County, Texas. In the event HMIT elects to proceed with a lawsuit against Farallon and Stonehill, venue of such proceedings will be proper in Dallas County, Texas.

5. This Court has jurisdiction over the subject matter of this Petition pursuant to Texas Rule of Civil Procedure 202.[2] The amount in controversy of any potential claims against Farallon or Stonehill far exceeds this Court's minimum jurisdictional requirements. Without limitation, HMIT specifically seeks to investigate potentially actionable claims for unjust enrichment, imposition of a constructive trust with

[1] These proceedings were initially filed in Delaware but were ultimately transferred to and with venue in the U.S. Bankruptcy Court for the Northern District of Texas.

[2] The discovery relief requested in this Petition does not implicate the HCM bankruptcy court's jurisdiction. Furthermore, this Rule 202 Petition is not subject to removal because there is no amount in actual controversy and there is no cause of action currently asserted.

disgorgement, knowing participation in breaches of fiduciary duty, and tortious interference with business expectancies.

6. This Court has personal jurisdiction over the Respondents from which discovery is sought because both Farallon and Stonehill are doing business in Texas under Texas law including, without limitation, TEX. CIV. PRAC. & REM. CODE §17.042. Consistent with due process, Respondents have established minimum contacts with Texas, and the assertion of personal jurisdiction over Respondents complies with traditional notions of fair play and substantial justice. HMIT's potential claims against Respondents arise from and/or relate to Farallon's and Stonehill's contacts in Texas. Respondents also purposefully availed themselves of the privilege of conducting business activities within Texas, thus invoking the benefits and protections of Texas law.

SUMMARY

7. HMIT seeks to investigate potential claims relating to the sale and transfer of large, unsecured creditors' claims in HCM's bankruptcy to special purpose entities affiliated with and/or controlled by Farallon and Stonehill (the "Claims"). Upon information and belief, Farallon and Stonehill historically had and benefited from close relationships with James Seery ("Seery"), who was serving as HCM's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO") at the time of the Claims purchases. Furthermore, still upon information and belief, because Farallon and Stonehill acquired or controlled the acquisition of the Claims under highly questionable

circumstances. HMIT seeks to investigate whether Respondents received material non-public information and were involved in insider trading in connection with the acquisition of the Claims.

8. The pre-suit discovery which HMIT seeks is directly relevant to potential claims, and it is clearly appropriate under Rule 202.1(b). HMIT anticipates the institution of a future lawsuit in which it may be a party due to its status as a stakeholder as former equity in HCM or in its current capacity as a Contingent Trust Interest holder, as well as under applicable statutory and common law principles relating to the rights of trust beneficiaries. In this context, HMIT may seek damages on behalf of itself or, alternatively, in a derivative capacity and without limitation, for damages or disgorgement of monies for the benefit of the bankruptcy estate.

9. HMIT currently anticipates a potential lawsuit against Farallon and Stonehill as defendants and, as such, Farallon and Stonehill have adverse interests to HMIT in connection with the anticipated lawsuit. The addresses and telephone numbers are as follows: **Farallon Capital Management LLC**, One Maritime Plaza, Suite 2100, San Francisco, CA 94111, Telephone: 415-421-2132; **Stonehill Capital Management**, LLC, 320 Park Avenue, 26th Floor, New York, NY 10022, 212-739-7474 . Additionally, the following parties also may be parties with adverse interests in any potential lawsuit: **Muck Holdings LLC**, c/o Crowell & Moring LLP, Attn: Paul B. Haskel, 590 Madison Avenue, New York, NY 10022, 212-530-1823; **Jessup Holdings LLC**, c/o Mandel, Katz and Brosnan

LLP, Attn: John J. Mandler, 100 Dutch Hill Road, Suite 390, Orangeburg, NY 10962, 845-6339-7800.

BACKGROUND[3]

A. *Procedural Background*

10. On or about October 16, 2019, HCM filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court, which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.

11. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee, which is a committee of investors in an HCM-affiliated fund known as the Crusader Fund that obtained an arbitration award against HCM in the hundreds of millions of dollars; Acis Capital Management, L.P. and Acis Capital Management GP LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS") - and an unpaid vendor, Meta-E Discovery.

12. Following the venue transfer to Texas on December 27, 2019, HCM filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary*

[3] All footnote references to evidence involve documents filed in the HCM bankruptcy proceedings and are cited by "Dkt." reference. HMIT asks the Court to take judicial notice of the documents identified by these docket entries.

Course ("HCM's Governance Motion").[4] On January 9, 2020, the Court signed an order approving HCM's Settlement Motion (the "Governance Order").[5]

13. As part of the Governance Order, an independent board of directors—which included Seery as one of the UCC's selections—was appointed to the Board of Directors (the "Board") of Strand Advisors, Inc., ("Strand Advisors") HCM's general partner. Following the approval of the Governance Order, the Board then appointed Seery as HCM's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO") in place of the previous CEO.[6] Seery currently serves as Trustee of the Claimant Trust (HCM's sole post-reorganization limited partner) and, upon information and belief, continues to serve as CEO of HCM following the effective date of the HCM bankruptcy reorganization plan ("Plan").[7]

B. Seery's Relationships with Stonehill and Farallon

14. Farallon and Stonehill are two capital management firms (similar to HCM) that, upon information belief, have long-standing relationships with Seery. Upon information and belief, they eventually participated in, directed and/or controlled the acquisition of hundreds of millions of dollars of unsecured Claims in HCM's bankruptcy on behalf of funds which they manage. It appears they did so without any meaningful

[4] Dkt. 281.
[5] Dkt. 339.
[6] Dkt. 854, Order Approving Retention of Seery as CEO/CRO.
[7] *See* Dkt. 1943, Order Approving Plan, p. 34.

due diligence, much less reasonable due diligence, and *ostensibly* based their investment decisions only on Seery's input.

15. Upon information and belief, Seery historically has had a substantial business relationship with Farallon and he previously served as legal counsel to Farallon in other matters. Upon information and belief, Seery also has had a long-standing relationship with Stonehill. GCM Grosvenor, a global asset management firm, held four seats on the Redeemer Committee[8] (an original member of the Unsecured Creditors Committee in HCM's bankruptcy). Upon information and belief, GCM Grosvenor is a significant investor in Stonehill and Farallon. Grosvenor, through Redeemer, also played a large part in appointing Seery as a director of Strand Advisors and approved his appointment as HCM's CEO and CRO.

C. Claims Trading

16. Imbued with his powers as CEO and CRO, Seery negotiated and obtained bankruptcy court approval of settlements with Redeemer, Acis, UBS, and another major creditor, HarbourVest[9] (the "Settlements") (Redeemer, Acis, UBS, and HarbourVest are collectively the "Settling Parties"), resulting in the following allowed claims:[10]

[8] Declaration of John A. Morris [Dkt. 1090], Ex. 1, pp. 15.
[9] "HarbourVest" collectively refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.
[10] Orders Approving Settlements [Dkt. 1273, Dkt. 1302, Dkt. 1788, Dkt. 2389].

Creditor	Class 8	Class 9
Redeemer	$137 mm	$0 mm
Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm
UBS	$65 mm	$60 mm

17. Although these Settlements were achieved after years of hard-fought litigation,[11] each of the Settling Parties ***curiously*** sold their claims to Farallon or Stonehill (or affiliated special purpose entities) shortly after they obtained court approval of their Settlements. One of these "trades" occurred within just a few weeks before the Plan's Effective Date.[12] Upon information and belief, Farallon and Stonehill coordinated and controlled the purchase of these Claims through special purpose entities, Muck Holdings, LLC ("Muck") and Jessup Holdings, LLC ("Jessup") (collectively "SPEs").[13] Upon information and belief, both of these SPEs were created on the eve of the Claims purchases for the ostensible purpose of taking and holding title to the Claims.

18. Upon information and belief, Farallon and Stonehill directed and controlled the investment of over $160 million dollars to acquire the Claims in the absence of any publicly available information that could rationally justify this substantial investment. These "trades" are even more surprising because, at the time of the confirmation of HCM's Plan, the Plan provided only pessimistic estimates that these Claims would ever receive full satisfaction:

[11] Order Confirming Plan, pp. 9-11.
[12] Dkt. 2697, 2698.
[13] *See* Notice of Removal [Dkt 2696], ¶ 4.

a. HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11;[14]

   i. This meant that Farallon and Stonehill invested more than $163 million in Claims ***when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims***.

b. In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% *to 54%* (down approximately $328.3 million);[15]

c. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the valuation of HCM's assets dropped over $200 million from $566 million to $328.3 million;[16]

d. Despite the stark decline in the valuation of the HCM bankruptcy estate and reduction in percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively the "Claims") in April and August of 2021[17] in the combined amount of approximately $163 million; and

e. Upon information and belief:

   i. Stonehill, through an SPE, Jessup, acquired the Redeemer Committee's claim for approximately $78 million;[18]

[14] Dkt. 1875-1, Plan Supplement, Exh. A, p. 4.
[15] Dkt. 2949.
[16] Dkt 1473, Disclosure Statement, p. 18.
[17] Notices of Transfers [Dkt. 2211, 2212, 2261, 2262, 2263, 2215, 2697, 2698].
[18] July 6, 2021 Letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

ii. The $23 million Acis claim[19] was sold to Farallon/Muck for approximately $8 million;

iii. HarbourVest sold its combined approximately $80 million in claims to Farallon/Muck for approximately $27 million; and

iv. UBS sold its combined approximately $125 million in claims for approximately $50 million to both Stonehill/Jessup and Farallon/Muck ***at a time when the total projected payout was only approximately $35 million***.

19. In Q3 2021, just over $6 million of the projected $205 million available to satisfy general unsecured claims was disbursed.[20] No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—$45 million more than was *ever* projected.[21] According to HCM's Motion for Exit Financing,[22] and a recent motion filed by Dugaboy Investment Trust,[23] there remain ***substantial*** assets to be monetized for the benefit of HCM's creditors. Thus, upon information and belief, the funds managed by Stonehill and Farallon stand to realize significant profits on their Claims purchases. In turn, upon information and belief, Stonehill and Farallon will garner (or already have garnered) substantial fees – both base fees and performance fees – as the result of their acquiring and/or managing the purchase of the Claims.

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[19] Seery/HCM have argued that $10 million of the Acis claim is self-funding. Dkt. 1271, Transcript of Hearing on Motions to Compromise Controversy with Acis Capital Management [1087] and the Redeemer Committee of the Highland Crusader Fund [1089], p. 197.
[20] Dkt. 3200.
[21] Dkt. 3582.
[22] Dkt. 2229.
[23] Dkt. 3382.

D. ***Material Information is Not Disclosed***

20. Bankruptcy Rule 2015.3 requires debtors to "file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." No public reports required by Rule 2015.3 were filed. Seery testified they simply "fell through the cracks."[24]

21. As part of the HarbourVest Settlement, Seery negotiated the purchase of HarbourVest's interest in HCLOF for approximately $22.5 million as part of the transaction.[25] Approximately 19.1% of HCLOF's assets were comprised of debt and equity in Metro-Goldwyn-Mayer Studios, Inc. ("MGM"). The HCLOF interest was not to be transferred to HCM for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements.[26]

22. Six days prior to the filing of the motion seeking approval of the HarbourVest Settlement, upon information and belief, it appears that Seery may have acquired material non-public information regarding Amazon's now-consummated interest in acquiring MGM,[27] yet there is no record of Seery's disclosure of such

[24] Dkt. 1905, February 3, 2021 Hearing Transcript, 49:5-21.
[25] Dkt. 1625, p. 9, n. 5.
[26] Dkt. 1625.
[27] Dkt. 150-1.

information to the Court, HCM's creditors, or otherwise. Upon the receipt of this material non-public information, HMIT understands, upon information and belief, that MGM was supposed to be placed on HCM's "restricted list," but Seery nonetheless continued to move forward with deals that involved MGM assets.[28]

23. As HCM additionally held its own direct interest in MGM,[29] the value of MGM was of paramount importance to the value of HCM's bankruptcy estate. HMIT believes, upon information and belief, that Seery conveyed material non-public information regarding MGM to Stonehill and Farallon as inducement to purchase the Claims.

E. ***Seery's Compensation***

24. Upon information and belief, a component of Seery's compensation is a "success fee" that depends on the actual liquidation of HCM's bankruptcy estate assets versus the Plan projections. As current holders of the largest claims against the HCM estate, Muck and Jessup, the SPEs apparently created and controlled by Stonehill and Farallon, were installed as two of the three members of an Oversight Board in charge of monitoring the activities of HCM, as the Reorganized Debtor, and the Claimant Trust.[30] Thus, along with a single independent restructuring professional, Farallon and

[28] *See* Dkt. 1625, Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith, filed December 23, 2020
[29] Motion for Exit Financing.[Dkt.2229]
[30] Dkt. 2801.

Stonehill's affiliates oversee Seery's go-forward compensation, including any "success" fee.[31]

DISCOVERY REQUESTED

25. HMIT seeks to investigate whether Farallon and Stonehill received material non-public information in connection with, and as inducement for, the negotiation and sale of the claims to Farallon and Stonehill or its affiliated SPEs. Discovery is necessary to confirm or deny these allegations and expose potential abuses and unjust enrichment.

26. The requested discovery from Farallon is attached as Exhibit "A", and includes the deposition of one or more of its corporate representatives and the production of documents. The requested discovery from Stonehill is attached as Exhibit "B", and includes the deposition of Stonehill's corporate representative(s) and the production of documents.

27. Pursuant to Rule 202.2(g), the requested discovery will include matters that will allow HMIT to evaluate and determine, among other things:

a. The substance and types of information upon which Stonehill and Farallon relied in making their respective decisions to invest in or acquire the Claims;

b. Whether Farallon and Stonehill conducted due diligence, and the substance of any due diligence when evaluating the Claims;

[31] Claimant Trust Agreement [Dkt. 1656-2].

c. The extent to which Farallon and Stonehill controlled the SPEs, Muck and Jessup, in connection with the acquisition of the Claims;

d. The creation and organizational structure of Farallon, Stonehill, Muck, and Jessup, as well as the purpose of creating Muck and Jessup as SPEs to hold the Claims;

e. Any internal valuations of Muck or Jessup's net asset value (NAV);

f. Any external valuation or audits of the NAV attributable to the Claims;

g. Any documents reflecting expected profits from the purchase of the Claims;

h. All communications between Farallon and Seery concerning the value and purchase of the Claims;

i. All communications between Stonehill and Seery concerning the value and purchase of the Claims;

j. All documents reflecting the expected payout on the Claims;

k. All communications between Farallon or Stonehill and HarbourVest concerning the purchase of the Claims;

l. All communications between Farallon or Stonehill and Acis regarding the purchase of the Claims;

m. All communications between Farallon or Stonehill and UBS regarding the purchase of the Claims;

n. All communications between Farallon or Stonehill and The Redeemer Committee regarding the purchase of the Claims;

o. All communications between Farallon and Stonehill regarding the purchase of the Claims;

p. All communications between Farallon and Stonehill and investors in their respective funds regarding purchase of the Claims or valuation of the Claims;

q. All communications between Seery and Stonehill or Farallon regarding Seery's compensation as the Trustee of the Claimant Trust;

r. All documents relating to, regarding, or reflecting any agreements between Seery and the Oversight Committee regarding compensation;

s. All documents reflecting the base fees and performance fees which Stonehill has received or may receive in connection with management of the Claims;

t. All documents reflecting the base fees and performance fees which Farallon has received or may receive in connection with management of the Claims;

u. All monies received by and distributed by Muck in connection with the Claims;

v. All monies received by and distributed by Jessup in connection with the Claims;

w. All documents reflecting whether Farallon is a co-investor in any fund which holds an interest in Muck; and

x. All documents reflecting whether Stonehill is a co-investor in any fund which holds an interest in Jessup.

BENEFIT OUTWEIGHS THE BURDEN

28. The beneficial value of the requested discovery greatly outweighs any conceivable burden that could be placed on the Respondents. The requested information

also should be readily available because the Respondents have been engaged in the bankruptcy proceedings relating to the matters at issue for several years.

29. The important benefit associated with this requested discovery is also clear – it is reasonably calculated to determine whether the Respondents have unjustly garnered tens of millions of dollars of benefit based upon insider information. If this occurred, the monies received as a result of such conduct are properly subject to a constructive trust and disgorged. This would result in substantial funds available for other creditors, including those creditors in Class 10, which includes HMIT as a beneficiary. This significant benefit, in addition to the value of bringing proper light to the activities of Farallon and Stonehill as discussed in this petition, far outweighs any purported burden associated with requiring Respondents to sit for focused depositions concerning the topics and documents identified in Exhibits A and B.

REQUEST FOR HEARING AND ORDER

30. After service of this Petition and notice, Rule 202.3(a) requires the Court to hold a hearing on this Petition.

PRAYER FOR RELIEF

31. Petitioner Hunter Mountain Investment Trust respectfully requests that the Court issue an order pursuant to Texas Rule of Civil Procedure 202 authorizing HMIT to take a deposition of designated representatives of Farallon Capital Management, LLC and Stonehill Capital Management, LLC. HMIT additionally requests authorization to

issue subpoenas duces tecum compelling the production of documents in connection with the depositions in compliance with Tex. R. Civ. P. 205, and asks that the Court grant HMIT all such other and further relief to which it may be justly entitled.

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: */s/ Sawnie A. McEntire*

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Attorneys for Petitioner Hunter Mountain Investment Trust

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Before me, the undersigned notary, on this day personally appeared Mark Patrick, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

> "My name is Mark Patrick. I am the Administrator of Hunter Mountain Investment Trust, and I am authorized and capable of making this verification. I have read Petitioner Hunter Mountain Investment Trust's Verified Rule 202 Petition ("Petition"). The facts as stated in the Petition are true and correct based on my personal knowledge and review of relevant documents in the proceedings styled *In re Highland Capital Management, L.P.*, Case No. 19-34054, in the United States Bankruptcy Court in the Northern District of Texas, Dallas Division ."

Mark Patrick

Sworn to and subscribed before me by Mark Patrick on January 20, 2023.

Notary Public in and for
the State of Texas

DEBORAH COLE
Notary ID #134079165
My Commission Expires
November 23, 2026

3116424.1

EXHIBIT "A"

CAUSE NO. _____

IN RE:	§	**IN THE DISTRICT COURT**
	§	
HUNTER MOUNTAIN	§	
INVESTMENT TRUST	§	**____th JUDICIAL DISTRICT**
	§	
Petitioner,	§	
	§	**DALLAS COUNTY, TEXAS**

NOTICE OF DEPOSITION OF FARALLON CAPITAL MANAGEMENT, LLC

TO: Farallon Capital Management, LLC, by and through its attorney of record _____.

PLEASE TAKE NOTICE that, pursuant to Tex. R. Civ. P. 199, 202, and 205, Petitioner Hunter Mountain Investment Trust ("HMIT") will take the deposition on oral examination under oath of Farallon Capital Management, LLC ("Farallon") on **_____, 2023 at _____ _.m.** before a notary public or other person authorized to administer a proper oath and will be recorded by stenographic means. The deposition will take place at _____ before a court reporter and videographer and will continue from day to day until completed. The deposition may also be recorded by non-stenographic (videotape) means.

Please take further notice that, pursuant to Tex. R. Civ. P. 199.2(b), Farallon is requested to designate one or more person(s) most knowledgeable and prepared to testify on behalf of Farallon concerning the topics identified on Exhibit "1", and to produce the documents described in Exhibit "2", attached hereto.

Respectfully submitted,

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Attorneys for Petitioner Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I hereby certify that, on January ___, 2023, a true and correct copy of the foregoing document was served on all known counsel of record in accordance with the Texas Rules of Civil Procedure.

Sawnie A. McEntire

EXHIBIT "A"
TO NOTICE OF DEPOSITION OF FARALLON CAPITAL MANAGEMENT, LLC

For purposes of the attached Exhibits "1" and "2", the following rules and definitions shall apply.

RULES OF CONSTRUCTION

1. The terms "all" and "each" shall be construed as all and each.

2. The terms "all" and "any" shall be construed as all and any.

3. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

4. The use of the singular form of any word includes the plural and vice versa.

DEFINITIONS

The terms used herein shall have the following meanings unless the context requires otherwise:

Acis. The term "Acis" refers to Acis Capital Management, L.P. and Acis Capital Management GP LLC, collectively.

Any and *all*. The terms "any" and "all" should be understood in either the most or the least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope. "Any" includes the word "all," and "all" includes the term "any."

Bankruptcy Case. The term "Bankruptcy Case" shall mean the Chapter 11 Bankruptcy of Debtor Highland Capital Management, L.P., Case No. 19-34054 in the United States Bankruptcy Court for the Northern District of Texas.

Claims. The term "Claims" shall mean the claims against Highland's Estate transferred to/acquired by Muck and/or Jessup as evidenced by Bankruptcy Case Dkt. Nos. 2215, 2261, 2262, 2263, 2697, 2698.

Communication. The term "communication" means any manner in which the mental processes of one individual are related to another, including without limitation, any verbal utterance, correspondence, **email, text message**, statement, transmission of information by computer or other device, letters, telegrams, telexes, cables, telephone

conversations, and records or notations made in connection therewith, notes, memoranda, sound recordings, electronic data storage devices, and any other reported, recorded or graphic matter or document relating to any exchange of information.

Concerning. The term "concerning" means reflecting, regarding, relating to, referring to, describing, evidencing, or constituting.

Document or documents. The terms "document" or "documents" shall mean anything that may be considered to be a document or tangible thing within the meaning of the TEXAS RULES OF CIVIL PROCEDURE, including (without limitation) Electronically Stored Information and the originals and all copies of any correspondence, memoranda, handwritten or other notes, letters, files, records, papers, drafts and prior versions, diaries, calendars, telephone or other message slips, invoices, files, statements, books, ledgers, journals, work sheets, inventories, accounts, calculations, computations, studies, reports, indices, summaries, facsimiles, telegrams, telecopied matter, publications, pamphlets, brochures, periodicals, sound recordings, surveys, statistical compilations, work papers, photographs, videos, videotapes, drawings, charts, graphs, models, contracts, illustrations, tabulations, records (including tape recordings and transcriptions thereof) of meetings, conferences and telephone or other conversations or communications, financial statements, photostats, e-mails, microfilm, microfiche, data sheets, data processing cards, computer tapes or printouts, disks, word processing or computer diskettes, computer software, source and object codes, computer programs and other writings, or recorded, transcribed, punched, taped and other written, printed, recorded, digital, or graphic matters and/or electronic data of any kind however produced or reproduced and maintained, prepared, received, or transmitted, including any reproductions or copies of documents which are not identical duplicates of the original and any reproduction or copies of documents of which the originals are not in your possession, custody or control.

Electronically Stored Information or ESI. The terms *"Electronically Stored Information" or "ESI" shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) respect to all such Documents/ESI*

Estate. The term "Estate" means HCM's bankruptcy estate.

Farallon, *you*, and *your*. The terms "Farallon," "you," and "your" shall mean Farallon Capital Management, LLC and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Muck Holdings, LLC. These terms also include any owners, partners, shareholders, agents, employees,

representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which Farallon is a general partner or owns an entities' general partner, or anyone else acting on Farallon's behalf, now or at any time relevant to the response.

Grosvenor. The term "Grosvenor" refers to Grosvenor Capital Management, L.P.

HarbourVest. The term "HarbourVest" refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., collectively.

HCM. The term "HCM" refers to debtor Highland Capital Management, L.P.

Jessup. The term "Jessup" refers to Jessup Holdings, LLC.

MGM. The term "MGM" refers to Metro-Goldwyn-Mayer Studios, Inc.

Muck. The term "Muck" shall refer to Muck Holdings, LLC.

NAV. The term "NAV" means net asset value.

Oversight Board. The term "Oversight Board" refers to the Claimant Trust Oversight Committee (a/k/a the Oversight Board of the Highland Claimant Trust) as identified in Bankruptcy Case Dkt. No. 2801.

Person. The term "person" is defined as any natural person or any business, legal, or governmental entity or association.

Plan. The term "Plan" refers to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified).

Redeemer. The term "Redeemer" means the Redeemer Committee of the Highland Crusader Funds.

Seery. The term "Seery" refers to James P. ("Jim") Seery.

Settling Parties. The term "Settling Parties" refers to Redeemer, Acis, HarbourVest, and UBS, collectively.

Stonehill. The term "Stonehill" refers to Stonehill Capital Management, LLC.

Strand. The term "Strand" refers to Strand Advisors, Inc.

UBS. The term "UBS" refers to UBS Securities LLC and UBS AG London Branch, collectively.

EXHIBIT "1"

TOPIC CATEGORIES

The witness(es) designated by Farallon to testify on its behalf is (are) requested to testify concerning the following Topic Categories:

a. The substance, types, and sources of information Farallon considered in making any decision to invest in any of the Claims on behalf of itself, Muck, and/or any fund with which Farallon is connected;

b. Whether Farallon conducted due diligence, and the substance and identification of any due diligence (including associated documents), when evaluating any of the Claims;

c. Any and all communications with James Dondero;

d. The extent to which Farallon was involved in creating and organizing Muck in connection with the acquisition of any of the Claims;

e. The organizational structure of Muck (including identification of all members, managing members), as well as the purpose for creating Muck, including, but not limited to, regarding holding title to any of the Claims;

f. Any internal valuations of Muck's Net Asset Value (NAV), as well as all assets owned by Muck;

g. Any external valuation or audits of the NAV attributable to any of the Claims;

h. Any documents reflecting profit forecasts relating to any of the Claims;

i. All communications between Farallon and Seery relating to any of the Claims;

j. All forecasted payout(s) on any of the Claims and all documents including or reflecting the same;

k. All communications between Farallon and any of the Settling Parties concerning any of the Claims;

l. Any negotiations between Farallon and any of the Settling Parties concerning any of the Claims;

m. All communications between Farallon and Stonehill regarding any of the Claims;

n. All communications between Farallon and any investors in any fund managed by Farallon regarding any of the Claims or valuation of the Claims;

o. All communications between Seery and Farallon regarding Seery's compensation as Trustee of the Claimant Trust;

p. All agreements and other communications between Seery and the Oversight Committee regarding Seery's compensation and all documents relating to, regarding, or reflecting such agreements and other communications;

q. All base fees and performance fees which Farallon has received or may receive in connection with the Claims and all documents relating to, regarding, or reflecting the same;

r. All monies received by Muck in connection with any of the Claims and any distributions made by Muck to any members of Muck relating to such Claims;

s. Whether Farallon is a co-investor in any fund which holds an interest in Muck or otherwise holds a direct interest in Muck and all documents reflecting the same;

t. All communications between Farallon and any of the following entities concerning any of the Claims:

    i. UCC;

ii. Highland;

iii. Grosvenor;

iv. Muck;

v. the Oversight Board.

u. The sources of funds used by Muck for the acquisition of any of the Claims;

v. The terms and conditions of any agreements governing the transfers of any of the Claims to Muck;

w. Representations made by Farallon, Muck, Seery, and/or the Settling Parties in connection with the transfer of any of the Claims;

x. Farallon's valuation or evaluation of HCM's Estate;

y. Information learned regarding MGM during the pendency of the negotiations relating to the Claims;

z. The appointment of Muck to the Oversight Board;

aa. Farallon's historical relationships and business dealings with Seery and Grovesnor;

bb. Representations made to the bankruptcy court in connection with the transfer of any of the Claims to Muck.

EXHIBIT "2"

DOCUMENT REQUESTS

1. Any and all documents created by, prepared for, or received by Farallon concerning any of the following topics:
    a. the transfer of the Claims;
    b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
    c. valuation of the Claims or the assets underlying the Claims;
    d. promises and representations made in connection with the transfer of the Claims;
    e. any due diligence undertaken by Farallon or Muck prior to acquiring the Claims;
    f. consideration for the transfer of the Claims;
    g. the value of HCM's Estate;
    h. the projected future value of HCM's Estate;
    i. past distributions and projected distributions from HCM's Estate;
    j. compensation earned by or paid to Seery in connection with or relating to the Claims;
    k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and
    l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.
2. Any and all communications between Farallon, on the one hand, and any of the following individuals or entities: (i) Seery, (ii) the UCC, (iii) the Settling Parties, (iv) Stonehill, (vi) Grosvenor, or, (vii) the Oversight Board, concerning any of the following topics:
    a. the transfer of the Claims;
    b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
    c. valuation of the Claims or the assets underlying the Claims;

d. promises and representations made in connection with the transfer of the Claims;

e. any due diligence undertaken by Farallon or Muck prior to acquiring the Claims;

f. consideration for the transfer of the Claims;

g. the value of HCM's Estate;

h. the projected future value of HCM's Estate;

i. past distributions and projected distributions from HCM's Estate;

j. compensation earned by or paid to Seery in connection with or relating to the Claims;

k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and

l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.

3. All correspondence and/or other documents by or between Farallon and/or Muck and any investors in any fund regarding the Claims and/or the acquisition or transfer of the Claims.

4. Any and all documents reflecting the sources of funding used by Muck to acquire any of the Claims.

5. Organizational and formation documents relating to Muck including, but not limited to, Muck's certificate of formation, company agreement, bylaws, and the identification of all members and managing members.

6. Company resolutions prepared by or on behalf of Muck approving the acquisition of any of the Claims.

7. Any and all documents reflecting any internal or external audits regarding Muck's NAV.

8. Agreements between Farallon and Muck regarding management, advisory, or other services provided to Muck by Farallon.

9. Any and all documents reviewed by Farallon as part of its evaluation and due diligence regarding any of the Claims.

10. Any documents reflecting any communications with James Dondero;

11. Annual fund audits relating to Muck.

12. Muck's NAV Statements.

13. Documents reflecting the fees or other compensation earned by Farallon in connection with the investment in, acquisition of, transfer of, and/or management of any of the Claims.

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EXHIBIT "B"

CAUSE NO. _____

IN RE:	§	**IN THE DISTRICT COURT**
	§	
HUNTER MOUNTAIN	§	
INVESTMENT TRUST	§	**____th JUDICIAL DISTRICT**
	§	
Petitioner,	§	
	§	**DALLAS COUNTY, TEXAS**

NOTICE OF DEPOSITION OF STONEHILL CAPITAL MANAGEMENT, LLC

TO: Stonehill Capital Management, LLC, by and through its attorney of record _____.

PLEASE TAKE NOTICE that, pursuant to Tex. R. Civ. P. 199, 202, and 205, Petitioner Hunter Mountain Investment Trust ("HMIT") will take the deposition on oral examination under oath of Stonehill Capital Management, LLC ("Stonehill") on **_____, 2023 at _____ _.m.** before a notary public or other person authorized to administer a proper oath and will be recorded by stenographic means. The deposition will take place at _____ before a court reporter and videographer and will continue from day to day until completed. The deposition may also be recorded by non-stenographic (videotape) means.

Please take further notice that, pursuant to Tex. R. Civ. P. 199.2(b), Stonehill is requested to designate one or more person(s) most knowledgeable and prepared to testify on behalf of Stonehill concerning the topics identified on Exhibit "1", and to produce the documents described in Exhibit "2", attached hereto.

Respectfully submitted,

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Attorneys for Petitioner Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I hereby certify that, on January ___, 2023, a true and correct copy of the foregoing document was served on all known counsel of record in accordance with the Texas Rules of Civil Procedure.

Sawnie A. McEntire

EXHIBIT "A"
TO NOTICE OF DEPOSITION OF STONEHILL CAPITAL MANAGEMENT, LLC

For purposes of the attached Exhibits "1" and "2", the following rules and definitions shall apply.

RULES OF CONSTRUCTION

1. The terms "all" and "each" shall be construed as all and each.

2. The terms "all" and "any" shall be construed as all and any.

3. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

4. The use of the singular form of any word includes the plural and vice versa.

DEFINITIONS

The terms used herein shall have the following meanings unless the context requires otherwise:

Acis. The term "Acis" refers to Acis Capital Management, L.P. and Acis Capital Management GP LLC, collectively.

Any and *all*. The terms "any" and "all" should be understood in either the most or the least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope. "Any" includes the word "all," and "all" includes the term "any."

Bankruptcy Case. The term "Bankruptcy Case" shall mean the Chapter 11 Bankruptcy of Debtor Highland Capital Management, L.P., Case No. 19-34054 in the United States Bankruptcy Court for the Northern District of Texas.

Claims. The term "Claims" shall mean the claims against Highland's Estate transferred to/acquired by Muck and/or Jessup as evidenced by Bankruptcy Case Dkt. Nos. 2215, 2261, 2262, 2263, 2697, 2698.

Communication. The term "communication" means any manner in which the mental processes of one individual are related to another, including without limitation, any verbal utterance, correspondence, **email, text message**, statement, transmission of information by computer or other device, letters, telegrams, telexes, cables, telephone

conversations, and records or notations made in connection therewith, notes, memoranda, sound recordings, electronic data storage devices, and any other reported, recorded or graphic matter or document relating to any exchange of information.

Concerning. The term "concerning" means reflecting, regarding, relating to, referring to, describing, evidencing, or constituting.

Document or documents. The terms "document" or "documents" shall mean anything that may be considered to be a document or tangible thing within the meaning of the TEXAS RULES OF CIVIL PROCEDURE, including (without limitation) Electronically Stored Information and the originals and all copies of any correspondence, memoranda, handwritten or other notes, letters, files, records, papers, drafts and prior versions, diaries, calendars, telephone or other message slips, invoices, files, statements, books, ledgers, journals, work sheets, inventories, accounts, calculations, computations, studies, reports, indices, summaries, facsimiles, telegrams, telecopied matter, publications, pamphlets, brochures, periodicals, sound recordings, surveys, statistical compilations, work papers, photographs, videos, videotapes, drawings, charts, graphs, models, contracts, illustrations, tabulations, records (including tape recordings and transcriptions thereof) of meetings, conferences and telephone or other conversations or communications, financial statements, photostats, e-mails, microfilm, microfiche, data sheets, data processing cards, computer tapes or printouts, disks, word processing or computer diskettes, computer software, source and object codes, computer programs and other writings, or recorded, transcribed, punched, taped and other written, printed, recorded, digital, or graphic matters and/or electronic data of any kind however produced or reproduced and maintained, prepared, received, or transmitted, including any reproductions or copies of documents which are not identical duplicates of the original and any reproduction or copies of documents of which the originals are not in your possession, custody or control.

Electronically Stored Information or ESI. The terms *"Electronically Stored Information" or "ESI" shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) respect to all such Documents/ESI*

Estate. The term "Estate" means HCM's bankruptcy estate.

Farallon. The term "Farallon," refers to Farallon Capital Management, LLC and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Muck Holdings, LLC. These terms also include any owners, partners, shareholders, agents, employees, representatives, attorneys, predecessors, successors,

assigns, related entities, parent companies, subsidiaries, and/or entities in which Farallon is a general partner or owns an entities' general partner, or anyone else acting on Farallon's behalf, now or at any time relevant to the response.

Grosvenor. The term "Grosvenor" refers to Grosvenor Capital Management, L.P.

HarbourVest. The term "HarbourVest" refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., collectively.

HCM. The term "HCM" refers to debtor Highland Capital Management, L.P.

Jessup. The term "Jessup" refers to Jessup Holdings, LLC.

MGM. The term "MGM" refers to Metro-Goldwyn-Mayer Studios, Inc.

Muck. The term "Muck" shall refer to Muck Holdings, LLC.

NAV. The term "NAV" means net asset value.

Oversight Board. The term "Oversight Board" refers to the Claimant Trust Oversight Committee (a/k/a the Oversight Board of the Highland Claimant Trust) as identified in Bankruptcy Case Dkt. No. 2801.

Person. The term "person" is defined as any natural person or any business, legal, or governmental entity or association.

Plan. The term "Plan" refers to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified).

Redeemer. The term "Redeemer" means the Redeemer Committee of the Highland Crusader Funds.

Seery. The term "Seery" refers to James P. ("Jim") Seery.

Settling Parties. The term "Settling Parties" refers to Redeemer, Acis, HarbourVest, and UBS, collectively.

Stonehill," "you," and "your." The terms "Stonehill", "you," and "your" shall mean Stonehill Capital Management, LLC and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to Jessup Holdings, LLC. These terms also include any owners, partners, shareholders, agents, employees,

representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which Stonehill is a general partner or owns an entities' general partner, or anyone else acting on Stonehill's behalf, now or at any time relevant to the response .

Strand. The term "Strand" refers to Strand Advisors, Inc.

UBS. The term "UBS" refers to UBS Securities LLC and UBS AG London Branch, collectively.

EXHIBIT "1"

TOPIC CATEGORIES

The witness(es) designated by Stonehill to testify on its behalf is (are) requested to testify concerning the following Topic Categories:

a. The substance, types, and sources of information Stonehill considered in making any decision to invest in any of the Claims on behalf of itself, Jessup, and/or any fund with which Stonehill is connected;

b. Whether Stonehill conducted due diligence, and the substance and identification of any due diligence (including associated documents), when evaluating any of the Claims;

c. Any and all communications with James Dondero;

d. The extent to which Stonehill was involved in creating and organizing Jessup in connection with the acquisition of any of the Claims;

e. The organizational structure of Jessup (including identification of all members, managing members), as well as the purpose for creating Jessup, including, but not limited to, regarding holding title to any of the Claims;

f. Any internal valuations of Jessup's Net Asset Value (NAV), as well as all assets owned by Jessup;

g. Any external valuation or audits of the NAV attributable to any of the Claims;

h. Any documents reflecting profit forecasts relating to any of the Claims;

i. All communications between Stonehill and Seery relating to any of the Claims;

j. All forecasted payout(s) on any of the Claims and all documents including or reflecting the same;

k. All communications between Stonehill and any of the Settling Parties concerning any of the Claims;

l. Any negotiations between Stonehill and any of the Settling Parties concerning any of the Claims;

m. All communications between Stonehill and Farallon regarding any of the Claims;

n. All communications between Stonehill and any investors in any fund managed by Stonehill regarding any of the Claims or valuation of the Claims;

o. All communications between Seery and Stonehill regarding Seery's compensation as Trustee of the Claimant Trust;

p. All agreements and other communications between Seery and the Oversight Committee regarding Seery's compensation and all documents relating to, regarding, or reflecting such agreements and other communications;

q. All base fees and performance fees which Stonehill has received or may receive in connection with the Claims and all documents relating to, regarding, or reflecting the same;

r. All monies received by Jessup in connection with any of the Claims and any distributions made by Jessup to any members of Jessup relating to such Claims;

s. Whether Stonehill is a co-investor in any fund which holds an interest in Jessup or otherwise holds a direct interest in Jessup and all documents reflecting the same;

t. All communications between Stonehill and any of the following entities concerning any of the Claims:

    i. UCC;

ii. Highland;

iii. Grosvenor;

iv. Jessup;

v. the Oversight Board.

u. The sources of funds used by Jessup for the acquisition of any of the Claims;

v. The terms and conditions of any agreements governing the transfers of any of the Claims to Jessup;

w. Representations made by Stonehill, Jessup, Seery, and/or the Settling Parties in connection with the transfer of any of the Claims;

x. Stonehill's valuation or evaluation of HCM's Estate;

y. Information learned regarding MGM during the pendency of the negotiations relating to the Claims;

z. The appointment of Jessup to the Oversight Board;

aa. Stonehill's historical relationships and business dealings with Seery and Grovesnor;

bb. Representations made to the bankruptcy court in connection with the transfer of any of the Claims to Jessup.

EXHIBIT "2"

DOCUMENT REQUESTS

1. Any and all documents created by, prepared for, or received by Stonehill concerning any of the following topics:
    a. the transfer of the Claims;
    b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
    c. valuation of the Claims or the assets underlying the Claims;
    d. promises and representations made in connection with the transfer of the Claims;
    e. any due diligence undertaken by Stonehill or Jessup prior to acquiring the Claims;
    f. consideration for the transfer of the Claims;
    g. the value of HCM's Estate;
    h. the projected future value of HCM's Estate;
    i. past distributions and projected distributions from HCM's Estate;
    j. compensation earned by or paid to Seery in connection with or relating to the Claims;
    k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and
    l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.
2. Any and all communications between Stonehill, on the one hand, and any of the following individuals or entities: (i) Seery, (ii) the UCC, (iii) the Settling Parties, (iv) Farallon, (vi) Grosvenor, or, (vii) the Oversight Board, concerning any of the following topics:
    a. the transfer of the Claims;
    b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
    c. valuation of the Claims or the assets underlying the Claims;

d. promises and representations made in connection with the transfer of the Claims;

e. any due diligence undertaken by Stonehill or Jessup prior to acquiring the Claims;

f. consideration for the transfer of the Claims;

g. the value of HCM's Estate;

h. the projected future value of HCM's Estate;

i. past distributions and projected distributions from HCM's Estate;

j. compensation earned by or paid to Seery in connection with or relating to the Claims;

k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and

l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.

3. All correspondence and/or other documents by or between Stonehill and/or Jessup and any investors in any fund regarding the Claims and/or the acquisition or transfer of the Claims.

4. Any and all documents reflecting the sources of funding used by Jessup to acquire any of the Claims.

5. Organizational and formation documents relating to Jessup including, but not limited to, Jessup's certificate of formation, company agreement, bylaws, and the identification of all members and managing members.

6. Company resolutions prepared by or on behalf of Jessup approving the acquisition of any of the Claims.

7. Any and all documents reflecting any internal or external audits regarding Jessup's NAV.

8. Agreements between Stonehill and Jessup regarding management, advisory, or other services provided to Jessup by Stonehill.

9. Any and all documents reviewed by Stonehill as part of its evaluation and due diligence regarding any of the Claims.

10. Any documents reflecting any communications with James Dondero;

11. Annual fund audits relating to Jessup.

12. Jessup's NAV Statements.

13. Documents reflecting the fees or other compensation earned by Stonehill in connection with the investment in, acquisition of, transfer of, and/or management of any of the Claims.

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Exhibit 4-B

REPORTER'S RECORD

VOLUME 1 OF 1

COURT OF APPEALS CAUSE NO. 00-00-00000-CV

TRIAL COURT CAUSE NO. DC-23-01004-J

IN RE:	)	IN THE DISTRICT COURT
	)	
	)	
HUNTER MOUNTAIN	)	
INVESTMENT TRUST,	)	OF DALLAS COUNTY, TEXAS
	)	
	)	
Petitioner.	)	191ST JUDICIAL DISTRICT

PETITIONER HUNTER MOUNTAIN INVESTMENT TRUST'S

RULE 202 PETITION

which was heard on

Wednesday, February 22, 2023

On the 22nd day of February 2023, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Gena Slaughter, Judge Presiding, held in Dallas, Dallas County, Texas, and the following proceedings were had, to wit:

Proceedings reported by machine shorthand utilizing computer-assisted realtime transcription.

APPEARANCES:

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ATTORNEYS FOR PETITIONER
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Investment Trust

and

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ATTORNEY FOR RESPONDENTS
Farallon Capital
Management, LLC, and
Stonehill Capital
Management LLC

* * *

VOLUME 1 INDEX

PETITIONER HUNTER MOUNTAIN INVESTMENT TRUST'S

RULE 202 PETITION

which was heard on

Wednesday, February 22, 2023

PETITIONER'S EXHIBITS INDEX

Number	Description	Offered	(Excluded) Admitted	Vol
P-1	Declaration of Mark Patrick	36	42	1
P1-A	Claimant Trust Agreement	36	42	1
P1-B	Division of Corporations - Filing	36	42	1
P1-C	Division of Corporations - Filing	36	42	1
P1-D	Order Approving Debtor's Settlement	36	42	1
P1-E	Order Approving Debtor's Settlement	36	42	1
P1-F	Order Approving Debtor's Settlement	36	42	1
P1-G	Order Approving Debtor's Settlement	36	42	1
P1-H	July 6, 2021, Alvarez & Marsal letter to Highland Crusader Funds Stakeholder	36 --	41 42	1 1
P1-I	United States Bankruptcy Court Case No. 19-34054	36	42	1

PETITIONER'S EXHIBITS INDEX continued

Number	Description	Offered	(Excluded) Admitted	Vol
PI-J	Exhibit A Highland Capital Management, L.P. Disclaimer for Financial Projections	36	42	1
PI-K	United States Bankruptcy Court Case No. 19-34054	36	42	1
P-2	Declaration of James Dondero	36	42	1
P2-1	Jim Dondero email dated Thursday, December 2020	36	(41)	1

RESPONDENT'S EXHIBITS INDEX

Number	Description	Offered	(Excluded) Admitted	Vol
R-1	Cause No. DC-21-09543 Verified Amended Petition	41	44	1
R-2	Cause No. DC-21-09543 Order	41	44	1
R-3	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-4	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-5	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-6	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-7	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-8	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-9	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-10	United States Bankruptcy Court Case No. 19-34054	41	44	1

RESPONDENT'S EXHIBITS INDEX continued

Number	Description	Offered	(Excluded) Admitted	Vol
R-11	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-12	United State Bankruptcy Court Case No. 19-12239	41	44	1
R-13	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-14	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-15	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-16	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-17	United States Bankruptcy Court Case No. 19-34054	41	44	1

P R O C E E D I N G S

THE COURT: Okay. Good morning, Counsel.

We are here in DC-23-01004, In re: Hunter Mountain Investment Trust.

And who is here for the plaintiff?

MR. McENTIRE: For the petitioner, Your Honor, Sawnie McEntire and my partner Roger McCleary.

THE COURT: Okay. And then for Farallon?

MR. SCHULTE: My name is David Schulte and I represent both of the respondents. It's Farallon Capital Management, LLC, and Stonehill Capital Management, LLC.

THE COURT: We are here today on a request for a 202 petition. I know one of the issues is the related suit, but let's just plow into it and we'll go from there.

Okay. Counsel?

MR. McENTIRE: May I approach the bench?

THE COURT: Yes, you may.

MR. McENTIRE: And I've given Mr. Schulte copies of all these materials.

In the interest of time, I have all the key pleadings here, which I will give you a copy of.

THE COURT: Thank you.

MR. McENTIRE: And this is the evidentiary submission that we submitted about a week ago.

THE COURT: Right.

MR. McENTIRE: To the extent you are interested, it is cross-referenced by exhibit number to the references in our petition to the docket in the bankruptcy court.

THE COURT: I appreciate that. Otherwise, I go hunting for stuff.

MR. McENTIRE: This is a PowerPoint.

THE COURT: Okay.

MR. McENTIRE: And, lastly, a proposed order.

THE COURT: Wonderful.

MR. McENTIRE: And Mr. Schulte has copies of it all.

THE COURT: Okay.

MR. McENTIRE: May I proceed, Your Honor?

THE COURT: You may.

MR. McENTIRE: All right. Your Honor, we are here for leave of court to conduct discovery under Rule 202 to investigate potential claims.

The issue before the court is not whether we have an actual claim.

THE COURT: Right.

MR. McENTIRE: We do not even need to state a cause of action. It is simply the investigation of potential claims.

Mr. Mark Patrick is here with us today. He's behind me. Mr. Patrick is the administrator of Hunter Mountain, which is a Delaware trust.

THE COURT: Okay.

MR. McENTIRE: He is the manager of Rand Advisors, which is also an investment manager of the trust. And, in effect, for all intents and purposes, Mr. Patrick manages the assets of the trust on a daily basis.

THE COURT: Okay.

MR. McENTIRE: There are potential claims that we're investigating. And I'll go through some of these because I know opposing counsel has raised standing issues.

THE COURT: Right.

MR. McENTIRE: And I think we can address all those standing issues.

Insider trading is in itself a wrong as recognized by courts. And I'll refer you to the opinions. We believe there's a breach of fiduciary duties, and that may take a little explanation.

At the time that Farallon and Stonehill acquired these claims, through their special purpose entities Muck and Jessup, they were outsiders.

THE COURT: Right.

MR. McENTIRE: But by acquiring the information in the manner in which we believe they did, they became insiders. And when they became insiders, under relevant authorities they owe fiduciary duties.

And at the time they acquired the claims, my client Hunter Mountain Investment Trust was the 99.5 percent interest holder or stakeholder in Highland Capital.

THE COURT: Right.

MR. McENTIRE: We also believe a knowing participation of breach of fiduciary duties under another name, aiding and abetting. But Texas recognizes it as knowing participation. Unjust enrichment, constructive trust, and tortious interference.

THE COURT: Okay.

MR. McENTIRE: Farallon and Stonehill are effectively hedge funds. And so is Highland Capital.

They were created. They actually did create Muck and Jessup. Those are the two entities that actually are titled with the claims. They acquired it literally days before the transfers.

So the reason we're focusing our discovery effort on Farallon and Stonehill, we are confident that any meaningful discovery -- emails, letters, correspondence, document drafts, things of that nature -- probably predated the existence of Muck and Jessup.

THE COURT: Right.

MR. McENTIRE: That's why we're focusing our discovery effort on Farallon and on Stonehill.

But, needless to say, Farallon, Stonehill, Muck and Jessup, having all participated in this acquisition, they're all insiders for purposes of assuming fiduciary duties.

And as I said, outsiders become insiders under the relevant authority. And one key case is the Washington Mutual case --

THE COURT: Right.

MR. McENTIRE: -- which we cited in our materials.

I would also just let you know, this is not something in total isolation. We understand we're not privy to the details. But we understand the Texas State Security Board also has an open investigation that has not been closed.

THE COURT: Okay.

MR. McENTIRE: And that's by way of background.

202 allows presuit discovery for a couple of reasons. And I won't belabor the point. One is to investigate potential claims.

There is no issue of notice or service here. There's no issue of personal jurisdiction. Farallon and Stonehill made a general appearance.

THE COURT: Right.

MR. McENTIRE: There's no issue concerning subject-matter jurisdiction. They actually concede that the court has jurisdiction on page 8 of their response.

The court's inquiry today is a limited judicial inquiry. There are really two avenues which I'll explain, but, first, I think the salient avenue is does the benefit of the discovery outweigh the burden.

And I think as I will hopefully demonstrate, I think that we clearly do.

THE COURT: Okay.

MR. McENTIRE: The merits of a potential claim, the case law is clear, is not before the court.

Much of their brief and their response is devoted to trying to attack the fact that there is no duty or things such as standing.

But the reality of it is we are not required to actually prove up a cause of action to this court although I think I can. In this process, I probably certainly can identify a potential cause of action. That's not our obligation to carry our burden.

There was an issue about timely submission of evidence they raised in a footnote, but I think that was resolved before the court took the bench.

THE COURT: Okay.

MR. McENTIRE: I've handed you a binder with Mr. Mark Patrick's affidavit and Jim Dondero's affidavit.

As I understand it, correct me if I'm wrong, you're not objecting to the submission of that evidence. Is that correct?

MR. SCHULTE: Almost.

THE COURT: Okay.

MR. SCHULTE: Your Honor, I do object to the two declarations that were submitted I believe five days before the hearing.

THE COURT: Okay.

MR. SCHULTE: As Your Honor is aware, Rule 202 contemplates 15 days' notice. The petition itself was required to be verified. It was verified and then new substance was added by way of these

declarations five days before the hearing.

And so we would argue that that has the effect of amending or supplementing the petition within that 15-day notice period.

All that said, I don't have any issue with the majority of the documents attached to Mr. Patrick's declaration.

THE COURT: Okay.

MR. SCHULTE: So I do object on the grounds of hearsay and timeliness to the declarations.

On Exhibit H to Mr. Patrick's declaration, I object to that document on the grounds of hearsay.

THE COURT: Okay. Which one?

MR. SCHULTE: Exhibit H to Mr. Patrick's declaration on the basis of hearsay.

All the other documents are I believe file-stamped copies of the pleadings filed in the bankruptcy, which I don't have any issue with that.

And then the exhibit to Mr. Dondero's declaration is an email that's objected to on the basis of hearsay. And it hasn't been proven up as a business record or any other way that will get past hearsay.

THE COURT: Okay.

MR. SCHULTE: So those are the limited objections I have to what's in that filing, Your Honor.

MR. McENTIRE: And I will address those objections. And we're prepared to put Mr. Patrick on the stand, if necessary.

I would point out that the case law is very clear that there's no 15-day rule here.

THE COURT: Okay.

MR. McENTIRE: We have asked the court to take judicial notice of all of our evidence in our petition itself.

The 15 days is the amount of time you have to give notice before the hearing --

THE COURT: Right.

MR. McENTIRE: -- but the case law is clear that I can put live testimony on, I can put affidavit testimony on.

THE COURT: This is an evidentiary hearing.

MR. McENTIRE: That's correct.

And that includes affidavits. And affidavits are routinely accepted in these types of proceedings and I have the case law I can cite to the court.

MR. SCHULTE: Your Honor, in contrast, I think if this were, for example, an injunction hearing, I don't believe that an affidavit would be

the substitute in an injunction hearing for live testimony.

And so if this is an evidentiary standard, I don't think that these affidavits should come in for the truth of the matter asserted. The witnesses should testify to the facts that they want to prove up.

MR. McENTIRE: I could give the court a cite.

THE COURT: Okay.

MR. McENTIRE: It's Glassdoor, Inc. versus Andra Group.

THE COURT: What was the name of it?

MR. McENTIRE: Glassdoor, Inc. versus Andra Group. It is 560 S.W.3d 281. It specifically addresses the use and relies upon affidavits in the record for purposes of a Rule 202.

So, with that said, I will address it in more detail in a moment. The evidentiary rule, to be clear, is it has to be supported by evidence. Seven days was the date that I picked because it was well in advance. It's the standard rule that's used for discovery issues. It's seven days before a hearing.

So I picked it. He's had it for seven days. He's never filed any written objections to my evidence. None.

And under the Local Rules I would think he would have objected within three business days. He did not do that, and so I'm a little surprised by the objection.

THE COURT: Okay.

MR. McENTIRE: All right. We do have copies of all the certified records, but I gave you the agenda on that. And we talked about the two declarations.

So the limited judicial inquiry is the only issue before the district court. It's whether or not to allow the discovery, not the merits of any claim yea or nay.

THE COURT: Right.

MR. McENTIRE: There's no need for us to even plead a cause of action, although we did.

Mr. Schulte goes to great length in his response to take issue with our cause of action, suggesting we had none. We do. But we're not even under an obligation to plead it; nevertheless, we did.

This is actually a two-part test. The first part was allowing the petitioner -- in this case, Hunter Mountain -- to take the requested deposition may prevent a failure or delay of justice, or the likely benefit outweighs the burden. Both apply here.

These trades took place in April of 2021, three of the four. The fourth I think took place in the summer.

And our goal is to obtain the discovery in a timely manner so we do not have any argument, valid or invalid, that there's a limitations issue.

THE COURT: Okay.

MR. McENTIRE: And so any further delay, such as transferring this to another court or back to the bankruptcy court, which it does not have jurisdiction, would cause tremendous delay.

THE COURT: Okay.

MR. McENTIRE: Hunter Mountain, a little bit of background. It is an investment trust. When it has money, it participates directly in funding the Dallas Foundation --

THE COURT: Okay.

MR. McENTIRE: -- which is a very I think well-respected and recognized charitable foundation.

Certain individuals and pastors from various churches are actually here because Hunter Mountain indirectly, but ultimately, provides a significant source of funding for their outreach programs and their charitable functions and programs.

THE COURT: Okay.

MR. McENTIRE: The empirical evidence in the documents that are before the court, regardless of what's in the affidavits, just screams that there was no due diligence here.

Now, we know in Mr. Dondero's affidavit he had a conversation with representatives of Farallon, which would be admissions against interest. They're admissions basically against interest that they effectively did no due diligence.

Yet we believe, upon information and belief, that they invested over $167 million. There are two sets of claims. There's a Class 8 claim and a Class 9 creditor claim.

THE COURT: Right.

MR. McENTIRE: Their expectations at the time that they acquired these claims was that Class 9 would get zero recovery.

So who spends $167 million when their expectation on return of investment is zero? Who spends $167 million even in Class 8 when the expected return is just 71 percent and is actually declining? And I think it's actually admitted in the affidavit that Mr. Dondero provided.

So without being hyperbolic or exaggerating, the data that was available publicly

was extremely pessimistic and doubtful that there would be any recovery.

We have direct information -- admissions, frankly -- that Farallon had access to non-public material, non-public information. And that was the fact that MGM Studios was up for sale.

Mr. Dondero was on the board of directors.

THE COURT: Okay.

MR. McENTIRE: He communicated, because of his responsibilities, this information to Mr. Seery.

And Mr. Seery, apparently, would have been restricted. He couldn't use it or distribute it.

THE COURT: Right.

And I don't know a lot about securities law but, yeah, that would be insider information. Right?

MR. McENTIRE: Yes.

And it appears from the affidavit that Mr. Dondero submitted that Farallon was aware of the information before the sale closed, before they closed their acquisitions.

And Mr. Dondero asked the question are you willing to even sell your claims and they said no. Or even 30 percent more and they said no. We're told that they're going to be very valuable.

Well, no one else had this information, so we have a problem here that we have two outsiders who are now insiders. They've acquired potentially very valuable claims with the sale of MGM.

They also acquired information concerning the portfolios of these companies over which Highland Capital managed and had ownership interests, so we're talking about having access to information that any other bidder or suitor would not have.

So this is how they were divided up. $270 million in Class 8. Each of the creditors right here are the unsecured creditors who sold. They were the sellers.

THE COURT: Right.

MR. McENTIRE: And these are the claims in the Class 9.

So you have $95 million in Class 9 claims that are being acquired when the expectation is that there will be zero return on investment. You have $270 million where the expectation was extremely low and pessimistic.

And here are the documents. And Mr. Schulte has not objected to these. This particular document is Exhibit 1-J to Mr. Patrick's affidavit.

THE COURT: Okay.

MR. McENTIRE: This came out of the plan. So when the bankruptcy plan was confirmed in February 2021, Farallon, Stonehill, Muck and Jessup, the latter two weren't even in existence.

THE COURT: Right.

MR. McENTIRE: Farallon and Stonehill were complete strangers to the bankruptcy proceedings, yet they come in in the wake of this information and they invest tens if not hundreds of millions of dollars with no apparent due diligence.

The situation gets even worse. And this is Exhibit 1-I to Mr. Patrick's affidavit. And as I understand, Mr. Schulte does not object to these documents. It's declining. And then, suddenly, they're in the money.

And at the end of the third quarter last year, they're already making 255 million bucks. And that's a far cry from the original investment. This is for both Class 8 and Class 9.

So Mr. Patrick states the purpose of this is to seek cancellation. Another word for it in bankruptcy-ese would be disallowance. But the cancellation of these claims and disgorgement.

If these are ill-gotten gains, regardless of the rubric or the monicker that you place on it --

breach of fiduciary duty as insiders, aiding and abetting or knowing participation in fiduciary duties, because a lot of people have fiduciary duties on this stuff. No matter what you call it, disgorgement is a remedy.

Wrongdoers should not be entitled to profit from their wrongdoing.

Mr. Schulte makes a big point that we can't prove damages. Well, first of all, I don't agree with the conclusion.

THE COURT: Right.

MR. McENTIRE: But even if he was right, disgorgement is a proxy for damages. And we have an entitlement and a right to explore how much they have actually received, when did they receive it.

The weathervane is tilting in one direction here, Judge.

Clearly, there is a creditor trust agreement. That's a very important document. It spells out rights and obligations. It's part of the plan.

There's a waterfall. And on page 27 of the creditor trust agreement a waterfall is exactly what it suggests. You have one bucket gets full, you go to the next bucket all the way down.

THE COURT: Class 1 or tier 1.

I can't remember the category. I don't do bankruptcy. But, yeah, those get paid, then the next level, then the next level.

So by the time you get down to level 10, which I think is what Hunter Mountain was, theoretically, there wouldn't have been anything left.

MR. McENTIRE: That's correct.

But here, if Class 8 and Class 9 -- and I will say the big elephant in those two classes are Farallon and Stonehill or their special purpose entity bucket Jessup -- they have 95 percent of that category.

And suddenly they're not entitled to keep what they've got, and suddenly there's a disallowance, or suddenly a cancellation regardless of the theory or the cause of action -- and we have several avenues here -- a lot of money is going to flow into the coffers of Hunter Mountain, and a lot of money will flow into the Dallas Foundation, and a lot of money will flow into the coffers of charities.

So there is standing here. Standing requires the existence of a duty. We think we have duties.

And a concrete injury. And if these claims were manipulated, we have a concrete injury and our proxy is disgorgement.

We've been deprived of an opportunity to share in category 10 or as we just described it in the waterfall under the creditor trust agreement.

THE COURT: Right.

MR. McENTIRE: Their burden is to show that this discovery has no benefit. No. That's my burden to show benefit. But their burden would be to show that it's overly burdensome to them.

And I find that difficult to understand since part of their response is devoted to the fact that, hey, judge in Dallas County, you should turn this over to Judge Jernigan in the bankruptcy court.

THE COURT: Because it's bankruptcy, you know.

MR. McENTIRE: In bankruptcy, that's their invitation.

THE COURT: Right.

MR. McENTIRE: Well, if they're inviting us to go do the discovery in bankruptcy court, it doesn't seem to be that burdensome because it's going to be the same discovery.

And, by the way, Judge Jernigan actually does not have jurisdiction over these proceedings. The other earlier proceeding, as you know, they attempted to remove it to her court and it was remanded.

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

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APPELLEE RECORD

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

I INDEX

APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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Clearly, she does not have jurisdiction.

The problem with bankruptcy involved, in addition, if I wanted to do Rule 2004 discovery like they're suggesting, that's their invitation. They would like you to push us down the road.

Well, we can't afford to push it down the road. Because if they push it down the road, I've got to go file a motion with Judge Jernigan, get leave to issue subpoenas.

THE COURT: Right.

MR. McENTIRE: They have 14 days to file a motion to quash, then I have to file another motion. And it's 21 days before their response is even filed. And there's another 14 or 15 days before the reply is filed. We're looking at 60, 70 days. And that's one of the reasons we selected this procedure.

And, by the way, you hear the phrase forum shopping a lot. Well, without engaging in the negative inference that that term suggests, a plaintiff, a petitioner, has the right to select its venue for a variety of reasons.

Our venue is the state district courts of Texas because it has an accelerated procedure. And that's why we're here.

THE COURT: Right.

MR. McENTIRE: I've identified the potential causes of action. Entities or people that breach fiduciary duties and receive ill-gotten gains a constructive trust may be imposed, disgorgement. Then we do run into bankruptcy concepts.

But it's important to know that some of these are not bankruptcy. Some of these are common law.

I suggest to the court, I don't have to go get Judge Jernigan's permission to sue Farallon or Stonehill for breach of fiduciary duties. I don't have to get her permission to sue for knowing participation.

If I'm actually looking for equitable disallowance, probably, maybe. But I can do the discovery here and then make that decision whether I need to go back to bankruptcy court.

I'm not foolish. I'm not going to run afoul of Judge Jernigan's orders. If I have to go back to Judge Jernigan to get permission, I will do it.

THE COURT: Right. Because only an idiot runs afoul of the bankruptcy court.

MR. McENTIRE: Hopefully, I'm not that.

So I clearly understand what both my ethical and lawyer obligations are. And I'm not going to run afoul of any court orders.

But some of these remedies don't require

an overview by Judge Jernigan or the bankruptcy court.

THE COURT: Okay.

MR. McENTIRE: They have a duty not to commit fraud, whether it's commit fraud against us or commit fraud against the estate.

They have a duty not to interfere with the expectancies that we have as a B/C beneficiary. That's a code name for a former Class 10 creditor.

They have a duty not to trade on inside information, and that's the Washington Mutual case.

And I've just already mentioned that because they were outsiders, they're insiders now.

These are their arguments. Our evidence is timely. It's not untimely. It's not speculative. It's not speculative because the events have already taken place. I'm not talking about something hypothetical.

THE COURT: Right.

MR. McENTIRE: My remedy flows from that.

So we're not projecting that I might have a claim later on. I have a claim today. If I have a claim today, I have it today. I have it and I want to confirm it by this discovery. Because their wrongdoing has already taken place, it's not hypothetical, it's not futuristic, it's already occurred.

When they say they have no duty to us, they're just wrong. They have duties not to breach fiduciary duties. We have direct standing I believe to bring a claim in that regard.

We have a right to bring direct standing under the Washington Mutual case, which I'll discuss.

And we also have a right to bring a derivative action.

THE COURT: Right.

MR. McENTIRE: And I notice that they made a comment about that in their response. But I can sue individually.

And I can also bring an action in the alternative as a derivative action for the estate. And these are all valid claims for the estate.

THE COURT: Okay.

MR. McENTIRE: Transfer. This is not a related case because it's not the litigation.

So if you just go to the very first instance and you look at the Local Rule, it talks about litigation and causes of action.

THE COURT: Right.

MR. McENTIRE: We don't have a cause of action. We're not asserting one in this petition. So this is not a related case that falls within the

four corners of the Local Rule.

THE COURT: Well, I guess the thing is it's still a related case. Like if you file a 202 and then you file a lawsuit, that would be considered related.

I looked at it and you're right. Technically, it's different parties. I'll just say it's a grey zone at best.

MR. McENTIRE: That's correct.

This is not a lawsuit in terms of causes of action. It might be a related case if Mr. Dondero had come in and filed a lawsuit. That would be a related case. Mr. Dondero is not involved in this process, other than as a fact witness.

These are all the evidentiary issues that perhaps he's raised. Live testimony, affidavit testimony is admissible.

The court considered numerous affidavits filed with the court. And that's as recently as 2017. These are all good cases, good law.

Equitable disallowance. It's kind of a fuzzy image. This is a bankruptcy court case, but this is simply to underscore the fact that in addition to my common law remedies there is a very substantial remedy in bankruptcy court.

It's not one I necessarily have to pursue, but if I wanted to I could. But what it does do is it helps to find some duties.

And here, the court has the right to disallow a claim on equitable grounds in extreme instances, perhaps very rare, where it is necessary as a remedy. And they did it in this case.

THE COURT: Okay.

MR. McENTIRE: This is simply an analogy to securities fraud and the 10b-5 statute.

Insiders of a corporation are not limited to officers and directors, but may include temporary insiders who have entered into a special confidential relationship in the conduct of the business of the enterprise and are given access to information solely for corporate purposes.

Well, what about the MGM stock? The court finds that the Equity Committee -- so here's the equity -- has stated a colorable claim. We were 99.5 percent equity.

The Equity Committee has stated a colorable claim that the settlement noteholders became temporary insiders because they acquired information that was not of public knowledge in connection with their acquisition.

And allowed them to participate in negotiations with JPMC -- JPMorgan Chase -- for the shared goal of reaching a settlement.

So these were outsiders that suddenly became temporary insiders because of access to inside information.

This is not a new concept. It comes from the United States Supreme Court. Fiduciaries cannot utilize inside information.

THE COURT: Right.

MR. McENTIRE: And we believe we have enough before the court to support and justify a further investigation that this may have occurred.

THE COURT: Okay.

MR. McENTIRE: Now, not a related case. The Jim Dondero case is actually closed.

THE COURT: Right.

MR. McENTIRE: And I'll be frank with you. In all candor, I never thought this was a possible related case.

THE COURT: I mean, we're talking about the same events, but there are differences, I agree.

MR. McENTIRE: We're talking about one similar event dealing with Farallon. Other events are different.

THE COURT: Okay.

MR. McENTIRE: So we have different dates.

THE COURT: Right.

MR. McENTIRE: Different parties on the petitioner's side, different law firms.

The only common party is Farallon. Alvarez & Marsal are not parties to this but Stonehill is. Stonehill was not a party to the prior proceedings.

And the standing is manifest. With no criticism of Mr. Dondero's lawyer, I searched in his argument where he was articulating standing.

And without going further, I will tell you I think our standing is clear. We're in the money.

THE COURT: Okay.

MR. McENTIRE: We are in the money if there's a disgorgement or a disallowance.

THE COURT: Okay.

MR. McENTIRE: We have all types of claims, including insider trading and a creation of fiduciary duties.

Our remedies, as far as I can tell, he didn't identify any. We have several. Disgorgement, disallowance, subordination, a variety. And damages.

So we suggest strongly that it is not a related case.

And I must tell you, the reference to say send this to bankruptcy court or defer to the bankruptcy court or send us over to Judge Purdy, with all due respect to opposing counsel, it's really just a delay mechanism.

And what they're seeking to do through their invective, their criticisms, the references to these other courts, is seeking an opportunity to push us down the road and put us in a bad position potentially and a not enviable position in connection with statute of limitations.

Your Honor, we would offer the binder of exhibits that we submitted on February 15, 2022, including the affidavits and all the attached exhibits.

I would ask the court to take judicial notice of all the exhibits that we referred to in our petition, which I think is appropriate since we were specifying with particularity what we were requesting the court to take judicial notice of. And that's the large index, that's the list.

THE COURT: Obviously, I can take judicial notice of any kind of court pleadings, whether they're state or federal.

MR. McENTIRE: That's correct.

THE COURT: That's clear.

MR. McENTIRE: We would offer both affidavits and all the attachments into evidence at this time.

THE COURT: Okay. Do you have exhibit numbers for them?

MR. McENTIRE: Yes. It's Exhibit 1 with attachments. 1-A, 1-B, 1-C, 1-D, 1-E, 1-F and then Exhibit 1-G, Exhibit 1-H, Exhibit 1-J, Exhibit 1-K.

Everything in the binder, Your Honor. It's Exhibit 1 and Exhibit 2 with the attachments.

THE COURT: Okay.

MR. McENTIRE: I believe they're all identified. I can put a sticker on them, if you'd like.

THE COURT: Yeah. To admit them, it will need a sticker.

So I'm going to hold off on admitting them for just a minute because I do want to hear his objections and then we can go back to it. So just make sure we do that.

I'm not trying to not admit them, but I do want to let him have his objections.

Okay. Anything else, Counsel?

MR. McENTIRE: That's all I have right now, Judge.

THE COURT: Okay. Counsel?

MR. SCHULTE: Should I start with those exhibits, Your Honor?

THE COURT: Why don't you do that. That's probably the easiest way.

MR. SCHULTE: In light of the authorities that Mr. McEntire shared about the affidavits, I'll withdraw the objections to the affidavits or the declarations.

THE COURT: Okay.

MR. SCHULTE: I'm taking Mr. McEntire's word that those cases say what he says they say.

THE COURT: I'll tell you because 202 is not a lawsuit, you don't necessarily have a right to cross-examine, et cetera. So, yeah, affidavits are frequently used on 202s.

MR. SCHULTE: And that's fine, Your Honor. I'll take Mr. McEntire's word what those cases say.

But I will maintain the objection to Exhibit H -- it's the declaration of Mr. Patrick -- on the grounds of hearsay. That is not a court record or a file-stamped pleading from federal or state court. It's just a letter. So that's hearsay. And it hasn't been properly authenticated.

The other issue is the exhibit to Mr. Dondero's declaration. That's just an email

from Mr. Dondero, so I object on the grounds of hearsay.

THE COURT: Mr. McEntire, what's your response specifically to Exhibit H as attached to the Patrick declaration and then the attachment to the Dondero declaration?

MR. McENTIRE: Exhibit H to Mr. Patrick's affidavit would be hearsay, but there's an exception that it's not controversial.

THE COURT: Okay.

MR. McENTIRE: And there's no indication that there's any challenge of the reliability of the document.

THE COURT: What is the exhibit? I'm trying to pull it up. Sorry.

MR. McENTIRE: It's Exhibit 1-H. It is a letter from Alvarez & Marsal simply indicating what they paid for the claim.

THE COURT: Is it the July 6th, 2021, letter?

MR. McENTIRE: Yes, Your Honor.

THE COURT: I've got it.

MR. McENTIRE: And the exhibit to Mr. Dondero's is not being offered for the truth of the matter asserted, just the state of mind of Farallon.

THE COURT: Okay.

MR. McENTIRE: He has proved it up that it's authentic. It's a true and accurate copy.

And it goes to the state of mind of Farallon and it goes to the state of mind of Mr. Seery as well who are basically individuals who are trading on inside information.

And Mr. Seery would not have known about the MGM sale but for that email. And Farallon and Stonehill would not know about MGM but for Mr. Seery.

THE COURT: Okay. So the response to hearsay is that it goes to state of mind.

MR. McENTIRE: It goes to state of mind.

THE COURT: Okay, Counsel. How do you respond to that?

MR. SCHULTE: I'll start with the last one, Your Honor. I think that's the definition of hearsay, is that you're purporting to establish the state of mind of the parties who are not before the court.

It's been emphasized that Mr. Dondero has no relation to HMIT. And none of the recipients of the email are parties to this proceeding.

This purports to establish the state of mind of Mr. Seery, who is not before the court, and the state of mind of Farallon, just based on the say so of

Mr. Dondero in this email. That's hearsay.

And as for the first letter, this is a letter on the letterhead of A&M which, by the way, is one of the parties in the Dondero Rule 202 petition.

And it's not on the letterhead of any of the parties to this case so the letter isn't properly authenticated.

And I'm not aware of the not controversial exception to hearsay.

THE COURT: Well, there is a thing that talks about if you're admitting something that's just not controverted. Right? It's everybody agrees "X" happened. We're just admitting evidence to have that. So what this basically is is just showing the claim of the funds.

And I guess my question is what's the objection. Is there an objection to the substance of it?

MR. SCHULTE: I don't think there's any dispute that Farallon and Stonehill, through their respective special purpose entities, purchased the claims that are at issue here.

And if that's the sole purpose of admitting this letter into evidence, I don't think that's a matter that's genuinely in dispute.

THE COURT: Okay.

MR. SCHULTE: So if that's the only issue as raised by this letter, I don't know that there's a dispute there.

THE COURT: Right. Well, that's the whole thing.

MR. McENTIRE: I think we're almost solving the issue on the fact of how much they paid, $75 million.

THE COURT: Okay. So I will sustain the objection to the email to Mr. Dondero's declaration, Exhibit P 2-1.

I am going to overrule the objection to -- I don't know what the letter is of the attachment.

MR. McENTIRE: It's Exhibit P 1-H to Mr. Patrick's affidavit.

THE COURT: Correct. Sorry.

Okay, Counsel. If you'll proceed.

MR. SCHULTE: May I approach the bench, Your Honor? I have a binder of exhibits also.

THE COURT: Yes, you may.

MR. SCHULTE: These have all been marked with exhibit stickers already. There are tabs for each of the exhibits. They're marked R1 through 17, I believe. And "R," of course, stands for Respondents.

THE COURT: I take the shortcut of calling everybody "Plaintiff" and "Defendant" just because I'm so used to using that language in court.

But I do agree. It's Petitioner and Respondent. You're not technically a defendant.

Okay. So, first of all, I'm going to admit Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2, with the sole exception of the email to Mr. Dondero's declaration that I sustained.

And then are there objections to the respondent's exhibits?

MR. McENTIRE: Very few.

I object to Exhibit No. 1 and Exhibit No. 2 as irrelevant.

THE COURT: What's the objection to 1?

MR. McENTIRE: They're offering the order from Judge Purdy.

THE COURT: Okay. I can take judicial notice of that. I mean, it's a court record from Dallas County. So I don't think that that's particularly relevant.

To be bluntly honest, I looked at it last night. Right? Because of the issue that there's a related case, I pulled that file too and looked at everything.

So I can take judicial notice of that. Whether it's relevant or not, I can look at it. And, obviously, if it's not relevant, I'll disregard it.

MR. McENTIRE: Fair enough.

THE COURT: I'll overrule that objection. What's next?

MR. McENTIRE: The only other objections are Exhibit 12 and 13. I just don't know what they are or for what purpose they would be offered.

THE COURT: Okay. So 12 is a notice of appearance and request for service in the bankruptcy court on behalf of Hunter Mountain Trust.

So what's the issue, Counsel?

MR. SCHULTE: Your Honor, these are notices of appearance filed by Hunter Mountain in the bankruptcy court.

And the purpose of these notices is simply to show -- and maybe this is not genuinely in dispute -- that Hunter Mountain, through its counsel, would have received notice of all the activity that was going on in the bankruptcy court.

THE COURT: It's the same issue I've got with everything that Plaintiff submitted. It's a bankruptcy pleading. I can take notice of it. If it's irrelevant, I'll disregard it.

So I'll overrule that objection.

And then what's 13?

MR. McENTIRE: The same objection.

THE COURT: I'll overrule it because again, I can take judicial notice of those.

MR. McENTIRE: No other objections, Your Honor.

THE COURT: So Respondent's Exhibits 1 through 17 are so admitted.

MR. SCHULTE: May I proceed, Your Honor?

THE COURT: Yes, you may.

MR. SCHULTE: HMIT -- Hunter Mountain -- races into this court seeking extensive and burdensome presuit discovery about claims trading that took place in the Highland bankruptcy two years ago.

Mr. McEntire has talked about the harm that would result from delay if a different court were to consider this request for presuit discovery. That is a function of waiting two years after the subject claims transfers to seek relief in this court.

The exact same allegations of claims trading and misconduct by Jim Seery -- those allegations are not on the slides that you looked at. But those allegations are common in Mr. Dondero's Rule 202 petition and this petition.

THE COURT: Right. They're common.

I know you make the allegation that Dondero is related to Hunter Mountain, but I guess I don't have any evidence of that.

Or do you have evidence of that? Because otherwise, while it involves some of the same issues in the sense of the underlying facts, technically Farallon is the common respondent.

But there's a different respondent and there's a different petitioner in that case.

MR. SCHULTE: Yes. That's true, Your Honor. And we've said that on information and belief.

THE COURT: Okay.

MR. SCHULTE: That's our suspicion.

We believe that to be the case, but I don't have evidence of it. I didn't hear a denial of it, but, nevertheless, that is where things stand.

But what's important about the case is even if this court and Judge Purdy determined that the cases are not related, what is important is that the same allegations related to this claims trading and the same allegations of inside information being shared by Mr. Seery, those were front and center in the July 2021 petition filed by Mr. Dondero.

Even if there are other dissimilarities between the cases, those are issues that are common.

THE COURT: Okay.

MR. SCHULTE: And it's important to note that as HMIT has filed this petition, it has glossed over issues of its own standing and the assertion of viable claims that will justify this discovery.

Now, I know that HMIT has cited these cases that say, Your Honor, I don't have to state a really specific claim right now.

But you do have to articulate some ground for relief, some theory, that would justify the expense and the burden that you're trying to put the respondents to in responding to all this discovery.

And this isn't simple discovery. We're talking about deposition topics with I believe 29 topics each and 13 sets of really broad discovery requests with a bunch of subcategories.

THE COURT: Right.

MR. SCHULTE: We're not talking about some minimal burden here. This is an intrusion into entities that are not parties to a lawsuit, but rather this investigation.

And HMIT has ignored that there is a specific mechanism in the bankruptcy court that's

available to it under federal bankruptcy Rule 2004 and that the substance of HMIT's petition, which is claims trading and bankruptcy, falls squarely within the expertise of Judge Jernigan, the presiding bankruptcy judge.

THE COURT: And I agree. You could do this in federal court. But there's a lot of things that can be done in state court or done in federal court.

They get to choose the method of getting the information, so why should I say, theoretically, yes, this is a good thing, I should do it, but, hey, send it to bankruptcy. Why?

MR. SCHULTE: The bankruptcy judge has actually answered that question directly.

THE COURT: Okay.

MR. SCHULTE: It is true, as HMIT has said, the federal bankruptcy court doesn't have jurisdiction over a Rule 202 proceeding. That's not in dispute.

THE COURT: Right.

MR. SCHULTE: We tried to remove the last case to federal bankruptcy court and it was a state claim.

But what the bankruptcy judge pointed out

when she remanded the case back to Judge Purdy, who ended up dismissing Dondero's petition, is it pointed out, one, there's this mechanism in bankruptcy where they can do the exact same thing, Rule 2004.

And the bankruptcy judge pointed out that it is in the best position to consider Hunter Mountain's request.

It pointed out when it remanded the case that it had grave misgivings about doing so. It confirmed that it is in the best position to consider this presuit discovery.

THE COURT: Okay. This is part of one of the exhibits?

MR. SCHULTE: Yes, Your Honor. This is in one of the opinions that I included in the binder, a courtesy copy of one of those opinions.

THE COURT: Oh, at the back?

MR. SCHULTE: Yes, Your Honor.

THE COURT: Okay.

MR. SCHULTE: It's 2022 Bankruptcy Lexis 5.

THE COURT: Okay. I got it.

And real quick, for the record, it's Dondero versus Alvarez & Marsal. It's 2022 Bankruptcy Lexis 5.

MR. SCHULTE: Right.

And in particular, Your Honor, I'm looking at pages 31 to 32 of that order.

THE COURT: Okay.

MR. SCHULTE: What the judge is pointing out here is it has grave misgivings about remanding the case because it knows a thing or two about the Highland bankruptcy, having presided over the case and all the related litigation for over what's now three years.

And it's familiar with the legal and factual issues. It's familiar with the parties. It's familiar with claims trading in a bankruptcy case, which was the very crux of the Dondero petition. It's also the crux of this petition by Hunter Mountain.

And it observed, the bankruptcy court did, that any case that could be fashioned from the investigation would end up in bankruptcy court anyway because it would be related to the Highland bankruptcy.

So you ask a really good question, Your Honor. Why should I ship it off to the bankruptcy court. The answer is Judge Jernigan is in a position to efficiently and practically deal with this request because she deals with it all the time and she is intimately familiar with the legal and factual issues and with claims trading.

It's not like Hunter Mountain gets poured out if it goes to bankruptcy court. It has a mechanism to seek the exact same discovery from Judge Jernigan who is very familiar with these very particular issues.

Now, Hunter Mountain says, well, bankruptcy court is too time-consuming and cumbersome. It's going to take 60 days to even get this before the bankruptcy court.

Well, we're talking about the fact that they've waited two years to file this proceeding related to these claims transfers that took place in 2021.

So, again, what HMIT is asking this court to do is inefficient and is impractical. This court would need to devote a lot of resources to understand what the proper scope of any discovery should be, whether the claims are cognizable.

And that's just a tall order, Your Honor. The request is more appropriately dealt with by the bankruptcy judge, according to a proper bankruptcy filing.

It's undisputed that while the bankruptcy court doesn't have jurisdiction over a 202 petition, there's no question that it has jurisdiction over a Rule 2004 request for discovery, which is the counterpart for this type of discovery in bankruptcy court.

THE COURT: Right.

MR. SCHULTE: The real issue, Your Honor, and this is the part that Hunter Mountain is dancing around, is that Hunter Mountain doesn't want to be in front of Judge Jernigan.

Judge Jernigan held Mark Patrick -- that is HMIT's principal who verified this petition. She held him along with Dondero and Dondero's counsel and others in civil contempt and sanctioned them nearly $240,000 for trying to join Seery to a lawsuit in violation of Judge Jernigan's gatekeeping orders.

HMIT is trying to dodge the bankruptcy court and its scrutiny of what HMIT is doing as this petition also targets Seery and the inside information that he purportedly gave to Farallon and Stonehill.

This is forum shopping, plain and simple. And the court should dismiss the petition so that HMIT can seek this discovery in bankruptcy court.

Now, I don't want to spend a lot of time on the related case, but I will emphasize just what I've mentioned, which is while some of the parties may be different, we're still talking about the same claims trading activity that took place in 2021 and the same allegations of insider dealing by Seery.

And Judge Purdy, on remand, dismissed

that petition where some of the same arguments were made about judicial efficiency and that the case should be filed in bankruptcy court.

And it bears noting, by the way, that after Judge Purdy dismissed Dondero's Rule 202 petition, where we had argued that this ought to be in the bankruptcy court, Dondero didn't file in the bankruptcy court, which sort of makes the point that they didn't want to be in front of Judge Jernigan on this either.

Okay. Now let's turn to the merits, Your Honor. While Mr. McEntire has gone to great lengths to say we don't have to state claims, he stated five or six on that PowerPoint presentation of claims that he envisions.

But what made it all really crystal clear is in that notice of supplemental evidence, and that includes the declaration of Mr. Patrick, there in paragraphs 15 and 16 it's made clear what Hunter Mountain really wants.

THE COURT: Okay.

MR. SCHULTE: What the goal of this discovery is is to invalidate the claims that Farallon and Stonehill's entities purchased.

So let's unpack what it is they purchased.

THE COURT: Okay.

MR. SCHULTE: These are claims that were not ever held by Hunter Mountain. These are claims that were held by Redeemer, Acis, UBS, and HarbourVest.

THE COURT: Right. They were the Class 8 and 9. Right?

MR. SCHULTE: I believe that's correct.

THE COURT: Okay.

MR. SCHULTE: Those claims were always superior to whatever it was that Hunter Mountain held.

So Redeemer, Acis, UBS, and HarbourVest held those claims. The parties in the bankruptcy had the opportunity to file objections to those claims. And they did.

And Seery, on behalf of the debtor, negotiated with Redeemer, Acis, UBS, and HarbourVest and reached settlements that resolved the priority and amounts of those claims.

THE COURT: Right.

MR. SCHULTE: And then filed what's referred to -- and I'm sure Your Honor knows this -- as a Rule 9019 motion to approve those settlements in the bankruptcy court.

THE COURT: Actually, I don't. I've never done bankruptcy but I read it. I know the general process and I did read it.

MR. SCHULTE: All right.

THE COURT: Just FYI, I've never done bankruptcy law. They've got their own rules.

MR. SCHULTE: Well, the parties in the bankruptcy had the opportunity to object to those settlements and some did so.

And after evidentiary hearings, the bankruptcy court granted those motions and allowed and approved those claims.

That is really important, Your Honor.

THE COURT: Okay.

MR. SCHULTE: That's Exhibits 14 through 17 in the binder that I handed you.

And these are the same exhibits that are referenced in Hunter Mountain's petition. And it bears noting that the U.S. District Court affirmed those orders after appeals were taken.

But the bankruptcy court's approval of the very same claims that Hunter Mountain now seeks to investigate and invalidate is entitled to res judicata.

HMIT can't now second-guess the bankruptcy court's orders approving those very same claims. That's the effect of the investigation that Hunter Mountain seeks, the invalidation of claims that are already bankruptcy court approved.

And it bears noting that each of those four orders, Exhibits 14 through 17, provides the following: quote, "The court" -- the bankruptcy court -- "shall retain exclusive jurisdiction to hear and determine all matters arising from the implementation of this order."

This would include HMIT's stated goal of conducting discovery to try to invalidate these very claims.

This is yet another reason, Your Honor, to answer your question earlier of why this request for discovery should be posed to the bankruptcy court.

Judge Jernigan, I suspect, would have views on whether her own orders authorizing these claims should be overturned.

Okay. So HMIT -- Hunter Mountain -- alleges that after the bankruptcy court approved these claims, Seery disclosed inside information to Farallon and to Stonehill to encourage them to buy these claims from the original claimants. Again, UBS, Redeemer, Acis, and HarbourVest.

Farallon, through Muck, which is its special purpose entity, and Stonehill through Jessup, which is Stonehill's special purpose entity, acquired those transferred claims in 2021.

And there's no magic in bankruptcy court to claims transfers. It's a contractual matter between the transferors and the transferees. It's strictly between them.

THE COURT: Okay.

MR. SCHULTE: And there's no bankruptcy court approval that's even required.

The transferee, so in this case Muck and Jessup, had simply to file under federal bankruptcy Rule 3001(e) a notice saying these claims were transferred to us. And they did so.

Your Honor, that's Exhibit 6 through 11 in the binder that I handed to you.

THE COURT: Okay.

MR. SCHULTE: The filings evidencing those claims transfers were public. And Hunter Mountain received the claims transfer notices.

And that's the exhibits that we were talking about, Exhibits 12 through 13, where Hunter Mountain's lawyers had appeared in the case before those claims transfer notices were filed.

So not surprisingly, Hunter Mountain did not file any objections to those claims transfers. And that's not surprising because under Rule 3001, the only party that could object to the claims transfers were

the transferors themselves.

THE COURT: Right.

MR. SCHULTE: Essentially saying, hold on. We didn't transfer these claims. But of course there's no dispute that the transfers were made.

Here, HMIT was neither the transferor nor the transferee of the claims. It had no interest in these claims. It never did. It didn't before the claims transfers and it didn't after the claims transfers.

The claims originally belonged to Redeemer, Acis, UBS, and HarbourVest, and they were then transferred to Muck and Jessup, which are Farallon's and Stonehill's entities.

THE COURT: Right.

MR. SCHULTE: So why does that matter? That matters because these claims were approved by the bankruptcy court. The claims didn't change or become more valuable after they were transferred. The only difference is who is holding the claims.

So Hunter Mountain says, hold on. What we're alleging here is that the claims that Farallon and Stonehill purchased with the benefit of this purported inside information from Mr. Seery, they're secretly worth more than expected.

Those allegations, they're disputed, to be sure. But let's assume they're true. That situation has zero impact on Hunter Mountain.

THE COURT: Okay.

MR. SCHULTE: And that's because this is a matter that's strictly between the parties to the claims transfers. Again, Redeemer, Acis, UBS, and HarbourVest on the one hand and Farallon and Stonehill on the other.

And the way we know this is let's pretend that Muck and Jessup didn't buy these claims, Your Honor, and that the claims instead have remained with UBS, HarbourVest, Acis, and whatever the other one I'm forgetting. The claims wouldn't have been transferred, and they would have remained with those entities.

In that case, the original claimants would have held those claims for longer than they wanted. And if HMIT is right, then the claims would have ended up being worth more than even they expected.

So why does that matter? Well, that matters because if that is all true, Hunter Mountain would be in the exact same place today. Neither better nor worse off, it would be in the exact same place.

Either Farallon and Stonehill's entities are gaining more on these claims than they expected

or UBS, HarbourVest, Acis, and Redeemer, they are realizing more on these claims than they expected.

But Hunter Mountain never stood to be paid on these claims to which it was a stranger. These are claims in which Hunter Mountain never had any interest.

THE COURT: So presuming that Hunter Mountain had expressed interest in buying these claims and there was insider trading, you don't think that would be a tortious interference in a potential contract?

MR. SCHULTE: If there was insider trading of the type that Hunter Mountain alleges in this case, it would have no impact on the rights of Hunter Mountain.

If that's true, maybe there was a fraud on the bankruptcy court. The bankruptcy court would surely be interested in that. Maybe there was a fraud on the transferors. I mean, maybe UBS, Redeemer, Acis -- why do I always forget the third one? -- and HarbourVest.

THE COURT: Like I said, I had a chart last night of all the names. Obviously, I haven't been involved in this case up until now, and there's a lot of names.

MR. SCHULTE: Yes.

The transferors of the claims might say,

well, wait a minute. I wish I would have known this inside information. I'm the one that was really injured here.

Because if there was really meat on this bone, Your Honor, then the injured parties would be the transferors of the claims: Redeemer, Acis, UBS, and HarbourVest.

Because the crux of HMIT's petition is that those entities, the transferors, were duped into selling their claims for too little when the claims were secretly worth more.

Well, if that's true, you would expect that the transferors would be screaming up and down the hallway, saying we didn't get paid enough.

THE COURT: Right.

MR. SCHULTE: We are the injured parties here, we are the ones with damages, we want to unwind these claims transfers, or we want to be paid more on these claims transfers.

But the rights of those entities, the transferors, to complain about these allegations doesn't mean that Hunter Mountain can also stand up and say, well, I want to complain too. Because Hunter Mountain never stood to be paid on these claims.

The question is if somebody was duped,

if somebody was injured, if anybody it was the transferors, not Hunter Mountain. The transferors would be the only real parties in interest that would have been injured by what Hunter Mountain alleges.

But it's notable that none of those transferors has filed an objection to these transfers.

THE COURT: Right.

MR. SCHULTE: None of them has filed a Rule 202 proceeding. None of them has filed a Rule 2004 proceeding seeking discovery about inside information that Farallon and Stonehill allegedly had. It is Hunter Mountain who is an absolute stranger to these claims trading transactions.

And so HMIT is trying to inject itself into a transaction to which it was never a party and which it never had any interest.

The sellers were entitled to sell those claims to any buyer they wanted to on whatever terms they agreed to.

And if there was some information that they didn't have the benefit of that the buyers did, you would expect the transferors, if anyone at all, to be the ones complaining about it. But that's not what we have here.

THE COURT: Okay.

MR. SCHULTE: All right. Another note that Hunter Mountain glosses over is duty.

So all the claims that were listed on the PowerPoint all require that there must have been some kind of a duty owed by Farallon and Stonehill to Hunter Mountain. But there's no duty owed to a stranger to a claims trading transaction.

Yet again, if anybody were to have a duty owed to it, I guess it would be the transferors of the claims even though that was an arm's length transaction.

But it's not a stranger to the transaction and a stranger that has no interest in the claims that we're talking about here.

THE COURT: Okay.

MR. SCHULTE: Nor has Hunter Mountain identified any authority for a private cause of action belonging to Hunter Mountain related to these claims transfers.

Hunter Mountain doesn't have the right to assert claims on behalf of other parties. It only has the right to assert claims on behalf of itself when it has been personally aggrieved.

I heard Mr. McEntire say several times during his presentation that Hunter Mountain had a

99.5 percent equity interest in Highland Capital.

THE COURT: Right.

MR. SCHULTE: I think it's important to point out that that equity interest was completely extinguished by the confirmed plan in the bankruptcy case.

As Your Honor pointed out, we have the waterfall, and Classes 1 through 9 have to be paid in full. And you know what Classes 8 and 9 are? General unsecured claims and subordinated claims.

And the only way that Hunter Mountain is ever in the money, as Mr. McEntire was saying, with its Class 10 claim is if Seery, the claimant trustee, certifies that all claims in 1 through 9 are paid in full 100 percent with interest and all indemnity claims are satisfied.

There has been no such certification by Mr. Seery, and there may never be such a certification by Mr. Seery.

THE COURT: Okay.

MR. SCHULTE: So that is real important because the idea that Hunter Mountain stands to somehow gain from this transaction is flawed for the reasons we've already talked about.

But it's also flawed because they have

what is, at best, a contingent interest. It's contingent on things that have not yet occurred. And under the case law, they don't have standing conferred on them in that interest.

THE COURT: Okay.

MR. SCHULTE: So for all those reasons why there is no interest in the claims, no legal damages, no duty owed to it, no private cause of action belonging to it and a hypothetical and contingent interest, HMIT lacks standing to investigate or challenge these claims and claims transfers to which it was not a party and in which it had zero interest.

And for any or all of the reasons we've talked about, Your Honor, their petition should be dismissed. I welcome any questions the court may have.

THE COURT: No. My head is kind of spinning. Like I said, I spent all day yesterday reading stuff. As I said, I will admit I've never practiced bankruptcy law.

I mean, my joking statement is I pretty much know enough to not be in contempt of bankruptcy court. Because I have cases where one of the defendants or one of the parties ends up in bankruptcy court and whether or not I can proceed with my case, et cetera. That's my whole goal is not to be in contempt of court.

MR. SCHULTE: That should be the goal, is to not be in contempt of the bankruptcy court.

MR. McENTIRE: May I have just five or ten minutes?

THE COURT: I don't have another hearing, so we're fine on time.

MR. McENTIRE: All right. In all due deference to Mr. Schulte, the last 15 minutes of his argument misstates the law.

THE COURT: Okay.

MR. McENTIRE: The Washington Mutual case addresses almost 90 percent of what he just talked about. Their equity was entitled to bring an action to basically disallow an interest that was acquired by inside information.

Okay. And so he has not addressed the Washington Mutual case at all.

THE COURT: Well, okay. So my question is let's say that the insider trading didn't happen.

I mean, when I was playing with the numbers last night, it doesn't appear that Hunter Mountain, being Class 10, would have gotten anything anyways even if. Right?

Like I said, I did a lot of reading last night, so I want to make sure I understand.

MR. McENTIRE: Fair enough. I think I can address that.

The bottom line is a wrongdoer should not be entitled to profit from his wrong. That's the fundamental premise behind the restatement on restitution. That's the fundamental purpose of the Washington Mutual case.

You have remedies, including disgorgement, disallowance or subordination.

THE COURT: I'm just trying to be devil's advocate because I'm trying to work through this.

So let's say it did happen and the court ordered disgorgement and invalidated these transfers, then the money would just go to the Class 8 and Class 9. Right? To Acis, UBS, HarbourVest, etc.

MR. McENTIRE: No, they would not. Because those claims have already been traded.

THE COURT: Okay. Well, that's what I'm saying.

If the court said there was insider trading and to disallow the transfer and ordered disgorgement, theoretically, back to Highland Capital, then the money is there.

Okay. So then it would just go to Acis and UBS. Right?

MR. McENTIRE: The remedy here is to subordinate their claims. HarbourVest, UBS, Acis, and the Redeemer committee have sold their claims. They can intervene if they want and that's up to them. If they want to take the position that they were defrauded, that's up to them.

THE COURT: Okay.

MR. McENTIRE: Otherwise, the remedy is to disgorge the proceeds and put them back into the coffers of the bankruptcy court in which case Category 8 and 9 would be brimful, overflowing, and flow directly into the coffers in Class 10.

And that's the purpose of 15 and 16 in Mr. Patrick's affidavit.

THE COURT: Okay.

MR. McENTIRE: I find it amazing that he refers to Judge Jernigan's orders where he said anything dealing with these claims must come back to me. I have exclusive jurisdiction. I recall that argument.

THE COURT: Right.

MR. McENTIRE: Well, she could have accepted the removal of Mr. Dondero in that other proceeding. She didn't. She said I don't have jurisdiction over this. I'm sending it back to the state court.

THE COURT: Okay. Because it was filed as a 202. If it had been filed as a Rule 404, then she would have had jurisdiction because you're specifically invoking a state court process. Right?

MR. McENTIRE: I'm invoking exclusively a state court process because of the benefit it provides. That is a strategic choice that this petitioner has elected. It has nothing to do with bankruptcy court, other than bankruptcy court is too slow.

All the invective about the prior contempt order has nothing to do with these proceedings. Mr. Dondero is not involved in these proceedings.

If HarbourVest and UBS want to intervene in some subsequent lawsuit, they have a right to do so. I can't stop them.

But until then, we have stated a cause of action or at least a potential cause of action which is insider trading. That from an outsider makes them an insider that owes fiduciary duties to the equity.

Washington Mutual allowed equity to come in and disallow those claims. And if those claims are disallowed, the Class 10 is going to be overflowing on the waterfall. And that's my client.

A couple of other things. Hunter Mountain

is not a stranger. Hunter Mountain was the big elephant in the room until the effective date of the plan.

We held 99.5 percent of the equity stake and when all of these wrongdoings occurred, Hunter Mountain was still the 99.5 percent equity stakeholder.

It's only after the bankruptcy plan had gone effective, after these claims had already been --

THE COURT: Wait. The insider trading happened after the bankruptcy had been filed but before the bankruptcy was resolved.

So it's during that process. Right?

MR. McENTIRE: You have filing a bankruptcy. You have a bankruptcy plan. You have confirmation of the plan, but it doesn't go effective until six months later.

THE COURT: Right.

MR. McENTIRE: After the bankruptcy plan was confirmed and they had dismal estimates of recovery -- 71 percent on Class 8, zero percent on Class 9 -- that's when Farallon and Stonehill purchased the claims.

But they purchased the claims at a time before the bankruptcy wasn't effective. And so the so-called claimant trust agreement had not gone into effect until several months later.

THE COURT: Okay.

MR. McENTIRE: And during this period of time Hunter Mountain was the very, very largest stakeholder.

THE COURT: Okay.

MR. McENTIRE: And so to call it a stranger is just not right and it's not fair because we're anything but a stranger.

They make an argument that Hunter Mountain didn't object to the settlements. Well, so what? I'm not attacking the underlying settlements. I'm attacking the claims transfers.

And then he says, well, why didn't they object to the claims transfers. Well, he finally conceded that the claims transfers are not actually subject to a judicial scrutiny by the bankruptcy court.

This court is uniquely qualified to review these claims transfers as is Judge Jernigan. Insider information is insider information as a rose is a rose is a rose. And any court of law is qualified to determine whether insider information was used.

Judge Jernigan did not say, okay, Farallon, you can buy this claim. There was no judicial process here.

THE COURT: Right. I mean, it's a motion.

We want to do this, just get approval.

MR. McENTIRE: They don't even have to get approval.

THE COURT: Okay.

MR. McENTIRE: All they have to do is file notice.

THE COURT: Okay. File the notice.

MR. McENTIRE: Judge Jernigan was not involved at all.

We had no reason to object. All we know there's a claims transfer. It's not until later that we discover that inside information was used and that's why we're here.

So we didn't object to the original claims. There was no need to. The original settlements rather. There was no need to. There was no objection to the claims transfers.

There was no mechanism to object, other than what we're doing here today. This is our objection. This is our attempt to object.

Because we believe that they have acquired hundreds of millions of dollars of ill-gotten gain and if that is true, not only will Hunter Mountain be benefited tremendously, but other unsecured creditors. They are very few but they will be also benefited.

Frankly, Judge Jernigan may want that to happen.

THE COURT: Okay.

MR. McENTIRE: But we're here to get the discovery so I can pull it all together within the next 30 days or 40 days. So I can make decisions before somebody might suggest, hey, well, you should have filed this a little bit earlier.

And so, Judge, that's why we're here, in the interest of time. And that was my decision. That was my strategic decision to bring it here.

THE COURT: Right.

MR. McENTIRE: He says that Rule 3001 is the exclusive remedy. Only transferors can complain about transferees or vice versa.

THE COURT: You're not necessarily complaining about the actual transfer. It's how the transfer came about.

MR. McENTIRE: That's right.

And to suggest that that is the governing principle that this court should consider is an absolute contradiction to the Washington Mutual case.

Because if fraud is in play, if inside information is in play, then it impacts everyone who is a stakeholder. Everyone.

THE COURT: Okay.

MR. McENTIRE: And we are one of the largest stakeholders in the bankruptcy proceedings, even today. So that's all I have.

I thank you for your attention, Your Honor. Clearly, the benefit here is we get to uncover some things that need to be uncovered. And we'd like to do it so in a timely fashion.

And if we don't have a claim, we don't have a claim. If we have a claim, then we may file it in a state district court.

And if Judge Jernigan and her gate-keeping orders require us to go there, we'll go there. I'm not going to run afoul of any rule she has, but we need to get this underway.

THE COURT: Okay.

MR. SCHULTE: Your Honor, may I make some rifle-shot responses?

THE COURT: Yeah. That's fine.

MR. SCHULTE: Okay. Mr. McEntire has said that they are one of the largest stakeholders in the Highland bankruptcy based on this 99.5 percent equity. That equity was extinguished in the fifth amended plan.

That's Exhibit 3 that I handed you, Your Honor. That plan was filed in January of 2021

before any of these claims transfers took place. The equity was extinguished by virtue of the plan.

THE COURT: Okay.

MR. SCHULTE: Mr. McEntire was talking about this Washington Mutual case. I read the case.

But what he said repeatedly, and I think it's really important to listen to what Mr. McEntire said about this case, is that that court allowed the equity to come in and talk about these transfers.

Hunter Mountain doesn't have any equity. That equity was extinguished in the plan for reasons I just discussed. So for being the largest stakeholder, according to Mr. McEntire, in the bankruptcy what does Hunter Mountain have to show for that? A Class 10.

As Your Honor pointed out, a Class 10 interest, that is below everybody else. And that's where they've been relegated.

And to answer your question, Your Honor, that you posed to Mr. McEntire that I'm not sure was ever answered, HMIT -- Hunter Mountain -- at Class 10 stood to gain nothing when the plan was put together. So the largest stakeholder stood to gain nothing.

I've pointed to the language in the court's order about how the court has exclusive jurisdiction.

And Your Honor nailed the answer to the concern raised by Mr. McEntire, which is the bankruptcy court didn't have jurisdiction over a 202 proceeding. But it unquestionably has authority over the counterpart, 2004 in bankruptcy court.

THE COURT: Right.

MR. SCHULTE: Finally, I have never argued and if I did say this, I apologize. I have never argued that Hunter Mountain is somehow a stranger to the bankruptcy.

THE COURT: Right. They were obviously involved in the bankruptcy, but they're a stranger to these transfers.

MR. SCHULTE: Exactly. They were a stranger to these transactions. They didn't have any interest in these claims.

They don't stand to gain anything if the claims are either rescinded or if the claims are invalidated or the transfers are invalidated. They don't stand to get anything because they never had any interest in these claims.

The claims are the claims and either UBS, Redeemer, Acis, and HarbourVest stood to gain more than expected or Farallon and Stonehill stand to gain more than expected.

And if anybody is really injured here, it's not Hunter Mountain. It's the transferors who were duped into these transfers, according to Hunter Mountain. And they would be the ones that would have damage and have a claim along the lines of what Hunter Mountain is trying to assert on behalf of all stakeholders.

Your Honor, I have a proposed order, as Mr. McEntire does.

May I bring it up?

THE COURT: Yes, you may.

Okay, Mr. McEntire. Anything else?

MR. McENTIRE: His last few statements are inconsistent with the law, Your Honor.

THE COURT: Okay.

MR. McENTIRE: Because the law clearly, clearly indicates that we are a beneficiary. And that's what the Washington Mutual case stands for.

THE COURT: Okay. Wait. Let me make sure I know which one.

Do you have a cite for that case?

MR. McENTIRE: Yes, ma'am. It's in the PowerPoint.

THE COURT: That's fine. I just wanted to make sure I could find it.

MR. McENTIRE: There's also a Fifth Circuit case that talks about subordination where a Class 8 and Class 9 would actually be subordinated, Your Honor, to our claim.

So that's another approach to this, is subordination.

THE COURT: Okay.

MR. McENTIRE: And that's the In re Mobile Steel case out of the Fifth Circuit. I think there's a cite in our brief.

THE COURT: Okay.

MR. McENTIRE: I acknowledge that we're now classified with a different name. We're a B/C limited partner. And we're, in effect, a Class 10 beneficial interest.

But we're there having been a 99.5. And the lion share of any money, 99.5 percent of any money that overflows into bucket No. 10 is ours.

THE COURT: Right.

Okay. I am processing. Obviously, I need to take this into consideration. I haven't had a chance to go through Respondent's exhibits.

I've looked through the plaintiff's exhibits, but now I have much more of a focus of what I'm doing.

So I will try to get you all a ruling by the end of next week. I apologize. I've got a special setting next week that's going to be kind of crazy, but I will do everything I can.

If you all haven't heard from me by next Friday afternoon, call my coordinator Texxa and tell her to bug me.

MR. McENTIRE: Thank you for your time.

THE COURT: You all are excused. Have a great day.

(This completes the Reporter's Record, Petitioner Hunter Mountain Investment Trust's Rule 202 Petition, which was heard on Wednesday, February 22, 2023.)

STATE OF TEXAS)

COUNTY OF DALLAS)

I, Gina M. Udall, Official Court Reporter in and for the 191st District Court of Dallas County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $750.00 and was paid by the attorney for Respondents.

WITNESS MY OFFICIAL HAND on this the 1st day of March 2023.

/S/ Gina M. Udall

Gina M. Udall, Texas CSR #6807
Certificate Expires: 10-31-2024
Official Reporter, 191st District Court of Dallas County, Texas
George Allen Sr. Courts Building
600 Commerce St., 7th Floor
Dallas, Texas 75202
Telephone: (214) 653-7146

Exhibit 4-C

CAUSE NO. DC-23-01004

IN RE:	§	IN THE DISTRICT COURT
HUNTER MOUNTAIN INVESTMENT TRUST,	§	DALLAS COUNTY, TEXAS
Petitioner.	§	191ST JUDICIAL DISTRICT

ORDER

Came on for consideration *Petitioner Hunter Mountain Investment Trust's Verified Rule 202 Petition* ("Petition") filed by petitioner Hunter Mountain Investment Trust ("HMIT"). The Court, having considered the Petition, the joint verified response in opposition filed by respondents Farallon Capital Management, L.L.C. ("Farallon") and Stonehill Capital Management LLC ("Stonehill"), HMIT's reply, the evidence admitted during the hearing conducted on February 22, 2023, the argument of counsel during that hearing, Farallon's and Stonehill's post-hearing brief, the record, and applicable authorities, concludes that HMIT's Petition should be denied and that this case should be dismissed. Therefore,

The Court ORDERS that HMIT's Petition be, and is hereby, DENIED, and that this case be, and is hereby, DISMISSED.

THE COURT SO ORDERS.

Signed this 1st day of March, 2023.

HONORABLE GENA SLAUGHTER

Exhibit 4-D

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:24 AM 03/09/2021
FILED 09:24 AM 03/09/2021
SR 20210838989 - File Number 5421257

CERTIFICATE OF FORMATION

OF

Muck Holdings, LLC

FIRST: The name of the limited liability company is:

Muck Holdings, LLC

SECOND: Its registered office in the State of Delaware is to be located at 251 Little Falls Drive, in the City of Wilmington, Delaware, 19808, and its registered agent at such address is CORPORATION SERVICE COMPANY.

IN WITNESS WHEREOF, the undersigned, being the individual forming the Company, has executed, signed and acknowledged this Certificate of Formation this 9th day of March, 2021.

By: /s/ Hanchang Sohn
Name: Hanchang Sohn
Title: Authorized Person

Exhibit 4-E

CERTIFICATE OF FORMATION

OF

Jessup Holdings LLC

FIRST: The name of the limited liability company is Jessup Holdings LLC.

SECOND: The address of its registered office in the State of Delaware is 1013 Centre Road, Suite 403-B in the City of Wilmington, Delaware 19805, in the County of New Castle. The name of its registered agent at such address is Vcorp Services, LLC.

THIRD: Members may be admitted in accordance with the terms of the Operating Agreement of the limited liability company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation on April 08, 2021.

/s/Taylor Lolya
Taylor Lolya, Authorized Person

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:10 PM 04/08/2021
FILED 01:10 PM 04/08/2021
SR 20211222936 - File Number 5822640

Exhibit 4-F

From: Roger L. McCleary
To: Schulte, David C (DAL - X59419)
Cc: Sawnie A. McEntire
Subject: HMIT — court's order/HMIT"s request for information
Date: Thursday, March 9, 2023 3:46:00 PM

David,

Thank you. This ruling denies Hunter Mountain Investment Trust ("HMIT") the investigatory discovery sought from Farallon Capital Management, LLC ("Farallon") and Stonehill Capital Management, LLC ("Stonehill") under Tex. R. Civ. P. 202. Accordingly, HMIT requests that Farallon and Stonehill advise whether they will *voluntarily* provide some or all of the information and documents requested in HMIT's Rule 202 Petition and, if so, under what terms. Please let us know by Tuesday, March 14th, whether Farallon and Stonehill will consider doing so. If so, we are available to discuss this at your earliest convenience.

In any event, HMIT also requests that Farallon and Stonehill *voluntarily* respond to the following two specific requests, which they can answer in a matter of minutes:

1. A simple description of the legal relationship: a) between Farallon and Muck Holdings, LLC ("Muck"), and b) between Stonehill and Jessup Holdings, LLC ("Jessup").
2. Whether: a) Farallon is a co-investor in any fund in which Muck holds an interest related to the Claims at issue in the Rule 202 Petition; b) Stonehill is a co-investor in any fund which Jessup holds an interest related to the Claims at issue in the Rule 202 Petition.

We would also appreciate prompt written responses to these two specific requests. To the extent we do not receive written responses to these two requests by close of business on Tuesday, March 14th, this will be taken as Farallon and Stonehill's refusal to provide the requested responses. Similarly, to the extent we do not receive a written confirmation of Farallon and Stonehill's willingness to discuss voluntary production of more of the information and documents requested in HMIT's Rule 202 Petition by then, this will be taken as their refusal to consider doing so.

Please let us know if you or your clients have any questions about this request. Thank you.

Regards, Roger.

Roger L. McCleary
Parsons McEntire McCleary PLLC
One Riverway, Suite 1800
Houston, TX 77056
Tel: (713) 960-7305
Fax: (832) 742-7387
www.pmmlaw.com

are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Schulte, David C (DAL - X59419) <David.Schulte@hklaw.com>
Sent: Wednesday, March 8, 2023 9:08 PM
To: Sawnie A. McEntire <smcentire@pmmlaw.com>; Roger L. McCleary <rmccleary@pmmlaw.com>
Cc: Timothy J. Miller <tmiller@pmmlaw.com>
Subject: [EXTERNAL] HMIT — court's order

Counsel--attached is a copy of the court's order in this case.

Dave

David C. Schulte | **Holland & Knight**
Partner
Holland & Knight LLP
1722 Routh St., Suite 1500 | Dallas, TX 75201
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

ORDER GRANTING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE ADVERSARY PROCEEDING

Upon consideration of the *Emergency Motion for Leave to File Adversary Proceeding* [Dkt. __] (the "Motion") filed by Hunter Mountain Investment Trust ("HMIT"), and having considered any responses thereto, the Court finds that: (1) the claims alleged in HMIT's Proposed Adversary Complaint [Dkt. __-1] against James P. Seery ("Seery"), Stonehill Capital Management, LLC, Farallon Capital Management, LLC, Muck Holdings, LLC, and Jessup Holdings, LLC (the "Claims") are colorable; (2) any demand on any other persons or entities to

prosecute the Claims would be futile; (3) HMIT is an appropriate party to bring the Claims on behalf of the Reorganized Debtor and the Highland Claimant Trust; and (4) HMIT's Motion should be granted.

It is therefore **ORDERED THAT:**

1. The Motion is GRANTED.

2. HMIT is granted leave to file its Proposed Adversary Complaint [Dkt. __-1] as an adversary proceeding in this Court.

###END OF ORDER###

Submitted by:
Parsons McEntire McCleary PLLC

/s/ Sawnie A. McEntire______
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Counsel for Hunter Mountain Investment Trust

REPORTER'S RECORD

VOLUME 1 OF 1

COURT OF APPEALS CAUSE NO. 00-00-00000-CV

TRIAL COURT CAUSE NO. DC-23-01004-J

IN RE:	)	IN THE DISTRICT COURT
	)	
	)	
HUNTER MOUNTAIN INVESTMENT TRUST,	)	OF DALLAS COUNTY, TEXAS
	)	
	)	
Petitioner.	)	191ST JUDICIAL DISTRICT

PETITIONER HUNTER MOUNTAIN INVESTMENT TRUST'S

RULE 202 PETITION

which was heard on

Wednesday, February 22, 2023

On the 22nd day of February 2023, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Gena Slaughter, Judge Presiding, held in Dallas, Dallas County, Texas, and the following proceedings were had, to wit:

Proceedings reported by machine shorthand utilizing computer-assisted realtime transcription.

GINA M. UDALL, CSR, RPR
Official Reporter, 191st District Court

APPEARANCES:

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ATTORNEYS FOR PETITIONER
Hunter Mountain
Investment Trust

and

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ATTORNEY FOR RESPONDENTS
Farallon Capital
Management, LLC, and
Stonehill Capital
Management LLC

* * *

VOLUME 1 INDEX

PETITIONER HUNTER MOUNTAIN INVESTMENT TRUST'S

RULE 202 PETITION

which was heard on

Wednesday, February 22, 2023

PETITIONER'S EXHIBITS INDEX

Number	Description	Offered	(Excluded) Admitted	Vol
P-1	Declaration of Mark Patrick	36	42	1
P1-A	Claimant Trust Agreement	36	42	1
P1-B	Division of Corporations - Filing	36	42	1
P1-C	Division of Corporations - Filing	36	42	1
P1-D	Order Approving Debtor's Settlement	36	42	1
P1-E	Order Approving Debtor's Settlement	36	42	1
P1-F	Order Approving Debtor's Settlement	36	42	1
P1-G	Order Approving Debtor's Settlement	36	42	1
P1-H	July 6, 2021, Alvarez & Marsal letter to Highland Crusader Funds Stakeholder	36 --	41 42	1 1
P1-I	United States Bankruptcy Court Case No. 19-34054	36	42	1

PETITIONER'S EXHIBITS INDEX continued

Number	Description	Offered	(Excluded) Admitted	Vol
PI-J	Exhibit A Highland Capital Management, L.P. Disclaimer for Financial Projections	36	42	1
PI-K	United States Bankruptcy Court Case No. 19-34054	36	42	1
P-2	Declaration of James Dondero	36	42	1
P2-1	Jim Dondero email dated Thursday, December 2020	36	(41)	1

RESPONDENT'S EXHIBITS INDEX

Number	Description	Offered	(Excluded) Admitted	Vol
R-1	Cause No. DC-21-09543 Verified Amended Petition	41	44	1
R-2	Cause No. DC-21-09543 Order	41	44	1
R-3	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-4	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-5	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-6	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-7	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-8	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-9	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-10	United States Bankruptcy Court Case No. 19-34054	41	44	1

RESPONDENT'S EXHIBITS INDEX continued

Number	Description	Offered	(Excluded) Admitted	Vol
R-11	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-12	United State Bankruptcy Court Case No. 19-12239	41	44	1
R-13	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-14	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-15	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-16	United States Bankruptcy Court Case No. 19-34054	41	44	1
R-17	United States Bankruptcy Court Case No. 19-34054	41	44	1

P R O C E E D I N G S

THE COURT: Okay. Good morning, Counsel.

We are here in DC-23-01004, In re: Hunter Mountain Investment Trust.

And who is here for the plaintiff?

MR. McENTIRE: For the petitioner, Your Honor, Sawnie McEntire and my partner Roger McCleary.

THE COURT: Okay. And then for Farallon?

MR. SCHULTE: My name is David Schulte and I represent both of the respondents. It's Farallon Capital Management, LLC, and Stonehill Capital Management, LLC.

THE COURT: We are here today on a request for a 202 petition. I know one of the issues is the related suit, but let's just plow into it and we'll go from there.

Okay. Counsel?

MR. McENTIRE: May I approach the bench?

THE COURT: Yes, you may.

MR. McENTIRE: And I've given Mr. Schulte copies of all these materials.

In the interest of time, I have all the key pleadings here, which I will give you a copy of.

THE COURT: Thank you.

MR. McENTIRE: And this is the evidentiary submission that we submitted about a week ago.

THE COURT: Right.

MR. McENTIRE: To the extent you are interested, it is cross-referenced by exhibit number to the references in our petition to the docket in the bankruptcy court.

THE COURT: I appreciate that. Otherwise, I go hunting for stuff.

MR. McENTIRE: This is a PowerPoint.

THE COURT: Okay.

MR. McENTIRE: And, lastly, a proposed order.

THE COURT: Wonderful.

MR. McENTIRE: And Mr. Schulte has copies of it all.

THE COURT: Okay.

MR. McENTIRE: May I proceed, Your Honor?

THE COURT: You may.

MR. McENTIRE: All right. Your Honor, we are here for leave of court to conduct discovery under Rule 202 to investigate potential claims.

The issue before the court is not whether we have an actual claim.

THE COURT: Right.

MR. McENTIRE: We do not even need to state a cause of action. It is simply the investigation of potential claims.

Mr. Mark Patrick is here with us today. He's behind me. Mr. Patrick is the administrator of Hunter Mountain, which is a Delaware trust.

THE COURT: Okay.

MR. McENTIRE: He is the manager of Rand Advisors, which is also an investment manager of the trust. And, in effect, for all intents and purposes, Mr. Patrick manages the assets of the trust on a daily basis.

THE COURT: Okay.

MR. McENTIRE: There are potential claims that we're investigating. And I'll go through some of these because I know opposing counsel has raised standing issues.

THE COURT: Right.

MR. McENTIRE: And I think we can address all those standing issues.

Insider trading is in itself a wrong as recognized by courts. And I'll refer you to the opinions. We believe there's a breach of fiduciary duties, and that may take a little explanation.

At the time that Farallon and Stonehill acquired these claims, through their special purpose entities Muck and Jessup, they were outsiders.

THE COURT: Right.

MR. McENTIRE: But by acquiring the information in the manner in which we believe they did, they became insiders. And when they became insiders, under relevant authorities they owe fiduciary duties.

And at the time they acquired the claims, my client Hunter Mountain Investment Trust was the 99.5 percent interest holder or stakeholder in Highland Capital.

THE COURT: Right.

MR. McENTIRE: We also believe a knowing participation of breach of fiduciary duties under another name, aiding and abetting. But Texas recognizes it as knowing participation. Unjust enrichment, constructive trust, and tortious interference.

THE COURT: Okay.

MR. McENTIRE: Farallon and Stonehill are effectively hedge funds. And so is Highland Capital.

They were created. They actually did create Muck and Jessup. Those are the two entities that actually are titled with the claims. They acquired it literally days before the transfers.

So the reason we're focusing our discovery effort on Farallon and Stonehill, we are confident that any meaningful discovery -- emails, letters, correspondence, document drafts, things of that nature -- probably predated the existence of Muck and Jessup.

THE COURT: Right.

MR. McENTIRE: That's why we're focusing our discovery effort on Farallon and on Stonehill.

But, needless to say, Farallon, Stonehill, Muck and Jessup, having all participated in this acquisition, they're all insiders for purposes of assuming fiduciary duties.

And as I said, outsiders become insiders under the relevant authority. And one key case is the Washington Mutual case --

THE COURT: Right.

MR. McENTIRE: -- which we cited in our materials.

I would also just let you know, this is not something in total isolation. We understand we're not privy to the details. But we understand the Texas State Security Board also has an open investigation that has not been closed.

THE COURT: Okay.

MR. McENTIRE: And that's by way of background.

202 allows presuit discovery for a couple of reasons. And I won't belabor the point. One is to investigate potential claims.

There is no issue of notice or service here. There's no issue of personal jurisdiction. Farallon and Stonehill made a general appearance.

THE COURT: Right.

MR. McENTIRE: There's no issue concerning subject-matter jurisdiction. They actually concede that the court has jurisdiction on page 8 of their response.

The court's inquiry today is a limited judicial inquiry. There are really two avenues which I'll explain, but, first, I think the salient avenue is does the benefit of the discovery outweigh the burden.

And I think as I will hopefully demonstrate, I think that we clearly do.

THE COURT: Okay.

MR. McENTIRE: The merits of a potential claim, the case law is clear, is not before the court.

Much of their brief and their response is devoted to trying to attack the fact that there is no duty or things such as standing.

But the reality of it is we are not required to actually prove up a cause of action to this court although I think I can. In this process, I probably certainly can identify a potential cause of action. That's not our obligation to carry our burden.

There was an issue about timely submission of evidence they raised in a footnote, but I think that was resolved before the court took the bench.

THE COURT: Okay.

MR. McENTIRE: I've handed you a binder with Mr. Mark Patrick's affidavit and Jim Dondero's affidavit.

As I understand it, correct me if I'm wrong, you're not objecting to the submission of that evidence. Is that correct?

MR. SCHULTE: Almost.

THE COURT: Okay.

MR. SCHULTE: Your Honor, I do object to the two declarations that were submitted I believe five days before the hearing.

THE COURT: Okay.

MR. SCHULTE: As Your Honor is aware, Rule 202 contemplates 15 days' notice. The petition itself was required to be verified. It was verified and then new substance was added by way of these

declarations five days before the hearing.

And so we would argue that that has the effect of amending or supplementing the petition within that 15-day notice period.

All that said, I don't have any issue with the majority of the documents attached to Mr. Patrick's declaration.

THE COURT: Okay.

MR. SCHULTE: So I do object on the grounds of hearsay and timeliness to the declarations.

On Exhibit H to Mr. Patrick's declaration, I object to that document on the grounds of hearsay.

THE COURT: Okay. Which one?

MR. SCHULTE: Exhibit H to Mr. Patrick's declaration on the basis of hearsay.

All the other documents are I believe file-stamped copies of the pleadings filed in the bankruptcy, which I don't have any issue with that.

And then the exhibit to Mr. Dondero's declaration is an email that's objected to on the basis of hearsay. And it hasn't been proven up as a business record or any other way that will get past hearsay.

THE COURT: Okay.

MR. SCHULTE: So those are the limited objections I have to what's in that filing, Your Honor.

MR. McENTIRE: And I will address those objections. And we're prepared to put Mr. Patrick on the stand, if necessary.

I would point out that the case law is very clear that there's no 15-day rule here.

THE COURT: Okay.

MR. McENTIRE: We have asked the court to take judicial notice of all of our evidence in our petition itself.

The 15 days is the amount of time you have to give notice before the hearing --

THE COURT: Right.

MR. McENTIRE: -- but the case law is clear that I can put live testimony on, I can put affidavit testimony on.

THE COURT: This is an evidentiary hearing.

MR. McENTIRE: That's correct.

And that includes affidavits. And affidavits are routinely accepted in these types of proceedings and I have the case law I can cite to the court.

MR. SCHULTE: Your Honor, in contrast, I think if this were, for example, an injunction hearing, I don't believe that an affidavit would be

the substitute in an injunction hearing for live testimony.

And so if this is an evidentiary standard, I don't think that these affidavits should come in for the truth of the matter asserted. The witnesses should testify to the facts that they want to prove up.

MR. McENTIRE: I could give the court a cite.

THE COURT: Okay.

MR. McENTIRE: It's Glassdoor, Inc. versus Andra Group.

THE COURT: What was the name of it?

MR. McENTIRE: Glassdoor, Inc. versus Andra Group. It is 560 S.W.3d 281. It specifically addresses the use and relies upon affidavits in the record for purposes of a Rule 202.

So, with that said, I will address it in more detail in a moment. The evidentiary rule, to be clear, is it has to be supported by evidence. Seven days was the date that I picked because it was well in advance. It's the standard rule that's used for discovery issues. It's seven days before a hearing.

So I picked it. He's had it for seven days. He's never filed any written objections to my evidence. None.

And under the Local Rules I would think he would have objected within three business days. He did not do that, and so I'm a little surprised by the objection.

THE COURT: Okay.

MR. McENTIRE: All right. We do have copies of all the certified records, but I gave you the agenda on that. And we talked about the two declarations.

So the limited judicial inquiry is the only issue before the district court. It's whether or not to allow the discovery, not the merits of any claim yea or nay.

THE COURT: Right.

MR. McENTIRE: There's no need for us to even plead a cause of action, although we did.

Mr. Schulte goes to great length in his response to take issue with our cause of action, suggesting we had none. We do. But we're not even under an obligation to plead it; nevertheless, we did.

This is actually a two-part test. The first part was allowing the petitioner -- in this case, Hunter Mountain -- to take the requested deposition may prevent a failure or delay of justice, or the likely benefit outweighs the burden. Both apply here.

These trades took place in April of 2021, three of the four. The fourth I think took place in the summer.

And our goal is to obtain the discovery in a timely manner so we do not have any argument, valid or invalid, that there's a limitations issue.

THE COURT: Okay.

MR. McENTIRE: And so any further delay, such as transferring this to another court or back to the bankruptcy court, which it does not have jurisdiction, would cause tremendous delay.

THE COURT: Okay.

MR. McENTIRE: Hunter Mountain, a little bit of background. It is an investment trust. When it has money, it participates directly in funding the Dallas Foundation --

THE COURT: Okay.

MR. McENTIRE: -- which is a very I think well-respected and recognized charitable foundation.

Certain individuals and pastors from various churches are actually here because Hunter Mountain indirectly, but ultimately, provides a significant source of funding for their outreach programs and their charitable functions and programs.

THE COURT: Okay.

MR. McENTIRE: The empirical evidence in the documents that are before the court, regardless of what's in the affidavits, just screams that there was no due diligence here.

Now, we know in Mr. Dondero's affidavit he had a conversation with representatives of Farallon, which would be admissions against interest. They're admissions basically against interest that they effectively did no due diligence.

Yet we believe, upon information and belief, that they invested over $167 million. There are two sets of claims. There's a Class 8 claim and a Class 9 creditor claim.

THE COURT: Right.

MR. McENTIRE: Their expectations at the time that they acquired these claims was that Class 9 would get zero recovery.

So who spends $167 million when their expectation on return of investment is zero? Who spends $167 million even in Class 8 when the expected return is just 71 percent and is actually declining? And I think it's actually admitted in the affidavit that Mr. Dondero provided.

So without being hyperbolic or exaggerating, the data that was available publicly

was extremely pessimistic and doubtful that there would be any recovery.

We have direct information -- admissions, frankly -- that Farallon had access to non-public material, non-public information. And that was the fact that MGM Studios was up for sale.

Mr. Dondero was on the board of directors.

THE COURT: Okay.

MR. McENTIRE: He communicated, because of his responsibilities, this information to Mr. Seery.

And Mr. Seery, apparently, would have been restricted. He couldn't use it or distribute it.

THE COURT: Right.

And I don't know a lot about securities law but, yeah, that would be insider information. Right?

MR. McENTIRE: Yes.

And it appears from the affidavit that Mr. Dondero submitted that Farallon was aware of the information before the sale closed, before they closed their acquisitions.

And Mr. Dondero asked the question are you willing to even sell your claims and they said no. Or even 30 percent more and they said no. We're told that they're going to be very valuable.

Well, no one else had this information, so we have a problem here that we have two outsiders who are now insiders. They've acquired potentially very valuable claims with the sale of MGM.

They also acquired information concerning the portfolios of these companies over which Highland Capital managed and had ownership interests, so we're talking about having access to information that any other bidder or suitor would not have.

So this is how they were divided up. $270 million in Class 8. Each of the creditors right here are the unsecured creditors who sold. They were the sellers.

THE COURT: Right.

MR. McENTIRE: And these are the claims in the Class 9.

So you have $95 million in Class 9 claims that are being acquired when the expectation is that there will be zero return on investment. You have $270 million where the expectation was extremely low and pessimistic.

And here are the documents. And Mr. Schulte has not objected to these. This particular document is Exhibit 1-J to Mr. Patrick's affidavit.

THE COURT: Okay.

MR. McENTIRE: This came out of the plan. So when the bankruptcy plan was confirmed in February 2021, Farallon, Stonehill, Muck and Jessup, the latter two weren't even in existence.

THE COURT: Right.

MR. McENTIRE: Farallon and Stonehill were complete strangers to the bankruptcy proceedings, yet they come in in the wake of this information and they invest tens if not hundreds of millions of dollars with no apparent due diligence.

The situation gets even worse. And this is Exhibit 1-I to Mr. Patrick's affidavit. And as I understand, Mr. Schulte does not object to these documents. It's declining. And then, suddenly, they're in the money.

And at the end of the third quarter last year, they're already making 255 million bucks. And that's a far cry from the original investment. This is for both Class 8 and Class 9.

So Mr. Patrick states the purpose of this is to seek cancellation. Another word for it in bankruptcy-ese would be disallowance. But the cancellation of these claims and disgorgement.

If these are ill-gotten gains, regardless of the rubric or the monicker that you place on it --

breach of fiduciary duty as insiders, aiding and abetting or knowing participation in fiduciary duties, because a lot of people have fiduciary duties on this stuff. No matter what you call it, disgorgement is a remedy.

Wrongdoers should not be entitled to profit from their wrongdoing.

Mr. Schulte makes a big point that we can't prove damages. Well, first of all, I don't agree with the conclusion.

THE COURT: Right.

MR. McENTIRE: But even if he was right, disgorgement is a proxy for damages. And we have an entitlement and a right to explore how much they have actually received, when did they receive it.

The weathervane is tilting in one direction here, Judge.

Clearly, there is a creditor trust agreement. That's a very important document. It spells out rights and obligations. It's part of the plan.

There's a waterfall. And on page 27 of the creditor trust agreement a waterfall is exactly what it suggests. You have one bucket gets full, you go to the next bucket all the way down.

THE COURT: Class 1 or tier 1.

I can't remember the category. I don't do bankruptcy. But, yeah, those get paid, then the next level, then the next level.

So by the time you get down to level 10, which I think is what Hunter Mountain was, theoretically, there wouldn't have been anything left.

MR. McENTIRE: That's correct.

But here, if Class 8 and Class 9 -- and I will say the big elephant in those two classes are Farallon and Stonehill or their special purpose entity bucket Jessup -- they have 95 percent of that category.

And suddenly they're not entitled to keep what they've got, and suddenly there's a disallowance, or suddenly a cancellation regardless of the theory or the cause of action -- and we have several avenues here -- a lot of money is going to flow into the coffers of Hunter Mountain, and a lot of money will flow into the Dallas Foundation, and a lot of money will flow into the coffers of charities.

So there is standing here. Standing requires the existence of a duty. We think we have duties.

And a concrete injury. And if these claims were manipulated, we have a concrete injury and our proxy is disgorgement.

We've been deprived of an opportunity to share in category 10 or as we just described it in the waterfall under the creditor trust agreement.

THE COURT: Right.

MR. McENTIRE: Their burden is to show that this discovery has no benefit. No. That's my burden to show benefit. But their burden would be to show that it's overly burdensome to them.

And I find that difficult to understand since part of their response is devoted to the fact that, hey, judge in Dallas County, you should turn this over to Judge Jernigan in the bankruptcy court.

THE COURT: Because it's bankruptcy, you know.

MR. McENTIRE: In bankruptcy, that's their invitation.

THE COURT: Right.

MR. McENTIRE: Well, if they're inviting us to go do the discovery in bankruptcy court, it doesn't seem to be that burdensome because it's going to be the same discovery.

And, by the way, Judge Jernigan actually does not have jurisdiction over these proceedings. The other earlier proceeding, as you know, they attempted to remove it to her court and it was remanded.

Clearly, she does not have jurisdiction.

The problem with bankruptcy involved, in addition, if I wanted to do Rule 2004 discovery like they're suggesting, that's their invitation. They would like you to push us down the road.

Well, we can't afford to push it down the road. Because if they push it down the road, I've got to go file a motion with Judge Jernigan, get leave to issue subpoenas.

THE COURT: Right.

MR. McENTIRE: They have 14 days to file a motion to quash, then I have to file another motion. And it's 21 days before their response is even filed. And there's another 14 or 15 days before the reply is filed. We're looking at 60, 70 days. And that's one of the reasons we selected this procedure.

And, by the way, you hear the phrase forum shopping a lot. Well, without engaging in the negative inference that that term suggests, a plaintiff, a petitioner, has the right to select its venue for a variety of reasons.

Our venue is the state district courts of Texas because it has an accelerated procedure. And that's why we're here.

THE COURT: Right.

MR. McENTIRE: I've identified the potential causes of action. Entities or people that breach fiduciary duties and receive ill-gotten gains a constructive trust may be imposed, disgorgement. Then we do run into bankruptcy concepts.

But it's important to know that some of these are not bankruptcy. Some of these are common law.

I suggest to the court, I don't have to go get Judge Jernigan's permission to sue Farallon or Stonehill for breach of fiduciary duties. I don't have to get her permission to sue for knowing participation.

If I'm actually looking for equitable disallowance, probably, maybe. But I can do the discovery here and then make that decision whether I need to go back to bankruptcy court.

I'm not foolish. I'm not going to run afoul of Judge Jernigan's orders. If I have to go back to Judge Jernigan to get permission, I will do it.

THE COURT: Right. Because only an idiot runs afoul of the bankruptcy court.

MR. McENTIRE: Hopefully, I'm not that.

So I clearly understand what both my ethical and lawyer obligations are. And I'm not going to run afoul of any court orders.

But some of these remedies don't require

an overview by Judge Jernigan or the bankruptcy court.

THE COURT: Okay.

MR. McENTIRE: They have a duty not to commit fraud, whether it's commit fraud against us or commit fraud against the estate.

They have a duty not to interfere with the expectancies that we have as a B/C beneficiary. That's a code name for a former Class 10 creditor.

They have a duty not to trade on inside information, and that's the Washington Mutual case.

And I've just already mentioned that because they were outsiders, they're insiders now.

These are their arguments. Our evidence is timely. It's not untimely. It's not speculative. It's not speculative because the events have already taken place. I'm not talking about something hypothetical.

THE COURT: Right.

MR. McENTIRE: My remedy flows from that.

So we're not projecting that I might have a claim later on. I have a claim today. If I have a claim today, I have it today. I have it and I want to confirm it by this discovery. Because their wrongdoing has already taken place, it's not hypothetical, it's not futuristic, it's already occurred.

When they say they have no duty to us, they're just wrong. They have duties not to breach fiduciary duties. We have direct standing I believe to bring a claim in that regard.

We have a right to bring direct standing under the Washington Mutual case, which I'll discuss.

And we also have a right to bring a derivative action.

THE COURT: Right.

MR. McENTIRE: And I notice that they made a comment about that in their response. But I can sue individually.

And I can also bring an action in the alternative as a derivative action for the estate. And these are all valid claims for the estate.

THE COURT: Okay.

MR. McENTIRE: Transfer. This is not a related case because it's not the litigation.

So if you just go to the very first instance and you look at the Local Rule, it talks about litigation and causes of action.

THE COURT: Right.

MR. McENTIRE: We don't have a cause of action. We're not asserting one in this petition. So this is not a related case that falls within the

four corners of the Local Rule.

THE COURT: Well, I guess the thing is it's still a related case. Like if you file a 202 and then you file a lawsuit, that would be considered related.

I looked at it and you're right. Technically, it's different parties. I'll just say it's a grey zone at best.

MR. McENTIRE: That's correct.

This is not a lawsuit in terms of causes of action. It might be a related case if Mr. Dondero had come in and filed a lawsuit. That would be a related case. Mr. Dondero is not involved in this process, other than as a fact witness.

These are all the evidentiary issues that perhaps he's raised. Live testimony, affidavit testimony is admissible.

The court considered numerous affidavits filed with the court. And that's as recently as 2017. These are all good cases, good law.

Equitable disallowance. It's kind of a fuzzy image. This is a bankruptcy court case, but this is simply to underscore the fact that in addition to my common law remedies there is a very substantial remedy in bankruptcy court.

It's not one I necessarily have to pursue, but if I wanted to I could. But what it does do is it helps to find some duties.

And here, the court has the right to disallow a claim on equitable grounds in extreme instances, perhaps very rare, where it is necessary as a remedy. And they did it in this case.

THE COURT: Okay.

MR. McENTIRE: This is simply an analogy to securities fraud and the 10b-5 statute.

Insiders of a corporation are not limited to officers and directors, but may include temporary insiders who have entered into a special confidential relationship in the conduct of the business of the enterprise and are given access to information solely for corporate purposes.

Well, what about the MGM stock? The court finds that the Equity Committee -- so here's the equity -- has stated a colorable claim. We were 99.5 percent equity.

The Equity Committee has stated a colorable claim that the settlement noteholders became temporary insiders because they acquired information that was not of public knowledge in connection with their acquisition.

And allowed them to participate in negotiations with JPMC -- JPMorgan Chase -- for the shared goal of reaching a settlement.

So these were outsiders that suddenly became temporary insiders because of access to inside information.

This is not a new concept. It comes from the United States Supreme Court. Fiduciaries cannot utilize inside information.

THE COURT: Right.

MR. McENTIRE: And we believe we have enough before the court to support and justify a further investigation that this may have occurred.

THE COURT: Okay.

MR. McENTIRE: Now, not a related case. The Jim Dondero case is actually closed.

THE COURT: Right.

MR. McENTIRE: And I'll be frank with you. In all candor, I never thought this was a possible related case.

THE COURT: I mean, we're talking about the same events, but there are differences, I agree.

MR. McENTIRE: We're talking about one similar event dealing with Farallon. Other events are different.

THE COURT: Okay.

MR. McENTIRE: So we have different dates.

THE COURT: Right.

MR. McENTIRE: Different parties on the petitioner's side, different law firms.

The only common party is Farallon. Alvarez & Marsal are not parties to this but Stonehill is. Stonehill was not a party to the prior proceedings.

And the standing is manifest. With no criticism of Mr. Dondero's lawyer, I searched in his argument where he was articulating standing.

And without going further, I will tell you I think our standing is clear. We're in the money.

THE COURT: Okay.

MR. McENTIRE: We are in the money if there's a disgorgement or a disallowance.

THE COURT: Okay.

MR. McENTIRE: We have all types of claims, including insider trading and a creation of fiduciary duties.

Our remedies, as far as I can tell, he didn't identify any. We have several. Disgorgement, disallowance, subordination, a variety. And damages.

So we suggest strongly that it is not a related case.

And I must tell you, the reference to say send this to bankruptcy court or defer to the bankruptcy court or send us over to Judge Purdy, with all due respect to opposing counsel, it's really just a delay mechanism.

And what they're seeking to do through their invective, their criticisms, the references to these other courts, is seeking an opportunity to push us down the road and put us in a bad position potentially and a not enviable position in connection with statute of limitations.

Your Honor, we would offer the binder of exhibits that we submitted on February 15, 2022, including the affidavits and all the attached exhibits.

I would ask the court to take judicial notice of all the exhibits that we referred to in our petition, which I think is appropriate since we were specifying with particularity what we were requesting the court to take judicial notice of. And that's the large index, that's the list.

THE COURT: Obviously, I can take judicial notice of any kind of court pleadings, whether they're state or federal.

MR. McENTIRE: That's correct.

THE COURT: That's clear.

MR. McENTIRE: We would offer both affidavits and all the attachments into evidence at this time.

THE COURT: Okay. Do you have exhibit numbers for them?

MR. McENTIRE: Yes. It's Exhibit 1 with attachments. 1-A, 1-B, 1-C, 1-D, 1-E, 1-F and then Exhibit 1-G, Exhibit 1-H, Exhibit 1-J, Exhibit 1-K.

Everything in the binder, Your Honor. It's Exhibit 1 and Exhibit 2 with the attachments.

THE COURT: Okay.

MR. McENTIRE: I believe they're all identified. I can put a sticker on them, if you'd like.

THE COURT: Yeah. To admit them, it will need a sticker.

So I'm going to hold off on admitting them for just a minute because I do want to hear his objections and then we can go back to it. So just make sure we do that.

I'm not trying to not admit them, but I do want to let him have his objections.

Okay. Anything else, Counsel?

MR. McENTIRE: That's all I have right now, Judge.

THE COURT: Okay. Counsel?

MR. SCHULTE: Should I start with those exhibits, Your Honor?

THE COURT: Why don't you do that. That's probably the easiest way.

MR. SCHULTE: In light of the authorities that Mr. McEntire shared about the affidavits, I'll withdraw the objections to the affidavits or the declarations.

THE COURT: Okay.

MR. SCHULTE: I'm taking Mr. McEntire's word that those cases say what he says they say.

THE COURT: I'll tell you because 202 is not a lawsuit, you don't necessarily have a right to cross-examine, et cetera. So, yeah, affidavits are frequently used on 202s.

MR. SCHULTE: And that's fine, Your Honor. I'll take Mr. McEntire's word what those cases say.

But I will maintain the objection to Exhibit H -- it's the declaration of Mr. Patrick -- on the grounds of hearsay. That is not a court record or a file-stamped pleading from federal or state court. It's just a letter. So that's hearsay. And it hasn't been properly authenticated.

The other issue is the exhibit to Mr. Dondero's declaration. That's just an email

from Mr. Dondero, so I object on the grounds of hearsay.

THE COURT: Mr. McEntire, what's your response specifically to Exhibit H as attached to the Patrick declaration and then the attachment to the Dondero declaration?

MR. McENTIRE: Exhibit H to Mr. Patrick's affidavit would be hearsay, but there's an exception that it's not controversial.

THE COURT: Okay.

MR. McENTIRE: And there's no indication that there's any challenge of the reliability of the document.

THE COURT: What is the exhibit? I'm trying to pull it up. Sorry.

MR. McENTIRE: It's Exhibit 1-H. It is a letter from Alvarez & Marsal simply indicating what they paid for the claim.

THE COURT: Is it the July 6th, 2021, letter?

MR. McENTIRE: Yes, Your Honor.

THE COURT: I've got it.

MR. McENTIRE: And the exhibit to Mr. Dondero's is not being offered for the truth of the matter asserted, just the state of mind of Farallon.

THE COURT: Okay.

MR. McENTIRE: He has proved it up that it's authentic. It's a true and accurate copy.

And it goes to the state of mind of Farallon and it goes to the state of mind of Mr. Seery as well who are basically individuals who are trading on inside information.

And Mr. Seery would not have known about the MGM sale but for that email. And Farallon and Stonehill would not know about MGM but for Mr. Seery.

THE COURT: Okay. So the response to hearsay is that it goes to state of mind.

MR. McENTIRE: It goes to state of mind.

THE COURT: Okay, Counsel. How do you respond to that?

MR. SCHULTE: I'll start with the last one, Your Honor. I think that's the definition of hearsay, is that you're purporting to establish the state of mind of the parties who are not before the court.

It's been emphasized that Mr. Dondero has no relation to HMIT. And none of the recipients of the email are parties to this proceeding.

This purports to establish the state of mind of Mr. Seery, who is not before the court, and the state of mind of Farallon, just based on the say so of

Mr. Dondero in this email. That's hearsay.

And as for the first letter, this is a letter on the letterhead of A&M which, by the way, is one of the parties in the Dondero Rule 202 petition.

And it's not on the letterhead of any of the parties to this case so the letter isn't properly authenticated.

And I'm not aware of the not controversial exception to hearsay.

THE COURT: Well, there is a thing that talks about if you're admitting something that's just not controverted. Right? It's everybody agrees "X" happened. We're just admitting evidence to have that. So what this basically is is just showing the claim of the funds.

And I guess my question is what's the objection. Is there an objection to the substance of it?

MR. SCHULTE: I don't think there's any dispute that Farallon and Stonehill, through their respective special purpose entities, purchased the claims that are at issue here.

And if that's the sole purpose of admitting this letter into evidence, I don't think that's a matter that's genuinely in dispute.

THE COURT: Okay.

MR. SCHULTE: So if that's the only issue as raised by this letter, I don't know that there's a dispute there.

THE COURT: Right. Well, that's the whole thing.

MR. McENTIRE: I think we're almost solving the issue on the fact of how much they paid, $75 million.

THE COURT: Okay. So I will sustain the objection to the email to Mr. Dondero's declaration, Exhibit P 2-1.

I am going to overrule the objection to -- I don't know what the letter is of the attachment.

MR. McENTIRE: It's Exhibit P 1-H to Mr. Patrick's affidavit.

THE COURT: Correct. Sorry.

Okay, Counsel. If you'll proceed.

MR. SCHULTE: May I approach the bench, Your Honor? I have a binder of exhibits also.

THE COURT: Yes, you may.

MR. SCHULTE: These have all been marked with exhibit stickers already. There are tabs for each of the exhibits. They're marked R1 through 17, I believe. And "R," of course, stands for Respondents.

THE COURT: I take the shortcut of calling everybody "Plaintiff" and "Defendant" just because I'm so used to using that language in court.

But I do agree. It's Petitioner and Respondent. You're not technically a defendant.

Okay. So, first of all, I'm going to admit Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2, with the sole exception of the email to Mr. Dondero's declaration that I sustained.

And then are there objections to the respondent's exhibits?

MR. McENTIRE: Very few.

I object to Exhibit No. 1 and Exhibit No. 2 as irrelevant.

THE COURT: What's the objection to 1?

MR. McENTIRE: They're offering the order from Judge Purdy.

THE COURT: Okay. I can take judicial notice of that. I mean, it's a court record from Dallas County. So I don't think that that's particularly relevant.

To be bluntly honest, I looked at it last night. Right? Because of the issue that there's a related case, I pulled that file too and looked at everything.

So I can take judicial notice of that. Whether it's relevant or not, I can look at it. And, obviously, if it's not relevant, I'll disregard it.

MR. McENTIRE: Fair enough.

THE COURT: I'll overrule that objection. What's next?

MR. McENTIRE: The only other objections are Exhibit 12 and 13. I just don't know what they are or for what purpose they would be offered.

THE COURT: Okay. So 12 is a notice of appearance and request for service in the bankruptcy court on behalf of Hunter Mountain Trust.

So what's the issue, Counsel?

MR. SCHULTE: Your Honor, these are notices of appearance filed by Hunter Mountain in the bankruptcy court.

And the purpose of these notices is simply to show -- and maybe this is not genuinely in dispute -- that Hunter Mountain, through its counsel, would have received notice of all the activity that was going on in the bankruptcy court.

THE COURT: It's the same issue I've got with everything that Plaintiff submitted. It's a bankruptcy pleading. I can take notice of it. If it's irrelevant, I'll disregard it.

So I'll overrule that objection.

And then what's 13?

MR. McENTIRE: The same objection.

THE COURT: I'll overrule it because again, I can take judicial notice of those.

MR. McENTIRE: No other objections, Your Honor.

THE COURT: So Respondent's Exhibits 1 through 17 are so admitted.

MR. SCHULTE: May I proceed, Your Honor?

THE COURT: Yes, you may.

MR. SCHULTE: HMIT -- Hunter Mountain -- races into this court seeking extensive and burdensome presuit discovery about claims trading that took place in the Highland bankruptcy two years ago.

Mr. McEntire has talked about the harm that would result from delay if a different court were to consider this request for presuit discovery. That is a function of waiting two years after the subject claims transfers to seek relief in this court.

The exact same allegations of claims trading and misconduct by Jim Seery -- those allegations are not on the slides that you looked at. But those allegations are common in Mr. Dondero's Rule 202 petition and this petition.

THE COURT: Right. They're common.

I know you make the allegation that Dondero is related to Hunter Mountain, but I guess I don't have any evidence of that.

Or do you have evidence of that? Because otherwise, while it involves some of the same issues in the sense of the underlying facts, technically Farallon is the common respondent.

But there's a different respondent and there's a different petitioner in that case.

MR. SCHULTE: Yes. That's true, Your Honor. And we've said that on information and belief.

THE COURT: Okay.

MR. SCHULTE: That's our suspicion.

We believe that to be the case, but I don't have evidence of it. I didn't hear a denial of it, but, nevertheless, that is where things stand.

But what's important about the case is even if this court and Judge Purdy determined that the cases are not related, what is important is that the same allegations related to this claims trading and the same allegations of inside information being shared by Mr. Seery, those were front and center in the July 2021 petition filed by Mr. Dondero.

Even if there are other dissimilarities between the cases, those are issues that are common.

THE COURT: Okay.

MR. SCHULTE: And it's important to note that as HMIT has filed this petition, it has glossed over issues of its own standing and the assertion of viable claims that will justify this discovery.

Now, I know that HMIT has cited these cases that say, Your Honor, I don't have to state a really specific claim right now.

But you do have to articulate some ground for relief, some theory, that would justify the expense and the burden that you're trying to put the respondents to in responding to all this discovery.

And this isn't simple discovery. We're talking about deposition topics with I believe 29 topics each and 13 sets of really broad discovery requests with a bunch of subcategories.

THE COURT: Right.

MR. SCHULTE: We're not talking about some minimal burden here. This is an intrusion into entities that are not parties to a lawsuit, but rather this investigation.

And HMIT has ignored that there is a specific mechanism in the bankruptcy court that's

available to it under federal bankruptcy Rule 2004 and that the substance of HMIT's petition, which is claims trading and bankruptcy, falls squarely within the expertise of Judge Jernigan, the presiding bankruptcy judge.

THE COURT: And I agree. You could do this in federal court. But there's a lot of things that can be done in state court or done in federal court.

They get to choose the method of getting the information, so why should I say, theoretically, yes, this is a good thing, I should do it, but, hey, send it to bankruptcy. Why?

MR. SCHULTE: The bankruptcy judge has actually answered that question directly.

THE COURT: Okay.

MR. SCHULTE: It is true, as HMIT has said, the federal bankruptcy court doesn't have jurisdiction over a Rule 202 proceeding. That's not in dispute.

THE COURT: Right.

MR. SCHULTE: We tried to remove the last case to federal bankruptcy court and it was a state claim.

But what the bankruptcy judge pointed out

when she remanded the case back to Judge Purdy, who ended up dismissing Dondero's petition, is it pointed out, one, there's this mechanism in bankruptcy where they can do the exact same thing, Rule 2004.

And the bankruptcy judge pointed out that it is in the best position to consider Hunter Mountain's request.

It pointed out when it remanded the case that it had grave misgivings about doing so. It confirmed that it is in the best position to consider this presuit discovery.

THE COURT: Okay. This is part of one of the exhibits?

MR. SCHULTE: Yes, Your Honor. This is in one of the opinions that I included in the binder, a courtesy copy of one of those opinions.

THE COURT: Oh, at the back?

MR. SCHULTE: Yes, Your Honor.

THE COURT: Okay.

MR. SCHULTE: It's 2022 Bankruptcy Lexis 5.

THE COURT: Okay. I got it.

And real quick, for the record, it's Dondero versus Alvarez & Marsal. It's 2022 Bankruptcy Lexis 5.

MR. SCHULTE: Right.

And in particular, Your Honor, I'm looking at pages 31 to 32 of that order.

THE COURT: Okay.

MR. SCHULTE: What the judge is pointing out here is it has grave misgivings about remanding the case because it knows a thing or two about the Highland bankruptcy, having presided over the case and all the related litigation for over what's now three years.

And it's familiar with the legal and factual issues. It's familiar with the parties. It's familiar with claims trading in a bankruptcy case, which was the very crux of the Dondero petition. It's also the crux of this petition by Hunter Mountain.

And it observed, the bankruptcy court did, that any case that could be fashioned from the investigation would end up in bankruptcy court anyway because it would be related to the Highland bankruptcy.

So you ask a really good question, Your Honor. Why should I ship it off to the bankruptcy court. The answer is Judge Jernigan is in a position to efficiently and practically deal with this request because she deals with it all the time and she is intimately familiar with the legal and factual issues and with claims trading.

It's not like Hunter Mountain gets poured out if it goes to bankruptcy court. It has a mechanism to seek the exact same discovery from Judge Jernigan who is very familiar with these very particular issues.

Now, Hunter Mountain says, well, bankruptcy court is too time-consuming and cumbersome. It's going to take 60 days to even get this before the bankruptcy court.

Well, we're talking about the fact that they've waited two years to file this proceeding related to these claims transfers that took place in 2021.

So, again, what HMIT is asking this court to do is inefficient and is impractical. This court would need to devote a lot of resources to understand what the proper scope of any discovery should be, whether the claims are cognizable.

And that's just a tall order, Your Honor. The request is more appropriately dealt with by the bankruptcy judge, according to a proper bankruptcy filing.

It's undisputed that while the bankruptcy court doesn't have jurisdiction over a 202 petition, there's no question that it has jurisdiction over a Rule 2004 request for discovery, which is the counterpart for this type of discovery in bankruptcy court.

THE COURT: Right.

MR. SCHULTE: The real issue, Your Honor, and this is the part that Hunter Mountain is dancing around, is that Hunter Mountain doesn't want to be in front of Judge Jernigan.

Judge Jernigan held Mark Patrick -- that is HMIT's principal who verified this petition. She held him along with Dondero and Dondero's counsel and others in civil contempt and sanctioned them nearly $240,000 for trying to join Seery to a lawsuit in violation of Judge Jernigan's gatekeeping orders.

HMIT is trying to dodge the bankruptcy court and its scrutiny of what HMIT is doing as this petition also targets Seery and the inside information that he purportedly gave to Farallon and Stonehill.

This is forum shopping, plain and simple. And the court should dismiss the petition so that HMIT can seek this discovery in bankruptcy court.

Now, I don't want to spend a lot of time on the related case, but I will emphasize just what I've mentioned, which is while some of the parties may be different, we're still talking about the same claims trading activity that took place in 2021 and the same allegations of insider dealing by Seery.

And Judge Purdy, on remand, dismissed

that petition where some of the same arguments were made about judicial efficiency and that the case should be filed in bankruptcy court.

And it bears noting, by the way, that after Judge Purdy dismissed Dondero's Rule 202 petition, where we had argued that this ought to be in the bankruptcy court, Dondero didn't file in the bankruptcy court, which sort of makes the point that they didn't want to be in front of Judge Jernigan on this either.

Okay. Now let's turn to the merits, Your Honor. While Mr. McEntire has gone to great lengths to say we don't have to state claims, he stated five or six on that PowerPoint presentation of claims that he envisions.

But what made it all really crystal clear is in that notice of supplemental evidence, and that includes the declaration of Mr. Patrick, there in paragraphs 15 and 16 it's made clear what Hunter Mountain really wants.

THE COURT: Okay.

MR. SCHULTE: What the goal of this discovery is is to invalidate the claims that Farallon and Stonehill's entities purchased.

So let's unpack what it is they purchased.

THE COURT: Okay.

MR. SCHULTE: These are claims that were not ever held by Hunter Mountain. These are claims that were held by Redeemer, Acis, UBS, and HarbourVest.

THE COURT: Right. They were the Class 8 and 9. Right?

MR. SCHULTE: I believe that's correct.

THE COURT: Okay.

MR. SCHULTE: Those claims were always superior to whatever it was that Hunter Mountain held.

So Redeemer, Acis, UBS, and HarbourVest held those claims. The parties in the bankruptcy had the opportunity to file objections to those claims. And they did.

And Seery, on behalf of the debtor, negotiated with Redeemer, Acis, UBS, and HarbourVest and reached settlements that resolved the priority and amounts of those claims.

THE COURT: Right.

MR. SCHULTE: And then filed what's referred to -- and I'm sure Your Honor knows this -- as a Rule 9019 motion to approve those settlements in the bankruptcy court.

THE COURT: Actually, I don't. I've never done bankruptcy but I read it. I know the general process and I did read it.

MR. SCHULTE: All right.

THE COURT: Just FYI, I've never done bankruptcy law. They've got their own rules.

MR. SCHULTE: Well, the parties in the bankruptcy had the opportunity to object to those settlements and some did so.

And after evidentiary hearings, the bankruptcy court granted those motions and allowed and approved those claims.

That is really important, Your Honor.

THE COURT: Okay.

MR. SCHULTE: That's Exhibits 14 through 17 in the binder that I handed you.

And these are the same exhibits that are referenced in Hunter Mountain's petition. And it bears noting that the U.S. District Court affirmed those orders after appeals were taken.

But the bankruptcy court's approval of the very same claims that Hunter Mountain now seeks to investigate and invalidate is entitled to res judicata.

HMIT can't now second-guess the bankruptcy court's orders approving those very same claims. That's the effect of the investigation that Hunter Mountain seeks, the invalidation of claims that are already bankruptcy court approved.

And it bears noting that each of those four orders, Exhibits 14 through 17, provides the following: quote, "The court" -- the bankruptcy court -- "shall retain exclusive jurisdiction to hear and determine all matters arising from the implementation of this order."

This would include HMIT's stated goal of conducting discovery to try to invalidate these very claims.

This is yet another reason, Your Honor, to answer your question earlier of why this request for discovery should be posed to the bankruptcy court.

Judge Jernigan, I suspect, would have views on whether her own orders authorizing these claims should be overturned.

Okay. So HMIT -- Hunter Mountain -- alleges that after the bankruptcy court approved these claims, Seery disclosed inside information to Farallon and to Stonehill to encourage them to buy these claims from the original claimants. Again, UBS, Redeemer, Acis, and HarbourVest.

Farallon, through Muck, which is its special purpose entity, and Stonehill through Jessup, which is Stonehill's special purpose entity, acquired those transferred claims in 2021.

And there's no magic in bankruptcy court to claims transfers. It's a contractual matter between the transferors and the transferees. It's strictly between them.

THE COURT: Okay.

MR. SCHULTE: And there's no bankruptcy court approval that's even required.

The transferee, so in this case Muck and Jessup, had simply to file under federal bankruptcy Rule 3001(e) a notice saying these claims were transferred to us. And they did so.

Your Honor, that's Exhibit 6 through 11 in the binder that I handed to you.

THE COURT: Okay.

MR. SCHULTE: The filings evidencing those claims transfers were public. And Hunter Mountain received the claims transfer notices.

And that's the exhibits that we were talking about, Exhibits 12 through 13, where Hunter Mountain's lawyers had appeared in the case before those claims transfer notices were filed.

So not surprisingly, Hunter Mountain did not file any objections to those claims transfers. And that's not surprising because under Rule 3001, the only party that could object to the claims transfers were

the transferors themselves.

THE COURT: Right.

MR. SCHULTE: Essentially saying, hold on. We didn't transfer these claims. But of course there's no dispute that the transfers were made.

Here, HMIT was neither the transferor nor the transferee of the claims. It had no interest in these claims. It never did. It didn't before the claims transfers and it didn't after the claims transfers.

The claims originally belonged to Redeemer, Acis, UBS, and HarbourVest, and they were then transferred to Muck and Jessup, which are Farallon's and Stonehill's entities.

THE COURT: Right.

MR. SCHULTE: So why does that matter? That matters because these claims were approved by the bankruptcy court. The claims didn't change or become more valuable after they were transferred. The only difference is who is holding the claims.

So Hunter Mountain says, hold on. What we're alleging here is that the claims that Farallon and Stonehill purchased with the benefit of this purported inside information from Mr. Seery, they're secretly worth more than expected.

Those allegations, they're disputed, to be sure. But let's assume they're true. That situation has zero impact on Hunter Mountain.

THE COURT: Okay.

MR. SCHULTE: And that's because this is a matter that's strictly between the parties to the claims transfers. Again, Redeemer, Acis, UBS, and HarbourVest on the one hand and Farallon and Stonehill on the other.

And the way we know this is let's pretend that Muck and Jessup didn't buy these claims, Your Honor, and that the claims instead have remained with UBS, HarbourVest, Acis, and whatever the other one I'm forgetting. The claims wouldn't have been transferred, and they would have remained with those entities.

In that case, the original claimants would have held those claims for longer than they wanted. And if HMIT is right, then the claims would have ended up being worth more than even they expected.

So why does that matter? Well, that matters because if that is all true, Hunter Mountain would be in the exact same place today. Neither better nor worse off, it would be in the exact same place.

Either Farallon and Stonehill's entities are gaining more on these claims than they expected

or UBS, HarbourVest, Acis, and Redeemer, they are realizing more on these claims than they expected.

But Hunter Mountain never stood to be paid on these claims to which it was a stranger. These are claims in which Hunter Mountain never had any interest.

THE COURT: So presuming that Hunter Mountain had expressed interest in buying these claims and there was insider trading, you don't think that would be a tortious interference in a potential contract?

MR. SCHULTE: If there was insider trading of the type that Hunter Mountain alleges in this case, it would have no impact on the rights of Hunter Mountain.

If that's true, maybe there was a fraud on the bankruptcy court. The bankruptcy court would surely be interested in that. Maybe there was a fraud on the transferors. I mean, maybe UBS, Redeemer, Acis -- why do I always forget the third one? -- and HarbourVest.

THE COURT: Like I said, I had a chart last night of all the names. Obviously, I haven't been involved in this case up until now, and there's a lot of names.

MR. SCHULTE: Yes.

The transferors of the claims might say,

well, wait a minute. I wish I would have known this inside information. I'm the one that was really injured here.

Because if there was really meat on this bone, Your Honor, then the injured parties would be the transferors of the claims: Redeemer, Acis, UBS, and HarbourVest.

Because the crux of HMIT's petition is that those entities, the transferors, were duped into selling their claims for too little when the claims were secretly worth more.

Well, if that's true, you would expect that the transferors would be screaming up and down the hallway, saying we didn't get paid enough.

THE COURT: Right.

MR. SCHULTE: We are the injured parties here, we are the ones with damages, we want to unwind these claims transfers, or we want to be paid more on these claims transfers.

But the rights of those entities, the transferors, to complain about these allegations doesn't mean that Hunter Mountain can also stand up and say, well, I want to complain too. Because Hunter Mountain never stood to be paid on these claims.

The question is if somebody was duped,

if somebody was injured, if anybody it was the transferors, not Hunter Mountain. The transferors would be the only real parties in interest that would have been injured by what Hunter Mountain alleges.

But it's notable that none of those transferors has filed an objection to these transfers.

THE COURT: Right.

MR. SCHULTE: None of them has filed a Rule 202 proceeding. None of them has filed a Rule 2004 proceeding seeking discovery about inside information that Farallon and Stonehill allegedly had. It is Hunter Mountain who is an absolute stranger to these claims trading transactions.

And so HMIT is trying to inject itself into a transaction to which it was never a party and which it never had any interest.

The sellers were entitled to sell those claims to any buyer they wanted to on whatever terms they agreed to.

And if there was some information that they didn't have the benefit of that the buyers did, you would expect the transferors, if anyone at all, to be the ones complaining about it. But that's not what we have here.

THE COURT: Okay.

MR. SCHULTE: All right. Another note that Hunter Mountain glosses over is duty.

So all the claims that were listed on the PowerPoint all require that there must have been some kind of a duty owed by Farallon and Stonehill to Hunter Mountain. But there's no duty owed to a stranger to a claims trading transaction.

Yet again, if anybody were to have a duty owed to it, I guess it would be the transferors of the claims even though that was an arm's length transaction.

But it's not a stranger to the transaction and a stranger that has no interest in the claims that we're talking about here.

THE COURT: Okay.

MR. SCHULTE: Nor has Hunter Mountain identified any authority for a private cause of action belonging to Hunter Mountain related to these claims transfers.

Hunter Mountain doesn't have the right to assert claims on behalf of other parties. It only has the right to assert claims on behalf of itself when it has been personally aggrieved.

I heard Mr. McEntire say several times during his presentation that Hunter Mountain had a

99.5 percent equity interest in Highland Capital.

THE COURT: Right.

MR. SCHULTE: I think it's important to point out that that equity interest was completely extinguished by the confirmed plan in the bankruptcy case.

As Your Honor pointed out, we have the waterfall, and Classes 1 through 9 have to be paid in full. And you know what Classes 8 and 9 are? General unsecured claims and subordinated claims.

And the only way that Hunter Mountain is ever in the money, as Mr. McEntire was saying, with its Class 10 claim is if Seery, the claimant trustee, certifies that all claims in 1 through 9 are paid in full 100 percent with interest and all indemnity claims are satisfied.

There has been no such certification by Mr. Seery, and there may never be such a certification by Mr. Seery.

THE COURT: Okay.

MR. SCHULTE: So that is real important because the idea that Hunter Mountain stands to somehow gain from this transaction is flawed for the reasons we've already talked about.

But it's also flawed because they have

what is, at best, a contingent interest. It's contingent on things that have not yet occurred. And under the case law, they don't have standing conferred on them in that interest.

THE COURT: Okay.

MR. SCHULTE: So for all those reasons why there is no interest in the claims, no legal damages, no duty owed to it, no private cause of action belonging to it and a hypothetical and contingent interest, HMIT lacks standing to investigate or challenge these claims and claims transfers to which it was not a party and in which it had zero interest.

And for any or all of the reasons we've talked about, Your Honor, their petition should be dismissed. I welcome any questions the court may have.

THE COURT: No. My head is kind of spinning. Like I said, I spent all day yesterday reading stuff. As I said, I will admit I've never practiced bankruptcy law.

I mean, my joking statement is I pretty much know enough to not be in contempt of bankruptcy court. Because I have cases where one of the defendants or one of the parties ends up in bankruptcy court and whether or not I can proceed with my case, et cetera. That's my whole goal is not to be in contempt of court.

MR. SCHULTE: That should be the goal, is to not be in contempt of the bankruptcy court.

MR. McENTIRE: May I have just five or ten minutes?

THE COURT: I don't have another hearing, so we're fine on time.

MR. McENTIRE: All right. In all due deference to Mr. Schulte, the last 15 minutes of his argument misstates the law.

THE COURT: Okay.

MR. McENTIRE: The Washington Mutual case addresses almost 90 percent of what he just talked about. Their equity was entitled to bring an action to basically disallow an interest that was acquired by inside information.

Okay. And so he has not addressed the Washington Mutual case at all.

THE COURT: Well, okay. So my question is let's say that the insider trading didn't happen.

I mean, when I was playing with the numbers last night, it doesn't appear that Hunter Mountain, being Class 10, would have gotten anything anyways even if. Right?

Like I said, I did a lot of reading last night, so I want to make sure I understand.

MR. McENTIRE: Fair enough. I think I can address that.

The bottom line is a wrongdoer should not be entitled to profit from his wrong. That's the fundamental premise behind the restatement on restitution. That's the fundamental purpose of the Washington Mutual case.

You have remedies, including disgorgement, disallowance or subordination.

THE COURT: I'm just trying to be devil's advocate because I'm trying to work through this.

So let's say it did happen and the court ordered disgorgement and invalidated these transfers, then the money would just go to the Class 8 and Class 9. Right? To Acis, UBS, HarbourVest, etc.

MR. McENTIRE: No, they would not. Because those claims have already been traded.

THE COURT: Okay. Well, that's what I'm saying.

If the court said there was insider trading and to disallow the transfer and ordered disgorgement, theoretically, back to Highland Capital, then the money is there.

Okay. So then it would just go to Acis and UBS. Right?

MR. McENTIRE: The remedy here is to subordinate their claims. HarbourVest, UBS, Acis, and the Redeemer committee have sold their claims. They can intervene if they want and that's up to them. If they want to take the position that they were defrauded, that's up to them.

THE COURT: Okay.

MR. McENTIRE: Otherwise, the remedy is to disgorge the proceeds and put them back into the coffers of the bankruptcy court in which case Category 8 and 9 would be brimful, overflowing, and flow directly into the coffers in Class 10.

And that's the purpose of 15 and 16 in Mr. Patrick's affidavit.

THE COURT: Okay.

MR. McENTIRE: I find it amazing that he refers to Judge Jernigan's orders where he said anything dealing with these claims must come back to me. I have exclusive jurisdiction. I recall that argument.

THE COURT: Right.

MR. McENTIRE: Well, she could have accepted the removal of Mr. Dondero in that other proceeding. She didn't. She said I don't have jurisdiction over this. I'm sending it back to the state court.

THE COURT: Okay. Because it was filed as a 202. If it had been filed as a Rule 404, then she would have had jurisdiction because you're specifically invoking a state court process. Right?

MR. McENTIRE: I'm invoking exclusively a state court process because of the benefit it provides. That is a strategic choice that this petitioner has elected. It has nothing to do with bankruptcy court, other than bankruptcy court is too slow.

All the invective about the prior contempt order has nothing to do with these proceedings. Mr. Dondero is not involved in these proceedings.

If HarbourVest and UBS want to intervene in some subsequent lawsuit, they have a right to do so. I can't stop them.

But until then, we have stated a cause of action or at least a potential cause of action which is insider trading. That from an outsider makes them an insider that owes fiduciary duties to the equity.

Washington Mutual allowed equity to come in and disallow those claims. And if those claims are disallowed, the Class 10 is going to be overflowing on the waterfall. And that's my client.

A couple of other things. Hunter Mountain

is not a stranger. Hunter Mountain was the big elephant in the room until the effective date of the plan.

We held 99.5 percent of the equity stake and when all of these wrongdoings occurred, Hunter Mountain was still the 99.5 percent equity stakeholder.

It's only after the bankruptcy plan had gone effective, after these claims had already been --

THE COURT: Wait. The insider trading happened after the bankruptcy had been filed but before the bankruptcy was resolved.

So it's during that process. Right?

MR. McENTIRE: You have filing a bankruptcy. You have a bankruptcy plan. You have confirmation of the plan, but it doesn't go effective until six months later.

THE COURT: Right.

MR. McENTIRE: After the bankruptcy plan was confirmed and they had dismal estimates of recovery -- 71 percent on Class 8, zero percent on Class 9 -- that's when Farallon and Stonehill purchased the claims.

But they purchased the claims at a time before the bankruptcy wasn't effective. And so the so-called claimant trust agreement had not gone into effect until several months later.

THE COURT: Okay.

MR. McENTIRE: And during this period of time Hunter Mountain was the very, very largest stakeholder.

THE COURT: Okay.

MR. McENTIRE: And so to call it a stranger is just not right and it's not fair because we're anything but a stranger.

They make an argument that Hunter Mountain didn't object to the settlements. Well, so what? I'm not attacking the underlying settlements. I'm attacking the claims transfers.

And then he says, well, why didn't they object to the claims transfers. Well, he finally conceded that the claims transfers are not actually subject to a judicial scrutiny by the bankruptcy court.

This court is uniquely qualified to review these claims transfers as is Judge Jernigan. Insider information is insider information as a rose is a rose is a rose. And any court of law is qualified to determine whether insider information was used.

Judge Jernigan did not say, okay, Farallon, you can buy this claim. There was no judicial process here.

THE COURT: Right. I mean, it's a motion.

We want to do this, just get approval.

MR. McENTIRE: They don't even have to get approval.

THE COURT: Okay.

MR. McENTIRE: All they have to do is file notice.

THE COURT: Okay. File the notice.

MR. McENTIRE: Judge Jernigan was not involved at all.

We had no reason to object. All we know there's a claims transfer. It's not until later that we discover that inside information was used and that's why we're here.

So we didn't object to the original claims. There was no need to. The original settlements rather. There was no need to. There was no objection to the claims transfers.

There was no mechanism to object, other than what we're doing here today. This is our objection. This is our attempt to object.

Because we believe that they have acquired hundreds of millions of dollars of ill-gotten gain and if that is true, not only will Hunter Mountain be benefited tremendously, but other unsecured creditors. They are very few but they will be also benefited.

Frankly, Judge Jernigan may want that to happen.

THE COURT: Okay.

MR. McENTIRE: But we're here to get the discovery so I can pull it all together within the next 30 days or 40 days. So I can make decisions before somebody might suggest, hey, well, you should have filed this a little bit earlier.

And so, Judge, that's why we're here, in the interest of time. And that was my decision. That was my strategic decision to bring it here.

THE COURT: Right.

MR. McENTIRE: He says that Rule 3001 is the exclusive remedy. Only transferors can complain about transferees or vice versa.

THE COURT: You're not necessarily complaining about the actual transfer. It's how the transfer came about.

MR. McENTIRE: That's right.

And to suggest that that is the governing principle that this court should consider is an absolute contradiction to the Washington Mutual case.

Because if fraud is in play, if inside information is in play, then it impacts everyone who is a stakeholder. Everyone.

THE COURT: Okay.

MR. McENTIRE: And we are one of the largest stakeholders in the bankruptcy proceedings, even today. So that's all I have.

I thank you for your attention, Your Honor. Clearly, the benefit here is we get to uncover some things that need to be uncovered. And we'd like to do it so in a timely fashion.

And if we don't have a claim, we don't have a claim. If we have a claim, then we may file it in a state district court.

And if Judge Jernigan and her gate-keeping orders require us to go there, we'll go there. I'm not going to run afoul of any rule she has, but we need to get this underway.

THE COURT: Okay.

MR. SCHULTE: Your Honor, may I make some rifle-shot responses?

THE COURT: Yeah. That's fine.

MR. SCHULTE: Okay. Mr. McEntire has said that they are one of the largest stakeholders in the Highland bankruptcy based on this 99.5 percent equity. That equity was extinguished in the fifth amended plan.

That's Exhibit 3 that I handed you, Your Honor. That plan was filed in January of 2021

before any of these claims transfers took place. The equity was extinguished by virtue of the plan.

THE COURT: Okay.

MR. SCHULTE: Mr. McEntire was talking about this Washington Mutual case. I read the case.

But what he said repeatedly, and I think it's really important to listen to what Mr. McEntire said about this case, is that that court allowed the equity to come in and talk about these transfers.

Hunter Mountain doesn't have any equity. That equity was extinguished in the plan for reasons I just discussed. So for being the largest stakeholder, according to Mr. McEntire, in the bankruptcy what does Hunter Mountain have to show for that? A Class 10.

As Your Honor pointed out, a Class 10 interest, that is below everybody else. And that's where they've been relegated.

And to answer your question, Your Honor, that you posed to Mr. McEntire that I'm not sure was ever answered, HMIT -- Hunter Mountain -- at Class 10 stood to gain nothing when the plan was put together. So the largest stakeholder stood to gain nothing.

I've pointed to the language in the court's order about how the court has exclusive jurisdiction.

And Your Honor nailed the answer to the concern raised by Mr. McEntire, which is the bankruptcy court didn't have jurisdiction over a 202 proceeding. But it unquestionably has authority over the counterpart, 2004 in bankruptcy court.

THE COURT: Right.

MR. SCHULTE: Finally, I have never argued and if I did say this, I apologize. I have never argued that Hunter Mountain is somehow a stranger to the bankruptcy.

THE COURT: Right. They were obviously involved in the bankruptcy, but they're a stranger to these transfers.

MR. SCHULTE: Exactly. They were a stranger to these transactions. They didn't have any interest in these claims.

They don't stand to gain anything if the claims are either rescinded or if the claims are invalidated or the transfers are invalidated. They don't stand to get anything because they never had any interest in these claims.

The claims are the claims and either UBS, Redeemer, Acis, and HarbourVest stood to gain more than expected or Farallon and Stonehill stand to gain more than expected.

And if anybody is really injured here, it's not Hunter Mountain. It's the transferors who were duped into these transfers, according to Hunter Mountain. And they would be the ones that would have damage and have a claim along the lines of what Hunter Mountain is trying to assert on behalf of all stakeholders.

Your Honor, I have a proposed order, as Mr. McEntire does.

May I bring it up?

THE COURT: Yes, you may.

Okay, Mr. McEntire. Anything else?

MR. McENTIRE: His last few statements are inconsistent with the law, Your Honor.

THE COURT: Okay.

MR. McENTIRE: Because the law clearly, clearly indicates that we are a beneficiary. And that's what the Washington Mutual case stands for.

THE COURT: Okay. Wait. Let me make sure I know which one.

Do you have a cite for that case?

MR. McENTIRE: Yes, ma'am. It's in the PowerPoint.

THE COURT: That's fine. I just wanted to make sure I could find it.

MR. McENTIRE: There's also a Fifth Circuit case that talks about subordination where a Class 8 and Class 9 would actually be subordinated, Your Honor, to our claim.

So that's another approach to this, is subordination.

THE COURT: Okay.

MR. McENTIRE: And that's the In re Mobile Steel case out of the Fifth Circuit. I think there's a cite in our brief.

THE COURT: Okay.

MR. McENTIRE: I acknowledge that we're now classified with a different name. We're a B/C limited partner. And we're, in effect, a Class 10 beneficial interest.

But we're there having been a 99.5. And the lion share of any money, 99.5 percent of any money that overflows into bucket No. 10 is ours.

THE COURT: Right.

Okay. I am processing. Obviously, I need to take this into consideration. I haven't had a chance to go through Respondent's exhibits.

I've looked through the plaintiff's exhibits, but now I have much more of a focus of what I'm doing.

So I will try to get you all a ruling by the end of next week. I apologize. I've got a special setting next week that's going to be kind of crazy, but I will do everything I can.

If you all haven't heard from me by next Friday afternoon, call my coordinator Texxa and tell her to bug me.

MR. McENTIRE: Thank you for your time.

THE COURT: You all are excused. Have a great day.

(This completes the Reporter's Record, Petitioner Hunter Mountain Investment Trust's Rule 202 Petition, which was heard on Wednesday, February 22, 2023.)

STATE OF TEXAS)

COUNTY OF DALLAS)

I, Gina M. Udall, Official Court Reporter in and for the 191st District Court of Dallas County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $750.00 and was paid by the attorney for Respondents.

WITNESS MY OFFICIAL HAND on this the 1st day of March 2023.

/S/ Gina M. Udall

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL	§	**Chapter 11**
MANAGEMENT, L.P.	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S OBJECTION REGARDING EVIDENTIARY HEARING AND BRIEF CONCERNING GATEKEEPER PROCEEDINGS RELATING TO "COLORABILITY"

Hunter Mountain Investment Trust ("HMIT"), Movant, files this Objection Regarding Evidentiary Hearing and Brief Concerning Gatekeeper Proceedings Relating to "Colorability," and respectfully shows:

OVERVIEW

1. HMIT objects to any evidentiary hearing regarding its Emergency Motion for Leave to file Adversary Proceeding (Doc. 3699), and the related attached declarations (Docs. 3699-2, 3699-3, and 3699-4) and the proposed Adversary Complaint (Doc. 3699-1) ("Adversary Complaint") (collectively the "Emergency Motion for Leave").[1]

2. The Emergency Motion for Leave does ***not*** involve a summary judgment standard; it does ***not*** involve a substantive inquiry into the merits; it is ***not*** a test of the credibility of witnesses. Rather, as the Fifth Circuit, the Northern District of Texas and circuit courts outside of Texas have concluded: it is a threshold determination involving a standard that is ***not stringent***.

3. Here, HMIT need show nothing more than some possible validity of its claims. ***At most***, courts analogize "colorable" to a FED. R. CIV. P. 12(b)(6) ("12(b)(6)") standard. In assessing a complaint, a court must accept all well-pleaded facts as true and liberally construe all factual allegations in the light most favorable to the plaintiff. *Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999). Courts do not consider evidence outside of the pleadings under 12(b)(6) and, if they do so, then the motion is converted to one under FED. R. CIV. P. 56, and "the parties must be allowed to fully develop the facts, through discovery or otherwise, to support their record." *Hilgeman v. Nat'l Ins. Co. of Am.*, 444 F.2d 446, 448 (5th Cir. 1971); *see* FED. R. CIV. P. 56(d)(2). Yet here, the Court proposes to

[1] The proposed Adversary Complaint is attached as Exhibit 1 to the Emergency Motion for Leave.

conduct an evidentiary hearing on "colorableness"—not just before discovery has been fully developed, but before the case is even *filed*.

4. "Colorableness" must be construed according to its ordinary meaning which, at the highest standard, is analogous to a 12(b)(6) standard which is expressly *not* evidentiary. The Emergency Motion for Leave readily satisfies this standard.

ARGUMENT AND AUTHORITIES

The Plan Does Not Require An Evidentiary Hearing.

5. The Fifth Amended Plan of Reorganization of Highland Capital Management includes various "gatekeeping" provisions ("Gatekeeping Provisions").[2] These Gatekeeping Provisions provide for a determination, after notice and hearing, whether certain claims are "colorable."[3] Pursuant to these Gatekeeping Provisions, HMIT filed its Emergency Motion for Leave, attaching the proposed Adversary Complaint as Exhibit 1 to the Motion. The Emergency Motion for Leave and proposed Adversary Complaint include substantial, detailed allegations demonstrating that the potential adversary claims are more than "colorable"—that is, the claims exceed the minimal ***gatekeeping*** threshold for filing.

[2] Fifth Amended Plan of Reorganization of Highland Capital Management (Doc. 1808) at Article IX(F), pp. 51-52.
[3] *Id*.

6. A "gatekeeping" protocol, by its own terms, occurs in advance of filing a claim and prior to any Fed. R. Civ. P. 12(b)(6) motion. A Rule 12(b)(6) motion is grounded on whether a Complaint "fails to state a claim upon which relief can be granted" and is considered prior to any discovery **and without an evidentiary hearing**. *See Broyles v. Torres*, 2009 WL 2215781 (S.D. Tex. 2009) (distinguishing Rule 12(b)(6) standard from "frivolous" standard and finding that frivolous standard is a lower bar than Rule 12(b)(6) and does not require discovery or an evidentiary hearing), *aff'd*, 381 Fed. Appx. 370, 373 (5th Cir. 2010) (affirming that discovery and evidentiary hearing were not necessary under either a "frivolous" or Rule 12(b)(6) determination).

7. Similarly here, as required under Rule 12(b)(6), the Court's determination of whether HMIT's proposed claims are "colorable" should be made in advance of any discovery and without an evidentiary hearing. *See Broyles v. Torres*, 618 F. Supp. 2d 661, 683 (S.D. Tex. 2009) (Rule 12(b)(6) only requires a complaint to allege facts showing the pleader is entitled to relief). As a general rule, when considering a motion to dismiss under Rule 12(b)(6), "a district court must limit itself to the contents of the pleadings, including attachments thereto." *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498–99 (5th Cir. 2000). The court may consider documents attached to or referred to in the complaint without converting the motion to one for summary judgment. *See id*.

8. Nothing in the Gatekeeping Provisions of the Plan provides for, much less requires, an evidentiary hearing on whether a proposed claim is "colorable." Further,

HMIT objects that any requirement of an evidentiary hearing or evidentiary basis for HMIT's "gatekeeping" motion is contrary to applicable legal standards.

An Evidentiary Hearing on Colorablility is Improper and an Abuse of Discretion.

9. The Fifth Circuit quoted *Richardson v. United States*, 468 U.S. 317 (1984), for a definition of a "colorable claim" as one with "***some possible validity***." *See In re Deepwater Horizon*, 732 F.3d 326, 340 (5th Cir. 2013) (quoting *Richardson*, 468 U.S. at 326 n. 6). The Fifth Circuit also has made clear that whether a claim is colorable is based on ***allegations*** rather than merits-based proof: "There is a distinction here between whether a claim is colorable and whether it is meritorious. A plaintiff's claim is colorable if he can ***allege*** standing and the elements necessary to state a claim on which relief can be granted—whether or not his claim is ultimately meritorious—whether he can *prove* his case." *Id*. at 341 (emphasis in original, bold emphasis added).

10. A court need not conduct an evidentiary hearing, but must ensure that the claims do not lack any merit whatsoever. To put it another way, the Court need not be satisfied there is an evidentiary basis on the merits of the claims to be asserted. *See Louisiana World Exposition v. Fed. Ins. Co*., 858 F.2d 233, 252-53 and n. 15 (5th Cir. 1988) (allegations were sufficient, and no evidentiary hearing was necessary, to determine that breach of fiduciary duty claim against bankruptcy estate's officers and directors for

mismanagement of estate was colorable claim).[4] In *Louisiana World Exposition*, the Fifth Circuit explained: "In light of our analysis, we find that the debtor-in-possession's refusal to pursue LWE's cause of action against its officers and directors for negligent management was indeed unjustified. The Committee outlined a colorable claim which, if pursued successfully, could have greatly increased the value of the estate." *Id*.

11. "To determine whether a plaintiff has stated a valid or colorable claim, the Fifth Circuit has **instructed district courts to utilize a similar standard applied to a motion to dismiss under Rule 12(b)(6)**." *Trippodo v. SP Plus Corp*., No. 4:20-CV-04063, 2021 WL 2446204, at *3 (S.D. Tex. May 21, 2021), *report and recommendation adopted*, No. 4:20-CV-04063, 2021 WL 2446191 (S.D. Tex. June 15, 2021) (emphasis added); *Reyes v. Vanmatre*, No. 4:21-CV-01926, 2021 WL 5905557, at *3 (S.D. Tex. Dec. 14, 2021)(quoting the same); *see also Family Rehabilitation, Incorporated v. Azar*, 886 F.3d 496, 504 n. 15 (5th Cir. 2018) (quoting *Abraham v. Exxon Corp*., 85 F.3d 1126, 1129 (5th Cir. 1996) ("the requirement of a colorable claim is not a stringent one"). "A plaintiff need show nothing more than "some possible validity." *Id*. (quoting *Richardson*, 468 U.S. at 326 n. 6).

12. Other circuit courts have reached similar conclusions. For example, the Eighth Circuit held that "creditors' claims are colorable if they would survive a motion to dismiss." *In Re Foster*, 516 B.R. 537, 542 (B.A.P. 8th Cir. 2014), *aff'd* 602 Fed. Appx. 356

[4] In *Louisiana World Exposition*, when stating that an evidentiary hearing was unnecessary, the court noted that there were no objections to the claim other than the debtor-in- possession's "grave" conflict of interest and his unjustified refusal to bring the claims. *Id*.

(8th Cir. 2015) (per curium); *see also Sabhari v. Mukasy*, 522 F.3d 842, 844 (8th Cir. 2008). The Ninth Circuit also has held that a claim is considered colorable when it has "some possible validity."); *See Stanley v. Gonzalez*, 476 F.3d 653, 657 (9th Cir. 2007) ("A colorable claim is one which is not 'wholly insubstantial, immaterial, or frivolous.'"). The Sixth and Seventh Circuits have adopted a similar test requiring that the court look only to the face of the complaint to determine if claims are colorable. *See In re The Gibson Group, Inc.*, 66 F.3d 1436, 1446 (6th Cir. 1995) (relying on similar standard applied in the Second Circuit); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996)("The requirement of a colorable claim is not a stringent one. This circuit has noted that 'jurisdiction depends on an arguable claim, not on success' and that only if 'any claim ... must be frivolous is jurisdiction lacking.'")

13. In the non-bankruptcy context, the Northern District of Texas District Court also explained that "[t]he requirement of a 'colorable claim' means only that the plaintiff must have an 'arguable claim' and not that the plaintiff must be able to succeed on that claim." *Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002). Other district courts have reached similar conclusions. *Harry v. Colvin* 2013 WL 12174300, at *5 (W.D. Tex., Nov. 6, 2013, No. 1:13-CV-490-LY)("a claim is considered colorable when it has some possible validity" and "is not wholly insubstantial, immaterial, or frivolous"); *American Medical Hospice Care, LLC v. Azar*, 2020

WL 9814144, at *5 (W.D. Tex., Dec. 9, 2020, No. 5:20-CV-757 DAE) ("The requirement of a colorable claim is not a stringent one.").

14. There is good reason for a non-evidentiary standard. If this Court were to allow evidence, then the issue turns from whether the underlying proposed complaint presents colorable claims to whether HMIT will ultimately be successful in its prosecution of the asserted claims. But, as the cited authority makes clear, that would turn the judicial process on its head. Both proposed plaintiffs and potential defendants must have access to all discovery that would be available in the event of a live adversary proceeding or civil action. Here, this means the Court should not place itself and the parties in the position of having a full pre-trial process and trial to determine whether a complaint can be filed in the first instance. Such an approach would be clear error and an abuse of discretion, constituting a ruling far afield from the standards articulated by the Fifth Circuit.

15. For these reasons, HMIT objects that an evidentiary hearing on the "colorability" of HMIT's prospective adversary proceeding would be inappropriate and contrary to established law. It would involve introduction of evidence that is not only unnecessary and irrelevant to the "colorability" determination, but also would have to be of broadest scope, so as not to deny HMIT of its right to present its full case on the merits after discovery (if the decision is to be evidence based). Further, HMIT objects that an evidentiary approach would irrationally require putative trial to determine mere

colorability, which would subject HMIT to higher burdens (both from a legal standard standpoint and from a burden - including associated costs – standpoint) than legally required.

Respectfully Submitted,
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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I certify that on the 21st day of April 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S SUPPLEMENT TO EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING

Hunter Mountain Investment Trust ("HMIT"), Movant, files this Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding (the "Supplement"), both in its individual capacity and on behalf of the Reorganized Debtor, Highland Capital Management, L.P. ("HCM" or "Reorganized Debtor") and the Highland Claimant Trust

("Claimant Trust") (the Reorganized Debtor and Claimant Trust are collectively the "Highland Parties") against Muck Holdings, LLC ("Muck"), Jessup Holdings LLC ("Jessup"), Farallon Capital Management, L.L.C. ("Farallon"), Stonehill Capital Management LLC ("Stonehill"), James P. Seery, Jr. ("Seery") and John Doe Defendants Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendants Nos. 11-10 are collectively "Respondents" or "Proposed Defendants").[1]

OVERVIEW

1. This Supplement is not intended to amend or supersede the Emergency Motion for Leave to File Verified Adversary Proceeding (Doc. 3699) ("Emergency Motion for Leave"); rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action.

2. Recent events make clear that (1) Seery, as Trustee, has a conflict of interest which precludes him from bringing the proposed claims; and (2) Seery, as Trustee, has abandoned and actively attempted to avoid a merits-based determination of the proposed claims. These facts are set forth in a revised Adversary Complaint attached to this Supplement as Exhibit 1-A.

[1] All capitalized terms not otherwise defined herein have the meaning ascribed to them in HMIT's Emergency Motion for Leave.

3. The revised Adversary Complaint also re-postures the Highland Parties as nominal defendants to address any procedural issues. Although the Court may authorize HMIT to bring the derivative action on behalf of the Highland Parties as Plaintiffs, their joinder as nominal defendants is also a recognized pleading practice. This recharacterization ***does not change*** the substance of the derivative action, which remains for the benefit of the Highland Parties.

4. Additional factual allegations are set forth in the revised Adversary Complaint. These additional allegations do not alter the substantive nature of the proposed causes of actions.

5. This Supplement is timely. The hearing will be scheduled no earlier than May 18, 2023. As such, the Respondents have at least 25 days from the filing of this Supplement before any scheduled hearing.

RECENT EVENTS RELATED TO EMERGENCY MOTION FOR LEAVE

6. On March 28, 2023, HMIT filed its Emergency Motion for Leave, seeking leave to represent the Highland Parties in a derivative capacity and seeking damages and other relief on behalf of itself, individually, as well as on behalf of the Reorganized Debtor and the Claimant Trust.

7. HMIT also filed its Application for Expedited Hearing on its Emergency Motion for Leave ("Application") seeking a hearing prior to April 16, 2022. In its Application, HMIT presented what it believed was good cause under Rule 9006 of the

Federal Rules of Bankruptcy Procedure to authorize a shortened time for a response and hearing.

8. On March 30, 2023, the so-called "Highland Parties," which then also included Seery (Doc. 3707), and separately, Muck, Jessup, Farallon, and Stonehill (Doc. 3704), filed their Objections to the Application. One of the arguments advanced in these Objections by counsel for the "Highland Parties" was that the Court should delay a ruling on HMIT's Application so Seery and other parties could develop a potential statute of limitations defense.

9. Regarding the proposed claims, Seery attempted to avoid the claims to protect his own self-interest ***at the expense of*** the Highland Parties and HMIT. Seery unilaterally characterized the Highland Parties as the "Highland Defendants" and claimed they were opposed to HMIT's Emergency Motion for Leave. To be clear, HMIT seeks to assert its proposed claims ***on behalf of*** the Highland Parties, ***not against*** them.

10. Because recent events clearly establish HMIT's capacity and standing to bring its derivative claims, a revised Adversary Complaint is attached hereto as **Exhibit 1-A**. In addition to new factual allegations, the revised Adversary Complaint also includes allegations regarding fraudulent concealment and the discovery rule because

these recent events make clear that the Proposed Defendants seek to fabricate a limitations argument which otherwise would not exist.

ARGUMENTS & AUTHORITIES

11. Seery has known about HMIT's proposed claims for some time, yet, as Claimant Trustee with a duty to protect the Estate, Seery has made no attempt to prosecute these claims, is possessed of a debilitating conflict of interest and, in fact, has urged this Court to weaponize the gatekeeping protocol to make certain he and the other defendants can better take advantage of a purported statute of limitations defense. *See* Motion, n. 14. (Doc. 3707, ¶¶ 6, 17). Seery has opposed the Emergency Motion for Leave to advance his personal self-interest. Aware that "[t]he Plan does not release . . . Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence," Seery is clearly seeking other means by which to insulate himself.

12. Seery's recent conduct confirms he is disqualified to bring the Proposed Claims due to his manifest conflict of interest. His recent actions are to the detriment of the Highland Parties and HMIT, making it all the more necessary for the Court to grant HMIT leave to bring the proposed claims. *See Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 252-53 (5th Cir. 1988) (granting leave to creditors' committee to bring breach of fiduciary duty claim against bankruptcy estate's officers and directors for mismanagement of the bankruptcy estate due to debtor-in-possession's incapacity to do so due to apparent conflict of interest).

13. In *Louisiana World Expedition*, the Fifth Circuit explained: "In light of our analysis, we find that the debtor-in-possession's refusal to pursue LWE's cause of action against its officers and directors for negligent management was indeed unjustified. The Committee outlined a colorable claim which, if pursued successfully, could have greatly increased the value of the estate. While the debtor-in-possession's refusal was understandable given the grave conflict of interest implications, we cannot ignore the fact that the creditors' interests in seeing the property of the estate collected were not protected. Where the interests of an estate and its creditors are impaired by the refusal of a trustee or a debtor-in-possession to initiate adversary proceedings to recover property of the estate, we must consider that refusal unjustified." *Id*. at 252.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Hunter Mountain Investment Trust respectfully requests this Court:

1. grant HMIT leave authorizing it to file the Adversary Complaint, attached as Exhibit 1-A, as an Adversary Proceeding in this United States Bankruptcy Court for the Northern District of Texas, in its own name and as a derivative action on behalf of the Debtor Highland Capital Management, L.P. and the Highland Claimant Trust, against Muck Holdings, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, Stonehill Capital Management, LLC, James P. Seery, Jr., and John Doe Defendants Nos. 1 – 10 (and against Highland Capital Management, L.P. and the Highland Claimant Trust as nominal defendants to the extent necessary); and

2. further grant HMIT all such other and further relief to which HMIT may be justly entitled.

Dated: April 23, 2023

Respectfully Submitted,

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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF CONFERENCE

On April 21, 2023, Hunter Mountain Investment Trust's counsel conferred by telephone, via email, or both with counsel for all Respondents regarding the relief requested in this filing, including John A. Morris, who purports to be representing and acting on behalf of the Reorganized Debtor and the Highland Claimant Trust, Josh Levy and Lindsay Robin on behalf of James P. Seery, and David Schulte on behalf of Muck Holdings, LLC, Jessup Holdings LLC, Stonehill Capital Management LLC, and Farallon Capital Management, L.L.C. Mr. Morris indicated it can be assumed his clients are opposed until he reviews this filed instrument. Mr. Levy and Mr. Schulte indicated that their respective clients are neither opposed nor agreed until their counsel has reviewed the contents of this filing.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

CERTIFICATE OF SERVICE

I certify that on the 23rd day of April 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire
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Exhibit 1-A to Emergency Motion

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Case No. 19-34054-sgj11**
Debtor.	§	
HUNTER MOUNTAIN INVESTMENT TRUST, INDIVIDUALLY, AND ON BEHALF OF THE DEBTOR HIGHLAND CAPITAL MANAGEMENT, L.P., AND THE HIGHLAND CLAIMANT TRUST	§	**Adversary Proceeding No. _____**
PLAINTIFFS,	§	

	§
v.	§
	§
MUCK HOLDINGS, LLC, JESSUP HOLDINGS LLC, FARALLON CAPITAL MANAGEMENT, L.L.C., STONEHILL CAPITAL MANAGEMENT LLC, JAMES P. SEERY, JR., JOHN DOE DEFENDANTS NOS. 1-10,	§
	§
DEFENDANTS	§
	§
and	§
	§
HIGHLAND CAPITAL MANAGEMENT, L.P., AND THE HIGHLAND CLAIMANT TRUST,	§
	§
NOMINAL DEFENDANTS.	§

VERIFIED ADVERSARY COMPLAINT

Hunter Mountain Investment Trust ("HMIT") files this Verified Adversary Complaint ("Complaint") in its individual capacity and as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management, L.P. ("HCM" or "Reorganized Debtor"), and the Highland Claimant Trust ("Claimant Trust") (the Claimant Trust and Reorganized Debtor are collectively referred to as "Nominal Defendants"), (collectively the Nominal Defendants and HMIT, in its various capacities, are referred to as "Plaintiffs") complaining of Muck Holdings, LLC ("Muck"), Jessup Holdings LLC ("Jessup"), Farallon Capital Management, L.L.C. ("Farallon"), Stonehill

Capital Management LLC ("Stonehill"), James P. Seery, Jr., ("Seery"), and John Doe Defendants Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery, and the John Doe Defendants Nos. 1-10 are collectively "Defendants"), and would show:

I. Introduction

A. *Preliminary Statement*

1. HMIT brings this Verified Adversary Complaint ("Complaint") on behalf of itself, individually, and as a derivative action benefitting and on behalf of the Reorganized Debtor and the Highland Claimant Trust, as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").[1] This action has become necessary because of the wrongful conduct of the Defendants, involving self-dealing, breaches of fiduciary duties, and aiding and abetting those breaches of duty.

2. This lawsuit focuses on a scheme involving Seery and his close business associates and allies. Seery held command of the Debtor, Highland Capital Management, L.P., in a complex bankruptcy. The Debtor's business involved hundreds of millions of dollars in assets that were held by the Debtor's Estate in a variety of entities, managed funds, and other investments. It was not and still is not a narrowly focused business with

[1] Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate. Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed in HMIT's Emergency Motion for Leave (Doc. 3699).

the type of uncomplicated, transparent assets that almost any potential claim purchaser could meaningfully evaluate. Seery effectively enjoyed despotic control over how these assets were managed, sold, or monetized, and many of his activities were never subject to judicial scrutiny or accountability. Indeed, Seery failed to cause the Debtor to make the financial disclosures required in such proceedings.

3. Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants ("Defendant Purchasers"), with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims. The Defendant Purchasers paid well over a hundred million dollars to buy these claims without the kind of independent due diligence that would be reasonably expected, if not required, because of their own fiduciary duties to their investors. It made no sense for the Defendant Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk. The counter-intuitive nature of the purchases at issue compels the conclusion that the Defendant Purchasers acted on inside information and Seery's secret assurances of great profits. Indeed, based upon publicly available information, their investment was projected to yield a small return with virtually no margin for error. But as they must have anticipated, they have already recovered the purchase price ***and*** returns far greater than what was publicly projected,

with the expectation of significant more profits if not deterred. These facts fit classic insider trading activity.

4. As part of the scheme, the Defendant Purchasers obtained a position to approve Seery's ongoing compensation - to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT. Initially, Seery's compensation package was composed of a flat monthly pay. Now, however, it is also performance based. This allows the Defendant Purchasers to satisfy the *quid pro quo* at the heart of the scheme. Seery would help the Defendant Purchasers make large profits and they would help enrich Seery with big pay days.

5. To further advance their scheme, the Defendants have participated in the pursuit of contrived litigation against HMIT and others, through litigation sponsored by the Litigation Sub Trust. Upon information and belief, Seery also directed or authorized legal counsel for the Reorganized Debtor and Claimant Trust (who, tellingly, also represented Seery) to oppose HMIT's efforts to obtain leave to file this adversary proceeding. These obstructive tactics are self-serving, with the apparent goals of attempting to: (a) exhaust financial resources in an effort to delay recognition of the vesting of HMIT's interests under the terms of the CTA; (b) reduce the value of HMIT's interests under the CTA; and (c) deprive HMIT of claims relating to breaches of fiduciary duty stemming from the scheme. The Defendants and Litigation Sub Trust have used millions of dollars of assets to finance these obstructive tactics. Every dollar misapplied

by Defendants to further this scheme is damaging to HMIT, the Reorganized Debtor, and the Claimant Trust.

6. This derivative action is brought pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and B. R. Rule 7023.1. At the time of the transactions at issue, HMIT held a 99.5% limited partnership in Highland Capital Management, L.P., the Original Debtor. This derivative action is not a collusive effort to confer jurisdiction that the Court would otherwise lack.

7. This action also is brought subject to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) (Doc. 1943, Exhibit A) (the "Plan") Article IX.F. Consistent with such provisions, this action is ***not*** brought ***against*** the nominal party Reorganized Debtor or the nominal party Claimant Trust, but as a derivative action on their behalf and for their benefit.[2] Additionally, HMIT is a person or party aggrieved by the conduct of the Defendants and, therefore, HMIT has constitutional standing to bring this action.

B. ***The Claimant Trust, the Derivative Action, the Futility of Further Demand, Abandonment of Claims, and Conflict of Interest***

8. Upon the Effective Date, the assets of the bankruptcy estate of Highland Capital Management, L.P., as the Original Debtor (the "Debtor's Estate"), were transferred to the Highland Claimant Trust under the terms of the Plan, and as defined

[2] To the extent the Reorganized Debtor and the Claimant Trust are considered necessary parties for the purposes of this derivative action, they have been included as nominal defendants.

in the CTA. These assets include all "causes of action" that the Debtor's Estate had before the Effective Date including, without limitation, the causes of action set forth in this Adversary Proceeding. Furthermore, the Claimant Trust is also managed by the Claimant Trustee, Seery, who has self-servingly and falsely characterized the claims as allegedly meritless (Doc. 3707).

9. Seery, as Claimant Trustee, breached his fiduciary duties and abandoned the current claims in this Adversary Complaint by objecting to HMIT's Emergency Motion for Leave to File this Adversary Complaint (Doc. 3699) and Application for Emergency Hearing (Doc. 3700). Seery is attempting to weaponize the gatekeeping protocols in the Plan to arm himself and others with potential defense arguments to avoid a merits-based determination of the claims against Seery and the other Defendants. In other words, Seery is attempting to protect his own self-interest ***at the expense of*** the Reorganized Debtor, the Claimant Trust, and HMIT. Therefore, any demand upon Seery to prosecute the claims in this Complaint would be futile because Seery is a Defendant.

10. Similarly, the Oversight Board exercises supervision over Seery as Claimant Trustee, and Muck and Jessup are controlling members of the Oversight Board. Any demand upon Muck and Jessup to prosecute these claims would be equally futile because they also filed objections to the expedited prosecution of these or similar claims (falsely characterizing the claims as an alleged waste of judicial resources) (Doc. 3704). Upon

information and belief, Muck and Jessup are also controlled by Farallon and Stonehill, further evidencing the futility of any such demand on Muck and Jessup.

11. All conditions precedent to bringing this derivative action have otherwise been satisfied or waived, and the Defendants are estopped from asserting otherwise. HMIT is an appropriate party to bring this action on behalf of the Reorganized Debtor and the Claimant Trust.

C. ***Nature of the Action***

12. The insider trading scheme was implemented after confirmation of the Plan, but before the Effective Date. Prior to the Effective Date, HMIT owned 99.5% of the limited partnership interest in the Debtor and was the beneficiary of fiduciary duties owed by Seery.

13. Seery, the Original Debtor's Chief Executive Officer ("CEO") and former Chief Restructuring Officer ("CRO"), wrongfully facilitated and promoted the insider trades by providing material non-public information to Defendant Purchasers concerning the value of assets in the Debtor's Estate. Farallon and Stonehill, who were otherwise strangers to the bankruptcy proceedings, wrongfully purchased the claims through their special purpose entities, Muck and Jessup, based upon this inside information. Seery's dealings with the Defendant Purchasers were not arm's-length, but instead were covert, undisclosed, and collusive.

14. Motivated by corporate greed, the Defendant Purchasers aided and abetted or, alternatively, knowingly participated in Seery's wrongful conduct. They also breached their own duties as "non-statutory insiders." Because of their long-standing, historical relationships with Seery, and their use of material non-public information, the Defendant Purchasers obtained effective control over various affairs of the Debtor's bankruptcy, including compensation awards to Seery. As such, they became non-statutory insiders.

15. HMIT was formerly the largest equity holder in the Debtor, holding a 99.5% limited partnership interest. As part of the scheme, Seery is attempting to delay recognition of HMIT's vesting of its interests under the CTA. As an allowed Class 10 Class B/C Limited Partnership Interest and Contingent Trust Interest holder, HMIT's right to recover from the Claimant Trust would be junior to the Reorganized Debtor's unsecured creditors, now known as Claimant Trust Beneficiaries. However, the vast majority of the approved unsecured claims superior to HMIT's interest are those claims wrongfully acquired by the insider trading and the breaches of duty at issue in this proceeding.

16. By wrongfully soliciting, fostering, and encouraging the wrongful insider trades at issue, Seery violated his fiduciary duties to the Debtor's Estate and to HMIT, including specifically his duty of loyalty and his duty to avoid self-dealing. But Seery was motivated out of self-interest to garner personal benefit by strategically "planting" his allies onto the Oversight Board which, as a consequence, does not act as an independent

board in the exercise of its responsibilities. Rather, imbued with powers to effectively control Seery's compensation, the Defendant Purchasers are postured to reward Seery for their illicit dealings and, upon information and belief, they have done so.

17. By receiving and acting upon material non-public information concerning the financial condition of the Debtor's Estate, Stonehill and Farallon, acting individually and through special purpose shell entities they created and controlled, directly or indirectly, are also liable for aiding and abetting Seery's breaches of fiduciary duties. By acquiring the claims at issue, Muck and Jessup, the shell entities created and controlled by Stonehill and Farallon, also became non-statutory insiders, and also aided and abetted Seery's breaches of fiduciary duties.

18. Because of their willful, inequitable misconduct and bad faith, Plaintiffs ask the Court to require the Defendant Purchasers to disgorge their ill-gotten profits and equitably disallow the remaining unpaid balances on the following allowed claims: Claim Nos. 23, 72, 81, 143, 147, 149, 150, 153, 154, 190, and 191 (the "Claims") currently held by Muck and Jessup. Because the Defendant Purchasers received substantial distributions from the Claimant Trust in connection with these Claims, HMIT seeks to disgorge from Defendant Purchasers all such distributions above the Defendant Purchasers' initial investment—compelling restitution of such funds to the Claimant Trust for the benefit of other creditors and former equity pursuant to the waterfall established under the Plan and the CTA. Plaintiffs also ask the Court to require Seery to

disgorge all compensation from the date his collusive conduct first occurred. Alternatively, Plaintiffs seek damages on behalf of the Claimant Trust in an amount equal to all compensation paid to Seery from the onset of his collusive conduct to present.

19. By this Complaint, Plaintiffs do not seek to challenge the Plan or the Order confirming the Plan.

II. Jurisdiction and Venue

20. Pursuant to *Misc. Order No. 33 Order of Reference of Bankruptcy Cases, U.S. District Court for N.D. Texas* (the "Order of Reference"), this Complaint is commenced in the Bankruptcy Court because it is "related to a case under Title 11." The filing of this Complaint is expressly subject to and without waiver of Plaintiffs' rights and ability to seek withdrawal of the reference pursuant to 28 U.S.C. § 157(d), FED. R. BANKR. P. 5011, and Local Bankruptcy Rule 5011-1. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein and nothing in this Complaint, nor Plaintiffs' compliance with the Order of Reference, shall be deemed a waiver of this right. To the extent necessary, Plaintiffs seek to withdraw the reference at this time.

21. This Court has jurisdiction of the subject matter and the parties as a "related to" proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and Articles IX.F., and XI. of the Plan.

22. Pursuant to Rule 7008 of the Bankruptcy Rules, Plaintiffs do **not** consent to the entry of final orders or judgment by the bankruptcy court.

23. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 1408 and 1409, and Articles IX.F., and XI. of the Plan.

III. Parties

24. HMIT is a Delaware statutory trust that was the largest equity holder in the Original Debtor, holding a 99.5% limited partnership interest. HMIT is also the holder of a Contingent Trust Interest in the Claimant Trust, but HMIT should be treated as a vested Claimant Trust Beneficiary due to Defendants' wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein. Due to Seery's abandonment of the claims asserted herein, and his patent conflict of interest, HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.

25. The Reorganized Debtor, Highland Capital Management, L.P., is a limited partnership formed under the laws of Delaware and may be served at its principal place of business address of 100 Crescent Court, Suite 1850, Dallas, Texas 75201. The Reorganized Debtor is a nominal defendant only, and a primary beneficiary of this lawsuit.

26. Pursuant to the Plan and the CTA, the Claimant Trust holds the assets of the Reorganized Debtor, including the causes of action that accrued to the Debtor's Estate before the Effective Date. The Claimant Trust is established in accordance with the Delaware Statutory Trust Act and Treasury Regulatory Section 301.7701-4(d). The

Claimant Trust may be served at its Principal Office where the Claimant Trust is maintained: 100 Crescent Court, Suite 1850, Dallas, Texas 75201. The Claimant Trust is a nominal defendant only, and a primary beneficiary of this lawsuit.

27. Muck is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Muck has made prior appearances in the Debtor's bankruptcy.

28. Jessup is a Delaware limited liability company, with its principal office in New York, and may be served with process via its registered agent, Vcorp Services, LLC, at 108 W. 13th Street Suite 100, Wilmington, Delaware 19801. Jessup has made prior appearances in the Debtor's bankruptcy.

29. Farallon is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Farallon is a capital management company that manages hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Farallon because Farallon's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts requirements and due process considerations.

30. Stonehill is a Delaware limited liability company, with its principal office in New York, and may be served with process at 320 Park Avenue, 26th Floor, New York, NY 10022. Stonehill is a capital management company managing hedge funds and is a

registered investment advisor. This Court has personal jurisdiction over Stonehill because Stonehill's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts and all due process considerations.

31. Seery is an individual citizen and resident of the State of New York. Mr. Seery may be served with process at 100 Crescent Court, Suite 1805, Dallas, Texas 75201.

32. HMIT separately seeks recovery against John Doe Defendants Nos. 1-10. Farallon has actively concealed the precise legal relationship between itself and Muck. Stonehill also actively concealed the precise legal relationship between itself and Jessup. What is known, however, is that Farallon and Stonehill created these special purpose shell entities, on the eve of the insider trades to acquire ownership of the Claims and to otherwise control the affairs of the Oversight Board. Both Farallon and Stonehill rejected inquiries concerning the exact nature of their relationship with these special purpose entities. Accordingly, HMIT seeks equitable tolling of any statute of limitations concerning claims against unknown business entities or individuals that Farallon and Stonehill may have created and inserted as intermediate corporate layers in the transactions at issue. John Doe Defendants Nos. 1-10 are currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.

IV. Facts

A. *Procedural Background*

33. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court,[3] which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.[4]

34. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee of the Highland Crusader Fund ("Redeemer"); Acis Capital Management, L.P., and Acis Capital Management GP, LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS")—and an unpaid vendor, Meta-E Discovery.

35. Following the venue transfer to Texas on December 27, 2019, the Debtor filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the*

[3] Doc. 3. Unless otherwise referenced, all documents referencing "Doc." refer to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

[4] Doc. 1.

Ordinary Course ("Governance Motion").[5] On January 9, 2020, the Court signed a Governance Order granting the Governance Motion.[6]

36. As part of the Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditors Committee—was appointed to the Board of Directors (the "Board") of Strand, the Original Debtor's general partner. The Board then appointed Seery as the Chief Executive Officer in place of the previous CEO, Mr. James Dondero, as well as the CRO.[7] Seery currently serves as Trustee of the Claimant Trust under the terms of the CTA and as CEO of the Reorganized Debtor.[8]

B. *The Targeted Claims*

37. In his capacity as the Original Debtor's CEO and CRO, Seery negotiated and obtained court approval for settlements with several large unsecured creditors including Redeemer, Acis, UBS, and another major unsecured creditor, HarbourVest (Redeemer, Acis, UBS, and HarbourVest are collectively the "Settling Parties"), resulting in the following allowed Claims:

Creditor	**Class 8**	**Class 9**
Redeemer	$137 mm	$0 mm
Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm

[5] Doc. 281.

[6] Doc. 339.

[7] Doc. 854, Order Approving Retention of Seery as CEO/CRO.

[8] *See* Doc. 1943, Order Approving Plan, p. 34.

UBS	$65 mm	$60 mm
(Totals)	$270 mm	$95 mm

As reflected in these settlements, HarbourVest and UBS owned Class 9 claims in addition to Class 8 claims. Class 9 claims were subordinated to Class 8 claims in the distribution waterfall in the Plan.

38. Each of the Settling Parties sold their Claims to Farallon and Stonehill (or affiliated special purpose entities) shortly after receiving court approval of the settlements. One of these "trades" took place within just a few weeks before the Plan's Effective Date.[9] All of these trades occurred when HMIT held its 99.5% equity stake in the Debtor. Notice of these trades was first provided in filings in the records of the Original Debtor's bankruptcy proceedings, as follows: Claim No. 23 (Doc. 2211, 2212, and 2215), Claim Nos. 190 and 191 (Doc. 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (Doc. 2263), Claim No. 81 (Doc. 2262), Claim No. 72 (Doc. 2261).

39. Farallon and Stonehill, both of whom are registered investment advisors that manage hedge funds, are acutely aware that they owe fiduciary duties to their investors. Yet, they both invested many tens of millions of dollars, directly or indirectly, to acquire the Claims in the absence of any publicly available information that could provide any economic justification for their investment decisions.

[9] Docs. 2697, 2698.

40. Upon information and belief, Stonehill and Farallon collectively invested an estimated amount exceeding $160 million to acquire the Claims with a face amount of $365 million, but a far lower publicly projected value at the time, and they did so in the absence of any meaningful due diligence. Indeed, Farallon has admitted that it conducted no due diligence but relied on Seery's profit guarantees.

41. The Defendant Purchasers' investments become even more suspicious because the Debtor, through Seery, provided the ***only*** publicly available information which, at the time, included pessimistic projections that certain of the Claims would receive partial payment, while the subordinated class of Claims would receive no distribution:

a. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the projected value of HCM's assets dropped over $200 million from $566 million to $364 million.[10]

b. HCM's Disclosure Statement publicly projected payment of only 71.32% of Class 8 claims, and 0% of claims in Classes 9-11.[11]

   - This meant that the Defendant Purchasers invested more than an estimated $160 million in the Claims when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par value on their Class 8 Claims. At best, the Defendant Purchasers would receive a marginal return that could not justify the risk.

[10] Doc. 1473, Disclosure Statement, p. 18.

[11] Doc. 1875-1, Plan Supplement, Ex. A, p. 4.

c. Despite the stark decline in the value of the Debtor's Estate and in the midst of substantial reductions in the percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively, again, the "Claims") in April and August of 2021 in the combined estimated amount of at least $163 million.[12]

42. Upon information and belief, Stonehill, through its special purpose entity, Jessup, acquired the Redeemer Committee's claim for $78 million.[13] Upon information and belief, the $23 million Acis claim[14] was sold to Farallon/Muck for $8 million. Upon information and belief, HarbourVest sold its combined $80 million in claims to Farallon/Muck for $27 million. UBS sold its combined $125 million in claims for $50 million to both Stonehill/Jessup and Farallon/Muck. In the instance of UBS, ***the total projected payout was only $35 million***. Indeed, as part of these transactions, both Farallon and Stonehill purchased Class 9 Claims at a time when the Debtor's Estate projected a zero dollar return on all such Claims.

43. Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment, Farallon, upon information and belief, indicated it would refuse to sell its stake in the Claims for a 40%

[12] Notices of Transfers [Docs. 2212, 2215, 2261, 2262, 2263, 2215, 2297, 2298]. The Acis claim was transferred on April 16, 2021; the Redeemer, Crusader, and HarbourVest claims were transferred on April 30, 2021; and the UBS claims were transferred on August 9, 2021.

[13] July 6, 2021, letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

[14] Seery/HCM have argued that $10 million of the Acis claim is self-funding.

premium or more above its investment—claiming that its stake was far more valuable based upon Seery's assurances. This is a striking admission that Farallon had and used material non-public inside information.

C. *Material Non-Public Information is Disclosed to Seery's Affiliates at Stonehill and Farallon*

44. One of many significant assets of the Debtor's Estate was the Debtor's direct and indirect holdings in Metro-Goldwyn-Mayer Studios, Inc. ("MGM").[15]

45. On December 17, 2020, James Dondero sent an email to Seery. At that time, Dondero was a member of the MGM board, and the email contained material non-public information regarding Amazon and Apple's interest in acquiring MGM.[16] Of course, any such sale would significantly enhance the value of the Debtor's Estate.

46. Upon receipt of this material non-public information, Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in the Bankruptcy Court seeking approval of the Debtor's settlement with HarbourVest - resulting in a transfer to the Debtor's Estate of HarbourVest's interest in a Debtor-advised fund, Highland CLO Funding, Ltd. ("HCLOF"), which held substantial MGM debt and equity.[17] Conspicuously, the HCLOF interest was not transferred to the Debtor's Estate for distribution as part of the bankruptcy estate, but rather to "to an entity to be

[15] *See* Doc. 2229, p. 6.

[16] *See* Adversary Case No. 20-3190-sgj11, Doc. 150-1, p. 1674.

[17] Doc. 1625. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM.

designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements.[18]

47. Upon information and belief, aware that the Debtor's stake in MGM afforded a new profit center, Seery saw this and the value of other assets as an opportunity to increase his own compensation. He then enlisted the help of Stonehill and Farallon to extract further value from the Debtor's Estate. This *quid pro quo* included, at a minimum, an understanding that Seery would be well-compensated for the scheme once the Defendant Purchasers, acting through Muck and Jessup, obtained control of the Oversight Board following the Effective Date.

48. Until 2009, Seery was the Global Head of Fixed Income Loans at Lehman Brothers[19] where, upon information and belief, he conducted substantial business with Farallon. Following the collapse of Lehman Brothers, Seery continued to work with, and indeed represented Farallon as its legal counsel. Seery ultimately joined a hedge fund, River Birch Capital,[20] which, along with Stonehill, served on the creditors committee in other bankruptcy proceedings. GCM Grovesnor, a global asset management firm, held four seats on the Redeemer Committee[21] and, upon information and belief, is a significant investor in Stonehill and Farallon. Grovesnor, through Redeemer, played a large part in

[18] Doc. 1625.

[19] Seery Resume [Doc. 281-2].

[20] *Id*.

[21] Declaration of John A. Morris [Doc. 1090], Ex. 1, pp. 15.

appointing Seery as a director of Strand Advisors. Seery was beholden to Grovesnor from the outset, and, by extension, Grovesnor's affiliates Stonehill and Farallon.

49. As successful capital management firms, with advisory and fiduciary duties to their own clients, Stonehill and Farallon typically engage in robust due diligence before making significant investments. Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* significant profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.

50. Seery shared with Stonehill and Farallon material *non-public* information concerning certain assets of the Debtor's Estate. Otherwise, it makes no sense that the Defendant Purchasers would have made their multi-million-dollar investments under these circumstances.

51. Fed. R. Bank. P. 2015.3(a) requires "periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or debtor . . . in which the estate holds a substantial of controlling interest." The purpose of Rule 2015.3 is "to assist parties in interest taking steps to ensure that the debtor's interest in any entity . . . is used for payment of allowed claims against the debtor." Pub. L. 109-8 § 419(b) (2005). However, these reports were not provided, thereby giving the Defendant Purchasers the added benefit of being insiders having access to information that was not made publicly available to other stakeholders.

52. When questioned at the confirmation hearing regarding the failure to file these reports, Seery explained that he "did not get it done and it fell through the cracks" (Doc. 1905 at 49:18-21). Yet even now—two years later—complete reports identifying the asset values and profitability of each non-publicly traded entity (in which the Reorganized Debtor has or held interests) have not been disclosed. Upon information and belief, this includes several entities including, but not limited to: Highland Select Equity Fund; Highland Select Entity Fund, L.P., Highland Restoration Capital Partners, L.P.; Highland CLO Funding, Ltd.; Highland Multi Strategy Credit Fund, L.P.; Highland Capital Management Korea Limited; Cornerstone Healthcare; Trussway Industries, LLC; Trussway Holdings, LLC; OmniMax International; Targa; CCS Medical; JHT Holdings; and other entities.[22] Upon information and belief, the Reorganized Debtors' interest in some of these entities has been sold,[23] but the sales prices have not been fully disclosed (except as reported by certain purchasers in public SEC filings).

53. Rather than providing the required reports, only generic information was provided (by way of examples, as "private security," "private portfolio company," and "private equity fund") with a total reported value of $224,267,777.21.[24] Entities were sold

[22] *See* Doc. 2229, pp. 6-7; January 29, 2021, Deposition of James P. Seery, Jr., 28:7-29:25.

[23] *See, e.g.*, https://trussway.com/2022/09/01/trussway-joins-builders-firstsource/ (sale of Trussway); https://www.prnewswire.com/news-releases/scionhealth-completes-acquisition-of-cornerstone-healthcare-group-301728275.html (sale of Cornerstone; unsurprisingly, Sidley Austin served as counsel for the purchaser); https://www.prnewswire.com/news-releases/svpglobal-completes-acquisition-of-omnimax-international-301151365.html (sale of OmniMax).

[24] Doc. 247 at p. 12.

without Court approval and without any 2015.3 report filings. In sum, upon information and belief, the Debtor had and the Reorganized Debtor has significant assets in a variety of funds and investments that were not publicly disclosed.

54. By wrongfully exploiting such material non-public insider information, Stonehill and Farallon—acting through Muck and Jessup—became the largest holders of unsecured claims in the Debtor's Estate with resulting control over the Oversight Board and a front row seat to the reorganization and distribution of Claimant Trust Assets. As such, they were given control (through Muck and Jessup) to approve discretionary bonuses and success fees for Seery from these assets.

D. ***Distributions***

55. The MGM sale was ultimately consummated in March 2022 for $6.1 billion in cash, plus $2.5 billion in debt that Amazon assumed and immediately repaid.[25]

56. HCM and its wholly owned subsidiary, HCMLP Investments, own 50.612% of HCLOF, which, as of December 31, 2021, had a total net asset value of $76.1 million, a substantial amount of which has been monetized.[26] Upon information and belief, HCM's interest in HCLOF was worth at least $38 million.

[25] Amazon Q1 2022 10-Q.

[26] Doc. 3584-1, pp. 2, 9, 13, 21.

57. On or about September 1, 2022, upon information and belief, Trussway was sold to Builder's First Source for $274.8 million, net of cash.[27] Prior to the sale, upon information and belief, Highland Select Equity Fund, L.P. ("HSEF") owned "approximately 90%" of Trussway, and HCM owned 100% of HSEF.[28] Upon information and belief, HCM should have netted at least $247.8 million from the sale of Trussway.

58. According to HCM's most recent Form ADV, filed on March 31, 2023, HCM currently owns at least $127.5 million in Highland Multi Strategy Credit Fund, L.P., Highland Restoration Capital Partners Master, LP, Highland Restoration Capital Partners, L.P., and Stonebridge-Highland Healthcare Private Equity Fund (collectively, the "Private Funds"), in addition to interests in HCM's client-CLOs and other non-regulatory assets.

59. Accordingly, and upon information and belief, and based solely on the Reorganized Debtor's interests in Trussway, HCLOF, and the Private Funds, the Reorganized Debtor has over **$413.3 million** in estimated liquid or monetizable assets—which alone exceeds the $397.5 million in general unsecured claims, and indeed *all* allowed claims[29]—notwithstanding the value realized from the Reorganized Debtor's

[27] BLDR Q3 2022 10-Q.

[28] Doc. 2229, n. 8.

[29] Doc. 3757, p. 7.

interests in MGM, Trussway, Cornerstone, and other substantial assets that may remain to be monetized.[30]

60. By the end of Q3 2021, just over $6 million of the projected $205 million available for general unsecured claimants had been disbursed.[31] No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—$45 million more than was *ever* projected.[32] Thus, Stonehill (Jessup) and Farallon (Muck) already have received returns that far eclipse their estimated investments. They also stand to make further significant profits on their investments, including distributions on their Class 9 Claims.

61. As of March 31, 2023, the Claimant Trust has distributed $270,205,592.[33] On a *pro rata* basis, this means that other creditors (excluding Muck and Jessup) have received an estimated $24,332,361.07 in distributions against the stated value of their allowed claims.[34] That leaves an estimated unpaid balance of only $2,456,596.93.

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[30] See Doc 3662, p. 4 (projecting assets worth at least $663.72 million as of June 1, 2022); *see also* supra, n. 22-23.

[31] Doc. 3200.

[32] Doc. 3582.

[33] Doc. 3757, p. 7.

[34] Stonehill (Jessup) and Farallon (Muck)'s Claims collectively represent an estimated 91% of all Class 8 claims. The other creditors therefore represent an estimated 9%. Upon information and belief, Stonehill (Jessup) and Farallon (Muck) hold 100% of the Class 9 claims.

V. Causes of Action

A. *Count I (against Seery): Breach of Fiduciary Duties*

62. The allegations in paragraphs 1-61 above are incorporated herein as if set forth verbatim.

63. As CEO and CRO of a debtor-in-possession, Seery owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate, including, without limitation, the duty of loyalty and the duty to avoid conflicts of interests, but Seery willfully and knowingly engaged in conduct which conflicted with his fiduciary duties—and he did so out of financial self-interest.

64. By disclosing material non-public information to Stonehill and Farallon in an effort to gain personal financial benefit, Seery willfully and knowingly breached his fiduciary duties. By failing to disclose the inside trades at issue, including his role in those inside trades, Seery willfully and knowingly breached his fiduciary duties.

65. As a result of his willful misconduct, Seery was unfairly advantaged by receiving assurances of additional undisclosed compensation and bonuses from the assets of the Debtor's Estate and from the Claimant Trust Assets—to the detriment of other stakeholders, including HMIT.

66. Seery's misconduct constituted fraud, willful misconduct, and bad faith.

67. Plaintiffs sue for all actual damages caused by Seery's misconduct. Seery should also be held liable for disgorgement of all compensation he received since his

collusion with the Defendant Purchasers first began. Alternatively, Seery should be disgorged of all compensation paid to him under the terms of the CTA since the Effective Date of the Plan in August 2021.

68. Alternatively, Plaintiffs are entitled to recover damages measured by all ill-gotten compensation which Seery has received since his first collusive conduct began.

B. ***Count II (against all Defendant Purchasers and the John Doe Defendants): Knowing Participation in Breach of Fiduciary Duties***

69. The allegations in paragraphs 1-68 above are incorporated herein as if set forth verbatim.

70. Seery owed fiduciary duties to HMIT and the Debtor's Estate, and he willfully and knowingly breached these duties. Without limiting the foregoing, Seery owed a duty of loyalty which he willfully and knowingly breached. Seery also owed a duty to not engage in self-interested conduct to the detriment of the Debtor's Estate and innocent stakeholders. Seery willfully and knowingly breached this duty.

71. The Defendant Purchasers were aware of Seery's fiduciary duties and, by purchasing the Claims and approving bonuses and other compensation for Seery, Stonehill (acting through Jessup) and Farallon (acting through Muck), willfully and knowingly participated in Seery's breaches or, alternatively, willfully aided and abetted such breaches.

72. Stonehill (Jessup) and Farallon (Muck) unfairly received many millions of dollars in profits and fees—and stand to earn even more profits and fees.

73. The Defendant Purchasers' misconduct constitutes bad faith, fraud, and willful misconduct.

74. Plaintiffs sue for all actual damages caused by the Defendant Purchasers' wrongful conduct. The Defendant Purchasers are also liable for disgorgement of all profits Defendant Purchasers earned from their participation in the purchase of the Claims. Plaintiffs also seek damages against the Defendant Purchasers for excessive compensation paid to Seery as part of the covert *quid pro quo* with Seery.

C. *Count III (against all Defendants): Conspiracy*

75. The allegations in paragraphs 1-74 above are incorporated herein as if incorporated herein verbatim.

76. Defendants conspired with each other to unlawfully breach fiduciary duties to HMIT and the Debtor's Estate, and to conceal their wrongful trades.

77. Seery's disclosure of material non-public information to the Defendant Purchasers and Seery's receipt of additional compensation as a *quid pro quo* for the insider-claims trading are overt acts in furtherance of the conspiracy.

78. HMIT's interest in the residual of the Claimant Trust Assets has been adversely impacted by this conspiracy. The assets have been depleted by virtue of Seery's compensation awards.

79. All Defendants' misconduct constitutes bad faith, fraud, and willful misconduct.

80. Plaintiffs sue for all actual damages caused by the Defendants' wrongful conduct. All Defendants should be disgorged of their ill-gotten profits and gains.

81. Plaintiffs sue all Defendants for damages associated with Seery's compensation awards pursuant to the scheme.

D. ***Count IV (against Muck and Jessup): Equitable Disallowance***

82. The allegations in paragraphs 1-81 above are incorporated herein as if set forth verbatim.

83. By purchasing the Claims based on material non-public information, Stonehill and Farallon, through Jessup and Muck, engaged in inequitable conduct.

84. By earning significant profits on their purchases, Muck and Jessup have been unfairly advantaged.

85. Muck and Jessup's misconduct constitutes bad faith, fraud, and willful misconduct.

86. Given this willful, inequitable, and bad faith conduct, equitable disallowance of Muck's and Jessup's Claims to the extent over and above their initial investment is appropriate and consistent with the purposes of the Bankruptcy Code.

87. Pleading in the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is

necessary and appropriate to remedy Muck's and Jessup's wrongful, willful, and bad faith conduct, and is also consistent with the purposes of the Bankruptcy Code.

E. ***Count V (against all Defendants): Unjust Enrichment and Constructive Trust***

88. The allegations in paragraphs 1-87 above are incorporated herein as if set forth verbatim.

89. By acquiring the Claims using material non-public information, Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity.

90. All Defendants' misconduct constitutes bad faith, fraud, and willful misconduct.

91. Allowing Stonehill, Farallon, Muck, and Jessup to retain their ill-gotten benefits would be unconscionable.

92. Stonehill, Farallon, Muck, and Jessup should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment.

93. The proceeds Stonehill, Farallon, Muck, and Jessup have received from the Claimant Trust are traceable and identifiable. A constructive trust should be imposed on such proceeds to secure the restitution of these improperly retained benefits.

94. Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restitute all compensation he has received from the

outset of his collusive activities. Alternatively, he should be required to disgorge and restitute all compensation received since the Effective Date. A constructive trust should be imposed on all such funds to secure the restitution of these improperly obtained benefits.

F. ***Count VI (Against all Defendants): Declaratory Relief***

95. The allegations in paragraphs 1-94 above are incorporated herein as if set forth verbatim.

96. HMIT seeks declaratory relief. The Court has jurisdiction to provide declaratory judgment relief when there is an actual controversy that has arisen and exists relating to the rights and duties of the parties.

97. Bankruptcy Rule 7001 provides that "a proceeding to recover property or money," may include declaratory relief. *See*, Fed. R. Bank P. 7001(1), (9).

98. The CTA is governed under Delaware law. The CTA incorporates and is subject to Delaware trust law.

99. HMIT seeks a declaration, as follows:

a. There is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement;

b. HMIT has standing to bring an action even if its interest is considered contingent and because it is an aggrieved party and enjoys constitutional standing;

c. HMIT has capacity and standing to bring these claims derivatively because Seery, as Trustee, has abandoned the claims;

d. HMIT has capacity and standing to bring these claims derivatively because Seery, as Trustee, and Muck and Jessup have a conflict of interest;

e. HMIT is an appropriate party to bring the derivative action on behalf of the Reorganized Debtor and the Claimant Trust;

f. Alternatively, HMIT's status as a Claimant Trust Beneficiary is fully vested now;

g. HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement by Muck and Jessup, and by extension, Farallon and Stonehill, of their ill-gotten profits;

h. HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments. Alternatively, HMIT's status as a Claimant Trust Beneficiary is fully vested when all of Muck's and Jessup's trust interests are subordinated to the trust interests held by HMIT;

i. Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of Seery's conduct, bad faith, willful misconduct, and unclean hands;

j. Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct, and unclean hands; and

k. All Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct, and unclean hands.

VI. Punitive Damages

100. The allegations in paragraphs 1-99 above are incorporated herein as if set forth verbatim.

101. The Defendants' misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others. An award of punitive damages as allowed by law is appropriate and necessary under the facts of this case.

VII. Conditions Precedent

102. All conditions precedent to recovery herein have been satisfied or have been waived.

VIII. Fraudulent Concealment and Equitable Tolling

103. The allegations in paragraphs 1-102 above are incorporated herein as if set forth verbatim.

104. The illicit conduct of Defendants as described herein was concealed from Plaintiffs, who did not know, and could not reasonably discover, either that conduct of Defendants or the injury that would result. Specifically, as described herein, Defendants conspired to trade on material nonpublic information in breach of duties to the Original Debtors and Debtor's Estate. Defendants used deception to conceal the causes of action alleged herein and continue to refuse formal and informal discovery requests of facts, information, and documents related to the Plaintiffs' claims. HMIT reasonably relied on

Defendants' deceptive representations, and otherwise exercised all diligence in this matter, yet the causes of action were inherently undiscoverable.

105. Defendants continued to engage in the illicit practices described herein, and consequently, Plaintiffs were continually injured by Defendants' illicit conduct. Therefore, Plaintiffs submit that each instance that one or more of the Defendants engaged in the conduct complained of in this action constitutes part of a continuing violation and operates to toll the statutes of limitation applicable to all causes of action in this matter.

106. Defendants' conduct was and is, by its nature, self-concealing. In addition, Defendants, through a series of affirmative acts and omissions, suppressed the dissemination of truthful information regarding their illicit conduct, and have actively foreclosed Plaintiffs from learning of their illicit, unfair, self-dealing, disloyal, and/or deceptive acts.

107. To the extent that one or more of the Defendants asserts a defense of statute of limitations or other time-based defense, they are estopped from doing so and Plaintiffs affirmatively pleads fraudulent concealment should toll or otherwise prevent application of any alleged statute of limitation defense. Plaintiffs further affirmatively plead equitable estoppel.

108. By reason of the foregoing, Plaintiffs' claims on behalf of itself and on behalf of the Highland Parties are timely under any applicable statute of limitations, pursuant

to the discovery rule, pursuant to the equitable tolling doctrine, pursuant to fraudulent concealment, and/or pursuant to any other applicable tolling doctrine.

IX. Jury Demand

109. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein involving triable issues of fact.

X. Prayer

WHEREFORE, Plaintiffs pray for judgment against each of the Defendants as follows:

1. That all Defendants be cited to appear and answer herein;

2. Finding that HMIT has capacity and standing to bring these claims individually and derivatively because Seery, as trustee, has abandoned the claims and has a conflict of interest;

3. Finding that HMIT has capacity and standing to bring these claims individually and derivatively because Muck and Jessup have a conflict of interest;

4. Awarding equitable disallowance of the Claims over and above Muck's and Jessup's original investments (or, alternatively, subordination of their Claimant Trust Interests, as addressed herein);

5. Awarding disgorgement of all funds distributed from the Claimant Trust to the Defendant Purchasers and any John Doe Defendants over and above their original investments;

6. Awarding disgorgement of all compensation paid to Seery from the date of his first collusive activities, or alternatively, from the Effective Date;

7. Imposition of a constructive trust as to all ill-gotten profits received by the Defendant Purchasers and any John Doe Defendants;

8. Awarding declaratory relief as described herein;

9. Awarding actual damages as described herein;

10. Awarding exemplary damages as described herein;

11. Awarding pre-judgment and post-judgment interest at the highest rate allowed by law; and

12. Awarding all such other and further relief to which Plaintiffs may be justly entitled.

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: /s/_____

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Attorneys for Hunter Mountain Investment Trust

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

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APPELLEE RECORD

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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CASE NO. 3:23-cv-02071-E

IN THE UNITED STATES DISTRICT COURT
FOR THE NOTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: HIGHLAND CAPITAL MANAGEMENT, L.P.,
Debtor

HUNTER MOUNTAIN INVESTMENT TRUST,
Appellant,

v.

HIGHLAND CAPITAL MANAGEMENT, L.P., et al

On Appeal from the United States Bankruptcy Court for the Northern District of Texas, Case No. 19-34054-slg11
The Honorable Judge Jernigan, Presiding

APPENDIX IN SUPPORT OF APPELLANT BRIEF FILED BY HUNTER MOUNTAIN INVESTMENT TRUST

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Appellant Hunter Mountain Investment Trust hereby files this *Appendix in Support of Appellant Brief filed by Hunter Mountain Investment* Trust, pursuant to Fed. R. Bankr. P. 8018.

DESCRIPTION	RECORD CITE (ROA)
Relevant Docket Entries	ROA.001307; ROA.001325; ROA.001541; ROA.001561; ROA.001564-ROA.001590
Hunter Mountain Investment Trust's Notice of Appeal	ROA.000001 – ROA.000004
Hunter Mountain Investment Trust's Second Amended Notice of Appeal	ROA.000551 – ROA.000834
Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding	ROA.000835-ROA.000939
Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024	ROA.001045-ROA.001048
Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified) and (II) Granting Related Relief	ROA.001660-ROA.001820
Hunter Mountain Investment Trust's Emergency Motion For Leave to File Verified Adversary Proceeding	ROA.001849-ROA.001885
Proposed Verified Adversary Complaint	ROA.001886-

	ROA.002235
Reporter's Record - Petitioner Hunter Mountain Investment Trust's Rule 202 Petition which was heard on Wednesday, February 22, 20234	ROA.002146-ROA.002224
Hunter Mountain Investment Trust's Objection Regarding Evidentiary Hearing and Brief Concerning Gatekeeper Proceedings Relating to "Colorability"	ROA.003302-ROA.003310
Hunter Mountain Investment Trust's Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding	ROA.003323-ROA.003330
Supplemental Proposed Verified Adversary Complaint	ROA.003331-ROA.003367
Transcript of Proceedings Before the Honorable Stacey G.C. Jernigan on April 24, 2023	ROA.003368-ROA.003429
Claim Purchasers' Objection to Hunter Mountain Investment Trust's (I) Emergency Motion For Leave To File Verified Adversary Proceeding; and (II) Supplement To Emergency Motion For Leave To File Verified Adversary Proceeding	ROA.003430 – ROA.003457
Order Fixing Briefing Schedule and Hearing Date With Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding as Supplemented	ROA.003458-ROA.003462
Highland Capital Management, L.P., Highland Claimant Trust, And James P. Seery, Jr.'s Joint Opposition To Hunter Mountain Investment Trust's Motion For Leave To File Verified Adversary Proceeding	ROA.003463 – ROA.003536
Hunter Mountain Investment Trust's Reply Brief In Support of Emergency Motion for Leave to File Adversary Proceeding	ROA.004665-ROA.004711

Order Pertaining to the Hearing on Hunter Mountain Investment Trust's Motion for Leave to File Adversary Proceeding [DE ## 3699 & 3760]	ROA.004712-ROA.004713
Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing	ROA.004836-ROA.004914
Order Regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing [Dkt. Nos. 3788 and 3791]	ROA.004959-ROA.004960
Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding	ROA.004984-ROA.005048
Hunter Mountain Investment Trust's Witness and Exhibit List in Connection with its Emergency Motion for Leave to File Verified Adversary Proceeding and Supplement	ROA.006608-ROA.006621
Proposed Verified Adversary Complaint	ROA.006651-ROA.006688
December17, 2020 Email regarding Trading Restriction MGM – material non public information	ROA.006689-ROA.006691
James D. Dondero's Notes	ROA.006692-ROA.006695
Order (I) Confirming the Fifth Amended Plan of Organization of Highland Capital Management, L.P. (As Modified) and (II) Granting Related Relief	ROA.006702-ROA.006863
Claimant Trust Agreement	ROA.007366-ROA.007405
Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust	ROA.007446-ROA.007449

Management Incentive Compensation Agreed Terms Reorganized Highland Capital Management, L.P. and Highland Claimant Trust, (the "Trust") December 2, 2021	ROA.007450-ROA.007456
Notice of Transfer of Claim Other Than For Security	ROA.007464-ROA.007466
Notice of Transfer of Claim Other Than For Security	ROA.007467-ROA.007469
Notice of Transfer of Claim Other Than For Security	ROA.007470-ROA.007472
Notice of Transfer of Claim Other Than For Security	ROA.007473-ROA.007482
Notice of Transfer of Claim Other Than For Security	ROA.007483-ROA.007485
Notice of Transfer of Claim Other Than For Security	ROA.007486-ROA.007490
Notice of Transfer of Claim Other Than For Security	ROA.007491-ROA.007494
Notice of Transfer of Claim Other Than For Security	ROA.007495-ROA.007499
Hunter Mountain Investment Trust's Response to Highland Claimant Trust and James P. Seery, Jr.'s Joint Motion to Exclude Testimony and Documents of Experts Scott Van Meter and Steve Pully	ROA.009436-ROA.009443
June 8, 2023 HMIT's Motion for Leave to File Verified Adversary Proceeding (3699) - Transcript of Proceedings Before The Honorable Stacy G.C. Jernigan, United States Bankruptcy Court	ROA.009458-ROA.009846
Hunter Mountain Investment Trust's Request for Oral Hearing Or, Alternatively, A Schedule For Evidentiary Proffer	ROA.009901-ROA.009904
Hunter Mountain Investment Trust's Reply To The Highland Parties' Response To Request For Oral Hearing	ROA.009908-ROA.009911
Memorandum Opinion and Order Granting Joint Motion To Exclude Expert Evidence [DE # 3820]	ROA.009912-ROA.009927

Transcript of Proceedings Before the Honorable Stacey G.C. Jernigan on May 26, 2023.	ROA.009847-ROA.009900
Order Striking HMIT's Evidentiary Proffer Pursuant to Rule 103(a)(2) And Limiting Briefing	ROA.010025-ROA.010028
Notice Of Filing Of The Current Balance Sheet Of The Highland Claimant Trust	ROA.010029-ROA.010034
Hunter Mountain Investment Trust's Motion To Alter Or Amend Order, To Amend Or Make Additional Findings, For Relief From Order, Or, Alternatively, For New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Brief	ROA.010062-ROA.010134

Respectfully Submitted,

By: */s/ Sawnie A. McEntire*

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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document, and the underlying brief, were sent via electronic mail via the Court's ECF system to parties authorized to receive electronic notice in this case on January 22, 2024.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	April 24, 2023
	1:30 p.m. Docket
Reorganized Debtor.	
	- DUGABOY INVESTMENT TRUST AND HUNTER MOUNTAIN INVESTMENT TRUST'S MOTION FOR LEAVE TO FILE PROCEEDING (3662)
	- STATUS CONFERENCE RE: MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING FILED BY CREDITOR HUNTER MOUNTAIN INVESTMENT TRUST (3699)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

DALLAS, TEXAS - APRIL 24, 2023 - 1:39 P.M.

THE COURT: I will now turn to our Highland matters. We have two of them. The first one we had scheduled I think may have been worked out, but it is the Dugaboy and Hunter Mountain adversary proceeding -- or, well, not adversary proceeding, a motion for leave to file an adversary proceeding regarding valuation. This is Case No. 19-34054.

Who do we have appearing for the Movant this afternoon?

MS. DEITSCH-PEREZ: Good morning, Your Honor. This is Deborah Deitsch-Perez from Stinson for the Movants.

THE COURT: All right. Thank you. Do we have you representing both Movants, Ms. Deitsch-Perez?

MS. DEITSCH-PEREZ: That's correct.

THE COURT: All right. Mr. Morris, I see you have your video turned on. You're representing the Debtor today, or Reorganized Debtor; is that correct?

MR. MORRIS: Yes, Your Honor. Good afternoon.

THE COURT: Good afternoon.

Do we have any other appearances on this matter?

All right. Well, am I correct you've worked out something procedurally on this?

MS. DEITSCH-PEREZ: Yeah, let me report. We have been negotiating over several weeks about information to be provided to the Movants, and additional information was indeed provided on Friday. I don't know if you've noticed, but the

reports have an additional section with some additional information.

We're going through it. We think there are probably still some -- some additional information that we need, and so we will first reach out to Mr. Morris and attempt to negotiate over that information. And if we are successful, wonderful. If we are unsuccessful, because the Debtor has agreed that a gatekeeper motion is not necessary since the adversary would just be seeking a valuation and not monetary or other relief, we will then proceed to -- if we cannot work things out with the Debtor, we'll proceed to file an adversary, which will be slightly different than the one that was attached to the gatekeeper motion because we will explain what additional information is needed and why the information we have is not sufficient. So it should narrow the scope of the adversary.

THE COURT: All right. Thank you. Mr. Morris, anything you want to add??

MR. MORRIS: Yes, just briefly, Your Honor. The Reorganized Debtor does not believe Hunter Mountain or Dugaboy is entitled to any information whatsoever. They certainly have no legal right to the information. It's why they have to pursue equitable -- an equitable claim. Not an equitable right, but an equitable claim.

Counsel is certainly correct that we negotiated in good faith to try to provide the information that the Reorganized

Debtors believed was -- might be useful to the extent that someone was really interested in settling the case. We were unable to come to an agreement. So, under Mr. Seery's leadership, we acted unilaterally. We produced a wealth of information on Friday night, including claims data, cash, cash in reserve, cash in the Claimant Trust, assets, general descriptions of assets that remain.

If they want to pursue a lawsuit, we'll accept service, with the proviso that we set forth in our opposition to the original motion, and that is everybody will be held accountable for unsupported and unsubstantiated allegations.

But the ball is in their court. We have produced what we're prepared to produce. If they want to continue with litigation, I guess that's what we'll do.

MS. DEITSCH-PEREZ: Well, we hope that the Debtor will continue to negotiate and will hear why we explain -- when we explain why the information isn't enough. So, ever the optimist, I hold out some hope that we will be able to do this, if not through this proceeding, through the motion for a greater stay and for mediation that's also before Your Honor.

So, one way or the other, we do hope to resolve this. If we can't, we will bring the adversary. And I thank you, Mr. Morris, for agreeing to accept service.

THE COURT: All right. Just a procedural question. Ms. Deitsch-Perez, will you be actually withdrawing this

motion for leave, or are you all doing some sort of order setting forth what you've all agreed to and announced? Just let me know, so I know what to be expecting.

MS. DEITSCH-PEREZ: I think we will try to have an agreed order to enforce what we're doing. If we fail in that, I don't suppose it matters very much. We can withdraw the application and just proceed to file the adversary. I'd rather get an agreed order up, though, setting forth that the Debtor has agreed that a gatekeeper is not necessary and that, as a result, we'll be filing the adversary. So, that's what I hope, Your Honor, we'll get.

THE COURT: All right. Well, just for the record, it doesn't really matter to me whether you withdraw it or I have an agreed order. I'm just trying to simplify life. I know sometimes the Clerk's Office personnel will reach out -- we need an order, we need an order, we need an order -- if there's a motion pending that doesn't have an order to match to it, and I'm just trying to avoid headaches in that regard.

MS. DEITSCH-PEREZ: That's why we'll make it clear what we do one way or the other.

THE COURT: Very good.

MR. MORRIS: Your Honor, just for the Court's convenience, I apologize that I don't have the docket numbers, but the information that we posted and we intended to and did post it on the docket so that it was available to everybody

equally, it's at the back of the two quarterly operating reports. There's one filed on behalf of the Reorganized Debtor and then there's one filed on behalf of the Claimant Trust. But I believe the information in the back of each of those reports is the same.

So, just in case the Court has any curiosity about what we've disclosed, I just wanted to make sure Your Honor knew where to find it.

THE COURT: Okay. I've got the docket right in front of me, and I see on Friday Docket No. 3756 was filed by the Reorganized Debtor, Post-Confirmation Report, and then Docket 3757 was filed by the Claimant Trust. So, thank you. I've noted those if we want to go back and look.

All right. Well, that concludes this Dugaboy/Hunter Trust motion for leave.

Let's now turn to the other Hunter Mountain motion for leave. We have a status conference -- I think it's a hearing on what kind of hearing we're going to have -- on Docket Entry No. 3699. So we probably have a larger appearance list on this one, so I'll do roll call.

Appearing for Hunter Mountain, who do we have?

MR. MCENTIRE: Good afternoon, Your Honor. This is Sawnie McEntire and my partner Roger McCleary with Parsons McEntire McCleary representing Hunter Mountain.

THE COURT: Okay. Now I'm going to just do a roll

call. For the Reorganized Debtor, Mr. Morris, will you be taking the lead on that?

MR. MORRIS: Yes, I will, Your Honor. Good afternoon.

THE COURT: Good afternoon.

All right. We have four, potentially, named Claims Purchasers. So I'll ask, who do we have representing Muck Holdings?

MR. MCILWAIN: Your Honor, Brent McIlwain here from Holland & Knight. I represent Farallon Capital Management, Stonehill Capital Management, Muck Holdings, and Jessup Holdings, LLC.

THE COURT: Okay. So you represent all four of the Claims Purchasers?

MR. MCILWAIN: That's correct, Your Honor.

THE COURT: All right. James Seery is a potential Defendant identified. Who do we have representing Mr. Seery?

MR. STANCIL: Good afternoon, Your Honor. This is Mark Stancil from Willkie Farr & Gallagher. I'm joined by my colleague Josh Levy and our co-counsel from Reed Smith, Omar Alaniz.

THE COURT: All right. Thank you.

Do we have any other lawyers appearing in this?

MR. STANCIL: I think that's it, Your Honor.

THE COURT: All right. Well, so, again, I think

we're having a hearing on what kind of hearing we're going to have on your motion for leave, Mr. McEntire. What did you want to say?

MR. MCENTIRE: Well, that's correct, Your Honor. Good afternoon again.

I think there are several issues before the Court during this status conference. One is the date of the hearing. I think we certainly preliminarily had agreed over the last 10 days that May 18 was the logical date in light of the motion practice.

The length of the hearing, Mr. Morris has suggested over four hours or approximately four hours. I've suggested one and a half hours.

And then there is an issue about whether or not evidence should be allowed.

There is a fourth issue that I just want to make sure that the Court is aware. I don't want to be accused of waiting this issue as the proceedings progress. And that is we have raised an issue about Mr. Morris's representation and whether he has a conflict of interest. We did this in writing in our reply brief several weeks ago. As a consequence, Mr. Seery now has new counsel, Mr. Morris of course to represent the Highland parties, the Reorganized Debtor and the Claimant -- the Highland Claimant Trust. We are concerned that he has a conflict of interest. It is unclear from whom he is taking

his direction or from whom he is deriving his authority.

And equally important if not more important, he is taking positions that are inconsistent with the best interests of the Reorganized Debtor and the Claimant Trust.

I don't think this is the type of issue that could be resolved today. However, I want to make sure it's on the record so I'm not accused of waiting as we proceed. But otherwise, it's the date of the hearing, the length of the hearing, and whether or not evidence is allowed.

I'm prepared to address the merits of our thoughts on each of those last three -- the date, the length, and the evidence issues -- if the Court wishes, or I could wait until after other counsel have made their comments. But I'm prepared to move forward as the Court wishes.

THE COURT: All right. Well, I am not going to address a conflicts of interest issue today. I think I heard you saying you don't anticipate the Court would. But I don't have any sort of pleading in front of me on that, so we'll just make that clear from the get-go.

One of the reasons I'm making that clear from the get-go is I have not read the brief you filed I don't know what time on Friday, Docket No. 3758, Mr. McEntire. And then I see an objection you filed Friday, Docket No. 3761. And then last night at 9:30 a supplemental support document. I take it none of --

MR. MCENTIRE: Right.

THE COURT: -- these issues raised the conflict of interest issue.

MR. MCENTIRE: We addressed the conflicts of issues in -- certainly in our filing last night. But the brief on Friday and the objection on Friday is addressing the Court's email and Mr. Morris's request to hold an evidentiary hearing. And we oppose that. We object to the conduct of an evidentiary hearing. And the brief that we filed -- the objection we filed was supported by case law. I've seen nothing from Mr. Morris or any of the other counsel in the case responding to our objection or the cases we've cited.

But Your Honor, if you wish, I could just move forward right now and address the evidentiary issue, if you wish.

THE COURT: All right. Well, I'm backing up. This shows 9:10 a.m. this morning, the 3761. Am I on the wrong thing?

MR. MCENTIRE: I think you're -- what we did this morning at Mr. Morris's request is we sent in a redline version of the revised complaint to the Court's attention. The actual revised complaint was filed last night, and all that was done this morning was, at Mr. Morris's request, to facilitate his review of the new complaint, was to redline it.

THE COURT: All right. Well, and then, okay, the brief you filed was at 4:55 p.m. Friday.

MR. MCENTIRE: Yes, ma'am.

THE COURT: I can assure you, we were still all working then, but unless you notify my courtroom deputy that you have filed something sort of on the eve of a hearing, we're not necessarily in chambers going to go back and scroll the docket. We had court on other matters this morning, so we were focused on that. I've not seen your brief. But anyway, you can argue obviously what you want to argue.

Okay. So let's talk about -- I think you wanted to talk about evidence first.

MR. MCENTIRE: Yes, ma'am.

THE COURT: So I'm happy to hear about that topic first. Because, obviously, the other issues -- length of hearing, date of hearing -- hinge on that. So what do you --

MR. MCENTIRE: I agree.

THE COURT: What do you say about this?

MR. MCENTIRE: All right. Well, earlier, I think, last week, or perhaps it was the end of the previous week, Mr. Morris had issued an email requesting a four-hour hearing because he wanted to cross-examine Mr. Dondero and otherwise have a full-blown evidentiary hearing. Opening statements, final argument, and witness examinations.

We responded immediately by email objecting to the evidentiary format. There was a series of exchanges between my office, Mr. Morris's office, and your chambers, Your Honor,

where Ms. Ellison indicated that you were initially inclined to grant an evidentiary hearing.

That was followed by an email on April 19th of last week where you suggested in your email that the issue of colorability, which is really the gatekeeper function that the Court's serving, as the Court is aware, that the standard for colorability was somehow greater than the standard for plausibility under a 12(b)(6) motion.

In the email, Ms. Ellison suggested that it was perhaps the Court's initial thinking that there was a higher hurdle associated with the gatekeeping function than a traditional 12(b)(6) inquiry.

We have done substantial research following that email exchange, and I will also point out to the Court we actually briefed the 12(b)(6) standard in our original emergency motion for leave. So this is not new to us. We had actually briefed it originally in our original motion that was filed back in late March. March 28th, I believe.

But in light of the Court's communication, we did further research. We have found no cases that suggest that the inquiry for colorability is greater than the plausibility standard under *Twombly*. In fact, we found cases that suggest just the opposite. The *Gonzalez* case which was cited is a Northern District of Texas case. It was a gatekeeper case. Not a bankruptcy case. But it was a gatekeeper case on an

ERISA claim that simply said that the plaintiff simply had to be able to establish an arguable claim.

The *Deepwater Horizon* case, which is a Fifth Circuit case, also states that the case -- the claim must only have some possible validity.

So the threshold inquiry is very, very low. Evidence is not allowed.

The *Gonzalez* case also suggested that the Court, similar to a 12(b)(6) inquiry, is limited to the four corners of the principal pleading -- in this case, the complaint, or now the revised complaint.

So we don't believe that --

THE COURT: So, Mr. McEntire, --

MR. MCENTIRE: Yes, Your Honor.

THE COURT: -- let me -- help me with this. I'm walking through -- because obviously the question we're drilling down on is what is the appropriate legal standard for the Court to apply --

MR. MCENTIRE: Yes.

THE COURT: -- in performing the gatekeeping function. So I started the same place I guess you and everyone else started, and that is with the plan, the gatekeeping provision in the plan. And it starts on the bottom of Page 50 and goes over to 51.

And you probably discovered, the same as I discovered,

that it doesn't give the appropriate legal standard. It just says that the Bankruptcy Court -- that no enjoined party may commence or pursue a claim or cause of action of any kind against any protected party without the Bankruptcy Court -- turn over to Page 51 -- first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind. And then the last sentence of that paragraph: "The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable."

Okay? So all that really tells us is that there has to be notice and a hearing. That doesn't say what kind of hearing, evidentiary or otherwise, and doesn't elaborate on colorable.

So, beyond that, here was my legal thinking. And maybe this is all fully explored in your brief. I just don't know. I thought, well, what legal standard do Bankruptcy Courts apply in the *Barton Doctrine* context when someone is seeking leave to sue a bankruptcy trustee? And then I thought, what legal standard do Bankruptcy Courts apply in a *Louisiana World Exposition*-type context if an unsecured creditors' committee or other party brings a *Louisiana World Exposition* motion, saying, we'd like leave to sue a party because the debtor-in-possession is conflicted or whatever reason.

And so before we get to *Deepwater Horizon* and the other cases, did you find any legal authority in the *Barton Doctrine*

context that you think sheds light? Because that seems to me the most analogous context, right?

MR. MCENTIRE: Specifically to answer -- to respond to your question directly, the answer is no. What we did find specifically, though, was the case, as I'd indicated, the Fifth Circuit directs that a 12(b)(6) standard be applied to the issue of colorability. And that's the *Trippodo* case.

THE COURT: The what case?

MR. MCENTIRE: And that's also cited -- the *Trippodo*. T-R-I-P-P-E-D-O [sic]. That is a Southern District of Texas case that cites a Fifth Circuit precedent that directs that a 12(b)(6) standard be used as a template, if you will, for determining colorability. And we've also cited that in our brief.

THE COURT: And that, was that the one that was in an ERISA context?

MR. MCENTIRE: No, ma'am. That was *Gonzalez*. And that's cited on Page 7 of our brief.

THE COURT: And so --

MR. MCENTIRE: That was a gatekeeper -- a gatekeeper issue. Before you -- you have to satisfy certain criteria before the Court will allow the ERISA to even be filed, the ERISA claim to even be filed. And so it was akin to a gatekeeper function. And they applied specifically a colorability or 12(b)(6) standard.

THE COURT: I'm sorry. What was the context? What was -- who was seeking to sue whom over what in the *Trippodo* case?

MR. MCENTIRE: The -- it was an ERISA claim. It was in the -- I believe it's the Northern --

THE COURT: Oh, I thought you said is not an ERISA claim.

MR. MCENTIRE: Well, no, I apologize. I may have sorted my words. It was an ERISA claim. It was in the Northern District of Texas, I believe. I have it right here. One second. Yes, it's Northern District of Texas. It's a 2002 case. It was dealing with the amendment of pleadings to bring forth an ERISA claim. And the issue there is whether or not there's a colorable claim or whether it was frivolous or futile. And the court determined that a -- that before you even get to the 12(b)(6) level -- this case can actually stand for the proposition that it's -- that it's even less than a 12(b)(6) standard. But before you even get there, you have to address it from a futility or frivolity or is there any evidence. The actual words that are used are, one second, "any arguable claim."

THE COURT: Okay.

MR. MCENTIRE: Not plausibility. Not on the merits. But any arguable claim. It's the lowest of possible thresholds.

THE COURT: All right. Well, --

MR. MCENTIRE: And that's --

THE COURT: -- so, but just to be clear, you didn't find anything in the *Barton Doctrine* context out there?

MR. MCENTIRE: I did not.

THE COURT: And what about --

MR. MCENTIRE: Now, to be honest --

THE COURT: Say again?

MR. MCENTIRE: To be clear, I did not -- I did not -- I apologize. We did not specifically look at *Barton*. I'll be glad to do that and supplement as necessary.

THE COURT: Okay. And *Louisiana World*, you didn't find anything that would shed light in that line of cases?

MR. MCENTIRE: I think we did. I believe *Louisiana World* supports our position here.

THE COURT: It says what legal standard applies?

MR. MCENTIRE: One second. One second, Your Honor, please.

(Counsel confer.)

MR. MCENTIRE: One moment, please, Your Honor.

(Counsel confer.)

MR. MCENTIRE: Can I -- I might have to supplement that. I have someone looking for it right this second.

(Counsel confer.)

MR. MCENTIRE: It was a conflict issue.

(Counsel confer.)

MR. MCENTIRE: The *Louisiana World* case, it was a little bit off topic. It had to do with a conflict of interest where the creditors' committee had a conflict on (inaudible) and the Court determined that the case should go forward. And --

THE COURT: I know it was a different context. I'm just trying to find something analogous to this gatekeeper motion. And the most analogous things I could think of was motions for leave that have been filed in a Bankruptcy Court pursuant to the *Barton Doctrine*, wanting to sue a bankruptcy trustee, where the Bankruptcy Court acts as a gatekeeper, and then a *Louisiana World*-type situation where a creditors' committee files a motion seeking leave to sue somebody, arguing the debtor is not doing it, for either conflicts or some other reason.

All right. So, assuming your case authority is the guiding authority here and it's a Rule 12(b)(6)-type context, you're saying I should look at the four corners of the documents, or anything else the Fifth Circuit has said I can look at, take judicial notice of, in a 12(b)(6) context and not hear evidence?

But part of the reason we're having this dispute, right, is because you've put forward some evidence? Do I understand that correctly? And I have not dove into weeds on this yet,

but I understand there were affidavits submitted by you. Correct?

MR. MCENTIRE: In order to make this determination, you do not need to consider the Dondero affidavits that Mr. Morris has raised. You do not need to consider any of the documents that are actually associated with our motion.

We recognize that the application under the 12(b)(6) standard, you'd be relegated to the four corners of the actual complaint itself -- in this case, the revised complaint.

The 12(b)(6) standard is a guide. We take that to mean that it's a low standard. It's, at most, a plausibility standard, but we believe actually less.

We've provided the Dondero declaration -- declarations, plural; there were two -- together with some documents to give -- provide additional background for the Court. But Mr. Morris has raised an objection. And under the circumstances, assuming the Court follows the guideline of the *Trippodo* case, then we would understand the Court would not consider the actual Dondero declarations.

THE COURT: Does that mean you're withdrawing the affidavits?

MR. MORRIS: I object to that, Your Honor. I really -- I'll let counsel finish. This is just not right.

THE COURT: Okay.

MR. MCENTIRE: Well, I'm not sure what --

THE COURT: Your response to that?

MR. MCENTIRE: I think what we're doing is the correct legal statement and articulation of what the law is. Whether Mr. Morris likes it or not, I suppose, you know, with all due deference to Mr. Morris, it's not a question of whether I'm doing something that he likes. It's what I think is legally correct. And I think that I've presented that as best as I can to the Court.

THE COURT: Okay. Well, you never --

MR. MCENTIRE: By the way, --

THE COURT: Assuming I would allow withdrawal of the affidavits, is that what you're seeking to do?

MR. MCENTIRE: Yes. If the Court is suggesting that if I leave the affidavits attached to the motion that the Court is going to allow this to become, effectively, a trial on the merits -- when it shouldn't be, because that's not what this is about, this is not a test of witness credibility, this is not a test of the ultimate merits of the claim -- if that is the situation that I'm being placed, then the answer is we would not want to withdraw them but we will.

THE COURT: Okay. Well, you don't want to but you will? I mean, I --

MR. MCENTIRE: Yes, correct. We do.

THE COURT: I feel like that means I need to explore this a little, because I don't want -- well, any time

affidavits are put forward in this Court, or I think any other court I know of, parties are always given the chance to cross-examine an affiant or a declarant. Okay? We always allow that if there's an objection to the underlying motion. So, --

MR. MCENTIRE: Well, here, --

THE COURT: -- I just want to make sure you're clear, you put it in and then the other side said, well, we want a chance to cross-examine the affiant. I allow that --

MR. MCENTIRE: Then --

THE COURT: -- always, a hundred percent, as does every other judge I know. If there's an affidavit, if someone wants to cross-examine them, obviously, there might be two sides of the story. So I just want to be clear on what your desired outcome is --

MR. MCENTIRE: Fair enough. I understand.

THE COURT: -- and request is.

MR. MCENTIRE: I understand the Court's statement. We withdraw the Dondero affidavits for purposes of this exercise and your consideration.

THE COURT: Okay.

MR. MORRIS: Can I be heard, Your Honor?

THE COURT: Yes. I'm going to let you be heard on that. But any other argument you want to make, Mr. McEntire?

MR. MCENTIRE: Yes. One last thing. We did find the reference to *Louisiana World*, and it was determined that no

evidence was appropriate and that the court should limit its inquiry based upon the allegations in the pleading, and in that case, to determine whether it was a colorable claim, which would, if pursued successfully, could have increased the value of the estate. So, the *Louisiana World* case does suggest that there's not an evidentiary component to this inquiry.

THE COURT: Okay. Let me be clear. You first said it held no evidence was appropriate, and then you said suggest. So, did the court actually tackle what is the legal standard and is evidence appropriate? Did it actually tackle those specific issues? That's all I really care about. Because I've read the case.

MR. MCENTIRE: Yes. The citation in our brief is that the Court need not be satisfied that there's an evidentiary basis on the merits of the claim to be asserted. And we have cited the *Louisiana World* case at Pages 252 and 253. Allegations were sufficient and no evidentiary hearing was necessary to determine -- in this case it was a breach of fiduciary duty claim -- whether it had -- whether it was appropriately colorable to move forward.

THE COURT: Okay. Courtney, you can be drilling down on that.

All right. Anything else?

MR. MCENTIRE: On the evidence issue, no, Your Honor.

We would, again, if the Court has time, we would encourage the Court to read our brief. We believe we've laid out the law fairly succinctly and clearly, and we stand by our brief --

THE COURT: All right.

MR. MCENTIRE: -- and our objection.

THE COURT: Well, of course I have time and I will read it, but I just, given when it was filed and that I wasn't alerted to it being there, I'm just explaining why I have not read it yet.

All right. Mr. Morris, your argument?

MR. MORRIS: Good afternoon, Your Honor. John Morris for the Claimant Trust and for the Reorganized Debtor.

Your Honor, we understood this to be a status conference. We didn't understand this to be a day for rulings by the Court. We didn't understand there was an issue for the Court to determine today. Hunter Mountain has now filed two briefs on the topic of the standard of colorability, and they've made an exhaustive argument, doing all of this before we -- before any of the objecting parties have had an opportunity to be heard.

Our brief is due on May 4th, and we respectfully request that the Court, subject to other comments that I have this afternoon, withhold judgment on anything that's happened here today.

Mr. McEntire has completely misstated the law. He has no

understanding, apparently, of what a gatekeeper is and how it functions under *Barton*. And there's been no reference at all to the purpose of the gatekeeper, which is set forth explicitly, clearly, and in great detail in the Court's confirmation order. Okay?

12(b)(6), I don't want to -- I don't want to get too far ahead of myself, but 12(b)(6) has nothing to do with this case. Of course this has turned into a bit of a circus, Your Honor, as it always does in Highland. This was a very simple matter. Hunter Mountain filed a motion for leave to file a complaint under the gatekeeper provision of Highland's plan. They attached a copy of their proposed complaint. And Paragraph 1 of their motion says, The motion is separately supported by the declarations of James Dondero dated May 22nd -- May 2022 and February 2023.

And these aren't just two declarations, Your Honor. There's almost 400 pages of attachments to these declarations. And now, 10 days before our opposition is due, because Mr. Dondero fears being cross-examined, Hunter Mountain just willy-nilly thinks they can withdraw those affidavit and declarations? That is greatly prejudicial, and I just can't believe what I just heard.

They don't want to do it, they don't want to subject their client to some cross-examination, when they put their declarations into evidence, when they said that their motion

was based on these declarations.

We should have that opportunity, Your Honor. Forget about the standard. As Your Honor rightly pointed, the rule is very clear. You offer declarations; we get to cross-examine.

On Friday night, we got Hunter Mountain's objection. Their, really, their second attempt to deal with colorability. Last night, they filed what they characterize as support or a supplemental document, which Hunter Mountain insists is not an amendment of their pleading.

Your Honor, I've had Hunter Mountain provide the Court with a blackline. I would respectfully request that the Court instruct Hunter Mountain to file it on the docket so that it becomes part of the official record in this case. If Your Honor reviews the blackline version, which is not on the docket but was emailed earlier today at my request, the Court will see just how extensive the changes are to this pleading. So here they are, without leave of Court, without filing a motion to amend, without anything, they simply dump a brand new complaint on us 10 days before our opposition is due, and today tell us they're not going to include the Dondero declarations.

This is all terribly wrong, Your Honor. This is not the way the process is supposed to work. I've seen a lot in this case, but this is a new standard for chaos.

The changes are extensive. And I just want to point out a

couple of them. They now claim that Mr. Seery exercised "despotic control" over the Debtor. I believe I have the right to inquire as to the factual basis for that ridiculous allegation.

They allege in Paragraph 2 of the newly-amended complaint that Seery "failed to cause the Debtor to make financial disclosures, as required."

Your Honor has been in this case since December of 2019. As this Court is aware, the single only financial disclosure that was not filed with the Court was pursuant to Rule 2015.3. Mr. Dondero commissioned his investigation. As his declarations say, he caused Mr. Rukavina and Mr. Draper to complain to the U.S. Trustee's Office. Nothing.

They objected to confirmation. They made a motion. They went to the District Court. They went to the Fifth Circuit. That one single document is not a basis to say that Mr. Seery failed to cause the Debtor to make financial disclosures.

We have the right, Your Honor, under the -- under the gatekeeper, under this Court's confirmed plan -- which, by the way, is worth nothing that in their newly-amended proposed complaint they specifically say they do not challenge the confirmation order. And I would encourage the Court to look at Paragraphs 77 through 80. They don't challenge that order. And that order tells us that we have the ability to inquire as to the good faith nature of these allegations. It has nothing

to do with 12(b)(6).

Because these changes are so extensive, Your Honor, we think we need a further change to the schedule. We believe the law says that this is an amendment that requires a resetting of the clock. But we don't need that much time, Your Honor. We need just a brief adjustment to the schedule. And we specifically propose that the objection deadline be extended by one week, from May 4th to May 11th. The reply deadline should be extended by one week, from May 11th to May 18th. And the hearing date should be extended by one week, from May 18th to May 25th, or any day the following week after Memorial Day.

The objecting parties should not be prejudiced by Hunter Mountain's continued evolution of their claims. This is -- and this approach is completely fair and reasonable.

And we want to touch just for a moment on this concept of derivative standing. Again, Your Honor, we plan on addressing this in detail in our submission. We shouldn't be required to set forth all of our arguments before they're fully formulated, pursuant to the Court's scheduling order. But I do want to make a couple of points.

Another attorney representing Hunter Mountain filed what it called the valuation motion. The first iteration, Your Honor will recall, was actually filed by Doug Draper on behalf of Dugaboy last summer. Then Louis Phillips represented

Hunter Mountain. When that motion was denied, the Stinson firm came in and represented Hunter Mountain. They filed a new valuation motion.

Here's the irony, Your Honor. Mr. Dondero and Hunter Mountain and Dugaboy keep telling the Court assets exceed liabilities. Assets exceed liabilities. And you know our position on that, Your Honor. They may; they may not. It's also irrelevant at the end of the day because of the indemnification claims. And we'll talk about that more in a moment.

But the important thing is that, if assets exceed liabilities, how could anybody other than, according to Hunter Mountain, Hunter Mountain have been harmed by anything? Creditors, according to Mr. Dondero, are getting paid in full. How could any of these allegations have harmed any beneficial holder of an interest in the Claimant Trust today? According to Mr. Dondero, they're going to get paid a hundred cents on the dollar. Where's the damages?

There's no derivative claim here. This is a -- this is an action by and for Hunter Mountain and nobody else. And it's frivolous. And we will prove that.

Make no mistake. The Trust and the Reorganized Debtor has a substantial outcome in this motion, and that's why I'm here. I'm here because the Trust has substantial indemnification obligations. Mr. Dondero seems to forget that. But those

indemnification obligations are real, and the Trust and the Reorganized Debtor have an affirmative duty on behalf of the Claimant Trust beneficiaries to make sure that baseless litigation is nipped in the bud. And that's why I'm here.

There is no rule of law that says you let the fox into the henhouse simply because the fox fabricates a story that the henhouse is on fire. The henhouse is not on fire, and an evidentiary hearing will prove that.

As for the subject at hand, it's important to remember that the underlying motion is not a defendant's motion to dismiss, but rather it's Hunter Mountain's motion for leave to file a complaint under the gatekeeper. The burden has shifted. They have the burden, not the putative defendants, but Hunter Mountain.

The gatekeeper provision was contained in Highland's plan, it was confirmed by this Court, and it was confirmed -- it was affirmed by the Fifth Circuit Court of Appeals.

We appreciate the Court's preliminary view that an evidentiary hearing is appropriate here, and we understand why there's two reasons for that: Because they put declarations into the record; and more importantly, because the gatekeeper provision requires it.

Hunter Mountain's objection to an evidentiary hearing is disingenuous. Mr. Patrick, Mr. Dondero, Hunter Mountain, they all know the gatekeeper analysis is not a 12(b)(6) analysis,

for at least the following reasons. Mr. Dondero and his affiliates have been fighting the gatekeeper provision since the moment it was proposed. They fought it at confirmation, they appealed it to the Fifth Circuit, they objected when this Court entered an order approving the gatekeeper without modification, in conformity with the Fifth Circuit's decision, and then going back to the Fifth Circuit to challenge the gatekeeper.

Why would you do all of that? Why would you spend that money? Why would you exhaust every potential avenue? If you thought it meant nothing, if you thought it was a less standard than 12(b)(6), who would do that? I think their conduct proves that they know the standard is substantially higher. And if they only read the Court's confirmation order, they would know that for certain.

Hunter Mountain's own pleadings prove that they know this is not a 12(b)(6) standard. If they thought it was a 12(b)(6) standard, they wouldn't have specifically and expressly asked the Court to look beyond the four corners of the complaint. Right? That's what they did in Paragraph 1 of their motion, the very first document filed here, Docket No. 3699, Paragraph 1: The motion is supported by the declarations of Jim Dondero.

Why would you do that if you thought all the Court had to do was look at the four corners? They'll never be able to

rationally explain that. They're attempting to, and I hope the Court won't let them, they're attempting to withdraw the declarations today because they found out afterwards that when you put declarations into the record people are allowed to cross-examine.

The Court should not allow Hunter Mountain to play these games.

There's more. They know they don't have the goods here. How do you know they don't have the goods here? Because the facts are based on Mr. Dondero and Mr. Dondero alone. This email that he sent to Mr. Seery in December 2017, as well as this phone call or phone calls that he allegedly had with one or two representatives of Farallon. This is all Mr. Dondero. He had all of this information in the spring of 2021. Did he bring anything to this Court's attention? No. You know what he did? He sought discovery. And he filed a 202 petition in Texas state court.

If you have the goods, if you have the evidence, bring your claim. He didn't do that because he knew he didn't have the evidence. He knew he didn't have the goods. So they went fishing. They went fishing to state -- Texas state court, and they came up with nothing. Right? It was removed to this Court.

Your Honor will recall that in early 2022 Your Honor had a hearing and remanded it back to state court. Mr. Dondero

filed another declaration with another version of his phone call with Farallon. And Texas state court dismissed the petition.

Hunter Mountain waits seven months. I don't know why they wait seven months, but they wait seven months. They have the same evidence. They don't file a complaint. Instead, Hunter Mountain files another 202 petition, searching for evidence. They went fishing again, and again went home empty, with Mr. Dondero's third recitation of his conversation with Farallon, but a second and different Texas state court said, no dice, no discovery.

That's why they're here now, because they swung and they missed twice. They have no better evidence today than they did in the spring of 2001 [sic] when a decision was made that they didn't have enough to bring an action. They know 12(b)(6) is not the standard here, Your Honor.

Mr. Stancil is here today on behalf of Mr. Seery. I understand Mr. Stancil wants to introduce himself to the Court and provide some very preliminary views on the gatekeeper standard and related matters. Highland -- Holland & Knight is here on behalf of the Claim Purchasers, and I'm sure they'll want to weigh in.

In the end, Your Honor, this was supposed to be a status conference. There's nothing for the Court to decide. A scheduling order was in place, and we'd respectfully request

that it be adjusted in light of, you know, these amended pleadings. I don't know why they -- you know, their amended pleadings. Just look at the blackline.

We should have the allotted time to respond to these issues, and we will do so. And I'm very confident that at the completion of briefing the Court will find it not only appropriate but necessary to hear evidence on this motion.

That's all I have, Your Honor.

THE COURT: All right. Let me be clear. The redline, should I have it somehow? It was not filed on the docket. You're wanting --

MR. MORRIS: It was not, Your Honor, --

THE COURT: Okay.

MR. MORRIS: -- just to be clear. I think -- I brought to Mr. McEntire's attention this morning that the Court's prior instruction in this case was that when you were going to file amended documents, when you were going to use amended documents, that blacklines should be filed with the Court. And a blackline was sent I believe to Ms. Ellison and to all counsel of record, but it wasn't filed on the docket. And I respectfully request that it be put on the docket, because I think that needs to be part of the record of this case.

THE COURT: Okay. I just -- I got from Traci the redline.

MR. MORRIS: Yeah. Just open it up. You'll see.

THE COURT: It was not sent to her until 12:00 noon, and then she sent it to me at 1:00-something. So I've got it now. All right. There it is. It's 43 pages.

MR. MCENTIRE: Your Honor? May I respond very quickly to the --

MR. MORRIS: No. Your Honor? Your Honor?

THE COURT: I'll let you have rebuttal argument at the end, --

MR. MCENTIRE: Fair enough.

THE COURT: -- after I've heard from all of the other parties in interest.

So, who wants to go next? Mr. McIlwain or counsel for Mr. Seery, Mr. Stancil? Who wants to go next?

MR. STANCIL: Your Honor, I think it's -- well, this is Mark Stancil for Mr. Seery. I think it's my turn.

THE COURT: Okay.

MR. STANCIL: And I'll try to be brief, Your Honor. I think it'd be helpful mostly to explain just in a little bit of detail why we agree completely with Mr. Morris's statement that Your Honor should await full briefing on this issue. Just in response to certain of the comments made earlier by the Plaintiffs, I'd like to just sort of maybe level-set a little bit.

For starters, I was confused that Mr. McEntire said he did

not look for cases under *Barton*, because Your Honor specifically cited *Barton* in the confirmation order in approving the gatekeeper provision, which I believe it's in Paragraph 80 in the confirmation order on Page 58. That's Docket No. 1943. And Your Honor specifically cites the Supreme Court's *Barton Doctrine*.

Moreover, that followed recitation of the extensive factual findings that supported the requirement of a rigorous gatekeeping requirement, including Paragraph 77, which the Court found as fact that Mr. Dondero and the Dondero-related entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor.

And as particularly relevant here, the Court further found that this harassment had been specifically directed at Mr. Seery, among others.

The Court further found in Paragraph 78 that Mr. Dondero's abuse of litigation "was consistent with his comments as set forth in Mr. Seery's credible testimony that if Mr. Dondero's plan proposal was not accepted he would 'burn down the place.'"

So, accordingly, Your Honor, the reference to *Barton* is very much a robust gatekeeping entity -- requirement. And we're exactly today where the Court had predicted in entering this order, that the costs and distraction of this litigation

are substantial. And if all we're doing is replicating a 12(b)(6) hearing on a motion for leave, we're actually not doing anything to reduce, as the Court made clear, the burdens, distractions, of litigation.

The Fifth Circuit likewise cited *Barton* in its order affirming the confirmation order. Specifically, it also explained that the provisions, these gatekeeper provisions requiring advance approval were meant to "screen and prevent bad-faith litigation." Well, that -- if that means only what the Plaintiffs say it does, then it really doesn't do anything at all to screen. There's no gatekeeping because their version of what that means is always policed under 12(b)(6) standards.

Moreover, the essence of bad faith is saying things in a complaint that are not true and are easily proved to be false. You know, the irony of their position is if you lard a complaint up with absolute falsehoods and lies, well, those have to be taken as true, and so, you know, they'll survive the motion to dismiss, and so therefore we can file it. That would turn the bad faith essence of the gatekeeping provisions here on their head.

So we think this is all about *Barton* and its progeny. But I would also provide Your Honor with maybe a 30-second preview of why we think *Barton* does have clear support for evidentiary hearings.

We -- I will refer Your Honor to a recent decision of the Fifth Circuit in a case *In re Foster*, 2023 WL 20872. And that was from January of this year, in which the Fifth Circuit affirmed a determination that a post-effective-date litigation could not be brought against the trustee. It's got a little bit of a complicated history, but I would -- I'll summarize to say the suit was filed in the state court, removed to federal court, and then there was a bankruptcy hearing, evidentiary hearing, and ultimately the Bankruptcy Court's decision was affirmed.

And we know there's an evidentiary hearing because if we look at the District Court's appeal opinion in that case, 2022 WL 160240 at *3, it specifically notes an evidentiary hearing because they had put a factual question before the Court.

But as a further preview to a brief that you'll be receiving from us, I think our count is up to nine circuits that apply an abuse of discretion standard to reviews of determinations under *Barton*. And of course, an abuse of discretion standard on appeal makes no sense if one is applying a mere 12(b)(6) standard, which, of course, is *de novo*.

One brief word on *Louisiana World*, Your Honor, because I believe the analogy they were drawing there is akin to a creditors' committee standing analysis. We're not at all agreeing that that level of analysis is appropriate here, but

I would add just a couple of things about that case.

First of all, that's a pre-effective-date question of a committee's standing to bring a cause of action. This, we're talking about repeated findings of abuse of process, giving rise to a gatekeeper action that applies beyond the effective date.

But that aside for the moment, even in the creditors' committee context, those creditors also have to show that the underlying action is both colorable and also that the party that didn't bring it was unjustified. So the Court looks beyond the mere 12(b)(6) standard in that context.

And I would just flatly disagree with Mr. McEntire's characterization of that decision as saying that evidence is not required. If Your Honor looks at Footnote 15 in that decision, which is at Page 248, so we're at 858 F.2d 233 at 248, the court explained why "an evidentiary hearing was unnecessary under the circumstances." And the circumstances the court goes on to note are that the officers and directors "did not object at any time to the committee's application" and further found that the committee had demonstrated the existence of a potential cause of action, and the officers and directors neither refuted any of the committee's claims nor objected to them. "Under the circumstances, we are at a loss to understand just what could have been gained from an evidentiary hearing on an application which drew no

objections."

So, respectfully, Your Honor, I don't think that case could possibly stand for a blanket rule that evidence is not appropriate in support of this, this -- even that analysis.

I think, Your Honor, the most important thing I'd like to ask for is the opportunity, as Mr. Morris mentioned, to write all this down for you instead of reading case snippets for you. We're in the middle of writing our brief. And it has changed quite a bit. We think the brief will be very helpful.

I would add, moreover, that there's no harm to be had by having an evidentiary hearing. If after full briefing Your Honor were to decide, you know what, this is a 12(b)(6) standard -- we don't think you will; we think it's actually a slam dunk to the contrary -- but the Court can, like in many bench trials, decline to rely on evidence and just say, hey, I'm not going to look at that, and here's -- here's where we go. But at least then the hearing will be -- we'll have it, and we'll have the record.

More importantly, we actually think there's enormous value in getting this right, as the Court of Appeals has told us getting it right under *Barton* and applying the correct scrutiny is required.

So, unless the Court has questions, I can turn it back to Mr. Morris or to Mr. McIlwain.

THE COURT: All right. I don't think I have

questions at the moment of you, but I'll turn to Mr. McIlwain and see if I have any questions for the collective group at that point. And of course, I'll go back to Mr. McEntire as well.

All right. Mr. McIlwain, go ahead.

MR. MCILWAIN: Thank you, Your Honor. Brent McIlwain here, again, from Holland & Knight for the Claim Purchasers. Your Honor, I'll be brief and just echo what Mr. Stancil and Mr. Morris said.

I guess, from a practical standpoint, though, what I'm most concerned about here is the procedure by which we've gotten to where we've gotten. It started with a motion for leave to file this complaint on what was supposed to be three days' notice. The Court denied that, rightly. That was appealed, and then there was a *mandamus* to the Fifth Circuit, all -- all of which were denied.

Here we are on the eve of this status conference, objections are filed, new pleadings are filed. I think what's being demonstrated is precisely why this Court has a gatekeeper order in place. Mr. Dondero and his counsel are vexatious litigators, and they're looking for any opportunity to get a leg up on us. On anybody in their path, frankly. And the Court should give us a reasonable opportunity to brief this, should give us a reasonable opportunity to present our case, and we should know what we're fighting against. Are we

fighting against a motion for leave that's supported by affidavit or not? And if we're not, they need to file a new motion or strike the affidavits on the record.

We can't have this ever-evolving pushing against a rope to determine what exactly we're fighting against. And the Court, the Court and the parties who are the subject, frankly, of what are fantastical make-believe theories from Mr. Dondero are entitled to know what the story is. And we're entitled to know what the pleading is. And if the pleading is -- as soon as the pleading is set, then we can respond.

So we're here to ask the Court, if we want to set a hearing, let's close the pleadings as it relates to Hunter Mountain. They shouldn't be even filing any further. Because if they're going to file something further, we need more time. And I'm okay with the schedule that Mr. Morris has outlined, but, frankly, it's generous to Hunter Mountain.

Anyway, Your Honor, I don't have anything substantively to add, but we will include a comprehensive response in our responsive brief whenever that filing, whenever we can determine exactly what we're responding to.

Thank you, ma'am.

THE COURT: All right. Mr. McEntire, you're the Movant, you have the last word.

MR. MCENTIRE: Yes, ma'am. Thank you. I'll try to be brief here.

Mr. Morris says -- I wrote down his words -- if you have the evidence, bring the claim. The revised --

THE COURT: I'm sorry, I did not -- I didn't hear what you said. Could you repeat what you just said?

MR. MCENTIRE: Yes, ma'am. Mr. Morris just told the Court that if they have the evidence, bring the claim. We have the evidence. And all you need to do is to look at the four corners of the revised claim that is before you. And you do not need to look at the Dondero declarations.

THE COURT: Let me --

MR. MCENTIRE: And we withdraw the Dondero --

THE COURT: Let me -- can I stop you right there? I mean, --

MR. MCENTIRE: Yes.

THE COURT: -- the point was made by I forget which lawyer now that your original motion for leave attached something like 387 pages of not just Dondero affidavits, but other evidentiary support. So I'd just like you to respond to that.

MR. MCENTIRE: Sure.

THE COURT: Why did you initially out of the gate think the Court needed to consider 387 pages of attachments? And --

MR. MCENTIRE: We never saw this, Your Honor, we never saw this as an evidentiary inquiry.

THE COURT: But --

MR. MCENTIRE: That was simply background for the Court. The allegations themselves can --

THE COURT: But stop. Why would you -- call it background, evidence, whatever you want to call it -- why would you submit all of that if you think I just need to look at the four corners and apply a 12(b)(6) standard?

MR. MCENTIRE: I would suggest -- fair enough. I would suggest that probably 80 to 90 percent if not more of those documents are from the Court's docket. They are simply docket references in the Court's docket. Very little is outside the four corners of the proceedings that you've been administering, Your Honor.

They're also referenced in the four corners of our pleading. The allegations are set forth in the four corners of our pleading. You don't need to go to the docket -- you may, if you wish -- but you don't need to go to the docket to look at those documents, because the allegations speak for themselves.

And the revised complaint that is before you or that was with our motion -- and by the way, responding to one of other counsel's statements, I don't have to seek leave to amend a complaint that has not been filed yet. What we're seeking to do is we're seeking to bring forth to the Court a complaint for your consideration as to whether we state a colorable

claim. And we don't need Mr. Dondero's declarations, and we don't -- you don't need to go look at all those documents. You can look at the four corners of our complaint and make that decision.

And to -- so we -- Mr. Morris's invitation is we have the evidence, bring the claim. That's exactly what we're doing. Because if you review the claim, much of which is financial in nature -- and by the way, the -- with all due deference to Mr. Morris, I've heard the name Mr. Dondero probably 50 times during this hearing. And we don't need Mr. Dondero to support the four corners of this complaint. And if you look at the complaint itself, there's no reference to Mr. Dondero -- or if there is, it's very few -- in the complaint itself. And this is -- Mr. Dondero is not bringing this particular motion. This is a motion by Hunter Mountain. Mr. Dondero is not directing the filing of this motion. This is a motion filed on behalf of Dondero and -- excuse me, on behalf of Hunter Mountain, and hopefully on behalf of the Reorganized Debtor and the Claimant Trust.

And so when we hear Mr. Dondero, it's an attempt to distract the Court. And what we need to do is just take a step back, not have distractions, look at the complaint, and under a 12(b)(6) standard, which is the appropriate standard at most, I think the Court will find that we have stated far more than a colorable claim.

I will also point out that Mr. Morris has not identified one single case suggesting or supporting his position. Not one single case. And counsel for Mr. Seery has really not addressed the *Louisiana* case that we've identified in an effective way.

THE COURT: He said -- he said --

MR. MCENTIRE: If he wants additional --

THE COURT: He said that was in a pre-confirmation context, and he pointed out the recent *Foster* case. What is your response to the recent *Foster* case?

MR. MCENTIRE: The issue here is colorability. And I don't have the recent *Foster* case before me. The issue is colorability. There's nothing in the Court's gatekeeping protocols in the plan that changes the standard. The standard is the same as the Fifth Circuit has articulated, and that is to -- that it's not a fruitless claim, --

THE COURT: But the question is, --

MR. MCENTIRE: -- that there's some evidence.

THE COURT: The question is whether the hearing that is required by the plan -- which said the Bankruptcy Court, after notice and a hearing, will determine whether an action should go forward -- whether the hearing contemplates evidence. Does the Court need to hear evidence? And to me, that partly turns on what my legal standard is.

In *Foster Mortgage*, --

MR. MCENTIRE: Yes.

THE COURT: -- the court heard evidence. And it was a *Barton* motion, which, as I identified, I think is a pretty darn analogous situation.

And I'll just let you know, my law clerk found a case from the Third Circuit, *Barton Creek*, where they considered evidence. *Vistacare Group*, 678 F.3d 218 (3rd Cir. 2012).

So, again, I am just here to figure out what kind of hearing we set. And maybe --

MR. MCENTIRE: That --

THE COURT: Maybe it's just -- maybe it's premature. Maybe I can't make that decision today because I have apparently very different views on whether evidence is appropriate and what my legal standard is. Maybe we need to just hear the briefing --

MR. MCENTIRE: We will take a look at the *Foster* case, Your Honor. And, as appropriate, I will -- we'll provide counsel our views on that. He's raised the issue, and we would like to be able to respond.

With regard to the schedule, I would suggest to the Court that the schedule as it exists is appropriate and sufficient because there's more than 24 or 25 days to respond to this pleading. And -- number one. Number two, regardless of how Mr. Morris liked to characterize the redline or the blackline or whatever-line, the bottom line is the pleading has actually

been streamlined. We've actually dropped a claim. We dropped one of the causes of action. And what has been included --

THE COURT: Which one was dropped?

MR. MCENTIRE: -- is the fraud that --

THE COURT: Which one was dropped?

MR. MCENTIRE: Fraud. We dropped fraud. We reorganized the pleading with a very large introductory section. And so what appears to be a lot of redline is a lot of just procedural reorientation of the pleading.

And the other thing I would point out, we have asserted a fraudulent concealment discovery rule allegation, and we have enhanced our conflict allegations against Mr. Seery.

We have also taken advantage of the financial data that just came out last week and incorporated some of that.

So a lot of this has occurred and a lot of our changes to the pleading have occurred or additions have occurred since the filing of the original motion. And so we don't believe there's -- the substantive nature of our allegations have not changed. We have added one or two additional declaratory judgment actions, and that's it.

And so setting aside attempts to mischaracterize expediently what may or may not be, I simply ask the Court to look at what's before it and to try to kind of pierce through the argument and perhaps a misdirection. Because, very clearly, the case has actually been lessened and is more

streamlined than anything.

With that, Your Honor, I would simply go back and say this. I don't believe we need to extend the briefing deadline any further. Mr. Dondero is not necessary for this Court's inquiry to determine what the appropriate standard is and whether evidence is required. We believe we are correct. We will brief the *Foster* case and take a look at it since counsel has raised it.

And I would, again, underscore the fact that Mr. Morris came in here today, talked for 30 minutes, and didn't offer the Court one single case citation.

Thank you.

THE COURT: All right. Well, he did start out by saying he didn't think we were going to discuss legal authority today.

MR. STANCIL: Your Honor, I don't want to reopen the wound, but if Your Honor wants cases, I've got -- I think I'm -- I have nine I could cite at the moment for the standard of review under *Barton*. It is not a 12(b)(6) standard. I assume Your Honor will ask if she wants those today or just wants to get those in our brief.

THE COURT: I want to --

MR. STANCIL: But I would hate for the record --

THE COURT: I want to get briefs. And in thinking through what kind of mini-scheduling order we're going to

have, I'm going to think out loud a bit. I will just tell you, I feel like this is -- deciding what is a colorable claim, I just strongly am inclined to think it's a mixed question of fact and law. Okay? And I am strongly inclined to think the Court's best guidance is from the *Barton Doctrine* cases.

And, again, I remember that *Foster* case from January. It's been three months since I've read it and I can't remember if they talked about legal standard or what kind of hearing you have to any great extent. But I do know the Court in Fort Worth heard evidence on that.

And, again, this Third Circuit case, *Vistacare* -- hang on. The court, just in Footnote 12, the Third Circuit points out evidence was presented and considered.

So I tend to think those are the most analogous cases, the *Barton Doctrine* cases. So I am going to allow briefing on (a) is it appropriate for the Court to hear evidence, and (b) any authority you can find regarding what is the appropriate legal standard. Colorable. I mean, those are actually closely overlapping issues, right? I guess they're one and the same, right? Because plausible, Rule 12(b)(6), you usually stick within the four corners of the documents, although you can take judicial notice of pleadings and the record in the case. But it looks like most of these *Barton Doctrine* cases have allowed evidence, suggesting it's at least a different

standard than 12(b)(6).

So I'm going to allow briefing on that, and we're going to talk about dates. But I'm just, I'm trying to decide -- and maybe I should get your comments on this, actually -- should we have legal briefing on other issues besides just what does the colorability standard entail.

Because here are a couple of things that just kind of make me wonder, do we need an evidentiary hearing or not? Do we have a legal question here about is all of this -- is this complaint, the claims in the complaint, would these be administrative expense claims that should have been asserted a long time ago? Does anyone want to talk about that? I mean, maybe I'm getting way ahead of myself. But the whole idea of Hunter Mountain is bringing these derivatively on behalf of the Reorganized Debtor. Well, maybe that negates my theory. I don't know. But I just think is this something -- maybe I'm all off. Maybe you all have thought about this a little more.

MR. MORRIS: Your Honor, yeah, if I may.

THE COURT: Okay.

MR. MORRIS: Number one, I hope whatever schedule the Court decides upon, that we stick to the schedule and that we don't have random briefs getting filed.

At this point, Your Honor, whether it's May 4th or May 11th, I think the objecting parties are going to address the two issues that you've identified, whether or not this should

be an evidentiary hearing and the standard of colorability. I'm also quite confident that other legal issues will be addressed, including whether or not Hunter Mountain has a legal right to even assert a derivative claim, whether or not duties are owed that would support some of these causes of action.

So there are other legal issues that we plan to address. But I would respectfully request that, whether it's May 4th or May 11th, you allow the objecting parties to file their papers, and then whether it's May 11th or May 18th, Hunter Mountain gets one and only one chance to respond in their reply. That's what the scheduling order is intended to do.

And I heard Mr. McEntire refer to yet another so-called supplement, and I don't want to chase a new brief every two days. That's not the way the process --

THE COURT: Well, --

MR. MORRIS: -- is intended to work.

THE COURT: -- absolutely. We're going to have --

MR. MORRIS: And -- and --

THE COURT: -- a firm scheduling order. But what I was thinking out loud about was would I hear or consider, entertain briefing on any subject besides the legal standard and do we have evidence. Because there are a couple legal issues out there swirling around. I don't know if my administrative expense argument/concern even makes sense,

because I'm not sure who's saying who was harmed here. But maybe it just doesn't make sense.

But another thing swirling around is do we have essentially complaints about claims trading? Claims trading? And I don't know if we want to get into that or not, but claims trading in bankruptcy is a pretty unregulated -- it's just kind of between the claims trader and the transferee. And so as far as do we have a colorable claims here, I'm wondering if there's some legal briefing with regard to the nature of the claims.

Thoughts?

MR. MORRIS: Well, --

THE COURT: Do we want to keep this solely legal standard and evidence, or allow briefing of a broader nature? I'm trying to be clear up front because I don't want one party giving me a huge brief going into 14 issues if that's not what --

MR. MORRIS: Yeah. And I would only say, Your Honor, that this motion is, in certain respects, no different than any other motion. A party files a motion, people are allowed to object, there's a reply, and there's a hearing. And we don't want that process to change one bit.

We think that there's a legal issue. If any objecting party believes that there's a legal issue that they feel like bringing to the Court's attention, it'll be contained in the

opposition brief. If Hunter Mountain wants to reply to that, they may. If they don't, they don't.

We have a schedule. You know, we'll just ask you for a one-week adjustment to take into account the latest pleadings that have been filed. But otherwise, this is a motion, there's an opposition, there's a reply, and there's a hearing. And we really would prefer to just keep it that way.

MR. MCENTIRE: Well, I agree with Mr. Morris, Judge, at least on the issue of the sequencing of the objection and the reply.

We still believe that May 4th is an appropriate date and we ought to keep the original schedule as they requested because of the nature of the pleadings that are before the Court, as I mentioned.

THE COURT: All right. Well, I've been scrolling through the redline. I see a lot of red. I know you say some of it's just rearranged, but I see a lot of red. So I think their request for a little more time is appropriate.

So, May 11th for objections and any briefs in support of objections. May 18th for a reply of Hunter Mountain and any briefing in support of the reply. And then a hearing May 25th or thereafter. Speak up, anyone who disagrees with this scheduling.

MR. MCENTIRE: Our statement, I just note it for the record, Your Honor.

So, with regard to the evidentiary issue, obviously, if the Court determines that it's going to be an evidentiary hearing, which we object to and oppose, I would reserve the opportunity to revisit the issue of withdrawing Mr. Dondero's declarations.

I will tell the Court, we're prepared to do so if this is not an evidentiary hearing, and we do not believe it should be an evidentiary hearing.

THE COURT: All right.

MR. MCENTIRE: I believe -- I think my position --

THE COURT: Wait. I'm hearing argument again. Right now, I'm just talking about dates.

MR. MCENTIRE: Understood.

THE COURT: And May 25th or as soon thereafter as you can be heard. Any opposition to that? I mean, basically, I'm just asking you to speak up, Mr. Morris's suggestion of these new dates: Anything you want to say about that?

MR. MCENTIRE: I do believe that my corporate representative is going to be unavailable on May 25th, and so we would ask that we keep the original schedule.

MR. MORRIS: Your Honor, I would propose, as an alternative to the 25th, since the 26th is the Friday before Memorial Day weekend, either the 30th, the 31st, or June 1st, with the 31st and the 1st being ideal, so we don't have to travel on the holiday weekend. I don't know what other folks'

schedules look like, but --

THE COURT: Okay.

MR. MORRIS: -- that seems to make sense to me.

THE COURT: What about May 31st or June 1st? And Traci, please let me know if I'm offering something I can't.

THE CLERK: Judge Jernigan, will you be giving a full day for the hearing? If so, neither one of those dates work. You could do the day after Memorial Day, May 30th. Or Friday of that week, May 2nd. I'm sorry, June 2nd.

MR. MORRIS: I'd prefer May 30th.

THE COURT: All right.

MR. MCENTIRE: My corporate representative -- my corporate representative is not available on May 30th. He's returning on the 31st from a vacation. And so, under the circumstances, we would request June 2nd.

THE COURT: Anyone have a problem with June 2nd?

MR. MORRIS: Can we go -- can we go with May 24th?

MR. MCENTIRE: My corporate representative is out the week from May 21st to May 31st.

THE COURT: Okay. Say again.

MR. MCENTIRE: I just received an --

MR. MORRIS: June 2nd.

THE COURT: Wait. Wait, wait, wait, wait. May 21st through May 31st?

MR. MCENTIRE: Yes, ma'am.

THE COURT: Okay. I'm just --

MR. MCENTIRE: So, under the circumstances, we would request --

THE COURT: I'm just letting you know, I am going to set aside a whole day. Okay? I don't know positively is it going to be evidentiary. What I'll do is, after the reply briefs, shortly after May 18th, I'll notify people you're going to be allowed to put on evidence or not.

But for your planning purposes, based on what I've looked at right now, again, the *Barton Doctrine* cases by analogy, it looks like the Court has discretion to hear evidence. Okay? So if people want to put on evidence, they're entitled to put on evidence. Okay? You don't have to. Nobody has to. But I think the Court in its discretion is going to hear it.

So I may read the briefs and do research, and if I change my mind, I'll let you all know May 19th or 20th.

All right. So, that being the case, it's difficult, because we're trying to find a whole day just in case we need the whole day. You just said your client representative, which is -- who is your client representative?

MR. MCENTIRE: Mr. Patrick.

THE COURT: He's gone May 21st through 31st?

MR. MCENTIRE: Yes, Your Honor.

THE COURT: All right. Did I hear June 2nd did not work for somebody else?

MR. MORRIS: Correct. Yeah, Your Honor. I'll be -- I'll be out of the country beginning the evening of the 2nd, returning the following Tuesday, so whatever date that is. I think the 6th. So I'd be prepared to go on the 8th or the 9th of June.

THE COURT: Okay. So, I'm sorry, you're out the 2nd through 9th? Is that what I heard?

MR. MORRIS: The 2nd -- the 2nd through the 6th, but I wouldn't want to do it on the 7th.

THE COURT: Okay. Well, --

MR. MORRIS: Or Thursday or Friday, June 8 or 9.

THE COURT: Okay. Anyone have a problem with June 8 or 9?

MR. MCENTIRE: Your Honor, the 8th is vastly superior, but I will confess the 9th is a college friend who will be staying at my house with my wife and kids, and my wife shouldn't be subjected to having to host him, but -- so if the 8th is available, I will beg for the Court's indulgence. But I'll be here on the 9th if that's requested.

THE COURT: Okay. Everyone good, --

MR. MCENTIRE: I might need a note.

THE COURT: -- June 8th? Everybody good with that? Okay. I'm hearing no objection. Traci, am I available?

THE CLERK: Yes. You have a Chapter 13 docket that afternoon, but I am sure we can work something out with Mr.

Powers.

THE COURT: Okay. So --

MR. MCENTIRE: Your Honor? Your Honor, this is Sawnie McEntire. For the record, I do need to lodge my objection, but I understand the conflicts. And so, subject to my objection, we agree to that date.

THE COURT: All right. So we'll start 9:30 in the morning, June 8th. And so I'm going to look for a scheduling order that uses these revised dates that I think I've heard you all will live with. May 11th for objections to the motion for leave, and that will include any briefs in support of the objections. And then May 18th for Hunter Mountain's reply and any briefing in the reply that responds to the objections. And shortly after that my courtroom deputy will let lawyers know, yes, she's going to hear evidence, or no, she's not going to have evidence. And the hearing will be June 8th at 9:30 in the morning.

Any other housekeeping matters while we are here? I mean, these are the only pleadings that are going to be allowed. How about that, among other things, as a housekeeping matter? Just these pleadings, except, obviously, if we have live witnesses and evidence on the 8th, you'll be bound by the Local Rule that says witness and exhibit lists are due three days before. Anything else that you all can think of?

MR. MORRIS: Your Honor, if I may, I greatly

appreciate your patience today. But I did want to just inquire as to the status of the decisions on the SE Multifamily HCRE matter as well as the motion to dismiss that was argued back in January. Not because I intentionally or unintentionally seek to pressure the Court, but I do think that those decisions will be helpful one way or the other resolving, you know, or getting some clarity in this case.

THE COURT: All right. Well, the next of those two items that comes out will be the SE Multihousing matter. My law clerk that's working on that is right over here to my right. And we think before the end of the week, but we are juggling lots of things, as you might imagine. So that one is next, and I'm hesitating to give you a time estimate on the other one, but it'll be next in the queue. We've had lots of different adversary proceedings in other cases that we've had to --

MR. MORRIS: Yeah.

THE COURT: -- work on. But I think, again, SE is probably towards the end of this week.

MR. MORRIS: All right. We appreciate the guidance, Your Honor.

THE COURT: Okay. She's giving me a thumbs up like I'm not overpromising. You can't see her from the video.

All right. So, everyone clear? I want to say in the strongest terms that I don't want an avalanche of pleadings.

Is everyone a hundred percent clear that we get the objections with supportive briefing May 11th, reply with supportive briefing on the 18th, and that's it? That's it. Other than witness and exhibit lists, --

MR. MORRIS: Yes, Your Honor.

THE COURT: -- if we have evidence. Everybody clear? Any questions?

MR. MCENTIRE: No, ma'am. Thank you. Thank you for your time.

THE COURT: Okay. Thank you. We are adjourned.

THE CLERK: All rise.

(Proceedings concluded at 3:12 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **04/25/2023**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	Case No. 19-34054 (SGJ)
Highland Capital Management, L.P.[1]	Chapter 11
Debtor.	(Jointly Administered)

CLAIM PURCHASERS' OBJECTION TO HUNTER MOUNTAIN INVESTMENT TRUST'S (I) EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING; AND (II) SUPPLEMENT TO EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING

[1] The last four digits of Debtor's taxpayer identification number are (6725). The headquarters and service address for Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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Muck Holdings, LLC ("Muck"), Jessup Holdings LLC ("Jessup"), Farallon Capital Management, L.L.C. ("Farallon"), and Stonehill Capital Management LLC ("Stonehill", and collectively, with Muck, Jessup, and Farallon, the "Claim Purchasers") file this *Objection to Hunter Mountain Investment Trust's (i) Emergency Motion for Leave to File Verified Adversary Proceeding; and (ii) Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* (the "Objection"). In support, the Claim Purchasers respectfully state as follows:

PRELIMINARY STATEMENT

1. Hunter Mountain Investment Trust's ("HMIT") *Emergency Motion for Leave to File Verified Adversary Proceeding* ("Motion to File Complaint") is a continuation of James Dondero's ("Dondero") relentless barrage of meritless litigation against the bankruptcy estate of Highland Capital Management, L.P. ("HCMLP" or the "Debtor"). Brought almost two years after the alleged "wrongdoing," the Motion to File Complaint seeks leave for HMIT, a Dondero affiliate, to file an adversary proceeding against the Claim Purchasers, James P. Seery, the post-effective date trustee of the Debtor's estate ("Seery"), and others based upon *private bilateral claim sales* between the Claim Purchasers and third-party sellers ("Claims Sellers"). HMIT lacks standing to complain about transactions between the Claim Purchasers and Claims Sellers, and for that reason alone, the Motion to File Complaint should be denied.

2. In addition, the Claims Purchasers owed no duties to the bankruptcy estate or any equity holders of the bankruptcy estate (including Dondero or HMIT) at the time of the claims transfers. As this Court knows, the trading of claims is not a process that involves the Court or the bankruptcy estate, other than the perfunctory filing of notice under FED. R. BANKR. P. 3001(e)(2). The Claim Purchasers filed Rule 3001 notices (most more than two years ago) and not one objection, response, or statement was filed with in response to those notices.

3. Moreover, none of the third-party Claims Sellers (who are sophisticated parties represented by skilled bankruptcy and transactional counsel) has ever made any allegation that the claims transfers damaged them or were in any way not valid, appropriately informed, arms-length transactions. The record shows that the Claims Sellers were well familiar with the circumstances of the Highland bankruptcy, having litigated for many years with Highland and Dondero themselves. The Claims Sellers sold their claims and have put their involvement behind them.

4. The structure of the bankruptcy estate shows that HMIT cannot better its position by pursuing the claims in the Proposed Complaint. Fundamentally, and fatally—whether HMIT could upend the transfers, or whether it could succeed in equitably subordinating the validly transferred claims—HMIT would be in the same position it is today: an equity holder with a speculative interest in the residual rump of the bankruptcy estate. With this Proposed Complaint, it is obvious that HMIT does not seek to bring justice to the Claims Sellers or even to the estate; it wants to bring nuisance against Seery and the Claim Purchasers. The law does not allow such actions, and the gatekeeper process should preclude HMIT from filing its Proposed Complaint.

5. Setting aside HMIT's lack of standing and lack of cognizable claims, which should cause the Proposed Complaint to fail even under a motion to dismiss standard, the claims HMIT seeks to assert are not colorable and thus cannot pass through the Plan's gatekeeper provision. The gravamen of the Proposed Complaint is that Seery provided the Claim Purchasers with "material non-public information" concerning Amazon's potential acquisition of MGM Holdings, Inc. ("MGM"), prompting the Claim Purchasers to acquire certain claims asserted in the bankruptcy case. The claims are not securities, of course, and HMIT's pleading fails to allege an information disparity between the transferors and Claims Purchasers. But why would Seery, an individual who *did* owe fiduciary duties to the bankruptcy estate, take such an unprecedented risk that would

imperil his role in the case and irreparably damage his reputation? HMIT alleges that Seery took such action to benefit himself by replacing the claims transferors with the Claim Purchasers, who allegedly agreed to "rubber stamp" Seery's compensation requests post-effective date. In other words, HMIT dreamed-up a "*quid pro quo*" where "inside information" was exchanged for an agreement to excessively compensate Seery later. There is no plausibility to that outlandish claim.

6. HMIT must establish a "prima facie" case that its claims have foundation. This standard requires that HMIT do more than simply plead speculative "facts" and have the Court treat them as true. Rather, HMIT must show that its allegations are "plausible on their face"; otherwise, the Plan's gatekeeper provision has no practical limitation on vexatious litigation. HMIT has not met this standard. Indeed, HMIT alleges no plausible facts supporting an inference that Seery shared non-public information with the Claim Purchasers, that the Claims Sellers were deceived in selling their claims, or that Seery and the Claim Purchasers agreed to a "*quid pro quo.*"

7. Allowing HMIT to proceed with litigation, after more than a year of harassing the Claim Purchasers in Texas state court (with no success), flies in the face of the central purpose of the Plan's gatekeeper provision. The HCMLP bankruptcy estate, led by Seery, is engaged in substantive litigation against Dondero and his affiliated entities to recoup losses arising from various breaches and malfeasance allegedly committed by Dondero and his affiliated entities.[2] HMIT and Dondero are vexatious litigants who are desperately attempting to gain leverage in the litigation pending against them. They seek to send a message to the market that participation in the Highland liquidation case and in related adversary proceedings will come at great cost and with substantial downside to anyone who dares attempt to recoup losses caused by Dondero and his

[2] *See, e.g.*, *Highland capital Management, L.P. v. James Dondero*, et al., Adv. No. 21-03003-SGJ (Bankr. N.D. Tex. Jan. 22, 2021).

entities and thereby profit from the vestiges of the HCMLP estate that Dondero no longer controls. This Court should deliver to HMIT and Dondero the stronger message that the gatekeeper terms were designed to control exactly this kind of baseless and damaging litigation.

BACKGROUND

8. On October 16, 2019, HCMLP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the Bankruptcy Court for the District of Delaware (the "Delaware Court"), instituting a voluntary chapter 11 bankruptcy case styled *In re Highland Capital Management, L.P.*, Case No. 19-12239 (Bankr. D. Del. Oct. 16, 2019) (the "Delaware Case"). On November 11, 2019, the Official Committee of Unsecured Creditors filed its *Motion of the Official Committee of Unsecured Creditors for an Order Transferring Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas* [Delaware Case at Dkt. No. 86] (the "Venue Motion"). On December 4, 2019, the Delaware Court granted the Venue Motion [Delaware Case at Dkt. No. 184], transferring the Debtor's case to the Bankruptcy Court for the Northern District of Texas (the "Court").

A. Claims are Filed, Settled, Allowed, and Transferred at Arms-Length

9. As set forth below, the claims transferred by the Claims Sellers were filed, settled, and ultimately allowed by this Court. Further, at every turn, Dondero and his affiliated entities objected to the settlements and were overruled. The Claim Purchasers acquired the claims through various arm's-length transactions, after the respective claims were allowed by this Court, and in each case, Rule 3001 notices were filed as reflected below:

Claimant(s)	Date Filed/ Claim No.	Asserted Amount	Claim Settled/Allowed Amount	Rule 3001 Notice Filed
Acis Capital Management LP and Acis Capital Management, GP LLC (together, "Acis")	12/31/2019 Claim No. 23	$23,000,000	Yes [Dkt. No. 1302][3] $23,000,000	Dkt. No. 2215 (Muck)
Redeemer Committee Highland Crusader Fund (the "Redeemer Committee")	4/3/2020 Claim No. 72	$190,824,557	Yes [Dkt. No. 1273] $137,696,610	Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (collectively, the "HarbourVest Parties")	April 8, 2020 Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes [Dkt. No. 1788][4] $80,000,000 in aggregate ($45,000,000 General Unsecured Claim, and $35,000,000 subordinated claim)	Dkt. No. 2263 (Muck)
UBS Securities LLC, UBS AG, London Branch (the "UBS Parties")	June 26, 2020 Claim Nos. 190, 191	$1,039,957,799.40	Yes [Dkt. No. 2389][5] $125,000,000 in aggregate ($65,000,000 General	Dkt. No. 2698 (Muck) and Dkt. No. 2697 (Jessup)

[3] The Debtor's settlement with Acis was approved over the objection of James Dondero [Dkt. No. 1121].

[4] The Debtor's settlement with the HarbourVest Parties was approved over the objections of James Dondero [Dkt. No. 1697] and The Dugaboy Investment Trust and Get Good Trust [Dkt. No. 1706].

[5] The Debtor's settlement with the UBS Parties was approved over the objections of James Dondero [Dkt. No. 2295], and the Dugaboy Investment Trust and Get Good Trust [Dkt. Nos. 2268, 2293].

			Unsecured Claim and $60,000,000 subordinated claim)	

10. HMIT hypothesizes, without alleging any credible facts, that the Claim Purchasers acquired the claims based on "inside information" disclosed by Seery in return for an agreement to approve excessive compensation for Seery at some point in the future. Indeed, while HMIT bears the burden of satisfying the gatekeeper standard, the record shows that the Claims Sellers, who are the only possible victims under HMIT's theories, have expressed no interest whatsoever in HMIT's allegations. And only the Claims Sellers have standing to dispute a claim sale. *See, e.g.*, Aaron L. Hammer & Michael A. Brandess, *Claims Trading: The Wild West of Chapter 11s*, Am. Bankr. Inst. J. 62 (July/Aug. 2010) ("In 1991, Fed. R. Bankr. P. 3001(e) was amended to limit the court's oversight on claims trading" such that "only the transferor may object to a transfer.").

B. Plan is Filed, Confirmed and Goes Effective

11. On November 24, 2020, the Debtor filed its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Dkt. No. 1472] (the "Plan"). With respect to the claims held by the Claim Purchasers, the Plan provided, *inter alia*, that "[o]n or as soon as reasonably practicable after the Effective Date, each holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim" will receive interests in the Claimant Trust.[6] Plan at Art. III(H)(8). Further, the Plan provides

> Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with

[6] The Plan includes substantially similar language with respect to Class 9 Subordinated Claims. Plan, Art. III(H)(9).

> respect to any General Unsecured Claim, ***except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court***.

Id. (emphasis added).[7]

12. On February 22, 2021, the Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Dkt. No. 1943] (the "Confirmation Order").

13. All of the claim trades were consummated ***after*** the Confirmation Order was entered.

14. On August 11, 2021, the Debtor filed its *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Dkt. No. 2700], indicating that the Plan went effective on August 11, 2021.

C. Dondero and HMIT Unsuccessfully Seek Discovery in State Court

15. In July of 2021, Dondero filed a pre-suit discovery request, targeting Farallon and Alvarez & Marsal ("A&M"), under TEX. R. CIV. P. 202 ("Rule 202"): *In Re: James Dondero*, Cause No. DC-21-09534, in the 95th Judicial District Court of Dallas County, Texas ("First 202"). While the First 202 did not seek discovery from Seery directly, Farallon and A&M removed that case to this Court, as it was clear that the purpose of the First 202 was to impugn Seery's conduct. After extensive briefing and a hearing, due to misalignment of Rule 202 proceedings and bankruptcy cases, the Court remanded the First 202 to the Texas state court "with grave misgivings." The state court ultimately denied and dismissed the First 202 on June 1, 2022.

16. As the Court is aware, Dondero waited over six months and filed a new Rule 202 petition through his affiliate HMIT – raising the same issues related to claims trading as in the

[7] The Plan includes substantially similar language with respect to Class 9 Subordinated Claims. Plan at Art. III(H)(8)-(9)

First 202, based on the same allegations of misconduct by Seery – but now in a different Texas state court: *In re: Hunter Mountain Investment Trust*, Cause No. DC-23-01004, in the 191st Judicial District of Dallas County, Texas ("Second 202"). The recipient of the Second 202 was once again Farallon, with the addition of Stonehill. HMIT, undeterred by the dismissal of the First 202, carefully avoided not only this Court, but also the 95th Judicial District Court that dismissed the First 202, and it sought to convince yet another state court judge that it had a valid basis to "investigate" claims purchases in a bankruptcy proceeding. After briefing and a hearing, the Second 202 met the same fate as the first: it was denied and dismissed on March 8, 2023.

17. Only after Dondero and HMIT failed to obtain state-court permission to harass the Claim Purchasers with broad discovery in support of futile theories did HMIT file its Motion to File Complaint, which is supported primarily with affidavits from Dondero, making the same baseless allegations that he and his lawyers have made for more than two years.

OBJECTION

18. HMIT's Motion to File Complaint [Dkt. No. 3699] should be denied because (i) HMIT lacks standing to pursue the claims asserted in the verified complaint attached as Exhibit 1-A to HMIT's *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* [Dkt. No. 3760] (the "Proposed Complaint"), (ii) HMIT has no cognizable claims against the Claims Purchasers, (iii) the Claim Purchasers are protected by the "Gatekeeper Provision" of the Plan, and (iv) the claims alleged by HMIT are not colorable.

A. HMIT has no standing to assert the causes of action in the Proposed Complaint.

19. For a party to have standing to assert a cause of action, *inter alia*, the alleged injury must be fairly traceable to the defendant's conduct. *See, e.g.*, *Friends of the Earth, Inc. v. Crown Cent. Petroleum Corp.*, 95 F.3d 358, 360 (5th Cir. 1996) ("To demonstrate that [plaintiffs] have

standing, [plaintiffs] must show that: 1) its members have suffered an actual or threatened injury; 2) the injury is 'fairly traceable' to the defendant's actions; and 3) the injury will likely be redressed if it prevails in the lawsuit."); *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 155 (Tex. 2012) ("The second element of the standing test requires that the plaintiff's alleged injury be 'fairly traceable' to the defendant's conduct."); *Vichi v. Koninklijke Philips Elecs. N.V.*, 62 A.3d 26, 38 (Del. Ch. 2012) ("there must be a causal connection between the injury and the conduct complained of-the injury has to be fairly traceable to the challenged action of the [respondent]…").

20. HMIT lacks standing to pursue the claims asserted in the Proposed Complaint because (i) neither HMIT nor the Bankruptcy Estate was affected or harmed by the Claim Purchasers' acquisition of the claims; and (ii) the Proposed Complaint fails to allege a cause of action against the Claim Purchasers because it lacks a theory of cognizable damages to the Debtor's bankruptcy estate, the Claimant Trust (as defined in the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Dkt. No. 1808] (the "Plan")[8]), and/or the beneficiaries of the Claimant Trust, such that HMIT has been injured.

21. Under the Plan, HMIT held a Class 10 claim which was converted post-confirmation to a contingent trust interest in the Claimant Trust. HMIT admits that the requisite conditions have not been satisfied to convert its contingent trust interest into a beneficial interest, and that more than $9.5 million must be paid to creditors other than the Claim Purchasers before HMIT becomes a Claimant Trust Beneficiary.[9] In an attempt to bridge this gap, HMIT asserts that it (or the bankruptcy estate) is entitled to the equitable disallowance, equitable subordination,

[8] Capitalized terms used herein but not otherwise defined have the meanings ascribed in the Plan.

[9] *See, e.g.*, Motion to File Complaint, ¶ 17 (stating that creditors other than the Claim Purchasers are owed at least $9.627 million). This $9.5 million does not include the tens of millions still owed to the Claim Purchasers.

disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims. Yet the transactions with which HMIT takes issue are private claim sales between the Claim Purchasers and various creditors of the Debtor's estate (the Claim Sellers). Neither HMIT nor the bankruptcy estate (including the Claimant Trust) has standing to challenge these sales.[10] Even assuming that the allegations in the Proposed Complaint are true (which is disputed), it is the Claim Sellers who potentially would have been damaged, not the bankruptcy estate. Whether the claims are held by the Claim Purchasers or the Claim Sellers, the economic effect on the bankruptcy estate (and thus on HMIT and its rights under the Plan) is the same.[11]

22. Perhaps realizing this deficiency in the Proposed Complaint, HMIT asserts that the Claim Purchasers and their proposed co-defendants are liable for excess compensation paid to Seery in furtherance of an alleged fraudulent scheme.[12] Yet HMIT has not pleaded facts sufficient to show that, even if Seery received extraordinary and excess compensation and such compensation was returned, HMIT's contingent interests in the Claimant Trust would vest. In fact, the Proposed Complaint is devoid of any factual assertions regarding the magnitude of the excess compensation Seery has received or will receive. HMIT admits that creditors, other than the Claim Purchasers, are owed more than $9.627 million and remain ahead of HMIT in priority, which creditors must be paid before HMIT becomes a Claimant Trust Beneficiary.[13] Accordingly, even if everything in the Proposed Complaint were true (which is disputed), HMIT failed to plead facts showing that it has been damaged, and thus it lacks standing.

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[10] *See* Motion to File Complaint, ¶ 27.

[11] Notably, the Claim Sellers have not alleged that improper conduct occurred with respect to the relevant claim sales, despite having the greatest economic incentive to do so.

[12] *See, e.g.*, Proposed Complaint, ¶¶ 4, 14, 16, 65, 69.

[13] *See, e.g.*, Plan, Art. I.B.44; Motion to File Complaint, ¶ 17 (stating that creditors other than the Claim Purchasers are owed at least $9.627 million).

23. Further, because HMIT's alleged injury is not actual or imminent—but rather, is hypothetical and contingent, as it depends on HMIT becoming a Claimant Trust Beneficiary at some future date—it lacks standing to prosecute the causes of action it threatens (or such threatened claims are not ripe because they depend on contingent or hypothetical facts or events that have not yet occurred). *See, e.g.*, *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009) ("However, allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing."); *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008) ("For standing, a plaintiff must be personally aggrieved; his alleged injury must be concrete and particularized, actual or imminent, not hypothetical."); *Vichi v. Koninklijke Philips Elecs. N.V.*, 62 A.3d 26, 38 (Del. Ch. 2012) (stating that for a claimant to have standing, the alleged injury must be "concrete and particularized," "actual or imminent," and "not conjectural or hypothetical"). HMIT must identify "an existing—rather than future or speculative—right that may be presently asserted." *Id*. Here, as any interest it has in the Claimant Trust is contingent, HMIT has no such right to assert. For this additional reason, HMIT's Motion to File Complaint should be denied. *Id.*

24. In addition, the Plan specifically reserves *only* to the Debtor, the Reorganized Debtor, and the Claimant Trustee the right to seek equitable subordination:

> The allowance, classification, and treatment of all Claims under the Plan ***shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise.*** Upon written notice and hearing, the ***Debtor the Reorganized Debtor, and the Claimant Trustee*** reserve the right to seek entry of an order by the Bankruptcy Court ***to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination***.

Resp. Ex. 3 (Plan), Art. III.J. (emphasis added). There is no independent right under the Plan for creditors like HMIT to seek to equitably subordinate other creditors' claims. HMIT lacks standing to assert the proposed claims because the Plan does not authorize these claims by such parties.

B. Equitable disallowance and equitable subordination are not available to HMIT.

25. As an initial matter, the Claim Purchasers no longer have claims which could be subordinated and/or disallowed. All of the relevant claims were settled and allowed prior to the Effective Date of the Plan.[14] Pursuant to the terms of the Plan, on the Effective Date of the Plan, such claims were exchanged for interests in the Claimant Trust, and thus there are no claims left which could be subordinated or disallowed. *See* Plan at Art. III(H)(8)-(9).

26. Further, the Plan provides that *only* the Debtor, the Reorganized Debtor and the Claimant Trustee reserved the right to seek to reclassify or subordinate claims. Plan, Art. III(J). However, any rights or defenses the Debtor's estate had with respect to the relevant claims were expressly disclaimed under the Plan, since all of the relevant claims were allowed by a final order of the Court, and thus no party has standing to seek to subordinate or disallow the Claim Purchasers' claims. *See, e.g.*, Plan at Art. III(H)(8)-(9) ("Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, ***except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court***.") (emphasis added).

27. Even if the relevant claims still remain subject to challenge, the remedies sought by HMIT are either not available, or cannot benefit HMIT. HMIT primarily seeks the equitable disallowance of the Claim Purchasers' claims. Proposed Complaint, ¶¶ 82-87. However, the Fifth Circuit has recognized that "equitable considerations can justify only the subordination of claims, not their disallowance." *In re Mobile Steel Co.*, 563 F.2d 692, 699 (5th Cir. 1977). Further, the

[14] *See* Dkt. Nos. 1273, 1302, 1788, 2389.

Supreme Court has indicated that the only grounds for disallowing a claim are those enumerated in section 502(b) of the Bankruptcy Code. *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 444 (2007) ("But even where a party in interest objects, the court 'shall allow' the claim 'except to the extent that' the claim implicates any of the nine exceptions enumerated in § 502(b)."). Inequitable conduct, as alleged by HMIT, is not one of the enumerated grounds for disallowance under section 502(b). *See* 11 U.S.C. § 502(b).

28. The cases cited by HMIT in support of equitable disallowance, in addition to being out of circuit and counter to Fifth Circuit precedent, are inapposite. First, as the Southern District of New York has noted, "[w]hile courts … have permitted claims for equitable disallowance to survive motions to dismiss, no court has ever employed equitable disallowance as a remedy or sanction under the Bankruptcy Code." *In re LightSquared Inc.*, 504 B.R. 321, 338 (Bankr. S.D.N.Y. 2013). Notably, the statement from *Lightsquared* **specifically** cites to each of the cases that HMIT uses to advance its equitable disallowance argument. *Id*.

29. Further, in each of the cited cases, the claims for which equitable disallowance was sought belonged to estate fiduciaries. *See Pepper v. Litton*, 308 U.S. 295, 311 (1939) (analyzing the ability to disallow claims of a fiduciary); *In re Adelphia Commc'ns Corp*., 365 B.R. 24, 71 (Bankr. S.D.N.Y. 2007) (same); *In re Washington Mut., Inc.*, 461 B.R. 200 (Bankr. D. Del. 2011) (same). Here, the claims were filed and settled by non-fiduciaries, and were allowed while the claims were still held by non-fiduciaries. Further, the claims were acquired by the Claim Purchasers well before they became members of the Claimant Trust Oversight Committee, and thus before they were estate fiduciaries. *Id*. Thus, the considerations discussed in *Adelphia*, *Pepper*, and *Washington Mutual* do not apply under the circumstances.

30. In the alternative, HMIT seeks equitable subordination of the Claim Purchasers' claims. Proposed Complaint, ¶ 87 ("Pleading in the alternative only, subordination of Muck's and Jessup's [claims] to all other interests in the Claimant Trust … is necessary and appropriate."). But the plain language of section 510(c) of the Bankruptcy Code precludes the relief sought by HMIT: "under principles of equitable subordination, [the court may] subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest." 11 U.S.C. § 510(c).

31. "Under the express language of 11 U.S.C. § 510(c), the Court may not subordinate a claim to an equity interest; it may only subordinate one claim to another claim and one equity interest to another equity interest." *In re Perry*, 425 B.R. 323, 380 (Bankr. S.D. Tex. 2010); *see also SED Holdings, LLC v. 3 Star Props., LLC*, 2019 WL 13192236, *2 (S.D. Tex. Sept. 11, 2019) ("the claim may only be subordinated, but not disallowed."); *In re Winstar Commc'ns, Inc.*, 554 F.3d 382, 414 (3d Cir. 2009) ("Finally, Lucent contends that the Bankruptcy Court's equitable subordination holding was inconsistent with the Bankruptcy Code because § 510(c) does not permit the subordination of debt to equity. We agree.").

32. HMIT's claims are based upon its previous equity interests in the Debtor. *See, e.g.*, Motion to File Complaint, ¶ 8 ("HMIT was the largest equity holder in the Original Debtor and held a 99.5% limited partnership interest."). Because the claims held by the Claim Purchasers cannot be subordinated to HMIT's interests, equitable subordination would not benefit HMIT.

C. HMIT has not established a legally cognizable claim.

33. HMIT does not allege that it has any interest in the claims that were transferred to Muck and Jessup, yet HMIT still seeks to challenge such transfers based on conclusory allegations devoid of substance. Here, the Claim Sellers were creditors of the Debtor, and they were entitled

to sell their claims to Muck and Jessup (or to any other buyer) on whatever terms (including price) the parties agreed to. HMIT has no right to second-guess those terms.

i. Claim Purchasers owed no duty owed to HMIT

34. HMIT has not identified any legal duty that the Claim Purchasers owed to HMIT related to the claims transfers; nor has HMIT identified any authority for a private cause of action belonging to HMIT related to the claims transfers. The Claim Purchasers owed no duty (fiduciary or otherwise) to the bankruptcy estate, creditor, or equity holder at the time of the claim transfers. *See, e.g.*, *In re Exec. Office Ctrs., Inc*., 96 B.R. 642, 651 (Bankr. E.D. La. 1988) (finding that an acquirer of a claim had no fiduciary duty to third parties, and the claim's effect on the bankruptcy estate before or after the claim's acquisition was the same, and "[t]herefore, there are no grounds for this Court to invoke its equitable powers to disallow or limit the claim of [the claim acquirer] in this bankruptcy case."); *In re Lorraine Castle Apartments Bldg. Corp.*, 149 F.2d 55, 57 (7th Cir. 1945) (finding that claim purchasers had no fiduciary duties to the estate or its beneficiaries).

35. This is not a mere academic point. HMIT must have sustained a legal injury as a result of a breach of a legal duty. *See, e.g.*, *Nobles v. Marcus*, 533 S.W.2d 923, 927 (Tex. 1976) ("It is a fundamental rule of law that only the person whose primary legal right has been breached may seek redress for an injury. … Without breach of a legal right belonging to the plaintiff no cause of action can accrue to his benefit."). This is fatal to HMIT's proposed claims.

ii. Claim Purchasers are not "non-statutory" insiders

36. HMIT tries to avoid the fact that no duty was owed to it by the Claim Purchasers by alleging that the Claim Purchasers were non-statutory insiders at the time of the claim transfers. Proposed Complaint, ¶¶ 14, 17. This Court has addressed similar arguments in another case. *See, e.g.*, *In re Acis Capital Mgmt., L.P.*, 604 B.R. 484, 535 (N.D. Tex. 2019), *aff'd sub nom. Matter of Acis Capital Mgmt., L.P.*, 850 F. App'x 302 (5th Cir. 2021).

37. In deciding whether a person is a non-statutory insider, this Court has considered two factors: (i) the closeness of the relationship between the putative insider and the debtor; and (ii) whether the transactions between the putative insider and the debtor were conducted at arm's length. *In re Acis Capital Mgmt., L.P.*, 604 B.R. 484, 535. "Under this test, because prongs one and two are conjunctive, a court's conclusion that the relevant transaction was conducted at arm's length necessarily defeats a finding of non-statutory insider status, regardless of how close a person's relationship with the debtor is or whether he is otherwise comparable to a statutorily enumerated insider." *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 970 (2018) (concurrence). Here, HMIT fails to plead facts sufficient to show that the Claim Purchasers are non-statutory insiders.

38. One prong of the test requires a showing that the transactions between the putative insider ***and the debtor*** were not conducted at arm's length. *See, e.g.*, *Acis Capital Mgmt*, 604 B.R. at 535. Here, the complained-of transactions are between the Claim Purchasers and the Claim Sellers, not the Debtor. *See, e.g.*, Proposed Complaint, ¶ 14 ("Because of their long-standing, historical relationships with Seery, ***and their use of material non-public information***, the Defendant Purchasers obtained effective control over various affairs of the Debtor's bankruptcy, including compensation awards to Seery. As such, they became nonstatutory insiders.") (emphasis added); *id.*, ¶ 17 ("By acquiring the claims at issue, Muck and Jessup, the shell entities created and controlled by Stonehill and Farallon, also became non-statutory insiders, and also aided and abetted Seery's breaches of fiduciary duties."). HMIT's allegations miss the necessary element that the debtor be a party to the contested transaction.

39. On the other prong of the test, showing an unwholesome relationship between the third party and the debtor, the factual bases upon which HMIT asserts that Claim Purchasers are

non-statutory insiders of the Debtors are insufficient. Essentially, HMIT argues that because Seery and the Claim Purchasers had business dealings in the past, including Seery allegedly representing Farallon as its legal counsel, that the Claim Purchasers should be deemed non-statutory insiders. *See* Proposed Complaint, ¶ 48. But prior business dealings alone is insufficient to confer non-statutory insider status on a non-debtor third party. *See Stalnaker v. Gratton (In re Rosen Auto Leasing)*, 346 B.R. 798, 801 (8th Cir. BAP 2006) (finding that a social relationship turned business relationship between a debtor's chairman and a third party was insufficient for such third party to be deemed a non-statutory insider of the debtor). Neither is a prior attorney-client relationship. *In re Olmos Equip., Inc.*, 601 B.R. 412, 426 (Bankr. W.D. Tex. 2019) (finding that a prior attorney-client relationship was insufficient to deem a third party a non-statutory insider). Accordingly, HMIT fails to meet the first prong of the non-statutory insider test.

40. And, even assuming that the Claim Purchasers' acquisitions of the claims were the type of transaction that might confer non-statutory insider status on the Claim Purchasers, HMIT has not pleaded credible facts sufficient to show that the Claim Purchasers' acquisitions of the relevant claims were not at arm's-length. And, aside from conclusory implausible statements, the Proposed Complaint fails to set forth facts about any transactions between the Claim Purchasers, Seery, and/or the Debtor regarding Seery's compensation that can give rise to a reasonable inference that compensation decisions were not negotiated and agreed at arm's-length. HMIT's Proposed Complaint on its face fails to meet the second prong of the non-statutory insider test.

41. Simply put, there is no meritorious, legally cognizable claim related to the transferred claims for HMIT to pursue, and thus the Motion to File Complaint should be denied.

D. The Alleged Claims Must be "Colorable" to Overcome the Gatekeeper Provision.

42. The Claim Purchasers are protected by the "gatekeeper provision" in the Plan. Due to concerns about Dondero and his affiliates inundating the Debtor's bankruptcy estate with vexatious litigation,[15] the Plan contains a provision which requires any entity seeking to assert a claim against a "Protected Party"[16] to first obtain leave of the Bankruptcy Court before filing an action. *See* Plan, Art. IX(f). Specifically, the Plan states as follows:

> Subject in all respects to ARTICLE XII.D, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party . . . .

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[15] *See* Confirmation Order, ¶ 79 ("The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ('AON'), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision.")

[16] "Protected Party" is defined as "collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); provided, however, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term 'Protected Party.'" Plan, Art. I(B)(104).

Id.

43. Here, as members of the Claimant Trust Oversight Committee (or Related Persons[17] of members of the Claimant Trust Oversight Committee), the Claim Purchasers are "Protected Parties." Because the allegations in the Proposed Complaint hinge on the Claim Purchasers acting as members of the Claimant Trust Oversight Committee to overpay Seery, the Claim Purchasers are Protected Parties.[18] Accordingly, all of the causes of action that HMIT seeks to assert against the Claim Purchasers in the Proposed Complaint are gated by the gatekeeper provision.

E. <u>The Claims in the Proposed Complaint are not Plausible or Colorable.</u>

44. HMIT has argued that it must only satisfy the Rule 12(b)(6) pleading standard to establish that a colorable claim exists sufficient to overcome the gatekeeper provision. But if that were the case, HMIT's allegations would be presumed true, and the gatekeeper provision would have no practical effect. Rather, the proper inquiry is found under the *Barton* doctrine.

45. In 1881, the Supreme Court established the *Barton* doctrine, which precluded suit being filed against court-appointed receivers absent the permission of the appointing court. *See Barton v. Barbour*, 104 U.S. 126, 127 (1881) ("It is a general rule that before suit is brought against a receiver leave of the court by which he was appointed must be obtained."). The *Barton* doctrine has since been expanded to protect, *inter alia*, court-appointed bankruptcy trustees. *See In re Christensen*, 598 B.R. 658, 664 (Bankr. D. Utah 2019) (stating that the *Barton* doctrine "precludes suit against a bankruptcy trustee for claims based on alleged misconduct in the discharge of a

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[17] As defined in the Plan, "Related Persons" means "with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present and former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case solely in their capacity as such." Plan, Art. I(B)(110).

[18] *See, e.g.*, Proposed Complaint, ¶¶ 4, 14, 16, 18, 47, 65.

trustee's official duties absent approval from the appointing bankruptcy court."). Because HMIT seeks to file suit against Seery for alleged misconduct committed in furtherance of his official duties, and because these allegations are inextricably intertwined with the allegations against the Claim Purchasers, HMIT must satisfy *Barton* before its claims can move forward.

46. The *Barton* doctrine is strictly a "jurisdictional gatekeeping doctrine," and it strips all courts—except the bankruptcy court that appointed the trustee—of subject-matter jurisdiction to hear a lawsuit against the trustee unless the bankruptcy court orders otherwise. *Id*. Under the *Barton* Doctrine, a court must determine if the party seeking to sue a trustee made "a prima facie case showing that [their claims are] not without foundation." *Id*. Failure to establish a prima facie case results in denial of leave to sue. *Id*. Although similar to the standard for a motion to dismiss for failure to state a claim under FED. R. CIV. P. 12(b)(6), the "not without foundation" standard is more flexible, and the proposed plaintiff must allege facts sufficient to state a claim to relief that is "plausible on its face." *Id*. The Proposed Complaint fails to state facially plausible claims.

i. The Proposed Complaint fails to plead facts which lead to the inference that the Claim Purchasers engaged in *quid pro quo* with Seery.

47. The Proposed Complaint asserts that the Claim Purchasers were "given control (through Muck and Jessup) to approve discretionary bonuses and success fees for Seery from [the Debtor's assets]." Proposed Complaint, ¶ 54; *see also id.*, ¶¶ 4, 14, 16, 65, 71. The Proposed Complaint is devoid of any factual assertions as to how the Claim Purchasers have affected Seery's compensation, and for this reason alone, the Proposed Complaint fails to assert a colorable cause against the Claim Purchasers for "knowing participation in Breach of Fiduciary Duties" (Count II) or "Conspiracy" (Count III), as each relies on the Claim Purchasers providing *quid pro quo* in exchange for allegedly receiving material non-public information. Proposed Complaint, ¶¶ 71, 77.

ii. The Proposed Complaint fails to plead facts which lead to the inference that Seery provided the Claim Purchasers with material, non-public information.

48. The allegations in the Proposed Complaint against the Claim Purchasers rely on the conclusory assertion that Seery provided the Claim Purchasers with material, non-public information that the Claim Purchasers used to their benefit in purchasing the claims. *See, e.g.*, Proposed Complaint, ¶ 3 ("Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants, with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims."). In support of that allegation, however, HMIT offers no factual support, and in fact admits that a logical leap is required to arrive at the conclusion that the Claim Purchasers were involved in nefarious activity:

> It made no sense for the Defendant Purchasers to invest millions of dollars for assets that –per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk. ***The counter-intuitive nature of the purchases at issue compels the conclusion that the Defendant Purchasers acted on inside information and Seery's secret assurance of great profits.***

Id. (emphasis added). Unsubstantiated claims of "counter-intuitive," "secret," unprofessional actions by the respected professional this Court appointed are not plausible. For this reason alone, the Proposed Complaint fails to assert a colorable claim. Yet the Proposed Complaint suffers from other deficiencies rendering the causes of action it seeks to assert non-colorable.

49. The Proposed Complaint admits that when the Claim Purchasers acquired the relevant claims, they would have turned a profit based upon then-existing projections. *See, e.g.*, *id.*, ¶ 3 (arguing only that the purchased claims "did not offer sufficient potential profit" to justify their purchase); *id.* ¶ 43 ("Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . ."); *id.* ¶ 49 ("Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* **significant** profit at the time of their multi-million-dollar investments

given the publicly available, negative financial information.") (bold added). HMIT's speculation about what level of projected return would be sufficient for the Claims Purchasers to purchase the claims does not give rise to a plausible inference that they acted improperly.

50. Second, contrary to the Proposed Complaint's statement that it would have been "*impossible* for Stonehill and Farallon (in the absence of insider information) to forecast *any* significant profit at the time of their multi-million-dollar investments," there was already media reporting that MGM was engaging with Apple and others on selling its media portfolio. *See, e.g.*, Benjamin Mullin, *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale*, THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.), https://www.wsj.com/articles/mgm-holdings-studio-behind-james-bond-explores-a-sale-11608588732. Far from material non-public information, the fact that MGM was negotiating a potential transaction was publicly known. HMIT's suggestion that the Claims Purchasers had information not known to the Claims Sellers is not plausible.

51. Finally, the Claim Purchasers acquired the UBS Claims approximately two and a half months *after* the announcement of the Amazon/MGM transaction, a fact which the Proposed Complaint neither discloses nor attempts to harmonize with its overall theory of the Claim Purchasers profiting from inside information. The Proposed Complaint's lack of internal consistency, as well as its lack of consistency with verifiable public facts, renders it implausible.

52. Accordingly, the Proposed Complaint is devoid of necessary factual assertions, and what facts are pleaded do not take the causes of action in the Proposed Complaint from the realm of "conceivable" to being "plausible," as required under relevant law.

For these reasons, the Claim Purchasers respectfully request that the Court deny the Motion to File Complaint, and grant the Claim Purchasers such other and further relief as is just and proper.

Dated: May 11, 2023

HOLLAND & KNIGHT LLP

By: /s/ *Christopher A. Bailey*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, and served upon all parties receiving notice pursuant to the CM/ECF system on this the 11th day of May, 2023.

/s/ Christopher A. Bailey
Christopher A. Bailey

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 10, 2023

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Case No. 19-34054-sgj
Reorganized Debtor.	

ORDER FIXING BRIEFING SCHEDULE AND HEARING DATE WITH RESPECT TO HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING AS SUPPLEMENTED

The Court conducted a status conference on April 24, 2023, concerning the final scheduling of *Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3760] (collectively, the "Underlying Motion"), as well as whether the hearing on the Underlying Motion would be evidentiary, and the Court having considered (i) the *Opposed Emergency Motion*

to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3738] (the "Motion")[1] filed by Highland Capital Management, L.P., and the Highland Claimant Trust; (ii) the *Joinder to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3740] filed by Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management, L.L.C., and Stonehill Capital Management LLC; (iii) the *Response and Reservation of Rights* [Docket No. 3748] filed by Hunter Mountain Investment Trust; (iv) the *Objection Regarding Evidentiary Hearing and Brief Concerning Gatekeeper Proceedings Relating to "Colorability"* [Docket No. 3758] filed by Hunter Mountain Investment Trust, and (v) the arguments of counsel,

IT IS HEREBY ORDERED that:

1. The hearing on Hunter Mountain Investment Trust's *Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3760] (collectively, the "Underlying Motion") shall be held in person on **June 8, 2023, at 9:30 a.m. (Central Time)** before the Honorable Stacey G. C. Jernigan, at **1100 Commerce Street, 14th Floor, Courtroom 1, Dallas, Texas**, and by Webex for those interested but not directly participating in the hearing.

2. Any responses to the Underlying Motion shall be filed no later than May 11, 2023.

3. Any replies in support of the Underlying Motion shall be filed no later than May 18, 2023.

4. The Court will advise the parties on or reasonably after May 18, 2023, whether the Court intends to conduct the hearing on an evidentiary basis.

###End of Order###

[1] All capitalized terms used but not defined herein have the meanings given to them in the Motion.

Approved as Form Only:

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLAIMANT TRUST, AND JAMES P. SEERY, JR.'S JOINT OPPOSITION TO HUNTER MOUNTAIN INVESTMENT TRUST'S MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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Highland Capital Management, L.P. ("HCMLP" or, as applicable, the "Debtor"), the reorganized debtor in the above-referenced bankruptcy case, the Highland Claimant Trust (the "Trust"; together with HCMLP, "Highland"), and James P. Seery, Jr., HCMLP's Chief Executive Officer and the Claimant Trustee of the Trust ("Seery"; together with Highland, the "Highland Parties"), by and through their undersigned counsel, hereby file this opposition (the "Opposition") to *Hunter Mountain Investment Trust's* ("HMIT") *Emergency Motion for Leave to File Verified Adversary Petition* ("Initial Motion" or "Mot."; Docket No. 3699) and *Hunter Mountain Investment Trust's Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* ("Supplemental Motion" or "Supp. Mot."; Docket No. 3760; collectively, the "Motion"). In support of their Opposition, the Highland Parties state as follows:

PRELIMINARY STATEMENT[1]

1. This Motion is the latest attempt by James Dondero ("Dondero") to make good on his threat to "burn down the place." This iteration involves baseless and personal attacks against the Proposed Defendants,[2] harassing those individuals charged with maximizing value for creditors while (perversely) wasting Highland's resources. Dondero's demonstrated hostility to Highland's legitimate goals is precisely why this Court entered the Gatekeeper Provision at issue here, and the current Motion vividly illustrates the wisdom of installing that prophylaxis. HMIT's Motion should be denied.

[1] Capitalized terms not defined in this Preliminary Statement shall have the meanings ascribed to them below.

[2] "Proposed Defendants" refers to, collectively, Seery, Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup"), Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"; collectively with Muck, Jessup, and Farallon, the "Claims Purchasers"), and John Doe Defendant Nos. 1–10.

2. HMIT's proposed Complaint ("Compl."; Docket No. 3760-1) is long on rhetoric, unsupported conspiracy theories, and conclusory statements, but short on actual factual allegations. For all its bluster, the Complaint rests entirely on the following assertions:

- On December 17, 2021, Dondero sent an unsolicited email to Seery regarding a potential acquisition of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"). At the time, the Debtor owned MGM stock directly and managed an entity that owned, among numerous other assets, subordinated debt in other entities that owned MGM stock (Compl. ¶¶ 44–45);

- Seery purportedly communicated with principals at Farallon and Stonehill, entities with which Seery allegedly did "substantial business" more than a decade before he assumed his roles at Highland. (*Id*. ¶ 48.) The Complaint contains no allegations regarding ***when*** these communications supposedly occurred, but speculates that Seery provided "material non-public information" about MGM and vague "assurances of great profits" on Highland claims (*id.* ¶¶ 3, 13–14, 47, 50);

- In April 2021 (four months after Dondero's unsolicited email), Farallon and Stonehill purchased "approved unsecured claims" of Highland at a 65% discount to face value. Based on the "publicly projected" estimates in Debtor's November 30, 2020, Disclosure Statement—which the Complaint touts as the only public source of information regarding the claims' potential value—Farallon and Stonehill stood to earn at least an 18% return on those purchases (*id.* ¶¶ 3, 37, 42); and

- In August 2021 (eight months after Dondero's unsolicited email), Farallon and Stonehill became members of the Claimant Oversight Board ("COB"). Under the Court-approved Chapter 11 Plan, Seery earned a set base salary and a performance-based bonus. The Complaint speculates that negotiations over the latter component "were not arm's-length," but contains no allegations about the negotiation process or the terms of Seery's final compensation package (*id.* ¶¶ 4, 13, 54.

The remainder of the Complaint consists of rhetorical rehash of these basic contentions, *ad hominem* attacks, or a self-serving (and utterly unsupported) claim by Dondero that a Farallon principal confessed this purported scheme to Dondero.

3. The Motion should be denied for three, independently sufficient reasons. ***First***, as a threshold legal matter, HMIT, as a holder of unvested, contingent interests, lacks standing to bring derivative claims on behalf of the Trust or HCMLP under applicable state law and the

Claimant Trust Agreement ("Trust Agreement" or "Trust Agmt."). HMIT cannot escape this reality by alternatively asserting its claims as nonexistent direct claims.

4. ***Second***, HMIT's claims are not "colorable" as that term is used in the Court-approved Plan and the Gatekeeper Provision included in this Court's Confirmation Order. (Plan Art. IX.F; Confirmation Order ¶¶ 72, 76, 81.) As the Confirmation Order expressly stated, the Gatekeeper Provision requires Dondero to make a threshold showing consistent with the (i) "the Supreme Court's 'Barton Doctrine,' *Barton v. Barbour*, 104 U.S. 126 (1881))," and (ii) "the notion of a prefiling injunction to deter vexatious litigants, that has been approved by Fifth Circuit." (*Id.* ¶¶ 76–81.) The Fifth Circuit confirmed as much when it rejected (in relevant part) Dondero's confirmation appeal, holding that the Gatekeeper Provision "screen[s] and prevent[s] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness." *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.* (*In re Highland Cap. Mgmt., L.P.*), 48 F.4th 419, 435 (5th Cir. 2022).

5. It is well-settled that "colorability" in this context requires HMIT to demonstrate ***more*** than the bare-bones Fed. R. Civ. P. 12(b)(6) "plausibility" standard. HMIT must demonstrate the "foundation" for its "*prima facie* case." *In re VistaCare Grp., LLC*, 678 F.3d 218, 232 (3d Cir. 2012). Accordingly, and contrary to HMIT's contention, evidentiary hearings are routinely conducted in this setting—particularly where (as here) the movant has larded its complaint with unsupported, conclusory assertions that cannot withstand even passing scrutiny and has attached hundreds of pages of exhibits and two self-serving declarations in support of its motion. HMIT's proffered gatekeeping standard, by contrast, would impose no hurdle at all and would render the threshold entirely duplicative of the motion to dismiss standard that every litigant already faces. In addition to ignoring the stated purposes and intent of the Gatekeeper Provision (which are long

since beyond collateral attack) and the factual bases upon which it was adopted, HMIT offers no reason why litigants whose serial abuses earned the imposition of the Gatekeeper Provision should be subject to the same standard as everyone else. To state that absurd contention is to refute it, and would essentially nullify this Court's authority to police its own docket.

6. ***Third***, even if the Rule 12(b)(6) standard applied, HMIT's bare-bones Complaint would fail. Even accepting the sparse factual allegations as true for purposes of this Motion, its central conclusions collapse under their own weight. For example, assuming that Dondero's unsolicited December 17, 2020 email, which violated this Court's TRO, included confidential information regarding MGM, the Complaint does not allege that such information remained nonpublic at the unidentified time Seery supposedly communicated with Farallon and Stonehill—and the Complaint acknowledges that neither entity purchased claims before April 2021. Likewise, although the Complaint's central thesis is that Farallon and Stonehill would not have purchased the Highland claims without knowing the supposedly secret MGM information, the Complaint acknowledges that the November 30, 2020 Disclosure Statement predicted a recovery ***significantly above*** what Farallon and Stonehill allegedly paid for the claims in April 2021.

7. While such self-contradictory and sparse allegations ordinarily might counsel in favor of denying the Motion under the Rule 12(b)(6) standard (*i.e.*, obviating the need to decide whether the *Barton*/vexatious-litigant standard applies), the Highland Parties respectfully request that this Court conduct the Rule 12(b)(6) analysis only in the alternative. Given the litigiousness of Dondero and his affiliated entities, who inevitably will appeal any adverse decision, the Fifth Circuit will benefit from a full record. Applying the correct heightened standard will also serve important interests going forward. This Motion is unlikely to be the last to require application of

the Gatekeeper Provision, and significant interests of judicial economy will be served by definitively establishing the threshold standard and propriety of an evidentiary hearing.

RELEVANT FACTUAL BACKGROUND

A. The Gatekeeper Provision Was Adopted To Prevent Baseless Litigation.

8. HMIT was required to file the Motion in accordance with a provision in Highland's confirmed Plan known as the "gatekeeper" (the "Gatekeeper Provision"). (Morris Dec. Ex. 1 at 51–52.)[3] The Gatekeeper Provision states, in pertinent part, that:

> [N]o Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . ***without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim*** of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

(*Id*. (emphasis added).)[4]

9. The Gatekeeper Provision is not a garden-variety plan provision. Rather, as this Court stated in its order confirming the Plan,[5] the Gatekeeper Provision was adopted as a direct result of Dondero's history of harassing, costly litigation. In describing the factual support for the Gatekeeper Provision, this Court observed that "prior to the commencement of the Debtor's

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[3] References to the "Plan" are to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*. (Morris Dec. Ex. 1.) Citations to "Morris Dec. Ex. __" are to the exhibits attached to the *Declaration of John A. Morris In Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding* accompanying this Opposition.

[4] Under the Plan, HMIT is an "Enjoined Party," and HCMLP, the Trust, Seery (in various capacities), Farallon, and Stonehill (in their capacities as members of the COB approving Seery's compensation) are "Protected Parties." (Plan Arts. I.B.56, I.B.105.)

[5] (Morris Dec. Ex. 2 (the "Confirmation Order").)

bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation some of which had gone on for years and, in some cases, over a decade . . . . During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor." (Confirmation Order ¶ 77.)

10. The Court further found that the "Dondero Post-Petition Litigation [as defined] was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would 'burn down the place.'" (*Id*. ¶ 78.)

11. These findings of fact—all of which the Fifth Circuit left undisturbed while affirming, in relevant part, the Confirmation Order—were the foundation upon which the Gatekeeper Provision was adopted:

> Approval of ***the Gatekeeper Provision will prevent baseless litigation*** designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will ***avoid abuse of the Court system and preempt the use of judicial time*** that properly could be used to consider the meritorious claims of other litigants.

(*Id*. ¶ 79 (emphasis added).)

B. Dondero, Patrick, And HMIT Unsuccessfully Search For Allegations To Manufacture A Complaint.

12. HMIT's proposed Complaint is premised on two primary allegations emanating from Dondero: (i) Seery supposedly shared with the Claims Purchasers "material, non-public inside information" that he had obtained from Dondero as part of a *quid pro quo* pursuant to which the Claims Purchasers would someday return the favor by joining the COB and "rubber-stamping" Seery's compensation package, and (ii) a representative of Farallon essentially confessed to the arrangement in one or more phone calls with Dondero in the late Spring of 2021. Despite knowing

of these alleged "facts," Dondero, Mark Patrick ("Patrick"),[6] HMIT's purported manager, and HMIT did not bring any claims but instead sought discovery—which two different Texas state courts denied.

1. The First Rule 202 Petition

13. On July 22, 2021, Dondero filed a petition in Texas state court seeking pre-suit discovery against Farallon and Alvarez & Marsal pursuant to Tex. R. Civ. P. 202 (the "First Rule 202 Petition"). (Morris Dec. Ex. 3.) The First Rule 202 Petition was based, in part, on Dondero's allegations that (i) Seery possessed "non-public, material information" that "[u]pon information and belief . . . was the basis for instructing Farallon to purchase the Claims," and that (ii) he had a telephone call with Michael Linn ("Linn"), a representative of Farallon, in which Linn allegedly told Dondero that "Farallon had purchased the claims sight unseen—relying entirely on Mr. Seery's advice solely because of their prior dealings." (*Id*. ¶¶ 21, 23.)[7]

14. After the targets of the First Rule 202 Petition removed it to the Bankruptcy Court, this Court held a hearing, after which it entered an Order remanding the proceeding back to Texas state court despite having "grave misgivings." (Morris Dec. Ex. 6 at 20.) In doing so, the Court noted that it was "familiar with the concept of claims-trading in bankruptcy (including the fact that, for decades now, since a rule change in the last century, no court approval and order is necessary unless the transferor objects)" and that it appeared that Dondero's motives were "highly suspect." (*Id*. at 21.)

[6] Patrick has worked closely with Dondero for over a decade. Patrick was hired by Highland in 2008 and now serves as manager of the "Charitable DAF," which is controlled by Dondero. On August 3, 2021, this Court held Patrick "in civil contempt of court" after "basically abdicating responsibility" for "executing the litigation strategy" to Dondero. (Aug. 3, 2021 Order at 20–21, 30, Docket No. 2660.)

[7] As described in more detail below, Dondero later amended the First Rule 202 Petition (Morris Dec. Ex. 4) to, among other things, modify his description of his conversation with Linn and, several weeks after doing so, offered his third sworn version of his purported communication(s) with Farallon (*id.* Ex. 5).

15. After remand, the Texas state court slammed the gate closed, denying the First Rule 202 Petition (as amended) and dismissing Dondero's case. (Morris Dec. Ex. 7.)

2. The Second Rule 202 Petition

16. Seven months later, in January 2023, HMIT filed another petition in a different Texas state court again seeking pre-suit discovery regarding, among other things, alleged wrongdoing in connection with the Claims Purchasers' acquisition of claims in the Debtor's bankruptcy case. (Morris Dec. Ex. 8 (the "Second Rule 202 Petition").) While the Second Rule 202 Petition was embellished and contained a few more speculative and conclusory assertions, it was based on many of the same allegations contained in the First Rule 202 Petition. Indeed, Dondero submitted yet another sworn statement, this one in support of the Second Rule 202 Petition, which included the fourth version of his purported communication(s) with Farallon. (Morris Dec. Ex. 9.)

17. On March 8, 2023, the Texas state court again slammed the gate closed, denying the Second Rule 202 Petition and dismissing HMIT's case. (Morris Dec. Ex. 10.)

18. Having been refused entry by two different Texas state courts, HMIT finally knocked on this Court's door on March 28, 2023 by filing the Motion, on an emergency basis, and contending that its 18-month detour in the Texas state court system left it at risk of blowing the statute of limitations on certain claims. The Motion is largely based on the same threadbare facts and speculative and conclusory statements that were insufficient to obtain discovery in both the First Rule 202 Petition and the Second Rule 202 Petition.

C. The Premise Of HMIT's Proposed Complaint—An Alleged *Quid Pro Quo* Between Seery And The Claims Purchasers—Is Demonstrably False.

19. HMIT asserts various legal theories resting on the assertion that Seery passed on material, non-public information concerning MGM to his purportedly "past business partners and close allies" Farallon and Stonehill, so that they could buy claims on the cheap and later reward

Seery by "rubber-stamp[ing]" an oversized compensation package. (Mot. ¶¶ 22, 24; *see also* Compl. ¶¶ 3–4, 16, 47, 54, 71, 77.)

20. HMIT primarily relies on: (i) an email Dondero sent to Seery on December 17, 2020, in which Dondero purportedly disclosed material, non-public inside information; (ii) Dondero's prior sworn statements concerning, among other things, his supposed recollection of one or more telephone calls he had with one or more representatives of Farallon in the late Spring of 2021; and (iii) two letters summarizing "investigations" commissioned by Dondero, the results of which were apparently delivered to the Executive Office of the United States Trustee ("EOUST"). (Mot. ¶ 1 ("This Motion is separately supported by . . . the declarations of James Dondero, dated May 2022 (Ex. 2), James Dondero, dated February 2023 (Ex. 3), and Sawnie A. McEntire with attached evidence (Ex. 4).").)

21. Based on the facts set forth below, and as will further be demonstrated at the upcoming hearing, HMIT cannot meet its burden of establishing that there is a good faith basis for the allegations concerning the "*quid pro quo.*"

D. The Allegations Concerning MGM and Insider Trading Have No Basis In Fact.

22. As a member of MGM's Board, Dondero was admittedly the source of the so-called material, non-public inside information. (Compl. ¶ 45.) On December 17, 2020, Dondero—in violation of an existing temporary restraining order—sent an email to Seery and others with the subject line "Trading Restriction re MGM – material non public information" stating:

> Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.

(Morris Dec. Ex. 11 (the "MGM E-Mail").)[8]

1. Dondero Had An Axe To Grind When He Sent The MGM E-Mail.

23. By December 17, 2020, Dondero viewed Seery as his enemy. The MGM E-Mail was initially just another clumsy and improper attempt to impede the Debtor's asset sales (*see infra* ¶ 25), but when that failed, Dondero shifted gears and began peddling the "inside information" angle, in multiple forums, hoping to make life difficult for Seery and anyone Dondero perceived to be supporting him.[9] But viewed in context, the MGM E-Mail and related allegations provide no basis for the assertion of "colorable" claims.

24. After causing the Debtor to file for bankruptcy protection in October 2019, Dondero was forced to surrender his control positions at the Debtor—including his positions as President and Chief Executive Officer—in January 2020 as part of a broader corporate governance settlement entered into to avoid the appointment of a Chapter 11 trustee. (Morris Dec. Ex. 12.) He remained an unpaid employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he then held titles, subject to the authority of the newly-appointed independent board of directors (the "Independent Board").[10]

25. By the Fall of 2020, however, the Independent Board demanded (and obtained) Dondero's resignation, and the Debtor had (1) reached proposed settlements with certain of its larger creditors, (2) proposed an asset-monetization plan, (3) obtained court approval of its

[8] Notably, the MGM E-Mail is internally inconsistent because it simultaneously purports to impose a "[t]rading [r]estriction" while also stating that "sales are subject to a shareholder agreement," which permits sales in certain circumstances.

[9] Neither Dondero nor HMIT ever explain how Dondero could have disclosed "material non-public inside information" that he purportedly obtained as a member of the MGM Board without violating his own fiduciary duties to MGM. The absence of any explanation is further indication that Dondero did not believe that the MGM E-Mail contained "material non-public inside information."

[10] In July 2020, Seery was appointed Chief Executive Officer and Chief Structuring Officer of the Debtor. (Morris Dec. Ex. 36.)

Disclosure Statement, and (4) begun to solicit votes in support of its proposed Plan. In response to these developments and others, Dondero began disrupting preparations for the implementation of the proposed Plan. The events in the weeks leading up to the MGM E-Mail are as follows:

- October 9: In accordance with the Independent Board's demand, made after threats and disruptions to the Debtor's operations, Dondero is forced to resign from all positions with the Debtor and its affiliates (Morris Dec. Ex. 13);
- October 16: Dondero's affiliates attempt to impede the Debtor's trading activities by demanding—with no legal basis—that Seery cease selling certain assets (*id.* Ex. 14; *id.* Ex. 15 at 13–15);
- November 24: This Court enters an Order approving the Debtor's Disclosure Statement, scheduling the confirmation hearing on the Debtor's Plan for January 13, 2021, and granting related relief (*id.* Ex. 16);
- November 24–27: Dondero personally interferes with certain securities trades ordered by Seery (*id*. Ex. 15 at 30–36);
- November 30: The Debtor provides written notice of termination of shared services agreements with Dondero's affiliates, NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"; together with NexPoint, the "Advisors") (*id.* Ex. 17);
- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes that had an aggregate face amount of more than $60 million (*id.* Exs. 18–21);
- December 3: Dondero responds by threatening Seery in a text message: "***Be careful what you do -- last warning***" (*id.* Ex. 22 (emphasis added));
- December 10: Dondero's interference and threat cause the Debtor to seek and obtain a temporary restraining order ("TRO") against Dondero (*id.* Ex. 23);
- December 16: The Court denies as "frivolous" a motion filed by certain Dondero affiliates in which they sought "temporary restrictions" on certain asset sales (*id.* Ex. 24); and
- December 17: After exhausting other avenues to curtail the asset sales Debtor conducted in furtherance of the proposed Plan, Dondero sends the MGM E-Mail to Seery (*id.* Ex. 11).

2. Dondero Had No Duty To Send The MGM E-Mail To Seery And He Violated An Existing TRO When He Did So.

26. With his efforts to disrupt the proposed Plan stymied, Dondero sent the MGM E-Mail to Seery. While HMIT alleges that Dondero disclosed "material non-public information regarding Amazon and Apple's interest in acquiring MGM" to Seery on December 17, 2020 (Compl. ¶ 45), HMIT does not state or suggest why Dondero did so.

27. That failure is unsurprising. As of December 17, 2020, Dondero owed no duty of any kind to the Debtor or any entity controlled by the Debtor because (i) in January 2020, he surrendered direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement (*see* Docket Nos. 339, 354-1 (Term Sheet)), and (ii) in October 2020, he resigned from all roles at the Debtor and affiliates.

28. Notably, Dondero admitted elsewhere that his goal in sending the MGM E-Mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

> On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple's interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Mr. Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades***.

(Morris Dec. Ex. 9 ¶ 3 (emphasis added).)

29. Dondero had no relationship of any kind with the Debtor when he sent the MGM E-Mail, and he directly violated the TRO by sending it to Seery without copying Debtor's counsel.[11] Particularly against the backdrop of Dondero's attempted interference with the Debtor's

[11] The TRO enjoined Dondero from, among other things, "communicating… with any Board member" (including Seery) without including Debtor's counsel. (Morris Dec. Ex. 23 ¶ 2(a).)

trading activities just weeks before and just days after December 17, 2020,[12] the MGM E-Mail was another transparent attempt to impede asset sales and undermine Seery's efforts to bring the Debtor's bankruptcy to a close.

3. The MGM E-Mail Did Not Disclose Material, Non-Public Inside Information.

30. HMIT's contention that the MGM E-Mail contained "material non-public inside information" is belied by press reports issued ***before*** December 17, 2020.

31. For example, as early as January 2020, Apple and Amazon were identified as being among a new group of "Big 6" global media companies and MGM was identified as being a leading media acquisition target. Indeed, according to at least one media report, "MGM, in particular, seems like a logical candidate to sell this year" having already held "preliminary talks with Apple, Netflix and other larger media companies." (Morris Dec. Ex. 25.)

32. In October 2020, the Wall Street Journal reported that MGM's largest shareholder, Anchorage Capital Group ("Anchorage"), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as Chairman of MGM's Board. The article reported that "[i]n recent months, Mr. Ulrich has said he is working toward a deal," and he specifically named Amazon and Apple as being among four possible buyers. (*Id.* Ex. 26.)

33. The forgoing is a small sample of publicly available information showing that MGM and Anchorage faced substantial pressure in 2020 and were contemplating a sale, and that Amazon and Apple were expected to be among interested bidders. No one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed "material interest" in acquiring MGM.

[12] (Morris Dec. Ex. 15 at 30–36.)

34. Even if the MGM E-Mail contained "material non-public information" when Dondero sent it on December 17, 2020 (which it did not), its substance was fully and publicly disclosed to the market in the days and weeks that followed.

35. For example, on December 21, 2020, a Wall Street Journal article titled *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale* (the "Wall Street Journal Article"), reported that MGM had "tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process," and had "a market value of around $5.5 billion, based on privately traded shares and including debt." The Wall Street Journal Article reiterated that (i) Anchorage "has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks," and (ii) "Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers." (*Id.* Ex. 27.)

36. The Wall Street Journal article thus contained more information than the MGM E-Mail, insofar as the former (i) disclosed that investment bankers had been retained; (ii) disclosed the identity of the investment bankers; (iii) reported that MGM had commenced a "formal sales process"; (iv) provided an indication of market value; and (v) reiterated that Anchorage, MGM's largest shareholder, was under pressure to sell its illiquid position and was actively "working toward a deal for the studio."

37. The Wall Street Journal's reporting was picked up and expanded upon in other publications soon after. For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The World is net enough! Amazon Joins other Streaming services in £4bn Bidding war for Bond films as MGM Considers Selling Back Catalogue*, cited the Wall Street Journal Article and further reported that MGM "hopes to spark a battle that could interest streaming services such as Amazon Prime" (*id.* Ex. 28);

- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that "it's now become apparent that MGM is actually up on the auction block," noting that the Wall Street Journal was "reporting that the studio has begun a formal sale process" and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder (*id.* Ex. 29); and

- On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition (*id.* Ex. 30).

4. Dondero's Conduct Confirms That He Did Not Believe He Disclosed Material, Non-Public Inside Information To Seery; The MGM E-Mail Played No Role In The HarbourVest Settlement.

38. Dondero's conduct further demonstrates that he did not believe he disclosed material, non-public information to Seery in December 2020.

39. HMIT contends that, upon receipt of the MGM E-Mail, "Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in the Bankruptcy Court seeking approval of the Debtor's settlement with HarbourVest – resulting in a transfer to the Debtor's Estate of HarbourVest's interest in a Debtor-advised fund, Highland CLO Funding, Ltd. ("HCLOF"), which held substantial MGM debt and equity." (Compl. ¶ 46.) These allegations do not withstand scrutiny for several reasons.

40. ***First***, the Debtor and HarbourVest had already reached an agreement in principle—including the core question of consideration—to settle their disputes on December 10, 2020, ***a week before*** Dondero sent the MGM E-Mail to Seery. (*See* Morris Dec. Ex. 31.)[13] Thus, even assuming that the MGM E-Mail contained "material non-public inside information" (which it did

[13] In its motion for approval of the HarbourVest settlement, Highland valued the interest in HCLOF that it was receiving as part of the settlement of HarbourVest's claim at $22.5 million. Dondero and other affiliates ostensibly controlled by Patrick have previously alleged that the valuation was "stale." It was not; rather, it was based on the then most recent report made available to holders of interests in HCLOF, including Dondero. (Morris Dec. Ex. 31-a.) In any event, HCLOF did not directly own any "MGM debt and equity."

not), the substance of that communication played no role in Seery's negotiations, which had concluded before he received the MGM E-Mail.

41. ***Second,*** *neither Dondero nor any of his affiliates ever raised this issue with the Court when lodging objections to the HarbourVest settlement*, which were filed just weeks after Dondero sent the MGM E-Mail to Seery. In fact, Dondero contended that the Debtor was ***overpaying*** HarbourVest via the settlement to buy votes and that the settlement was neither reasonable nor in the best interests of the Debtor's estate. (Morris Dec. Ex. 32.)

42. Dondero and HMIT cannot reconcile their current assertion that Seery misused allegedly "material, non-public inside information" with their failure to object to the HarbourVest settlement on that basis.

5. The Texas State Securities Board Has Determined That No Action Is Warranted.

43. In its Motion, HMIT claimed that the Texas State Securities Board (the "TSSB") "opened an investigation into the subject matter of the insider trades at issue," and argued that the "continuing nature of this investigation underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely 'colorable.'" (Mot. ¶ 37.)

44. HMIT's characterization is misleading because the TSSB never "opened an investigation"; rather, the TSSB reviewed a "complaint" (undoubtedly filed at Dondero's direction). That review is now complete. On May 9, 2023, the TSSB issued the following statement:

> The staff of the Texas State Securities Board (the "Staff") has completed its review of the complaint received by the Staff against Highland Capital Management, L.P. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time.

(Morris Dec. Ex. 33.)

45. The TSSB's decision that no further action is warranted underscores the Highland Parties' position that the claims described in the proposed Complaint are neither plausible nor "colorable."

E. HMIT's Allegations Concerning Seery's Alleged Relationships With The Claims Purchasers Are Unsupported And Provide No Foundation For The Purported Inferences.

46. HMIT asserts that Seery and the Claims Purchasers had substantial pre-existing relationships that provided the foundation for the alleged "*quid pro quo*." (*See*, *e.g.*, Compl. ¶¶ 14, 47–48.) These allegations appear to be based solely on a review of Seery's resume and some internet searches conducted as part of the "investigation" commissioned by Dondero, the results of which were presented to the EOUST in an unsuccessful effort to convince that agency to investigate further. (*See* Mot. Ex. 2 ¶ 4 & Exs. A–B.) As HMIT's pleadings and the documents presented to the EOUST show, and as will be further established at the hearing, these conclusory allegations have no basis in fact.

1. HMIT's Allegations Concerning Stonehill

47. HMIT's conclusory allegation that Seery and Stonehill had a "close business relationship" is based on two alleged "facts."

48. ***First***, HMIT contends that Seery "joined a hedge fund, River Birth Capital," that "served on the creditors committee in other bankruptcy proceedings" with Stonehill. (Compl. ¶ 48.) But HMIT fails to (i) identify those proceedings or when they occurred; (ii) allege that Seery was aware of, let alone participated in, any "bankruptcy proceedings" with Stonehill; or (iii) suggest how the unidentified "bankruptcy proceedings" resulted in a relationship close enough to support the wide-ranging conspiracy HMIT imagines.

49. HMIT tries to bolster this supposed connection by pointing to a decade-old court filing showing that the law firm for which Seery worked (Sidley Austin LLP) represented a "Steering Group of Senior Secured Noteholders" in the Blockbuster bankruptcy, and that, at some point, Stonehill was one of five members of that group. (Mot. Ex. 2 at A-66.)[14] There is no evidence or non-conclusory allegation that Seery (or his then-firm) ever represented Stonehill individually or that any individual involved in the Blockbuster bankruptcy on Stonehill's behalf had any involvement in Stonehill's decision to purchase claims in the Highland bankruptcy.

50. ***Second***, HMIT alleges that (i) a global asset management firm called GCM Grovesnor held four seats on the Redeemer Committee; (ii) "upon information and belief" GCM Grovesnor "is a significant investor in Stonehill and Farallon"; (iii) Grovesnor "through Redeemer, played a large part in appointing Seery as a director of Strand Advisors"; and (iv) Seery was therefore "beholden to Grovesnor from the outset, and, by extension, Grovesnor's affiliates Stonehill and Farralon [*sic*]." (*Id.*)

51. These allegations, however, are based on unsupported speculation and tortured inferences, and certain of them make no sense.[15]

2. HMIT's Allegations Concerning Farallon

52. Likewise, the speculative and unsupported allegations concerning Seery's alleged relationship with Farallon cannot withstand scrutiny.

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[14] The Complaint incorrectly claims that "Seery represented Farallon as its legal counsel" (Compl. ¶ 48), but its Motion appends a court filing referring to Stonehill (Mot. Ex. 2 at A-66).

[15] For example, HMIT alleges that Grovesnor is a "significant investor" in Stonehill and Farallon and that Grovesnor is an "affiliate" of Stonehill and Farallon, while also effectively alleging that Stonehill and Farallon fleeced the Redeemer Committee by buying its claim while in possession of "material, non-public inside information." Notably, the Redeemer Committee—the actual party that would have been harmed if HMIT's allegations had any merit (which they do not)—has never sought to intervene in this matter even though Dondero first floated these allegations in 2021 as part of the First Rule 202 Petition (nor, for that matter, has Acis, UBS, or HarbourVest ever voiced any concerns about supposedly being victimized by the Claims Purchasers).

53. HMIT alleges "upon information and belief" that Seery "conducted substantial business with Farallon" while he was the Global Head of Fixed Income Loans at Lehman Brothers. (Compl. ¶ 48.) But the only "fact" supposedly supporting this broad allegation is a single page taken from (what appears to be) a Lehman Brothers real estate group promotional document stating that Farallon participated in a secured real estate loan in 2007. (Mot. Ex. 2 at A-65.) HMIT does not allege that Seery knew of, let alone participated in, this transaction, nor does it identify any other business (let alone "substantial business") that Seery allegedly conducted with Farallon while at Lehman Brothers.

F. HMIT's "Insider Trading" Allegations Are Unsupported And Provide No Foundation For The Purported Inferences.

54. One of HMIT's principal allegations is that, as part of the purported *quid pro quo*, Seery disclosed to the Claims Purchasers "material non-public inside" information concerning MGM that he obtained from Dondero to entice them to buy claims in Highland's bankruptcy case. (*See*, *e.g.*, Compl. ¶¶ 13, 47, 50, 83, 89.)

1. Dondero's Description Of His Communication(s) With Farallon Have Changed Over Time.

55. HMIT's Motion is based in substantial part on Dondero's description of communication(s) he purportedly had with one or two representatives of Farallon in the "late spring" of 2021 concerning Farallon's acquisition of certain claims in the Highland bankruptcy. (Mot. ¶ 1 & Ex. 3; Morris Dec. Ex. 9.)

56. Because (i) Dondero's description of his communication(s) with Farallon has substantially changed over time, (ii) neither HMIT nor Dondero offer any rational reason why Farallon would voluntarily confess to improprieties to a third party with a well-earned reputation

for using overly aggressive litigation tactics, and (iii) certain aspects of his various descriptions are contradicted by documentary evidence, they cannot be the basis for any claim.[16]

57. In the First Rule 202 Petition filed in July 2021, Dondero swore, among other things, that:

> [Seery] has an age-old connection to Farallon and, upon information and belief, advised Farallon to purchase the claims.
>
> On a telephone call between [Dondero] and a representative of Farallon, Michael Lin [*sic*], Mr. Lin [*sic*] informed [Dondero] that Farallon had purchased the claims sight unseen—relying entirely on Mr. Seery's advice solely because of their prior dealings.
>
> As Highland's current CEO, Mr. Seery had non-public, material information concerning Highland. Upon information and belief, such non-public, material information was the basis for instructing Farallon to purchase the Claims.

(Morris Dec. Ex. 3 ¶¶ 20–21, 23 ("Version 1").)

58. Version 1 is notable because it (i) did not state what Dondero said, if anything, (ii) referred to a single phone call, (iii) made no mention of MGM, (iv) made no mention of Raj Patel (who features later); and (v) stated only "upon information and belief" that Farallon purchased the Claims based on "non-public, material information."[17]

59. On May 2, 2022, Dondero amended the First Rule 202 Petition. In his new verified pleading, Dondero swore, among other things, that:

> [Seery] has an age-old connection to Farallon and, upon information and belief, advised Farallon to purchase the claims.

[16] Notably, there is no allegation that anyone ever communicated with Stonehill about its claims purchases (let alone obtained a "confession"); thus, HMIT's "conspiracy" theory against Stonehill rests on nothing but rank speculation based on unsupportable inferences.

[17] Later in 2021, Dondero "commissioned an investigation by counsel" who produced written reports to the EOUST. The first such report was prepared by Douglas Draper, counsel to Dondero's family trusts, and delivered to the EOUST on October 5, 2021. Draper provided several reasons to support his speculation that "Farallon and Stonehill may have been provided material, non-public information to induce their purchase of claims" and to justify his request for further investigation—but conspicuously failed to mention Dondero's telephone call(s) with Farallon. (Mot. Ex. 2-A at 7.)

> On a telephone call between [Dondero] and Michael Lin [*sic*], a representative of Farallon, Mr. Lin [*sic*] informed [Dondero] that Farallon had purchased the claims sight unseen ***and with no due diligence—100% relying on Mr. Seery's say-so because they had made so much money in the past when Mr. Seery told them to purchase claims***.
>
> In other words, ***Mr. Seery had inside information on the price and value of the claims that he shared with no one but Farallon for their benefit***.

(*Id.* Ex. 4 ¶¶ 22–24 ("Version 2") (emphasis added).)

60. Like Version 1, Version 2 also (i) did not state what Dondero said, if anything; (ii) referred to a single phone call; (iii) made no mention of MGM; and (iv) made no mention of Raj Patel. But in contrast to Version 1, Version 2 embellished Linn's alleged comments and—more importantly—now expressly asserted that Seery "shared" inside information with "no one but Farallon" rather that adopting Version 1's statement that "upon information and belief," Farallon purchased the Claims based on "non-public, material information."[18]

61. About four weeks later, Dondero provided yet another version of his discussion with Linn. In a declaration sworn to on May 31, 2022, Dondero stated, among other things, that:

> Last year, I called Farallon's Michael Lin [*sic*] about purchasing their claims in the bankruptcy. ***I offered them 30% more than what they paid***. I was told by Michael Lin [*sic*] of Farallon that they purchased the interests ***without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid***.

(*Id.* Ex. 5 ¶ 2 ("Version 3") (emphasis added).)

62. Version 3 introduces several new topics. For example, Dondero asserts for the first time that he called Linn because he was interested in purchasing Farallon's claims. Dondero also

[18]If, as Dondero contends, Seery "shared" inside information with "no one but Farallon," then he did not share the inside information with Stonehill.

asserts that he offered "30% more than what they paid."[19] Finally, and significantly, Dondero asserts for the first time that Linn reported Seery telling him that the "interests would be worth far more than what Farallon paid."

63. On February 15, 2023, Dondero filed yet another sworn statement concerning his 2021 discussion(s) with Farallon, this time in support of HMIT's Verified Rule 202 Petition. (*Id.* Ex. 9.) In this version, Dondero stated that:

> In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC ("Farallon"), ***Raj Patel*** and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the ***Acis and HarbourVest claims***, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Mr. Seery because they had made significant profits when Mr. Seery told them to purchase other claims in the past. ***They also stated that they were particularly optimistic because of the expected sale of MGM***.

(*id*. Ex. 9 ¶ 4 ("Version 4") (emphasis added).)

64. Version 4 introduces still more new topics. For example, Dondero asserted for the first time that (i) more than one telephone call occurred; (ii) Raj Patel also participated in these calls on Farallon's behalf; (iii) he was told that "Farallon had a deal in place to purchase the Acis and HarbourVest claims"; and (iv) he learned that Farallon was "***particularly optimistic because of the expected sale of MGM***."

65. Finally, in its Motion, HMIT attributes statements to Farallon that even Dondero never described. For example, HMIT contends that "Farallon bragged about the value of its investment referencing non-public information regarding Amazon, Inc.'s ('Amazon') interest in

[19] Ironically, Dondero appears to have offered to purchase Farallon's claims without conducting any due diligence because (i) he provides no indication that he knew at that time how much Farallon paid for its claims yet he blindly offered to pay "30% more than what" Farallon paid, and (ii) HMIT alleges that the Debtor was not transparent. (*See* Compl. ¶¶ 51–53.)

acquiring Metro-Goldwyn-Mayer Studios Inc." (Mot. ¶ 32.)[20] While HMIT cites Version 4 as support, neither that version nor any prior version is consistent with HMIT's description of Dondero's purported communication(s) with Farallon.[21]

2. Dondero's Offer to Purchase Farallon's and Stonehill's Claims In 2022 Contradicts HMIT's Allegations.

66. According to HMIT, Dondero offered to buy Farallon's claims in the Highland bankruptcy for 30% more than what Farallon was paid, but that Farallon insisted it would not sell at any price. (Morris Dec. Ex. 5 ¶ 2.)

67. Yet, on October 14, 2022, before the Second Rule 202 Petition was filed, HCMFA (one of Dondero's advisory firms) made written offers to Stonehill and Farallon to purchase their claims at cost "plus a five percent (5%) return." (Morris Dec. Ex. 35.) Dondero's offer to purchase claims at 5% above cost is inconsistent with his purported knowledge that Farallon would not sell at any price.

G. A Rational Basis Exists For the Claims Purchases—Although Only the Claim Sellers Could Have Been Harmed in Any Event.

68. HMIT insists that it "made no sense" for the Claims Purchasers to buy claims because "the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk," and "their investment was projected to yield a small return with

[20] This purported statement that HMIT attributes to Farallon makes little sense because the MGM-Amazon deal was publicly announced on May 26, 2021 (Morris Dec. Ex. 34), before Dondero and Farallon ever spoke.

[21] Conspicuously absent from HMIT's pleadings is any evidence corroborating any of the five versions of Dondero's conversation(s) with Farallon. Given the importance of the Farallon's alleged confessional, one would have expected Dondero to contemporaneously (i) send a confirming e-mail to Farallon to make sure there was a written record of the discussion, (ii) send an e-mail to a colleague so that others were informed, (iii) make notes to himself; or (iv) tell someone what happened. Yet, no such corroborating evidence was presented or referred to in the First Rule 202 Petition, either of the EOUST Letters, the Second Rule 202 Petition, the Motion, the original proposed Complaint, the Supplement, or the amended proposed Complaint.

virtually no margin for error." (Compl. ¶ 3.) HMIT's arguments are belied by the publicly available facts and its own allegations.

69. In advance of Plan confirmation, the Debtor projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. (Docket No. 1875 Ex. A.) In its proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims. (Compl. ¶ 42.) Taking into account the face amount of the allowed claims, the Claims Purchasers' projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value[22]	Purchaser	Purchase Price	Projected Profit
Redeemer	$137.0	$0.0	$97.71	Stonehill	$78.0	$19.71
Acis	$23.0	$0.0	$16.4	Farallon	$8.0	$8.40
HarbourVest	$45.0	$35.0	$32.09	Farallon	$27.0	$5.09
UBS	$65.0	$60.0	$46.39	Stonehill & Farallon	$50.0	($3.61)

70. As HMIT acknowledges, by the time Dondero spoke with Farallon in the "late spring" of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest. (Compl. ¶ 41 n.12.)[23] Based on an aggregate purchase price of $113 million, the Claims Purchasers would have expected to net over $33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections because they also purchased the Class 9 claims, and would therefore capture any upside. In this context, HMIT assertions in its proposed Complaint lack any rational basis.

[22] "Ascribed Value" is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

[23] The UBS claims were not acquired until August 2021, long after the alleged "*quid pro quo*" was supposedly agreed upon and the MGM-Amazon deal was announced. (Morris Dec. Ex. 34.)

71. Notably, none of the selling claimholders—all of which are sophisticated parties that were represented by sophisticated counsel—have raised any objections or complaints. In fact, three of the four selling claimholders (Redeemer, Acis, and UBS) were members of the Official Committee of Unsecured Creditors.

72. Finally, even if HMIT's allegations had any merit (they do not), only the selling claimholders would have cause to complain. The estate (and HMIT) would not have been harmed because it made (and may in the future make) the exact same distributions to claimholders regardless of what entity owns the claims.

H. Seery's Compensation Structure Is Consistent With The Plan And The Trust Agreement, And Was The Product Of Arms'-Length Negotiations.

73. According to HMIT, Seery provided "material non-public information" to the Claims Purchasers so that he could someday "plant friendly allies onto the [COB] to rubber stamp compensation demands." (Mot. ¶ 22; *see also id.* ¶¶ 3, 24, 48.) HMIT alleges in its revised Complaint:

> As part of the scheme, the Defendant Purchasers obtained a position to approve Seery's ongoing compensation – to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT. Initially, Seery's compensation package was composed of a flat monthly pay [sic]. Now, however, it is also performance based. This allows the Defendant Purchasers to satisfy the *quid pro quo* at the heart of the scheme. Seery would help the Defendant Purchasers make large profits and they would help enrich Seery with big pay days.

(Compl. ¶ 4.)

74. Notably, these allegations (i) describe a compensation structure that is ***entirely consistent with*** the incentive compensation plan structure in the Court-confirmed Plan and set forth in the Trust Agreement; and (ii) are devoid of any actual facts (*e.g.*, the terms of Seery's compensation plan or how it was calculated or negotiated). In reality, Seery's compensation

package was the product of arm's-length negotiations with the COB (including the active participation of the COB's independent member) over a four-month period, the result of which was an incentive compensation plan that aligned Seery's interests with those of the Claimant Trust Beneficiaries (*i.e.*, to maximize value and creditor recoveries).

75. As a threshold matter, HMIT's allegation that "[i]nitially, Seery's compensation package was composed of a flat monthly pay [*sic*]" (Compl. ¶ 4]) is plainly wrong. Seery was appointed Highland's Chief Executive Officer (effective as of March 15, 2020) pursuant to a Bankruptcy Court order entered on July 16, 2020 without objection. (Morris Dec. Ex. 36 (the "July Order").) The July Order approved the terms of a separate employment agreement (a copy of which was included in the Debtor's motion (Docket No. 774 Ex. A-1) and attached to the July Order) (the "Original Employment Agreement").

76. Under the Original Employment Agreement, Seery was to receive (i) Base Compensation in the amount of $150,000 per month, ***plus*** (ii) a Restructuring Fee, the amount of which would be determined by whether a Case Resolution Plan (*i.e.*, a plan with substantial creditor support) or a Monetization Vehicle Plan (*i.e.*, a plan lacking substantial creditor support) was achieved (as those terms are defined in the Original Employment Agreement).

77. On November 24, 2020, after notice and a hearing, the Bankruptcy Court entered an Order (Docket No. 1476) approving the adequacy of *The Disclosure Statement of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (Morris Dec. Ex. 37 (the "Disclosure Statement").) The Disclosure Statement provided in pertinent part that:

> The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement . . . . The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

(*Id.* Art. III.F.2(e); *see* Plan Art. IV.B.6 (incorporating identical language).)

78. The Trust Agreement was part of a Plan Supplement (as amended) filed in advance of the confirmation hearing (Morris Dec. Ex. 38), and provided in pertinent part:

> Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(Trust Agmt. § 3.13(a)(i).)[24]

79. The Plan went effective on August 11, 2021, and, as a result, the COB was formed. The COB ultimately had three members: a representative of Farallon (Michael Linn), a representative of Stonehill (Christopher Provost), and an independent member (Richard Katz).

80. On August 26, 2021, the COB held a regularly scheduled meeting during which it discussed the incentive compensation program ("ICP"). The minutes of this meeting reflect that:

> Mr. Seery also presented the Board with an overview of his Incentive Compensation Program proposal which would include not only Mr. Seery but the current HCMLP team. (The terms and structure of the proposal had been previewed with the Board in prior operating models presented by Mr. Seery.) Mr. [Seery] reviewed the proposal and stated his view that the proposal was market based and was designed to align incentives between himself and the HCMLP team on the one hand and the Claimant Trust [B]eneficiaries on the other. ***The Board asked questions regarding proposal and determined that is [sic] would consider the proposal and revert to Mr. Seery with a counter proposal***.

(Morris Dec. Ex. 39 (emphasis added).)

[24] Seery was designated as the "Claimant Trustee" under the Trust Agreement. (Trust Agmt. 38 §1.1(e).

81. Far from being a "rubber stamp," the minutes show that the COB did not simply accept Seery's initial proposed ICP but "asked questions" and indicated that it would provide a "counter proposal."

82. On August 30, 2021, the COB convened for "an off-cycle (non-regular) meeting." As reflected in the minutes of this meeting, the COB again discussed the ICP:

> Mr. Katz began the meeting by walking the Oversight Board and Mr. Seery through the Oversight Board's counter-proposal to the HCMLP incentive compensation proposal, including the review of a spreadsheet and summary of the counter-proposal. Discussion was joined by Mr. Linn and Mr. Stern. Mr. Seery asked numerous questions and received detailed responses from the Oversight Board. ***Mr. Seery and the Oversight Board agreed to continue the discussion and negotiations regarding the proposed incentive compensation plan for the Claimant Trustee and the HCMLP [employees]***.

(*Id.* Ex. 40 (emphasis added).)

83. Seery and the COB continued to exchange and discuss additional proposals and counter-proposals over the coming months.[25] Finally, on December 6, 2021, Seery and the COB executed a Memorandum of Agreement stating that:

> In accordance with the provisions of the Highland Claimant Trust Agreement and the Highland Capital Management, L.P. ("HCMLP") Plan of Reorganization, ***the Oversight Board of the Highland Claimant Trust and the Claimant Trustee/Chief Executive Officer of HCMLP engaged in robust, arm's length and good faith negotiations regarding the incentive compensation program for the Claimant Trust/CEO*** and the HCMLP post-effective date operating team ("HCMLP Team"). ***After considering various structures and incentives to motivate performance on behalf of the Claimant Trust***, the parties reached the binding

[25] In particular, (i) Seery delivered another proposal to the COB on October 9, 2021, which he further revised later in the month; (ii) Katz (the independent COB member) responded on behalf of the COB on October 26 and proposed that the parties agree upon the structure of the proposal before addressing the specific numbers; (iii) Seery responded on November 3; (iv) further discussions were held on November 9; (v) on November 17, Linn provided a "wholesome response" in which he "updated the term sheet" and raised certain issues that he did not believe would have "much a difference for this negotiation"; (vi) Seery wrote to the COB indicating that he wanted to "finalize the ICP" but had "a couple of asks and one question"; and (vii) still further negotiations took place thereafter.

> agreement reflected in the attached HCMLP and Claimant Trust Management Incentive Compensation Program.

(Morris Dec. Ex. 41 (emphasis added).)

84. Notably, in November 2021, one of the "investigative reports" commissioned by Dondero incorrectly speculated that "Mr. Seery's success fee presumably will be based on whether the Plan outperforms what was disclosed in the Plan Analysis." (Mot. Ex. 2-B at 14.) In fact, Seery's bonus is tied to creditor recoveries so that the interests of stakeholders are aligned.

85. Dondero's commissioned report also incorrectly "estimate[d] that, based on the estate's [alleged] $600 million value today, ***Mr. Seery's success fee could be approximate [sic] $50 million***." (*Id.*) In reality, under the negotiated terms of the ICP (Morris Dec. Ex. 41), the maximum bonus Seery can receive is approximately $8.8 million—which would require all Class 8 and 9 claimholders to receive cash distributions for the full amount of their claims plus interest—82.4% less than the baseless success fee presented to the EOUST on Dondero's behalf.

RELEVANT PROCEDURAL HISTORY

86. To avoid the appointment of a Chapter 11 trustee, on January 9, 2020, this Court approved a settlement (the "January Order"; Docket No. 339) removing Dondero from control of Highland and appointing an Independent Board consisting of John Dubel, Russell Nelms, and Seery (the "Independent Directors"). The January Order prohibited litigation against the Independent Directors without this Court's prior authorization and limited claims to those arising from willful misconduct or gross negligence.[26]

[26] (January Order ¶ 10 ("No entity may commence or pursue a claim or cause of action of any kind against any Independent Director . . . relating in any way to the Independent Director's role as an independent director . . . without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director . . . .").)

87. Highland later moved to have Seery appointed its Chief Executive Officer and Chief Restructuring Officer. This Court approved his appointment in the July Order (Morris Dec. Ex. 36), which like the January Order, prohibited litigation against Seery without this Court's prior authorization and limited claims to those arising from willful misconduct or gross negligence.[27]

88. On February 22, 2021, this Court issued the Confirmation Order confirming the Plan. The confirmed Plan included the Gatekeeper Provision prohibiting Enjoined Parties, including HMIT, from bringing claims against Protected Parties, including Seery, unless, after notice and a hearing, this Court found the claims "colorable." (Plan Art. IX.F.) The Gatekeeper Provision was affirmed by the Fifth Circuit. *NexPoint*, 48 F.4th at 425–26, 435–39. The detail factual findings in the Confirmation Order supporting the Gatekeeper Provision were not challenged or disturbed on appeal.

89. On August 11, 2021, the Plan became effective (Docket No. 2700), and pursuant to the Plan:

- All prepetition partnership interests in the Debtor, including HMIT's, were cancelled;
- HCMLP was reorganized as a Delaware limited liability partnership;
- The Trust, a Delaware statutory trust, was established pursuant to the Trust Agreement;
- HCMLP's limited partnership interests were issued to the Trust;
- HCMLP's general partnership interests were issued to HCMLP GP LLC, a newly-established Delaware limited liability company;

[27] (July Order ¶ 5 ("No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery . . . .").)

- The majority of HCMLP's assets, including its "Causes of Action,"[28] were transferred to the Trust;

- Seery was appointed reorganized HCMLP's Chief Executive Officer and trustee of the Trust (the "Claimant Trustee");

- "Estate Claims" (*i.e.*, Causes of Action against HCMLP's insiders)[29] were transferred to the newly-established Highland Litigation Sub-Trust (the "Litigation Trust"), a Delaware statutory trust and subsidiary of the Trust;

- An oversight board was appointed to oversee the management of the Trust, reorganized HCMLP, and the Litigation Trust;

- Holders of allowed general and subordinated unsecured claims (*i.e.*, Class 8 and 9) received interests in the Trust (collectively, the "Trust Interests") and became "Claimant Trust Beneficiaries" (as defined in the Plan); and

- Holders of the Debtor's prepetition partnership interests (*i.e.*, Class 10 and 11) were allocated unvested contingent interests (the "Contingent Interests") in the Trust that vest if, and only if, the Claimant Trustee certifies that all Claimant Trust Beneficiaries (*i.e.*, Class 8 and 9) have been paid in full, Class 8 have received post-petition interest, and all disputed claims in Class 8 and 9 have been resolved.

(*See* Plan Art. IV.)

90. On October 8, 2021, the Trust irrevocably transferred and assigned to the Litigation Trust "any and all Causes of Action not previously transferred or assigned by operation of the Plan, the Litigation Sub-Trust Agreement, or otherwise" except for causes of action then being

[28] "Causes of Action" are defined in the Plan as: "any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law." (Plan Art. I.B.19.)

[29] "Estate Claims" are defined in the Plan as "estate claims and causes of action against Dondero, Okada, other insiders of the Debtor, and each of the Related Entities, including any promissory notes held by any of the foregoing" other than causes of action against any current employee of Highland other than Dondero. (Plan Art. I.B.61.)

pursued by the Trust or which the Trust intended to pursue on behalf of entities managed by reorganized HCMLP. (*See* Morris Dec. Ex. 42.)[30]

91. On March 28, 2023, HMIT filed its Initial Motion with a proposed Verified Adversary Complaint totaling 387 pages with exhibits. This Court scheduled a conference for Monday, April 24, 2023. (Docket No. 3751.) On Friday, April 21, 2023, HMIT filed objections to any evidentiary hearing or briefing on its Initial Motion. ("Objs."; Docket No. 3758.) On Sunday, April 23, 2023, HMIT filed a Supplemental Motion with an amended proposed Verified Adversary Complaint, which added HCMLP and the Trust as nominal defendants and dropped a claim for "fraud by misrepresentation and material nondisclosure." (Docket No. 3760.) On April 24, 2023, this Court held a conference, set a briefing schedule on the Motion, and scheduled a hearing for June 8, 2023. (Docket Nos. 3763–64.)

LEGAL STANDARD

92. HMIT concedes, as it must, that its proposed lawsuit is subject to this Court's "gatekeeping protocol," and "the injunction and exculpation provision in the Plan." (Mot. ¶¶ 1, 4, 14; Supp. Mot. ¶ 11.) But HMIT fundamentally misunderstands the threshold showing it must make to clear that hurdle.

A. HMIT Misconstrues The "Colorability" Standard Established In The Gatekeeper Provision.

93. This Court made extensive factual findings and approved the Gatekeeper Provision on two grounds: (i) "the Supreme Court's 'Barton Doctrine,' *Barton v. Barbour*, 104 U.S. 126 (1881))," and (ii) "the notion of a prefiling injunction to deter vexatious litigants[] that has been approved by Fifth Circuit." (Confirmation Order ¶¶ 76–81.) Those doctrines operate to "prevent

[30] The October 8, 2021 transfer was publicly disclosed by the Litigation Trust in its litigation with HMIT, among others. *Kirschner v. Dondero*, Adv. Proc. No. 21-03076-sgj, Docket No. 211 (Bankr. N.D. Tex. Sept. 9, 2022).

baseless litigation designed merely to harass the post-confirmation entities," "avoid abuse of the court system," and "preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." (*Id.* ¶ 79.) The Fifth Circuit confirmed that "the injunction and gatekeeping provisions are sound," explaining that "[c]ourts have long recognized bankruptcy courts can perform a gatekeeping function," including "[u]nder the '*Barton*' doctrine." *NexPoint*, 48 F.4th at 435, 438–39 (collecting cases). The Fifth Circuit further recognized that the Gatekeeper Provision here was necessary to prevent "bad-faith litigation" from consuming the resources of the reorganized debtor and those working to maximize claims of legitimate stakeholders. *Id.*

94. Under the *Barton* doctrine, "[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation." *VistaCare*, 678 F.3d at 232 (cleaned up) (citing *Anderson v. United States*, 520 F.2d 1027, 1029 (5th Cir. 1975); *Kashani v. Fulton (In re Kashani)*, 190 B.R. 875, 885 (B.A.P. 9th Cir 1995)); *see also, e.g.*, *CFTC v. Hunter Wise Commodities, LLC*, 2020 WL 13413703, at *1 (S.D. Fla. Mar. 5, 2020) ("Under the *Barton* doctrine, . . . before leave to sue a receiver or trustee is granted, the plaintiff must demonstrate that he has a *prima facie* case against the trustee or receiver.") (citing *Anderson*, 520 F.2d at 1029); *Fin. Indus. Assoc. v. SEC*, 2013 WL 11327680, at *4 (M.D. Fla. July 24, 2013) (same). Contrary to HMIT's contention, this standard "involves a greater degree of flexibility" than a "Rule 12(b)(6) motion to dismiss," because "the bankruptcy court, which, ***given its familiarity with the underlying facts and the parties***, is uniquely situated to determine whether a claim against the trustee has merit," and "[t]he bankruptcy court is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor's estate." *VistaCare*, 678 F.3d at 233 (emphasis added).

95. To satisfy the "*prima facie* case standard," "the movant must do more than meet the liberal notice-pleading requirements of Rule 8." *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases). "[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless." *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at *2 (N.D. Ill. Nov. 30, 2000). "To apply a less stringent standard would eviscerate the protections" of the Gatekeeper Provision. *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at *2).

96. Similarly, courts in the vexatious litigant context require the movant to "show that the claims sought to be asserted have sufficient merit," including that "the proposed filing is both procedural and legally sound," and "that the claims are not brought for any improper purpose, such as harassment." *Silver v. City of San Antonio*, 2020 WL 3803922, at *1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); *see also Silver v. Perez*, 2020 WL 3790489, at *1 (W.D. Tex. July 7, 2020) (same). "[T]o protect courts and innocent parties from abusive and vexatious litigation[,] . . . courts may apply whatever standard deemed warranted when reviewing the proposed complaint." *Silver*, 2020 WL 3803922, at *6. "For a prefiling injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review," such as the "plausibility" standard for a Rule 12(b)(6) motion. *Id.* Rather, courts apply "an additional layer of review," and "may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action" or that the "litigant's allegations are unlikely," especially "when prior cases have shown the litigant to be untrustworthy or not credible . . . ." *Id.*

97. HMIT argues that "a claim is colorable if it is 'plausible' and could survive a motion to dismiss" under Rule 12(b)(6). (Mot. ¶¶ 38–42.) But HMIT's motion does not even mention the specific bases this Court invoked in the Confirmation Order—the *Barton* doctrine and vexatious-litigant provisions—as supporting the Gatekeeper Provision, much less has HMIT identified a single case in the *Barton* doctrine or vexatious litigant context that supports its interpretation. (*Id.*; *see also* Morris Dec. Ex. 43 at 15:25–16:4 (THE COURT: "[D]id you find any legal authority in the *Barton* doctrine context that you think sheds light? Because that seems to me the most analogous context, right?" MR. MCENTIRE: "Specifically to answer -- to respond to your question directly, the answer is no.").) HMIT relies instead on cases from inapposite contexts, such as whether a bankruptcy court should grant a creditor's committee derivative standing after a trustee or debtor-in-possession declined to pursue a claim.[31] None of those cases, of course, involves gatekeeping orders entered in response to a pattern of abusive conduct that specifically rely on *Barton* and vexatious-litigant authorities. Moreover, and as discussed below, even those cases recognize that a claim must not only be likely to survive a motion to dismiss, but also that the debtor has "unjustifiably" refused to pursue it. *La. World*, 858 F.2d at 247–48**.** That requirement demands that the proposed claims be subjected to a realistic cost-benefit analysis, which here would be fatal to HMIT's speculative, Hail Mary conspiracy theory.

98. HMIT also relies on a series of cases that are even farther afield from the Gatekeeper Provision here. Those include benefits coverage disputes under ERISA, Medicare

[31] *See La. World Expo. v. Fed. Ins. Co.*, 858 F.2d 233, 247–48 (5th Cir. 1988); *PW Enters. v. N.D. Racing Comm'n (In re Racing Servs., Inc.)*, 540 F.3d 892, 900 (8th Cir. 2008); *Larson v. Foster (In re Foster)*, 516 B.R. 537, 542 (B.A.P. 8th Cir. 2014); *Canadian Pac. Forest Prods. v. J.D. Irving, Ltd. (In re Gibson Grp.)*, 66 F.3d 1436, 1446 (6th Cir. 1995); *Official Comm. v. Hudson United Bank (In re America's Hobby Ctr.)*, 225 B.R. 275, 282 (Bankr. S.D.N.Y. 1998).

coverage disputes, and constitutional challenges.[32] None of those cases implicate the *Barton* doctrine and vexatious-litigant concerns. (*See* Mot. ¶¶ 39–41; Objs. ¶¶ 9–13.)

B. Evidentiary Hearing

99. Courts in the *Barton* doctrine context regularly conduct an evidentiary hearing to determine whether a proposed complaint meets the necessary threshold. "Whether to hold a hearing is within the sound discretion of the bankruptcy court." *VistaCare*, at 232 n.12 "[T]he decision whether to grant leave may involve a 'balancing of the interests of all parties involved," which will ordinarily require an evidentiary hearing. *Id.* at 233 (quoting *Kashani*, 190 B.R. at 886–87). In *VistaCare*, for example, the bankruptcy court "held a hearing on CGL's motion for leave" in which "the sole owner of CGL, and the Trustee, testified." *Id.* at 223, 232. The Fifth Circuit has affirmed a colorability analysis in the *Barton* context, which involved an evidentiary hearing, without any concern that the inquiry was somehow improper. *See Foster v. Aurzada (In re Foster)*, 2023 WL 20872, at *1 (5th Cir. Jan. 3, 2023) (affirming dismissal of an action to sue a trustee under *Barton* "[a]fter a hearing [by] the bankruptcy court"); *Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at *4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after "a

[32] *See Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has "a colorable claim to vested benefits" such that the employee may be considered a "participant" under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting "claimants [with] no colorable legal claim" to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant's double jeopardy claim was "colorable" such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at *3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a "colorable claim" against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at *3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a "colorable claim" to warrant the district court's exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at *5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at *5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a "colorable constitutional claim" such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

close examination" of the evidence revealed only that the trustee "acted within the scope of [his] duties"), *aff'd* 799 F. App'x 271 (5th Cir. 2020).

100. Recognizing that the *Barton* doctrine requires more than a mere Rule 12(b)(6) analysis, courts of appeals routinely review "a bankruptcy court's decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard." *VistaCare*, 678 F.3d at 224 (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)).[33] Application of the Rule 12(b)(6) standard, of course, is subject to *de novo* review. Indeed, as this Court noted at the April 24, 2023 status conference, HMIT's "original motion for leave attached something like 387 pages of not just Dondero affidavits, but other evidentiary support," which is inconsistent with HMIT's position that this Court "just need[ed] to look at the four corners and apply a 12(b)(6) standard." (Morris Dec. Ex. 43 at 43:16–18, 44:4–7.) Although HMIT's belatedly counsel suggested it might seek to "withdraw the Dondero affidavits" (*id.* at 22:17–18), HMIT has filed no such motion and "reserve[d] the opportunity to revisit the issue of withdrawing Mr. Dondero's declarations" (*id.* at 55:1–5). As this Court noted, "parties are always given the chance to cross-examine an affiant or a declarant." (*Id.* at 22:2–3.) This Court should exercise its discretion to hold an evidentiary hearing to permit the parties to present evidence, including through cross-examination of Dondero—even if HMIT now engages in gamesmanship by seeking to withdraw the Dondero declarations before the hearing.

[33] Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. *See In re Bednar*, 2021 WL 1625399, at *3 (B.A.P. 10th Cir. Apr. 27, 2021) ("[T]he Bankruptcy Court's decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . . .") (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App'x 969, 973–74 (11th Cir. 2016) ("Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court's ruling on a *Barton* motion for an abuse of discretion.") (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at *3 (B.A.P. 1st Cir. Sept. 17, 2014) ("Appellate courts review a bankruptcy court's decision to deny a motion for leave to sue under the abuse of discretion standard.") (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

C. Exculpation and Release

101. This Court's January Order and July Order exculpated Seery from all claims except "those alleging willful misconduct and gross negligence." (January Order ¶ 10; July Order ¶ 5.) The Plan's exculpation provision also limited claims against Seery, in his role as an Independent Director, to those arising "from willful misconduct, criminal misconduct…or gross negligence." (Plan Art. IV.D; Confirmation Order ¶¶ 72–73.) The Trust Agreement similarly limits claims against Seery to "fraud, willful misconduct, or gross negligence." (Trust Agmt. § 8.1; *see also id.* §§ 8.3–8.4.) Thus, HMIT cannot assert claims other than those expressly permitted under these Orders and court-approved documents.

ARGUMENT

102. HMIT lacks standing to bring the derivative claims alleged in the Complaint (*see infra* Sections I–II), did not satisfy the procedural requirements to bring derivative claims (*see infra* Section III), and cannot bring derivative claims under the guise of direct claims (*see infra* Section IV). Even if HMIT could assert claims (which it cannot), they fail under any standard (*see infra* Section V).

I. HMIT Lacks Standing To Bring Derivative Claims Under Delaware Law.

103. HMIT acknowledges that any "fiduciary duties and claims involving breaches of those duties" with respect to HCMLP and the Claimant Trust are "governed by Delaware law" under the "Internal Affairs Doctrine." (Motion ¶ 21 & n.24; *see also* Plan Art. XII.M ("corporate governance matters . . . shall be governed by the laws of the state of organization" of the respective entity)); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) ("In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle."). HMIT lacks standing to bring any such claims under Delaware law.

A. HMIT Lacks Standing To Bring Derivative Claims On Behalf Of The Trust.

104. The Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29. (Compl. ¶ 26.) "[T]o proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement" such that "the plaintiff must be a beneficial owner" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action." *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *19 n.123 (Del. Ch. June 15, 2011), *aff'd* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b). This requirement is "mandatory and exclusive" and only "a beneficial owner" "has standing to bring a derivative claim on behalf of the Trust." *In re Nat'l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)).

105. HMIT is not a "beneficial owner" of the Trust and therefore lacks standing to bring derivative claims on its behalf. The "beneficial owners" of the Trust are the "Claimant Trust Beneficiaries." (*See* Trust Agmt. § 2.8 ("The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . . .").) The Claimant Trust Beneficiaries are "the Holders of Allowed General Unsecured Claims" and "Holders of Allowed Subordinated Claims." (Plan Art. I.B.44; *see also* Trust Agmt. § 1.1(h).)[34] HMIT is neither. HMIT was an "equity holder in the

[34] (*See* Morris Dec. Ex. 1, Plan Art. I.B.44 ("'*Claimant Trust Beneficiaries*' means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests."); Trust Agmt. at 1 n.2 ("For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.").)

Original Debtor" and now holds only an unvested "Contingent Trust Interest in the Claimant Trust." (Compl. ¶ 24.) HMIT argues, without justification, that it "should be treated as a vested Claimant Trust Beneficiary." (*Id.*) But, under the Trust Agreement, "Contingent Trust Interests" "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and Trust Agreement. (Trust Agmt. § 5.1(c).) Because it is undisputed that the Contingent Trust Interests have not vested, HMIT is not a "beneficial owner" and lacks standing to bring derivative claims under Delaware law. *See Nat'l Coll.*, 251 A.3d at 190–92 (dismissing creditors' derivative claims because they were not "beneficial owners of the Trusts"); *Hartsel*, 2011 WL 2421003, at *19 n.123 (dismissing derivative claims by investors that "no longer own shares" because "those investors no longer have standing to pursue a derivative claim").[35]

B. HMIT Lacks Standing To Bring Derivative Claims On HCMLP's Behalf.

106. Reorganized HCMLP is a Delaware a limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.* (Compl. ¶ 25.) To bring "a derivative action" on behalf of a limited partnership, "the plaintiff must be a partner or an assignee of a partnership interest" continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action." 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) ("The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another

[35] If HMIT were a Claimant Trust Beneficiary (which it is not), its claims must be brought in this Court and it has "waived any right to a trial jury." (Trust Agmt. § 5.10(d).) HMIT would also be required to reimburse the Claimant Trustee and any member of the COB if its suit fails (*id.* § 5.10(b)), and this Court could require HMIT "to post a bond ensuring that the full costs of a legal defense can be reimbursed" (*id.* § 5.10(c)). The Highland Parties reserve the right to seek reimbursement and posting of a bond commensurate with the enormous burdens this litigation would impose.

party's fiduciary duties to them.") (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff'd* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) ("The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.") (citing 6 Del. C. § 17-211(h)).

107. HMIT is not a partner of reorganized HCMLP and therefore lacks standing to bring derivative claims on its behalf. "HMIT held a 99.5% limited partnership in Highland Capital Management, L.P., the Original Debtor." (Compl. ¶ 6; *see id.* ¶¶ 12, 15, 24.) But that limited partnership interest was extinguished by the Plan on August 11, 2021 (the Effective Date of the Plan) and HMIT does not own any partnership interest in reorganized HCMLP. (Plan Art. IV.A.) Because HMIT would not hold a partnership interest at "the time of bringing the action," it "lacks derivative standing" to bring claims "on the partnership's behalf." *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

108. HMIT also cannot satisfy "the continuous ownership requirement." When HMIT's partnership interest was extinguished on the Plan's Effective Date, HMIT "los[t] standing to continue a derivative suit" on behalf of the Debtor.[36] *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff's partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re SkyPort Global Commcn's, Inc.)*, 2011 WL 111427, at *25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders "lack standing to bring a derivative claim" under Delaware law because they "had their equity interests in the company extinguished pursuant to the merger under the Plan"); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) ("[T]he cancellation

[36] Even before its partnership interest was extinguished, HMIT would have been required to obtain the Debtor's consent or court approval before it could have brought a derivative suit on behalf of the estate.

of WorldCom shares under the Plan … prevents the required continuation of shareholder status through the litigation.") (cleaned up).

C. HMIT Lacks Standing To Bring A "Double Derivative" Action.

109. "[A] double derivative suit is one brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled." *Lambrecht v. O'Neal*, 3 A.3d 277, 282 (Del. 2010). Under "Delaware's 'double derivative' standing jurisprudence," "parent level standing is required to enforce a subsidiary's claim derivatively." *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

110. To the extent HMIT seeks to bring a double derivative action on behalf of the Trust based on claims purportedly held by its wholly owned subsidiary, HCMLP, HMIT lacks standing. Because HMIT lacks derivative standing to bring claims on behalf of the parent Trust, it also lacks standing to bring a double derivative action. (*See supra* Section I.A.)

111. The Trust also lacks standing to bring these claims on behalf of HCMLP. The Claimant Trust received limited partnership interests in Highland on August 11, 2021, the Effective Date of the Plan. (*See supra* ¶ 79.) HMIT challenges trades that occurred in April and August 2021 (Compl. ¶ 41 & n.12), which predate the Effective Date of the Plan. Because the Trust did not hold limited partnership interests "[a]t the time of the transaction of which the plaintiff complains," 6 Del. C. § 17-1002, it cannot bring a derivative action based on these trades, and HMIT lacks standing to bring a double derivative action.

II. HMIT Lacks Standing To Bring Derivative Claims Under Federal Bankruptcy Law.

112. HMIT ignores its inability to proceed derivatively under Delaware law and instead insists it has derivative standing as a matter of federal bankruptcy law. (Mot. ¶¶ 9–14.) HMIT also

lacks derivative standing under federal bankruptcy law because (i) HMIT's lack of standing under Delaware law is dispositive regardless of forum, and (ii) HMIT, in any event, cannot meet the requirements for suing on behalf of a debtor under the federal bankruptcy case law it cites.

A. Federal Law Does Not Confer Standing Prohibited By Delaware Law.

113. HMIT's invocation of federal bankruptcy law cannot remedy HMIT's lack of derivative standing under Delaware law. HMIT cites Fed. R. Civ. P. 23.1, which "applies to this proceeding pursuant to" Fed. R. Bankr. P. 7023.1. (Mot. ¶ 10.) But Rule 23.1 "speaks only to the adequacy of the . . . pleadings," and "cannot be understood to 'abridge, enlarge, or modify any substantive right.'" *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991) (quoting 28 U.S.C. § 2072(b)). Thus, the question of whether HMIT has a right to proceed derivatively is governed not by Rule 23.1, but by the "source and content of the substantive law" governing the requirements for derivative actions, which is Delaware law. *Id.* at 96–97.

114. HMIT's own authority (*see* Mot. ¶¶ 12–13) further supports that Delaware law governs the standing analysis and precludes HMIT's suit. *Louisiana World Exposition v. Federal Insurance Co.*, 858 F.2d 233 (5th Cir. 1988), on which HMIT relies, "is the leading case from the Fifth Circuit . . . articulating when a creditors committee may be permitted standing to pursue estate causes of action." *Reed v. Cooper (In re Cooper)*, 405 B.R. 801, 809 (Bankr. N.D. Tex. 2009). To the extent *Louisiana World* applies post-Effective Date,[37] it does not supersede state law requirements for derivative standing. Before addressing the requirements a creditors' committee must meet to sue derivatively as a matter of federal bankruptcy law (discussed below), the Fifth Circuit conducted a lengthy analysis to determine "as a threshold issue" whether the creditors'

[37] *Louisiana World*, in certain circumstances, allows creditors to "file suit on behalf of a debtor-in-possession or a [bankruptcy] trustee." *La. World*, 858 F.2d at 247. HCMLP is no longer a debtor-in-possession; it has been reorganized.

committee in that case could assert its claims under Louisiana law. 858 F.2d at 236–45. The court specifically addressed whether the creditors' committee could pursue a derivative action under Louisiana law and concluded that "there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions." *Id.* at 243. The opposite is equally true: where state law imposes such a bar, a creditor cannot flout that prohibition because it is in bankruptcy court. *See In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 ("To determine that the third party may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors' state of incorporation or formation.") (denying creditors' committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act).

115. Because HMIT lacks standing to bring derivative claims under Delaware law (*see supra* Section I), it cannot satisfy the "threshold issue" to proceed derivatively, whether in state or federal court.

B. HMIT Cannot Meet The *Louisiana World* Standard Governing Derivative Actions By Creditors In Bankruptcy.

116. Even if Delaware law did not preclude HMIT from suing derivatively (it does), HMIT still would lack standing under federal bankruptcy law. Under Fifth Circuit precedent, a bankruptcy court may authorize a creditor to proceed derivatively only if: (i) the creditor's claims are "colorable"; (ii) the trustee or debtor-in-possession "refused unjustifiably to pursue the claim"; and (iii) the creditor "first receive[d] leave to sue from the bankruptcy court." *La. World*, 858 F.2d at 247; *see also, e.g.*, *PW Enters.*, 540 F.3d at 899 (same). "These requirements ensure that derivative standing does not risk interfering with the debtor or trustee and prevents creditors from

pursuing weak claims." *In re On-Site Fuel Serv., Inc.*, 2020 WL 3703004, at *9 (Bankr. S.D. Miss. May 8, 2020). HMIT does not and cannot satisfy these requirements.

117. HMIT focuses solely on the first of these three requirements—asserting that its claims are "colorable." (*See* Mot. ¶¶ 12–14, 38–42; Objs. ¶¶ 3–4, 7–15; Supp. Mot. ¶ 13.) Even if HMIT could satisfy the "colorable claim" requirement under *Louisiana World*, which it cannot (*see infra* Section V), it does not even try to satisfy the second requirement—that Highland "refused unjustifiably to pursue the claim"—because it cannot.

118. To assess whether a debtor's refusal was unjustified, courts "must look to whether the interests of creditors were left unprotected as a result" by conducting a "cost-benefit analysis" that takes into account whether the potential action is "valid and profitable." *La. World*, 858 F.2d at 253 n.20; *see also Reed*, 405 B.R. at 810 (same); *Canadian Pac.*, 66 F.3d at 1442 ("[I]f a creditor pleads facts to support the conclusion that it has a colorable claim . . . and if the bankruptcy court finds that the claim will likely benefit the estate based on a cost-benefit analysis, then the creditor has raised a rebuttable presumption that the debtor-in-possession's failure to bring that claim is unjustified."). This requirement is not easily met. Under HMIT's own authority (*see* Mot. ¶ 40) "the real challenge for the creditor will be to persuade the bankruptcy court that the trustee unjustifiably refuses to bring its claim." *PW Enters.*, 540 F.3d at 900. As the Eighth Circuit explained:

> To satisfy its burden, the creditor, at a minimum, must provide the bankruptcy court with *specific* reasons why it believes the trustee's refusal is unjustified. A creditor thus does not meet its burden with a naked assertion that 'the trustee's refusal is unjustified.' . . . The creditor, *not the bankruptcy court*, has the onus of establishing the trustee unjustifiably refuses to bring the creditor's claim.

Id. (emphasis in original).

119. In conducting the "cost/benefit" analysis required to determine if a debtor's refusal to sue is unjustified, courts consider (i) the probability of success on the claims and the financial recovery to the estate, (ii) the proposed cost of the litigation, and (iii) the delay and expense of bringing the litigation. *PW Enters.*, 540 F.3d at 901; *see also Official Comm.*, 225 B.R. at 282 ("The mandated cost/benefit analysis involves the weighing of the probability of success and financial recovery, whether it is preferable to appoint a trustee to bring suit instead of the creditors' committee, and 'the terms relative to attorneys' fees on which suit might be brought.'") (quoting *In re STN Enterps.*, 779 F.2d 901, 905 (2d Cir. 1985)). A creditor seeking to proceed derivatively must establish "a sufficient likelihood of success" to "'justify the anticipated delay and expense to the bankruptcy estate that the initiation and continuation of litigation will likely produce.'" *Official Comm.*, 225 B.R. at 282 (quoting *STN*, 779 F.2d at 906. If the creditor carries its burden, it shifts to the debtor to refute by a preponderance of the evidence. *PW Enters.*, 540 F.3 at 900 n.9; *Canadian Pac.*, 66 F.3d at 1442; *see also La. World*, 858 F.2d at 248 n.15 (noting that an "evidentiary hearing was unnecessary under the circumstances," where the debtor-in-possession's officers and directors "neither refuted any of the Committee's claims nor objected to them").

120. HMIT does not even attempt to meet its burden to establish that HCMLP or the Trust unjustifiably refused to pursue HMIT's claims, or to present facts to enable the Court to conduct a cost-benefit analysis and conclude that HMIT's proposed claims are "valid and profitable." *La. World*, 858 F.2d at 253 n.20. Under HMIT's own authority (*see* Mot. ¶¶ 39–41), courts permitted creditors to sue derivatively on behalf of debtors ***only*** after conducting such an evidentiary analysis. For example, in *Louisiana World*, the court found that "the Committee demonstrated"—and the debtor-in-possession did not "refute[]" or "rebut[]"—"the existence of a potential cause of action, a demand on the debtor-in-possession, a refusal or inability on the part

of the debtor-in-possession to bring suit, the possibility of a sizeable monetary recovery and, given the contingent nature of the attorney's fee schedule, a limited cost factor." 858 F.2d at 248 n.15.

121. Here, as discussed at length above, the evidence shows that HMIT's "claims" are spurious, would be a waste of time, money, and effort, and have no purpose but to further Dondero's crusade to burn Highland down, and make good on his explicit thread against Seery. (*See supra* ¶¶ 8–85.)

122. HMIT's vague assertion that the COB has "conflicts of interest" does not excuse HMIT from having to ask HCMLP and/or the Trust to pursue HMIT's alleged claims or from proving that any refusal to do so was "unjustified." (Mot. ¶¶ 12–14.) In *Louisiana World*, the court conducted the cost-benefit analysis even though the directors and officers of the debtor-in-possession were conflicted. *La. World*, 858 F.2d at 234.[38]

C. HMIT Lacks Standing To Bring Derivative Claims Challenging Pre-Confirmation Conduct.

123. "When a Chapter 11 plan is confirmed," the debtor loses "its authority to pursue claims as through it were trustee," unless it makes a "specific and unequivocal" "reservation of claims." *Wooley v. Haynes & Boone, L.L.P. (In re SI Restructuring, Inc.)*, 714 F.3d 860, 864 (5th Cir. 2013) (cleaned up; collecting cases). "Without an effective reservation, the debtor has no standing to pursue a claim that the estate owned before it was dissolved." *Id.* (cleaned up).

124. HCMLP did not reserve any claims against Seery or any other Proposed Defendant. (Docket No. 1875-3.) Therefore, neither HCMLP nor the Trust has standing to bring claims against Seery based on conduct occurring before August 11, 2021, the Effective Date of the Plan. *Wooley*, 714 F.3d at 864. Because HMIT seeks to bring derivative claims on behalf of both HCMLP and

[38] Moreover, HMIT did not ask the COB's independent member to pursue its proposed "claims," even though the independent member is empowered to make decisions on behalf of the COB if the other members are conflicted. (Trust Agmt. § 4.6(c).)

the Trust, HMIT's "standing is contingent upon" HCMLP's and the Trust's standing." *Id.* ("[A] creditor can derive standing to bring a debtor's claim only if the debtor itself could bring the claim."). HMIT therefore lacks standing to challenge any pre-confirmation conduct. Other than the "success fee" portion of Seery's compensation, every single allegation against Seery, including the alleged breaches of fiduciary duties, is based on pre-effective date conduct.[39]

III. HMIT Did Not Satisfy The Procedural Requirements To Bring A Derivative Action.

A. HMIT Failed To Include The Litigation Trust As A Party.

125. It is settled law that "[a]n action must be prosecuted in the name of the real party in interest." Fed. R. Civ. P. 17(a); *see BCC Merch. Sols., Inc. v. Jet Pay, LLC*, 129 F. Supp. 3d 440, 450 (N.D. Tex. 2015) ("The Rule 17(a) requirement is in essence a codification of the prudential standing requirement that a litigant cannot sue in federal court to enforce the rights of third parties.") (cleaned up; collecting cases). "The real party in interest is the person with the right to sue under substantive law, and the determination whether one is the real party in interest with respect to a particular claim is based on the controlling state or federal substantive laws." *BCC*, 129 F. Supp. 3d at 453 (cleaned up; collecting cases).

126. HMIT seeks to bring a "derivative action benefitting and on behalf of the Reorganized Debtor [HCMLP] and the [] Claimant Trust." (Compl. ¶¶ 1, 11.) But the Claimant Trustee transferred to the Litigation Trust "any and all Causes of Action," with limited exceptions not relevant here. (*See supra* ¶ 89.) The Litigation Trust is therefore the "real party in interest,"

[39] The movant in *Wooley* also alleged that (i) the complained-of breaches of fiduciary duty were kept "secret," (ii) the movant did not discover the claims until after confirmation, and (iii) it would therefore be inequitable to preclude its lawsuits. 714 F.3d at 865–66. The Fifth Circuit denied standing, notwithstanding later discovered "facts," because "[a]llowing [movant] to assert these claims simply because some of the underlying facts were unknown at the time the Plan was confirmed would be inconsistent with the 'nature of a bankruptcy which is designed primarily to secure prompt, effective administration and settlement of all debtor's assets and liabilities within a limited time." *Id.* at 866. Here, HMIT had knowledge of at least some of the "facts," including Dondero's alleged disclosure of MGM's inside information to Seery, before confirmation and did not object.

and HMIT lacks prudential standing to bring derivative claims on behalf of Highland. *See, e.g.*, *BlackRock Allocation Target Shares: Series S Portfolio v. Wells Fargo Bank, N.A.*, 247 F. Supp. 3d 377, 414–15 (S.D.N.Y. 2017) (holding that plaintiff "lacks standing to bring a derivative claim against Defendant" because it "transferred all rights to such claim").

127. The Litigation Trust is likewise "an indispensable party to a [beneficiary's] derivative suit," so HMIT cannot bring a derivative action without including the Litigation Trust. *Schwab v. Oscar (In re SII Liquidation Co.)*, 2012 WL 4327055, at *8 (Bankr. S.D. Ohio Sept. 20, 2012) (cleaned up) (dismissing derivative action); *see also* Fed. R. Civ. P. 19(a)(1) (requiring joinder of indispensable party); Fed. R. Bankr. P. 7019; Fed. R. Civ. P. 12(b)(7) (permitting dismissal for "failure to join a party under Rule 19"); Fed. R. Bankr. P. 7012(b).

128. HMIT's footnoted assertion that it "seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust" (Compl. ¶ 1 n.1) fails because, as discussed above, HMIT lacks standing to bring such "double derivative" claims (*see supra* Section I.C). The Litigation Trust is wholly owned by the Trust and, as matter of Delaware law, HMIT must demonstrate "parent level standing" to bring a "double derivative" claim that belongs to the Litigation Trust. *Sagarra*, 34 A.3d at 1079–81; *Lambrecht*, 3 A.3d at 282. Because HMIT lacks standing to bring a derivative claim on behalf of the Trust (*see supra* Section I.A), it also lacks standing to bring a double derivative claim.

B. HMIT Failed To Make Any Demand To The Litigation Trustee And Fails To Plead Demand Futility With Particularity.

129. HMIT's failure to include the Litigation Trust as a party was no accident. The Litigation Trust is a Delaware statutory trust and wholly-owned subsidiary of the Trust. (Litigation Sub-Trust Agmt. § 1.1(e).) Even if HMIT had standing under Delaware law to bring a derivative action on behalf of the Litigation Trust, which it does not (*see supra* ¶ 128), HMIT can proceed

derivatively only "if (i) [HMIT] demanded that the [Trustee] pursue the corporate claim and [he] wrongfully refused to do so or (ii) demand is excused because the [Trustee is] incapable of making an impartial decision regarding the litigation." *United Food & Comm. Workers Union v. Zuckerberg*, 250 A.3d 862, 876 (Del. Ch. 2020) (collecting cases). Accordingly, to allege a derivative action under Rule 23.1, which HMIT claims governs (*see* Compl. ¶ 6), HMIT must "state with particularity: (A) any effort by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members; and (B) the reasons for not obtaining the action or not making the effort." Fed. R. Civ. P. 23.1(b)(3); Fed. R. Bankr. P. 7023.1. HMIT failed to do so.

130. This Court approved Marc Kirschner ("Kirschner") as Litigation Trustee. (Confirmation Order ¶ 45; *see also* Morris Dec. Ex. 44 (the "Litigation Sub-Trust Agreement") § 1.1(r).) HMIT admits that it did not make any effort to make a pre-filling demand to Kirschner regarding this action. (Compl. ¶ 1 n.1.) Instead, HMIT asserts that "[a]ny demand on the Litigation Sub-Trust would be [] futile" because "the Litigation Trustee serves at the direction of the Oversight Board." (*Id.* ¶ 1 n.1; Mot. ¶ 11 n.13.) This conclusory assertion does not allege a single fact casting "reasonable doubt" on Kirschner's objectivity or showing that he was "dominate[d]" by interested parties, let alone with particularity. *Zuckerberg*, 250 A.3d at 877–91 (surveying Delaware demand futility law); (Mot. ¶ 11).[40] Because HMIT has not satisfied either the demand requirement or demand futility, it cannot bring a derivative action. *See, e.g.*, *Zuckerberg*, 250 A.3d at 900–901 (granting "motion to dismiss under Rule 23.1"); *In re Six Flags Ent. Corp. Deriv. Litig.*, 2021 WL 1662466, at *8 (N.D. Tex. Apr. 28, 2021) (dismissing derivative action with

[40] As discussed *supra* note 38, HMIT also does not explain its failure to make any pre-filing demand to the independent member of the COB, who it does not allege is conflicted. (Compl. ¶ 10.)

prejudice for failure to plead demand futility under Delaware law "under Rule 23.1's heightened standard").

C. HMIT Cannot "Fairly And Adequately" Represent The Interests of Claimant Trust Beneficiaries.

131. Rule 23.1 provides that a "derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association." Fed. R. Civ. P. 23.1(a); Fed. R. Bankr. P. 7023.1. To be an adequate representative, "a plaintiff in a [] derivative action must not have ulterior motives and must not be pursuing an external personal agenda." *Energytec, Inc. v. Proctor*, 2008 WL 4131257, at *6 (N.D. Tex. Aug. 29, 2008) (cleaned up) (quoting *Smith v. Ayres*, 977 F.2d 946, 949 (5th Cir. 1992)). To determine adequacy, courts evaluate, *inter alia*, "economic antagonisms between representative and class," "other litigation pending between the plaintiff and defendants," "plaintiff's vindictiveness towards the defendant," and "the degree of support plaintiff was receiving from the [beneficiaries] he purported to represent." *Id.* *6–7 (quoting *Davis v. Comed, Inc.*, 619 F.2d 588, 593–94 (6th Cir. 1980)).

132. HMIT is an inadequate representative. HMIT is effectively controlled by Dondero, and the Plan recognizes HMIT as a Dondero Related Entity (Plan Art. I.B.110). This Court found that "Mr. Dondero and the Dondero Related Entities have harassed the Debtor," including with "substantial, costly, and time-consuming litigation." (Confirmation Order ¶ 77.) This Court also found that Dondero threatened to "burn down the place" if he did not get his way and that "Mr. Dondero and his related entities," including HMIT, "will likely commence litigation against the Protected Parties," including Seery. (*Id.* ¶ 78.) This Court has even referred to Dondero as an "antagonist" whose conduct has made this bankruptcy "contentious, protracted, and unpleasant," and akin to a "corporate divorce." *In re Highland Cap. Mgmt., L.P.*, 2021 WL 2326350, at *1, *25

(Bankr. N.D. Tex. June 7, 2021) (holding Dondero in "civil contempt of court"). The Fifth Circuit similarly recognized that Dondero and his related entities sought to "frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital's management, threatening employees, and canceling trades between Highland Capital and its clients." *NexPoint*, 48 F.4th at 426; *see also id.* at 427–28. Dondero's own written threats confirm these findings: "Be careful what you do -- last warning." (*See supra* ¶ 25.) Dondero-controlled HMIT is pursuing this derivative action for "ulterior motives" of "antagonism" and "vindictiveness," cannot "fairly and adequately the interests" of the Claimant Trust Beneficiaries, and should be not be permitted to "bring a derivative suit on their behalf." *Energytec*, 2008 WL 4131257, at *6–7 (dismissing derivative action by former CEO on adequacy grounds because he sought to "revers[e] the events leading to his removal" and was in litigation with other shareholders).[41]

IV. HMIT Has No Direct Claims Against The Highland Parties.

133. Throughout its Motion and Complaint, HMIT makes vague references to unspecified direct claims against the Proposed Defendants. (*See, e.g.*, Motion ¶ 10 ("HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . ."); *id.* ¶ 67 (arguing that "HMIT has [d]irect [s]tanding"); Compl. ¶ 24 ("HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.").) But "a claim is not 'direct' simply because it is pleaded that way." *Schmermerhorn*, 2011 WL 111427, at *26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at *7 (Del. Ch. Nov. 5, 2004)). "Fifth

[41] HMIT and Dondero also have a "personal economic interest" and other claimants "do not share this interest." *Energytec*, 2008 WL 4131257, at *7. Specifically, HMIT has asserted in another proceeding that Highland has sufficient assets "to pay class 8 and class 9 creditors 100 cents on the dollar." (Docket No. 3662 ¶ 5.) If true, HMIT's proposed claims will benefit only HMIT and, potentially, The Dugaboy Investment Trust (controlled by Dondero) and Mark Okada (HCMLP's co-founder) as the holders of Class 11 interests. Proposed Defendants reserve the right to contest HMIT's assertion.

Circuit precedent [] dictates that," to determine whether claims are direct or derivative, "this Court look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs' characterization." *Id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)).

134. Under Delaware law, "whether a claim is solely derivative or may continue as a dual-natured claim 'must turn *solely* on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'" *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original). "In addition, to prove that a claim is direct, a plaintiff 'must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.'" *Id.* (quoting *Tooley*, 845 A.2d at 1033); *see also Schmermerhorn*, 2011 WL 111427, at *24 (same).

135. Similarly, in the bankruptcy context, "[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate." *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)). "In that situation, only the bankruptcy trustee has standing to pursue the claim for the estate . . . ." *Id.* "To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate." *Id.*

136. Even if HMIT had viable claims (it does not), they would be derivative, not direct, under both Delaware law and federal bankruptcy law. HMIT argues that the Proposed Defendants' "alleged actions devalued HMIT's interest in the Debtor's Estate, including, without limitation, payment of excessive compensation to Seery." (Mot. ¶ 67.) Thus, by its own admission, any

alleged harm to HMIT "comes about only because of harm to the debtor," so the alleged "injury is derivative." *Meridian*, 912 F.3d at 293–94 ("The creditors' injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties."); *see also El Paso,* 152 A.3d at 1260–61 & n.60 (holding that claim "claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative") (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at *12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had "not identified any independent harm suffered by the limited partners"; "the partnership suffered all the harm at issue—it paid too much").

137. HMIT's reliance on *Pike v. Texas EMC Management, LLC*, 610 S.W.3d 763 (Tex. 2020), is misplaced. The fact that "a partner or other stakeholder in a business organization has ***constitutional*** standing to sue for an alleged loss in the value of its interest in the organization" (Mot. ¶ 67 (quoting *Pike*, 610 S.W.3d at 778) (emphasis added)) is irrelevant. As the Court explained, it is "the statutory provisions that define and limit a stakeholder's ability to recover certain measures of damages, which protect the organization's status as a separate and independent entity," and therefore considered the matter under Texas partnership law. *Pike*, 610 S.W.3d at 778–79. Here, HMIT admits that both the Trust and HCMLP are governed by Delaware law, which does not recognize any direct (or derivative) claims by HMIT.

138. Even assuming, *arguendo*, that HMIT could bring direct claims (it cannot), the Highland Parties cannot be held liable for them. "Under the Delaware Statutory Trust Act, 'a trustee, when acting in such capacity, shall not be personally liable to any person other than the statutory trust or a beneficial owner for any act, omission or obligation of the statutory trust or any trustee thereof' except 'to the extent otherwise provided' by the trust's governing document."

Athene Life & Annuity Co. v. Am. Gen. Life Ins. Co., 2020 WL 2521557, at *8 (Del. Super. May 18, 2020) (quoting 12 Del C. §§ 3803(b)–(c)). The Trust Agreement likewise limits "personal liability" "to the fullest extent provided under Section 8303 of the Delaware Statutory Trust Act." (Trust Agmt. § 8.3.) Because, as discussed above, HMIT is not a "beneficial owner" of the Claimant Trust (*see supra* Section I.A), it cannot bring direct claims against Proposed Defendants under Delaware law.

V. HMIT's Proposed Complaint Fails To Plausibly Allege Any Claims Against The Proposed Defendants.

139. Because HMIT lacks standing, this Court need not reach the merits of HMIT's proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion. HMIT fails to adequately allege its claims under any standard. HMIT's claims are not colorable because they lack foundation, and HMIT's "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," fail to "[]cross the line from conceivable to plausible." *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

A. HMIT Does Not Adequately Allege Any Breach Of Fiduciary Duties (Count I).

140. HMIT alleges that Seery breached his fiduciary duties (i) "[b]y disclosing material non-public information to Stonehill and Farallon" before their purchase of certain Highland claims, and (ii) by receiving "compensation paid to him under the terms of the [Trust Agreement] since the Effective Date of the Plan in August 2021." (Compl. ¶¶ 64–67.) Under Delaware law, which HMIT admits governs (*see* Mot. ¶ 21 n.24), "[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege '(1) that a fiduciary duty existed and (2) that the defendant breached that duty.'" *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at *30 (N.D. Tex. Apr. 15,

2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at *8 (Del. Ch. Feb. 28, 2020)). HMIT fails to plausibly allege either element.

141. ***First***, HMIT's "legal conclusion[]" that Seery "owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate" (Compl. ¶ 63) "do[es] not suffice" to plausibly allege the existence of any actionable fiduciary relationship. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). Officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders. *See Gilbert v El Paso Co.*, 1988 WL 124325, at *9 (Del. Ch. Nov. 21, 1988) ("[D]irectors' fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.") *aff'd,* 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at *11 (Del. Ch. Nov. 7, 2013) (same). Because Seery did not owe any "duty" to HMIT directly and individually, the Complaint fails to state a claim for breach of fiduciary duty to HMIT.

142. ***Second***, to the extent Seery owed any fiduciary duties to HMIT or the Debtor, he did not breach them by allegedly communicating with Farallon and Stonehill. (*See* Compl. ¶ 64.) As this Court recognized, "claims trading in bankruptcy is [] pretty unregulated—it's just kind of between the claims trader and the transferee." (Morris Dec. Ex. 43 at 53:6–7.) In fact, this Court recognized that "for decades now, since a rule change in the last century, no court approval and order is necessary unless the transferor objects." (Morris Dec. Ex. 6 at 20); *see also* Aaron L. Hammer & Michael A. Brandess, *Claims Trading: The Wild West of Chapter 11s*, 29 Am. Bankr. Inst. J. 61 (July/Aug. 2010) ("In 1991, Fed. R. Bankr. P. 3001(e) was amended to limit the court's oversight on claims trading" such that "only the transferor may object to a transfer.") (quoting Michael H. Whitaker, *Regulating Claims Trading in Chapter 11 Bankruptcies: A Proposal for Mandatory Disclosure*, 3 Cornell J.L. & Pub. Pol'y 303, 320 (1994)). Because none of the

transferors objected to the claims trades at issue, Seery's alleged actions in connection with them cannot constitute a breach of any fiduciary duties.

143. ***Third***, HMIT's "conclusory allegations" and "legal conclusions" are "purely speculative, devoid of factual support," and therefore "stop[] short of the line between possibility and plausibility of entitlement to relief." *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up). As to Seery's discussions with Farallon and Stonehill, HMIT asserts that Seery "disclose[d] material non-public information to Stonehill and Farallon," and they "acted on inside information and Seery's secret assurances of great profits." (Compl. ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.) HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, or what "assurances" he made. The few facts HMIT provides contradict its own allegations. The only purportedly "material non-public information" identified is the Complaint is the MGM E-Mail Dondero sent to Seery containing "information regarding Amazon and Apple's interest in acquiring MGM." (Compl. ¶ 45.) This information was widely reported in the financial press at the time (*see supra* ¶¶ 30–37), so it cannot constitute material non-public information as a matter of law. *See, e.g.*, *SEC v. Cuban*, 2013 WL 791405, at *10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not "material, nonpublic information" and "'becomes public when disclosed to achieve a broad dissemination to the investing public'") (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)). HMIT asserts that Farallon and Stonehill's purchases "made no sense" without access to "material non-public information." (Compl. ¶¶ 3, 50.) But HMIT admits that Farallon and Stonehill purchased Highland claims at discounts of 43% to 65% to their allowed amounts, so they would therefore receive at least an 18% return based on publicly available estimates in Highland's Court-approved Disclosure Statement. (*Id.* ¶¶ 3, 37, 42.)

144. As to Seery's compensation, HMIT asserts that it was "excessive," and speculates that compensation negotiations between Seery and the COB "were not arm's-length." (Compl. ¶¶ 4, 13, 54, 74.) But HMIT does not say one word about the process for negotiating and approving Seery's compensation. Nor does HMIT allege what Seery's compensation actually is, let alone compare it to others' compensation to show that it is "excessive." HMIT's assertion that Seery's compensation package was initially "composed of a flat monthly pay" but now "is also performance based" (*id.* ¶ 4) is wrong and contradicted by Court-approved documents. The structure of Seery's post-effective date compensation, which includes a "Base Salary," "success fee," and "severance," was fully disclosed in the Trust Agreement, which was publicly filed in advance of the Plan confirmation hearing and approved by this Court and the Fifth Circuit as part of the Plan (*see supra* ¶¶ 78–79).

145. Thus, HMIT fails to allege facts that, even if true (and they are not), support a reasonable inference that Mr. Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty. *See Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]though the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation.")

B. HMIT's Theories Of Secondary Liability Fail (Counts II and III).

146. HMIT seeks to hold Proposed Defendants secondarily liable for Seery's alleged breach of fiduciaries duties on an aid/abet theory (Compl. ¶¶ 69–74) and conspiracy theory of liability (*id.* ¶¶ 75–81). As a threshold matter, HMIT has not plausibly alleged any primary breach

of fiduciary duties, so it cannot pursue secondary liability for the same alleged wrongdoing. *See English v. Narang*, 2019 WL 1300855, at *14 (Del. Ch. Mar. 20, 2019) ("As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.") (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at *10 (Tex. App. Jan. 25, 2022) ("[A] defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.") (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)).[42]

147. Even if HMIT could pursue secondary liability, it has not plausibly alleged any civil conspiracy. Under Texas law, "civil conspiracy is a theory of vicarious liability and not an independent tort." *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019). "[T]he elements of civil conspiracy [are] "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result." *Id.* at 141 (cleaned up).

148. HMIT has not plausibly alleged any "meeting of the minds." HMIT asserts that "Defendants conspired with each other to unlawfully breach fiduciary duties" (Compl. ¶ 76), which is precisely the sort of "legal conclusion" the Supreme Court held is "not entitled to the assumption of truth." *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66). HMIT repeats four times that Seery provided information to Farallon and Stonehill as a "as a *quid pro quo*" for "additional compensation" (Compl. ¶ 77; *see also id* ¶¶ 4, 47, 74), but never provides

[42] Because HMIT breach of fiduciary duty claim is governed by Delaware law, its aid/abet theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas); By contrast, "conspiracy is not an internal affair" or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

"nonconclusory factual allegations" in support. *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 550 U.S. at 565–66). HMIT vaguely alleges "upon information and belief" that Seery "did business with Farallon" and "served on [a] creditors committee" with Stonehill. (Compl. ¶ 48.) HMIT also asserts "[u]pon information and belief" that Farallon "conducted no due diligence but relied on Seery's profit guarantees." (*Id.* ¶ 40.) These allegations "upon information belief" are "wholly speculative and conclusory," and therefore do "not satisfy the pleading requirements under Rule 8(a)." *Hargrove v. WMC Mortg. Corp.*, 2008 WL 4056292, at *3 (S.D. Tex. Aug. 29, 2008) (citing *Twombly*, 550 U.S. at 555).

C. HMIT Seeks Remedies That Are Not Available As A Matter Of Law (Counts IV, V, and VI).

149. HMIT seeks a grab bag of unavailable remedies, including (1) equitable disallowance (Compl. ¶¶ 82–87), (2) unjust enrichment (*id.* ¶¶ 88–94), (3) declaratory relief (*id.* ¶¶ 95–99), (4) punitive damages (*id.* ¶¶ 100–01), and (5) equitable tolling (*id.* ¶¶ 103–08), several of which are incorrectly pleaded as causes of action. None of these remedies are available under applicable law.

150. ***First***, Seery does not have any bankruptcy claims that can be subordinated or disallowed. (*Id.* ¶¶ 82–87.) In any event, the Fifth Circuit has expressly rejected equitable disallowance as remedy available under the Bankruptcy Code. *See SED Holdings, LLC v. 3 Star Props., LLC*, 2019 WL 13192236, at *2 (S.D. Tex. Sept. 11, 2019) ("[T]he claim may only be subordinated, but not disallowed.") (citing *Benjamin v. Diamond (In re Mobile Steel Co.)*, 563 F.2d 692, 699 (5th Cir. 1977)); *see also In re Lightsquared Inc.*, 504 B.R. 321, 339–40 (Bankr. S.D.N.Y. 2013) ("[T]he Bankruptcy Code, pursuant to section 510(c) or otherwise, does not permit equitable disallowance of claims that are otherwise allowable under section 502(b).") (citing *Mobile Steel*, 563 F.2d at 699 n.10).

151. ***Second***, under Texas law, "[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay." *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).[43] Thus, "when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory." *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)). Here, Seery's compensation is governed by express agreements (*see supra* ¶¶ 78–79), so unjust enrichment is unavailable as a theory of recovery.

152. ***Third***, HMIT brings "claims for declaratory relief, but a request for declaratory relief is not an independent cause of action, [and] in the absence of any underlying viable claims such relief is unavailable." *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at *2 (S.D. Tex. June 7, 2016) (citing *Collins Cnty., Texas v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)).

153. ***Fourth***, HMIT has no basis to seek punitive damages. HMIT abandoned its fraud claim so its sole claim for primary liability is breach of fiduciary duty. As a matter of Delaware law, the "court cannot award punitive damages in [a] fiduciary duty action." *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff'd* 682 F. App'x 24 (2d Cir. 2017).

[43] Under the Plan, Texas law governs HMIT's "claim" for unjust enrichment because it is not a "corporate governance matter." (Plan Art. XII.M.) It also governs HMIT's "claim" for constructive trust, which "is merely a remedy used to grant relief on the underlying cause of action." *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

154. ***Finally***, HMIT cannot invoke "the discovery rule," "equitable tolling doctrine," "fraudulent concealment," or "any other applicable tolling doctrine" to toll the statute of limitations (Compl. ¶ 108), because this Court has held that that HMIT "has known about the conduct underlying the desired lawsuit for well over a year, based on activity that has occurred in the bankruptcy court" (Docket No. 3713 at 2–3); *see also* Order at 2–3, *In re Hunter Mt. Inv. Tr.*, No. 23-10376 (5th Cir. Apr. 12, 2023) (declining to disturb this Court's "appropriate" Order, because HMIT "approached the brink of the limitations period before seeking leave to assert its claim").

CONCLUSION

155. For the foregoing reasons, the Highland Parties respectfully request that this Court deny the Motion in its entirety and grant such other relief this Court deems just and proper.[44]

[44] Denial should be ***with prejudice***. HMIT "has known about the conduct underlying the desired lawsuit for well over a year" (Docket No. 3713 at 2–3) and has already filed two proposed Complaints. It should not be permitted to file a third (or more), which "would be futile." *Marucci Sports, L.L.C. v. NCAA*, 751 F.3d 368, 378 (5th Cir. 2014) (affirming denial of leave to amend as futile) (collecting cases).

Dated: May 11, 2023

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S REPLY BRIEF IN SUPPORT OF EMERGENCY MOTION FOR LEAVE TO FILE ADVERSARY PROCEEDING

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Hunter Mountain Investment Trust ("HMIT" or "Movant") files this Reply Brief in Support of its Emergency Motion for Leave to File Verified Adversary Proceeding, together with its Supplemental Motion (collectively "HMIT's Motion for Leave") in Reply to the Joint Opposition filed by Highland Capital Management, LP., Highland Claimant Trust and James P. Seery, Jr. (Doc. 3783) ("Joint Opposition") and the Claims Purchasers Objection (Doc. 3780) ("Claims Purchasers Objection"), and respectfully shows as follows:[1]

Overview

1. This Reply Brief is submitted to address the many flaws and misleading arguments in the Joint Opposition and the Claims Purchasers Objection and is submitted in further support of HMIT's Motion for Leave.

2. The Respondents do nothing to defeat, much less mount an argument against, the allegations that indict them:

- **The Claims Purchasers do not deny they invested over $163 Million in the claim trades;**
- **The Claims Purchasers do not deny they did no due diligence before investing this $163 Million;**
- **The Claims Purchasers do not deny they refused to sell their newly acquired claims at any price;**
- **The Claims Purchasers do not deny they invested in the claims when, at best, only low ROIs were projected -- not to speak of the**

[1] James P. Seery, Jr., Highland Capital Management, L.P., Highland Claimant Trust and the so-called "Claims Purchaser" are collectively referred to as "Respondents."

> **substantial risks generally associated with claims trading in a bankruptcy setting—all happening within a short-window and, notably, within just weeks before the public announcement relating to the MGM sale**;

Tellingly, these questions and issues are never addressed in over 86 pages of Respondents' collective briefing.

3. The Joint Opposition states that HMIT is "harassing those individuals charged with maximizing value for creditors while (perversely) wasting Highland's resources." Joint Opposition ¶ 1. Nothing is further from the truth. It should be clear to all who seek fairness that HMIT seeks restitution to benefit (not hurt) the Claimant Trust, adding substantially to "Highland's resources." The fact that the Joint Opposition advances a contrary notion underscores the conflict that plagues the Pachulski law firm's involvement in this matter. That the "Highland Parties" are tying their knot to James Seery is a grave misjudgment, and the Pachulski firm should be disqualified as a result. If indulged, the Pachulski firm's arguments will damage the Reorganized Debtor, the Claimant Trust and innocent stakeholders.

4. The Joint Opposition suggests that HMIT is guilty of *ad hominem* attacks on James Seery's character, notwithstanding the many plausible allegations against him. This is wildly ironic given the vitriol the Joint Opposition uses in its tiresome, ineffectual assault on Jim Dondero. The Joint Opposition uses hyperbolic references to Mr. Dondero on no less than 123 occasions in the first 29 pages, and the Claims Purchasers echo these exaggerations. Yet none of these attacks have anything to do with the current

proceedings. They are intended as a deflection: Mr. Dondero is not a party to HMIT's Motion for Leave, and the Court's docket confirms that HMIT has not been held to be – and is not - a "vexatious" litigant. There also is no viable basis for Respondents to contend that HMIT is a "Dondero affiliate," much less that Jim Dondero has any current connection with HMIT. The diatribe against Mr. Dondero underscores the irrelevance of over 60% of the Joint Opposition. Rather than attempting to address the colorability of HMIT's insider trading allegations, which they cannot effectively do, the Respondents clearly want to litigate in an alternate dimension in the hope of inflaming the Court against HMIT's Motion for Leave.

5. The Respondents' arguments concerning standards of review are misleading. An evidentiary hearing in this setting is highly inappropriate and would open a Pandora's box of discovery and procedural issues. Relevant case law makes clear that the determination of "colorability" does not allow the "weighing" of evidence. At most, a Rule 12(b)(6) "plausibility" standard applies.

6. To allow a full-blown evidentiary hearing on HMIT's Motion for Leave is incorrect even if the *Barton* doctrine is applied, though it should not be applied. In the absence of discovery, an evidentiary hearing would be akin to a mini-trial where HMIT is deprived of basic discovery and due process. Respondents urge an amorphous (and improper) standard of proof (*e.g.*, must every factual allegation be established by admissible, credible evidence ***before*** leave to file is granted?). By doing so, Respondents

are inviting reversible error and encouraging an abuse of discretion. Their effort to turn these proceedings into a 3-ring donnybrook will not withstand appellate scrutiny.

7. Both the Joint Opposition and the Claims Purchasers Objection play fast and loose with standing arguments. HMIT has constitutional standing to bring claims on its individual behalf as an aggrieved party. Indeed, there is no question HMIT has individual standing under Delaware statutory trust law as well as standing to seek declaratory relief that it is "*in the money*," and that Seery's refusal to certify HMIT's status as a beneficiary of the Claimant Trust is part of the larger conspiracy (Complaint ¶¶ 3-5, Count III). The Respondents' conduct caused a non-speculative, legally cognizable injury to HMIT, the Claimant Trust and the Reorganized Debtor.

8. Seery and the Pachulski firm seek to keep HMIT in a box as a "contingent" interest to fashion the argument that Seery does not owe direct duties to HMIT, post-effective date. But this is inconsistent with pertinent Delaware trust law, which also provides derivative standing.

9. The suggestion that HMIT needed to sue on behalf of the Litigation Sub-Trust is also wrong and distorts the plain language of the Assignment Agreement[2] discussed in the Joint Opposition, a document which the Pachulski firm presumably drafted.

[2] Document Number 211, Bankruptcy Adversary Proceedings (Case No. 21-03076-sgj (Bankr. N.D. Tex.)).

10. The Respondents miss the boat in their discussions of MGM. First, HMIT alleges that the Claims Purchasers had access to MNPI far greater than just MGM. Respondents ignore this claim. Second, Respondents fail to distinguish between substantive MNPI that Seery received and provided to the Claims Purchasers and the indefinite, unconfirmed media reports regarding MGM. The former is actionable under relevant law.

11. The Joint Opposition uses the last few pages of its briefing as a scatter gun attack on HMIT's Motion for Leave. None of these arguments have merit. In response, and without limitation, it is clear that HMIT can fairly represent the interests of the derivative parties; HMIT has standing to bring forth all of the claims set forth in the Complaint; HMIT does plausibly allege its claims as set forth in the Complaint; HMIT does plausibly set forth its claims for breach of fiduciary duty as set forth in the Complaint; HMIT has adequately plead the futility of making demands as a condition precedent to bringing a derivative action as set forth in the Complaint; HMIT does seek remedies that are available as a matter of law, including, without limitation, unjust enrichment, disgorgement, constructive trust, and declaratory relief. The Joint Opposition's discussion in paragraph 154 is frivolous.

Objections to "Evidence"

12. HMIT objects to the entirety of the Declaration of John Morris ("Morris Decl.") and all of the attached purported "evidence," which is appended to the Joint

Opposition, (collectively the "Opposition Evidence") on several grounds, and HMIT hereby request the Court strike all Opposition Evidence based upon the reasons set forth herein.

13. First, the Opposition Evidence is irrelevant to the Court's inquiry concerning "colorability." The Court should not weigh evidence outside the 4-corners of HMIT's proposed Complaint.

14. Second, Respondent's suggestion that HMIT is allegedly a "vexatious" litigant is a red herring, and HMIT objects that Respondents' "Opposition Evidence" purportedly relating to Mr. Dondero is entirely irrelevant. This Court has made no such finding – nor has any other court. There also is no indication in the Court's docket that HMIT should be pigeonholed in such a manner to impose unwarranted burdens on HMIT.

15. Third, hypothetically, and for the sake of argument only, even if Respondents' contentions about Mr. Dondero's purported control over HMIT were correct (which HMIT denies), this would have no bearing on the "colorability" of HMIT's allegations under applicable legal standards. In any event, Respondents' blunderbuss of "Dondero evidence" is immaterial in the absence, at a minimum, of any showing that Jim Dondero exercises direct or functional control over the affairs of HMIT in connection with the specific proposed adversary proceeding at issue. Respondents make no such showing.

16. In addition, numerous Opposing Evidence documents have been heavily redacted without any explanation or stated justification. The Joint Opposition is using both sword and shield in this proceeding, and this should not be allowed.

17. HMIT provides notice that it withdraws all affidavits and other evidence attached to its Motion for Leave, subject to a reservation of rights that, in the event the Court concludes it will conduct an evidentiary hearing, HMIT may offer the same evidence at the hearing. Further, if the Court concludes that it will conduct an evidentiary hearing on HMIT's Motion for Leave, HMIT reserves all rights to conduct merits-based discovery before the hearing – without waiving any of HMIT's substantive or procedural rights, and without admitting that an evidentiary hearing or discovery is proper.

Argument

I. Standing

A. HMIT has standing to bring claims as a holder of a beneficial interest in the Claimant Trust both derivatively and in its own right.

18. The Respondents assert, as a threshold legal matter, that the "contingent" nature of HMIT's interest in the Claimant Trust divests HMIT of any right or remedy to assert a derivative claim or a claim on its own behalf. *See* Joint Opposition, ¶3.[3] Their arguments are flat wrong.

[3] The Respondents ***never*** address HMIT's allegation that Seery refuses to certify HMIT's status as a Beneficiary as part of the scheme at issue.

19. Delaware statutory trust law provides that a plaintiff in a derivative action on behalf of a trust must be a beneficial owner at the time of the action and at the time of the transaction. DEL. CODE ANN. tit. 12, § 3816. A "beneficial owner" means "***any*** owner of a beneficial interest in a statutory trust, the fact of ownership to be determined and evidenced ... in conformity to the applicable provisions of the governing instrument of the statutory trust." DEL. CODE ANN. tit. 12, § 3801 (emphasis added). A "beneficial interest" is the "profit, benefit, or advantage resulting from a contract." *Mangano v. Pericor Therapeutics*, No. CIV.A. 3777-VCN, 2009 WL 4345149, at *5 (Del. Ch. Dec. 1, 2009) (citing favorably to Black's Law Dictionary 156 (6th ed. 1990)). As one Delaware court recognized when evaluating derivative standing, the statute "use[s] … the general term beneficiary, without any language restricting the class of beneficiary to whom it refers…" *Est. of Tigani*, No. CV 7339-ML, 2016 WL 593169, at *14 (Del. Ch. Feb. 12, 2016).

20. Here, it is clear HMIT owns ***some*** benefit or advantage under the Claimant Trust Agreement [Doc. 3521-5]. The Respondents argue that the language of the Claimant Trust Agreement -- that the "Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust" -- is proof HMIT does not own a beneficial interest. *See* Joint Opposition, ¶105. But "Claimant Trust Beneficiaries" ***includes*** the Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests (*i.e.*, HMIT) ***if*** the Claimant Trustee pays Holders of Allowed Unsecured Claims and Holders of Allowed Subordinated Claims are paid. *See* Claimant

Trust Agreement, ¶1.1(h). While HMIT holds a different class of beneficial interest (*i.e.*, a contingent or secondary interest), it nonetheless owns a *type* of beneficial interest. Importantly, in the context of equity securities, courts reject "the argument that an investor cannot be considered a beneficial owner of an equity security when the investor's right to acquire the security is contingent upon a future event." § 22:28. *Beneficial ownership and convertible securities*, 1F Going Public Corp. § 22:28 (collecting cases).[4] Nor is there any reason for a different result here. The Delaware legislature easily could have restricted standing to limit derivative actions to a specific class of beneficial interests holders ***but did not do so***. DEL. CODE ANN. tit. 12, § 3816; *Tigani*, 2016 WL 593169, at *14. Thus, this omission must be interpreted as an expression of legislative intent to include ***any*** owner of a beneficial interest, just as the statute says. *Brown v. State*, 36 A.3d 321, 325 (Del. 2012) (Delaware law follows the maxim of statutory interpretation "*expressio unius est exclusio alterius*"). The Claimant Trust Agreement is otherwise silent on derivative standing and, therefore, Delaware statutory trust law applies. HMIT therefore meets the requirements for derivative standing under Delaware law because HMIT owns a type of beneficial interest.

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[4] Of note, **none** of the cases cited in the Joint Opposition involve contingent beneficiaries. Rather, in *In re Nat'l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020), the applicable trust documents required holders of beneficial interests to be evidenced by a trust certificate and the court found that those who did not hold a trust certificate did not have derivative standing. This is **not** a "contingent beneficiary" case. In *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *19 n.123 (Del. Ch. June 15, 2011), *aff'd* 38 A.3d 1254 (Del. 2012), the court noted that certain investors no longer owned affected shares at all so they no longer had standing to pursue a derivative claim. Again, this is **not** a "contingent beneficiary" case.

21. While the class of beneficial interest is distinct (*i.e.,* contingent), the Claimant Trust Agreement does not preclude HMIT, as a holder of a contingent beneficial interest, from asserting claims in its individual right. Leading trust authority and courts throughout the country recognize that a *contingent beneficiary* has standing to bring claims against a trustee of a trust. RESTATEMENT (SECOND) OF TRUSTS Sec. 199; *Scanlon v. Eisenberg*, 2012 WL 169765 (7th Cir. Jan. 20, 2012) (contingent, discretionary beneficiary of a trust has Article III standing to bring a suit against the trustee for breach of fiduciary duty in mismanaging the trust's assets); *Mayfield v. Peek*, 446 S.W.3d 253 (Tex. App.—El Paso 2017, no pet.); *Siefert v. Leonhardt*, 975 S.W.2d 489, 492–93 (Mo. Ct. App. 1998) (holders of contingent interest in trust have standing to bring suit against at trustee); *Smith v. Bank of Clearwater*, 479 So. 2d 755 (Fla. Dist. Ct. App. 1985) (contingent beneficiary was entitled to bring suit against trustee for alleged mismanagement of trust resulting in diminution of trust asset); *Giagnorio v. Emmett C. Torkelson Tr.*, 292 Ill. App. 3d 318, 686 N.E.2d 42 (1997) (contingent beneficiary had standing to bring action for breach of fiduciary duty). The same applies here.

22. The Respondents' arguments -- that HMIT is excluded from the definition of a Claimant Trust Beneficiary -- leads only to the conclusion that subsection 5.10 of the Claimant Trust Agreement does not apply to HMIT. *See* Joint Opposition, n. 35. But the contingent nature of HMIT's beneficial interest does not divest it from having standing

to bring causes of action in its own right—contingent beneficial interest holders have standing to bring actions against trustees under Delaware law.

23. The Claims Purchasers also argue there is no legal duty and no cognizable injury fairly traceable to their conduct, and that "only the transferor may object to a transfer." [Claims Purchaser Objection at ¶11) This is again not true. The Complaint involves more than just private trades between sellers and buyers outside of the purview of the Court. Seery's excessive compensation is a quid pro quo which causes a cognizable, legal injury to both the Claimant Trust and HMIT.[5] Furthermore, the Claims Purchasers have a duty to not aid and abet Seery's breaches of fiduciary duty.[6]

B. The Plan did not divest the Claimant Trust of any claims and specifically reserved claims regarding acts or omissions that constitute bad faith, fraud, or willful misconduct which were not released.

24. The Joint Opposition argues that the Plan did not reserve claims against Seery or the other Respondents and, as a consequence, neither HCMLP nor the Claimant

[5] The nature of this injury, in addition to Seery's influence over the Claimant Trust, and the lack of prior action by the Claimant Trust to pursue the claims HMIT seeks to pursue derivatively, among other things, demonstrate that HMIT is not only a proper party to assert its derivative claims - but the best party to do so.

[6] *See RBC Capital Markets, LLC v. Jervis*, 129 A.3d 816, 861 (Del. 2015) (aider and abetter is liable if its participation in the breach of fiduciary duty is "knowing"). The Claims Purchasers also claim that even if Seery's compensation was excessive, HMIT cannot show that any disgorgement of these fees would inure to HMIT's benefit as a contingent beneficiary. [Claims Purchasers Objection ¶22] In making this argument, however, they obviously ignore the well-pleaded allegations that the Claims Purchasers aided and abetted Seery's breaches of fiduciary duty and they should be disgorged of their ill-gotten profits.

Trust has standing to bring claims based on pre-effective date conduct.[7] Joint Opposition ¶ 124. This is not true.

25. Article IX(D) of the Plan[8] specifically states that each of the "Released Parties" (which is defined by the Plan to include Seery) is released and discharged by the Debtor and the Estate (including by the Claimant Trust) from any and all Causes of Action, including derivative claims ***except that*** the forgoing "does not release … any Causes of Action arising from the willful misconduct, criminal misconduct, actual fraud or gross negligence of such applicable Released Party." *See* Plan, Art. IX(D). Further, in the Confirmation Order, this Court ruled that the Plan does not purport to release any claim held by the Claimant Trust. *See* Confirmation Order[9] at ¶71.[10]

26. Claims brought derivatively on behalf of the Reorganized Debtor and the Claimant Trust were specifically retained by the Plan in keeping with applicable Fifth

[7] HMIT reserves all rights regarding the timing of the accrual of the causes of action, including whether the ultimate step in the fraudulent scheme occurred post-Effective Date -- with the payment of Seery's excess compensation -- a legal injury. *Middaugh v. InterBank*, 528 F. Supp. 3d 509, 546 (N.D. Tex. 2021) (a claim for fraud accrues "when a wrongful act causes some legal injury"); *ISN Software Corp. v. Richards, Layton & Finger, P.A.*, 226 A.3d 727, 733 (Del. 2020) ("[a] cause of action in tort accrues at the moment when 'an injury, although slight, is sustained in consequence of the wrongful act of another.").

[8] The *Fifth Amended Plan Of Reorganization Of Highland Capital Management, L.P. (As Modified)* [Doc. 1943-1] (the "Plan").

[9] Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief [Doc. 1943] (the "Confirmation Order").

[10] Furthermore, in the alternative, Section E of the Plan specifically preserves all causes of action not expressly settled or released, including all causes of action ". . .of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or be different from those the Debtor now believes to exist." Here, the principles requiring specificity in the identification of reserved claims do not apply for several reasons, *inter alia*, because Seery is part of the larger conspiracy. If Seery's willful misconduct is not released, then those who willfully aided and abetted his conduct is effectively also preserved.

Circuit law. *See In re SI Restructuring Inc.*, 714 F.3d 860, 864 (5th Cir. 2013) (quoting 11 U.S.C. § 1123(b)(3)(B)).[11] Therefore, the Plan does not affect HMIT's standing to bring derivative claims because these claims are grounded in willful misconduct and fraud. Furthermore, to the extent that claims against the Claims Purchasers accrued post-effective date, then the Claimant Trust owns those claims, and HMIT may pursue those claims derivatively. HMIT reserves its procedural rights to pursue such claims accordingly.

C. The Litigation Sub-Trust Assignment of Claims [Doc. 211] is Flawed.

27. The Joint Opposition argues that the so-called Litigation Sub-Trust Assignment precludes HMIT's current derivative claims on behalf of the Claimant Trust. Again, this is wrong.

28. The Litigation Sub-Trust was charged with the responsibility to pursue Estate Claims, but not other Causes of Action identified in Paragraph 19(a) of the Plan.

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[11] *See, Dynasty Oil & Gas, LLC v. Citizens Bank (In re United Operating, LLC)* and its progeny deal with the retention of ***pre-confirmation*** causes of action. 540 F.3d 351, 355 (5th Cir. 2008). Specifically, in *United Operating*, the Fifth Circuit explained:

> To facilitate this timely, comprehensive resolution of an estate, a debtor must put its creditors on notice of any claim it wishes to pursue after confirmation. Proper notice allows creditors to determine whether a proposed plan resolves matters satisfactorily before they vote to approve it—"absent 'specific and unequivocal' retention language in the plan, creditors lack sufficient information regarding their benefits and potential liabilities to cast an intelligent vote.

Id. at 354; But here, HMIT's claims are post-confirmation. The stated rationale for the specific claims reservation being tied to notice in the confirmation process has no applicability to post-confirmation claims.

This is also made clear under Section 2.2 of the Sub-Trust Agreement where the Litigation Sub-Trust was established for purposes of monetizing the Estate Claims. [Doc. 1811-4] In this context, it is clear that the Assignment Agreement dated October 8, 2021 was intended to transfer only those causes of action necessary for the Litigation Sub-Trust to pursue its defined responsibilities. Any further expansion of the assignment language would constitute an impermissible effort to modify the Plan.

29. The language of the Assignment Agreement recognizes the Plan's limitation by making clear that the assignment is only intended to transfer those causes of action "that will be included in the Litigation Trustee's complaint filed on or before October 15, 2021 are assigned to the Litigation Sub-Trust." This evinces the assignor's intent that all other causes of action were not assigned. Thus, the Claimant Trust still holds the claims which HMIT seeks to assert derivatively.

30. It also appears that the Litigation Sub-Trust may not have standing to pursue non-Estate claims. *See* Plan, Section IV(D).[12] The Plan incorporates the Final Term Sheet (Doc. 354) which defines "Estate Claims" as "any and all Estate Claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor and each of the Released Parties." Clearly, this does not include breaches of fiduciary duty or aiding and

[12] HMIT has alleged, alternatively, that it seeks to bring the Adversary Proceeding in the name of the Litigation Sub-Trust only if it is determined that the Claimant Trust does not own the claims but the Sub-Trust does. It has also alleged that demand on the Trustee of the Litigation Sub-Trust would be futile.

abetting breaches of such duties against Seery, as well as Muck and Jessup as members of the Oversight Board.

31. In its arguments concerning the Assignment Agreement, the Joint Opposition seeks to modify the Plan. The Fifth Circuit is clear that any modification of the "rights obligations and expectations" under a Plan of Reorganization that was not "specifically contemplated and negotiated by the Parties at confirmation" constitutes a modification of the Plan. *See In re U.S. Brass Corp.*, 301 F.3d 296, 308-309 (5th Cir. 2002); *cf. Highland Capital Mgmt. Fund Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.),* Civil Action No. 3:21-CV-1895-D, 2022 U.S. Dist. LEXIS 15648, at *5 (N.D. Tex. 2022).

II. The "Colorable" Standard

A. The plain language of the Plan's Gatekeeper provision states that the Court must determine whether a cause of action represents a colorable claim

32. The Fifth Circuit quoted *Richardson v. United States*, 468 U.S. 317 (1984), for a definition of a "colorable" claim as one with "***some possible validity***." *See In re Deepwater Horizon*, 732 F.3d 326, 340 (5th Cir. 2013) (quoting *Richardson*, 468 U.S. at 326 n. 6). The Fifth Circuit also made clear that whether a claim is colorable is based on ***allegations*** and not merits-based proof: "There is a distinction here between whether a claim is colorable and whether it is meritorious. A plaintiff's claim is colorable if he can ***allege*** standing and the elements necessary to state a claim on which relief can be

granted—**whether or not his claim is ultimately meritorious—whether he can *prove* his case**." *Id*. at 341 (emphasis in original, bold emphasis added).

33. Here, in an analysis under the "colorable" standard, the Court need not be satisfied there is an evidentiary basis on the merits of the claims to be asserted. *See Louisiana World Exposition v. Fed. Ins. Co*., 858 F.2d 233, 252-53 and n. 15 (5th Cir. 1988) (allegations were sufficient, and no evidentiary hearing was necessary, to determine that breach of fiduciary duty claim against bankruptcy estate's officers and directors for mismanagement of estate was colorable claim).[13] In *Louisiana World Exposition*, the Fifth Circuit explained: "[I]n light of our analysis, we find that the debtor-in-possession's refusal to pursue LWE's cause of action against its officers and directors for negligent management was indeed unjustified. The Committee outlined a colorable claim which, if pursued successfully, could have greatly increased the value of the estate." *Id*. Similarly here, where the proposed claims are brought pursuant to the Plan and this Court's exclusive jurisdiction, the more lenient colorability standard applies and an evidentiary hearing is neither warranted nor appropriate.

B. The *Barton* Doctrine does not support an evidentiary hearing.

34. The Respondents urge application of the Barton Doctrine. They complain that HMIT's stated authority -- that the colorable standard is lower than a FED. R. CIV. P.

[13] In *Louisiana World Exposition*, when stating that an evidentiary hearing was unnecessary, the court noted that there were no objections to the claim other than the debtor-in- possession's "grave" conflict of interest and his unjustified refusal to bring the claims. *Id*.

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

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APPELLEE RECORD

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

I INDEX

APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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12(b)(6) analysis -- cannot apply because these authorities do not arise in a "gatekeeper" context.[14] Joint Opposition, ¶97. Claim Purchasers Objection, ¶44. However, as the drafters of the Plan and the "gatekeeper" provisions, the Highland Parties could easily have incorporated a *Barton* doctrine standard, but they instead elected to use the "colorable" standard. This choice must be construed as having some consequence, particularly because the applied standard should be what the Plan says: *colorable*. *In re Phoenix Petroleum Co.*, 278 B.R. 385 (Bankr. E.D. Pa. 2001) (noting the general rule that ambiguities in plans are interpreted against the drafters).

35. HMIT's authorities directly address the "colorable" standard, while Respondents provide no persuasive argument that a standard higher than a Rule 12(b)(6) standard should apply in the context of the Gatekeeper order. *See, e.g., In re On-Site Fuel Serv., Inc.*, No. 18-04196-NPO, 2020 WL 3703004, at *12 (Bankr. S.D. Miss. May 8, 2020) (derivative standing for a creditor's committee); *Trippodo v. SP Plus Corp.*, No. 4:20-CV-04063, 2021 WL 2446204, at *3 (S.D. Tex. May 21, 2021), *report and recommendation adopted*, No. 4:20-CV-04063, 2021 WL 2446191 (S.D. Tex. June 15, 2021) (amending a complaint where the amendment would destroy diversity jurisdiction); *Dantzler v. United States Dep't of Just.*, No. CV 22-2211, 2022 WL 4820404, at *2 (E.D. La. Sept. 7, 2022), *report and recommendation adopted*, No. CV 22-2211, 2022 WL 4605508 (E.D. La. Sept. 30, 2022)

[14] The Highland Parties also assert that the Court must essentially consider HMIT a vexatious litigant. Such a finding would of course be procedurally improper and unsupported by the record before this Court which shows that HMIT has had extremely limited participation in the Bankruptcy Case.

(dismissal for lack of federal question jurisdiction); *In re Deepwater Horizon*, 732 F.3d 326, 342 (5th Cir. 2013) (inclusion of claims into a class); *Richardson v. United States*, 468 U.S. 317, , 104 S. Ct. 3081, 3086, 82 L. Ed. 2d 242 (1984)(appealability of a double jeopardy claim); *Becker v. Noe*, No. CV ELH-18-00931, 2019 WL 1415483, at *18 (D. Md. Mar. 27, 2019) (Reliance on the nationwide service of process provision in a RICO case).

36. It is clear that courts apply the "colorable" standard in the ***same*** manner in a variety of different factual and procedural contexts. Yet Respondents argue that the Court should ignore this abundant precedent. Respondents also ask the Court to disregard the choice to incorporate a "colorable" standard in the Gatekeeper provisions.

37. There is yet another flaw in Respondents' arguments. Even if the *Barton* doctrine applies, the *prima facie* standard used in *Barton*, like the "colorable" standard, is ***lower*** than a FED. R. CIV. P. 12(b)(6) standard. In *Provider Meds, LP*, Judge Houser analyzed the *Barton* doctrine and ultimately concluded that it did not apply to a suit before the appointing court. 514 B.R. 473, 476 (Bankr. N.D. Tex. 2014). Importantly in reaching this conclusion, Judge Houser explained that:

> **Federal Rule of Civil Procedure 12(b)(6)…provides a more stringent standard in evaluating whether a legitimate claim for relief has been stated than is applied when leave [under the Barton doctrine] is sought**. Specifically, when a party seeks leave to sue a trustee, that party must make a prima facie case against the trustee, showing that its claim is not without foundation. And, while the standard for granting leave is similar to the standard courts employ when evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), **the standard for granting leave to sue is more flexible than the standard for granting a motion to dismiss**.

Id. at 476-77. (Emphasis added) Therefore, contrary to the Respondents' analysis, a *Barton* doctrine analysis is not appropriate but even then, it is ***less*** stringent than FED. R. CIV. P. 12(b)(6).

38. The Respondents cite cases where the bankruptcy court considered evidence in the context of a *Barton* doctrine analysis as support for the idea that a higher standard than a FED. R. CIV. P. 12(b)(6) applies. But the case law is clear that -- under a FED. R. CIV. P. 12(b)(6) analysis -- courts may consider certain types of evidence: *i.e.* documents attached to the complaint and any documents that are central to the claim ***and*** referenced by the complaint." *Ironshore Europe DAC v. Schiff Hardin, L.L.P.*, 912 F.3d 759, 763 (5th Cir. 2019) (emphasis added). Further, courts can consider matters of public record as judicially noticed. *Cinel v. Connick*, 15 F.3d 1338, 1343 n.6 (5th Cir. 1994). And a court cannot weigh it at a Fed. R. Civ. P. 12(b)(6) hearing. *Ferguson v. Texas Farm Bureau Bus. Corp.*, No. 6:17-CV-00111, 2017 WL 7053927, at *5 (W.D. Tex. July 26, 2017), *report and recommendation adopted*, No. 6:17-CV-111-RP, 2018 WL 1392703 (W.D. Tex. Mar. 20, 2018) (weighing evidence at the 12(b)(6) stage is wholly improper under the 12(b)(6) framework). But none of these authorities suggest an evidentiary hearing is appropriate, much less an open-ended 3-ring evidentiary circus as Respondents urge.

39. A cursory look at the cases cited in the Joint Opposition confirms that Courts do ***not*** weigh evidence but rather conduct a Fed. R. Civ. P. 12(b)(6) type analysis.

- In *VistaCare*, the Third Circuit indicated that while a court can decide to a hold a hearing, there is no mention of the type of hearing the

court should conduct. *In re VistaCare Grp., LLC*, 678 F.3d 218, 232 n.12 (3d Cir. 2012).

- In *Foster v. Aurzada (In re Foster)*, 2023 WL 20872, at *1 (5th Cir. Jan. 3, 2023) the bankruptcy court considered filed pleadings, *i.e.*, matters of public record, and the bankruptcy court expressly stated that in considering the evidence it was giving "great latitude for what amounts to evidence" on the issue because the movant was a pro se litigant. *See In re Foster*, Case No. 12-43804-elm7 (Bankr. N.D. Tex.), Dkt. Nos. 544 and 539 (witness and exhibit lists); 547 (Transcript, p. 18:22-25).

- In *Grodksy*, again, the bankruptcy court expressly reviewed transcripts (*i.e.*, the record before the bankruptcy court)[15] and documents submitted with the proposed complaint, i.e., exactly what a court would do in a FED. R. CIV. P. 12(b)(6) analysis. No. 09-13383, 2019 WL 2006020, at *4 (Bankr. E.D. La. Apr. 11, 2019), *subsequently aff'd sub nom. Matter of Grodsky*, 799 F. App'x 271 (5th Cir. 2020).

Here, HMIT does not dispute that this Court can conduct a hearing, and that it can look at documents incorporated into the Complaint and the record in the Bankruptcy Case that is referred to in support the allegations in the Complaint. But what the Court cannot do is consider and weigh evidence outside the boundaries of a FED. R. CIV. P. 12(b)(6) analysis.

40. The Joint Opposition brief (at para. 95) misconstrues the cases suggesting that HMIT must meet a prima facia standard. *In re World Mktg. Chi*, LLC, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (holding that Barton doctrine only applies to a request to bring

[15] Of note, bankruptcy courts can and do consider the record in a bankruptcy case in a Barton doctrine analysis and the record can often be dispositive. If a trustee is acting pursuant to court orders (which are matters of public record), there can be no ultra vires act.

a suit outside of the bankruptcy court); *Leighton Hold. Ltd. v. Belofsky*, 2000 WL 1761020, at *1 (N.D. Ill. Nov. 30, 2000) (same). Additionally, the cases cited to state that *Barton* requires more than a Rule 12(b)(6) review are distinguishable. *In re Linton*, 136 F.3d 544, 545 (7th Cir. 1998) (discussing particular problem of bringing suit against trustee in a Chapter 7 while the bankruptcy was ongoing as a threat to the trustee); *In re beck Indus., Inc.*, 725 F.2d 880, 886 (2d Cir. 1984) (deciding whether a California court would have jurisdiction without leave of bankruptcy court and finding that "*Barton* has long been the subject of statutory exception").

41. When undertaking a *Barton* doctrine analysis (which is a ***more lenient*** standard than a FED. R. CIV. P. 12(b)(6)), there is ***no*** authority that courts should conduct a full evidentiary hearing. In a FED. R. CIV. P. 12(b)(6) context, considering matters that are outside of the Complaint or not matters of public record would convert a FED. R. CIV. P. 12(b)(6) motion to dismiss into a motion for summary judgement. FED. R. CIV. P. 12(d).[16] But a motion for summary judgment requires that parties have adequate opportunity for discovery, which of course has not occurred here. FED. R. CIV. P. 56(d).

42. Accordingly, an evidentiary hearing on the HMIT's Motion for Leave is wholly improper and it, and any associated discovery, would result in a waste of judicial

[16] Indeed, the Claims Purchasers aggressively opposed discovery in the related Rule 202 proceedings in Texas State Court.

time and resources, along with unnecessary and burdensome delay, inconvenience, and expense to HMIT (calculated to deny HMIT's due process rights).

C. Vexatious Litigant Pre-Filing Injunction Standard does not apply.

43. The Respondents next argue that -- rather than the colorable standard contained in the Gatekeeper provisions (or even the plausible claim *Barton* doctrine analysis) -- the Court should conduct a heighted analysis because the Confirmation Order states that the Gatekeeper is "consistent with" the notion of a pre-filing injunction to deter vexatious litigants, and the Fifth Circuit stated the Gatekeeper provisions screen and prevent bad faith litigation. Joint Opposition, ¶4.

44. The Joint Opposition cites two cases that involve the *same* pro se litigant with an extensive, documented history of an "abuse of the judicial process," who after notice and hearing was deemed a "vexatious litigant," and who then proceeded to violate the pre-filing injunction on numerous occasions. *See Silver v. Bemporad*, No. SA-19-CV-0284-XR, 2019 WL 1724047, at *1-4 (W.D. Tex. Apr. 18, 2019), *appeal dismissed*, No. 19-50339 (5th Cir. July 15, 2019) (finding filer to be a vexatious litigant); *Silver v. City of San Antonio*, No. SA-19-MC-1490-JKP, 2020 WL 3803922, at *6 (W.D. Tex. July 7, 2020); *Silver v. Perez*, No. SA-20-MC-0655-JKP, 2020 WL 3790489, at *2 (W.D. Tex. July 7, 2020). In such a case, the court did afford itself greater latitude than a FED. R. CIV. P. 12(b)(6) analysis finding that, based on the facts before it, "merely satisfying the minimal requirements to survive screening or a motion to dismiss may not always carry a sanctioned litigant's burden to

persuade the Court that it should permit a proposed action to be filed." *City of San Antonio*, 2020 WL 3803922 at *6. But the *Silver* courts do not purport to establish some standard for all pre-filing injunctions. Rather, the *Silver* courts make clear that the standard imposed is begot by its previous specific, extensive findings regarding this particular litigant's behavior. Importantly, citing the Fifth Circuit, the *Silver* court cautioned that an "injunction against future filings must be ***tailored*** to protect the courts and innocent parties, while preserving the legitimate rights of litigants." *Farguson v. MBank Houston, N.A.*, 808 F.2d 358, 360 (5th Cir. 1986).

45. Here, however, the Gatekeeper protocol was tailored by the Highland Parties to include the ***colorable*** standard as a predicate. And this is the standard ordered by the Court based upon the record before it, and this is the standard that was affirmed by the Fifth Circuit. Notably, given the breadth of the Gatekeeper protocol (applying to likely hundreds of parties including any entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case and any entity related thereto),[17] any higher standard would never been found to have been "tailored" to preserve legitimate rights of hundreds of parties under *Farguson*.

[17] "Enjoined Parties" (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero ("Dondero"), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

46. The time to advocate for a higher standard for a pre-filing injunction was at confirmation of the Plan—not years later, particularly where there is ***no finding*** of HMIT being a vexatious litigant. *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008) (noting that in modifying a pre-filing injunction, after appropriate notice and an opportunity for hearing, a court must consider the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits).

III. The Colorable Allegations and Factual Sufficiency of HMIT's Pleadings

A. The Financial Allegations

47. Applying the correct "colorable" standard which, at most, is consistent with Rule 12(b)(6) standards for plausibility, the Court should focus on the four corners of HMIT's proposed Adversary Complaint and not weigh extraneous evidence. When doing so, it is clear HMIT pleads sufficient factual allegations to raise more than a colorable claim.

48. Notwithstanding over 85 pages of collective briefing, Respondents ***do not deny*** that the Claims Purchasers failed to undertake due diligence (Complaint ¶40). Respondents ***also never deny*** that the Claims Purchasers invested $163 million, a very significant sum with low annualized projected returns within optimistic timeframes, in the absence of due diligence (Complaint ¶¶40, 49). This is particularly curious because the purchased claims related to a Debtor whose assets are contained in numerous portfolio companies, advised funds and whose fee revenue is dependent upon numerous

sources. This was and is not a typical "one business" bankruptcy where investors can review comparable investments to make an informed decision to buy claims. This alone provides compelling support for the colorable nature of the allegations that the Claims Purchasers used Material Non-Public Information ("MNPI") provided by Seery.[18] Otherwise, they cannot economically justify their significant financial investment and the attendant risks.

49. But the strength of HMIT's claims is even more robust. As the Complaint alleges, information made public by the Debtor at the time of the claims trades forecasted pessimistic returns: 71% for Class 8 Creditor Claims and 0% for Class 9 Creditor Claims (Complaint ¶¶38-43). Focusing on Class 8 Claims, Farallon purchased the HarbourVest Class 8 Claim ($45 million par value) for $27 million (Complaint ¶¶38-43). Based on the modeling publicly provided by the Debtors, the face value of this Claim must be discounted by at least 29% because of the payout projections (if not even more because of inherent risk). The Debtor's disclosures indicated, at the very best, a payout of only $31.9 million. Thus, a buyer relying on this publicly available information provided by the Debtor could not reasonably expect more than $4.9 million in return, best case, over

[18] Respondents argue that only the claim Sellers have a gripe. This is not so. The Court can take judicial notice that Claims Purchase Agreements frequently contain MNPI waivers or "Big Boy" letters, whereby the buyer and sellers acknowledge potential access to MNPI, but then waive or release rights, accordingly. The Claims Purchase Agreements have never been produced and the Claims Purchasers have openly resisted such discovery. This lack of openness and candor reinforces the colorable nature of HMIT's claims.

several years. This is a paltry payout over time that does not account for the inherent uncertainties and risks in any bankruptcy (Complaint ¶¶38-43).

50. Similarly, Farallon and Stonehill collectively invested $50 million to acquire UBS' Class 8 Claim with a par value of $65 million which, again, must be reduced due to the 71% payout projections (Complaint ¶¶38-43). In this instance, the best-case ROI is no more than $46 million. Thus, Farallon and Stonehill invested $50 million to acquire a Claim that was projected by the Debtor to be worth only $46 million – less than their investment. Of course, this begs the question -- who would do this? Both Farallon and Stonehill are fiduciaries to their investors (Complaint ¶ 3). As sophisticated investors, Farallon and Stonehill traditionally undertake extensive due diligence before committing to an investment. It is therefore mindboggling that this was not done. It also defies common sense that Farallon and Stonehill invested a huge sum ($50 million) to realize a loss.

51. The Joint Opposition also plays an arithmetic shell game when it argues a potential return of 30%. Joint Opposition ¶ 70. This is trickery because the Claims Purchasers would never have reasonably considered a payout for Class 9 Claims unless, of course, they had access to MNPI. It also makes no sense because Farallon does not deny HMIT's allegations that it was not interested in selling at even a higher premium – 40% above their purchase price (Complaint ¶43). Stated differently, the known

circumstantial evidence (as alleged in the Complaint) more than plausibly supports the notion that Farallon and Stonehill had information that was unavailable to others.

B. HMIT's Allegations Concerning MGM and MNPI

52. The draft Complaint includes allegations, both plausible and colorable, that Seery transferred MNPI to the Claims Purchasers.[19] At no point do any of the Claims Purchasers dispute they conducted no due diligence, nor do they deny they relied upon Seery. Instead, both the Joint Opposition and the Claim Purchasers devote significant efforts to allege that the information they received relating to MGM was already public. *See* Joint Opposition at 13-15; Claims Purchasers Objection at ¶50.[20] But, as shown below, this is simply not true. Also, they ignore the broader allegations in the Complaint that **MNPI other than MGM** also was involved (Complaint at ¶43-54). Stated differently, HMIT alleges that Seery gave MNPI to the Claim Purchasers ***in addition*** to MGM.

53. The Respondents' arguments concerning MGM are also anemic. The "news articles" upon which they rely are only rumor, and not direct information from an MGM board member, such as Mr. Dondero. The Wall Street Journal Article (December 2020), which is the basis for the other articles which Respondents rely, cites no sources, other than people who are allegedly "familiar" with the matter—with no other explanation or

[19] This includes, but is not limited to information concerning MGM. *See* proposed Adversary Complaint [Doc. 3760-1] at ¶¶ 3, 13, 14, 16,17, 43.
[20] *See* Joint Opposition Exhibits 25-30.

expansion on the (lack of) reliability of the source.[21] These same articles also make clear that a sale is in no way imminent and that MGM has been allegedly trying to solicit a sale for years:

- In 2018, MGM tried selling to Apple but the "preliminary talks fell apart"[22]
- "MGM has been shopping itself for years"[23]
- In 2019, MGM again tried selling to Apple but "those talks didn't appear to bear any fruit."[24]

Thus, on their face, these media articles are nothing more than interesting and unconfirmed rumors. On the other hand, the information Seery received from James Dondero, an MGM board member with access to verified information and communications that are not available to the public, is qualitatively different. In fact, the Dondero email discusses the sale in terms of "probability" within a specific defined time period. This is a far cry from the speculative indefinite nature of the media reports. This information is clearly MNPI and would provide a significant advantage to any investor.

> Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest.
>
> ***Probably*** first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.

[21] Joint Opposition, Ex. 27.
[22] *Id.*
[23] Joint Opposition, Ex. 34.
[24] Joint Opposition, Ex. 29.

54. Courts consistently hold that speculative media reports about "potential" transactions are materially distinct from information possessed by corporate insiders:

> "Insiders often have special access to information about a transaction. *Rumors or press reports about the transaction may be circulating but are difficult to evaluate because their source may be unknown. A trier of fact may find that information obtained from a particular insider, even if it mirrors rumors of press reports, is sufficiently more reliable, and, therefore is material and nonpublic, because the insider tip alters the mix by confirming the rumor or reports."*[25]

The Respondents' argument that a rumor transforms Respondents' use of MNPI concerning MGM into public information is simply not the law.

C. Allegations on "Information and Belief"

55. Respondents next try to argue that HMIT's pleadings concerning Seery's compensation are not colorable or factually insufficient. The opposite is true.

56. First, it is clear that Muck and Jessup purchased claims that placed them on the Oversight Board. In this capacity, it is clear that Muck and Jessup could control compensation awards relating to Seery. It is also clear that the Plan was modified to provide Seery with the opportunity to receive open-ended "performance" compensation. It is also undisputed that the Claims Purchasers have resisted discovery on their communications with Seery that would shed further light on the compensation awards.

[25] *United States v. Contorinis*, 672 F.3d 136, 144 (2d Cir. 2012) (emphasis added).

57. HMIT has undoubtedly asserted various of its *quid pro quo* allegations based upon information and belief. *See, e.g.*, Complaint at 47. This was necessary because of the discovery blockade erected by the Claims Purchasers. But "pleading on information and belief is accepted in the Fifth Circuit and throughout the federal courts." *See League of United Latin Am. Citizens v. Abbott*, 604 F. Supp 463, 496-97 (W.D. Tex. 2022) (citing *Johnson v. Johnson*, 385 F.3d 503, 531 n.19 (5th Cir. 2004); 5 Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. § 1224 (4th ed.), 2 Moore's Fed. Prac. § 8.04[4] (3d ed.).

58. Even in a motion to dismiss context, the argument that "information and belief" pleadings should be disregarded is properly rejected. *See id*. ("*Second*, Defendants say that the Court must disregard any factual allegations in MALC's complaint that are made on information and belief. Dkt. 80 at 12. In their telling, that form of pleading is impermissible unless MALC specifies the "basis" for its factual allegations. Dkt. 80 at 12 (quotation omitted). But information-and-belief pleading is accepted in the Fifth Circuit and throughout the federal courts. That's because the Court must accept all factual allegations as true at the motion-to-dismiss stage; the time to dispute their truth is at summary judgment. *See Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937. The Court therefore declines Defendants' invitation to disregard factual allegations pleaded on information and belief—so long as they are truly factual and not "legal conclusion[s] couched as ... factual allegation[s]." *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007))."). Moreover, "[i]f the

facts pleaded in a complaint are peculiarly within the opposing party's knowledge, as often with fraud allegations, they may be based on information and belief." *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333 (5th Cir. 2008). That is particularly true here.

59. Applying these established principles to determine the sufficiency of HMIT's Complaint, it is clear that HMIT's allegations concerning Respondents' quid pro quo agreements regarding compensation must be accepted as true at this stage. HMIT has not had access to the actual financial records detailing Seery's actual compensation. HMIT has not had access to email communications between Seery, Farallon, Stonehill, Muck, and Jessup concerning his compensation and agreements relating to his compensation. The Joint Opposition has produced documents that are highly redacted and otherwise not properly considered at this stage of the proceeding. The Claims Purchasers also strenuously objected to discovery of these matters in the Rule 202 state court proceedings. To now challenge HMIT's allegations concerning Seery's compensation is the epitome of unfairness and, if indulged, a denial of due process.

IV. Duties

60. The proposed Complaint focuses on post-Plan trades which resulted in unjustified compensation to Seery and the Claims Purchasers' ill-gotten gains. HMIT, and the Reorganized Debtor and Claimant Trust, seek disgorgement of those gains. Seery, as Trustee, owed fiduciary duties to act in the Debtor's Estate's and HMIT's best interest and to maximize the value of the Debtor's Estate. *In re Johnson*, 433 B.R. 626 (S.D. tex. 2010)

("The term 'best interest of the estate' is not defined in the Bankruptcy Code. The Court therefore looks to the general duties of the debtor in possession regarding his Chapter 11 estate. 'The debtor in possession performing the duties of the trustee is the representative of the estate and is saddled with the same fiduciary duty as a trustee to maximize the value of the estate available to pay creditors.' *Cheng v. K & S Diversified Investments (In re Cheng)*, 308 B.R. 448, 455 (9th Cir. BAP 2004), aff'd, 160 Fed.Appx. 644 (9th Cir.2005). '[A] debtor in possession holds its powers in trust for the benefit of creditors. The creditors have the right to require the debtor in possession to exercise those powers for their benefit.' *Yellowhouse Machinery Co. v. Mack (In re Hughes)*, 704 F.2d 820, 822 (5th Cir.1983), *quoting In re Kovacs*, 16 B.R. 203, 205 (Bankr.D.Conn.1981).").

61. There is no doubt Seery owed the Original Debtor's Estate, as well as equity (including HMIT), fiduciary duties, including the duty of loyalty and the duty to avoid conflicts of interest. *See In re Xtreme Power Inc.*, 563 B.R. 614, 632-33 (Bankr. W.D. Tex. 2016) (detailing fiduciary duties owed by corporate officers and directors under Delaware law); *Louisiana World*, 858 F.2d at 245-46 (detailing duties owed by debtors-in-possession).

62. Likewise, the Claims Purchasers owed a legal duty to not knowingly aid and abet breaches of these fiduciary duties. [26]

[26] *See RBC Capital Markets, LLC v. Jervis*, 129 A.3d 816, 861 (Del. 2015) (aider and abetter is liable if its participation in the breach of fiduciary duty is "knowing").

V. Remedies

63. Respondents self-servingly argue that no equitable remedy is available to remedy their breaches of fiduciary duty, and thus, they should be able to broker and purchase claims using MNPI without repercussions. That is not the law. The courts can fashion equitable remedies to deter and rectify this type of bad faith, willful misconduct.

64. The Fifth Circuit's decision in *Mobile Steel* was premised on the notion that disallowance was not necessary because creditors "are fully protected by subordination" and "[i]f the misconduct directed against the bankrupt is so extreme that disallowance might appear to be warranted, then *surely* the claim is either invalid or the bankrupt possesses a clear defense against it." *Mobile Steel*, 563 F.2d at 699 n. 10 (emphasis added). The *Mobile Steel* factors are not present here,[27] which indicates that the Fifth Circuit would allow equitable disgorgement and declaratory judgment relief to assure creditors are "fully protected." *See id*. The Joint Opposition at paragraph 152 states that a declaratory judgment is only appropriate when is supported by an underlying cause of action. The brief cites *Green v. Wells Fargo,* a case which relies on and misinterprets *Collins Cnty. Texas v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 169-71 (5th Cir. 1990) (requiring a party to have a cognizable interest in an actual controversy."

[27] Equitable subordination cannot effectively address the current facts where the Original Debtor's CEO and CRO conspired directly with close business allies who acquired the largest unsecured claims to the detriment of other innocent creditors and *former equity*. The reasoning in published cases from other circuits supports this conclusion. *See Adelphia*, 365 B.R. at 71-73; *Citicorp Venture Capital, Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 991 n. 7 (3d Cir. 1998).

65. The Respondents engaged in the alleged conduct which damaged the Reorganized Debtor and the Claimant Trust, including improper agreements to compensate Seery under the terms of the Claimant Trust Agreement. Under these circumstances, disgorgement is an available remedy for breach of fiduciary duty both under Texas Law, *see Kobach Tool Co. v. Corbett-Wallace Corporation*, 160 S.W. 2d 509 (Tex. 1942), and under Delaware law, *see Metro Storage International, LLC v. Herron*, 275 A.3d 810 (Del. Ch. 2022). Disgorgement is also an appropriate remedy for unjust enrichment under Texas law, *Hunter v. Shell Oil Co*., 198 F.2d 485 (5th Cir. 1952). Disgorgement is also an appropriate remedy for aiding and abetting.[28]

66. Imposition of a constructive trust also is proper for addressing unjust enrichment under both Delaware and Texas law, *see Teacher's Retirement System of Louisiana v. Aidi off*, 900 A.2d 654 (Del. Ch. 2006) and *Shin-Chi-Su v. Vantage Drilling Company*, 474 S.W. 3d 384 (Tex. App. – 14th Dist. 2015, pet. denied). The elements of unjust enrichment are: (1) the defendant must have gained a benefit (2) at the expense of plaintiff, (3) and retention of that benefit must be shown to be unjust. *See* Restatement (Third) of Restitution and Unjust Enrichment §321, cut. e (2011).

[28] Aiding and abetting is a derivative tort that is reliant upon the underlying tort. As a result, the damages for aiding and abetting a breach of fiduciary duty are the same as those available for breach of fiduciary duty. *See US Bank Assoc. v. Verizon Commun., Inc.*, 817 F.Supp. 934, 944 (N.D. Tex. 2011) (applying Delaware law).

VI. Declaratory Relief

67. The Joint Opposition devotes only a single conclusory paragraph to HMIT's requested declaratory relief (Joint Opposition ¶ 152). The Claims Purchasers Objection provides none. The singular argument presented by the Joint Opposition – that there is no case or controversy – is also weak. This is particularly so after considering over 85 pages of combined briefing, 44 exhibits, and over 1000 pages of heavily-redacted purported "evidence" dumped into the Court's record.

68. Declaratory relief is appropriate here to address HMIT's rights and entitlements under the Claimant Trust Agreement. These rights and entitlements include whether (i) HMIT has standing to bring an action against a trustee even if its interest is considered "contingent;" (ii) HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill; (iii) HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments; (iv) Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of fraudulent conduct, bad faith, willful misconduct, and unclean hands; (v) Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful

misconduct, and unclean hands; and (vi) all of the Respondents are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct, and unclean hands.

VII. Claims Trading

69. The Respondents' discussion of claims trading – and the seller's right to object – avoids HMIT's allegations in the Complaint. The Respondents misapply the principle that the claims trades are a private transaction outside of the Court's purview (Claims Purchasers Objection ¶10. Respondents are wrong. The trades at issue were part of a pact that caused legal injury to the Reorganized Debtor, the Claimant Trust and HMIT.

70. Here, the claims trading was highly irregular. HMIT alleges that the sophisticated Claims Purchasers did none of the typical, expected due diligence when purchasing multi-million-dollar claims; they purchased claims with low or non-existent ROI; they purchased the UBS claims when the public information projected a loss; and their claims trades were substantially different from a private transaction. It involved the Debtor's CEO and MNPI and promises of enhanced compensation as the *quid pro quo*.

71. The information regarding the true value of the transferred claims also was not discovered until long after confirmation of the Plan and the limited opportunity to object to the trades. Discovery of relevant information has been withheld. The Respondents should not be allowed to refuse discovery of the Claims purchase

agreements and then rely on them as a basis for opposing the proposed Adversary Complaint. The agreements may very well provide important information as to why the claims sellers did not object to the claims—including potential mutual waivers and "Big Boy" agreements with releases. But again, these agreements have been withheld.

72. The Claims Purchasers mistakenly argue that Claims Purchasers were not non-statutory insiders because they did not have a sufficiently close relationship to the debtor. (Claims Purchasers ¶ 36). However, a person can be a non-statutory insider based on his relationship with a statutory insider of the debtor, regardless of his relationship with the debtor itself.[29] The facts as alleged by HMIT are sufficient to establish a "sufficiently close relationship" with a statutory insider of the debtor.[30]

VIII. Texas State Securities Board

73. The Joint Opposition improperly states that the Texas Securities Board ("TSSB") never "opened an investigation" and that the TSSB's determination on regulatory action is somehow indicative of the potential for a civil claim. In support of the contention, the Joint Opposition includes only a select portion of the communication it received from the TSSB instead of the entire communication. The reasons are obvious

[29] *In re Acis Capital Mgmt., L.P.*, 604 B.R. 484, 535 (N.D. Tex. 2019), *aff'd sub nom. Matter of Acis Capital Mgmt., L.P.*, 850 F. App'x 302 (5th Cir. 2021) (applying standard that relationship with statutory insider is sufficient); *In re A. Tarricone, Inc.*, 286 B.R. 256, 262 (Bankr. S.D.N.Y. 2002).
[30] *See In re Smith*, 415 B.R. 222, 233 (Bankr. N.D. Tex. 2009).

– the TSSB regards its efforts as an "investigation" under the Texas Securities Act and the TSSB specifically disclaims the relevance of its decision as to civil claims.

74. Further, the closure of the "complaint" is not a determination of the validity of any of the allegations in the proposed Adversary Complaint. The TSSB as a regulatory body is responsible for investigating and enforcing violations of the Texas Securities Act and pursuing regulatory action where it determines it to be appropriate. That determination is distinct from the merits of HMIT's civil claims.

75. To the extent that the Joint Opposition regards a TSSB "investigation" as being more significant than a "review," this Court should not be misled by the Joint Opposition's argument that the TSSB only conducted a "review."

76. The Joint Opposition does not present any support for its claim that the TSSB only conducted a "review." Instead, the Joint Opposition seek to argue that the TSSB's use of the verb "reviewed" somehow morphs the TSSB's investigation into the noun "review." The truth lies in the communications and requests issued by the TSSB, which HMIT believes confirm the fact that the TSSB conducted an "investigation" because there were sufficient indicia of wrongdoing to warrant one.

<u>Reservation of Rights</u>

77. The Joint Opposition and the Claims Purchaser's Objection (collectively the "Responses") present a scatter-gun, chaotic approach to the law and the issues before the Court. To the extent HMIT has not addressed every matter raised by and each case cited

by the Respondents in their Responses, HMIT specifically reserves all and does not waive any of its rights to present additional arguments and appropriate authorities to further demonstrate the flaws and errors in the Respondents' arguments and Responses.

WHEREFORE PREMISES CONSIDERED, Hunter Mountain Investment Trust respectfully requests this Court grant HMIT leave to file its proposed Adversary Complaint, and also seeks such other and further relief to which HMIT may be justly entitled.

Dated: May 18, 2023.

Respectfully Submitted,

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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I certify that on the 18th day of May 2023, a true and correct copy of the foregoing motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 22, 2023

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	

ORDER PERTAINING TO THE HEARING ON HUNTER MOUNTAIN INVESTMENT TRUST'S MOTION FOR LEAVE TO FILE ADVERSARY PROCEEDING

[DE ## 3699 & 3760]

Based on the court's review of all of the parties' pleadings and briefing relating to the above-referenced motion and supplemental motion ("Motion for Leave"), the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave—and, in particular, pertaining to the court's required inquiry into whether "colorable" claims may exist, as described in the Motion for Leave. Therefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing if they so choose. This may include

examining any witness for whom a Declaration or Affidavit has already been filed. The parties will be allowed no more than three hours of presentation time each (allocated three hours to the movant and three hours to the aggregate respondents). This allocated presentation time may be spent in whatever manner the parties believe will be useful to the court (argument/evidence).

 # # # END OF ORDER # # #

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR EXPEDITED DISCOVERY OR, ALTERNATIVELY, FOR CONTINUACE OF JUNE 8, 2023 HEARING

Hunter Mountain Investment Trust ("HMIT"), as Movant, files this Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing ("Motion") concerning HMIT's Motion for Leave to File Adversary Complaint

(Doc. 3699) and related Supplement (Doc. 3760) (Docs. 3699 and 3760 collectively "Motion for Leave"), and would respectfully show:

A. Summary of Motion

1. This Motion seeks discovery on an expedited basis to prepare for the evidentiary hearing on the Motion for Leave currently scheduled for June 8, 2023.

2. HMIT submits that the colorable nature of the claims asserted in HMIT's proposed adversary proceeding is evident on the face of HMIT's proposed Complaint. HMIT previously objected and continues to object that any evidentiary hearing relating to the Motion for Leave is inappropriate. *See* HMIT'S Reply Brief in Support of its Motion for Leave (Doc. 3785) at paras. 12-17.

3. Nevertheless, on May 22, 2023, the Court ruled that it intends to conduct an evidentiary hearing on the Motion for Leave. As a result, HMIT faces the untenable prospect of attempting to prepare for this evidentiary hearing, and attempting to respond to voluminous evidence that one or more of the Respondents intends to offer at the hearing, without a reasonable opportunity to obtain meaningful and timely discovery. HMIT therefore files this Motion seeking to protect its due process rights, of which HMIT

will be deprived unless HMIT is granted expedited discovery as requested in this Motion.[1]

B. Summary of Procedural Background

4. On April 24, 2023, this Court conducted a status conference regarding a briefing and hearing schedule for HMIT's Motion for Leave and whether the hearing on HMIT's Motion for Leave would be evidentiary. *See* Order Fixing Briefing Schedule (Doc. 3781).

5. At the April 24, 2023, status conference, HMIT also objected that an evidentiary hearing on HMIT's Motion for Leave was improper. HMIT also provided notice at that time that it intended to withdraw all affidavits and other materials attached to its Motion for Leave.[2] However, in the event this Court elected to hold an evidentiary hearing on its Motion for Leave, HMIT reserved all rights to conduct merits-based discovery relating to the Motion for Leave before the hearing – without waiving its substantive or procedural rights, and without conceding the propriety of an evidentiary hearing (which HMIT continues to deny).

[1]This Motion and HMIT's related discovery requests are related to HMIT's Motion for Leave and the Court's May 22, 2023, order (Doc. 3787) ("Order") ruling that the June 8 hearing on HMIT's Motion for Leave will be evidentiary. HMIT reserves all and does not waive any of its substantive or procedural rights and objections in connection with its Motion for Leave, this Motion, and the discovery HMIT seeks to obtain. Further, and not by way of limitation, HMIT's discovery requests are subject to and without waiver of HMIT's objections that the hearing on HMIT's Motion is not properly an evidentiary hearing.

[2] This withdrawal was subject to HMIT's reservation of rights that, in the event the Court concludes it will conduct an evidentiary hearing on the Motion for Leave, HMIT reserved the right to offer the same at any such hearing.

6. On May 11, 2023, the Claim Purchasers filed their Objection to HMIT's Motion for Leave; (Doc. 3783) and Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr. filed their Joint Opposition to HMIT's Motion for Leave (Doc. 3780) with the Declaration of John A. Morris and the exhibits thereto (Doc. 3784) ("Morris Declaration") (Objection, Joint Opposition, and Declaration collectively filed by the "Respondents").

7. On May 22, 2023, the Court entered its Order granting Respondents' request for an evidentiary hearing. Therefore, subject to and without waiving its objections, HMIT requests immediate leave to obtain all of its requested discovery on or before the specific dates identified in each deposition notice (with duces tecum), failing which the hearing on HMIT's Motion for Leave should be continued until HMIT has obtained such discovery. The requested discovery is generally described in this Motion, but is set forth with particularity in the Deposition Notices with Duces Tecum attached as Exhibits A-E.

8. In summary, HMIT seeks expedited depositions of corporate representatives of Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup") and also seeks the deposition of James A. Seery, Jr. ("Seery"). Without limitation, the following topics and documents are generally addressed in the requested discovery:

- The factual background related to the proposed Adversary Complaint, including the facts relevant to the objections to the Motion for Leave filed by the Respondents, including but not limited to HMIT's standing to bring the claims;

- Communications between Respondents related to the claims made the basis of the proposed Adversary Complaint;

- Any due diligence undertaken by the Claims Purchases related to the Claims purchased and the value of the Debtor's Estate;

- Information regarding Seery's compensation and communications with the Oversight Board;

- Communications or information related to the Respondents' knowledge of the MGM sale and related emails and communications with James Dondero ("Dondero");

- Relationship between Seery and Farallon, Stonehill, or any of the Claims Purchasers or Sellers;

- Communications between the Claims Sellers and the Claims Purchasers, including, but not limited to, the Claims purchase agreements;

- Communications with Dondero;

- Litigation hold notices and document retention protocols.

B. Argument

9. The Respondents should not be allowed to play fast and loose with the rules by using purported evidence as a sword while seeking to shield documents from discovery. Consideration of John Morris' Declaration, which is attached to the Joint

Opposition and the related Exhibits (Nos. 1 – 44) is not only inappropriate, but to do so without allowing discovery denies HMIT due process.[3]

10. The Morris Declaration was filed on May 11, 2023, making it impossible for HMIT to conduct discovery on any basis other than on an expedited basis. Accordingly, HMIT requests an expedited discovery schedule for all requested depositions and document productions with a completion date on the deadlines identified in each discovery device. Alternatively, HMIT requests a continuance of the June 8, 2023, hearing date so it can timely conduct all of the requested discovery in advance of any hearing.

Reservation of Rights

11. HMIT reserves its substantive and procedural rights and objections concerning any discovery requests (document requests and interrogatories) propounded to HMIT as well as to the date, time and scope of any deposition notices relating to HMIT. HMIT also reserves its right to supplement this Motion or otherwise seek to compel production of specific documents to which objections have been or may be asserted.

WHEREFORE PREMISES CONSIDERED, Hunter Mountain Investment Trust respectfully requests this Court grant its Emergency Motion for Expedited Discovery or,

[3] HMIT filed objections as part of its Reply Brief in Support of its Motion for Leave (Doc. 3785) at paras. 12-17.

Alternatively, for a Continuance of the June 8, 2023, Hearing on HMIT's Motion for Leave to File Adversary Complaint, and seeks further relief to which HMIT may be justly entitled.

Dated: May 24, 2023.

Respectfully Submitted,

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CERTIFICATE OF CONFERENCE

On May 24, 2023, counsel for HMIT and counsel for all Respondents conferred during a conference call regarding the substance of this Motion. Counsel for Farallon Capital Management, L.L.C., Stonehill Capital Management LLC, Jessup Holdings LLC,

and Muck Holdings, LLC, are opposed to any discovery related to their clients. Counsel for James P. Seery, Jr., generally agrees to participate in expedited discovery, however, there may be disagreements concerning specific document production requests. Counsel for Highland Capital Management, L.P. and Highland Claimant Trust is generally not opposed to conducting expedited discovery; however, it is opposed to producing any currently redacted documents except by in-camera tender to the Court. Counsel for all Respondents are opposed to postponing the hearing currently set for June 8, 2023.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

CERTIFICATE OF SERVICE

I certify that on the 24th day of May 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

Exhibit A

Sawnie A. McEntire
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1700 Pacific Avenue, Suite 4400
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Houston, Texas 77056
Telephone: (713) 960-7315
Facsimile: (713) 960-7347
Attorneys for Petitioner Hunter Mountain Investment Trust

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S NOTICE OF ORAL AND VIDEOTAPED DEPOSITION OF JAMES P. SEERY, JR.

To: James P. Seery, Jr., by and through his counsel of record, Mark T. Stancil and Joshua S. Levy, WILLKIE FARR & GALLAGHER LLP, 1875 K Street, N.W., Washington, D.C. 20006; and Omar J. Alaniz, REED SMITH LLP, 2850 N. Harwood St., Ste. 1500, Dallas, Texas 75201

Pursuant to the Federal Rules of Civil Procedure, as adopted by the Federal Rules of Bankruptcy Procedure, Hunter Mountain Investment Trust ("HMIT") will take the oral and videotaped deposition of James P. Seery, Jr. ("Seery"). This deposition and document request relates to HMIT's Motion for Leave to File Adversary Complaint (Dkt. 3699) and related Supplement (Dkt. 3760) ("Motion for Leave").

The deposition will take place at the offices of Parsons McEntire McCleary, PLLC, 1700 Pacific Ave., Suite 4400, Dallas, TX 75201 (or at another mutually agreeable location) beginning at **9:00 a.m.** on **Monday, June 5, 2023** and continuing day after day until completed.

Please take further notice that Seery is requested to produce the documents described in Exhibit "A", attached hereto. The documents to be produced as described in Exhibit "A" shall be produced electronically to counsel for HMIT, twenty-four (24) hours prior to the deposition.

The deposition shall be conducted before a certified court reporter or other individual authorized by law to administer oaths and take depositions. The deposition will be videotaped.

Dated: May 23, 2023

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: */s/Sawnie A. McEntire*
Sawnie A. McEntire
State Bar No. 13590100

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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of May, 2023, a true and correct copy of the foregoing instrument was served on all known counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

EXHIBIT "A"

TO NOTICE OF DEPOSITION OF JAMES P. SEERY, JR.

For purposes of the attached, the following rules and definitions shall apply.

RULES OF CONSTRUCTION

1. The terms "all" and "each" shall be construed as all and each.

2. The terms "all" and "any" shall be construed as all and any.

3. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

4. The use of the singular form of any word includes the plural and vice versa.

DEFINITIONS

1. "You," "Your," and/or "Seery" means James P. Seery, Jr. and includes all of his partners, directors, agents, servants, employees, and any other persons consulting with, advising, acting or purporting to act on behalf of him, including any attorney, financial advisor, or other representative.

2. "Stonehill" means Stonehill Capital Management LLC, including its partners, directors, agents, servants, employees, and any other persons consulting with, advising, acting or purporting to act on behalf of Stonehill, including any attorney, financial advisor, or other representative.

3. "Farallon" means Farallon Capital Management, L.L.C., including its partners, directors, agents, servants, employees, and any other persons consulting with, advising, acting or purporting to act on behalf of Farallon, including any attorney, financial advisor, or other representative.

4. "Acis" refers to Acis Capital Management, L.P. and Acis Capital Management GP LLC, collectively.

5. "Grosvenor" refers to Grosvenor Capital Management, L.P.

6. "HarbourVest" refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., collectively.

7. "HCM" refers to debtor Highland Capital Management, L.P. and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Seery, and the Reorganized Debtor. These terms also include any owners, partners, shareholders, agents, employees, representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which HCM is a general partner or owns an entities' general partner, or anyone else acting on HCM's behalf, now or at any time relevant to the response.

8. "Jessup" refers to Jessup Holdings LLC.

9. "MGM" refers to Metro-Goldwyn-Mayer Studios, Inc.

10. "Muck" shall refer to Muck Holdings, LLC.

11. "NAV" means net asset value.

12. "Oversight Board" refers to the Claimant Trust Oversight Committee (a/k/a the Oversight Board of the Highland Claimant Trust) as identified in Bankruptcy Case Dkt. No. 2801.

13. "Claimant Trust" includes the Highland Claimant Trust as identified in Bankruptcy Case Dkt. 2801 and the Plan.

14. "UCC" includes all official members of the UCC and for purposes of this Motion for Leave, Sidley Austin LLP.
15. "ROI" means return on investment.

16. "Respondents" means Seery, Muck, Jessup, Farallon and Stonehill.

17. "Person" is defined as any natural person or any business, legal, or governmental entity or association.

18. "Plan" refers to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and supplemented.

19. "Redeemer" means the Redeemer Committee of the Highland Crusader Funds.

20. "Settling Parties" refers to Redeemer, Acis, HarbourVest, and UBS, collectively.

21. "Stonehill" refers to Stonehill Capital Management, LLC.

22. "Strand" refers to Strand Advisors, Inc.

23. "UBS" refers to UBS Securities LLC and UBS AG London Branch, collectively.

24. "Claims Purchasers" includes Farallon, Stonehill, Muck and Jessup.

25. "Claims Purchases" includes the Claims purchased by Farallon and Stonehill through Muck and Jessup as described in the Proposed Adversary Complaint.

26. "Claims" shall mean the claims against Highland's Estate transferred to/acquired by Muck and/or Jessup as evidenced by Bankruptcy Case Dkt. Nos. 2215, 2261, 2262, 2263, 2697, 2698.

27. "Proposed Defendants" refers to, collectively, Seery, Muck, Jessup, Farallon, and Stonehill.

28. "Proposed Plaintiffs" refers to, collectively, HMIT in its individual capacity and in a derivative capacity on behalf of the Reorganized Debtor, Highland Capital Management, L.P., the Highland Claimant Trust and the Litigation Sub-Trust.

29. "Dondero" means James Dondero.

30. "HMIT" shall mean Hunter Mountain Investment Trust including its partners, directors, agents, servants, employees, and any other persons consulting with, advising, acting or purporting to act on behalf of HMIT, including any attorney, financial advisor, or other representative.

31. "Highland Bankruptcy" or "Bankruptcy Case" means the above-captioned matter styled: *In re Highland Capital Management, L.P.*, Cause No. 19-34054 in the United States Bankruptcy Court of the Northern District of Texas.

32. "Proposed Adversary Complaint" is the proposed adversary complaint which is Exhibit 1-A to HMIT's Supplement to Emergency Motion for Leave to File Verified Adversary Complaint (Dkt. 3760).

33. "Estate" means HCM's bankruptcy estate.

34. "Effective Date" of the Plan means August 11, 2021, which is the Effective Date of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., and pursuant to the Plan and the Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., Docket No. 2700, in bankruptcy proceedings of Highland Capital Management, L.P. in the Bankruptcy Court for the Norther District of Texas, Dallas Division (Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

35. "Communications" means every form of interchange, exchange or transmission of information, thought or opinion, and shall include, without limitation, all verbal Communications (whether transmitted face to face or by media such as intercoms, telephones, electronic mail, television or radio), all written or graphic Communications of any kind, and all statements, discussions, conversations, speeches, meetings, remarks, questions, answers, panel discussions and symposia.

36. "Identify or identity" when used in reference to a natural person means his or her full legal name, present or last known address, employer, and present or last known job title or position. When used in reference to a corporation or other legal entity, the term "identify or identity" means to give its name, and the address of its principal place of business. When used in reference to a document, "identify" means the name and date of the document and the identity of the person who prepared it and who signed it. When used for a communication, "identify" means to give the date, time, method of communication, persons involved, and substance of the communication. When used for deposition or other sworn testimony, "identify" means to give the witness's name, the date of the testimony and the style of the case. When used for any other purpose, the common dictionary meaning of "identify or identity" applies.

37. The terms "pertaining to" or "relating to" means concerning, including, evidencing, mentioning, or referring, directly or indirectly, to the specified subject matter or any aspect or portion thereof.

38. The term "information" as used herein should be construed in the broad sense. It includes reference to both facts and applicable principles. This word should not be construed to be limited by any method of acquisition or compilation and, therefore, includes oral information as well as documents.

39. The words "relate", "relating", "refer", "referring" refer to and shall include documents concerning, containing, showing, relating, mentioning, referring or pertaining in any way, directly or indirectly to, or in legal, logical or factual way connected with, a discovery request, and includes Documents underlying, supporting, nor or previously attached or appended to, or used in the preparation of any document called for by such request.

40. The term "document" shall mean "document" as defined in Rule 34(a) of the Federal Rules of Civil Procedure and includes any medium upon which data, intelligence or information can be ascertained that is within the possession, custody, or control of a person or entity or of its agents, employees, representatives (including, without limitation, attorneys, consultants, and accountants), or other person acting or purporting to act for or on behalf of or in concert with that person or entity, including, but not limited to contracts, agreements, communications, correspondence, letters, telegrams, memoranda, records, reports, books, summaries or records of telephone conversations, summary of records of personal conversations or interview, diaries, forecasts, schedules, statistical statements, work papers, graphs, charts, accounts, analytical records, minutes or records of meetings or conferences, consultants' reports, appraisals, records, reports of summaries of negotiations, brochures, notes, marginal notations, bills, invoices, checks, drafts, photographs, lists, journals, advertising magnet tapes, computer tapes, disks and cards, printouts and all other written, printed, stenographic, or sound reproductions, however produced or reproduced, and all drafts and copies of all of the foregoing. Electronically Stored Information or ESI. The terms *"Electronically Stored Information" or "ESI" shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) respect to all such Documents/ESI.*

41. "Drafts" means any earlier, preliminary, preparatory, or tentative version of all or part of a document, whether or not the draft was superseded by a later draft and whether or not the terms of the draft are the same as or different from the terms of the final documents. The term "copies" means each and every copy of any documents that is not identify in every respect with the document being produced,

including photocopies of the original or final document on which any notations or handwritten notes have been added, or where the original is not in your possession, custody or control.

42. "Material" is used in its broadest sense and means any tangible thing.

DOCUMENT REQUESTS

1. Any and all documents created by, prepared for, or received by Seery concerning any of the following topics:

a. The purchase of the Claims by Muck and/or Farallon or Stonehill and/or Jessup;

b. Any purchase agreement relating to the acquisition of the Claims, including any draft agreements, final agreements, letters of intent, and term sheets;

c. Negotiations regarding the purchase of the Claims;

d. Valuations of the Claims or the assets underlying the Claims;

e. Promises and representations made in connection with the purchase of the Claims;

f. Any documents, including, but not limited to, any investment memoranda considered or prepared as part of any due diligence undertaken or considered by any of the Claims Purchasers prior to acquiring the Claims;

g. Consideration for the transfer of the Claims;

h. Value of HCM's Estate;

i. Projected future value of HCM's Estate;

j. Past distributions and projected distributions from the Highland Claimant Trust;

k. Compensation earned by or paid to Seery in connection with or relating to his role as Trustee of the Highland Claimant Trust;

l. Compensation earned by or paid to Seery for his roles as CEO, Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and

m. Any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.

2. Any and all communications between Seery, on the one hand, and any of the following individuals or entities: (i) Muck, (ii) the UCC, (iii) the Settling Parties, (iv) Stonehill, (v) Farallon, (vi) Grosvenor, (vii) the Oversight Board, (viii) Dondero, (ix) Jessup, (x) any fund affiliated with or managed by Muck, (xi) any fund affiliated with or managed by Jessup, (xii) any fund affiliated with or managed by Farallon, and (xiii) any fund affiliated with or managed by Stonehill, concerning any of the following topics:

a. Purchase or sale of the Claims;

b. Negotiation of any agreement regarding the purchase or sale of the Claims;

c. Valuation of the Claims or the assets underlying the Claims;

d. Promises and representations made in connection with the purchase, sale and/or transfer of the Claims;

e. Any due diligence undertaken by Farallon or Muck prior to acquiring the Claims;

f. Any due diligence undertaken by Stonehill or Jessup prior to acquiring the Claims;

g. Consideration for the purchase of the Claims;

h. Value of HCM's Estate;

i. Projected future value of HCM's Estate;

j. Past distributions and projected distributions from HCM's Estate;

k. Compensation earned by or paid to Seery in connection with or relating to the Claims;

l. Compensation earned by or paid to Seery for his roles as CEO and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and

m. Future compensation to be paid to Seery as Trustee of the Highland

Claimant Trust.

n. Decisions made by the Oversight Board.

3. All correspondence and/or other documents by or between Seery and any investors in any fund regarding the Claims and/or the acquisition or transfer of the Claims.

4. Any and all documents reflecting the sources of funding used to acquire any of the Claims.

5. Organizational and formation documents relating to Muck and/or Jessup including, but not limited to, their certificate of formation, company agreement, bylaws, and the identification of all members and managing members.

6. Company resolutions prepared by or on behalf of Muck or Jessup approving the acquisition of any of the Claims.

7. Any and all documents reflecting any internal or external audits regarding Muck's or Jessup's NAV.

8. Agreements between Farallon and Muck or Stonehill and Jessup regarding management, advisory, or other services provided to Muck by Farallon or Stonehill or Jessup.

9. Any documents reflecting any communications with James Dondero.

10. Annual fund audits relating to Muck or Jessup.

11. Muck's or Jessup's NAV Statements.

12. Documents reflecting the fees or other compensation earned by Muck or Jessup in connection with the investment in, acquisition of, transfer of, and/or management of any of the Claims.

13. 12/6/21 Memorandum Agreement.

14. 5/9/23 Letter from the Texas State Securities Board to Highland.

15. Minutes of Meetings of the Claimant Trust Oversight Board.

16. All texts/communications with any member of the Oversight Board regarding your compensation and distributions.

17. All text messages or other communications with any of the Claims Purchasers.

18. Any documents reflecting any offer to purchase any of the Claims (and any portion thereof) from either Muck and/or Jessup and/or efforts to market any interests held by either Muck and/or Jessup.

19. Any document retention policy or protocol or Litigation Hold Requests.

20. Unredacted copies of all exhibits to the Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to HMIT's Motion for leave to File Verified Adversary Proceeding (Dkt. 3784).

Exhibit B

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Facsimile: (713) 960-7347
Attorneys for Petitioner Hunter Mountain Investment Trust

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S NOTICE OF ORAL AND VIDEOTAPED RULE 30(b)(6) DEPOSITION OF FARALLON CAPITAL MANAGEMENT, L.L.C.'S CORPORATE REPRESENTATIVE

To: Farallon Capital Management, L.L.C., by and through its counsel of record, Brent R. McIlwain, David C. Shulte, and Christopher Bailey, HOLLAND & KNIGHT LLP, 1722 Routh Street, Suite 1500, Dallas, Texas 75201.

Pursuant to Federal Rule of Civil Procedure 30(b)(6), as adopted by the Federal Rules of Bankruptcy Procedure, Hunter Mountain Investment Trust ("HMIT") will take the oral and videotaped deposition of a corporate representative or representatives of Farallon Capital Management, L.L.C. ("Farallon") or other consenting person designated by Farallon, to testify concerning the matters specified in Exhibit "A". This deposition and document request relates to HMIT's Motion for Leave to File Adversary Complaint (Dkt. 3699) and related Supplement (Dkt. 3760) ("Motion for Leave").

The deposition will take place at the offices of Parsons McEntire McCleary, PLLC, 1700 Pacific Ave., Suite 4400, Dallas, TX 75201 (or at another mutually agreeable location) beginning at **9:00 a.m.** on **Thursday, June 1, 2023** and continuing day after day until completed. Farallon is instructed to designate a person or persons authorized to testify on its behalf concerning the issues specified in Exhibit "A", as required by Federal Rule of Civil Procedure 30(b)(6).

Please take further notice that Farallon is requested to designate one or more person(s) most knowledgeable and prepared to testify on behalf of Farallon concerning the topics identified on Exhibit "A-1", and to produce the documents described in Exhibit "A-2", attached hereto. The documents to be produced as described in Exhibit "A-2" shall be produced electronically to counsel for HMIT, twenty-four (24) hours prior to the deposition.

The deposition shall be conducted before a certified court reporter or other individual authorized by law to administer oaths and take depositions. The deposition will be videotaped.

Dated: May 23, 2023

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: */s/Sawnie A. McEntire*

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One Riverway, Suite 1800
Houston, Texas 77056
Telephone: (713) 960-7315
Facsimile: (713) 960-7347

Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of May, 2023, a true and correct copy of the foregoing instrument was served on all known counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

EXHIBIT "A"

TO NOTICE OF DEPOSITION OF FARALLON CAPITAL MANAGEMENT, LLC

For purposes of the attached, the following rules and definitions shall apply.

RULES OF CONSTRUCTION

1. The terms "all" and "each" shall be construed as all and each.

2. The terms "all" and "any" shall be construed as all and any.

3. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

4. The use of the singular form of any word includes the plural and vice versa.

DEFINITIONS

1. "You," "Your," and/or "Farallon" refer to Farallon Capital Management, L.L.C., and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Muck Holdings, LLC. These terms also include Michael Lin and any owners, partners, shareholders, agents, employees, representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which Farallon is a general partner or owns an entities' general partner, or anyone else acting on Farallon's behalf, now or at any time relevant to the response.

2. "Stonehill" means Stonehill Capital Management LLC, including its partners, directors, agents, servants, employees, and any other persons consulting with, advising, acting or purporting to act on behalf of Stonehill, including any attorney, financial advisor, or other representative.

3. "Acis" refers to Acis Capital Management, L.P. and Acis Capital Management GP LLC, collectively.

4. "Grosvenor" refers to Grosvenor Capital Management, L.P.

5. "HarbourVest" refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., collectively.

6. "HCM" refers to debtor Highland Capital Management, L.P. and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Seery and the Reorganized Debtor. These terms also include any owners, partners, shareholders, agents, employees, representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which HCM is a general partner or owns an entities' general partner, or anyone else acting on HCM's behalf, now or at any time relevant to the response.

7. "Jessup" refers to Jessup Holdings LLC.

8. "MGM" refers to Metro-Goldwyn-Mayer Studios, Inc.

9. "Muck" shall refer to Muck Holdings, LLC.

10. "NAV" means net asset value.

11. "Oversight Board" refers to the Claimant Trust Oversight Committee (a/k/a the Oversight Board of the Highland Claimant Trust) as identified in Bankruptcy Case Dkt. No. 2801.

12. "Claimant Trust" includes the Highland Claimant Trust as identified in Bankruptcy Case Dkt. 2801 and the Plan.

13. "UCC" includes all official members of the UCC and for purposes of this Motion for Leave, Sidley Austin LLP.

14. "ROI" means return on investment.

15. "Respondents" means Seery, Muck, Jessup, Farallon and Stonehill.

16. "Person" is defined as any natural person or any business, legal, or governmental entity or association.

17. "Plan" refers to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and supplemented.

18. "Redeemer" means the Redeemer Committee of the Highland Crusader Funds.

19. "Seery" refers to James P. ("Jim") Seery.

20. "Settling Parties" refers to Redeemer, Acis, HarbourVest, and UBS, collectively.

21. "Stonehill" refers to Stonehill Capital Management, LLC.

22. "Strand" refers to Strand Advisors, Inc.

23. "UBS" refers to UBS Securities LLC and UBS AG London Branch, collectively.

24. "Claims Purchasers" includes Farallon, Stonehill, Muck and Jessup.

25. "Claims Purchases" includes the Claims purchased by Farallon and Stonehill through Muck and Jessup as described in the Proposed Adversary Complaint.

26. "Claims" shall mean the claims against Highland's Estate transferred to/acquired by Muck and/or Jessup as evidenced by Bankruptcy Case Dkt. Nos. 2215, 2261, 2262, 2263, 2697, 2698.

27. "Proposed Defendants" refers to, collectively, Seery, Muck, Jessup, Farallon, and Stonehill.

28. "Proposed Plaintiffs" refers to, collectively, HMIT in its individual capacity and in a derivative capacity on behalf of the Reorganized Debtor, Highland Capital Management, L.P., the Highland Claimant Trust and the Litigation Sub-Trust.

29. "Dondero" means James Dondero.

30. "HMIT" shall mean Hunter Mountain Investment Trust including its partners, directors, agents, servants, employees, and any other persons consulting with, advising, acting or purporting to act on behalf of HMIT, including any attorney, financial advisor, or other representative.

31. "Highland Bankruptcy" or "Bankruptcy Case" means the above-captioned matter styled: *In re Highland Capital Management, L.P.*, Cause No. 19-34054 in the United States Bankruptcy Court of the Northern District of Texas.

32. "Proposed Adversary Complaint" is the proposed adversary complaint which is Exhibit 1-A to HMIT's Supplement to Emergency Motion for Leave to File Verified Adversary Complaint (Dkt. 3760).

33. "Estate" means HCM's bankruptcy estate.

34. "Effective Date" of the Plan means August 11, 2021, which is the Effective Date of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., and pursuant to the Plan and the Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., Docket No. 2700, in bankruptcy proceedings of Highland Capital Management, L.P. in the Bankruptcy Court for the Norther District of Texas, Dallas Division (Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

35. "Communications" means every form of interchange, exchange or transmission of information, thought or opinion, and shall include, without limitation, all verbal Communications (whether transmitted face to face or by media such as intercoms, telephones, electronic mail, television or radio), all written or graphic Communications of any kind, and all statements, discussions, conversations, speeches, meetings, remarks, questions, answers, panel discussions and symposia.

36. "Identify or identity" when used in reference to a natural person means his or her full legal name, present or last known address, employer, and present or last known job title or position. When used in reference to a corporation or other legal entity, the term "identify or identity" means to give its name, and the address of its principal place of business. When used in reference to a document, "identify" means the name and date of the document and the identity of the person who prepared it and who signed it. When used for a communication, "identify" means to give the date, time, method of communication, persons involved, and substance of the communication. When used for deposition or other sworn testimony, "identify" means to give the witness's name, the date of the testimony and the style of the case. When used for any other purpose, the common dictionary meaning of "identify or identity" applies.

37. The terms "pertaining to" or "relating to" means concerning, including, evidencing, mentioning, or referring, directly or indirectly, to the specified subject matter or any aspect or portion thereof.

38. The term "information" as used herein should be construed in the broad sense. It includes reference to both facts and applicable principles. This word should not be construed to be limited by any method of acquisition or compilation and, therefore, includes oral information as well as documents.

39. The words "relate", "relating", "refer", "referring" refer to and shall include documents concerning, containing, showing, relating, mentioning, referring or pertaining in any way, directly or indirectly to, or in legal, logical or factual way connected with, a discovery request, and includes Documents underlying, supporting, nor or previously attached or appended to, or used in the preparation of any document called for by such request.

40. The term "document" shall mean "document" as defined in Rule 34(a) of the Federal Rules of Civil Procedure and includes any medium upon which data, intelligence or information can be ascertained that is within the possession, custody, or control of a person or entity or of its agents, employees, representatives (including, without limitation, attorneys, consultants, and accountants), or other person acting or purporting to act for or on behalf of or in concert with that person or entity, including, but not limited to contracts, agreements, communications, correspondence, letters, telegrams, memoranda, records, reports, books, summaries or records of telephone conversations, summary of records of personal conversations or interview, diaries, forecasts, schedules, statistical statements, work papers, graphs, charts, accounts, analytical records, minutes or records of meetings or conferences, consultants' reports, appraisals, records, reports of summaries of negotiations, brochures, notes, marginal notations, bills, invoices, checks, drafts, photographs, lists, journals, advertising magnet tapes, computer tapes, disks and cards, printouts and all other written, printed, stenographic, or sound reproductions, however produced or reproduced, and all drafts and copies of all of the foregoing. Electronically Stored Information or ESI. The terms *"Electronically Stored Information" or "ESI" shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) respect to all such Documents/ESI.*

41. "Drafts" means any earlier, preliminary, preparatory, or tentative version of all or part of a document, whether or not the draft was superseded by a later draft and whether or not the terms of the draft are the same as or different from the terms of the final documents. The term "copies" means each and every copy of any documents that is not identify in every respect with the document being produced, including photocopies of the original or final document on which any notations or handwritten notes have been added, or where the original is not in your possession, custody or control.

42. "Material" is used in its broadest sense and means any tangible thing.

EXHIBIT "A-1" – DEPOSITION TOPICS

The witness(es) designated by Farallon to testify on its behalf is (are) requested to testify concerning the following Topic Categories:

1. The factual background and circumstances relating to the subject matter of the Proposed Adversary Complaint;

2. The alleged factual background and circumstances regarding the evidence and allegations supporting Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery's Joint Opposition to HMIT's Motion for Leave to file Verified Adversary Proceeding (Dkt. 3783);

3. The alleged factual background and circumstances regarding evidence and allegations supporting the Claim Purchasers' Objection to HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding and Supplement thereto (Dkt. 3780).

4. Communications between Farallon and any of the following entities or persons relating to any of the Claims:

   a. Any member of the UCC;

   b. HCM;

   c. Grosvenor;

   d. Muck;

   e. Any member of the Oversight Board;

   f. Seery;

   g. Stonehill or Jessup;

   h. Any of the Settling Parties;

   i. Dondero; and

   j. Any fund managed by and/or affiliated with Farallon that invested any funds in connection with the purchase of any of the Claims.

5. The sources of funds used by Muck and/or Farallon to acquire any of the Claims;

6. The agreements, including all terms and conditions relating to or governing the purchase of any of the Claims by either Muck and/or Farallon and the subsequent assignment of such Claims to Muck;

7. All communications between Farallon and Seery related to the Proposed Adversary Complaint;

8. Representations and/or warranties made by either Farallon, Muck, Seery, and/or any of the Settling Parties in connection with any agreements relating to the purchase, sale, transfer and/or assignment of any of the Claims;

9. Information known to Farallon regarding the sale of MGM prior to the execution of any agreements to purchase any of the Claims, as well as all communications between Farallon and Seery relating to MGM;

10. Appointment of Muck to the Oversight Board;

11. Farallon's historical relationships and business dealings with Seery and Grovesnor, including any prior business dealings between Seery and any person who is currently an officer, principle, director and/or member of Farallon or Grovesner;

12. Communications between Farallon and/or Muck, on the one hand, and Seery, on the other hand, related to Seery's compensation as CEO and Trustee of the Highland Claimant Trust following the Effective Date of the Plan.

13. Actual compensation paid to Seery since the Effective Date of the Plan.

14. All agreements and other communications between Seery and any member of the Oversight Board regarding Seery's compensation and all documents relating to, regarding, or reflecting such agreements and all the negotiations leading up to such agreements.

15. All communications between any of the Respondents related to indemnification or indemnity of any other Respondent in connection with the Claims set forth in the Proposed Adversary Complaint.

16. Any offers from any third-party to purchase any of the Claims (or any portion thereof) from Muck and/or Farallon and all communications regarding any such offer(s).

17. Any offer by Muck and/or Farallon to sell any of the Claims or any part thereof.

18. Any effort by either Muck and/or Farallon to sell or market any of the Claims or any portion thereof.

19. Any due diligence conducted by either Muck or Farallon related to the Claims Purchases including, without limitation, all accounting analyses, investment analyses, valuations, ROI analyses, projections, forecasts, cost, loss, risk, and benefit calculations, investment adviser analyses, any internal or external NAV valuations and/or fiduciary analysis.

20. Identity of any persons contacted and documents reviewed for purposes of any due diligence related to the Claims Purchases.

21. The substance, types, and sources of information Farallon considered in making any decision to invest in any of the Claims on behalf of itself, Muck, and/or any fund with which Farallon is affiliated or which Farallon manages.

22. All communications reflecting due diligence information provided by any HCM Party to Farallon regarding the assets or liabilities of the HCM Estate, the monetization of any assets, projected timing of any such monetization, and distributions relating to the Claims, and any other financial information related to the Claims.

23. The extent to which Farallon was involved in creating and organizing Muck in connection with the acquisition of any of the Claims.

24. The organizational structure of Muck (including identification of all members, managing members), as well as the purpose for creating Muck, including, but not limited to, regarding holding title to any of the Claims.

25. All base fees and performance fees which Farallon has received or may receive in connection with distributions relating to the Claims and all documents relating to, regarding, or reflecting the same.

26. All monies and/or distributions received by Muck and/or Farallon in connection with any of the Claims and any distributions made by Muck to any members of Muck relating to such Claims.

27. Whether Farallon is a co-investor in any fund which holds an interest in Muck or otherwise holds a direct interest in Muck and all documents reflecting the same.

28. Any communications related to any litigation hold or document retention protocol related to the facts and claims made the basis of the Proposed Adversary Complaint.

29. Identify any document retention policy or protocol.

30. The documents produced in response to the requests in this Notice.

EXHIBIT "A-2"
DOCUMENT REQUESTS

1. Any and all documents created by, prepared for, or received by Farallon concerning any of the following topics:

   a. The purchase of the Claims by Muck and/or Farallon;

   b. Any purchase agreement relating to the acquisition of the Claims, including any draft agreements, final agreements, letters of intent, and term sheets;

   c. Negotiations regarding the purchase of the Claims;

   d. Valuations of the Claims or the assets underlying the Claims;

   e. Promises and representations made in connection with the purchase of the Claims;

   f. Any documents, including, but not limited to, any investment memoranda, considered or prepared as part of any due diligence undertaken or considered by Farallon or Muck prior to acquiring the Claims;

   g. Consideration for the transfer of the Claims;

   h. Value of HCM's Estate;

   i. Projected future value of HCM's Estate;

   j. Past distributions and projected distributions from the Highland Claimant Trust;

   k. Compensation earned by or paid to Seery in connection with or relating to his role as Trustee of the Highland Claimant Trust;

   l. Compensation earned by or paid to Seery for his roles as CEO, Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and

   m. Any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.

2. Any and all communications between Farallon, on the one hand, and any of the following individuals or entities: (i) Seery, (ii) the UCC, (iii) the Settling Parties, (iv) Stonehill, (vi) Grosvenor, (vii) the Oversight Board, (viii) Dondero and (ix) any fund affiliated with or managed by Farallon concerning any of the following topics:

a. Purchase or sale of the Claims;

b. Negotiation of any agreement regarding the purchase or sale of the Claims;

c. Valuation of the Claims or the assets underlying the Claims;

d. Promises and representations made in connection with the purchase, sale and/or transfer of the Claims;

e. Any due diligence undertaken by Farallon or Muck prior to acquiring the Claims;

f. Consideration for the purchase of the Claims;

g. Value of HCM's Estate;

h. Projected future value of HCM's Estate;

i. Past distributions and projected distributions from HCM's Estate;

j. Compensation earned by or paid to Seery in connection with or relating to the Claims;

k. Compensation earned by or paid to Seery for his roles as CEO and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and

l. Future compensation to be paid to Seery as Trustee of the Highland Claimant Trust;

m. Decisions made by the Oversight Board.

3. All correspondence and/or other documents by or between Farallon and/or Muck and any investors in any fund regarding the Claims and/or the acquisition or

transfer of the Claims.

4. Any and all documents reflecting the sources of funding used by Muck to acquire any of the Claims.

5. Organizational and formation documents relating to Muck including, but not limited to, Muck's certificate of formation, company agreement, bylaws, and the identification of all members and managing members.

6. Company resolutions prepared by or on behalf of Muck approving the acquisition of any of the Claims.

7. Any and all documents reflecting any internal or external audits regarding Muck's NAV.

8. Agreements between Farallon and Muck regarding management, advisory, or other services provided to Muck by Farallon.

9. Any documents reflecting any communications with James Dondero.

10. Annual fund audits relating to Muck.

11. Muck's NAV Statements.

12. Documents reflecting the fees or other compensation earned by Farallon in connection with the investment in, acquisition of, transfer of, and/or management of any of the Claims.

13. 12/6/21 Memorandum Agreement.

14. 5/9/23 Letter from the Texas State Securities Board to Highland.

15. Minutes of Meetings of the Claimant Trust Oversight Board.

16. All texts/communications with any member of the Oversight Board regarding Seery's compensation and distributions.

17. All text messages or other communications with any of the other Claims Purchasers.

18. Any documents reflecting any offer to purchase any of the Claims (and any portion thereof) from either Muck and/or Farallon and/or efforts to market any interests held by either Muck and/or Farallon.

19. Any document retention policy or protocol or Litigation Hold Requests.

Exhibit C

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Attorneys for Petitioner Hunter Mountain Investment Trust

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S NOTICE OF ORAL AND VIDEOTAPED RULE 30(b)(6) DEPOSITION OF STONEHILL CAPITAL MANAGEMENT LLC'S CORPORATE REPRESENTATIVE

To: Stonehill Capital Management LLC, by and through its counsel of record, Brent R. McIlwain, David C. Shulte, and Christopher Bailey, HOLLAND & KNIGHT LLP, 1722 Routh Street, Suite 1500, Dallas, Texas 75201.

Pursuant to Federal Rule of Civil Procedure 30(b)(6), as adopted by the Federal Rules of Bankruptcy Procedure, Hunter Mountain Investment Trust ("HMIT") will take the oral and videotaped deposition of a corporate representative or representatives of Stonehill Capital Management LLC ("Stonehill") or other consenting person designated by Stonehill, to testify concerning the matters specified in Exhibit "A". This deposition and document request relates to HMIT's Motion for Leave to File Adversary Complaint (Dkt. 3699) and related Supplement (Dkt. 3760) ("Motion for Leave").

The deposition will take place at the offices of Parsons McEntire McCleary, PLLC, 1700 Pacific Ave., Suite 4400, Dallas, TX 75201 (or at another mutually agreeable location) beginning at **9:00 a.m.** on **Friday, June 2, 2023** and continuing day after day until completed. Stonehill is instructed to designate a person or persons authorized to testify on its behalf concerning the issues specified in Exhibit "A", as required by Federal Rule of Civil Procedure 30(b)(6).

Please take further notice that Stonehill is requested to designate one or more person(s) most knowledgeable and prepared to testify on behalf of Stonehill concerning the topics identified on Exhibit "A-1", and to produce the documents described in Exhibit "A-2", attached hereto. The documents to be produced as described in Exhibit "A-2" shall be produced electronically to counsel for HMIT, twenty-four (24) hours prior to the deposition.

The deposition shall be conducted before a certified court reporter or other individual authorized by law to administer oaths and take depositions. The deposition will be videotaped.

Dated: May 23, 2023

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: */s/Sawnie A. McEntire*

Sawnie A. McEntire
State Bar No. 13590100
smcentire@pmmlaw.com
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201
Telephone: (214) 237-4300
Facsimile: (214) 237-4340

Roger L. McCleary
State Bar No. 13393700
rmccleary@pmmlaw.com
One Riverway, Suite 1800
Houston, Texas 77056
Telephone: (713) 960-7315
Facsimile: (713) 960-7347

Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of May, 2023, a true and correct copy of the foregoing instrument was served on all known counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

EXHIBIT "A"

TO NOTICE OF DEPOSITION OF STONEHILL CAPITAL MANAGEMENT, LLC

For purposes of the attached, the following rules and definitions shall apply.

RULES OF CONSTRUCTION

1. The terms "all" and "each" shall be construed as all and each.

2. The terms "all" and "any" shall be construed as all and any.

3. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

4. The use of the singular form of any word includes the plural and vice versa.

DEFINITIONS

1. "You," "Your," and/or "Stonehill" refer to Stonehill Capital Management LLC, and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Jessup Holdings LLC. These terms also include any owners, partners, shareholders, agents, employees, representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which Stonehill is a general partner or owns an entities' general partner, or anyone else acting on Stonehill's behalf, now or at any time relevant to the response.

2. "Farallon" means Farallon Capital Management, L.L.C., including its partners, directors, agents, servants, employees, and any other persons consulting with, advising, acting or purporting to act on behalf of Farallon, including any attorney, financial advisor, or other representative.

3. "Acis" refers to Acis Capital Management, L.P. and Acis Capital Management GP LLC, collectively.

4. "Grosvenor" refers to Grosvenor Capital Management, L.P.

5. "HarbourVest" refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., collectively.

6. "HCM" refers to debtor Highland Capital Management, L.P. and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Seery, and the Reorganized Debtor. These terms also include any owners, partners, shareholders, agents, employees, representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which HCM is a general partner or owns an entities' general partner, or anyone else acting on HCM's behalf, now or at any time relevant to the response.

7. "Jessup" refers to Jessup Holdings LLC.

8. "MGM" refers to Metro-Goldwyn-Mayer Studios, Inc.

9. "Muck" shall refer to Muck Holdings, LLC.

10. "NAV" means net asset value.

11. "Oversight Board" refers to the Claimant Trust Oversight Committee (a/k/a the Oversight Board of the Highland Claimant Trust) as identified in Bankruptcy Case Dkt. No. 2801.

12. "Claimant Trust" includes the Highland Claimant Trust as identified in Bankruptcy Case Dkt. 2801 and the Plan.

13. "UCC" includes all official members of the UCC and for purposes of this Motion for Leave, Sidley Austin LLP.

14. "ROI" means return on investment.

15. "Respondents" means Seery, Muck, Jessup, Farallon and Stonehill.

16. "Person" is defined as any natural person or any business, legal, or governmental entity or association.

17. "Plan" refers to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and supplemented.

18. "Redeemer" means the Redeemer Committee of the Highland Crusader Funds.

19. "Seery" refers to James P. Seery, Jr.

20. "Settling Parties" refers to Redeemer, Acis, HarbourVest, and UBS, collectively.

21. "Stonehill" refers to Stonehill Capital Management, LLC.

22. "Strand" refers to Strand Advisors, Inc.

23. "UBS" refers to UBS Securities LLC and UBS AG London Branch, collectively.

24. "Claims Purchasers" includes Farallon, Stonehill, Muck and Jessup.

25. "Claims Purchases" includes the Claims purchased by Farallon and Stonehill through Muck and Jessup as described in the Proposed Adversary Complaint.

26. "Claims" shall mean the claims against Highland's Estate transferred to/acquired by Muck and/or Jessup as evidenced by Bankruptcy Case Dkt. Nos. 2215, 2261, 2262, 2263, 2697, 2698.

27. "Proposed Defendants" refers to, collectively, Seery, Muck, Jessup, Farallon, and Stonehill.

28. "Proposed Plaintiffs" refers to, collectively, HMIT in its individual capacity and in a derivative capacity on behalf of the Reorganized Debtor, Highland Capital Management, L.P., the Highland Claimant Trust and the Litigation Sub-Trust.

29. "Dondero" means James Dondero.

30. "HMIT" shall mean Hunter Mountain Investment Trust including its partners, directors, agents, servants, employees, and any other persons consulting with, advising, acting or purporting to act on behalf of HMIT, including any attorney, financial advisor, or other representative.

31. "Highland Bankruptcy" or "Bankruptcy Case" means the above-captioned matter styled: *In re Highland Capital Management, L.P.*, Cause No. 19-34054 in the United States Bankruptcy Court of the Northern District of Texas.

32. "Proposed Adversary Complaint" is the proposed adversary complaint which is Exhibit 1-A to HMIT's Supplement to Emergency Motion for Leave to File Verified Adversary Complaint (Dkt. 3760).

33. "Estate" means HCM's bankruptcy estate.

34. "Effective Date" of the Plan means August 11, 2021, which is the Effective Date of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., and pursuant to the Plan and the Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., Docket No. 2700, in bankruptcy proceedings of Highland Capital Management, L.P. in the Bankruptcy Court for the Norther District of Texas, Dallas Division (Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

35. "Communications" means every form of interchange, exchange or transmission of information, thought or opinion, and shall include, without limitation, all verbal Communications (whether transmitted face to face or by media such as intercoms, telephones, electronic mail, television or radio), all written or graphic Communications of any kind, and all statements, discussions, conversations, speeches, meetings, remarks, questions, answers, panel discussions and symposia.

36. "Identify or identity" when used in reference to a natural person means his or her full legal name, present or last known address, employer, and present or last known job title or position. When used in reference to a corporation or other legal entity, the term "identify or identity" means to give its name, and the address of its principal place of business. When used in reference to a document, "identify" means the name and date of the document and the identity of the person who prepared it and who signed it. When used for a communication, "identify" means to give the date, time, method of communication, persons involved, and substance of the communication. When used for deposition or other sworn testimony, "identify" means to give the witness's name, the date of the testimony and the style of the case. When used for any other purpose, the common dictionary meaning of "identify or identity" applies.

37. The terms "pertaining to" or "relating to" means concerning, including, evidencing, mentioning, or referring, directly or indirectly, to the specified subject matter or any aspect or portion thereof.

38. The term "information" as used herein should be construed in the broad sense. It includes reference to both facts and applicable principles. This word should not be construed to be limited by any method of acquisition or compilation and, therefore, includes oral information as well as documents.

39. The words "relate", "relating", "refer", "referring" refer to and shall include documents concerning, containing, showing, relating, mentioning, referring or pertaining in any way, directly or indirectly to, or in legal, logical or factual way connected with, a discovery request, and includes Documents underlying, supporting, nor or previously attached or appended to, or used in the preparation of any document called for by such request.

40. The term "document" shall mean "document" as defined in Rule 34(a) of the Federal Rules of Civil Procedure and includes any medium upon which data, intelligence or information can be ascertained that is within the possession, custody, or control of a person or entity or of its agents, employees, representatives (including, without limitation, attorneys, consultants, and accountants), or other person acting or purporting to act for or on behalf of or in concert with that person or entity, including, but not limited to contracts, agreements, communications, correspondence, letters, telegrams, memoranda, records, reports, books, summaries or records of telephone conversations, summary of records of personal conversations or interview, diaries, forecasts, schedules, statistical statements, work papers, graphs, charts, accounts, analytical records, minutes or records of meetings or conferences, consultants' reports, appraisals, records, reports of summaries of negotiations, brochures, notes, marginal notations, bills, invoices, checks, drafts, photographs, lists, journals, advertising magnet tapes, computer tapes, disks and cards, printouts and all other written, printed, stenographic, or sound reproductions, however produced or reproduced, and all drafts and copies of all of the foregoing. Electronically Stored Information or ESI. The terms *"Electronically Stored Information" or "ESI" shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) respect to all such Documents/ESI.*

41. "Drafts" means any earlier, preliminary, preparatory, or tentative version of all or part of a document, whether or not the draft was superseded by a later draft and whether or not the terms of the draft are the same as or different from the terms of the final documents. The term "copies" means each and every copy of any documents that is not identify in every respect with the document being produced, including photocopies of the original or final document on which any notations or handwritten notes have been added, or where the original is not in your possession, custody or control.

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2. The alleged factual background and circumstances regarding the evidence and allegations supporting Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery's Joint Opposition to HMIT's Motion for Leave to file Verified Adversary Proceeding (Dkt. 3783).

3. The alleged factual background and circumstances regarding evidence and allegations supporting the Claim Purchasers' Objection to HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding and Supplement thereto (Dkt. 3780).

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   c. Grosvenor;

   d. Jessup;

   e. Any member of the Oversight Board;

   f. Seery;

   g. Farallon or Muck;

   h. Any of the Settling Parties;

   i. Dondero; and

   j. Any fund managed by and/or affiliated with Stonehill that invested any funds in connection with the purchase of any of the Claims.

5. The sources of funds used by Jessup and/or Stonehill to acquire any of the Claims.

6. The agreements, including all terms and conditions relating to or governing the purchase of any of the Claims by either Jessup and/or Stonehill and the subsequent assignment of such Claims to Jessup.

7. All communications between Stonehill and Seery related to the Proposed Adversary Complaint.

8. Representations and/or warranties made by either Stonehill, Jessup, Seery, and/or any of the Settling Parties in connection with any agreements relating to the purchase, sale, transfer and/or assignment of any of the Claims.

9. Information known to Stonehill regarding the sale of MGM prior to the execution of any agreements to purchase any of the Claims, as well as all communications between Stonehill and Seery relating to MGM.

10. Appointment of Jessup to the Oversight Board.

11. Stonehill's historical relationships and business dealings with Seery and Grovesnor, including any prior business dealings between Seery and any person who is currently an officer, principle, director and/or member of Stonehill or Grovesner.

12. Communications between Stonehill and/or Jessup, on the one hand, and Seery, on the other hand, related to Seery's compensation as CEO and Trustee of the Highland Claimant Trust following the Effective Date of the Plan.

13. Actual compensation paid to Seery since the Effective Date of the Plan.

14. All agreements and other communications between Seery and any member of the Oversight Board regarding Seery's compensation and all documents relating to, regarding, or reflecting such agreements and all the negotiations leading up to such agreements.

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16. Any offers from any third-party to purchase any of the Claims (or any portion thereof) from Jessup and/or Stonehill and all communications regarding any such offer(s).

17. Any offer by Jessup and/or Stonehill to sell any of the Claims or any part thereof.

18. Any effort by either Jessup and/or Stonehill to sell or market any of the Claims or any portion thereof.

19. Any due diligence conducted by either Jessup or Stonehill related to the Claims Purchases including, without limitation, all accounting analyses, investment analyses, valuations, ROI analyses, projections, forecasts, cost, loss, risk, and benefit calculations, investment adviser analyses, any internal or external NAV valuations and/or fiduciary analysis.

20. Identity of any persons contacted and documents reviewed for purposes of any due diligence related to the Claims Purchases.

21. The substance, types, and sources of information Stonehill considered in making any decision to invest in any of the Claims on behalf of itself, Jessup, and/or any fund with which Stonehill is affiliated or which Stonehill manages.

22. All communications reflecting due diligence information provided by any HCM Party to Stonehill regarding the assets or liabilities of the HCM Estate, the monetization of any assets, projected timing of any such monetization, and distributions relating to the Claims, and any other financial information related to the Claims.

23. The extent to which Stonehill was involved in creating and organizing Jessup in connection with the acquisition of any of the Claims.

24. The organizational structure of Jessup (including identification of all members, managing members), as well as the purpose for creating Jessup, including, but not limited to, regarding holding title to any of the Claims.

25. All base fees and performance fees which Stonehill has received or may receive in connection with distributions relating to the Claims and all documents relating to, regarding, or reflecting the same.

26. All monies and/or distributions received by Jessup and/or Stonehill in connection with any of the Claims and any distributions made by Jessup to any members of Jessup relating to such Claims.

27. Whether Stonehill is a co-investor in any fund which holds an interest in Jessup or otherwise holds a direct interest in Jessup and all documents reflecting the same.

28. Any communications related to any litigation hold or document retention protocol related to the facts and claims made the basis of the Proposed Adversary Complaint.

29. Identify any document retention policy or protocol.

30. The documents produced in response to the requests in this Notice.

EXHIBIT "A-2"
DOCUMENT REQUESTS

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c. Negotiations regarding the purchase of the Claims;

d. Valuations of the Claims or the assets underlying the Claims;

e. Promises and representations made in connection with the purchase of the Claims;

f. Any documents, including but not limited to investment memoranda, considered or prepared as part of any due diligence undertaken or considered by Stonehill or Jessup prior to acquiring the Claims;

g. Consideration for the transfer of the Claims;

h. Value of HCM's Estate;

i. Projected future value of HCM's Estate;

j. Past distributions and projected distributions from the Highland Claimant Trust;

k. Compensation earned by or paid to Seery in connection with or relating to his role as Trustee of the Highland Claimant Trust;

l. Compensation earned by or paid to Seery for his roles as CEO, Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and

m. Any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.

2. Any and all communications between Stonehill, on the one hand, and any of the following individuals or entities: (i) Seery, (ii) the UCC, (iii) the Settling Parties, (iv) Farallon, (vi) Grosvenor, (vii) the Oversight Board, (viii) Dondero and (ix) any fund affiliated with or managed by Stonehill concerning any of the following topics:

a. Purchase or sale of the Claims;

b. Negotiation of any agreement regarding the purchase or sale of the Claims;

c. Valuation of the Claims or the assets underlying the Claims;

d. Promises and representations made in connection with the purchase, sale and/or transfer of the Claims;

e. Any due diligence undertaken by Stonehill or Jessup prior to acquiring the Claims;

f. Consideration for the purchase of the Claims;

g. Value of HCM's Estate;

h. Projected future value of HCM's Estate;

i. Past distributions and projected distributions from HCM's Estate;

j. Compensation earned by or paid to Seery in connection with or relating to the Claims;

k. Compensation earned by or paid to Seery for his roles as CEO and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and

l. Future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.

m. Decisions made by the Oversight Board.

3. All correspondence and/or other documents by or between Stonehill and/or Jessup and any investors in any fund regarding the Claims and/or the acquisition or transfer of the Claims.

4. Any and all documents reflecting the sources of funding used by Jessup to acquire any of the Claims.

5. Organizational and formation documents relating to Jessup including, but not limited to, Jessup's certificate of formation, company agreement, bylaws, and the identification of all members and managing members.

6. Company resolutions prepared by or on behalf of Jessup approving the acquisition of any of the Claims.

7. Any and all documents reflecting any internal or external audits regarding Jessup's NAV.

8. Agreements between Stonehill and Jessup regarding management, advisory, or other services provided to Jessup by Stonehill.

10. Any documents reflecting any communications with James Dondero.

11. Annual fund audits relating to Jessup.

12. Jessup's NAV Statements.

13. Documents reflecting the fees or other compensation earned by Stonehill in connection with the investment in, acquisition of, transfer of, and/or management of any of the Claims.

14. 12/6/21 Memorandum Agreement.

15. 5/9/23 Letter from the Texas State Securities Board to Highland.

16. Minutes of Meetings of the Claimant Trust Oversight Board.

17. All texts/communications with any member of the Oversight Board regarding Seery's compensation and distributions.

18. All text messages or other communications with any of the other Claims Purchasers.

19. Any documents reflecting any offer to purchase any of the Claims (and any portion thereof) from either Jessup and/or Stonehill and/or efforts to market any interests held by either Jessup and/or Stonehill.

20. Any document retention policy or protocol or Litigation hold Request.

Exhibit D

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Attorneys for Petitioner Hunter Mountain Investment Trust

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S NOTICE OF ORAL AND VIDEOTAPED RULE 30(b)(6) DEPOSITION OF MUCK HOLDINGS, LLC'S CORPORATE REPRESENTATIVE

To: Muck Holdings, LLC, by and through its counsel of record, Brent R. McIlwain, David C. Shulte, and Christopher Bailey, HOLLAND & KNIGHT LLP, 1722 Routh Street, Suite 1500, Dallas, Texas 75201.

Pursuant to Federal Rule of Civil Procedure 30(b)(6), as adopted by the Federal Rules of Bankruptcy Procedure, Hunter Mountain Investment Trust ("HMIT") will take the oral and videotaped deposition of a corporate representative or representatives Of Muck Holdings, LLC ("Muck") or other consenting person designated by Muck, to testify concerning the matters specified in Exhibit "A". This deposition and document request relates to HMIT's Motion for Leave to File Adversary Complaint (Dkt. 3699) and related Supplement (Dkt. 3760) ("Motion for Leave").

The deposition will take place at the offices of Parsons McEntire McCleary, PLLC, 1700 Pacific Ave., Suite 4400, Dallas, TX 75201 (or at another mutually agreeable location) beginning at **3:00 p.m.** on **Thursday, June 1, 2023** and continuing day after day until completed. Muck is instructed to designate a person or persons authorized to testify on its behalf concerning the issues specified in Exhibit "A", as required by Federal Rule of Civil Procedure 30(b)(6).

Please take further notice that Muck is requested to designate one or more person(s) most knowledgeable and prepared to testify on behalf of Muck concerning the topics identified on Exhibit "A-1", and to produce the documents described in Exhibit "A-2", attached hereto. The documents to be produced as described in Exhibit "A-2" shall be produced electronically to counsel for HMIT, twenty-four (24) hours prior to the deposition.

The deposition shall be conducted before a certified court reporter or other individual authorized by law to administer oaths and take depositions. The deposition will be videotaped.

Dated: May 23, 2023

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: */s/Sawnie A. McEntire*

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Facsimile: (713) 960-7347

Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of May, 2023, a true and correct copy of the foregoing instrument was served on all known counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

EXHIBIT "A"

TO NOTICE OF DEPOSITION OF MUCK HOLDINGS, LLC

For purposes of the attached, the following rules and definitions shall apply.

RULES OF CONSTRUCTION

1. The terms "all" and "each" shall be construed as all and each.

2. The terms "all" and "any" shall be construed as all and any.

3. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

4. The use of the singular form of any word includes the plural and vice versa.

DEFINITIONS

1. "You," "Your," and/or "Muck" refer to Muck Holdings, LLC, and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Farallon Capital Management, L.L.C. These terms also include any owners, partners, shareholders, agents, employees, representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which Muck is a general partner or owns an entities' general partner, or anyone else acting on Muck's behalf, now or at any time relevant to the response.

2. "Stonehill" means Stonehill Capital Management LLC, including its partners, directors, agents, servants, employees, and any other persons consulting with, advising, acting or purporting to act on behalf of Stonehill, including any attorney, financial advisor, or other representative.

3. "Farallon" means Farallon Capital Management, L.L.C., including its partners, directors, agents, servants, employees, and any other persons consulting with, advising, acting or purporting to act on behalf of Farallon, including any attorney, financial advisor, or other representative.

4. "Acis" refers to Acis Capital Management, L.P. and Acis Capital Management GP LLC, collectively.

5. "Grosvenor" refers to Grosvenor Capital Management, L.P.

6. "HarbourVest" refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., collectively.

7. "HCM" refers to debtor Highland Capital Management, L.P. and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Seery, and the Reorganized Debtor. These terms also include any owners, partners, shareholders, agents, employees, representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which HCM is a general partner or owns an entities' general partner, or anyone else acting on HCM's behalf, now or at any time relevant to the response.

8. "Jessup" refers to Jessup Holdings LLC.

9. "MGM" refers to Metro-Goldwyn-Mayer Studios, Inc.

10. "NAV" means net asset value.

11. "Oversight Board" refers to the Claimant Trust Oversight Committee (a/k/a the Oversight Board of the Highland Claimant Trust) as identified in Bankruptcy Case Dkt. No. 2801.

12. "Claimant Trust" includes the Highland Claimant Trust as identified in Bankruptcy Case Dkt. 2801 and the Plan.

13. "UCC" includes all official members of the UCC and for purposes of this Motion for Leave, Sidley Austin LLP.

14. "ROI" means return on investment.

15. "Respondents" means Seery, Muck, Jessup, Farallon and Stonehill.

16. "Person" is defined as any natural person or any business, legal, or governmental entity or association.

17. "Plan" refers to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and supplemented.

18. "Redeemer" means the Redeemer Committee of the Highland Crusader Funds.

19. "Seery" refers to James P. Seery, Jr.

20. "Settling Parties" refers to Redeemer, Acis, HarbourVest, and UBS, collectively.

21. "Stonehill" refers to Stonehill Capital Management, LLC.

22. "Strand" refers to Strand Advisors, Inc.

23. "UBS" refers to UBS Securities LLC and UBS AG London Branch, collectively.

24. "Claims Purchasers" includes Farallon, Stonehill, Muck and Jessup.

25. "Claims Purchases" includes the Claims purchased by Farallon and Stonehill through Muck and Jessup as described in the Proposed Adversary Complaint.

26. "Claims" shall mean the claims against Highland's Estate transferred to/acquired by Muck and/or Jessup as evidenced by Bankruptcy Case Dkt. Nos. 2215, 2261, 2262, 2263, 2697, 2698.

27. "Proposed Defendants" refers to, collectively, Seery, Muck, Jessup, Farallon, and Stonehill.

28. "Proposed Plaintiffs" refers to, collectively, HMIT in its individual capacity and in a derivative capacity on behalf of the Reorganized Debtor, Highland Capital Management, L.P., the Highland Claimant Trust and the Litigation Sub-Trust.

29. "Dondero" means James Dondero.

30. "HMIT" shall mean Hunter Mountain Investment Trust including its partners, directors, agents, servants, employees, and any other persons consulting with,

advising, acting or purporting to act on behalf of HMIT, including any attorney, financial advisor, or other representative.

31. "Highland Bankruptcy" or "Bankruptcy Case" means the above-captioned matter styled: *In re Highland Capital Management, L.P.*, Cause No. 19-34054 in the United States Bankruptcy Court of the Northern District of Texas.

32. "Proposed Adversary Complaint" is the proposed adversary complaint which is Exhibit 1-A to HMIT's Supplement to Emergency Motion for Leave to File Verified Adversary Complaint (Dkt.. 3760).

33. "Estate" means HCM's bankruptcy estate.

34. "Effective Date" of the Plan means August 11, 2021, which is the Effective Date of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., and pursuant to the Plan and the Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., Docket No. 2700, in bankruptcy proceedings of Highland Capital Management, L.P. in the Bankruptcy Court for the Norther District of Texas, Dallas Division (Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

35. "Communications" means every form of interchange, exchange or transmission of information, thought or opinion, and shall include, without limitation, all verbal Communications (whether transmitted face to face or by media such as intercoms, telephones, electronic mail, television or radio), all written or graphic Communications of any kind, and all statements, discussions, conversations, speeches, meetings, remarks, questions, answers, panel discussions and symposia.

36. "Identify or identity" when used in reference to a natural person means his or her full legal name, present or last known address, employer, and present or last known job title or position. When used in reference to a corporation or other legal entity, the term "identify or identity" means to give its name, and the address of its principal place of business. When used in reference to a document, "identify" means the name and date of the document and the identity of the person who prepared it and who signed it. When used for a communication, "identify" means to give the date, time, method of communication, persons involved, and substance of the communication. When used for deposition or other sworn testimony, "identify" means to give the witness's name, the date of the testimony and the

style of the case. When used for any other purpose, the common dictionary meaning of "identify or identity" applies.

37. The terms "pertaining to" or "relating to" means concerning, including, evidencing, mentioning, or referring, directly or indirectly, to the specified subject matter or any aspect or portion thereof.

38. The term "information" as used herein should be construed in the broad sense. It includes reference to both facts and applicable principles. This word should not be construed to be limited by any method of acquisition or compilation and, therefore, includes oral information as well as documents.

39. The words "relate", "relating", "refer", "referring" refer to and shall include documents concerning, containing, showing, relating, mentioning, referring or pertaining in any way, directly or indirectly to, or in legal, logical or factual way connected with, a discovery request, and includes Documents underlying, supporting, nor or previously attached or appended to, or used in the preparation of any document called for by such request.

40. The term "document" shall mean "document" as defined in Rule 34(a) of the Federal Rules of Civil Procedure and includes any medium upon which data, intelligence or information can be ascertained that is within the possession, custody, or control of a person or entity or of its agents, employees, representatives (including, without limitation, attorneys, consultants, and accountants), or other person acting or purporting to act for or on behalf of or in concert with that person or entity, including, but not limited to contracts, agreements, communications, correspondence, letters, telegrams, memoranda, records, reports, books, summaries or records of telephone conversations, summary of records of personal conversations or interview, diaries, forecasts, schedules, statistical statements, work papers, graphs, charts, accounts, analytical records, minutes or records of meetings or conferences, consultants' reports, appraisals, records, reports of summaries of negotiations, brochures, notes, marginal notations, bills, invoices, checks, drafts, photographs, lists, journals, advertising magnet tapes, computer tapes, disks and cards, printouts and all other written, printed, stenographic, or sound reproductions, however produced or reproduced, and all drafts and copies of all of the foregoing. Electronically Stored Information or ESI. The terms *"Electronically Stored Information" or "ESI" shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium.*

Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) respect to all such Documents/ESI.

41. "Drafts" means any earlier, preliminary, preparatory, or tentative version of all or part of a document, whether or not the draft was superseded by a later draft and whether or not the terms of the draft are the same as or different from the terms of the final documents. The term "copies" means each and every copy of any documents that is not identify in every respect with the document being produced, including photocopies of the original or final document on which any notations or handwritten notes have been added, or where the original is not in your possession, custody or control.

42. "Material" is used in its broadest sense and means any tangible thing.

EXHIBIT "A-1" – DEPOSITION TOPICS

The witness(es) designated by Muck to testify on its behalf is (are) requested to testify concerning the following Topic Categories:

1. The factual background and circumstances relating to the subject matter of the Proposed Adversary Complaint.

2. The alleged factual background and circumstances regarding the evidence and allegations supporting Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery's Joint Opposition to HMIT's Motion for Leave to file Verified Adversary Proceeding (Dkt. 3783).

3. The alleged factual background and circumstances regarding evidence and allegations supporting the Claim Purchasers' Objection to HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding and Supplement thereto (Dkt. 3780).

4. Communications between Muck and any of the following entities or persons relating to any of the Claims:

   a. Any member of the UCC;

   b. HCM;

   c. Grosvenor;

   d. Muck;

   e. Any member of the Oversight Board;

   f. Seery;

   g. Stonehill or Jessup;

   h. Any of the Settling Parties;

   i. Dondero; and

   j. Any fund managed by and/or affiliated with Muck that invested any funds in connection with the purchase of any of the Claims.

5. The sources of funds used by Muck and/or Farallon to acquire any of the Claims.

6. The agreements, including all terms and conditions relating to or governing the purchase of any of the Claims by either Muck and/or Farallon and the subsequent assignment of such Claims to Muck.

7. All communications between Muck and Seery related to the Proposed Adversary Complaint.

8. Representations and/or warranties made by either Farallon, Muck, Seery, and/or any of the Settling Parties in connection with any agreements relating to the purchase, sale, transfer and/or assignment of any of the Claims.

9. Information known to Muck regarding the sale of MGM prior to the execution of any agreements to purchase any of the Claims, as well as all communications between Muck and Seery relating to MGM.

10. Appointment of Muck to the Oversight Board.

11. Farallon's or Muck's historical relationships and business dealings with Seery and Grovesnor, including any prior business dealings between Seery and any person who is currently an officer, principle, director and/or member of Farallon or Muck or Grovesner.

12. Communications between Farallon and/or Muck, on the one hand, and Seery, on the other hand, related to Seery's compensation as CEO and Trustee of the Highland Claimant Trust following the Effective Date of the Plan.

13. Actual compensation paid to Seery since the Effective Date of the Plan.

14. All agreements and other communications between Seery and any member of the Oversight Board regarding Seery's compensation and all documents relating to, regarding, or reflecting such agreements and all the negotiations leading up to such agreements.

15. All communications between any of the Respondents related to indemnification or indemnity of any other Respondent in connection with the Claims set forth in the Proposed Adversary Complaint.

16. Any offers from any third-party to purchase any of the Claims (or any portion thereof) from Muck and/or Farallon and all communications regarding any such offer(s).

17. Any offer by Muck and/or Farallon to sell any of the Claims or any part thereof.

18. Any effort by either Muck and/or Farallon to sell or market any of the Claims or any portion thereof.

19. Any due diligence conducted by either Muck or Farallon related to the Claims Purchases including, without limitation, all accounting analyses, investment analyses, valuations, ROI analyses, projections, forecasts, cost, loss, risk, and benefit calculations, investment adviser analyses, any internal or external NAV valuations and/or fiduciary analysis.

20. Identity of any persons contacted and documents reviewed for purposes of any due diligence related to the Claims Purchases.

21. The substance, types, and sources of information Muck considered in making any decision to invest in any of the Claims on behalf of itself, Farallon, and/or any fund with which Farallon is affiliated or which Farallon manages.

22. All communications reflecting due diligence information provided by any HCM Party to Muck regarding the assets or liabilities of the HCM Estate, the monetization of any assets, projected timing of any such monetization, and distributions relating to the Claims, and any other financial information related to the Claims.

23. The extent to which Farallon was involved in creating and organizing Muck in connection with the acquisition of any of the Claims.

24. The organizational structure of Muck (including identification of all members, managing members), as well as the purpose for creating Muck, including, but not limited to, regarding holding title to any of the Claims.

25. All base fees and performance fees which Muck has received or may receive in connection with distributions relating to the Claims and all documents relating to, regarding, or reflecting the same.

26. All monies and/or distributions received by Muck and/or Farallon in connection with any of the Claims and any distributions made by Muck to any members of Muck relating to such Claims.

27. Whether Farallon is a co-investor in any fund which holds an interest in Muck or otherwise holds a direct interest in Muck and all documents reflecting the same.

28. Any communications related to any litigation hold or document retention protocol related to the facts and claims made the basis of the Proposed Adversary Complaint.

29. Identify any document retention policy or protocol.

30. The documents produced in response to the requests in this Notice.

EXHIBIT "A-2"
DOCUMENT REQUESTS

1. Any and all documents created by, prepared for, or received by Muck concerning any of the following topics:

a. The purchase of the Claims by Muck and/or Farallon;

b. Any purchase agreement relating to the acquisition of the Claims, including any draft agreements, final agreements, letters of intent, and term sheets;

c. Negotiations regarding the purchase of the Claims;

d. Valuations of the Claims or the assets underlying the Claims;

e. Promises and representations made in connection with the purchase of the Claims;

f. Any documents considered or prepared as part of any due diligence, including, but not limited to, any investment memoranda undertaken or considered by Farallon or Muck prior to acquiring the Claims;

g. Consideration for the transfer of the Claims;

h. Value of HCM's Estate;

i. Projected future value of HCM's Estate;

j. Past distributions and projected distributions from the Highland Claimant Trust;

k. Compensation earned by or paid to Seery in connection with or relating to his role as Trustee of the Highland Claimant Trust;

l. Compensation earned by or paid to Seery for his roles as CEO, Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and

m. Any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.

2. Any and all communications between Muck, on the one hand, and any of the following individuals or entities: (i) Seery, (ii) the UCC, (iii) the Settling Parties, (iv) Stonehill, (vi) Grosvenor, (vii) the Oversight Board, (viii) Dondero and (ix) any fund affiliated with or managed by Muck concerning any of the following topics:

a. Purchase or sale of the Claims;

b. Negotiation of any agreement regarding the purchase or sale of the Claims;

c. Valuation of the Claims or the assets underlying the Claims;

d. Promises and representations made in connection with the purchase, sale and/or transfer of the Claims;

e. Any due diligence undertaken by Farallon or Muck prior to acquiring the Claims;

f. Consideration for the purchase of the Claims;

g. Value of HCM's Estate;

h. Projected future value of HCM's Estate;

i. Past distributions and projected distributions from HCM's Estate;

j. Compensation earned by or paid to Seery in connection with or relating to the Claims;

k. Compensation earned by or paid to Seery for his roles as CEO and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and

l. Future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.

m. Decisions made by the Oversight Board.

3. All correspondence and/or other documents by or between Farallon and/or Muck and any investors in any fund regarding the Claims and/or the acquisition or

transfer of the Claims.

4. Any and all documents reflecting the sources of funding used by Muck to acquire any of the Claims.

5. Organizational and formation documents relating to Muck including, but not limited to, Muck's certificate of formation, company agreement, bylaws, and the identification of all members and managing members.

6. Company resolutions prepared by or on behalf of Muck approving the acquisition of any of the Claims.

7. Any and all documents reflecting any internal or external audits regarding Muck's NAV.

8. Agreements between Farallon and Muck regarding management, advisory, or other services provided to Muck by Farallon.

9. Any documents reflecting any communications with James Dondero.

10. Annual fund audits relating to Muck.

11. Muck's NAV Statements.

12. Documents reflecting the fees or other compensation earned by Muck in connection with the investment in, acquisition of, transfer of, and/or management of any of the Claims.

13. 12/6/21 Memorandum Agreement.

14. 5/9/23 Letter from the Texas State Securities Board to Highland.

15. Minutes of Meetings of the Claimant Trust Oversight Board.

16. All texts/communications with any member of the Oversight Board regarding Seery's compensation and distributions.

17. All text messages or other communications with any of the other Claims Purchasers.

18. Any documents reflecting any offer to purchase any of the Claims (and any portion thereof) from either Muck and/or Farallon and/or efforts to market any interests held by either Muck and/or Farallon.

19. Any document retention policy or protocol or Litigation Hold Requests.

Exhibit E

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Facsimile: (713) 960-7347
Attorneys for Petitioner Hunter Mountain Investment Trust

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S NOTICE OF ORAL AND VIDEOTAPED RULE 30(b)(6) DEPOSITION OF JESSUP HOLDINGS LLC'S CORPORATE REPRESENTATIVE

To: Jessup Holdings LLC, by and through its counsel of record, Brent R. McIlwain, David C. Shulte, and Christopher Bailey, HOLLAND & KNIGHT LLP, 1722 Routh Street, Suite 1500, Dallas, Texas 75201.

Pursuant to Federal Rule of Civil Procedure 30(b)(6), as adopted by the Federal Rules of Bankruptcy Procedure, Hunter Mountain Investment Trust ("HMIT") will take the oral and videotaped deposition of a corporate representative or representatives of Jessup Holdings LLC ("Jessup") or other consenting person designated by Jessup, to testify concerning the matters specified in Exhibit "A". This deposition and document request relates to HMIT's Motion for Leave to File Adversary Complaint (Dkt. 3699) and related Supplement (Dkt. 3760) ("Motion for Leave").

The deposition will take place at the offices of Parsons McEntire McCleary, PLLC, 1700 Pacific Ave., Suite 4400, Dallas, TX 75201 (or at another mutually agreeable location) beginning at **3:00 p.m.** on **Friday, June 2, 2023** and continuing day after day until completed. Jessup is instructed to designate a person or persons authorized to testify on its behalf concerning the issues specified in Exhibit "A", as required by Federal Rule of Civil Procedure 30(b)(6).

Please take further notice that Jessup is requested to designate one or more person(s) most knowledgeable and prepared to testify on behalf of Jessup concerning the topics identified on Exhibit "A-1", and to produce the documents described in Exhibit "A-2", attached hereto. The documents to be produced as described in Exhibit "A-2" shall be produced electronically to counsel for HMIT, twenty-four (24) hours prior to the deposition.

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 26, 2023

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	

ORDER REGARDING HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR EXPEDITED DISCOVERY OR, ALTERNATIVELY, FOR CONTINUANCE OF THE JUNE 8, 2023 HEARING

[Dkt. Nos. 3788 and 3791]

Having considered the *Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing* of Hunter Mountain Investment Trust ("HMIT") filed on May 24, 2023, at Dkt. No. 3788 ("Motion for Expedited Discovery"), and, separately, on May 25, 2023, at Dkt. No. 3791 ("Motion for Continuance," and, together with the Motion for Expedited Discovery, the "Motions"), and the arguments of counsel at the emergency hearing on the Motions held on Friday May 26, 2023, at 9:30 a.m.,

IT IS ORDERED that the Motion for Continuance be, and hereby is, **DENIED**;

IT IS FURTHER ORDERED that the Motion for Expedited Discovery be, and hereby is, **GRANTED**, in part and only to the extent as set forth below:

(1) To the extent any party would like to depose either James P. Seery, Jr. or James Dondero in advance of the June 8 hearing ("June 8 Hearing") on HMIT's *Emergency Motion for Leave to File Verified Adversary Proceeding* [Dkt. No. 3699] and *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* [Dkt. 3760] (together, the "Motion for Leave"), Mr. Seery and Mr. Dondero shall be made available for depositions ("Depositions") on a date and at a time agreeable to the parties that is no earlier than May 31, 2023, and no later than June 7, 2023, and no discovery or depositions of any other party or witness will be permitted prior to the June 8 hearing; and

(2) None of the parties shall be entitled to any other discovery, including the production of documents from Mr. Seery or Mr. Dondero, or any other party or witness pursuant to a subpoena *duces tecum*, or otherwise, prior to the conduct of the Depositions or to the court's ruling on the Motion for Leave following the June 8, 2023 hearing;

IT IS FURTHER ORDERED that, except as specifically set forth in this Order, HMIT's Motion for Expedited Discovery be, and hereby is, **DENIED**.

 # # # END OF ORDER # # #

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERARY PROCEEDING

Hunter Mountain Investment Trust ("HMIT"), Movant, files this Emergency Motion for Leave to File Verified Adversary Proceeding ("Motion"), both in its individual capacity and as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management, L.P. ("HCM" or "Reorganized Debtor") and the Highland Claimant Trust against Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup"), Farallon

Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), James P. Seery, Jr. ("Seery") and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendant Nos. 11-10 are collectively "Respondents" or "Proposed Defendants").

I. Good Cause for Expedited Relief

1. HMIT seeks leave to file an Adversary Proceeding pursuant to the Court's "gatekeeping" orders, as well as the injunction and exculpation provisions in the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (Doc. 1943), as modified (the "Plan").[1] A copy of HMIT's proposed Verified Adversary Proceeding ("Adversary Proceeding") is attached as Exhibit 1 to this Motion. This Motion is separately supported by objective evidence derived from historical filings in the bankruptcy proceedings.[2] WITHDRAWN

WITHDRAWN

WITHDRAWN .

[1] The exculpation provisions were recently modified by a decision of the Fifth Circuit. Such provisions apply to James P. Seery, Jr. only and are limited to his capacity as an Independent Director. *Matter of Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 438 (5th Cir. 2022).

[2] Unless otherwise referenced, all references to evidence involving documents filed in the Debtor's bankruptcy proceedings (Case No. 19-34054-sgj11 (Bankr. N.D. Tex.)) are cited by "Doc." reference. HMIT asks the Court to take judicial notice of the documents identified by such entries.

WITHDRAWN

WITHDRAWN

2. The expedited nature of this Motion is permitted under Fed. R. Bank P. 9006 (c)(1), which authorizes a shortened time for a response and hearing for good cause. For the reasons set forth herein, HMIT has shown good cause and requests that the Court schedule a hearing on this Motion on three (3) days' notice, and that any responses be filed no later than twenty-four hours before the scheduled hearing.[4]

3. HMIT brings this Motion on behalf of itself and derivatively on behalf of the Reorganized Debtor and the Highland Claimant Trust ("Claimant Trust"), as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").[5] Upon the Plan's Effective Date, Highland Capital Management, LP, as the original Debtor ("Original Debtor"), transferred its assets, including its causes of action, to the Claimant Trust, including the causes of action set forth in the attached Adversary Proceeding. The attached Adversary Proceeding alleges claims which are substantially more than "colorable" based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud,[6] including a fraud upon innocent stakeholders, as well as breaches of fiduciary

[4] Expedited action on this Motion is also warranted to hasten Movants' opportunity to file suit, pursue prompt relevant discovery, and reduce the threat of loss of potentially key evidence. Upon information and belief, Seery has been deleting text messages on his personal iPhone via a rolling, automatic deletion setting.

[5] Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate.

[6] Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the

duties and knowing participation in (or aiding and abetting) breaches of fiduciary duty. The Adversary Proceeding also alleges that the Proposed Defendants did so collectively by falsely representing the value of the Debtor's Estate, failing to timely disclose accurate values of the Debtor's Estate, and trading on material non-public information regarding such values. HMIT also alleges that the Proposed Defendants colluded to manipulate the Debtor's Estate—providing Seery the opportunity to plant close business allies into positions of control to approve Seery's compensation demands following the Effective Date.

4. Emergency relief is needed because of a fast-approaching date (April 16, 2023) that one or more of the Proposed Defendants *may* argue, depending upon choice of law, constitutes the expiration of the statute of limitations concerning some of the common law claims available to the Claimant Trust, as well as to HMIT.[7] Although HMIT offered to enter tolling agreements from each of the Proposed Defendants, they either rejected HMIT's requests or have not confirmed their willingness to do so, thereby necessitating the expedited nature of this Motion.[8] Because this Motion is subject to the

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proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement.

[7] The first insider trade at issue involved the sale and transfer of Claim 23 in the amount of $23 million held by ACMLD Claim, LLC to Muck on April 16, 2021 (Doc. 2215).

[8] HMIT has been diligent in its efforts to investigate the claims described in this Motion, including the filing of a Tex. R. Civ. P. Rule 202 proceeding in January 2023, which was not adjudicated until recently in March 2023. Those proceeding were conducted in the 191st Judicial District Court in Dallas County, Texas, under Cause DC-23-01004. WITHDRAWN Farallon and Stonehill defended those proceedings by aggressively arguing, in significant part, that the discovery issues were better undertaken in this Court.[8] The Rule 202 Petition was recently dismissed (**necessarily without prejudice**)

Court's "gatekeeping" orders and the injunction provisions of the Plan, emergency leave is required.

5. This Motion will come as no surprise to the Proposed Defendants. Farallon and Stonehill were involved in recent pre-suit discovery proceedings under Rule 202 of the Texas Rules of Civil Procedure relating to the same insider trading allegations described in this Motion. Muck and Jessup, special purpose entities created and ostensibly controlled by Farallon and Stonehill, respectively, also were provided notice of these Rule 202 Proceedings in February 2023. Like this Motion, the Rule 202 Proceedings focused on Muck, Jessup, Farallon, and Stonehill and their wrongful purchase of large, allowed claims in the Original Debtor's bankruptcy based upon material non-public information. Seery is also aware of these insider trading allegations because of a prior written demand.

6. In light of the Proposed Defendants' apparent refusal to enter tolling agreements, or their failure to fully affirm their willingness to do so, HMIT is forced to seek emergency relief from this Court to proceed timely with the proposed Adversary Proceeding before the expiration of any *arguable* limitations period.[10]

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on March 8, 2023, ostensibly based on such arguments. However, it is telling that Stonehill and Farallon admitted during the Rule 202 Proceedings to their "affiliation" with Muck and Jessup and that they bought the Claims through these entities.

WITHDRAWN

[10] HMIT respectfully requests that this Motion be addressed and decided on an expedited basis that provides HMIT sufficient time to bring the proposed action timely. In the event the Court denies the requested relief, HMIT respectfully requests prompt notice of the Court's ruling to allow HMIT sufficient

II. Summary of Claims

7. HMIT requests leave to commence the proposed Adversary Proceeding, attached as Exhibit 1, seeking redress for breaches of duty owed to HMIT, breaches of duties owed to the Original Debtor's Estate, aiding and abetting breaches of those fiduciary duties, conspiracy, unjust enrichment, and fraud. HMIT also alleges several viable remedies, including (i) imposition of a constructive trust; (ii) equitable disallowance of any unpaid balance on the claims at issue;[11] (iii) disgorgement of ill-gotten profits (received by Farallon, Stonehill, Muck and Jessup) to be restituted to the Claimant Trust; (iv) disgorgement of ill-gotten compensation (received by Seery) to be restituted to the Claimant Trust; (v) declaratory judgment relief; (vi) actual damages; and (vii) punitive damages.

III. Standing

8. **HMIT.** Prior to the Plan's Effective Date, HMIT was the largest equity holder in the Original Debtor and held a 99.5% limited partnership interest. HMIT currently holds a Class 10 Claim as a contingent Claimant Trust Interest under the CTA

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time to seek, if necessary, appropriate relief in the United States District Court. In order to have a fair opportunity to seek such relief on a timely basis and protect HMIT's rights and the rights of the Reorganized Debtor, HMIT will need to seek such relief on or before Wednesday, April 5, 2023, if this Motion has not been resolved.

[11] In the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

(Doc. 3521-5). Upon information and belief, all conditions precedent to HMIT's certification as a vested Claimant Trust Beneficiary would be readily satisfied but for the Defendants' wrongful actions and conduct described in this Motion and the attached Adversary Proceeding.

9. **Reorganized Debtor.** Although HMIT has standing as a former Class B/C Equity Holder, Class 10 claimant, and now contingent Claimant Trust Interest under the CTA,[12] this Motion separately seeks authorization to prosecute the Adversary Proceeding derivatively on behalf of the Reorganized Debtor and Claimant Trust. All conditions precedent to bringing a derivative action are satisfied.

10. Fed. R. Civ. P. 23.1 provides the procedural steps for "derivative actions," and applies to this proceeding pursuant to Fed. R. Bank. P. 7023.1. Applying Rule 7023.1, the Proposed Defendants' wrongful conduct occurred, and the improper trades consummated, in the spring and early summer of 2021, before the Effective Date in August 2021. During this period, HMIT was the 99.5% Class B/C limited partner in the original Debtor. As such, HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time, and the other Proposed Defendants aided and abetted breaches of those duties at that time.

[12] The last transaction at issue involved Claim 190, the Notice for which was filed on August 9, 2021. (Doc. 2698).

11. The derivative nature of this proceeding is also appropriate because any demand on Seery would be futile.[13] Seery is the Claimant Trustee under the terms of the CTA. Furthermore, any demand on the Oversight Board to prosecute these claims would be equally futile because Muck and Jessup, both of whom are Proposed Defendants, dominate the Oversight Board.[14]

12. The "classic example" of a proper derivative action is when a debtor-in-possession is "unable or unwilling to fulfill its obligations" to prosecute an otherwise colorable claim where a conflict of interest exists. *Cooper*, 405 B.R. at 815 (quoting *Louisiana World*, 858 F.2d at 252). Here, because HMIT's proposed Adversary Proceeding includes claims against Seery, Muck, and Jessup, the conflicts of interest are undeniable. Seery is the Trustee of the Claimant Trust Assets under the CTA, and he also serves as the "Estate Representative."[15] Muck and Jessup, as successors to Acis, the Redeemer Committee and UBS, effectively control the Oversight Board, with the responsibility to "monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance . . . ."[16]

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[13] Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed herein, since the Litigation Trustee serves at the direction of the Oversight Board.

[14] *See* Footnote 8, *infra.* In December 2021, several stakeholders made a demand on the Debtor through James Seery, in his capacity as Trustee to the Claimant Trust, to pursue claims related to these insider trades.

[15] *See* Claimant Trust Agreement (Doc. 3521-5), Sec. 3.11.

[16] *Id.* at Sec. 4.2(a) and (b).

13. Creditors' committees frequently bring suit on behalf of bankruptcy estates. Yet, it is clear that any ***appropriately designated party*** also may bring derivative claims. *In re Reserve Prod., Inc.*, 232 B.R. 899, 902 (Bankr. E.D. Tex. 1999) (citations omitted); *see In re Enron Corp.*, 319 B.R. 128, 131 (Bankr. S.D. Tex. 2004). As this Court has held in *In Re Cooper*:

> In Chapter 11 [cases], there is both a textual basis . . . and, frequently, a non-textual, equitable rationale for granting a creditor or creditors committee derivative standing to pursue estate actions (*i.e.*, the equitable rationale coming into play when the debtor-in-possession has a conflict of interest in pursuing an action, such as in the situation of an insider-defendant).

In re Cooper, 405 B.R. 801, 803 (Bankr. N.D. Tex. 2009) (also noting that "[c]onflicts of interest are, of course, frequently encountered in Chapter 11, where the metaphor of the 'fox guarding the hen house' is often apropos"); *see also In re McConnell*, 122 B.R. 41, 43-44 (Bankr. S.D. Tex. 1989) ("[I]ndividual creditors can also act in lieu of the trustee or debtor-in-possession . . . ."). Here, the Proposed Defendants are the "*foxes guarding the hen house*," and their conflicts of interest abound.[17] Proceeding in a derivative capacity is necessary, if not critical.

[17] *See Citicorp Venture Cap., Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 987 (3d Cir. 1998) (settlement noteholders purchased Debtors' securities with "the benefit of non-public information acquired as a fiduciary" for the "dual purpose of making a profit and influenc[ing] the reorganization in [their] own self-interest."), *see also, Wolf v. Weinstein*, 372 U.S. 633, 642, 83 S.Ct. 969, 10 L.Ed.2d 33 (1963) ("Access to inside information or strategic position in a corporate reorganization renders the temptation to profit by trading in the Debtor's stock particularly pernicious.").

14. The proposed Adversary Proceeding also sets forth claims that readily satisfy the Court's threshold standards requiring "colorable" claims, as well as the requirements for a derivative action. This Motion, which is supported by objective evidence contained in historical filings in the bankruptcy proceedings, also incorporates sworn declarations. At the very least, this additional evidence satisfies the Court's threshold requirements of willful misconduct and fraud set forth in the "gatekeeping" orders, as well as the injunction and exculpation provisions in the Plan.[18] This evidence also supports well-pleaded allegations exempted from the scope of the releases included in the Plan.

15. HMIT is an appropriate party to bring this action on behalf of the Reorganized Debtor and the Claimant Trust. If successful, the Adversary Proceeding will likely recover well over $100 million for the Claimant Trust, thereby enabling the Reorganized Debtor and Claimant Trust to pay off any remaining innocent creditors and make significant distributions to HMIT as a vested Claimant Trust Beneficiary.

16. As of December 31, 2022, the Claimant Trust had distributed 64.2% of the total $397,485,568 par value of all Class 8 and Class 9 unsecured creditor claims. The

[18] HMIT recognizes that it is an "Enjoined Party" under the Plan. The Plan requires a showing, *inter alia*, of bad faith, willful misconduct, or fraud against a "Protected Party." Seery is a "Protected Party" and an "Exculpated Party" in his capacity as an Independent Director. Muck and Jessup *may* be "Protected Parties" as members of the Oversight Committee, but they were not "protected" when they purchased the Claims before the Effective Date. While it is HMIT's position that Farallon and Stonehill do not qualify as "Protected Parties," they are included in this Motion in the interest of judicial economy.

Claims acquired by Muck and Jessup have an allowed par value of $365,000,000. Based on these numbers, the innocent unsecured creditors hold approximately $32 million in allowed claims.[19]

17. As of December 31, 2022, the Claimant Trust has distributed $255,201,228.[20] On a *pro rata* basis, that means that innocent creditors have received approximately $22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately $9,627,000.

18. Muck and Jessup already have received approximately $232.8 million on their Claims. Assuming and original investment of approximately $160 million, this represents over $72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary. The benefits to the Reorganized Debtor, the Claimant Trust and innocent stakeholders are undeniable.[21]

19. Seery and the Oversight Board should be estopped from challenging HMIT's status to bring this derivative action on behalf of the Claimant Trust. Seery, Muck and Jessup have committed fraud, acted in bad faith and have unclean hands, and they should not be allowed to undermine the proposed Adversary Proceeding - which seeks

[19] Doc. 3653.

[20] *Id.*

[21] Further, under the present circumstances and time constraints, this Motion should be granted to avoid the prospect of the loss of some of HMIT's and the Claimant Trust's claims and denial of due process.

to rectify significant wrongdoing. To hold otherwise would allow Seery, Muck, Jessup, Stonehill, and Farallon the opportunity to not just "guard the hen house," but to also open the door and take what they want.[22] HMIT seeks a declaratory judgment of its rights, accordingly.

IV. The Proposed Defendants

20. Seery acted in several capacities during relevant times. He served as the Debtor's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"). He also served as member of the Debtor's Independent Board.[23] He currently serves as Claimant Trustee under the CTA and remains the CEO of the Reorganized Debtor.

21. There is no doubt Seery owed the Original Debtor's Estate, as well as equity, fiduciary duties, including the duty of loyalty and the duty to avoid conflicts of interest. *See In re Xtreme Power Inc.*, 563 B.R. 614, 632-33 (Bankr. W.D. Tex. 2016) (detailing fiduciary duties owed by corporate officers and directors under Delaware law); *Louisiana World*, 858 F.2d at 245-46 (detailing duties owed by debtors-in-possession).[24]

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[22] "The doctrine of 'unclean hands' provides that "a litigant who engages in reprehensible conduct in relation to the matter in controversy ... forfeits his right to have the court hear his claim, regardless of its merit. [T]he purpose of the clean hands maxim is to protect the court against misuse by one who, because of his conduct, has forfeited his right to have the court consider his claims, regardless of their merit. As such it is not a matter of defense to be applied on behalf of a litigant; rather it is a rule of public policy." *Portnoy v. Cryo-Cell Int'l, Inc.*, 940 A.2d 43, 80–81 (Del. Ch. 2008) (citations omitted) (internal quotations omitted for clarity).

[23] Seery is the beneficiary of the Court's "gatekeeping" orders and is an "exculpated" party in his capacity as an Independent Director. He is also a "Protected Party."

[24] The Internal Affairs Doctrine dictates choice of law. Here, the Debtor, Highland Capital Management, was organized under the law of Delaware. As much, Seery's fiduciary duties and claims involving breaches of those duties will be governed by Delaware law.

22. Farallon and Stonehill are capital management companies which manage hedge funds; they are also Seery's close business allies with a long history of business ventures and close affiliation. Although they were strangers to the Original Debtor's bankruptcy on the petition date, and were not original creditors, they became entangled in this bankruptcy at Seery's invitation and encouragement—and then knowingly participated in the wrongful insider trades at issue. By doing so, Seery was able to plant friendly allies onto the Oversight Board to rubber stamp compensation demands. The proposed Adversary Proceeding alleges that Farallon and Stonehill bargained to receive handsome pay days in exchange.

23. Muck and Jessup are special purpose entities, admittedly created by Farallon and Stonehill on the eve of the alleged insider trades, and they were used as vehicles to assume ownership of the purchased claims.[WITHDRAWN] The record is clear that Muck and Jessup ***did not exist*** before confirmation of the Plan in February 2021.[26] Now, however, Muck and Jessup serve on the Oversight Board with immense powers under the CTA.[27] When they purchased the claims at issue, Muck and Jessup were ***not*** acting in their official capacities on the Oversight Committee and, therefore, they were not "Protected Persons" under the Plan.

[WITHDRAWN]

[26] [WITHDRAWN] Muck was created on March 9, 2021 before the Effective Date. Jessup was created on April 8, 2021, before the Effective Date.

[27] *See* Doc. 3521-5, Sec. 4(a) and 4(b).

24. By trading on the alleged material non-public information, Farallon, Stonehill, Muck, and Jessup became non-statutory "insiders" with duties owed directly to HMIT at a time when HMIT was the largest equity holder.[28] *See S.E.C. v. Cuban*, 620 F.3d 551, 554 (5th Cir. 2010) ("The corporate insider is under a duty to 'disclose or abstain'—he must tell the shareholders of his knowledge and intention to trade or abstain from trading altogether."). In this context, there is no credible doubt that Farallon's and Stonehill's dealings with Seery were ***not*** arms-length. Again, Farallon and Stonehill were Seery's past business partners and close allies.[29] By virtue of the insider trades at issue, Farallon and Stonehill acquired control (acting through Muck and Jessup) over the Original Debtor and Reorganized Debtor through Seery's compensation agreement and awards, as well as supervisory powers over the Claimant Trust. This makes Farallon and Stonehill paradigm non-statutory insiders.

25. HMIT also seeks recovery against John Doe Defendant Nos. 1 through 10.[30] It is clear Farallon and Stonehill refuse to disclose the precise details of their legal

[28] Because of their "insider" status, this Court should closely scrutinize the transactions at issue.

[29] Farallon and Stonehill are two capital management firms (similar to HCM) with whom Seery has had substantial business relationships. Also, Seery previously served as legal counsel to Farallon. Seery also has a long-standing relationship with Stonehill. GCM Grosvenor, a global asset management firm, held four seats on the Redeemer Committee (an original member of the Unsecured Creditors Committee in HCM's bankruptcy). Upon information and belief, GCM Grosvenor is a significant investor in Stonehill and Farallon. GCM Grosvenor, through Redeemer, also played a large part in appointing Seery as a director of Strand Advisors and approved his appointment as HCM's CEO and CRO.

[30] Farallon and Stonehill consummated their trades concealing their actual involvement through Muck and Jessup as shell companies. Farallon's and Stonehill's identities were not discovered until much later after the fact.

relationships with Muck and Jessup. They resisted such discovery in the prior Rule 202 Proceedings in state district court.[WITHDRAWN] They also refused to disclose such details in response to a prior inquiry to their counsel.[WITHDRAWN] Furthermore, the corporate filings of both Muck and Farallon conspicuously omit the identity of their respective members or managing members.[WITHDRAWN] Accordingly, HMIT intends to prosecute claims against John Doe Defendant Nos. 1 -- 10 seeking equitable tolling pending further discovery whether Farallon and Stonehill inserted intermediate corporate layers between themselves and the special purpose entities (Muck and Jessup) they created. *See In re ATP Oil & Gas Corp.*, No. 12-36187, 2017 WL 2123867, *4 (Bankr. S.D. Tex. May 16, 2017) (lsgur .J.); *see also In re IFS Fin. Corp.* No. 02-39553, 2010 WL 4614293, *3 (Bankr. S.D. Tex. No. 2, 2010) ("The identity of the party concealing the fraud is immaterial, the critical factor is whether any of the parties involved concealed property of the estate." "In either case, the trustee must demonstrate that despite exercising diligence, he could not have discovered the identity of the [unnamed] defendants prior to the expiration of the limitations period.") *ATP Oil*, 2017 WL 2123867 at *4. That burden is easily satisfied here.

[WITHDRAWN]

[WITHDRAWN]

[WITHDRAWN]

V. Background

26. As part of this Court's Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditor's Committee—was appointed to the Board of Directors (the "Board") of Strand Advisors, Inc., ("Strand Advisors"), the Original Debtor's general partner. Following approval of the Governance Order, the Board then appointed Seery as the Original Debtor's CEO and CRO. [34] Following the Effective Date of the Plan, Seery now serves as Trustee of the Claimant Trust (the Reorganized Debtor's sole post-reorganization limited partner), and continues to serve as the Reorganized Debtor's CEO. [35]

27. Imbued with his powers as CEO and CRO, Seery negotiated and obtained bankruptcy court approval of several settlements prior to the Effective Date, resulting in the following approximate allowed claims (hereinafter "Claims"):[36]

Creditor	**Class 8**	**Class 9**
Redeemer	$137 mm	$0 mm
Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm
UBS	$65 mm	$60 mm
(Totals)	$270 mm	$95 mm

[34] Doc. 854, Order Approving Retention of Seery as CEO/CRO.

[35] *See* Doc. 1943, Order Approving Plan, p. 34.

[36] Orders Approving Settlements [Doc. 1273, Doc. 1302, Doc. 1788, Doc. 2389].

Each of the settling parties curiously sold their Claims to Farallon or Stonehill (or their affiliated special purpose entities) shortly after they obtained court approval of their settlements. One of these "trades" occurred within just a few weeks before the Effective Date. Farallon and Stonehill coordinated and controlled the purchase of these Claims through Muck and Jessup, and they admitted in open court that Muck and Jessup were created to allow their purchase of the Claims.[WITHDRAWN]

28. HMIT alleges that Seery filed (or caused to be filed) deflated, misleading projections regarding the value of the Debtor's Estate,[38] while inducing unsecured creditors to discount and sell their Claims to Farallon and Stonehill. But as reflected in the attached declarations, it is now known that Seery provided material, non-public information to Farallon. The circumstantial evidence is also clear that both Farallon and Stonehill had access to and used this non-public information in connection with their purchase decisions.

29. Farallon and Stonehill are registered investment advisors who have their own fiduciary duties to their investors, and they are acutely aware of what these duties entail. Yet, upon information and belief, they collectively invested over $160 million dollars to purchase the Claims in the absence of any publicly available information that

[WITHDRAWN]

[38] The pessimistic projections were issued as part of the Plan Analysis on February 2, 2021. [Doc. 1875-1]. The Debtor projected 0% return on Class 9 claims and only 71.32% return on Class 8 Claims.

could rationally justify such investments. These "trades" become even more suspect because, at the time of confirmation, the Plan provided pessimistic projections advising stakeholders that the Claim holders would never receive full satisfaction:

- From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the valuation of HCM's assets dropped over $200 million from $566 million to $328.3 million.[39]
- HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11;[40]
    - This meant that Farallon and Stonehill invested more than $103 million in Claims ***when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims***.
- In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% *to 54%*;[41]

30. In the third financial quarter of 2021, just over $6 million of the projected $205 million available to satisfy general unsecured creditors was disbursed.[42] No additional distributions were made to the unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—**$45 million more than was *ever* projected**.[43]

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[39] Doc. 1473, Disclosure Statement, p. 18.

[40] Doc. 1875-1, Plan Supplement, p. 4.

[41] Doc 2949.

[42] Doc 3200.

[43] Doc 3582.

31. According to Highland Capital's Motion for Exit Financing,[44] and a recent motion filed by Dugaboy Investment Trust,[45] there remain ***substantial*** assets to be monetized for the benefit of the Reorganized Debtor's creditors. Thus, upon information and belief, Stonehill and Farallon, stand to realize significant profits on their wrongful investments. In turn, Stonehill and Farallon will garner (and already have garnered) substantial fees – both base fees and performance fees – as the result of their acquiring and/or managing the Claims. Upon information and belief, HMIT also alleges that Seery has received excessive compensation and bonuses approved by Farallon (Muck) and Stonehill (Jessup) as members of the Oversight Board.

32. WITHDRAWN

- Farallon admitted it conducted no due diligence and relied upon Seery in making its multi-million-dollar investment decisions at issue.[WD]
- Farallon admitted it was unwilling to sell its stake in these Claims at any price because Seery assured Farallon that the Claims were tremendously valuable.[WD]
- Farallon bragged about the value of its investment referencing non-public information regarding Amazon, Inc.'s ("Amazon") interest in acquiring Metro-Goldwyn-Mayer Studios Inc. ("MGM").[WD]

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[44] Doc 2229.

[45] Doc 3382.

[WD] WITHDRAWN

[WD] WITHDRAWN

[WD] WITHDRAWN

- Farallon was unwilling to sell its stake in the newly acquired Claims even though publicly available information suggested that Farallon would lose millions of dollars on its investment.[49]

Farallon can offer ***no credible explanation*** to explain its significant investment, and its refusal to sell at any price, ***except*** Farallon's access to material non-public information. In essence, Seery became the guarantor of Farallon's significant investment. Farallon admitted as much in its statements to James Dondero.

33. The same holds true for Stonehill. Given the negative, publicly available information, Stonehill's multi-million-dollar investments make no rational sense unless Stonehill had access to material non-public information.

34. Fed. R. Bank. P. 2015.3 requires debtors to "file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." However, no public reports required by Rule 2015.3 were filed. Seery testified they simply "fell through the cracks." [50]

35. Six days prior to the filing of the motion seeking approval of the HarbourVest Settlement, Seery acquired material non-public information regarding Amazon's interest in acquiring MGM.[51] Upon receipt of this material non-public

[49] *See* WITHDRAWN Doc. 1875-1.

[50] Doc. 1905, February 3, 2021, Hearing Transcript, 49:5-21.

[51] *See* Adversary No. 20-3190-sgj11, Doc. 150-1.

information, MGM should have been placed on the Original Debtor's "restricted list," but Seery continued to move forward with deals that involved MGM stock and notes.[52] Because the Original Debtor additionally held direct interests in MGM,[53] the value of MGM was of paramount importance to the value of the estate.

36. Armed with this and other insider information, Farallon—through Muck—proceeded to invest in the Claims and, acting through Muck, acceded to a powerful position on the Oversight Board to oversee future distributions to Muck and itself. It is no coincidence Seery invited his business allies into these bankruptcy proceedings with promises of great profits. Seery's allies now oversee his compensation.[54]

37. The Court also should be aware that the Texas States Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation

[52] As part of the HarbourVest Settlement, Seery negotiated the purchase of HarbourVest's interest in HCLOF for approximately $22.5 million as part of the transaction. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM. The HCLOF interest was not to be transferred to the Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements. Doc. 1625, p. 9, n. 5. Doc. 1625.

[53] *See* Doc. 2229, Motion for Exit Financing.

[54] Amazon closed on its acquisition of MGM in March 2022, but the evidence strongly suggests that agreements for the trades already had been reached - while announcement of the trades occurred strategically after the MGM news became public. Now, as a result of their wrongful conduct, Stonehill and Farallon profited significantly on their investments, and they stand to gain substantially more profits.

underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely "colorable."

VI. Argument

A. HMIT has asserted Colorable Claims against Seery, Stonehill, Farallon, Muck, and Jessup.

38. Unlike the terms "Enjoined Party," "Protected Party," or "Exculpated Party," the Plan does not define what constitutes a "colorable" claim. Nor does the Bankruptcy Code define the term. However, relevant authorities suggest that a Rule 12(b)(6) standard is an appropriate analogue.

39. The Fifth Circuit has held that a "colorable" claim standard is met if a [movant], such as HMIT, has asserted claims for relief that, on appropriate proof, would allow a recovery. A court need not and should not conduct an evidentiary hearing but must ensure that the claims do not lack any merit whatsoever. *Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 248 (5th Cir. 1988). Stated differently, the Court need not be satisfied there is an evidentiary basis for the asserted claims but instead should allow the claims if they ***appear*** to have ***some*** merit.

40. Other federal appellate courts have reached similar conclusions. For example, the Eighth Circuit holds that "creditors' claims are colorable if they would survive a motion to dismiss." *In re Racing Services, Inc.*, 540 F.3d 892, 900 (8th Cir. 2008); *accord In Re Foster*, 516 B.R. 537, 542 (B.A.P. 8th Cir. 2014), aff'd 602 Fed. Appx. 356 (8th Cir. 2015) (*per curiam*). The Sixth Circuit has adopted a similar test requiring that the court

look ***only*** to the face of the complaint to determine if claims are colorable. *In re The Gibson Group, Inc.*, 66 F.3d 1436, 1446 (6th Cir. 1995) (emphasis added).

41. Although there is a dearth of federal court authorities in Texas, other federal courts have adopted the same standard—*i.e.*, a claim is colorable if it is "plausible" and could survive a motion to dismiss. *See In re America's Hobby Center, Inc.*, 223 B.R. 273, 282 (S.D.N.Y 1998). In addition, in the non-bankruptcy context, the District Court for the Northern District of Texas explained that "[t]he requirement of a 'colorable claim' means only that the plaintiff must have an '*arguable* claim' and not that the plaintiff must be able to succeed on that claim." *Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (Emphasis added).

42. Thus, in this instance, this Court's gatekeeping inquiry is properly limited to whether HMIT has stated a plausible claim on the face of the proposed pleadings involving "bad faith," "willful misconduct," or "fraud." Because the face of the Adversary Complaint alleges plausible facts, HMIT's Motion is properly granted. Clearly, the attached Adversary Proceeding would survive a Rule 12(b)(6) challenge. Furthermore, the supporting declarations and documentary evidence provide additional support, and the circumstantial evidence proves that Farallon and Stonehill, strangers to the bankruptcy on the petition date, would not have leaped into these proceedings without undisclosed assurances of profit.

B. Fraud

43. As set forth in the proposed Adversary Proceeding, HMIT alleges a colorable claim for fraud—both fraud by knowing misrepresentation and fraud by omission of material fact. Here, these allegations of fraud are appropriately governed by Texas law under appropriate choice of law principals.[55]

44. Seery had a duty to not provide material inside information to his business allies. But, he did so. At the latest, Seery became aware of the potential sale of MGM in December 2020 when he received an email from Jim Dondero. [redacted] Thus, Seery knew at that time that this potential sale would likely yield significant value to the Original Debtor's Estate. Yet, the financial disclosures associated with the Plan's confirmation, which were provided only a month later, presented an entirely different outlook for both Class 8 and Class 9 unsecured creditors.[57] Seery knew at that time that these pessimistic disclosures were misleading, if not inaccurate.

45. There is no credible doubt Seery intended that innocent stakeholders would rely upon the pessimistic projections set forth in the Plan Analysis. Indeed, the singular purpose of the Plan Analysis was to advise stakeholders. As such, HMIT alleges that Seery knowingly made misrepresentations with the intention that innocent stakeholders

[55] However, Delaware law is substantially similar on the elements of fraud. *See Malinals v. Kramer*, No. CIV.A. CPU 6-11002145, 2012 WL 174958, at 2 (Del. Com. PI. Jan. 5, 2012)

[redacted] WITHDRAWN

[57] *See* Doc. 1875-1, Plan Analysis, February 1, 2021.

would rely, and that he failed to disclose material information concerning his entanglements with Farallon and Stonehill, as well as the related negotiations that were chock full of conflicts of interest.

46. On the flip side of this conspiracy coin, Farallon and Stonehill were engaged in negotiations to acquire the Claims at discounted prices; and, they successfully did so. HMIT alleges that their success was based on knowledge that the financial disclosures associated with the Plan Analysis were significantly understated. Otherwise, it would make no financial sense for Farallon and Stonehill to do the deals at issue. Indeed, Farallon admitted that it would not sell the Claims at any price, expressing great confidence in the substantial profits it expected even in the absence of any supporting, publicly available information.

47. All of the Proposed Defendants had a duty of affirmative disclosure under these circumstances. Seery always had this duty. Muck, Jessup, Farallon, and Stonehill assumed this duty when they became non-statutory "insiders." Thus, all of the Proposed Defendants are liable for conspiring to perpetrate a fraud by omission of material facts.

48. HMIT also claims that Seery and the other Proposed Defendants failed to disclose material information concerning Seery's involvement in brokering the Claims in exchange for *quid pro quo* assurances of enhanced compensation. Seery's compensation

WITHDRAWN

should be disgorged or, alternatively, such compensation constitutes a damage recoverable by the Reorganized Debtor and Claimant Trust as assignees (or transferees) of the Original Debtor's causes of action. This compensation was the product of the alleged self-dealing, breaches of fiduciary duty, and fraud.

C. Breaches and Aiding and Abetting Breaches of Fiduciary Duties

49. It is beyond dispute Seery owed fiduciary duties to the Estate. *See Xtreme Power*, 563 B.R. at 632-33 (detailing fiduciary duties owed by corporate officers and directors under Delaware law);[59] *Louisiana World*, 858 F.2d at 245-46 (5th Cir. 1988) (detailing duties owed by debtors-in-possession). Although Seery did not buy the Claims at issue, he stood to profit from these sales because his close business allies would do his bidding after they had acceded to positions of power and control on the Oversight Board. Muck and Jessup were essentially stepping into the shoes of three of the largest unsecured creditors who were already slated to serve on the Oversight Board. Thus, by acquiring their Claims, all of the Proposed Defendants knew that Muck and Jessup would occupy these powerful oversight positions after the Effective Date.

50. Thus, the alleged conspiracy was successfully implemented before the Effective Date. Farallon and Stonehill now occupy control positions through the shell

[59] The *Xtreme* case also notes that "several Delaware courts have recognized that 'directors who are corporate employees lack independence because of their substantial interest in retaining their employment." 563 B.R. at 633-34. Because Muck and Jessup are now in control of Seery's compensation, it follows that Seery is beholden to them, and Seery's disclosure of inside information to Stonehill and Farallon confirms his conflict of interest.

entities (Muck and Jessup) overseeing large compensation packages for Seery. Of course, this control (and the opportunity to control) presented a patent conflict of interest which Seery should have avoided, but instead knowingly created, fostered, and encouraged. HMIT alleges that Seery breached his duty to avoid this conflict or otherwise disclose this conflict and Farallon and Stonehill aided and abetted this breach.

51. The Original Debtor, as an investment adviser registered with the SEC, is also required to make public disclosures on its Form ADV, the uniform registration form for investment advisers required by the SEC. These Form ADV disclosures, which were in effect at the time of the insider trades at issue, explicitly forbade "any access person from trading either personally or on behalf of others . . . on material non-public information or communicating material non-public information to others in violation of the law or duty owed to another party."[60] It now appears these representations were false when made. Seery's alleged conduct also violated, at minimum, the duties Seery owed in his various capacities with the Original Debtor under the Form ADV disclosures.

52. Although initially strangers to the original bankruptcy, by accepting and using inside information, Farallon and Stonehill became "temporary insiders" and thus owed separate duties to the Estate. *See S.E.C. v. Cuban*, 620 F.3d 551 (5th Cir. 2010) ("[E]ven

[60] *See, e.g.*, https://files.adviserinfo.sec.gov/IAPD/Content/Common/crd_iapd_Brochure.aspx?BRCHR_VRSN_ID=777026.

an individual who does not qualify as a traditional insider may become a 'temporary insider' if by entering 'into a special confidential relationship in the conduct of the business of the enterprise [they] are given access to information solely for corporate purposes." *In re Washington Mut., Inc.*, 461 B.R. 200 (Bankr. D. Del. 2011), *vacated in part*, 08-12229 MFW, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (finding that equity committee stated colorable claim for equitable disallowance against creditors who "became temporary insiders of the Debtors when the Debtors gave them confidential information and allowed them to participate in negotiations with JPMC for the shared goal of reaching a settlement that would form the basis of a consensual plan of reorganization"; vacated in part as a condition of settlement only);[61] *See also, In re Smith*, 415 B.R. 222, 232-33 (Bankr. N.D. Tex. 2009) ("[a]n insider is an entity or person with 'a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arm's length with the debtor.' 'Thus, the term "insider" is viewed to encompass two classes: (1) per se insiders as listed in the Code and (2) extra-statutory insiders that do not deal at arm's length.'" (citations omitted)). Farallon, Stonehill, Muck, and Jessup clearly fall into this latter category.

[61] Although the *Washington Mutual* case was subsequently vacated, the Court's intellectual reasoning remains valid because the vacatur was mandated by a mediated settlement, not because the court's logic was flawed or changed, and the court expressly noted that the parties' settlement was conditioned on vacatur. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, *8 (Bankr. D. Del. Feb. 24, 2012) ("grant[ing] partial vacatur . . . *in furtherance of the settlement embodied in the Plan*," and noting that "absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement." (emphasis added)).

53. Because Farallon and Stonehill (acting through Muck and Jessup) now hold the majority of the seats on the Oversight Board, they, along with Seery, exercise control of the reorganization proceedings. At no time were Farallon, Stonehill, or Seery's plans disclosed to the other creditors or equity. In fact, the only inference that can be reasonably drawn is that Farallon and Stonehill brazenly sought to conceal their involvement by establishing shell entities—Muck and Jessup—to nominally hold the Claims and create an opaque barrier to any effort to identify the "*Oz behind the curtain*." Such conduct aligns precisely with the inequitable conduct detailed in *Citicorp* and *Adelphia* (discussed below).

54. In sum, the proposed Adversary Proceeding sets forth plausible allegations that Stonehill and Farallon were aware of Seery's fiduciary duties. Indeed, as registered investment advisors, both Farallon and Stonehill were acutely aware of Seery's fiduciary obligations, including, without limitation, the duty to act in the best interests of the Original Debtor's Estate and the duty not to engage in insider trading that would benefit Seery, as an insider, and themselves, as non-statutory insiders. By accepting and then acting on material non-public information, Farallon and Stonehill (as well as Muck and Jessup) aided and abetted breaches of these fiduciary duties. By placing themselves in positions to control Seery's compensation, Farallon and Stonehill (acting through Muck and Jessup) induced, encouraged, aided and abetted Seery's self-dealing.

D. Equitable Disallowance is an Appropriate Remedy

55. HMIT also seeks equitable disallowance. Although the Fifth Circuit in *Matter of Mobile Steel Co.* generally limited the court's equitable powers to subordination rather than disallowance,[62] the Fifth Circuit **did *not* foreclose** the viability of equitable disallowance as a potential remedy. *See* 563 F.2d 692, 699 n. 10 (5th Cir. 1977). Binding U.S. Supreme Court precedent in *Pepper v. Litton* also permits bankruptcy courts to fashion disallowance remedies. 308 U.S. 295, 304-11 (1939). Bankruptcy Code § 510, which supplies the authority for equitable subordination, was "intended to codify case law, such as *Pepper v. Litton . . . and is not intended to limit the court's power in any way…. Nor does [it] preclude a bankruptcy court from completely disallowing a claim in appropriate circumstances*." *In re Adelphia Commun. Corp.*, 365 B.R. 24, 71-72 (Bankr. S.D.N.Y. 2007), *aff'd in part sub nom. Adelphia Recovery Tr. v. Bank of Am., N.A.*, 390 B.R. 64 (S.D.N.Y. 2008), *adhered to on reconsideration*, 05 CIV. 9050 (LMM), 2008 WL 1959542 (S.D.N.Y. May 5, 2008) (emphasis and omissions in original).[63]

56. The Fifth Circuit's decision in *Mobile Steel* also was premised on the notion that disallowance would not add to the quiver of defenses to fight unfairness because

[62] Equitable subordination is an inadequate remedy in this instance.

[63] In *Washington Mutual*, the Court's intellectual reasoning when imposing disallowance is instructive. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, *8 (Bankr. D. Del. Feb. 24, 2012) ("grant[ing] partial vacatur . . . *in furtherance of the settlement embodied in the Plan*," and noting that "absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement." (emphasis added)).

creditors "are fully protected by subordination" and "[i]f the misconduct directed against the bankrupt is so extreme that disallowance might appear to be warranted, then *surely* the claim is either invalid or the bankrupt possesses a clear defense against it." *Mobile Steel*, 563 F.2d at 699 n. 10 (emphasis added). Importantly, however, the factual scenarios considered in *Mobile Steel* do not exist here.

57. Here, Muck and Jessup purchased both Class 8 and Class 9 Claims, and they now effectively occupy more than 90% of the entire field of unsecured creditors in these two claimant tiers. Thus, subordination cannot effectively address the current facts where the Original Debtor's CEO and CRO conspired directly with close business allies who acquired the largest unsecured claims to the detriment of other innocent creditors and *former equity*. The reasoning in published cases from other circuits supports this conclusion. *See Adelphia*, 365 B.R. at 71-73; *Citicorp Venture Capital, Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 991 n. 7 (3d Cir. 1998).

58. The purpose of equitable subordination is to assure that the wrongdoer does not profit from bad conduct. In the typical case, subordination to other creditors will achieve this deterrence. But, it is clear that the Third Circuit's decision in *Citicorp* was structured to use subordination as just one tool in a larger tool box to make sure "at a minimum, the remedy here should deprive – [the fiduciary] of its profit on the purchase of the notes." *Id* at 991. In *Adelphia*, the Southern District of New York also used equitable

subordination as a remedy to address wrongs of non-insiders who aided and abetted breaches a fiduciary duty by the debtor's management. 365 B.R. at 32.

59. But subordination cannot adequately address the wrongful conduct at issue. This is because subordination is typically limited to instances where one creditor is subordinated to other creditors, not equity. Here, for all practical purposes, there are only a few other unsecured creditors with relatively small stakes. Therefore, subordination as a weapon of deterrence is neutered.

60. In sum, by engaging in the alleged wrongful acts, including aiding and abetting Seery's breaches of fiduciary duty, Farallon, Stonehill, Muck, and Jessup should not be rewarded. The Proposed Defendants engaged in alleged conduct which damaged the Original Debtor's estate, including improper agreements to compensate Seery under the terms of the CTA. Equitable disallowance is an appropriate remedy which, when combined with disgorgement of all ill-gotten profits, will deprive the Proposed Defendants of their ill-gotten gains.

E. Disgorgement and Unjust Enrichment

61. The law is clear that disgorgement is an available remedy for breach of fiduciary duty both under Texas Law, see *Kinzbach Tool Co. v. Corbett-Wallace Corporation*, 160 S.W. 2d 509 (Tex. 1942), and under Delaware law, see *Metro Storage International, LLC v. Harron*, 275 A.3d 810 (Del. Ch. 2022). Disgorgement is also an appropriate remedy for unjust enrichment under Texas law, *Hunter v. Shell Oil Co.*, 198 F.2d 485 (5th Cir. 1952),

and under Delaware law, *In re Tyson Foods, Inc. Consolidated Shareholder Litigation*, 919 A.2d 563 (Del. Ch. 2007).[64]

62. Likewise, the imposition of a constructive trust is proper for addressing unjust enrichment under both Delaware and Texas law, see *Teacher's Retirement System of Louisiana v. Aidinoff*, 900 A.2d 654 (Del. Ch. 2006) and *Hsin-Chi-Su v. Vantage Drilling Company*, 474 S.W. 3d 384 (Tex. App. – 14th Dist. 2015), pet. denied. The elements of unjust enrichment are: (1) the defendant must have gained a benefit (2) at the expense of plaintiff, (3) and retention of that benefit must be shown to be unjust. *See Restatement (Third) of Restitution and Unjust Enrichment* §321, cmt. e (2011).

63. Here, the imposition of a constructive trust and disgorgement are clearly appropriate to provide redress for the alleged breaches of fiduciary duty and the knowing participation in (or aiding and abetting) those breaches. Furthermore, the imposition of a constructive trust and disgorgement are appropriate to disgorge the improper benefits that all of the Proposed Defendants received by virtue of collusion and insider trading.

64. As set forth in the proposed Adversary Proceeding, Seery gained the opportunity to have his compensation demands rubber stamped. The other Defendants gained the opportunity to purchase valuable claims at a discount knowing that

[64] It is likely that the Internal Affairs Doctrine will dictate that Delaware choice of law governs the breach of fiduciary duty claims.

pessimistic financial projections were false and that the upside investment potential was great. Retention of the benefits they received would be unjust and inequitable.

65. Clearly, the Debtor's Estate was damaged by virtue of the claimed conduct. Seery obtained profits and compensation to the detriment of that estate as well as the estate of the Reorganized Debtor, other innocent creditors and HMIT, as former equity and as a contingent Claimant Trust Beneficiary.

F. Declaratory Relief

66. HMIT also seeks declaratory relief pursuant to Fed. R. Bank P. 7001(9). Specifically, HMIT seeks a declaratory judgment that: (a) there is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement; (b) as a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered "contingent;" (c) HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill; (d) HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments; (e) Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of fraudulent conduct, bad faith, willful misconduct, and unclean hands; (f) Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized

Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct, and unclean hands; and (g) all of the Proposed Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct, and unclean hands.

G. HMIT has Direct Standing.

67. The Texas Supreme Court recently held that "a partner or other stakeholder in a business organization has constitutional standing to sue for an alleged loss in the value of its interest in the organization." *Pike v. Texas EMC Mgt., LLC*, 610 S.W.3d 763, 778 (Tex. 2020). In so holding, the Court considered federal law and found that the traditional "incantation that a shareholder may not sue for the corporation's injury" is really a question of capacity, which goes to the merits of a claim, rather than an issue of standing that would impact subject matter jurisdiction. *Id.* at 777 (noting that the 5th Circuit and "[o]ther federal circuits agree that a plaintiff has standing to sue for the lost value of its investment in a corporation"). Because Seery, Muck, Jessup, Stonehill, Farallon's alleged actions devalued HMIT's interest in the Debtor's Estate, including, without limitation, payment of excessive compensation to Seery, HMIT has standing to pursue its common law claims directly. HMIT also has direct standing to seek declaratory relief as set forth in the proposed Adversary Proceeding.

VII. Prayer

WHEREFORE, PREMISES CONSIDERED, Hunter Mountain Investment Trust respectfully requests this Court grant HMIT leave authorizing it to file the Adversary Complaint, attached as Exhibit 1, as an Adversary Proceeding in this United States Bankruptcy Court for the Northern District of Texas, in its own name and as a derivative action on behalf of the Debtor Highland Capital Management, L.P., against Muck Holdings, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, Stonehill Capital Management, LLC, James P. Seery, Jr., and John Doe Defendants Nos. 1 – 10, and further grant HMIT all such other and further relief to which HMIT may be justly entitled.

Dated: March 28, 2023

Respectfully Submitted,
PARSONS MCENTIRE MCCLEARY PLLC

By: */s/ Sawnie A. McEntire*

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CERTIFICATE OF CONFERENCE

Beginning on March 24, 2023, and also on March 27, 2023, the undersigned counsel conferred either by telephone or via email with all counsel for all Respondents regarding the relief requested in the foregoing Motion, including John A. Morris on behalf of James P. Seery, and Brent McIlwain on behalf of Muck Holdings LLC, Jessup Holdings LLC, Stonehill Capital Management, and Farallon Capital Management. Mr. Seery is opposed to this Motion. Based upon all communications with Mr. McIlwain, it is reasonably believed his clients are also opposed and we advised him that this recitation would be placed in the certificate of conference.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

CERTIFICATE OF SERVICE

I certify that on the 28th day of March 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

Exhibit 1 to Emergency Motion

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Case No. 19-34054-sgj11**
Debtor.	§	
HUNTER MOUNTAIN INVESTMENT TRUST, INDIVIDUALLY, AND ON BEHALF OF THE DEBTOR HIGHLAND CAPITAL MANAGEMENT, L.P. AND THE HIGHLAND CLAIMANT TRUST	§	**Adversary Proceeding No. _____**
PLAINTIFFS,	§	

v.	§
	§
MUCK HOLDINGS, LLC, JESSUP HOLDINGS, LLC, FARALLON CAPITAL MANAGEMENT, LLC, STONEHILL CAPITAL MANAGEMENT, LLC, JAMES P. SEERY, JR., AND JOHN DOE DEFENDANTS NOS. 1-10	§
DEFENDANTS.	§

VERIFIED ADVERSARY COMPLAINT

Hunter Mountain Investment Trust ("HMIT") files this Verified Adversary Complaint in its individual capacity and, as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management L.P. ("HCM" or "Reorganized Debtor") and the Highland Claimant Trust (collectively "Plaintiffs"), complaining of Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup"), Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), James P. Seery, Jr., ("Seery") and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendants Nos. 1-10 are collectively "Defendants"), and would show:

I. Introduction

1. HMIT brings this Verified Adversary Complaint ("Complaint") on behalf of itself, individually, and as a derivative action benefitting the Reorganized Debtor and

on behalf of the Highland Claimant Trust ("Claimant Trust"), as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").[1] This derivative action is specifically brought pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and B. R. Rule 7023.1. At the time of the transactions at issue, HMIT held a 99.5% limited partnership in Highland Capital Management, LP, the Original Debtor, as described herein. This derivative action is not a collusive effort to confer jurisdiction that the Court would otherwise lack.

2. Upon the Effective Date, the assets of the bankruptcy estate of Highland Capital Management, L.P., as the Original Debtor (the "Debtor's Estate") were transferred to the Highland Claimant Trust under the terms of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Doc. 1943, Exhibit A] (the "Plan") and as defined in the CTA. These assets include all "causes of action" that the Debtor's Estate had before the Effective Date including, without limitation, the causes of action set forth in this Adversary Proceeding. Furthermore, the Claimant Trust is managed by the Claimant Trustee, Seery. Therefore, any demand upon Seery to prosecute the claims set forth in this Complaint would be futile because Seery is a Defendant. Similarly, the Oversight Board exercises supervision over Seery as Claimant

[1] Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate. Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed in HMIT's Emergency Motion for Leave (Doc. __).

Trustee, and Muck and Jessup are members of the Oversight Board. Any demand upon Muck and Jessup to prosecute these claims would be equally futile. All conditions precedent to bringing this derivative action have otherwise been satisfied.

3. This action has become necessary because of Defendants' tortious conduct. This tortious conduct occurred before the Effective Date of the Plan, but its effects have caused damage both before and after the Effective Date. Prior to the Effective Date, HMIT owned 99.5% of the limited partnership interest in the Original Debtor and was the beneficiary of fiduciary duties owed by Seery.

4. Seery, the Original Debtor's CEO and former Chief Restructuring Officer ("CRO"), wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends, Farallon and Stonehill. He did so by providing material non-public information to them concerning the value of the Original Debtor's Estate that other stakeholders did not know. Farallon and Stonehill, who were otherwise strangers to the bankruptcy proceedings, wrongfully purchased the claims through their special purpose entities, Muck and Jessup, based upon this inside information, and they are now profiting from their misconduct. Seery's dealings with the other Defendants were not arm's length, but instead were covert, undisclosed, and collusive.

5. Motivated by corporate greed, the other Defendants aided and abetted or, alternatively, knowingly participated in Seery's wrongful conduct. They also breached their own duties as "non-statutory insiders." Because of their long-standing, historical

relationships with Seery, and their use of material non-public information, Farallon, Stonehill, Muck, and Jessup assumed positions of control over the affairs of the Debtor's bankruptcy, including compensation awards to Seery. As such, they became non-statutory insiders.

6. HMIT was formerly the largest equity holder in the Debtor, holding a 99.5% limited partnership interest. HMIT now holds an Allowed Class 10 Class B/C Limited Partnership Interest and a Contingent Trust Interest under the CTA. Given HMIT's' position as former equity, HMIT's right to recover from the Claimant Trust is junior to the Reorganized Debtor's unsecured creditors, now known as Claimant Trust Beneficiaries. However, the vast majority of the approved unsecured claims superior to HMIT's interest are the claims wrongfully acquired by insider trading and the breaches of duty at issue in this proceeding.

7. By wrongfully soliciting, fostering, and encouraging the wrongful insider trades, Seery violated his fiduciary duties to the Debtor's Estate, specifically his duty of loyalty and his duty to maximize the value of the Estate with corresponding recovery by legitimate creditors and former equity. Seery was motivated out of self-interest to garner personal benefit (to the detriment of the Debtor's Estate) by strategically benefitting his business allies with non-public information. He then successfully "planted" his allies onto the Oversight Board, which, as a consequence does not act as an independent board in the exercise of its responsibilities. Rather, imbued with powers to oversee Seery's

future compensation, the other Defendants are postured to reward Seery financially regarding Defendants' illicit dealings and, upon information and belief, they have done so.

8. By receiving and acting upon material non-public information concerning the financial condition of the Debtor's Estate, Stonehill and Farallon, acting individually and through special purpose shell entities they created and controlled, directly or indirectly, are also liable for aiding and abetting Seery's breaches of fiduciary duties. By acquiring the claims at issue, Muck and Jessup, the shell entities created and controlled by Stonehill and Farallon, also became non-statutory insiders owing duties of disclosure which they also breached.

9. HMIT separately seeks recovery against John Doe Defendant Nos. 1-10. Farallon actively concealed the precise legal relationship between Farallon and Muck. Stonehill actively concealed the precise legal relationship between Stonehill and Jessup. What is known, however, is that Farallon and Stonehill created these special purpose shell entities on the eve of the insider trades to acquire ownership of the claims and to otherwise control the affairs of the Oversight Board. Both Farallon and Stonehill rejected inquiries concerning the exact nature of their relationship with these special purpose entities. Accordingly, HMIT seeks equitable tolling of any statute of limitations concerning claims against unknown business entities that Farallon and Stonehill may have created and inserted as intermediate corporate layers in the transactions at issue.

10. HMIT seeks to disgorge all Defendants' ill-gotten profits and equitable disallowance of the remaining unpaid balances on the following allowed claims: Claim Nos. 23, 72, 81, 143, 147, 149, 150, 153, 154, 190, and 191 (the "Claims") currently held by Muck and Jessup. Because Defendants received substantial distributions from the Claimant Trust in connection with these Claims, HMIT seeks to disgorge all such distributions above Defendants' initial investment—compelling restitution of such funds to the Claimant Trust for the benefit of innocent creditors and former equity pursuant to the waterfall established under the Plan and the CTA. HMIT also seeks to disgorge Seery's compensation from the date his collusive conduct first occurred. Alternatively, HMIT seeks damages on behalf of the Claimant Trust in an amount equal to all compensation paid to Seery from the onset of his collusive conduct to present.

II. Jurisdiction and Venue

11. Pursuant to *Misc. Order No. 33 Order of Reference of Bankruptcy Cases, U.S. District Court for N.D. Texas* (the "Order of Reference"), this Complaint is commenced in the Bankruptcy Court because it is "related to a case under Title 11." The filing of this Complaint is expressly subject to and without waiver of Plaintiff' rights and ability to seek withdrawal of the reference pursuant to 28 U.S.C. § 157(d), FED. R. BANKR. P. 5011, and Local Bankruptcy Rule 5011-1. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein and nothing in this Complaint, nor Plaintiffs' compliance with the Order of Reference, shall be deemed a waiver of this right.

12. This Court has jurisdiction of the subject matter and the parties as a "related to" proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and Articles IX.F, and XI. of the Plan.

13. Pursuant to Rule 7008 of the Bankruptcy Rules, Plaintiffs do **not** consent to the entry of final orders or judgment by the bankruptcy court.

14. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 1408 and 1409, and Articles IX.F, and XI. of the Plan.

III. Parties

15. HMIT is a Delaware statutory trust that was the largest equity holder in the Original Debtor, holding a 99.5% limited partnership interest. HMIT is also the holder of a Contingent Trust Interest in the Claimant Trust, but should be treated as a vested Claimant Trust Beneficiary due to Defendants' wrongful conduct.

16. Pursuant to the Plan and the CTA, the Claimant Trust holds the assets of the Reorganized Debtor, including the causes of action that accrued to the Original Debtor before the Effective Date. The Claimant Trust is established in accordance with the Delaware Statutory Trust Act and Treasury Regulatory Section 301.7701-4(d).

17. Muck is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Muck has made prior appearances in the Debtor's bankruptcy.

18. Jessup is a Delaware limited liability company, with its principal office in New York, and may be served with process via its registered agent, Vcorp Services, LLC, at 108 W. 13th Street Suite 100, Wilmington, Delaware 19801. Jessup has made prior appearances in the Debtor's bankruptcy.

19. Farallon is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Farallon is a capital management company that manages hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Farallon because Farallon's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts requirements and due process considerations.

20. Stonehill is a Delaware limited liability company, with its principal office in New York, and may be served with process at 320 Park Avenue, 26th Floor, New York, NY 10022. Stonehill is a capital management company managing hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Stonehill because Stonehill's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts and all due process considerations.

21. Seery is an individual citizen and resident of the State of New York. Mr. Seery may be served with process at 100 Crescent Court, Suite 1805, Dallas, Texas 75201.

22. John Doe Defendant Nos. 1-10 are currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.

IV. Facts

A. *Procedural Background*

23. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court,[2] which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.[3]

24. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee of the Highland Crusader Fund ("Redeemer"); Acis Capital Management, L.P. and Acis Capital Management GP, LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS")—and an unpaid vendor, Meta-E Discovery.

25. Following the venue transfer to Texas, on December 27, 2019, the Debtor filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of*

[2] Doc. 3. Unless otherwise referenced, all documents referencing "Doc." refer to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

[3] Doc. 1.

Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ("Governance Motion").[4] On January 9, 2020, the Court signed a Governance Order granting the Governance Motion.[5]

26. As part of the Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditors Committee—was appointed to the Board of Directors (the "Board") of Strand, the Original Debtor's general partner. The Board then appointed Seery as the Chief Executive Officer in place of the previous CEO, Mr. James Dondero, as well as the CRO.[6] Seery currently serves as Trustee of the Claimant Trust under the terms of the CTA and the CEO of the Reorganized Debtor.[7]

B. *The Targeted Claims*

27. In his capacity as the Original Debtor's CEO and CRO, Seery negotiated and obtained court approval for settlements with several large unsecured creditors including Redeemer, Acis, UBS, and another major unsecured creditor, HarbourVest (Redeemer, Acis, UBS, and HarbourVest are collectively the "Settling Parties"), resulting in the following allowed Claims:

Creditor	**Class 8**	**Class 9**
Redeemer	$137 mm	$0 mm

[4] Doc. 281.

[5] Doc. 339.

[6] Doc. 854, Order Approving Retention of Seery as CEO/CRO.

[7] *See* Doc. 1943, Order Approving Plan, p. 34.

Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm
UBS	$65 mm	$60 mm
(Totals)	$270 mm	$95 mm

As reflected in these settlements, HarbourVest and UBS owned Class 9 claims in addition to Class 8 Claims. Class 9 Claims were subordinated to Class 8 Claims in the distribution waterfall in the Plan.

28. Each of the Settling Parties sold their Claims to Farallon and Stonehill (or affiliated special purpose entities) shortly after receiving court approval of the settlements. One of these "trades" took place within just a few weeks before the Plan's Effective Date.[8] All of these trades occurred when HMIT held its 99.5% equity stake in the Debtor. Notice of these trades was first provided in filings in the records of the Original Debtor's bankruptcy proceedings, as follows: Claim No. 23 (Doc. 2211, 2212, and 2215), Claim Nos. 190 and 191 (Doc. 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (Doc. 2263), Claim No. 81 (Doc. 2262), Claim No. 72 (Doc. 2261).

29. Farallon and Stonehill, both of whom are registered investment advisors that manage hedge funds, have fiduciary duties to their own investors. As such, they are acutely aware of their duties and obligation as fiduciaries. Yet, they both invested many tens of millions of dollars, directly or indirectly, to acquire the Claims in the absence of

[8] Docs. 2697, 2698.

any publicly available information that could provide any economic justification for their investment decisions.

30. Upon information and belief, Stonehill and Farallon collectively invested an estimated $160 million to acquire the Claims with a face amount of $365 million, and they did so in the absence of any meaningful due diligence. Indeed, Farallon has admitted that it conducted no due diligence but relied on Seery's guarantees.

31. Stonehill and Farallon's investments become even more suspicious because the Plan provided the ***only*** publicly available information, which, at the time, included pessimistic projections that the Claims would ever receive full payment:

a. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the projected value of HCM's assets dropped over $200 million from $566 million to $364 million.[9]

b. HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11.[10]

   - This meant that Farallon and Stonehill invested more than $163 million in Claims when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims.

c. In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% to 54%.

[9] Doc. 1473, Disclosure Statement, p. 18.

[10] Doc. 1875-1, Plan Supplement, Ex. A, p. 4.

d. Despite the stark decline in the value of the estate and in the midst of substantial reductions in the percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively, again, the "Claims") in April and August of 2021 in the combined amount of $163 million.[11]

32. Upon information and belief, Stonehill, through its special purpose entity, Jessup, acquired the Redeemer Committee's claim for $78 million.[12] Upon information and belief, the $23 million Acis claim[13] was sold to Farallon/Muck for $8 million. Upon information and belief, HarbourVest sold its combined $80 million in claims to Farallon/Muck for $27 million. UBS sold its combined $125 million in claims for $50 million to both Stonehill/Jessup and Farallon/Muck. In the instance of UBS, ***the total projected payout was only $35 million***. Indeed, as part of these transactions, both Farallon and Stonehill purchased Class 9 Claims at a time when the Debtor's Estate projected a zero dollar return on all such Claims.

[11] Notices of Transfers [Docs. 2212, 2215, 2261, 2262, 2263, 2215, 2297, 2298]. The Acis claim was transferred on April 16, 2021; the Redeemer, Crusader, and HarbourVest claims were transferred on April 30, 2021; and the UBS claims were transferred on August 9, 2021.

[12] July 6, 2021, letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

[13] Seery/HCM have argued that $10 million of the Acis claim is self-funding.

C. *Material Non-Public Information is Disclosed to Seery's Affiliates at Stonehill and Farallon.*

33. One of the significant assets of the Debtor's Estate was the Debtor's direct and indirect holdings in Metro-Goldwyn-Mayer Studios, Inc. ("MGM").[14]

34. On December 17, 2020, James Dondero, sent an email to Seery. At that time, Dondero was a member of the MGM board, and the email contained material non-public information regarding Amazon and Apple's interest in acquiring MGM.[15] Of course, any such sale would significantly enhance the value of the Original Debtor's estate.

35. Upon receipt of this material non-public information, Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in this Court seeking approval of the Original Debtor's settlement with HarbourVest - resulting in a transfer to the Original Debtor of HarbourVest's interest in a Debtor-advised fund, Highland CLO Funding, Ltd. ("HCLOF"), which held substantial MGM debt and equity.[16] Conspicuously, the HCLOF interest was not transferred to the Original Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements.[17]

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[14] *See* Doc. 2229, p. 6.

[15] *See* Adversary Case No. 20-3190-sgj11, Doc. 150-1, p. 1674.

[16] Doc. 1625. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM.

[17] Doc. 1625.

36. Upon information and belief, aware that the Debtor's stake in MGM afforded a new profit center, Seery saw an opportunity to increase his own compensation and enlisted the help of Stonehill and Farallon to extract further value from the Original Debtor's Estate at the expense of other innocent creditors and equity. This *quid pro quo* included, at a minimum, a tacit, if not express, understanding that Seery would be well-compensated.

37. Until 2009, Seery was the Global Head of Fixed Income Loans at Lehman Brothers[18] where, on information and belief, he conducted substantial business with Farallon. Following the collapse of Lehman Brothers, Seery continued to work with, and indeed represented Farallon as its legal counsel. Seery ultimately joined a hedge fund, River Birch Capital,[19] which, along with Stonehill, served on the creditors committee in other bankruptcy proceedings. GCM Grovesnor, a global asset management firm, held four seats on the Redeemer Committee[20] and, upon information and belief, is a significant investor in Stonehill and Farallon. Grovesnor, through Redeemer, played a large part in appointing Seery as a director of Strand Advisors. Seery was beholden to Grovesnor from the outset, and, by extension, Grovesnor's affiliates Stonehill and Farallon.

[18] Seery Resume [Doc. 281-2].

[19] *Id*.

[20] Declaration of John A. Morris [Doc. 1090], Ex. 1, pp. 15.

38. As successful capital management firms, with advisory and fiduciary duties to their own clients, Stonehill and Farallon typically engage in robust due diligence before making significant investments. Yet, in this case, it would have been *impossible* for Stonehill and Farallon to forecast *any* profit at the time of their multi-million-dollar investments given the negative financial information disclosed by the Original Debtor's Estate. Seery, as the CEO, was aware of and involved in approving these negative financial projections. In doing so, Seery intentionally caused the publication of misleading, false information.

39. Seery shared with Stonehill and Farallon *non-public* information concerning the value of the Original Debtor's Estate which was higher than publicly available information. Thus, the only logical conclusion is that all Defendants knew that the publicly available projections, which accompanied the Plan, were understated, false, and misleading. Otherwise, Farallon, Muck, Stonehill and Jessup would not have made their multi-million-dollar investments. None of the Defendants disclosed their knowledge of the misleading nature of these financial projections when they had a duty to do so. None of the Defendants disclosed the nature of their dealings in acquiring the Claims.

40. By wrongfully exploiting non-public insider information, Stonehill and Farallon—acting through Muck and Jessup—became the largest holders of unsecured claims in the Debtor's Estate with resulting control over the Oversight Board and a front row seat to the reorganization and distribution of Claimant Trust Assets. As such, they

were given control (through Muck and Jessup) to approve discretionary bonuses and success fees for Seery from these assets.

D. ***Distributions***

41. The MGM sale was ultimately consummated in March 2022 for $6.1 billion in cash, plus $2.5 billion in debt that Amazon assumed and immediately repaid.[21]

42. By the end of Q3 2021, just over $6 million of the projected $205 million available for general unsecured claimants had been disbursed.[22] No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—$45 million more than was *ever* projected.[23] Thus, Stonehill (Jessup) and Farallon (Muck) have already received returns that far eclipse their investment. They also stand to make further significant profits on their investments, including payments on Class 9 Claims.

43. As of December 31, 2022, the Claimant Trust has distributed $255,201,228. On a pro rata basis, that means that innocent creditors have received approximately $22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately $9,627,000.

[21] Amazon Q1 2022 10-Q.

[22] Doc. 3200.

[23] Doc. 3582.

44. Muck and Jessup already have received approximately $232.8 million on their Claims. Assuming and original investment of approximately $160 million, this represents over $72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary.

45. It is clear Seery facilitated the sale of the Claims to Stonehill (Jessup) and Farallon (Muck) at discounted prices and used misleading financial projections to facilitate these trades. This was part of a larger strategy to install Stonehill (Jessup) and Farallon (Muck), his business allies, onto the Oversight Board where they would oversee lucrative bonuses and other compensation for Seery in exchange for hefty profits they expected to receive.

V. Causes of Action

A. Count I (against Seery): Breach of Fiduciary Duty

46. The allegations in paragraphs 1-45 above are incorporated herein as if set forth verbatim.

47. As CEO and CRO of a debtor-in-possession, Seery owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate, including, without limitation, the duty of loyalty. Seery also was under a duty to avoid conflicts of interests, but Seery willfully and knowingly engaged in conduct which conflicted with his fiduciary duties—and he did so out of financial self-interest.

48. By fraudulently providing and/or approving negative projections of the Debtor's Estate when he knew otherwise, Seery willfully and knowingly breached his fiduciary duties.

49. By misusing and disclosing confidential, material non-public information to Stonehill and Farallon, Seery willfully and knowingly breached his fiduciary duties.

50. By failing to disclose his role in the inside trades at issue, Seery willfully and knowingly breached his fiduciary duties.

51. As a result of his willful misconduct, Seery was unfairly advantaged by receiving additional undisclosed compensation and bonuses from the assets of the Debtor's Estate and from the Claimant Trust Assets—to the detriment of other innocent stakeholders, including HMIT, as former equity and a contingent Claimant Trust Beneficiary.

52. To remedy these breaches, Seery is liable for disgorgement of all compensation he received since his collusion with Farallon and Stonehill first began. Alternatively, Seery should be disgorged of all compensation paid to him under the terms of the CTA since the Effective Date of the Plan in August 2021.

53. Alternatively, Plaintiffs are entitled to recover damages measured by all ill-gotten compensation which Seery has received since his first collusive conduct began.

B. Count II (against Stonehill, Farallon, Jessup and Muck): Breaches of Fiduciary Duty and Knowing Participation in Breach of Fiduciary Duty

54. The allegations in paragraphs 1-53 above are incorporated herein as if set forth verbatim.

55. Seery owed fiduciary duties to HMIT and the Debtor's Estate, and he willfully and knowingly breached these duties. Without limiting the foregoing, Seery owed a duty of loyalty which he willfully and knowingly breached. Seery also owed a duty to not engage in self-interested conduct to the detriment of the Debtor's Estate and innocent stakeholders. Seery also willfully and knowingly breached this duty.

56. Stonehill and Farallon were aware of Seery's fiduciary duties and, by purchasing the Claims and approving bonuses and other compensation for Seery, Stonehill (acting through Jessup) and Farallon (acting through Muck), willfully and knowingly participated in Seery's breaches or, alternatively, willfully aided and abetted such breaches.

57. Stonehill (Jessup) and Farallon (Muck) unfairly received many millions of dollars in profits and fees—and stand to earn even more profits and fees—to the detriment of innocent stakeholders, including HMIT.

58. Stonehill and Farallon are liable for disgorgement of all profits earned from their purchase of the Claims. In addition, they are liable in damages for excessive compensation paid to Seery as part of the covert *quid pro quo* with Seery.

C. Count III (against all Defendants): Fraud by Misrepresentation and Material Nondisclosure

59. The allegations in paragraphs 1-58 above are incorporated herein as if set forth verbatim.

60. Based on Seery's duties as CEO and CRO of a debtor-in-possession, and the other Defendants' duties as non-statutory insiders, Seery, Stonehill (Jessup), and Farallon (Muck) had a duty to disclose Stonehill and Farallon's plans to purchase the Claims, but they deliberately failed to do so. Seery also had a duty to disclose correct financial projections but, rather, misrepresented such values or failed to correct false and misleading projections. These factual misrepresentations and omissions were material.

61. The withheld financial information was material because it has had an adverse impact on control over the eventual distributions to creditors and former equity, as well as the right to control Seery's compensation. By withholding such information, Seery was able to plant friendly business allies on the Oversight Board to the detriment of innocent stakeholders.

62. Defendants knew that HMIT and other creditors were ignorant of their plans, and HMIT and other stakeholders did not have an equal opportunity to discover their scheme. HMIT and the other innocent stakeholders justifiably relied on misleading information relating to the value of the Original Debtor's Estate.

63. By failing to disclose material information, and by making or aiding and abetting material misrepresentations, Seery, Stonehill, Farallon, Muck, and Jessup intended to induce HMIT to take no affirmative action.

64. HMIT justifiably relied on Seery, Stonehill, Farallon, Muck, and Jessup's nondisclosures and representations, and HMIT was injured as a result and the Debtor's Estate was also injured.

65. As a result of their frauds, all Defendants should be disgorged of all profits and ill-gotten compensation derived from their fraudulent scheme. Seery is also liable for damages measured by excessive compensation he has received since he first engaged in willful misconduct.

D. Count IV (against all Defendants): Conspiracy

66. The allegations in paragraphs 1-65 above are incorporated herein as if incorporated herein verbatim.

67. Defendants conspired with each other to unlawfully breach fiduciary duties to HMIT and the Debtor's Estate, to conceal their fraudulent trades, and to interfere with HMIT's entitlement to the residual of the Claimant Trust Asset.

68. Seery's disclosure of material non-public information to Stonehill and Farallon, and Muck and Jessup's purchase of the Claims, are each overt acts in furtherance of the conspiracy.

69. HMIT's interest in the residual of the Claimant Trust Assets has been adversely impacted by this conspiracy. The assets have been depleted by virtue of Seery's compensation awards.

E. Count V (against Muck and Jessup): Equitable Disallowance

70. The allegations in paragraphs 1-69 above are incorporated herein as if set forth verbatim.

71. By purchasing the Claims based on material non-public information, Stonehill and Farallon, through Jessup and Muck, engaged in inequitable conduct.

72. By earning significant profits on their purchases, Muck and Jessup have been unfairly advantaged to the detriment of the remaining stakeholders, including HMIT.

73. Given this inequitable conduct, equitable disallowance of Muck's and Jessup's Claims to the extent over and above their initial investment is appropriate and consistent with the purposes of the Bankruptcy Code.

74. Pleading in the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

F. Count VI (against all Defendants): Unjust Enrichment and Constructive **Trust**

75. The allegations in paragraphs 1-74 above are incorporated herein as if set forth verbatim.

76. By acquiring the Claims using material non-public information, Stonehill and Farallon breached a relationship of trust with the Original Debtor's Estate and other innocent stakeholders and were unjustly enriched and gained an undue advantage over other creditors and former equity.

77. Allowing Stonehill, Farallon, Muck and Jessup to retain their ill-gotten benefits at the expense of other innocent stakeholders and HMIT, as former equity, would be unconscionable.

78. Stonehill, Farallon, Muck, and Jessup should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment.

79. The proceeds Stonehill, Farallon, Muck, and Jessup have received from the Claimant Trust are traceable and identifiable. A constructive trust should be imposed on such proceeds to secure the restitution of these improperly retained benefits.

F. Count VI (Against all Defendants): Declaratory Relief

80. The allegations in paragraphs 1-79 are incorporated herein as if set forth verbatim.

81. HMIT seeks declaratory relief. The Court has jurisdiction to provide declaratory judgment relief when there is an actual controversy that has arisen and exists relating to the rights and duties of the parties.

82. Bankruptcy Rule 7001 provides that "a proceeding to recover property or money," may include declaratory relief. *See*, Fed. R. Bank P. 7001(1), (9).

83. The Claimant Trust Agreement is governed under Delaware law. The Claimant Trust Agreement incorporates and is subject to Delaware trust law. HMIT seeks a declaration, as follows:

a. There is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement;

b. As a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered contingent;

c. HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill;

d. HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments. Alternatively, HMIT's status as a Claimant Trust Beneficiary is fully vested when all of Muck's and Jessup's trust interests are subordinated to the trust interests held by HMIT;

e. Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of Seery's fraudulent conduct, bad faith, willful misconduct and unclean hands;

f. Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct and unclean hands;

g. All Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct and unclean hands.

VI. Punitive Damages

84. The allegations in paragraphs 1-74 are incorporated herein as if set forth verbatim.

85. The Defendants' misconduct was intentional, knowing, willful and fraudulent and in total disregard of the rights of others. An award of punitive damages is appropriate and necessary under the facts of this case.

86. All conditions precedent to recovery herein have been satisfied.

VII. Prayer

WHEREFORE, HMIT prays for judgment as follows:

1. Equitable disallowance of the Claims over and above Muck's and Jessup's original investments (or, alternatively, subordination of their Claimant Trust Interests, as addressed herein);

2. Disgorgement of all funds distributed from the Claimant Trust to Muck and/or Jessup over and above their original investments;

3. Disgorgement of compensation paid to Seery in managing or administering the Original and Reorganized Debtor's Estate;

4. Imposition of a constructive trust;

5. Declaratory relief as described herein;

6. An award of actual damages as described herein;

7. An award of exemplary damages as allowed by law;

8. Pre- and post-judgment interest; and,

9. All such other and further relief to which HMIT may be justly entitled.

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S WITNESS AND EXHIBIT LIST IN CONNECTION WITH ITS EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING, AND SUPPLEMENT

Hunter Mountain Investment Trust ("HMIT"), Movant, files this Witness and Exhibit List for the hearing to consider HMIT's *Emergency Motion for Leave to File Verified Adversary Proceeding* [Doc. 3699] and *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* [Doc. 3760] (together the "Motion for Leave"), which is

currently set for June 8, 2023 at 9:30 a.m. (Central Time) (the "Motion for Leave Hearing.).[1]

HMIT reserves the right to amend or supplement this witness list and exhibit list to add or withdraw witnesses or exhibits.

I. Witnesses

1. James P. Seery, Jr. as an Adverse Party;

2. James Dondero;

3. Mark Patrick;

4. Scott Van Meter (Expert Witness). Mr. Van Meter may provide opinion testimony on issues relating to Mr. Seery's compensation and claims trading. A copy of his CV is produced as part of the Exhibit List. Based upon his education, experience, and training, and his review of documents, Mr. Van Meter has formed several opinions in this matter.

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[1] This Witness and Exhibit List is filed subject to and without waiving and of HMIT's substantive and procedural rights including, but not limited to, HMIT's objections to the evidentiary format of the Motion for Leave Hearing, including as ordered by the Court's May 22, 2023, Order Pertaining to the Hearing on Hunter Mountain Investment Trust's Motion for Leave to File Adversary Proceeding [DE ## 3699 & 3760] (Doc. 3787) ("May 22 Order"). HMIT's prior objections to an evidentiary hearing on "colorability," and applying an evidentiary burden of proof to HMIT's Motion for Leave, were asserted by HMIT during the April 24, 2023, Status Conference, and were further set forth in HMIT'S Reply Brief in Support of its Motion for Leave (Doc. 3785) and during the May 26, 2023, hearing regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing (Doc 3788), all of which objections are incorporated herein for all purposes ("HMIT's Evidentiary Hearing Objections").

Subject to and without waiving HMIT's Evidentiary Hearing Objections, and based on the Court's rulings relating to the evidentiary format for the Motion for Leave Hearing, HMIT also files this instrument subject to and without waiving HMIT's procedural and substantive rights relating to HMIT's efforts to take discovery in advance of the Motion for Leave Hearing including, but not limited to, the discovery HMIT requested in Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing (Doc. 3791) to the extent it was denied in the Court's May 26, 2023, Order Regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing [Dkt. Nos. 3788 and 3791] (Doc.3800).

Mr. Van Meter has analyzed the claims traded in the bankruptcy case and holds the opinion that, at a minimum, there are several red flags plausibly indicating the use of Material Non-Public Information ("MNPI") in connection with the Claims Purchasers' investment in the claims at issue.

Mr. Van Meter also holds the opinion that investments in the claims at issue would have normally required substantial due diligence which was not undertaken, another red flag, plausibly indicating the Claims Purchasers' use of MNPI in connection with their investment in the claims at issue.

His analysis also identified red flags plausibly indicating that the Claims Purchasers' acted in concert to acquire certain of the claims at issue.

Mr. Seery's incentive-based compensation was not based upon any market study, which is another red flag indicating that it was not reasonable and is excessive. Mr. Van Meter also holds the opinion that Mr. Seery's compensation is clearly excessive if the Claims Purchasers, who later controlled the Claimant Trust, had access to information eliminating or reducing uncertainty and risk associated with the performance targets ultimately set forth in the Incentive Compensation Plan ("ICP").

Mr. Van Meter will also review Mr. Seery's deposition testimony and the testimony given by all the witnesses at the hearing on this matter and may offer further opinions in response to that testimony.

Mr. Van Meter's contact information is B. Riley Advisory Services, 4400 Post Oak Parkway, Suite 1400, Houston, Texas 77027, (713) 858-3225;

5. Steve Pully (Expert Witness). Mr. Pully may provide opinion testimony on issues relating to Mr. Seery's claims trading.

Mr. Pully has over 37 years of experience as a hedge fund executive, investment banker, attorney, corporate board member and as an expert consultant. He holds a JD Degree as well as a degree in accounting. He is a Chartered Financial Analyst, a licensed CPA and an attorney licensed in the State of Texas. He also holds various FINRA security licenses. His CV is produced as an exhibit identified on the Exhibit List.

Mr. Pully holds various opinions based upon the materials he has reviewed, as well as his education, experience and training, including: (i) the publicly available

projections concerning payout on the claims at issue would not have rewarded the Claims Purchasers with the types of economic returns they would normally hope to realize for a similar type investment; (ii) based on the pessimistic public projections, there is a strong likelihood that inappropriate information was provided to the Claims Purchasers in making their investment decisions; (iii) credit oriented funds, like Farallon and Stonehill, have strong investment requirements and typically perform extensive due diligence and analysis before committing to investments; (iv) it is implausible that an investment decision could have been made by Farallon and Stonehill to acquire the claims at issue for as much as they invested based upon the publicly available information and apparent lack of due diligence; (v) the publicly projected estimates concerning likely returns on the claims at issue did not justify the magnitude of the Claims Purchasers' investment.

Mr. Pully will also review Mr. Seery's deposition testimony and the testimony given by all the witnesses at the hearing on this matter and may offer further opinions in response to that testimony.

Mr. Pully's contact information is 4564 Meadowood, Dallas, Texas 75220, (214) 587-6133.

6. Any adverse party who is present in the Courtroom including, without limitation, Michael Linn and Raj Patel;

7. Any witnesses listed or called by any other party; and

8. Any witnesses necessary for impeachment and/or rebuttal.

II. Exhibits

#	DESCRIPTION	OFFR	OBJ	ADM
1.	Exhibit 1 – Adversary Complaint			
2.	Exhibit 1a – Revised Adversary Complaint attached to Supplemental Motion			

#	DESCRIPTION	OFFR	OBJ	ADM
3.	[Doc. 3784-12] December 17, 2020, Email from James Dondero to James Seery re: MGM			
4.	James Dondero Handwritten Notes – May 2021			
5.	Compliance Logs [Confidential][2]			
6.	[Doc. 3784-36] - News Article – May 26, 2021 – Announcing MGM Deal			
7.	[Doc. 1943] Order (I) Confirming Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief			
8.	[Doc. 1875] Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization (Amended Liquidation Analysis/Financial Projections Dated February 1, 2021 [Doc. 1875-1])			
9.	[Doc. 2030] January 2021 Monthly Operating Report, filed March 15, 2021			
10.	[Doc. 2949] Q3 2021 Post-Confirmation Report			

[2] This Exhibit has been designated "Confidential" pursuant to the *Agreed Protective Order* [Doc. 382] and is being served on all Parties to these immediate proceedings. This Confidential exhibit is not being filed immediately with this Exhibit List, however, it will be provided via hard copy.

#	DESCRIPTION	OFFR	OBJ	ADM
11.	[Doc. 2229] Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief, filed 4/20/21			
12.	[Doc. 3409] Q2 2022 Post-Confirmation Report (Reorganized Debtor)			
13.	[Doc. 3583] Q3 2022 Post-Confirmation Report (Claimant Trust)			
14.	[Doc. 3757] Q1 2023 Post-Confirmation Report (Claimant Trust)			
15.	[Doc. 0064] Notice of Appointment of Committee of Unsecured Creditors			
16.	CV of James P. Seery, Jr.			
17.	June 2, 2023 Transcript of James P. Seery, Jr.'s Deposition			
18.	January 29, 2021 Transcript of James P. Seery, Jr.'s Deposition			
19.	Excerpts of January 29, 2021 Transcript of James P. Seery, Jr's Deposition			
20.	Excerpts of February 3, 2021 Hearing Transcript of James P. Seery, Jr.'s Testimony			

#	DESCRIPTION	OFFR	OBJ	ADM
21.	Excerpts of January 20, 2021 Transcript of James P. Seery, Jr.'s Deposition			
22.	Excerpts of October 17, 2020 Transcript of James P. Seery, Jr.'s Deposition			
23.	[Doc. 3784-44] Assignment Agreement			
24.	John Morris Email re: Text Messages, dated February 16, 2023			
25.	John Morris Email re: Text Messages, dated March 10, 2023			
26.	Doc. 3521-5 – Claimant Trust Agreement			
26a.	[Doc. 1811-3] Redlined Draft of Claimant Trust Agreement, attached to Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications) [Doc. 1811]			
27.	[Doc. 2801] Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust			
28.	[Doc. 3784-43] Memorandum of Agreement – Compensation			
29.	[Doc. 3784-41] Redacted Minutes – Oversight Board, dated August 26, 2021			

#	DESCRIPTION	OFFR	OBJ	ADM
30.	[Doc. 3784-42] Redacted Minutes – Oversight Board			
31.	[Doc. 2211] Notice of Transfer of Claim other than for Security (Acis/ACMLP), dated August 30, 2021			
32.	[Doc. 2212] Notice of Transfer of Claim Other than Security (Acis/ACMLP)			
33.	[Doc. 2215] Notice of Transfer of Claim other than Security (Acis/Muck)			
34.	[Doc. 2261] Notice of Transfer of Claim other than Security (Redeemer/Jessup)			
35.	[Doc. 2262] Notice of Transfer of Claim other than Security (Crusader/Jessup)			
36.	[Doc. 2263] Notice of Transfer of Claim other than Security (HarbourVest/Muck)			
37.	[Doc. 2697] Notice of Transfer of Claim other than Security (UBS/Jessup)			
38.	[Doc. 2698] Notice of Transfer of Claim other Than Security (UBS/Muck)			
39.	Expert CV for Scott Van Meter			
40.	Materials Reviewed by Scott Van Meter			

#	DESCRIPTION	OFFR	OBJ	ADM
41.	Data Chart Prepared by S. Van Meter – Notice of Transfers			
42.	Data Chart Prepared by S. Van Meter – Analysis of Claim Amount Transferred by Month			
43.	Data Chart Prepared by S. Van Meter – Analysis of Expected Returns			
44.	Data Chart Prepared by S. Van Meter – Analysis of Cumulative Distributions			
45.	Data Chart Prepared by S. Van Meter – Analysis of Estimated Trustee Compensation			
46.	Expert CV for Steve Pully			
47.	Materials Reviewed by Steve Pully			
48.	Chart Prepared by S. Pully – Estimated Recovery of Class 8 and Class 9 Claims Based on Public Information			
49.	Chart Prepared by S. Pully – Amount Paid by Farallon and Stonehill for Class 8 and Class 9 Claims			
50.	Chart Prepared by S. Pully – Recoveries on Class 8 and 9 Claims			
51.	Chart Prepared by S. Pully – Calculation of Returns to Farallon and Stonehill			

#	DESCRIPTION	OFFR	OBJ	ADM
52.	Chart Prepared by S. Pully – IRR Calculations			
53.	[Doc. 1894] Transcript of Proceedings (Confirmation Hearing) – February 2-3, 2021 – Volume 1 of 2			
54.	[Doc. 1905] Transcript of Proceedings (Confirmation Hearing) – February 2-3, 2021 – Volume 2 of 2			
55.	[Doc. 1866-5] Amended Liquidation Analysis/Financial Projections, dated January 28, 2021			
56.	HCM Form ADV, Part 1, March 31, 2023			
57.	HCM Form ADV Part 1, April 25, 2023			
58.	[Doc. 3778] Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust			
59.	Doug Draper Letter to US Trustee's Office with Exhibits, dated October 5, 2021			
60.	Davor Rukavina Letter to US Trustee's Office with Exhibits, dated November 3, 2021			
61.	Davor Rukavina Letter to US Trustee's Office with Exhibits, dated May 11, 2022			

#	DESCRIPTION	OFFR	OBJ	ADM
62.	Declaration of Sawnie McEntire with All Exhibits, dated March 27, 2023			
63.	Asset Chart – HCMLP Assets to be Monetized; HCMLP Monetization & Management Fees (est.); Cash Roll;			
64.	Certificate of Formation of Muck Holdings, LLC. filed March 9, 2021			
65.	Certificate of Formation of Jessup Holdings LLC, filed April 8, 2021			
66.	Declaration of Mark Patrick with All Exhibits, dated February 14, 2023			
67.	Letter from Alvarez & Marsal to Highland Crusader Funds Stakeholders, dated July 6, 2021			
68.	[Doc. 1788] Order Approving Debtor's Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith			
69.	[Doc. 2389] Order Approving Debtor's Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith			
70.	Sub-Advisory Agreement between NexPoint Advisors, L.P., and Highland Capital Management, L.P. (dated effective as of January 1, 2018)			

#	DESCRIPTION	OFFR	OBJ	ADM
71.	Amended and Restated Shared Services Agreement between			
72.	Articles Concerning MGM			
73.	[Doc. 3662] – Motion for Leave to File Proceeding, Together with All Exhibits Thereto, filed February 6, 2023			
74.	[Doc. 2537] Motion of Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief			
75.	[Doc. 2687] Order Approving Motion of the Debtor for Entry of an Order (I) Authorizing the Sale of Property and (II) Granting Related Relief			
76.	Statement of Interested Party in Response to Motion of Nexpoint Strategic Opportunities Fund to Confirm Discharge or Plan Injunction Does Not Bar Lawsuit, or alternatively, for Relief from all Applicable Injunctions (Doc. 1235, *In re: ACIS Capital Management*, Cause No. 18-30264-sgj11).			
77.	Doc. 3756 – Post-confirmation Report (Reorganized Debtor)			
78.	Excerpts of October 20, 2021 Transcript of James P. Seery, Jr. Deposition			
79.	Case Study – Large Loan Origination			

#	DESCRIPTION	OFFR	OBJ	ADM
80.	Excerpt from Pleading filed in the United States Bankruptcy Court of the Southern District of New York, Case No. 10-14997, *In re: Blockbuster Inc.*, et al.			
81.	Any document entered or filed into the Bankruptcy Case, including any exhibits thereto			
82.	All exhibits necessary for impeachment and/or rebuttal			
83.	All exhibits identified or offered by any other party at the hearing			

HMIT reserves the right to amend and/or supplement this Exhibit List, including the removal of any exhibit. HMIT also reserves the right to use any exhibit offered by any other party to these proceedings and any document for purely impeachment purposes. HMIT also reserves and does not waive the right to object to any exhibit (or any portion thereof) that may be identified on this Exhibit List to the extent offered by another Party.

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: */s/ Sawnie A. McEntire*

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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I certify that on the 5th day of June 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

HMIT Exhibit No. 2

Exhibit 1-A to Emergency Motion

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Attorneys for Hunter Mountain Investment Trust

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Case No. 19-34054-sgj11**
Debtor.	§	
HUNTER MOUNTAIN INVESTMENT TRUST, INDIVIDUALLY, AND ON BEHALF OF THE DEBTOR HIGHLAND CAPITAL MANAGEMENT, L.P., AND THE HIGHLAND CLAIMANT TRUST	§	**Adversary Proceeding No. _____**
PLAINTIFFS,	§	

	§
v.	§
	§
MUCK HOLDINGS, LLC, JESSUP HOLDINGS LLC, FARALLON CAPITAL MANAGEMENT, L.L.C., STONEHILL CAPITAL MANAGEMENT LLC, JAMES P. SEERY, JR., JOHN DOE DEFENDANTS NOS. 1-10,	§
	§
DEFENDANTS	§
	§
and	§
	§
HIGHLAND CAPITAL MANAGEMENT, L.P., AND THE HIGHLAND CLAIMANT TRUST,	§
	§
NOMINAL DEFENDANTS.	§

VERIFIED ADVERSARY COMPLAINT

Hunter Mountain Investment Trust ("HMIT") files this Verified Adversary Complaint ("Complaint") in its individual capacity and as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management, L.P. ("HCM" or "Reorganized Debtor"), and the Highland Claimant Trust ("Claimant Trust") (the Claimant Trust and Reorganized Debtor are collectively referred to as "Nominal Defendants"), (collectively the Nominal Defendants and HMIT, in its various capacities, are referred to as "Plaintiffs") complaining of Muck Holdings, LLC ("Muck"), Jessup Holdings LLC ("Jessup"), Farallon Capital Management, L.L.C. ("Farallon"), Stonehill

Capital Management LLC ("Stonehill"), James P. Seery, Jr., ("Seery"), and John Doe Defendants Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery, and the John Doe Defendants Nos. 1-10 are collectively "Defendants"), and would show:

I. Introduction

A. *Preliminary Statement*

1. HMIT brings this Verified Adversary Complaint ("Complaint") on behalf of itself, individually, and as a derivative action benefitting and on behalf of the Reorganized Debtor and the Highland Claimant Trust, as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").[1] This action has become necessary because of the wrongful conduct of the Defendants, involving self-dealing, breaches of fiduciary duties, and aiding and abetting those breaches of duty.

2. This lawsuit focuses on a scheme involving Seery and his close business associates and allies. Seery held command of the Debtor, Highland Capital Management, L.P., in a complex bankruptcy. The Debtor's business involved hundreds of millions of dollars in assets that were held by the Debtor's Estate in a variety of entities, managed funds, and other investments. It was not and still is not a narrowly focused business with

[1] Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate. Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed in HMIT's Emergency Motion for Leave (Doc. 3699).

the type of uncomplicated, transparent assets that almost any potential claim purchaser could meaningfully evaluate. Seery effectively enjoyed despotic control over how these assets were managed, sold, or monetized, and many of his activities were never subject to judicial scrutiny or accountability. Indeed, Seery failed to cause the Debtor to make the financial disclosures required in such proceedings.

3. Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants ("Defendant Purchasers"), with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims. The Defendant Purchasers paid well over a hundred million dollars to buy these claims without the kind of independent due diligence that would be reasonably expected, if not required, because of their own fiduciary duties to their investors. It made no sense for the Defendant Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk. The counter-intuitive nature of the purchases at issue compels the conclusion that the Defendant Purchasers acted on inside information and Seery's secret assurances of great profits. Indeed, based upon publicly available information, their investment was projected to yield a small return with virtually no margin for error. But as they must have anticipated, they have already recovered the purchase price ***and*** returns far greater than what was publicly projected,

with the expectation of significant more profits if not deterred. These facts fit classic insider trading activity.

4. As part of the scheme, the Defendant Purchasers obtained a position to approve Seery's ongoing compensation - to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT. Initially, Seery's compensation package was composed of a flat monthly pay. Now, however, it is also performance based. This allows the Defendant Purchasers to satisfy the *quid pro quo* at the heart of the scheme. Seery would help the Defendant Purchasers make large profits and they would help enrich Seery with big pay days.

5. To further advance their scheme, the Defendants have participated in the pursuit of contrived litigation against HMIT and others, through litigation sponsored by the Litigation Sub Trust. Upon information and belief, Seery also directed or authorized legal counsel for the Reorganized Debtor and Claimant Trust (who, tellingly, also represented Seery) to oppose HMIT's efforts to obtain leave to file this adversary proceeding. These obstructive tactics are self-serving, with the apparent goals of attempting to: (a) exhaust financial resources in an effort to delay recognition of the vesting of HMIT's interests under the terms of the CTA; (b) reduce the value of HMIT's interests under the CTA; and (c) deprive HMIT of claims relating to breaches of fiduciary duty stemming from the scheme. The Defendants and Litigation Sub Trust have used millions of dollars of assets to finance these obstructive tactics. Every dollar misapplied

by Defendants to further this scheme is damaging to HMIT, the Reorganized Debtor, and the Claimant Trust.

6. This derivative action is brought pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and B. R. Rule 7023.1. At the time of the transactions at issue, HMIT held a 99.5% limited partnership in Highland Capital Management, L.P., the Original Debtor. This derivative action is not a collusive effort to confer jurisdiction that the Court would otherwise lack.

7. This action also is brought subject to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) (Doc. 1943, Exhibit A) (the "Plan") Article IX.F. Consistent with such provisions, this action is ***not*** brought ***against*** the nominal party Reorganized Debtor or the nominal party Claimant Trust, but as a derivative action on their behalf and for their benefit.[2] Additionally, HMIT is a person or party aggrieved by the conduct of the Defendants and, therefore, HMIT has constitutional standing to bring this action.

B. ***The Claimant Trust, the Derivative Action, the Futility of Further Demand, Abandonment of Claims, and Conflict of Interest***

8. Upon the Effective Date, the assets of the bankruptcy estate of Highland Capital Management, L.P., as the Original Debtor (the "Debtor's Estate"), were transferred to the Highland Claimant Trust under the terms of the Plan, and as defined

[2] To the extent the Reorganized Debtor and the Claimant Trust are considered necessary parties for the purposes of this derivative action, they have been included as nominal defendants.

in the CTA. These assets include all "causes of action" that the Debtor's Estate had before the Effective Date including, without limitation, the causes of action set forth in this Adversary Proceeding. Furthermore, the Claimant Trust is also managed by the Claimant Trustee, Seery, who has self-servingly and falsely characterized the claims as allegedly meritless (Doc. 3707).

9. Seery, as Claimant Trustee, breached his fiduciary duties and abandoned the current claims in this Adversary Complaint by objecting to HMIT's Emergency Motion for Leave to File this Adversary Complaint (Doc. 3699) and Application for Emergency Hearing (Doc. 3700). Seery is attempting to weaponize the gatekeeping protocols in the Plan to arm himself and others with potential defense arguments to avoid a merits-based determination of the claims against Seery and the other Defendants. In other words, Seery is attempting to protect his own self-interest ***at the expense of*** the Reorganized Debtor, the Claimant Trust, and HMIT. Therefore, any demand upon Seery to prosecute the claims in this Complaint would be futile because Seery is a Defendant.

10. Similarly, the Oversight Board exercises supervision over Seery as Claimant Trustee, and Muck and Jessup are controlling members of the Oversight Board. Any demand upon Muck and Jessup to prosecute these claims would be equally futile because they also filed objections to the expedited prosecution of these or similar claims (falsely characterizing the claims as an alleged waste of judicial resources) (Doc. 3704). Upon

information and belief, Muck and Jessup are also controlled by Farallon and Stonehill, further evidencing the futility of any such demand on Muck and Jessup.

11. All conditions precedent to bringing this derivative action have otherwise been satisfied or waived, and the Defendants are estopped from asserting otherwise. HMIT is an appropriate party to bring this action on behalf of the Reorganized Debtor and the Claimant Trust.

C. ***Nature of the Action***

12. The insider trading scheme was implemented after confirmation of the Plan, but before the Effective Date. Prior to the Effective Date, HMIT owned 99.5% of the limited partnership interest in the Debtor and was the beneficiary of fiduciary duties owed by Seery.

13. Seery, the Original Debtor's Chief Executive Officer ("CEO") and former Chief Restructuring Officer ("CRO"), wrongfully facilitated and promoted the insider trades by providing material non-public information to Defendant Purchasers concerning the value of assets in the Debtor's Estate. Farallon and Stonehill, who were otherwise strangers to the bankruptcy proceedings, wrongfully purchased the claims through their special purpose entities, Muck and Jessup, based upon this inside information. Seery's dealings with the Defendant Purchasers were not arm's-length, but instead were covert, undisclosed, and collusive.

14. Motivated by corporate greed, the Defendant Purchasers aided and abetted or, alternatively, knowingly participated in Seery's wrongful conduct. They also breached their own duties as "non-statutory insiders." Because of their long-standing, historical relationships with Seery, and their use of material non-public information, the Defendant Purchasers obtained effective control over various affairs of the Debtor's bankruptcy, including compensation awards to Seery. As such, they became non-statutory insiders.

15. HMIT was formerly the largest equity holder in the Debtor, holding a 99.5% limited partnership interest. As part of the scheme, Seery is attempting to delay recognition of HMIT's vesting of its interests under the CTA. As an allowed Class 10 Class B/C Limited Partnership Interest and Contingent Trust Interest holder, HMIT's right to recover from the Claimant Trust would be junior to the Reorganized Debtor's unsecured creditors, now known as Claimant Trust Beneficiaries. However, the vast majority of the approved unsecured claims superior to HMIT's interest are those claims wrongfully acquired by the insider trading and the breaches of duty at issue in this proceeding.

16. By wrongfully soliciting, fostering, and encouraging the wrongful insider trades at issue, Seery violated his fiduciary duties to the Debtor's Estate and to HMIT, including specifically his duty of loyalty and his duty to avoid self-dealing. But Seery was motivated out of self-interest to garner personal benefit by strategically "planting" his allies onto the Oversight Board which, as a consequence, does not act as an independent

board in the exercise of its responsibilities. Rather, imbued with powers to effectively control Seery's compensation, the Defendant Purchasers are postured to reward Seery for their illicit dealings and, upon information and belief, they have done so.

17. By receiving and acting upon material non-public information concerning the financial condition of the Debtor's Estate, Stonehill and Farallon, acting individually and through special purpose shell entities they created and controlled, directly or indirectly, are also liable for aiding and abetting Seery's breaches of fiduciary duties. By acquiring the claims at issue, Muck and Jessup, the shell entities created and controlled by Stonehill and Farallon, also became non-statutory insiders, and also aided and abetted Seery's breaches of fiduciary duties.

18. Because of their willful, inequitable misconduct and bad faith, Plaintiffs ask the Court to require the Defendant Purchasers to disgorge their ill-gotten profits and equitably disallow the remaining unpaid balances on the following allowed claims: Claim Nos. 23, 72, 81, 143, 147, 149, 150, 153, 154, 190, and 191 (the "Claims") currently held by Muck and Jessup. Because the Defendant Purchasers received substantial distributions from the Claimant Trust in connection with these Claims, HMIT seeks to disgorge from Defendant Purchasers all such distributions above the Defendant Purchasers' initial investment—compelling restitution of such funds to the Claimant Trust for the benefit of other creditors and former equity pursuant to the waterfall established under the Plan and the CTA. Plaintiffs also ask the Court to require Seery to

disgorge all compensation from the date his collusive conduct first occurred. Alternatively, Plaintiffs seek damages on behalf of the Claimant Trust in an amount equal to all compensation paid to Seery from the onset of his collusive conduct to present.

19. By this Complaint, Plaintiffs do not seek to challenge the Plan or the Order confirming the Plan.

II. Jurisdiction and Venue

20. Pursuant to *Misc. Order No. 33 Order of Reference of Bankruptcy Cases, U.S. District Court for N.D. Texas* (the "Order of Reference"), this Complaint is commenced in the Bankruptcy Court because it is "related to a case under Title 11." The filing of this Complaint is expressly subject to and without waiver of Plaintiffs' rights and ability to seek withdrawal of the reference pursuant to 28 U.S.C. § 157(d), FED. R. BANKR. P. 5011, and Local Bankruptcy Rule 5011-1. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein and nothing in this Complaint, nor Plaintiffs' compliance with the Order of Reference, shall be deemed a waiver of this right. To the extent necessary, Plaintiffs seek to withdraw the reference at this time.

21. This Court has jurisdiction of the subject matter and the parties as a "related to" proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and Articles IX.F., and XI. of the Plan.

22. Pursuant to Rule 7008 of the Bankruptcy Rules, Plaintiffs do **not** consent to the entry of final orders or judgment by the bankruptcy court.

23. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 1408 and 1409, and Articles IX.F., and XI. of the Plan.

III. Parties

24. HMIT is a Delaware statutory trust that was the largest equity holder in the Original Debtor, holding a 99.5% limited partnership interest. HMIT is also the holder of a Contingent Trust Interest in the Claimant Trust, but HMIT should be treated as a vested Claimant Trust Beneficiary due to Defendants' wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein. Due to Seery's abandonment of the claims asserted herein, and his patent conflict of interest, HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.

25. The Reorganized Debtor, Highland Capital Management, L.P., is a limited partnership formed under the laws of Delaware and may be served at its principal place of business address of 100 Crescent Court, Suite 1850, Dallas, Texas 75201. The Reorganized Debtor is a nominal defendant only, and a primary beneficiary of this lawsuit.

26. Pursuant to the Plan and the CTA, the Claimant Trust holds the assets of the Reorganized Debtor, including the causes of action that accrued to the Debtor's Estate before the Effective Date. The Claimant Trust is established in accordance with the Delaware Statutory Trust Act and Treasury Regulatory Section 301.7701-4(d). The

Claimant Trust may be served at its Principal Office where the Claimant Trust is maintained: 100 Crescent Court, Suite 1850, Dallas, Texas 75201. The Claimant Trust is a nominal defendant only, and a primary beneficiary of this lawsuit.

27. Muck is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Muck has made prior appearances in the Debtor's bankruptcy.

28. Jessup is a Delaware limited liability company, with its principal office in New York, and may be served with process via its registered agent, Vcorp Services, LLC, at 108 W. 13th Street Suite 100, Wilmington, Delaware 19801. Jessup has made prior appearances in the Debtor's bankruptcy.

29. Farallon is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Farallon is a capital management company that manages hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Farallon because Farallon's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts requirements and due process considerations.

30. Stonehill is a Delaware limited liability company, with its principal office in New York, and may be served with process at 320 Park Avenue, 26th Floor, New York, NY 10022. Stonehill is a capital management company managing hedge funds and is a

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

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APPELLEE RECORD

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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registered investment advisor. This Court has personal jurisdiction over Stonehill because Stonehill's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts and all due process considerations.

31. Seery is an individual citizen and resident of the State of New York. Mr. Seery may be served with process at 100 Crescent Court, Suite 1805, Dallas, Texas 75201.

32. HMIT separately seeks recovery against John Doe Defendants Nos. 1-10. Farallon has actively concealed the precise legal relationship between itself and Muck. Stonehill also actively concealed the precise legal relationship between itself and Jessup. What is known, however, is that Farallon and Stonehill created these special purpose shell entities, on the eve of the insider trades to acquire ownership of the Claims and to otherwise control the affairs of the Oversight Board. Both Farallon and Stonehill rejected inquiries concerning the exact nature of their relationship with these special purpose entities. Accordingly, HMIT seeks equitable tolling of any statute of limitations concerning claims against unknown business entities or individuals that Farallon and Stonehill may have created and inserted as intermediate corporate layers in the transactions at issue. John Doe Defendants Nos. 1-10 are currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.

IV. Facts

A. *Procedural Background*

33. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court,[3] which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.[4]

34. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee of the Highland Crusader Fund ("Redeemer"); Acis Capital Management, L.P., and Acis Capital Management GP, LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS")—and an unpaid vendor, Meta-E Discovery.

35. Following the venue transfer to Texas on December 27, 2019, the Debtor filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the*

[3] Doc. 3. Unless otherwise referenced, all documents referencing "Doc." refer to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

[4] Doc. 1.

Ordinary Course ("Governance Motion").[5] On January 9, 2020, the Court signed a Governance Order granting the Governance Motion.[6]

36. As part of the Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditors Committee—was appointed to the Board of Directors (the "Board") of Strand, the Original Debtor's general partner. The Board then appointed Seery as the Chief Executive Officer in place of the previous CEO, Mr. James Dondero, as well as the CRO.[7] Seery currently serves as Trustee of the Claimant Trust under the terms of the CTA and as CEO of the Reorganized Debtor.[8]

B. *The Targeted Claims*

37. In his capacity as the Original Debtor's CEO and CRO, Seery negotiated and obtained court approval for settlements with several large unsecured creditors including Redeemer, Acis, UBS, and another major unsecured creditor, HarbourVest (Redeemer, Acis, UBS, and HarbourVest are collectively the "Settling Parties"), resulting in the following allowed Claims:

Creditor	**Class 8**	**Class 9**
Redeemer	$137 mm	$0 mm
Acis	$23 mm	$0 mm
HarbourVest	$45 mm	$35 mm

[5] Doc. 281.

[6] Doc. 339.

[7] Doc. 854, Order Approving Retention of Seery as CEO/CRO.

[8] *See* Doc. 1943, Order Approving Plan, p. 34.

UBS	$65 mm	$60 mm
(Totals)	$270 mm	$95 mm

As reflected in these settlements, HarbourVest and UBS owned Class 9 claims in addition to Class 8 claims. Class 9 claims were subordinated to Class 8 claims in the distribution waterfall in the Plan.

38. Each of the Settling Parties sold their Claims to Farallon and Stonehill (or affiliated special purpose entities) shortly after receiving court approval of the settlements. One of these "trades" took place within just a few weeks before the Plan's Effective Date.[9] All of these trades occurred when HMIT held its 99.5% equity stake in the Debtor. Notice of these trades was first provided in filings in the records of the Original Debtor's bankruptcy proceedings, as follows: Claim No. 23 (Doc. 2211, 2212, and 2215), Claim Nos. 190 and 191 (Doc. 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (Doc. 2263), Claim No. 81 (Doc. 2262), Claim No. 72 (Doc. 2261).

39. Farallon and Stonehill, both of whom are registered investment advisors that manage hedge funds, are acutely aware that they owe fiduciary duties to their investors. Yet, they both invested many tens of millions of dollars, directly or indirectly, to acquire the Claims in the absence of any publicly available information that could provide any economic justification for their investment decisions.

[9] Docs. 2697, 2698.

40. Upon information and belief, Stonehill and Farallon collectively invested an estimated amount exceeding $160 million to acquire the Claims with a face amount of $365 million, but a far lower publicly projected value at the time, and they did so in the absence of any meaningful due diligence. Indeed, Farallon has admitted that it conducted no due diligence but relied on Seery's profit guarantees.

41. The Defendant Purchasers' investments become even more suspicious because the Debtor, through Seery, provided the ***only*** publicly available information which, at the time, included pessimistic projections that certain of the Claims would receive partial payment, while the subordinated class of Claims would receive no distribution:

a. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the projected value of HCM's assets dropped over $200 million from $566 million to $364 million.[10]

b. HCM's Disclosure Statement publicly projected payment of only 71.32% of Class 8 claims, and 0% of claims in Classes 9-11.[11]

   - This meant that the Defendant Purchasers invested more than an estimated $160 million in the Claims when the publicly available information indicated they would receive $0 in return on their investment as Class 9 creditors and substantially less than par value on their Class 8 Claims. At best, the Defendant Purchasers would receive a marginal return that could not justify the risk.

[10] Doc. 1473, Disclosure Statement, p. 18.

[11] Doc. 1875-1, Plan Supplement, Ex. A, p. 4.

c. Despite the stark decline in the value of the Debtor's Estate and in the midst of substantial reductions in the percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively, again, the "Claims") in April and August of 2021 in the combined estimated amount of at least $163 million.[12]

42. Upon information and belief, Stonehill, through its special purpose entity, Jessup, acquired the Redeemer Committee's claim for $78 million.[13] Upon information and belief, the $23 million Acis claim[14] was sold to Farallon/Muck for $8 million. Upon information and belief, HarbourVest sold its combined $80 million in claims to Farallon/Muck for $27 million. UBS sold its combined $125 million in claims for $50 million to both Stonehill/Jessup and Farallon/Muck. In the instance of UBS, ***the total projected payout was only $35 million***. Indeed, as part of these transactions, both Farallon and Stonehill purchased Class 9 Claims at a time when the Debtor's Estate projected a zero dollar return on all such Claims.

43. Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment, Farallon, upon information and belief, indicated it would refuse to sell its stake in the Claims for a 40%

[12] Notices of Transfers [Docs. 2212, 2215, 2261, 2262, 2263, 2215, 2297, 2298]. The Acis claim was transferred on April 16, 2021; the Redeemer, Crusader, and HarbourVest claims were transferred on April 30, 2021; and the UBS claims were transferred on August 9, 2021.

[13] July 6, 2021, letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

[14] Seery/HCM have argued that $10 million of the Acis claim is self-funding.

premium or more above its investment—claiming that its stake was far more valuable based upon Seery's assurances. This is a striking admission that Farallon had and used material non-public inside information.

C. *Material Non-Public Information is Disclosed to Seery's Affiliates at Stonehill and Farallon*

44. One of many significant assets of the Debtor's Estate was the Debtor's direct and indirect holdings in Metro-Goldwyn-Mayer Studios, Inc. ("MGM").[15]

45. On December 17, 2020, James Dondero sent an email to Seery. At that time, Dondero was a member of the MGM board, and the email contained material non-public information regarding Amazon and Apple's interest in acquiring MGM.[16] Of course, any such sale would significantly enhance the value of the Debtor's Estate.

46. Upon receipt of this material non-public information, Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in the Bankruptcy Court seeking approval of the Debtor's settlement with HarbourVest - resulting in a transfer to the Debtor's Estate of HarbourVest's interest in a Debtor-advised fund, Highland CLO Funding, Ltd. ("HCLOF"), which held substantial MGM debt and equity.[17] Conspicuously, the HCLOF interest was not transferred to the Debtor's Estate for distribution as part of the bankruptcy estate, but rather to "to an entity to be

[15] *See* Doc. 2229, p. 6.

[16] *See* Adversary Case No. 20-3190-sgj11, Doc. 150-1, p. 1674.

[17] Doc. 1625. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM.

designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements.[18]

47. Upon information and belief, aware that the Debtor's stake in MGM afforded a new profit center, Seery saw this and the value of other assets as an opportunity to increase his own compensation. He then enlisted the help of Stonehill and Farallon to extract further value from the Debtor's Estate. This *quid pro quo* included, at a minimum, an understanding that Seery would be well-compensated for the scheme once the Defendant Purchasers, acting through Muck and Jessup, obtained control of the Oversight Board following the Effective Date.

48. Until 2009, Seery was the Global Head of Fixed Income Loans at Lehman Brothers[19] where, upon information and belief, he conducted substantial business with Farallon. Following the collapse of Lehman Brothers, Seery continued to work with, and indeed represented Farallon as its legal counsel. Seery ultimately joined a hedge fund, River Birch Capital,[20] which, along with Stonehill, served on the creditors committee in other bankruptcy proceedings. GCM Grovesnor, a global asset management firm, held four seats on the Redeemer Committee[21] and, upon information and belief, is a significant investor in Stonehill and Farallon. Grovesnor, through Redeemer, played a large part in

[18] Doc. 1625.

[19] Seery Resume [Doc. 281-2].

[20] *Id*.

[21] Declaration of John A. Morris [Doc. 1090], Ex. 1, pp. 15.

appointing Seery as a director of Strand Advisors. Seery was beholden to Grovesnor from the outset, and, by extension, Grovesnor's affiliates Stonehill and Farallon.

49. As successful capital management firms, with advisory and fiduciary duties to their own clients, Stonehill and Farallon typically engage in robust due diligence before making significant investments. Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* significant profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.

50. Seery shared with Stonehill and Farallon material *non-public* information concerning certain assets of the Debtor's Estate. Otherwise, it makes no sense that the Defendant Purchasers would have made their multi-million-dollar investments under these circumstances.

51. Fed. R. Bank. P. 2015.3(a) requires "periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or debtor . . . in which the estate holds a substantial of controlling interest." The purpose of Rule 2015.3 is "to assist parties in interest taking steps to ensure that the debtor's interest in any entity . . . is used for payment of allowed claims against the debtor." Pub. L. 109-8 § 419(b) (2005). However, these reports were not provided, thereby giving the Defendant Purchasers the added benefit of being insiders having access to information that was not made publicly available to other stakeholders.

52. When questioned at the confirmation hearing regarding the failure to file these reports, Seery explained that he "did not get it done and it fell through the cracks" (Doc. 1905 at 49:18-21). Yet even now—two years later—complete reports identifying the asset values and profitability of each non-publicly traded entity (in which the Reorganized Debtor has or held interests) have not been disclosed. Upon information and belief, this includes several entities including, but not limited to: Highland Select Equity Fund; Highland Select Entity Fund, L.P., Highland Restoration Capital Partners, L.P.; Highland CLO Funding, Ltd.; Highland Multi Strategy Credit Fund, L.P.; Highland Capital Management Korea Limited; Cornerstone Healthcare; Trussway Industries, LLC; Trussway Holdings, LLC; OmniMax International; Targa; CCS Medical; JHT Holdings; and other entities.[22] Upon information and belief, the Reorganized Debtors' interest in some of these entities has been sold,[23] but the sales prices have not been fully disclosed (except as reported by certain purchasers in public SEC filings).

53. Rather than providing the required reports, only generic information was provided (by way of examples, as "private security," "private portfolio company," and "private equity fund") with a total reported value of $224,267,777.21.[24] Entities were sold

[22] *See* Doc. 2229, pp. 6-7; January 29, 2021, Deposition of James P. Seery, Jr., 28:7-29:25.

[23] *See, e.g.*, https://trussway.com/2022/09/01/trussway-joins-builders-firstsource/ (sale of Trussway); https://www.prnewswire.com/news-releases/scionhealth-completes-acquisition-of-cornerstone-healthcare-group-301728275.html (sale of Cornerstone; unsurprisingly, Sidley Austin served as counsel for the purchaser); https://www.prnewswire.com/news-releases/svpglobal-completes-acquisition-of-omnimax-international-301151365.html (sale of OmniMax).

[24] Doc. 247 at p. 12.

without Court approval and without any 2015.3 report filings. In sum, upon information and belief, the Debtor had and the Reorganized Debtor has significant assets in a variety of funds and investments that were not publicly disclosed.

54. By wrongfully exploiting such material non-public insider information, Stonehill and Farallon—acting through Muck and Jessup—became the largest holders of unsecured claims in the Debtor's Estate with resulting control over the Oversight Board and a front row seat to the reorganization and distribution of Claimant Trust Assets. As such, they were given control (through Muck and Jessup) to approve discretionary bonuses and success fees for Seery from these assets.

D. ***Distributions***

55. The MGM sale was ultimately consummated in March 2022 for $6.1 billion in cash, plus $2.5 billion in debt that Amazon assumed and immediately repaid.[25]

56. HCM and its wholly owned subsidiary, HCMLP Investments, own 50.612% of HCLOF, which, as of December 31, 2021, had a total net asset value of $76.1 million, a substantial amount of which has been monetized.[26] Upon information and belief, HCM's interest in HCLOF was worth at least $38 million.

[25] Amazon Q1 2022 10-Q.

[26] Doc. 3584-1, pp. 2, 9, 13, 21.

57. On or about September 1, 2022, upon information and belief, Trussway was sold to Builder's First Source for $274.8 million, net of cash.[27] Prior to the sale, upon information and belief, Highland Select Equity Fund, L.P. ("HSEF") owned "approximately 90%" of Trussway, and HCM owned 100% of HSEF.[28] Upon information and belief, HCM should have netted at least $247.8 million from the sale of Trussway.

58. According to HCM's most recent Form ADV, filed on March 31, 2023, HCM currently owns at least $127.5 million in Highland Multi Strategy Credit Fund, L.P., Highland Restoration Capital Partners Master, LP, Highland Restoration Capital Partners, L.P., and Stonebridge-Highland Healthcare Private Equity Fund (collectively, the "Private Funds"), in addition to interests in HCM's client-CLOs and other non-regulatory assets.

59. Accordingly, and upon information and belief, and based solely on the Reorganized Debtor's interests in Trussway, HCLOF, and the Private Funds, the Reorganized Debtor has over **$413.3 million** in estimated liquid or monetizable assets—which alone exceeds the $397.5 million in general unsecured claims, and indeed *all* allowed claims[29]—notwithstanding the value realized from the Reorganized Debtor's

[27] BLDR Q3 2022 10-Q.

[28] Doc. 2229, n. 8.

[29] Doc. 3757, p. 7.

interests in MGM, Trussway, Cornerstone, and other substantial assets that may remain to be monetized.[30]

60. By the end of Q3 2021, just over $6 million of the projected $205 million available for general unsecured claimants had been disbursed.[31] No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost $250 million was paid toward Class 8 general unsecured claims—$45 million more than was *ever* projected.[32] Thus, Stonehill (Jessup) and Farallon (Muck) already have received returns that far eclipse their estimated investments. They also stand to make further significant profits on their investments, including distributions on their Class 9 Claims.

61. As of March 31, 2023, the Claimant Trust has distributed $270,205,592.[33] On a *pro rata* basis, this means that other creditors (excluding Muck and Jessup) have received an estimated $24,332,361.07 in distributions against the stated value of their allowed claims.[34] That leaves an estimated unpaid balance of only $2,456,596.93.

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[30] See Doc 3662, p. 4 (projecting assets worth at least $663.72 million as of June 1, 2022); *see also* supra, n. 22-23.

[31] Doc. 3200.

[32] Doc. 3582.

[33] Doc. 3757, p. 7.

[34] Stonehill (Jessup) and Farallon (Muck)'s Claims collectively represent an estimated 91% of all Class 8 claims. The other creditors therefore represent an estimated 9%. Upon information and belief, Stonehill (Jessup) and Farallon (Muck) hold 100% of the Class 9 claims.

V. Causes of Action

A. *Count I (against Seery): Breach of Fiduciary Duties*

62. The allegations in paragraphs 1-61 above are incorporated herein as if set forth verbatim.

63. As CEO and CRO of a debtor-in-possession, Seery owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate, including, without limitation, the duty of loyalty and the duty to avoid conflicts of interests, but Seery willfully and knowingly engaged in conduct which conflicted with his fiduciary duties—and he did so out of financial self-interest.

64. By disclosing material non-public information to Stonehill and Farallon in an effort to gain personal financial benefit, Seery willfully and knowingly breached his fiduciary duties. By failing to disclose the inside trades at issue, including his role in those inside trades, Seery willfully and knowingly breached his fiduciary duties.

65. As a result of his willful misconduct, Seery was unfairly advantaged by receiving assurances of additional undisclosed compensation and bonuses from the assets of the Debtor's Estate and from the Claimant Trust Assets—to the detriment of other stakeholders, including HMIT.

66. Seery's misconduct constituted fraud, willful misconduct, and bad faith.

67. Plaintiffs sue for all actual damages caused by Seery's misconduct. Seery should also be held liable for disgorgement of all compensation he received since his

collusion with the Defendant Purchasers first began. Alternatively, Seery should be disgorged of all compensation paid to him under the terms of the CTA since the Effective Date of the Plan in August 2021.

68. Alternatively, Plaintiffs are entitled to recover damages measured by all ill-gotten compensation which Seery has received since his first collusive conduct began.

B. ***Count II (against all Defendant Purchasers and the John Doe Defendants): Knowing Participation in Breach of Fiduciary Duties***

69. The allegations in paragraphs 1-68 above are incorporated herein as if set forth verbatim.

70. Seery owed fiduciary duties to HMIT and the Debtor's Estate, and he willfully and knowingly breached these duties. Without limiting the foregoing, Seery owed a duty of loyalty which he willfully and knowingly breached. Seery also owed a duty to not engage in self-interested conduct to the detriment of the Debtor's Estate and innocent stakeholders. Seery willfully and knowingly breached this duty.

71. The Defendant Purchasers were aware of Seery's fiduciary duties and, by purchasing the Claims and approving bonuses and other compensation for Seery, Stonehill (acting through Jessup) and Farallon (acting through Muck), willfully and knowingly participated in Seery's breaches or, alternatively, willfully aided and abetted such breaches.

72. Stonehill (Jessup) and Farallon (Muck) unfairly received many millions of dollars in profits and fees—and stand to earn even more profits and fees.

73. The Defendant Purchasers' misconduct constitutes bad faith, fraud, and willful misconduct.

74. Plaintiffs sue for all actual damages caused by the Defendant Purchasers' wrongful conduct. The Defendant Purchasers are also liable for disgorgement of all profits Defendant Purchasers earned from their participation in the purchase of the Claims. Plaintiffs also seek damages against the Defendant Purchasers for excessive compensation paid to Seery as part of the covert *quid pro quo* with Seery.

C. *Count III (against all Defendants): Conspiracy*

75. The allegations in paragraphs 1-74 above are incorporated herein as if incorporated herein verbatim.

76. Defendants conspired with each other to unlawfully breach fiduciary duties to HMIT and the Debtor's Estate, and to conceal their wrongful trades.

77. Seery's disclosure of material non-public information to the Defendant Purchasers and Seery's receipt of additional compensation as a *quid pro quo* for the insider-claims trading are overt acts in furtherance of the conspiracy.

78. HMIT's interest in the residual of the Claimant Trust Assets has been adversely impacted by this conspiracy. The assets have been depleted by virtue of Seery's compensation awards.

79. All Defendants' misconduct constitutes bad faith, fraud, and willful misconduct.

80. Plaintiffs sue for all actual damages caused by the Defendants' wrongful conduct. All Defendants should be disgorged of their ill-gotten profits and gains.

81. Plaintiffs sue all Defendants for damages associated with Seery's compensation awards pursuant to the scheme.

D. ***Count IV (against Muck and Jessup): Equitable Disallowance***

82. The allegations in paragraphs 1-81 above are incorporated herein as if set forth verbatim.

83. By purchasing the Claims based on material non-public information, Stonehill and Farallon, through Jessup and Muck, engaged in inequitable conduct.

84. By earning significant profits on their purchases, Muck and Jessup have been unfairly advantaged.

85. Muck and Jessup's misconduct constitutes bad faith, fraud, and willful misconduct.

86. Given this willful, inequitable, and bad faith conduct, equitable disallowance of Muck's and Jessup's Claims to the extent over and above their initial investment is appropriate and consistent with the purposes of the Bankruptcy Code.

87. Pleading in the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is

necessary and appropriate to remedy Muck's and Jessup's wrongful, willful, and bad faith conduct, and is also consistent with the purposes of the Bankruptcy Code.

E. ***Count V (against all Defendants): Unjust Enrichment and Constructive Trust***

88. The allegations in paragraphs 1-87 above are incorporated herein as if set forth verbatim.

89. By acquiring the Claims using material non-public information, Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity.

90. All Defendants' misconduct constitutes bad faith, fraud, and willful misconduct.

91. Allowing Stonehill, Farallon, Muck, and Jessup to retain their ill-gotten benefits would be unconscionable.

92. Stonehill, Farallon, Muck, and Jessup should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment.

93. The proceeds Stonehill, Farallon, Muck, and Jessup have received from the Claimant Trust are traceable and identifiable. A constructive trust should be imposed on such proceeds to secure the restitution of these improperly retained benefits.

94. Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restitute all compensation he has received from the

outset of his collusive activities. Alternatively, he should be required to disgorge and restitute all compensation received since the Effective Date. A constructive trust should be imposed on all such funds to secure the restitution of these improperly obtained benefits.

F. ***Count VI (Against all Defendants): Declaratory Relief***

95. The allegations in paragraphs 1-94 above are incorporated herein as if set forth verbatim.

96. HMIT seeks declaratory relief. The Court has jurisdiction to provide declaratory judgment relief when there is an actual controversy that has arisen and exists relating to the rights and duties of the parties.

97. Bankruptcy Rule 7001 provides that "a proceeding to recover property or money," may include declaratory relief. *See*, Fed. R. Bank P. 7001(1), (9).

98. The CTA is governed under Delaware law. The CTA incorporates and is subject to Delaware trust law.

99. HMIT seeks a declaration, as follows:

a. There is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement;

b. HMIT has standing to bring an action even if its interest is considered contingent and because it is an aggrieved party and enjoys constitutional standing;

c. HMIT has capacity and standing to bring these claims derivatively because Seery, as Trustee, has abandoned the claims;

d. HMIT has capacity and standing to bring these claims derivatively because Seery, as Trustee, and Muck and Jessup have a conflict of interest;

e. HMIT is an appropriate party to bring the derivative action on behalf of the Reorganized Debtor and the Claimant Trust;

f. Alternatively, HMIT's status as a Claimant Trust Beneficiary is fully vested now;

g. HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement by Muck and Jessup, and by extension, Farallon and Stonehill, of their ill-gotten profits;

h. HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments. Alternatively, HMIT's status as a Claimant Trust Beneficiary is fully vested when all of Muck's and Jessup's trust interests are subordinated to the trust interests held by HMIT;

i. Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of Seery's conduct, bad faith, willful misconduct, and unclean hands;

j. Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct, and unclean hands; and

k. All Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct, and unclean hands.

VI. Punitive Damages

100. The allegations in paragraphs 1-99 above are incorporated herein as if set forth verbatim.

101. The Defendants' misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others. An award of punitive damages as allowed by law is appropriate and necessary under the facts of this case.

VII. Conditions Precedent

102. All conditions precedent to recovery herein have been satisfied or have been waived.

VIII. Fraudulent Concealment and Equitable Tolling

103. The allegations in paragraphs 1-102 above are incorporated herein as if set forth verbatim.

104. The illicit conduct of Defendants as described herein was concealed from Plaintiffs, who did not know, and could not reasonably discover, either that conduct of Defendants or the injury that would result. Specifically, as described herein, Defendants conspired to trade on material nonpublic information in breach of duties to the Original Debtors and Debtor's Estate. Defendants used deception to conceal the causes of action alleged herein and continue to refuse formal and informal discovery requests of facts, information, and documents related to the Plaintiffs' claims. HMIT reasonably relied on

Defendants' deceptive representations, and otherwise exercised all diligence in this matter, yet the causes of action were inherently undiscoverable.

105. Defendants continued to engage in the illicit practices described herein, and consequently, Plaintiffs were continually injured by Defendants' illicit conduct. Therefore, Plaintiffs submit that each instance that one or more of the Defendants engaged in the conduct complained of in this action constitutes part of a continuing violation and operates to toll the statutes of limitation applicable to all causes of action in this matter.

106. Defendants' conduct was and is, by its nature, self-concealing. In addition, Defendants, through a series of affirmative acts and omissions, suppressed the dissemination of truthful information regarding their illicit conduct, and have actively foreclosed Plaintiffs from learning of their illicit, unfair, self-dealing, disloyal, and/or deceptive acts.

107. To the extent that one or more of the Defendants asserts a defense of statute of limitations or other time-based defense, they are estopped from doing so and Plaintiffs affirmatively pleads fraudulent concealment should toll or otherwise prevent application of any alleged statute of limitation defense. Plaintiffs further affirmatively plead equitable estoppel.

108. By reason of the foregoing, Plaintiffs' claims on behalf of itself and on behalf of the Highland Parties are timely under any applicable statute of limitations, pursuant

to the discovery rule, pursuant to the equitable tolling doctrine, pursuant to fraudulent concealment, and/or pursuant to any other applicable tolling doctrine.

IX. Jury Demand

109. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein involving triable issues of fact.

X. Prayer

WHEREFORE, Plaintiffs pray for judgment against each of the Defendants as follows:

1. That all Defendants be cited to appear and answer herein;

2. Finding that HMIT has capacity and standing to bring these claims individually and derivatively because Seery, as trustee, has abandoned the claims and has a conflict of interest;

3. Finding that HMIT has capacity and standing to bring these claims individually and derivatively because Muck and Jessup have a conflict of interest;

4. Awarding equitable disallowance of the Claims over and above Muck's and Jessup's original investments (or, alternatively, subordination of their Claimant Trust Interests, as addressed herein);

5. Awarding disgorgement of all funds distributed from the Claimant Trust to the Defendant Purchasers and any John Doe Defendants over and above their original investments;

6. Awarding disgorgement of all compensation paid to Seery from the date of his first collusive activities, or alternatively, from the Effective Date;

7. Imposition of a constructive trust as to all ill-gotten profits received by the Defendant Purchasers and any John Doe Defendants;

8. Awarding declaratory relief as described herein;

9. Awarding actual damages as described herein;

10. Awarding exemplary damages as described herein;

11. Awarding pre-judgment and post-judgment interest at the highest rate allowed by law; and

12. Awarding all such other and further relief to which Plaintiffs may be justly entitled.

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: /s/ _____

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Attorneys for Hunter Mountain Investment Trust

HMIT Exhibit No. 3

EXHIBIT 11

From: Jim Dondero <JDondero@highlandcapital.com>

To: Thomas Surgent <TSurgent@HighlandCapital.com>, Jim Seery <jpseeryjr@gmail.com>, Scott Ellington <SEllington@HighlandCapital.com>, "Joe Sowin" <JSowin@HighlandCapital.com>, Jason Post <JPost@NexpointAdvisors.com>

Cc: "D. Lynn (\"Judge Lynn\")" <michael.lynn@bondsellis.com>, Bryan Assink <bryan.assink@bondsellis.com>

Subject: Trading restriction re MGM - material non public information

Date: Thu, 17 Dec 2020 14:14:39 -0600

Importance: Normal

Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest.
Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.

Sent from my iPhone

HMIT Exhibit No. 4

24 Raj Patel bought it because of Seery

JAMES D. DONDERO

50-70 & not compelling
Class 8

Asked what would be compelling
-No offer

Bought in Feb/March timeframe

Bought assets w/Claims

offered him 40-50% premium

130% of cost; "Not Compelling"

No Counter; Told Discovery coming

& Raj Patel bought it because of Seery

JAMES D. DONDERO

50-70 & not compelling
Class 8

Asked what would be compelling
-No offer

Bought in Feb/March timeframe

Bought assets w/Claims
offered him 40-50% premium
130% of cost; "Not Compelling"
No Counter; Told Discovery coming

Offered 24am no counter

HMIT Exhibit No. 7

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

ORDER (I) CONFIRMING THE FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF

The Bankruptcy Court[2] having:

a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the "Disclosure Statement Order"), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.

Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. 1473] (the "Disclosure Statement") under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the "Objection Deadline"), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (*As Modified*) [Docket No. 1808] (as amended, supplemented or modified, the "Plan");

c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the "Voting Deadline") in accordance with the Disclosure Statement Order;

d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;

e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the "Confirmation Hearing Notice"), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;

f. reviewed: (i) the *Debtor's Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor's Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)t* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the "Plan Supplements");

g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as "List of Assumed Contracts");

h. reviewed: (i) the *Debtor's Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the "Confirmation Brief"); (ii) the *Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the "Voting Certifications").

i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

Certificate of Service dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021[Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the "Affidavits of Service and Publication");

j. reviewed all filed[3] pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;

k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the "Confirmation Hearing);

l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and

m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;[4] (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. ("Strand"), the Debtor's general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the "Witnesses"); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

[3] Unless otherwise indicated, use of the term "filed" herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

[4] The Court admitted the following exhibits into evidence: (a) all of the Debtor's exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor's exhibits lodged at Docket No. 1866; (c) all of the Debtor's exhibits lodged at Docket No. 1877; (d) all of the Debtor's exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor's Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an "asset monetization plan" because it involves the orderly wind-down of the Debtor's estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under $1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor**. The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the "Petition Date"). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor**. The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor's general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles ("CLOs"), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor's affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee**. The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a "serial litigator." The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

a. **The Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee").** This Committee member obtained an arbitration award against the Debtor in the amount of $190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor's claim was settled during this Chapter 11 Case in the amount of approximately $137,696,610 (subject to other adjustments and details not relevant for this purpose).

b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC ("Acis").** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately $8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland's alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately $23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

c. **UBS Securities LLC and UBS AG London Branch ("UBS").** UBS is a Committee member that filed a proof of claim in the amount of $1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.

d. **Meta-E Discovery ("Meta-E").** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than $779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for $40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive $750,000 in cash on the Effective Date of the Plan, an $8.25 million general unsecured claim, and a $2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than $70 million with an entity in the Highland complex and asserted a $300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a $45 million general unsecured claim and a $35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure**. Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.[5] As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,[6] and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as "gatekeeper" prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor's restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the "gatekeeper" provision to those alleging willful misconduct and gross negligence.

[5] This order is hereinafter referred to as the "January 9 Order" and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the "Settlement Motion").

[6] *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the "Stipulation").

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court's order authorizing the appointment of Mr. Seery as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.[7] The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called "Barton Doctrine" (first articulated in an old Supreme Court case captioned *Barton v. Barbour,* 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

[7] *See Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the "July 16 Order")

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a $300 million claim) and Patrick Daugherty (who asserted a $40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain)**. Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase "not your garden variety", which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];

b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund)* [Docket No. 1670];

c. A *Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];

d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC)* [Docket No. 1673]; and

e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank)* [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

17. **Questionability of Good Faith as to Outstanding Confirmation Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;

b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;

c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;

d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;

e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and

f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the "Plan Supplement Documents").

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the $13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an "opt out" mechanism to allow holders of liquidated Class 8 Claims at or below a $1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm's-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.

b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

c. **The Reorganized Debtor**. The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of $250,000 for his first year of service, and $150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid $150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid $40,000 per month for the first three months and $20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

46. **Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).** Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

47. **Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the "Liquidation Analysis") to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.

c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.

d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.

e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].

f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of* Reorganization *of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.

g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.

h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.

i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).** Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The "best interests" test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery's deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor's projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as "HCLOF" that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at $22.5 million; (2) an increase in the value of certain of the Debtor's assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor's continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.

b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.

c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced "fire sale" of assets; and

e. The Debtor's employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors' argument that the Claimant Trust Agreement's disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee's liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides "retiree benefits" and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the "Contingent Interests"), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapuetics* 429 B.R 570 (Bankr. W.D. Tex. 2010).

b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3))**. The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the "Assumed Contracts"). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.[8] Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

[8] *See Notice of Withdrawal of James Dondero's Objection Debtor's Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith* [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the "Release Conditions"). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery's testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor's efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties' significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately $200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the "Exculpation Provision"). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co*., 584 F.3d 229 (5th Cir. 2009), for several reasons:

a. First, the statutory basis for *Pacific Lumber*'s denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties…. [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15th Ed. 2008]). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber's* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.[9]

b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumbe*r, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

[9] The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan inunction to implement and enforce the Plan's release, discharge and release provisions (the "Injunction Provision"). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor's assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor's assets and those assets could be monetized for less money to the detriment of the Debtor's creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a "third-party release." The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms "implementation" and "consummation" are neither vague nor ambiguous

76. **Gatekeeper Provision**. Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the "Gatekeeper Provision"). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr, Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court's "Barton Doctrine." *Barton v. Barbour,* 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll,* 850 F.3d 811 (5th Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5th Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P'Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5th Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court's jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall.* The Bankruptcy Court's determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon**. Each of Scott Ellington ("Mr. Ellington") and Isaac Leventon ("Mr. Leventon") (each, a "Senior Employee Claimant") has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669] (the "Senior Employees' Objection") (for each of Mr. Ellington and Mr. Leventon, the "Liquidated Bonus Claims").

a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of $1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of $598,198.00. Mr. Ellington received two Ballots[10] – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees' Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be $1,000,000.

b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.

c. The Senior Employees' Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon's entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

[10] As defined in the Plan, "Ballot" means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").

e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive $701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive $413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.

f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be $600,000 and in Mr. Leventon's case, would be $358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.

h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.

i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.

j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).

k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

A. Confirmation of the Plan. The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.[11]

B. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

C. Objections. Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

D. Plan Supplements and Plan Modifications. The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

[11] The Plan is attached hereto as **Exhibit A**.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

E. Deemed Acceptance of Plan. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

F. Vesting of Assets in the Reorganized Debtor. Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

G. Effectiveness of All Actions. All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

H. Restructuring Transactions. The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

I. Preservation of Causes of Action. Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

J. Independent Board of Directors of Strand. The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

K. Cancellation of Equity Interests and Issuance of New Partnership Interests. On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

L. Transfer of Assets to Claimant Trust. On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

M. Transfer of Estate Claims to Litigation Sub-Trust. On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

N. Compromise of Controversies. In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

O. Objections to Claims. The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

P. Assumption of Contracts and Leases. Effective as of the date of this Confirmation Order, each of the Assumed Contacts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

Q. Rejection of Contracts and Leases. Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

R. Assumption of Issuer Executory Contracts. On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the "Issuer Executory Contracts") pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the "Portfolio Manager") will pay to the Issuers[12] a cumulative amount of $525,000 (the "Cure Amount") as follows:

a. $200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP ("SRZ") in the amount of $85,714.29, Jones Walker LLP ("JW") in the amount of $72,380.95, and Maples Group ("Maples" and collectively with SRZ and JW, the "Issuers' Counsel") in the amount of $41,904.76 as reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case; and

b. $325,000 in four equal quarterly payments of $81,250.00 (each, a "Payment"), which amounts shall be paid to SRZ in the amount of $34,821.43, JW in the amount of $29,404.76, and Maples in the amount of $17,023.81 as additional reimbursement for the attorney's fees and other legal expenses incurred by the Issuers in connection with the Debtor's bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the "Management Fees"), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the "Payment Dates"), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers' Counsel, allocated in the proportion set forth in such agreement; *provided, however,* that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor's liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers' Counsel to the Debtor, in the event of any failure to make any Payment.

S. Release of Issuer Claims. Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

[12] The "Issuers" are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

T. Release of Debtor Claims against Issuer Released Parties. Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Ferona Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the "Issuer Released Parties"),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however,* that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

U. Authorization to Consummate. The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

V. Professional Compensation. All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

W. Release, Exculpation, Discharge, and Injunction Provisions. The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

X. Discharge of Claims and Termination of Interests. To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

Y. Exculpation. Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

provided, however, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

Z. Releases by the Debtor. On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

AA. Injunction. Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

BB. Duration of Injunction and Stays. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

CC. Continuance of January 9 Order and July 16 Order. Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, entered by the Bankruptcy Court on January 9, 2020* [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

DD. No Governmental Releases. Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

EE. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

FF. Cancellation of Notes, Certificates and Instruments. Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

GG. Documents, Mortgages, and Instruments. Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

HH. Post-Confirmation Modifications. Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

II. Applicable Nonbankruptcy Law. The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

JJ. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

KK. Notice of Effective Date. As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked "undeliverable as addressed," "moved, left no forwarding address" or "forwarding order expired," or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity's new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

LL. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

MM. Waiver of Stay. For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

NN. References to and Omissions of Plan Provisions. References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

OO. Headings. Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

PP. Effect of Conflict. This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

QQ. Resolution of Objection of Texas Taxing Authorities. Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the "Tax Authorities") assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.

b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

RR. Resolution of Objections of Scott Ellington and Isaac Leventon. Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.

b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.

c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.

d. The Senior Employees' Objection is deemed withdrawn.

SS. No Release of Claims Against Senior Employee Claimants. For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a "Released Party" under the Plan.

TT. Resolution of Objection of Internal Revenue Service. Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service ("IRS") and all of its claims, including any administrative claim (the "IRS Claim"):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor's, the Reorganized Debtor's and/ or any successor- in-interest's obligations under the Plan, then entire prepetition liability of an IRS' Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term "any payment required to be made on federal taxes," as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term "any required tax return," as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

UU. IRS Proof of Claim. Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS's proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS' assessment of the Debtor's unpaid priority and general unsecured taxes, penalties and interest.

VV. CLO Holdco, Ltd. Settlement Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25,2021* [Docket No. 1838-1] (the "CLOH Settlement Agreement"). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

WW. Retention of Jurisdiction. The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

XX. Payment of Statutory Fees; Filing of Quarterly Reports. All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

YY. Dissolution of the Committee. On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

ZZ. Miscellaneous. After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided*, *however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

###END OF ORDER###

Exhibit A

Fifth Amended Plan (as Modified)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P. (AS MODIFIED)

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ZAnnable@HaywardFirm.com:

Counsel for the Debtor and Debtor-in-Possession

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

ARTICLE I.
RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

B. Defined Terms

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however,* that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however,* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. "*Allowed Claim or Equity Interest*" means a Claim or an Equity Interest of the type that has been Allowed.

8. "*Assets*" means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor's books and records, and the Causes of Action.

9. "*Available Cash*" means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. "*Ballot*" means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. "*Bar Date*" means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. "*Bar Date Order*" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. "*Business Day*" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

18. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

19. "*Causes of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor's Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. "*CEO/CRO*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer.

21. "*Chapter 11 Case*" means the Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. "*Claims Objection Deadline*" means the date that is 180 days after the Confirmation Date; *provided, however,* the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. "*Claimant Trust*" means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. "*Claimant Trust Agreement*" means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. "*Claimant Trust Assets*" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. "*Claimant Trust Beneficiaries*" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. "*Claimant Trustee*" means James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate's investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor's business operations.

29. "*Claimant Trust Expenses*" means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. "*Claimant Trust Interests*" means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided*, *however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. "*Claimant Trust Oversight Committee*" means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee's performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. "*Class A Limited Partnership Interest*" means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants' Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. "*Class B Limited Partnership Interest*" means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. "*Class B/C Limited Partnership Interests*" means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. "*Class C Limited Partnership Interest*" means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. "*Committee*" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. "*Confirmation Order*" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. *"Convenience Claim"* means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to $1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. "*Convenience Claim Pool*" means the $13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. "*Convenience Class Election*" means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to $1,000,000 and receive the treatment provided to Convenience Claims.

44. "*Contingent Claimant Trust Interests"* means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. "*Debtor*" means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. *"Delaware Bankruptcy Court"* means the United States Bankruptcy Court for the District of Delaware.

47. "*Disclosure Statement*" means that certain *Disclosure Statement for Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. "*Disputed*" means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. "*Disputed Claims Reserve Amount*" means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. "*Distribution Agent*" means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. "*Distribution Date*" means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. "*Distribution Record Date*" means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. "*Employees*" means the employees of the Debtor set forth in the Plan Supplement.

56. "*Enjoined Parties*" means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero ("Dondero"), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. "*Entity*" means any "entity" as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. "*Equity Interest*" means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

60. "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. "*Estate Claims*" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. "*Exculpated Parties*" means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Exculpated Party."

63. "*Executory Contract*" means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. "*Exhibit*" means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. "*Federal Judgment Rate*" means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. "*File*" or "*Filed*" or "*Filing*" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. "*Final Order*" means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. "*Frontier Secured Claim*" means the loan from Frontier State Bank to the Debtor in the principal amount of $7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. "*General Partner Interest*" means the Class A Limited Partnership Interest held by Strand, as the Debtor's general partner.

70. "*General Unsecured Claim*" means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. "*Governmental Unit*" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

72. "*GUC Election*" means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. "*Holder*" means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. "*Impaired*" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. "*Independent Directors*" means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. "*Initial Distribution Date*" means, subject to the "Treatment" sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. "*Insurance Policies*" means all insurance policies maintained by the Debtor as of the Petition Date.

78. "*Jefferies Secured Claim*" means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. "*Lien*" means a "lien" as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. "*Limited Partnership Agreement*" means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. "*Litigation Sub-Trust*" means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. "*Litigation Sub-Trust Agreement*" means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. "*Litigation Trustee*" means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. "*Managed Funds*" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. "*New Frontier Note*" means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. "*New GP LLC*" means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. "*New GP LLC Documents*" means the charter, operating agreement, and other formational documents of New GP LLC.

88. "*Ordinary Course Professionals Order*" means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. "*Other Unsecured Claim*" means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. *"Person*" means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. "Petition *Date*" means October 16, 2019.

92. "*Plan*" means this *Debtor's Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. "*Plan Distribution*" means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. "*Plan Documents*" means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. "*Plan Supplement*" means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. "*Priority Non-Tax Claim*" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. "*Professional Fee Claims Bar Date*" means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. "*Professional Fee Claims Objection Deadline*" means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. "*Professional Fee Reserve*" means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. "*Proof of Claim*" means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. "*Protected Parties*" means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however,* that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

106. "*PTO Claims*" means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. "*Reduced Employee Claims*" has the meaning set forth in ARTICLE IX.D.

108. "*Reinstated*" means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. "*Rejection Claim*" means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. "*Related Entity*" means, without duplication, (a) Dondero, (b) Mark Okada ("Okada"), (c) Grant Scott ("Scott"), (d) Hunter Covitz ("Covitz"), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. "*Related Entity List*" means that list of Entities filed with the Plan Supplement.

112. "*Related Persons*" means, with respect to any Person, such Person's predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. "*Released Parties*" means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. "*Reorganized Debtor*" means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. "*Reorganized Debtor Assets*" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. "*Reorganized Limited Partnership Agreement*" means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. "*Restructuring*" means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. "*Retained Employee Claim*" means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. "*Schedules*" means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor's Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

123. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

126. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

127. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. "*Subordinated Claim*" means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

133. "*UBS*" means, collectively, UBS Securities LLC and UBS AG London Branch.

134. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. "*Voting Deadline*" means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. "*Voting Record Date*" means November 23, 2020.

ARTICLE II.
ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however,* that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

B. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

C. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Equity Interests

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

C. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

D. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

E. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

F. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

G. Cramdown

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

H. Classification and Treatment of Claims and Equity Interests

1. *Class 1 – Jefferies Secured Claim*

- *Classification*: Class 1 consists of the Jefferies Secured Claim.
- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting*: Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification*: Class 2 consists of the Frontier Secured Claim.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting*: Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification*: Class 3 consists of the Other Secured Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.

- *Impairment and Voting*: Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification*: Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting*: Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification*: Class 5 consists of the Retained Employee Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting*: Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification*: Class 6 consists of the PTO Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.

- *Impairment and Voting*: Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. *Class 7 – Convenience Claims*

- *Classification*: Class 7 consists of the Convenience Claims.

- *Allowance and Treatment*: On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting*: Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. *Class 8 – General Unsecured Claims*

- *Classification*: Class 8 consists of the General Unsecured Claims.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. *Class 9 – Subordinated Claims*

- *Classification*: Class 9 consists of the Subordinated Claims.

  Treatment: On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification*: Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. *Class 11 – Class A Limited Partnership Interests*

- *Classification*: Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment*: On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

  Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting*: Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

B. The Claimant Trust[2]

1. *Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

[2] In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

(i) the payment of the Claimant Trust Expenses;

(ii) the payment of other reasonable expenses of the Claimant Trust;

(iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;

(v) the orderly monetization of the Claimant Trust Assets;

(vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

(viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

(ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however,* that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

(i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. *Tax Reporting.*

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however,* that such investments are investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however,* that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

D. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

E. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

F. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

G. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

H. Control Provisions

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

I. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

J. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

K. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the "IRC"), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Dates of Distributions

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

B. Distribution Agent

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

C. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

D. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

E. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

F. Rounding of Payments

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

G. *De Minimis* Distribution

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than $100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

H. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

I. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

J. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

K. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

L. Withholding Taxes

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

M. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

N. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

O. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

B. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

C. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

D. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. *Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. *Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,

ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

ARTICLE VIII.
EFFECTIVENESS OF THIS PLAN

A. Conditions Precedent to the Effective Date

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.

- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.

- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.

- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

B. <u>Waiver of Conditions</u>

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

C. <u>Dissolution of the Committee</u>

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

ARTICLE IX.
EXCULPATION, INJUNCTION AND RELATED PROVISIONS

A. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

B. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

C. Exculpation

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided*, *however,* the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

D. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or

- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

Provided, however, that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

E. Preservation of Rights of Action

1. *Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. *Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

F. Injunction

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however,* the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

G. Duration of Injunctions and Stays

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

H. Continuance of January 9 Order

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

ARTICLE X.
BINDING NATURE OF PLAN

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to nay taxes of the kind specified in Bankruptcy Code section 1146(a).

ARTICLE XI.
RETENTION OF JURISDICTION

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided*, *however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;

- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;

- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof*; provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- resolve any issues related to any matters adjudicated in the Chapter 11 Case;

- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;

- enforce the terms and conditions of this Plan and the Confirmation Order;

- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and

- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. Obligations Not Changed

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

E. Entire Agreement

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

F. Closing of Chapter 11 Case

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

I. Further Assurances

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

J. Severability

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

If to the Claimant Trust:

Highland Claimant Trust
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700

Dallas, Texas 75201
Attention: James P. Seery, Jr.

If to the Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.

with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

If to the Reorganized Debtor:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
with copies to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey N. Pomerantz, Esq.
Ira D. Kharasch, Esq.
Gregory V. Demo, Esq.

L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however,* that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

N. Tax Reporting and Compliance

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

O. Exhibits and Schedules

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

P. Controlling Document

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: January 22, 2021

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and Chief Restructuring Officer

Prepared by:

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Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

Exhibit B

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

Schedule of CLO Management Agreements and Related Contracts to Be Assumed

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.

20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.

21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.

22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.

23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al

24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd

25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd

26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association

27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.

28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company

29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company

30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company

32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association

33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.

34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company

35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association

37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company

38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.

43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.

44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association

45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust

46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.

47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.

48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.

49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association

50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.

53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association

54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company

55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association

56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street

57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank

58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.

59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company

60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

HMIT Exhibit No. 26

CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of August 11, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this "Agreement"), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the "Debtor"), as settlor, and James P. Seery, Jr., as trustee (the "Claimant Trustee"), and Wilmington Trust, National Association, a national banking association ("WTNA"), as Delaware trustee (in such capacity hereunder, and not in its individual capacity, the "Delaware Trustee," and together with the Debtor and the Claimant Trustee, the "Parties") for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the "Chapter 11 Case");

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the "Plan"),[1] which was confirmed by the Bankruptcy Court on February 22, 2021, pursuant to the *Findings of Fact and Order Confirming Plan of Reorganization for the Debtor* [Docket No. 1943] (the "Confirmation Order");

WHEREAS, this Agreement, including all exhibits hereto, is the "Claimant Trust Agreement" described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries[2] in accordance with the Plan; (v) the Claimant Trustee can resolve

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan. The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Docket No. 1875, Exh. B.

[2] For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.

Disputed Claims as set forth herein and in the Plan; and (vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

DECLARATION OF TRUST

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

ARTICLE I.
DEFINITION AND TERMS

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the "Definitions," Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) "Acis" means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) "Bankruptcy Court" has the meaning set forth in the Recitals hereof.

(c) "Cause" means (i) a Person's willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person's commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person's conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person's gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(d) "Claimant Trust Agreement" means this Agreement.

(e) "Claimant Trustee" means James P. Seery, Jr., as the initial "Claimant Trustee" hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) "Claimant Trust" means the "Highland Claimant Trust" established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) "Claimant Trust Assets" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

(h) "Claimant Trust Beneficiaries" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

(i) "Claimant Trust Expense Cash Reserve" means $[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) "Claimant Trust Expenses" means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with this Agreement.

(k) "Committee Member" means a Member who is/was also a member of the Creditors' Committee.

(l) "Conflicted Member" has the meaning set forth in Section 4.6(c) hereof.

(m) "Contingent Trust Interests" means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

(n) "Creditors' Committee" means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) "Delaware Statutory Trust Act" means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) "Delaware Trustee" has the meaning set forth in the introduction hereof.

(q) "Disability" means as a result of the Claimant Trustee's or a Member's incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) "Disinterested Members" has the meaning set forth in Section 4.1 hereof.

(s) "Disputed Claims Reserve" means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) "Employees" means the employees of the Debtor set forth in the Plan Supplement.

(u) "Employee Claims" means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(v) "Estate Claims" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) "Equity Trust Interests" has the meaning given to it in Section 5.1(c) hereof.

(x) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(y) "General Unsecured Claim Trust Interests" means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) "GUC Beneficiaries" means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) "GUC Payment Certification" has the meaning given to it in Section 5.1(c) hereof.

(bb) "HarbourVest" means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) "Investment Advisers Act" means the Investment Advisers Act of 1940, as amended.

(dd) "Investment Company Act" means the Investment Company Act of 1940, as amended.

(ee) "Litigation Sub-Trust" means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) "Litigation Sub-Trust Agreement" means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) "Litigation Trustee" means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) "Managed Funds" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however,* that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) "Material Claims" means the Claims asserted by UBS, Patrick Hagaman Daugherty, Integrated Financial Associates, Inc., and the Employees.

(jj) "Member" means a Person that is member of the Oversight Board.

(kk) "New GP LLC" means the general partner of the Reorganized Debtor.

(ll) "Oversight Board" means the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee's performance of his duties and otherwise serve the functions set forth in this Agreement and those of the "Claimant Trust Oversight Committee" described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.

(mm) "Plan" has the meaning set forth in the Recitals hereof.

(nn) "Privileges" means the Debtor's rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to,

attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that "Privileges" shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(oo) "PSZJ" means Pachulski Stang Ziehl & Jones LLP.

(pp) "Redeemer Committee" means the Redeemer Committee of the Highland Crusader Fund.

(qq) "Registrar" has the meaning given to it in Section 5.3(a) hereof.

(rr) "Reorganized Debtor Assets" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(ss) "Securities Act" means the Securities Act of 1933, as amended.

(tt) "Subordinated Beneficiaries" means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(uu) "Subordinated Claim Trust Interests" means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(vv) "TIA" means the Trust Indenture Act of 1939, as amended.

(ww) "Trust Interests" means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(xx) "Trust Register" has the meaning given to it in Section 5.4(b) hereof.

(yy) "Trustees" means collectively the Claimant Trustee and Delaware Trustee, however, it is expressly understood and agreed that the Delaware Trustee shall have none of the duties or liabilities of the Claimant Trustee.

(zz) "UBS" means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) "WilmerHale" Wilmer Cutler Pickering Hale & Dorr LLP.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

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APPELLEE RECORD

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

I INDEX

APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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Counsel for Highland Capital Management, L.P.

cases where they would apply. "Includes" and "including" are not limiting and "or" is not exclusive. References to "Articles," "Sections" and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words "herein," "hereafter" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol "$" shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

ARTICLE II.
ESTABLISHMENT OF THE CLAIMANT TRUST

2.1 Creation of Name of Trust.

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the "Highland Claimant Trust." The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

2.2 Objectives.

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment,

make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with "liquidating trust" status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee and (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims, the Employee Claims, and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.

2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession, custody or control, (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee, directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address: 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

ARTICLE III.
THE TRUSTEES

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the Estate Claims transferred to the Litigation Sub-Trust, as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following "[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]".

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(d), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor's Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to $3,000,000 (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust's role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board solely in their capacities as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay,

such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;

(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from

the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xxi) being collectively, the "Authorized Acts").

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee's authority with respect to certain other assets, including certain portfolio company assets (the "Other Assets").

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

(i) terminate or extend the term of the Claimant Trust;

(ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;

(iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than $3,000,000 (over a thirty-day period);

(iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;

(v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder's Claim becomes an Allowed Claim under the Plan;

(vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;

(vii) borrow as may be necessary to fund activities of the Claimant Trust;

(viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;

(ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);

(x) change the compensation of the Claimant Trustee;

(xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and

(xii) retain counsel, experts, advisors, or any other professionals; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and (ii) any other professional whose expected fees and expenses are estimated at less than or equal to $200,000.

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service ("IRS") guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys' fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee's resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause for Cause immediately upon notice thereof, or without Cause upon 60 days' prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the

vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the "Interim Trustee") until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person's appointment as Interim Trustee.

3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee's capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee's obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as "Estate Representative". The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the "Estate Representative") with respect to the Claimant

Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims and the Employee Claims. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

(b) The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

(b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee.

(a) The Delaware Trustee shall have the limited power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Delaware Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement, in either case as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee and upon which the Delaware Trustee shall be entitled to conclusively and exclusively rely; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust. For the avoidance of doubt, the Delaware Trustee will only have such rights and obligations as expressly provided by reference to the Delaware Trustee hereunder. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Claimant Trustee set forth herein. The Delaware Trustee shall be one of the trustees of the Claimant Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Statutory Trust Act and for taking such actions as are required to be taken by a Delaware Trustee under the Delaware Statutory Trust Act. The duties (including fiduciary duties), liabilities and obligations of the Delaware Trustee shall be limited to those expressly set forth in this Section 3.16 and there shall be no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity, of the Delaware Trustee. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Claimant Trust, the other parties hereto or any beneficiary of the Claimant Trust, it is hereby understood and agreed by the other parties hereto that such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Agreement.

(b) The Delaware Trustee shall serve until such time as the Claimant Trustee removes the Delaware Trustee or the Delaware Trustee resigns and a successor Delaware Trustee is appointed by the Claimant Trustee in accordance with the terms hereof. The Delaware Trustee may resign at any time upon the giving of at least thirty (30) days' advance written notice to the Claimant Trustee; provided, that such resignation shall not become effective unless and until a successor Delaware Trustee shall have been appointed by the Claimant Trustee in accordance with the terms hereof. If the Claimant Trustee does not act within such thirty (30) day period, the Delaware Trustee may apply to the Court of Chancery of the State of Delaware for the appointment of a successor Delaware Trustee.

(c) Upon the resignation or removal of the Delaware Trustee, the Claimant Trustee shall appoint a successor Delaware Trustee by delivering a written instrument to the

outgoing Delaware Trustee. Any successor Delaware Trustee must satisfy the requirements of Section 3807 of the Delaware Statutory Trust Act. Any resignation or removal of the Delaware Trustee and appointment of a successor Delaware Trustee shall not become effective until a written acceptance of appointment is delivered by the successor Delaware Trustee to the outgoing Delaware Trustee and the Claimant Trustee and any undisputed fees, expenses and indemnity due to the outgoing Delaware Trustee are paid. Following compliance with the preceding sentence, the successor Delaware Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Delaware Trustee under this Agreement, with like effect as if originally named as Delaware Trustee, and the outgoing Delaware Trustee shall be discharged of its duties and obligations under this Agreement.

(d) The Delaware Trustee shall be paid such compensation as agreed to pursuant to a separate fee agreement. The Claimant Trust shall promptly advance and reimburse the Delaware Trustee for all reasonable out-of-pocket costs and expenses (including reasonable legal fees and expenses) incurred by the Delaware Trustee in connection with the performance of its duties hereunder.

(e) WTNA shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

(f) Any corporation or association into which WTNA may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Delaware Trustee is a party, will be and become the successor Delaware Trustee under this Agreement and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

ARTICLE IV.
THE OVERSIGHT BOARD

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-

E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof..

4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.8 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate

in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set otherwise forth herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed "Conflicted Members" with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a "Committee Member Claim Matter"). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any

Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article IX hereof. The Members of the Oversight Board will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 4.8 below, or removal pursuant to Section 4.9 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day that is 90 days following the delivery of such notice, (ii) the appointment of a successor in accordance with Section 4.10 below, and (iii) such other date as may be agreed to by the Claimant Trustee and the non-resigning Members of the Oversight Board.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further evidenced by the Claimant Trustee's filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee's website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment

under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member. Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.12.

ARTICLE V.
TRUST INTERESTS

5.1 Claimant Trust Interests.

(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the "GUC Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the "Subordinated Beneficiaries"). The

Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary's Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the "Equity Holders"). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the "GUC Payment Certification"). Equity Holders will only be deemed "Beneficiaries" under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed "Equity Trust Interests." The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary's Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other wright to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or

reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the "Registrar"), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the "Trust Register"), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary's Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be "securities" under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys' fees and other costs; provided, however, that any fees and costs shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.

(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.

ARTICLE VI.
DISTRIBUTIONS

6.1 Distributions.

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive termination of the Claimant Trustee), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within six months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.

6.2 Manner of Payment or Distribution. All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records

of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 *De Minimis* Distributions. Distributions with a value of less than $100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. **After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.**

ARTICLE VII.
TAX MATTERS

7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the

Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

ARTICLE VIII.
STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, Delaware Trustee, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), WTNA in its individual capacity and as Delaware Trustee, the Oversight Board, and all past and present Members (collectively, in their capacities as such, the "Indemnified Parties") shall be

indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party's reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, willful misconduct, or gross negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, WTNA in its individual capacity and as Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense and shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein. The terms of this Section 8.2 shall survive the termination of this Agreement and the resignation or removal of any Indemnified Party.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or

otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

ARTICLE IX.
TERMINATION

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall prepare, execute and file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). If the Delaware Trustee's signature is required for purposes of filing such certificate of cancellation, the Claimant Trustee shall provide the Delaware

Trustee with written direction to execute such certificate of cancellation, and the Delaware Trustee shall be entitled to conclusively and exclusively rely upon such written direction without further inquiry. Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

ARTICLE X.
AMENDMENTS AND WAIVER

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement. No amendment or waiver of this Agreement that adversely affects the Delaware Trustee shall be effective unless the Delaware Trustee has consented thereto in writing in its sole and absolute discretion.

ARTICLE XI.
MISCELLANEOUS

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in

respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee
c/o Highland Capital Management, L.P.
100 Crescent Court, Suite 1850
Dallas, Texas 75201

With a copy to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd, 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)
Ira Kharasch (ikharasch@pszjlaw.com)
Gregory Demo (gdemo@pszjlaw.com)

(b) If to the Delaware Trustee:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, DE 19890
Attn: Corporate Trust Administration/David Young
Email: nmarlett@wilmingtontrust.com
Phone: (302) 636-6728
Fax: (302) 636-4145

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.11 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board. or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however*, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

[Remainder of Page Intentionally Blank]

IN WITNESS HEREOF, the parties hereto have caused this Claimant Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Highland Capital Management, L.P.

By: _____
James P. Seery, Jr.
Chief Executive Officer and
Chief Restructuring Officer

Claimant Trustee

By: _____
James P. Seery, Jr., not individually but solely in his capacity as the Claimant Trustee

Wilmington Trust, National Association,
as Delaware Trustee

By: /s/ NC Marlett III
Name: Neumann Marlett
Title: Bank Officer

HMIT Exhibit No. 27

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward
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Zachery Z. Annable
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ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Reorganized Debtor

IN THE UNITED STATED BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., [1]	Case No. 19-34054-sgj11
Reorganized Debtor.	

NOTICE OF APPOINTMENT OF MEMBERS OF THE OVERSIGHT BOARD OF THE HIGHLAND CLAIMANT TRUST

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Pursuant to the *Fifth Amended Plan of Reorganization of Highland Capital* Management, *L.P. (As Modified)* [Docket No. 1808] (as may be amended, supplemented, or otherwise modified from time to time, the "Plan")[2] and the Claimant Trust Agreement, the initial Members of the Oversight Board were (i) the Redeemer Committee; (ii) Acis; (iii) UBS; (iv) Meta-e Discovery; and (v) David Pauker (collectively, the "Initial Members"). The Initial Members resigned from the Oversight Board on the Effective Date.

Pursuant to the procedures set forth in the Claimant Trust Agreement, the following Members were appointed to the Oversight Board, effective as of the Effective Date, to replace the Initial Members (after giving effect to the resignations of the Initial Members, the following Members comprise the entire Oversight Board):

Disinterested Member:	Richard Katz c/o Highland Capital Management, L.P. 100 Crescent Court, Suite 1850, Dallas, Texas 75201 Phone: (972) 628-4100
Member:	Muck Holdings LLC c/o Crowell & Moring LLP Attn: Paul B. Haskel 590 Madison Avenue New York, New York 10022 Phone: (212) 530-1823
Member:	Jessup Holdings LLC c/o Mandel, Katz and Brosnan LLP Attn: John J. Mandler 100 Dutch Hill Road, Suite 390 Orangeburg, NY 10962 Phone: (845) 639-7800

[2] The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Ex. B [Docket No. 1875]. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Dated: September 2, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)
John A. Morris (NY Bar No. 266326) (*pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Reorganized Debtor

HMIT Exhibit No. 28

EXHIBIT 41

MEMORANDUM OF AGREEMENT

In accordance with the provisions of the Highland Claimant Trust Agreement and the Highland Capital Management, L.P. ("HCMLP") Plan of Reorganization, the Oversight Board of the Highland Claimant Trust and the Claimant Trustee/Chief Executive Officer of HCMLP engaged in robust, arm's-length and good faith negotiations regarding the incentive compensation program for the Claimant Trustee/CEO and the HCMLP post-effective date operating team ("HCMLP Team"). After considering various structures and incentives to motivate performance on behalf of the Claimant Trust, the parties reached the binding agreement reflected in the attached HCMLP and Claimant Trust Management Incentive Compensation Program (the "ICP") pdf document. A model entitled "ICP Nov 17 2021 Adjusted Dec 2 2021" summarizing potential ICP payments is also attached hereto.

The ICP is a detailed outline of the agreed program with Claimant Trust Expense compensation payments designed to assure the efficient and successful operation of the Claimant Trust and HCMLP for the benefit of the Claimant Trust and the Claimant Trust Beneficiaries. To the extent that there remain additional details regarding allocations (or other issues) to be determined in the future, the Oversight Board and the Claimant Trustee/CEO will negotiate in good faith the resolve those issues.

This Memorandum of Agreement is executed in accordance with the Claimant Trust Agreement (i) by Claimant Trustee executes this agreement on behalf of himself, the Claimant Trust and HCMLP and (ii) by the Oversight Board Members in their respective capacities as members of the Oversight Board

ACCEPTED AND AGREED this 6th day of December 2021.

James P. Seery, Jr., Claimant Trustee and HCMLP CEO

Oversight Board Members

Richard Katz. Independent Member

Jessup Holdings LLC

By: Christopher Provost
Authorized Signatory

Muck Holdings LLC

By: Michael Linn
Authorized Signatory

FINAL

MANAGEMENT INCENTIVE COMPENSATION AGREED TERMS
REORGANIZED HIGHLAND CAPITAL MANAGEMENT, L.P. and
HIGHLAND CLAIMANT TRUST, (the "Trust")
DECEMBER 2, 2021

In accordance with the terms of the Claimant Trust Agreement in respect of compensation and severance for the Claimant Trustee, and consistent with the Claimant Trustee's management of the Reorganized Highland Capital Management, L.P. ("HCMLP") and its employees, the following term sheet contains the terms of the Incentive Compensation Program ("ICP") agreed to by the Oversight Board, the Claimant Trustee and HCMLP. Payments made under this ICP are Claimant Trust Expenses and compensation and reasonable expenses of administering the confirmed HCMLP Plan of Reorganization ("Plan").

1. Structure
   a. The ICP will have 5 Tiers based upon distribution to allowed Class 8 and Class 9 Claims. Incentive Payments will be based on actual cash reserved or distributed to holders of Allowed Class 8 and Class 9 Claims.
   b. The (i) Claimant Trustee/CEO and (ii) the HCMLP Team will each be indefeasibly allocated a percentage of the distributions reserved or made to Allowed Class 8 (principal and interest) and Class 9 Claims effective as of the date hereof. [redacted]
   c. Timing of payments to the Claimant Trustee/CEO and the HCMLP Team TBD. However, the purpose of the program is to incentivize performance and promote retention. Accordingly, allocations and distributions are not expected to occur until significant progress is made on the monetizations contemplated by the Plan.
   d. Assumed Allowed Claim Amounts

1.	Class 8 Principal	$295,326,201
2.	Class 8 Interest (thru 12/22)	$9,676,000
3.	Class 9 (assumes Daugherty settlement)	$98,750,000

   e. Incentive Payment Tiers
      i. Tier 1 $200,000,000 to $210,000,000 (approx. 68% to 71% Class 8)
      ii. Tier 2 $210,000,001 to $266,000,000 (approx. 71.1% to 90% Class 8)
      iii. Tier 3 $266,000,001 to $305,000,000 (approx. 90.1% to 103% Class 8)
      iv. Tier 4 $305,000,001 to $354,000,000 (approx. 50% Class 9)
      v. Tier 5 $354,000,001 to 100% Class 9 Payout (> 50% Class 9)

FINAL

f. Tier Payment Percentages

	Claimant Trustee/CEO	[redacted]
Tier 1	.72%	[redacted]
Tier 2	1.17%	[redacted]
Tier 3	2.75%	[redacted]
Tier 4	4.25%	[redacted]
Tier 5	6.000%	[redacted]

g. [redacted]

h. Base Salary

i. As set for the in the Claimant Trust Agreement, Claimant Trustee/CEO will continue to receive his current base salary of $150,000 per month (the "Base Salary"), less the actual cost of health insurance benefits provided to the Claimant Trustee/CEO.

ii. Claimant Trustee/CEO and Oversight Board agree that the Base Salary will reset to $75,000.00 per month starting 12/31/22, it being understood that Claimant Trustee/CEO and Oversight Board will negotiate in good faith to the extent a different Base Salary makes sense based on the scope of remaining assets and ongoing litigation for the Trust as needed for the periods from 12/31/22 to the end of the Trust. To that end, Claimant Trustee/CEO and Oversight Board agree to re-evaluate the Base Salary at least every 6m starting 12/31/22.

iii. Claimant Trustee/CEO to receive a cash payment of $1,000,000.00 and the Claimant Trustee/CEO ICP in the event of severance without cause, it being understood that if severance occurs during the period of 7/1/22 to 12/31/22, the cash payment portion will be the continuation of Base Salary until 12/31/22.

iv. [redacted]

FINAL

[redacted]

2. General Terms

a. [redacted]

b. [redacted]

c. [redacted]

d. Claimant Trustee/CEO is permitted to shift a portion of his ICP payments to HCMLP Team members at his sole discretion.

e. It is the intent of the parties to make distributions from the Claimant Trust on a net basis, including the calculation of ICP so that payments under the ICP are treated as Claimant Trust Expenses and other reasonable costs of compensation and expenses. The ICP payments are not Claimant Trust distributions. For example, if a 1% share is owed on a $100mm distribution, the Trust would need have $101mm of cash for distribution so that $1mm would go to the ICP and the balance to the Claimant Trust beneficiaries (holders of Class 8 and Class 9 Claims).

f. The amounts of ICP entitlement, based on the tiers above in 1e and 1f, are anchored to 12/31/22 claim distributions; an 8% discount rate (annual rate, quarterly compounding) will apply to any distribution based on deviation from 12/31/22. For example, if a $1mm distribution is made on 12/31/23, such distribution will be treated for ICP calculation purposes as the equivalent of $924k on 12/31/22; analogously, if a $1mm distribution is made 6/30/22, such amount will be treated as the equivalent of $1.04mm on 12/31/22. Such time value adjustments will be done on a distribution-by-distribution basis.

g. 20% of the Claimant Trustee/CEO ICP will be based on the successful achievement of the following goals, as determined by the Oversight Board :

   i. Claimant Trustee/CEO to monitor and manage costs appropriately
   ii. Claimant Trustee/CEO to manage and retain HCMLP Team appropriately
   iii. Claimant Trustee/CEO to report to the Oversight Board on a timely basis all relevant information regarding the Claimant Trust.

-END-

ICP Proposals Comparison

Class B Principal	295,326,201
Class B Interest (through YE '22)	9,626,000
Total Class B Claim	305,602,201
Class 9 Principal	98,750,000
Total Class B+9 Claims	403,752,201

Sub claims breakdown

UBS	60.00
Harbourvest	35.00
Daugherty	3.75
Total	98.75

Seery Proposal 1

Distributions Gross $	% Recovery	on	To Jim Seery (was not broken out in original proposal) % Incre.	$ Incre.	% cumul.	$ cumul.
209,681,603	71.00%	Class B Prin.				
265,793,581	90.00%	Class B Prin.				
295,326,201	100.00%	Class B Prin.				

[redacted]

Oversight Board Proposal 1

Distributions Gross $	% Recovery	on	To Jim Seery % Incre.	$ Incre.	% cumul.	$ cumul.
209,681,603	71.00%	Class B Prin.	0.72%	1,500,000	0.72%	1,500,000
295,326,201	100.00%	Class B Prin.	1.17%	1,000,000	0.85%	2,500,000
388,939,701	85.00%	Class 9 Prin.	4.27%	4,000,000	1.67%	6,500,000
			20.00%			

[redacted]

Seery Proposal 2

Distributions Gross $	% Recovery	on	To Jim Seery % Incre.	$ Incre.	% cumul.	$ cumul.
210,000,000	71.11%	Class B Prin.	0.72%	1,512,000	0.72%	1,512,000
266,000,000	90.07%	Class B Prin.	1.17%	655,200	0.81%	2,167,200
305,000,000	103.28%	Class B Prin.	3.50%	1,365,000	1.16%	3,532,200
354,000,000	49.62%	Class 9 Prin.	5.00%	2,450,000	1.69%	5,982,200
			6.00%			

[redacted]

Oversight Board Proposal 2

Distributions Gross $	% Recovery	on	To Jim Seery % Incre.	$ Incre.	% cumul.	$ cumul.
210,000,000	71.11%	Class B Prin.	0.72%	1,512,000	0.72%	1,512,000
266,000,000	90.07%	Class B Prin.	1.17%	655,200	0.81%	2,167,200
305,000,000	103.28%	Class B Prin.	2.75%	1,072,500	1.06%	3,239,700
354,000,000	49.62%	Class 9 Prin.	4.25%	2,082,500	1.50%	5,322,200
			6.00%			

[redacted]

Proposal Comparisons

Gross distribution	210,000,000	266,000,000	305,000,000	354,000,000	388,939,701	403,752,201
% on Class B Prin.	71.11%	90.07%	103.28%	119.87%	131.70%	136.71%
% on Class B Prin. + Int.	68.35%	87.21%	100.00%	116.06%	127.52%	132.38%
% on Class 9 Prin.	0.00%	0.00%	0.00%	49.62%	85.00%	100.00%

Seery Proposal 1

[redacted]

Oversight Board Proposal 1						
% cumul. to Jim Seery	0.72%	0.81%	0.96%	1.41%	1.67%	2.34%
$ cumul. to Jim Seery	1,503,718	2,157,583	2,913,351	5,007,068	6,500,000	9,467,500

[redacted]

Seery Proposal 2						
% cumul. to Jim Seery	0.72%	0.81%	1.16%	1.69%	2.08%	2.22%
$ cumul. to Jim Seery	1,512,000	2,167,200	3,532,200	5,982,200	8,078,582	8,967,332

[redacted]

Oversight Board Proposal 2							
% cumul. to Jim Seery		0.72%	0.81%	1.06%	1.50%	1.91%	2.06%
$ cumul. to Jim Seery		1,512,000	2,167,200	3,239,700	5,322,200	7,418,582	8,307,332
x of 2yrs salary	3,600,000	0.4x	0.6x	0.9x	1.5x	2.1x	2.3x

[redacted]

HMIT Exhibit No. 31

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054-sgj11**
Debtor.	§	

NOTICE OF TRANSFER OF CLAIM OTHER THAN FOR SECURITY

CLAIM NO. 23 was filed in this case or deemed filed under 11 U.S.C. § 1111(a). Transferee hereby gives evidence and notice pursuant to Rule 3001(e)(2), Fed. R. Bankr. P., of the transfer, other than for security, of the claim referenced in this evidence and notice.

Name of Transferee:

ACMLP Claim, LLC

Name of Transferors:

Acis Capital Management L.P. and
Acis Capital Management GP, LLC

Name and Address where notices to Transferee should be sent:

ACMLP Claim, LLC
4514 Cole Ave., Suite 600
Dallas, TX 75205

Phone: (214) 556-3405

Name and Address where transferee payments should be sent:

Same as above

Claim No.: 23
Amount of Claim: $23,000,000.00
Date Claim Filed: December 31, 2019

Phone: (214) 556-3405

I declare under penalty of perjury that the information provided in this notice is true and correct to the best of my knowledge and belief.

By: _____ Date: 4/15/21
Transferee's Agent

EVIDENCE OF TRANSFER OF CLAIM

TO: THE DEBTOR AND THE BANKRUPTCY COURT

For value received, the adequacy and sufficiency of which are hereby acknowledged, Acis Capital Management GP, LLC ("**Assignor**") has unconditionally and irrevocably transferred and assigned to ACMLP Claim, LLC ("**Assignee**") all of Assignor's rights, title and interest in, to and under those claims asserted by Assignor in the proof of claim that was assigned claim number 23 ("**Claim No. 23**") filed against Highland Capital Management, L.P. (the "**Debtor**") in Case No. 19-34054 pending in the United States Bankruptcy Court for the Northern District of Texas (the "**Bankruptcy Court**").

Assignor waives any objection to the transfer of Claim No. 23 on the books and records of the Debtor and the Bankruptcy Court, and hereby waives to the fullest extent permitted by law any notice or right to a hearing as may be imposed by Rule 3001 of the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, applicable local bankruptcy rules or applicable law. Assignor acknowledges and understands, and hereby stipulates, that an order of the Bankruptcy Court may be entered without further notice to Assignor transferring Claim No. 23 to Assignee and recognizing Assignee as the sole owner and holder of Claim No. 23. Assignor further directs the Debtor, the Bankruptcy Court, Kurtzman Carson Consultants, LLC, as court-appointed claims and noticing agent, and all other interested parties that all further notices relating to Claim No. 23, and all payments or distributions of money or property in respect of Claim No. 23, shall be delivered or made to Assignee.

IN WITNESS WHEREOF, this EVIDENCE OF TRANSFER OF CLAIM is executed this 15th day of April, 2021.

ACIS CAPITAL MANAGEMENT GP, LLC

By: _____

Name: Joshua N. Terry

Title: President

HMIT Exhibit No. 32

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054-sgj11**
Debtor.	§	

NOTICE OF TRANSFER OF CLAIM OTHER THAN FOR SECURITY

CLAIM NO. 23 was filed in this case or deemed filed under 11 U.S.C. § 1111(a). Transferee hereby gives evidence and notice pursuant to Rule 3001(e)(2), Fed. R. Bankr. P., of the transfer, other than for security, of the claim referenced in this evidence and notice.

Name of Transferee:

ACMLP Claim, LLC

Name of Transferors:

Acis Capital Management L.P. and
Acis Capital Management GP, LLC

Name and Address where notices to Transferee should be sent:

ACMLP Claim, LLC
4514 Cole Ave., Suite 600
Dallas, TX 75205

Phone: (214) 556-3405

Name and Address where transferee payments should be sent:

Same as above

Claim No.: 23
Amount of Claim: $23,000,000.00
Date Claim Filed: December 31, 2019

Phone: (214) 556-3405

I declare under penalty of perjury that the information provided in this notice is true and correct to the best of my knowledge and belief.

By: _____ Date: 4/15/21
Transferee's Agent

EVIDENCE OF TRANSFER OF CLAIM

TO: THE DEBTOR AND THE BANKRUPTCY COURT

For value received, the adequacy and sufficiency of which are hereby acknowledged, Acis Capital Management, L.P. ("**Assignor**") has unconditionally and irrevocably transferred and assigned to ACMLP Claim, LLC ("**Assignee**") all of Assignor's rights, title and interest in, to and under those claims asserted by Assignor in the proof of claim that was assigned claim number 23 ("**Claim No. 23**") filed against Highland Capital Management, L.P. (the "**Debtor**") in Case No. 19-34054 pending in the United States Bankruptcy Court for the Northern District of Texas (the "**Bankruptcy Court**").

Assignor waives any objection to the transfer of Claim No. 23 on the books and records of the Debtor and the Bankruptcy Court, and hereby waives to the fullest extent permitted by law any notice or right to a hearing as may be imposed by Rule 3001 of the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, applicable local bankruptcy rules or applicable law. Assignor acknowledges and understands, and hereby stipulates, that an order of the Bankruptcy Court may be entered without further notice to Assignor transferring Claim No. 23 to Assignee and recognizing Assignee as the sole owner and holder of Claim No. 23. Assignor further directs the Debtor, the Bankruptcy Court, Kurtzman Carson Consultants, LLC, as court-appointed claims and noticing agent, and all other interested parties that all further notices relating to Claim No. 23, and all payments or distributions of money or property in respect of Claim No. 23, shall be delivered or made to Assignee.

IN WITNESS WHEREOF, this EVIDENCE OF TRANSFER OF CLAIM is executed this 15th day of April, 2021.

ACIS CAPITAL MANAGEMENT, L.P.

By: Shorewood GP, LLC, its general partner

By: _____
Joshua N. Terry, President

HMIT Exhibit No. 33

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054-sgj11**
Debtor.	§	

NOTICE OF TRANSFER OF CLAIM OTHER THAN FOR SECURITY

CLAIM NO. 23 was filed in this case or deemed filed under 11 U.S.C. § 1111(a). Transferee hereby gives evidence and notice pursuant to Rule 3001(e)(2), Fed. R. Bankr. P., of the transfer, other than for security, of the claim referenced in this evidence and notice.

Name of Transferee:

Muck Holdings LLC

Name of Transferor:

ACMLP Claim, LLC

Name and Address where notices to Transferee should be sent:

Muck Holdings LLC
c/o Crowell & Moring LLP
Attn: Paul Haskel
590 Madison Avenue
New York, NY 10022

Phone: (212) 530-1823

Name and Address where transferee payments should be sent:

Same as above

Claim No.: 23
Amount of Claim: $23,000,000.00
Date Claim Filed: December 31, 2019

Phone: (212) 530-1823

I declare under penalty of perjury that the information provided in this notice is true and correct to the best of my knowledge and belief.

By: _____
Transferee's Agent

Date: April 16, 2021

EVIDENCE OF TRANSFER OF CLAIM

TO: THE DEBTOR AND THE BANKRUPTCY COURT

For value received, the adequacy and sufficiency of which are hereby acknowledged, ACMLP Claim, LLC ("**Assignor**") has unconditionally and irrevocably transferred and assigned to Muck Holdings LLC ("**Assignee**") all of Assignor's rights, title and interest in, to and under those claims asserted by Assignor in the proof of claim that was assigned claim number 23 ("**Claim No. 23**") filed against Highland Capital Management, L.P. (the "**Debtor**") in Case No. 19-34054 pending in the United States Bankruptcy Court for the Northern District of Texas (the "**Bankruptcy Court**").

Assignor waives any objection to the transfer of Claim No. 23 on the books and records of the Debtor and the Bankruptcy Court, and hereby waives to the fullest extent permitted by law any notice or right to a hearing as may be imposed by Rule 3001 of the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, applicable local bankruptcy rules or applicable law. Assignor acknowledges and understands, and hereby stipulates, that an order of the Bankruptcy Court may be entered without further notice to Assignor transferring Claim No. 23 to Assignee and recognizing Assignee as the sole owner and holder of Claim No. 23. Assignor further directs the Debtor, the Bankruptcy Court, Kurtzman Carson Consultants, LLC, as court-appointed claims and noticing agent, and all other interested parties that all further notices relating to Claim No. 23, and all payments or distributions of money or property in respect of Claim No. 23, shall be delivered or made to Assignee.

IN WITNESS WHEREOF, this EVIDENCE OF TRANSFER OF CLAIM is executed this 16th day of April, 2021.

ACMLP Claim, LLC
By: Shorewood GP, LLC, its Manager

By: _____
Name: Joshua N. Terry
Title: President

HMIT Exhibit No. 34

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**Chapter 11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054-sgj11**
	§	
	§	
Debtor.	§	

NOTICE OF TRANSFER OF CLAIM OTHER THAN FOR SECURITY

CLAIM NO. 72 was filed in this case or deemed filed under 11 U.S.C. § 1111(a). Transferee hereby gives evidence and notice pursuant to Rule 3001(e)(2), Fed. R. Bankr. P., of the transfer, other than for security, of the claim referenced in this evidence and notice.

Name of Transferee:

Jessup Holdings LLC

Name of Transferors:

Redeemer Committee of the Highland Crusader Fund

Name and Address where notices to Transferee should be sent:

Jessup Holdings LLC
c/o Mandel, Katz and Brosnan LLP
Attn: John Mandler
100 Dutch Hill Road, Suite 390
Orangeburg, NY 10962

Phone: (845) 639-7800

Claim no.: 72
Amount of Claim: $137,696,610.00
Date Claim Filed: April 3, 2020

Phone: (845) 639-7800

Name and Address where transferee payments should be sent:

Same as above

I declare under penalty of perjury that the information provided in this notice is true and correct to the best of my knowledge and belief.

By: _____
Transferee's Agent

Date: April 30, 2021

EVIDENCE OF TRANSFER OF CLAIM

TO: THE DEBTOR AND THE BANKRUPTCY COURT

For value received, the adequacy and sufficiency of which are hereby acknowledged, the Redeemer Committee of the Highland Crusader Fund ("**Assignor**") has unconditionally and irrevocably transferred and assigned to Jessup Holdings LLC ("**Assignee**") all of Assignor's rights, title and interest in, to and under those claims asserted by Assignor in the proof of claim that was assigned claim number 72 ("**Claim No. 72**") filed against Highland Capital Management, L.P. (the "**Debtor**") in Case No. 19-34054 pending in the United States Bankruptcy Court for the Northern District of Texas (the "**Bankruptcy Court**").

Assignor waives any objection to the transfer of Claim No. 72 on the books and records of the Debtor and the Bankruptcy Court, and hereby waives to the fullest extent permitted by law any notice or right to a hearing as may be imposed by Rule 3001 of the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, applicable local bankruptcy rules or applicable law. Assignor acknowledges and understands, and hereby stipulates, that an order of the Bankruptcy Court may be entered without further notice to Assignor transferring Claim No. 72 to Assignee and recognizing Assignee as the sole owner and holder of Claim No. 72. Assignor further directs the Debtor, the Bankruptcy Court, Kurtzman Carson Consultants, LLC, as court-appointed claims and noticing agent, and all other interested parties that all further notices relating to Claim No. 72, and all payments or distributions of money or property in respect of Claim No. 72, will be delivered or made to Assignee.

[Signature Pages Follow]

IN WITNESS WHEREOF, this EVIDENCE OF TRANSFER OF CLAIM is executed this 30th day of April, 2021.

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

Grosvenor Capital Management, L.P.

By: _____
Name: Burke Montgomery, designated representative of Grosvenor Capital Management, L.P.

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

Grosvenor Capital Management, L.P.

By: _____

Name: Brian Zambie, designated representative of Grosvenor Capital Management, L.P.

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

Grosvenor Capital Management, L.P.

By: _____

Name: Tom Rowland, designated representative of Grosvenor Capital Management, L.P.

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

Concord Management, LLC

By: _____

Name: Brant Behr, designated representative of Concord Management, LLC

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

Baylor University

By: _____

Name: David Morehead, designated representative of Baylor University

ATTEST:

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

Man Solutions Limited

By: _____

Name: Michael Buerer, designated representative of Man Solutions Limited

[Signature Page to Evidence of Transfer of Claim]

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

Belleville Road Pty Limited

By: _____

Name: Stuart Robertson, designated representative of Seattle Fund SPC

HMIT Exhibit No. 35

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**Chapter 11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054-sgj11**
	§	
Debtor.	§	

NOTICE OF TRANSFER OF CLAIM OTHER THAN FOR SECURITY

CLAIM NO. 81 was filed in this case or deemed filed under 11 U.S.C. § 1111(a). Transferee hereby gives evidence and notice pursuant to Rule 3001(e)(2), Fed. R. Bankr. P., of the transfer, other than for security, of the claim referenced in this evidence and notice.

Name of Transferee:

Jessup Holdings LLC

Name and Address where notices to Transferee should be sent:

Jessup Holdings LLC
c/o Mandel, Katz and Brosnan LLP
Attn: John Mandler
100 Dutch Hill Road, Suite 390
Orangeburg, NY 10962

Phone: (845) 639-7800

Name and Address where transferee payments should be sent:

Same as above

Name of Transferors:

Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd. and Highland Crusader Fund II, Ltd.

Claim no.: **81**
Amount of Claim: **$50,000.00**
Date Claim Filed: **April 6, 2020**

Phone: (845) 639-7800

I declare under penalty of perjury that the information provided in this notice is true and correct to the best of my knowledge and belief.

By: _____
Transferee's Agent

Date: April 30, 2021

EVIDENCE OF TRANSFER OF CLAIM

TO: THE DEBTOR AND THE BANKRUPTCY COURT

For value received, the adequacy and sufficiency of which are hereby acknowledged, Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd. and Highland Crusader Fund II, Ltd. (collectively, the "**Assignor**") has unconditionally and irrevocably transferred and assigned to Jessup Holdings LLC ("**Assignee**") all of Assignor's rights, title and interest in, to and under those claims asserted by Assignor in the proof of claim that was assigned claim number 81 ("**Claim No. 81**") filed against Highland Capital Management, L.P. (the "**Debtor**") in Case No. 19-34054 pending in the United States Bankruptcy Court for the Northern District of Texas (the "**Bankruptcy Court**").

Assignor waives any objection to the transfer of Claim No. 81 on the books and records of the Debtor and the Bankruptcy Court, and hereby waives to the fullest extent permitted by law any notice or right to a hearing as may be imposed by Rule 3001 of the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, applicable local bankruptcy rules or applicable law. Assignor acknowledges and understands, and hereby stipulates, that an order of the Bankruptcy Court may be entered without further notice to Assignor transferring Claim No. 81 to Assignee and recognizing Assignee as the sole owner and holder of Claim No. 81. Assignor further directs the Debtor, the Bankruptcy Court, Kurtzman Carson Consultants, LLC, as court-appointed claims and noticing agent, and all other interested parties that all further notices relating to Claim No. 81, and all payments or distributions of money or property in respect of Claim No. 81, will be delivered or made to Assignee.

(remainder of page blank)

HMIT Exhibit No. 36

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054-sgj11**
Debtor.	§	

NOTICE OF TRANSFER OF CLAIM OTHER THAN FOR SECURITY

CLAIM NOS. 143, 147, 149, 150, 153, and 154 were filed in this case or deemed filed under 11 U.S.C. § 1111(a). Transferee hereby gives evidence and notice pursuant to Rule 3001(e)(2), Fed. R. Bankr. P., of the transfer, other than for security, of the claim referenced in this evidence and notice.

Name of Transferee:

Muck Holdings LLC

Name of Transferors:

HarbourVest 2017 Global Fund L.P.
HarbourVest 2017 Global AIF L.P.
HarbourVest Dover Street IX Investment L.P.
HV International VIII Secondary L.P.
HarbourVest Skew Base AIF L.P.
HarbourVest Partners L.P.

Name and Address where notices to Transferee should be sent:

Muck Holdings LLC
c/o Crowell & Moring LLP
Attn: Paul Haskel
590 Madison Avenue
New York, NY 10022

Phone: (212) 530-1823

Claim Nos.: 143, 147, 149, 150, 153, and 154 and all associated claims and rights pursuant to the Court's Order at Doc. No. 1788 (Entered 1/21/21)

Amount of Claims: **$45,000,000.00 (GUC)**
$35,000,000.00 (Subor.)

Date POCs Filed: **April 8, 2020**

Phone: (617) 348-3773

Name and Address where transferee payments should be sent:
Same as above

[Signature page follows]

I declare under penalty of perjury that the information provided in this notice is true and correct to the best of my knowledge and belief.

By: _____
Transferee's Agent

Date: April 29, 2021

EVIDENCE OF TRANSFER OF CLAIM

TO: THE DEBTOR AND THE BANKRUPTCY COURT

For value received, the adequacy and sufficiency of which are hereby acknowledged, HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, "**Assignors**") have unconditionally and irrevocably transferred and assigned to Muck Holdings LLC ("**Assignee**") all of Assignors' rights, title and interest in, to and under those claims asserted by Assignors in the proofs of claims that were assigned claim numbers 143, 147, 149, 150, 153, and 154 ("**Claim Nos. 143, 147, 149, 150, 153, and 154**") filed against Highland Capital Management, L.P. (the "**Debtor**") in Case No. 19-34054 pending in the United States Bankruptcy Court for the Northern District of Texas (the "**Bankruptcy Court**") and all associated claims and rights under that certain *Order Approving Debtor's Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* dated January 20, 2021 [Doc No. 1788] (the "**Order**").

Assignors waive any objection to the transfer of Claim Nos. 143, 147, 149, 150, 153, and 154 as well as the claims and rights under the Order - on the books and records of the Debtor and the Bankruptcy Court, and hereby waive to the fullest extent permitted by law any notice or right to a hearing as may be imposed by Rule 3001 of the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, applicable local bankruptcy rules or applicable law. Assignors acknowledge and understand, and hereby stipulate, that an order of the Bankruptcy Court may be entered without further notice to Assignors transferring Claim Nos. 143, 147, 149, 150, 153, and 154 as well as all associated claims and rights under the Order to Assignee and recognizing Assignee as the sole owner and holder of Claim Nos. 143, 147, 149, 150, 153, and 154 as well as all associated claims and rights under the Order. Assignors further direct the Debtor, the Bankruptcy Court, Kurtzman Carson Consultants, LLC, as court- appointed claims and noticing agent, and all other interested parties that all further notices relating to Claim Nos. 143, 147, 149, 150, 153, and 154, and all payments or distributions of money or property in respect of Claim Nos. 143, 147, 149, 150, 153, and 154 as well as associated claims and rights under the Order, shall be delivered or made to Assignee.

IN WITNESS WHEREOF, this EVIDENCE OF TRANSFER OF CLAIM is executed this 28 day of April, 2021.

HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member

By: _____
Name: Michael Pugatch
Its: Managing Director

HarbourVest 2017 Global AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner

By: _____
Name: Michael Pugatch
Its: Managing Director

HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner

By: _____
Name: Michael Pugatch
Its: Managing Director

HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its General Partner

By: _____
Name: Michael Pugatch
Its: Managing Director

HarbourVest Skew Base AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner

By: _____
Name: Michael Pugatch
Its: Managing Director

HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member

By: _____
Name: Michael Pugatch
Its: Managing Director

HMIT Exhibit No. 37

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**Chapter 11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054-sgj11**
	§	
Debtor.	§	

NOTICE OF TRANSFER OF CLAIM OTHER THAN FOR SECURITY

CLAIM NOS. 190 and 191 were filed in this case or deemed filed under 11 U.S.C. § 1111(a). Transferee hereby gives evidence and notice pursuant to Rule 3001(e)(2), Fed. R. Bankr. P., of the transfer, other than for security, of the claim referenced in this evidence and notice.

Name of Transferee:

Jessup Holdings LLC

Name and Address where notices to Transferee should be sent:

Jessup Holdings LLC
c/o Mandel, Katz and Brosnan LLP
Attn: John J. Mandler
100 Dutch Hill Road, Suite 390
Orangeburg, NY 10962
Phone: (845) 639-7800

Name and Address where transferee payments should be sent:

Same as above

Name of Transferors:

UBS Securities LLC and UBS AG London Branch

Claim no.: **190**
Amount of Claim: **$32,175,000.00**
Date Claim Filed: **June 26, 2020**

and

Claim No. **191**
Amount of Claim: **$18,000,000.00**
Date Claim Filed: **June 26, 2020**

I declare under penalty of perjury that the information provided in this notice is true and correct to the best of my knowledge and belief.

By: _____
Transferee's Agent

Date: August 9, 2021

EVIDENCE OF TRANSFER OF CLAIM

TO: THE DEBTOR AND THE BANKRUPTCY COURT

For value received, the adequacy and sufficiency of which are hereby acknowledged, UBS Securities LLC ("**UBS Securities**") and UBS AG London Branch ("**UBS AG**" and, together with UBS Securities, "**Assignor**") have unconditionally and irrevocably transferred and assigned to Jessup Holdings LLC ("**Assignee**"), a portion of Assignor's rights, title and interest in, to and under the claims asserted by Assignor contained in the proofs of claim that was assigned claim numbers 190 and 191 (the "**Transferred Claim**") filed against Highland Capital Management, L.P. (the "**Debtor**") in Case No. 19-34054 pending in the United States Bankruptcy Court for the Northern District of Texas (the "**Bankruptcy Court**") and allowed pursuant to the Bankruptcy Court's Order dated May 27, 2021 at Docket No. 2389 in the amounts consisting of: (a) a 49.5% portion of the Class 8 Claim in the amount of $32,175,000.00 (which, with respect to claim number 190, is comprised of the sum of the claim amount of $21,450,000.00 asserted and held by UBS AG and the claim amount of $10,725,000.00 asserted and held by UBS Securities) and (b) a 30% portion of the Class 9 Claim in the amount of $18,000,000.00 (which, with respect to claim number 191, is comprised of the sum of the claim amount of $12,000,000.00 asserted and held by UBS AG and the claim amount of $6,000,000.00 asserted and held by UBS Securities).

Assignor waives any objection to the transfer of the Transferred Claim on the books and records of the Debtor and the Bankruptcy Court, and hereby waives to the fullest extent permitted by law any notice or right to a hearing as may be imposed by Rule 3001 of the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, applicable local bankruptcy rules or applicable law. Assignor acknowledges and understands, and hereby stipulates, that an order of the Bankruptcy Court may be entered without further notice to Assignor transferring the Transferred Claim to Assignee and recognizing Assignee as the sole owner and holder of the Transferred Claim. Assignor further directs the Debtor, the Bankruptcy Court, Kurtzman Carson Consultants, LLC, as court-appointed claims and noticing agent, and all other interested parties that all further notices relating to Transferred Claim, and all payments or distributions of money or property in respect of the Transferred Claim, will be delivered or made to Assignee.

(remainder of page blank)

IN WITNESS WHEREOF, this EVIDENCE OF TRANSFER OF CLAIM is executed this 9th day of August, 2021.

ASSIGNOR:

UBS SECURITIES LLC

By: _____
Name: William W. Chandler
Title: Managing Director

By: _____
Name: John Lantz
Title: Executive Director

UBS AG LONDON BRANCH

By: _____
Name: Jignesh Doshi
Title: Mananging Director

By: _____
Name: William W. Chandler
Title: Managing Director

ASSIGNEE:

JESSUP HOLDINGS LLC

By: _____
Name: John J. Mandler
Title: Authorized Signatory

HMIT Exhibit No. 38

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**Chapter 11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054-sgj11**
	§	
Debtor.	§	

NOTICE OF TRANSFER OF CLAIM OTHER THAN FOR SECURITY

CLAIM NOS. 190 and 191 were filed in this case or deemed filed under 11 U.S.C. § 1111(a). Transferee hereby gives evidence and notice pursuant to Rule 3001(e)(2), Fed. R. Bankr. P., of the transfer, other than for security, of the claim referenced in this evidence and notice.

Name of Transferee:

Muck Holdings LLC

Name and Address where notices to Transferee should be sent:

Muck Holdings LLC
c/o Crowell & Moring LLP
Attn: Paul B. Haskel
590 Madison Avenue
New York, New York 10022
Phone: (212) 530- 1823

Name and Address where transferee payments should be sent:

Same as above

Name of Transferors:

UBS Securities LLC and UBS AG London Branch

Claim no.: **190**
Amount of Claim: **$32,175,000.00**
Date Claim Filed: **June 26, 2020**

and

Claim No. **191**
Amount of Claim: **$18,000,000.00**
Date Claim Filed: **June 26, 2020**

I declare under penalty of perjury that the information provided in this notice is true and correct to the best of my knowledge and belief.

By: _____
Transferee's Agent

Date: August 9, 2021

EVIDENCE OF TRANSFER OF CLAIM

TO: THE DEBTOR AND THE BANKRUPTCY COURT

For value received, the adequacy and sufficiency of which are hereby acknowledged, UBS Securities LLC ("**UBS Securities**") and UBS AG London Branch ("**UBS AG**" and, together with UBS Securities, "**Assignor**") have unconditionally and irrevocably transferred and assigned to Muck Holdings LLC ("**Assignee**"), a portion of Assignor's rights, title and interest in, to and under the claims asserted by Assignor contained in the proofs of claim that was assigned claim numbers 190 and 191 (the "**Transferred Claim**") filed against Highland Capital Management, L.P. (the "**Debtor**") in Case No. 19-34054 pending in the United States Bankruptcy Court for the Northern District of Texas (the "**Bankruptcy Court**") and allowed pursuant to the Bankruptcy Court's Order dated May 27, 2021 at Docket No. 2389 in the amounts consisting of: (a) a 49.5% portion of the Class 8 Claim in the amount of $32,175,000.00 (which, with respect to claim number 190, is comprised of the sum of the claim amount of $21,450,000.00 asserted and held by UBS AG and the claim amount of $10,725,000.00 asserted and held by UBS Securities) and (b) a 30% portion of the Class 9 Claim in the amount of $18,000,000.00 (which, with respect to claim number 191, is comprised of the sum of the claim amount of $12,000,000.00 asserted and held by UBS AG and the claim amount of $6,000,000.00 asserted and held by UBS Securities).

Assignor waives any objection to the transfer of the Transferred Claim on the books and records of the Debtor and the Bankruptcy Court, and hereby waives to the fullest extent permitted by law any notice or right to a hearing as may be imposed by Rule 3001 of the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, applicable local bankruptcy rules or applicable law. Assignor acknowledges and understands, and hereby stipulates, that an order of the Bankruptcy Court may be entered without further notice to Assignor transferring the Transferred Claim to Assignee and recognizing Assignee as the sole owner and holder of the Transferred Claim. Assignor further directs the Debtor, the Bankruptcy Court, Kurtzman Carson Consultants, LLC, as court-appointed claims and noticing agent, and all other interested parties that all further notices relating to Transferred Claim, and all payments or distributions of money or property in respect of the Transferred Claim, will be delivered or made to Assignee.

(remainder of page blank)

IN WITNESS WHEREOF, this EVIDENCE OF TRANSFER OF CLAIM is executed this 9th day of August, 2021.

ASSIGNOR:

UBS SECURITIES LLC

By: _____
Name: William W. Chandler
Title: Managing Director

By: _____
Name: John Lantz
Title: Executive Director

UBS AG LONDON BRANCH

By: _____
Name: Jignesh Doshi
Title: Mananging Director

By: _____
Name: William W. Chandler
Title: Managing Director

ASSIGNEE:

MUCK HOLDINGS LLC

By: _____
Name: Michael Linn
Title: Authorized Signatory

IN WITNESS WHEREOF, this EVIDENCE OF TRANSFER OF CLAIM is executed this 9th day of August, 2021.

ASSIGNOR:

UBS SECURITIES LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

UBS AG LONDON BRANCH

By: _____
Name:
Title:

By: _____
Name:
Title:

ASSIGNEE:

MUCK HOLDINGS LLC

By: _____
Name: Michael Linn
Title: Authorized Signatory

Sawnie A. McEntire
State Bar No. 13590100
smcentire@pmmlaw.com
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201
Telephone: (214) 237-4300
Facsimile: (214) 237-4340

Roger L. McCleary
State Bar No. 13393700
rmccleary@pmmlaw.com
One Riverway, Suite 1800
Houston, Texas 77056
Telephone: (713) 960-7315
Facsimile: (713) 960-7347
Attorneys for Petitioner Hunter Mountain Investment Trust

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S RESPONSE TO HIGHLAND CLAIMANT TRUST AND JAMES P. SEERY, JR.'S JOIINT MOTION TO EXCLUDE TESTIMONY AND DOCUMENTS OF EXPERTS SCOTT VAN METER AND SETVE PULLY

Hunter Mountain Investment Trust ("HMIT") submits this Response to Highland Claimant Trust and James P. Seery, Jr.'s Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully ("Joint Motion").[1]

A. <u>HMIT's Expert Disclosures are Timely and Exceed Procedural Requirements.</u>

1. Bankruptcy Rule of Procedure 9014 governs this contested matter, and 9014 specifically excludes Rule 26(a)(2)(b) requirements regarding expert witness disclosures and reports. *See* Bank. R. Proc. 9014 ("The following subdivisions of Fed. R. Civ. P. 26, as incorporated by Rule 7026, shall not apply in a contested matter unless the court directs otherwise: 26(a)(1) (mandatory disclosure), 26(a)(2) (***disclosures regarding expert testimony***) and 26(a)(3) (additional pre-trial disclosure), and 26(f) (mandatory meeting

[1] HMIT files this Response subject to and without waiving its prior objections concerning the evidentiary format of the June 8 hearing, including, , but not limited to, HMIT's objections to the evidentiary format of the Motion for Leave Hearing, including as ordered by the Court's May 22, 2023, Order Pertaining to the Hearing on Hunter Mountain Investment Trust's Motion for Leave to File Adversary Proceeding [DE ## 3699 & 3760] (Doc. 3787) ("May 22 Order"). HMIT's prior objections to an evidentiary hearing on "colorability," and applying an evidentiary burden of proof to HMIT's Motion for Leave, were asserted by HMIT during the April 24, 2023, Status Conference, and were further set forth in HMIT'S Reply Brief in Support of its Motion for Leave (Doc. 3785) and during the May 26, 2023, hearing regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing (Doc 3788), all of which objections are incorporated herein for all purposes ("HMIT's Evidentiary Hearing Objections"). HMIT objects that all of the Highland Parties' proposed exhibits are irrelevant because the "colorability" issue should be decided per a standard no more stringent than that applied under a Rule 12(b)(6) motion. *See In re Deepwater Horizon*, 732 F.3d 326, 340 (5th Cir. 2013) (quoting *Richardson v. United States,* 468 U.S. 317, 326 n. 6 (1984)); *Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 252-53 and n. 15 (5th Cir. 1988).

before scheduling conference/discovery plan) (emphasis added)). Moreover, this Court's local rules do not require expert disclosures.

2. Here, the Court specifically explained the limited pre-hearing discovery which would be allowed during the May 26, 2023 on HMIT's Motion for Expedited Discovery (Doc. 3788). The Court stated:

> "Here's what I'm going to do. We'll have yet another order regarding what kind of hearing we're going to have on June 8th, and it will clarify that Mr. Seery can testify and Mr. Dondero can testify, and both of them shall be made available for depositions before June 8th but not sooner than next Wednesday. And that is the evidence that the Court will consider. No other deposi... No other -- I'm still talking. No other depositions will happen between now and June 8th. You can make your legal arguments, ***you can put on your witnesses***, and the Court is going to rule." May 26, 2023 Hr. Tr. at 51:3-14 (emphasis added).

Nothing in the Court's statements limited any parties' rights to call other witnesses. The only limitation concerned discovery. As such, the Highland Parties' and Seery's statements to the contrary should be recognized for what it is: the paradigm of doublespeak. Indeed, they also designated Mark Patrick as a witness.

3. The Court further explained that there would be no pre-hearing document production among the parties. *See id*. at 52:10-17 ("I'm denying that request [to compel document productions]. Okay. And I'm going to go back to the cart-before-the-horse analogy. You know something, you have something that makes you think you have colorable claims. Okay? ***You can put on your witness and try to convince me***. You can cross-examine Mr. Seery and try to convince me. Okay? But if you convince me, then

there'll be a normal lawsuit and discovery. But at this point, I think it's a very improper request." (emphasis added)).

4. Finally, the Court made clear that other than pursuant to Local Rule 9014-1(c) (providing for witness and exhibit lists to be exchanged three days before the hearing) and the depositions of Mr. Dondero and/or Mr. Seery, there would be no other required pre-hearing disclosures. *See* May 26, 2023 Order on HMIT's Emergency Motion for Expedited Discovery (Doc. 3800) ("None of the parties shall be entitled to any other discovery [other than the depositions of Mr. Dondero and/or Mr. Seery], including the production of documents from Mr. Seery or Mr. Dondero, ***or any other party or witness pursuant to a subpoena duces tecum, or otherwise***, prior to the conduct of the Depositions or to the court's ruling on the Motion for Leave following the June 8, 2023 hearing." (emphasis added)). Again, this makes clear that other witnesses were contemplated.

5. Again, contrary to the position taken in the Joint Motion, the Highland Parties identified Mark Patrick as a witness—though he was not specifically discussed as a witness at the May 26, 2023 hearing.

6. HMIT's expert witness disclosures were timely and provided more detail than required. While HMIT has consistently taken the position (and still does) that the Court should only consider the four corners of its proposed Adversary Proceeding pursuant to the governing Supreme Court and Fifth Circuit standard for "colorability" of a claim, this Court clearly and unequivocally has rejected that standard in favor of an

evidentiary hearing with expressly limited pre-hearing discovery. To the extent a representative of Stonehill Capital Management, LLC or Farallon Capital Management, LLC could offer expert testimony regarding their claims trading, so should HMIT have the same opportunity. The fact that they chose not to do so does not create a "trial by ambush" situation.

7. None of the cases cited in the Joint Motion involves a pre-hearing disclosures prior to a contested bankruptcy proceeding—and certainly none is analogous to the facts of the Court's order in this case (which involve a gatekeeping colorability determination). *In re Dernick*, 2019 WL 5078632 (Bankr. S.D. Tex. September 10, 2019) (relating to discovery served in an adversary proceeding after the discovery deadline expired and discovery served while trial was ongoing); *Hernandez v. Results Staffing, Inc.*, 907 F.3d 354 (5th Cir. 2018) (failure to disclose updated medical records in Uniformed Services Employment and Reemployment Rights Act matter); *In re Cathey*, 2021 WL 2492851 at *2 (Bankr. N.D. Miss. June 17, 2021) (involving improper, late, and jurisdictionally prohibited form of request for relief) ("Rather than appearing for the state court proceeding at the time or pursuing the state court appeals process, the debtor asks this Court to essentially overturn a judgment of the state court that is now final and non-appealable. This position is expressly prohibited by the *Rooker-Feldman* doctrine.").

B. The Opinions of Mr. Pully and Mr. Van Meter Survive *Daubert* Scrutiny.

8. The Joint Motion's authority related to the substance of HMIT's experts is similarly inapposite. Far from exercising a *Daubert* analysis—a pre-trial motion practice under the Federal Rules of Civil Procedure—this Court is making a colorability determination under Rule 9014 contested proceeding, which expressly excludes disclosures regarding experts. HMIT produced the resumes and testifying history for its experts; neither of whom have ever been precluded from testifying. Both are abundantly qualified. HMIT also produced exhibits that in detail explained the experts' forensic analysis and methodology of their computations, which are well within their focused expertise.

9. Mr. Van Meter has served as bankruptcy trustee and is very familiar with claims trading. He has not only worked as a post-confirmation trustee himself (a role he currently holds), he also has worked with other post-confirmation trustees, has dealt with claims traders, and in over 30 years of experience in bankruptcy matters is highly qualified to express the his opinions.

10. As to his compensation analysis, Mr. Van Meter's opinions similarly are based on knowledge of post-confirmation trustee compensation as that provided to Mr. Seery. He also has personal experience as post confirm trustee and as an attorney and financial advisor. He has been involved in dozens of bankruptcy cases which have resulted in post-confirmation in which the compensation of the post-confirmation trustee

has to be resolved. Simply put, Mr. Van Meter is very familiar with post-confirmation compensation of a trustee.

11. This is a bench hearing on colorability—not a trial where "junk science" is a concern. The *Daubert* standards and policies are not applicable. The policies and principles in the cases cited in the Joint Motion simply do not apply to this proceeding. Indeed, none of the cases cited in the Joint Motion is in a bankruptcy contested proceeding matter (much less involving a gatekeeping colorability determination). The Joint Motion takes a kitchen sink approach to criticize HMIT's expert opinions by throwing out abbreviated complaints which lack any valid reasoning or detail. In the unlikely event the Court finds the Joint Motion persuasive, then it can consider the kitchen-sink arguments in what weight to give the testimony.

WHEREFORE, Hunter Mountain Investment Trust respectfully requests this Court to deny the Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully and to grant HMIT all such other and further relief as is just and proper.

DATED: June 7, 2023

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

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CERTIFICATE OF SERVICE

I certify that on the 7th day of June 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	June 8, 2023
	9:30 a.m. Docket
Reorganized Debtor.	
	HMIT'S MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING (3699)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

DALLAS, TEXAS - JUNE 8, 2023 - 9:42 A.M.

THE CLERK: All rise. United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, The Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated. All right. We are here this morning for a setting in Highland. This is on a motion of Hunter Mountain for leave to file an adversary proceeding. I will start out by getting appearances from lawyers in the courtroom.

MR. MCENTIRE: Yes, Your Honor. Sawnie McEntire along with my partner Roger McCleary and Tim Miller on behalf of Hunter Mountain Investment Trust, Ltd.

THE COURT: Thank you.

MR. MORRIS: Good morning, Your Honor. John Morris, Pachulski Stang Ziehl & Jones, for the Reorganized Highland, for the Highland Claimant Trust. I'm joined by Mr. Pomerantz, Mr. Demo, and Ms. Winograd.

THE COURT: Good morning.

MR. STANCIL: Good morning, Your Honor. Mark Stancil from Willkie Farr & Gallagher for Mr. Seery. I'm joined by my colleague Josh Levy.

THE COURT: Good morning.

MR. MCILWAIN: Good morning, Your Honor. Brent McIlwain from Holland & Knight here for Muck Holding, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, and

Stonehill Capital Management, LLC.

THE COURT: Thank you. All right. Is that all of our lawyer appearances? I know we have observers on the WebEx, but I assume you are just observers. We scheduled this to be a live hearing for participants.

All right. Well, we had some ground rules for how this would go forward today. We, of course, have had two -- I call them hearings on what kind of hearing we're going to have. We've had two status conferences. And so our ground rules were set. Three hours of total presentation time for each the Movant and the aggregate Respondents. We also had an order regarding what discovery would or would not be allowed.

And to my surprise, there were a flurry of pleadings. We're a few minutes late getting out here because we were trying to digest what was filed late yesterday and into the night.

So I understand we have a controversy about a couple of expert witnesses who were listed on Monday on the Movants' exhibit and witness list. And I've seen a motion to exclude the expert witnesses' testimony. And I think we need to address that right off the bat. I don't want to take too much time on this, because, again, we're going to finish today, and I won't let this housekeeping matter eat into our three hours, but I want to get going. So I'll hear from Movant, Mr. McEntire.

MR. STANCIL: Your Honor, may --

THE COURT: Go ahead.

MR. STANCIL: We moved to exclude, so I would propose that my colleague, Mr. Levy, address this motion very briefly if --

THE COURT: Well, I guess --

MR. STANCIL: Or I will do as --

THE COURT: -- that actually makes sense.

MR. STANCIL: Okay.

THE COURT: I was thinking Mr. McEntire teed up the issue, but I suppose you did with the motion to exclude. So, Counsel?

MR. LEVY: Thank you, Your Honor. Josh Levy on behalf of Mr. Seery.

So, we think our papers largely speak for themselves, but two additional points we'd like to raise. In the response filed by Hunter Mountain this morning, and this is Docket Entry 3828, in Paragraph 11, they argue that this is a bench hearing on colorability, not a trial where junk science is a concern. But junk science is precisely what they're trying to introduce here. They have raised two expert witnesses, one who purports to be an expert in compensation but has no experience whatsoever in evaluating compensation, and they provide no methodology for their conclusion.

For example, they claim to have identified red flags.

They never explain what those red flags are, why they are red flags, or how they determined they were red flags. This is junk science, precisely what the Federal Rules are designed to exclude.

But that shouldn't detract from the broader procedural point that this is the first time we're hearing about expert witnesses, at 10:00 p.m. three days before the hearing. This is a trial by ambush. This motion was filed in March, we've been litigating this motion for over two months now, and this is the first time we're hearing about any expert witnesses.

As Your Honor noted, we've had multiple conferences. We've had rules setting the ground rules for this hearing. We've had orders setting the scope of discovery. But now Hunter Mountain is trying to pull a bait-and-switch. After never mentioning any experts, after obtaining orders limiting the scope of discovery, they then wait until right before the hearing to disclose their experts, ensuring that these experts are insulated from any kind of discovery and can ambush us at the hearing.

I'm happy to answer any other questions, but we believe they should be excluded and the accompanying exhibits should also be excluded.

THE COURT: All right. Thank you. And the accompanying exhibits, I don't review exhibits before a trial or a hearing because I don't know what's going to be objected

to and admitted. So do you want to point out, were there expert reports in the proposed exhibits?

MR. LEVY: These were charts and analyses prepared by their experts, not actual expert reports.

THE COURT: Okay.

MR. LEVY: In their witness and exhibit list, Hunter Mountain included several paragraphs that I guess serves as what would be their expert reports. And then it would be Exhibits 39 through 52, which consist of CVs, materials reviewed, and then what they term "data charts" prepared by their experts.

THE COURT: 39 through 52? Oh, I'm looking at the wrong exhibit notebook. Oh.

(Pause.)

THE COURT: Okay. Here we go. All right. No questions at this time.

Mr. McEntire?

MR. MCENTIRE: Yes, Your Honor. May I proceed?

THE COURT: You may.

MR. MCENTIRE: Again, my presentation and response is subject to our objection concerning that any evidence is being admitted for any purpose, other than what we believe is the proper standard of review. So my response and our offer of these experts is subject to that objection.

With that said, Mr. Levy's argument he just presented to

the Court presupposes that my client has a duty under 9014 to provide a report, which we do not; to provide detailed disclosures, which we do not, because 9014 is specifically exempted from the scope of Rule 26. What we did, we didn't have to do. What we did, and I made the decision to provide them some disclosure and identification of who they were, their backgrounds, and --

THE COURT: Well, let me stop you.

MR. MCENTIRE: Certainly.

THE COURT: "What we did, we didn't have to do." The Local Rules, first of all, do require an exhibit and witness list. And --

MR. MCENTIRE: We've provided that.

THE COURT: I know. I know. But you -- I thought I heard you --

MR. MCENTIRE: No, no.

THE COURT: -- saying you didn't have to do that. You do have to do that.

MR. MCENTIRE: No, no, no.

THE COURT: But I guess what you're saying is --

MR. MCENTIRE: What we provided was more than what the Local Rules require.

THE COURT: How so?

MR. MCENTIRE: We provided CVs. We provided their backgrounds. We disclosed in the actual witness description

who they were and the key components of their opinions. And we refer to their data charts. That is not something that the Local Rule requires.

THE COURT: Okay. Well, let me back up. We have our Local Rules, but then we had our two status conferences --

MR. MCENTIRE: Yes.

THE COURT: -- on what the format of the hearing --

MR. MCENTIRE: Yes.

THE COURT: -- would be.

MR. MCENTIRE: Yes.

THE COURT: And, of course, there was extensive discussion, evidence or no evidence? What did the legal standard, colorability, require?

MR. MCENTIRE: Yes.

THE COURT: And I came out in the end and said, if people want to put on witnesses, they're entitled to put on witnesses. I think there may be a mixture of a fact question and law question on colorability. So, and then I set a three-hour time limit and I said, if someone wants to depose Mr. Seery and Mr. Dondero, they can, but no more discovery other than that. Okay?

MR. MCENTIRE: I understand.

THE COURT: Why then did you not say, well, wait, Judge, if it's going to be evidence, we're just letting you know, in full disclosure, we might call a couple of experts,

and this may impact your decision on what kind of discovery can happen. And this may impact your decision on whether three hours each side is enough.

MR. MCENTIRE: Well, Your Honor, in fairness, I don't think we had made a final decision to actually designate any experts. And at the time, the focus was on other witnesses. But there was no exclusion, there was no limitation at all on my right to bring an expert. And the Rules are very clear. And the Court's --

THE COURT: But I specifically limited discovery, and it was on your motion. It was on your motion we set the hearing on --

MR. MCENTIRE: Actually, --

THE COURT: You know, did you need a continuance, because if we were going to have evidence, maybe you needed a continuance. And then there was a discovery issue raised.

MR. MCENTIRE: To be clear, Your Honor, I'm looking at your orders.

THE COURT: Got them in front of me.

MR. MCENTIRE: Your order of May 26, 2023. You said, You can put on your witnesses and the Court is going to rule. You made no limitations as to who the witnesses would be. Your order did not limit the scope of witnesses to simply Mr. Seery or Mr. Dondero. In fact, any suggestion that you did limit the witnesses is contrary --

THE COURT: Now, which order are you looking at?

MR. MCENTIRE: I'm looking at the May 26, 2023 order, Page 51, Lines 3 through 14.

THE COURT: Okay.

MR. MCENTIRE: You also stated --

THE COURT: I have -- have I entered three orders on this? I've got a May 10th order. I've got a May 22nd order.

MR. MCENTIRE: And I would also point out, Your Honor, --

THE COURT: Could you answer my question? I want to look at what you're looking at.

MR. MCENTIRE: Certainly.

THE COURT: Here we -- this is the one. Okay. Aha. Okay. May 26.

MR. MCENTIRE: Page 51, Lines 3 through 14.

THE COURT: I've entered three orders on what kind of hearing we're going to have. Okay. So you're looking where?

MR. MCENTIRE: Page 51, Lines 3 through 14. "You can put on your witnesses."

THE COURT: Page 51?

MR. MCENTIRE: Yes, ma'am.

THE COURT: Oh. You're looking at a transcript, not the order.

MR. MCENTIRE: That's right. I apologize.

THE COURT: Okay.

MR. MCENTIRE: Yeah, I'm looking at the transcript from the hearing.

THE COURT: Okay. Well, I'm looking at my order.

MR. MCENTIRE: And the order, the order also specifies no limitation at all in connection with the -- the --

THE COURT: But my order was based on what was discussed that day.

MR. MCENTIRE: And what was --

THE COURT: If you had said, hmm, Judge, if you're going to allow evidence, we may call a couple of experts, then there would have been a whole discussion about that and did I need to limit the discovery, as I did. And there would have been a whole discussion of, well, three hours, three hours each side, is that going to be enough if we have experts?

MR. MCENTIRE: The discovery ruling that you made was on my motion, and at the time I was not seeking to take any expert depositions. And you denied my request to take ample discovery. You limited my right to take only one deposition, without documents.

The issue of taking expert discovery was not even on the table. However, you made it very --

THE COURT: Well, that's my point precisely. The whole purpose of the hearing was, what kind of hearing are we going to have on June 8th?

MR. MCENTIRE: I understand. And our position --

THE COURT: We had already had one status conference on argument only versus evidence. And I allowed you all to file some briefing, which you did. And then I issued an order after the briefing, saying, I think I should allow evidence on the colorability question. I'm not forcing anyone to put on evidence, but if you want to put on evidence, you can.

And then you filed your motions and we had the next status conference on what kind of hearing we're going to have. And there was more argument: We don't think the evidence is appropriate, but if evidence is appropriate, we want you to continue the hearing to allow all kinds of discovery. I don't know what. And it was right before Memorial Day, and I hated the fact that a bunch of subpoenas were going to go out and ruin people's holidays. But there was no discussion then of, okay, but just so you know, since you have made the ruling that evidence can come in, we're going to have a couple of experts.

MR. MCENTIRE: As I've already mentioned, Your Honor, we had not made a decision to call experts at that time. We made a decision to call the experts shortly before we filed our designations.

The point here is this. The Rules do not require me to provide any more disclosure than I have. I have gone over and above the Local Rules.

If the Court believes that it would have allowed more time for this hearing, I would advise the Court that opposing counsel vehemently opposed any type of postponement or continuance. The discovery that I was requesting was discovery from fact witnesses. Experts were not at issue at that time. Experts are --

THE COURT: Because --

MR. MCENTIRE: -- at issue now.

THE COURT: -- nobody knew that experts might be called.

MR. MCENTIRE: I have a right to call experts, Your --

THE COURT: It changes the whole complexion.

MR. MCENTIRE: But I have a right to call experts, under the Rules. I have a right, a fundamental due process -- let me -- may I finish, Your Honor? A fundamental due process right to call experts. Their attempt to charge some type of *Daubert* challenge is nothing but a shotgun blast on the wall, having no meaning at all. At a minimum, I have a right to put the witnesses on the stand and we'll have a *Daubert* hearing.

If they want more time, they need to ask for it. They didn't ask for it. Their solution is to strike my experts, which is improper. It would be improper for this Court to strike my experts when they have been properly tendered under the Local Rules. They have not cited an alternative remedy.

If they want the alternative remedy, they need to ask the Court.

THE COURT: My next question is: How do you propose to get this all done in only three hours?

MR. MCENTIRE: We intend to move quickly.

THE COURT: But, see, now they, I'm guessing, prepared their case assuming there weren't going to be experts. And they, if they're good lawyers, which I know you all are, they have their script of the kind of things they were going to ask the witnesses.

MR. MCENTIRE: Well, did they have a --

THE COURT: And now they've got to carve out time for two last-minute experts?

MR. MCENTIRE: They had an option. And one of the options was they could have called me up on Tuesday and asked for their depositions and I probably would have agreed.

THE COURT: I already said no depositions except Seery and Dondero.

MR. MCENTIRE: Then they could have come and filed a different kind of motion with the Court.

Their only remedy that they're seeking is a draconian one. There are other options that are more consistent with the implementation of due process here, Your Honor, not striking my experts, which were properly identified under the Local Rules.

If the Court is going to strike my experts, note our objection. We are tendering our experts. We will put -- like to put a proffer on for the Fifth Circuit or for the appellate process. But if the Court is going to strike our experts, then it needs to do so. We object because we have done everything correctly.

THE COURT: Okay. Here's another problem. I have not had time to process their motion to exclude. Beyond the procedural issues, they are saying junk science, that there's inadequate expertise on the part of I guess at least one of them regarding executive compensation. I haven't had -- they filed their motion to exclude at 4:00-something yesterday. Okay?

MR. MCENTIRE: I understand.

THE COURT: Now, yeah, I could have stayed up all night. I stayed up pretty late anyway, by the way. But --

MR. MCENTIRE: Well, first of all, --

THE COURT: -- I haven't even had the time to process and intelligently rule on their motion --

MR. MCENTIRE: I appreciate that, and I'll respect --

THE COURT: -- as far as the --

MR. MCENTIRE: I'll respect the Court's statement.

THE COURT: -- junk science argument.

MR. MCENTIRE: I'll respect the Court's statement. Their process and the procedure they've adopted is improper,

because if you're going to have a *Daubert* hearing, that's a live hearing. Or they're going to have to have evidence to support their challenge. This is simply a conclusory shotgun blast on the wall, Your Honor.

If you even want to consider a *Daubert* challenge, the proper procedure is to put the witnesses on the stand and have an opportunity to have a proffer of evidence and a cross-examination. That's the proper procedure. Throwing something and innuendo and rhetoric and conclusions is not a proper *Daubert* motion at all. The Court could deny their *Daubert* motion just on those grounds.

THE COURT: I'm not going to rule on a motion that I've barely had a chance to read, not to mention your response that was filed at 8:00-something this morning.

MR. MORRIS: It was.

MR. MCENTIRE: It was. Well, then the option is you need to continue the proceeding to allow the experts to take the stand.

THE COURT: Well, I know you have thought on that, but here is something I'm contemplating doing. We'll go forward with the hearing in the manner my order said we would go forward with it. My, I guess, Order #3 of my three orders. And at the end of the evidence, you can argue in closing, each of you, why we should keep the evidence open to come back another day on only the experts. But time matters. If you've

all already used your three hours on each side, then are we going to come back for five minutes on each of them? I mean, I don't know.

And then, of course, I would have to, if I ruled in that way, I believe I would have to give them a chance to depose these people.

MR. MCENTIRE: I think that would be reasonable.

THE COURT: Okay. But you think you can get all of your evidence in, other than your experts, and your opening statement, if any, your closing argument, if any, in three hours?

MR. MCENTIRE: I'll do my best.

THE COURT: Well, if you -- it's not a matter of -- I'm just saying this may all be an academic argument, because I'm not increasing this to more than three hours each. We've fully vetted that.

MR. MCENTIRE: Well, what the Court is then doing by virtue of your ruling is that you're making me actually present my evidence in a shortened form today, two hours, two and a half hours, not knowing how -- whether or not you are actually going to allow experts.

So, without the certainty, I will have to abbreviate my entire presentation, giving them the advantage of putting more evidence on than I, in an effort to anticipate a positive ruling, which you're not prepared to provide yet. And so I'm

actually being penalized.

THE COURT: Counsel, we had two status conferences on what kind of hearing we were going to have.

MR. MCENTIRE: I understand.

THE COURT: Now, the fact that you had not decided your strategy for this hearing, that's not my fault. Again, we had two hearings on what kind of hearing we were going to have today. We could have fully vetted this. I could have heard about the experts, I could have decided if we were going to continue the hearing past June 8th, could have decided if we were going to allow more depositions.

MR. MCENTIRE: Your Honor, --

THE COURT: I could have fully studied the merits of the motion to exclude and decided if this is junk science or not.

MR. MCENTIRE: I would request a ruling at this time, Your Honor, on the experts. If you are not inclined to provide a ruling to me on the experts at this time, I would effectively be penalized on my time limits. I will have to set aside enough time to put the experts on, not knowing, not knowing whether you're going to give me the opportunity to do so until the end of the day. And that would be -- that would be punishment.

THE COURT: Isn't this going to be just preparing your case you would have -- I mean, going forward with your

case the way you would have?

MR. MCENTIRE: No, I don't -- really don't think so. I think there's --

THE COURT: I mean, --

MR. MCENTIRE: There's a difference.

THE COURT: -- you did not prepare your witnesses and your possible cross-examination with the expectation of I'll get my two experts in?

MR. MCENTIRE: My -- of course. But the point is, then I'm going to have to set aside a half an hour or maybe even longer from my other witness preparations, not knowing whether you'll even give me that time.

THE COURT: Isn't the other side going to have to do the very same thing?

MR. MCENTIRE: No.

THE COURT: Why not? They don't know how I'm going to rule. I don't know how I'm going to rule. I have not studied the motion to exclude the way I should.

MR. MCENTIRE: Okay. Well, Your Honor, we request a ruling now. But if the Court is not inclined to do so, please note our objection.

THE COURT: All right. I'll give the Movants the last word. And I say "Movants" plural. I'm trying to remember where I saw a joinder and when I did not. Did I see a joinder? I can't remember.

MR. MORRIS: Can we just have a moment, Your Honor?

THE COURT: Okay. Okay.

MR. MCILWAIN: Your Honor, my clients did file a joinder, but --

THE COURT: Okay.

MR. MCILWAIN: -- I'm going to let them handle this.

THE COURT: Okay.

(Pause.)

THE COURT: Counsel?

MR. LEVY: Thank you, Your Honor. Two brief points we'd like to make. The first is on the Rules. So, Hunter Mountain is focused on Rule 26(a) regarding reports. However, Rule 26(b) applies to contested matters under Rule 9014. And as we explain in Paragraph -- we explain in our brief, that -- or, in Paragraph 19 of our brief, that under Rule 26(b) we're entitled to depose the experts.

And so we agree with Your Honor's suggestion that if there's going to be any sort of experts, then we need the opportunity to depose them. This is Rule 26(b)(4)(A), which expressly does apply to contested matters under Bankruptcy Rule 9014(b).

The second point is we agree with the approach Your Honor has proposed. We think, for today, both sides can put on their full cases without expert witnesses. Both sides can have the full three hours, which should address Hunter

Mountain's concern. And if Your Honor decides at the conclusion of the hearing that expert testimony would be helpful, then we could take the opportunity to depose their experts and then come back for an additional half-hour for each side to address any expert testimony that Your Honor believes would be helpful.

THE COURT: Okay. Is your proposal that you each today would be limited to two and a half/two and a half? Or three/three, and then another hour, 30 minutes/30 minutes, if I --

MR. LEVY: Three/three.

THE COURT: -- decide to allow any experts?

MR. LEVY: Yeah. Three. Three and three for each side, the hearing contemplated by Your Honor's orders, today. And if Your Honor decides that expert testimony would be helpful, we could come back for an hour, for half an hour on each side, regarding experts.

THE COURT: All right. Mr. McEntire, what about that?

Oh, I'm sorry, did you --

MR. STANCIL: Oh, I'm sorry. Just one additional point, Your Honor. We would ask that Your Honor's ruling on the ultimate admissibility of this be limited to what they've actually put in front of us. The day for the hearing is today, so I think I'd like -- I'd suspect Your Honor would

like to avoid another raft of submissions. So we would just ask that they live or die with what they've said in the way of methodology, disclosures, and the like.

THE COURT: Okay. Mr. McEntire, this seems like the best of all worlds, maybe.

MR. MCENTIRE: Well, it may be the best of the worlds in which we're operating.

My first position is that the experts are admissible, period. And the Rules do not require anything more than what we've already done. In fact, we've done more than we were supposed to.

THE COURT: What is your argument about 26(b)(4), which --

MR. MCCLEARY: If they want to take a deposition, they could have called me up and asked for it.

MR. STANCIL: Your Honor, I was --

THE COURT: Wait a second. They were under a court order. Okay?

MR. MCENTIRE: They could have -- they could have sought --

THE COURT: They were under my order. Okay? They would have been violating my order if they had done it.

MR. STANCIL: I was also, Your Honor, I was in a --

THE COURT: Not to mention that it was --

MR. STANCIL: I was in an airplane from 9:00 a.m.

Tuesday until 9:00 p.m. Tuesday.

THE COURT: I'm surprised a lot of you got here, with the Martian atmosphere that I saw pictures of.

Yes. That's not realistic, to think that you disclose an expert on Monday for a Thursday hearing and they can call you up and --

MR. MCENTIRE: The other --

THE COURT: -- quickly put together a deposition. So, --

MR. MCENTIRE: Sure. The other option, --

THE COURT: Uh-huh.

MR. MCENTIRE: -- of course, Your Honor, as I mentioned before, and I'm not going to repeat myself, is they -- there's other forms of relief they could seek. But under the circumstances, and in light of your apparent leaning on the issue, then this is the best under the circumstances that they've suggested. We'd like an hour each.

I would also point out that -- well, anyway, that's it, Your Honor. Thank you.

THE COURT: All right. So we are going to go forward as planned, three hours/three hours. No experts today. In making your closings -- well, this is kind of awkward. I'm trying to think if we really have closing arguments, when you don't know if it's -- it doesn't seem to make sense. Like, I guess we could have closing arguments if you want, subject to

supplementing your closing arguments if we come back a second day with the experts. Okay?

And I'm not making a ruling today on the motion to exclude. I'm going to hear what I hear. And maybe what we'll do is I'll give you a placeholder hearing if we're going to come back on the experts. Then I'll go back and read the motion, the response, and make my ruling on are we coming back for another day of experts. Okay? Got it?

And with regard to the comment about not adding to, I think that's a fair point. You can't add new exhibits that the expert might talk about or that you might want me to consider between now and whenever the tentative day two is.

MR. MCENTIRE: Understand. We agree with that.

THE COURT: Okay.

MR. MCCLEARY: Your Honor, there is one -- one exhibit that has a small typo transcription of a number on it. So we would like to substitute for that. It's a minor detail. But I'll provide opposing counsel with that. But it's very minor.

THE COURT: You have it today, I presume?

MR. MCCLEARY: Yes, we have it.

THE COURT: Okay. So as long as you hand it to them today.

MR. STANCIL: No objection, Your Honor. We do -- I think someone is back at the office working on a short reply

on our motion, which I assume we could file in support of -- I mean, we filed our motion. They filed an opposition. I assume we would be entitled under the Rules to file a short reply on the actual exclusion issue.

THE COURT: That is fair, but let's talk about timing. You said someone is back at the office working on it. Could you get it on file by Monday?

MR. STANCIL: Yes, ma'am.

THE COURT: Okay. Then that'll be allowed if it's filed by the end of the day Monday.

MR. MCCLEARY: Your Honor, I'm providing a copy of Exhibit 43 to opposing counsel, which is the substitute exhibit.

And obviously, we'd like to have an opportunity to respond to what their filing is on Monday.

THE COURT: No. I mean, motion, response, reply. That's all our Rules permit. Okay? Motion, response, reply. Okay.

MR. MCCLEARY: Yes, Your Honor.

THE COURT: All right. Well, with that, do the parties want to make opening statements? If so, Mr. McEntire, you go first.

MR. MCENTIRE: Yes, Your Honor. We have a PowerPoint I would like to utilize, if I could.

THE COURT: You may.

MR. MORRIS: Your Honor, before we get to that, the Plaintiff has objected to virtually every single exhibit that we have. Should we deal with the evidence first, because I don't want to refer to documents or evidence in my opening that they're objecting to. They've literally objected to every single exhibit except one, although I think they're withdrawing certain of those objections.

I don't -- I don't know if the Court has had an opportunity to see the objection that was filed to the exhibits.

THE COURT: That was what was filed like at 11:00 last night or so?

MR. MORRIS: That's right.

THE COURT: Okay.

MR. MORRIS: And so at 2:00, 3:00, 4:00, 5:00 o'clock this morning, I actually typed out a response that I'd like to hand up to the Court. But we've got to resolve the evidentiary issues before we get to this.

THE COURT: Okay. Well, --

MR. MORRIS: And I don't know what their position is going to be --

THE COURT: -- as a housekeeping matter, let's do that first. And let's start with the Movants' exhibits. Do we have any stipulations on admissibility of Movants' exhibits?

MR. MORRIS: So, if I understand correctly, Your Honor, you'd like to know if we object to any of their exhibits first?

THE COURT: Yes. And --

MR. MORRIS: Okay.

THE COURT: -- we'll hold --

MR. MORRIS: Because we have very limited objections.

THE COURT: Yes. We're going to keep on hold for now your exhibits to the expert-related, --

MR. MORRIS: Yes.

THE COURT: -- your objections to the expert-related ones.

MR. MORRIS: Right. I think -- I think --

THE COURT: So let's not talk about, for this moment, --

MR. MORRIS: 39 --

THE COURT: -- 39 through 52.

MR. MORRIS: Okay.

THE COURT: But as for 1 through 38 or 53 through 80, do the Respondents have objections?

MR. LEVY: Yes, Your Honor. We have very limited objections.

THE COURT: Okay.

MR. LEVY: So, the three to which we object in their entirety are Exhibits 24, 25, and 76, all of which we object

to on relevance grounds.

Exhibits 24 and 25 are email correspondence between counsel in an unrelated state court matter where Mr. Seery is responding to a third-party subpoena regarding the preservation of his text messages on his iPhone. This has absolutely nothing to do with whether or not the Movants have stated a colorable claim for breach of fiduciary duties.

What this appears to be is related to an entirely separate motion raised by Dugaboy regarding the preservation of Mr. Seery's iPhone. So we object to Exhibits 24 and 25 because they have simply nothing to do with the issues in this hearing.

We also object to Exhibit 76, which is a filing from two years ago in a different bankruptcy matter, from *Acis*, regarding an injunction in place in that -- in that plan about issues that -- that occurred before the bankruptcy was in place. So this is just an entirely different case from issues that arose many, many years ago that, again, has nothing to do with this case.

THE COURT: This was whether the *Acis* plan injunction barred some lawsuit?

MR. LEVY: Exactly.

THE COURT: Okay. Okay. Is that all?

MR. LEVY: We also have limited objections to certain exhibits that we think are admissible for the -- for the fact

they're said, but not the truth of the matter asserted.

For example, Exhibits 1 and 2 are complaints filed in those actions. We have no objection to those coming in, but not for the truth of the matter asserted. These are advocacy pieces and pleadings. They're not actually substantive evidence.

And we would have similar -- similar objections to Exhibits 4, 6, 11, --

THE COURT: Wait. 4 is James Dondero Handwritten Notes, May 2021.

MR. LEVY: Yes.

THE COURT: Okay.

MR. LEVY: So, we have no objection to that coming into evidence.

THE COURT: Uh-huh.

MR. LEVY: But there are -- those are hearsay. They're not admissible standing by themselves for the truth of the matter asserted.

THE COURT: Okay.

MR. LEVY: And Exhibit 6 are news articles. Similarly, they're hearsay, but we have no objection to them coming in. They're admissible for the fact that they're published, but not the truth of the matter asserted.

THE COURT: Okay.

MR. LEVY: Exhibit 11, which is a motion filed by the

Debtor. Similarly, it's for -- we have no objection to anything on the docket coming in, but anything that's an advocacy piece, like a motion as opposed to an order, we think is not admissible for the truth of the matter asserted.

And that would be a similar objection, then, for Exhibit 58, which is a complaint.

Exhibits 59, 60, and 61 are -- are letters by counsel for Mr. Dondero to the U.S. Trustee's Office. We similarly have no objection to that coming in, but not for the truth of the matter asserted.

And Exhibits 62 and 63, Exhibit 62 is an attorney declaration attaching, similarly, documents that are -- that are advocacy pieces.

And Exhibit 63 appears to be an asset chart prepared by counsel. So it would be a similar objection.

And Exhibit 66 also is a declaration attaching documents.

No objections to those coming in, but not for the truth of the matter asserted.

Exhibits 72, 73, and 74 are all -- well, 72 are press articles. 73 and 74 are briefs. We don't object to that coming in, but we object to it being admitted for the truth of the matter asserted.

And similarly, Exhibit 80 is a pleading in an SDNY bankruptcy. We have no objection to that coming in, but not for the truth of the matter asserted.

And finally, Exhibits 81, 82, 83 don't specify particular documents. They appear to largely be reservations of rights. And so we would likewise reserve our right to object once we see any specific documents --

THE COURT: Okay.

MR. LEVY: -- admitted under these exhibits.

THE COURT: Okay. Mr. --

MR. LEVY: And I understand my colleague has an objection to Exhibit 5.

MR. MORRIS: Exhibit 5, which is the subject, I believe, of an unopposed sealing motion. That document has to do with purported restrictions on certain securities. Since it's subject to a sealing motion, I don't want to say too much more than that, other than that -- we don't think it should be admitted, because you can just see from the information on the document that it was created after the termination of a shared services agreement.

However, I'm hopeful that we can resolve the issue by simply stipulating that in December 2020 MGM was on a restricted list. What that means, what the consequences of it, the rest of it can be the subject of discussion. But if they're trying to get that document in for that particular fact, we would stipulate to it in order to resolve that dispute.

THE COURT: All right. Well, that's lots to respond

to, Mr. McCleary. Why don't we start with the outright objections: 24, 25. It's apparently text messages related to Mr. Seery's iPhone. I know we've got another motion pending out there that's not set today regarding Mr. Seery's iPhone.

MR. MCCLEARY: Yes, Your Honor. Well, as the Court is aware, we've attempted to get discovery from Mr. Seery in relation to the allegations in this lawsuit. And by the way, all of our exhibits that we're tendering are subject to our objections that this should not be an evidentiary hearing. I just want to make that clear.

THE COURT: Understood.

MR. MCCLEARY: Okay. Thank you. So, we're not waiving that.

The Exhibits 24 and 25 are relevant to the fact that he's -- he's not preserving information that is relevant to the claims in this lawsuit. And that also is something that is a factor in the colorability of our claims in this case.

THE COURT: How?

MR. MCCLEARY: Well, there is an effort, we believe, underway to not have information available for us to discover. And it reflects that they have been involved in providing -- we think supports -- providing material nonpublic information to other people that would be in his phone. And we want him to preserve it. And we think the fact that he is not is evidence that supports the colorability of our claims.

THE COURT: So, --

MR. MCENTIRE: Your Honor, this --

THE COURT: No. No. I'm processing that. You're wanting the Court to receive into evidence a text that may say something like, I delete messages periodically on my phone, to support your claim that you have a colorable claim that some sort of improper insider disclosure of information and insider trading is going on? He said he had an automatic delete feature on his phone; therefore, he -- that must be evidence of a colorable claim for insider trading. That's the argument?

MR. MCENTIRE: May I add to it, supplement, Your Honor? Mr. Seery, in his deposition, indicated that he did receive a text message that he had recently reviewed from Stonehill in February of 2021. To the extent, however, that is inconsistent with the fact that he has an automatic delete button, suggesting to me that certain text messages have been selectively saved and some other messages have been not selectively saved.

THE COURT: We don't have that motion set today.

MR. MCENTIRE: This is not -- that has nothing to do with the motion. It has to do with the fact that what is being presented to the Court in response, the Respondents' argument, is a selected window, a selected picture, that is -- distorts the reality of what we think has been destroyed

evidence.

Mr. Seery can't save one message that may be helpful to them and not save others that may not be. And it is inconsistent with the notion that this automatic delete button was already in effect, so why does he have one favorable message? That's why it's relevant.

THE COURT: Maybe he stopped using the automatic delete after --

MR. MCENTIRE: No, he didn't at this time, Your Honor.

THE COURT: Well, --

MR. MCENTIRE: That's the relevance.

THE COURT: So, --

MR. MCCLEARY: And he should never have used it, Your Honor, given his role and responsibilities.

THE COURT: We don't have that motion set today. What is the content of these emails? February 16th, March 10th, 2023? What is the content, for me to really zero in --

MR. LEVY: I have --

THE COURT: -- on relevance or not.

MR. LEVY: -- copies of the emails, if that would be helpful --

THE COURT: Okay.

MR. LEVY: -- to Your Honor.

THE COURT: Well, you know, now I'm seeing them, so I

don't know what the big deal is if --

MR. LEVY: As Your Honor can see, these are emails between counsel regarding preservation, which has nothing to do with whether there are colorable claims for fiduciary duties.

I'll add that -- and to show that this has nothing to do with this case and it is an attempt to generate a fishing expedition for documents in an entirely unrelated motion, we had a meet-and-confer where we represented to the counsel bringing that motion that we have been able to recover the text messages from the iCloud.

And so this is really just a sideshow. It has nothing to do with the issues of the colorability of claims for breach of fiduciary duties. It should not be introduced into evidence in this hearing.

THE COURT: All right. I'm going to sustain the objection, but this is without prejudice to you re-urging admission of these messages at the hearing on the motion regarding Mr. Seery's phone. Okay? Now, --

MR. MCCLEARY: That's as to 24 and 25, Your Honor?

THE COURT: Correct. And let's go now to the other one, the Exhibit 76, the *Acis*-related document, the relevance of that. Statement of Interested Party in Response to Motion of NexPoint to Confirm Discharge or Plan Injunction Does Not Bar Suit, or Alternatively, for Relief from All Applicable

Injunctions.

What is the relevance for today's matter?

MR. MCCLEARY: Your Honor, this is background of pleadings and just background information generally to support the allegations made in the case and the background.

THE COURT: What do you mean, background?

MR. MCCLEARY: Kind of the history relative to the claims trading and relative to the claims of the use of insider information.

THE COURT: Okay. Be more specific, because I certainly have a background education on *Acis* litigation.

(Pause.)

MR. MCCLEARY: Yeah. Your Honor, this is a data point that is referred to in one of our experts' data charts, I believe, so --

THE COURT: All right. So let's just carry that to --

MR. MCCLEARY: Yes.

THE COURT: I'm just going to mark it as carried along with 39 through 62, related to the experts.

(HMIT's Exhibits 39 through 62 and Exhibit 76 carried.)

THE COURT: Okay. What about all of these objections that we don't object *per se* but we want it clear that the documents are not being offered for the truth of the matter asserted because there's hearsay?

MR. MCENTIRE: Your Honor, I'll let Mr. McCleary address all of those.

I want to point out one exception, and that is Exhibit #4, which are handwritten notes from Mr. Jim Dondero. Those are not -- they are being offered for the truth of the matter asserted because it's an admission of a party opponent in these proceedings, and that's Farallon. They reflect significant statements and admissions by Farallon, which are not hearsay. It's an exception to the hearsay rule. And they're being offered for more -- they are being offered for the truth of the matter asserted, because -- and it's admissible in that format.

THE COURT: But are you referring to hearsay within hearsay? Because there would be, I guess -- I guess the handwritten notes of Mr. Dondero are his hearsay, and then you're saying there's --

MR. MCENTIRE: So, this is reflecting statements made to Mr. Dondero that are admissions of a party opponent.

MR. LEVY: None of that has been established. These are not notes from anybody at Farallon or Stonehill which could potentially be a party admission. These are notes by Mr. Dondero about what was purportedly said by somebody else, and there's no evidence that these were kept in the regular course of business.

This is hearsay and hearsay within hearsay. And this

could be established in testimony, but it can't be admitted -- the document can't be admitted to speak on behalf of a third person who's not here.

MR. MCENTIRE: Well, first of all, I agree, we'd need to lay a foundation. But that's not the purpose of this discussion right now. I am simply advising the Court that once I lay a foundation, it comes in for all purposes. It comes in as an admission of a party opponent.

MR. LEVY: It is not an admission of a party opponent. It is not notes or statements by any actual defendant. These are notes by Mr. Dondero being introduced for his own benefit. It is not a party admission.

THE COURT: Okay. I'm going to carry that one. If one of the witnesses that's on the witness stand -- well, presumably Mr. Dondero will be called -- we can get context at that time and decide if it's appropriate to let it in and let you cross-examine him on them if that's going to come in. All right? So we'll carry this one.

Anything else, though, unique, or can we consider as a batch all these other objections to -- most of them being pleadings, not all of them but a lot of them -- that the Respondents just want it clear that they're not being offered for the truth of the matter asserted? Your response?

MR. MCCLEARY: They're, again, largely data points relied on by experts in the course of coming up with their

opinions and just setting the background and history of the claims trading.

THE COURT: Well, then which ones are data points? Because I just need to carry those, right? If they're not being offered for any other reason.

MR. MCCLEARY: Well, I would have to -- we would have to refer to the charts of the experts, Your Honor, to determine that on all of them.

MR. MCENTIRE: In order to facilitate this, may I make a suggestion, Your Honor? We'll agree that if we're going to offer anything that he's identified other than for the purposes indicated, we will advise the Court. Otherwise, we'll accept the limitations imposed. And as we go through, if we offer an exhibit that is more than the truth -- if we are offering it for the truth of the matter asserted, we will advise the Court, and then we could take it up then. I'm just trying to get the ball rolling.

THE COURT: Okay. Well, that's still going to be a time-consuming thing, maybe. But, okay. Just, when we start the clock here -- very shortly, I hope -- I want people clear that when you make objections, that counts against your three hours. Okay? All right?

MR. LEVY: Okay. Understood, Your Honor.

MR. MCCLEARY: Your Honor, we have certainly made objection to some of their exhibits.

THE COURT: All right. Well, shall we turn to those now?

MR. MCCLEARY: Yes, Your Honor.

MR. MORRIS: Your Honor, they objected to every single exhibit except one, so let's be clear.

THE COURT: Okay.

MR. MORRIS: If they're withdrawing them, that's fine.

MR. MCCLEARY: Well, --

MR. MORRIS: But let's be clear.

MR. MCCLEARY: -- we are not withdrawing our general objection to all the evidence, of course. Just --

THE COURT: Okay. Let me just say for the record right now, I understand and you are preserving for all purposes your ability to argue on appeal that it was error for the Court to consider any evidence. Okay? You have not waived that argument by --

MR. MCCLEARY: Thank you.

THE COURT: -- now --

MR. MCCLEARY: Thank you. We can have --

THE COURT: -- agreeing to the admission of anybody's exhibit or offering your own exhibits.

MR. MCCLEARY: And we could have a running objection on that basis, on relevance to all the witnesses and the evidence that they offer on that basis. I would request that.

THE COURT: Well, okay, let me be clear. Relevance. Your argument is that no evidence is relevant because the Court doesn't need to consider any evidence --

MR. MCCLEARY: Yes, Your Honor.

THE COURT: -- on the colorability issue. You've got a running objection. It's not destroyed for appeal purposes. Okay?

MR. MCCLEARY: Thank you, Your Honor. Then, subject to that, in terms --

MR. MORRIS: I'm sorry to interrupt, but --

MR. MCCLEARY: Sure.

MR. MORRIS: -- would it be helpful if I gave the Court my list so she can see --

MR. MCCLEARY: Sure.

MR. MORRIS: -- what the --

MR. MCCLEARY: Sure.

MR. MORRIS: Okay. May I approach, Your Honor?

THE COURT: You may. I'm not sure, if everything has been objected to, I'm not sure how --

MR. MORRIS: Because I've tried -- I've tried to organize it in a way that would be helpful.

THE COURT: Okay.

(Pause.)

MR. MCCLEARY: Okay. Your --

THE COURT: I'm ready.

MR. MCCLEARY: -- Honor, yes.

THE COURT: Uh-huh.

MR. MCCLEARY: So, we are withdrawing our objections, other than the general objections to relevance based on the evidentiary nature of the proceeding, to Exhibits 1 and 2.

With respect to 3, this is a verified petition to take deposition for suit and seek documents filed on July 22, 2021. We object on the grounds of relevance and hearsay to that. Is that --

THE COURT: Well, --

MR. MORRIS: I don't -- I don't understand this one.

THE COURT: This --

MR. MCCLEARY: Is that, I'm sorry, is that your #11?

MR. MORRIS: Yeah.

MR. MCCLEARY: All right. We withdraw our objection to #3, subject to our general objection.

On Exhibit 4, we object to relevance and hearsay on a verified amended petition to take deposition before suit and seek documents.

THE COURT: Okay. This is my time to hear your argument. And we're going to be here --

MR. MORRIS: Can I -- can I do this here? It's going to be much quicker.

THE COURT: What do you mean? Do what here?

MR. MORRIS: So, if you just follow the chart that I

gave the Court, --

THE COURT: Uh-huh.

MR. MORRIS: -- Section A is a list of exhibits that they've objected to. Those exhibits are in the right-hand column.

At the same time, they are offering the exact same exhibits into evidence on their exhibit list. I don't understand how they can offer their exhibits and object to ours.

MR. MCCLEARY: Counsel. I'm sorry. We've already told them that, subject to our general objection, we'll withdraw the objections to those exhibits.

MR. MORRIS: Right. So can we agree that all objections to Section A are withdrawn?

MR. MCCLEARY: Subject to the general objection, yes.

MR. MORRIS: Thank you.

THE COURT: Okay. So, --

MR. MORRIS: That's going to be much quicker.

THE COURT: -- 11, 34, 2, 46, 42, 38, 41, 39, 40, and various attachments to Highland Exhibits 5 are withdrawn. So, admitted by stipulation.

(Debtors' Exhibits 2, 11, 34, 38, 39, 40, 41, 42, 46 are received into evidence. Certain attachments to Debtors' Exhibit 5 are received into evidence.)

MR. MORRIS: And to make this easy, Your Honor, at

some point I hope later today, but perhaps tomorrow, we'll slap a caption on this, we'll file it on the docket, so that, you know, an appellate court, if necessary, can follow along. But I think that we've just stipulated that all of the exhibits identified in Section A of this document are -- the objections have been withdrawn.

THE COURT: Okay.

MR. MCCLEARY: Subject to the general objections.

MR. MORRIS: Right. That gets us -- I'm going to jump to Section C, because I think the same is true. Section C identifies all exhibits that each party has taken from the docket. And you can see from Footnote 4, the Court can take judicial notice under Federal Rule of Evidence 201, we've just had the discussion about whether or not any of them would be limited for purposes of the truth of the matter asserted, but all of the exhibits identified in Section C I think the Court can take judicial notice of because they're on a docket.

THE COURT: Response?

MR. MORRIS: And so I would respectfully request that they withdraw their objections to anything in Section C.

THE COURT: Response, Mr. McCleary?

MR. MCCLEARY: I understand the Court can take judicial notice of those, Your Honor, but they do contain irrelevant and hearsay information also.

MR. MORRIS: The hearsay, I think that we just had

the discussion. I mean, if there's something that he wants to really point out at this point that I can respond to. But we would agree that advocacy pieces shouldn't be offered for the truth of the matter asserted. Court orders, on the other hand, are law of the case.

THE COURT: So, I mean, it's the very same situation we just addressed with your own exhibits. You have a lot of court filings. And they didn't have a problem with it, as long as everyone knew advocacy was not being accepted for the truth of the matter asserted.

MR. MCCLEARY: Well, --

THE COURT: Isn't this the same thing?

MR. MCCLEARY: -- they're not offering it for the truth of the matter asserted. That's one thing. And certainly the Court can take judicial notice. We do object to the extent they're offering Exhibits 6 through 10 for the truth of the matter asserted.

MR. MORRIS: Well, let me check those.

THE COURT: Well, --

MR. MCCLEARY: I'm sorry. 6, 7, uh -- (pause).

THE COURT: Those are orders of --

MR. MORRIS: Yeah.

THE COURT: -- courts.

MR. MORRIS: Yeah. They're orders of the Court.

MR. MCCLEARY: The orders are not relevant, Your

Honor.

THE COURT: Explain.

MR. MCCLEARY: Well, they have not demonstrated that the orders that they seek to introduce are relevant. They have orders regarding, for example, the contempt proceedings that are irrelevant to these proceedings. And prejudicial under 403.

THE COURT: All right. Shall I take a five- or ten-minute break? Let me -- I think I've been very generous by not starting the clock yet on the three hours/three hours.

MR. MCCLEARY: Appreciate that.

THE COURT: But here's how we do things in bankruptcy court. And I don't mean to talk down to anyone. I don't know, you may appear in bankruptcy court every day of your life. But we expect counsel to get together ahead of time and stipulate to the admissibility of as many exhibits as you can. If there's a preservation of rights here and there, fine. But we --

MR. MCCLEARY: Maybe if we take --

THE COURT: You know, --

MR. MCCLEARY: We can try to --

THE COURT: -- helping everyone to understand, --

MR. MCCLEARY: Sure.

THE COURT: -- we have thousands of cases in our court.

MR. MCCLEARY: Sure.

THE COURT: And this is just something we have to do to give all parties their day in court when they need time. And so --

MR. MCCLEARY: If you'd like us to take ten minutes and try to narrow this, we certainly --

THE COURT: Okay. With everybody understanding you should have taken the ten minutes before we got here. But, again, when I say three hours, --

MR. MORRIS: Yeah.

THE COURT: -- that's what I meant. Okay?

MR. MCCLEARY: Yes, Your Honor.

THE COURT: So we'll take a ten-minute break.

THE CLERK: All rise.

(A recess ensued from 10:42 a.m. until 10:54 a.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. Have we reached agreements on some of these exhibits?

MR. MCCLEARY: Your Honor, we have agreed on the ones that we can agree on, and we announced that to the Court with respect to the Paragraph A items that the Court's already ruled on.

I would like to point out to the Court that we just got their objections handed to us right before the hearing. We filed ours last night. So we didn't --

THE COURT: At 11:00-something, right?

MR. MCCLEARY: Yes, Your Honor, but we did --

THE COURT: Okay. Well, okay. So I guess your point is you want to make sure I'm annoyed with everyone, not just selective of you.

MR. MCCLEARY: Well, --

THE COURT: I mean, exhibit lists were filed Monday. So I don't know why on Tuesday people were not on the phone saying, you know, or Wednesday morning at the latest.

MR. MCCLEARY: Sure. And we haven't had much of an opportunity, in fairness, to consider their objections and respond because we just received them right at the time of the hearing, just before the hearing started.

Your Honor, we would urge our objections to Exhibit #4. We've objected to this petition to take deposition before suit and seek documents on the basis of relevance and hearsay. They have a number of pleadings in other matters that have nothing to do with, frankly, the colorability standard in this case. And this is an example.

THE COURT: Okay. This is the time for me to hear specific objections and what the basis is, and not just --

MR. MORRIS: Can we go back --

THE COURT: -- a category.

MR. MCCLEARY: Yeah.

MR. MORRIS: Can we go back to my way? Because it's

just going to be much faster. It really will be. Right? We -- Category 1, A and C, we dealt with. Category B, --

THE COURT: Well, we dealt with A.

MR. MORRIS: Right. And --

THE COURT: All of those are withdrawn, and they are admitted by stipulation.

MR. MORRIS: Right.

MR. MCCLEARY: Subject to --

THE COURT: Category C, --

MR. MCCLEARY: -- the general objections.

THE COURT: -- I'm not sure we're to closure on.

MR. MORRIS: Um, --

THE COURT: Are we to closure on C? Are you stipulating?

MR. MCCLEARY: No. We are not stipulating on C.

MR. MORRIS: Let's do them one at a time.

MR. MCCLEARY: I have not had an opportunity to -- to --

MR. MORRIS: Let's do them one at a time.

MR. MCCLEARY: Have not had an opportunity to look at each and every one of these, Your Honor. Because we did just get these.

THE COURT: Okay.

MR. MCCLEARY: But generally --

THE COURT: If we have not wrapped this up in 15

minutes, we're just going to start, and you can object the old-fashioned way. But I'm telling all lawyers here, objections count against your time. Okay?

MR. MORRIS: And I'd move for the admission of all of our exhibits right now, then.

THE COURT: Okay.

MR. MORRIS: So let him -- let -- put him on the clock and let's go.

THE COURT: Okay. So, 15 minutes. Let start going through everything except Category A.

MR. MORRIS: Number 4?

MR. MCCLEARY: Number 4, Your Honor, we object on the basis of relevance and hearsay.

MR. MORRIS: Okay. My response to that, Your Honor, and this will be my response -- this is in Section B of my outline --

THE COURT: Uh-huh.

MR. MORRIS: Okay? They object to Exhibits 3, 4, 5, and 9. These are Mr. Dondero's prior sworn statements. You just heard his lawyer stand here and tell the Court that somehow his handwritten notes should be admissible as an admission. You know what he did? He testified four different times under oath. That's Exhibits 3, 4, 5, and 9. Sworn statements.

They come into evidence not as hearsay but under Federal

Rule of Evidence 801(d)(1). It's beyond -- the notion that they can prove a colorable claim and that it's not relevant that he's got diametrically different -- he's got four different statements, now five with his notes, he's got five different statements. Doesn't that go to the colorability of these claims?

We believe it does. That's the basis for the introduction of these documents into evidence.

THE COURT: Okay. Mr. McCleary, your response?

MR. MCCLEARY: Well, it's a verified amended petition, Your Honor, in another matter, to -- before suit to seek documents. Has nothing to do with the merits of this case and our motion for leave. So we object on the grounds of relevance and hearsay.

THE COURT: Well, since they're prior sworn statements of Mr. Dondero, --

MR. MCCLEARY: Well, then they might -- if they want to use it later to impeach, they can try to do that, but they have to lay the foundation.

THE COURT: What about 801(d)(1)?

MR. MCCLEARY: Again, relevance, Your Honor.

THE COURT: Okay. I overrule. Those are --

MR. MCCLEARY: And Mr. --

MR. MORRIS: Okay.

THE COURT: Those are going to be admitted.

MR. MCCLEARY: By the way, on hearsay, Mr. Dondero is not Hunter Mountain. So when he argues that these are admissions, they're not admissions by Hunter Mountain.

MR. MORRIS: Your Honor, the only piece of evidence, literally the only piece of evidence they have are the words out of Mr. Dondero's mouth. There is no evidence, there will be no evidence of a *quid*, a *pro*, or a *quo*. There will be no evidence other than what Mr. Dondero testifies to --

MR. MCCLEARY: Well, --

MR. MORRIS: -- about what he was told. There will be no evidence that there was a meaningful relationship between Mr. Seery and Ms. -- and Farallon and Stonehill. There will be no evidence, none, that Farallon and Stonehill rubber-stamped Mr. Seery's compensation package. Nothing. The only thing we have are going to be the words out of Mr. Dondero's mouth and these notes that just showed up. And these statements --

MR. MCCLEARY: Your Honor?

THE COURT: Okay. Counsel, I mean, it just feels like --

MR. MORRIS: It's --

THE COURT: -- if notes get in, then sworn statements of Mr. Dondero should get in. Right?

MR. MCCLEARY: Your Honor, he's making arguments, closing arguments, opening arguments, trying to run out the

clock. We objected to relevance, and we stand on our objection.

THE COURT: Okay.

MR. MCCLEARY: And on hearsay.

THE COURT: I'll admit 3, 4, 5, and 9.

(Debtors' Exhibits 3, 4, 5, and 9 are received into evidence.)

MR. MORRIS: Section E.

MR. MCCLEARY: I'm sorry. So our objections are overruled?

THE COURT: They are overruled.

MR. MCCLEARY: On 3, 4, 5?

THE COURT: And 9.

MR. MORRIS: Section E of my outline.

MR. MCCLEARY: What about 6?

THE COURT: That's not --

MR. MORRIS: Well, --

THE COURT: Well, I don't --

MR. MORRIS: -- it would -- it would --

THE COURT: Let's go back to C. I'm not clear if we're to closure on Section C.

MR. MORRIS: I'll let Counsel go through --

THE COURT: And 6 is within Section C.

MR. MORRIS: I'll let Counsel go through each one, one at a time.

MR. MCCLEARY: No. That's all right. If you want to go through, you have them lumped in. Yeah, I think it'd probably be quickest if, frankly, we just go down the list, Your Honor. Frankly.

THE COURT: Well, you've got ten minutes left.

MR. MCCLEARY: Okay. We object to #6, memorandum and opinion order granting Dondero's motion to remand, on the basis of relevance and hearsay.

THE COURT: Overruled. I can take judicial notice under 201 of that. So 6 is admitted.

(Debtors' Exhibit 6 is received into evidence.)

MR. MCCLEARY: We object to Exhibits 7 and 8 on the grounds of relevance. 7 on relevance and hearsay, and 8 on relevance.

MR. MORRIS: I'll take 7 first, Your Honor.

THE COURT: Okay.

MR. MORRIS: It's an order dismissing Mr. Dondero's 202 petition. That 202 petition sought discovery on the basis of the exact same so-called insider trading claims that Hunter Mountain is asserting today.

I think it's not only relevant, it's almost dispositive that a Texas state court heard the exact same -- or, actually, not the exact same, because Mr. Dondero changed his story so many times -- but heard a version, I think Versions 1, 2, and 3, of this insider trading and would not even give them

discovery.

So when the Court considers whether or not there's a colorable claim here, I think it ought to think about what a Texas state court decided on not whether or not they have colorable claims, whether or not they're even entitled to discovery. I think it's very relevant. Move for its admission right now.

MR. MCCLEARY: Your Honor, it's ironic, because at that hearing counsel for the Respondents was arguing that it ought to be this Court that considers what discovery is appropriate.

THE COURT: Okay. Well, obviously, you can argue about that, but, again, I think I can take judicial notice of this. Right?

MR. MCCLEARY: Well, we argue that it's not relevant, Your Honor, and it is the --

THE COURT: Okay.

MR. MCCLEARY: 7 is not relevant and is hearsay.

THE COURT: Okay.

MR. MORRIS: Number 8, --

THE COURT: Objection is overruled.

MR. MCCLEARY: Overruled?

THE COURT: And so 7 is admitted.

(Debtors' Exhibit 7 is received into evidence.)

MR. MCCLEARY: 8 is our verified petition. And we

object on the grounds of relevance.

MR. MORRIS: You know, Your Honor, if I really had the time and the patience to do this, I think I'd find this document attached to Mr. McEntire's affidavit that's on their exhibit list.

But to speed this up just a little bit, how could their 202 petition that sought discovery on the basis of the very same insider trading allegation not be relevant? It's a judicial order. You can take notice of it. And it's incredibly relevant that a second Texas state court heard the same allegations that they're presenting to you as colorable and said no, you're not getting discovery.

MR. MCCLEARY: We don't know why they made that order, Your Honor. They could have simply accepted the opposition's arguments that this Court had jurisdiction and should consider what discovery ought to be done.

THE COURT: Overruled.

MR. MCCLEARY: It's not relevant to our --

THE COURT: I admit 8.

MR. MORRIS: Next?

MR. MCCLEARY: Overruled?

THE COURT: Yes.

(Debtors' Exhibit 8 is received into evidence.)

MR. MCCLEARY: The declaration of James Dondero. I think we withdrew the Dondero --

THE COURT: Right.

MR. MCCLEARY: -- declarations. If it --

THE COURT: It's --

MR. MCCLEARY: Numbered -- I'm sorry, #9.

THE COURT: 9. I've already checked it as admitted.

MR. MCCLEARY: If you want to -- if you want to offer #9, they can offer it.

THE COURT: It's admitted. I've already --

MR. MCCLEARY: Okay.

THE COURT: -- said.

MR. MCCLEARY: Number 10. It's an order denying our second Rule 202 petition. And we object to it on relevance, Your Honor.

THE COURT: Same objection. It's overruled. It's admitted.

(Debtors' Exhibit 10 is received into evidence.)

MR. MCCLEARY: Number 12, 13, and -- 12 and 13 are correspondence regarding resignation letters. We object on grounds of relevance.

THE COURT: Wait. Did we skip 11 for a reason?

MR. MCCLEARY: Pardon me?

THE COURT: Did we skip 11 for a reason?

MR. MCCLEARY: We only have it --

THE COURT: Oh, wait. It's already admitted by stipulation.

MR. MCCLEARY: Yeah, and we have --

MR. MORRIS: That's the one --

MR. MCCLEARY: We have our general objection.

MR. MORRIS: That's the one exhibit that they didn't object to.

THE COURT: Okay.

MR. MCCLEARY: We only had our general objection with respect to that.

THE COURT: Okay. Thank you. Thank you.

MR. MCCLEARY: On 12 --

THE COURT: Uh-huh.

MR. MCCLEARY: -- and 13, those are correspondence regarding resignations. We object on the grounds of relevance.

MR. MORRIS: So, the relevance of that, Your Honor, is to show that when Mr. Dondero sent this email to Mr. Seery in December 2020, he had absolutely no relationship to Highland, had absolutely no duty to Highland, had absolutely no reason to send this email to Highland. He wasn't in control of Highland. He wasn't --

If they'll stipulate to this, that's fine. He wasn't in control. He had no authority to do anything. He couldn't effectuate trades. He wasn't there. And that's what these documents are intended to prove.

THE COURT: Okay. Why are we -- this is --

MR. MCCLEARY: Because there are --
THE COURT: Some of this stuff, I mean, --
MR. MCCLEARY: There are other agreements.
THE COURT: -- is no big deal. Right?
MR. MCCLEARY: Sub-advisory agreements, other agreements that he had under which he had a responsibility to make the communications regarding material nonpublic information that he made. So this is simply irrelevant, Your Honor.
THE COURT: I overrule. I mean, again, I don't --
MR. MCCLEARY: Okay.
(Debtors' Exhibits 12 and 13 are received into evidence.)
MR. MCCLEARY: Number 14, --
THE COURT: You're both giving me just a lot of background that I already have, but of course a Court of Appeals --
MR. MORRIS: That's why we --
THE COURT: -- isn't going to have it.
MR. MORRIS: Yep.
MR. MCCLEARY: Well, #14, Exhibit 14, we object on the grounds of relevance and hearsay.
THE COURT: Okay. Wait a minute. We skipped 13 because -- why? Oh, wait, that was, I'm sorry, 12 and 13 --
MR. MORRIS: Yes.
THE COURT: -- where I've overruled the objection and

admitted.

Okay. Go ahead.

MR. MCCLEARY: 14, we object on the grounds of relevance and hearsay, Your Honor.

MR. MORRIS: I'm just going to make this real quick, Your Honor. Here's the thing. This Court knows it. It's actually facts that cannot be disputed because they're subject of court orders.

As the Court will recall, beginning in late November 2020 continuing through late December 2020, Mr. Dondero was engaged in a continuous pattern of interference with Highland's business and trading. It was the subject of the TRO, which is why the TRO is relevant.

Your Honor will recall that at the end of November Mr. Dondero attempted to stop Mr. Seery from trading in Avaya stock. On December 3rd is when he sent this threatening email, text message, to Mr. Dondero [sic]. It caused us to get the TRO.

Your Honor will recall on December 16, 2020, that's when we had the hearing on Mr. Dondero's motion to try to stop Mr. Seery from trading in the CLOs that the Court dismissed as frivolous and granted the directed verdict of Highland.

So, that's December 16. He sends this email about MGM on December 17th. And what happens on December 18th? More interference with Highland's business. It's a matter of --

beyond dispute. It's law of the case at this point because that's the subject of the contempt order. And the Court found that, after -- after hours, on December 18th, Hunter Covitz told Mr. Dondero that Mr. Seery was again trying to trade in Avaya stock, and within a day or two Mr. Dondero was again interfering it, and that's what led to the second -- to the first contempt order.

So all of these documents are relevant to show motive and what was happening. This email was not sent for any legitimate purpose. The evidence is just overwhelming. And it's not -- it's not like, oh, that's an argument we're making. Between the TRO and the contempt order, it's law of the case. He was interfering with Highland's business nonstop for thirty days, including the day before he sent this email and the day after he sent the email.

THE COURT: Okay.

MR. MCCLEARY: Your Honor, this is a lawsuit or an effort to file a lawsuit on behalf of Hunter Mountain Investment Trust, not James Dondero. And as much as Counsel wants to make this about Jim Dondero and attack him, this is a different case. So this exhibit has nothing to do with the claims in this lawsuit. It's not relevant. And hearsay.

MR. MORRIS: The only evidence is Mr. Dondero. It's -- could not be more relevant.

THE COURT: Okay. I overrule. I'm admitting this.

And so we're --

MR. MCCLEARY: Uh, --

THE COURT: It's 14. It's -- how far?

MR. MCCLEARY: 14. Exhibit 15 is where we are, Your Honor.

THE COURT: Okay.

(Debtors' Exhibit 14 is received into evidence.)

THE COURT: 15.

MR. MORRIS: Oh, that's -- that's the contempt order. And so these contain the judicial findings that are now beyond dispute that Mr. Dondero was engaged in interfering with Highland's business after the TRO was entered on December 10th.

THE COURT: Okay. Again, my own orders, --

MR. MCCLEARY: Your Honor, it's not --

THE COURT: -- I can take judicial notice of --

MR. MCCLEARY: It's --

THE COURT: -- under the Federal Rules of Evidence.

MR. MCCLEARY: It's --

THE COURT: 201.

MR. MCCLEARY: We simply object as not relevant. We object based on Federal Rule of Evidence 403. Any possible relevance is outweighed by the prejudice. And we object on the grounds of hearsay, Your Honor.

THE COURT: Prejudice? Prejudice? They're orders I

issued. I'm going to be prejudiced by my own orders?

MR. MCCLEARY: Uh, well, --

THE COURT: I don't --

MR. MCCLEARY: -- Hunter Mountain will be.

THE COURT: Okay. I'll overrule.

(Debtors' Exhibit 15 is received into evidence.)

THE COURT: I'll tell you what. We're out of our -- well, we've get probably 30 seconds left. Anything that we can maybe knock out to not have eat into your three hours? Both of you?

MR. MCCLEARY: Your Honor, we filed written objections to all of these exhibits. We urge those objections. 16.

THE COURT: I know, but this is your chance to argue why your objections have merit. I can -- we can just --

MR. MCCLEARY: Because, well, obviously, we're talking about pleadings and filings in other matters. The evidence that they're trying to use to impugn Jim Dondero, which has nothing to do with the merits of HMIT's claims and allegations of insider trades.

THE COURT: Okay. A lot of this is articles. Articles, articles, articles about MGM.

MR. MCCLEARY: On the articles, Your Honor, subject to our general objection, we'll withdraw the objections to the articles if they'll agree to the articles that we've offered.

MR. MORRIS: Your Honor, we didn't lodge an objection to their articles.

MR. MCCLEARY: Okay.

MR. MORRIS: And just so, if anybody is keeping track at home, this is Item B on the list that I created earlier this morning.

THE COURT: Okay. So, 25 through 30 are articles. Those are admitted by stipulation. Nothing is about the truth of the matter asserted. They're just articles that were out there for --

MR. MORRIS: Right. I would just --

MR. MCCLEARY: Yes.

THE COURT: -- the world.

MR. MORRIS: Just so we're clear, it's Exhibits 25, 6 -- 25, 26, 27, 28, 29, and 30.

THE COURT: Right.

(Debtors' Exhibits 25 through 30 are received into evidence.)

MR. MORRIS: And so, yes, those are all articles. They have their articles. Exhibit 72.

THE COURT: Oh, and 34 is another one. So that's admitted as well.

MR. MORRIS: Yes.

MR. MCCLEARY: Yes, Your Honor.

(Debtors' Exhibit 34 is received into evidence.)

THE COURT: Okay. Well, we're out of time, so as for the others, they can offer them the old-fashioned way if they want to, you can object the old-fashioned way, and it eats into both of your three hours.

MR. MCCLEARY: Yes, Your Honor.

THE COURT: Okay. Let's hear opening statements. And by the way, before we wrap up today, I'm going to say out loud everything I've admitted so we're all crystal clear on what's in the record. This has been a bit chaotic.

MR. MCCLEARY: Okay. Understood.

THE COURT: So, Caroline is going to be the keeper of our time over here. And if the judge ever interrupts you, she's going to stop the timer. Okay?

MR. MCENTIRE: Thank you.

THE COURT: I hope I won't any more, but you may proceed.

MR. MCENTIRE: No, I appreciate it. Thank you. Can you see it, Your Honor?

THE COURT: I can, yes. Thanks.

MR. MCENTIRE: Can opposing counsel see it?

MR. MORRIS: Yes, sir.

MR. MCENTIRE: All right.

THE COURT: And I'm just going to ask everyone who has a PowerPoint today, can I get a hard copy --

MR. MCENTIRE: Certainly.

THE COURT: -- before we close?

MR. MCENTIRE: Certainly.

THE COURT: Okay. Thank you.

OPENING STATEMENT ON BEHALF OF HUNTER MOUNTAIN INVESTMENT TRUST

MR. MCENTIRE: May it please the Court, Your Honor, at this time I'll be providing the opening statement on behalf of Hunter Mountain Investment Trust. It is a Delaware trust. Mark Patrick, who's in the courtroom, is the Administrator. He will be one of the witnesses that you'll hear today.

Hunter Mountain Investment Trust is the former 99.5 percent equity holder, currently classified as a Class 10 contingent beneficiary under the Claimant Trust Agreement. It is active in supporting various entities that in turn support charities throughout North Texas.

Your Honor, this is not an ordinary claims-trading case. I know the Court made those references in one of the hearings, and I wanted to more clearly respond. This has different indicia. An ordinary claims-trading case is normally outside the purview of the bankruptcy court. What makes this different is that we're involving, we believe and allege, breaches of fiduciary duty of the Debtor-in-Possession's CEO and the Trustee.

It involves also aiding and abetting by the entities that actually acquired the claims. And that falls into the

category of willful misconduct.

It also involves injury to the Reorganized Debtor and to the Claimant Trust. Ordinarily, a claims trade would not involve injury to the estate or the reorganized debtor. Here, we have alleged that it has. And the injury takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers.

During the course of my presentation today, I'll be referring to the Claims Purchasers as the collective of Farallon, Stonehill, Muck, and Jessup.

I would like to briefly discuss some of the issues that have already been presented to the Court, just to make sure that this record is clear.

Can you please continue?

We don't believe the *Barton* Doctrine is applicable. I believe that precedent is very clear that the *Barton* Doctrine deals with proceedings in other courts, and the various standards and requirements of *Barton* do not apply if in fact we're coming to the Court and filing the proceeding in the court where the Trustee was actually appointed.

And so I think that the law is clear. And this is Judge Houser here in the Northern District of Texas in the case *In re Provider Meds*. And she makes very clear that the standard for granting leave to sue here is actually less stringent than

a 12(b)(6) plausibility standard. So if there is any issue as to what standard this Court should be applying to the -- to this process, we believe it's a 12(b)(6) standard, confined to the four corners of the document.

If the Court wishes to consult the documents that are referred to in the four corners of the petition or complaint, it may do so.

But the standard here is even more flexible than a standard plausibility. Our evidence, though, achieves the standard of plausibility as well.

The *In re Deepwater Horizon* case is another important case. That's a Fifth Circuit case. A plaintiff's claim is colorable if it can allege standing and the elements necessary to state a claim on which relief could be granted. Defining a colorable claim as one with some possible validity. I don't have to prove my case today. I didn't have to prove my case in the prior hearings. I have to prove sufficient allegations, not evidence, but sufficient allegations to show that it has some possible basis of validity.

Possible basis of validity. We're not here talking about likelihoods. We're not here talking about *prima facie* evidence. We're not here talking about probabilities. We're talking about something less than plausibility. But, again, we achieve plausibility.

A colorable claim is defined as one which is plausible or

not without merit. These are various cases from around the country. The colorable claim requirement is met if a committee has asserted claims for relief that, on appropriate proof, would allow recovery. On appropriate proof. We're not required to put on that proof today, Your Honor.

Courts have determined that a court need not conduct an evidentiary hearing, but must ensure that the claims do not lack any merit whatsoever. We submit that our claims have substantial merit and deserve the opportunity to initiate our proceedings, have an opportunity to conduct discovery. And if they want to file a 12(b)(6) motion before this judge, before you, they can do so. If they want to file a motion for summary judgment, they can do so. But at this juncture, they cannot, and at this juncture this Court should not consider evidence in making its determination.

Standing under Delaware law. The Funds have collectively really hit the standing issue hard. I think it's easily resolved. First of all, it's clear that a beneficial owner has standing to bring a derivative action. Under Delaware law, a beneficial owner has a right to bring a derivative action on behalf of the -- against the trustee.

So the issue is, am I a beneficial owner? As a contingent beneficiary in Class 10, and that's the Court's inquiry here, do I qualify as a beneficial owner? And I think that Delaware law is clear that, by not limiting it to only vested

interests, by not limiting it only to immediate beneficiaries, they are not -- they are not extending the scope of the statute to contingent beneficiaries. And this is consistent with the laws around the country, because even Texas recognizes that an unvested contingent beneficiary has a property right to protect.

Even Mr. Seery admitted in his deposition that a unvested contingent interest is in the nature of a property right. If you have a property right, that property right can be abused. If you have a property right, that property right, whether it's inchoate or not, it can be abused, it can be misappropriated, and you could become aggrieved. And that is the constitutional standard for standing: Is Hunter Mountain Investment Trust aggrieved? And the answer is yes.

Contingent beneficiaries from around the country, in addition to Mr. Seery's admission that we have a property interest, contingent beneficiary has standing. This is the *Smith v. Clearwater* case on Slide 11. Very clearly, they say that even if it's subject to a future event. Their argument is that Mr. Seery has not certified Hunter Mountain as in the money. We believe we are in the money. That's a different issue. We believe he should certify, in the discharge of his duties. That's a different issue.

But even assuming his case -- his argument for a moment, their argument is that since he's not done that act, which we

also challenge and criticize that he's not done that act, that we can't qualify to bring this case. Well, that's not what the law is, that even an unvested interest, a contingent interest, has a right.

Slide 12. This is the State of Illinois. Despite the fact that interest is contingent and may not vest in possession, you still have a right to protect what you have. And you have standing to bring a cause of action.

The Claimant Trust Agreement, by the way, suggests that we have no vested interest, and they'll likely argue that point. But the point there is the law says that's irrelevant. If it's an inchoate interest, if it's potentially vested in the future, that's what imbues you with standing.

And in any event, the Claimant Trust Agreement is subject to Delaware trust law, and they can't get around that. They can say whatever they want to say in the agreement to try to block us from participation, but it's still subject to Delaware trust law, and Delaware trust law does not draw a distinction between vested or unvested.

The State of Missouri: There is no dispute in this case that the future -- that future beneficiaries have standing to bring an accounting action, whether they're vested or contingent. The *Bucksbaum* case. Article III standing exists, constitutional standing, including discretionary beneficiaries, have long been permitted to bring suits to

redress trustees' breaches of trust. This applies not only to our standing as an individual plaintiff, which we've brought, but also in our standing -- in our capacity seeking to bring a derivative action to benefit the Claimant Trust of the Reorganized Debtor. Both are permitted under this law under these cases.

An interest -- in the *Mayfield* case, an interest is any interest, whether legal or equitable or both, vested, contingent, defeasible, or indefeasible. So the unilateral self-serving wording of the Claimant Trust does not abrogate our right to bring the claim.

I'd like to talk briefly about fiduciary duties. We know that Mr. Seery has fiduciary duties to the estate when he was the CEO prior to the effective date. We allege that he breached those fiduciary duties, and that gives us standing to bring the claim that we have brought for breaching fiduciary duties, causing damages that are accruing post-effective date.

In the *Xtreme Power* case, again, the directors can either appear on both sides of the transaction or expect to derive any personal financial benefit. We are alleging that Mr. Seery engaged in self-dealing. We allege that he engaged in self-dealing by arriving at an understanding where he could put business allies -- whether you call them friends, business allies, close acquaintances -- on the committee, the Oversight Board that would ultimately oversee his compensation, which,

in the context of this case, makes no sense and it is excessive.

Muck is a specially -- special-purpose entity of Farallon. Farallon acquired the claims, created Muck to do the job. Muck is now on the Oversight Board.

Jessup. Jessup is a special-purpose entity, a shell created by Stonehill. Stonehill bought the claims, funneled the money through Jessup. Jessup is now on the Oversight Board. Jessup and Muck -- and by the way, the principals in Farallon are actually the representatives from Muck on the Oversight Board. So there's no suggestion that there's really a distinct corporate relationship here.

Michael Linn, who is a principal at Farallon. You'll hear his name today, throughout today. He actually is a representative of the Oversight Board, dealing with Mr. Seery and negotiating Mr. -- I put negotiation in quotes -- negotiating Mr. Seery's compensation.

I'd like to talk very briefly about background. We took Mr. Seery's deposition. I was unaware of this. I now know it. Perhaps the Court was already aware of it. This is Mr. Seery's first job as a CEO of any debtor. This is the first time Mr. Seery has ever been a chief restructuring officer. This is the first time Mr. Seery has ever been the CEO of a reorganized debtor. This is the first time that he's served as a trustee post-effective date. However, his compensation

is excessive and not market-driven, and there's a reason for that. We believe and we allege that it's a *quid pro quo* because of prior relationships with Farallon and Stonehill.

Farallon and Stonehill are hedge funds, Your Honor. They created their special-purpose entities on the eve of this transaction simply to take the title to the claims, but the money is going upstream.

Seery has a relationship with Farallon. Do we know the full extent of that relationship? No. We have been deprived of discovery. We attempted to get the discovery in the state court 202 process. We were denied for reasons not articulated in the court's order.

We attempted to get the discovery here that the Court refused under the last hearing about these relationships.

So what we do have begins to put the pieces of the puzzle together. And sufficient is more than plausible. It is more than colorable.

We know that Mr. Seery went on a meet-and-greet trip to Farallon's offices in 2017. Didn't have to. He was trying to cultivate a business relationship. Farallon was important to him.

We know that in 2019 he was no longer with Guggenheim Securities. He goes out to Farallon's offices for another meet-and-greet and he specifically meets with the two principals who are reflected in Mr. Dondero's notes, Raj Patel

and Michael Linn.

We know that in June 2020 Farallon emailed Seery. This is after Mr. Seery becomes the CEO. He says, "Congratulations. We're monitoring what you're doing."

Seery's relationship with Stonehill. These are all -- this is all before what we believe to be the events that are at issue in this case. We believe that -- represented Stonehill in the *Blockbuster* bankruptcy proceeding. There was an objection to a document. Mr. Seery was involved in the *Blockbuster* proceedings. Stonehill was one of his many clients on the committee that he represented.

We know that Stonehill is actively involved in one of Mr. Seery's charities in New York. We know that he sent text messages to Mr. Seery in February of 2021, wanting to know how to get involved in this bankruptcy.

Farallon and Stonehill were strangers to this bankruptcy. They weren't creditors. They were encouraged and they came into this process.

Farallon and Stonehill have not denied any of our allegations. They are not putting any evidence on today. We allege that these relationships was based and founded upon a *quid pro quo*. I'll scratch your back; you scratch mine. You give me some information; I want to evaluate these claims. And, by the way, we're going to be on the Oversight Board, or you're going to put us on the Oversight Board, or by default

we'll be on the Oversight Board, and we'll work out your compensation agreement.

Mr. Seery also has an established relationship with Stonehill.

I like to have a timeline of certain events. This is not all of the relevant events, but this can give you a quick picture. We know that Mr. Dondero sent an email to Mr. Seery in December of 2020 relating to MGM. It is undisputed that Mr. -- that Farallon emailed Seery, Mr. Seery, in January of 2021 if there was a path to get information regarding the claims for sales. Mr. Seery says he never responded to it, but we know that this entity, Farallon, got deeply involved in buying these claims shortly after this email.

We have the Claimant Trust Agreement suddenly being amended to not have a base fee, but now we're going to incorporate a success participation fee. As part of a plan, we're not criticizing that, but suddenly the vehicle for post-effective date bonuses is being created.

The Debtors' analysis comes out in association with the plan confirmation. It projects a 71.32 percent recovery for Class 8 and Class 9, and those are the principal classes we're talking about. 95 percent -- 98 percent of all of the claims here are in Class 8 and Class 9, until you get to us, Class 10.

71.32 percent of Class 8 means that Farallon and Stonehill

will get less than about a six percent internal rate return on their $163 million investment, which they have never denied. That is not a hedge fund investment goal. Investment -- hedge funds like these companies, they go for 38, 40, 50 percent of returns. Who would ever invest $163 million on a distressed asset that's not collateralized with only an expectation of an internal rate of turn of six percent? But that's going to be the evidence before the Court. That does not make any financial, rational wisdom at all.

The plan is confirmed. It's undisputed that Stonehill contacts Seery after the plan is confirmed to want to know how to get involved. They have phone calls after this text message. Muck is created on March 9. We know from Mr. Seery's deposition that Farallon told Seery that six days later they bought the claims. All the claims, by the way, when I say bought the claims, it's everything except UBS. To our knowledge. They may have negotiated the paperwork back then, but the claims transfers did not occur until the summer. All the other claims involved, the claims transfers were filed with this Court in mid-April and at the end of April.

Tim Cournoyer removes MGM from the restricted list. Tim Cournoyer is an employee of Highland. Well, it tells us that MGM was on the restricted list and there should be no discussion about MGM, but there was. There was discussions about MGM, and Mr. Dondero is going to testify to that.

And we also know that the HarbourVest settlement was consummated during this period of time. If it had been on the restricted list, as it was, that transaction should never have occurred. But it did occur. This Court ordered it. It approved it. And I'm not challenging -- we're not challenging that settlement. It is done. That is done. What we are challenging is the fact that Mr. Seery is actively involved in using inside material nonpublic information.

Jessup Holdings is created shortly thereafter, on April 8th. We have claims settling on April 30th. The Acis claim is transferred to Muck -- that's Farallon -- on April 16. The Redeemer and Crusader are all transferred on April 30th.

Stonehill and Farallon never deny that they did no due -- that they failed to do due diligence. We allege that there was no due diligence. And that relies in significant part upon Mr. Dondero. But now, because we have Mr. Seery's deposition, it also relies upon Mr. Seery's admissions in deposition, because he says he never opened up a data room, he doesn't know what due diligence they did. Farallon says the only due diligence they did is they talked to Jim Seery. And how do you invest $163 million, or $10 million or $50 million, whatever the part is, with an internal rate of return six percent, only on the advice of Mr. Seery, who's never been a trustee or a CEO before, unless there's something going on?

Your Honor, public announcement of MGM on May 26th. On

May 28th, two days later, Mr. Dondero calls Farallon. It took Mr. Dondero or his group a few days, a week or so, to even understand who -- that Farallon was involved, because the registrations for Muck and Jessup did not disclose their principals, did not even disclose addresses. They were shell -- they were companies that came in in the last minute to buy these claims incognito, frankly.

They found out that Farallon was involved. They had a call initially with Raj Patel, who is the principal of Farallon. He has three conversations total: One with Mr. Patel and two with Michael Linn. Michael Linn was the one responsible for these claim purchases. Patel admitted that Farallon relied exclusively on Seery and did no due diligence. Linn rejected the premium to sell. The evidence you'll hear today, that Mr. Linn rejected a premium up to 40 percent to sell the claims. He actually said he would not sell at all because he was told by Mr. Seery that the claims were too valuable.

That is evidence of insider trading. Specifically, they said they were very optimistic about MGM and they were unwilling to sell because Seery said too valuable.

We have -- these are the purchases. This is where the Class 9 claims fall. And keep in mind -- Tim, go back -- that $95 million of this upside potential is being told, at least to the publicly available information, that you're never going

to get there. Yet 95 -- $95 million is allocated to this category. So Class 8 is $275 million. Class 9 is 29 -- $95 million.

Next.

So we have the evidence that you'll hear today. Farallon admitted the timing. No due diligence, never denied by the Claim Purchasers. Based upon material nonpublic information. That's our allegation. Purchased over $160 million. This is never denied by the Claims Purchasers. They purchased claims when the return on investment was highly doubtful. Maximum expected annual rate of return, assuming publicly-available information, was approximately six percent, and that is totally atypical of what a hedge fund would seek.

Insider information. We're not talking about just MGM. The Respondents want to narrow the Court's inquiry. This is much larger than MGM. MGM is a part of it, it's a big part of it, but it's not the only part of it. It's other assets. Portfolio companies. Other invested assets. There's a lot of money out there, and it was never disclosed during the ordinary course of the bankruptcy, for reasons that the Court already knows, in terms of asset values. How does someone come in and purchase distressed assets, claims, without any understanding of what assets are backing those claims, when there's no publicly-available information there to do it and there's no evidence, no indication, no statement that actually

due diligence was done?

That right there, without anything else, makes our claims plausible. You don't have to prove insider trading by direct evidence. Nobody's going to admit that they did something wrong. You prove it circumstantially, and we've cited cases and we'll give you cases to that effect.

Next.

We have material nonpublic information. It is very clear that Mr. Dondero on December 17th sent this email, not just to Mr. Seery but to several other individuals, including lawyers. It states that he'd just gotten off a board call. A pre-board call. The update, he provides the update. Active diligencing. It's probably a first-quarter event. We can scour all of the other media documents that are in evidence, both from us and them, and you're not going to find any indication anywhere that a board member has said, guys, gals, it's going to be a probable first-quarter event. That's material nonpublic information.

THE COURT: By the way, you all objected to this exhibit.

MR. MCENTIRE: No, this is my exhibit.

THE COURT: We spent --

MR. MCENTIRE: I did not. They objected to this.

MR. MORRIS: Your Honor, we didn't object to it, and that is the one exhibit that they did not object to.

THE COURT: Oh, it is?

MR. MORRIS: Nobody objected to this exhibit.

MR. MCENTIRE: I'm not going to object to this exhibit, Your Honor.

THE COURT: Okay. It's a different version.

MR. MCENTIRE: Fair enough.

THE COURT: Okay. It was a different email around that same time frame.

MR. MCENTIRE: So just --

THE COURT: Apologies. We stopped the clock.

MR. MCENTIRE: This -- my next exhibit is simply a demonstrative, but I just want the Court to understand that MGM is no small matter here and Mr. Seery did testify in deposition that it probably made up $450 million. He was pretty close.

MR. MORRIS: Your Honor, I object to this demonstrative. There is no evidence in the record. It's not cited to anything. We're not just going to start putting up stuff on the screen that we like.

MR. MCENTIRE: Excuse me. I'm not offering this document into evidence.

MR. MORRIS: I don't care. The Court shouldn't be seeing a demonstrative exhibit that contains matters that are never going to be in the record.

THE COURT: Okay.

MR. MCENTIRE: I disagree. I can put the data in the record.

May I proceed?

MR. MORRIS: But you didn't.

THE COURT: Okay. I'm not considering the truth of this until and unless I get evidence of this.

MR. MCENTIRE: Fair enough. But the point is this, Mr. Seery has conceded in deposition that between the institutional funds and the CLOs, there's a lot of MGM securities and stock. We're talking a lot of money. We're not talking about just Highland Capital's investment.

You can skip the next slide. Skip.

So, rumors versus material nonpublic information. They can talk all day long, and if they want to use their time doing this, they can. There's a difference between rumor and actual material nonpublic information. Rumor from undocumented sources, lack of clarity, lack of timing. There is no -- there's no debate that a lot of people knew that maybe MGM might be for sale. Maybe they wouldn't. Sometimes it falls apart, you know. But the point is a board member is telling someone that there's a probable event in the first quarter of 2021. That is definite, specific, and it comes from the highest authority. That is -- if that's not material and public information, I don't know what could be.

Classic indications of insider trading. You have to have

a tipper with access to MNPI. Here, we know that Mr. Seery, if he's the tipper, we allege he's the tipper -- and these are words of art out of case law, by the way -- he has access to information about MGM. He has access about asset values, projected values. He has a relationship. We believe he has a very strong relationship. It's more than just social acquaintances. He's giving congratulatory emails. He's getting solicitations. He's solicited. Benefits received. We know what the benefits are. They get the opportunity to invest money with huge upside.

There was a point mentioned some time ago that, well, only -- only the sellers really have the grievance. Well, Your Honor, we have a right to start our lawsuit and do some discovery, because, frankly, a lot of sellers have big-boy agreements. They say, you don't sue me if I have MNPI. I don't sue you if you have MNPI. We have mutual releases. Let's go by our way. Everybody's happy. We're not going to come back and see each other ever again.

That's one of the things we're being deprived of here. But otherwise, what we have here is a colorable plan. We've asked for the communications with the sellers. We can't get it. We have here an email.

Next.

We have here an email. This actually -- you'll hear Mr. Dondero say this actually reflects three communications. Raj

Patel, Farallon, bought it because of Seery. Mr. Dondero contacted Mr. Patel and says, Raj Patel bought it because of Seery. 50 to 70 percent's not compelling. Class 8. 50 percent, 70 percent. Give you a 30 percent to 40 percent premium. Not compelling. I ain't going to sell. Ask what would be compelling. Nothing. No offer. Bought in February/ March. We now know the time frame. We know that Stonehill is communicating with them and we know that Farallon has been just communicating with Mr. Seery. Bought assets with claims. It's not just the MGM. It's not just the portfolio companies and other assets. It's also the claims.

Well, what are the claims? It's the claims against Mr. Dondero. Well, how would they know about all this if there's no due diligence and there's no evidence of any due diligence before you? 130 percent of costs, not compelling, no counter. Mr. Dondero's angry. Discovery is coming.

Atypical behaviors are also circumstantial evidence of insider trading. We have strange behaviors here, Judge. We have a vast majority of the claim value is acquired by only two entities post-confirmation. Most significant claims are only owned by two entities who were strangers to the whole process.

The removal of -- and Mr. Morris offered to stipulate. The sudden removal of MGM from the compliance list in April of 2021 -- by the way, the removal doesn't cleanse the MNPI. If

you have material nonpublic information because you received it from Mr. Dondero, the fact that Mr. Dondero's no longer employed by Highland Capital or no longer directly or formally affiliated doesn't cleanse the MNPI.

We have no due diligence, regardless of the significant nine-digit numbers, and we have no rational explanation of why this kind of money would be invested when they're projecting an actual loss, if -- a modest return at best for Class 8 and a loss for Class 9.

Insider trading can be proved by circumstantial evidence, Your Honor. No fraudster, no person who's done wrong is going to admit to it, so you look for the classic -- you look for the classic elements. And that's what we had here. And we have alleged all of this in our pleadings. Not in extraneous evidence. Within the four corners of our pleadings. And that's why we have a plausible claim.

You know, I believe it's Rule 8, Rule 9 of the Federal -- you have to require specificity in a fraud claim. Well, this is not a fraud claim. This is a different claim. But we have provided specificity that passes the smell test of colorability. We have provided specificity that would satisfy even more stringent requirements under 12(b)(6).

The plan analysis. This is a, I think, a document admitted by everyone. Mr. Seery has testified that this projection of 71.32 percent for Class 8 came out in February

of 2021 and never changed, all the way up to the effective date.

So this is what the public believed. This is what the public knew. And if this was all that Farallon and if is all that Stonehill had access to, that means that they were going to lose their entire investment on Class 9. They bought UBS at a loss to begin with. And on the other three investments, they were going to get a very, very modest, minor return, six percent over three years, or even less. That is not what hedge funds do.

Seery's excessive post-effective date compensation. We have obtained no discovery from Farallon or Stonehill in this regard, but we know that he had no prior experience. We know that the award that was given him was not market-based, even though the self-serving documents that have been produced and that are attached to their exhibit list suggests a robust negotiation. Well, they were robust without any kind of reality check in the real world about whether it was market-supported. None. Mr. Seery has admitted to that.

It was not lowered. He's making $1.8 million a year right now, with most -- a lot of the assets already sold, the reorganization done. All they're doing now is monetizing assets. He's getting $1.8 million. He's got 11 people working for him. And then he has a bonus, a bonus that is -- increases significantly with his ability to recover for Muck,

Jessup, Farallon, and Stonehill.

And in the absence of -- if we were really dealing with uncertainty and risk, then that may be another issue, but here we're dealing with entities that already know that they're going to get a payday and they already have. They've already made about a $170 million return -- 170 percent return, excuse me -- over and above the original investment, when they were projected to actually lose money.

Just so you know, we have over $534 million of cash that has been basically monetized, and out of that, $203 million in total expenses -- $277 million to Class 8 and -- and -- 1 through 7, and Class 8 distributors. Excuse me, creditors. Even if you take -- if you take out the alleged obligations of Mr. Dondero on the promissory note cases, that still leaves over $100 million available, which puts us in the money. Puts us in the money. And the fact that you have $203 million of expenses in a case of this nature is part of our claim, is that we have delay actions. We have a situation where Mr. Seery is continuing to receive $1.8 million a year on a slow pace to monetize, paying other professionals, when this could have been over a long time ago. That's part of our allegations. It's not part of any valuation motion. It's actually in our allegations.

I'm going to reserve the rest. I think that's my opening statement, Your Honor. I'm going to reserve the rest for my

closing. And let me see. Yes, that's right. And thank you for your time.

THE COURT: All right. Caroline, how much time was that?

THE CLERK: Thirty-four minutes and 27 seconds.

THE COURT: Thirty-four minutes and 37 seconds. Okay.

THE CLERK: Twenty-seven.

THE COURT: Oh, 27. Okay.

MR. MCENTIRE: Thirty-four minutes?

MR. MCCLEARY: Thirty-four minutes.

MR. MORRIS: Your Honor, I do have hard copies of my short slide presentation.

THE COURT: All right. You may approach.

And Mr. McEntire, are you going to give me your PowerPoint later, hard copies later?

MR. MCENTIRE: Yes, Your Honor. I found one typo and I'd like to fix one typo and then we'll give it to you.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF THE DEBTORS

MR. MORRIS: Good morning, Your Honor. John Morris, Pachulski Stang Ziehl & Jones, for Highland Capital Management and the Claimant Trust.

I want to be fairly brief because I really want to focus on the evidence. I look forward to Your Honor hearing from

Mr. Seery so that he could clear up a lot of the misleading statements that were just made.

The Court is here today on a gatekeeper function, and we're delighted that the gatekeeper exists. We're delighted that the Court will have an opportunity, after considering evidence, to determine whether or not these claims are actually colorable.

There's -- there were a lot of conclusory statements I just heard. There were a lot of assumptions that were made. There were a lot of misleading statements that were made. At the end of the day, what the Court is going to be asked to do is to decide whether, in light of the evidence, do these claims stand up on their own? And they do not.

And let me begin by saying that I made a mistake a couple of weeks ago. If we can go to Slide 1. I told Your Honor that you were the sixth body to consider these insider trading claims. Based on Hunter Mountain's exhibit list, there is actually one more, and I'll get to that in a moment. So you're actually -- this is the seventh attempt to peddle these claims to one body or another.

The first was Mr. Dondero's 202 petition.

Everything I have here, Your Honor, is footnoted to evidence. Okay?

So, Footnote 1, you can look in the paragraphs of Mr. Dondero's petition, his amended petition, his declaration,

where he makes the same allegations. Again, I misspeak. Not the same allegations. Different versions of the allegations that are being presented today concerning insider trading.

He did it three times. The Texas state court said no discovery. In October of 2021, Douglas Draper wrote an extensive letter to the U.S. Trustee, setting forth the same allegations. You can find them at our Exhibit 5. It's attachment Exhibit A, Pages 6 through 11. Compare them to the allegations that are being made by Hunter Mountain today. The U.S. Trustee's Office took no action.

Mr. Rukavina followed up with the same thing to the same body in November of 2021. You can see where his allegations of insider trading are made and *quid pro quo* and all the rest of it. Again, they took no action.

The one that I don't have on this chart because I didn't -- I made the chart last week and then was unavailable. Mr. Rukavina sent a second letter. And you can find that at Plaintiffs' Exhibit 61. And in Plaintiffs' Exhibit 61, you'll see that Mr. Rukavina sent yet another letter to the U.S. Trustee's Office on May 11, 2022.

And these are all really important, right? The U.S. Trustee's Office has oversight responsibility for matters including claims trading. That's their job. They took three different swings at this. And these are pages of allegations. 6 to 11. 9 to 13. We think it's very important that the

Court look at what was told to the U.S. Trustee's Office. And you're going to hear Mr. Seery testify that Highland has never heard from the U.S. Trustee's Office concerning any of these allegations or any of the other allegations that are set forth in Mr. Rukavina and Mr. Draper's letter. Never. Declined to even initiate an investigation.

Hunter Mountain filed its own 202 petition. It boggles my mind that they try to create distance with Mr. Dondero, because the whole petition, like this whole complaint, is based on Mr. Dondero. He submitted a declaration alleging the same insider trading case, and a second Texas state court said I'm not even giving you discovery. We know that's the result.

But the best is the Texas State Securities Board. I think we're going to hear testimony that Mr. Dondero or somebody under his control is the one who filed the complaint with the Texas State Securities Board. Who would be the better body to assess whether or not there's insider trading than a securities board? I can't imagine there's a better body. They did an investigation. Mr. Dondero could have told them anything he wanted. I'm sure he did. And they wrote in their motion in Paragraph 37 one of the reasons they have colorable claims is the investigation is ongoing.

Much to their dismay, I'm sure, two days before our opposition was due, the Texas State Securities Board said, we've looked at the complaint, we've done our investigation,

and we're not taking any action. You can find that, Your Honor, Footnoted 5 at Exhibit 33.

You are now the seventh body who's being asked -- and you're being asked to do substantially more than any of the other prior bodies were. The Texas state courts were being asked, just let them have discovery. They said no. The U.S. Trustee's Office, charged with the responsibility of looking at claims trading, said, I'm not going to investigate. I know what you've told me. No. The Texas State Securities Board. Insider trading, insider trading. I'm not doing an investigation. I'm not doing anything. And now they want to come here and engage in, you know, in expensive, long litigation over the same claims nobody else would touch.

Can we go to the next slide?

Mr. Dondero's email. Good golly. "Amazon and Apple are in the data room." There's a hundred articles out there that they're putting into evidence that say that. "Both continue to express material interest." There's a hundred articles out there that say that. "Probably a first-quarter event. Will update as facts change."

There will not be any evidence that he ever updated anybody, because that wasn't the purpose of this, as Your Honor will recall. He had an axe to grind.

And I direct your -- I don't direct the Court to do anything -- I ask the Court to take a look at our opposition

to the motion, in Paragraphs 23 to 25, where we cite to extensive evidence, all of which is now part of the record, showing just what was happening, from the moment he got fired on October 10th until the end of the year, with the interference, with the interference, with the threats, with the TRO. It was nonstop.

Was this email sent in good faith by somebody who owed no duty to anybody? Or was it really just another attempt -- and this is why the gatekeeper is so important, because I think that's exactly what this Court is supposed to do: Is this a good-faith claim? Is this a claim that's made in good faith? It can't be. And you know why? You know what's -- you know what's -- I'll just say it now. I won't even save it for cross.

Remember the HarbourVest settlement that they're making so much, you know, about? Mr. Dondero is the tipper. According to him, he gave Mr. Seery inside information. According to him, Mr. Seery abused it by engaging in the HarbourVest transaction. But Mr. Dondero filed an extensive objection to the HarbourVest settlement and never said a word about this, because that wasn't on his mind at the time. The email was sent in order to interfere. And when that failed, he's trying to play gotcha now. It's ridiculous.

He owed no duty to Highland. It would have been a breach of his own duty to MGM to share that information at that

period of time.

The shared services agreement. They don't help him. Mr. Dondero has nothing to do with that. Highland is providing services. He's not providing services to Highland. Highland was providing. We had already given notice of termination. We had already had our plan and disclosure -- we had already had our disclosure statement approved. We were weeks away from confirmation. Please.

And the *Wall Street Journal* article on December 21st at Exhibit 27, that's not your garden-variety *Wall Street Journal* article, because it specifically says that investment bankers were engaged to start a formal process. The investment bankers are identified by name. Something has changed. Anybody could see that.

Yes, there were rumors for a long time. Nobody had ever said there was a formal process. Nobody had ever said investment bankers had ever been hired. Nobody had ever identified those investment bankers. Right? I mean, just the world changed.

If you can go to the next slide.

You know, before I get to the next slide in too much detail, *quid pro quo*. We look at it as *quid*. Did he -- is there any evidence that he actually gave anybody material nonpublic inside information? The answer is going to be no. The *quo* is the relationship. And I'm not going to spend too

much time on that now. But wait until you hear Mr. Seery testify as to the actual facts about his relationship. Because some of what we just heard is mind-boggling, that little -- that little page from the *Blockbuster* case, like, 14 years ago, where Farallon was one of a group of people who Jim Seery never met. Like, the stretch, what they're trying to do is beyond the pale. But I'm delighted to have Mr. Seery sit in the box and answer all the questions they want to ask him about his relationship with Farallon and Stonehill.

But getting to the point, the *quid pro quo*. The *quo* is they fixed his compensation? Are you kidding me? They rubber-stamped his compensation? Highland and Mr. Seery and the board are alleged to have negotiated? There's nothing alleged. There are facts. There is evidence. It is beyond dispute. If you look, just for example, right, they take issue with his salary? The salary was fixed by this Court in 2020. Without objection. He's getting the exact same salary that he ever got.

You'll hear that it's a full-time job. Your Honor knows better than anybody in this courtroom, other than me, perhaps, the litigation burden that's been placed on this man. He has no other income. He doesn't do anything else. This is a full-time job. It's the exact same job that he had when Your Honor approved his compensation package three years ago, without a raise. They didn't give him a nickel more. Not one

nickel. It's outrageous.

The balance of his compensation, of which he has not yet received a nickel, is exactly what this Court would want somebody in Mr. Seery's position to do. It aligns his interests with his constituency. Not with Stonehill. Not with Farallon. With all creditors. The greater the recovery, the greater the bonus. Outrageous, right? Remarkable, isn't it? Only in their world.

If Your Honor can go back to Mr. Rukavina's letter, because this is where it all -- that's where it all starts from. Like, excessive compensation. Mr. Rukavina, I don't know how he did this, why he did it, what it was based on. He actually told the U.S. Trustee's Office that they thought Mr. Seery made $50 million. It's in the letter. $50 million, they told the U.S. Trustee's Office he made. It's footnoted, so you can go find it. It's right there, at Page 14. Quote, Seery's success fee could approximate $50 million.

$8.8 million is what he's making. They think that's excessive? What do they think he should make? Three? Five? We're not going to hear that. But that's what this case is about. You just heard counsel in his opening statement. He literally said the only thing at issue is his compensation. And that has to be the case, because if there was -- if there was no claims trading, UBS and HarbourVest and Acis, right, the Redeemer Committee, they would all still be holding these

claims today.

When Stonehill and Farallon acquired the claims, they were all allowed. There was no debate about what the claims were. If they held the claims today, they would be worth the exact same amount of money, only a different person would be benefitting from it.

So the case actually is only about Mr. Seery's compensation. And they've moved the goalposts, as often happens in this courtroom, from rubber-stamping -- I'll give you what you want. When I hear rubber-stamp, I hear, you make a demand and I'll give it to you. And now they realize, when they see the negotiation -- because it's in evidence, it's just the documents, you can see the board minutes -- what do we, doctor the board minutes and they should get discovery because we doctored the board minutes? The board minutes show a four-month negotiation with an Independent Board member fully involved. It's mind-boggling. It's actually -- well, I'll just leave it at that.

Next slide. Last slide. Let me finish up. Three of the four sellers were former Committee members. Mr. Dondero agreed that Committee members would have access to special nonpublic inside information as part of the protocols, as part of the corporate governance settlement. He agreed to that. These are the people who got abused? These are the people who didn't know what was happening? Committee members and

HarbourVest, probably one of the biggest and most sophisticated funds in the world, didn't know what was happening? They got abused? Stonehill and Farallon took advantage of them?

If you read their pleadings closely, they actually allege, and I don't -- I don't know if there'll ever be any evidence of this -- but they actually allege that -- I forget which -- oh, somebody is an investor in Stonehill and Farallon, and so the theory is one of the sellers is an investor in Farallon. So not only did they abuse, they abused one of their own investors. Like, this is not a colorable claim. This is ridiculous.

None of the claims sellers are here. Sophisticated people who -- who -- right? Mr. Dondero could pick up the phone and say, hey, guys, you got ripped off. You sold your claims when you shouldn't have. They had an unfair advantage.

Nobody's here. Where is anybody complaining? They're not going to because they cut a deal that they thought was good for them at the time. In hindsight, maybe they have regrets. Right? We all have regrets sometimes in hindsight. But that doesn't create a claim.

We've heard so much about what hedge funds would get and how much and is this rational? The fact of the matter is, at the time Mr. Dondero had his phone call on May 28th, UBS had not been purchased, although MGM had already been announced.

So when they talk about MGM, maybe it's the fact -- and this is in evidence -- maybe it's the fact that, two days before, the MGM-Amazon deal actually was publicly announced. It actually was. So maybe when they say, hey, yeah, we like MGM, because, you know, that just -- that just got announced. Maybe that happened.

But at the end of the day, the claims that they bought, if you just look at the claims that were purchased at the time he had the conversation, all Mr. Seery had to do was meet projections and they were going to get $33 million in two years. A 30 percent return in two years. I don't know. That doesn't -- that doesn't sound crazy to me. Doesn't sound crazy to me. It certainly doesn't create a colorable claim, just because they think that Farallon or Stonehill -- there's not going to be any evidence of Farallon or Stonehill's risk profile. There's not going to be any evidence of Farallon or Stonehill's, you know, expected returns. There's not going to be any evidence at all about what due diligence they did or didn't do, other than what comes out of Mr. Dondero's mouth, as usual.

Mr. Dondero -- and let's look at what's going to come out of Mr. Dondero's mouth. He has multiple sworn statements. I'm going to take his notes and they're going to become mine. I'll put him on notice right now. Because those notes bear no relationship to the evolution of his sworn statements over

time.

The first time he mentions MGM in a sworn statement is two years after the fact in Version #5. That's a colorable claim? You want -- you want to oversee a litigation, or maybe it gets removed to the district court, maybe I get lucky to be in front of a jury, and I'll have Mr. Dondero explain how it took him five tries before he could write down the letters MGM. Not a colorable claim. No evidence against Stonehill whatsoever. Zero. Zero. Never spoke to them. There's no colorable claim here, Your Honor.

I'm going to turn the podium over to Mr. Stancil to talk about the law.

THE COURT: Okay.

OPENING STATEMENT ON BEHALF OF JAMES P. SEERY, JR.

MR. STANCIL: Thank you, Your Honor. Mark Stancil, counsel for Mr. Seery. But I'm going to just very briefly address a few legal points. And I actually mean briefly.

THE COURT: Okay.

MR. STANCIL: I'll come back to a good bit of this in closing as time permits.

I heard Mr. McEntire say *Barton* doesn't apply. I would encourage him to start with what the gatekeeping order actually says. Here it is. This is in -- it's in the plan. Your Honor has confirmed it. The question we have in terms of what standard applies is, what does this order mean? Well, we

think that's going to be clear. It's not what they think the word "colorable" would mean in other contexts. It's not what they think they should have to satisfy now that they have a theory. It's, what does this mean?

And we'll get into some of the additional evidence from Your Honor's order at the time, later in closing.

Next slide, please.

But let me just start to say I'm awfully surprised to hear him say that he doesn't believe *Barton* applies, because the order says that it does. This is Paragraph 80 of the confirmation order. It says that the Court has statutory authority to approve the gatekeeper provision under these sections of the Bankruptcy Code. The gatekeeper provision is also within the spirit of the Supreme Court's *Barton* Doctrine. The gatekeeper provision is also consistent with the notion of a pre-filing injunction to deter vexatious litigants that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures*.

So I think it is impossible, and respectfully, Your Honor, it's law of the case. This is what the order is based on. The day for objecting to what's in the confirmation order is long gone.

So let me come back, then -- first slide, please -- and I'll just very briefly give you a little legal framework for what we're going to be arguing to you later in closing.

So, *Barton* does require a *prima facie* showing. That is *Vistacare* and plenty of other cases. That is more than a 12(b)(6) standard, Your Honor. Numerous courts agree. And in fact, as you'll hear us discuss later, Judge Houser's opinion is not to the contrary, because she said explicitly, I'm not applying *Barton*. So anything that they're relying on for what *Barton* requires from that opinion is *dicta*. But we can show you case after case after case, and we will, to show that *Barton* requires evidentiary hearings.

Here's a point, this third bullet here is something I have not heard a single word in all of the briefing and ink that has been spilled and in as long as we've been here this morning, is what is a gatekeeping order doing if all it does is reproduce a 12(b)(6) standard? That's what they say. In fact, they're actually saying it's even lower. Now I think I heard them say it's even lower than a 12(b)(6) standard.

That makes no sense whatsoever. We've just shown you that this gatekeeping order was imposed consistent with *Barton* and vexatious litigant principles. Later I will walk Your Honor through factual findings that you made detailing the vexatious litigation, detailing the abuses. The notion that the gate is the same gate that every other litigant who hasn't demonstrated that record of bad faith is absurd, and it serves no purpose.

And as Mr. Morris described, Hunter Mountain woefully,

woefully violates any *prima facie* showing. And we'll get into a little bit more exactly how that works.

We are going to ask this Court, in addition to ruling that *Barton* applies and that they've failed it, we're going to ask this Court, respectfully, to please consider ruling on multiple independent grounds as well. We know there's a penchant for appeals and appeals upon appeals. So we will argue to Your Honor, although we will largely spare you another rehash of our briefs, but we will explain to Your Honor why they do lack standing to bring this claim as a matter of Delaware law. And there was a lot of fuzzing up about constitutional standing and Delaware law. Not necessary.

If -- we will be happy to rely on our pleadings here, but on Page 27 of the Claimant Trust Agreement, that's what defines their rights under Delaware law, and they were talking about how beneficial owners under Delaware law have standing. Well, are they beneficial owners? They are not. Equity holders -- this is in Paragraph C, Page 27 of the Claimant Trust Agreement -- Equity holders will only be deemed beneficiaries under this agreement upon the filing of a payment certification with the bankruptcy court, at which time the contingent trust interests will vest and be deemed equity trust interests.

They are not beneficial owners of squat. That has not

happened.

And last, Your Honor, we will -- and I will organize this for Your Honor in closing as well -- we would ask you to rule on a straight-up 12(b)(6) standard as an alternative, because we know what's coming on appeal and we think their complaint collapses under its own weight. You heard Mr. Morris detailing their own math shows significant returns. You'll also hear us describe how they have nothing but mere conclusions and naked assertions upon information and belief but unsupported.

Iqbal and *Twombly* would still apply under their 12(b)(6) standard, especially, and perhaps even more with a heightened standard under Rule 9(b), because they're essentially alleging some version of fraud, it sounds like.

They're never going to get there, Your Honor. All we would ask is for a full record to take inevitably, unfortunately, to the Court of Appeals.

And I think Mr. -- I'm not sure which of my colleagues will be speaking briefly for Holland & Knight, but I'll just turn it over to them.

THE COURT: All right. Mr. McIlwain?

OPENING STATEMENT ON BEHALF OF THE CLAIM PURCHASERS

MR. MCILWAIN: Thank you, Your Honor. I'll be even briefer. Brent McIlwain here for the Claim Purchasers.

Your Honor, Mr. McEntire stated to this Court that my

clients have never denied any of this. In fact, in his reply, he says, The Claim Purchasers do not deny that they invested over $163 million. We do not deny that we did not due diligence, we do not deny that we refused to sell our claims at any price, and we do not deny that we invested the claims at what is, at best, a low ROI.

We had no duty to answer to HMIT or Mr. McEntire. We had no duty when we bought these claims to -- we had no duties to any creditor. We had -- it was a bilateral agreement with a third party. And frankly, Your Honor, it's not Mr. Dondero's or HMIT's business what due diligence we did and what information that we obtained.

But I will tell you right now, Your Honor, we were very careful in our pleadings to not bring issues of fact, because this -- HMIT has been chasing my clients, obviously, based on the notes that were presented in the initial PowerPoint, it was a -- it's retribution. It's retribution for not agreeing to sell the claims to Mr. Dondero when he offered to purchase at a 40 percent premium.

And Your Honor, when I look at that note, it's interesting, because I hadn't seen the note, obviously, until it showed up on the exhibit list. When you look at that note, I think it's -- I think it's very interesting. To the extent it was contemporaneous, I don't know. But what it shows, it shows that if you're a hammer, everything's a nail. And Mr.

Dondero is a vexatious litigator. And what did he write down? Discovery to follow.

But my question is this. Who was trying to trade on inside information? Mr. Dondero was offering a 40 percent premium, allegedly, on the cost. What information did he have? Certainly, he had inside information.

My client owed no duty to Mr. Dondero. My client owed no duty to anybody in this estate at the time of these claims purchase.

And Your Honor, we talk a lot about -- or, it's been talked a lot of insider trading. These are claims trades. I think the Court honed in on this from the very get-go. The Court does not have a role in claims trades. There's a 3001 notice that's filed post-claims trade, but there's no requirement that there's Court approval.

And these aren't securities. It's not as if we're trading claims and it could benefit or hurt you based on some equity position that you're going to obtain. We obtained claims that had been settled, they were litigated heavily, and the most that we can obtain is the amount of the claim. And that is, as Mr. Morris stated, all that changed was the name of the claimant. That's all. Because the claims didn't increase in value based on the trade.

Your Honor, our pleadings, I think, speak for themselves in terms of you really -- you really don't have to consider

evidence, from our perspective, to determine that this proposed complaint has no merit and is not plausible and presents no colorable claims.

The gatekeeper provision, and we're going to talk a lot about that today, obviously, right, requires that Mr. Dondero establish a *prima facie* case that the claims have some plausibility. If you can simply write down allegations, file a motion for leave and attach those allegations and say, Your Honor, you have to take all these as true, the gatekeeper has no meaning. There's no point in having a gatekeeper provision.

And in summary, Your Honor, what -- and I think Mr. Morris honed in on this specifically -- this really comes down to compensation. Right? Because this -- the allegation is that my clients purchased claims, presumably at a discount, right, based on some inside information, which we obviously deny, but we don't have to put that at issue today. For what purpose? For what purpose? So we got inside information from Mr. Seery so that we could then scratch his back on compensation on the back-end?

Your Honor, there is no reason that my clients need to be involved in this litigation. If HMIT thinks that this -- that they have a claim against Mr. Seery for excessive compensation, they can -- they could have brought such a gatekeeper motion, or a motion for leave under the gatekeeper

provision, without including my clients. Why did they include my clients? They included my clients because my clients did not sell to Mr. Dondero when he called, unsolicited, to try to get information. It's retribution. And that's what a vexatious litigator does, and that's why the gatekeeper provision is in place.

I'll reserve the rest for closing, Your Honor.

THE COURT: All right. Caroline, what was the collective time of the Respondents?

THE CLERK: Twenty-eight minutes and 37 seconds.

THE COURT: Twenty-eight minutes, 37 seconds.

All right. Well, let's talk about should we take a lunch break now? I'm thinking we should, because any witness is going to be, I'm sure, more than an hour. So can you all get by with 30 minutes, or do you need 45 minutes? I'll go with the majority vote on this.

(Counsel confer.)

MR. MCENTIRE: 1:00 o'clock. 45 minutes.

MR. MORRIS: 40 minutes, whatever. 1:00 o'clock?

THE COURT: We'll come back at 1:00 o'clock.

MR. MORRIS: Thank you, Your Honor.

THE COURT: Okay. Thank you.

THE CLERK: All rise.

(A luncheon recess ensued from 12:19 p.m. until 1:05 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're going back on the record in the Highland matter, the Hunter Mountain motion for leave to file lawsuit.

I'll just let you know that at 1:30 we're going to take probably what will be a five-minute break, maybe ten minutes at the most, because I have a 1:30 motion to lift stay docket. Just looking at the pleadings, I really think maybe one is going to be resolved and it won't be more than five or ten minutes. So whoever is on witness stand can either just stay there, because I think we won't be finished, or you can take a bathroom break or whatever. All right? So, it's video, the 1:30 docket.

All right. So, Mr. McEntire, are you ready to call your first witness?

MR. MCENTIRE: I am, Your Honor.

THE COURT: Okay.

MR. MCENTIRE: May I proceed?

THE COURT: You may.

MR. MCENTIRE: At this time, Hunter Mountain calls Mr. James Dondero.

THE COURT: All right. Mr. Dondero, welcome. If you could find your way to the witness box, I will swear you in once you're there. It looks like you've got lots of notebooks there. Please raise your right hand.

(The witness is sworn.)

THE COURT: All right. Thank you. You may be seated.

MR. MCENTIRE: I'm not familiar with your procedure. Should I approach the -- here to --

THE COURT: If you would, unless you're having --

MR. MCENTIRE: That's fine.

THE COURT: -- any kind of --

MR. MCENTIRE: That's fine. I'm not.

THE COURT: -- knee issues or, you know, sometimes people want to stay seated for that reason.

MR. MCENTIRE: Your Honor, again, my tender of Mr. Dondero as a witness is subject to our running objection on the evidentiary format.

THE COURT: Understood.

JAMES DAVID DONDERO, HUNTER MOUNTAIN INVESTMENT TRUST'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MCENTIRE:

Q Mr. Dondero, would you state your full name for the record, please?

A James David Dondero.

Q With whom are you currently -- what company are you currently affiliated with?

A Founder and president of NexPoint.

Q All right. And I think the Court is well aware, but would

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

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APPELLEE RECORD

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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Counsel for Highland Capital Management, L.P.

you just briefly describe your prior affiliation with -- was it Highland Capital?

A Yes.

Q What was that affiliation?

A President and founder for 30 years, and then to facilitate an expeditious resolution of the estate I handed the reins to three Independent Board members and I became a portfolio manager until October of -- I was an unpaid portfolio manager until October of '20.

Q Thank you, sir. Do you have any current official position with Hunter Mountain Investment Trust?

A No.

Q Can you describe for us, sir, any actual or control you attempt to exercise on the business affairs of Hunter Mountain Investment Trust?

A None.

Q Are you -- do you have any official legal relationship with Hunter Mountain Investment Trust where you can attempt to exercise either direct or indirect control over Hunter Mountain Investment Trust?

A I do not.

Q Did you participate -- personally participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan?

A I did not.

Q As the former CEO of Highland Capital, are you familiar with the types of assets that Highland Capital owned? On the petition date?

A Yes.

Q And have you been monitoring these proceedings and the disclosures in these proceedings since the petition date?

A Yes.

Q Okay. Can you describe generally for me the types of assets on the petition date that Highland Capital owned? The types of assets? Describe the types of assets -- companies, stocks, securities, whatever, whatever you -- however you would describe it.

A There were some securities, but it was primarily investments in private equity companies and interests in funds.

Q Okay. I've heard the term portfolio company. What is a portfolio company?

A A portfolio company would be a private equity company that we controlled a majority of the equity and appointed and held accountable the management teams.

Q Would there be separate management, separate boards, for those portfolio companies?

A Yes.

Q All right. How many portfolio companies were there on the petition date, if you're aware? If you recall?

A Half a dozen, of different sizes.
Q Can you identify the names, if you recall?
A Yes.
Q What are those names?
A Trussway, Cornerstone, some small -- Carey International, CFA, SSP Holdings. Yeah, to a lesser extent, OmniCare.
Q All right.
A Or, um, --
Q In addition to the portfolio --
A Sorry.
Q -- of companies in which Highland Capital would own interests, did Highland also have interests in various funds?
A Yes. I said OmniCare. I meant OmniMax, I think was the name.
Q What type of funds?
A I'm sorry. The funds were usually funds that we were invested in or seeded or managed. So they're things like Multistrat, Restoration, a Korea fund, PetroCap.
Q Are these managed funds by Highland Capital? Or were they?
A Yes. Pretty much, with the exception of PetroCap. We were a minority -- a minority -- a large -- a large minority investor with a sub-advisor.
Q Did Highland Capital Management on the petition date own an interest, a direct security interest in MGM?

A Yes. And I -- yes.
Q Did the various portfolio companies that you've identified, did one or more of those portfolio companies also own MGM stock?
A Yes.
Q Did the various funds that you've identified, did one or more of those funds also own MGM stock?
A Yes. Between -- yes. Between the CLOs, the funds, Highland directly, it was about $500 million that eventually got taken out for about a billion dollars.
Q Okay. $500 million is what you said?
A Approximately. Depending on what mark, what time frame. But ultimately they got taken out for about a billion dollars.
Q Okay. And as a consequence of these investments, significant investment -- first of all, how would you describe that magnitude of investments? Is that a significant investment from the perspective of MGM?
A Yes.
Q As a consequence, what role, if any, did you play in terms of MGM's governance? Were you -- did you become a member of the board of directors?
A Yes. I was a board member for approximately ten years, and myself and the president of Anchorage, between our two entities, we had a majority of the equity in MGM.
Q Okay. If there was a third party, not familiar with the

management of Highland Capital, who had been monitoring these bankruptcy proceedings as you have, was there any way that a third-party stranger to this bankruptcy proceeding could, from your perspective, actually appreciate or identify the -- all the details of the investments that Highland Capital had?

MR. MORRIS: Objection to the form of the question. It calls for speculation. He's not here as an expert today. He shouldn't be allowed to testify what a third party would or wouldn't have thought or known.

MR. MCENTIRE: Well, I'll --

THE COURT: I'll overrule.

BY MR. MCENTIRE:

Q Mr. Dondero?

A The disclosures in the Highland bankruptcy were scant. I think there was six or eight line items listed, the descriptions of which were limited. But it didn't include -- it didn't include a broad listing of all the funds, and it didn't include subsidiaries or any net value or any offsetting liabilities or risks of any of the underlying companies or investments, either.

MR. MCENTIRE: Would you put up Exhibit 3, please?

BY MR. MCENTIRE:

Q Mr. Dondero, we're going to -- do you have a screen in front of you as well?

A Yes.

Q We're going to put up Exhibit 3, and I'm going to ask you some questions about it. First of all, would you identify Exhibit 3?

A It didn't come up on my screen yet.

Q Still not up there?

A Yes. Now it is.

Q Can you identify Exhibit 3, please?

(Discussion.)

Q There we go. Mr. Dondero, would you identify Exhibit 3, please?

A This was an email I sent to Compliance and relevant people to put -- to put MGM on the restricted list.

Q It indicates it was on December 17, 2020. Did you personally author this email?

A Yes.

Q You sent it to multiple individuals, including Mr. Surgent. Was Mr. Surgent an attorney at Highland Capital at the time?

A He was head of compliance for both organizations.

Q Scott Ellington? Is he an attorney? Was he an attorney at the time?

A He's the general counsel of Highland.

Q You also sent it to someone at NexPoint Advisors, Jason Post. Who is Mr. Post?

A Mr. Post was head of compliance at NexPoint Advisors and a

subordinate of Thomas Surgent's.

Q Jim Seery. Mr. Seery, of course. You also addressed it to Mr. Seery?

A Yes.

Q It says, Trading Restrictions Re: MGM Material Nonpublic Information. What did you mean by the term "material nonpublic information"?

A Material nonpublic information is when you have material nonpublic information that the public does not have, and it essentially makes you an insider and restricts you from trading.

Q All right. It says, Just got off a pre-board call.

First of all, you generated this in the ordinary course of your business, did you not?

A Um, --

Q This email.

A Yes.

Q Okay.

A Yes.

Q And --

A Any restricted list. Restricted list items happen all the time in the normal course of business.

Q And you've maintained a copy of this email as well, have you not?

A I'm sure we have one. I don't have it personally.

Q Fair enough. But you're -- you have -- you have access and custody over emails, correct?
A Not any of my Highland emails.
Q But those were left. Right?
A Yes. Yes.
MR. MORRIS: Your Honor, I mean, he's leading the witness at this point, so I'm just --
MR. MCENTIRE: That's fine.
MR. MORRIS: I'm just --
THE COURT: Okay. Sustained.
MR. MORRIS: -- going to be sensitive to it.
THE COURT: Sustained.
BY MR. MCENTIRE:
Q Mr. -- this is a true and accurate copy of the email that you sent, is it not?
A It appears to be.
MR. MCENTIRE: At this time, I would offer Exhibit 3 into evidence, Your Honor.
THE COURT: Okay. I'm looking through what we admitted earlier. Did we not --
MR. MCENTIRE: This already may be in evidence.
THE COURT: Yes. I'm --
MR. MCENTIRE: I don't --
THE COURT: Was there any objection?
MR. MORRIS: There wasn't. I mean, --

THE COURT: I think there was an objection that I overruled.

MR. MORRIS: No. There wasn't. I mean, unfortunately, we've gotten the short end of the stick here, because all of their documents are in evidence, and I got caught short because I'm going to have to do it the old-fashioned way. But yes, this is in evidence.

MR. MCENTIRE: Okay. Fair enough.

MR. MORRIS: Because -- actually got through all of their documents.

MR. MCENTIRE: Fair enough.

THE COURT: Okay. All right.

BY MR. MCENTIRE:

Q So, Mr. --

THE COURT: So it's in evidence.

BY MR. MCENTIRE:

Q -- Dondero, going back to Exhibit 3, it says, Just got off a pre-board call.

Is that the MGM board, a pre-board call?

A Yes.

Q What is a pre-board call?

A It's a pre-board call that usually sets the agenda. And, again, myself and the Anchorage guys, we would move in locksteps, in a coordinated fashion, generally, in terms of agenda and company policy.

Q It says, Update is as follows. Amazon and Apple actively diligencing in the data room.

What was your understanding of -- of -- what was your intent in conveying that information to the recipients?

A The intent was really in the last sentence, or second-to-last sentence, that the transaction was likely to close. Amazon had come back. We had turned Amazon away earlier in the year at $120 a share, and they said they wouldn't be willing to pay more. And --

THE COURT: Is there an objection?

MR. MORRIS: There is an objection. None of this was shared with Mr. Seery, all of this background that we're -- that we're doing. He -- I would request that we stick with the -- only the information that was given to Mr. Seery, like -- like he's talking about his intent. Like, who cares at this point?

MR. MCENTIRE: Well, --

MR. MORRIS: This is what Mr. Seery got.

THE COURT: Okay. What is your response to that?

MR. MCENTIRE: I have a response to -- well, they've -- they've questioned his intent in sending this in his opening statement.

MR. MORRIS: Ah.

MR. MCENTIRE: And I'm trying to make it clear what his intent was.

MR. MORRIS: So, you know what, Your Honor? *Quid pro quo*. Now we're going to do a real *quid pro quo*. He can ask him about his intent, and then he can't object to all of the other documents and exhibits that I say prove that this was here only to interfere with Mr. Seery's trading activity. I'll do that *quid pro quo*.

MR. MCENTIRE: May I proceed, Your Honor?

THE COURT: You may. Objection is overruled.

BY MR. MCENTIRE:

Q Mr. Dondero, what was your intent in communicating --

A Okay.

Q -- that probably a first-quarter event? What was your understanding?

A After 30 years of compliance education: Taint one, taint all. We were all sitting together. I -- the trading desk was right outside my desk. All the employees of Highland that would eventually move to NexPoint, all the ones that would eventually move to Skyview, all the ones that eventually moved to Jim Seery, were all within 30 feet of my desk.

Q What do you mean by "Taint one, taint all"?

A That's a compliance concept that, as a professional, you have a responsibility, when you are in possession of material nonpublic information, to put something on the restricted list so that it's not traded. Okay? And you can't -- one person can't sit in their cube and say they know something and not

tell anybody else, such that the rest of the organization trades. That's not the way compliance works.

Q It says also no -- also, any sales are subject to a shareholder agreement.

What was the meaning of that or the intent of that?

A There was a stringent shareholder agreement, particularly among the board members, that no shares could be bought or sold without approval of the company.

Q The company here being MGM?

A MGM, yes.

Q What is a restricted list?

A A restricted list is when you believe as an investment professional that you have material nonpublic information, you notify Compliance, and then Compliance notifies the entire organization and prevents any trading in that security.

Q You mentioned the doctrine taint one, taint all. If an individual or -- if an individual within a company setting is found to have traded on material nonpublic information, what is the potential consequence or sanction?

MR. MORRIS: Objection, Your Honor. This is like a legal conclusion. He's not a law enforcement officer. He's not a securities officer. What are we doing?

MR. MCENTIRE: I can rephrase.

THE COURT: Okay. He's going to rephrase.

BY MR. MCENTIRE:

Q Based upon your years -- based upon your years of experience as a board member of MGM, based upon your years of experience as a CEO of Highland Capital and an executive that trades in securities and has sold securities, what is your understanding, from a non-legal perspective, of what the risks are associated with trading on material nonpublic information?
A You could be -- you would be fired from the organization if you did. You could be banned from the securities industry. The industry can shut down the -- or, the SEC can shut down the advisor or they can fine the advisor.
Q Do you know what a compliance log is?
A Yes.
Q Should MGM have been placed on a compliance log at NexPoint?
A Throughout the organization -- throughout the organization, it should -- it should and it was on all -- at all organizations, yes.
Q Should it have been placed on a -- on a compliance log to Highland Capital, from your perspective?
A Yes.
Q Can you give us any explanation of why, to your knowledge, why MGM would be taken off the restricted list in April of 2021 at Highland Capital?
A When an investment professional puts something on the restricted list, in order for it to come off the restricted

list, the material nonpublic information has to be public. So there has to be a cleansing that occurs by the company.

Q To the extent that you were no longer affiliated with Highland Capital in the early portion, the first quarter of 2021, does that somehow cleanse the material nonpublic information that you identified?

A It does not.

Q Why not?

A Because the -- it -- the company hasn't -- the company didn't come out and make public the information that we knew from a private perspective that the transaction was about to go through.

Q You sat here during opening statements when Mr. Morris referred to the various news coverage and media coverage concerning MGM and the fact that people had expressed interest in buying in the past?

A Yes. And at the board level, we had entertained numerous ones. There were rumors that had no basis in fact, and there were negotiations we had with people that were never in the news. But none of them got to this degree of certainty where it was going to close within a couple months.

Q From your perspective as an investment professional, with the years of experience that you described for the Court, what is the difference between receiving an email from a board member such as yourself and rumors or suggestions of possible

sale in the media?
A I knew with certainty from the board level that Amazon had hit our price, agreed to hit our price, and it was going to close in the next couple months.
Q That's not rumor or innuendo; that's hard information from a member of the MGM board?
A Correct.
MR. MCENTIRE: All right. You can take that down, please, Tim.
BY MR. MCENTIRE:
Q I want to talk a little bit about due diligence. When you were the chief executive officer of Highland Capital, --
A Yes.
Q -- can you tell us whether Highland Capital ever involved itself in the acquisition of distressed assets?
A Yes. We did a fair amount of investing in distressed assets.
Q What is a distressed asset?
A It's something that trades at a discount, where the certainty and the timing of realizations or contractual obligations is uncertain.
Q Is a -- well, let me back up. Has Highland -- did Highland Capital ever invest in unsecured claims in connection with bankruptcy proceedings?
A Yes.

Q And in terms of the -- on the spectrum of risk, where does an unsecured creditor claim in a bankruptcy proceeding kind of rank in terms of the uncertainties or risk, from your perspective?

A It's high risk. It's a -- yeah, it would be highly-distressed, generally.

Q Explain to us -- I know the Court is very familiar with claims trading. Explain to us from your perspective as an investment -- a seasoned investment expert or executive what those risks are. What types of risk are associated with such an investment?

A You have to evaluate the assets tied to the claim specifically. Or if it's an unsecured in general, the assets in general in the estate.

You have to handicap the realization that a distressed seller might not get full value for something. You have to handicap the likelihood around that. And then you have to handicap the timing, and then you have to handicap the expenses and the other obligations of the estate, and then handicap risk items that aren't known or that are difficult if not impossible to underwrite, like unknown litigation or last-minute litigation or claims or something.

Q And all these handicapping, this handicapping process, how does that impact the price or the investment that you're willing to make? Generally?

A Generally, you put a much higher discount rate. You know, like if you would do debt at 10 percent and a normal public equity at a 15 percent return, you would do distressed or private equity investing at a 20, 25 percent return expectation to offset the risk and the unknowns.

Q In order to handicap an investment in an unsecured creditor's claim appropriately to reach an informed decision, what type of data would you need to have access to?

MR. MORRIS: Objection to the form of the question. He's not here as an expert. He's here as a fact witness. He should -- he should limit himself to that instead of talking about what investors should be doing.

MR. MCENTIRE: Well, Your Honor, with all due respect, he's here as the former CEO of Highland Capital. He has experience, firsthand knowledge experience, and he also has expertise because of his education, his career, and training.

And again, there's no limitation here under the Rules about what type of information I can elicit from him in this proceeding. This is, whether you call it expert testimony, I call it personal knowledge, but it has some expert aspects to it, but I think that's fair and appropriate.

THE COURT: Well, I think you can ask what kind of data would you rely on, would Highland Capital or entities he's been in charge of rely on, --

MR. MCENTIRE: I understand.

THE COURT: -- but not what would people rely on. So I sustain the objection partially.

MR. MCENTIRE: All right.

BY MR. MCENTIRE:

Q Mr. Dondero, I'll rephrase the question. When you were the chief executive officer of Highland Capital before Mr. Seery took the reins, and you, your company, Highland Capital, was investing in an unsecured creditor's claims, what due diligence, what type of information would you expect your team to explore and investigate?

A Sure. Distressed investment in a trade claim would be among our thickest folders, it would be among our most diligenced items, because you have those three buckets, the value of the assets, again, and the ability and timing of monetization of those as a not strong -- as a weak seller, and then you would have the litigation or claims against those, and then you would have to also have a third section of analysis for the litigation risk of the estate overall.

Q What type of legal analysis or legal due diligence would you have required as the CEO of Highland Capital?

A At Highland, we would have had third-party law firms, in addition to our own legal staff, in addition to our own business professionals, reviewing all the analysis and the assumptions.

Q With regard to a financial analysis, what types of financial due diligence would you have required?

A It would have been a detailed -- a detailed analysis of all the cash flows on the particular underlying investments, and an evaluation and valuation of what those companies or investments were worth.

Q Why is it important to look at the underlying value of the asset?

A Because that -- those are what will be monetized in order to give you a return on the claims or securities that you buy in a distressed situation.

MR. MCENTIRE: Tim, would you please put up Exhibit 4?

MR. MORRIS: Your Honor, I don't mean to be monitoring your time, but we're at the 1:30 --

THE COURT: I was just checking the clock here. Let's do take a break. So, --

MR. MCENTIRE: All right.

MR. MORRIS: Your Honor, can we have an instruction to the witness not to --

THE COURT: Yes.

MR. MORRIS: -- look at his phone and not to confer with anybody? Because we had that incident once before.

THE COURT: Okay. Well, I don't --

THE WITNESS: I don't have my phone.

THE COURT: Okay.

THE WITNESS: My phone's at the front desk.

THE COURT: So, no discussions with your lawyers or -- I guess he doesn't have his phone -- during this break.

MR. MORRIS: Thank you, Your Honor.

THE COURT: All right. So, I really think this will take five minutes, so don't go far.

(Off the record, 1:33 p.m. to 1:47 p.m.)

THE COURT: Okay. We will go back on the record, then, in the Highland matter.

MR. MCENTIRE: I'm just going to grab him right now.

THE COURT: Okay. We are, for the record, waiting on Mr. Dondero to take his place again on the witness stand.

(Pause.)

THE COURT: All right, Mr. Dondero. We're ready for you to resume your testimony.

All right. Mr. McEntire, you may proceed.

MR. MCENTIRE: Thank you, Your Honor.

DIRECT EXAMINATION, RESUMED

BY MR. MCENTIRE:

Q Mr. Dondero, when we left off, I was just putting up what I requested as Exhibit 4.

MR. MCENTIRE: And Tim, if you can put that back up, please.

BY MR. MCENTIRE:

Q Mr. Dondero, can you identify Exhibit #4, please?
A Yes. These are notes I took contemporaneous with three conversations with guys at Farallon.
Q I didn't quite hear you. Did you say contemporaneous?
A Yes.
Q So, you say with three conversations. Who were the conversations with?
A One was with Raj Patel that was fairly short, and he deflected me to Mike Linn, who was the portfolio manager in charge and had done the transactions.
Q Which transactions?
A The buying of the claim, the Highland claims.
Q All right. And what was your purpose in making these notes?
A We'd been trying nonstop to settle the case for two-plus years. We'd been counseled that it was a Kabuki dance that would just, you know, all settle at the end, and it never quite happened that way. And when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case.
The ownership was initially hidden, but we were able to find out pretty quickly that Farallon was Muck. So I reached out the Farallon guys.
Q All right. And were you ever able at that time to determine who was affiliated with Jessup, the other special-

purpose entity?
A We -- initially, we thought Farallon was all of the entities. We didn't find out about Stonehill -- it was more difficult and they had taken more efforts to hide the ownership in Stonehill. We didn't find out for two more months.
Q So your first conversation was with Mr. Patel?
A Yes.
Q And did you call him?
A Yes.
Q Your first entry, there's a 28 on the left-hand side. What does that 28 refer to, if you recall?
A That was the date, I believe.
Q Do you believe it was May 28th?
A Yes.
Q What makes you believe that?
A That's what it says.
Q Okay. Raj Patel --
THE COURT: Is there a way you can show the words that are cut off?
MR. MCENTIRE: On this particular one, I can't, Your Honor. We tried, but we can't. No.
THE COURT: If I look in the notebook, can I see it?
MR. MCENTIRE: I don't think so. I think this is -- what you see is exactly what's in the notebook. It's the same

document. This is how -- how we -- this is how we have it.

BY MR. MCENTIRE:

Q Mr. Patel. Who is Mr. Patel?

A He's Mike Linn's boss. He's head of -- I believe head of credit at Farallon.

Q Okay. And Farallon is based where, if you know?

A San Francisco.

Q And what kind of company is Farallon, if you know?

A They -- they look a lot like Highland. Well, they do real estate. They do hedge funds. They do -- they don't do as many 40 Act or retail funds, but they're -- they're an investor.

Q Mr. Patel. What did he tell you during this phone call?

A That he bought it because Seery told him to buy it and they had made money with Seery before.

Q All right. And how long did the call last?

A Not long.

Q Okay. You said he referred you to Mr. -- who was the person?

A To Mike Linn.

Q Who is Mike Linn?

A Mike Linn is a portfolio manager that works for Mr. Patel.

Q And did you call Mr. Linn?

A Yes.

Q All right. The notes here, do these reflect several

conversations?
A The first one reflects a conversation with Raj Patel, and then the rest of it reflects two conversations with Mike Linn.
Q All right. Where does the first conversation with Mike Linn start and where does it end?
A It ends -- it begins at the 50, 70 cents. We knew that they had -- that the claims had traded around 50 cents. And I said we'd be willing to pay 70 cents. We'd like to prevent the $5 million-a-month burn. We'd like to buy your claims.
Q Why 70 cents? What was -- what was that all about?
A I was trying to give them a compelling premium that was still less than I had offered the UCC three months earlier.
Q And so you have: Not compelling, Class 8. What does that mean?
A He said that was -- he just said 70 cents wasn't compelling.
Q There's a reference to: Asked what would be compelling. Was that a question you asked him?
A Yes.
Q And what was his response?
A He said he had no offer. And he -- we had heard he paid 50 cents and I offered him 70 cents and then -- but he was clear to me that he wouldn't tell me what he paid. And so the next time I called him I -- I -- instead of just making it cents on the dollar, I said I'd pay 130 percent of whatever he

did pay. You don't have to tell me what you paid, but I'll pay you 30 percent more than you paid, you know, a couple months ago. And -- or we thought they notified the Court when they just bought it, but they had actually negotiated buying it back in February. January or February. So --

Q Who told you that they bought it in February or March time frame?

A He did.

Q Okay. Was this during the first or the second phone --

MR. MORRIS: I apologize for interrupting. Who's the "he"?

MR. MCENTIRE: Mike Linn.

THE WITNESS: Mike Linn.

MR. MORRIS: Thank you so much.

MR. MCENTIRE: I'll make sure the record --

BY MR. MCENTIRE:

Q Mike Linn --

A Yes.

Q -- told you that Farallon had bought their interest in the claims back in the February or March time frame?

A Yes.

Q All right. Bought assets with claims. What does that refer to?

A He said it wasn't compelling because he said Seery told him it would be worth a lot more. He -- he confirmed what Raj

said, that -- I said, do you realize the estate is spending $5 million a month on legal fees? That, you know, you should want to sell this thing. And he said Seery told him it was worth a lot more and there were claims and litigation beyond the asset value.

Q You offered him 40 to 50 percent premium. What is that?

A That's what the 70 cents on the 50 cents represents. And then I changed the dialogue to I'll pay you 130 percent of whatever your cost was. And he said, not compelling. And then I, both -- both calls, I pressed him, what price would he offer at? And he said he had no offer, he wasn't willing to sell.

Q The 130 percent of cost, not compelling, was that in the second or the third call with Mr. Linn?

A It was at my third and final call with Farallon. My second call with Mike Linn was the 130 percent of cost.

Q And he said not compelling? You put it in quotation marks?

A Yep.

Q And then you said, no counter. What does that mean?

A He wouldn't -- he wouldn't give an offer, he wouldn't give a price at which he would sell.

Q What did Mike Linn tell you, in effect, with regard to his due diligence that Farallon had undertaken?

A When I -- when I told him about the risks and the

litigation and the burn, he said he wasn't following the case, he wasn't aware of it, he was depending on Jim Seery.

Q What, if anything, did Michael Linn tell you about MGM?

A That was more the initial Raj Patel call, where he said we bought it because he was very optimistic regarding MGM.

Q Okay. Did you have any understanding when he first got his optimism about MGM?

A No. He just said that's why they had bought it initially, they were very optimistic about MGM.

Q That's why they had bought it initially?

A Yes.

Q And they had bought it initially in the February-March time frame?

A Yes.

Q And that -- would you -- does that predate the public disclosure of the MGM sale to Amazon?

A Yes.

Q Substantially by a couple of months?

A Yes.

Q I'd like to turn your attention now to a different topic.

MR. MCENTIRE: And Tim, if you could pull up Exhibit 8, please.

I believe this document is already in evidence, Your Honor.

THE COURT: 8 is?

MR. MCENTIRE: Oh, by the way, I offer Exhibit 4 into evidence.

BY MR. MCENTIRE:

Q Let me ask you a couple quick questions.

THE COURT: Is there an objection?

MR. MORRIS: Nope.

THE COURT: Okay. 4 is admitted.

(Hunter Mountain Investment Trust's Exhibit 4 is received into evidence.)

BY MR. MCENTIRE:

Q Exhibit 8.

MR. MORRIS: I apologize, Your Honor. Just one caveat. It's not for the truth of the matter asserted; it's for what his impressions were at the time.

MR. MCENTIRE: Well, --

MR. MORRIS: This is what he wrote down. I don't --

MR. MCENTIRE: I'm offering it for the truth of the matter asserted.

MR. MORRIS: Okay. And I object to that extent. This --

MR. MCENTIRE: Let me --

MR. MORRIS: Can I *voir dire*? Can I *voir dire*? May I do --

MR. MCENTIRE: May I finish my statement that I was --

THE COURT: Let him finish, and then --

MR. MCENTIRE: Thank you.

THE COURT: -- you can.

MR. MCENTIRE: I am offering it for the truth of the matter asserted because these are documents that were prepared contemporaneously, it's an exception to the hearsay rule and reflects admissions of a -- of an adverse party. Admissions that are adverse to their interests. Declarations of interest adverse to their interest and admissions of an adverse party contemporaneously recorded. And so that's why I'm offering it.

MR. MORRIS: For all purposes?

THE COURT: Okay. Let me have you point me to the exact hearsay exception. I understand this hearsay exception you're arguing for the hearsay within the hearsay, the party opponent exception. But it's technically hearsay of Mr. Dondero, even though he's here on the stand.

MR. MCENTIRE: Well, I could lay a foundation, then.

BY MR. MCENTIRE:

Q Mr. Dondero, --

THE COURT: Well, no. I'm asking for what your --

MR. MCENTIRE: It's --

THE COURT: -- rule reference is.

MR. MCENTIRE: I don't have the Rules with me right this second. It's 803(1) --

(Discussion.)

MR. MCENTIRE: All right. Well, it's -- it's admissible under several categories. It's not hearsay because it's an admission of a party opponent. It's also an admission under 803(1), present sense impression. It's also admissible --

THE COURT: So you say it's Mr. Dondero's statement describing or explaining an event --

MR. MCENTIRE: Yes.

THE COURT: -- or admission made while or immediately after the declarant perceived it?

MR. MCENTIRE: Yes. It's also a record of a regularly-conducted activity, which is 803(6). And I think it's also not technically hearsay because it's also an admission of a party. So, this --

THE COURT: Well, that's the hearsay within the hearsay.

MR. MORRIS: Yeah.

THE COURT: But I'm -- I'm --

MR. MORRIS: That can't possibly be right. I can't go back to my hotel right now and write down that he told me that he did a bad thing and come in here tomorrow and say he admitted he did a bad thing because it's in my notes.

MR. MCENTIRE: Well, --

MR. MORRIS: That's can't possibly be the law.

MR. MCENTIRE: Well, --

MR. MORRIS: That's not the law.

MR. MCENTIRE: There are two hearsay issues here. One is whether this is a business record or otherwise qualifies as an exception to the hearsay rule, and then there's an internal hearsay issue of whether or not what Mr. Patel and Mr. --

THE COURT: You haven't established the business record exception. Okay?

MR. MCENTIRE: I'm prepared to lay the foundation right this second. At this moment.

THE COURT: You may proceed.

BY MR. MCENTIRE:

Q Mr. Dondero, is this a document that was generated by you in the ordinary course of your business?

A Yes.

Q Did you have personal knowledge when you recorded this document?

A Yes.

Q You personally recorded this document, correct?

A Yes.

Q And you have had custody of this document. Correct?

A Yes.

Q And this is --

MR. MCENTIRE: That's a -- that's a business record,

Your Honor.

MR. MORRIS: May I, Your Honor?

THE COURT: You may.

MR. MORRIS: Okay.

VOIR DIRE EXAMINATION

BY MR. MORRIS:

Q Where's the document now? How come it's -- how come it's cut off?

A I don't know.

Q Do you have the document today? How come we're looking at a document that's cut off?

A I'm sure we have it somewhere. I don't have it.

MR. MORRIS: So, number one, Your Honor, we don't have the actual document. We have a partial document.

Number two, let's talk about it for a second.

BY MR. MORRIS:

Q You say that you do this in the ordinary course of business. What's the purpose of taking these notes?

A When I'm starting negotiation with somebody new on something complicated and I don't know what their concerns or rationale is going to be, I take little notes like this.

Q And is it -- is it the purpose of it to capture the important things that are going on in the conversation?

A So I know next time how to address it differently, you know.

Q That's not my question. My question is, is the purpose of taking notes so that you have a written record of the important points that you discussed?
A Yes, so I know how to address it the next time.
Q Okay. And among the important points that you never put down on these notes was the letters MGM. Is that correct?
A Correct.
Q Okay. And you never put down here that Michael Linn told you he wasn't following the case, correct?
A No, I did not.
Q Okay.
A But it was --
Q And --
A Yeah. But I --
Q That --

MR. MORRIS: Your Honor, if this is --

MR. MCENTIRE: (faintly) This is *voir dire* of the witness for a business record exception.

MR. MORRIS: No, because --

THE COURT: Overruled.

MR. MORRIS: Thank you.

BY MR. MORRIS:

Q Mr. Patel wouldn't tell you how much he paid and that's why you didn't write it down, right?
A Mr. Patel told me he bought it because of Seery. My

conversation was very short with him. That was one of the few things he said. Linn said he wouldn't sell it because he didn't find it compelling.

Q Okay.

A And Linn was the one who wouldn't tell me --

Q Okay.

A -- the price.

Q But -- but even though you took these notes to write down things that you thought were important, you didn't write down MGM. Correct?

A Yes.

Q And you didn't write down that anybody was very optimistic about MGM. Correct?

A No, I did not.

Q And you didn't write down that Mr. Linn told you he wasn't following the case. Correct?

A Well, he said the same thing Patel said about he bought it because of Seery. He did confirm that. I didn't see any reason to write that again.

Q You didn't -- you never wrote it down. Not once. Not -- there's nothing about again, right. You never wrote down that --

A No, I did write --

Q -- anybody ever told you they weren't following the case. Correct?

A Correct.
Q Okay.
A But I wrote down that he bought it because of Seery.
Q Okay.

MR. MORRIS: Your Honor, no objection. It can go in.

MR. MCENTIRE: Okay.

THE COURT: Wait. Did you just say no objections?

MR. MORRIS: Except -- except for the hearsay on hearsay. It can't possibly be an admission. It's his -- it's his notes. This is what he wrote. It can come in for that purpose. It's -- it's a -- that's what he's testified to, and I can't object to that. But it can't possibly come in as an admission against Farallon.

MR. MCENTIRE: Well, I disagree.

MR. MORRIS: That's the point.

MR. MCENTIRE: Well, first of all, I disagree. This is otherwise admissible, and it can come. I think that's really, Your Honor, that's really the weight it's going to be given. It comes in. He's not making an objection to its admissibility. And if he wants to argue the weight of the document, that's a different issue.

MR. STANCIL: Your Honor, if I may.

THE COURT: You may.

MR. STANCIL: The second layer of hearsay goes to whether this is a statement by Farallon. It is a statement by

Mr. Dondero of what he heard, what he says he heard Farallon say. 801(d) refers to, when they're talking about an opposing party statement, made by the party, not made by a listener who says he heard the party. This is classic hearsay within hearsay. It's not admissible for that purpose.

THE COURT: Okay. I sustain the objection, and -- but I'm still struggling to understand what the Respondents have agreed to. Because --

MR. MORRIS: That -- that this is what he claims to have written down. I mean, right? So, so --

THE COURT: Okay.

MR. MORRIS: -- a present sense impression.

THE COURT: So, it is admitted as Mr. Dondero's present sense impression, but it's not admitted as to the truth of anything that Claims Purchasers may have said.

MR. MORRIS: And -- and the --

THE COURT: That's what you're saying?

MR. MORRIS: Yes. And the most important thing is that he's testified that the purpose of the notes was to capture the things that were important that he was told. And we've established what he wasn't told.

MR. MCENTIRE: Okay. I believe the document is in evidence, Your Honor.

THE COURT: Exhibit 4 is in evidence. But, again, there's no admission in here as to what Claims Purchasers

testified as to.

MR. MCENTIRE: Well, they haven't testified yet because --

THE COURT: This is what he --

THE DEFENDANT: I understand. I understand.

THE COURT: -- he says he remembers.

MR. MCENTIRE: Okay. So, --

THE COURT: It's sort of an --

MR. STANCIL: Your Honor, just so we're clear for our record, this is not admitted for the truth of what Farallon is purported to have said.

MR. MCENTIRE: Correct.

THE COURT: Correct.

MR. MCENTIRE: This --

MR. STANCIL: Thank you.

MR. MCENTIRE: This is offered for the truth of what Mr. -- Mr. Dondero recalls them saying.

THE COURT: Okay.

MR. MCENTIRE: In part.

THE COURT: I think -- I think we're on the same page now. I think. I think.

(Hunter Mountain Investment Trust's Exhibit 4 is received into evidence.)

MR. MCENTIRE: All right. May I proceed, Your Honor?

THE COURT: You may.

MR. MCENTIRE: Can you please put up Exhibit 8, please? And I believe this document has been put into evidence --

THE COURT: It is.

MR. MCENTIRE: Thank you.

BY MR. MCENTIRE:

Q Mr. Dondero, this document is a -- part of a -- the Court's docket. It was filed on February 1, 2021, if you could go to the top upper banner. It's Debtors' Notice of Filing of Plan Supplement of the Fifth Amended Plan of Reorganization of Highland Capital Management, as Modified.

Do you see that?

A Yes.

Q I'll direct your attention, --

MR. MCENTIRE: If you could go to Page 4, please, for me, Tim.

BY MR. MCENTIRE:

Q Page 4 has a schedule, a plan analysis and a liquidation analysis. Do you see that?

A Yes.

Q All right. For Class 8, what does it identify that is being projected for distributions to the general unsecured claims for Class 8?

A 71.3 percent.

Q What percentage is being identified that will be

distributed to Class 9?

A 9, no distribution.

Q No distribution? All right. Mr. Dondero, in Paragraph -- I'm going to give you a piece of paper.

MR. MCENTIRE: Can you just give me a piece of paper real quick?

BY MR. MCENTIRE:

Q I'm handing you a piece of paper and I'm --

A Okay. Thank you.

Q Mr. Dondero, in our complaint in this case, the proposed complaint in this case, we allege that Class 8 had a total of $270 million, the claims that were purchased by Farallon and Stonehill had a face value in Class 8 of $270 million. Would you write that number down?

And assuming that this was public information that was available in February of 2021 at 71.32 percent, --

MR. MORRIS: Objection, Your Honor. That's an assumption not in evidence. He hasn't laid a foundation for what was available in February in 2021.

BY MR. MCENTIRE:

Q Mr. Dondero, according to --

THE COURT: Wait. Are you going to respond, or are you just going to --

MR. MCENTIRE: I'll rephrase the question.

THE COURT: -- rephrase? Okay.

BY MR. MCENTIRE:

Q According to the document that is identified as Exhibit #8 that says that 71.32 percent is the anticipated projected payout on Class 8 claims, what is 71.32 percent of the face value of the claims that were purchased?

A About $192 million.

Q $192 million? And assuming for a moment that, as alleged by Hunter Mountain in this case, that $163 million was actually used to purchase the Class 8 claims, what is the difference?

A About $30 million.

Q A little less than that, isn't it? Or is the number --

A Yeah. $28 million or whatever.

Q $28 million? And based upon your years of experience in running Highland Capital, being involved in the purchase of unsecured claims, being involved in investigating and acquiring distressed assets, that return over a two-year period, is that the kind of return that a hedge fund would typically -- you would expect to receive?

MR. MORRIS: I just want to make sure that -- because the question changed a little bit in the middle. If he wants to ask him if he would have made the investment, that's fine. But he should not be permitted to testify as to what any other investor, including the ones who purchased these claims, would have done. Every -- there's different risk profiles. He can

testify to whatever he wants about himself.

THE COURT: Sustained.

BY MR. MCENTIRE:

Q Go ahead. Based upon your experience at Highland Capital, would Highland Capital have ever acquired those claims based upon that kind of return over two years? For a distressed asset such as this?

A No.

Q Why not?

A It's below a debt level return that you could get on high-rated assets with certainty. It's --

Q What do you mean by it's below -- below a debt return that you could get on collateralized assets? What do you mean by that?

A I think in this case the debt that the Debtor put in place paid 12, 13 percent and was triple secured or whatever. So no one would buy the residual claims for an 8 percent compounded, whatever that $28 million works out to.

MR. MORRIS: I move to strike, Your Honor. He shouldn't be talking about or testifying to what other people might do.

THE WITNESS: Well, we --

THE COURT: This is --

THE WITNESS: We would never have done that.

THE COURT: This is --

MR. MCENTIRE: He would not have.

THE COURT: -- Highland, not nobody. Okay.

BY MR. MCENTIRE:

Q Mr. Dondero, and what is it about the fact that these claims are not collateralized that impacts the decision-makers, from your perspective?

A You have all the risk that the $205 million of expenses this estate has currently paid grows to $300 or $400 million. You know, you have the risk that other litigation regarding Seery violating the Advisers Act --

MR. MORRIS: I move to strike, Your Honor.

THE WITNESS: -- results in --

THE COURT: Sustained.

THE WITNESS: -- expenses.

BY MR. MCENTIRE:

Q Just respond to my question, sir. What does the fact about not being collateralized, how does that impact the decision-maker's --

A Well, I was trying to answer it. You just have all kinds of residual risk of bad acts that have happened at the estate or expenses increasing or whatever.

MR. MORRIS: I move to strike the phrase "bad acts," Your Honor.

THE COURT: Overruled.

BY MR. MCENTIRE:

Q What did you mean by that? What did you mean by "bad acts"?

A We've highlighted it in a lot of complaints. There's been several violations of the Advisers Act.

MR. MORRIS: Move to strike, Your Honor. It's a legal conclusion.

THE COURT: Sustained.

BY MR. MCENTIRE:

Q Mr. Dondero, are you familiar with an entity known as NHF?

A Yes.

Q What is NHF?

A A NexPoint hedge fund. It was a closed-in fund that we manage still to this day at NexPoint. The name has changed to NXDT.

Q Was NHF publicly traded?

A It -- yeah, it's a publicly-traded equity. It's a closed-in fund, technically, but it's a publicly-traded security.

Q What -- what is your affiliation with NHF?

A I'm the portfolio manager.

Q And, again, what are your responsibilities as the portfolio manager?

A To optimize the portfolio and hopefully exceed investor expectations.

Q Have you become aware that Stonehill was purchasing MGM stock in the first quarter of 2021? And NHF?

A Yes. We believe -- we're able to demonstrate from Bloomberg records, on the Bloomberg terminal, they show up as holders and purchasers in the -- in the first few months of 2021.

Q What magnitude?

A I think it was one of their top equity positions. It was about six million bucks.

MR. MCENTIRE: Can you put up the chart? This is for demonstrative purposes only.

I'm not offering this chart into evidence, Your Honor. It's simply a demonstration. Or a demonstrative.

MR. MORRIS: Your Honor, there's no such thing.

MR. MCENTIRE: There is.

MR. MORRIS: A demonstrative has to be based on evidence. A demonstrative is supposed to summarize evidence. You don't put up a demonstrative until --

THE COURT: All right. What's your response to that?

MR. MCENTIRE: That I'm about to walk through some points where he can establish as a point of evidence, and then we can talk about it. Demonstratives, demonstratives are used all the time, Your Honor.

MR. MORRIS: It's to --

THE COURT: Well, they summarize evidence.

MR. MORRIS: It's to summarize evidence.

THE COURT: Yes. So, --

MR. MCENTIRE: Well, this is --

THE COURT: -- you can elicit the evidence, and then if this chart seems to summarize whatever he testifies as to, then --

MR. MCENTIRE: All right.

THE COURT: -- then I think maybe you can put it up.

MR. MCENTIRE: Mr. -- you can take it down, Tim.

BY MR. MCENTIRE:

Q Mr. Dondero, do you have an understanding of how much total distributions have been paid to date in the Highland bankruptcy?

A I believe the Class 8 -- the 1 through 7 was only about $10 million. I believe Class 8 got $260 or $270 million so far.

Q All right. And do you have an understanding of what the total amount of expenses are?

A Total expenses paid to date was $203 million. $205 million.

Q So the -- the -- there's a rough approximation between the professional expenses and the actual all proofs of claim; is that correct?

A There is, yeah, a ratio, and -- yes.

Q The total cash flow, if you add those two together, what are they? What are they approximately?

A $470 million.

Q $470 million? And do you understand that the -- that the Reorganized Debtor and the Claimant Trust would have more than sufficient assets to reach Class 10 where Hunter Mountain is currently located, even setting aside the claims against you?
A Correct. There's $57 million of cash on the balance sheet, net of a couple million today, I guess. And then there's $100 million of other assets.
MR. MCENTIRE: Reserve the rest of my questions. Reserve the rest of my questions, Your Honor.
THE COURT: Okay. Pass the witness.
MR. MCENTIRE: Could I have my time estimate?
THE COURT: Yes. Caroline?
THE CLERK: (faintly) As of right now, we are at 81 minutes, so --
MR. MCENTIRE: Thank you.
THE COURT: That was 81 minutes total?
THE CLERK: Yes.
THE COURT: Okay.
MR. MORRIS: May I proceed, Your Honor?
THE COURT: You may.

CROSS-EXAMINATION

BY MR. MORRIS:
Q Good afternoon, Mr. Dondero.
A Good to see you.
Q My pleasure. Do you know an attorney named Ronak

(phonetic) Patel?
A Is that Rakhee that they call --
Q Could be. Do you know an attorney named Rakhee Patel?
A There was a Rakhee Patel, I believe, early in the *Acis* case.
Q Let me try --
A I'm not -- I've never met her.
Q Let me try this differently.
A Okay.
Q Did you ever meet with the Texas State Securities Board?
A No.
Q Did anybody acting on your behalf ever file a complaint with the Texas State Securities Board?
A No.
Q Do you know if anybody's filed a complaint with the Texas State Securities Board? About Highland?
A I believe you covered it earlier. Mark Patrick.
Q Mark Patrick what?
A I guess he did, or Hunter Mountain did, or the DAF did. I don't -- I don't know.
Q Did you ever speak with Mark Patrick about a TSSB investigation of Highland?
A No.
Q Okay. Why do you think Mark Patrick knows about the TSSB investigation of Highland?

MR. MCENTIRE: Objection to form. Calls for speculation. He's just established that he's never --

THE WITNESS: I don't know.

MR. MCENTIRE: -- talked to Mark Patrick.

MR. MORRIS: Okay.

THE COURT: Okay. Sustained.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Have you ever seen the draft Hunter Mountain complaint in this case?

A No.

Q Okay. I think you testified a moment ago that Amazon had hit MGM's price by December 17th. Do I have that right?

A Yes.

Q Okay. Then how come you didn't say that in your email to Mr. Seery?

A Your best practices and typical practices, when you put it on the restricted list, is to just give as little information as possible so that the inside information isn't promulgated specifically throughout the organization and leaked --

Q So, --

A -- throughout the organization.

Q So, even though your intent was to convey information to Mr. Seery, you didn't actually tell him the truth, right? You didn't tell him that Amazon had actually hit the stock price.

Right?
A I wouldn't characterize it that way.
Q Okay. In fact, all you told him was that they were interested. Isn't that right?
A I wasn't telling him anything. I was telling Compliance, as an investment professional, that it needed to be on the restricted list because we were in possession of material nonpublic information regarding a merger that was going to go through shortly. Or in the next few months.
Q Is it your testimony that, as of December 17th, Amazon had made an offer that was acceptable to MGM?
A Yeah, we were going into -- that's what the board meeting was. We were going into exclusive negotiations to culminate the merger with them.
Q Okay. I think you have a binder there of our exhibits. If you can go to #11.
A Which one?
MR. MORRIS: May I approach?
THE WITNESS: Sure.
(Pause.)
BY MR. MORRIS:
Q That's your email, sir, right?
A Yes.
Q Okay. It doesn't say anything about Amazon hitting the price, right?

A It doesn't need to.
Q In fact, it still mentions Apple, doesn't it? Why did you feel the need to mention Apple if Amazon had already hit the price?
A The only way you generally get something done at attractive levels in business is if two people are interested.
Q But why weren't you -- why were you creating a story for the Compliance Department when the whole idea was to be transparent so they would understand what was happening? Why would you create a story that differed from the facts?
A It didn't differ from the facts, and it's not a story. It's a, we have material nonpublic information. Please put this on the restricted list. And --
Q But that -- but you said Amazon and Apple are actively diligencing and they're in the data room. Do you see that?
A That's true.
Q So, even though -- you know what, I'll move on. But this -- this doesn't say what you testified to earlier, that Apple hit the -- that Amazon hit the price. Right? Can we just agree on that?
A Well, agree that it doesn't have to and it's not supposed to.
MR. MORRIS: I move to strike. I just want --
THE COURT: Sustained.
BY MR. MORRIS:

Q -- you to -- I want you to just work with me here. You did not tell the Compliance Department that Apple -- that Amazon had hit the strike price. Right? Isn't that correct? That's not what this email says?

A The -- you can pull up a hundred of these type emails. They're not specific.

MR. MORRIS: I'm going to move to strike and I'm just going to ask you, --

THE COURT: Sustained.

BY MR. MORRIS:

Q -- because you testified to one thing, and I just want to make clear that you told the Compliance Department something different. Can we just agree on that?

MR. MCENTIRE: Well, Your Honor, may I respond to his motions to strike? I think he's becoming argumentative.

THE COURT: Could you speak into the mic, --

MR. MCENTIRE: I can.

THE COURT: -- please.

THE COURT: He's becoming argumentative. And I think it's very clear that, if he asks a question, the witness has a right to respond. I think his answers are totally responsive. And I don't think anything should be struck.

THE COURT: Okay. Your question was you didn't put in there anything about it hit the strike price --

MR. MORRIS: He didn't --

THE COURT: -- or whatever?

MR. MORRIS: He didn't -- he didn't tell the Compliance Department what he just testified to. In fact, he told the Compliance Department something very different. That's all I'm asking.

THE COURT: And I think that's just a yes or no.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Yes or no? You told the Compliance Department something different than what was actually happening?

A That's not true.

Q Oh.

A Exactly what was here, what was happening. I didn't give more detail, which is more hearsay.

Q Okay. If somebody was filing -- following the Highland bankruptcy, they would have known that MGM was very important, right?

A You'd have to show me where. I don't -- I don't see it in any of the bankruptcy --

Q You don't think that that's true?

A I didn't see it in any of the public filings.

Q Do you remember we were here two years ago on this very day, June 8, 2021, for the second contempt hearing? You sat in that very witness box during the second contempt hearing? Remember that? That was two years ago.

A I remember sitting in the box. What are you asking?
Q And do you remember that that was just a few days after MGM had announced its deal with Amazon?
A I -- I don't remember -- I -- was that the day the judge was hopeful that would lead to a resolution of the case?
Q Exactly. So, --
A Okay.
Q -- Judge Jernigan certainly knew that MGM was important. Right?
A Yes.
Q And she's a bankruptcy judge, right?
A Yes.
Q And she was overseeing the bankruptcy case, right? Correct?
A Yes.
Q And the very first thing when she walked in the door two years ago on this day was, oh my goodness, MGM, they have a deal, maybe we can finally get to a settlement. Right?
A And I wish she had pushed on that.
Q Do you --
A And I remember you guys dismissing it.
Q Do you think she had material nonpublic inside information?
A No, I don't think so.
Q She probably learned it in the bankruptcy case, right?

A Yeah.
Q Okay. Do you believe Mr. Seery sold any MGM securities between the day you sent your email and the day the Amazon deal was announced on May 26th?
A I don't know.
Q Do you -- so you have no knowledge? Let's do this a different way. You have no basis to say that Mr. Seery sold any MGM securities between the moment you sent this email on December 17th and the day the Amazon deal was announced on May 26th. Correct?
A I'm sorry. Just to clarify, you're saying sold, not bought, right? You're not asking me if --
Q I'll do either way.
A Okay.
Q Fair point.
A Sure.
Q Very fair point.
A Okay.
Q Do you believe that Mr. Seery engaged in any transactions of MGM securities between those two relevant data points?
A Yes.
Q Okay. What do you think he did?
A The HarbourVest transaction.
Q Okay. So, you learned about the HarbourVest transaction when?

A When it was filed.
Q And that was on December 23rd. Do you remember that?
A Yes.
Q It was just less than a week after you sent your email, right?
A Yes.
Q And do you remember that you filed an objection to the HarbourVest settlement?
A Yes.
Q And you're the one who gave Mr. Seery this material nonpublic inside information, right?
A Yes.
Q Did you object to the HarbourVest settlement on the basis that Mr. Seery was engaging in insider trading?
A Not then, I don't think. I believe --
Q You didn't, right? Even though it was happening at the exact same moment, the very -- within a week of you giving him this information. He's announcing that he's doing this settlement and you don't say a word. Isn't that right?
A Because I delegated the responsibility to Compliance by notifying them of material nonpublic information, and Compliance should hold the organization accountable. Compliance is separate and discrete from management. Compliance reports to the SEC.
Q You filed a 15-page objection to the settlement, didn't

you?
A I don't -- I don't know.
Q Did you tell Judge Jernigan that Mr. Seery was doing bad?
A Not then. I think a month later, two months later.
Q Even though you knew what was happening, you didn't say anything, right?
A I -- I'm not responsible for all the filings. I --
Q Even though it's under your name?
A Correct.
Q How about -- how about CLO Holdco? Did CLO Holdco file an objection to the HarbourVest settlement?
A I -- I don't know which entities did, but it -- whatever entities that were in control that could did, eventually, when they found out, you know, and -- but did -- did they, within a week or contemporaneously? No. It was right around the holidays. A lot of people weren't paying attention. You guys were trying to rush the HarbourVest thing through.
Q Sir, CLO Holdco filed an objection, claiming that it was entitled to purchase the HarbourVest interests in HCLOF because it had a right of first refusal, right? Isn't that right?
A Okay. I -- what ultimately governs the --
Q Isn't that right?
A I don't -- okay.
Q It's really just yes or no.

A I don't know.
Q If you don't remember, that's fine.
A I don't remember, yeah.
MR. MCENTIRE: Your Honor, would he please give the witness an opportunity to answer? He's interrupted three times in less than five seconds. Give the witness an opportunity to respond.
MR. MORRIS: This is real easy stuff.
THE COURT: Okay.
MR. MORRIS: I'm trying to cross him here.
MR. MCENTIRE: Your Honor, with all due respect, he's making it very difficult because he's being very aggressive --
MR. MORRIS: Nah.
MR. MCENTIRE: -- and he's interrupting the witness.
MR. MORRIS: I would never.
THE COURT: Okay. I don't feel the need to do that right now, but I will -- I will consider your request.
THE WITNESS: Can I give a complete answer to his last question, or one that I'd like to be my answer on the record?
THE COURT: Go ahead.
THE WITNESS: The governing responsibility as a registered investment advisor is you're not allowed to buy back from investors fund interests or investments unless you offer it to everybody else, in writing, in that fund first.

That's the Investment Advisers Act as I understand it, and that is what was improper in the HarbourVest transaction. I mean, besides the fact that the pricing was wrong, they misled HarbourVest. And I know HarbourVest hasn't complained, but just because your investors don't complain doesn't mean you can rip them off.

MR. MORRIS: I'd really move to strike the entirety of the answer, Your Honor.

THE COURT: Granted.

BY MR. MORRIS:

Q Mr. Dondero, HC --

A I'm not going to -- I'm not answering any more questions unless I can answer that question with that answer, --

Q Mr. Dondero, do you --

A -- because I believe it's responsive.

Q Do you remember that CLO Holdco withdrew their objection?

A I --

Q To the HarbourVest settlement?

A I don't remember.

Q Do you remember that's really when Grant Scott left the scene?

A I don't --

Q He thought it was inappropriate for them to withdraw, right?

A I don't remember all the details. I know they made some

mistakes, and there's a tolling agreement against Kane's (phonetic) firm for making mistakes, and, you know, whatever. But I -- I don't remember all the details.

Q And a couple of months later, you conspired with Mr. Patrick to try to sue Mr. Seery in order to try to get that very same interest in HCLOF, right?

MR. MCENTIRE: Your Honor, I have to object. There's no foundation and it's also highly argumentative and I move to object. That's a -- that's a question asked in bad faith.

THE WITNESS: I deny any conspiring.

MR. MORRIS: Okay.

THE COURT: Sustained.

BY MR. MORRIS:

Q In April, Mr. Patrick filed a lawsuit on behalf of CLO Holdco a couple of weeks after getting appointed as the head of CLO Holdco and the DAF about the HarbourVest settlement. Isn't that right?

A I believe so.

Q Okay. And you worked with him on that, right?

A I -- I did not work with him on that. I was very just tangentially aware.

Q Okay.

MR. MORRIS: I'm just going to refer the Court -- I'm going to move for the admission into evidence of the second contempt order.

THE COURT: Exhibit what?

MR. MORRIS: Just one moment, Your Honor.

(Pause.)

MR. MORRIS: You know what, I don't know that I have it on the list. I'm just going to ask the Court to take judicial notice. We had a hearing two years ago to this day, and the Court found in the order that it entered at the conclusion of that hearing that Mr. Patrick had abdicated his responsibility to Mr. Seery. It's one of the reasons why Mr. Seery wasn't held in contempt of Court. And I'd like -- I'd like Counsel to address it now.

MR. MCENTIRE: Yeah, I'll -- you said Seery, didn't you?

MR. MORRIS: Oh, sorry. I said Seery. I meant Dondero.

MR. MCENTIRE: (faintly) Also, I believe it's entirely irrelevant. Judicial -- taking judicial --

THE COURT: Would you speak in the microphone, please?

MR. MCENTIRE: I'm sorry. Taking judicial notice of something that is utterly irrelevant is not necessary, not appropriate. What this Court did two years ago roughly to the day -- and I assume he's correct -- has no bearing on anything before the Court today. Nothing. This has zero connection, nexus, under any analysis, any fair scrutiny, dealing with the

colorability of the claim that Hunter Mountain, who was not involved in those proceedings, is trying to advance here. And it would be -- it would be improper for this Court to even take it under judicial notice.

THE COURT: Okay. Response?

MR. MORRIS: Can I respond?

THE COURT: Uh-huh.

MR. MORRIS: Okay. So, Your Honor, I'm going to move for the introduction into evidence of Exhibit 45. It is the Charitable DAF complaint that was filed in the federal district court on April 12, 2021, under the direction of Mark Patrick, who today stands here as the representative of Hunter Mountain.

This was the complaint, if Your Honor will recall, that they tried to amend and we had a hearing here about the circumstances, because that amendment was going to name Mr. Seery personally, in violation of the gatekeeper order. Right?

THE COURT: Uh-huh.

MR. MORRIS: And so it is all tied together. If you go to Paragraph 77 of this exhibit, it says, HCLOF holds equity in MGM Studio. This is the exact same transaction, right? So, so Mr. Dondero says, I gave Mr. Seery inside information, he violated all of these things in the HarbourVest transaction, even though he didn't say a word

then, and here, while it's still on the restricted list, before the Amazon deal is announced, they're actually in court saying that they should be entitled to acquire that same asset that Mr. Seery supposedly acquired improperly. He wants it for himself.

I mean, are you kidding me? It's not relevant?

THE COURT: I overrule the relevance objection. It's admitted.

MR. MORRIS: Thank you. And 45 is admitted, Your Honor?

THE COURT: 45 is admitted.

MR. MORRIS: Okay.

(Debtors' Exhibit 45 is received into evidence.)

MR. MCENTIRE: Just, Your Honor, I was identifying my objection in connection with his original request that you take something under --

THE COURT: Would you speak in the microphone? Again, we --

MR. MCENTIRE: Yes. My original objection was addressing his request of you, Your Honor, to take something under judicial notice. I want to make sure my objection is also lodged with regard to Exhibit 45, which I understand you've overruled.

THE COURT: Correct.

MR. MCENTIRE: Okay.

THE COURT: It is so noted.

MR. MORRIS: Okay.

THE COURT: You've objected and I've admitted it.

MR. MORRIS: And I think I've said this already, but the reason that we're requesting the Court take judicial notice of its order on the second contempt proceeding is because it shows that Mr. Dondero and Mr. Patrick worked together, in violation of the gatekeeper, to try to suit Mr. Seery to obtain the interest in HCLOF that he is sitting here today saying somehow that Mr. Seery wrongfully acquired, even though he didn't say a word at the time.

THE COURT: Okay. So now we're talking about not Exhibit 45 --

MR. MORRIS: Yes.

THE COURT: -- but the order that was entered --

MR. MORRIS: Correct.

THE COURT: -- regarding the filing of Exhibit 45?

MR. MORRIS: Exactly.

THE COURT: Someone is going to need to give me a docket entry number before we're done here.

MR. MORRIS: Okay.

THE COURT: I can and will take judicial notice of that, but I need to have it --

MR. MCENTIRE: So I assume, for the record, my objection is overruled?

THE COURT: Your objection is overruled.

MR. MCENTIRE: Thank you.

MR. MORRIS: All right.

BY MR. MORRIS:

Q You mentioned something about, I think, was it NXDT or NHF?

A Yes.

Q And just let me see if I can do it this way. Right? So there used to be a fund known as the NexPoint Strategic Opportunities Fund, right?

A Yes.

Q Okay. And in 2020 that was a closed-in fund. Correct?

A Yes.

Q And it traded under the ticker symbol NHF, correct?

A Yes.

Q And then late in 2021 the name of the fund was changed to NexPoint Diversified Real Estate Trust, correct?

A Yes.

Q And the ticker symbol changed from NHF to NXDT, correct?

A Yes.

Q And then it became a REIT the following year, right?

A Yes.

Q And I'm just going to refer to these letters as the Fund; is that fair?

A That's fine.

Q For purposes of these questions. And you were the Fund's portfolio manager, the president, the principal executive officer, correct?
A Yes.
Q And another entity that you controlled, NexPoint Advisors, provided advisory services to the Fund, correct?
A Yes.
Q And you controlled NexPoint Advisors at all times, correct?
A Yes.
Q Okay. And the Fund was publicly traded, right?
A Yes.
Q And the Fund owned shares of MGM at the end of 19 -- at the end of 2020, correct?
A Yes.
Q In fact, as of December 2020, MGM was one of the Fund's ten largest holdings, with -- valued at over $25 million. Isn't that right?
A Yes.
Q And by the end of 2021, MGM was the Fund's fifth largest holding, with assets -- with a value of over $40 million. Correct?
A Yes.
Q And the Fund also held MGM common stock indirectly; isn't that right?

A Yes.
Q In fact, when the Amazon deal closed at the -- in March of 2022, the Fund issued a press release disclosing that it stood to receive over $125 million on the MGM shares that it held directly and indirectly. Correct?
A We issued several press releases. I don't remember --
Q Okay. Do you remember that, that as a result of the MGM sale, the Fund was expected to receive approximately $126 million?
A Yes.
Q Okay.
A Roughly.
Q All right. In October 2020, just a few weeks before you sent your email, the Fund announced the commencement of a tender offer to acquire outstanding shares at a certain price. Correct?
A Yeah, I believe so.
Q And you authorized that, right?
A Yes.
Q And when a fund acquires shares and then retires them, the shareholders who did not tender consequently own a larger percentage of the fund than they did before the tender, correct?
A Yes.
Q Okay. And the tender was completed in January, in the

first week of January 2001 [sic], correct?
A I don't remember when it was complete.
Q It started at the end of October 2020, and it ended sometime in January '21. Is that fair?
A Okay. I don't remember. Okay.
Q Do you want me to refresh your recollection?
A I'm just saying I don't remember.
Q Yeah, okay.
A I'm not dis...
Q Okay.
A -- denying it. I just don't remember the exact dates.
(Discussion.)
MR. MORRIS: Your Honor, can I mark for identification purposes Plaintiffs' Exhibit -- I'm just going to call it 100, to see if it refreshes the witness's recollection?
THE COURT: You may mark it.
MR. MORRIS: Okay.
THE COURT: We'll see where it goes from there.
(Debtors' Exhibit 100 is marked for identification.)
BY MR. MORRIS:
Q So, I've put --
MR. MCENTIRE: Hold it. Your Honor, I think we're now marking exhibits that we haven't put on an exhibit list.
MR. MORRIS: I'm trying to refresh his recollection.

MR. MCENTIRE: Okay.

MR. MORRIS: Yeah.

MR. MCENTIRE: Well, --

THE COURT: Yes.

MR. MORRIS: Okay? I haven't offered it in -- I haven't offered it --

THE COURT: I've not admitted -- I don't know what it is. I haven't admitted it yet. I'm waiting.

MR. MORRIS: I haven't offered it into evidence. He said he doesn't remember, --

THE COURT: Okay.

MR. MORRIS: -- I've got an SEC document here, and I'm going to try and refresh his recollection.

THE COURT: Okay.

BY MR. MORRIS:

Q You're familiar with these forms, right?

A Generally.

Q In fact, in fact, you sign them in your capacity as the fund portfolio manager, right? Your signature is put on it, anyway?

A Generally.

Q Yeah. And do you see that this is the Form N-CSR that was filed with the SEC at the end of 2001 [sic] on behalf of NexPoint Diversified Real Estate Trust?

A Yes.

Q Okay. So if you just turn to Page 16. And the numbers are kind of at the bottom in the middle of the page. You'll see the notes to the consolidated financial statements.

A Yes.

Q Okay. And Note 1 discusses the organization. Do you see that?

A Yes.

Q And at the bottom of the left-hand column, it says, On January 8, 2021, the company announced the final result of its exchange offer pursuant to which the company purchased the company's outstanding -- the company's common shares in exchange for certain consideration.

Do you see that?

A Yes.

Q That's a reference to the tender offer that you authorized at the end of October, correct?

A Yes.

Q And then at the bottom it says, The company share -- company -- excuse me. I strike that. It says, quote, The common shares at a price of $12 per common share, for an aggregate purchase price of approximately $125 -- $105 million. Upon retirement of the repurchased shares, the net asset value was $152 million, or $17.41 million.

Do you see that?

A Yes.

Q Does that refresh your recollection that the tender offer was completed at the beginning of January?
A Yes.
Q And that's with all of the MGM stock that the Fund still owned at that time, right?
A Yeah. We -- we didn't -- we didn't violate --
Q You didn't --
A We didn't -- we didn't violate like Seery did. We didn't sell any shares or buy shares.
Q Okay.
MR. MORRIS: I'm going to move to strike that, Your Honor.
THE COURT: So granted.
MR. MCENTIRE: Well, Your Honor, I've actually got a response to his motion to strike. This entire inquiry is irrelevant.
MR. MORRIS: Not --
MR. MCENTIRE: This has no relevance at all in connection with the allegations that we're making in this case.
THE COURT: Your response?
MR. MORRIS: My response, Your Honor, if you ask me -- let me just get a few more questions. He personally owned shares in the Fund. The Fund owned shares in MGM. And notwithstanding the restricted material, this is the insider,

and he is benefiting from himself through the Fund's repurchase of these shares in the tender offer, and he went and he had substantial holdings. I'll get to that in a minute.

So he is actually doing something worse than what Mr. Seery -- what he accuses Mr. Seery of, because he's buying shares for his own personal benefit. Right? He's the insider. Right? And the Fund owns the shares directly. There's never going to be an allegation that HCLOF ever owned any MGM stock. Never.

THE COURT: Okay. I'm going to allow this. Obviously, on redirect, you can further question on this --

MR. MCENTIRE: Well, --

THE COURT: -- to --

MR. MCENTIRE: Well, first of all, his suggestions and his accusations are purely argumentative.

THE COURT: Would you please speak in the microphone? We --

MR. MCENTIRE: Well, he's standing in the way, Your Honor.

THE COURT: Well, --

MR. MCENTIRE: It's irrelevant.

THE COURT: There are two. There's room for both of you.

Continue. Go ahead.

MR. MCENTIRE: It's entirely irrelevant, and it's argumentative.

THE COURT: Okay. Overruled. You can continue.

BY MR. MORRIS:

Q You did own an awful lot of the Fund's shares, didn't you?

A I owned some.

Q You owned some? You owned millions, right?

A Yes.

Q Okay. And as a result of the tender, you owned a greater interest of the Fund, right?

A Yes.

Q And therefore you owned a greater number -- a greater portion of the MGM stock, the $125 million of MGM stock that was owned directly and indirectly by the Fund, correct?

A You do know insiders weren't permitted to participate in the tender, which would have kept my percentage the same.

Q Sir, you benefitted -- you didn't stop the tender, right? You didn't say, now I know what's going to happen, I should stop it? You benefitted from the tender. Can we just agree on that?

A I did everything I was supposed to do, notifying Compliance. If they thought it was material, they would have -- it was in their hands once I notified Compliance of the material --

Q Okay.

A -- nonpublic information.
Q I appreciate that. I just want --
A It wasn't my responsibility to do Compliance's job to call you or call --
Q Okay.
A -- the SEC or call anybody else.
Q But you will agree that, even though you had material nonpublic inside information, you didn't take any steps to stop the tender, correct?
A The tender was for a relatively small amount of the stock. But I did -- I would -- it would not be my responsibility to change or adjust the tender --
Q Okay.
A -- or what was happening.
Q Okay. And then the last question is, you benefitted from the tender because the Fund repurchased shares, which increased your percentage ownership of the Fund, and therefore your percentage ownership of the MGM shares that were held directly and indirectly. Is that fair?
A Marginally, I guess. Yes.
Q Okay. From the -- from the millions of shares, you would describe it as marginal? Okay.
Let me move on. You've testified now that you spoke with representatives of Farallon in the late spring, I guess beginning on May 28th. Right?

A Yes.
Q And that was two days after the MGM deal was publicly announced, correct?
A Yes.
Q Okay. And had you ever communicated with Mr. Patel before that phone call?
A I don't believe so.
Q And then you spoke with Mr. Linn shortly after?
A Yes.
Q Had you ever spoken with Mr. Linn before that phone call with Mr. Linn?
A I don't believe so.
Q So these phone calls were the very first time that you ever spoke to either one of these gentlemen. Is that right?
A That I can remember.
Q Okay.
A If I ran into them at --
Q Uh-huh.
A -- a conference a decade ago, I don't know, but --
Q And they told you that they bought the shares in the February-March time frame, right?
A Yes.
Q And you have no reason to dispute that, correct?
A Correct.
Q Okay. And you didn't know how much they had paid for the

claims as a result of these conversations, correct?
A They did not admit a price.
Q Okay. And it's your testimony that there wasn't sufficient information in the public for them to buy -- this is your view -- that there wasn't sufficient information in the public to justify their purchases. Is that your view?
A Correct.
Q And even though you didn't think there was sufficient information in the public, you were prepared to pay 30 percent more than they did, right?
A Yes.
Q And is that because you were 30 percent more irrational than them or because you had material nonpublic inside information?
MR. MCENTIRE: Objection. Argumentative, Your Honor.
THE COURT: Overruled.
THE WITNESS: Even at a 30 percent premium, it was less than I offered the UCC several months earlier, number one.
Number two, I was still under the illusion there was a desire to resolve the place, not burn it down. You know, there was -- all the original members were happy to sell at $150 million. It was a $500 or $600 million estate. There should be $400 or $500 million of residual value. It shouldn't all be going out the door to lawyers and others.

BY MR. MORRIS:

Q You were willing to pay 30 percent more for an unknown purchase price, 30 percent more of an unknown purchase price, at a moment that you didn't believe there was sufficient information to buy the claims, correct?

A You have a couple misstatements in there. The Grosvenor piece was public. The Grosvenor piece traded at $67 million. So we knew that piece trade at around 50 cents. We knew from people in the marketplace the other pieces were trading right around that level.

So I wasn't just offering 30 percent on any willy-nilly number, 130 percent of any willy-nilly number. I knew they had paid around 50, 60 cents. And so I was offering 30 percent more than that. Thirty percent more than $150 million, call it $200 million. I had offered $230 or $240 million to resolve the whole estate before the plan went effective, and I got no response from the original UCC members.

Q So why didn't you just try to settle the case with them? Why did you try to buy the claim? Why, if you had these new people, and your good intentions were to finally get to a settlement of the case, why didn't you say, hey, guys, how do we resolve the case? Why did you want to buy the claims at a 30 percent premium over what they paid with no knowledge and no diligence, according to you? Can you explain that to Judge

Jernigan?

A Because Seery told them to hold on, don't worry, they were going to make $270 million.

Q That doesn't answer my question. Why didn't you try -- you had new owners. Why didn't you try to settle with them?

A When someone owns an asset, buying their asset is settling with them. What claim does Farallon have against us? At that point, they had no claims against us.

Q It doesn't settle the case, does it?

A But if we owned all the claims, it would settle the case. Just like if Seery had objected to the claims trading that they were supposed to give written notice to the Court, he had enough cash on the balance sheet to buy and retire all the claims.

Q All right. Let's go back, I apologize, to that Exhibit 11. No, it's not Exhibit 11. I think it's their Exhibit 4, your notes.

MR. MORRIS: Your Honor, may I have -- just have one moment?

THE COURT: You may.

MR. MORRIS: Can you tell me how long I've been going? That's really my question.

THE CLERK: So, on cross, --

MR. MORRIS: Yeah.

THE CLERK: -- you've been going for 32 minutes.

MR. MORRIS: Okay. Trying to speed this up.
BY MR. MORRIS:
Q All right. So, do we have your handwritten notes, which are Exhibit 4, in this binder? Oh.
THE COURT: Do you want to put it up again on the screen?
MR. MORRIS: Ms. Canty, if you're listening and you can do that, that would be great. If not, --
(Discussion.)
MS. CANTY: One second, John.
MR. MORRIS: All right. He -- he's got it.
THE COURT: Okay.
BY MR. MORRIS:
Q Okay. So, I just -- I just want to make -- you know, follow up on a few questions I asked you earlier on *voir dire*. So, these are your notes, right, and you said you write down the important stuff. Correct?
A I write down, yeah, the stuff I thought I would need for the next call.
Q Okay. And, you know, again, just so we have it all in one spot, it doesn't say anything about MGM. Correct?
A It does not.
Q It doesn't say anything about a *quid pro quo*, correct?
A *Quid pro*? Uh, no, it does not.
Q It doesn't say anything at all about Mr. Seery's

compensation, correct?
A It does not.
Q It doesn't say anything about the sharing of material nonpublic inside information, correct?
A When I told them discovery was coming, that was my response to I knew they had traded on material nonpublic information.
Q Okay. That -- you told them that?
A Yes.
Q Is that what you're saying now?
A Yes.
Q Oh, so that's what you told them? They didn't tell you that; that's what you told them?
A Yes.
Q And that's why you wanted discovery, right?
A I thought it would be a lot easier to get discovery on a situation like this than it has been for the last two years, yes.
Q Okay. Um, --
A In fact, I told them that it would be coming in the next few weeks. And this has been a couple years.
Q And that's exactly what you did, right?
A Well, we've been trying for two years to get --
Q Right.
A -- discovery in this.

Q Okay. So you filed your Texas 202, right?
A I don't know who filed what.
Q That was the one by Mr. Sbaiti that was filed under your name? Do you remember that?
A Generally.
Q Okay. Let's take a quick look at that document. It's #3 in our binder.
A Binder #3?
(Discussion.)
MR. MORRIS: Okay. I think #3 is in evidence, Your Honor.
THE WITNESS: Number 3 is in evidence.
THE COURT: Yes.
MR. MORRIS: Okay.
THE COURT: It is.
BY MR. MORRIS:
Q And if you can turn to the last page, Mr. Dondero. Page 8.
A Yes.
Q Okay. And that's your signature, right?
A Yes.
Q And you verified that this document was true and correct within the best of your personal knowledge, correct?
A Yes.
Q Did you read it before you signed it?

A Probably.
Q You don't recall doing that?
A Not at this moment.
Q And you may not have. Is that fair?
A No, I probably did. Do you have a question?
Q I'm just wondering if you signed it or not.
A I did sign it.
Q Okay. Good. So, can you go to Paragraph 21? Well, let's start at Paragraph 20. It says that Mr. Seery, quote, has an age-old connection to Farallon, and upon information and belief, advised Farallon to purchase the claims.
Do you see that?
A Yes.
Q And then the next paragraph you refer to the telephone call that you had with Michael Linn, right?
A Yes.
Q It doesn't refer to any phone call with Mr. Patel, correct?
A It does not.
Q And the only reason that you swore under oath you were told that Farallon purchased the claims was because of Farallon's, quote, prior dealings with Mr. Seery. Correct? In Paragraph 21, it says, Relying entirely on Mr. Seery's advice solely because of their prior dealings?
A Yes.

Q Okay. You didn't -- you didn't swear under oath at that time that you were told that they bought the claims because of MGM. Right?

A If you're asking if this is -- it seems like it's not complete, if that's what you're asking me.

Q I'm not asking you that. I'm asking you what -- I'm asking you to confirm that you swore under oath to the Texas state court, just weeks after you had these conversations, about what you were told concerning Farallon's purchase of the claims.

I'm focused on Paragraph 21. The only reason that you gave, that you told the Texas state court under oath, was that Farallon told you they bought their claims because of their prior dealings with Seery. Right?

A Yeah. And that's true. And that's consistent with what I've said.

Q Okay. You didn't say anything about MGM, correct?

A Correct.

Q You didn't say anything about a *quid pro quo*, correct?

A Correct.

Q You didn't say anything about Mr. Seery's compensation. Correct?

A I did not.

Q You didn't say anything about the sharing of material nonpublic inside information, correct?

A Different document, different purposes.
Q Well, but that's now two documents. You have your notes and you had this document, neither one of which say any of those things. Fair?
A Different documents, different purposes. I don't know if that's --
Q Is it fair that neither one of those documents say any of those things?
A It's fair that they don't all match.
Q Okay. Okay. Well, that's a fair statement. Let's go to the next one. Do you remember the next year you filed an amended petition?
A What tab?
Q That's -- I appreciate that. It's Tab 4. Do you see at the last page you've again signed a verification?
A Yep.
Q And do you see this one's filed with the Texas state court on May 2, 2022?
A Yes.
Q And you swore under oath that this statement was complete, true, and accurate to the best of your knowledge, correct?
A Yes.
Q Okay. Can you go to Page 5, please?
A Yes.
Q Directing your attention to Paragraph 23, do you see where

you say now that Farallon was relying, quote, on Mr. Seery's say-so because they had made so much money in the past when Mr. Seery told them to purchase claims.

Do you see that?

A Yes.

Q Again, you don't say anything about MGM, correct?

A Correct.

Q Again, you don't say anything about material nonpublic inside information, correct?

A Well, on 24 it does. Right? Mr. Seery had inside information on the price and value of claims. So, you've got to look at all of the bullet points.

Q But that's not the paragraph where you're talking -- that's -- it says, in other words. That's not the paragraph where you're describing your conversation with Farallon. That's your interpretation of it, correct, just as you just said?

A (no immediate response)

Q You told -- I'm sorry. I should let you finish the answer. That's your interpretation of it, correct?

A Well, I'm reading all the bullets in aggregate, and it's -- it's a picture of material information shared by Seery, not just MGM or one particular investment, but on all the other assets that aren't detailed in any of the public filings, also.

Q The only -- the only point I want to make, I think we can agree on this --
A Okay.
Q -- is that you believed that Mr. Seery gave them material nonpublic inside information. Farallon never told you that. Isn't that true? That's why you wanted discovery?
A They said they relied on him and did no diligence of their own. They were very express -- explicit about that.
Q Okay. Can you answer my question now?
A Which -- I thought -- that does, --
Q You concluded --
A -- yes.
Q -- that Mr. Seery gave them material nonpublic inside information. They never told you that. Fair?
A They said they relied on -- solely on Seery, didn't buy it for any other reason, and they did no due diligence of their own.
Q Okay. Let's go to the next one. Now, the no-due-diligence part, that's not in any version we've seen, right? That's something that you just --
A No, no, --
Q -- that you're just testifying to now? That's not in your notes, it's not in Version 1, and it's not in this version, correct?
A Well, let's go back to the Linn one, because when I was

going back and forth and he wouldn't give a price, he kept saying, Seery told us it's worth a lot more. And I kept saying, you've got to look at the burn, you've got to look at the professionals. And --

Q Okay.

A -- that's --

Q Shortly after this, you filed yet another declaration, right?

A Yes.

Q Uh-huh. Can you turn to #5? And this is another version of your recollection of what you were told, correct? In Paragraph 2?

A These are all -- I don't know why you're saying they're different. They're all the same. They're just slightly different verbiage. What's the major difference between any of them?

Q I'll ask, I'll ask you the question. The question is, you had never written in any of the prior versions that they didn't do any due diligence; isn't that right? You never -- you never talked about their due diligence in any prior version, correct?

A It's all -- it's all the same version. I don't -- some versions --

Q Can you answer my question?

A I don't know. I don't know --

Q Which --
A -- which ones included which -- I don't --
Q We've just looked at them. Do you want to look at them again?
A I just looked at one page in the other one and it was five pages. I just looked at the one page and I found two or three things --
Q Your notes --
A -- it didn't include, but --

MR. MORRIS: You know what. I don't want to argue. They say what they say, Your Honor, and I would ask the Court to look carefully at our objection to the motion because we lay all of this out.

Your Honor can -- here's the point, because I do want to finish up right now. There are five different versions of this conversation. They're laid out in the brief. And the question that you have to ask yourself, Your Honor, is, if you allow this case to go forward, how do they make a colorable claim when the story keeps changing?

And I'll just leave it at that, because, you know, the last version says MGM for the first time. Like, it comes out of nowhere. This -- his notes don't say it, he hasn't testified that that's what he was told, but somehow that's in his sworn statement.

So I'm just going to rest on the papers, because this is

-- I don't want to be argumentative.

THE COURT: Okay.

MR. MCENTIRE: Well, I'll object to the argument of counsel. He's just doing another opening statement here, and it's inappropriate and not proper.

THE COURT: Okay. I agree. This is Q and A.

MR. MORRIS: Okay.

THE COURT: So, --

BY MR. MORRIS:

Q Do you know -- do you have any knowledge or information as to how Mr. Seery's compensation was established?

A Uh, --

Q Withdrawn. I'm talking now not in his capacity as an independent director or the CEO of the Debtor. I'm only talking about in his capacity as the CEO of the Reorganized Debtor and the Claimant Trustee. Do you have any personal knowledge as to how his compensation was established?

A The knowledge I have is that the Claimant Trust gives full latitude to change it at almost any time they want. Add more to it, add more than that we've seen, double it in the future if reserves are reversed. It can do anything it wants. And I guess we've seen some redacted partial statements of his compensation, but that's all I know.

Q Okay. You have no knowledge about how Mr. Seery's compensation package was determined, correct?

A I was not involved.
Q Okay. You've never -- I'll just leave it at that.
MR. MORRIS: I have nothing further, Your Honor.
THE COURT: Okay. Pass the witness. I'm sorry, I guess I should ask, do any of the other responding parties have examination?
MR. STANCIL: No, Your Honor.
THE COURT: No? Okay. Redirect?
MR. MCENTIRE: Just very briefly, Your Honor.
THE COURT: Okay.
MR. MCENTIRE: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. MCENTIRE:
Q Mr. Dondero, you remember the questions about Judge Jernigan walking into the courtroom on June 8 two years ago saying, MGM is sold, maybe we can settle this case? Do you recall those questions?
A Yes.
Q And do you remember Mr. Morris's dramatic suggestion that, well, how did Judge Jernigan know, or to that effect?
A Yes.
Q Well, that had already been announced, had it not, publicly?
A Yes.
Q Several weeks before?

A Yes.
Q I'd like to direct your attention -- do you still have Exhibit 4 that he handed you? Do you have Exhibit 4 there?
A Uh, --
Q His exhibit?
A Is that the notes?
Q No, it's -- Exhibit 4 is the verified amended petition to take deposition before suit -- take -- in the state court. To -- deposition.
A You've got to give me more of a clue. I'm sorry. There's like six binders.
MR. MCENTIRE: Mr. Morris, can you show us where the exhibit --
MR. MORRIS: Sure. Which one is it?
MR. MCENTIRE: It's Exhibit 4. I'm going to talk to him about Exhibit 4 (inaudible) that you've have used with this witness.
BY MR. MCENTIRE:
Q I assume -- Mr. Dondero, were you assuming from the tone and the substantive content of his questions that Mr. Morris is suggesting that your notes are not reliable?
A He was trying to make it seem like the versions were different. They were all 90 percent the same. Different -- it seemed like different emphasis for different purposes. And then you have to remember we learned more about Farallon and

Stonehill over time. Like, in the beginning, when I had -- when I -- we didn't even know Stonehill was involved when I --

Q Sure.

A -- first talked to -- when --

Q Well, he made the big suggestion about you never talked about due diligence before. Turn to Exhibit 4, Paragraph 23, which he did not address with you. Can you turn to Paragraph 23 of Exhibit 4? Mr. Morris omitted to refer you to this particular paragraph.

A 23? Go ahead.

Q Would you read it into the record?

A (reading) On a telephone call between Petitioner and Michael Linn, a representative of Farallon, Michael Linn informed the Petitioner Farallon had purchased the claim sight-unseen and with no due diligence, a hundred percent relying on Mr. Seery's say-so, because they had made so much in the past with Mr. -- when Mr. Seery had (overspoken).

Q Now, since you've an opportunity to see other paragraphs and other -- that he was otherwise not selecting, you did refer to the -- to what Mr. Linn had told you about in May of 2021?

A Yes. I've been very consistent. Listen, I believe Farallon tapes all their conversations. So, eventually, as this goes further, I purposefully --

Q Well, let's --

MR. MORRIS: I move to strike, Your Honor.

THE WITNESS: Okay.

THE COURT: Sustained.

BY MR. MCENTIRE:

Q He also did not direct your attention or the Court's attention to Paragraph 27 of Exhibit 4, selecting -- presumably strategically selecting not to refer to that paragraph. Do you see Paragraph 27?

A Yes.

Q Could you read that into the record, please?

A (reading) However, Mr. Seery is privy to material nonpublic information, inside information of many of the securities that Highland deals in, as well as the funds that Mr. Seery manages through Highland. One of these assets was a publicly-traded security that Highland was an insider of, and therefore should not have traded, whether directly or indirectly, given its possession of insider information.

Q Isn't that paragraph just basically addressing MGM?

A Yeah, that's the only major position we had that that would apply to.

Q So the suggestion that you're just making this MGM stuff up is not true. It's consistent with what you've (inaudible) in other courts as well, correct?

A Yes. I believe it's disingenuous to say that there's different versions of my story.

Q Well, let's continue with Mr. Morris's strategy. Go to Exhibit 3, please. Mr. Morris suggested that there's no reference at all in any of these prior pleadings about Mr. Seery's excess conversation. Do you recall that series of questions?

A Yes. Or his statements, yes.

Q Yes. And he did not direct your --

MR. MORRIS: I move to strike. I asked him if he had any knowledge of the man's compensation package. That's what I asked him.

MR. MCENTIRE: No, sir. Your Honor, that's not what he asked him. That was one of the questions he asked. The other question was, there's nothing in here about compensation. That's what I'd like to address now.

MR. MORRIS: Oh, go right ahead.

THE COURT: Okay.

BY MR. MCENTIRE:

Q Directing your attention --

THE COURT: You can ask. I'd have to go back and check the record whether you had that second question you mentioned. I remember questions about does he have knowledge of Seery's compensation. I just can't remember if he asked, --

MR. MCENTIRE: Fair enough.

THE COURT: -- were there references to it in the --

MR. MCENTIRE: Well, --

THE COURT: -- prior pleadings.

MR. MCENTIRE: -- for the record, we'll make it clear that there is a reference.

BY MR. MCENTIRE:

Q If I could direct your attention to Paragraph 23, Exhibit -- as to --

MR. MORRIS: What exhibit is it?

MR. MCENTIRE: It's Exhibit 3.

MR. MORRIS: Hold on one second.

MS. MUSGRAVE: Your exhibit.

THE COURT: Highland's Exhibit 3.

MR. MORRIS: Give me a moment.

THE COURT: Page what?

MR. MCENTIRE: It's Paragraph 22 on Page 5.

THE WITNESS: I'm sorry. My Exhibit 3?

BY MR. MCENTIRE:

Q Could you read for me, please, Mr. --

MR. MORRIS: Hold on one second. It's my Exhibit 3 or your exhibit?

MR. MCENTIRE: It's your exhibit. This is Hunter Mountain's binder.

MR. MORRIS: Ah, I apologize.

MR. MCENTIRE: You were just using it.

MR. MORRIS: Okay. All right. Go ahead. What

paragraph were you?
BY MR. MCENTIRE:
Q I'd direct your attention, Mr. Dondero, to Paragraph 22.
MR. MORRIS: Yeah.
BY MR. MCENTIRE:
Q Would you read -- would you read Paragraph 22 into the record, please?
A (reading) Mr. Seery had much to gain by brokering a sale of the claim suggested to Muck, mainly his knowledge that Farallon as a friendly investor would allow him to remain as Highland's CEO with virtually unfettered discretion to administer Highland. In addition, Mr. Seery's written compensation package incentivized him to continue the bankruptcy for as long as possible.
Q There was also a series of questions to you about a transaction involving NexPoint -- NexPoint Diversified Real Estate Trust. Do you recall those questions?
A Yeah. Let's talk about that.
Q All right. Tell me what the transaction was.
A I'm sorry. The tender that he was asking about or --
Q Yes, the tender.
A There was -- investors wanted some shares retired, and we didn't have enough cash on the balance sheets. So we tendered in the form of giving them Preferred, which was like equity but a better dividend or a more secured dividend, and 20

percent cash. And then insiders weren't allowed to participate. But the whole tender was only for eight or ten percent of the nominal amount outstanding. And again, you've got a package of securities, so you didn't get any -- you didn't cash. And although it reduced the share count, it also increased the Preferred or the claims against the company. So it was marginally accretive, I guess.

Q All right.

A But, again, as far as inside information is concerned, Compliance is a separate party organization that reports up to the SEC. Has a dotted line to me. Reports to the SEC. They make sure everything we do is compliant.

Q Mr. Dondero, --

A Yeah. Can --

Q -- you didn't participate in the transaction, did you?

A No. Insiders weren't allowed to participate in the transaction.

MR. MCENTIRE: Reserve the rest of my questions, Your Honor.

THE COURT: Any recross?

RECROSS-EXAMINATION

BY MR. MORRIS:

Q The reference to the compensation that we just looked at, that was your own personal view, not something that anybody from Farallon ever told you, correct? You can go back and

look.
A Yeah, that --
Q I mean, it's not a trick question.
A Yeah, that was my pleading.
Q Okay. And that was your own speculation, if you will? It had nothing to do with anything Farallon ever told you, correct?
A I never discussed Seery's compensation with Farallon.
Q Okay. Thank you, sir, very much. Just one last question. The price of the tender --
A Yes.
Q -- was based in part on the value of the MGM stock, correct?
A The tender was based on market price --
Q And --
A -- of where the closed-in fund was trading. It was trading at a discount. And the discount to NAV, the NAV included MGM accurately marked at whatever time.
Q I appreciate that.
MR. MORRIS: No further questions, Your Honor.
THE COURT: All right. Mr. Dondero, that concludes your testimony.
THE WITNESS: Thank you.
THE COURT: You are excused from the witness box.
(The witness steps down.)

THE COURT: We probably should take a break, right?

MR. MORRIS: Okay.

THE COURT: Caroline, do you want to give them the aggregate time used?

THE CLERK: Yes. The Defendants used 91 minutes right now. And the Respondents together, 86 minutes.

THE COURT: Okay. I thought it was going to be higher than that.

(Laughter.)

MR. MCENTIRE: That's what it feels like.

MR. MORRIS: You were wishing.

THE COURT: I was wishing. Okay. A ten-minute break.

THE CLERK: All rise.

(A recess ensued from 3:17 p.m. until 3:28 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're back on the record in the Highland matter. Mr. McEntire, you may call your next witness.

MR. MCENTIRE: Your Honor, Hunter Mountain would call Mr. Seery adversely.

MR. STANCIL: Your Honor, we're waiting for Mr. Morris for just 60 more seconds. I think he's on his way back to the courtroom.

THE COURT: Okay. I just noticed.

Did I hear you say you're going to call him virtually?

MR. MCENTIRE: Adversely.

THE COURT: Oh, adversely? Okay. I'm so used to hearing the word "virtually" the past few years.

Oh, and there he is. Okay.

MR. SEERY: I'm sorry, Your Honor.

THE COURT: Mr. Seery, welcome.

MR. SEERY: Good afternoon, Your Honor.

THE COURT: Please raise your right hand.

(The witness is sworn.)

THE WITNESS: I do.

THE COURT: All right. You may be seated.

JAMES P. SEERY, JR., HUNTER MOUNTAIN INVESTMENT TRUST'S ADVERSE WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MCENTIRE:

Q Mr. Seery, would you please state your full name for the record?

A James P. Seery, Jr.

Q And you and I met for the first time I believe it was last Friday in your deposition; is that correct?

A You were by video.

Q I mean, --

A We didn't actually meet.

Q Correct. You are currently the CEO of the Reorganized

Debtor?

A That's correct.

Q Prior to your appointment as the CEO of the Reorganized Debtor, you've never served as a CEO of a reorganized debtor in the past, have you?

A I have not.

Q You previously served as the chief executive officer of Highland Capital as a Debtor-In-Possession. Is that correct?

A That's correct.

Q And that was the first time you'd ever served in a position such as that; is that correct?

A As the CEO of a debtor, yes.

Q Right. You also now currently serve as a Trustee for the Highland Claimant Trust, which was put into effect after the effective date of the plan, correct?

A Yes, I'm the Claimant Trustee.

Q All right. That's the first time --

THE COURT: Mr. McEntire, we usually require standing at the podium. I mean, do you need --

MR. MCENTIRE: That's fine. I'm totally fine.

THE COURT: Okay. That's --

MR. MCENTIRE: I forgot.

THE COURT: Okay. Thank you.

BY MR. MCENTIRE:

Q That was -- and your capacity as the Trustee for the

Claimant Trust, that's a first experience as well, correct?
A As the Claimant Trustee, yes.
Q All right. And in these various capacities as a CEO of the Reorganized Debtor, do you consider yourself to be subject to the Investment Advisers Act?
A No, I don't I'm subject to the Investment Advisers Act. I think Highland in certain capacities could be.
Q All right. But do you have any duties that -- that you are required to fulfill under the Investment Advisers Act accordingly?
A Do I?
Q Yes.
A I believe Highland does. I don't know that I have any personal duties.
Q All right, sir. Let me now talk a little bit about your duties that you did have at Highland. You agree that when you were at Highland you had fiduciary duties that you owed to the estate?
A Yes.
Q What were those duties?
A To generally treat the estate on an honest and fair matter.
Q Avoid conflicts of interest?
A Yes.
Q Not self-deal?

A Yes.
Q Do you agree with me that you would have a duty not to trade on material inside -- material nonpublic information?
A Generally, I would have a duty to not trade on material nonpublic information, yes.
Q Can you think of an exception?
A There may be. I just don't think of any one off the top of my head.
Q So, today, you would agree, for purposes of these proceedings, that you would have an obligation as the CEO of the Debtor-In-Possession not to participate in a transaction involving material nonpublic information? Agreed?
A It would depend. So, for example, if I was trading with someone else who had material nonpublic information, that might be a permissible transaction.
Q The HarbourVest transaction, you were involved in negotiating the HarbourVest settlement?
A Yes, I was.
Q Did that involve any component related to MGM stock?
A No, it did not.
Q There was no involvement at all concerning the transfer of MGM stock to any entity as a result of that transaction?
A None whatsoever.
Q Okay. And does HCLOF not have a participation at this time in MGM stock?

A We call it H-C-L-O-F.
Q Yes.
A It does not own MGM stock, and as I far as I know, never owned MGM stock.
Q Okay. You agree you received an email from Mr. Dondero in December of 2020. We've had it here before. You've seen it in the courtroom, correct?
A Yes.
Q Okay. Did you ever send -- forward that email to anyone else?
A I'm sorry. Could you repeat that?
Q Did you forward that email on to anyone else?
A I believe I did, yes.
Q To whom?
A I certainly discussed it with counsel. I believe I forwarded it to counsel, both the Pachulski firm and the WilmerHale firm. Thomas Surgent had gotten it. He was on the email. And I also forwarded it, I believe -- certainly, discussed it -- with the other independent directors.
Q Okay. I'm not going to talk about your conversations with other lawyers in-house, okay, or your outside counsel. Did you take any steps yourself personally to make sure that MGM stock was placed on a restricted list at Highland Capital after you received that email?
A No. MGM was already on the restricted list at Highland

Capital.

Q Okay. And is that because of Mr. Dondero's position on the board of MGM?

A It -- I believe that's the reason. It was on before I got to Highland.

Q Okay. And you agree, do you not, sir, that the email that you received from Mr. Dondero also contained material nonpublic information?

A I don't think so, no.

MR. MCENTIRE: Would you put up Exhibit -- our Exhibit 4, please?

MR. MORRIS: 4?

MR. MCENTIRE: 4.

BY MR. MCENTIRE:

Q Did H-C-L-O-F -- I'll refer to it as HCLOF, you refer to it as H-C-L-O-F -- did that -- did HCLOF own any funds that owned MGM stock?

A HCLOF had interest in certain Highland-managed CLOs that did own some.

Q As a result of the Highland settlement -- excuse me, the HarbourVest settlement, was there any impact on who owned some of those CLO funds?

A No.

Q Okay. How was the CLOs, the funds, handled, if at all, in the -- in the HarbourVest settlement?

A They didn't have any impact whatsoever on the HarbourVest settlement.

Q Looking at Exhibit 4 for a moment, please, did the interests, did the interests in -- HarbourVest's interests in any of those CLOs transfer?

A No, they did not.

Q Okay. And did HCLOF acquire any interest in any of those CLO's as a consequence of the HarbourVest settlement?

A No, it did not.

Q Looking at Exhibit 4. Excuse me, Exhibit 3 is what I meant to say. Exhibit 3.

THE COURT: Hunter Mountain Exhibit 3?

MR. MCENTIRE: Yes, ma'am.

THE COURT: Okay.

MR. MCENTIRE: Yes, Your Honor. Excuse me.

BY MR. MCENTIRE:

Q This is the email that we were just referring to that you received, correct?

A Yes.

Q And you don't think -- you knew that Mr. Dondero was on the board of directors of MGM?

A Yes.

Q And he -- as a member of the board of directors, when you received this, you see where he indicated that it was probably a first-quarter event? Do you see that?

A I see what it says, yes.
Q Okay. And you did not think that that was material nonpublic information?
A No, I did not.
Q When he indicated that Amazon and Apple were actively diligencing -- are diligencing in the data room, both continue to express material interest, coming from a member of the board of directors of MGM, you did not think that was material nonpublic information?
A I did not, no.
Q You know the difference between a newspaper article or a media article that discusses rumors of a possible sale and the difference between that and a member of the board of directors saying that a sale is going to occur? You understand the difference between the two?
A Between the two things you just outlined?
Q Yes.
A Yes. One you said a sale is going to occur, and the other you said a media report. But it would depend on what's in the media report. Some media reports are pure speculation. Others have a lot of detail, and they clearly came from an inside source, and that's why the market moves on them.
Q Okay. So what you're suggesting to me, that there was some indication in the media press before you received this email suggesting that there was actually going to be a sale in

the first quarter of 2021?

A I don't know if it had a first-quarter event in it, but certainly it was clear from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction had to take place very quickly. And in fact, the transaction did not take place in the first quarter.

Q Okay. So you -- when you received this particular email, you did not think that it was requiring any additional protection at -- in any way? Is that what you're suggesting to this Court?

A That the email required additional protection?

Q That you didn't take additional steps to make sure that it was maintained on the restricted list.

A It was already on the restricted list, so there was no change.

Q Was it --

A I --

MR. MORRIS: Hold on. Let him finish.

BY MR. MCENTIRE:

A I was suspicious when I got the email, but I didn't think I had to do anything else than the steps I told you I just took.

Q Yeah, I'm not asking whether you were suspicious or not. My question's a little bit different. You understand that MGM

was taken off your restricted list in April of 2021?

A I understand that that's what you've recently shown me. I wasn't aware of that fact or I didn't have a recollection of that fact, but certainly April of 2021 would be beyond the first quarter. Mr. Dondero was not an employee, an affiliate, subject to a contractual relationship. He had no duty to Highland and Highland had no duty to him. And in fact, it was quite antagonistic by that time. So it would be appropriate to take MGM off the restricted list at the end of that time.

Q Well, hopefully you won't take this as argumentative, but I object as nonresponsive. That really wasn't my question. Okay? My question --

THE COURT: Sustained.

BY MR. MCENTIRE:

Q -- is a little bit different. As far as you were concerned, MGM was on the restricted list and stayed on the restricted list all the way until the public announcement in May of 2021?

A That's not true.

Q When did you first become aware it was taken off the restricted list?

A I didn't -- I wasn't aware that it had come off the restricted list. I would have assumed it would have been off the restricted list once Mr. Dondero had been severed from Highland.

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Q I see. Now, Mr. Dondero has relayed a conversation that he had with Mr. Patel and Mr. Linn, suggesting that they were particularly optimistic about MGM based upon what you told them.
A I --
Q Let me finish. If that occurred, are you suggesting that that is a lie?
A Two things. One is I don't think he actually testified to that. I think he said he had a conversation with Mr. Patel. Then he had a different conversation with Mr. Linn, and a subsequent conversation with Mr. Linn. So the way he laid it out were multiple conversations.
Q Agreed.
A I don't -- I don't know which one you're talking about.
Q Mr. Dondero testified that Mr. Patel was particularly optimistic about the investment because of what he had learned from Mr. -- from you about MGM.
MR. MORRIS: I dispute that characterization. Why can't he just ask the question?
MR. MCENTIRE: That is my question. If that --
THE COURT: What is the question? I'm not sure I hear the question.
MR. MCENTIRE: I'm getting lost because I'm getting interrupted. I'll try to rephrase it again.
MR. MORRIS: It's my first objection.

MR. MCENTIRE: And I --

THE COURT: Go ahead.

MR. MCENTIRE: I'm just going to rephrase, Your Honor.

THE COURT: Just rephrase your question.

MR. MCENTIRE: Thank you.

BY MR. MCENTIRE:

Q Mr. Dondero has testified that Farallon advised him in May of 2021 that they were optimistic about MGM based upon what you told them. Assuming that to be the case, do you deny that happened?

A I do deny that happened. Because I can't -- I don't know what Farallon told him, but I never told Farallon anything. And a conversation on May 28th, after the May 26th announcement that MGM was going through, might make people optimistic that it could go through, but there was a very difficult FTC process that MGM would have to go through.

Q And I'm referring to that. If Farallon stated that they were optimistic about MGM based upon what you had told them, --

A That would not be true.

Q -- that would be false?

A That would not be true.

Q And is Mr. Dondero says that's what Farallon told them, that would also be false?

A That's correct.

Q So we have your statement, we have what may be Farallon's statement, and we have what Mr. Dondero believes may have been Farallon's statement, and you're saying the latter two are just not true?

A I didn't have a conversation with Farallon about MGM that -- that I recall --

Q Well, you're on the witness stand.

A -- virtually at any time.

Q You're on the witness stand.

A Oh, I'm aware of where I am sitting.

Q Yeah. Good. We've got that cleared up. Now, are you suggesting that -- that you may not specifically recall this conversation?

A No, I am not saying that at all. After May 26th, when the MGM announcement was made and it was public, I may have had conversations with a number of people about MGM.

Q Well, let's make sure the record is clear. Did you call Farallon on May 26th and say, hey, did you know that MGM just sold?

A No, I don't recall any such conversation, and I wouldn't have had to, since it was in the paper.

Q I'm not talking about what's in the paper. I'm talking about conversations between you and Farallon.

A Yeah. I don't recall having a conversation with Farallon

on May 26th.

Q How about May 27th?

A Not that I recall, no.

Q How about May 28th?

A Not that I recall off the top of my head.

Q And we understand that that's the day that Mr. Dondero actually had his conversation that he's reported, at least, with Farallon. Do you recall that?

A That's what he claims, yes.

Q You were with a company called River -- you're a lawyer, correct?

A I am. I'm in retired status.

Q Okay. I wish I was.

A It's simply retiring your license and not having to take the CLE.

Q Understood. Now, you were with a company called River Birch?

A Yes.

Q And from River Birch, you went to Guggenheim Securities?

A That's correct.

Q At Guggenheim Securities, did you go to Farallon and meet with Mr. Patel in their offices in San Francisco?

A I believe we did, yes.

Q You call it a meet-and-greet?

A I do, yes.

Q That was in 2017?
A 2017, 2018. I'm not exactly sure when it was.
Q And one of the purposes of meet-and-greet is to solicit business or to see if a business opportunity -- see if it exists?
A That's not correct, no.
Q What is a meet-and-greet for, then?
A It's to meet the people at the fund and to greet the people at the fund. Introduce them to other people in your firm.
Q Just because it's going to be fun, or does it have a business angle to it?
A Oh, it hopefully will be fun, yes, but it's done in order to build a relationship over time. You're not in there soliciting business. If you do that, you won't do very well.
Q Okay. Fair enough. So you're there trying to develop a relationship with Farallon?
A Guggenheim was, yes.
Q And you were part of it?
A That's correct.
Q And what was your job at Guggenheim?
A I was co-head of credit.
Q Is that a fairly significant position at Guggenheim?
A Not really, no.
Q It's not significant at all?

A No.
Q All right.
A Which is why --
Q Well, you left --
A Which is why they don't have that business.
Q Okay. So is that why you left Guggenheim?
A It -- I did, yeah. It wasn't a good fit for either Guggenheim or for me, because it really wasn't something --
Q When did you --
A -- that they were set up to do.
Q -- leave Guggenheim?
A In 2019.
Q And then you went back to Farallon to meet with them again, did you not?
A I met with Farallon while I was in San Francisco with my wife.
Q Okay. Did you call ahead to arrange the meeting, or was it just a --
A I --
Q -- a blind call?
A I did call ahead, yes.
Q A cold call, I guess, is the word -- the phrase that they use. Okay. So -- and was that a meet-and-greet?
A That was again, yes.
Q Again, what were you trying to do? Develop a relationship

with Farallon?
A I was trying to catch up with them after having met them previously. And that was just Raj Patel. And this one I also met Michael Linn.
Q Okay. What kind of business were you in when you met with them the second time?
A I wasn't doing anything.
Q What were you hoping to do?
A I was hoping to get back into the investing side of the business, from running a credit-type lending business at Guggenheim, which is what they tried to do and it didn't work out. And I wanted to get back to what I was doing more at River Birch, but I was looking at other opportunities, whatever came along.
Q Well, what were the different options that you were looking at?
A I was looking at potentially getting back into investing, joining potentially a restructuring firm, any options like that. I was not looking to become a lawyer again.
Q And why would meeting and greeting with Farallon fit in within that scenario, the strategic scenarios that you've just discussed?
A They're a giant hedge fund.
Q A giant hedge fund?
A Yes.

Q And so it would be good to have a relationship with a giant hedge fund, wouldn't it?
A And to know what their thinking of the markets, where the opportunity set might be, who they are dealing with and interacting with. Those are -- those are valuable things to know over time.
Q And --
A And you need to maintain those relationships in order to be --
Q Sure.
A -- part of any business.
Q Sure. These meet-and-greets can actually evolve and provide relationship benefits, correct?
A I don't -- I'm not sure what you mean by relationship benefits.
Q Sloppy words for -- on my part. They can evolve into something that is a meaningful relationship?
A They could over time, yes.
Q And we know that after you became the CEO of Highland Capital that you received a call from, was it Farallon, to congratulate you on your appointment?
A It was an email.
Q And that was in the summer of 2020, shortly after your meet-and-greet out in San Francisco?
A Your calendar's a bit off, but it was in June of 2020, so

that would have been more than shortly after, but yes.

Q Okay. And who contacted you to congratulate you on your appointment?

A This was my appointment as an independent director. I had not yet been appointed as CEO or CRO. This was in June of 2020, and it was Michael Linn.

Q Michael Linn? Was it a telephone call?

A I think 30 seconds ago I said it was an email.

Q Fair enough. Do you still have that email?

A I do, yes.

Q Okay. He contacted you again, "he" being Michael Linn, he contacted you again in January of 2021, did he not?

A That's correct, yes.

Q He wanted to see if he could get involved somehow in the Highland bankruptcy?

A Well, he congratulated -- he didn't congratulate -- he wished me a happy new year, and he basically said it looks like you're -- again, he's following the case -- it looks like you're doing good work. Is there any way for us to get involved? We're interested in claims or buying assets.

Q Okay. And Stonehill. Now, you know the founder of Stonehill, do you not?

A No, I don't know him. I've met him several times.

Q Doesn't he come by and stop in and talk with you when you're in Stonehill's offices? And that's happened recently?

A Your use of the plural is incorrect, and you know that from the deposition. I was in Stonehill's office one time, and I was in a meeting with Mr. Stern. We ended up having a board meeting from Stonehill's office with the other participants on video, and Mr. Motulsky came in and said hello.

Q All right. And who's Mr. Motulsky?

A He's the founder of Stonehill.

Q I see. And did you know Mr. Motulsky before that?

A I'd interacted with Mr. Motulsky over the years at -- mostly at industry-type functions.

Q Okay. Now, Stonehill is also a hedge fund?

A Yes.

Q Are they different than Farallon in that regard, or similar?

A I don't know as much about what their business is. They certainly do a direct lending component, so I know that they -- they will do some direct lending, which I don't think is something Farallon really does. Farallon is much bigger, as I understand it, but I don't really know the size of Stonehill.

Q Okay.

A I know they're not a $50 billion fund like Farallon.

Q And do you know Mr. Stern at Farallon?

A I now know him, yes, because he was -- he's really the representative on the -- no, he's not the representative on

the board, but he is the one who manages the Stonehill and Jessup positions for Stonehill.

Q Well, we know that after you were CEO of Highland, you also got a text message, correct, a text message from someone at Stonehill, correct?

A Mr. Stern sent me a text message reintroducing himself -- I don't know if it was re- or just introducing -- and sent me his email and asked me to contact him about the case. This was at the end of February/beginning of March 2021, after the confirmation order.

Q Okay. After the -- after the confirmation order?

A Yes.

Q I believe the confirmation order -- I may be wrong -- I thought it was like the 21st, 22nd, somewhere in there. Does that sound right to you?

A Yes.

Q Okay. So, shortly after confirmation, then, Farallon calls you to congratulate you and wants to see how they can get involved?

A No. There was no congratulations there. Shortly after the confirmation order, which I believe was at least a week to ten days after confirmation, I got the communication from Mr. Stern to try to connect about the case.

Q All right.

A He's at Stonehill, not Farallon.

Q Correct. Now, --
A You said Farallon.
Q I misspoke, then. Thank you for correcting me. Let's talk about -- you live in New York?
A I do.
Q You're involved with a charity called Team Rubicon?
A Yes.
Q And Team Rubicon is a -- is that a veterans-type charity?
A Yeah. It's a veteran-led organization, and what it does is connects veterans to disasters. And mostly in the U.S., but also all over. So if there's a flood, if there's a hurricane, if there's an earthquake, veterans who have been trained in -- by the military in ready response and really being able to handle themselves when things are bad are deployed to help the communities that are hit. So I think that Team Rubicon likes to think, you know, on your worst day they're your best friend.
Q So you're -- are you on the board?
A No, I'm not.
Q You're on the Host Committee?
A I was on the Host Committee last year, and I'll be on the Host Committee this year.
Q Okay. And you have charity events?
A We have a charity event, yes.
Q Okay. And the purpose of the charity event is to raise a

bunch of money?
A That's correct.
Q Okay. Have you been successful in the past?
A I do my best. Team Rubicon is a big organization. It's done very well raising money. It doesn't have an endowment. The founder's theory was that if people give us money, we're supposed to spend it on helping other people. And so each year it has to raise more money.
Q And Stonehill has been -- has contributed to your charity?
A I believe Stonehill, one or two years, and I should know this, and I didn't look it up after our deposition, gave $10,000.
Q Okay. Maybe once, maybe twice?
A Maybe twice.
Q Okay.
A I hope more.
Q Okay. And they also attend your -- your actual charity events, do they not?
A No.
Q All right. They just give money?
A That's right. And the Mike Stern who's on the board of Team Rubicon is not the Mike Stern who is at Stonehill. It's an older gentleman who's in Texas who just happens to give a lot of money to --
Q All right.

A -- Team Rubicon.
Q You also represented Blockbuster. Take that back. Were you the lawyer or the attorney representing the Creditors Committee, the UCC, in the *Blockbuster* bankruptcy?
A No, I was not.
Q Tell me what your capacity was.
A I represented a group of bondholders, secured bondholders. So I represented the group.
Q And was Stonehill a member of that group?
A Not that I recall, but your pleadings seem to indicate that they were. So if they were, they were a small participant. The largest participant was Carl Icahn, who owned about 30 percent of it. Then the others who were big were DK, Davidson Kempner, Monarch, Owl Creek. Those were the big players.
Q Well, --
A When Carl Icahn is in your group, you remember that.
Q Yeah, well, Carl Icahn is not here. We're talking about Stonehill right now.
A And I said I don't remember them actually being a part of it. If they were, --
Q Okay. Well, let me -- let me give you what I'm going to mark as Exhibit 80. That's your name at the top, right?
(Hunter Mountain Investment Trust's Exhibit 80 is marked for identification.)

A That's correct, yes.
Q You were at the time with Sidley & Austin?
A That's correct, yes.
Q This is *In re Blockbuster*.
MR. MCENTIRE: Scroll down, please.
BY MR. MCENTIRE:
Q And steering group of senior -- involves -- well, let's count them. Let's see. One, two, three, four, five. Five entities comprising the backstop lenders. Is that correct?
A I think that's the steering group. So, in order to represent the group, you need to try to assemble a large-enough group that it's material to the company. And then the company, if you're -- particularly if you're over 50 percent, will pay the fees of the group. And you don't represent any individual member of the group. I've never represented Carl Icahn. I represent the group. And if folks want to stay in the group, they can stay. If they want to trade out of the group, they do. And the company will generally continue to pay the fees, and you represent the group so long as you have a controlling interest in the -- whatever the issue is.
Q Well, that's interesting, because now what you're telling me is that this group right here, this is kind of like the executive committee of the group.
A No, it's called the steering group, and it doesn't necessarily --

Q That's fine.
A Well, it's not an executive committee. It doesn't necessarily include just the largest. Some large holders won't be on it. The largest holders here by a long shot were Icahn, who --
Q I'm not talking about --
A -- unloaded, as I say, over 30 percent. Monarch, Owl Creek, and I just don't recall Stonehill being a part of it.
Q I'm not really interested in Carl Icahn. I just want to establish this is a steering group in which you were the lead counsel and Blockbuster was on it. Is that correct?
A Yes.
Q Excuse me. Not Blockbuster.
A I'm sorry.
Q Stonehill.
A No, it's the Blockbuster case in 2010, and Stonehill was apparently on it, but I just don't have a recollection of their involvement.
Q All right. So when Mr. -- who sent you the text message in February of 2021 from Stonehill?
A Michael Stern.
Q And had you actually met him before?
A I think I had, but we didn't know each --
Q All right.
A You know, we certainly didn't know each other, we'd never

worked on anything together, but I --

Q Do you have all your text messages from that period of time, that first quarter of 2021?

A I believe I do, yes.

Q They're saved?

A Yes.

Q Okay. When did the automatic delete button on your cell phone start?

MR. STANCIL: Your Honor, objection. We've covered this this morning. I believe this is a motion coming down the pike, and I thought we had -- thought we had had tabled this preservation issue.

MR. MCENTIRE: This has a direct bearing on his communications with Farallon and Stonehill in this period of time, Your Honor. We have one text message that he's identified, and I have a right to examine whether there are others. Or if not, why not.

MR. STANCIL: Your Honor, he's --

MR. MCENTIRE: That's a legitimate -- I'm not finished. That's a legitimate area of inquiry in this examination.

MR. STANCIL: He's testified he has them all. Your Honor did not order document discovery. I think that's it for purposes of today's hearing, Your Honor.

THE COURT: Okay. I sustain the objection.

BY MR. MCENTIRE:

Q After this text message that you received from Stonehill in February 2021, did you have any follow-up?

A Well, his text message, I don't recall what it said other than I was -- I do recall that he gave me his email address, because I didn't have it. And we just didn't know each other well enough. But we definitely had follow -up. He wanted to talk to me, and at some point we talked.

Q And when did you talk?

A I'm sorry?

Q When did you talk?

A When? I -- it was at the, initially, end of February, beginning of March. So it would have been somewhere in that -- in that time period.

Q End of February, beginning of March? And we also know that you next talked to Farallon, according to your testimony, and they advised you they had already purchased all their claims as of March 15, correct?

A On March 15th, they sent me an email that said they had purchased an interest in claims, and --

Q So -- go ahead.

A I'm not finished. And then at some point after that, we arranged a quick discussion, because that was a curious --

Q I want to assure you I will always let you finish.

A Thank you very much.

Q Unlike others. So, with that said, Mr. Seery, can you identify -- let me back up. Was there a data room set up at Highland Capital for claims investors to come in and look at data?

A No, there was not.

Q Are you aware, sitting here today, that Farallon did any due diligence in connection with its investment in the claims it purchased that are at issue in this proceeding?

A I have indication that they did some, yes. I don't know how much they did.

Q What is the indication?

A In the email in June of 2020, Mr. Linn said that he and his associate were following the case, thought it was -- that's the one that congratulated me on being an independent director, and that they were paying attention to the case. And it -- I don't recall the exact other items in there, but it was clear that they were following the Highland matter. And then in the email in January 2021, he also indicated that they'd been following the case further, and said, Looks like you have things well in hand, or something to that effect. So --

Q Do you have that email, too? Have you saved that email?

A They're all saved, yeah.

Q Okay. So let's talk about that. But you had no data room that would allow them to come in and actually investigate the

underlying assets. Is that correct?
A Not in respect of anybody trying to buy claims. We did have a data room with respect to financing.
Q Please listen to my question. I'll get to it. Data room for claims investors. There was no data room set up on or before March 15 to allow Farallon to come in and investigate its investment in this claim?
A That's correct.
Q There was no data room set up prior to March 15 to allow Stonehill to come in and investigate its investment in the claims it purchased. Is that correct?
A That's correct.
Q Can you identify any due diligence, sitting here today -- let me back up. You heard Mr. Dondero's testimony about portfolio companies, correct?
A Yes.
Q Portfolio companies are companies in which Highland Capital has an interest that actually have separate and distinct management. Is that correct?
A Generally. And it -- I disagree with some of his testimony, but generally that's correct, yes.
Q Well, okay. Let's just take on the part that you agree with. With regard to those portfolio companies, was there anything that was disclosed in the Highland publicly-available financials that would allowed a detailed analysis of

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Highland's investments in each of those portfolio companies?
A I don't know. Certainly, in the four or five sets of projections that were filed, there were financial projections. I'm not sure exactly what was included in each one or in the disclosure statement.
Q Fair enough. Well, I'll represent to you I don't think there's detailed information on each individual portfolio company.
MR. MORRIS: Your Honor, he's not here to testify. I move to strike.
MR. MCENTIRE: Okay.
THE COURT: Sustained.
BY MR. MCENTIRE:
Q In that regard, Mr. Seery, can you identify what Farallon did to investigate the underlying asset value of any of these portfolio companies?
A I don't have any knowledge as to what Farallon did before it bought claims.
Q Can you identify what due diligence Stonehill did to investigate the underlying asset value in any of these portfolio companies?
A I don't -- I mean, in connection with claims purchasing, I have no idea what Stonehill did.
Q Now, I understand that you solicited -- perhaps I don't recall correctly. Did you solicit both Farallon and Stonehill

to participate in a bid to provide exit financing?
A I don't think that's fair. I solicited Farallon because I knew they already owned claims. Stonehill reached out to me, and that was one of the things they were interested in doing, if there was financing needs.
Q Okay.
A And at the time they reached out, which was right after confirmation -- right after confirmation and the confirmation order, we didn't know what our needs would be. We didn't really, at the early stage, think we needed exit financing. When we looked at some of the difficulty we were going to have -- for example, collecting notes and realizing on assets -- we realized that we were going to need some exit financing in order to have enough money to support the enterprise to monetize the assets.
Q And I think you used the -- I think the phrase you used, you are the straw man or a straw man bid? Is that what you called it the other day?
A We did. You set up a very typical competitive process to do exit financing.
Q And what was the --
A And what -- well, I --
Q -- suggest --
A I was going to get to your straw man. And one of the things you do is you assess what the market's going to look

like, what you think the market looks like, what you think a financing would be good for the enterprise, the flexibility you need, how you'd structure it. And then you put that out to prospective lenders and say, Here's our straw man. This is what we'd like you to consider in terms of financing. And then they do their work and come back. And they can either say, that looks great, or we have a totally different idea of what the financing might be, or some other combination of those things.

Q Mr. Seery, thank you for that answer, but I need to ask you to do me a favor. I'm on the clock, and so I'd just like to get my questions out, if you'd try to respond. Okay?

A Uh-huh.

Q Because your answers, as long as they may be, are impacting me a little bit.

So let me ask this question. In the straw man proposal that you put out for bid, what was the suggested interest rate?

A You know, you asked me that the other day, and I think I was slightly off. So it -- and I -- but I did tell you that it depended. There was -- I don't recall what the rate was, but it starts -- if everybody wants to put out money -- and I apologize for the length of the answer -- they look and they say, well, what if I get paid back in six months? Nobody wants to do that. So, duration makes a difference. So

there's an interest rate. There's upfront fees. There's often exit fees. And sometimes there's other amounts. So, our -- my recollection is that our straw man was somewhere in the low teens on the high end, and then closer to high single-digits on the low end. Something in that range.

Q And Farallon indicated to you they were not interested, correct?

A No, not exactly. What Farallon said was they didn't -- they signed an NDA because we invited them in. We invited in six folks. Five signed NDAs. Two of the -- I invited in Farallon. I invited in Stonehill. Well, Stonehill called me. I invited in Contrarian because they had bought claims. And then two lenders that I knew. And Farallon did the work and came back and said, this isn't really what we do. And the other guys, you're telling me, which I was, that other people are more competitive. And so it's not really what we do, we don't think the returns are good enough, but if you need us, because now they're already invested in the claims, call us.

Q Okay.

MR. MCENTIRE: And again, I'll object as nonresponsive. Your Honor, that was a very long answer talking about a lot of other entities. My only question was what the interest rate was.

MR. MORRIS: Your Honor, we oppose the motion to strike. I think it's --

MR. MCENTIRE: No, I didn't strike it. I said -- my objection was nonresponsive. I will now follow it up with a motion to strike his answer.

THE COURT: Overruled. Okay.

BY MR. MCENTIRE:

Q Mr. Seery, you just told us that the interest rate was in the high single digits to in the 12 and 13 percent range.

A No, I was giving you the all-in return for the lender. That's a very different --

Q All-in return?

A -- thing for the -- than an interest rate.

Q That's even better.

A And it depended on the time.

Q Fair enough.

Q So if -- the shorter the duration, the higher the effective return, because he's not getting the return for as long a period of time. If I have $100 million and I get 10 percent, I get just $10 million. But if I have that out for $3 million, I've earned $30 million. So maybe that gets squeezed in the longer it's out.

Q And Farallon said that the interest rate or the return rate was not what they were looking for?

A They indicated two things. I believe I've said this several times. One is they said, this isn't really what we do, a $50-ish million dollar loan to do an exit. But we're in

the case. If you need us, call us. Included in that was, it doesn't look attractive enough to us because you're telling me other guys are more competitive.

Q Okay. And do you know what kind of rate of return they were going to get on the investment of the -- on the claims at a 71 percent projected return rate?

A If we only hit the plan, Farallon's two purchases, based on the numbers you get -- you gave, over a two-year period, would be 38.9 percent.

Q Okay, but we're going to talk about that in a second. Okay. How much -- how much did Farallon actually invest?

A I'd have to look back at your numbers. They're in your pleading. I don't know what they actually paid. I just have it from your pleading.

Q Okay. And do you have paperwork that -- can you (inaudible) calculation here?

A I have a calculator that, when I looked at your numbers, I ran that, and I --

Q I see. All right.

A I'm able to remember certain things.

Q So, so if it's projected that the internal rate of return is only six percent, do you disagree with that?

A A hundred percent disagree. There's -- that's virtually impossible.

Q Okay.

A And that's, by the way, for hitting the plan.
Q I'm sorry?
A That's for hitting the 70 -- the 71-and-change percent.
Q I want to ask you a question about that. The 71-percent-and-change --
A Uh-huh.
Q -- that came out of the plan for Class 8, --
A Yes.
Q -- that was for Class 8, correct?
A Correct.
Q There was zero expected return to Class 9, correct?
A That's correct. They would only get upside, and I think it says in the projections, based upon our view at the time, litigation that could ensue, and that was part of the plan.
Q And as I understand it, that 71-and-some-change --
A Uh-huh.
Q -- projected return rate never changed from the date of confirmation all the way up to the effective date. Am I correct?
A The -- we didn't change the projections that we'd filed with the plan because the plan was confirmed. We didn't need to change the projections that were filed with the plan.
Q The NDAs, as you understand it, can you tell me specifically when the NDAs were signed?
A I know it's the first week of April to the second week of

April. Blue Torch may have signed -- who actually ended up doing the financing -- they may have signed it a week or so before. They'd been around offering financing a number of times in the past.

Q Fair enough. But we know that you understood as of March 15th that Farallon had already made their investments? I mean, claims?

A That's what they told me in that email, yes.

Q Okay. When did Stonehill sign the NDA?

A In and around the same time.

Q But you don't know when Stonehill actually purchased their claims?

A I don't know exactly when. I know generally that by the end of April, early May, they were -- they were the holder of the Redeemer claim. And --

(Interruption.)

A -- I can't remember whether it was from them or whether it was from --

Q Did you ever communicate with Stonehill during the time that they were doing their due diligence on the exit financing?

A Yes.

Q Okay. Did they come to your offices?

A I don't know if we were back yet. I think we were back, but I don't recall them coming to our offices. I think it was

all virtual. It's early '21, so there would have been vaccines. It would have been very -- very -- I don't recall them coming to the offices at that time.

Q But just to be clear, you don't know, you can't give the Court a date when Stonehill actually completed their investments in either Redeemer or HarbourVest?

A No, I don't. I don't know. Did -- just --

Q That was my question.

A When you say Redeemer or HarbourVest, they never bought HarbourVest.

Q It was just Redeemer?

A Correct.

Q All right. You understand that Muck is an entity, a special-purpose entity created by Farallon?

A That's my understanding, yes.

Q And you understand Jessup is a special-purpose entity created by Stonehill?

A That's my understanding, yes.

Q Muck and Jessup are both on the Oversight Committee?

A They are. They -- those entities are the --

Q Is it the Oversight Committee or the Oversight Board?

A Same thing.

Q Fair enough.

A I'll consider them the same.

Q And there's a third member, too, correct?

A That's correct.
Q Okay.
A Independent member.
Q Okay. So you have a three-person board; is that right?
A That's correct.
Q And one of their jobs is to make decisions concerning your compensation?
A The structure of the Claimant Trust Agreement provides that I'm to negotiate with the -- either the Committee or the Oversight Board. And the compensation in the Claimant Trust Agreement is a base salary of $150,000, which is -- a month, which is the same as the one in the case, plus severance, plus a success fee. And it's very specific that that will be negotiated by the -- either the Committee or then the Oversight Board.
Q And Michael Linn, who Mr. Dondero has referred to, he's actually on the Oversight Board, is he not?
A He's the Muck representative on the Oversight Board.
Q All right.
A Yes.
Q If I understand it correctly, you are currently receiving, as the Trustee, $150,000 a month. Is that correct?
A That's incorrect.
Q What are you receiving?
A I receive $150,000 a month as the Trustee and the CEO of

Highland Capital.

Q Well, --

A So I have --

Q -- fair enough.

A I have both roles. The Trustee, for example, doesn't manage the team, they actually work for Highland Capital, and I'm the CEO of Highland Capital.

Q There was some suggestion that the $150,000 was something that the Court had passed upon prior to the effective date or part of the plan. This is a separate negotiated item that you -- that you allegedly negotiated that was awarded to you post-effective date, correct?

A That's false.

Q Okay. So the $150,000 had a discount that was supposed to drop down to $75,000 after a period of time. That never happened, did it?

A The -- you seem to be mixing concepts. But the $150,000 a month was set by the plan and the -- and the Claimant Trust Agreement as the "base salary." That wasn't going to move. When we -- it never was supposed to move.

When I began negotiating with the Oversight Board for the success fee, they pushed back and said, we would like that to step down. So in our -- I did not say, oh, that's a great idea. We ended up negotiating, and they included a provision that we would renegotiate depending on the level of work.

That's one of the provisions.

Q Okay. But renegotiate down to $75,000 after a period of time, but that never happened?

A Initially, I believe it was supposed to step down to $75,000 automatic, subject to renegotiation that it go back up, not a structure that I particularly liked. And since then, we've negotiated on that point.

Q So you currently are making $150,000 a month?

A That's correct.

Q How often do you come to Dallas?

A Usually I'm here at least once a month. Usually it's between two and four days.

Q Okay. And you have a staff here in Dallas at Highland Capital, correct?

A Yes.

Q How many people?

A Eleven.

Q Eleven people?

A Uh-huh.

Q Working full-time?

A Yes.

Q And you're still making $1.8 million a year?

A Yes.

Q You also have a bonus structure, correct?

A That's correct.

Q And that's performance-based?

A That's correct.

MR. MCENTIRE: Can you pull up the agreement please? Okay.

(Pause.)

BY MR. MCENTIRE:

Q All right. Do you see --

MR. MCENTIRE: We're having technical difficulty here.

BY MR. MCENTIRE:

Q All right. Can you identify this document?

MR. MCENTIRE: What exhibit number is this?

MR. MILLER: 28.

BY MR. MCENTIRE:

Q Exhibit 28.

MR. MCENTIRE: I believe this is already in evidence.

THE COURT: Hunter Mountain Exhibit 28?

MR. MCENTIRE: Yes, Your Honor.

THE COURT: Okay.

BY MR. MCENTIRE:

Q This is the memorandum of agreement. Do you see that?

A Yes.

Q On the third line, it says -- and your name is identified here. You're the Claimant Trustee, correct?

A Claimant Trustee/CEO.

Q Engaged in robust, arm's length, and good-faith negotiations regarding the incentive compensation program.

As part of this robust, arm's length, and good-faith negotiation, did you personally conduct any independent search in the marketplace?

A I did -- what do you mean by search in the marketplace?

Q Well, did you try to do a market study? I asked that question in your deposition.

A I didn't know if you were asking a different question.

Q Same question.

A You mean market study on compensation?

Q Yes.

A No, I did not.

Q Are you aware of whether or not any member of the Oversight Board or Oversight Committee did a market study?

A On compensation?

Q On compensation.

A I'm not aware that they did one, no.

Q So this robust, arm's length, and good-faith negotiation, as far as you know, is divorced from any market study database or -- or methods. Is that correct?

A I don't believe that's correct, no.

Q I see. So did -- was any third-party consultant hired?

A Not by me or Highland or the Trust, no.

Q All right.

MR. MCENTIRE: Can you scroll down a little bit, please?

BY MR. MCENTIRE:

Q You signed this agreement, correct?

A Yes.

Q And we have Michael Linn signing on behalf of Muck, who also is with Farallon, correct?

A That's correct.

MR. MCENTIRE: Scroll down.

BY MR. MCENTIRE:

Q And by the way, this is a heavily-redacted document. The redactions deal with what?

A The redactions deal with the portion that would go to the team as opposed to going to me.

Q Are we talking about the 11-member team?

A Correct.

MR. MCENTIRE: Can you scroll down? Stop. Go back.

BY MR. MCENTIRE:

Q So we have the assumed allowed claim amounts under Section D. Do you see that?

A Yes.

Q Class 9, $98 million and some change. Class 8, $295 million and some change. Then we go into the incentive payment tiers. Do you see that?

A Yes.

Q What's the purpose of the tiers?
A The purpose of the tiers was to set additional compensation so that, the more recovery, the higher the compensation. So, below Tier 1, there was really effectively no bonus, is my recollection. And then in each tier there would be a percentage.

So the first tier is $10 million. There would be a percentage of that $10 million that could be allocated for bonus. Then in the next tier it would be $56 million. A portion of that would be allocated for bonus. And it's weighted more heavily to the higher-recovery tiers, meaning it incentivizes both me and the team to try to reach deeper into Class 8 and Class 9 and get higher recoveries.

Q Okay. So the idea is, the more difficult it is to get the recoveries, the higher percentage you should get, because if you're successful then you should be rewarded accordingly? Is that kind of how it works?

A I'm not sure if difficult is the term, but it's a combination of both expertise, difficulty, and time.

MR. MCENTIRE: All right. Can you scroll down, please? Next page.

BY MR. MCENTIRE:

Q And here are your actual tier participations. They go -- you said basically nothing Tier 1, up through 6 percent. So Tier 1 is the 71 percent, right?

A It's .72 percent, and it's of the -- that's the first piece. You have to get to Tier 1. So if we had not -- I believe it's structured is if we don't get to Tier 1, for example, we don't hit the plan, right around the plan number of 71-and-change cents, then there wouldn't -- there wouldn't be upside.

So it was very much structured in a way that you had to perform. And then the better the performance, the bigger the percentages of the tier.

Q So, in theory, Mr. Seery, by the time you get down to Tier 4 and Tier 5, it's a little bit less certain that you're ever going to get there. Is that right?

A Well, out of the gate, going deeper was uncertain. It's a question of being able to execute well on the assets and being able to control the costs and being able to make distributions. It wasn't based on what we just got for the assets. It's actually based on actual distributions --

Q I understand that.

A -- to Class 8 and 9 claimants.

Q I understand that. And the idea is, is that it take a lot more effort -- the theory was it might take a lot more effort to get all the way to the bottom of Tier 5 to pay all the Class 9 claims, right?

A And maybe a little luck.

Q Yeah. And Class 10 is not even factored into this, is it?

A No, it is not.
Q And so you didn't consider Class 10. You stopped at Tier 5?
A That's correct.
Q So your entitlement to a 6 percent return, or a 6 percent bonus on the recoveries, you say it's there to incentivize you. You didn't expect that to actually happen, did you, when you signed this? Is that your testimony?
MR. STANCIL: I object to the form of the question. It mischaracterizes the agreement.
BY MR. MCENTIRE:
Q You didn't expect it to happen, did you, sir?
THE WITNESS: Well, the six --
THE COURT: Wait. I'm sorry. Could you rephrase the question?
MR. MCENTIRE: Sure.
BY MR. MCENTIRE:
Q Are you telling the judge that you really didn't expect that to happen and that's why you were entitled to a higher percentage?
A No. We didn't expect to reach Class 9 and go deep into Class 9, but we certainly held out the possibility that we could. And it's not six percent. It's six percent of the increment. These are cumulative. So you get .72 of Tier 1. You get 1.17 of Tier 2. And you can add those, and you earn

them when you've actually made the distribution, but you don't get paid until you get all your distribution or we're relatively done or there's a renegotiation. Because the Committee wanted to make sure that I didn't say, hey, I hit Tier 3, time to go, I got a better job.

Q So, Mr. Seery, if Farallon told Mr. Dondero that they wouldn't sell basically at any price because you said it was too valuable, and they rejected a 40 or 50 percent premium, if they said that, is that -- is that a lie?

A That I -- rephrase that, please. I don't -- didn't quite understand your question.

Q Yeah. You've heard the testimony that Farallon, Michael Linn, told Mr. Dondero that they were not going to sell their claim at any amount because you had told them it was too valuable. Is that a lie?

A I think that's -- yeah, I don't think that's true.

Q Okay. And obviously, if they're not going to be willing to sell at any amount, they must be pretty certain they're going to hit Tier 5. Would that just be a lie?

A That -- that conversation was before this negotiation. That -- there's no -- they could not have had any expectation, either when they had that conversation in May or when we had this discussion that I was going to hit Tier 5 and I hadn't hit Tier 5. And the idea that they wouldn't sell at any price is complete utter nonsense, because they're capped on what

they can get.
Q So if -- sure. Okay. So, but if Farallon told --
A But that's what you said.
Q If Farallon told Mr. Dondero that they wouldn't even sell at 130 percent of the purchase price because you told them it would be too valuable, is that a lie?
A I never told them it would be too valuable. I don't -- I don't know any of the other parts that you're saying, the 130 percent of an unknown number, some guess number that Mr. Dondero had. I never told them it would be too valuable. That would be their own assessment of where we were at the end of May 2021.
Q If they said that you told them not to sell, that it was too valuable, is that a lie?
A That's untrue, yes.
Q If they told him -- if they told him that he told you -- that you told them it was too valuable because of MGM, is that a lie?
A Yes.
Q How many shares of stock did Highland Capital own?
MR. MCENTIRE: Well, one second. What is my time? How much time do I have?
THE CLERK: Right now you're at --
MR. MCENTIRE: So I'm almost two and a half hours in?
THE CLERK: Just about. A little under.

BY MR. MCENTIRE:

Q I'm going to have to speed up here, Mr. Seery.

THE COURT: A little under two and a half, you said.

BY MR. MCENTIRE:

Q Mr. Seery, I want to make sure. Highland Capital owns interests in the CLOs. What is the CLOs' stake in the MGM stock, or what was it?

A Highland Capital does not own any interest in any of the CLOs it manages. It has a fee stream, and it can have certain deferred fees that it can get, but it didn't own any interest in any of the CLOs that it managed.

Q Fair enough. How about the portfolio companies?

A Did Highland Capital own interests in the portfolio companies?

Q Yes.

A Some of the ones Mr. Dondero listed, but they weren't portfolio companies. So he said OmniMax, but we didn't have any management of OmniMax. We just had debt that converted to equity, but we didn't control the -- the thing. That was during the case, the company.

Q Did Multistrat have an interest in MGM?

A Multistrat owned MGM, yes.

Q Okay. And did your company, Highland Capital -- your company -- Highland Capital have an interest in Multistrat?

A Highland Capital owns 57 percent of Multistrat, yes.

Q And did Highland Capital have an interest in any other portfolio companies that have an interest in -- had a stake in MGM?

A RCP. Restoration Capital Partners.

Q And do you recall what the value of that was?

A It shifted over time. I don't -- I don't know what time you're talking about.

Q And isn't it true that 90 percent of all the securities that Highland Capital owned at the time that the sale went public was roughly 90 percent of all of Highland Capital's securities?

MR. STANCIL: Objection, Your Honor. I don't know what that question is asking.

THE COURT: I don't understand it, either.

Could you rephrase?

MR. MCENTIRE: I'll try to.

BY MR. MCENTIRE:

Q At the time that the announcement was made about Amazon buying MGM in May of 2021, what percentage of all the securities did MGM comprise of the securities that were owned by Highland Capital?

A Of the securities that were directly owned by Highland Capital, it may have been -- I'm thinking of public or semi-public securities, the 150,000 or 170,000 that we had that were subject to the Frontier lien. Might have been almost all

of the securities that we owned. It wasn't -- it was a good position, but it wasn't a huge driver for the directly-owned shares. There was more value in the Multistrat and the RCP.

Q What percent of shares of all --

MR. STANCIL: Your Honor, I'm sorry, I'm having trouble hearing the end of Mr. Seery's answers. So I know it's not his --

THE WITNESS: I'm sorry.

THE COURT: Okay. If you could make sure you speak into the mic.

THE WITNESS: Yeah. I'm sorry.

MR. STANCIL: I'm having trouble with Mr. McEntire talking over the end of Mr. Seery's answers.

THE COURT: Ah.

MR. STANCIL: I'm having trouble following.

THE COURT: Okay.

MR. STANCIL: I apologize.

THE COURT: Okay. Could you --

MR. MCENTIRE: I didn't know I was doing that.

THE COURT: Well, --

MR. MCENTIRE: I'll try to do better.

BY MR. MCENTIRE:

Q Mr. Seery, of all the stock that Highland Capital owned in May of 2021, what percentage of that was (inaudible) stock?

A Hopefully this is clear. Highland Capital did not own a

lot of stock. Highland Capital did have a direct ownership interest in MGM, so that might have been the vast majority of the stock that Highland Capital owned. It did own interest in other entities, like its investment in RCP or its investment in Multistrat. But of the stock that it owned directly, that was probably it, and that's the one that was liened up to Frontier.

Q Mr. Seery, did Highland Capital own approximately 170,000 shares of MGM stock in May of 2021?

A Yes. You -- I'm sorry. You asked me what percentage, and I think I said roughly that amount of stock liened up to Frontier, and that that might have been almost all of the stock we owned.

Q Does Highland Capital own a direct interest in HCLOF?

A In HC --

Q HCLOF?

A HCLOF? Yes. Highland Capital owns a small direct interest, and a large indirect interest which we got through the settlement with HarbourVest.

Q And the entity in which you acquired the indirect interest, what's the name of that entity?

A I don't recall. It's a -- it's a single-shell special-purpose entity that we own all of it and it has no other assets.

Q And just to make sure that the record is clear, you deny

under oath that HCLOF has any interest -- or had any interest in MGM stock?

A HCLOF has never owned MGM stock and still doesn't own MGM stock. It's never owned it.

Q Um, --

A At least -- at least, as long as I've been in this case.

MR. MCENTIRE: One second, Your Honor, please.

(Pause.)

MR. MCENTIRE: I'm going to have to pass the witness because of time sensitivities, Your Honor, so I'll pass the witness at this time.

THE COURT: Okay. Cross?

CROSS-EXAMINATION

BY MR. MORRIS:

Q Mr. Seery?

A Yes, sir.

Q You just covered a lot of what we would have covered, so I want to be really, really quick here. Okay? We're not covering old ground. Let's just start with the HarbourVest settlement. Do you recall that Mr. Dondero sent the email to you on December 17th?

A Yes.

Q Okay. When did you reach the agreement with HarbourVest on the settlement?

A December 10th.

Q Okay.

MR. MCENTIRE: Your Honor, I'd like to move into evidence Exhibit 31. Actually, let me lay a foundation first.

Can you give the witness --

MR. MCENTIRE: Is this a new exhibit?

MR. MORRIS: No. It's Exhibit 31.

MR. MCENTIRE: Can I see it, Tim, please?

MR. MORRIS: It's in your box.

MR. MCENTIRE: Give me a minute.

MR. MORRIS: Uh-huh.

THE COURT: Okay. We're about to focus on Highland Exhibit what?

MR. MORRIS: 31.

THE COURT: Okay.

MR. MORRIS: Do you have it, Your Honor?

THE COURT: I do.

BY MR. MORRIS:

Q Do you have it, Mr. Seery?

A I do, yes.

MR. MORRIS: Do you have it, sir?

MR. MCENTIRE: I do. Thank you.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Can you just tell the Court what this is?

A This is an email chain. It starts from me to the other

independent directors, copying counsel, to outline the terms of the HarbourVest settlement that I had just made the offer to HarbourVest to settle on these terms on December 8th. And this was the product of a number of negotiations that had taken place over the prior weeks, and this was the final offer that I was making to them to settle.

Q Directing your attention to the bottom of the first page, the first email dated December 8, 2020 at 6:46 p.m., can you just read the first sentence out loud.

A I lost -- you lost me.

Q That begins, "As discussed yesterday."

A Oh. "As discussed yesterday, after consultation with John Morris" -- that would be you -- "regarding litigation risks, this evening I made an offer" -- it says "and," but it should have said "an" -- "offer to HarbourVest to settle their claims. The following are the proposed terms."

Q Okay. Just stop right there. And you were -- this is the report that you gave to the independent directors?

A The other independent directors.

Q Right.

A I was also one.

Q Right. And did Mr. Dubel respond?

A He did, yes.

Q And can you just describe briefly what your understanding was of his response?

A Dubel responds a couple hours after I sent the original email: "Jim, this basically looks like a $10 million -- net $10 million payment to HV." That's HarbourVest. "Is that correct? Does the 72-cent recovery include the $22-1/2 million that we get from the transfer of HCLOF interests? Remind me again, post-effective date, who is managing HCLOF?"

So I think my understanding was Mr. Dubel was querying me on some of the terms that I had set forth here, including that the value of the claim in our estimation was going to be about $9.9 million, meaning they would have a $45 million senior claim, a $35 million junior claim, and we thought, based on the values we had then, it was going to pay out about $9.9 million.

Q Okay. And was this offer accepted?

A Yes, it was.

Q When was it accepted?

A I think I just said. On -- on December 10th.

Q Okay. And did the terms that you described for the other independent directors on December 8th, did they change in any way at all from that reflected in this email until the time we got to the 9019 hearing?

A Not at all, no.

Q Okay. I see that you mention in here that you -- it says, quote, "The interests have a marked value of $22-1/2 million, according to Hunter Covitz." Do you see that?

A That's correct, yes.
Q Who's Hunter Covitz?
A Hunter Covitz was a Highland employee. He ran the structured products business. So he was responsible for making sure that the CLO we managed, which was AC7, was compliant and was -- with the indentures. He also was responsible for monitoring the -- what we call the 1.0 CLOs, even though they weren't really CLOs, they were more like closed-in funds. And he also kept track of the Acis -- CLOs that HCLOF had an interest in that were managed by Acis.
Q Okay. And do you recall how he conveyed to you the NAV?
A Well, I talked to him numerous times, so this wasn't our -- I didn't just call him up at the end and say, what's the NAV? I had had discussions with him while I was negotiating with HarbourVest. And at some point, he or someone -- he told me the amount, and at some point he gave me a NAV statement that actually showed the NAV of HCLOF, which at 11/30 was roughly $45 million.
Q Okay. Can you turn to Exhibit 31-A, the next document in the binder?
A Mine's completely blacked out.
THE COURT: I'm sorry, what number?
MR. MORRIS: 31-A.
THE COURT: Oh.
MR. MORRIS: And the first two pages are redacted

just because they're not relevant and they're business information.

BY MR. MORRIS:

Q But can you turn to the last page, sir?

A Yes.

Q Can you tell the judge what this is?

A So this is a net asset value statement from HCLOF. That's Highland CLO Funding, Limited. That's the Guernsey entity that -- that held these interests. And this is a net asset amount, and it shows what the net -- what the net asset value is as of this time on a carryforward basis of $45.191 million.

Q Okay. And where did you get this document?

A I believe I got it from Covitz. It's generated by an entity called Elysium, which is the fund administrator for HCLOF, and I believe they're out of Guernsey.

Q And did you rely on this document in setting the proposal to HarbourVest?

A Well, both the conversations with Covitz and the document. And frankly, HarbourVest got the same documents because they were -- they held a membership interest in HCLOF. So he -- Michael Pugatch knew what the NAV was.

Q And would Mr. Dondero or entities controlled by him who also have interests in HCLOF, is it your understanding that they would have also had this document available?

A All members would --

MR. MCENTIRE: Excuse me. Excuse me. I object to that question, the question being "and the entities controlled by Mr. Dondero." There's no foundation for this witness to answer a question like that.

BY MR. MORRIS:

Q Who else owned --

THE COURT: Sustained.

BY MR. MORRIS:

Q -- an interest in HCLOF?

THE COURT: Go ahead.

THE WITNESS: It would have been DAF.

BY MR. MORRIS:

Q The DAF?

A Yeah.

Q Okay. Let's just ask this question. Is it your understanding that these NAV valuation reports were made to all holders of interests in HCLOF?

A Yes. And that would include the DAF. And I did leave off that there were three former Highland employees long gone, or at least not around at this point, who also owned very small interests, and they would have gotten those statements as well.

Q And does HCLOF also produce audited financial statements?

A It does, yes.

Q Can you go to Exhibit 60, please?

A Six zero?
Q Yes, sir. A couple of questions here. Is this a document that Highland would have received in the ordinary course of business?
A Yes, it is.
Q Okay. And what is the NAV depicted on this page as of the end of the year 2020?
A Well, you have to look through it, because this document is actually dated 4/21/21, --
Q Okay.
A -- which you can see on Page 10 where it's signed. And that shows a net asset value of $50.4 million as of 12/31/21. 12/20. I'm sorry. And -- but it wasn't prepared until -- the audits aren't done and we don't get this document until after the directors sign off in April.
Q Okay.
MR. MORRIS: And Your Honor, I move for the admission into evidence of these three HarbourVest-related documents, 30, 31-A, and 60.
MR. MCENTIRE: No objection.
THE COURT: They're admitted.
MR. MORRIS: Okay.
(Debtors' Exhibits 30, 31-A, and 60 are received into evidence.)
BY MR. MORRIS:

Q Okay. Let me move on. We've seen Mr. Dondero's email today. You've seen that before, correct?

A Yes.

Q Okay. What was your reaction when you got it?

A I was highly suspicious.

Q Why is that?

A Well, not to replow too much old ground, but this came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.

It also followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski being on it.

Furthermore, Pachulski had advised Mr. Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics.

And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

In addition, that followed the termination of the shared service arrangements, the approval of the disclosure statement, and the demand to collect on the demand notes that

Mr. Dondero and his entities were liable for.

So at that point, he'd been interfering with the business, he had threatened me, he was subject to a TRO, and I got this email and I was highly suspicious.

Q Did you ever share this email with anybody at Farallon?

A No.

Q Did you ever share this email with anybody at Stonehill?

A No. And just to be clear, not just the email, the contents. Never discussed it with them.

Q That was going to be my next question. Did you ever share any information about MGM with anybody?

MR. MCENTIRE: Objection. Leading.

MR. MORRIS: I'm asking the question.

MR. MCENTIRE: No, you're leading.

MR. MORRIS: This is the whole --

MR. MCENTIRE: You're leading the witness.

THE COURT: Overruled. Finish the question.

BY MR. MORRIS:

Q Did you ever share any information concerning with MGM with anybody at Stonehill before you learned that they had purchased claims?

MR. MCENTIRE: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: No. No, I did not.

BY MR. MORRIS:

Q Did you ever share any information with anybody at Farallon concerning MGM before you learned that they purchased their claims?

MR. MCENTIRE: Objection. Leading.

THE WITNESS: No, I did not.

THE COURT: Overruled.

THE WITNESS: I'm sorry.

(Pause.)

THE WITNESS: You know, you just asked me something about Stonehill.

THE COURT: No.

THE WITNESS: I'm sorry.

BY MR. MORRIS:

Q Yeah. No question.

A I wanted to clarify one.

Q What did you want to clarify, sir?

A Certainly didn't share anything about this email, any of the contents of it. I don't know if I ever -- I don't know exactly when Stonehill bought their claims, and they were subject to the NDA to do the financing process. So I know when Farallon told me they had bought their claims and I know we never had any discussions at all before they acquired their claims, and I don't know when Stonehill got those -- their claims, so I don't know when -- what was in the data room or what -- what might have been discussed about MGM while they

were under an NDA.
Q Okay.
A But certainly nothing -- I never shared the contents of this email, the substance of this email, the email at all. That's what I wanted to clarify.
Q What data room are you talking about, sir?
A This was the data room related to the exit financing where we sought exit financing and ultimately got exit financing from Blue Torch Capital.
Q And who put together the data room?
A DSI, which was our financial consultants, and our finance team.
Q And why did you -- did you delegate responsibility for creating the data room to DSI and the members of your team you just identified?
A Yeah, of course.
Q How come?
A I don't really know how to put together a data room.
Q Did you -- did you direct them to put anything in the data room?
A Not specifically. We had a deck that we -- that certainly I worked on and commented on, which would have been a general overview of the -- of the post-reorganized Highland and the -- and the -- and the Claimant Trust. So I certainly commented on that. But the specific information in the data room, I

don't -- I never looked at it. I don't know what it is.
Q How many -- how many entities who were participating in the exit facility process wound up making bids or offers?
A There were five that signed NDAs. Three provided substantive proposals. One was verbal. That was Bardin Hill, who'd been contacting me throughout the case, and they do this kind of financing, and they submitted a competitive bid. Stonehill in writing, and then amended, a more aggressive one, in writing. And Blue Torch probably three, and the most aggressive.
Q And did you give the -- did you give the opportunity to your age-old friends at Stonehill?
A They're not my age-old friends. And no, they lost. They were second, they were close, it was a good real proposal, but they didn't win.
Q So, --
A Blue Torch won.
Q So is it fair to say that you -- did you pick the best proposal that you thought provided the best value for the company that you were managing?
MR. MCENTIRE: Your Honor, again, for the last ten minutes, we've had nothing but leading questions. And it just is --
MR. MORRIS: Fine. Happy to --
THE COURT: Sustained. Rephrase.

BY MR. MORRIS:

Q Why did you pick Stone -- why did you pick Blue -- Blue-?

A Blue Torch.

Q Blue Torch, over the other bids?

A It was the best bid. So, structurally, it was the least expensive, although they were extremely close. I had a lot of confidence in Blue Torch because this type of financing is what they do. And while you can never have a hundred percent confidence that if somebody goes through the -- this is an LOI, right, so this is a letter of intent. When they go further, they may -- they may not complete it. But I had a high degree of confidence that they would get there, because, again, that's what they do. And they were the -- they were just the better bid.

Q Okay. Do you recall that in Mr. Dondero's notes he wrote down that he was told that Farallon had purchased their claims in February or March?

A I saw that on what he claimed, yes.

Q And is that consistent with what you were told by Farallon in March?

A They told me they acquired the claims -- they had acquired the claims on March 15th, by email. I don't know if they acquired them in February or March. Or even January. I know they said they had them on March 15.

Q Did you ever speak with Farallon about anything having to

do with the purchase of their claims?

MR. MCENTIRE: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: Not -- not before they sent me that email.

MR. MORRIS: I apologize. Withdrawn.

BY MR. MORRIS:

Q Before -- before learning of their purchase, had you had any discussions with them about potential claim purchases?

MR. MCENTIRE: Objection.

THE WITNESS: No.

MR. MCENTIRE: Leading.

THE WITNESS: I'm sorry.

THE COURT: Overruled.

THE WITNESS: No, I didn't.

BY MR. MORRIS:

Q Okay. Before you learned that Stonehill had purchased claims in the Highland bankruptcy, had you ever had any conversation with them about the potential purchase of claims?

MR. MCENTIRE: Objection. Leading.

THE WITNESS: No, I don't -- I don't --

THE COURT: Overruled.

THE WITNESS: I'm sorry. I don't -- I don't believe so, no.

BY MR. MORRIS:

Q Do you have any knowledge at all as to how the sellers went about selling their claims?
A I have some knowledge now, post-effective date, that I believe I have some understanding, but not a great one.
Q Did you ever communicate with any of the sellers about the potential sale of their claims prior to the time their claims were sold?
MR. MCENTIRE: Objection. Leading.
THE COURT: Overruled.
THE WITNESS: I did have a conversation with Eric Felton who was the Redeemer representative on the Creditors' Committee. And it came out of one of the emails I got. I think it indicated that --
MR. MCENTIRE: Objection, hearsay, Your Honor. I mean, hearsay, Your Honor.
THE COURT: Okay.
MR. MCENTIRE: It's hearsay.
THE COURT: Okay. He's about to say something that's hearsay is the objection. Any response?
MR. MORRIS: I'm not offering it for the truth of the matter asserted. I'm offering it for Mr. Seery's state of mind and the extent of his communications. How about that?
MR. MCENTIRE: I don't see how you could offer it for anything other than for the truth of the matter asserted. It's coming from a third party, so I object to hearsay.

MR. MORRIS: Okay. You know what? We --
BY MR. MORRIS:
Q Other than the one conversation --
THE COURT: Are you withdrawing the question or do I need --
MR. MORRIS: Yeah. This is just --
THE COURT: Okay. You're withdrawing the question.
MR. MORRIS: I'll withdraw the question.
THE COURT: Okay.
BY MR. MORRIS:
Q Other than the one conversation with Mr. Felton, did you ever have a conversation with any seller prior to the time you learned that Farallon or Stonehill --
MR. MCENTIRE: Objection. Leading.
BY MR. MORRIS:
Q -- purchased the claims?
THE COURT: Overruled.
THE WITNESS: No.
BY MR. MORRIS:
Q Did you play any role in facilitating or recommending to Farallon or Muck that it purchase claims?
MR. MCENTIRE: Objection. Leading.
THE COURT: Overruled.
THE WITNESS: No. None whatsoever.
BY MR. MORRIS:

Q Did you play any role in facilitating or recommending that Stonehill or Jessup purchase claims?
A No.
MR. MCENTIRE: Objection. Leading.
THE COURT: Overruled.
THE WITNESS: I'm sorry.
BY MR. MORRIS:
Q All right. Let's just finish up with compensation. Can you go to Exhibit 41, please? Can you just identify that document for the Court?
A This is the -- it's a memorandum agreement that sits on top of an outline. It is the December 2 incentive compensation agreed terms for Highland Capital --
Q Okay.
A -- and the Trust.
Q And when was this signed?
A It would have been -- the date is December 6th.
Q And --
A 2021. I'm sorry.
Q Okay. And when did you and the Committee members begin discussing your compensation package?
A Shortly after the effective date, which was August 11, 2021.
Q And were there any negotiations during that intervening three- or four-month period?

A Considerable negotiations during that period, yes.
Q Can you go to the last page of Exhibit 41? Can you describe that for the Court? I know it's hard to read, but --
A I --
Q -- the numbers don't matter so much as the infor... you know, just, can you just describe --
A Yeah.
Q -- what's being conveyed?
A So it's very hard to read, but it says -- because it's small -- Seery Proposal 1, Oversight Counter 1, Seery Proposal 2, Oversight Counter 2, and then it continues down. My recollection is that we had four or five rounds of back-and-forth that were meaningful. But it -- but it even took a detour in the middle, because it started with my proposal, which was pretty robust, and their response to me that they didn't like the structure or the amount, and so then we started talking about that. And then they -- after we were kind of hitting numbers and structure at the same time, they came back to me and said, stop, we've got to agree on the structure before we agree on the amounts.
MR. MCENTIRE: Your Honor, I'm going to object as it's hearsay and move to strike. This is -- he's not talking about the document. He's talking about something outside of the four corners of the document. I object to hearsay.
MR. MORRIS: Hearsay? There's no statement.

THE COURT: There was --

MR. MORRIS: It's a description of what happened.

MR. MCENTIRE: But he's actually referring to statements in his substantive comments.

THE COURT: Overruled. Okay.

MR. MORRIS: I move for the admission into evidence of Exhibit 41.

THE COURT: Any objection?

MR. MCENTIRE: That's the memorandum agreement, Mr. Morris? Is that it?

MR. MORRIS: Yes, sir.

MR. MCENTIRE: No objection.

THE COURT: Admitted.

(Debtors' Exhibit 41 is received into evidence.)

BY MR. MORRIS:

Q Can we go backwards to Exhibit 39, please? Can you describe for the Court what that is?

A This is a redacted copy of minutes of the board meeting on August 21 -- 26, 2021.

Q And there's a lot of stuff redacted there. Do you have an understanding as to why there is redactions?

A It would have nothing to do with these issues that we're discussing or the alleged *quid pro quo*.

Q Okay. Can you just read out loud the last portion that's unredacted on the second page, beginning with "Mr. Seery

reviewed"?

A It actually says, "Mr. Seery also presented the board with an overview of his incentive compensation program proposal, which would include not only Mr. Seery but the current HCMLP team. The terms and structure of the proposal had been previewed with the board in prior operating models presented by Mr. Seery. Mr. Seery reviewed the proposal and stated his view that the proposal was market-based and was designed to align incentive between himself and the HCMLP team on the one hand and the Claimant Trust beneficiaries on the other. The board asked questions regarding the proposal and determined that it would consider the proposal and revert to Mr. Seery with a counterproposal."

Q All right. When you were -- when you were shown one of these documents before, you were asked to identify Mr. Linn, but you weren't asked about the others. Do you see Richard Katz there?

A Yes.

Q Who's that?

A He's the independent member.

Q Did he play any role in the negotiation of your compensation package?

A Yes. He was actively involved.

Q Okay. And how about Mr. Provost? Who's he?

A He is the Jessup person. Jessup is the board member.

He's their representative on the board.

Q Okay.

MR. MORRIS: And I move for admission into evidence of Exhibit 39.

MR. MCENTIRE: No objection, Your Honor.

THE COURT: Admitted.

(Debtors' Exhibit 39 is received into evidence.)

BY MR. MORRIS:

Q Let's go to Exhibit 40, please. Can you just describe for the Court what that is?

A This is a subsequent board meeting minutes, August 30, 2021.

Q And can you just read into the record -- why are there redactions?

A Again, they would -- if there are redactions, it would have nothing to do with the issues that are being brought up in this motion.

Q And can you just read into the record the paragraph beginning, "Mr. Katz"?

A "Mr. Katz began the meeting by walking the Oversight Board and Mr. Seery through the Oversight Board's counterproposal to the HCMLP incentive compensation proposal, including the review of the spreadsheet and summary of the counterproposal. Discussion was joined by Mr. Linn and Mr. Stern. Mr. Seery asked numerous questions and received detailed responses from

the Oversight Board. Mr. Seery and the Oversight Board agreed to continue the discussion and negotiations regarding the proposed incentive compensation plan for the Claimant Trustee and the -- and the HCMLP."

Q So they didn't accept your original proposal that you made in the earlier document?

A They did not.

Q Okay. And did negotiations continue?

A They did, yes.

MR. MORRIS: Before we go on, I move for admission into evidence Exhibit 40.

THE COURT: Any --

MR. MCENTIRE: No objection.

THE COURT: It's admitted.

(Debtors' Exhibit 40 is received into evidence.)

BY MR. MORRIS:

Q Can you go to Exhibit 59, please? Can you describe for the Court what this is?

A This is an email string between me and the Oversight Board regarding the compensation proposal.

Q Okay. And directing your attention to the bottom, I guess, of the second page, there is an email from Mr. Katz dated October 26. Do you see that?

A At the bottom of the second -- oh, yes, yes.

Q Okay. Can you just read the sentence at the bottom of the

page beginning "We propose"?

MR. MCENTIRE: Well, Your Honor, I would, first of all, object to him just reading from the document until it's been put into evidence.

THE COURT: I'm sorry, say again?

MR. MCENTIRE: I would object to Exhibit --

THE COURT: We can't pick things up on the record when you don't speak in a mic.

MR. MCENTIRE: I object to him simply reading from the document before the document is offered into evidence.

MR. MORRIS: Okay.

MR. MCENTIRE: Accepted into evidence.

MR. MORRIS: Sure. I'd move it into evidence.

MR. MCENTIRE: I object as hearsay.

MR. MORRIS: This is a present sense recollection -- recorded. It's a clear business record. It's a negotiation that's happening over time. Mr. Seery is here to answer any questions about authenticity.

MR. MCENTIRE: Well, first of all, it's an email string involving communications with third parties. That's hearsay in and of itself. And it's not been established that this is a business record. And Mr. Morris's statements to that effect, frankly, don't carry his burden. There's internal hearsay contained throughout the document, Your Honor, even if it is a business record.

MR. MORRIS: Your Honor, just to be clear, let me respond.

THE COURT: Uh-huh.

MR. MORRIS: Exceptions to hearsay rule. 803(1) present sense impression; (2) -- (3) existing mental impression, state of mind about motive, (5) recorded recollection, (6) records of regularly-conducted activity, or Federal Rule of Evidence 807, residual exception for trustworthy and probative evidence. I'll take any of them.

MR. MCENTIRE: None of them apply.

MR. MORRIS: Okay.

THE COURT: Okay. Overruled.

MR. MORRIS: Thank you.

THE COURT: I admit it. 59's admitted.

(Debtors' Exhibit 59 is received into evidence.)

BY MR. MORRIS:

Q Can you just read that last sentence at the bottom of that page?

A This is from Rich Katz to me.

Q Uh-huh.

A (reading) We propose doing this in two stages. First, we'd like to come to agreement on structural, underscored, elements of the ICP.

ICP means incentive compensation program or plan.

Only after we'd done that, when the board had greater

understanding of what plan they were pricing, would we haggle out the specific numbers, underscore, tier attachment points, and percentage participation in each tier.

Q Okay. And going to the right-hand part of that, do you see where it says, Salary J.S. Only?

A Yes.

Q Can you just, you know, generally describe for the Court what the debate is or the negotiation that's happening on that particular point?

A Well, this was brought up earlier. The salary was $150,000 a month. That was the same salary that I'd had during the case that was approved by the Court. It had been approved by the Committee, approved by the other independent members. That was continuing. It was also contained as an actual base salary in the plan and the Claimant Trust Agreement, and they were never amended.

The Committee came back to me and said, we'd like that to step down. And they'd like it to step down on a definitive specific schedule, because they had a view that that would incentivize me to work faster to make distributions before the stepdown and that I wouldn't linger in the role. And the yellow --

Q Can you just read the yellow out loud?

A That's --

Q Read the whole thing.

A That's my response.
Q Read the whole thing.
A (reading) Based on the required expertise, volume, and personal risk of the work today, I do not think that any formulaic reduction in base comp is appropriate. With the complexity and amount of issues that I have to manage on a daily basis, I currently do not have capacity to take on significant outside work. Of course, things can change. If they do, I am open to discussing reduction in the base. I have no interest in sitting around doing nothing, having no risk, and collecting the full base compensation. We can include prefatory language and an agreement to revisit our terms, but I do not see an avenue to set parameters to lock in an agreement for the future at this time.
And then there's another paragraph on severance.
Q You can stop there.
MR. MORRIS: I have no further questions.
THE COURT: All right. Pass the witness.
MR. MCENTIRE: Do you have any questions?
A VOICE: No.
MR. MCENTIRE: Okay. How much time do I have, please?
THE CLERK: So, the limit is at two hours and 32 minutes.
MR. MCENTIRE: All right.

REDIRECT EXAMINATION

BY MR. MCENTIRE:

Q Just a couple questions very quickly, Mr. Seery. Highland Capital Management paid HarbourVest cash as part of the settlement, correct?

A That's incorrect.

Q There was no cash component at all?

A There was not.

Q And in connection with the HarbourVest settlement, HarbourVest transferred an interest in HCLOF to Highland Capital or an entity affiliated with Highland Capital; is that not correct?

A That's correct.

Q And that -- that entity -- and HCLOF, and HCLOF had an interest in various CLOs, correct?

MR. MORRIS: Your Honor, I object. This is beyond the scope of my cross, or redirect, however you prefer.

MR. MCENTIRE: Well, you spent a lot of time on HarbourVest. I'm just trying to clear it up.

MR. MORRIS: I didn't say the word CLO. I did not say the word CLO.

THE COURT: Overruled. He can go there.

If you'd please move the mic towards your voice.

BY MR. MCENTIRE:

Q And HCLOF had an interest in various CLOs, correct?

A I believe it had an interest in five CLOs. Oh, that's not true. It had an interest in five of the 1.0 CLOs. It also owned one hundred -- basically, somewhere between 87 and a hundred percent of Acis 3, 4, 5, 6, and 7, which is about a billion dollars of CLOs to 10 (inaudible) leveraged vehicles, and they owned basically all the equity, so that was the driver of the value.

Q And various entities that were -- I mean, some of these various CLOs had an interest in MGM stock, correct?

A The 1. -- the Highland 1.0s did. The value drivers I just described -- Acis 3, 4, 5, 6, and 7 -- had no interest in MGM.

Q But one of them did have an interest in MGM?

A That's not correct.

Q What did you just say?

A 3, 4, 5, 6, and 7 did not have any interest in MGM.

Q Were there any CLOs that had an interest in MGM?

A Some of the 1.0 CLOs did, --

Q I see.

A -- yes.

MR. MCENTIRE: Pass the witness.

MR. MORRIS: No further questions.

THE COURT: Mr. Seery, I want to ask you one thing.

THE WITNESS: Yes, Your Honor.

EXAMINATION BY THE COURT

THE COURT: We dance around it a lot. The Highland

ownership of MGM stock. If think -- if you could confirm I've heard this correct -- you said Highland itself owned 170,000 shares that were subject to a Frontier Bank lien?

THE WITNESS: Yes, Your Honor. I believe that's the right amount. So, Highland directly owned about 170,000 shares. Those were liened up to Frontier. They were -- they were never transferred. Highland never sold any MGM stock.

THE COURT: Okay. So Frontier still holds it or what?

THE WITNESS: No. In fact, post-effective -- I believe it was post-effective date, and with cash generated, we -- we paid off the Frontier loan, --

THE COURT: Uh-huh.

THE WITNESS: -- released that lien, and then we held those shares in MGM until the merger was consummated.

THE COURT: Okay.

THE WITNESS: So we tendered our shares into the -- into the merger and got the merger consideration, which was cash.

THE COURT: Okay. And so there was that. But other than that, you said Highland owned 50 percent of Multistrat, which owned some MGM stock?

THE WITNESS: Multistrat had a -- I don't recall the amount, but a material amount of MGM stock. That also -- so, Highland owned 57 percent of Multistrat. Is also the manager

of Multistrat.

THE COURT: Uh-huh.

THE WITNESS: Multistrat did not sell any MGM stock. It also tendered them into the merger as well.

THE COURT: Okay. And then you said Highland owned some percentage of Restoration --

THE WITNESS: Restorations Capital Partners.

THE COURT: -- Capital Partners, which owned some MGM stock?

THE WITNESS: Similarly, Highland is the manager of what we call RCP. RCP owned a material amount of MGM stock. RCP did not sell any MGM stock. However, in 2019, you'll recall that Mr. Dondero sold $125 million of stock postpetition out of RCP. It was MGM stock. He sold it back to MGM. We had a -- we had a hearing on it, because subsequently the Independent Board learned about it, the Committee learned about it, they had not -- it had not been disclosed, but there was a -- what we thought was a binding agreement with MGM, and MGM indicated that they were going to hold us to it, and so we had a hearing about approving that transaction. The Committee was not happy.

THE COURT: Okay. I'm fuzzy on when that was. You said?

THE WITNESS: That would have been in early 2020, probably April-ish timeframe.

THE COURT: Okay.

MR. MORRIS: Your Honor?

THE WITNESS: The transaction was in November, I believe.

MR. MORRIS: If it's helpful, Your Honor, you can find it at Docket 487.

THE COURT: Okay.

MR. MORRIS: I think that's the objection from the Committee where the issue was -- comes up at least at one time.

THE COURT: Okay. And then I think this is the last category I heard, that HCM and its specially-created sub owned just over 50 percent of HCLOF, and it in turn owns interest in a lot of CLOs, and a few of those, what you call the 1.0 CLOs, did own some MGM stock?

THE WITNESS: That's correct. So if you look on the audited financials that we had introduced into evidence, you'll see actually every asset that HCLOF owns. There's no MGM in there. It does own interest. There were minority interests in five or six of the 1.0 CLOs. Grayson, Greenbrier, Gleneagles, Brentwood, Liberty, and one other. And it had interest in those, but it never owned any MGM stock and it never traded any MGM stock. It didn't own any.

THE COURT: All right. Did I cover the universe of what MGM stock was owned by Highland or something Highland had

an interest in?

THE WITNESS: Yeah. So, the ones that HCLOF had an interest in that I just listed, those -- Jasper was the other one. I apologize. The -- they owned -- they owned MGM stock among their other -- they had a lot of other assets. The other CLOs, the 1.0 CLOs that Highland had, every one of them owned MGM stock. None of them sold or bought any stock. Those all tendered into the merger as well. Highland did not own any interest in any of those entities.

THE COURT: Uh-huh.

THE WITNESS: It just managed them.

THE COURT: Okay. And this is my last question. Someone brought up or it came up today that exactly two years ago today -- I didn't remember we were on an anniversary of that -- but was when we had a hearing, and I think it was a contempt hearing, but I had, I guess, read in the media, like many other human beings, an article about the MGM-Amazon transaction, and I had said I had hope in my heart and brain that this could be an impetus or a triggering event for maybe a settlement. And that was kind of quickly pooh-poohed, if you will.

Remind me why I was quickly persuaded, oh well, I guess that's not going to happen. I just can't remember what I heard that day.

THE WITNESS: Well, it was widely known that

Highland, meaning not the 171,000 --

THE COURT: Uh-huh.

THE WITNESS: -- but the entities that Highland or related entities, including DAF, the other Dondero entities, controlled a lot of Highland stock, as even Mr. Dondero said between Anchorage --

THE COURT: You mean MGM?

THE WITNESS: MGM, I'm sorry. Between -- there were only five major holders. There was the two we just mentioned and Davidson Kempner and Monarch and Owl Creek, and just a few other big holders.

And so Your Honor would have learned it from the case, but you also would have learned it from the paper, that any time a holder is mentioned, it's first Anchorage, because they owned the biggest piece, and Kevin Ulrich, who was the chairman of Anchorage, was also the chairman of MGM. And then Highland was always mentioned.

The reason that it didn't have some great amount of capital that went on to Highland, although there was money from RCP and there was money from MGM, is Highland doesn't own the stock that's -- or interests in the 1.0 CLOs that owned all of it. We just manage it.

THE COURT: Uh-huh.

THE WITNESS: And that goes to various other entities, including, in large part, to Dondero entities. So

there wasn't a big windfall to Highland from that.

The possibility of some upside from HCLOF, because it owned small interests in those five, there was some value in that, but a lot of it got tied up in the litigation that other entities, Dondero entities, are bringing against U.S. Bank and Acis, which has tied up everything in that -- those distributions.

THE COURT: Okay. All right. Thank you. You are excused from the stand.

THE WITNESS: Thank you, Your Honor.

MR. STANCIL: I owe you a docket number, Your Honor. You said don't let us leave before we give you a docket number for that second contempt order. We promised to come back. It was #2660.

THE COURT: Okay. Got it.

MR. STANCIL: Which -- did we move that into evidence?

MR. MORRIS: No. We asked the Court to take judicial notice.

THE COURT: I will take judicial notice of 2660, --

MR. STANCIL: Thank you, Your Honor.

THE COURT: -- I already said. Thank you.

THE WITNESS: Thank you, Your Honor.

THE COURT: You're excused.

(The witness steps down.)

THE COURT: All right. Are you going to have any other evidence, Mr. McEntire?

MR. MCENTIRE: Your Honor, as I respond to your question, I think we have 30 -- approximately 30 minutes left.

THE CLERK: Twenty-six, yes.

MR. MCENTIRE: Twenty-six. We do have another witness. We also have a closing final argument. And we also have an opportunity -- we want to reserve an opportunity for our experts that is still under advisement.

So my first action would be to ask for an extension of time, or we would like to add to our time limit. Instead of just three hours, we'd like to increase the time so we can accomplish all these things.

I mean, if the Court is unwilling to give us additional time, then I will be forced not to call another witness. I will move to a very short final argument. I need to preserve some time for my experts, should you allow them to testify.

THE COURT: Well, --

MR. MORRIS: May I respond?

THE COURT: -- you don't have to preserve time. I'm either going to allow you to put on your experts, and we said 30 minutes/30 minutes, --

MR. MORRIS: That was what I was going to say, Your Honor.

THE COURT: Okay.

MR. MORRIS: There's no prejudice here. Nobody's being harmed. There's no appellate issue. I thought we were really clear. Everybody gets their three hours today. We will file our reply brief on Monday. The Court will determine both whether it needs to hear expert testimony and whether or not our motion should be sustained. If the Court denies the motion, we'll take a couple of depositions and each side will get whatever period of time the Court orders.

But, you know, the attempts to create an appellate record are just -- you know, that's not -- there's no issue here. He can -- he's got 26 minutes. He can put on his witness, he can make his closing in the 26 minutes that they've always had.

THE COURT: All right. Well, we have --

MR. MCENTIRE: May I caucus? May I caucus very quickly, Your Honor?

THE COURT: Okay. Uh-huh. And while you're caucusing, we have our game plan on the experts. We know how that's going to happen. And I'm not extending the three hours.

MR. MORRIS: (sotto voce) We have 62 minutes?

(Pause.)

MR. MCENTIRE: Your Honor, accordingly, I'll just -- we'll move into a final argument at this time.

THE COURT: Okay. So you rest?

MR. MCENTIRE: I rest.

THE COURT: All right.

MR. MORRIS: We call Mark Patrick.

THE COURT: All right. Mr. Patrick, you've been called to the witness stand.

MR. MORRIS: I just need to find my examination notes. Just give me one moment, please.

THE COURT: All right. Please raise your right hand. Could you remain standing, please.

(The witness is sworn.)

THE COURT: All right. You may be seated.

MARK PATRICK, DEBTORS' WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Hi, Mr. Patrick.

A Hello.

Q Did you ever meet with anybody at the Texas State Securities Board?

A No.

Q Do you know if -- do you know anybody who ever met with anybody at the Texas State Securities Board concerning Highland?

A Yes.

Q And who met with the Texas State Securities Board concerning Highland?

A Ronnie (phonetic) Patel.

Q And is that a lawyer?
A Yes.
Q Do you know who retained Mr. -- that lawyer?
A Yes.
Q Who retained that lawyer?
A The DAF, the Charitable DAF Fund. Or one of its entities.
Q Okay. And is it your understanding that the DAF Fund or one of its charitable entities filed a complaint with the Texas State Securities Board?
A Yes.
Q Okay. Thank you very much. Does Hunter Mountain owe any money to Mr. Dondero?
A No.
Q Is there a promissory note that's outstanding that Mr. Dondero has pursuant to which Hunter Mountain owes him $60-plus million?
A No.
Q Who created Hunter Mountain?
A Well, I don't recall specifically. I just recall the facts that, when Hunter Mountain was created, Thomas Surgent, the chief compliance officer of Highland Capital Management, who was representing the Dugaboy Investment Trust as well as Highland Capital legally with respect to that transaction, requested to Rand that the Hunter Mountain Investment Trust be created for purposes of Highland filing its ADV with the SEC.

It was my understanding that when the ADV would be filed, sort of the ownership change would -- chain would stop at Hunter Mountain.

Q Okay. Dugaboy is Mr. Dondero's family trust, correct?

A No. But I'll help you along. Just please use the full name of the trust.

Q If I refer to the Trust, will you know that that's -- is that for the Hunter Mountain Investment Trust, or do you want me to use trust --

A There's no entity called Dugaboy. Just Dugaboy. There's not.

Q Okay.

A It's a shorthand. I'm --

Q Okay. I'll refer to Dugaboy then, okay?

A What are we referring to?

Q The trust known as Dugaboy.

A Okay. Fair enough. Go ahead.

Q Okay. Did Dugaboy contribute a portion of its ownership interest in Highland to the Highland -- to the Hunter Mountain Investment Trust?

A Contribute? No.

Q Did it transfer?

A Yes.

Q And did it receive in exchange a promissory note from Hunter Mountain?

A Yes, it did.
Q Okay. And Mr. Dondero is the lifetime beneficiary of Dugaboy, correct?
A Yes and no. It's a placeholder -- a placeholder provision that's never been used.
MR. MCCLEARY: Your Honor, pardon me. Pardon me. Objection, relevance, Your Honor.
THE COURT: Relevance?
MR. MORRIS: This is -- we've been told so many times that Mr. Dondero has no interest in this case, he has nothing to do with Hunter Mountain. He's the lifetime beneficiary of Dugaboy. And if I --
THE WITNESS: That provision has never been invoked. He's received no money through that provision.
THE COURT: Okay. Just wait. We're resolving --
MR. MORRIS: Right.
THE COURT: -- an objection at the moment.
BY MR. MORRIS:
Q Can we turn to Exhibit 51?
THE COURT: I'm still working on the objection.
MR. MORRIS: I'm going to try and lay a foundation. Okay?
THE COURT: Okay. So he's withdrawing the question.
MR. MCCLEARY: He's withdrawing the question? Okay.
THE COURT: Okay.

BY MR. MORRIS:

Q You have a binder in front of you, sir. Can you go to Exhibit 51?

THE COURT: And this is Highland's Exhibit 51?

MR. MORRIS: Yeah.

THE COURT: Okay.

BY MR. MORRIS:

Q And is that a promissory note that was made --

A Yes, it is.

Q -- that was made by Hunter Mountain in favor of Dugaboy back in 2015?

MR. MCCLEARY: Objection, relevance, Your Honor.

MR. MORRIS: I'm trying to connect Mr. Dondero to Hunter Mountain.

THE COURT: Okay. Overruled.

THE WITNESS: Yeah. It's a secured promissory note with the amount of approximately $62.6 million signed by Beacon Mountain, LLC, --

MR. MORRIS: Uh-huh.

THE WITNESS: -- as administrator for Hunter Mountain Investment Trust.

BY MR. MORRIS:

Q Okay. And as the -- what's your role with Hunter Mountain today?

A And it's in favor, just to answer your question, it's in

favor of the Dugaboy Investment Trust. That's where I was just being a little stickler --

Q I appreciate that.

A -- previously. Sorry.

Q I do.

A Okay. What is your question?

Q What's your role with Hunter Mountain today?

A I am the administrator.

Q When did you become the administrator?

A On or about August of 2022.

Q Okay. How did you become the administrator?

A Through the acquisition of Rand Advisors.

Q And does Hunter Mountain have any employees?

A No.

Q Does it have any operations?

A No.

Q Does it generate any revenue?

A Not -- not currently.

Q Okay. Did it generate any revenue in 2022?

A No.

Q Does it own any assets?

A Yes.

Q What does it own?

A It has -- it's my understanding it has a contingent beneficiary interest in the Claimants Trust.

Q And that's the only asset it has, right?
A Correct.
Q So that if it -- if that interest has no value, then Hunter Mountain has no ability to pay the Dugaboy note. Fair?
A (sotto voce) If that interest has no value?
That is correct.
Q Okay.
MR. MORRIS: I move Exhibit 51 into evidence.
MR. MCCLEARY: Your Honor, relevance. Objection.
THE COURT: Your response?
MR. MORRIS: Mr. Dondero desperately needs Hunter Mountain to win in this lawsuit because otherwise his family trust will get nothing on this $63 million note.
THE COURT: Okay. Overrule the objection. It's admitted.
(Debtors' Exhibit 51 is received into evidence.)
BY MR. MORRIS:
Q Neither you or any representative of Hunter Mountain has ever spoken with any representative of Farallon, correct?
A Correct.
Q Neither you nor any representative of Hunter Mountain has ever spoken with anybody at Stonehill, correct?
A Correct.
Q You have -- neither you nor Hunter Mountain have any personal knowledge about a *quid pro quo*, correct?

A (sotto voce) Nor Hunter Mountain have any personal knowledge about a *quid pro quo*.

Correct.

Q Neither you nor anybody at Hunter Mountain have any personal knowledge about how Mr. Seery's compensation package was determined, correct?

A Correct.

Q Neither you nor anybody at Hunter Mountain had any knowledge about the terms of Mr. Seery's compensation package until the Highland parties voluntarily disclosed that in opposition to the Hunter Mountain motion, correct?

A No. I --

MR. STANCIL: Objection, relevance, Your Honor.

THE COURT: Overruled.

THE WITNESS: No. I seem to -- I seem to have an awareness that the performance fee was amended at a certain time post-confirmation, or, you know, around the confirmation time period. And so that's with respect to the compensation. I -- just myself.

BY MR. MORRIS:

Q Can you tell Judge Jernigan everything you know or everything you knew before receiving Highland's opposition to this motion about Mr. Seery's compensation as the CEO of the Reorganized Debtor at the Claimant Trustee?

MR. MCCLEARY: Objection, Your Honor. That's

overboard and an unclear question.

THE COURT: Overruled. He's gone through some specific things now. I guess he's just trying to encompass anything we haven't covered.

THE WITNESS: Yeah. I had a -- I personally had a general understanding that Mr. Seery's compensation changed after the claims trading to put in a performance-based-type measure. But I do recall that it was always very -- it was unclear exactly the terms.

BY MR. MORRIS:

Q Okay. Did you learn anything else?

A Such as?

Q Just, did you ever learn anything else about Mr. Seery's compensation package that you haven't testified to yet?

MR. STANCIL: Your Honor, objection. Vague.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. MORRIS:

Q Okay. Neither you nor Hunter Mountain has any personal knowledge whatsoever about any due diligence that Stonehill did in connection with the purchase of claims, correct?

MR. MCCLEARY: Your Honor, he's getting into allegations in the complaint which involve attorney work product, so we object on the basis of invading the attorney work product.

THE COURT: Overruled.

THE WITNESS: Can you restate the question again?

BY MR. MORRIS:

Q Yes, sir. Neither you nor Hunter Mountain have any personal knowledge as to what due diligence Stonehill did before purchasing its claims in this case, correct?

MR. MCCLEARY: Objection. Attorney work product. Invasion of that. Could I --

THE COURT: I just ruled.

MR. MCCLEARY: I understand.

THE COURT: I just --

MR. MCCLEARY: Could I have a running objection to this line of questioning on that basis, Your Honor, invasion of attorney work product?

THE COURT: Why don't you explain why it's attorney work product. I'm missing --

MR. MCCLEARY: Because they might -- he would have knowledge from the efforts and investigation through attorneys in the case. I assume he's not asking -- you can't separate that, potentially. So he's getting into attorney work product.

MR. MORRIS: I'm asking for facts.

THE COURT: He's asking for facts. I overrule.

BY MR. MORRIS:

Q Can you answer the question, sir?

A Yeah. I'm not aware -- I'm not personally aware of how much work Farallon did, or Stonehill.

Q You have no knowledge whatsoever about the diligence Stonehill did before purchasing its claims, correct?

A Well, I would generalize now is that they did nothing.

Q And that's on the basis of Mr. Dondero's testimony, correct?

A I would just call it on a basis of our general inquiry, which would be including, in part, Mr. Dondero's testimony.

Q What else are you relying upon for your conclusion that you just described other than Mr. Dondero's? What other facts?

A Yeah, we -- yeah, we have not uncovered any facts that indicated that they did conduct any due diligence of any sort.

Q Okay. And are you -- do you have any personal knowledge as to what Farallon did in connection with its due diligence prior to buying its claim?

A Yeah. We have not been able to find any facts that would suggest that Farallon conducted any due diligence of any kind.

Q Okay.

MR. MORRIS: One second, Your Honor.

(Pause.)

BY MR. MORRIS:

Q Who's paying Hunter Mountain's legal fees?

A Hunter Mountain is paying -- is legally obligated and

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

Volume 26

APPELLEE RECORD

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

002805

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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paying its own legal fees.

Q If it generates no income and its only assets is the interest in Highland, where is it getting the funds to pay legal fees?

MR. MCCLEARY: Objection, Your Honor. This is irrelevant and invades the attorney-client privilege.

MR. STANCIL: Your Honor, I'm happy to read a Fifth Circuit case that says the identity of a third-party payer of attorneys' fees is not privileged. I would refer them to *In re Grand Jury Subpoena*, 913 F.2d 1118, a 1990 Fifth Circuit case. I can read from Judge Jones' opinion, but you tell me how much you want to hear on this.

THE COURT: Okay. I overrule your objection. He can answer.

THE WITNESS: There is a settlement agreement by Hunter Mountain Investment Trust as well as the Dugaboy Investment Trust that provides for the payment of attorney fees.

MR. MORRIS: No further questions, Your Honor.

THE COURT: Okay. Cross?

MR. MCCLEARY: Yes, Your Honor, briefly.

CROSS-EXAMINATION

BY MR. MCCLEARY:

Q Mr. Patrick, how would you describe Mr. Dondero's relationship with Hunter Mountain Investment Trust today?

A None.
Q You were asked some -- let me ask you about litigation, and litigation involving the sub-trust. Has Hunter Mountain been involved in litigation with Mr. Kirschner?
A Yes.
Q Okay. And what is your understanding of Mr. Kirschner's role?
MR. MORRIS: Your Honor, while I would love for them to continue --
MR. MCCLEARY: He's the --
MR. MORRIS: -- to use their time, I object that it's beyond the scope of my examination. They passed on the witness. They rested their case. He should be limited to the scope of my inquiry.
THE COURT: Okay. How does this tie to direct?
MR. MCCLEARY: Your Honor, it -- just very generally. This is --
THE COURT: Okay. I need to know how it ties to the direct.
MR. MCCLEARY: This doesn't tie directly to the direct, Your Honor.
THE COURT: Then it's beyond the scope, you acknowledge?
MR. MCCLEARY: Yes, Your Honor.
THE COURT: Okay. Sustained, then.

MR. MCCLEARY: Okay.

BY MR. MCCLEARY:

Q Mr. Patrick, has Hunter Mountain Investment filed any litigation as a plaintiff other than its efforts to be a plaintiff in this lawsuit and its action as a petitioner in the Rule 201 matter earlier this year in Dallas state court?

A The 202.

Q 202, yes.

A No, it has not.

Q All right. And then it's -- has it been a party, then, to any other litigation other than the efforts to file this action, the Rule 202 action, and has it been a defendant in any lawsuits?

A To my understanding, no.

Q Is it involved as a defendant in the Kirschner litigation?

A Yes.

Q Mr. Kirschner is suing Hunter Mountain; is that correct?

A That is correct.

Q Okay. So, is Hunter Mountain a vexatious litigant?

MR. MORRIS: Objection, Your Honor. This is now really beyond the scope. We're not doing -- this is -- we're not doing it. I'm not letting -- because there's a vexatious litigant motion pending now in the district court right now before Judge Starr. This has nothing to do with anything I asked.

THE COURT: Okay.

MR. MCCLEARY: They're trying to draw --

THE COURT: You've already asked him is it a party in any other litigation besides the 202 and this attempted one, so where are we going with this?

MR. MCCLEARY: Well, they're just trying to draw Mr. Dondero into this and -- this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed -- attempting to file this action and a Rule 202 proceeding. So they're not involved in a lot of litigation and they're not a vexatious litigant.

THE COURT: Okay. I think I'll sustain that and we can just move on.

MR. MCCLEARY: Okay. Then I'll pass the witness. Thank you, Your Honor.

THE COURT: Okay. Any redirect?

MR. MORRIS: No, thank you, Your Honor.

THE COURT: All right. You are excused, Mr. Patrick.

(The witness steps down.)

THE COURT: Anything else?

MR. MORRIS: Just a time check for both sides and let's get to closings.

THE COURT: Okay. Caroline?

THE CLERK: Movant has 23 minutes left and the Respondents have 47.

THE COURT: 23 and 47. Any other evidence from the Respondents?

MR. MORRIS: That is a fair question.

(Discussion.)

MR. MCCLEARY: Your Honor, I just want to confirm that all the exhibits that they did not object to have been admitted into evidence.

THE COURT: All right. Well, let me --

MR. MCCLEARY: We do offer them.

MR. MORRIS: Oh.

THE COURT: Hang on.

MR. MORRIS: Did I get Exhibit 45, Your Honor?

THE COURT: Just a moment. I'm doing two things at once here. 45 is in.

MR. MORRIS: Okay.

THE COURT: All right. On HMIT's exhibits, okay, first, as we all know, 29 through 52 are carried until -- if we have another hearing with the experts.

(HMIT's Exhibits 29 through 52 carried.)

THE COURT: I'm showing we have -- and speak up if anyone questions this -- I show that we have Hunter Mountain Exhibits 3 and 4, and then 7 through 10, 12 through 23, and 26 through 38, and 53 through 57, 64, 65, and then 67 through seventy --

(HMIT's Exhibits 3, 4, 7-10, 12-23, 26-38, 53-57, 64, 65,

67-70 are received into evidence.)

MR. MCCLEARY: Your Honor, I apologize. From 36 -- 26 to 32 are in?

THE COURT: I believe that was part of the stipulation, Mr. Morris, right?

MR. MCCLEARY: Yes.

MR. MORRIS: I think that's right.

THE COURT: Okay.

MR. MORRIS: We really didn't object to very many.

THE COURT: Yes.

MR. MCCLEARY: That would be 25, too. That would include 25?

MR. STANCIL: No. Objection. 25 is not --

THE COURT: It's not admitted.

MR. STANCIL: It's not in evidence.

THE COURT: 25 and 24 were not admitted.

MR. MORRIS: Correct. Those are my emails.

THE COURT: Okay. So --

MR. MCCLEARY: 25 is an article.

THE COURT: Your 25 was John Morris Email Re: Text Messages dated March 10, 2023.

MR. MCCLEARY: Okay.

THE COURT: Okay. I can't remember where I left off. I think I left off -- I'll just repeat after the expert exhibits that are carried. I've admitted 53 through 57. I

have admitted 64, 65, 67 through 71.

(HMIT's Exhibit 71 is received into evidence.)

Now, I'm not sure if I ended up admitting 72. That was the articles. I can't remember if you stipulated on that finally.

MR. MORRIS: I said they --

MR. MCCLEARY: They had no objection.

MR. MORRIS: -- they come in --

THE COURT: Not for the truth of the matter asserted.

MR. MORRIS: -- self -- exactly.

THE COURT: Okay.

MR. MORRIS: Self-authenticating.

THE COURT: So 72 is in.

MR. MCCLEARY: Okay.

(HMIT's Exhibit 72 is received into evidence.)

THE COURT: Then we had some pleadings. I think 73, 74, 75 are in, but again, not for the truth of the matter asserted in any advocacy on 73 and 74. And then 77, 78, 79 are in. And that's it.

(HMIT's Exhibits 73, 74, 75, 77, 78, and 79 are received into evidence.)

MS. DEITSCH-PEREZ: Your Honor, I didn't make an appearance, but I was taking notes (inaudible).

MR. MCCLEARY: Your Honor, I believe 80 should be in.

MR. MORRIS: No objection to 80. It's on our -- it's

part of our Exhibit 5.

THE COURT: Okay. 80 is in. Admitted.

(HMIT's exhibit 80 is received into evidence.)

MR. MORRIS: Yeah. That's really Section A of that thing that I gave you this morning.

THE COURT: If Ms. Deitsch-Perez wants to consult with the Hunter Mountain lawyers, she can. I don't know --

MR. MORRIS: Can I go through quickly mine, Your Honor? Because we actually never had the opportunity to put our exhibits in.

THE COURT: Okay. Let's make sure we're to --

MR. MORRIS: Okay. I'm sorry. I'm sorry.

THE COURT: -- closure on the Hunter Mountain exhibits.

MR. MORRIS: I'm sorry.

THE COURT: Anything I said that you disagree with? I don't think --

(Pause.)

THE COURT: Okay. Let's hurry up. What is the controversy?

A VOICE: Roger? The Court's addressing you.

MR. MCCLEARY: Oh. Excuse me, Your Honor. So, just a little unclear of whether you have Exhibits 21 through 25 admitted.

THE COURT: I have 21, 22, and 23. Not 24. Not 25.

Okay. Anything else?

MR. MCCLEARY: Okay. Then we do offer 24 and 25.

THE COURT: You offered them. I did not admit them.

MR. MCCLEARY: Okay. 76. I believe -- was that -- you're carrying?

MS. DEITSCH-PEREZ: Carried.

MR. MCCLEARY: You're carrying that?

THE COURT: Okay. I carried that and --

MR. MCCLEARY: It's part of the expert issue.

THE COURT: Okay. Yes, part of the expert. So it's carried.

(HMIT's Exhibit 76 is carried.)

(Pause.)

MR. MCCLEARY: I understand you've admitted 53 through 83, although some of them have now not been approved.

THE COURT: All right. Well, we need to clarify. 58 through 63, you think you offered them and I admitted them, but not for the truth? I remember that being discussed for 58 through 63. Are you actually offering them?

MR. MCCLEARY: Yes. 58 through 63.

THE COURT: All right. And Mr. Morris, you ultimately agreed that yes, but not for the truth of the matter asserted?

MR. MORRIS: That's right, Your Honor.

THE COURT: Okay. So they are admitted. Okay.

(HMIT's Exhibits 58 through 63 are received into evidence.)

THE COURT: And then there was an objection to the Mark Patrick declaration for the same thing, not for the truth of the matter asserted.

MR. MORRIS: Exactly.

THE COURT: But you agree as long as it's --

MR. MORRIS: Correct.

THE COURT: Okay. So what that means is, to recap, 53 through 75 are admitted, although some of those are only -- they're not for the truth of the matter asserted. And then 77 through 80 are admitted. Okay?

MR. MCCLEARY: And 76? We offered 76.

THE COURT: That's -- we carried it. We carried it. It relates to the expert.

MR. MCCLEARY: Carried it.

(Pause.)

MR. MCCLEARY: Thank you, Your Honor.

THE COURT: Okay. Now let's straighten out Highland's exhibits. So, I'm showing 1 through 16 have been admitted, and then 25 through 31-A?

MR. MORRIS: 25 through 31-A?

THE COURT: I'm sorry. Yes. 25 through 31-A.

MR. MORRIS: Okay.

THE COURT: And then 34. And then 39, 40, 41, and

then 45. 51, 59, and 60.

MR. MORRIS: Okay. So I'm going to do my best not to burden the Court. I'm trying to focus. We move for the admission into evidence of Exhibit 32, which is Mr. Dondero's objection to the HarbourVest settlement. And the reason that we're offering it is because he made no mention of any concern at all that the settlement implicated material nonpublic inside information.

THE COURT: All right. Any objection?

MR. MCCLEARY: 32?

THE COURT: Uh-huh.

MR. MCCLEARY: Yes, Your Honor. Relevance and hearsay.

THE COURT: Overruled. And I can take judicial notice of it in any event.

(Debtors' Exhibit 32 is received into evidence.)

MR. MORRIS: We move for the admission into evidence of Exhibit 33, which is the recent letter from the Texas State Securities Board declining to take any action after conducting an investigation of the Dugaboy complaint.

THE COURT: Okay. Any objection?

MR. MCCLEARY: We object on the grounds of relevance, 403, hearsay, and authenticity, Your Honor.

And I also, I think it's important that the decision by a regulatory body has no bearing on this cause of action or the

colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry, Your Honor.

THE COURT: Okay. I overrule the relevance objection. Certainly, it goes to colorability. It's some evidence. It's some evidence. A regulatory body did not choose to go forward --

MR. MCCLEARY: But that could be for --

THE COURT: -- on the complaint.

MR. MCCLEARY: That could be for reasons entirely unrelated.

THE COURT: True, true. It's some evidence.

MR. MORRIS: That's speculation.

MR. MCCLEARY: Not for this.

THE COURT: But what is the authenticity objection?

MR. MCCLEARY: Well, there's no demonstration. I don't believe they sponsored that with anyone.

THE COURT: Pardon? Say again?

MR. MCCLEARY: They didn't sponsor that with anyone.

MR. MORRIS: Your Honor, I actually -- if they really put me to it, because I was reading the Rules of Evidence in the wee hours of the morning, I am certain that there's an exception for government documents and government statements and government decisions.

MR. STANCIL: Your Honor, as to its authenticity, I

could produce a witness from Highland who said they got it, if that's really what we're doing. That it's the letter, they got it from the TSSB, if we're really doing authenticity.

MR. MCENTIRE: Well, first of all, it's hearsay and there is no authenticity issue and it's irrelevant. I understand --

MR. STANCIL: What is the authenticity issue, Mr. McEntire?

THE COURT: I'm trying to understand the authenticity issue. You think this is a --

MR. STANCIL: Do you think it's a real letter or a fake letter?

MR. MCENTIRE: Well, first of all, I'm going to address the Court and not you, okay?

Your Honor, --

THE COURT: Well, address by speaking in a --

MR. MCENTIRE: Yeah. Thank you.

THE COURT: Okay. I'm just saving the court reporter from grief, okay?

MR. MCENTIRE: It is hearsay, and it is hearsay that is calculated to be misrepresented or mischaracterized because it's utter speculation as to the basis for their decision. And if it's -- utter speculation is the basis of your decision, it has no reason to come in. There's no --

THE COURT: What you're telling me, it goes to the

weight of the evidence. Okay?

MR. MCENTIRE: Your Honor, --

THE COURT: Okay. You're not telling me it's inadmissible hearsay.

MR. MCENTIRE: Well, it is inadmissible hearsay.

MR. MORRIS: Can I just, for one second?

THE COURT: Please.

MR. MORRIS: Paragraph 34 of their motion, Your Honor. Quote, "The Court also should be aware that the Texas State Securities Board opened an investigation into the subject matter of the insider tradings at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT's position that the claims described in the attached adversary proceeding are plausible and certainly far more than merely colorable."

They used the investigation to try to convince you that their claims are colorable, and now we have a letter saying there's nothing.

THE COURT: Okay. You want to explain that to me?

MR. MCENTIRE: Well, we put no evidence in, in this proceeding --

THE COURT: You put what?

MR. MCENTIRE: We have put no evidence in, in this proceeding, --

THE COURT: You filed a pleading under Rule 11

suggesting this was highly relevant, right?

MR. MCENTIRE: We filed a motion. Yes, we did.

THE COURT: Under Rule 11.

MR. MCENTIRE: Yes. Of course we did.

THE COURT: Okay.

MR. MCENTIRE: Of course we did.

THE COURT: Suggesting this Texas State Securities Board complaint and investigation was highly relevant.

MR. MCENTIRE: The fact that it had opened an investigation and was conducting an investigation is irrelevant. Its decision to stop the investigation without further elaboration or clarification, this is why it calls for utter speculation.

MR. MORRIS: Your --

THE COURT: Okay. Do you have the hearsay exception that applies? I'm looking at my evidence rules right now for the government record or public record. Is it 803(8) that we need to have addressed here?

MR. STANCIL: 803(8), Your Honor.

A VOICE: Yeah, public records.

THE COURT: Okay.

MR. STANCIL: Public record. Sets out --

THE COURT: Public records, 803(8), hearsay exception. Moreover, you pled allegations suggesting this investigation was really relevant. So I overrule your

objection, and so that means 33 is admitted.

(Debtors' Exhibit 33 is received into evidence.)

MR. MORRIS: Thank you, Your Honor. I continue. Exhibit 36 --

MR. MCENTIRE: Which one was that?

MR. MORRIS: That was 33.

So now we're up to 36, Your Honor. I'm going to skip some of these.

THE COURT: Okay.

MR. MORRIS: But this is just the Court's order approving Mr. Seery's original --

THE COURT: I'm waiting for any objection for the record. Do we have an objection, Mr. McCleary?

MR. MCCLEARY: 36, relevance, Your Honor.

MR. MORRIS: The relevance is that this Court approved without objection Mr. Seery's compensation package in an amount that included a base salary of $150,000, which the Claimant Purchasers and the independent director saw fit to continue.

THE COURT: Objection overruled. It's admitted.

(Debtors' Exhibit 36 is received into evidence.)

MR. MORRIS: I think 38 may be on their list. Yeah, 38 is in as their 26, right? So that should be admitted.

THE COURT: Admitted.

(Debtors' Exhibit 38 is received into evidence.)

MR. MCCLEARY: If it's on our list, we agree.

THE COURT: Okay. It's admitted.

MR. MORRIS: That's it, Your Honor.

THE COURT: Okay. Do you all need a five-minute break before we do closing arguments?

MR. MORRIS: I'd be grateful.

THE COURT: Okay.

MR. MCCLEARY: Yes, Your Honor. Thank you.

THE COURT: Will do.

THE CLERK: All rise

(A recess ensued from 5:49 p.m. to 5:57 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated.

We're back on the record in the Highland matter. Closing arguments. Just for everyone's benefit, time -- you said 47 minutes and 23 minutes back several minutes ago, and then we had all the housekeeping stuff. So I'm not sure if that's where we are right now or if --

MR. MCENTIRE: I'm waiting for my monitor guy to be here.

THE COURT: Okay. Okay.

So Caroline, is it still 47 and 23?

THE CLERK: Yes.

THE COURT: That's when we started the housekeeping stuff.

MR. MCENTIRE: So 27 minutes?

THE COURT: Twenty-three.

THE CLERK: Twenty-three.

MR. MCENTIRE: Twenty-three? Can I get a five-minute warning, please? Would you pull up the PowerPoint? And let's go to Slide 39.

May I proceed, Your Honor?

THE COURT: You may.

CLOSING ARGUMENT ON BEHALF OF HUNTER MOUNTAIN INVESTMENT TRUST

MR. MCENTIRE: So, before I go to the PowerPoint, I'd like to kind of give a high-altitude overview of the situation as I see it from the evidence perspective. We don't believe this should have been an evidentiary hearing. Evidence has been allowed.

We had a situation where, if you believe Mr. Dondero's testimony as contrasted with Mr. Seery's testimony, you have a credibility issue. So the Court is now conducting an inquiry presumably on the basis in part on the credibility of witnesses. And if you engage -- and if you want to indulge that type of inquiry, the credibility of witnesses, without allowing the Plaintiff in this case or the Movant in this case to conduct some level of meaningful discovery, I would suggest we have been deprived of due process, because without documents to test Mr. Seery's statements, we are being deprived of something that's basically very fundamental in our

judicial process.

And therefore, it underscores our argument and our rationale why this shouldn't be an evidentiary hearing, because I don't believe the Court can consider credibility issues.

We have, on the one hand, unequivocal notes from Mr. Dondero prepared contemporaneously that would suggest that someone admitted to him and stated to him that they did in fact obtain material nonpublic information. Mr. Seery says that didn't happen. I specifically said, is that a lie? Yes, it's not true. Well, that's a real problem, because that's not the criteria that this Court should use for determining whether we have a colorable claim. A colorable claim is whether there is some possibility. It's something less, even less stringent than a 12(b)(6) standard, plausibility. We have that.

If you look at our pleadings, we have set forth all of the facts we need, all the elements we need to establish a trade on material inside information, nonpublic information. We have evidence -- we have allegations that there was no due diligence. And Farallon's lawyer stood up here -- well, I'm not going to really address that today. But if there was any day to address it, it was today. We have no evidence to suggest they did do due diligence. Even Mr. Seery said, I don't know what due diligence they did. We have evidence to

suggest that the only due diligence they did was to talk to Mr. Seery, who has told -- who told them that this is very valuable, don't -- this is a really good -- a good investment here, it's a lot better than the 71 percent that's on our disclosures.

And Judge, that evidence supports the colorability of the claim. And if you go down the pathway of saying, well, I'm not sure about Mr. Dondero because he had been held in contempt two years ago, that's a real problem. That's a problem for this Court. And I'm going to suggest that's why this should have been a four-corners deliberation. Even Farallon and Stonehill suggest this should be a four-corners deliberation.

We have evidence now of no due diligence. We have evidence before you that suggests that they did learn about MGM before the announcement date. We have evidence that Mr. Seery did trade on -- did -- was aware and received information of material nonpublic information. And for him, a CEO of his reputed stature, to sit here and say that was not material and that was nonpublic defies common sense. It defies reasonableness. That goes to credibility.

Mr. Dondero's notes speak volumes. The trades themselves speak volumes. Mr. Dondero established that the interest -- return of interest here is to be less than one -- it's in the one digits, and hedge funds trade in the 30, 40, 50 percent

range. Well, if that's the case, we have Farallon walking away from a return on the exit financing of 13 percent, and that wasn't good enough for him. How could six percent be good enough for him? There's something missing here. There's something not right.

And we're entitled to get our lawsuit on file and do some discovery. And if they want to do a 12(b)(6), they do a 12(b)(6). If they want to do a Rule 56 after discovery, they could do a Rule 56, all in this Court. But to address this threshold issue now based upon this, what happened here today, is a fundamental denial of due process.

I'd like to go to my pleadings.

Can you go to Slide 39, please?

First of all, let there be no doubt -- 39. Slide 39. 38. 38, please.

We can plead on information and belief. We have a right to plead on information and belief. And the Fifth Circuit -- that is an acknowledged procedural practice in the Fifth Circuit. And if some of our allegations are based upon information and belief, so be it. The test here is not at this stage. The test here is whether I have sufficient factual allegations, whether on information and belief or otherwise, to satisfy at most a plausibility standard. That's it.

And if they want to challenge us at a later date, they

can. Rule 56. 12(b)(6). Or standing. But we have standing. We have standing. We have standing under Delaware law. We're a contingent beneficial interest that has standing under Delaware law and all other law. All -- even Texas agrees that a contingent interest has standing, an inchoate interest as Mr. Seery described. A property interest. You have property interest, you have standing.

THE COURT: Let me ask you.

And Caroline, turn the clock off when the Court interrupts.

Just so you know, I mean, my analysis here is standing first. Does your client have standing? Because we all know that's a subject matter jurisdiction inquiry and I have to explore that first. And then I've said many times the legal standard question for colorability. That's kind of the second place I go --

MR. MCENTIRE: Sure.

THE COURT: -- if I find there's standing. But can you tell me, have there been appellate decisions that are relevant today on standing? Contrary to what people may expect, I don't follow every appellate decision from every appeal in the Highland case. Okay? I wait until I get a mandate --

MR. MCENTIRE: Sure.

THE COURT: -- to where I have to act on something.

MR. MCENTIRE: Sure.

THE COURT: So I feel like I've learned at some point that some either district judge or Fifth Circuit said some party didn't have standing. And I don't know if it was Hunter Mountain or some other trust.

MR. MCENTIRE: Not --

THE COURT: And is there anything they said that, if it wasn't Hunter Mountain, could be relevant here?

MR. MCENTIRE: I hope somebody kicks me if I'm wrong, what I'm about to say. I'm not aware of any such issue --

THE COURT: Okay.

MR. MCENTIRE: -- dealing with Hunter Mountain Investment Trust. I am not.

THE COURT: But any other party that might somehow bear on this case?

MR. MORRIS: I apologize, Your Honor, I was distracted. For which issue?

THE COURT: Standing. Because I was saying my first thing I've got to tackle in ruling on this is standing of Hunter Mountain. And I seem to remember learning that either the district court on an appeal or the Fifth Circuit on some appeal from Highland --

MR. MORRIS: Correct.

THE COURT: -- said some party didn't have standing.

MR. MORRIS: Correct.

THE COURT: And I don't know if it was --

MR. MORRIS: Dugaboy on the 2015.3, for sure, was a Fifth Circuit standing decision.

THE COURT: Okay.

MR. MORRIS: I think there was a district court order that preceded that.

THE COURT: Okay.

MR. MORRIS: That was the subject of the appeal.

THE COURT: The Dugaboy --

MR. MORRIS: 2015.3.

THE COURT: -- motion to require those --

MR. MORRIS: Yeah.

THE COURT: -- 2015.3 statements. Okay.

MR. MCENTIRE: So what we have here -- we can go back on the clock if you'd like.

THE COURT: Yes, please.

MR. MCENTIRE: How much time do I have?

THE CLERK: You have just under 16 minutes.

MR. MCENTIRE: Sixteen? Okay. Give me a two-minute warning. Sorry.

Your Honor, what we have here --

THE COURT: I don't think the U.S. Supreme Court justices will give you a two-minute warning, but maybe I'm wrong.

MR. MCENTIRE: Would you give me a two-minute

warning, please?

THE COURT: And I'm sure not a Supreme Court justice.

MR. MCENTIRE: What we have here is we have a 99.5 percent equity interest that has now been relegated to a category of contingent interest, which we don't believe we should be, and that's part of our declaratory judgment relief we're asking for, which we have standing to do that at a minimum because we want to be treated like a Class 9.

If they want to treat us like a Class 10, I have an argument for that, and it's more than colorable. It's persuasive. It's -- it is a winning argument. And that is we do have standing in our individual capacity, and we have given you a whole bunch of cases in our PowerPoint, or we will give you a whole bunch of cases in our PowerPoint and in our briefing to support that.

We also have given you Delaware case law that says we have standing under Delaware trust law to bring a derivative action against the Trustee. We have done everything appropriate here.

We have the -- a demand upon Seery obviously would be futile to prosecute the claim. A demand upon the Oversight Board would be futile to make a demand on Muck and Jessup, because they're Defendants and they're SPEs of Farallon and Stonehill. And a demand upon Mr. Kirschner would be futile. They suggest that there's an assignment of some sort, but that

would be a modification -- of the claims over to the Litigation Trust, but that would be a modification of the plan.

There's been no assignment of this claim, or these claims, to the Litigation Trust Trustee. But even if there had been, we pled that in the alternative as well. And it would be futile to make a demand on Mr. Kirschner because he's suing Hunter Mountain.

So we are an appropriate party. The only, then, issue becomes whether or not we have standing under Delaware law to bring a derivative action. And we have briefed that and we -- and that's included in our PowerPoint. The answer is yes.

I'd like to go briefly to Page -- next slide.

In our factual section, we set forth why this investment would defy any kind of rational economic sense in the absence of material nonpublic information as a factual allegation supported by data, supported by dates, supported by time.

Based upon that, we also have allegations that are framed around the admissions that Mr. Michael Linn provided. We have allegations that he turned down a 30 or 40 percent premium in our petition. We have allegations that they admitted that they did no due diligence. We have allegations that they admitted that they got material -- basically information about MGM.

And again, it's not all about MGM. It's about the values

of all the portfolio companies. They want to make it about MGM. If they do, we win. But it's much broader than that.

And we have standing to bring this claim because if we're right Mr. Seery will have to return excess compensation and the Claims Purchasers will have to disgorge. And that's going to help not just Hunter Mountain. That's going to help other creditors who haven't been paid yet.

So this is not exclusively -- Hunter Mountain would substantially benefit. I'm not suggesting otherwise. But it also benefits innocent stakeholders other than Hunter Mountain. And that's why we are an appropriate party. We don't have a conflict of interest to bring this. Everybody on their side of the table does. There's no one else who could bring this.

Your Honor, it's very clear when the trades took place. We give dates and times. It's very clear that -- next slide, 40. It's very clear that their investment was over $160 million. If it isn't, I don't see any denials. All we got today was a lame statement from the lawyer saying we're not here today to deny this.

MR. MORRIS: I'm offended.

THE COURT: He's offended by being called lame.

MR. MCENTIRE: Not you lame personally.

MR. MORRIS: Oh, thanks for the clarification.

THE COURT: Okay.

MR. MCENTIRE: A lame statement by you. In fact, it wasn't even you, so --

In any event, Your Honor, --

MR. MORRIS: I've been called worse.

MR. MCENTIRE: -- the point being is that there was no -- there's not -- never been an attempt to deny the factual allegations in our pleadings dealing with Farallon and Stonehill. None at all.

And so -- not that that's ultimately relevant, because that's an evidentiary issue outside of the four corners of our pleading, but it does -- it just stands out and screams. It screams. And it screams volumes.

So right, now based upon our pleadings -- we even plead in Paragraph 42, Paragraph 42, exactly what they invested. This is what you have before you. No one has disputed it. It's in the four corners of our pleading. We've got dates, times, amounts. We have admissions to Mr. -- well, we have admissions from Michael Linn, Paragraph 47. We have -- we do plead upon information and belief the *quid pro quo* on compensation. And frankly, the evidence here today is that the compensation is excessive. And the experts will further confirm that it is excessive. $1.8 million with a bonus program in place to pay him another $8, $9, $10 million, when in fact the risks don't exist and there's no uncertainty and therefore the percentages make no sense. That's --

THE COURT: What do you mean, the risks don't exist and there is no uncertainty?

MR. MCENTIRE: If Mr. Seery is telling Farallon and Stonehill don't sell, this could be really valuable, it's inconsistent with the notion that the schedule and the performance -- performance schedule in the compensation agreement is rationally justified. Because if it's really certain or it's likely you're going to make a lot of money, there's no reason to give him six percent to incentivize him because it's already a done deal.

And the whole point here is that I scratch your back, you scratch mine. They make a lot of money on their deal and he gets a lot of money on the backside post-effective date. Post-effective date.

Next slide, 49.

It would have been impossible, based upon the publicly-available information in Paragraph 49, impossible for Stonehill and Farallon, in the absence of inside information, to forecast any significant profit when they made their investments. It's not possible. Because given the amount of the Claim 8 and Claim 9 claims -- they actually invested in Claim 9 with a zero return. It's projected to be a negative result. On Claim 8, even if you allocate their entire purchase price to Claim 8, they're going to get something less than a 10 percent return paid out over a couple years. Nobody

invests that kind of money in an unsecured creditor asset that hasn't been collateralized. There's something wrong here.

And we have a right to have our day in court to show that. We have our right to take a true deposition of Mr. Seery with documents. We have a right to take Farallon and Stonehill's deposition with documents. And we have tried to get information and we have been turned down at every turn. We have a right to have our day in court, Your Honor.

We have allegations of excessive compensation. I know Mr. Morris suggested the other day that we didn't have any such allegations. They're here. The whole idea here is that Mr. Seery would really profit on the backside. And, you know, he actually testified, I believe -- I won't do that because that's outside the four corners of our pleading. But the -- there is a *quid pro quo*. We allege there's a *quid pro quo* upon information and belief. And we also allege willfully and knowingly, we allege conduct that falls clearly within the exceptions.

None of this -- none of these claims were released. Mr. Seery's not an exculpated party in the context of how we -- proposing to sue him here. None of the protected parties, to the extent that Muck and Jessup claim to be protected parties, they're not protected here, because all of the claims we're making are on the basis of willful misconduct and bad faith, which are the standards that they used and incorporated in the

plan and in the gatekeeper provisions.

How much time do I have?

THE CLERK: Right now you have --

MR. MCENTIRE: Thirty seconds?

THE CLERK: -- seven minutes left.

MR. MCENTIRE: Okay. Next slide, please.

Mr. Seery has admitted that he has a duty to avoid self-dealing. We allege that he did self-deal. There is clearly a relationship. We have a right to explore the depths of that relationship. Well, already we know there is a relationship. We have investments in charities, contributions to charities, meet-and-greets, congratulatory emails. It's not as if Farallon and Stonehill are strangers, or Mr. Seery's a stranger to them. It's not like that at all. They contacted him to get involved.

And by placing -- by acquiring these claims -- and by the way, this is the most significant trading activity in your bankruptcy, in this bankruptcy proceeding. Post-confirmation. Post-confirmation. By acquiring these claims, they were guaranteed to be put onto the Oversight Board. By acquiring these claims, they were guaranteed to be put in a position -- into a position where they would adjust, monitor, compensate Mr. Seery. That's the terms of the Claimant Trust. Those are the terms.

And it's interesting, because one of the amendments that's

in evidence to the plan, I think it's either the third or the fourth amendment, that came out of nowhere right before confirmation, they changed the structure of the Claimant Trust to go off a standard base pay and added in a bonus structure at the last minute. That's evidence.

Mr. Seery has acknowledged, we have alleged he had duties to avoid self-dealing, to always look out for the best interests of the estate, to avoid conflicts of interest. Well, here, to the extent that there is a *quid pro quo*, he is self-dealing and he has injured the Reorganized Debtor and he's injured the Claimant Trust, because that's just less money.

And we also allege, Your Honor, it's also an allegation that --

THE COURT: And let me ask, the sole injury here is compensation was more than it would have been if not for the sale of the claims to Farallon and Stonehill --

MR. MCENTIRE: That's one of the injuries.

THE COURT: -- and therefore less money at the end of the day for creditors and ultimately Hunter Mountain?

MR. MCENTIRE: Yes. And we also allege that, as part of this arrangement, conspiracy, as we allege conspiracy, we have seen over $200 million flow out of the coffers of this estate in the form of --

THE COURT: What do you mean, as a result of the

alleged conspiracy? What do you mean?

MR. MCENTIRE: A delay, a postponement, making long-term payouts, keeping the litigation alive. They actually suggested to Mr. Linn, don't settle these claims, don't sell out, because this is asset-backed, and we also have claims. And so --

THE COURT: Wait, what? Say again?

MR. MCENTIRE: One of the things that Mr. Linn told Mr. Dondero, according to Mr. Dondero's notes, is we have -- this is very valuable, we're buying assets and we're buying into claims, the litigation claims that are being asserted in this bankruptcy proceeding.

THE COURT: Yes. Got it.

MR. MCENTIRE: Yeah. And so the whole idea here is, is that people are funneling money in and taking money out of the coffers of this estate to fuel future litigation in order to have a bigger payday at the end for Class 8 and Class 9. That's exactly what those notes suggest.

THE COURT: I don't understand the correlation. What correlation are you making? Because of the claims being purchased, what?

MR. MCENTIRE: The claims being purchased allow Muck and Jessup to be in a position to award compensation. We've talked about that.

THE COURT: I got that.

MR. MCENTIRE: That's one type of injury. The other injury is, and we have alleged it, is the fact that these claims become very valuable not only because they're asset-backed but because also the litigation claims that Mr. Kirschner is prosecuting.

THE COURT: But how does the purchase of the claims impact that? They were allowed claims at certain amounts before, and after the purchase they're still allowed claims.

MR. MCENTIRE: Mr. Seery is telling them that, basically, this is our plan, this is what we're doing, this is --

THE COURT: That was the plan of reorganization that was confirmed by the Court. I don't get how something changed. I'm trying to get to what are the injuries that your client has suffered. And I get the compensation argument you're making, but I don't get the rest of it.

MR. MCENTIRE: If Mr. Dondero had been in a position, or one of his entities had been in a position, or even Hunter Mountain, and I'm not sure why Hunter Mountain -- be in a position to have acquired the claims, then we would -- this bankruptcy wouldn't even be in existence anymore. It'd be over. All creditors would be paid. It would be done. Be over. And that is an allegation we have made --

THE COURT: How do I know that?

MR. MCENTIRE: Because all the creditors would have

been paid off.

THE COURT: How do I know, if he would have purchased the claims, that's what would have happened?

MR. MCENTIRE: Well, that's what he testified to today here. I don't want to get off on a rabbit trail.

THE COURT: I'm trying to understand the injury, --

MR. MCENTIRE: Sure. I understand.

THE COURT: -- because that's part of my analysis here.

MR. MCENTIRE: The focus, the focus is on the compensation. And once they aid and abet, once they aid and abet a breach of fiduciary duties, they are subject to disgorgement, and disgorgement of all of their ill-gotten gains. And the ill-gotten gains are now well over -- approaching over $100,000 million.

THE COURT: How do you get to that number?

MR. MCENTIRE: Easily. We know how much they purchased, which has never been denied. We know how much has been distributed to Class 8. And we know what percentage of Class 8 they own. They own about 95 percent of all Class 8 claims. So if $270,000 million has been distributed to Class 8, they got 90 percent of that, 95 percent of it has already gone to them, Farallon and Stonehill.

THE COURT: But it would have gone to the sellers of the claims as well. I'm trying to make the connection.

MR. MCENTIRE: That's not the injury. The injury is what -- that is a consequence of their conduct. The injury is the compensation. All right? That's a distinct injury. They are subject to disgorgement as a consequence because they have done wrong, and the law should not tolerate -- should not tolerate and allow wrongdoers to get away. And that's where the unjust enrichment and disgorge --

THE COURT: And what are your best cases for that, that they would have to disgorge --

MR. MCENTIRE: We have cited --

THE COURT: -- the Purchasers would have to disgorge --

MR. MCENTIRE: We have cited cases in our brief.

THE COURT: I'm asking you now to --

MR. MCENTIRE: I don't have them in front of me right this second. But an aider and abettor --

THE COURT: The *CVC* case, is that your best case?

MR. MCENTIRE: I don't have the cases in front of me. I can say this, that the case law is robust, and I can supply you --

THE COURT: It is not robust. That's why I'm asking you to zero in. I read your *CVC* case from the Third Circuit, and I'm wondering, is that your strongest case?

MR. MCENTIRE: No. I think we -- I think we have a lot of strong cases. I'm not sure that it is the strongest.

THE COURT: Tell me which ones, so I --

MR. MCENTIRE: Ma'am, I just said I don't have it in front of me. If you'll look --

THE COURT: Okay. Well, this is closing argument where you present law in support of your position.

MR. MCENTIRE: Well, actually, I'm arguing facts right now. But Your Honor, what I want to tell you is if you'd like me to submit a letter brief on that, I will.

THE COURT: No.

MR. MCENTIRE: Okay. Then I won't. It's in my brief. All of our authorities are in the brief.

In conclusion, --

THE COURT: Okay. So that was the *CVC* case from the Third Circuit which dealt with an insider who purchased claims, statutory insider, a board member, a 28-percent equity owner, who purchased claims during the case to be in a position to file a competing plan and didn't disclose to the board or file a 3001(e) notice. Okay. There was -- claims shouldn't be allowed at more than what the purchaser paid for it.

MR. MCENTIRE: Okay.

THE COURT: Okay. I'm asking you, is that your best case? Because you also cited *Adelphia*, which seemed kind of factually off the mark. And so I really --

MR. MCENTIRE: I -- I'm sorry, --

THE COURT: I need to know, because I've made clear from the beginning, --

MR. MCENTIRE: Yes.

THE COURT: -- I'm struggling with how is there a cause of action related to claims trading.

MR. MCENTIRE: (chuckles)

THE COURT: I don't know why you're giggling. This is --

MR. MCENTIRE: No, I'm not. But --

THE COURT: -- serious stuff. Okay?

MR. MCENTIRE: Agreed. Agreed.

THE COURT: A bankruptcy estate is being charged ka-ching, ka-ching -- not bankruptcy estate -- the post-confirmation trust. Ka-ching, ka-ching, ka-ching. So this is serious stuff.

MR. MCENTIRE: Agreed.

THE COURT: I need to, you know, colorable claim.

MR. MCENTIRE: Agreed.

THE COURT: Colorable claim.

MR. MCENTIRE: Agreed.

THE COURT: Even if plausibility is the standard, which I've expressed my doubt about that, how do you have a plausible claim? What is your best case?

MR. MCENTIRE: Okay. This --

THE COURT: Just to recap what I'm focused on,

purchaser and seller, okay? I can see where breach of contract, maybe some sort of torts between those two. Okay. I can see where the U.S. Trustee, the SEC, I don't know, the Texas State Securities Board, they might get concerned about allegations of insider trading and there might be a regulatory action. But the estate? Again, the post-confirmation trust --

MR. MCENTIRE: Okay.

THE COURT: -- and a contingent beneficiary. I'm trying to understand what is the best legal authority that might support a colorable claim. And we talked about the *CVC* case and *Adelphia*. I'm trying to figure out what are other cases you think I should really hone in on to understand this.

MR. MCENTIRE: All right. At the very beginning this morning, during my opening statement, I had said this is not your typical claims-handling case, because I recall from our last conference you asked that question a couple of times. This is not your typical claims-handling case. And it's not a typical claims-handling case because we have a fiduciary that we claim breached his duties that were owed to the estate. And he self-dealt. And he -- this has nothing to do with the plan. This has something to do with what Mr. Seery did outside the corners of the plan. Perhaps he used the plan expediently. He self-dealt.

That's why this is not just between a seller and a buyer

of a claim. That's number one.

We have been denied an opportunity to discover the communications between the sellers and the buyers, and my guess is we have big boy agreements that prevent the sellers from ever coming back at anybody for fraud. My expectation, that's the case. We should have a right to go explore that. So that's why they're not here.

THE COURT: Why? I mean, what would that tell you? What would that tell you?

MR. MCENTIRE: That --

THE COURT: If there's a big boy agreement, if there's not, what --

MR. MCENTIRE: It would tell us --

THE COURT: -- consequence would that have for this --

MR. MCENTIRE: It would tell us --

THE COURT: -- proposed lawsuit?

MR. MCENTIRE: It would answer Mr. Morris's question that he's raised several times, this is the seller's issue, this is not -- this is not the Hunter Mountain's issue. It is Hunter Mountain's issue. Hunter Mountain as an equity interest-holder should be in a position to be certified as a Class 9 beneficiary now pursuant to our declaratory judgment action. That's number one.

Number two. As a contingent beneficiary, it is entitled

to protect its interests and bring suits if it sees that something has happened that is incorrect and is a tort involving the Reorganized Debtor and the Claimant Trust. That is the nature and the essence of our claim.

And as a consequence, the aiders and abettors should not be allowed to walk away unharmed. They should be required to disgorge their ill-gotten profits. And that calculation is easily done, as I've just demonstrated.

Your Honor, that's all I have. Thank you very much.

THE COURT: Thank you.

MR. MCENTIRE: And we talked -- we'd need an opportunity to argue on the issue of experts, because -- whether you're just going to take it under advisement, I'm not sure how you're going to handle that.

THE COURT: I'm going to read the pleadings and then I'm going to let you all know are we coming back for another day.

MR. MCENTIRE: Thank you.

THE COURT: All right. Who is making the closing argument -- do we have three closing arguments?

MR. STANCIL: Yes.

MR. MCILWAIN: We're going to do it in reverse order.

MR. MORRIS: Reverse order in.

THE COURT: Okay. Reverse order of --

MR. STANCIL: Keep it interesting.

MR. MORRIS: I think I was last on the opening.

THE COURT: -- importance?

(Laughter.)

THE COURT: No. Just kidding. Just kidding.

MR. MORRIS: We're assuming you remember what the original order was.

MR. STANCIL: Yeah, right, right.

MR. MORRIS: It was so many hours ago.

THE COURT: Okay. Oh, so many hours ago.

MR. MCILWAIN: I think I was referred to earlier as the lame lawyer.

THE COURT: Oh, you were. I think --

MR. MCILWAIN: So I'll start. I think --

THE COURT: I think you --

MR. MCILWAIN: Or maybe it was the lame argument, whatever. Whatever.

THE COURT: I think you were the lame one.

CLOSING ARGUMENT ON BEHALF OF THE CLAIM PURCHASERS

MR. MCILWAIN: Your Honor, Brent McIlwain here for the Claim Purchasers.

Let me start, I guess, by saying I understand now why Hunter Mountain did not want to put on evidence, because the evidence that they put on, frankly, made their case much worse.

As we argued or we stated in the opening statement, our

position is that you can look within the four corners of this document and determine that there is no plausible or colorable claim. What the evidence showed is that Mr. Dondero allegedly had a call with one -- with Farallon, not with Stonehill, with Farallon, Farallon wouldn't tell him what they paid, Farallon did not accept an offer of 130 or 140 percent of whatever they paid for the claim, and he thinks they did no due diligence, right? He had nothing in his notes about MGM. So he can say that he thought that they were positive because of MGM, but it's certainly not -- I don't think the Court should take that evidence with any credibility.

But interestingly, what Mr. Dondero says is, well, how do you know how much they paid for these claims? He goes, well, there was a market for the claims, right? They were all trading at 50 or 60 cents. But yet no one would ever buy these claims without any due diligence because the projections in the plan indicate that they wouldn't -- they wouldn't get a return.

Well, if there's a market for the claims and he's willing to pay 30 or 40 percent more than whatever someone purchased, certainly there is a market for the claims. And he is the only one, frankly, that had inside information. That's why he was willing to maybe pay more.

Or, alternatively, the case that you were describing before, Mr. Dondero maybe wanted to buy the claims so he could

control the case, right, so he could dismiss any litigation that was pending against himself so he could avoid the ire of the estate that is aimed at him.

It also -- the Court's inquiry as to what the injury is I think is precisely on point. The only injury offered at this point really is that somehow my client's agreed-to higher compensation that is reasonable or appropriate in return for some inside information on claims that were allegedly trading at 50 or 60 cents in any instance. And what the evidence showed is that, one, Mr. Dondero never had any information about that, about the compensation that Seery is receiving when this complaint was filed, when this motion for leave was filed.

And so if you judge the complaint within the four corners, there is no -- there is no *quid pro quo*, right? Because he says, well, there's obviously something up here because they wouldn't have bought these claims without due diligence, and they must have agreed to higher compensation, and that's why it all happened. And if we throw all this out here, then we'll get to do the discovery that we wanted to do.

Importantly, if you look at his notes, right, the first thing that's written down is discovery to follow, because that's how he operates. That's how a serial litigator operates. Discovery to follow so that I can pay you back for not selling your claim to me. Right? So I can't control the

world, so I can't control this case, you're going to pay. And we're all paying. Every one of us here. Right? There's 15 lawyers in the courtroom and probably 10 on the phone, right? We're all paying.

And so when Mr. McEntire says I'm not getting my day in court, we've had an entire day in court. We've had three hearings to decide what this hearing is going to be. And he's gotten more than his day in court for, frankly, what is word salad. This complaint doesn't pass any test, whether it's 12(b)(6) or under the *Barton* Doctrine. It's simply allegations that are thrown out there, and they're saying, so that we can do more discovery to determine if we actually have allegations. Because they want to continue to harass people, they want to continue to be a thorn in everyone's side, so that perhaps they can avoid further litigation against Mr. Dondero or they can convince somebody to settle with Mr. Dondero.

It doesn't make any sense, Your Honor, and this is exactly why there is a gatekeeper provision, right. That's why the Court imposed this.

And you ask yourself, why would someone sell these claims? Obviously, the sellers of the claims have not shown up. Whether they're big boy, it doesn't matter, because the Court and this estate had nothing to do with those sales. But they haven't shown back up. I can -- I can venture a guess why, if

I was involved with Mr. Dondero, I would sell my claim, right? Because I wouldn't have to be here. And that's exactly why the Court should not authorize this complaint to be filed and the gatekeeper provision of the order should prevent it. And frankly, this should be shut down and we should not have to have continued litigation over experts, or anything else, for that matter. And frankly, we should just be able to go on and let Mr. Seery do his job.

Because I think the evidence was pretty clear that his compensation is reasonable and it was in line, frankly, with what he was making before. And candidly -- and maybe it's because Mr. McEntire is not involved in bankruptcy cases, but this is similar compensation that I see in numerous cases, and it's tiered to incentivize Mr. Seery to do his job, and he's doing his job.

So, with that, Your Honor, I'll cede the rest of the time to the other parties.

THE COURT: Okay. Thank you.

CLOSING ARGUMENT ON BEHALF OF JAMES P. SEERY, JR.

MR. STANCIL: Thank you, Your Honor. I'm going to focus -- and I'm going to put my little clock up so Mr. Morris doesn't, you know, give me the hook here.

THE COURT: Okay.

MR. STANCIL: But first --

THE COURT: Next time we're all here, maybe I'll have

one of those red, what do you call them, the buzzer.

MR. STANCIL: Oh, the big light?

THE COURT: The red light.

MR. STANCIL: We used to joke that the judge I clerked for wished he had a trapdoor and he could just pull the lever when it was done.

THE COURT: Okay.

(Laughter.)

MR. STANCIL: Maybe I shouldn't have put that in your head.

THE COURT: Who was that? Are we going to say who that was?

MR. STANCIL: So Your Honor, I'm going to try to set the legal framework. I'm going to ask you -- and I think we have our -- we have the deck. It's the little -- if we could put that up and start on Slide 2.

I'd like to address what standard applies, and then I'd like to spend a few minutes asking Your Honor again not only to rule on multiple alternative grounds, but also I'd like to walk through what if you did this on a pure 12(b)(6), because it's going to collapse.

So, well, we'll just jump in. I said at the beginning that we know that the question here is not what does the word colorable mean in isolation. We wouldn't do that in any context. We would always look and see what the operative

language here is in the Court's confirmation order. So the question is, what did the Court mean, it must represent a colorable claim?

So we mentioned before Paragraph 80 of the confirmation order. That cites *Barton*. It cites the vexatious litigant cases. I've not heard one word from Mr. McEntire answering how it can be that we're here on a sub-12(b)(6) standard he now says when the Court articulated this legal authority and this legal basis in the confirmation order. If he believed that, the time to make that argument was on the confirmation appeal, and that's over.

But let me then say, how did we get, how did the Court get to Paragraph 80? Well, that came after a series of factual findings in the confirmation order -- in fact, actually, Josh, do you have the hard copy of this?

MR. LEVY: Yeah.

MR. STANCIL: If I could hand that to the Court.

May I approach, Your Honor?

THE COURT: You may. Thanks.

MR. STANCIL: And I don't propose to go through every slide, Your Honor.

THE COURT: Okay.

MR. STANCIL: But if you could turn to Slide #5. This is Paragraph 77 of the Court's confirmation order. Factual support for gatekeeper provision.

MR. MCENTIRE: Excuse me. May I have a copy? I can't see it.

THE COURT: Oh.

MR. LEVY: Oh, yeah, sure, sure.

MR. STANCIL: And can we get a copy of yours as well, --

MR. MCENTIRE: Sure.

MR. STANCIL: -- while we're at it? Thanks.

The facts supporting the need for the gatekeeper provision are as follows. I will not read them all, but if you scroll about eight lines down, it says, During the last several months, Mr. Dondero and the Dondero-related entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. And then there are six separate enumerated examples of that.

Paragraph 78 on the next slide. Findings regarding Dondero postpetition litigation. The Bankruptcy Court finds that the Dondero postpetition litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted he would, quote, burn down the place.

Next slide. This is Paragraph 79. Necessity of the

gatekeeper provision. If you would just skim to the bottom of that first column, it says, Approval of the gatekeeper provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtors' assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.

And then came Paragraph 80, which we've just discussed. With respect, Your Honor, the question is, what is the meaning of Paragraph 80? And in context, following those paragraphs regarding vexatious litigation and abuse of litigation, it is simply implausible to suggest that colorability is a sub-12(b)(6) standard.

And that is Mr. McEntire's contention today, that the gatekeeping order is actually lower than the threshold that every other litigant faces. Everyone else has to file a claim, pass a 12(b)(6), and on they go to get to discovery. Mr. McEntire believes that the gatekeeping order imposes less than that on him, and then he's treated just like everybody else. It makes no sense whatsoever.

So I'll skip Slides 8 and 9, Your Honor, but that's where the Fifth Circuit described the gatekeeping orders, affirmed them in relevant part, citing *Barton*. There is no mystery here.

If you could flip, Your Honor, to Slide 10 very briefly. We've talked about this case a little bit in one of our status hearings, *In re Vistacare Group*. This is the leading case that describes what it is that one does under a *Barton* analysis, and it says that the trustee must make a -- pardon me -- a party seeking leave to sue a trustee must make a *prima facie* case against the trustee, showing that its claim is not without foundation. A *prima facie* case is more than a 12(b)(6).

And I would direct Your Honor to the language in the third bullet. It involves a greater degree of flexibility than a Rule 12(b)(6) motion to dismiss because the bankruptcy court, which, given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit. Boy howdy, are we -- I'm sorry. My kids are going to tease me for that.

But this -- no case has ever proved the wisdom of that statement, Your Honor. We are here, and the Court is all too familiar with the facts and the parties of this case. And we're not here on an adversary proceeding. We're here on a contested matter. And Your Honor has the authority on any contested matter to take evidence, and a broad, broad discretion as to what evidence is appropriate to meet that standard.

So we have laid out briefly in Slide 11 what -- why we

believe that -- or how we believe that the *prima facie* showing would work. And in short -- and maybe this will help us going forward -- we believe that if they make -- if a party seeking relief under the gatekeeping order says things, we have the right to rebut them, like in a burden-shifting or a burden of production -- pardon me -- analysis. So you can say that the sun rises in the west, but we can bring in evidence to say it doesn't, it rises in the east. And that's the plausibility threshold.

And here, and if Your Honor would flip to the next slide, I'm not sure it's entirely fair to say, even after they have purported to withdraw their evidence, that they've really done so. And we disagreed with Mr. McEntire, and advised him of such leading up to this hearing, that we do not agree that his redactions fully excise all of the evidentiary assertions from his motion.

And I'll just pick one example here on Slide 12. On the left is Paragraph 32 of the motion for leave prior to the purported withdrawal. On the right is Paragraph 32 after the withdrawal. Your Honor will see all they've withdrawn are the citations. It's verbatim. It's the same allegations. And they have argued various facts and put them in evidence. So even if it were true, and it's not, but even if it were true that all you get here is a 12(b)(6) ruling in the ordinary case if you put no evidence in dispute, they forfeited that

right by putting these facts and evidence in dispute in their motion.

The fact that they have withdrawn evidentiary support for their evidentiary assertions does not relieve them of the reality that they have made all sorts of factual arguments in their motion for leave, and as a contested matter we have the right to address it.

I'm proposing, Your Honor, unless you have questions on the cases on 13, 14, those are the cases where we have described the hearings that have been held under *Vistacare* and *Foster*, and I know more about the down-in-the-weeds of *Foster* than I ever cared to, but I don't want to repeat what's in our briefs.

If Your Honor is willing to flip to Page 15, this is an argument I've alluded to briefly, but boy, we don't hear -- we have not heard a single thing as to what function the gatekeeper serves, particularly in context of Your Honor's factual findings in the confirmation order, if all it means is 12(b)(6) or lower. It just, it's an unanswerable point that they just persist in ignoring.

But I'd like to address very briefly that third bullet, because at various times and in their brief they have cited, Hunter Mountain has cited, down here we call it *Louisiana World*, I think in the Second Circuit we call it *STN*, but this UCC derivative standing. There are, in fact, two elements one

has to pass for that, and that's a different context. The first is colorability as it's used in that context, and that is often a 12(b)(6) standard in that context. But still to have standing, to bring that claim on behalf of the estate, you have to show a cost-benefit analysis. As we've heard today, we've probably spent more in legal fees today, or over the last three months, than the purportedly excessive compensation to Mr. Seery. And so I would respectfully submit, if we were here on a *Louisiana World* or *STN* hearing, this would be an open-and-shut case just as well.

So if I could, Your Honor, if you are willing to jump ahead to Slide 17, I'd like to ask you -- and I do want to address the standing jurisdictional question a little bit.

THE COURT: Okay.

MR. STANCIL: Not to get into the weeds of standing, because I think we have briefed that out the wazoo in our papers, and I read this morning -- I think it was this morning -- from the Claimant Trust Agreement, which says they're not a beneficial interest.

But my understanding is that Article III standing, whether there is a theoretical injury in any way, that is -- that goes to Your Honor's subject matter jurisdiction under Article III, but that is not true of statutory standing under Delaware law or prudential standing. Those are -- those go to basically whether they state a claim.

So, Your Honor, I believe, can -- and I've confessed to my colleague that the only way I remember this is I screwed it up really, really badly when I was clerking years ago -- but I believe Your Honor can, and in this case should, rule on the standing ground in the alternative. Not on the Article III. Article III is binary. They either have it or they don't. But on the statutory standing, you can say -- I think you can hold that they do not have standing under Delaware law to pursue the claim, but even if they do have standing, and then reach the remainder.

And we know we're headed for appeal. We've heard -- pretty much two-thirds of the time this morning has been laying the groundwork for an appeal. And we would only like -- we would like to make sure that we give the Fifth Circuit a fulsome record.

So I would like to ask Your Honor to flip to Page 19. And this is really the end of, I think, what we need to do. So, Your Honor, what if we were here just on 12(b)(6)? So we've got a *quid*, we've got a *pro*, we've got a *quo*. They fail at each turn. Let me spend most of my time on the *quid*. I'll let the documents of which the Court can take judicial notice speak for themselves. I will let the bare-bones nature of the assertion -- and it's okay to put in a complaint something on information and belief, but you still have to pass *Iqbal* and *Twombly*. I can't say upon information and belief that I was

denied a starting position on the Knicks, right? I would like to believe that's the case, but it still has to be a plausible allegation.

Let's look at this chart. And this chart is taken right out of our brief. These are their numbers. This is at the bottom. And I want to -- I would like to take head-on this proposition that this is not a rational investment on their numbers.

So let's take the Stonehill purchase of Redeemer. They paid $78 million to earn a projected profit, according to the November 30 disclosure statement, of $19.71 million. By my arithmetic, that is a return of 25.27 percent. Even by Mr. Dondero's lights, that's a pretty good return.

I'm going to come back to why that's not the end of the return, but let's look at the Farallon purchase of Acis. Spent $8 million. Projected profit, $8.4 million. I'll take 105 percent return any day.

Let's look at the Farallon purchase of HarbourVest. Purchase price, $27 million. Projected profit, $5.09 million. That is -- oh, I can't read my own writing anymore -- I think that is 18.85 percent. I would again gladly take that every day of the week, whether it's a distressed asset or otherwise.

But let me make one really important point that Mr. Dondero obfuscated, Mr. McEntire does not acknowledge, and it is just a fact. These are projected profits if all Mr. Seery

does is hit the plan. November 30, 2021. If he does no better than what he thought these assets were worth then, this is the expected return. So for those trades that we've talked about, that's a slam dunk even on that.

But let's look about -- we'll talk about upside. Because, as Your Honor knows from doing bankruptcy cases, upside, it's all about upside for people who are purchasing claims. So it isn't just that their returns were capped at these already-ample percentages. If Class 8, for example, of Redeemer paid out in full, they would be making not -- oh, gosh, I'm not sure I should do this on the fly -- but they'd be recovering $137 million on the Class 8 claim, not the $97.71 million. So there's another $40 million of upside.

Even if it's a low-probability event, that's a -- hedge funds do that all day every day.

Same here with Acis. Paid $8 million, expected $16.4 million, but they could get up to $23 million.

Now, we've heard so much about how Class 9 was worthless, worthless, worthless. No, it's not. There's always the potential for upside. Paid $27 million. Could recover $45 million just on Class 8. Could recover another $35 million on Class 9. They could recover $80 million on a $27 million purchase. Now, the probability of that is complicated, but it's not zero. We know that it's not zero. All we've heard from them today is that Mr. Seery is -- could pay off 8 and 9

in full. So I don't think that is even remotely plausible.

Let's talk briefly about UBS. They like to talk about UBS for the projected profit of $3.61 million in loss. But that was -- that's in August, and that claim trades.

So a couple of things that happened between the November 30 disclosure statement setting that projected value and the purchase of the UBS claim in August. Number one is we are nine, ten months past the worst of COVID. And Your Honor could take judicial notice of massive market movements just if you do nothing.

We don't need to get to that, because we talked all morning about MGM. May 26th, it's announced publicly. May 26, 2021.

So the notion that a purchaser of a UBS claim in the summer of 2021, after this MGM transaction is announced, would think, you know what, I think these claims are only worth what they were worth back in November, is not plausible.

And so this is why the comparisons to the debt, the exit financing, well, 12 percent. That's a 12 percent capped return. We're talking here about returns of 25 percent, 105 percent, 18.85 percent, just based on projections at the -- sort of in the darkest days post-COVID.

So it's not plausible. If a court were looking at this just under the 12(b)(6) standard, we would be -- we'd be dismissing this claim as well. And we really -- respectfully,

Your Honor, we need that ruling. We think we need that ruling so that whatever the -- whatever they may say the standard is in the Fifth Circuit, we only have to go one time. And we really believe that we're entitled to that.

I'll let Your Honor -- I will just stand on the deck and our briefs on the *pro* and the *quo*. But meet-and-greets, these are just conclusory allegations in the complaint. He says they worked -- that he worked for them 10 or 15 years ago, which some of that's not even true, but even if it were all true, if I were beholden to every client I've met at a schmooze fest or everybody I worked for in a group 20 years ago or 15 years ago, you know, I would be incapable of operating without a conflict of interest. And it's just not plausible. This is something that needs to go.

Unless the Court has questions, I will cede the remainder of our time to Mr. Morris.

THE COURT: No questions. Thank you.

CLOSING ARGUMENT ON BEHALF OF THE REORGANIZED DEBTOR

MR. MORRIS: Thank you so much, Your Honor, for your patience. It's been a very long day. I am very grateful that we're going to finish today.

As I said at the beginning, I believe this exercise, as difficult as it may have been, is so important and so vital, preserving this estate and what's left of it.

The gatekeeper exists for very important reasons. Your

Honor made those findings in her order that has been upheld on appeal. And we're here to make sure that frivolous litigation is not commenced against my clients, or, frankly, against Stonehill and Farallon, given their capacity as Claimant Oversight Board members.

Hunter Mountain confuses argument with facts. There's no facts here to support anything, and that's what the gatekeeper is about. The gatekeeper is making sure that there's a good-faith basis to pursue claims. And as Mr. Stancil points out, it is certainly acceptable to state things upon information and belief. But the point of the gatekeeper is if somebody says -- not somebody says -- somebody offers proof that those beliefs are wrong, you no longer have a plausible claim. And that's why we thought it was so important to go through this exercise today. Because the facts show that their beliefs are simply wrong, and the entire complaint is based on their beliefs.

There is zero evidence concerning the compensation other than their belief that the compensation is excessive. The case is over. Like, you could stop there. I'm going to go through a bunch of things that -- you could stop there.

I want to actually begin backwards, though, in time, with the HarbourVest settlement. Right? After two years of litigation and re-litigation and re-litigation of the HarbourVest settlement, the claims of insider trading, finally

the Court has before it admissible indisputable evidence that Mr. Seery negotiated the terms of the HarbourVest settlement before he ever got this notorious email from Mr. Dondero. That should be a finding of fact in Your Honor's order and it should never be -- nobody should ever make that allegation again. It's over. You have the documents. You have the email from Mr. Seery to the board, here are the terms, and those are the terms Your Honor approved.

And there's more. Because this is so important for us, because we're tired of being accused of wrongdoing. We're tired of being falsely accused of wrongdoing.

$22-1/2 million. That's the valuation Mr. Seery put on it. You can see that he's doing it to his Independent Board colleagues, copying his lawyers. He's telling them where he got it, from Hunter Covitz. The evidence is now in the record. It came from a regularly-published NAV report from November 30th. It was seven days old. It can never be disputed again that $22.5 million was a fair value, not based on some subjective view of Mr. Seery but based on the person who gave him the report that everybody relies upon that Mr. Dondero got.

And it was ratified yet again in the audited financial statements that came out, and it shows for the period ending -- this is Exhibit 60, I believe -- for the period ending December 31, 2020, $50 million. Okay, so it went up a few

million dollars in December.

This is their case? This is the case? Your Honor I know is still working on the motion to dismiss. That's Mark Patrick, right? That's the complaint that he brought. That's what this is about. I don't mean to confuse the issue, but it's time to put this stuff to rest, because it's wrong. Mr. Dondero has lost and he's got to get over it at some point.

But here's the best piece of evidence about this whole shenanigans about MGM being inside information. Mr. Dondero filed a 15-page objection to the HarbourVest settlement and didn't say a word about it. How is that possible? Six days before the settlement, he sends this email. Two weeks later, in January, he files a 15-page objection and doesn't mention anything about insider trading, MGM, or any wrongdoing by Mr. Seery. In fact, he argues the exact opposite, that Mr. Seery cut a bad deal. How is that possible? This is a plausible claim?

It gets better, or worse, depending on your point of view. CLO Holdco filed an objection and they said they're entitled to buy the asset. This is Mr. Dondero's, you know, operating arm of the DAF. They lost -- they actually had an honorable person who concluded, I don't really have that right. But these are the claims that Mr. Patrick is asserting, and he asserted them on April -- in April, before the MGM deal was announced. Right? And Your Honor found, and that's why it

was so important for the Court to take judicial notice of the second contempt order, because Mr. Dondero was intimately involved in bringing those claims and in bringing those claims against -- or trying to bring those claims against Mr. Seery, in violating of the gatekeeper. This is all tied together.

I have to tell you, I don't know why we're not doing Rule 11. Forget about colorable claims. This is a fraud on the Court. It really is. And I don't know when it's going to stop. I'd love to move on with my life, to be honest with you.

The tender offer. He's out there doing a tender offer benefitting as the fund that he manages acquires more shares and his interest goes up and the value goes up with all these MGM holdings. Really? And he's going to accuse Mr. Seery of wrongdoing?

There was one point of Mr. Dondero's testimony that made my heart skip a beat. It's when he referred to the need to get discovery. And why did it skip a beat? Because he actually had a moment of candor where he admitted that the notion that Mr. Seery gave them material nonpublic inside information was his thought. It's not anything that Farallon ever told him. And then it spins and it spins and it spins, and finally when he gets to the fifth version of his sworn statement MGM suddenly appears. It's not right. Colorable claims? Fraudulent claims.

What's the undisputed evidence right now? I'll take Mr. Dondero at his word that Mr. Patel told him that Farallon bought the claims in February or March. How did they reconcile that with the undisputed testimony that Mr. Seery thereafter invited Farallon to participate in the exit financing? And they signed an NDA in early April. Why would you sign an NDA if you already got inside information? Who would do that? What would be the purpose of that?

How do you reconcile the fact that, according to Mr. Dondero, the claims were already in Farallon's pocket when they signed an NDA to get information for an exit facility. Is that plausible?

We've heard Mr. McEntire say a bunch of times it's much broader than MGM. Not only not a scintilla of evidence, but no substantive allegation. Again, confusing argument with facts. Because he had -- yes, Mr. Seery had access to inside information relative to Highland. He's the CEO. But where is the evidence that he shared anything with anybody? There is nothing.

Mr. Dondero admitted in his motion -- in a moment of candor, he said that's what he concluded based on the fact that Mr. Patel supposedly told him, I bought because Seery told me to. He made the inference. No evidence. Nothing.

They're bringing this case for the benefit of innocent parties? These people have told you time and again that

assets exceed liabilities. What innocent parties? Where are they and how come they're not -- let's get to that point, too. Because they're saying, oh, Mr. Seery is, like, just not declaring the end of this. Seriously? How much do they think Mr. Seery should reserve for indemnification claims as we do trials like this with a mountain of lawyers billing $800, $1,500 an hour? Seriously? Mr. Seery is somehow acting in bad faith by not declaring the end of this case? How much is he supposed to reserve? They keep skipping over that. We'll talk about that in the mediation motion. We'll talk about that in the Hunter Mountain motion in July. Who's prosecuting that? Mr. Dondero's lawyer. I know there's a really big separation between Hunter Mountain and Mr. Dondero, but Stinson is prosecuting that claim on behalf of Hunter Mountain when they're seeking information.

And they complain about the legal fees? We've put our pens down. Kirschner put his pens down. We put down the claim objection. What we're doing is defense at this point.

We're awaiting the ruling on the notes litigation, and we will very much prosecute the vexatious litigant motion if Judge Starr grants the pending motion to exceed the page limit that's been out there for months. I'm not sure what's happening there. We'll do that for sure. But otherwise, we're just playing defense.

We're here today because they've made a motion, a motion

that lacks any good-faith basis whatsoever. And that's why today was so important, so the Court could hear the witnesses. They could -- the Court -- I mean, think about it. Texas State Securities Board. The audacity of saying that somehow a letter from the Texas State Securities Board saying they're taking no action after conducting an investigation of Dugaboy's claim of insider trading is irrelevant? Like, what?

I've told you before, all we do is play Whack-A-Mole. Whack-A-Mole. They make an argument, we prove it's frivolous, so they just make a new argument. Their pleading says their claims are colorable because there's an open investigation. Now there's no investigation and they say that's irrelevant. How can they say that with a straight face? I couldn't.

I want to talk about Mr. Seery. I want to finish with my Mr. Seery. I may not use all my time. We can go home early.

(Laughter.)

THE COURT: It's past early.

MR. MORRIS: But this guy has worked doggedly, Your Honor, and I will defend him until the end of time. He's a man who has so far exceeded expectations. And they're saying he's not -- he's overpaid? The guy is overpaid? When he's into Class 9? When he's being pursued with these frivolous claims? Every day he's being attacked. How much do they think he should be paid? I would have loved to -- I hope -- no, I don't hope. I don't think there's any reason to hear

expert testimony. I think Your Honor should exercise -- the Court should exercise its discretion and say there's no need, the Court doesn't need to hear expert testimony.

But if we do, I'll be delighted to hear their expert's view on what Mr. Seery -- if it's not $8.8 million for all these years, what should it be, after he takes an estate from 71 percent on the 8s to, according to them, assets exceed liabilities, 9s are paid in full?

You know what? If they put their pens down, maybe there would be a conversation. But as long as we keep doing this ridiculous, baseless, frivolous litigation, Mr. Seery is going to conserve resources, because he's got to pay people like me to defend him and to defend the estate. This is a preview of what we'll talk about at the mediation motion. He's doing a great job. He's devoting his life to it. He has no other income. He's got no other job. It's wrong.

The claims are not only not colorable, they are frivolous. I ask the Court to stop this in its tracks right now.

Thank you very much.

THE COURT: Thank you.

All right. Is there any time for the Movant to have the last word, which we usually give the Movant the last word.

THE CLERK: The Movant, I think, has a little under -- maybe about a minute left.

THE COURT: Anything you want to say in a minute?

MR. MCENTIRE: Yes, just I'll take 30 seconds. How is that?

THE COURT: Okay.

REBUTTAL CLOSING ARGUMENT ON BEHALF OF HUNTER MOUNTAIN

MR. MCENTIRE: I just want to direct your attention to our reply brief, specific paragraphs that address your question about authorities. We do cite several cases on Page 41, 40 and 41, dealing with the issue of unjust enrichment. That's it.

Thank you, Your Honor, very much.

THE COURT: Okay. Thank you. Unjust enrichment?

MR. MCENTIRE: Disgorgement.

THE COURT: Okay. But I was really, you know, claims trading in the bankruptcy context, just your best --

MR. MCENTIRE: Well, I think the cases that you identified were our best cases. The --

THE COURT: Okay.

MR. MCENTIRE: -- *Adelphia* and the other cases.

THE COURT: All right. Well, --

MR. MCENTIRE: There are other cases, Your Honor, in different contexts. There's also the *Washington Mutual* case dealing with equitable disallowance. There's also the *Mobile Steel* case, a Fifth Circuit --

THE COURT: *Mobile Steel*? Oh, my goodness. Okay.

MR. MCENTIRE: Okay. All right.

THE COURT: 1968? Or no. That doesn't mean it isn't still quoted often, but --

MR. MCENTIRE: Those would also be relevant.

THE COURT: Equitable subordination --

MR. MCENTIRE: Yes, ma'am.

THE COURT: -- when there's bad acts.

MR. MCENTIRE: And Footnote #10 in the *Mobile Steel* case. That is relevant, too. Just, --

THE COURT: Okay.

MR. MCENTIRE: Thank you.

THE COURT: All right. So I gave a deadline of Monday, right, --

MR. STANCIL: Yes.

THE COURT: -- to reply to the response to the motion in limine?

MR. STANCIL: Yes, Your Honor. Do you want time before you leave for the day? I mean, it's not going to be that long, so 4:00 o'clock Monday? Does that work for you?

THE COURT: I don't care. I probably won't start looking at it until the next day.

MR. STANCIL: But I will -- I'll just reserve and so I don't have my associates --

THE COURT: Yes. I think these days midnight, 11:59 p.m., is what lawyers tend to want.

MR. STANCIL: Oh, not this lawyer.

THE COURT: Oh, well, okay. Okay. So I'll just have to look at this, and probably by Friday of next week I will reach out through Traci and let you know what my decision is on whether we're going to have another day of just 30 minutes, 30 minutes of experts.

MR. MCENTIRE: Your Honor, another housekeeping matter. You'd wanted a copy of our PowerPoint, --

THE COURT: Yes.

MR. MCENTIRE: -- which I'm pleased to give you. We found a typo that we can correct electronically on the version I showed.

THE COURT: Uh-huh.

MR. MCENTIRE: I likely will send that to you and I can copy opposing counsel. Is that --

THE COURT: Okay. Send it to Traci Ellison, my courtroom deputy.

MR. MCENTIRE: All right.

THE COURT: And she'll --

MR. MCENTIRE: We'll do that first thing in the morning.

THE COURT: Okay.

MR. MCENTIRE: So you'll have a copy --

MR. STANCIL: Can we get the hard copy that -- from today, though?

MR. MCENTIRE: No, that had a typo on it. I really

don't want to share it. We fixed it.

THE COURT: What? I'm sorry, what?

MR. MORRIS: That's fine.

MR. STANCIL: Never mind.

THE COURT: Do I not need to know?

MR. STANCIL: Let's all go home.

THE COURT: Okay. And then my last question is -- and there was a mention of the CLO Holdco lawsuit, where there's a pending motion to dismiss. There's an opinion I'm writing well underway. I just keep getting sidetracked by other things. Imagine that. So I know that people are wanting to get an answer to that. So, trust me, it's going to get done here pretty soon.

You mentioned Brantley Starr. I mean, it is not my role to pick up the phone and call him and say hey, --

MR. MCENTIRE: No, I wasn't suggesting that.

THE COURT: -- District Judge, get busy on that.

MR. MCENTIRE: Yeah.

THE COURT: But I'll at least tell you, I know the man seems to have more jury trials than any judge I've seen in this building, so I suspect he's working late hours trying to get things done.

MR. MCENTIRE: Yeah.

THE COURT: What do we have upcoming? We have what you called the mediation motion. When is that set?

MR. MORRIS: June 26.

THE COURT: June 26th. Be here before we know it.

MR. MORRIS: Yeah. And just to keep the Court informed, the Movant's reply was due today. We gave them a week extension. They asked earlier today. I saw in my email we gave them. So I think you should expect the reply on the 15th. The hearing is the 26th, and that's not in person.

THE COURT: Okay. Well, I'm very interested to dive into those pleadings. I knew the motion was coming because one of the lawyers said at a prior hearing it would be coming. So I haven't read any of those pleadings, but, well, I'm just very interested to hear how this plays out. I mean, I've said it before.

MR. MORRIS: Uh-huh.

THE COURT: We had global mediation in summer of 2020. We had two very fine mediators. We had a heck of a lot settled, to my amazement. But we're now way down the road and whole lot of money has been eaten up fighting lots of stuff. I mean, it would have to be pens down. There's an enormous amount out there that would have to be part of it, and I just don't know if everyone is fully appreciating that. I hope they are. Anyone listening. We're really, really far down the road now, and there's just how many appeals? Someone at one time told me there were 26. I bet it's more than that by now.

MR. MORRIS: I think that's right. I think we argued on Monday, what is it, the sixth of nine appeals in the Fifth Circuit. And we've got, you know, a cert petition that we're waiting to hear from on the Supreme Court. And yeah, there's still a couple dozen matters in the district court.

THE COURT: Okay.

MR. MORRIS: Not one of them, not one of them we're prosecuting, with the exception of waiting on the Court to rule on the Report and Recommendation on the notes litigation and vexatious litigant. We are not the plaintiff, movant, in anything.

THE COURT: We've got adversaries. The Reports and Recommendations. That's just made everything go a lot slower. But all right. So we have that. And anything else coming up?

MR. MORRIS: I think on July 11th maybe there is a hearing scheduled on Hunter Mountain. If you recall, Hunter Mountain had that valuation motion last year that you denied on the grounds that they didn't have a legal right to valuation information. They made a motion earlier this year for leave to file an adversary proceeding to assert an equitable claim and some other declaratory relief, is my recollection.

While we filed an opposition, we didn't oppose the relief requested, so that motion got resolved. They have filed an adversary proceeding. And I think, if I remember correctly,

our response to the complaint, maybe that's what due. Oh, the 11th is a status conference. It could be a status conference, maybe to set a scheduling order.

THE COURT: Okay.

MR. MORRIS: But that's it. I think that's the only thing on the calendar.

THE COURT: That's a lot.

MR. MCENTIRE: Thank you.

THE COURT: Anything else? Okay.

MR. STANCIL: Thank you, Your Honor.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 7:18 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **06/12/2023**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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Debtors' Exhibits, cont'd.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	May 26, 2023
	9:30 a.m. Docket
Reorganized Debtor.	
	- MOTION FOR EXPEDITED HEARING FILED BY HUNTER MOUNTAIN TRUST [3789]
	- MOTION TO CONTINUE HEARING FILED BY HUNTER MOUNTAIN TRUST [3791]
	- MOTION FOR EXPEDITED DISCOVERY FILED BY HUNTER MOUNTAIN TRUST [3788]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

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Proceedings recorded by electronic sound recording;
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DALLAS, TEXAS - MAY 26, 2023 - 9:37 A.M.

THE COURT: All right. We're here for an emergency hearing in Highland, Case No. 19-34054. We have motions to take expedited discovery, and alternatively, a motion to continue the June 8th hearing, filed by Hunter Mountain Trust. So I will start by getting lawyer appearances. Who do we have appearing for Hunter Mountain?

MR. MCENTIRE: Good morning, Your Honor. This is Sawnie McEntire on behalf of Hunter Mountain Investment Trust, along with my partner, Roger McCleary, and an associate in our firm, Tim Miller.

And Your Honor, the audio is very low. I have mine cranked all the way up. I could barely hear you, with all due deference to the Court.

THE COURT: All right. Well, I'll try to talk louder. I don't know if it's a problem everyone's having, or just on your end.

All right. Who do we have appearing for Highland?

MR. MORRIS: Good morning, Your Honor. It's John Morris from Pachulski Stang Ziehl & Jones for the Reorganized Debtor and the Claimant Trust. And I do apologize for not having a necktie this morning, Your Honor. I'm out of town in the middle of nowhere and just don't have one with me. I do apologize.

THE COURT: Okay. Understood. This was an emergency

setting right before a holiday.

All right. Who do we have appearing for Mr. Seery today?

MR. LEVY: This is Josh Levy from Willkie Farr & Gallagher on behalf of Mr. Seery. I'm joined today by my colleagues, Mark Stancil and John Brennan.

THE COURT: Okay. Thank you.

Who do we have appearing for what I'll call the Claims Purchasers?

MR. MCILWAIN: Good morning, Your Honor. Brent McIlwain from Holland & Knight here for Farallon Capital, Stonehill Capital, Muck, and Jessup. David Schulte and Chris Bailey are also on, but I anticipate handling the hearing.

THE COURT: Okay. Thank you.

I presume that's all of our appearances. Is there anyone I have missed?

All right. Well, Mr. McEntire, this is all about you. This is all about your motion. Tell me what you'd like to present today.

MR. MCENTIRE: Thank you, Your Honor. Your Honor, it's difficult for me to see right here. Do we have a court reporter?

THE COURT: Of course we do.

MR. MCENTIRE: Thank you. Just the visual on my computer is not very good. Thank you.

Your Honor, we're before the Court today on a motion for

expedited discovery. Our motion, as well as the discovery we have propounded, it's certainly subject to and without waiving our prior objections to the evidentiary format that the Court has indicated it intends to conduct in connection with the June -- upcoming June 8 hearing.

As the Court knows, we have objected to the evidentiary format of that hearing. But in light of the Court's recent ruling on --

THE COURT: Okay. Can I just stop you there, because --

MR. MCENTIRE: Sure.

THE COURT: -- your motion, it made me think that you think I've ordered evidence. Okay? I thought I made clear in my order, you can use your time however you want on June 8th, argument, evidence, but the issue here is that you chose to put on evidence, the Dondero affidavit, and as we discussed at the hearing on what kind of hearing we're going to have, if you put on a declaration or an affidavit, every court in the country is going to say that witness has to be made available for cross-examination.

So you decided to start this with putting on evidence, so I was simply saying, okay, well, if you're going to put on evidence, then other people are entitled to cross-examine your witness. And I went further to say I think this is maybe a mixed question of fact and law, so therefore people are

entitled to put on evidence in that regard. Okay?

So I feel like we went through this all at the last hearing on what kind of hearing we're going to have. So, I mean, you may continue, but I just, I took issue just now with you saying basically I ordered there was going to be evidence, okay? I would have been perfectly --

MR. MCENTIRE: Okay, Your Honor.

THE COURT: -- fine if you wanted to just put on argument, but I feel like you kind of started the ball rolling by putting in evidence.

MR. MCENTIRE: Well, Your Honor, to respond to your comments at the beginning of this hearing, as I indicated during the course of the status conference, we have withdrawn Mr. Dondero's affidavits and all the supporting evidence in connection with our motion and provided --

THE COURT: Well, I mean, you haven't actually withdrawn it. You said you might want to withdraw it.

MR. MCENTIRE: Well, we're -- well, actually, Your Honor, my recollection is that we are -- we're not only prepared but we have withdrawn it, subject only to our reservation of rights to use that evidence should the Court allow Mr. Seery, the Highland parties, or any other party to offer evidence.

We strenuously objected to the evidentiary format, and our offer and tender in that regard was made in the context of our

position that the Court can make a ruling on the pleadings, which I understand now the Claims Purchasers actually agree with us.

So it's Mr. Seery and the Highland parties who have provided substantial briefing to the Court on why they are entitled to an evidentiary hearing. And we responded with substantial briefing to the Court on why we did not think evidentiary hearing was appropriate under the various legal standards.

And then we received the Court's order, which perhaps -- certainly allows the Highland parties and certainly allows Mr. Seery to put on evidence. It doesn't prevent them from putting on evidence. If they're entitled to put on evidence, then we should be entitled to conduct discovery. And if they're entitled to put on evidence, then we should be entitled to offer the material that was attached to our original motion. That is our position. And that is what prompted our initiation of the discovery requests that are now before the Court.

I'll make a further point that we do believe that the Court can conduct this hearing on colorability based upon the four corners of the document and the document references that are in the four corners of that document because that is a -- that is an appropriate inquiry. That is an appropriate judicial inquiry in connection with the type of proceeding

that's currently before the Court on June 8th.

Mr. Morris's attempt and Mr. Seery's lawyers' attempt to inject evidence into the proceeding we think is improper. However, if the Court is going to allow them to do so, then we're entitled to conduct discovery to protect our due process rights, which are very substantial.

What we have now is a very schizophrenic situation, because the Claims Purchasers are objecting to participate in any discovery. They're taking the position that they are not going to offer any evidence. But nevertheless, they're going to seek to benefit, undoubtedly, from any evidence that Mr. Morris develops or that Mr. Seery's counsel develops. So it's a bit of a whipsaw situation.

They opened the Pandora's box here, Judge. We tried to keep it closed. We said that in our briefing when we filed our last brief on May 18. They have opened a Pandora's box. And if they want to put on any evidence at all, then we're entitled to do discovery.

That's my response to your initial comments. I'm prepared to discuss more detailed arguments that have been presented in the responses, if the Court wishes, and I'd like to proceed on -- as well.

THE COURT: Okay. Let me stop. Can I --

MR. MCENTIRE: Your Honor, --

THE COURT: Let me stop. You said you would address

the responses. Have responses to your emergency motions that were filed Wednesday night and Thursday morning been filed and I just haven't seen them?

MR. MCENTIRE: Yes. There are two responses. They were both filed yesterday. The Claims Purchasers filed a response, I believe, midafternoon, and then I believe Mr. Morris and Mr. Seery's counsel filed a response yesterday evening. And I am prepared to respond to those, because I think we have some very serious issues that need to be presented to the Court for the Court to fully assess the situation.

Your Honor, --

THE COURT: Just a moment while --

MR. MCENTIRE: -- the joint opposition --

THE COURT: Just a moment. I'm pulling up the responses. Okay.

MR. MCENTIRE: Yes, ma'am.

THE COURT: They were filed at 7:25 p.m. last night. Okay. Or a response.

Let me stop you right now. Tell me what is your first choice of what you want here, okay? I'm just trying to understand. As you said, we have a lot going on here. You filed the motion. You filed an affidavit of Dondero supporting many of your factual allegations in your motion. What do you want? If we could go backwards in time, what

would you want the Court to do here?

MR. MCENTIRE: I think it's proper for the Court to conduct its inquiry based upon the four corners of the Exhibit 1-A which is attached to our supplemental motion. We believe the Court can make its decision on colorability based on the four corners of that document. We do believe that the Court, if it wishes to do so -- it does not need to do so -- but if it's going to consider anything extraneous to the four corners of that document, it would be limited to the documents that are referred to in that petition -- in the complaint, rather -- Exhibit 1-A to our supplemental motion.

We do not believe any additional discovery would take place, and we believe Mr. --

THE COURT: Okay. Remind me, because there were 300 pages plus of material, remind me of what Document 1-A was.

MR. MCENTIRE: Exhibit 1-A is the complaint that is attached to our supplemental motion.

THE COURT: Okay. Right. Okay. So that's what you were referring to. I thought you were referring to --

MR. MCENTIRE: Yes, ma'am.

THE COURT: -- an Exhibit A perhaps to that exhibit. All right.

MR. MCENTIRE: Exhibit 1 --

THE COURT: So you want me to scrap --

MR. MCENTIRE: Exhibit 1-A.

THE COURT: I mean, here's the problem. You've got a motion for leave that gives factual reasons why, in exercising the gatekeeper provision, I should allow that complaint to be filed, and it has an affidavit of Dondero. I don't know how to put that genie back in the bottle here. Tell me what you --

MR. MCENTIRE: I think it's very easy.

THE COURT: -- would have me to do, now that that's on the record and I've seen it.

MR. MCENTIRE: The Court can conduct a hearing on the four corners of the pleading, just like the Claims Purchasers also agree. So you have five parties in this case right now --

THE COURT: Okay.

MR. MCENTIRE: -- who all agree --

THE COURT: But what do I do about that motion that's on file and that affidavit?

MR. MCENTIRE: You could ignore the exhibits that are attached to it.

THE COURT: Except the complaint.

MR. MCENTIRE: Except the complaint. Exhibit 1-A attached to the supplemental motion. Yes, Your Honor.

THE COURT: So if you got what you want here, what are you saying, that you would, I don't know, agree to redaction of every sentence in your motion that refers to the

Dondero affidavit and also striking the Dondero affidavit? Is that what -- I'm just, I'm trying to give meaning to this.

MR. MCENTIRE: If that would help the Court, we can redact any reference to Mr. Dondero's affidavit.

THE COURT: I'm not saying --

MR. MCENTIRE: Now, we have allegations --

THE COURT: I'm trying to get at how we do what you want the Court to do -- that is, not consider evidence. And I'm trying to think of procedurally how we put the genie back in the bottle. So is that your answer, there would be redaction of every sentence in the motion for leave that is supported by the Dondero affidavit and then a striking of the Dondero affidavit?

MR. MCENTIRE: I would withdraw the Dondero affidavit and I would be prepared to redact those portions of our motion that refer to the Dondero affidavit. Yes, Your Honor.

THE COURT: All right. And so that would be your desired way to go forward on your motion, and then you just show up on the 8th and each make legal arguments?

MR. MCENTIRE: We would show up on the 8th and make legal arguments, assuming that Mr. Morris and Mr. Seery's counsel do not attempt to put on evidence. If they attempt to put on evidence, pursuant to the Court's most recent order, then we should be entitled to put on evidence as well, as well as the Dondero affidavit.

THE COURT: With Mr. Dondero in court subject to cross-examination?

MR. MCENTIRE: If that's -- if the Court allows Mr. Morris to examine Mr. Dondero in court, then he'll be subject to --

THE COURT: I'm asking what --

MR. MCENTIRE: -- cross-examination on the affidavit as well.

THE COURT: -- you want, okay? Quit saying if that's what the Court wants. I wish I wasn't here on Friday morning before a three-day weekend, okay? Tell me what you want, okay? Do you --

MR. MCENTIRE: Yes, ma'am.

THE COURT: You've just said --

MR. MCENTIRE: I believe --

THE COURT: -- you want only oral argument. That's what you want?

MR. MCENTIRE: Hunter Mountain Investment Trust believes that the hearing on June 8th should be conducted on the pleading only and no extraneous evidence offered, including Mr. Dondero's affidavit. That is what we want.

THE COURT: So you would say, Here is our proposed complaint and here's why we think it presents colorable claims? And you would make --

MR. MCENTIRE: Yes.

THE COURT: -- legal arguments of why colorable claims are articulated?

MR. MCENTIRE: Yes, Your Honor. And the Court may consider the documents that are referred to in the complaint, but Mr. Dondero's affidavit is not referred to in the complaint.

THE COURT: Okay. And remind me of what documents are referred to in the complaint.

MR. MCENTIRE: All of the documents are of public record, I believe. Various documents from the Court's docket, disclosure statements, the plan, the Claimant Trust Agreement, the notices of claims trading that occurred in the spring of 2021. I believe they're all traceable back to the Court's docket or otherwise accessible in your records.

THE COURT: And why would I need to look at those?

MR. MCENTIRE: That's a traditional -- if the Court wishes to do so, that's a traditional process of a 12(b)(6) motion, that courts may make an inquiry into documents that are referred to and incorporated into a complaint or a petition.

THE COURT: Well, I know Fifth Circuit authority permits the Court to do that, but I'm just wondering how looking at these items support the argument that your complaint presents colorable claims.

MR. MCENTIRE: Well, I think there -- it does so in a

variety of ways. The disclosure statements that are referred to, the projections on distributions that are referred to, are very supportive of the notion that the Claims Purchasers had access to information that no one else had access to. They invested $163 million or more in claims involving -- where they conducted no due diligence. And that's an allegation in the complaint.

They've invested over $163 million in purchasing these claims, when the disclosures were -- suggested that they would only get 71 percent on Plan -- on Tier 8 and zero percent on Tier 9. They invested a substantial sum of money in Tier -- related to Tier 9 when they were projected to get zero value.

I think that all supports the notion that sophisticated buyers who have their own fiduciary duties to their own investors would actually invest $163 million in purchasing claims in the absence of due diligence when the disclosure suggested a very pessimistic return. Those are the types of inferences that are properly and reasonably drawn, and accepting all of the allegations in my complaint as true and plausible.

Now, the Court certainly can determine if it wishes that my clients are not plausible, but we think that that's -- what I've just described is -- creates a robust circumstantial plausibility.

THE COURT: Okay. Well, I'm going to ask you one

more question, and then of course I'm going to let the others weigh in. And you used the term plausible, and we've talked about is plausible the same thing as colorable, and you think it is and others think it's not. But here is my last question for you. And I want to phrase this in as helpful a way as possible as I can. If all I hear is legal argument, and if the standard is plausibility, or if plausibility is the same thing as colorability, to me, the legal question that I have to decide, okay -- again, and I'm viewing the world through the lens you're viewing it, okay, that colorability is plausibility, and really all you need to do is look at the complaint and consider legal argument -- if that is the correct lens the Court is supposed to look through here, I'm telling you I think it will boil down to this question: When or under what circumstances can claims trading during a Chapter 11 case -- and it's a stretch here to say during a Chapter 11 case, right? It was post-confirmation, pre-effective date. But when can claims trading in connection with a Chapter 11 case give rise to a cause of action that either the bankruptcy estate or a shareholder of the debtor have standing to bring? Is that not the legal question that the Court would have to consider on June 8th if it's a plausibility standard and if it's just a legal argument, not evidence type of hearing?

Because I am, I'm just going to tell you right now, I'm

trying to be helpful in telling you what I think, I really struggle with how in the heck does the bankruptcy estate or a shareholder of the bankruptcy estate have a cause of action relating to claims trading. Okay? Claims trading is a robust industry in the world of Chapter 11, and it has been for decades. People who are as old as me remember when the bankruptcy rules changed in 1991, Rule 3001(e), to make claims trading simply a matter between buyer and seller, where the court doesn't even have to issue any order.

So I am trying to understand the theory of the proposed adversary proceeding. And because I cannot figure out a legal theory, that's why, in my view, I have gone overboard to be generous here and said, I'll consider evidence, maybe somebody is going to say something in evidence that helps me understand the legal theory. And, in fact, you put in an affidavit.

So, again, I'm being what I think is super-generous by saying, okay, you put on evidence, you want to put on evidence, fine, you put on evidence, but other people can put on evidence. And now you're saying, oh, never mind, I don't want to put on evidence. Okay. But tell me -- I guess, not to get ahead of things, but I'm trying to understand what the theory is here if all I'm supposed to do is look at the four corners of the complaint and view it under a 12(b)(6) plausibility standard. How is there a cause of action here?

MR. MCENTIRE: Okay. Your Honor, responding

specifically to your question, this has been thoroughly briefed in our reply brief that we submitted on May 18. It addresses your question on all corners.

This is more than just a claims-trading case. The estate was actually impacted. The estate is impacted because of what we are alleging to be a quid pro quo. Mr. Seery is placing individuals or companies or entities into positions to approve his compensation scheme, which we believe to be excessive. Even the compensation agreement that was recently produced by the Highland parties and Mr. Morris we believe reflects, in essence, an excessive agreement.

And the situation here is that the estate has been directly impacted, as well as innocent creditors and stakeholders, because money has been drained away from the estate. This is not a simple, pure claims-trading issue. It's not a situation between seller and buyer. This impacts the estate.

From all we know, because we've never seen the discovery, the sellers have already released all their claims. The estate would be the only one in the "Big Boy" agreements that are typical of these claims-trading arrangements. So the estate is the only truly aggrieved party, as well as Hunter Mountain, who would have standing to bring these claims. And these claims would not be released under the gatekeeping provisions because they would involve willful conduct.

Our allegation is a conspiracy to breach Mr. Seery's fiduciary duties, to line his pockets with extra money in a quid pro quo exchange for providing people he knows or companies he knows into positions where they can greatly profit from inside information.

THE COURT: Okay. So, --

MR. MCENTIRE: It's not limited to MGM.

THE COURT: So the whole --

MR. MCENTIRE: Yes?

THE COURT: -- theory of your case is Seery is being paid too much money for his role as Liquidating Trustee or Claims Trustee? That's what it's all going to boil down to?

MR. MCENTIRE: No, ma'am. That's just one aspect of our claim. I was responding to your question of why this isn't just a pure claims-trading case. We derive our standing to sue from other areas as well. As aiders and abettors in a breach of these fiduciary duties, --

THE COURT: What are the different --

MR. MCENTIRE: -- the Claims Purchasers are subject --

THE COURT: -- breaches of fiduciary duties? The claims that were sold were already allowed claims, which, while there was massive litigation involving these claimants, there was mediation during the case and there was a settlement of these claims and there were 9019 motions approved by orders

of the Court.

So, again, I'm trying to understand the theory of your case. The claims amounts were set. Whoever held them, the sellers, the purchasers, or someone else out there -- Carl Icahn, pick your Claims Purchaser -- the claims amounts were set.

So I'm trying to understand how you think the estate and the shareholder have a cause of action for the estate being harmed, when the claims amounts were going to be the same, okay, because they had already been mediated and settled and approved by final order, and the only thing I'm hearing is, because the Claims Purchasers are purportedly friendly with Mr. Seery, they approved exorbitant compensation for him that maybe some other claims purchaser would have resisted, and therefore the claim, the estate, and the shareholder have been harmed by whatever extra compensation is allowed. Is that what it all boils down to?

MR. MCENTIRE: I think, again, Your Honor, that's -- it's much more than that.

THE COURT: What is the much more?

MR. MCENTIRE: Your first question is --

THE COURT: What is the much more? And this isn't the hearing, this isn't the June 8th hearing, but I'm trying to understand, should I order people to sit for depositions over a holiday weekend, okay? That's what this is about. Or

should I continue the June 8th hearing because you think you need depositions, okay? I'm trying to understand the theory of the case before we can figure out, do we go down that trail?

MR. MCENTIRE: I'll try to be succinct, Your Honor, in responding to your last question.

Your first question was -- well, actually, there's several. Your first question was what fiduciary duties were breached? There is a fiduciary duty not to engage in self-dealing, not to engage in conflicts of interest, and duties of disclosure. We believe that Mr. Seery engaged with the Claims Purchasers to participate in a *quid pro quo* where he could be assured of significant compensation post-effective-date by placing two companies with whom he is very close and familiar on the Oversight Board, controlling the decisions of the Oversight Board. We believe that actual compensation agreement that has now been produced reflects excessive compensation. That hurts the estate. If it hurts the estate, it hurts the innocent stakeholders, including other innocent creditors and my client as former equity. That's number one.

Number two. What other evidence do we have within the four corners? First, they're allegations, but we believe that they're well-pled allegations under a 12(b)(6) standard.

If the only publicly-available disclosure that is available in February of 2021 is that Tier 9 will get zero

return, yet the Claims Purchasers spent $45 million or more on Tier 9 claims, and that Tier 8 is only going to get 71 percent return, and they nevertheless spent a total of $163 million, we believe those are clear, colorable, plausible allegations supporting a participation and receiving inside information.

Now, it is clear that Mr. Seery was aware of MGM. He disclosed it. We know he disclosed it because we have the allegations in the pleading. Not referring to Mr. Dondero. We also know that the Claims Purchasers rejected any suggestion that they would sell their participation in those claims for even a 40 percent premium.

Well, when they're projected to get zero return or 71 percent return, it's difficult to understand -- in fact, I don't think it's possible to understand -- why they would be unwilling to sell even at a 40 percent premium. That is the allegation.

This is not a summary judgment proceeding. This is an initial threshold pleading stage. And the Court is asking good questions. Hopefully I'm providing some good answers that can put our claim into context. This is not just a pure claims-trading issue.

Now, the claim sellers, when they -- the Claims Purchasers, when they participate in this agreement, this collusion, as we allege, or this conspiracy, as we clearly allege, they become aiders and abettors under relevant law.

And as aiders and abettors, they're subject to disgorgement. That would be a claim that the estate would have for aiding and abetting the breach of fiduciary duties of a CEO and a Trustee.

THE COURT: All right. Well, I'm going to hear from others, but --

MR. MCENTIRE: Your Honor, I will tell you that I do have -- if the Court does want us to address the discovery issues before the Court, I have a lot to talk about, but I understand you may want to first hear from other counsel on this issue.

THE COURT: Okay. I do. But I want you to know I'm struggling mightily with your legal theories, okay? And I'm letting you know, if all I do is consider legal argument, I don't know how in the world you're going to get there. You are complaining in essence about claims purchasing. Okay? You say you're not, but it all is at the heart of your theories, that these claims which were sold, which were mediated -- which were litigated heavily, were mediated, were the subject of settlement agreements and 9019 motions, and then the original claims holders, like many people in every bankruptcy -- not every; in lots of bankruptcies around the country -- choose to monetize their claims. And it happens all the time. It happens all the time.

And in 1991, the rules-making committee decided, you know

what, the bankruptcy judges don't even need to be in the middle of this. You just file a notice in the docket, and if the original seller, holder of the claim, wants to file an objection and say, I didn't sell my claim, they can file an objection and the court will hold a hearing. But absent that dispute between seller and purchaser, the bankruptcy judge, frankly, shouldn't care.

Now, we've had some extreme situations in certain cases. The old *Japonica* case from I think the 1990s where someone said the claims purchaser, their votes on the plan shouldn't count because they purchased their claims and were acting in bad faith. I mean, that is the only thing I can think of here where you say a person who purchases a claim during the case, then acts in bad faith, don't allow their claim for voting purposes. Or we've had a few weird cases out there where the claim is only allowed at the purchase amount for voting and distribution purposes.

But I have never, in 34 years, seen anything like this. And claims trading is a robust industry. People have made their livelihoods -- I mentioned Carl Icahn. I'm getting very philosophical. But this happens all the time. And you have set forth a proposed lawsuit that is arguing there was a breach of fiduciary duty by Mr. Seery by encouraging people friendly to him to purchase claims that had already been allowed. And, by the way, it happened post-confirmation, pre-

effective date. And there was a conspiracy here that the Claims Purchasers participated in.

If all we have is legal argument on this, I think you're going to lose. Okay? So, again, in my view, I am keeping an open mind and letting you put on evidence if there's some sort of evidence that you think is going to get me over the legal hump here, okay? So that's why we're here. Okay?

MR. MCENTIRE: Okay.

THE COURT: Okay. So, Mr. Morris, I'll let you go next.

MR. MORRIS: Thank you, Your Honor. I'd like to just defer, if I may, to Mr. Stancil first, Mr. Seery's counsel, and then I'll follow him.

THE COURT: Okay. Mr. Stancil?

MR. STANCIL: Good morning, Your Honor. This is Mark Stancil from -- thank you -- from Willkie Farr for Mr. Seery.

I think I just want to make three brief points, and Mr. Morris may wish to add before -- and I do want to invite my colleague, Mr. Levy, to address discovery issues if we turn to the scope of discovery.

First and foremost, and I think consistent with what I heard Your Honor say, I did not hear Mr. McEntire identify a single injury, hypothetical or otherwise, to the estate that does not derive exclusively from purportedly excessive compensation to Mr. Seery. So, every aiding and abetting or

breach theory that he articulated, the only way any of those could conceivably have harmed the estate under their theory is that Mr. Seery was somehow able to obtain outside compensation. And that is what this case boils down to. So none of the other -- whether -- how many causes of action he splits it into makes no difference.

I would add, moreover, that we completely dispute his characterization of Mr. Seery's compensation as excessive, and as I'd like to explain in just a moment, we believe we're entitled to show that.

But I would be remiss not to add that they filed this complaint alleging that Mr. Seery's compensation was excessive without knowing what Mr. Seery's compensation even was. So were he to rely truly on the four corners of his complaint, he has nothing, literally nothing to base this theory of excessive compensation on, besides absolute supposition.

Second, and I realize, Your Honor, this was supposed to be the topic for June 8th, as to what the proper standard is, and we've -- both sides have briefed that. Mr. McEntire has veered pretty heavily into that argument, so I just wanted to respond very briefly to a couple of his points.

It would make a mockery of the gatekeeping order were a party bound by it or subject to it entitled to simply make up assertions and say, well, I'll rely on these assertions, and the more false they are, the better, because that'll get me

past the gatekeeping and I can then file it.

So, for that reason, we believe it is clear under *Barton* and vexatious litigant doctrines, upon which this Court's gatekeeping order was expressly based when it was ordered, that we believe that even if they choose to rely solely on the four corners of their complaint, we are entitled to submit, if we so choose, evidence that directly rebuts and renders any allegation facially implausible. And we think that that's exactly what Your Honor will see here. The documents -- and perhaps Mr. Morris would care to address these in more detail; I'll defer to him -- but the documents and evidence we would present and will present at the hearing, most of which is already just attached to our motion, will blow this out of the water. It's an absurd allegation. And the idea that we have to allow this to be filed because they choose to make what are, candidly, bald-faced lies in a complaint and just say, well, we're now going to ignore our attempt to support it with any evidence, but you can't contradict any of our assertions in our complaint, we think that would be completely -- completely improper.

And we think, to the extent the complaint on its four corners would rely on the say-so of a party in interest such as Mr. Dondero, we would be entitled to cross-examine him.

You know, there are complaints that have objective, verifiable, or at least testable evidence that is independent

of someone's personal recollection, that he must have had some phone call or claims, as is the case here, that essentially third parties confessed in an unrelated phone call to some criminal scheme to him.

The last point I'll make before I turn it over to Mr. Morris is we think it's very important, whatever the Court's decision today with respect to discovery, that we keep the June 8 date. This is hanging over the estate. As all of us know, the longer something runs, the more expensive it is, no matter what. We believe every lick of discovery that's appropriate, if that's what the Court orders, can be done. Everybody can be deposed. It'll all get done by June 8th. And those of us who are in the bankruptcy trenches know that people have moved far greater mountains than these in shorter periods of time.

So, with that, we think it's really important to hold that hearing date and get past this.

THE COURT: Okay. Thank you.

Let me ask you what you think of the idea I put out there of, assuming we can kind of put the genie back in the bottle here, if Mr. McEntire withdrew the Dondero affidavit and we had redaction of every sentence in the motion for leave that mentioned the Dondero affidavit, is your client opposed to that and then just going forward with legal argument on June 8th? I'm not clear on that.

MR. STANCIL: Yes, Your Honor. Yes, Your Honor. On behalf of Mr. Seery, he is opposed to that for two reasons.

Your Honor will recall that the complaint basically alleges that Mr. Seery took what they call nonpublic information and gave it to somebody, in violation of his obligations. That is just an absolute fabrication that we're entitled, on a gatekeeping standard, to rebut. If they choose to limit themselves to the four corners, that's fine. But it's a contested matter. It's not an adversary proceeding yet. They're trying to get there. It's a contested matter, and we're entitled to put on evidence to show that they cannot meet the colorability gatekeeping standard as expressed in this Court's order.

So if they choose to limit themselves to their say-so even in a complaint, I do believe, Your Honor, that we would be entitled to show contrary evidence. And whether it persuades Your Honor that it's not colorable after we've shown it to you, that's up to Your Honor.

For example, if the complaint were to allege that the sun sets in the east and rises in the west, well, we should be able to put on a photograph that says no, here it is in the west, here it is in the east. And it would be perverse to say that they can file a complaint that's subject to a gatekeeping order just based on their say-so. I mean, ironically, the more absurd and disprovable the allegation, the easier it is

to get past, in theory, get past some sort of gatekeeping order, and it should be just the opposite. We believe we're entitled to that under the Rules, Your Honor.

THE COURT: All right. So you want to put on Seery, Mr. Seery, at the June 8th hearing?

MR. MCENTIRE: Let me just check, Your Honor, one phone. Yes.

THE COURT: Okay. All right.

Well, I guess I'll go to -- well, Mr. Morris, did you want to speak next?

MR. MORRIS: I do, Your Honor.

THE COURT: Okay. Go ahead.

MR. MORRIS: I do. And I'll join in Mr. Stancil's presentation, with one modification. I think he may have misspoke in suggesting that Hunter Mountain alleged that Mr. Seery's compensation was, quote, excessive. They did not make that allegation. They're making that allegation now because they've actually seen Mr. Seery's compensation package. They had no knowledge of Mr. Seery's compensation package until we voluntarily disclosed it as one of our exhibits in opposition to the motion.

The allegation in the complaint is not that Mr. Seery's compensation is excessive, it's that it was rubberstamped by his age-old friends at Farallon and Stonehill in exchange for the delivery of this so-called material nonpublic information.

So I otherwise agree with Mr. Stancil. But let's -- it's very important for the Court to hold Hunter Mountain to the allegations in their complaint, because this is what we have seen for three years, the shifting tides of allegations. It's the same game of Whack-a-Mole that we did for two years in connection with the notes litigation.

I am very sensitive to these things, Your Honor. The allegation in the complaint is *quid pro quo*. It's not, oh, I've now seen Mr. Seery's compensation package and it's excessive. For somebody who is asking the Court and swore to the Court that $70 million of notes would be forgiven because Jim Seery as the Highland representative sold MGM assets, for him to suggest that this is excessive is unbelievable.

Let me take a step back, Your Honor. The Court can certainly take judicial notice of the fact that it is the sixth body to consider these insider trading allegations. Mr. Dondero filed a 202 seeking discovery based on it. And yet how can he have a colorable claim today when he couldn't state a colorable basis simply to get discovery? Boom. They shut the door on him in Texas state court.

Doug Draper wrote an enormous letter to the United States Trustee's Office, put forth an enormous amount of paper, made the allegations of insider trading. They can't state a colorable claim today because they couldn't state a colorable basis to get the United States Trustee to commence an

investigation.

Mr. Rukavina did the same thing. No investigation.

Hunter Mountain. They filed a 202 petition. They couldn't state a colorable basis to get discovery.

And then my favorite is the Texas State Securities Board. I've now learned that indeed they did commence an investigation on the basis of Mr. Dondero's complaint. It wasn't just a review. It was actually a heightened inquiry. And after considering everything, the Texas State Securities Board said, we are taking no action.

You are the sixth body to consider. I think, when deciding whether or not there is a colorable claim, we're done, frankly. 0-for-6.

Next, I think the Court can certainly take judicial notice of newspaper articles. And the fact that Mr. Dondero had absolutely no duty whatsoever to send that email on December 17th. Look at the context in which it was sent. It's laid out very clearly in our opposition. And four days later, the *Wall Street Journal* -- not, you know, an obscure publication -- publishes an article that says MGM has retained investment bankers. They identify the investment bankers. They say there is a formal process going on to sell the company. They quote the chairman of the board that says we're actively selling the company. We have four interested parties, and two of them are Apple and Amazon, the very two people that four

days earlier Jim Dondero, for no reason at all other than to gum up the wheels, tells Jim Seery about. The Court can certainly take judicial notice of these things.

And then, finally, I don't know how Hunter Mountain can tell the Court that they should accept the allegations in the complaint as true when we got four months of negotiations over Mr. Seery's compensation. The allegation in the complaint is that it was rubberstamped. We will put in documentary evidence -- you don't have to accept that if there's no credibility determination on this point, but this is really -- this is yet another reason why there's no -- there can never be, as a matter of fact, a colorable claim here. I appreciate the legal points that Your Honor made earlier, but as a matter of fact, there is -- it is inconceivable that there could be a colorable claim, because the claim is *quid pro quo*. Rubberstamped. That's their word. The Court already has in the record evidence showing that that is a lie. They had no basis. They have no knowledge. They had no inquiry as to how his compensation, but they said it was rubberstamped as part of a *quid pro quo*. Just look at the exhibits that Your Honor has already.

The Court is supposed to say, "I accept the allegations as true," when it has documentary evidence that shows the allegations are false? In what world would that be just?

I don't want to get directly involved in the discovery

disputes. I'll leave that to Mr. Seery's counsel. But whether it's on a legal basis or a factual basis, the fact of the matter is that they sought discovery not once but twice. They got nothing. And yet here they are, pressing the same allegations.

I only ask the Court to hold them to their allegations. Do not let them use what they get in discovery to say, Aha, we have a new claim. That's not the way this process works. The question is whether they have stated a colorable claim. And we have already proven, frankly, as a matter of fact and as a matter of law, that there is not only no basis to these claims, these claims are not made in good faith.

Thank you, Your Honor.

THE COURT: All right. You said you'd defer to Mr. Seery's counsel on the discovery questions. I just want to -- I'll ask you the same question.

MR. MORRIS: Yeah.

THE COURT: If you had your way, what would the hearing on June 8th look like? And I guess you're on the same page as Mr. Stancil, that Mr. Seery should be allowed to testify?

MR. MORRIS: I believe that's right, Your Honor. Only Mr. Seery can say what Mr. Seery did, instead of drawing just absurd inferences based on absolutely nothing. And I think, I think the record will be clear. I think he should

authenticate, for example, the documents relating to the negotiation of his compensation package. I think he should be able to tell the Court that he never disclosed anything about MGM or this other -- there's no *quid pro quo*. He barely knew these people, if he knew them at all. This is just, you know, this is just more of the same, Your Honor. It's more of what we've been doing for three years.

And I'll just repeat, you are the sixth body to pass on these so-called insider trading allegations. And you're actually being asked to do substantially more than the five prior bodies declined to do.

THE COURT: Okay. Two --

MR. MORRIS: Right. They declined to get discovery. They declined -- yeah.

THE COURT: Two Texas state court judges in a Rule 202, --

MR. MORRIS: Right.

THE COURT: -- we want pre-lawsuit discovery; the Texas Securities Board; and the U.S. Trustee? Now, who's the other one?

MR. MORRIS: The U.S. Trustee twice.

THE COURT: Oh, twice?

MR. MORRIS: The U.S. Trustee twice, because there were two different letters, --

THE COURT: Okay.

MR. MORRIS: -- each of which addressed the so-called insider trading allegations. And that's how I get to five.

THE COURT: Okay.

MR. MORRIS: And I just think that that just is really illustrative of, you know, the lack of credibility, the lack of bona fides, the lack of truthfulness in the allegations that are being pressed here.

THE COURT: All right. Mr. McIlwain, anything you want to add to this discussion?

MR. MCILWAIN: Yes, Your Honor. And I'll be brief. And if I may, because I suspect you're going to ask me the same question, I might start with my answer regarding the hearing.

From our perspective, from the Claims Purchasers respective, and I think we're uniquely situated, we're different in most regards, if not all regards, than Mr. Seery in that we are just Claims Purchasers. Now, my clients are on the Oversight Committee, and I think we're protected by the gatekeeper as a result of that.

But based on the allegations set forth in the four corners of the complaint, and our response was narrowly tailored, directed to issues that did not have anything to do with the facts, they were legal bases for denial of the motion for leave. And in that regard, Your Honor, I would be fine and my clients would be fine if this hearing were conducted on a

purely -- purely based on the pleadings, on legal arguments and with no evidence.

That being said, I understand Mr. Stancil's position and Mr. Seery's position that there is some need, from their perspective, to clean up the record, when, you know, frankly, the bona fides and reputation is being attacked. I understand that. But from my perspective and from my client's perspective, I think we're prepared to move forward on the 8th purely on a legal basis.

In all of our response -- in each one of our responses, the items that we responded to, Your Honor, we did so very carefully not to raise evidentiary issues, affirmative evidentiary issues from our perspective. They either referred to purely legal questions, and in which case we think we win, or refer to, you know, documents that were on file with the Court.

Moreover, Your Honor, we do not -- you know, I understand the Court may not have had an opportunity to review our response that we filed late yesterday, but the Claims Purchasers have no intention of presenting any evidence at the June 8th hearing. We don't intend to put on any witnesses. We don't intend to submit any exhibits.

And frankly, Your Honor, and I know we've covered a lot of ground today, but as it relates to the motion that's on file today, Hunter Mountain Investment Trust's request to take

expedited discovery, which is being heard, as the Court noted, the Friday before Memorial Day, right, we would submit that that's completely inappropriate for our clients to be subjected to any discovery at this point. As Mr. Morris pointed out, two state courts have already denied these requests.

And if the Court were to allow Hunter Mountain to take discovery in the face of us stating on the record and in pleadings that we have no intention of putting on any witnesses or submitting any evidence at the hearing, I mean, it essentially turns the gatekeeper order on its head, or provision on its head. Because what that would mean is that they can file a complaint, or a motion for leave to file a complaint, they can make any allegations they want, and if you respond to that motion to leave, you're now subjected to discovery, and so they can go out and search and try to find some other claim.

Ordinarily, Your Honor, it wouldn't -- discovery, from my perspective, doing this for 25 years, I wouldn't have an issue with discovery. This is different. This is different because Hunter Mountain and Mr. Dondero have taken every opportunity to harass various parties in the case. And, you know, someone would ask, why would -- why do claims sellers sell their claims? My Lord, why wouldn't you want to get out of this case? I mean, I can't imagine being subjected to this

litigation, as Mr. Seery has been subjected, year after year after year. And successfully. Mr. Seery has been successful in every regard.

So, Your Honor, we -- in summary, I think the Court hit it right on the head. This is -- these are -- at the heart, this complaint is about claims trading. We complied with Rule 3001. The Court has no role in respect to the claims trading. The fantastical allegations that they've made as it relates to these claims trade don't -- have no impact, frankly, on the fact that the claims were allowed, they were litigated, they were mediated, and they're only entitled -- the Claims Purchasers are only entitled to get whatever the claims are, right? These claims don't get enlarged. They're not equity. They're claims. They're claims that were converted, by the way, into trust interests. So, you know, as we point out in our response, we think many of the points and relief that Hunter Mountain is requesting just can't even be granted by the Court. In fact, we can address those on June 8th.

At the end of the day, we're here on a discovery motion that has been filed on an emergency basis to seek discovery. And from my clients they're seeking four depositions. Four -- so 16 hours of depositions. Over 30 topics, with 19 different document requests. Your Honor, if we're not going to present any evidence and we're not going to put any witnesses on, I would submit that that's totally inappropriate and it flies in

the face of the whole point of the gatekeeper. And that's why we would ask that, at least as it relates to the Claims Purchasers, that Hunter Mountain's motion for expedited discovery be denied.

THE COURT: All right. Mr. McEntire, I'm going to give you the last word. And let me tell you what I'm inclined to do based on everything I've heard.

If someone wants to put on Mr. Seery -- Highland or Mr. Seery's counsel -- I'm going to hear evidence from Mr. Seery on June 8th. And if you want to withdraw the Dondero affidavit and the Court will redact or have you file a redacted version of your motion for leave that strikes every sentence that refers to the Dondero affidavit, no other changes, just that, you can do that. Or if you don't do that, then Mr. Dondero, you can put him on if you want, or he has to be available for cross-examination. Okay?

But that would be it. No Claims Purchaser witnesses. And I'm not continuing the hearing beyond June 8th. You can get depos done, if you both want to do depos or one of you wants to do depos, between now and June 8th. Not on the holidays, by the way. I'm not going to order anyone to appear sooner than, say, Wednesday of next week.

But that's what I'm inclined to do. And one thing that's rolling around in my brain is I do remember the 202 suits in Texas state court as, starting two years ago, opportunities to

take discovery. So I don't know why at this late stage I would allow discovery of the Claims Purchasers, especially when this really looks like it's more about Mr. Seery and Mr. Dondero than them. And again, the whole policy that the Court really isn't supposed to get in the middle of claims trading.

So that is what I'm inclined to do. Tell me what different view of the world you want me to consider.

MR. MCENTIRE: Well, with all due respect, Your Honor, my view of the world is substantially different. We would, of course, object if that's your ultimate ruling, for the following reasons.

The 202 petitions having nothing to do with colorability. The court, to address the Hunter Mountain 202 pleading or petition, did not specify a reason. But I would advise the Court, and we -- actually, you could take notice of the record of the proceedings. They earnestly argued that you, Your Honor, were in the best position to address these issues. So I think it's highly likely that the judge who addressed the 202 petition that Hunter Mountain had filed did so in deference to you. Not to suggest --

THE COURT: Did it --

MR. MCENTIRE: -- to you how to rule.

THE COURT: Did it happen twice? Same judge twice, or two different judges?

MR. MCENTIRE: Oh, I'm sorry. There were two

different judges, but Hunter Mountain was not involved in the first inquiry at all. And they argued standing in that issue. And that's a totally different proceeding, totally different issues, totally different evidence got put on before the Court. And totally -- and Farallon's counsel, who's actually on this website today, earnestly argued that you were in the best position to address these discovery issues. That's in his briefing and his oral argument. That's number one.

Number two, the Texas State --

THE COURT: Did you ever bring --

MR. MCENTIRE: -- Securities Board --

THE COURT: -- a 2004 exam asking me to? Because the reason I remember this is because the Claims Purchasers actually removed from state court to this Court the first 202 state court action, if that's what you call it, an action, pre-action discovery. And I remanded it --

MR. MCENTIRE: Pre-suit discovery. Yes, Your Honor.

THE COURT: I remanded it back, with some angst, because I'm like, okay, well, there's a tool, 2004, and I don't know why we're doing this in state court, but if that's what whoever it was at the time, Hunter Mountain Trust or whoever it was, if that's what they want to do, they can do it. Okay?

MR. MCENTIRE: Sure.

THE COURT: So when they were unsuccessful --

MR. MCENTIRE: So, Hunter Mountain --

THE COURT: -- I don't know why they didn't -- well, anyway, I'm just baffled.

MR. MCENTIRE: Hunter Mountain Investment -- yes, if I could finish my comments, Your Honor. Hunter Mountain Investment Trust was not involved in that. Hunter Mountain Investment Trust filed its 202 petition because of timing issues because we were concerned we were going to meet with the same obstructive tactics that we're seeing today in this court, --

THE COURT: Who was involved?

MR. MCENTIRE: -- trying to oppose this.

THE COURT: If it wasn't Hunter Mountain, who was it?

MR. MCENTIRE: It was Jim Dondero.

THE COURT: Okay.

MR. MCENTIRE: Hunter Mountain was only involved in one proceeding, and it was in February and March of this year. And immediately after that resolved, we proceeded to move in this court. We were concerned about limitations issues with regard to one of the individual claims and one of the causes of action, so we proceeded to file our motion for leave of the gatekeeping order.

Our history is very simple. It's very clear. It has not been harassing. And it's very clearly identified as we've only been in two courts on this issue, the 202 petition and

your court, and that's it. To suggest that we're harassing is just a distortion.

There are some other distortions. Mr. Morris is absolutely wrong. We have specific allegations as to excessive compensation in the complaint. And it's interesting how counsel can make a characterization but omit facts or allegations that are inconsistent with the truth.

And so I find it amazing that Paragraph 71 stands out like a sore thumb, where we specifically allege excessive compensation that Mr. Seery garnered from his deal. That's the second thing.

We have a situation where the Claims Purchasers have never clearly denied access to material nonpublic information. They have never clearly denied that they did no due diligence, yet they obstructed discovery in the 202 petition and now they obstruct discovery here.

A Pandora's box has been opened. To allow Mr. Seery to take the stand and to explain that he didn't do this or didn't do that and allow the other part of the conspirator group, Mr. McIlwain's clients, escape and avoid being tested and challenged in cross-examination is the epitome of a deprivation of due process. We will be deprived of our due process rights if you singularly let Mr. Seery take the stand and prevent our right to take discovery from the Claims Purchasers.

They do not want to be challenged. They do not want to open the door as to what happened here. And they've been trying to prevent that from day one.

We don't think that evidence of any type is appropriate. But if you're going to let any evidence in, you cannot let -- you can't let part of the toothpaste out without letting it all out. And so we're entitled to a full-blown discovery and a full-blown evidentiary hearing if in fact you allow any evidence in.

We agree with the Claims Purchasers' lawyer that it shouldn't come in generally, and that includes Mr. Seery, and that includes Mr. Dondero, and that includes everything else, except the four corners of our pleading. And we're prepared to stand on that, subject to the pertinent rules that deal with 12(b)(6) inquiries.

Your Honor, what we've done today is we've talked about the merits of our claim before the June 8th hearing. The only issue before the Court today was a discovery issue, which we've never really addressed, because Mr. Morris and Mr. Seery's counsel are trying to slide over the fact that they have objected to some of our discovery, refusing to produce documents that go to the very core of our claim. They are seeking to prevent access and Mr. Seery's deposition on communications with the Claims Purchasers dealing with the asset values and projections, distributions from the estate.

Well, that's the guts of material nonpublic information.

And we -- this case is not limited to MGM as much as Mr. Morris would like to do so. A fair reading of our complaint in Paragraphs 3, 13, 17, 47, 50, and 51 make it very clear that this is a lot larger than just MGM.

And Your Honor, to allow them to put Mr. Seery on the stand without our right to depose him and have documents relating to his communications --

THE COURT: Wait, wait, wait.

MR. MCENTIRE: -- with the Claims Purchasers --

THE COURT: Wait, wait, wait. Maybe I was not clear. You all can depose -- if Seery is going to testify, you can depose him before June 8th, just not over the holiday weekend. Okay? And --

MR. MCENTIRE: Yes, I understood that.

THE COURT: And -- and -- and --

MR. MCENTIRE: But they're trying to prevent --

THE COURT: And -- and -- and -- and if you're not going to withdraw the Dondero affidavit and redact the sentences in the motion for leave that mention the Dondero affidavit, okay, so if you're going to rely on Dondero's affidavit or call him at the June 8th hearing, they can depose him. Again, not over the holiday weekend.

But I'm just saying that's as far as I'm going to let the evidence go. I'm not going to allow depositions of Claims

Purchasers unless you somehow show me you've got a colorable claim or claims in your proposed complaint. Then, if I say yes, then normal discovery rules will apply. We have very much a cart-before-the-horse situation here.

MR. MCENTIRE: We do. I agree with that. Completely. And in fact, what was happening here, Your Honor, with all due respect, is you're just addressing the colorability of my client's claims to determine whether I can conduct discovery, but they want to put discovery on to challenge the colorability of my claims. Somewhat circular, Your Honor, with all due respect. And so we're truly being deprived --

THE COURT: Well, again, --

MR. MCENTIRE: -- of our rights.

THE COURT: -- again, I go back to where it all starts, and it starts with your motion attaching a Dondero affidavit. That's where it all starts. You could have just filed a motion making legal argument. And if you just wanted to make your legal argument at the hearing on this, then that would have been fine to the Court. But once you filed that affidavit, all I can say is everything changed. I used the genie-in-the-bottle analogy.

So I'm giving you every opportunity here to present your colorable claim. And I have told you that, if it all comes down to legal argument, I'm not sure how you're ever going to

convince me. I'm saying you can --

MR. MCENTIRE: Well, I --

THE COURT: I'm saying you can take back the Dondero affidavit if you want. I'm saying you can go forward with it if you want, but they can cross-examine him if you do. But now that the genie is out of the bottle, I can understand the Defendants wanting to put on their own countervailing evidence, because the genie is out of the bottle. I've already read your motion and I've read the Dondero affidavit. I can't unsee it. So if --

MR. MCENTIRE: The genie is not out of the -- with all due respect, Your Honor, the genie is not out of the bottle because we have a right to amend or supplement, and that's effectively what we've done here. And so you do not --

THE COURT: And I want you --

MR. MCENTIRE: -- need to consider the Dondero --

THE COURT: -- to be clear about what I am saying. If you want to take it back, you can. If you want to refile the motion, merely redacting those sentences that refer to the Dondero affidavit and not filing the Dondero affidavit, I'll let you. But I'm not going to stop the other side from putting on Mr. Seery out of concern --

MR. MCENTIRE: Right.

THE COURT: -- that I've already read that stuff. Okay?

MR. MCENTIRE: All right.

THE COURT: And I don't think they like that, --

MR. MCENTIRE: I understand your ruling.

THE COURT: -- especially. I don't think they like it, especially. I think they'd now like probably to cross-examine Mr. Dondero. But I'm giving --

MR. MORRIS: If I may, Your Honor, just really --

THE COURT: Go ahead.

MR. MORRIS: I'm sorry. I was just --

MR. MCENTIRE: Your Honor, if I can finish --

MR. MORRIS: (overspoken)

MR. MCENTIRE: -- my presentation.

MR. MORRIS: We have relied --

MR. MCENTIRE: I understand your ruling.

MR. MORRIS: We have relied on the Dondero affidavits. They were analyzed and reviewed extensively in the opposition. I think it would be very prejudicial if they were allowed to withdraw them. But, you know, the Court has to do what the Court thinks is right.

But I do want to point out that Mr. McEntire made the point at the status conference that he was considering withdrawing the affidavits. He didn't do so. We did an extensive analysis of those affidavits. We relied on them. And only in reply did they say, oh, we're withdrawing them. I just don't think that's proper.

THE COURT: Okay.

MR. MCENTIRE: Your Honor, I have a few more comments to clarify your ruling, please.

THE COURT: Okay. Go ahead.

MR. MCENTIRE: Number one, we have withdrawn the affidavit, number one.

THE COURT: You -- it is still --

MR. MCENTIRE: We reserve the right, if you --

THE COURT: When did you withdraw it? Because I just looked at the docket. It's not withdrawn.

MR. MCENTIRE: I did it at the status conference. And if there's any ambiguity or concern or confusion about that, --

THE COURT: It is on the docket.

MR. MCENTIRE: -- I clearly did it --

THE COURT: It has been publicly available for weeks now.

MR. MCENTIRE: It was formally done in our reply on May 18, and so there can be no ambiguity. If you'd like for me to withdraw it from the public record, I'll be glad to do so.

THE COURT: Okay.

MR. MCENTIRE: I didn't know that was an additional issue.

THE COURT: I mean, here -- I gave you this emergency

hearing. You asked for 45 minutes. I actually have a conference call at 11:00 o'clock.

Here's what I'm going to do. We'll have yet another order regarding what kind of hearing we're going to have on June 8th, and it will clarify that Mr. Seery can testify and Mr. Dondero can testify, and both of them shall be made available for depositions before June 8th but not sooner than next Wednesday. And that is the evidence that the Court will consider. No other deposi...

MR. MCENTIRE: Your Honor, we --

THE COURT: No other -- I'm still talking. No other depositions will happen between now and June 8th. You can make your legal arguments, you can put on your witnesses, and the Court is going to rule. Okay?

MR. MCENTIRE: I understand your ruling. There's one additional clarification, Your Honor.

THE COURT: Okay.

MR. MCENTIRE: We would like for the documents to be produced that we've requested from Mr. Seery. They're important to allow us to conduct his deposition. And we specifically would like the objections to the production of documents to be overruled.

If the Court wants to take that under advisement because of the shortness of this hearing today, that's fine, but it's very important that we have access to information relating to

the value of the estate, communications with the Claims Purchasers about the value of the estate, projected distributions. And specifically, I'll provide the reference, we have allegations in Paragraphs 24, 59, and 99 that relate to this, as well as all the communications regarding insider trading that would be -- that would support the relevance. It's Request for Production Number 1-H through J.

THE COURT: Okay. Let me stop you.

MR. MCENTIRE: And it's Request for Production --

THE COURT: I'm denying that request. Okay. And I'm going to go back to the cart-before-the-horse analogy. You know something, you have something that makes you think you have colorable claims. Okay? You can put on your witness and try to convince me. You can cross-examine Mr. Seery and try to convince me. Okay? But if you convince me, then there'll be a normal lawsuit and discovery. But at this point, I think it's a very improper request. Okay? So that's the --

MR. MCENTIRE: Please note for the record, Your Honor, that we're being denied the opportunity to depose Mr. Seery fully and completely without the production of these documents. We understand your ruling, however. Please note our objection.

THE COURT: All right. I will see you on June 8th. We're adjourned.

MR. MCENTIRE: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 10:55 a.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **05/27/2023**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAINT INVESTMENT TRUST'S REQUEST FOR ORAL HEARING OR, ALTERNATIVELY, A SCHEDULE FOR EVIDENTIARY PROFFER

Hunter Mountain Investment Trust ("HMIT"), Movant in these Contested Proceedings, submits this Request for Oral Hearing or, Alternatively, a Schedule for Evidentiary Proffer ("Request"), and would show:[1]

INTRODUCTION

1. On June 12, 2023, at 8:15 p.m., Highland Capital Management LP, Highland Claimant Trust and James P. Seery, Jr. filed their Reply in Further Support of their Joint Motion to Exclude Testimony of Steve Pully and Scott Van Meter (Doc. 3841) ("Reply Brief"). The Claims Purchasers subsequently joined this Reply Brief on June 12, 2023 (Doc. 3842).

2. During the hearing on June 8, 2023, the Court instructed HMIT that it was not allowed to file a sur-reply concerning these expert witness issues. *See* June 8, 2023 Hearing Transcript at 25:3-12; 26:14-18. Accordingly, this current request is not submitted as a sur-reply, but instead seeks an oral hearing in connection with the matters raised in the Joint Motion to Exclude Testimony (Doc. 3820), HMIT's Response to the Joint Motion

[1] This Request is filed subject to and without waiving any of HMIT's substantive and procedural rights including, but not limited to, HMIT's objections to the evidentiary format of the June 8, 2023, hearing ("June 8 Hearing") on HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Doc. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Doc. 3760] (together the "Motion for Leave"), including objections to the Court's May 22, 2023 order [Doc. 3787] ("May 22 Order"). HMIT's prior objections to an evidentiary hearing were asserted by HMIT during the April 24, 2023, Status Conference, and were further set forth in HMIT'S Reply Brief in Support of its Motion for Leave [Doc. 3785], during the May 26, 2023, hearing regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing [Doc 3788], and during the June 8 Hearing, all of which objections are incorporated herein for all purposes ("HMIT's Evidentiary Hearing Objections").

to Exclude Testimony (Doc. 3828), the Reply Brief (Doc. 3841), and the related joinders including, without limitation, the *Daubert* challenges advanced as to HMIT's experts.

3. Both Scott Van Meter and Steve Pully are qualified to testify to the matters identified in HMIT's Witness List dated June 5, 2023. (Doc. 3818). HMIT is entitled to present both Mr. Pully and Mr. Van Meter for an oral hearing to establish their qualifications under Rule 702 of the Federal Rules of Evidence, as well as the relevance and reliability of their opinions and methodologies under Rule 703. Although HMIT was under no obligation to provide expert reports or other expert disclosures when it served its Witness List on June 5, 2023, HMIT's experts are now being challenged. Therefore, HMIT requests an evidentiary hearing to present its expert witnesses as to their qualifications and the reliability of their opinions. Alternatively, HMIT requests a schedule to provide expert witness proffers concerning their qualifications, opinions, the bases of their opinions, and the relevance and reliability of their opinions and methods.

Dated: June 13, 2023.

Respectfully Submitted,

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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I certify that on the 13th day of June 2023, a true and correct copy of the foregoing motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S REPLY TO THE HIGHLAND PARTIES' RESPONSE TO REQUEST FOR ORAL HEARING

Hunter Mountain Investment Trust ("HMIT"), Movant in these Contested Proceedings, submits this Reply ("Reply") to the Response to Hunter Mountain Investment Trust's Request for Oral Argument or, Alternatively, a Schedule for Evidentiary Proffer ("Response") filed by Highland Capital Management, L.P., Highland

Claimant Trust, and James P. Seery, Jr. (collectively, the "Highland Parties"), and would show:[1]

1. HMIT's Request for Hearing for Oral Hearing or, Alternatively, a Schedule for Evidentiary Proffer (Doc. 3845) ("Request") is consistent both with the Court's rulings during the hearing on June 8, 2023, and the relevant rules relating to discovery and rules of evidence related to expert testimony.

2. HMIT is not asking to add "new exhibits" or to have its experts testify about "new exhibits." Rather, HMIT seeks a proper *Daubert* hearing to address the admissibility of expert testimony under Fed. R. Evid. 702 and 703. Nothing the Court said about "new exhibits" affects HMIT's right to be heard and present evidence during a proper *Daubert* inquiry. The Record does ***not*** support any other conclusion:

> Mr. McEntire: If you even want to consider a *Daubert* challenge, the proper procedure is to put the witnesses on the stand and have an opportunity to have a proffer of evidence and a cross-examination. That's the proper procedure. Throwing something and innuendo and rhetoric and conclusions is not a proper

[1] This Reply is filed subject to and without waiving any of HMIT's substantive and procedural rights including, but not limited to, HMIT's objections to the evidentiary format of the June 8, 2023, hearing ("June 8 Hearing") on HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Doc. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Doc. 3760] (together the "Motion for Leave"), including objections to the Court's May 22, 2023 order [Doc. 3787] ("May 22 Order"). HMIT's prior objections to an evidentiary hearing were asserted by HMIT during the April 24, 2023, Status Conference, and were further set forth in HMIT'S Reply Brief in Support of its Motion for Leave [Doc. 3785], during the May 26, 2023, hearing regarding Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing [Doc 3788], and during the June 8 Hearing, all of which objections are incorporated herein for all purposes ("HMIT's Evidentiary Hearing Objections").

Daubert motion at all. The Court could deny their *Daubert* motion just on those grounds.[2]

3. HMIT's Request for Oral Hearing is also consistent with Fifth Circuit authority, which requires the Court, at a minimum, to perform a *Daubert* inquiry and "articulate its basis" on the record for excluding or admitting expert testimony. *Rodriguez v. Riddell Sports, Inc.*, 242 S.W.3d 567, 581-82 (5th Cir. 2001). A failure to conduct a proper *Daubert* inquiry and "articulate" the basis for a ruling based on a sufficiently developed record, would be error. *See id.*; *see also Dodge v. Cotter Corp.*, 328 F.3d 1212, 1223 (10th Cir. 2003) ("A natural requirement of the [*Daubert*] gatekeeper function is the creation of 'a sufficiently developed record in order to allow a determination of whether the district court properly applied the relevant law.'") (citation omitted). There cannot be a "sufficiently developed record" to make any *Daubert* inquiry when the experts have not even been granted the opportunity to offer their opinions, the bases of their opinions, and the methodology they employed in arriving at their opinions.

4. In any event, if the Court excludes the experts' opinions on any basis, HMIT is still entitled to make an offer of proof on what the experts would opine for purposes of appellate review—a requirement for error preservation that a *Daubert* hearing ordinarily would fulfill. Fed. R. Evid. 103(c) ("The court may direct that an offer of proof be made

[2] Hearing Transcript at 17:5-11.

in question-and-answer form."). Thus, if the Court denies a *Daubert* hearing, HMIT is entitled to submit an offer of proof for the record. Fed. R. Evid. 103(a)(2).

Dated: June 14, 2023.

Respectfully Submitted,

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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF SERVICE

I certify that on the 14th day of June 2023, a true and correct copy of the foregoing motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 16, 2023

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	

MEMORANDUM OPINION AND ORDER GRANTING JOINT MOTION TO EXCLUDE EXPERT EVIDENCE [DE # 3820]

I. INTRODUCTION.

BEFORE THIS COURT is yet another dispute in the continuing saga of the Chapter 11 bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor").

The Reorganized Debtor has been operating under a confirmed Chapter 11 plan for approximately two years now—a plan having been confirmed on February 22, 2021. The plan was never stayed; it went effective in August 2021; and it was affirmed almost in its entirety by

the United States Court of Appeals for the Fifth Circuit (in late summer 2022). A petition for writ of certiorari regarding the plan confirmation order has been pending at the United States Supreme Court since January 2023. Millions of dollars have been paid out to creditors under the plan, although the plan has not been completed.

This court uses the words "continuing saga" because there is a mountain of litigation that is still pending. First, there are numerous adversary proceedings still pending, in which the Reorganized Debtor and a Litigation Trustee appointed under the plan are seeking to liquidate claims that Highland has against others, in order to augment the pot of money available for unsecured creditors. Some of these adversary proceedings involve what seem like simple suits on promissory notes (albeit very large promissory notes), and others involve highly complex torts. There are numerous appeals pending and, from time to time, petitions for writs of mandamus have been filed post-confirmation. And there are new lawsuits popping up around every corner it seems.

To be sure, this post-confirmation litigation is not the "usual stuff," and the adverse parties in this ongoing post-confirmation litigation are not the "usual suspects." For example, the numerous post-confirmation adversary proceedings do not involve preference lawsuits or other Chapter 5 avoidance actions against non-insider creditors—as we so often see proliferate in Chapter 11 cases post-confirmation. And we do not have long-running proof of claim objections pending post-confirmation—because all of the proof of claim objections regarding non-insider creditors were resolved long ago (with major compromises reached and settlements approved by the court—some after formal mediation). And as for the myriad appeals, the non-insider creditors in this case—with proofs of claim asserted in the hundreds of millions of dollars—overwhelmingly supported Highland's confirmed plan and, therefore, they have not been appellants on any of the aforementioned appeals.

So who has been the adverse party in this deluge of post-confirmation litigation? The founder and former Chief Executive Officer ("CEO") of Highland, Mr. James Dondero personally, and entities that he controls (*e.g.,* family trusts; investment advisory firms; managed funds; and other entities—frequently organized offshore—that were not themselves debtors in the Highland Chapter 11 case but assert party-in-interest status in various capacities). To be clear, Mr. Dondero takes umbrage at the suggestion that ***all*** of the adverse parties in these numerous post-confirmation scuffles are controlled by him.

Which brings us to the current, post-confirmation contested matter before the court. Currently, a party called Hunter Mountain Investment Trust ("HMIT"), a Delaware trust, has filed a "gatekeeper motion"—that is, a motion seeking leave from this court to file an adversary proceeding in the bankruptcy court against the Reorganized Debtor's CEO and certain investors who purchased allowed unsecured claims in this case post-confirmation and pre-Effective Date (as further described below). HMIT's gatekeeper motion has given birth to a sideshow, so to speak, regarding ***what, if any, evidence the court ought to consider in connection with HMIT's gatekeeper motion—the latest "act" in such sideshow focusing on the propriety of considering expert testimony.***

Who or what exactly is HMIT? HMIT is an entity with no employees and no income whose only asset is a contingent right of recovery under the Highland confirmed plan—by virtue of HMIT having held a majority (99.5%) of the limited partnership interests in Highland pre-confirmation, which interests were classified in the plan in a "Class 10" (that was projected to receive no recovery). Mr. Dondero asserts that he does not control HMIT. HMIT represents that, since on or about August 2022, it has been solely controlled by a Mr. Mark Patrick (a former employee of Highland who left Highland one week after its Plan was confirmed and went to work for an entity

called "Skyview Group," that was formed by certain former Highland employees, and apparently now advises various affiliate entities of Mr. Dondero).[1] While HMIT only has one asset (the "Class 10" contingent interest), Mark Patrick has testified that HMIT is liable on a $62.6 million-dollar indebtedness that it owes to The Dugaboy Investment Trust (a family trust of which Mr. Dondero is the lifetime beneficiary), pursuant to a promissory note made by HMIT in favor of Dugaboy, in 2015, in exchange for Dugaboy transferring to HMIT an ownership interest in Highland. *See* Transcript 6/8/23 Hearing, at pp. 304-308 [DE # 3843]. *See also* Highland Exh. 51 from 6/8/23 Hearing [DE # 3817]. Mr. Patrick has testified that Dugaboy and HMIT have a settlement, pursuant to which, Dugaboy is paying HMIT's attorney's fees. Transcript 6/8/23 Hearing, at p. at 313:2-18 [DE # 3843].

II. HMIT'S MOTION FOR LEAVE TO FILE LAWSUIT (a.k.a. THE "GATEKEEPER MOTION").

To understand the procedural motion now before the court—***which deals with whether or not the bankruptcy court should allow or exclude expert witness testimony and documents*** (more fully described below)—one must understand the context in which it is being considered, which is the hearing on HMIT's *Emergency Motion for Leave to File Verified Adversary Proceeding* that was filed by HMIT (the "HMIT Motion for Leave"), which this court loosely refers to sometimes as the "Gatekeeping Motion."

The HMIT Motion for Leave, as alluded to, requests leave from the bankruptcy court to file a post-confirmation, post-Effective Date adversary proceeding pursuant to this bankruptcy court's "gatekeeping" orders and, specifically, the gatekeeping, injunction, and exculpation

[1] *See* DE # 2440 (Transcript of a 6/8/21 Hearing, at pp. 95:18-96:10).

provisions of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [DE # 1943], as modified (the "Plan"). The HMIT Motion for Leave, with attachments, as first filed, was 387 pages in length, and the attachments included a proposed complaint and two sworn declarations of the aforementioned former CEO of the Reorganized Debtor, Mr. Dondero. The HMIT Motion for Leave was later amended to eliminate the declarations of Mr. Dondero. DE ## 3815 & 3816. In a nutshell, HMIT desires leave to sue certain parties regarding ***the post-confirmation, pre-Effective Date purchase of allowed unsecured claims***. The proposed defendants would be:

> **Mr. James P. Seery, Jr.,** who now serves as the CEO of the Reorganized Debtor and also serves as the Trustee of the Highland Claimant Trust created pursuant to the Plan, and also was previously Highland's Chief Restructuring Officer ("CRO") during the case, then CEO, and, also, an Independent Board Member of Highland's general partner during the Highland case. Mr. Seery is best understood as the man who took Mr. Dondero's place running Highland—per the request of the Official Unsecured Creditors Committee.
>
> **Certain Claims Purchasers,** known as Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the "Claims Purchasers"). The Claims Purchasers purchased $240 million face value of unsecured claims post-confirmation and pre-Effective Date—which claims had already been allowed during the Highland case—in the spring of 2021 and another $125 million face value allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk's docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Official Unsecured Creditors Committee during the Highland bankruptcy case).
>
> **John Doe Defendant Nos. 1-10**, which are described to be "currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue."

The proposed plaintiffs would be:

> **HMIT,** which represents that it was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited

partnership interests). HMIT represents that it currently holds a Class 10 interest under the confirmed Highland plan, which gives it a contingent interest in the Claimant Trust created under the plan, and as defined in the Claimant Trust Agreement ("CTA").

Reorganized Debtor, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

Highland Claimant Trust, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Highland Claimant Trust.

The gist of the complaint that HMIT seeks leave to file is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that "wrongful conduct occurred" and "improper trades" were made. HMIT Motion for Leave, 7. HMIT believes the Claim Purchasers paid around $160 million for the $365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland's Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. Also, Mr. Dondero purports to have concluded from conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Mr. Seery must have given these claims purchasers material nonpublic information ("MNPI") regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Mr. Seery shared MNPI regarding the likely imminent sale of Metro-Goldwyn-Mayer Studios, Inc. ("MGM"), in which Highland had, directly and indirectly, substantial holdings. Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in

media reports for several months[2] and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months ***before*** certain of their claims—the UBS claims—were purchased).[3] Note that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public). In summary, while HMIT's proposed complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Mr. Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor's estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors (who, incidentally, are not complaining) to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Mr. Seery, and are now happily approving Mr. Seery's allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Mr. Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages.

The individual counts that HMIT wants to allege are:

I. Breach of Fiduciary Duty (as to Mr. Seery)

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[2] *See* Highland Exh. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Exh. 26 (describing prospects of an MGM sale noting that, among its largest shareholders, was "Highland Capital Management, LP") (article October 11, 2020). *See also* Highland Exhs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for $8.4 billion).

[3] The MGM-Amazon deal was ultimately consummated in March 2022 for approximately $6.1 billion, net of cash acquired, plus approximately $2.5 billion in debt that Amazon assumed and immediately repaid.

II. Breach of Fiduciary Duty and Knowing Participation in Breach of Fiduciary Duty (as to Claims Purchasers)

III. Fraud by Misrepresentation and Material Nondisclosure (as to all proposed defendants)[4]

IV. Conspiracy (as to all proposed defendants)

V. Equitable Disallowance (as to Muck and Jessup)

VI. Unjust Enrichment and Constructive Trust (as to all proposed defendants)

V. Declaratory Judgment (as to all proposed defendants)

III. NEXT, THE DELUGE OF ACTIVITY, IN MULTIPLE COURTS, AFTER THE FILING OF THE HMIT MOTION FOR LEAVE.

After the HMIT Motion for Leave was filed on March 28, 2023, there was two-and-a-half months of activity regarding ***what type of hearing the bankruptcy court would hold and when*** on the HMIT Motion for Leave. A timeline is set forth below.

3/28/23: The HMIT Motion for Leave was filed, along with a request for emergency hearing on same. DE ## 3699 & 3700. HMIT requested that the court schedule a hearing on the motion "on three (3) days' notice, and that any responses be filed no later than twenty-four hours before the scheduled hearing sought." DE # 3700, 2. The HMIT Motion for Leave was 37 pages in length, plus another 350 pages of supporting exhibits, including two sworn declarations of Mr. Dondero.

3/31/23: Bankruptcy Court entered order denying an emergency hearing on the HMIT Motion for Leave. DE # 3713. The court stated that it would set the hearing on normal notice (at least 21 days' notice), seeing no emergency.

4/4/23-4/12/23: HMIT pursued an unsuccessful interlocutory appeal and then a petition for writ of mandamus regarding the Bankruptcy Court's denial of an emergency hearing at first the District Court and then the Fifth Circuit.

4/13/23: Highland filed a motion asking the Bankruptcy Court to set a briefing schedule on the HMIT Motion for Leave, indicating that Highland's proposed timetable for same was opposed by HMIT. DE # 3738. The Claims Purchaser and Mr. Seery joined in that motion. DE ## 3740 & 3747. HMIT subsequently filed a response unopposed to a briefing schedule and status conference. DE # 3748.

[4] This Count III has gone in and out of the various drafts HMIT has filed with the court and was included in the latest version of the proposed complaint that was filed at DE # 3816.

4/21/23: HMIT filed a Brief [DE # 3758] before the status conference indicating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the Bankruptcy Court did not need evidence in order to exercise its gatekeeping function and determine if HMIT has a "colorable" claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

4/24/23: The Bankruptcy Court held a status/scheduling conference; there was extensive discussion among all the parties regarding what type of hearing there needed to be on the HMIT Motion for Leave. HMIT was adamant there should be no evidence. Highland and Mr. Seery argued they ought to be able to cross-examine Mr. Dondero since his sworn declarations had been attached to the HMIT Motion for Leave as "objective evidence" that "supported" the HMIT Motion for Leave. DE #3699, p. 2. HMIT stated that it would withdraw Mr. Dondero's declarations, but not if the court was going to allow evidence.

5/11/23: Bankruptcy Court entered Order [DE # 3781] fixing a briefing schedule for the parties and stating that the court would "advise the parties on or reasonably after May 18, 2023, whether the Court intend[ed] to conduct the hearing on an evidentiary basis."

5/22/23: Bankruptcy Court issued an Order [DE # 3787] after receipt of briefing, stating that "the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave—and, in particular, pertaining to the court's required inquiry into whether 'colorable' claims may exist, as described in the Motion for Leave. Therefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing if they so choose. This may include examining any witness for whom a Declaration or Affidavit has already been filed. The parties will be allowed no more than three hours of presentation time each (allocated three hours to the movant and three hours to the aggregate respondents). This allocated presentation time may be spent in whatever manner the parties believe will be useful to the court (argument/evidence)."

5/24/23: HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing. [DE # 3788 & 3789]. HMIT continued to urge that it did not think presentation of evidence was appropriate in connection with the HMIT Motion for Leave, but that "subject to and without waiving its objections, HMIT requests immediate leave to obtain all of its requested discovery on or before the specific dates identified in each deposition notice (with duces tecum), failing which the hearing on HMIT's Motion for Leave should be continued until HMIT has obtained such discovery. The requested discovery is generally described in this Motion, but is set forth with particularity in the Deposition Notices with Duces Tecum attached as Exhibits A-E. [paragraph numbering omitted.] In summary, HMIT seeks expedited depositions of corporate representatives of Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup") and also seeks the deposition of James A. Seery, Jr. ("Seery")." Deposition Notices were attached for each of these five parties. Nothing was stated about a possible need for (or intention to present) expert testimony.

5/26/23: The Bankruptcy Court held yet another status conference in response to HMIT's newest emergency motion. The Bankruptcy Court referred to this as a "second hearing on what kind of hearing we were going to have" on the HMIT Motion for Leave. The court heard more discussions on whether it was appropriate to consider evidence at the hearing on the HMIT Motion for Leave. Nothing was mentioned about possible experts. The court, continuing to believe that

there could be mixed questions of fact and law inherent in deciding the HMIT Motion for Leave, granted in part and denied in part HMIT's request for expedited discovery it sought of Mr. Seery and the Claims Purchasers. The Bankruptcy Court issued a follow-up order [DE # 3800] that provided: "(1) To the extent any party would like to depose either James P. Seery, Jr. or James Dondero in advance of the June 8 hearing ("June 8 Hearing") on HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. 3760] (together, the "Motion for Leave"), Mr. Seery and Mr. Dondero shall be made available for depositions ("Depositions") on a date and at a time agreeable to the parties that is no earlier than May 31, 2023, and no later than June 7, 2023, and no discovery or depositions of any other party or witness will be permitted prior to the June 8 hearing; and (2) None of the parties shall be entitled to any other discovery, including the production of documents from Mr. Seery or Mr. Dondero, or any other party or witness pursuant to a subpoena duces tecum, or otherwise, prior to the conduct of the Depositions or to the court's ruling on the Motion for Leave following the June 8, 2023 hearing" The Bankruptcy Court issued this ruling with the expectation—based on everything it heard—that HMIT did not wish for the court to consider evidence but, if it did, it thought it should get to depose Mr. Seery and the Claims Purchasers. The court reached what seemed like appropriate middle ground by allowing the deposition of Mr. Seery and allowing the other parties to depose Mr. Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Mr. Dondero had been seeking discovery from the Claims Purchasers in state court "Rule 202" proceedings for approximately two years.

June 5, 2023 (10:10 pm): HMIT filed its Witness and Exhibit List disclosing two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony).

June 7, 2023 (4:07 pm): A Joint Motion to Exclude Expert Testimony and Documents was filed by Highland, Mr. Seery, and the Highland Claimant Trust ("Motion to Exclude Expert Evidence").

June 8, 2023 (8:12 am): HMIT filed a Response to the Motion to Exclude Expert Evidence.

June 8, 2023 (9:30 am): The Bankruptcy Court commenced its hearing on the HMIT Motion for Leave. The parties desired for court to rule on whether the expert testimony and exhibits should be allowed into the record. After much discussion, the court informed parties that it had not had the opportunity to study their eleventh-hour filings, and that the court would go forward with the hearing as the court had earlier contemplated (three hours per side; no experts for now) and the court would take the Motion to Exclude Expert Evidence under advisement and would schedule a "Day 2" for the hearing on the HMIT Motion for Leave for the experts if it determined that was appropriate. The court gave Highland, Mr. Seery, and the Highland Claimant Trust a deadline of 6/12/23 to reply to HMIT's Response. They filed a Reply (in which the Claims Purchasers joined). The Bankruptcy Court ordered no more pleadings would be considered. HMIT filed another pleading on this topic on 6/13/23 [DE # 3845] and Highland and Mr. Seery responded to the HMIT additional pleading [DE # 3846] and then HMIT replied to their response [DE # 3847].

IV. TURNING, FINALLY, TO THE MOTION TO EXCLUDE EXPERT EVIDENCE

As indicated in the timeline above, HMIT designated on June 5, 2023, at 10:10 pm CDT, two expert witnesses to testify at the hearing on the HMIT Motion for Leave. The first one was Mr. Scott Van Meter, stating that he "may provide opinion testimony on issues relating to Mr. Seery's compensation and claims trading." The second one was Mr. Steve Pully, stating that he "may provide opinion testimony on issues relating to Mr. Seery's claims trading." To be clear, Mr. Seery is not alleged to have engaged in claims trading (i.e., he is not alleged to have either sold or purchased any claims in the Highland case). Rather, it is surmised by HMIT that Mr. Seery might have shared MNPI with the Claims Purchasers. Details about the two proposed experts' education, experience, and the likely substance of their testimony were provided.

Further, with regard to Mr. Van Meter, HMIT disclosed that he had analyzed the claims trading in the Highland case and holds the opinion that there are "red flags" plausibly indicating the use of MNPI in connection with the claim purchasers' investment in their claims –primarily among them the fact that the claims purchasers allegedly did not undertake due diligence. He also would apparently opine that Mr. Seery's compensation is not reasonable or excessive because not based on any market study and because the Claims Purchasers, as large creditors on the post-confirmation oversight committee, have the ability to control it.

Further, with regard to Mr. Pully, HMIT disclosed that the projections in the publicly available information (presumably the Disclosure Statement and Plan and accompanying exhibits, the Bankruptcy Schedules, and Monthly Operating Reports) would not have rewarded the Claims Purchasers with the type of economic return that hedge funds/private equity firms would expect to realize. Thus, they must have had some MNPI to convince them that the claims purchasing was worthwhile.

There are procedural problems and substantive problems with the Proposed Experts (hereinafter so called).

A. The Procedural Problems.

The timeline set forth above is highly problematic. Highland, Mr. Seery, and the Highland Claimant Trust refer to the timeline here as tantamount to "trial by ambush."

HMIT counters that it, in fact, complied with this court's local rules and national rules as well. As to the local rules, Local Bankruptcy Rule 9014-1(c) of the Northern District of Texas requires, in contested matters, the exchange of exhibits and witness lists with opposing parties at least 3 calendar days before a scheduled hearing (unless a specific order otherwise applies). The hearing on the HMIT Motion for Leave was scheduled for June 8, 2023, at 9:30 am CDT, and HMIT filed its exhibit and witness list on June 5, 2023, at 10:10 pm CDT—technically three calendar days before the hearing, albeit less than 72 hours before the hearing. As for the national rules, HMIT states that it was under no duty to disclose the existence or substance of expert testimony prior to the exchange of witness lists, because national Rule 9014 of the Federal Rules of Bankruptcy Procedure ("FRBP"), applying to contested matters, does not incorporate Rule 26(a)(2) of the Federal Rules of Civil Procedure ("FRCP"), which defines the content and timing for expert disclosures (unless the court directs otherwise, which it did not here).

HMIT's focus on these rules is disingenuous. The court does not view the Proposed Experts as having been appropriately and timely disclosed in light of the two-and-a-half-month timeline set forth above and—most importantly—the bankruptcy court's multiple prior conferences and orders setting the scope of the hearing and associated discovery. HMIT's revelation (approximately 60 hours before the hearing on the HMIT Motion for Leave) that it

sought to offer expert testimony came far too late. HMIT never raised even the prospect of expert testimony at any point in its multiple filings with the bankruptcy court (which consisted of many hundreds of pages) or during the two status/scheduling conferences on the HMIT Motion for Leave. During the two status/scheduling conferences, this court repeatedly asked HMIT what it wanted to do at the hearing on the HMIT Motion for Leave (as far as there being evidence or no evidence—zeroing in on the inconvenient complication for HMIT that it had already put in some evidence, through the filing of the declarations of Mr. Dondero in support of its motion, and this, at the very least, would entitle the parties to cross-examine him on the statements contained in the declarations). HMIT represented that it desired for the hearing to be conducted "on the pleadings only" and that it had or would withdraw the declarations of Mr. Dondero (it had not withdrawn the declarations as of the status/scheduling conferences). But, alternatively, if there would be evidence, HMIT wanted to conduct expedited discovery of documents, fact depositions, and corporate representative depositions. [DE # 3791]. ***HMIT made no mention of any experts***. Only after the bankruptcy court had ruled on HMIT's request for expedited discovery—and expressly limited the scope of discovery—did HMIT reveal its Proposed Experts [DE # 3818]. Obviously, the court would have fully vetted with the parties at the status/scheduling conferences the need for experts and the need for any discovery of them if HMIT mentioned it as a possibility.

Additionally, while HMIT focuses on the fact that FRBP 9014 excludes FRCP 26(a)(2)(b)'s requirements regarding expert witness disclosures and reports (absent the court directing otherwise), FRBP 9014 ***does*** include ***FRCP 26(b)(4)(A)***, in contested matters, which provides that "[a] party may depose any person who has been identified as an expert whose opinions may be presented at trial." *See* FRBP 9014(b); FRBP 7026. As alluded to above, this bankruptcy court had limited pre-hearing discovery to "depositions of Mr. Dondero and/or Mr. Seery" in reliance on

HMIT's representations, which omitted any reference to expert witnesses. By waiting until roughly 60 hours before the hearing to disclose the Proposed Experts, this resulted in Highland, Mr. Seery, and the Highland Claimant Trust not having sufficient time to seek to modify the court's prior status/scheduling orders, let alone take two expert depositions.

B. *The Substantive Problems*.

Finally, on a substantive level, the Proposed Experts' testimony and documents are inadmissible because they will not "help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702(a). Federal Rule of Evidence 702(a) provides that a witness who is qualified as an expert may testify in the form of an opinion or otherwise if, among other requirements, "the expert's scientific, technical, or otherwise specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue."

The fact finder here at this stage, in the context of determining whether HMIT's proposed complaint asserts "colorable" claims under the gatekeeper provision of the Plan, obviously, is the bankruptcy judge. The judge, thus, may decide whether the Proposed Experts would help her analyze or understand an issue. This court is well within its discretion to conclude that the Proposed Experts would not advance the judge's analysis. This bankruptcy judge has had years of experience (both before and after her 17 years as a bankruptcy judge) with the topic of claims purchasing that sometimes occurs during a bankruptcy case. The court notes, anecdotally, that the activity of investing in distressed debt (which frequently even occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and has, indeed, been for a couple of decades. As noted by one scholar:

> The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in

> 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

ADAM J. LEVITIN, BANKRUPTCY MARKETS: MAKING SENSE OF CLAIMS TRADING, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010).

This judge has likewise had decades of experience with hedge funds and private equity funds. The court understands very well financial concepts such as return on investment, risk, and the handicapping of how certain events might impact recoveries. This court can take judicial notice that there was volatility in the capital markets during the time period of this case that would certainly factor into decisions to buy or sell claims.[5] This court understands the concepts of MNPI and fiduciary duties. The judge remembers very well when the possibility of an MGM-Amazon transaction flooded the news in late 2020 and 2021, and then became a reality. The court remembers asking the parties in the Highland case during open court about it, since it was widely known that Highland and its affiliates owned direct or indirect interests in MGM stock. This was before, by the way, certain of the claims purchases that are at issue here were made.

Finally, this judge has decades of experience with executive compensation in bankruptcy cases and in connection with post-confirmation trusts.[6] In fact, this court approved Mr. Seery's

[5] A court "can, of course, take judicial notice of stock prices." *Schweitzer v. Invs. Comm. of Phillips 66 Savings Plan*, 960 F.3d 190, 193 n.3 (5th Cir. 2020).

[6] This court even ran across one article that the above-signing judge published on the topic before she was a judge. *Bringing Home the Bacon, or Just Being a Hog? Employee and Executive Compensation Issues in Chapter 11*, 22nd Annual Bankruptcy Conference, The University of Texas School of Law (Nov. 2003) (co-authored with Frances Smith). The bankruptcy judge does not mean to suggest that a 20-year-old article makes anyone per se an expert. It

compensation early on during the bankruptcy case (in 2020), and his compensation was negotiated by the former members of the Official Unsecured Creditors Committee, among others. Mr. Seery's compensation during this bankruptcy case was obviously subject to a motion, notice and a hearing, and was fully disclosed. Mr. Seery's base compensation now is the same as what this court approved back in 2020. Certainly, in a bankruptcy case, one size does not fit all. Highland is a unique case that has involved great contentiousness and hundreds of millions of dollars of assets. Mr. Seery's compensation reflects these circumstances, among other things.

In summary, with all due respect to the Proposed Experts, it is hard for this court to conceive how they could help this court to understand the evidence or determine a fact in issue relative to the gatekeeping motion—as contemplated by Fed. R. Evid. 702(a)—when this court deals with the issues presented by motion, and similar issues, somewhat regularly.

Accordingly, the court will exercise its discretion under Fed. R. Evid 702(a) and exclude the Proposed Experts testimony and HMIT Exhibits 39-52 relating to same.

A further opinion and order will be forthcoming on the HMIT Motion for Leave.

END OF MEMORANDUM OPINION AND ORDER####

is merely to further the point that a long-term bankruptcy judge with Chapter 11 experience typically has developed expertise regarding executive compensation issues pre-and post-confirmation in Chapter 11 cases.

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 1, 2023

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

ORDER STRIKING HMIT'S EVIDENTIARY PROFFER PURSUANT TO RULE 103(a)(2) AND LIMITING BRIEFING

The Court has reviewed Hunter Mountain Investment Trust's ("HMIT") *Evidentiary Proffer Pursuant to Rule 103(a)(2)* ("Proffer"; Dkt. No. 3858), the *Highland Parties' Joint Objections To And Motion To Strike HMIT's Evidentiary Proffer Pursuant to Rule 103(a)(2)* ("Motion"; Dkt. No. 3860) filed by Highland Capital Management, L.P., the Highland Claimant Trust, and James P. Seery, Jr. (collectively, the "Highland Parties"), and the *Claims Purchasers' Joinder to the Highland Parties' Objections and Motion to Strike HMIT's Purported Proffer* (Dkt. No. 3861) filed by Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management,

L.L.C., and Stonehill Capital Management LLC (collectively with HMIT and the Highland Parties, the "Parties"). After due deliberation, the Court has determined that good and sufficient cause has been shown for the relief requested in the Motion. It is therefore **ORDERED** that:

1. The Motion is **GRANTED**.

2. The Proffer and its accompanying declarations are stricken from the record for the reasons set forth in the Court's June 27, 2023 email (attached hereto as Exhibit A). The Court directs the Clerk to remove docket entry 3858 from the docket.

3. The Parties shall not file any additional briefs, motions, pleadings, proffers, or other submissions with the Court in connection with the Motion, the Highland Parties' *Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully* (Dkt. No. 3820), or any proposed/excluded expert evidence relative to HMIT's *Motion for Leave to File Verified Adversary Proceeding* (Dkt. No. 3699).

END OF ORDER

Exhibit A

From: Traci Ellison <Traci_Ellison@txnb.uscourts.gov>
Date: June 27, 2023 at 1:28:02 PM CDT
To: "Stancil, [illegible]" <[illegible]>, "Annable, Zachery" <zannable@haywardfirm.com>, "Sawnie A. McEntire" <smcentire@pmmlaw.com>, "Roger L. McCleary" <rmccleary@pmmlaw.com>, "Omar J. Alaniz" <OAlaniz@reedsmith.com>, "McIlwain, Brent R (DAL - X59481)" <Brent.McIlwain@hklaw.com>
Subject: 19-34054-sgj11 Highland Capital Management, L.P.

Dear Counsel:

Please see the following message from Judge Jernigan:

"With regard to the Evidentiary Proffer ("Proffer") of Hunter Mountain Investment Trust ("HMIT") filed at DE # 3858 on 6/19/23 (i.e., after the 6/8/23 hearing on HMIT's Motion for Leave to File Verified Adversary Proceeding [DE # 3699] and after the court's written 6/16/23 ruling regarding the admissibility of the proposed expert evidence), the court has determined that the Proffer is unnecessary. Rule 103(a)(2) does not apply if "the substance" of the excluded evidence "was apparent from the context." Fed. R. Evid. 103(a)(2). Here, "the substance" of the excluded evidence was quite apparent from the "context"--more specifically, the witness and exhibit list filed by HMIT, the proposed exhibits offered [see DE # 3818], and the statements of HMIT's counsel on the record at the 6/8/23 hearing.

The court is aware of the motion to strike the Proffer [DE # 3860] and the Joinder therein [DE # 3861]. The court concludes it is appropriate to grant the motion to strike. The court directs counsel for movants to upload a form of order that grants their motion to strike. The order shall direct the Clerk to mark DE # 3858 as stricken from the record as both filed without authority and unnecessary pursuant to FRE 103(a)(2).

The parties are directed to file no more pleadings in the bankruptcy court regarding this issue of the proposed/excluded expert evidence relative to DE # 3699. The court has ruled [at DE # 3854]."

Thank you,
Traci

PACHULSKI STANG ZIEHL & JONES LLP
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John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
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Counsel for the Reorganized Debtor and the Highland Claimant Trust

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

NOTICE OF FILING OF
THE CURRENT BALANCE SHEET OF THE HIGHLAND CLAIMANT TRUST

PLEASE TAKE NOTICE that, pursuant to the Court's *Order (A) Continuing Hearing on Motion to Stay and to Compel Mediation [Dkt. 3752] and (B) Directing Certain Actions in Advance of Continued Hearing* [Docket No. 3870], Highland Capital Management, L.P., the reorganized debtor in the above-captioned bankruptcy case, and the Highland Claimant Trust hereby file the

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are 8357. The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

current balance sheet attached hereto as **Exhibit A** showing the general categories of assets and liabilities of the Highland Claimant Trust, subject to the accompanying notes.

[*Remainder of Page Intentionally Left Blank*]

Dated: July 6, 2023

PACHULSKI STANG ZIEHL & JONES LLP

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-and-

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Counsel for the Reorganized Debtor and the Highland Claimant Trust

EXHIBIT A

Highland Claimant Trust
Summarized Consolidated Balance Sheet [1]
As of May 31, 2023
The accompanying notes are integral to understanding this balance sheet
(Estimated and unaudited, $ in millions)

	Balance per books	adjustments (see notes)	Adjusted balance
Assets			
Cash and equivalents	$ 13	$ -	$ 13
Disputed claims reserve [2]	12	-	12
Other restricted cash	12	-	12
Investments [3]	118	(12) [6]	106
Notes receivable, net [4]	86	(83) [4]	3
Other assets	6	-	6
Total assets	**$ 247**	**$ (95)**	**$ 152**
Liabilities			
Secured and other debt	$ -	$ -	$ -
Distribution payable [2]	12	-	12
Additional indemnification reserves	-	90 [5]	90
Other liabilities	15	13 [5]	28
Total liabilities [5]	**$ 27**	**$ 103**	**$ 130**
Book/adjusted book equity (see accompanying notes) [5]	**220**	**(198)**	**22**
Total liabilities and book/adjusted book equity	**$ 247**	**$ (95)**	**$ 152**

Supplemental Info: [7]

Sum of remaining allowed Class 8 Trust Beneficiaries, excluding interest	$ 27
Sum of remaining allowed Class 9 Trust Beneficiaries, excluding interest	99
Sum of face amount of pending Class 8/9 potential Trust Beneficiaries, excluding interest	13
Sub-total	$ 139

{SEE ACCOMPANYING NOTES ON THE FOLLOWING PAGE}

The information contained in this summarized consolidated balance sheet (the "Summary") is based on estimates, and therefore should not be relied upon, as actual results may differ materially from the estimates contained herein.

This Summary is neither an offer nor a solicitation of an offer to buy or sell securities.

Information contained herein is not indicative of, nor does it guarantee, future results. The information contained in this Summary is based on matters as they exist as of the date of preparation and not as of any future date. Valuations do not reflect performance in different economic or market cycles and there can be no assurances that valuations will be achieved. Trust Beneficiaries may experience materially different results and outcomes.

Highland Claimant Trust
Summarized Consolidated Balance Sheet [1]
As of May 31, 2023

Notes:

(1) This presentation is not in accordance with US GAAP and is unaudited, but has nevertheless been prepared in good faith and with the intention of providing the reader with a comprehensible understanding of the remaining assets and liabilities of the Highland Claimant Trust, Highland Capital Management, LP, HCMLP GP LLC, and Highland Litigation Trust (the "Consolidated Entities"). These entities have each been aggregated on a stand-alone basis, with intercompany amounts eliminated. Funds and entities that may otherwise be consolidated by one or more of the Consolidated Entities under US GAAP are not fully consolidated and rather are included solely at their equity value. For example, if Highland Capital Management, LP is a 20% investor in a managed fund with assets of $100 million and liabilities of zero that would normally require consolidation under US GAAP, the presentation contained herein reflects an investment of $20 million as opposed to fully consolidating the $100 million fund and reflecting minority interest of $80 million. The value of the Highland Indemnity Trust is not included herein. As of May 31, 2023, $35 million has been funded to the Highland Indemnity Trust. Highland Indemnity Trust beneficiaries are Claimant Trust Indemnified Parties. Any unused assets remaining after satisfying indemnification obligations will be transferred to the Highland Claimant Trust or otherwise be distributed to the Claimant Trust Beneficiaries in accordance with the Indemnity Trust Agreement. For presentation purposes, it is assumed that outstanding indemnification obligations will consume the entirety of the Highland Indemnity Trust. Further, no current recovery amount has been ascribed to the "Kirschner Adversary" as all such value is considered to be contingent, nor have any liabilities been reserved for various success fees payable to professionals associated with the Kirschner Adversary or any other litigations. Such liabilities are also contingent in nature.

(2) Amounts already authorized for distribution, but reserved in the Disputed Claims Reserve related to resolution of pending disputed claims.

(3) Value reflected herein consists primarily of ownership in private funds and subsidiaries, valued using NAV as the practical expedient, public & private investments (including residual sale escrows), valued at fair value, and SE Multifamily Holdings, LLC, valued using book equity value as of the most recent financials received. See note 6 for further information. There is substantial risk and uncertainty with respect to the timing and ultimate cash value to be received from monetizations of these investments and such value could ultimately be materially impacted by actual monetizations.

(4) Book amounts reflect principal amounts outstanding on various notes, without discount, adjustment, or estimates of future costs of collection, with two exceptions. The first exception is to the note receivable from Hunter Mountain Investment Trust for which over $90 million of principal and interest is currently due, payable, and in default. These notes are a component of the "Kirschner Adversary" which is currently stayed. These principal and interest amounts are fully reserved based on the assumption that Hunter Mountain Investment Trust has no other assets other than a contingent, unvested interest in the Highland Claimant Trust. That assumption is subject to change. The second exception relates to the note receivable from Highland Select Equity Master Fund, LP. This amount is fully reserved based on the pendency of the Ch. 7 proceeding for Highland Select Equity Master Fund, LP and the minimal remaining value of Highland Select Equity Master Fund, LP's assets, which is expected to be further consumed (at least in part) by trustee and professional fees. Aside from these exceptions, approximately $65 million of these principal amounts (further described below) are subject to ongoing litigation with various note counterparties who are contesting the validity of their obligations. These disputed amounts are contained within the "Balance per books" column herein without discount or adjustment. While the makers have asserted defenses, Highland believes they are meritless and is confident that judgments will ultimately be entered in Highland's favor. However, based on Mr. Dondero's history of failing to satisfy judgments entered against his affiliates by others (e.g., UBS, the Redeemer Committee, Joshua Terry, and Patrick Daugherty), the effect of complete non-payment of principal is reflected in the "adjustments" column, which also assumes non-payment of the currently performing $18 million note receivable from The Dugaboy Investment Trust. Ultimate recoveries from these notes could differ materially from the current principal outstanding depending on the outcome of the pending litigation and no recovery can be assured. Accrued interest is captured in the "Other assets" line item, subject to the exceptions discussed within this footnote. While there is currently a report & recommendation from the bankruptcy court for summary judgment, plus costs of collection, no costs of collection are reflected as assets on this balance sheet, so would be incremental. The estimated amount of such costs of collections are over $3 million.

Detail of note principal amounts subject to report & recommendations of the bankruptcy court, currently pending in district court (excludes accrued interest):

Note Maker	Principal O/S	Comments
NexPoint Advisors, LP	$ 25	Consists of a single note
NexPoint Real Estate Partners, LLC	12	fka HCRE Partners, LLC; five underlying notes comprise balance
NexPoint Asset Management, LP	11	fka Highland Capital Management Fund Advisors, LP; four underlying notes comprise balance
James Dondero	10	Three underlying notes comprise balance
Highland Capital Management Services, Inc.	7	Five underlying notes comprise balance
Sub-total	$ 65	

(5) The book equity amount reflects a multitude of estimates including, but not limited to the value of investments and collectability of notes receivable. For book purposes, no contingent liabilities or indemnification reserves have been recorded as liabilities that would reduce book equity, notwithstanding that it is currently expected that there will be a) a need to maintain further highly material indemnification reserves; and b) further incurrance of springing contingent liabilities if distribution milestones are achieved. The amount of further incremental indemnification reserves are currently expected to exceed $90 million, and may ultimately be greater, which will be required to be funded (at least in part) prior to any further material distributions to Trust Beneficiaries. In the absence of a global settlement that, among other things, fully and finally releases all Claimant Trust Indemnified Parties, Highland believes the additional indemnification reserves are required because, among other reasons, (a) based on the so-called "Dondero exclusion," insurance is likely to remain cost-prohibitive and/or unsatisfactory, leaving the Claimant Trust and Indemnity Trust assets as the sole sources of funding for indemnity obligations, (b) approximately twenty (20) matters are being actively litigated in at least 9 different forums; and (c) based on history, new litigation can be expected. Any unused assets remaining after satisfaction of indemnity obligations will be distributed as required by the Indemnity Trust Agreement. The amount of incremental springing contingent liabilities are expected to range from $5 million to $15 million, which are exclusive of various success fees associated with recoveries under the "Kirschner Adversary" and others. No reserves have been accrued for any current, pending, or threatened litigation brought by any Dondero-related parties. Lastly, it is expected that the trust and its subsidiaries will operate at an operating loss prospectively. The corresponding information in the "adjustments" column above is an estimate of the effects of these incremental indemnification reserves and contingent liabilities, but does not assume any expected future operating cash burn, which is expected to be significant.

6) The value of SE Multifamily Holdings LLC maintained on this balance sheet is $15.7 million, which is a component of the "Investments" line item and is based on a several years stale book-basis balance sheet. Notwithstanding Dondero-entities' previous disclosures of this interest at values of $20 million and $12 million, Highland also received interest from Dondero to acquire the interest for $3.8 million, among other assets. The purpose of this adjustment is to assume that the holding could be monetized at the lower $3.8 million level, which would result in a $11.9 million decrease to Highland's book equity if it were hypothetically transacted at that level. Highland has initiated proceedings in Delaware to receive books and records relating to SE Multifamily Holdings LLC, for which it has the contractual right and has been seeking for approximately a year, but for which Dondero-controlled entities have not provided to date.

7) Amounts described herein represent the face amounts of outstanding allowed and pending claims. The pending claim amounts do not include amounts that are the subject of various appeals or that are unliquidated. The allowed and pending claims (along with accrued interest) could ultimately be satisfied in part or in full using 1) the assets of the disputed claims reserve, 2) the residual amount of cash in the indemnity trust after satisfying all indemnification obligations, and 3) the residual amount of cash remaining after monetizing all other non-cash assets and paying liabilities and future expenses.

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Attorneys for Hunter Mountain Investment Trust

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

HUNTER MOUNTAIN INVESTMENT TRUST'S MOTION TO ALTER OR AMEND ORDER, TO AMEND OR MAKE ADDITIONAL FINDINGS, FOR RELIEF FROM ORDER, OR, ALTERNATIVELY, FOR NEW TRIAL UNDER FEDERAL RULES OF BANKRUPTCY PROCEDURE 7052, 9023, AND 9024 AND INCORPORATED BRIEF

Hunter Mountain Investment Trust ("HMIT"), both in its individual capacity and derivatively on behalf of the Reorganized Debtor, Highland Capital Management, L.P. ("HCM" or "Debtor") and the Highland Claimant Trust,[1] files this Motion to Alter or Amend Order, to

[1] And, in all capacities and alternative derivative capacities asserted in the Emergency Motion (as defined herein) [Bankr. Dkt. Nos. 3699, 3815, and 3816], and the supplement to the Emergency Motion [Bankr. Dkt. No. 3760] and the draft Complaint attached to the same [Bankr. Dkt. No. 3760-1].

Amend or Make Additional Findings, for Relief from Order,[2] or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Brief (the "Motion"), and respectfully states as follows:

1. HMIT filed an Emergency Motion for Leave to File Verified Adversary Proceeding ("Emergency Motion") [Bankr. Dkt. Nos. 3699, 3815, and 3816], which was supplemented on April 23, 2023 [Bankr. Dkt. No. 3760]. By way of its Emergency Motion, HMIT sought leave to file an Adversary Proceeding pursuant to the Court's gatekeeping order and the injunction and exculpation provisions in the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Bankr. Dkt. 1943], as modified (the "Plan").

2. A hearing on the Emergency Motion was held on June 8, 2023. On August 25, 2023, the Court issued its Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding (the "Order") [Bankr. Dkt. Nos. 3903 and 3904]. In the Order, among other things, the Court concluded that HMIT lacked standing to bring the proposed claims and therefore denied the Emergency Motion. Specifically, the Court found that "HMIT's allegations of injury are, without a doubt, 'merely conjectural or hypothetical' and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests." [Bankr. Dkt. No. 3903 at 72].

3. This Motion seeks alteration of, or a new trial to re-consider, these and associated findings and conclusions relating to standing, because post-hearing financial disclosure filings in

[2] The "Order" refers to this Court's Order Denying HMIT's Emergency Motion for Leave to File Adversary Proceeding. [Bankr. Dkt. Nos. 3903, 3904].

the bankruptcy matter further evidence that the Court's standing determinations are incorrect and should be corrected.[3]

4. On July 6, 2023, while the Emergency Motion was pending, the Debtor and the Highland Claimant Trust filed a Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust, showing the "general categories of assets and liabilities of the Highland Claimant Trust, subject to the accompanying notes." [Bankr. Dkt. No. 3872; a copy of which is attached as Exhibit 1 to this Motion]. And on July 21, 2023, the Debtor filed its Post-Confirmation Report for Highland Capital Management, LP for the Quarter Ending June 30, 2023 [Bankr. Dkt. No. 3888; a copy of which is attached as Exhibit 2 to this Motion] and the Highland Claimant Trust filed its Post-Confirmation Report for Highland Capital Management, LP for the Quarter Ending June 30, 2023 [Bankr. Dkt. No. 3889; a copy of which is attached as Exhibit 3 to this Motion].

5. As explained below, these financial documents further demonstrate that HMIT's alleged injuries are not "conjectural or hypothetical," and, instead, demonstrate that its Contingent Claimant Trust Interest will vest, or put colloquially, it is "in the money." Stated otherwise, the financial documents further establish HMIT's standing and alleged non-speculative injury.

6. In support of this request, HMIT points the Court to the financial disclosures, which further demonstrates that HMIT is now "in the money."

[3] HMIT contests and disagrees with other adverse rulings in the Court's order, including but not limited to (1) the Court's determination that the "colorability" question presents "mixed questions of law and fact" and its associated decision to hold an evidentiary hearing; (2) the Court's holding an evidentiary hearing without allowing HMIT to obtain discovery and/or admit expert testimony, and (3) the Court's determination that HMIT's claims are not "colorable" for reasons other than standing. HMIT intends to raise these and other issues on appeal and HMIT reserves its rights accordingly. [*See, e.g.*, Bankr. Dkt. Nos. 3790, 3853, 3903-04].

Highland Claimant Trust
Summarized Consolidated Balance Sheet [1]
As of May 31, 2023
The accompanying notes are integral to understanding this balance sheet
(Estimated and unaudited, $ in millions)

	Balance per books	adjustments (see notes)	Adjusted balance
Assets			
Cash and equivalents	$ 13	$ -	$ 13
Disputed claims reserve [2]	12	-	12
Other restricted cash	12	-	12
Investments [3]	118	(12) [6]	106
Notes receivable, net [4]	86	(83) [4]	3
Other assets	6	-	6
Total assets	$ 247	$ (95)	$ 152
Liabilities			
Secured and other debt	$ -	$ -	$ -
Distribution payable [2]	12	-	12
Additional indemnification reserves	-	90 [5]	90
Other liabilities	15	13 [5]	28
Total liabilities [5]	$ 27	$ 103	$ 130
Book/adjusted book equity (see accompanying notes) [5]	220	(198)	22
Total liabilities and book/adjusted book equity	$ 247	$ (95)	$ 152
Supplemental Info: [7]			
Sum of remaining allowed Class 8 Trust Beneficiaries, excluding interest	$ 27		
Sum of remaining allowed Class 9 Trust Beneficiaries, excluding interest	99		
Sum of face amount of pending Class 8/9 potential Trust Beneficiaries, excluding interest	13		
Sub-total	$ 139		

[*See* Exhibit 1, Bankr. Dkt. 3872, at Ex. A].

7. As this balance sheet demonstrates, even without pursuing the *Kirschner* Adversary, the Claimant Trust has $247 million in assets and $139 million in Class 8 and 9 claims. Moreover, the Claimant Trust's balance sheet assets do not include a fully cash-funded $35 million indemnity account that presumably may be used to pay creditors in the event it is not consumed by the indemnity-related expenses. [*See* Exhibit 1, Bankr. Dkt. 3872 at Ex. A, n. 1]. While the balance sheet includes "non-book" adjustments, they do not change HMIT's "in the money" status. One adjustment gives zero asset value to the notes payable by affiliates of Jim Dondero. [*See id.* at Ex. A]. However, $70 million of those notes are (or shortly will be) fully bonded by cash deposited in the registry of the district court. *See* N.D. Tex. Case No. 3:31-cv-00881-X, Dkt. Nos. 149, 151, and 152. Another "adjustment" creates a $90 million "additional indemnification reserve," on top of the $35 million cash indemnity reserve. [*See* Exhibit 1, Bankr.

Dkt. 3872 at Ex. A]. It is unlikely, however, that these extensive indemnity reserves will ever be expended or necessary for indemnity.[4] Additionally, as the Post-Confirmation reports reveal, all of the administrative claims, secured claims, and priority claims have been paid in full. [Exhibit 2, Bankr. Dkt. No. 3888, and Exhibit 3, Bankr. Dkt. No. 3889].

8. For all these reasons, HMIT is "in the money" under Claimant Trust's recently disclosed balance sheet and disclosures.[5] Moreover, as this Court noted in a prior unrelated matter, HMIT must only show "significant indicia of solvency" to have standing. *See In re ADPT DFW Holdings, LLC*, Bankr. N.D. Tex. Case No. 17-31432, Dkt. No. 303 at Hrg. Trans. 131:22 – 132:6. HMIT has made the showing and, this showing is further evidenced by the Claimant Trust's own unadjusted balance sheet.

9. HMIT, along with the other Contingent Trust Interest holders are, as discussed above, "in the money." In other words, HMIT has both constitutional and prudential standing to bring its asserted claims.

10. For the foregoing reasons, HMIT has standing and a cognizable injury to support the claims in its Emergency Motion. Thus, pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024, HMIT requests that the Court alter or amend its findings and judgment that HMIT lacks standing or a cognizable alleged injury. Alternatively, HMIT requests that the

[4] Per the Plan, any indemnity is limited to fees and expenses, as no indemnity right would lie for a judgment entered on a claim for which a plaintiff could assert or recover under the gatekeeper order and applicable law. Nor is it likely that the Claimant Trust will incur even close to the reserved amounts for fees and expenses. For the bankruptcy case as a whole, for example, the debtor's bankruptcy and non-bankruptcy professional fees and expenses totaled only approximately $40 million, pre-confirmation. [Exhibits 2, 3; Bankr. Dkt. Nos. 3888, 3889]. Also, as is clear from the Motion and Order authorizing the creation of the Indemnity Trust Agreement, the projected indemnity reserve was contemplated to be $25 Million, so the cash amount apparently set aside for indemnification amounts to $100 Million more than contemplated. [Bankr. Dkt. Nos. 2491, 2599, attached as Exhibits 4-5].

[5] [*See* Exhibits 1 – 3, Bankr. Dkt. Nos. 3888, 3889].

Court grant a new trial or hearing pursuant to Federal Rule of Bankruptcy Procedure 9023 due to the impact of the financial documents on HMIT's standing and ability to assert the claims.

PRAYER

HMIT respectfully requests that the Court grant this Motion and alter or amend its findings or Order to rule that HMIT has constitutional and prudential standing and a cognizable injury or, alternatively, order a new trial/hearing.

Dated: September 8, 2023

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: */s/ Sawnie A. McEntire*

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Attorneys for Hunter Mountain Investment Trust

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that the undersigned conferred with John Morris, counsel for Debtor and the Highland Claimant Trust, and that, while Mr. Morris' clients oppose the relief requested in this motion, Mr. Morris and his clients have no objection to the making of this motion (*i.e.*, Mr. Morris and his clients agreed that this motion is not precluded by the stay in place or other order of the Court).

/s/ Sawnie A. McEntire
Sawnie A. McEntire

The undersigned hereby certifies that the undersigned conferred with Mr. Brent McIlwain, counsel for Respondents Muck Holdings, LLC ("Muck"), Jessup Holdings LLC ("Jessup"), Farallon Capital Management, L.L.C. ("Farallon"), and Stonehill Capital Management LLC ("Stonehill," and collectively, with Muck, Jessup, and Farallon, the "Claims Purchasers"), and Mr. Mark T. Stancil, counsel for Respondent James P. Seery, Jr., and that, while Mr. McIlwain and Mr. Stancil's clients oppose the relief requested in this motion, Mr. McIlwain and Mr. Stancil and their respective clients have no objection to the making of this motion (*i.e.*, they also agree that this motion it is not precluded by the stay in place or other order of the Court).

/s/ Roger L. McCleary
Roger L. McCleary

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 8, 2023, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof.

/s/ Sawnie A. McEntire
Sawnie A. McEntire

Exhibit 1

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Counsel for the Reorganized Debtor and the Highland Claimant Trust

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
	§	
Reorganized Debtor.	§	

NOTICE OF FILING OF
THE CURRENT BALANCE SHEET OF THE HIGHLAND CLAIMANT TRUST

PLEASE TAKE NOTICE that, pursuant to the Court's *Order (A) Continuing Hearing on Motion to Stay and to Compel Mediation [Dkt. 3752] and (B) Directing Certain Actions in Advance of Continued Hearing* [Docket No. 3870], Highland Capital Management, L.P., the reorganized debtor in the above-captioned bankruptcy case, and the Highland Claimant Trust hereby file the

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are 8357. The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

current balance sheet attached hereto as **Exhibit A** showing the general categories of assets and liabilities of the Highland Claimant Trust, subject to the accompanying notes.

[*Remainder of Page Intentionally Left Blank*]

Dated: July 6, 2023

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Counsel for the Reorganized Debtor and the Highland Claimant Trust

EXHIBIT A

Highland Claimant Trust
Summarized Consolidated Balance Sheet [1]
As of May 31, 2023
The accompanying notes are integral to understanding this balance sheet
(Estimated and unaudited, $ in millions)

	Balance per books	adjustments (see notes)	Adjusted balance
Assets			
Cash and equivalents	$ 13	$ -	$ 13
Disputed claims reserve [2]	12	-	12
Other restricted cash	12	-	12
Investments [3]	118	(12) [6]	106
Notes receivable, net [4]	86	(83) [4]	3
Other assets	6	-	6
Total assets	**$ 247**	**$ (95)**	**$ 152**
Liabilities			
Secured and other debt	$ -	$ -	$ -
Distribution payable [2]	12	-	12
Additional indemnification reserves	-	90 [5]	90
Other liabilities	15	13 [5]	28
Total liabilities [5]	**$ 27**	**$ 103**	**$ 130**
Book/adjusted book equity (see accompanying notes) [5]	**220**	**(198)**	**22**
Total liabilities and book/adjusted book equity	**$ 247**	**$ (95)**	**$ 152**

Supplemental Info: [7]

Sum of remaining allowed Class 8 Trust Beneficiaries, excluding interest	$ 27
Sum of remaining allowed Class 9 Trust Beneficiaries, excluding interest	99
Sum of face amount of pending Class 8/9 potential Trust Beneficiaries, excluding interest	13
Sub-total	$ 139

{SEE ACCOMPANYING NOTES ON THE FOLLOWING PAGE}

The information contained in this summarized consolidated balance sheet (the "Summary") is based on estimates, and therefore should not be relied upon, as actual results may differ materially from the estimates contained herein.

This Summary is neither an offer nor a solicitation of an offer to buy or sell securities.

Information contained herein is not indicative of, nor does it guarantee, future results. The information contained in this Summary is based on matters as they exist as of the date of preparation and not as of any future date. Valuations do not reflect performance in different economic or market cycles and there can be no assurances that valuations will be achieved. Trust Beneficiaries may experience materially different results and outcomes.

Highland Claimant Trust
Summarized Consolidated Balance Sheet [1]
As of May 31, 2023

Notes:

(1) This presentation is not in accordance with US GAAP and is unaudited, but has nevertheless been prepared in good faith and with the intention of providing the reader with a comprehensible understanding of the remaining assets and liabilities of the Highland Claimant Trust, Highland Capital Management, LP, HCMLP GP LLC, and Highland Litigation Trust (the "Consolidated Entities"). These entities have each been aggregated on a stand-alone basis, with intercompany amounts eliminated. Funds and entities that may otherwise be consolidated by one or more of the Consolidated Entities under US GAAP are not fully consolidated and rather are included solely at their equity value. For example, if Highland Capital Management, LP is a 20% investor in a managed fund with assets of $100 million and liabilities of zero that would normally require consolidation under US GAAP, the presentation contained herein reflects an investment of $20 million as opposed to fully consolidating the $100 million fund and reflecting minority interest of $80 million. The value of the Highland Indemnity Trust is not included herein. As of May 31, 2023, $35 million has been funded to the Highland Indemnity Trust. Highland Indemnity Trust beneficiaries are Claimant Trust Indemnified Parties. Any unused assets remaining after satisfying indemnification obligations will be transferred to the Highland Claimant Trust or otherwise be distributed to the Claimant Trust Beneficiaries in accordance with the Indemnity Trust Agreement. For presentation purposes, it is assumed that outstanding indemnification obligations will consume the entirety of the Highland Indemnity Trust. Further, no current recovery amount has been ascribed to the "Kirschner Adversary" as all such value is considered to be contingent, nor have any liabilities been reserved for various success fees payable to professionals associated with the Kirschner Adversary or any other litigations. Such liabilities are also contingent in nature.

(2) Amounts already authorized for distribution, but reserved in the Disputed Claims Reserve related to resolution of pending disputed claims.

(3) Value reflected herein consists primarily of ownership in private funds and subsidiaries, valued using NAV as the practical expedient, public & private investments (including residual sale escrows), valued at fair value, and SE Multifamily Holdings, LLC, valued using book equity value as of the most recent financials received. See note 6 for further information. There is substantial risk and uncertainty with respect to the timing and ultimate cash value to be received from monetizations of these investments and such value could ultimately be materially impacted by actual monetizations.

(4) Book amounts reflect principal amounts outstanding on various notes, without discount, adjustment, or estimates of future costs of collection, with two exceptions. The first exception is to the note receivable from Hunter Mountain Investment Trust for which over $90 million of principal and interest is currently due, payable, and in default. These notes are a component of the "Kirschner Adversary" which is currently stayed. These principal and interest amounts are fully reserved based on the assumption that Hunter Mountain Investment Trust has no other assets other than a contingent, unvested interest in the Highland Claimant Trust. That assumption is subject to change. The second exception relates to the note receivable from Highland Select Equity Master Fund, LP. This amount is fully reserved based on the pendency of the Ch. 7 proceeding for Highland Select Equity Master Fund, LP and the minimal remaining value of Highland Select Equity Master Fund, LP's assets, which is expected to be further consumed (at least in part) by trustee and professional fees. Aside from these exceptions, approximately $65 million of these principal amounts (further described below) are subject to ongoing litigation with various note counterparties who are contesting the validity of their obligations. These disputed amounts are contained within the "Balance per books" column herein without discount or adjustment. While the makers have asserted defenses, Highland believes they are meritless and is confident that judgments will ultimately be entered in Highland's favor. However, based on Mr. Dondero's history of failing to satisfy judgments entered against his affiliates by others (e.g., UBS, the Redeemer Committee, Joshua Terry, and Patrick Daugherty), the effect of complete non-payment of principal is reflected in the "adjustments" column, which also assumes non-payment of the currently performing $18 million note receivable from The Dugaboy Investment Trust. Ultimate recoveries from these notes could differ materially from the current principal outstanding depending on the outcome of the pending litigation and no recovery can be assured. Accrued interest is captured in the "Other assets" line item, subject to the exceptions discussed within this footnote. While there is currently a report & recommendation from the bankruptcy court for summary judgment, plus costs of collection, no costs of collection are reflected as assets on this balance sheet, so would be incremental. The estimated amount of such costs of collections are over $3 million.

Detail of note principal amounts subject to report & recommendations of the bankruptcy court, currently pending in district court (excludes accrued interest):

Note Maker	Principal O/S	Comments
NexPoint Advisors, LP	$ 25	Consists of a single note
NexPoint Real Estate Partners, LLC	12	fka HCRE Partners, LLC; five underlying notes comprise balance
NexPoint Asset Management, LP	11	fka Highland Capital Management Fund Advisors, LP; four underlying notes comprise balance
James Dondero	10	Three underlying notes comprise balance
Highland Capital Management Services, Inc.	7	Five underlying notes comprise balance
Sub-total	$ 65	

(5) The book equity amount reflects a multitude of estimates including, but not limited to the value of investments and collectability of notes receivable. For book purposes, no contingent liabilities or indemnification reserves have been recorded as liabilities that would reduce book equity, notwithstanding that it is currently expected that there will be a) a need to maintain further highly material indemnification reserves; and b) further incurrance of springing contingent liabilities if distribution milestones are achieved. The amount of further incremental indemnification reserves are currently expected to exceed $90 million, and may ultimately be greater, which will be required to be funded (at least in part) prior to any further material distributions to Trust Beneficiaries. In the absence of a global settlement that, among other things, fully and finally releases all Claimant Trust Indemnified Parties, Highland believes the additional indemnification reserves are required because, among other reasons, (a) based on the so-called "Dondero exclusion," insurance is likely to remain cost-prohibitive and/or unsatisfactory, leaving the Claimant Trust and Indemnity Trust assets as the sole sources of funding for indemnity obligations, (b) approximately twenty (20) matters are being actively litigated in at least 9 different forums; and (c) based on history, new litigation can be expected. Any unused assets remaining after satisfaction of indemnity obligations will be distributed as required by the Indemnity Trust Agreement. The amount of incremental springing contingent liabilities are expected to range from $5 million to $15 million, which are exclusive of various success fees associated with recoveries under the "Kirschner Adversary" and others. No reserves have been accrued for any current, pending, or threatened litigation brought by any Dondero-related parties. Lastly, it is expected that the trust and its subsidiaries will operate at an operating loss prospectively. The corresponding information in the "adjustments" column above is an estimate of the effects of these incremental indemnification reserves and contingent liabilities, but does not assume any expected future operating cash burn, which is expected to be significant.

6) The value of SE Multifamily Holdings LLC maintained on this balance sheet is $15.7 million, which is a component of the "Investments" line item and is based on a several years stale book-basis balance sheet. Notwithstanding Dondero-entities' previous disclosures of this interest at values of $20 million and $12 million, Highland also received interest from Dondero to acquire the interest for $3.8 million, among other assets. The purpose of this adjustment is to assume that the holding could be monetized at the lower $3.8 million level, which would result in a $11.9 million decrease to Highland's book equity if it were hypothetically transacted at that level. Highland has initiated proceedings in Delaware to receive books and records relating to SE Multifamily Holdings LLC, for which it has the contractual right and has been seeking for approximately a year, but for which Dondero-controlled entities have not provided to date.

7) Amounts described herein represent the face amounts of outstanding allowed and pending claims. The pending claim amounts do not include amounts that are the subject of various appeals or that are unliquidated. The allowed and pending claims (along with accrued interest) could ultimately be satisfied in part or in full using 1) the assets of the disputed claims reserve, 2) the residual amount of cash in the indemnity trust after satisfying all indemnification obligations, and 3) the residual amount of cash remaining after monetizing all other non-cash assets and paying liabilities and future expenses.

Case 3:23-cv-01476-E Document 14-26 Filed 08/28/23 Page 126 of 214 PageID 6696

Exhibit 2

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP

Debtor(s)

Case No. 19-34054

☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 06/30/2023

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to: ◉ Reorganized Debtor

○ Other Authorized Party or Entity: _____

Name of Authorized Party or Entity

/s/ Zachery Z. Annable

Signature of Responsible Party

07/21/2023

Date

Zachery Z. Annable, Hayward PLLC

Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231

Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$6,894,640	$122,318,601
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$0	$5,194,652
d. Total transferred (a+b+c)	$6,894,640	$127,513,253

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor		*Aggregate Total*	$0	$33,005,136	$0	$33,005,136
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i	Pachulski Stang Ziehl & Jones	Lead Counsel	$0	$24,312,860	$0	$24,312,860
	ii	Development Specialists, Inc.	Financial Professional	$0	$5,765,448	$0	$5,765,448
	iii	Kurtzman Carson Consultants	Other	$0	$2,054,716	$0	$2,054,716
	iv	Hayward & Associates PLLC	Local Counsel	$0	$872,112	$0	$872,112
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				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
b.	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor		*Aggregate Total*	$0	$7,604,472	$0	$7,604,472
	Itemized Breakdown by Firm						
		Firm Name	Role				
	i	Hunton Andrews Kurth LLP	Other	$0	$1,149,807	$0	$1,149,807
	ii	Foley Gardere, Foley & Lardne	Other	$0	$629,088	$0	$629,088
	iii	Deloitte	Financial Professional	$0	$553,413	$0	$553,413
	iv	Mercer (US) Inc.	Other	$0	$204,767	$0	$204,767
	v	Teneo Capital, LLC	Financial Professional	$0	$1,364,823	$0	$1,364,823
	vi	Wilmer Cutler Pickering Hale	Other	$0	$2,650,937	$0	$2,650,937

	vii	Carey Olsen	Other	$0	$280,264	$0	$280,264
	viii	ASW Law	Other	$0	$4,976	$0	$4,976
	ix	Houlihan Lokey Financial Advi	Other	$0	$766,397	$0	$766,397
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c.	All professional fees and expenses (debtor & committees)			$0	$60,171,929	$0	$60,171,929

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$0	$270,205,592	$397,485,568	68%
e. Equity interests	$0	$0	$0		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

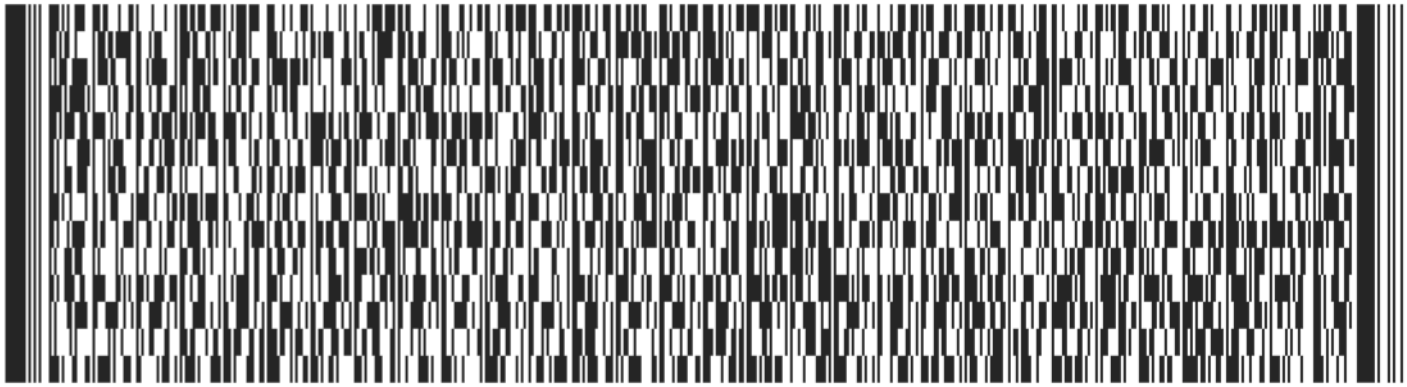
I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

/s/ James Seery
Signature of Responsible Party

James Seery
Printed Name of Responsible Party

CEO
Title

07/21/2023
Date



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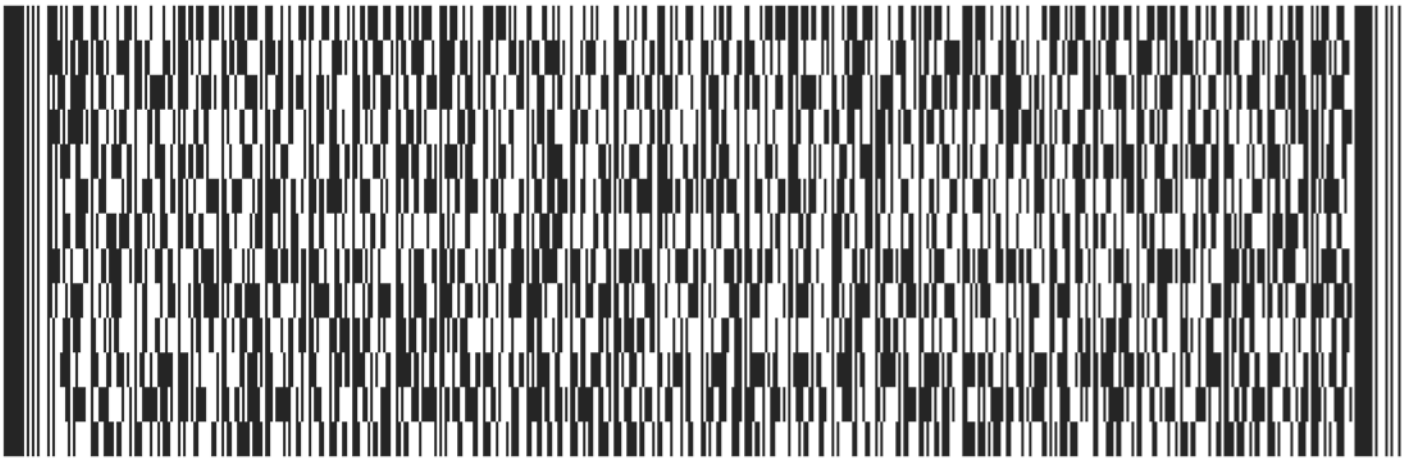

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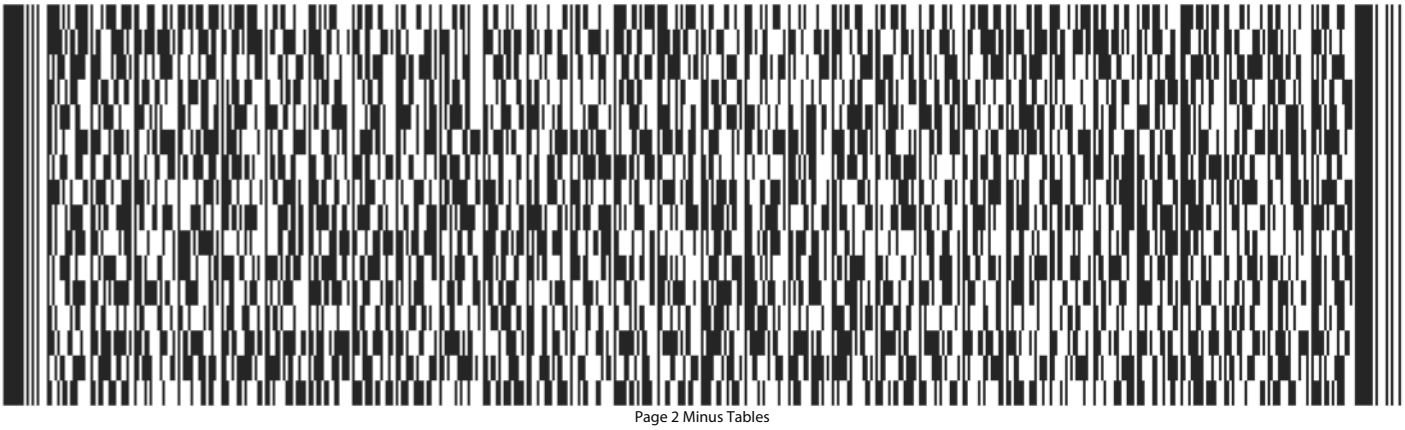

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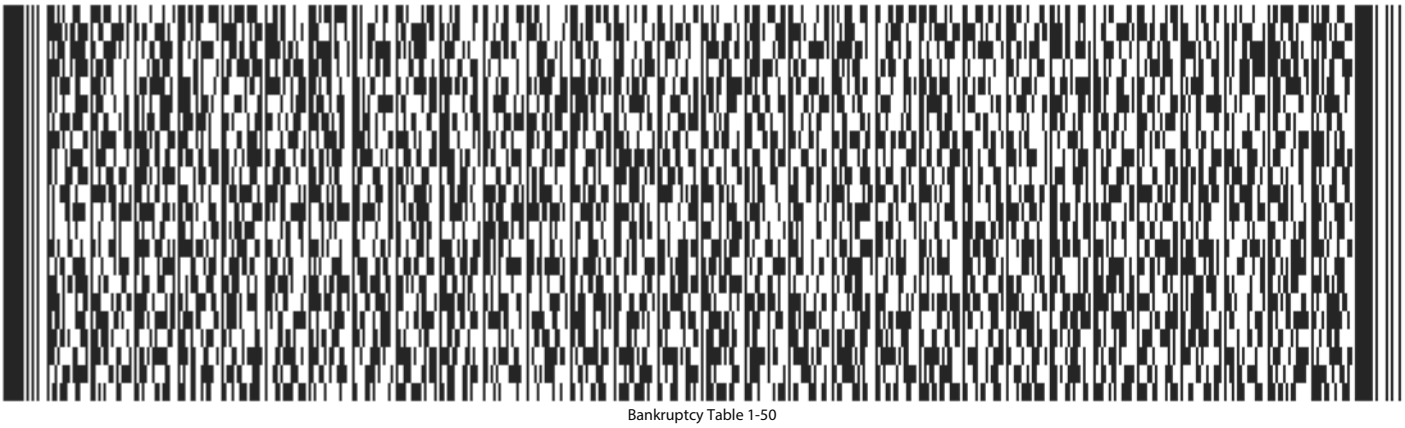
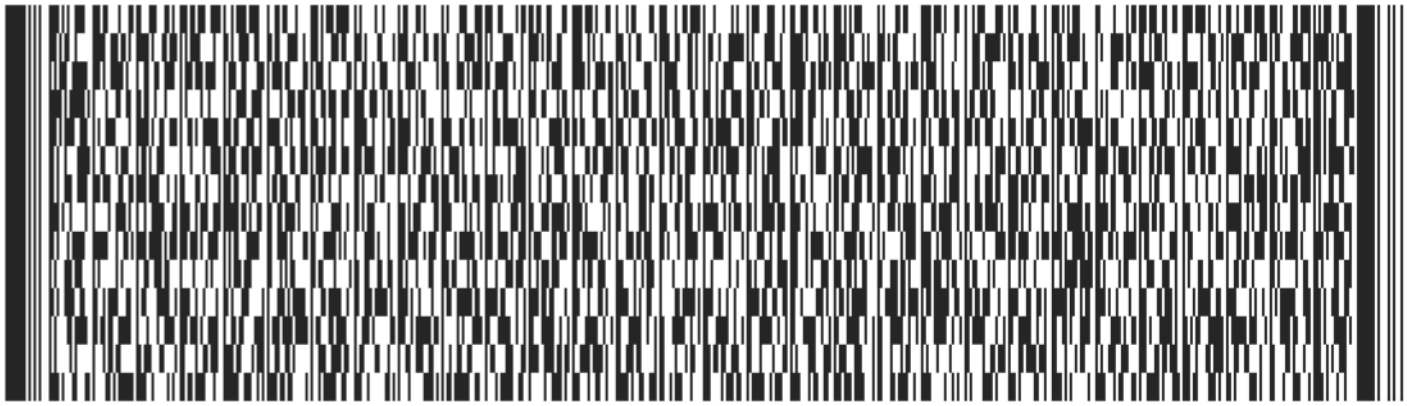
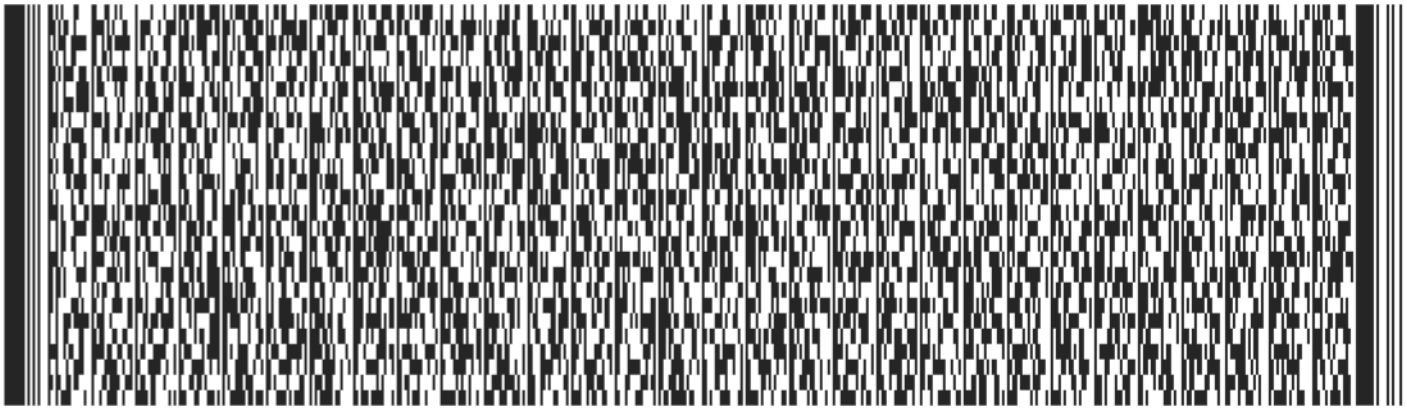


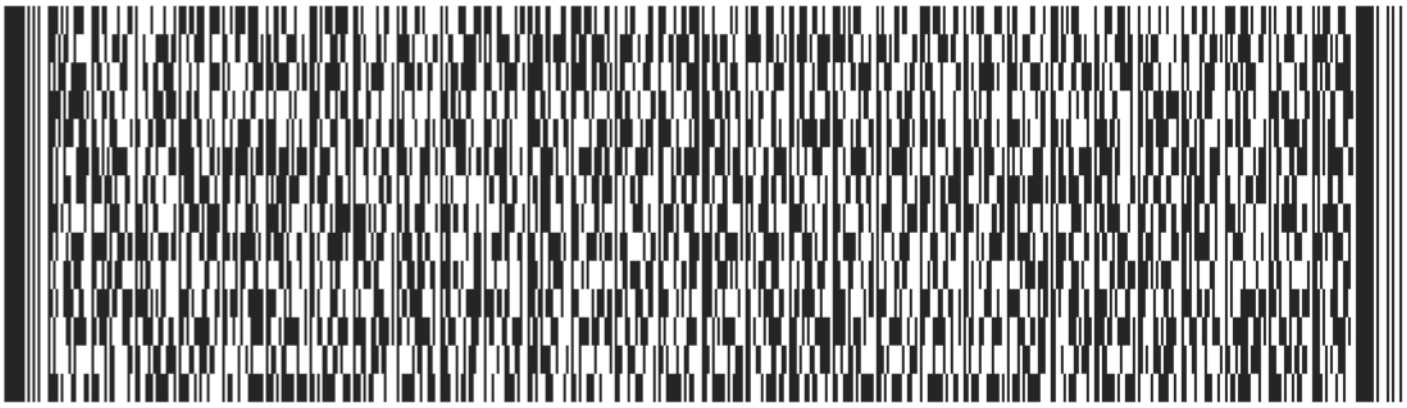
Bankruptcy Table 1-50



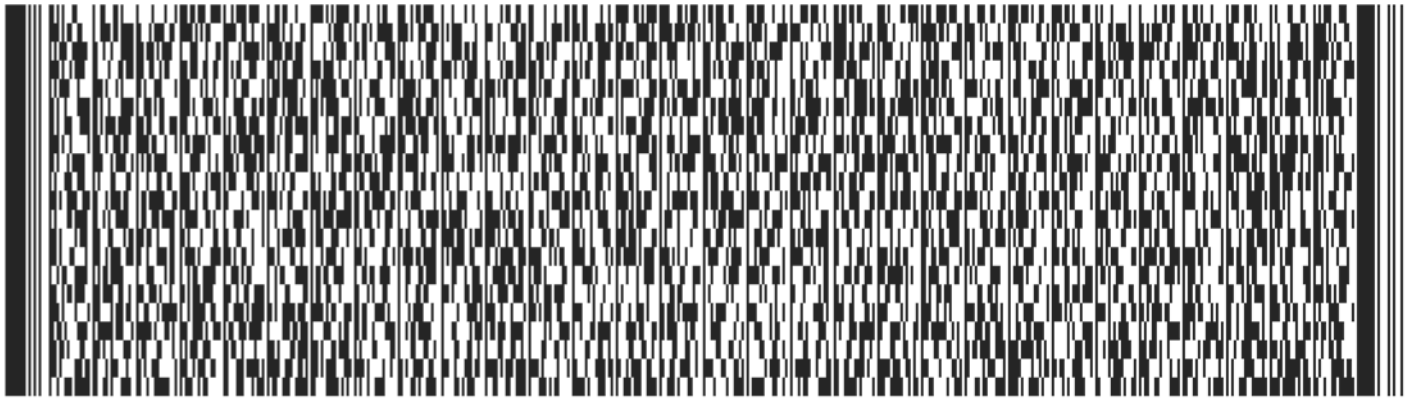
Bankruptcy Table 51-100



Non-Bankruptcy Table 1-50



Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST CONFIRMATION REPORT

The Reorganized Debtor has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), on behalf of debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Reorganized Debtor prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Reorganized Debtor relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Reorganized Debtor made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Reorganized Debtor reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

In Section A of the PCR, the Reorganized Debtor listed the bankruptcy related professionals employed in connection with the Bankruptcy Case.

In Section B of the PCR, the Reorganized Debtor listed non-bankruptcy professionals, those that would have been retained absent the Bankruptcy Case, and the ordinary course professionals ("OCP"). Hunton Andrews Kurth LLP ("Hunton") and Wilmer Cutler Pickering Hale and Dorr LLP ("Wilmer Hale") were originally ordinary course professionals but were later employed

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

professionals. The amounts listed for Hunton and Wilmer Hale include the OCP payments and employed professional payments.

In Section C of the PCR, the Reorganized Debtor totals all payments included in Sections A and B, along with payments made to professional employed by the official committee of unsecured creditors (the "Committee").

The approved current quarter, approved cumulative, and paid cumulative will have the same amount listed due to approval and payment of final fee applications.

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

The payments made to holders of General Unsecured Claims were disbursed from the Claimant Trust, but for presentation purposes, have been included in Part 3 of the post-confirmation report for the Reorganized Debtor.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with Reorganized Debtor's governing documents and the Plan.

The Debtor reserves all right to object to any claim in accordance with the terms of the Plan.

Exhibit 3

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP	§	Case No. 19-34054
	§	
	§	
Debtor(s)	§	☐ Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 06/30/2023

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to: ○ Reorganized Debtor

◉ Other Authorized Party or Entity: Highland Claimant Trust

Name of Authorized Party or Entity

/s/ Zachery Z. Annable
Signature of Responsible Party

07/21/2023
Date

Zachery Z. Annable, Hayward PLLC
Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106
Dallas TX 75231
Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

Debtor's Name Highland Capital Management, LP Case No. 19-34054

Part 1: Summary of Post-confirmation Transfers

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	$6,969,608	$325,793,422
b. Non-cash securities transferred	$0	$0
c. Other non-cash property transferred	$0	$0
d. Total transferred (a+b+c)	$6,969,608	$325,793,422

Part 2: Preconfirmation Professional Fees and Expenses

				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
a.	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor *Aggregate Total*						
	Itemized Breakdown by Firm						
		Firm Name	Role				
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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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				Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
b.	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor		*Aggregate Total*				
	Itemized Breakdown by Firm						
		Firm Name	Role				
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Debtor's Name Highland Capital Management, LP Case No. 19-34054

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c.	All professional fees and expenses (debtor & committees)						

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	$0	$0	$15,750	$15,750	100%
b. Secured claims	$5,843,261	$0	$5,274,477	$5,274,477	100%
c. Priority claims	$16,498	$0	$1,213,832	$1,213,832	100%
d. General unsecured claims	$205,144,544	$0	$270,205,592	$397,485,568	68%
e. Equity interests	$0	$0	$0		

Part 4: Questionnaire

a. Is this a final report? Yes ○ No ◉

If yes, give date Final Decree was entered: _____

If no, give date when the application for Final Decree is anticipated: _____

b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes ◉ No ○

Privacy Act Statement

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

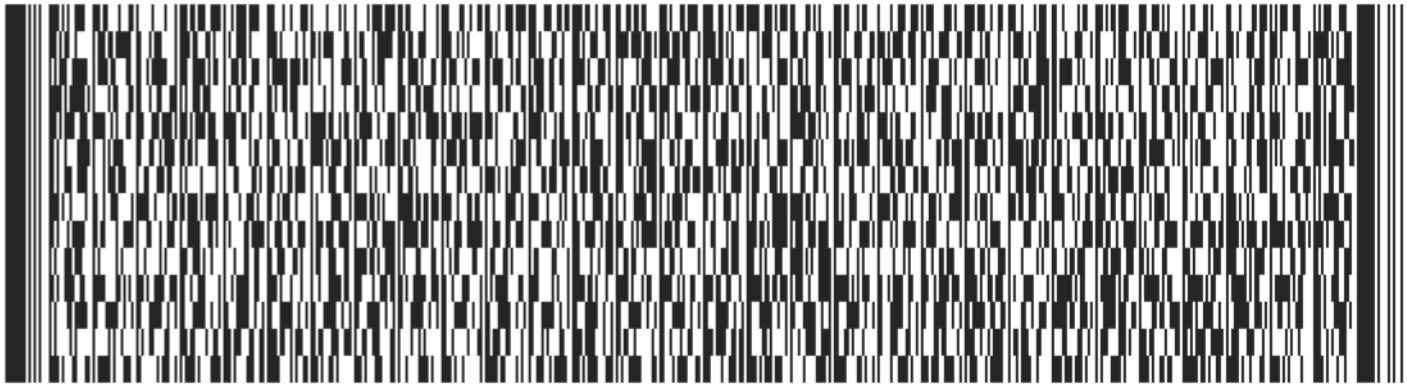
I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.

/s/ James Seery
Signature of Responsible Party

James Seery
Printed Name of Responsible Party

Claimant Trustee
Title

07/21/2023
Date



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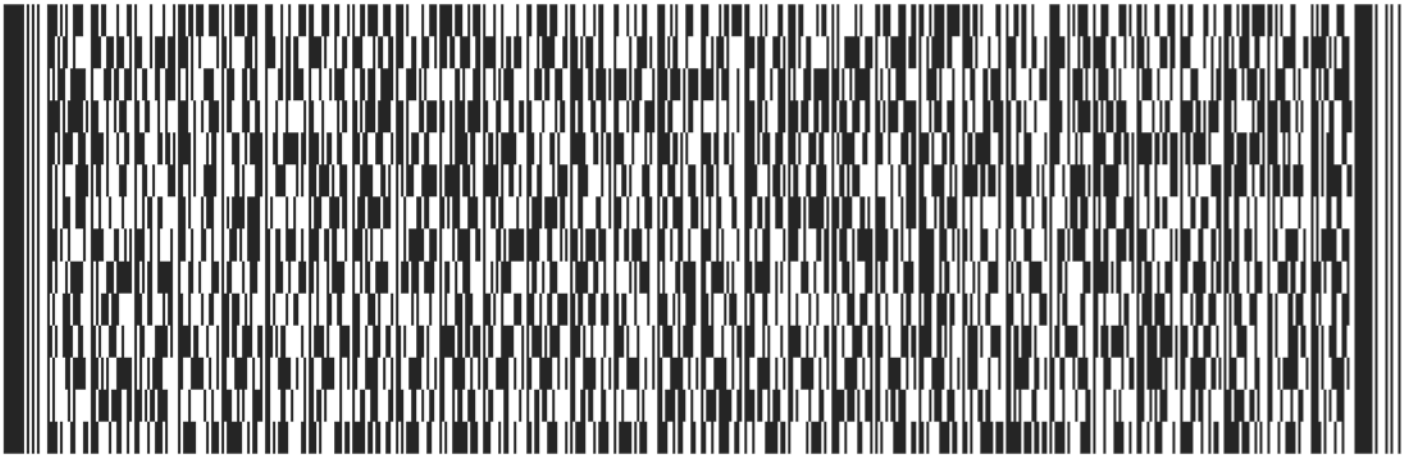

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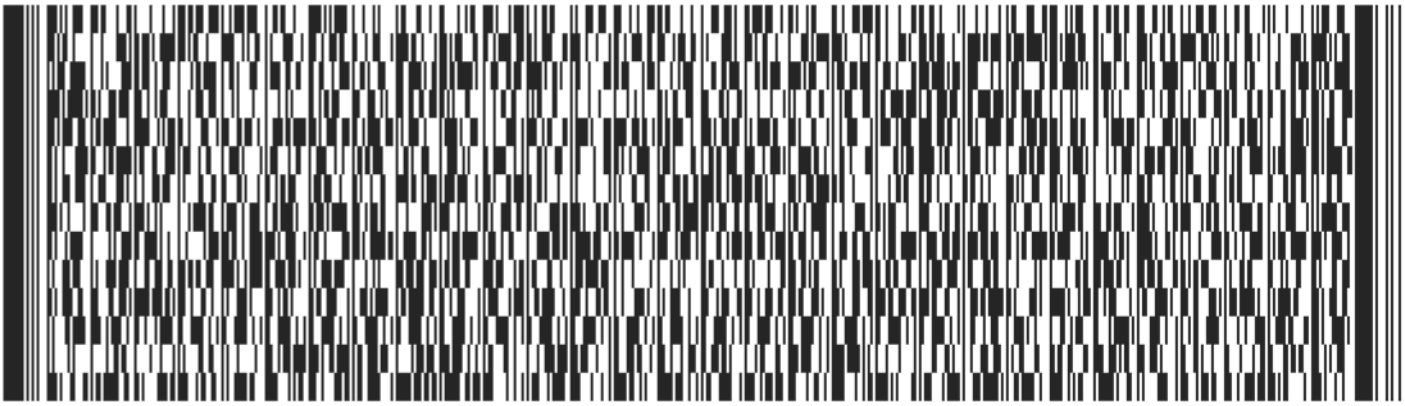

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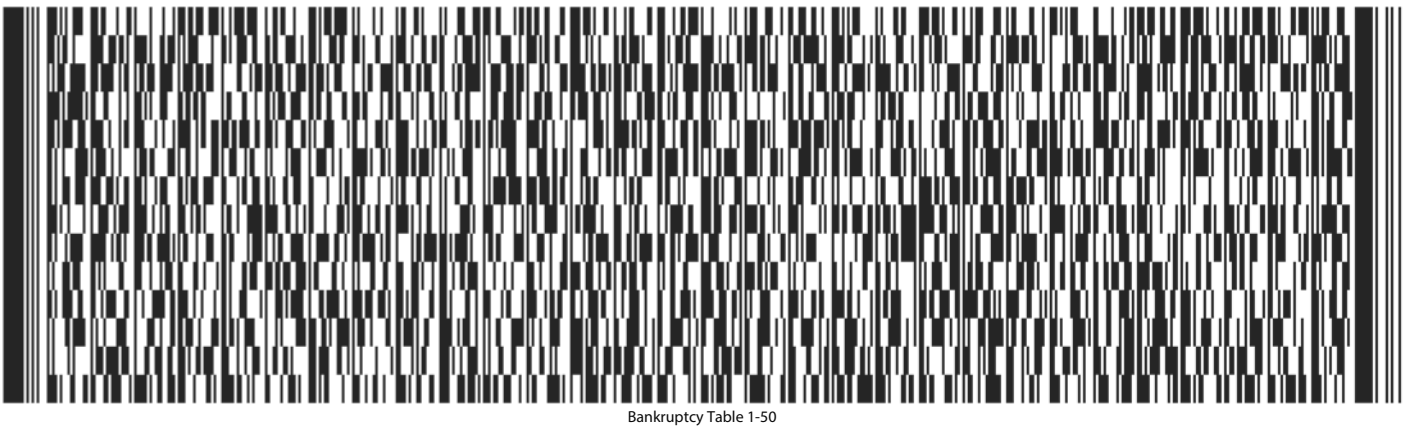
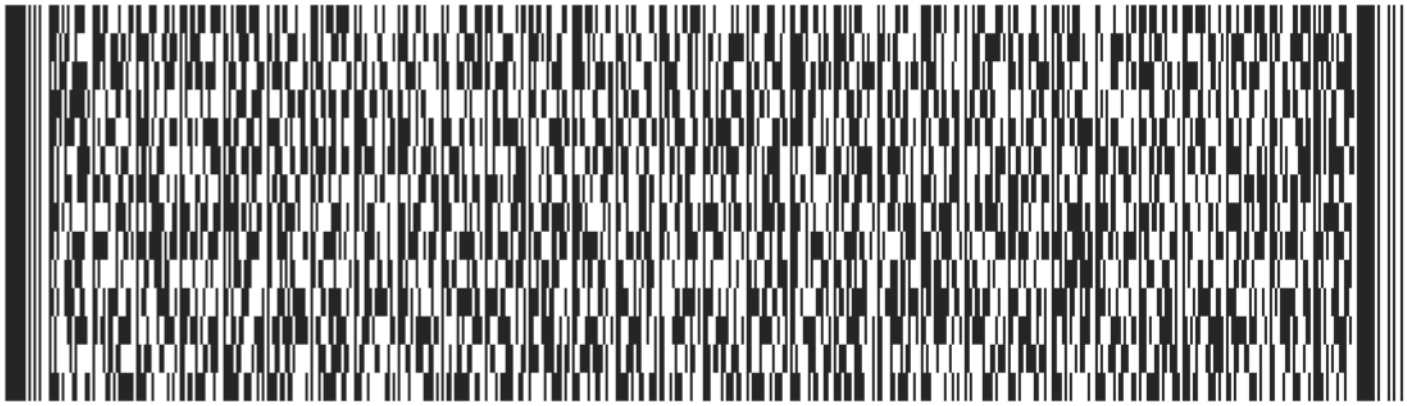


Bankruptcy Table 1-50



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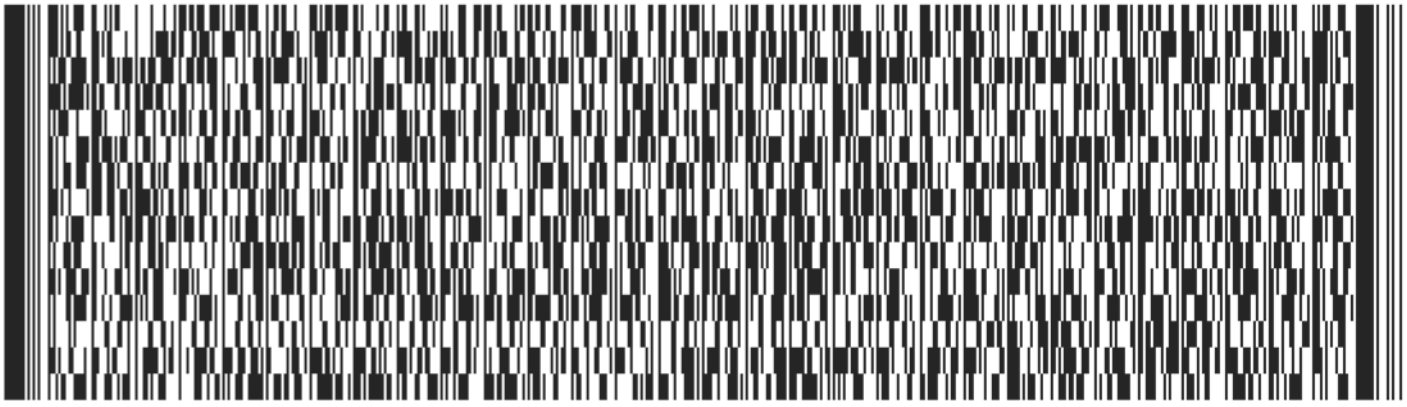

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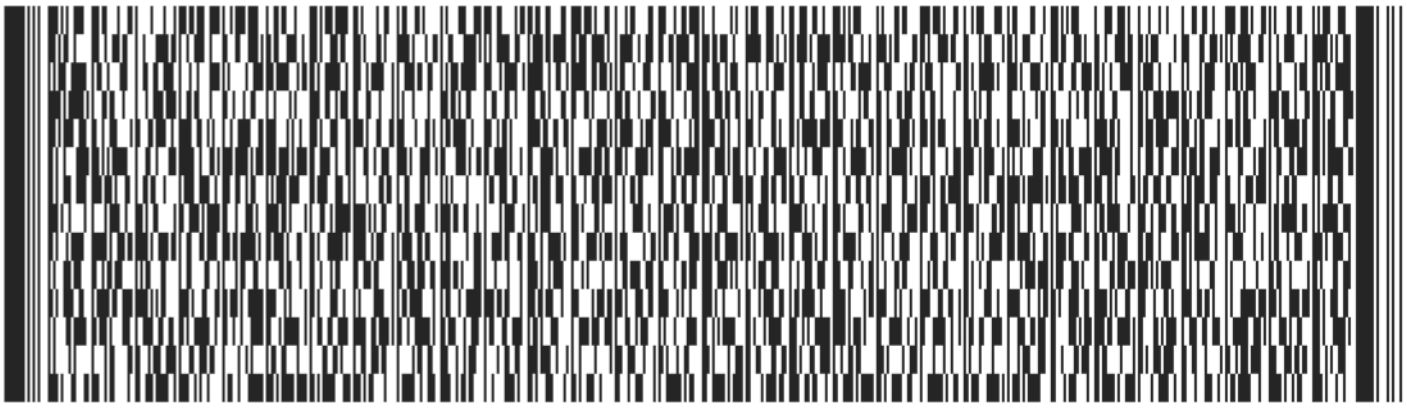
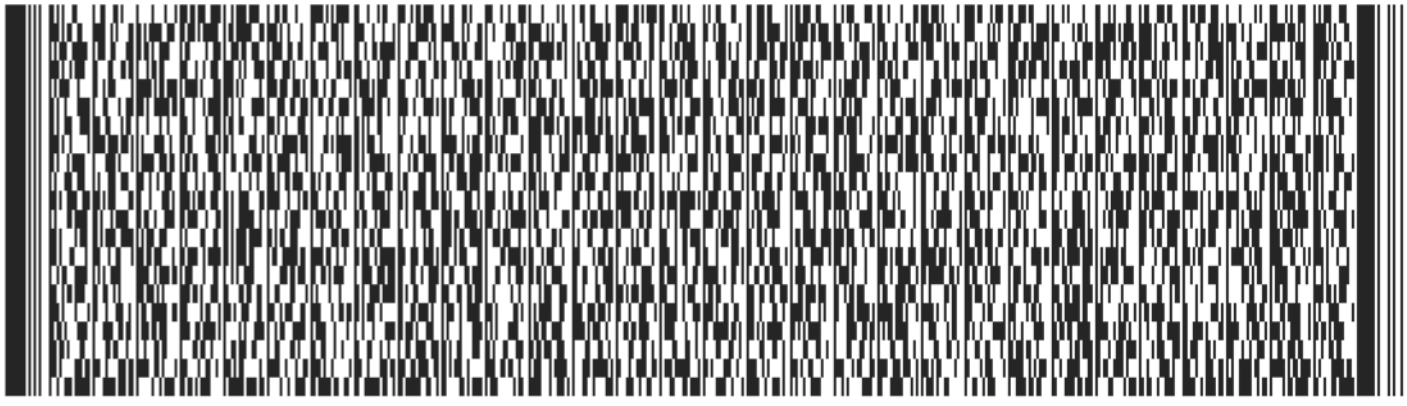


Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

GLOBAL NOTES TO POST CONFIRMATION REPORT

The Highland Claimant Trust has filed the attached post-confirmation report (the "PCR") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), with respect to the case of Reorganized Debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the "Bankruptcy Case"). The Highland Claimant Trust prepared the PCR with the assistance of the Reorganized Debtor's employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* https://www.justice.gov/ust/chapter-11-operating-reports). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Highland Claimant Trust, the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Highland Claimant Trust relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Highland Claimant Trust made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Highland Claimant Trust reserves the right to amend and supplement the PCR as may be necessary or appropriate.

Part 2: Preconfirmation Professional Fees and Expenses

The Highland Claimant Trust did not make any payment of professional fees prior to Confirmation of the Plan.

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan

For presentation purposes, the chart showing claims anticipated under the plan, paid claims and allowed claims are reflected in both the Reorganized Debtor and Claimant Trust post-confirmation report under Part 3: Recoveries of the Holders of Claims and Interests under the Confirmed Plan.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with the Claimant Trust's governing documents and the Plan.

Exhibit 4

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054
	§	Chapter 11
	§	
Debtor.	§	
	§	

DEBTOR'S MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE (A) CREATION OF AN INDEMNITY SUBTRUST AND (B) ENTRY INTO AN INDEMNITY TRUST AGREEMENT AND (II) GRANTING RELATED RELIEF

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

The above-captioned debtor and debtor-in-possession (the "Debtor") hereby moves (the "Motion"), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), for the entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), (i) authorizing the (a) creation of an indemnity subtrust (the "Indemnity Subtrust"), and (b) entry into an indemnity trust agreement (the "Trust Agreement"), and (ii) granting related relief.

INTRODUCTION[2]

1. Pursuant to this Motion, the Debtor requests authority to create the Indemnity Subtrust and enter into a Trust Agreement that is substantially consistent with terms set forth in the Term Sheet attached to this Motion as **Exhibit B** (collectively the "Indemnity Trust Documents"). As discussed below, the Indemnity Trust Documents will secure the indemnity obligations of the Claimant Trust, Litigation Trust and the Reorganized Debtor pursuant to the terms of the Claimant Trust Agreement, the Litigation Trust Agreement, the Reorganized Limited Partnership Agreement and the Plan (collectively the "Indemnity Obligations").

2. The Debtor intends for the Indemnity Subtrust to be in lieu of directors' and officers' insurance ("D&O Insurance"), which the Debtor contemplated obtaining as a condition to the Effective Date for the benefit of the beneficiaries of the Indemnity Obligations. The Debtor and the Committee thoroughly explored the market for obtaining D&O Insurance. Based on such due diligence, the Debtor, in consultation with the Committee, determined that based, upon the prohibitive cost of D&O Insurance, securing the Indemnity Obligations through an Indemnity Subtrust is preferable and in the best interests of the Debtor's estate and its creditors. Moreover, as discussed below, establishing the Indemnity Subtrust will facilitate the Effective

[2] Capitalized terms used but not defined in this introduction have the meanings given to them below.

Date of the Plan which the Debtor anticipates will occur on or about August 1, 2021, if the Court approves the Motion.

JURISDICTION

3. The United States Bankruptcy Court for the Northern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. The bases for the relief requested herein are sections 105 and 363 of the Bankruptcy Code.

STATEMENT OF FACTS

A. The Debtor's Bankruptcy Case

5. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Bankruptcy Court").

6. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the U.S. Trustee in the Delaware Bankruptcy Court. On December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Debtor's chapter 11 case to this Court [Docket No. 186].[3]

7. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

[3] All docket numbers refer to the docket maintained by this Court.

B. **The Court's Confirmation of the Plan and Denial of Motions for a Stay Pending Appeal.**

8. On February 22, 2021, after a two-day hearing, the Bankruptcy Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the "Confirmation Order") with respect to the Debtor's *Fifth Amended Plan of Reorganization of Highland Capital* Management*, L.P.*, as modified (the "Plan").[4]

9. James Dondero and certain of his related entities (collectively, the "Dondero Entities") appealed the Confirmation Order [Docket Nos. 1957, 1966, 1970, 1972] and filed motions in this Court seeking a stay of the Confirmation Order pending appeal [Docket Nos. 1955, 1967, 1971, 1973] (the "Stay Motions"). This Court denied the Stay Motions [Docket Nos. 2084, 2095].

10. Certain of the Dondero Entities subsequently filed motions for stay pending appeal in the District Court for the Northern District of Texas, Dallas Division (the "District Court"), in April 2021 (the "District Court Stay Motions").

11. In May 2021, following the grant of an expedited appeal by the Fifth Circuit Court of Appeals, certain of the Dondero Entities filed motions for stay pending appeal in the Fifth Circuit in May 2021 (the "Appellate Stay Briefs") despite not having a ruling on the District Court Stay Motions. On June 21, 2021, the Fifth Circuit denied the Appellate Stay Briefs.

12. On June 23, 2021, the District Court denied the District Court Stay Motions.

[4] Unless otherwise noted, capitalized terms used herein have the meanings given to them in the Plan. The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Ex. B [Docket No. 1875].

C. **Conditions to the Effective Date of the Plan.**

13. Article VIII of the Plan contains the conditions to the Effective Date of the Plan. The two conditions that have delayed the occurrence of the Effective Date are (i) the Confirmation Order becoming a Final Order and (ii) the Debtor obtaining D&O Insurance acceptable to the Debtor, the Committee, the Claimant Trust Oversight Committee, and the Litigation Trustee.

14. In addition, the Debtor determined, in the weeks following confirmation, that it would require exit financing in order to maintain sufficient liquidity for post-Effective Date operations and to comply with its obligations under the Plan. The facts and circumstances leading to the Debtor's decision to obtain exit financing are set forth in the *Motion for Entry of an Order (i) Authorizing the Debtor to (a) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (b) Incur and Pay Related Fees and Expenses, and (ii) Granting Related Relief* [Docket No. 2229] (the "Exit Financing Motion"). The Court approved the Exit Financing at a hearing on June 25, 2021.

15. As discussed at the confirmation hearing, the Debtor encountered difficulty in obtaining D&O Insurance because of the litigiousness of the case and the threat that litigation would continue well beyond confirmation of the Plan. Nevertheless, after confirmation, the Debtor, working closely with the Committee, continued to pursue D&O Insurance. Ultimately, however, the Debtor, the Committee, and the Independent Board, including Mr. Seery, who will be the Claimant Trustee and manage the Reorganized Debtor, determined that the insurance that was available was both insufficient and too costly in light of the coverage being provided.

16. The Debtor, working closely with the Committee, subsequently investigated alternatives to traditional D&O Insurance that could provide the beneficiaries of the Indemnity

Obligations protection after the Effective Date. The most attractive alternative was to create the Indemnity Subtrust, the approval of which is being sought through this Motion. If the Court approves this Motion, the Debtor will waive the condition to the Effective Date requiring the Confirmation Order to become a Final Order and thereby paving the way for the Plan to become effective.

D. **Post-Effective Date Governance and Management**

17. The Plan provides for the creation of the Claimant Trust, the Litigation Trust, and the Reorganized Debtor on the Effective Date to facilitate the monetization of the Debtor's assets and the pursuit of Estate Claims for the benefit of the Debtor's creditors and stakeholders. As currently contemplated, the Claimant Trust will be overseen by James P. Seery, Jr., as the Claimant Trustee, and an Oversight Board, made up of the Debtor's largest creditors. The Claimant Trust is governed by the terms of the Claimant Trust Agreement.[5] The Litigation Sub-Trust is governed by the terms of the Litigation Trust Agreement.[6] And the Reorganized Debtor will be governed by the Reorganized Limited Partnership Agreement.[7] It is anticipated that Mr. Seery will be the Claimant Trustee and the chief executive officer of the Reorganized Debtor.

E. **Post-Effective Date Indemnification**

18. The terms of the Claimant Trust Agreement, the Litigation Trust Agreement, and the Reorganized Limited Partnership Agreement each provide for a broad indemnification of the parties tasked with managing the implementation of the Plan (collectively, the "Indemnified

[5] The final Claimant Trust Agreement was filed as Exhibit R to *Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* [Docket No. 1811] on January 22, 2021 (the "January Supplement").

[6] The final Litigation Trust Agreement was filed as Exhibit T to the January Supplement.

[7] The final Reorganized Limited Partnership Agreement was filed as Exhibit Z to the January Supplement.

Parties").[8] The costs of indemnifying the Indemnified Parties (the "Indemnification Costs") were provided for in the Plan and the Plan Documents. The Indemnification Costs would be treated as expenses and be paid before, and be senior to, distributions to the Debtor's pre-petition creditors, *i.e.*, the Claimant Trust Beneficiaries. The relevant documents also authorized the reservation of assets sufficient to fund the Indemnification Costs.

A. The Indemnity Subtrust and Trust Agreement

19. As discussed above, the Debtor has determined that it is in the best interests of the Debtor's estate and its stakeholders to create the Indemnity Subtrust pursuant to the terms of the Trust Agreement. The Indemnity Subtrust will be administered by a third-party corporate trustee. The Indemnity Trust will, as discussed below, be funded on the Effective Date with $2.5 million in cash and a note (the "Indemnification Note") in the principal amount of $22.5 million with such amounts to be held in reserve and used solely to pay Indemnification Costs that are not otherwise paid or payable by the Claimant Trust, Litigation Trust, or Reorganized Debtor, as applicable.

20. As contemplated by the Plan and consistent with the Claimant Trust Agreement, the Litigation Trust Agreement, and the Reorganized Limited Partnership Agreement, the Indemnification Costs have priority to other claims. The Indemnity Subtrust is the vehicle which ensures that adequate provision for such Indemnification Costs is made, notwithstanding the

[8] The Indemnified Parties of (a) the Claimant Trust are (i) the Claimant Trustee (including each former Claimant Trustee), (ii) Delaware Trustee, (iii) the Oversight Board, and (iv) all past and present Members of the Oversight Board, and the employees, agents, and professionals of each of the foregoing; (b) the Litigation Trust are (i) the Litigation Trustee (including each former Litigation Trustee), (ii) the Oversight Board, and (iii) all past and present Members of the Oversight Board, and the employees, agents, and professionals of each of the foregoing; and (c) the Reorganized Debtor are (i) New GP LLC (as the Reorganized Debtor's general partner) and each member, partner, director, officer, and agent thereof, (ii) each person who is or becomes an officer of the Reorganized Debtor, and (iii) each person who is or becomes an employee or agent of the Reorganized Debtor if New GP LLC determines in its sole discretion that such employee or agent should be indemnified. *See* Claimant Trust Agreement, § 8.2; Litigation Trust Agreement, § 8.2.; Reorganized Limited Partnership Agreement, §§ 10(b)-(c).

timing pursuant to which assets are monetized and distributions would otherwise be made to such beneficiaries of the Claimant Trust.

21. Certain material terms of the Trust Agreement and the Indemnity Subtrust are as follows:[9]

Beneficiaries:	The Indemnified Parties
Indemnity Trustee	A corporate trustee with appropriate trust powers under applicable state and/or federal law.
Indemnity Trust Administrator	Mr. Seery, initially in his capacity as the Claimant Trustee or in his individual capacity if no longer serving as the Claimant Trustee.
Indemnity Trust Corpus	At the inception of the Indemnity Trust, the trust corpus shall consist of the following, to be irrevocably contributed by the Grantor: 1. Cash of $2.5 million; and 2. the Indemnification Funding Note, in the principal amount of $22.5 million. The foregoing contributions are intended to create and maintain a balance of liquid assets in the Indemnity Trust Account of not less than $25 million (the "Indemnity Trust Account Minimum Balance").
Indemnification Funding Note	The Indemnification Funding Note will represent and document the Claimant Trustee's obligation to make additional cash deposits into the Indemnity Trust Account to satisfy the obligations of the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor, each of which will be jointly and severally liable under the Indemnification Funding Note. After the initial funding of principal under the Indemnification Funding Note, the principal balance thereof will at all times equal the amount representing the difference between (i) the Indemnity Trust Account Minimum Balance and (ii) the balance of liquid assets held in the Indemnity Trust Account, as reported on the most recent quarterly statement issued by the Indemnity Trustee.
Withdrawal of Trust Assets	Consistent with the Indemnity Trust's purpose as a collateral mechanism, withdrawals from the Indemnity Trust Account are contemplated only following a tender of for indemnity pursuant to Section 8.2 of the Claimant Trust Agreement and the failure of such Beneficiary to receive payment in full of such indemnity claim from the Claimant Trust within [30] days.
Duration of the Indemnity Trust	The Indemnity Trust will exist and remain in full force and effect until the *earlier of* (i) the expiry of all indemnification rights under Section 8.2 of the Claimant Trust Agreement, due to expiration of all applicable statutes of limitations (as determined by the Indemnity Trust Administrator, in his sole and absolute discretion), and (ii) the mutual agreement to terminate the Indemnity Trust by the Grantor and the Indemnity Trust Administrator.
Liquidation and Final Distribution of Trust Assets	Upon dissolution and liquidation of the Indemnity Trust, any assets remaining in the Indemnity Trust Account will be transferred to the Claimant Trust; provided, however, if the Claimant Trust is no longer in existence, then such distribution of the Indemnity Trust assets will be made according to the same distribution methodology contemplated in Section 9.2 of the Claimant Trust

[9] The following is by way of summary only. Parties are encouraged to read the entirety of the Term Sheet. In the event that the description set forth herein is in conflict with the Term Sheet, the Term Sheet will control. All terms are subject to change.

	Agreement (or the successor to such numbered section) on the effective date of the termination of the Claimant Trust.
Governance of the Indemnity Trust	Consistent with the Indemnity Trust's purpose as a collateral mechanism, it is not contemplated that the Indemnity Trust will need any comprehensive governance system. For any action contemplated or required in connection with the operation of the Indemnity Trust, and for any guidance or instruction to be provided to the Indemnity Trustee, such function, rights and responsibility shall be vested in the Indemnity Trust Administrator, and the Indemnity Trustee will take written directions from the Indemnity Trust Administrator, in such form specified in the Indemnity Trust Agreement and otherwise satisfactory to the Indemnity Trustee. Beneficiaries will not be involved in or have any rights with respect to the administration of the Indemnity Trust or have any right to direct the actions of the Indemnity Trustee with respect to the Indemnity Trust or the assets held in the Indemnity Trust Account, other than the Indemnity Trust Administrator in such capacity."

22. The Debtor believes that it has the support of the Committee with respect to the implementation of the Indemnity Subtrust. However, the Debtor and the Committee are still discussing the terms of the Trust Agreement and the foregoing terms may change. If the terms change, the Debtor will file an updated Term Sheet as necessary.

B. Entry into the Trust Agreement Is an Exercise of the Debtor's Sound Business Judgment and Should Be Approved

23. The Bankruptcy Code authorizes a debtor, after notice and a hearing, to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). It is well established in this jurisdiction that a debtor may use property of the estate outside the ordinary course of business if there is a good business reason for doing so. *See, e.g., Black v. Shor (In re BNP Petroleum Corp.)*, 642 F. App'x 429, 435 (5th Cir. 2016) (sale of debtors' assets under section 363(b) of the Bankruptcy Code must "'be supported by an articulated business justification, good business judgment, or sound business reasons.'" (quoting *Cadle Co. v. Mims (In re Moore),* 608 F.3d 253, 263 (5th Cir. 2010)); *Petfinders LLC v. Sherman (In re Ondova Ltd)*, 620 F. App'x 290, 291 (5th Cir. 2015) (sale of debtors' assets under section 363(b) of the Bankruptcy Code is exercise of the trustee's sound business judgment"); *In re ASARCO, LLC,* 441 B.R. 813, 830 (Bankr. S.D. Tex. 2010) (outside of the ordinary course of

business, "for the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors, and equity holders, there must be some articulated business justification for using, selling, or leasing the property") (quoting *In re Continental Air Lines*, 780 F.2d 1223, 1226 (5th Cir. 1986)), *aff'd,* 650 F.3d 593 (5th Cir. 2011).

24. To determine whether the business-judgment test is satisfied, courts require "a showing that the proposed course of action will be advantageous to the estate." *In re Pisces Energy*, *LLC*, 2009 Bankr. LEXIS 4709, at *18 (Bankr. S.D. Tex. Dec. 21, 2009). In the absence of a showing of bad faith or an abuse of business discretion, a debtor's business judgment will not be altered. *See, e.g.*, *NLRB v. Bildisco & Bildisco (In re Bildisco),* 682 F.2d 72, 79 (3d Cir. 1982), *aff'd*, 465 U.S. 513 (1984); *Lubrizol Enter. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985). "Great judicial deference is given" to the "exercise of business judgment." *GBL Holding Co. v. Blackburn/Travis/Cole, Ltd. (In re State Park Bldg. Grp.*), 331 B.R. 251, 254 (Bankr. N.D. Tex. 2005).

25. Entry into and performance under the Trust Agreement and the creation of the Indemnity Subtrust is in the best interests of the Debtor's estate and represents a sound exercise of the Debtor's business judgment. The Effective Date of the Plan cannot occur unless it is certain that there will be sufficient resources to pay the Indemnification Costs. As the Court is unfortunately aware, the Dondero Entities' strategy is to sue the Debtor's current management and post-Effective Date management whenever possible. Mr. Dondero admitted as much during the hearing held on June 8, 2021. The Debtor is therefore under no illusions. There will be Indemnification Costs and, unfortunately, they probably will be significant.

26. For that reason, among others, without the ability to guarantee payment of the Indemnification Costs, the Debtor would not be able to engage competent management to

oversee the implementation of the Plan, including the monetization of the Debtor's assets, prosecution of Estate Claims, and, ultimately, distributions to the Claimant Trust Beneficiaries. As discussed above, execution of the Trust Agreement is in lieu of obtaining D&O Insurance which, because of Mr. Dondero's history of litigiousness and his notoriety in the insurance industry could not be obtained in a cost-effective manner.

27. The Indemnity Subtrust (when coupled with the Exit Facility) will allow the Plan to become effective and permit the Reorganized Debtor to monetize its assets and pay allowed claims, as contemplated under the Plan, while the Reorganized Debtor or Litigation Trustee, as applicable, simultaneously pursues Estate Claims and otherwise attempts to recover value for creditors.

28. For these reasons, the Debtor submits that entering into the Trust Agreement and the creation of the Indemnity Subtrust will be an exercise of its sound business judgment, in the best interests of the Debtor's estate, and should be approved.

C. Waiver of the Stay Period Pursuant to Bankruptcy Rule 6004(h) Is Proper

29. The Indemnity Subtrust is required to promptly implement the Effective Date. Consequently, the Debtor requests that the Court enter an order providing that the Debtor has established cause to exclude the relief requested herein from the fourteen-day stay period provided under Bankruptcy Rule 6004(h). Accordingly, the Debtor requests that the Order authorizing the Debtor to enter into the Trust Agreement be effective immediately upon entry such that the Debtor may proceed to complete the necessary related work to enable the prompt occurrence of the Effective Date.

Notice

30. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Office of the United

States Attorney for the Northern District of Texas; (c) the Debtor's principal secured parties; (d) counsel to the Committee; and (e) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of Page Intentionally Blank]

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form annexed hereto as **Exhibit A**, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: June 25, 2021

PACHULSKI STANG ZIEHL & JONES LLP

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EXHIBIT A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054**
	§	**Chapter 11**
	§	
Debtor.	§	**Re: Docket No. _____**
	§	

ORDER APPROVING DEBTOR'S MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE (A) CREATION OF AN INDEMNITY SUBTRUST AND (B) ENTRY INTO AN INDEMNITY TRUST AGREEMENT AND (II) GRANTING RELATED RELIEF

Upon the *Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (b) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief* (the "Motion"),[1] and the Court finding that: (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and

[1] All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Agreement was an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted as set forth herein.

2. The Debtor is authorized to enter into and perform under the Trust Agreement and consummate the transactions contemplated thereby, including the creation of the Indemnity Subtrust.

3. The Debtor is authorized to negotiate, prepare, execute, and deliver all documents and take such other action as may be necessary or appropriate to implement, effectuate, and fully perform its obligations as and when they are incurred and come due under the Trust Agreement.

4. The terms and provisions of this Order shall be binding in all respects upon all parties in this chapter 11 case, the Debtor, its estate, and all successors and assigns thereof.

5. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

 # # # END OF ORDER # # #

EXHIBIT B

TERM SHEET FOR INDEMNITY TRUST AGREEMENT

This Term Sheet sets forth the basic terms of a proposed trust (the "Indemnity Trust") to provide collateral security supporting the indemnification obligations specified in (i) Section 8.2 of that certain Claimant Trust Agreement, effective as of [●], 2021 (the "Claimant Trust Agreement"), establishing that certain claimant trust (the "Claimant Trust") pursuant to the *Fifth Amended Plan of Reorganization of Highland Capital Management L.P (as Modified)* (the "Plan"), (ii) Section 8.2 of the Litigation Sub-Trust Agreement, establishing the Litigation Sub-Trust pursuant to the Plan, and (iii) Section 10 of the Reorganized Limited Partnership Agreement (as defined in the Plan), establishing the Reorganized Debtor (as defined in the Plan) pursuant to the Plan. The Indemnity Trust is based on the fundamental premise, as set forth under the Plan and consistent with the Claimant Trust Agreement and related documents, that the indemnification rights under the Claimant Trust are senior priority obligations of the Claimant Trust, relative to the classes of beneficiaries thereunder, and that adequate provision for such indemnification needs to be funded, notwithstanding the timing pursuant to which assets are realized by the Claimant Trust and distributions would otherwise be made to such beneficiaries of the Claimant Trust. The Indemnity Trust is not intended to address any qualifications, requirements or standards for indemnification; such matters are to be addressed solely under and pursuant to the standards set forth in Section 8.2 of the Claimant Trust Agreement, Section 8.2 of the Litigation Sub-Trust Agreement, and Section 10 of the Reorganized Limited Partnership Agreement. This Term Sheet assumes that the Indemnity Trust is intended solely as a collateral mechanism, to fund indemnification claims that were tendered to but not paid by the Claimant Trust, Litigation Sub-Trust or the Reorganized Debtor within a reasonable period of time (thirty (30) days) following such claim being made. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Claimant Trust Agreement.

Grantor	Claimant Trust, pursuant to the authority granted under Section 6.1(a) of the Claimant Trust Agreement.
Beneficiaries	The Beneficiaries of the Indemnity Trust shall be the following: 1. Indemnified Parties under Section 8.2 of the Claimant Trust Agreement and their respective employees, agents and professionals, which are also indemnitees under the same provision; 2. "Indemnified Parties" under Section 8.2 of the Litigation Sub-Trust Agreement and their respective employees, agents and professionals, which are also indemnitees under the same provision; and 3. "Covered Persons" under Section 10 of the Reorganized Limited Partnership Agreement.
Indemnity Trustee	A corporate trustee with appropriate trust powers under applicable state and/or federal law.
Indemnity Trust Administrator	James P. Seery, Jr., initially in his capacity as the Claimant Trustee or in his individual capacity if no longer serving as

	the Claimant Trustee. If James P. Seery, Jr. voluntarily resigns or is unable to serve as Indemnity Trust Administrator, his legal successors or assigns. If Cause (as defined in the Claimant Trust Agreement) to remove James P. Seery Jr. or the then current Indemnity Trust Administrator is shown by final order of a court of competent jurisdiction, a successor chosen by the Claimant Trustee. Governance of the Indemnity Trust shall be effected by and through the Indemnity Trust Administrator (see "Governance").
Indemnity Trust Corpus	At the inception of the Indemnity Trust, the trust corpus shall consist of the following, to be irrevocably contributed by the Grantor: 1. Cash of $2.5 million; and 2. the Indemnification Funding Note, in the principal amount of $22.5 million. The foregoing contributions are intended to create and maintain a balance of liquid assets in the Indemnity Trust Account of not less than $25 million (the "Indemnity Trust Account Minimum Balance").
Indemnification Funding Note	The Indemnification Funding Note will represent and document the Claimant Trustee's obligation to make additional cash deposits into the Indemnity Trust Account to satisfy the obligations of the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor, each of which will be jointly and severally liable under the Indemnification Funding Note; such deposits are intended to ensure proper allocation of the respective assets of the Claimant Trust, the Litigation Sub-Trust and the Reorganized Debtor to the Indemnity Trust upon material monetizations by the Claimant Trust, reflective of the Claimant Trustee's power to reserve for senior indemnity claims under Section 6.1(a) of the Claimant Trust Agreement. Payments under the Indemnification Funding Note will be senior in priority to any distributions to the Claimant Trust beneficiaries. The initial principal amount of the Indemnification Funding Note will be $22.5 million, representing the extent of the additional collateral to be allocated to the Indemnity Trust, such that the Indemnity Trust Account

	will maintain the Indemnity Trust Account Minimum Balance. The initial principal amount of the Indemnification Funding Note will be paid in full or in part on the earlier of (a) demand for payment from the Indemnity Trust Administrator or (b) the date at which the net asset value (asset value net of liabilities and expense reserves) is less than 200% of the principal amount of the Indemnification Funding Note. Subject to the foregoing, the Claimant Trustee will have sole and absolute discretion to determine the timing and amount of the payments of the initial principal amount of the Indemnification Funding Note consistent with his view of liquidity needs of the Claimant Trust and related entities and the requirements of any financing agreement binding on the Claimant Trust. Upon the Claimant Trustee's determination that such a payment should be made, the amount of the payment shall be due within five (5) days of such a determination. After the initial funding of principal under the Indemnification Funding Note, the principal balance thereof will at all times equal the amount representing the difference between (i) the Indemnity Trust Account Minimum Balance and (ii) the balance of liquid assets held in the Indemnity Trust Account, as reported on the most recent quarterly statement issued by the Indemnity Trustee. Such principal balance of the Indemnification Funding Note will be documented by the Indemnity Trust Administrator and will be paid in full, in a manner determined by the Claimant Trustee consistent with the procedures set forth in the immediately preceding paragraph hereof. For the avoidance of doubt, the foregoing payments under the Indemnification Funding Note will be senior to any distribution to beneficiaries under the Claimant Trust. In the event that the liquid assets of the Claimant Trust are insufficient to satisfy the foregoing payments, the Claimant Trustee must take all reasonable action to satisfy such obligations under the Indemnification Funding Note, including accessing any available credit lines or third-party leverage, and no current payments to Claimant Trust beneficiaries will be made until all current amounts due under the Indemnification Funding Note have been made. Consistent with the foregoing, upon written request of the Indemnity Trust Administrator, the Claimant Trustee shall provide collateral to secure any amounts due or which may become due under the Indemnification Funding Note, including the posting of a bank letter of

	credit, under terms acceptable to the Indemnity Trust Administrator. The Indemnification Funding Note will not bear interest, other than that which must be imputed under applicable law. All amounts due under the Indemnification Funding Note shall be absolute, regardless of their characterization.
Indemnity Trust Account	A custodial account to be maintained/held by the Indemnity Trustee. The trust corpus and other assets of the Indemnity Trust shall be held in such Indemnity Trust Account maintained by the Indemnity Trustee, for the benefit of the Beneficiaries. Any investment income (see "Investment of Trust Assets") shall be retained in the Indemnity Trust Account and will be included in the balance of Indemnity Trust Corpus. Any investment income, investment loss and Withdrawals of Trust Assets will be included in the determination of whether the Indemnity Trust Account Minimum Balance has been achieved (see "Indemnification Funding Note").
Reports and Account Statements	The Indemnity Trustee will provide comprehensive Indemnity Trust Account statements to the Beneficiaries and the Indemnity Trust Administrator on a quarterly basis, beginning at inception. Such statements will include the balance of the assets held in the Indemnity Trust Account as of the subject reporting date, plus a full accounting of all deposits (including amounts collected under the Indemnification Funding Note and any investment income) and any withdrawals/distributions made during the subject period and the effect of any investment losses. Such statements may be redacted for any sensitive information, as determined by the Indemnity Trust Administrator, in his sole and absolute discretion.
Withdrawal of Trust Assets	Consistent with the Indemnity Trust's purpose as a collateral mechanism, withdrawals from the Indemnity Trust Account are contemplated only following a tender of for indemnity pursuant to Section 8.2 of the Claimant Trust Agreement, Section 8.2 of the Litigation Sub Trust Agreement, or the Reorganized Limited Partnership Agreement and the failure of such Beneficiary to receive payment in full of such indemnity claim from the Claimant Trust within 30 days. It is expressly contemplated that in the ordinary course of their respective businesses, the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor will pay the costs and expenses of

	defending indemnified claims as well as the amount of any such claims if successful. The Indemnity Trust will serve as a source of indemnification for such claims as provided herein in the event that any of the Claimant Trust, the Litigation Sub-Trust, or the Reorganized Debtor, as the case may be, does not pay such claims. A request for withdrawal of assets from the Indemnity Trust Account must be presented to the Indemnity Trustee, with a copy to the Indemnity Trust Administrator, and must be accompanied by an written certification of the following: 1. A claim for indemnification was made under Section 8.2 of the Claimant Trust Agreement, Section 8.2 of the Litigation Sub Trust Agreement, or the Reorganized Limited Partnership Agreement, accompanied by a copy of such claim and all underlying documentation. 2. The Beneficiary did not receive full payment with respect to such indemnification claim with 30 days. Following the receipt of the above information, the Indemnity Trust Administrator will issue a withdrawal/distribution order to the Indemnity Trustee, with a copy to the claiming Beneficiary. Upon receipt of such order, the Indemnity Trustee will pay the full amount of the requested distribution to the subject Beneficiary; such payment will be made within 3 business days of receipt. In the event that a claiming Beneficiary receives payment with respect to the subject indemnity claim from the Claimant Trust or any other source, such Beneficiary must promptly notify the Indemnity Trustee and the Indemnity Trust Administrator, and the subject request for payment from the Indemnity Trust will be revised accordingly; to the extent that any such amounts were already received from the Indemnity Trust, such amounts must be repaid to the Indemnity Trust Account, without interest.
Duration of the Indemnity Trust	The Indemnity Trust will exist and remain in full force and effect until the *earlier of* (i) the expiry of all indemnification rights under Section 8.2 of the Claimant Trust Agreement, Section 8.2 of the Litigation Sub Trust Agreement, and the Reorganized Limited Partnership Agreement due to expiration of all applicable statutes of limitations (as determined by the Indemnity Trust Administrator, in his sole and absolute discretion), and (ii)

	the mutual agreement to terminate the Indemnity Trust by the Grantor and the Indemnity Trust Administrator. For the avoidance of doubt, neither the liquidation or termination of the Claimant Trust nor the legal existence of the Grantor or any other party thereto will have any effect on the legal existence of the Indemnity Trust.
Wind-down	Upon the determination of the Indemnity Trust Administrator that the Claimant Trust has substantially completed its efforts to monetize and distribute its assets or such earlier date that the Indemnity Trust Administrator shall determine, the Indemnity Trust Administrator and the Claimant Trust Oversight Committee shall work in good faith to replace the Indemnity Funding Note with a suitable third-party insurance policy.
Liquidation and Final Distribution of Trust Assets	Upon dissolution and liquidation of the Indemnity Trust, any assets remaining in the Indemnity Trust Account will be transferred to the Claimant Trust; provided, however, if the Claimant Trust is no longer in existence, then such distribution of the Indemnity Trust assets will be made according to the same distribution methodology contemplated in Section 9.2 of the Claimant Trust Agreement (or the successor to such numbered section) on the effective date of the termination of the Claimant Trust.
Limitations on Transferability	A beneficial interest in the Indemnity Trust may not be transferred, assigned or hypothecated without the consent of the Indemnity Trust Administrator in his sole and absolute discretion, provided that such transfer, assignment or hypothecation does not confer upon such assignee status as a Beneficiary under the Indemnity Trust. The Indemnity Trust Administrator may impose such conditions and other terms upon any transfer, assignment or hypothecation as he considers appropriate, in his sole and absolute discretion. In the event of an assignment, the foregoing limitations on transferability will continue to apply in all respects to such beneficial interest and will be binding on the assignee of such beneficial interest.
Governance of the Indemnity Trust	Consistent with the Indemnity Trust's purpose as a collateral mechanism, it is not contemplated that the Indemnity Trust will need any comprehensive governance system. For any action contemplated or required in connection with the operation of the Indemnity Trust, and for any guidance or instruction to be provided to the Indemnity Trustee, such function, rights and responsibility shall be vested in the Indemnity Trust Administrator, and the Indemnity Trustee will take written directions from the

	Indemnity Trust Administrator, in such form specified in the Indemnity Trust Agreement and otherwise satisfactory to the Indemnity Trustee. Consistent with the foregoing, the Indemnity Trust Administrator shall have the power to take any actions the Indemnity Trust Administrator, in his sole and absolute discretion, deems desirable or necessary in connection with the operation of the Indemnity Trust. The Indemnity Trust Administrator will have the power and authority to retain such experts and other advisors, including financial consultants and legal counsel, as he considers appropriate to address any matter relating to the Indemnity Trust. Without limiting the generality of the foregoing, to the extent the Indemnity Trust Administrator identifies any conflict of interest in his roles as the Claimant Trustee, on the one hand, and the Indemnity Trust Administrator, on the other, or otherwise relating to the Indemnity Trust, the Indemnity Trust Administrator may retain such experts, including legal counsel, as he, in his sole and absolute discretion, considers appropriate to evaluate and resolve any such conflict of interest. The cost of any such advisors/experts/counsel will be paid by the Claimant Trust, and if not paid in a timely fashion, can represent a claim for indemnity under the Indemnity Trust Agreement (see "Withdrawal of Trust Assets"). Beneficiaries will not be involved in or have any rights with respect to the administration of the Indemnity Trust or have any right to direct the actions of the Indemnity Trustee with respect to the Indemnity Trust or the assets held in the Indemnity Trust Account, other than the Indemnity Trust Administrator in such capacity."
Indemnification of Indemnity Trustee	The Indemnity Trustee and the Indemnity Trust Administrator will be provided customary indemnification rights typical for a collateral trust of this type.
Nature and Evidence of Beneficial Interest	A beneficial interest in the Indemnity Trust will not entitle a Beneficiary to any direct right, title or interest in or to the specific assets held in the Indemnity Trust Account, and no Beneficiary will have any right to call for a partition or division of such assets. A beneficial interest in the Indemnity Trust will not be evidenced by any certificate, security, receipt or any other instrument. The Indemnity Trust Administrator will maintain a record of the Beneficiaries and their respective beneficial interests in the Indemnity Trust.

	Notwithstanding the foregoing, the Indemnity Trustee or the Indemnity Trust Administrator will be authorized to provide evidence of beneficiary status upon request by a Beneficiary.
Investment of Trust Assets	The cash or other liquid assets in the Indemnity Trust Account will be invested in a manner consistent with that set forth in Section 3.4 of the Claimant Trust Agreement; provided, however, the approval of the Oversight Board will not be needed. Such investment function will be overseen by the Indemnity Trust Administrator and effected by the Indemnity Trustee.
Governing Law	The Indemnity Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.
Venue	Each of the parties consents and submits to the exclusive jurisdiction of the Bankruptcy Court of the Northern District of Texas for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Indemnity Trust Agreement or any act or omission of the Indemnity Trustee (acting in his capacity as the Indemnity Trustee or in any other capacity contemplated by this Indemnity Trust Agreement); provided, however, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas

Exhibit 5

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 21, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054**
	§	**Chapter 11**
	§	
Debtor.	§	**Re: Docket No. 2491**
	§	

ORDER APPROVING DEBTOR'S MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE (A) CREATION OF AN INDEMNITY SUBTRUST AND (B) ENTRY INTO AN INDEMNITY TRUST AGREEMENT AND (II) GRANTING RELATED RELIEF

Upon the *Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (b) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief* (the "Motion"),[1] and the Court finding that: (i) this Court has jurisdiction over this matter

[1] All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Trust Agreement and the consummation of the transactions contemplated thereby is an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is **GRANTED** as set forth herein and as modified on the record to provide that the Indemnification Note will be unsecured.

2. Pursuant to 11 U.S.C. §§ 363(b) and 105(a), the Debtor is authorized (i) to enter into and perform under the Trust Agreement and consummate the transactions contemplated thereby, including the creation of the Indemnity Subtrust., and (ii) to negotiate, prepare, execute, and deliver all documents and take such other action as may be necessary or appropriate to implement, effectuate, and fully perform its obligations as and when they are incurred and come due under the Trust Agreement.

3. The terms and provisions of this Order shall be binding in all respects upon all parties in this chapter 11 case, the Debtor, its estate, and all successors and assigns thereof.

4. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

 # # # END OF ORDER # # #

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No. 19-34054-sgj11**
Debtor.	§	

ORDER GRANTING HUNTER MOUNTAIN INVESTMENT TRUST'S MOTION TO ALTER OR AMEND ORDER, TO AMEND OR MAKE ADDITIONAL FINDINGS, FOR RELIEF FROM ORDER, OR, ALTERNATIVELY, FOR NEW TRIAL UNDER FEDERAL RULES OF BANKRUPTC Y PROCEDURE 7052, 9023, AND 9024

The Court, having considered Hunter Mountain Investment Trust's Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Brief ("Motion to Alter and for Other Relief"), filed by Hunter Mountain Investment Trust, both in its individual capacity and derivatively on behalf of the Reorganized Debtor,

Highland Capital Management, L.P., and the Highland Claimant Trust,[1] finds that the Motion to Alter and for Other Relief should be GRANTED. It is, therefore:

ORDERED that the Motion to Alter and for Other Relief is **GRANTED**, and the Court will issue further rulings and reasons in connection herewith.

End of Order

Submitted by:

PARSONS MCENTIRE MCCLEARY PLLC

*/s/ Sawnie A. McEntire*______
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Counsel for Hunter Mountain Investment Trust

3130619.1

[1] And, in all capacities and alternative derivative capacities asserted in HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Bankr. Dkt. Nos. 3699, 3815, and 3816] ("Emergency Motion"), and the supplement to the Emergency Motion [Bankr. Dkt. No. 3760] and the draft Complaint attached to the same [Bankr. Dkt. No. 3760-1].

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Re: Highland Capital Management, L.P		
	§	Case No. 19-34054-SGJ11
Hunter Mountain Investment Trust Appellant	§	
vs.	§	
Highland Capital Management, L.P.	§	3:24-CV-1786-L (Lead)
Appellee	§	

[4104] Order extending stay of Contested Matter (related document # 4000 and 4013 Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024.

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APPELLEE RECORD

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	

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APPELLEE'S SUPPLEMENTAL
DESIGNATION OF RECORD ON APPEAL

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. ("Appellee" or "Reorganized Debtor"), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its supplemental designation of items to be included in the record in the appeal filed by Hunter Mountain Investment Trust ("Appellant") from the *Order Extending Stay of Contested Matter [Docket No. 4000]* entered by the United States Bankruptcy Court for the Northern District of Texas on June 24, 2024 [Docket No. 4104] in the above-referenced bankruptcy proceeding (the "Bankruptcy Case"). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

I. Supplemental Items from the Docket in the Bankruptcy Case

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by Appellant:

Date	Docket No.	Description
Documents filed in Bankruptcy Case		
01/22/2021	1811	NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD)
02/01/2021	1875	Support/supplemental document (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF)
06/13/2023	3843	Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699)
01/24/2024	4030	Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013)

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Date	Docket No.	Description
01/31/2024	4033	Order granting in part motion to stay contested matter (related document 4013) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) 4000 Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.)

II. Items from the Docket in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj

Appellee designates the following additional items from the docket in the above-referenced adversary proceeding filed in the United States Bankruptcy Court for the Northern District of Texas as Adversary Proceeding No. 23-03038-sgj:

Date	Docket No.	Description
Documents filed in Bankruptcy Court Adversary Proceeding No. 23-03038-sgj		
02/20/2024	25	Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust

002807

III. Items from the Docket in District Court Case No. 3:23-cv-2017-E

Appellee designates the following additional items from the docket in the above-referenced appeal filed in the United States District Court for the Northern District of Texas as Case No. 3:23-cv-2071-E:

Date	Docket No.	Description
Documents filed in District Court Appeal 3:23-cv-2071-E		
09/15/2023	1	Hunter Mountain Investment Trust's Amended Notice of Appeal
01/22/2024	29	Appellant's BRIEF by Hunter Mountain Investment Trust
01/22/2024	30	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Appellant's BRIEF *Part 1 of Appendix* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s),

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Date	Docket No.	Description
		# 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s))
01/22/2024	31	Appendix in Support filed by Hunter Mountain Investment Trust re 29 Brief/Memorandum in Support of Motion *Supplemental Appendix - Beginning at ROA.003368* (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s), # 19 Exhibit(s), # 20 Exhibit(s), # 21 Exhibit(s), # 22 Exhibit(s), # 23 Exhibit(s), # 24 Exhibit(s), # 25 Exhibit(s), # 26 Exhibit(s), # 27 Exhibit(s), # 28 Exhibit(s), # 29 Exhibit(s), # 30 Exhibit(s), # 31 Exhibit(s), # 32 Exhibit(s), # 33 Exhibit(s), # 34 Exhibit(s)
03/06/2024	34	Appellee's BRIEF by Farallon Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC.
03/06/2024	35	Appellee's BRIEF by Highland Capital Management LP, Highland Claimant Trust, James P. Seery, Jr.
04/03/2024	38	Appellant's REPLY BRIEF by Hunter Mountain Investment Trust.
06/10/2024	39	NOTICE of Supplemental Authority filed by Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC
06/11/2024	40	ADDITIONAL ATTACHMENTS to 39 NOTICE of Supplemental Authority, by Appellees Farallon Capital Management LLC, Highland Capital Management LP, Highland Claimant Trust, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery, Jr, Stonehill Capital Management LLC

Dated: August 5, 2024

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No. 3:23-cv-02071-E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE HIGHLAND CAPITAL MANAGEMENT, L.P.,

Debtor.

HUNTER MOUNTAIN INVESTMENT TRUST,

Appellant,

v.

HIGHLAND CAPITAL MANAGEMENT, L.P., ET AL.,

Appellees.

BRIEF OF CLAIM PURCHASER APPELLEES

Appeal from the United States Bankruptcy Court for the Northern District of Texas, Case No. 19-34054-slg11, Hon. Stacey G.C. Jernigan, Presiding

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Introduction

Farallon Capital Management, L.L.C. ("Farallon"), Stonehill Capital Management LLC ("Stonehill"), Muck Holdings, LLC ("Muck"), and Jessup Holdings LLC ("Jessup") (collectively, the "Claim Purchasers") file this brief in response to HMIT's brief seeking reversal of the Bankruptcy Court's orders denying HMIT's motion for leave to file an adversary complaint and motion for expedited discovery from the Claim Purchasers. This brief addresses the issues specific to the Claim Purchasers: HMIT's lack of standing to assert claims against the Claim Purchasers, the failure of the proposed complaint to assert colorable claims against the Claim Purchasers, and the Bankruptcy Court's proper denial of HMIT's premature discovery requests to the Claim Purchasers. The Claim Purchasers defer to the brief filed by Highland Capital Management, L.P., the Highland Claimant Trust, and James Seery (collectively, the "Highland Parties") on other issues and adopt the arguments in that brief to the extent they address proposed claims against the Claim Purchasers.

The Bankruptcy Court correctly determined that due to the nature of claims trading in bankruptcy cases, the Claim Purchasers' acquisition of the claims at issue cannot give rise to any causes of action that HMIT would have

standing to bring. Even if HMIT could upend the transfers, or even if it could succeed in equitably subordinating the validly transferred claims, HMIT would be in the same position it is today: an equity holder with a speculative contingent interest in whatever might someday be left after all of the Claimant Trust's liabilities are exhausted.

To avoid this truth, HMIT posits a farfetched chain of events that James Dondero has unsuccessfully pitched to other courts and administrative agencies. HMIT first asserts, without any plausible factual basis, that Seery received material nonpublic information from Dondero about a potential acquisition of MGM by Amazon (even though sharing nonpublic information would have breached Dondero's duties as a member of MGM's board). HMIT next posits (again without any plausible factual basis) that Seery shared that information with the Claim Purchasers. HMIT alleges that in exchange for nonpublic information, the Claim Purchasers agreed to approve "excessive compensation" for Seery. Finally, HMIT argues this "excessive" compensation reduced the value of HMIT's Class 10 contingent claims. As the Highland Parties note in their brief, Dondero's recitation of these alleged facts has shifted materially over the many times he has sworn to them. The Bankruptcy Court correctly held that HMIT does not have standing to assert

the proposed claims. It also correctly denied HMIT's requested discovery from the Claim Purchasers and concluded that the proposed complaint does not assert plausible claims. The Court should affirm the Bankruptcy Court's orders.

Statement of the Case

(1) The Highland Bankruptcy

As the Bankruptcy Court observed, the procedural history of this bankruptcy case is tortured. ROA.838–40. The Bankruptcy Court noted that as of July 14, 2023, there were at least 30 pending and active matters involving Dondero: six proceedings in the Bankruptcy Court, six actions or appeals pending in this Court, seven appeals pending in the Fifth Circuit, two petitions for writ of certiorari pending in the Supreme Court, and nine other proceedings pending in various state, federal, and foreign jurisdictions. ROA.839–40. This Statement of the Case will focus on the aspects of the procedural and factual history that are relevant to this appeal.

In October 2019, Highland Capital Management, L.P. ("HCMLP" or the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the Bankruptcy Court for the District of Delaware, instituting a voluntary chapter 11 bankruptcy case, *In re Highland Capital*

Management, L.P., Case No. 19-12239 (Bankr. D. Del.). The United States Trustee for Region 3 appointed an Official Committee of Unsecured Creditors (the "Committee"). On the Committee's motion, the case was transferred to the United States Bankruptcy Court for the Northern District of Texas: *In re Highland Capital Management, L.P.*, Case No. 19-34054 (Bankr. N.D. Tex.).

In December 2019, the Debtor filed the Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operation in the Ordinary Course seeking Bankruptcy Court approval of a compromise with the Committee which contemplated, *inter alia*, the (i) creation of an independent board of directors (the "Independent Board") to govern the Debtor during the bankruptcy proceedings; and (ii) removal of Dondero as a director, officer, or managing member of the Debtor. ROA.947. Among others, Seery was selected to participate on the Independent Board and was later made the Debtor's chief restructuring officer. ROA.948–49.

The Bankruptcy Court entered an order approving that compromise. ROA.947. Under that order, Dondero remained an unpaid employee of the Debtor, subject to the authority of the Independent Board, which, at its discretion, had the authority to require Dondero's immediate resignation.

ROA.949. By Fall 2020, the Independent Board demanded, and obtained, Dondero's resignation. ROA.949–50.

(2) The Claims HMIT References in this Appeal

The Debtor had many large creditors whose claims against the Debtor were adjudicated in the bankruptcy process. As set forth in the chart below, the creditor claims HMIT references in this dispute (the "Claims") were filed, settled by negotiation between each creditor and the Debtor, and ultimately allowed by the Bankruptcy Court—all before the Claim Purchasers purchased them from the Class 8 and Class 9 creditors (the "Claim Sellers"). At almost every turn, Dondero or his affiliated entities objected to the settlements negotiated by the Debtor; the Bankruptcy Court overruled those objections. The Claim Purchasers acquired the Claims through private arm's-length transactions, and, in each case, claim transfer notices under Federal Rule of Bankruptcy Procedure 3001 were filed as reflected in the chart below. No objection was filed to the transfer notices.

Muck is a single-purpose entity managed by Farallon that acquired Claims. Jessup is a single-purpose entity managed by Stonehill that acquired Claims. ROA.837. The following chart (which is in the Bankruptcy Court's order (ROA.862–63)) summarizes the acquisitions:

Claimant(s)	Date Filed/ Claim No.	Asserted Amount	Allowed Amount	Rule 3001 Notice Filed
Acis Capital Management LP and Acis Capital Management, GP LLC	12/31/2019 Claim No. 23	Not less than $75,000,000	$23,000,000[1]	ROA.7465 (Muck)
Redeemer Committee Highland Crusader Fund	4/3/2020 Claim No. 72	$190,824,557	$137,696,610	ROA.7474 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP,	April 8, 2020 Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	$80,000,000 in aggregate ($45,000,000 General Unsecured Claim, and $35,000,000 subordinated claim) [2]	ROA.7487 (Muck)

[1] The Debtor's settlement with Acis was approved over the objection of Dondero. ROA.862.

[2] The Debtor's settlement with the HarbourVest Parties was approved over the objections of Dondero and The Dugaboy Investment Trust and Get Good Trust. ROA.862.

HarbourVest Skew Base AIF LP				
UBS Securities LLC, UBS AG, London Branch	June 26, 2020 Claim Nos. 190, 191	$1,039,957,799.40	$125,000,000 in aggregate ($65,000,000 General Unsecured Claim and $60,000,000 subordinated claim)[3]	ROA.7496 (Muck) and ROA.7492 (Jessup)

(3) The Reorganization Plan

In August 2020, the Debtor filed its Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as amended, supplemented or modified, the "Plan") and accompanying disclosure statement. *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 48 F.4th 419, 426 (5th Cir. 2022). On February 22, 2021, the Bankruptcy Court entered the Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief (the "Confirmation Order").

[3] The Debtor's settlement with the UBS Parties was approved over the objections of Dondero and the Dugaboy Investment Trust and Get Good Trust. ROA.863.

ROA.1660. The Plan went effective on August 11, 2021. *In re Highland Cap. Mgmt.*, 48 F.4th at 428.

The priority and value of the Claims are established by the Plan. All the claim purchases were consummated ***after*** the Confirmation Order was entered. With respect to the Claims, the Plan provides, among other things, that "[o]n or as soon as reasonably practicable after the Effective Date, each holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim" will receive Class 8 interests in the Claimant Trust.[4] ROA.1778. Further, the Plan provides:

> Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, ***except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court***.

Id. (emphasis added).[5] Thus, only the Debtor, the reorganized debtor, and the Claimant Trust have the right to seek to reclassify or subordinate claims.

[4] The Plan includes substantially similar language with respect to Class 9 Subordinated Claims. ROA.1779.

[5] The Plan includes substantially similar language with respect to Class 9 Subordinated Claims. ROA.1778–79.

The Plan created four new entities: (1) the reorganized debtor, (2) a new general partner for the reorganized debtor (called HCMLP, GP LLC), (3) the Claimant Trust (administered by Seery and overseen by the Claimant Trust Oversight Board ("CTOB")), and (4) a Litigation Sub-Trust. ROA.1780–81, 1783. The Claimant Trust owns the equity interests in the other three entities. ROA.1761; ROA.1767. The Claimant Trust is to monetize the reorganized debtor's assets and make distributions to Class 8 and Class 9 creditors. ROA.1783. The Plan cancelled the limited partnership interests that HMIT held in Highland in exchange for a contingent Class 10 interest in the Claimant Trust. ROA.1780. Under the Plan, the Class 10 claims will vest and become eligible for payment only after payment in full with interest of all of the other classes of creditors. ROA.1763.

The Plan includes a Gatekeeper Provision that restricts certain individuals and entities from filing any "claim or cause of action of any kind" against certain identified Protected Parties without the Bankruptcy Court's permission. ROA.1806. As HMIT acknowledges, it is one of the parties that must seek permission before filing a claim or cause of action. ROA.1858. HMIT also acknowledges that Seery is one of the Protected Parties and that Muck and Jessup "may" be Protected Parties. ROA.1858. The Gatekeeper

Provision requires HMIT to seek an order from the Bankruptcy Court "determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind" and "specifically authorizing [HMIT] to bring such claim or cause of action." ROA.1806.

Dondero and certain entities under his control appealed the confirmation of the Plan, and (among other complaints) they argued that the Gatekeeper Provision was improper. The Fifth Circuit rejected those arguments and found that the Gatekeeper Provision was "sound." *In re Highland Cap. Mgmt.*, 48 F.4th at 435, 439. The Fifth Circuit confirmed that the *Barton* doctrine supports the power of a bankruptcy court to require a party to obtain leave before filing certain actions. *Id.* at 439 (citing *Barton v. Barbour*, 104 U.S. 126 (1881)).

The Plan also addresses the compensation of the Claimant Trustees: "the salient terms of [the Claimant Trustees'] employment, including such Trustees' duties and compensation shall be set forth in the Claimant Trust Agreement …. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases." ROA.1785. The Claimant Trust Agreement provides that "the Claimant Trustee shall receive compensation,

including any severance, as agreed to by the Claimant Trustee and the Committee, if agreed upon prior to the Effective Date, or the Oversight Board if agreed upon on or after the Effective Date." ROA.6118. Before the Plan was confirmed, the Bankruptcy Court approved a specific compensation structure for Seery. ROA.904–05.

(4) Dondero's and HMIT's State-Court Discovery Attempts

In July 2021 (before the Plan's approval), Dondero filed a pre-suit discovery request in Texas state court, targeting Farallon and Alvarez & Marsal ("A&M"), under Texas Rule of Civil Procedure 202. The case was styled *In Re: James Dondero*, Cause No. DC-21-09534, in the 95th Judicial District Court of Dallas County, Texas (the "First 202"). ROA.5351. Farallon and A&M removed that case to the Bankruptcy Court. After briefing and a hearing, due to misalignment of Rule 202 proceedings and bankruptcy cases, the Bankruptcy Court remanded the First 202 to the Texas state court "with grave misgivings." *Dondero v. Alvarez & Marsal CRF Mgmt., LLC (In re Highland Cap. Mgmt., L.P.)*, Adv. No. 21-03051, 2022 WL 38310, at *9 (Bankr. N.D. Tex. Jan. 4, 2022). Farallon and A&M opposed Dondero's petition as nothing more than an unfounded fishing expedition. The state court denied relief and dismissed the First 202 on June 1, 2022. ROA.5575.

Six months later, Dondero filed a new Rule 202 petition through his affiliate HMIT, raising the same issues related to claims trading as in the First 202, but now in a different Texas state court: *In re: Hunter Mountain Investment Trust*, Cause No. DC-23-01004, in the 191st Judicial District of Dallas County, Texas ("Second 202"). ROA.5577. The targets of the Second 202 were Farallon (again) and Stonehill. HMIT, undeterred by the Texas court's dismissal of the First 202, sought to convince a second state court judge that HMIT had a valid basis to "investigate" third parties' private purchases of approved bankruptcy claims. *Id.* The Claim Purchasers again opposed the unfounded fishing expedition. After briefing and a hearing, the Second 202 met the same fate as the first: it was denied and dismissed. ROA.5602.

(5) HMIT's Motion for Leave to File Adversary Proceeding

After the denial and dismissal of the Second 202, HMIT filed a motion for leave ("Motion for Leave"), seeking the Bankruptcy Court's permission under the Gatekeeper Provision to file an adversary proceeding against Seery and the Claim Purchasers. ROA.1849. The proposed complaint attached to the Motion for Leave repeated the same baseless allegations that Dondero and

his lawyers have made for more than two years. ROA.1916.[6] As the Highland Parties explain in their brief, Dondero's sworn statements have varied in material respects with each repetition.

HMIT sought to have the Motion for Leave heard on an expedited basis, which the Bankruptcy Court denied. ROA.2236; ROA.2355. HMIT appealed the denial of the motion to expedite, and the district court affirmed. *Hunter Mountain Inv. Trust v. Muck Holdings LLC* et al. *(In re Highland Cap. Mgmt., L.P.)*, Case No. 3:23-cv-00737-N (N.D. Tex. Apr. 11, 2023). HMIT then sought a writ of mandamus from the Fifth Circuit compelling the Bankruptcy Court to hear the Motion for Leave on an emergency basis, which was denied. *In re Hunter Mountain Inv. Trust*, Case No. 23-10376 (5th Cir. Apr. 12, 2023). On April 23, 2023, HMIT filed a supplement to its Motion for Leave, which included a revised proposed adversary complaint. ROA.3323.

HMIT sought leave to assert claims against the Claim Purchasers for (i) knowing participation in breaches of fiduciary duties; (ii) conspiracy; (iii) equitable disallowance; (iv) unjust enrichment and constructive trust; (v)

[6] Dondero has also shopped his conspiracy theories alleging unprofessional and even criminal conduct by the Claim Purchasers to the Texas State Securities Board and the Office of the United States Trustee. ROA.859; ROA861. ROA. Both agencies declined to pursue them. ROA.859–61.

declaratory relief; and (vi) punitive damages. ROA.3358–62. These allegations all rely on HMIT's implausible and purely speculative theory that (a) Seery received material non-public information from Dondero about the potential acquisition of MGM by Amazon; (b) Seery communicated that information to the Claim Purchasers in breach of his fiduciary duties to the Debtor; (c) based solely on alleged statements made by Seery about the future value of the Claims, the Claim Purchasers decided to purchase the Claims; and (d) in exchange for the alleged nonpublic information, the Claim Purchasers agreed to rubberstamp Seery's "excessive compensation." ROA.3350–54.

(6) The Bankruptcy Court's Orders

The Bankruptcy Court entered an order setting a hearing on the Motion for Leave for June 8, 2023, and setting a briefing schedule. ROA.3458. The Bankruptcy Court also indicated that, after it had an opportunity to review any responses and replies filed in connection with the Motion for Leave, it would notify the litigants as to whether the June 8 Hearing would be evidentiary. *Id.*

The Claim Purchasers filed an objection to HMIT's Motion for Leave. ROA.3430. The Highland Parties also filed a joint opposition to the Motion for Leave. ROA.3463.

After the Bankruptcy Court entered an order that the June 8 Hearing would be evidentiary, ROA.4712, HMIT filed a motion seeking wide-ranging discovery from the Claim Purchasers and the Highland Parties. ROA.4714. The Claim Purchasers and the Highland Parties objected to that motion. ROA.4931; ROA.4939. The Claim Purchasers argued that no discovery was necessary because the Court could rule on the Motion for Leave based solely on the papers filed with the Bankruptcy Court. The Claim Purchasers' position was that an evidentiary hearing was not necessary with respect to the proposed claims against the Claim Purchasers. ROA.4934. Accordingly, the Claim Purchasers stated they did not intend to put on any evidence at the Hearing, including any witness testimony or documentary evidence. *Id.* After a hearing, the Bankruptcy Court allowed the depositions of Seery and Dondero but prohibited other depositions or document production. ROA.4951.

Three days before the hearing on HMIT's Motion for Leave, HMIT filed a new version of its proposed complaint which removed statements attributable to Dondero and did not attach affidavits from Dondero that were previously included, but which left allegations in the proposed complaint that depended on statements made by Dondero. ROA.4984. That same day,

HMIT also filed a witness and exhibit list that, for the first time, disclosed HMIT's intent to call two expert witnesses. ROA.6608. The Highland Parties filed a motion to exclude these expert witnesses. ROA.9273.

On June 8, 2023, the Bankruptcy Court held a full-day hearing on the Motion for Leave, which included testimony from Dondero, Seery, and Mark Patrick (HMIT's controller). ROA.9458.[7] The Bankruptcy Court did not allow expert testimony but indicated it would take the motion to exclude under advisement and, if it determined that expert testimony was necessary or advisable, it would hold a second hearing for such testimony. ROA.9481–82.

About a week after the hearing, the Bankruptcy Court entered an order granting the Highland Parties' motion to exclude, concluding that the proposed testimony of HMIT's two purported experts would not help the Bankruptcy Court understand the evidence or determine a fact in issue. ROA.9912; ROA.9925.

Then on August 25, 2023, the Bankruptcy Court entered its opinion and order on the Motion for Leave. ROA.835. In a thorough and detailed opinion,

[7] The Claim Purchasers contend that the colorability of the claims against them can be determined as a matter of law without any evidence. ROA.4934. Thus, they did not offer evidence at the hearing or participate in the cross-examination of Dondero. *See generally* ROA.9458.

the Bankruptcy Court concluded that HMIT did not have constitutional or prudential standing to bring its proposed causes of action. ROA.901–08. It also found that HMIT had not shown it has a colorable claim against the Claim Purchasers or Seery. ROA.925–38. Accordingly, the Bankruptcy Court denied the Motion for Leave. ROA.938–39.

HMIT filed a motion to alter or amend the Bankruptcy Court's ruling ("Motion to Alter"), arguing that "new" evidence about the value of the Highland Claimant Trust's assets compels a different outcome. ROA.10062. The Bankruptcy Court denied the Motion to Alter (ROA.1045).

Summary of the Argument

The Bankruptcy Court correctly denied HMIT's Motion for Leave. The Bankruptcy Court correctly concluded that HMIT lacks constitutional standing to assert the proposed claims against the Claim Purchasers. Constitutional standing requires (1) injury; (2) traceability; and (3) redress-ability. None of those elements is present here.

To support standing, the alleged injury must be particularized and concrete. To be concrete, the injury must actually exist; it cannot be conjectural or hypothetical. A merely possible future injury is not sufficient to support standing. As an initial matter, the only parties who could possibly

claim to be injured by the acquisition of the Claims for less than their fair value would be the Claim Sellers (not HMIT, which never had any interest in the Claims). And the Claim Sellers have not raised any complaint about the transaction. In an attempt to manufacture an injury, HMIT posits that Seery shared material nonpublic information about the Claims with the Claim Purchasers in exchange for an agreement to approve "excessive" compensation for Seery, and that the "excessive" compensation to Seery makes HMIT's Class 10 claims less valuable. But the Class 10 claims are unvested and contingent. Any claim that Seery's compensation affected the likelihood that the Class 10 claims will vest is pure speculation. Thus, HMIT does not have a concrete injury. The Bankruptcy Court also correctly rejected HMIT's reliance on supposedly "new" evidence in HMIT's Motion to Alter because that evidence does not make it any more likely that the Class 10 claims will ever recover any money.

HMIT's proposed claims against the Claim Purchasers also lack traceability. Because the injury is hypothetical, there can be no traceability. Moreover, the Claim Purchasers did not owe any duties the bankruptcy estate, any creditors, or equity holders at the time of the claim transfers. Nor were

they non-statutory insiders. Additionally, any assertions about Seery's compensation are nothing but speculation that cannot support traceability.

HMIT's proposed claims also fail redressability. The remedies that HMIT seeks against the Claim Purchasers are unavailable as a matter of law. The Plan reserves to the debtor, the reorganized debtor, and the Claimant Trustee the right to seek to reclassify or subordinate claims. HMIT does not have that right. Additionally, the Claims are no longer subject to disallowance or subordination because when the Plan went effective, the Claims were exchanged for interests in the Claimant Trust. In any event, the Fifth Circuit has held that courts do not have power to grant equitable disallowance of claims. And equitable subordination is precluded by the Bankruptcy Code. The Bankruptcy Court also concluded that the time has expired for any attempt to reconsider the Claims. In the absence of a recharacterization of the Claims (which can no longer happen as a matter of law), there is no basis for disgorgement or a constructive trust.

The Bankruptcy Court also properly denied HMIT's request for discovery from the Claim Purchasers. The purpose of the Gatekeeper Provision is to require HMIT to show that its claims are colorable *before* it is entitled to discovery. The Claim Purchasers consistently argued that the

Motion for Leave could be determined without discovery or evidence. And they did not put on any evidence at the hearing on the Motion for Leave. The Bankruptcy Court's denial of discovery from the Claim Purchasers is consistent with the purpose of the Gatekeeper Provision and the Claim Purchasers' response to the Motion for Leave.

When the Bankruptcy Court considered whether HMIT's proposed claims are "colorable," it applied the proper standard and correctly concluded that the proposed complaint does not assert colorable claims against the Claim Purchasers. Contrary to HMIT's argument, "colorability" for purposes of the Gatekeeper Provision requires more than satisfying Rule 12(b)(6). If that were the case, the Gatekeeper Provision would not provide the intended additional layer of protection against vexatious claims. The proper test for colorability derives from the *Barton* doctrine. HMIT must show that its claims are plausible and "not without foundation." The proposed claims against the Claim Purchasers do not satisfy that test (or the Rule 12(b)(6) standard, either.)

The allegations in the proposed complaint against the Claim Purchasers suffer from three main flaws. First, the proposed complaint lacks any factual assertions (much less plausible factual assertions) about *how* the Claim

Purchasers affected Seery's compensation. Second, the proposed complaint fails to include any plausible allegations to support HMIT's assertion that Dondero's email to Seery contained material nonpublic information. In fact, the Bankruptcy Court noted that Dondero admitted that his email did not include the information Dondero considered to be nonpublic. Third, there are no plausible allegations to support Dondero's assertion—which he admitted was his own speculation—that Seery shared the information in Dondero's email with the Claim Purchasers.

HMIT's reliance on purported circumstantial evidence of its unfounded *quid pro quo* scheme is unavailing. There are no factual allegations to support HMIT's unfounded assumptions about the reasons for the Claim Purchasers' decisions to acquire the Claims. And HMIT's implausible theory cannot account for the acquisition of the UBS claims *after* the information about the MGM sale became public. Thus, the proposed complaint against the Claim Purchasers does not assert plausible claims and cannot satisfy the requirements of the Gatekeeper Provision.

ARGUMENT

1. HMIT lacks standing to assert the claims in the proposed adversary proceeding.

The Bankruptcy Court correctly concluded that HMIT lacks standing to assert its proposed causes of action. ROA.908. A plaintiff seeking to invoke a federal court's jurisdiction has the burden to establish that it has standing to bring its claims. *E.g.*, *Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615, 1618 (2020); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The Supreme Court has held that the "irreducible constitutional minimum of standing" encompasses three elements: injury, traceability, and redressability. *Lujan*, 504 U.S. at 560–61. First, the injury element requires that the plaintiff have suffered a concrete and particularized injury that must be actual or imminent and cannot be conjectural or hypothetical. *Id.* at 560. Second, traceability requires a causal connection between plaintiff's injury and the complained-of conduct. *Id.* Third, redressability requires that it be likely that the injury will be redressed by a favorable decision. *Id.* at 561. The lack of any of these elements forecloses standing. *Id.* The Bankruptcy Court correctly concluded that HMIT fails on all three of these elements of standing. ROA.903–04.[8]

[8] The Bankruptcy Court also noted that in arguing it has standing, HMIT confused constitutional standing with the "person aggrieved" test for prudential standing only in the context of bankruptcy appellate matters. ROA.900–01. In its brief in this

A. HMIT has not alleged a particularized, concrete injury.

An injury must be particularized and concrete. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). Particularization means the injury must "affect the plaintiff in a personal and individual way." *Id.* Concreteness "is quite different from particularization," and it requires that the injury "actually exist"—it must be "real" and not merely "abstract." *Id.* at 340. The alleged injury must be "actual or imminent." *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009). Allegations of a "merely conjectural or hypothetical" injury, or of "only a 'possible' future injury" do not suffice to confer standing. *Id.*; *Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir. 2023).

As noted above, the crux of HMIT's proposed adversary proceeding is the allegation that Seery gave the Claim Purchasers nonpublic information about the potential acquisition of MGM by Amazon. ROA.3350–52. HMIT asserts that the Claim Purchasers used that information to acquire the Claims for less than their fair value. *Id.* But the only possible victims of this alleged scheme are the entities from which the Claim Purchasers acquired the Claims.

Court, HMIT continues to assert that it has standing as a "person aggrieved." (HMIT Br. at 6–7.) The Claim Purchasers disagree that HMIT is a "person aggrieved." But as the Bankruptcy Court held, standing as a "person aggrieved" is not sufficient if the party does not have constitutional standing. ROA.900–01.

None of the Claim Sellers (who are sophisticated parties represented by skilled bankruptcy and transactional counsel) has ever suggested that the Claims transfers damaged them or were in any way not valid, appropriately informed, arm's-length transactions. The record shows that the Claim Sellers were well familiar with the circumstances of the Highland bankruptcy, having litigated for many years with Highland and Dondero. The Claim Sellers sold their claims and put their involvement behind them.

To avoid this weakness, HMIT posits an implausible, unfounded, and speculative chain of events that it argues creates a cognizable injury. HMIT alleges that, in exchange for the alleged nonpublic information, the Claim Purchasers agreed that Muck and Jessup, once they joined the CTOB, would use their position to approve "excessive" compensation for Seery. ROA.3354. HMIT further posits that the purportedly "excessive" compensation reduces the value of the Class 10 claims. (HMIT Br. at 24.) As the Bankruptcy Court summarized, HMIT's theory is that "Seery's alleged over-compensation depletes the assets in the Claimant Trust available for distribution to creditors under the Plan, such that there is less likely a chance that HMIT ultimately receives any distributions on account of its Class 10 Contingent Claimant Trust Interest." ROA.904.

There are at least two problems with this theory of injury. First, it is not a concrete injury. The allegation that Seery was "overcompensated" is based on nothing but HMIT's pure speculation. The Proposed Complaint includes no factual assertions about the magnitude of the excess compensation Seery has received or will receive. ROA.3357. And as the Bankruptcy Court noted, HMIT admitted at the hearing on HMIT's Motion for Leave that it has no personal knowledge of what Seery's actual compensation was at the time HMIT filed its Motion for Leave. ROA.904. Thus, any allegation that Seery was "overcompensated" is merely speculation.

Second, even if Seery received excess compensation and even if such compensation were returned, HMIT has not alleged how, as a matter of law, that remedy would result in the vesting of HMIT's unvested, contingent Class 10 claims. Under the Plan, HMIT will not receive anything on those claims until all the Class 8 and Class 9 claims are paid in full and with interest and all other liabilities of the reorganized debtor are paid. ROA.1780; ROA.1763. If the Class 10 claims do not vest, then HMIT will not (and cannot) be harmed by any alleged overcompensation of Seery. Thus, any theory of injury that is based on harm to Class 10 claims is necessarily contingent and hypothetical.

In this Court, HMIT argues that new evidence it presented in its Motion to Alter shows there will be enough money to pay all of the Class 8 and Class 9 claims in full with interest, such that the Class 10 claims will be "in the money." (HMIT Br. at 20–21.) The Bankruptcy Court denied the Motion to Alter. ROA.1045. First, it determined that the allegedly "new" evidence was not, in fact, new. ROA.1046–47. Thus, the Bankruptcy Court concluded there was no basis to reopen the record on the Motion for Leave. ROA.1047–48.

HMIT asserts that if the evidence is not "new," then the Bankruptcy Court erred in determining that HMIT lacks standing. (HMIT Br. at 28.) This argument is based on HMIT's assertion that this evidence shows that it is "in the money." But that argument misses the mark. The Bankruptcy Court held that HMIT could have and should have presented this evidence in its briefing or at the hearing. ROA.1047. Because HMIT did not do so, it has no basis to reopen the record after the Bankruptcy Court already ruled.

The Bankruptcy Court also noted that HMIT ignored the "voluminous supplemental notes" that are "integral to understanding the numbers." ROA.1047. As the Bankruptcy Court points out, those notes make clear that it is still speculative whether the Class 10 claims will be "in the money." One note explains that there are significant continuing administrative and legal fees

that continue to deplete the assets of the reorganized debtor. *Id.* That same note provides that the post-confirmation trust and its subsidiaries will operate at a loss prospectively. *Id.* HMIT does not (and cannot) account for those additional contingent expenses in its argument that it is "in the money." Moreover, an additional note explains that because of a lack of "full and complete information," some of the valuations may not be accurate. *Id.* Again, HMIT does not (and cannot) account for inaccuracies in valuation in its assertion that it is "in the money." In short, even looking at the so-called "new" evidence, any assertion that HMIT will be "in the money" is pure speculation.[9]

B. HMIT cannot establish traceability.

As discussed, traceability requires a causal connection between plaintiff's alleged injury and the complained-of conduct. *Lujan*, 504 U.S. at 560; *Allen v. Wright*, 468 U.S. 737, 753 n.19 (1984). As the Bankruptcy Court properly held, there is no traceability because "there is nothing but a hypothetical theory of

[9] HMIT's brief in this Court also appears to argue that it has been injured because the Claim Purchasers allegedly "received a windfall." (HMIT Br. at 25.) Of course, an alleged windfall to the Claim Purchasers does not equate to an injury to HMIT. The Claimant Trust will make the same amount of payments on the Class 8 and Class 9 claims regardless of who holds them. As a matter of law, HMIT cannot improve the position of its Class 10 interests by attacking the Claim Purchasers.

an alleged injury." ROA.906. Because the purported injury is purely hypothetical, it cannot be traced to the conduct about which HMIT complains.

HMIT's traceability arguments fail for two additional reasons. First, there can be no causal connection because the Claim Purchasers did not owe any duties (fiduciary or otherwise) to the bankruptcy estate, any creditors, or equity holders at the time of the claim transfers. *See, e.g.*, *In re Exec. Off. Ctrs., Inc.*, 96 B.R. 642, 651 (Bankr. E.D. La. 1988) (finding that an acquirer of a claim had no fiduciary duty to third parties, and the claim's effect on the bankruptcy estate before or after the claim's acquisition was the same, and "[t]herefore, there are no grounds for this Court to invoke its equitable powers to disallow or limit the claim of [the claim acquirer] in this bankruptcy case"); *In re Lorraine Castle Apartments Bldg. Corp.*, 149 F.2d 55, 57, 59 (7th Cir. 1945) (affirming a finding that claim purchasers had no fiduciary duties to the estate or its beneficiaries). Because there was no duty owed by the Claim Purchasers as a matter of law, there could be no breach and thus no causation.

HMIT alleges in the proposed complaint that the Claim Purchasers were non-statutory insiders at the time of the Claim transfers. ROA.3339. That assertion falls flat. In determining whether a party is a non-statutory insider,

the court considers two factors: "(1) the closeness of the relationship between the transferee and the debtor; and (2) whether the transactions between the transferee and the debtor were conducted at arm's length." *In re Holloway*, 955 F.2d 1008, 1011 (5th Cir. 1992). Because these factors are conjunctive, a finding that the transaction was arm's length "defeats a finding of non-statutory insider status, regardless of how close a person's relationship with the debtor is or whether he is otherwise comparable to a statutorily enumerated insider." *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 402 (2018) (Sotomayor, J., concurring).

HMIT's proposed complaint fails both prongs of the test. First, there is no allegation of a transaction between the Claim Purchasers and the ***Debtor***. Rather, the Claims-trading transactions are bilateral agreements between the Claim Purchasers and the Claim Sellers. ROA.3347. Thus, the proposed complaint fails to satisfy the first prong. Second, the allegations about the relationship between the Claim Purchasers and the Debtor are based on HMIT's allegations of past business dealings between Seery, on the one hand, and Farallon and Stonehill, on the other. ROA.3351–52. Even if HMIT's allegations were true, such relationships would be insufficient. *Stalnaker v.*

Gratton (In re Rosen Auto Leasing, Inc.), 346 B.R. 798, 801 (BAP 8th Cir. 2006) (holding that a social relationship turned business relationship between a debtor's chairman and a third party was insufficient for such third party to be deemed a non-statutory insider of the debtor). Nor is it sufficient, if as HMIT alleges, Seery allegedly represented Farallon in a prior, unrelated case. *In re Olmos Equip., Inc.*, 601 B.R. 412, 426 (Bankr. W.D. Tex. 2019) (finding that a prior attorney-client relationship was insufficient to deem a third party a non-statutory insider).

In any event, the proposed complaint does not plead sufficient facts to show that the Claim Purchasers' acquisitions of the Claims were not at arm's-length. Aside from conclusory statements, the proposed complaint fails to set forth facts about any transactions between the Claim Purchasers, Seery, or the Debtor regarding Seery's compensation that can give rise to a reasonable inference that compensation decisions were not negotiated and agreed at arm's-length. ROA.3351. Thus, the Bankruptcy Court correctly rejected the imposition of non-statutory insider status on the Claim Purchasers.

Finally, there is no traceability because the proposed complaint has no colorable factual assertions about how the Claim Purchasers allegedly affected Seery's compensation. ROA.904–05; ROA.3351. Any assertion that Seery's

compensation is higher because of the Claim Purchasers' involvement on the CTOB is thus nothing but rank speculation, and it cannot support traceability.

C. HMIT's alleged injury is not redressable by its proposed adversary proceeding.

HMIT also fails under the third prong of the standing test: redressability. To find redressability, there must be "a likelihood that the requested relief will redress the alleged injury." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998). HMIT seeks (i) equitable disallowance of the Claim Purchasers' claims; (ii) equitable subordination of the Claim Purchasers' interests; (iii) disgorgement of funds distributed to the Claim Purchasers; (iv) disgorgement of compensation paid to Seery; and (v) imposition of a constructive trust. But, as the Bankruptcy Court correctly found, none of the remedies that HMIT seeks in its proposed complaint is available to HMIT.

As an initial matter, the Claim Purchasers' claims are not subject to being subordinated or disallowed. The confirmed Plan (which was affirmed by the Fifth Circuit) reserved to the debtor, the reorganized debtor, and the Claimant Trustee the right to seek to reclassify or subordinate claims. ROA.1781. And since the relevant claims were all settled and allowed by the Bankruptcy Court, any rights or defenses that the debtor's estate had with respect to those claims were expressly disclaimed and extinguished under the Plan. ROA.1778–79.

Thus, under the Plan, HMIT has no right to seek to reclassify or subordinate claims.

Additionally, the Claims were all settled and allowed before the Plan's effective date, and before the Claim Purchasers bought them. ROA.584–85. Under the Plan, the Claims were exchanged for interests in the Claimant Trust. Thus, the Claims no longer exist. ROA.1778–79. The Fifth Circuit largely affirmed the Plan (and did not disturb the portions of the Plan related to the Claims). *In re Highland Cap. Mgmt.*, 48 F.4th at 432. And in this Court, HMIT admits it is not challenging the underlying settlement of the Claims as approved by the Bankruptcy Court. (HMIT Br. at 25 n.83.) Thus, due to the operation of the Plan, HMIT cannot state a claim as a matter of law seeking disallowance or subordination of the Claim Purchasers' Class 8 and Class 9 interests.

Moreover, equitable disallowance is not a viable remedy. The Fifth Circuit has recognized that "equitable considerations can justify only the subordination of claims, not their disallowance." *In re Mobile Steel Co.*, 563 F.2d 692, 699 (5th Cir. 1977). The Supreme Court has also held that disallowance of claims is permissible only on the grounds enumerated in Bankruptcy Code section 502(b). *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas*

& Elec. Co., 549 U.S. 443, 449 (2007) ("But even where a party in interest objects, the court 'shall allow' the claim 'except to the extent that' the claim implicates any of the nine exceptions enumerated in § 502(b)."). Inequitable conduct, as alleged by HMIT, is not one of the enumerated grounds for disallowance under section 502(b). *See* 11 U.S.C. § 502(b).

In this Court, HMIT asserts that the Fifth Circuit in *Mobile Steel* did "not foreclose the possibility of equitable disallowance in some circumstances." (HMIT Br. at 37.) But HMIT cannot avoid the Fifth Circuit's plain statement:

> The prerogative to relegate claims to inferior status on equitable grounds, though broad, is not unlimited. It confronts two principal bounds. First equitable considerations can justify only the subordination of claims, not their disallowance.

563 F.2d at 699 (internal citations omitted). Nothing in the opinion suggests that equitable disallowance could ever be available. To the contrary, the Fifth Circuit was unequivocal in its statement that equitable considerations can never justify disallowance of claims.

And the other cases HMIT cites for the propriety of disallowance all address claims that belonged to estate fiduciaries. *See Pepper v. Litton*, 308 U.S. 295, 311 (1939) (analyzing the ability to disallow claims of a fiduciary); *In re Adelphia Commc'ns Corp.*, 365 B.R. 24, 71 (Bankr. S.D.N.Y. 2007) (same). Here, the Claims were filed and settled by non-fiduciaries, and were allowed

while the Claims were still held by non-fiduciaries. Further, the Claims were acquired by the Claim Purchasers well before they became members of the CTOB, and thus before they were estate fiduciaries. *Id.* Thus, the considerations discussed in *Pepper* and *Adelphia* do not apply here.

HMIT's alternative claim for equitable subordination similarly fails. ROA.3360. Bankruptcy Code section 510(c) precludes this relief: "under principles of equitable subordination, [the court may] subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest." 11 U.S.C. § 510(c). This language means that a court may not subordinate a claim to an equity interest. *See, e.g.*, *In re Perry*, 425 B.R. 323, 380 (Bankr. S.D. Tex. 2010) ("Under the express language of 11 U.S.C. § 510(c), the Court may not subordinate a claim to an equity interest; it may only subordinate one claim to another claim and one equity interest to another equity interest."); *In re Winstar Commc'ns, Inc.*, 554 F.3d 382, 414 (3d Cir. 2009) ("Finally, Lucent contends that the Bankruptcy Court's equitable subordination holding was inconsistent with the Bankruptcy Code because § 510(c) does not permit the subordination of debt to equity. We agree."). Because HMIT's contingent, unvested Class 10 interests are based on its

previous equity interest in Debtor, the Class 8 and Class 9 interests held by the Claim Purchasers cannot be subordinated to HMIT's Class 10 interest.

The Bankruptcy Court noted that because the Claims were adjudicated and allowed, the only way to reconsider them is through Bankruptcy Code section 502(j), which provides that "[a] claim that has been allowed or disallowed may be reconsidered for cause … according to the equities of the case." 11 U.S.C. § 502(j). But any attempt now to seek reconsideration of the claims is too late under Bankruptcy Rule 9024. Thus, equitable subordination is unavailable to HMIT, cannot put the Class 10 interests "in the money," and cannot support redressability.

In this Court, HMIT asserts that its claims for disgorgement or constructive trust are viable. (HMIT Br. at 38–39.) But HMIT cites no authority for these arguments. And HMIT ignores that without equitable disallowance or equitable subordination of the Class 8 and Class 9 interests, there will be nothing to disgorge from the Claim Purchasers, and nothing over which a constructive trust can be imposed. Invoking "disgorgement" and "constructive trust" as magic words by themselves cannot conjure a viable theory of redressability. Nor can HMIT's unjust enrichment claim, which is not an independent claim under Texas law. ROA.936 (citing *Taylor v. Trevino*,

569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) and *Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App.—Amarillo 2021, pet. denied)). HMIT's reliance on the Fifth Circuit's decision in *King v. Baylor Univ.*, 46 F.4th 344, 367 (5th Cir. 2022), is misplaced. In that case, the Fifth Circuit confirmed that unjust enrichment is a limited *remedy* available only in narrow circumstances that are not present here. *Id.* at 367–68.

None of the remedies HMIT seeks is viable. Thus, the Bankruptcy Court correctly held that HMIT cannot satisfy the redressability requirement.

2. The Bankruptcy Court correctly denied HMIT's premature attempts to take discovery.

HMIT complains that the Bankruptcy Court denied its motion for expedited discovery from the Claim Purchasers. (HMIT Br. at 50.) The Bankruptcy Court's order correctly restricted the prehearing discovery to depositions of Seery and Dondero. ROA.4960.

The Gatekeeper Provision was incorporated into the Plan specifically to prevent Dondero, and entities associated with Dondero (like HMIT), from filing abusive litigation and imposing significant costs and burdens on certain parties, including the Claim Purchasers. ROA.838. HMIT's motion seeking expedited discovery was an attempt to circumvent the Gatekeeper Provision by imposing those same costs and burdens on the Claim Purchasers before a

ruling on the Motion for Leave. HMIT should not have been able to pursue wide-ranging discovery in an attempt to find support for its allegations unless and until the Bankruptcy Court determined HMIT's alleged claims were colorable and "not without foundation." *In re VistaCare Grp., LLC*, 678 F.3d 218, 232-33 (3d Cir. 2012).

Indeed, HMIT chose to advance the Motion for Leave, and repeatedly advanced the argument that *no evidence* was necessary to proceed. ROA.3305. HMIT insisted that "the colorable nature of the claims asserted in HMIT's proposed adversary proceeding is evident on the face of HMIT's proposed complaint." ROA.4837. Accordingly, HMIT's own position was that the requested discovery was unnecessary to show the colorability of its claims.

In the Bankruptcy Court, the Claim Purchasers were steadfast in their view that the proposed claims against them fail as a matter of law, with the consequence that no amount of discovery was needed to resolve those claims. The Claim Purchasers therefore opposed HMIT's motion for discovery, and they did not seek to conduct any discovery. ROA.4934. The Claim Purchasers did not attach any evidence to their objection to HMIT's Motion for Leave. *See generally* ROA.3430. Similarly, the Claim Purchasers did not file a witness or exhibit list in advance of the June 8 hearing, and they did not present any

evidence at the hearing and did not participate in the examination of any witnesses. *See generally* ROA.9458. The Claim Purchasers' counsel made a brief closing argument at the end of the hearing. ROA.9811. To the extent that there were any facts in dispute at the June 8 hearing, such dispute was solely between HMIT on the one hand, and the Highland Parties, on the other. As to the proposed claims against them, the Claim Purchasers took the position that the Motion for Leave could be decided based on the allegations of the proposed complaint. ROA.4934. And in denying the motion for discovery, the Bankruptcy Court properly agreed with that approach as it relates to HMIT's proposed claims against the Claim Purchasers.

3. The Bankruptcy Court correctly concluded that the proposed complaint does not assert any colorable claims against the Claim Purchasers.

In considering the Motion for Leave, the Bankruptcy Court correctly held that the complaint does not assert colorable claims against the Claim Purchasers. On its face, the proposed complaint does not demonstrate that the claims are "not without foundation" and fails to assert plausible claims. The Court should therefore affirm the Bankruptcy Court's denial of the Motion for Leave.

As noted above, the Fifth Circuit has affirmed the propriety of the Gatekeeper Provision in the Plan. *In re Highland Cap. Mgmt.*, 48 F.4th at 435, 439. The Gatekeeper Provision requires HMIT to establish that its proposed claims are "colorable." HMIT argues that it can satisfy the Gatekeeper Provision merely by pleading claims that meet the standard under Federal Rule of Civil Procedure 12(b)(6). (HMIT Br. at 44.). But if that were true, then the Gatekeeper Provision would be rendered meaningless, because it would add noting beyond the procedural baseline applicable to all litigants. That is, if Rule 12(b)(6) is the only limitation on HMIT's ability to file a claim, then the Gatekeeper Provision provides no additional benefit to those it is intended to protect. To pass through the Gatekeeper Provision, a prospective plaintiff would need only to make the same showing that any other plaintiff would need to make to survive a motion to dismiss. It would be nonsensical to adopt a meaning of "colorable" that makes the Gatekeeper Provision meaningless.

As the Bankruptcy Court recognized, at a minimum,[10] the proper test for whether the claims are "colorable" under the Gatekeeper Provision is found

[10] The Claim Purchasers also join in and adopt the arguments of the Highland Parties about the proper standard for determining whether a claim is colorable for purposes of the Gatekeeper Provision. As the Highland Parties argue, under the

in the *Barton* doctrine. ROA.1027. In *Barton v. Barbour*, the Supreme Court recognized the propriety of requiring court permission before allowing claims against court-appointed receivers. 104 U.S. 126, 134–35 (1881). The doctrine has since been expanded to protect court-appointed bankruptcy trustees and others. *See In re Christensen*, 598 B.R. 658, 664 (Bankr. D. Utah 2019) (stating that the *Barton* doctrine "precludes suit against a bankruptcy trustee for claims based on alleged misconduct in the discharge of a trustee's official duties absent approval from the appointing bankruptcy court."). This is the doctrine on which the Fifth Circuit relied to affirm the propriety of the Gatekeeper Provision. *In re Highland Cap. Mgmt.*, 48 F.4th at 439.

Under the *Barton* doctrine, a court must determine if the party seeking to sue made "a prima facie case showing that [its claims are] not without foundation." *In re Christensen*, 598 B.R. at 667. Failure to establish a prima facie case results in denial of leave to sue. *Id.* Although similar to the standard for a motion to dismiss for failure to state a claim under Rule 12(b)(6), the "not without foundation" standard is more flexible, and the proposed plaintiff must allege facts sufficient to state a claim to relief that is "plausible on its

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circumstances here, a higher evidentiary standard should apply. But even under the lower *Barton* standard, the proposed complaint does not assert "colorable" claims.

face." *Id.* Thus, under the *Barton* doctrine, showing that a claim is "colorable" requires more than just meeting the 12(b)(6) standard.[11]

For the reasons discussed in Section 1 above and in the Highland Parties' brief, HMIT's proposed complaint does not plead a plausible theory of recovery against the Claim Purchasers. It does not plead a plausible injury, a plausible theory of how a plausible injury was caused by the Claim Purchasers, or any cognizable theory of relief. In addition, the proposed complaint fails to plead plausible facts to support other key portions of the proposed claims against the Claim Purchasers.

One key to HMIT's proposed complaint against the Claim Purchasers is its assertion that there was a *quid pro quo* agreement between the Claim Purchasers and Seery related to Seery's compensation. ROA.3351. But, as discussed above, the proposed complaint is devoid of any factual assertions about *how* the Claim Purchasers affected Seery's compensation. *Id.* For this reason alone, the Proposed Complaint fails to assert a colorable claim against the Claim Purchasers for "knowing participation in Breach of Fiduciary Duties" (Count II) or "Conspiracy" (Count III), as each relies on the Claim

[11] Even if the correct standard is the 12(b)(6) test, the allegations fail to meet that test either.

Purchasers providing *quid pro quo* in exchange for allegedly receiving material non-public information. ROA.3351.

Additionally, the proposed complaint fails to include plausible allegations to support the conclusory assertion that Dondero's email to Seery contained material nonpublic information. The Bankruptcy Court correctly concluded that the proposed complaint did not plausibly assert that the information in the email about the potential sale of MGM was material nonpublic information. ROA.955–56. To the contrary, Dondero admitted at the hearing that he did not actually share the supposedly "nonpublic" information with Seery. ROA.957. The implausibility of the allegation is bolstered by the fact that when he sent the email to Seery, Dondero no longer owed any duties to Highland. ROA.5606; ROA.5609. But as a member of the MGM board, he *did* owe duties to MGM. ROA.849. HMIT's theory of the case is therefore that Dondero shared material nonpublic information with Seery in violation of his duties to MGM, even though he did not owe any duties to Highland. That is simply implausible.

The Bankruptcy Court also correctly concluded that there is no plausible allegation that Seery shared the information in Dondero's email with the Claim Purchasers. ROA.959. Instead, the proposed complaint relies on

unfounded inferences and purported circumstantial evidence. The Bankruptcy Court correctly rejected Dondero's self-serving testimony about phone calls he allegedly had with two Farallon representatives months after Dondero's email to Seery, and after the Claim Purchasers already acquired the claims at issue. ROA.959–63. The Bankruptcy Court also observed that the purported contemporaneous notes from the alleged calls with Farallon representatives do not mention MGM, any sharing of the alleged nonpublic information by Seery, the purported *quid pro quo*, or Seery's compensation. ROA.959–63. Finally, the Bankruptcy Court relied on Dondero's admission that no one at Farallon ever told him that Seery communicated the alleged material nonpublic information; rather, Dondero merely *assumed* Seery must have done so. ROA.962. Thus, there is no plausible allegation that Seery shared the alleged nonpublic information with the Claim Purchasers.

In this Court, HMIT asserts that there is circumstantial evidence of its unfounded *quid pro quo* scheme. (HMIT Br. at 48.) In support of that assertion, HMIT relies on the conclusory allegation in the proposed complaint that the Claim Purchasers would not have bought the claims without using for their benefit the alleged nonpublic information. (*Id.*) HMIT's allegation is based on its assertion that the Claim Purchasers would not have made a

sufficiently "significant" profit. ROA.3352. Of course, that is pure speculation and requires an implausible leap to arrive at unfounded conclusions.[12] HMIT's view of the adequacy of the projected profit cannot support an inference that the Claim Purchasers had material nonpublic information. ROA.864.

HMIT's theory suffers from an additional flaw as it relates to the UBS claims—the timing of the acquisition. It is undisputed that the UBS claims were acquired approximately two and half months *after* the public announcement of the MGM sale. ROA.3349; ROA.864. Therefore, even under HMIT's proposed theory, there can be no inference that the decision to acquire the UBS claims was driven by the alleged material nonpublic information. That information was public by the time the Claim Purchasers

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[12] Plaintiff's proposed complaint hypothesizes:

> It made no sense for the Defendant Purchasers to invest millions of dollars for assets that—per the publicly available information—did not offer a sufficient potential profit to justify the publicly disclosed risk. *The counter-intuitive nature of the purchases at issue compels the conclusion that the Defendant Purchasers acted on inside information and Seery's secret assurance of great profits.*

(*Id.* (emphasis added).) Unsubstantiated claims of "counter-intuitive," "secret," unprofessional actions by the respected professional this Court appointed are not plausible.

acquired the UBS claims. For this additional reason, HMIT's theory lacks plausibility on its face.

Conclusion

The Bankruptcy Court correctly denied leave for HMIT to file its proposed complaint. HMIT lacks standing to assert its proposed claims because its convoluted liability theories fail to establish a concrete injury traceable to the Claim Purchasers' acquisition of the Claims that would be redressable by the proposed suit. Moreover, the proposed complaint does not assert "colorable claims" as required by the Gatekeeper Provision. For these reasons, those stated in the Bankruptcy Court's order, and those in the Highland Parties' brief, the Bankruptcy Court's order denying the Motion for Leave should be affirmed. The Claim Purchasers further request general relief.

Dated: March 6, 2024

Respectfully submitted,

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Certificate of Compliance

This brief complies with the word limit in Fed. R. Bankr. P. 8015(a)(7)(B) because, excluding the parts of the brief exempted by Fed. R. Bankr. P. 8015(g), this brief contains 9,295 words.

This brief complies with the typeface requirements of Fed. R. Bankr. P. 8015(a)(5) and the type-style requirements of Fed. R. Bankr. P. 8015(a)(6) because this brief has been prepared in Microsoft Word in 14-point Equity font.

/s/ Richard B. Phillips, Jr.
Richard B. Phillips, Jr.

No. 3:23-cv-02071-E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

In the Matter of Highland Capital Management, L.P.,

Debtor.

Hunter Mountain Investment Trust,

Appellant,

v.

Highland Capital Management, L.P., et al.

Appellees.

ANSWERING BRIEF OF APPELLEES, THE HIGHLAND PARTIES

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Highland Capital Management, L.P. ("HCMLP" or, as applicable, the "Debtor"), the reorganized debtor in the underlying bankruptcy case, the Highland Claimant Trust (the "Trust"; together with HCMLP, "Highland"), and James P. Seery, Jr., HCMLP's Chief Executive Officer and the Claimant Trustee of the Trust ("Seery"; together with Highland, the "Highland Parties"), by and through their undersigned counsel, hereby file this opposition (the "Opposition") to Hunter Mountain Investment Trust's appeal (Dkt. No. 29). In support of their Opposition, the Highland Parties state as follows:

PRELIMINARY STATEMENT[1]

1. This appeal is yet another collateral attack on HCMLP's confirmed Chapter 11 bankruptcy plan, which the Fifth Circuit affirmed in relevant part nearly two years ago. *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P.* (*In re Highland Cap. Mgmt., L.P.)*, 48 F.4th 419 (5th Cir. 2022). Every such challenge has been led by HCMLP's former CEO, James Dondero, or his affiliates. Every such challenge has failed. This latest iteration fits that mold, and it should meet the same fate.

[1] Capitalized terms not defined in this Preliminary Statement have the meanings ascribed to them below.

2. The nominal Appellant here is Hunter Mountain Investment Trust ("HMIT"). The primary target of HMIT's appeal is the carefully tailored Gatekeeper Provision included in the Plan to ensure that Dondero's demonstrated affinity for wasteful, harassing litigation would not derail the success of the Plan. Specifically, the Gatekeeper Provision requires that certain specified enjoined parties (including HMIT) must seek leave of the Bankruptcy Court before bringing suit against certain protected parties (including each of the Appellees) for certain actions, including the ones at issue here, and show that the proposed claims are "colorable." The Fifth Circuit expressly approved the Gatekeeper Provision when affirming (in relevant part) the Confirmation Order. 48 F.4th at 435.

3. This case demonstrates why the Gatekeeper Provision was properly adopted, was correctly affirmed, appropriately applied, and remains *essential* to the core objectives of HCMLP's Plan. For example, HMIT's lawsuit attempts to sidestep the crystal-clear terms of the Claimant Trust agreement declaring that holders of unvested, contingent interests (such as HMIT) have no rights and are owed no duties. Likewise, instead of seriously attempting to show that its proffered lawsuit was more than a belated and baseless attack on those responsible for implementing the Plan, HMIT seeks to render the "gatekeeping" function meaningless by urging the very same Rule 12(b)(6) standard that would have applied had the Gatekeeper Provision not existed. But these efforts ignore Fifth Circuit

precedent—including the specific holdings in this case—confirming bankruptcy courts' authority to impose and enforce gatekeeping provisions just as the Bankruptcy Court did here.

4. The "colorability" standard adopted by the Bankruptcy Court here was reasonable and entirely consistent with the Fifth Circuit's stated purpose of the Gatekeeper Provision to "screen and prevent bad faith litigation." Under the standard adopted by the Bankruptcy Court, a movant (such as HMIT) need show only that its proposed claims "are ***not without foundation***, are ***not without merit***, and are ***not being pursued for any improper purpose such as harassment***." *Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Adversary Proceedings* (ROA 000835-000939). Thus, this standard is intended to permit good faith claims to proceed but stops Dondero and his affiliates from alleging preposterous theories and then using subsequent discovery as a fishing expedition in search of claims. When tested in this instance, HMIT's claims failed to meet this standard, and HMIT implicitly acknowledges as much.

5. On appeal, HMIT concocts a blizzard of alleged procedural infirmities in the proceeding below to obscure HMIT's inability to substantiate the "colorability" of its underlying claims. Perhaps HMIT's most glaring failure below

was ***the concession by HMIT's sole representative, Mark Patrick, that neither he nor HMIT has actual personal knowledge of any fact supporting HMIT's proposed Complaint***. Nothing HMIT says in this appeal cures that fatal defect, and HMIT's cursory defense of its claims rests on the same speculation and internal contradiction painstakingly recounted by the Bankruptcy Court.

6. The core theory of HMIT's proposed complaint was that Appellees engaged in an illicit *quid pro quo*. HMIT alleged that Seery received material non-public information ("MNPI") from Dondero and used it to curry favor with parties that would later purchase claims in HCMLP's bankruptcy, ultimately control Seery's compensation, and return the favor by overpaying Seery. But as the Bankruptcy Court correctly recognized, HMIT's complaint was nonsensical under any standard. To highlight just a few such examples recounted by the Bankruptcy Court:

- There was no "*quid.*" The information Dondero delivered to Seery (unsolicited) was false and was not MNPI in any event. To the extent the information had any value at all, it was known to any reader of the *Wall Street Journal*.
- There was no "*pro.*" Neither HMIT (nor Dondero) offered any plausible allegation that Seery ever delivered the information to the Claims Purchasers, and Seery flatly denied the allegation.
- There was no "*quo.*" Seery's base salary was approved by the Bankruptcy Court (without objection), and his incentive compensation package was approved by the Claimant Oversight Board—including an independent member with no financial stake in the Trust's assets—after lengthy, arm's length negotiations reflected in Board minutes, contemporaneous emails, and numerous proposals and counterproposals.

7. Were those failures not enough, HMIT's litigation tactics below underscored that its lawsuit lacked any good-faith basis. After attaching hundreds of pages of affidavits and purported evidentiary materials to its Motion for Leave, HMIT abruptly reversed course when confronted with Appellees' evidentiary response, claiming that the Bankruptcy Court could not consider any materials outside the four corners of its proposed Complaint. When that effort failed, HMIT attempted to spring belated "expert" testimony on the eve of the hearing, which tactic the Bankruptcy Court held violated its prior orders and was otherwise unnecessary and improper. Undeterred, HMIT sought to smuggle those same excluded materials into the record in a purported "evidentiary proffer" after the hearing. Simply put, it is difficult to imagine a more compelling illustration of why the Gatekeeper Provision is in place and was properly applied to block HMIT's bad-faith efforts to undermine the core tenets of the confirmed Plan.

STATEMENT OF FACTS

A. Background: The Highland Bankruptcy

8. HCMLP was an investment fund co-founded by James Dondero ("Dondero") in 1993. HCMLP invested in a variety of assets, including MGM stock, and Dondero sat on MGM's Board of Directors. In October 2019, Dondero caused HCMLP to file for bankruptcy. To avoid the appointment of a Chapter 11 trustee, Dondero ceded control of HCMLP to an independent board of directors (which

included Seery), but remained as an unpaid portfolio manager subject to the independent board's oversight. Seery was later appointed CEO of the Debtor and he and the independent board subsequently proposed and had confirmed (over Dondero's vociferous objections) an asset-monetization Plan with the support of nearly all creditors not affiliated with Dondero.[2] (*See generally* ROA at 841-46.)

9. Pursuant to the Plan, on the August 11, 2021 effective date ("Effective Date"), the Highland Claimant Trust (the "Trust") was established to be overseen by a Claimant Oversight Board ("COB"), and Seery became the CEO of HCMLP (now, the reorganized debtor) and the Trustee of the Trust. (ROA at 006099-006138.)

10. Between February 2021 (when the Plan was confirmed) and the Effective Date, three members of the Unsecured Creditors Committee (the "Committee"), and one other entity, sold all or portions of their bankruptcy claims (the sold claims, the "Claims") to affiliates of two investment funds, Farallon Capital Management, L.L.C. ("Farallon") and Stonehill Capital Management LLC ("Stonehill"; together with Farallon, the "Claims Purchasers").[3] Before being sold,

[2] References to the "Plan" are to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*. ROA 001594-001659. Citations to "ROA at ___" are to the *Transmittal and Certification of Record on Appeal* and the *Notice of Transmittal re: Transmittal and Certification of Record on Appeal*. *See* Docket Nos. 23 and 24, respectively.

[3] The Committee members who sold all or a part of their Claims were Redeemer Committee of Highland Crusader Fund ("Redeemer"), UBS Securities LLC and UBS AG London Branch ("UBS"), and Acis Capital Management, L.P. and Acis Capital Management GP, LLP ("Acis"). Another group of affiliated entities known as "HarbourVest" also sold its claims to the Claims Purchasers during this period. HarbourVest was not a Committee member. (HarbourVest, Redeemer, UBS, and Acis are collectively referred to as the "Sellers").

the Claims were "allowed" in fixed amounts pursuant to negotiated settlements that were approved by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. In compliance with applicable rules, the Claims Purchasers gave timely and public notice of their acquisition of the Claims. (ROA 000862.)

11. Following the Effective Date, the Claims were converted into vested interests in the Trust and the Claims Purchasers became "Claimant Trust Beneficiaries" and members of the COB. In contrast, HMIT never had an allowed claim against the Debtor and its former equity interest was converted into contingent interests in the Trust. Under the terms of the Trust, HMIT's contingent interests hold no rights and will not vest unless and until all senior claims (including those held by the Claims Purchasers) are paid in full, with interest, and all Trust obligations (including indemnity obligations) are paid in full, something that has yet to occur (and may never occur).

B. The Gatekeeper Provision Was Adopted To Prevent Frivolous Litigation

12. The Plan contains a "gatekeeper" provision that required HMIT to obtain leave of the Bankruptcy Court before it could commence an action against, among others, Seery and members of the COB (the "Gatekeeper Provision"). (ROA at 001594-001659.)

13. As the Bankruptcy Court explained in its order confirming the Plan, the Gatekeeper Provision was adopted as a direct result of Dondero's history of

harassing, costly litigation: "prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation some of which had gone on for years and, in some cases, over a decade." (Confirmation Order, ROA 001714 ¶ 77.)[4] That pattern continued after the bankruptcy case commenced. "During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor." (*Id.*)

14. The Bankruptcy Court further found that the "Dondero Post-Petition Litigation [as defined] was a result of Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Seery's credible testimony, that if Dondero's plan proposal was not accepted, he would 'burn the place down.'" (*Id*. ¶ 78; *see also* ROA at 839–40 (describing Dondero-related post-confirmation litigation)); *see also Highland*, 48 F.4th at 435, 439.

15. The Gatekeeper Provision is based on these findings of fact, all of which were left undisturbed by the Fifth Circuit on appeal. Relying on those facts, the Gatekeeper Provision was adopted to "***prevent baseless litigation*** designed merely to harass the post-confirmation entities" and to "***avoid abuse of the Court***

[4] ROA 001660-001820 (the "Confirmation Order").

system and preempt abuse of judicial time" that would be better spent on the meritorious claims of others. (*Id*. ¶ 79 (emphasis added).)[5]

C. HMIT's Motion For Leave

16. On March 28, 2023, HMIT filed its *Emergency Motion for Leave to File Verified Adversary Complaint* (the "Motion for Leave"). (ROA 001849-002235.) In support, HMIT attached a draft 28-page *Verified Adversary Complaint* ("Original Comp.") and more than 300 pages of other documents, including (a) two declarations executed by Dondero, which themselves attached voluminous documentation; and (b) an attorney's declaration that attached yet more documents, including pleadings and transcripts from Dondero's and HMIT's earlier, unsuccessful attempts to obtain discovery from Farallon in Texas state court.[6]

17. HMIT's lawsuit alleges a *quid pro quo* whereby (a) Dondero allegedly gave Seery "material, non-public information regarding Amazon and Apple's interest in acquiring MGM"; (b) Seery allegedly conveyed that information to Claims Purchasers so they could buy claims on the cheap; and (c) the Claims Purchasers could later reward Seery by "rubber-stamp[ing]" an allegedly oversized

[5] *See also* ROA 000838 n.7; *Highland*, 48 F.4th at 427, 435 (explaining that the Gatekeeper Provision was specifically tailored to address Dondero's "continued litigiousness" by "screen[ing] and prevent[ing] bad faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness").

[6] After belatedly realizing that placing Dondero's declarations into the record exposed him to discovery under Bankruptcy Rule 9014(c), HMIT abruptly revised its Motion for Leave and tried to withdraw the declarations and delete the express references to them (while leaving the allegations based on Dondero's declarations intact). ROA 000854 n.55.

compensation package as members of the COB. (ROA 006622-006650.) (Original Comp.) ¶¶3, 4, 7, 33-34, 36, and 40; (ROA 001861, 001862.) (Motion for Leave) ¶¶ 22, 24; *see also* (ROA 006651-006688.) (Amended Comp.) ¶¶ 3–4, 16, 47, 54, 71, 77.

18. As described below, the evidence established, and the Bankruptcy Court expressly found that (a) Dondero's December 17, 2023 email to Seery regarding MGM (discussed below) did not contain MNPI; (b) even if it did, the relevant information was in the marketplace within days and there was no evidence Seery ever conveyed the information to the Claims Purchasers; and (c) Seery's compensation was consistent with the terms of the Plan, was otherwise the product of extensive, arm's-length negotiations between Seery and the COB, including its independent member, and fully aligned his interests with the Claimant Trust Beneficiaries.

19. In other words, there was no *quid pro quo*, and no amount of discovery or purported expert testimony will ever change that.

D. HMIT's Motion Is Being Orchestrated By Dondero to Undermine the Plan

20. The Bankruptcy Court correctly found the "Motion for Leave is just one more attempt by Dondero to press his conspiracy theory that he has pressed" unsuccessfully for years. ROA 000876.

21. Perhaps most notably, HMIT's own legal representative admitted as much under oath. Mark Patrick, a long-time Dondero employee and HMIT's newly-appointed putative administrator, made numerous unequivocal admissions that this was a proceeding "of, by, and for Dondero." Those admissions included: (a) neither he nor HMIT has ***any*** knowledge concerning ***any*** fact relevant to the proposed claims,[7] (b) HMIT owes Dugaboy Investment Trust ("Dugaboy"), Dondero's family trust, more than $62 million (ROA 006470-006477), (c) HMIT has no operations or revenue and no assets other than its unvested, contingent interest in the Trust to satisfy its obligations to Dugaboy, and (d) Dugaboy is funding HMIT's legal expenses in this proceeding. (ROA 009761-009769; *see also* ROA 000836-000837.) In fact, HMIT called Dondero as a witness on its direct case, but not Patrick. (ROA 000873-000874.)[8]

E. HMIT's Motion Is Dondero's *Eighth Attempt* to Push His "Insider Trading" Allegations

22. The evidence established that Dondero, HMIT, and other related entities have tried to gain traction with their "insider trading" allegations at least

[7] Patrick expressly admitted that neither he nor HMIT (a) have ever spoken with any representative of Farallon or Stonehill, (b) have any personal knowledge concerning any alleged *quid pro quo*, (c) have any personal knowledge about how Seery's compensation package was determined, (d) had any substantive knowledge concerning Seery's compensation until Seery voluntarily disclosed it as part of this proceeding, or (e) have any personal knowledge about what due diligence the Claims Purchasers did before acquiring their claims. (ROA 009765-009769.)

[8] Further, after the Highland Parties called Patrick, HMIT's brief follow-up examination did not include a single question concerning HMIT's claims. (ROA 009770-009773.)

eight times in four different venues, none of which has been successful. (ROA 000858-000861).

23. Dondero's quest began in July 2021 when he sought pre-suit discovery from Farallon in Texas state court under Texas Rule 202. This was the first of ***three*** Rule 202 petitions filed by Dondero and HMIT over a 20-month period in which they sought evidence to support their speculative "insider trading" claims against Seery and Farallon. Each petition was based solely on Dondero's sworn statements. Each was dismissed. (ROA 005350-005549, ROA 005574-005602.)[9]

24. Dondero also pressed his "insider trading" allegations with the Texas State Securities Board ("TSSB") by causing his affiliated entity, Charitable DAF Fund ("DAF"), to file a complaint against HCMLP. (ROA 009759-009760 (Patrick admits DAF filed the Complaint).) In its Motion for Leave, HMIT relied heavily on the TSSB's ongoing investigation as evidence that it had "colorable" claims. (*Id*.).[10] Undermining this HMIT-generated support for its own allegations, just before the

[9] HMIT speculates its Rule 202 Petition may have been dismissed because Farallon supposedly argued that the Bankruptcy Court could order discovery. That makes no sense because ***the Bankruptcy Court granted Dondero's motion to remand the Rule 202 proceeding to state court*** after Farallon removed it to the Bankruptcy Court. (ROA 005550-005573.)

[10] HMIT asserted that "[t]he Court should be aware that [the TSSB] opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. ***The continuing nature of this investigation underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely 'colorable."***" (ROA 001869-001870.), Motion for Leave ¶37 (emphasis added).)

hearing on the Motion for Leave, the TSSB concluded its investigation and took no action against any of the Highland Parties.[11]

25. Finally, beginning in October 2021, ***Dondero caused two lawyers to send three separate letters*** to the Executive Office for U.S. Trustees (the "EOUST") requesting that investigations be opened into the alleged "insider trading" and other wrongdoing alleged to have occurred during HCMLP's bankruptcy case. (ROA 008232-08314, ROA 008315.) Like the Texas state courts and the TSSB, the EOUST has taken no action. (ROA 000859-000860).

F. The MGM E-Mail Was False And Served No Legitimate Purpose

26. As discussed above, HMIT's claims are based on the allegation that Seery shared MNPI concerning MGM with Farallon and Stonehill so that they could purchase bankruptcy claims at a discount and reward Seery by "rubber-stamping" his compensation package.

27. As a member of MGM's Board, Dondero was the source of the so-called MNPI. (ROA 001905.) ¶ 45.) On December 17, 2020, Dondero sent the

[11] Specifically, on May 9, 2023, the TSSB informed HCMLP's counsel in writing that "[t]he issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time." (ROA 005899-005900.) (the "No Action Letter"). Astonishingly, HMIT objected to the No Action Letter on relevance and other grounds even though HMIT's Motion for Leave had averred that the then-ongoing nature of the TSSB investigation "underscore[d]" the merits of its purported claims. (ROA 009780-009785.) (the Court reminded HMIT's counsel that he "filed a pleading under Rule 11 suggesting [the TSSB's investigation] was highly relevant"). HMIT's objection was overruled.

following email to Seery and others with the subject line "Trading Restriction re MGM – material non public information" (the "MGM E-Mail"):

> Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.[12]

28. The MGM E-Mail was false, and Dondero knew it. (ROA 000851-000852.) On cross, Dondero admitted that he knew that Amazon had already hit MGM's "strike price" when he sent the MGM E-Mail and the suggested competition between Amazon and Apple was, in fact, over. (ROA 009617-009623.) Rather than tell Seery the truth, Dondero repackaged public information (as discussed below) while trying to give it an air of authority as an MGM Board member in the hopes of handcuffing Seery's ability to sell assets and undermine the Plan. (ROA 000852.)

29. Further, the Bankruptcy Court found that Dondero sent the MGM E-Mail while "engaged in what appeared to be attempts to thwart, impede, and otherwise interfere with the Plan being proposed by the Independent Directors and the Committee." (ROA 000846-000848.) The Bankruptcy Court relied on extensive, irrefutable evidence that, from October 9 to December 17, Dondero became

[12] ROA 005603-005604.

increasingly desperate as the prospect of regaining control of HCMLP continued to elude him, ultimately culminating in the MGM E-Mail:

- October 9: Dondero is forced to resign from HCMLP for acting against its interests (ROA 005608-005610);
- October 16: Dondero and affiliates attempt to impede the Debtor's trading activities (ROA 005611-005613; ROA 005614-005669);
- November 24: HCMLP's Disclosure Statement is approved and the confirmation hearing is scheduled for January 13, 2021 (Bankr. Dkt. No. 1476.);
- November 24-27: Dondero personally interferes with certain trades (not involving MGM) ordered by Seery (ROA 005614-005669 at 30-36);
- November 30: the Debtor provides notice of termination of certain agreements with Dondero affiliates (Morris Dec. Ex. 17; ROA 009730);[13]
- December 3: the Debtor demands payment of over $60 million due under certain promissory notes issued to HCMLP by Dondero and his affiliates (Morris Dec. Exs. 18-21; ROA 009730);
- December 3: Dondero sends Seery a threatening text message, saying "***Be careful what you do – last warning***" (Morris Dec. Ex. 22; ROA 009730);
- December 10: Dondero's interference and threats cause HCMLP to seek and obtain a temporary restraining order ("TRO") against Dondero (Morris Ex. 23 (ROA 005759-005762.);
- December 16: the Bankruptcy Court dismisses as "frivolous" a motion by certain Dondero affiliates to temporarily restrict certain of the Debtor's asset sales (Morris Ex. 23 (ROA 005759-005762.); Morris Ex. 24 at 63:5-64:15 (ROA 005763-005829); and

[13] References to "Morris Dec. Ex. __" are to exhibits attached to the *Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr's Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding*, executed on May 11, 2023, and filed at Bank. Dkt. No. 3784.

- December 17: Dondero sends the unsolicited email concerning MGM to Seery in violation of the TRO (H. Ex. 11) (ROA 005603-005604.)

30. The Bankruptcy Court cited even more evidence proving that Dondero did not send the MGM E-mail for a legitimate purpose (ROA 000849), including that:

- "Dondero no longer owed a duty of any kind to the Debtor or any entity controlled by the Debtor . . . having resigned from all roles at the Debtor" in October 2020;
- The MGM E-mail served *no* purpose because "MGM was already on the restricted list at Highland Capital, and had been for a long time, and Dondero would know this" (ROA 009672-009673, 009676); and
- If Dondero shared MNPI with a person to whom he owed no duty, then he "would have been violating his own fiduciary duties to MGM." (ROA 000849).

31. More evidence exists that Dondero sent the MGM E-mail in a clumsy attempt to impede the early implementation of HCMLP's asset-monetization Plan, not for any legitimate purpose. HMIT has alleged that the MGM E-Mail should have caused the Debtor to cease settlement negotiations with HarbourVest because HarbourVest was to transfer its interest in HCLOF—which owned interests in many CLOs, some of which in turn owned some MGM stock among their varied portfolios of assets—to an affiliate of HCMLP as part of a proposed settlement of HarbourVest's bankruptcy claim.[14] Yet,

[14] HMIT has alleged that "[u]pon receipt of this material non-public information, Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in [the Bankruptcy] Court seeking approval of the Original Debtor's settlement with HarbourVest—resulting in a transfer to the Original Debtor of HarbourVest's interest in a Debtor-advised fund,

- despite being the self-described "tipper" of the MNPI, Dondero objected to the proposed HarbourVest settlement on the purported ground that ***HCMLP was allegedly overpaying HarbourVest, not because Seery was attempting to trade on MNPI***;[15]

- the investment arm of Dondero's DAF, CLO Holdco, objected to the proposed HarbourVest settlement on the ground that ***it had a contractual right to acquire HarbourVest's interest in HCLOF***;[16] and

- in April 2021, Mark Patrick—the Dondero employee then serving as the newly-minted DAF trustee—caused CLO Holdco to commence an action alleging that the Debtor and Seery violated its contractual right of first refusal by receiving HarbourVest's interest in HCLOF.[17]

32. How can Patrick plausibly assert on behalf of CLO Holdco that it had the right to acquire HarbourVest's interest in HCLOF in December 2020 while simultaneously asserting on behalf of HMIT here that the Debtor could not do so? HMIT and Dondero will never be able to plausibly reconcile their contradictory positions.[18]

Highland CLO Funding, Ltd. ("HCLOF"), which held substantial MGM debt and equity." (ROA 006250, Original Comp. ¶35.)

[15] (ROA 005883-005898.) HMIT and Dondero will never be able to plausibly explain why Dondero said nothing about Seery's alleged misuse of the MNPI when objecting to the HarbourVest settlement.

[16] *See CLO Holdco Ltd.'s Objection to HarbourVest Settlement* [Bankr. Docket No. 1707].

[17] (ROA 006242-006268.)

[18] CLO Holdco's attempt to acquire HarbourVest's interest in HCLOF was not Dondero's only attempt to benefit from the actual MNPI he held as a member of the MGM Board. Dondero owned millions of shares in a fund, NXDT, that he managed and that directly owned shares in MGM. During the Hearing, Dondero admitted that in late 2020 and into January 2021, while indisputably in possession of MNPI, he authorized a tender offer by NXDT to his considerable personal benefit. (ROA 009633-009642.) HMIT and Dondero will never be able to plausibly explain Dondero's conduct.

G. The MGM E-Mail Did Not Contain MNPI

33. HMIT's claims are also not colorable because "the MGM Email did not disclose information to Seery that was not already made available to the public at the time it was sent." (ROA 000850.) "[N]o one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed 'material interest' in acquiring MGM." *Id*. at 851.

34. The Bankruptcy Court quoted several published reports from 2020 that tightly tracked with the substance of the MGM E-Mail. (*Id*.) For example, the *Wall Street Journal* reported in October 2020—nearly two months before Dondero sent the MGM E-Mail—that MGM's largest shareholder, Anchorage Capital Group ("Anchorage"), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as MGM's Chairman. The article reported that "[i]n recent months, Mr. Ulrich has said he is working toward a deal," and specifically identified Amazon and Apple as among four possible buyers. (*Id*. (citing ROA 005840-005846); s*ee also* ROA 005830-005839.)

35. The Bankruptcy Court also found that qualitatively better information concerning MGM was "fully and publicly disclosed to the market in the days and weeks that followed" the MGM E-Mail. (ROA 000852.) For example, on December 21, 2020—just two business days after Dondero sent the MGM E-Mail—the *Wall*

Street Journal (a) reported that MGM had "tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process" and had "a market value of around $5.5 billion," and (b) reiterated that Anchorage was under pressure to sell and that "Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers." (*Id.* at 000852-000853 (citing ROA 005847-005851.); *see also* ROA 005852-005854, ROA 005855-005858, ROA 005859-005875.) The December *Wall Street Journal* article thus contained better information than Dondero's MGM E-Mail.

36. Based on extensive published reports, the Bankruptcy Court properly found that the MGM E-Mail did not contain MNPI—but that even if it did, even better information was disclosed promptly thereafter.

H. No HCMLP Entity Traded Any MGM Securities

37. HMIT seeks to bring an "insider trading case" where no trading of MGM securities occurred.

38. The MGM E-Mail was irrelevant to the HarbourVest settlement because the evidence adduced proves (a) the terms of the settlement of HarbourVest's bankruptcy claim were agreed upon before Dondero sent the MGM E-Mail;[19] (b) the value of HarbourVest's interest in HCLOF was determined by a November valuation based on outside third-party portfolio valuations and was later

[19] (ROA 009722-009725.)

validated by year-end independently audited financial statements;[20] and (c) HCLOF did not own any MGM securities.[21]

39. Moreover, as the Bankruptcy Court found after questioning Seery, HCMLP "and entities it controlled did not sell their MGM stock while the MGM-Amazon deal was under discussion and/or not made public, but, instead, they tendered their MGM holdings in connection with, and as part of, the ultimate MGM-Amazon transaction after it closed in March 2022." (ROA 000853, 009750-009756.)

I. Neither HMIT nor the Estate Were Damaged by the Claims Purchasers' Acquisition of the Claims

40. HMIT refers to the claims purchased by Farallon and Stonehill as "Disputed Claims," but these bankruptcy claims were not disputed when the Claims Purchasers bought them. To the contrary, they had been previously allowed by the Bankruptcy Court in a fixed dollar amount: "the claims acquired by the Claims Purchasers were acquired by them after extensive litigation, mediation, and settlements were approved by the bankruptcy court and after the original claims-holders had voted on the Plan and after Plan confirmation." (ROA 000837; *see also Id*. at 000862.)[22]

[20] (ROA 009725-009729, ROA 005876-005878, ROA 005879-005882, ROA 006574-006621.)

[21] (ROA 009671-009672.)

[22] Even HMIT acknowledges that "Seery obtained bankruptcy court approval for settlements" that resulted in allowed claims for the Sellers. *See* HMIT Br. at 7-8.

41. Consequently, the purchase and sale of the allowed Claims had no economic impact on the estate or on HMIT as the holder of unvested, contingent interests in the Trust. The estate will distribute the exact same amount to Farallon and Stonehill that it would have distributed had the Sellers retained the Claims for their own benefit.

J. Sufficient Public Information Existed To Justify The Claims Purchases

42. HMIT falsely contends that "the only public information relating to the Debtor's financial condition was pessimistic, including that holders of Class 8 claims were projected to receive 71.32% on account of their claims and holders of Class 9 claims were projected to receive nothing," such that HMIT contends that Farallon's and Stonehill's decision to purchase the Claims could only be justified by their receipt of MNPI. HMIT Br. at 9-10. HMIT's contentions did not withstand scrutiny.

43. ***First***, the "UBS claims were not acquired until August 2021, long after the alleged 'quid pro quo' was supposedly agreed upon and the MGM-Amazon deal was announced in the press in late May 2021." (ROA 000864 n.95 (citing ROA 005901-005903)). Since the Claims Purchasers bought the UBS claims after the MGM-Amazon deal was announced, the MGM-E-Mail could not have plausibly been a factor in their decision to do so.

44. ***Second***, because the Claims Purchasers bought the Claims at a steep discount relative to projected values, the Claims Purchasers stood to gain tens of

millions of dollars—or, as the Bankruptcy Court concluded, "nearly 30% on their investment"—if HCMLP merely met the projections.[23] Further, the "Claims Purchasers would make even more money if Highland beat its projections, because they also purchased the Class 9 claims and would therefore capture any upside." (*See* ROA 000863-000864.)

45. ***Finally***, while HMIT insists that there was insufficient public information to justify Farallon's and Stonehill's purchases, Dondero also admits that he offered pay them a 30% premium over their purchase price. (ROA 009644-009665.) If the Claims Purchasers had no rational basis to buy the Claims, how will HMIT and Dondero ever plausibly explain Dondero's supposed decision to offer the Claims Purchasers a substantial premium over their purchase price?

[23] The Bankruptcy Court's math is simple. As set forth in the following chart, the Claim Purchasers would have received a 30% gain on their investment based solely on the projected recovery of 71.32% for Class 8 claims disclosed in connection with Plan confirmation:

Claim Seller	Claim Purchaser	Class 8 Claim Amount	Projected Proceeds*	Alleged Purchase Price	Expected Gain	Expected Gain %	IRR
Redeemer	Stonehill	$137.7	$98.2	$78.0	$20.2	26.0%	24.2%
Acis	Farallon	$23.0	$16.4	$8.0	$8.4	105.1%	98.6%
HarbourVest	Farallon	$45.0	$32.1	$27.0	$5.1	18.9%	17.5%
TOTALS (weighted average):		$205.7	$146.7	$113.0	$33.7	29.9%	27.8%

* "Projected Proceeds" is the projected recovery on Class 8 claims of 71.32% multiplied by the face amount of the claim.

Given the discounts, as a matter of arithmetic, the Claims Purchasers stood to profit, albeit more modestly, even if the reorganized Debtor fell well short of projections.

K. Seery's Compensation Was the Product of Arm's-Length Negotiations, so There Could Be No "*Quid Pro Quo*"

46. HMIT's claims are not colorable because HMIT lacks *any* basis to allege that Seery was "able to plant friendly allies onto the Oversight Board to rubber stamp [his] compensation demands," the "*quo*" of the alleged "*quid pro quo*." [Original Motion ¶22); Proposed Amended Comp. ¶¶ 4, 16, 47, 54, 71, and 77]. In fact, the indisputable evidence adduced at trial established that Seery's incentive compensation plan is aligned with the interests of the Trust's beneficiaries and was the product of lengthy, arm's-length, good-faith negotiations.[24]

47. ***First,*** Seery testified (and the Plan documents prove) that his "base salary" of $150,000 per month was fixed by the Plan and the Claimant Trust Agreement (and was exactly the same as the base salary that was approved without objection by the Bankruptcy Court in July 2020 when he was appointed CEO of the Debtor), not by the COB. (ROA 009706-009709.)

48. ***Second***, Patrick (on his own behalf and on behalf of HMIT) and Dondero admitted they had *no* information concerning Seery's compensation plan or how it was determined until the Highland Parties voluntarily disclosed it in

[24] To justify its causes of action, HMIT invented, from whole cloth, a long-standing relationship between Seery and Farallon's and Stonehill's principals. One of the more egregious fabrications is HMIT's allegation that Stonehill's principal, Michael Stern, is on the board of Team Rubicon—a veteran's charity supported by Seery. That is simply false. While there is a Michael Stern on Team Rubicon's board, he is not the Michael Stern that works at Stonehill and has nothing whatsoever to do with Stonehill, HMIT, or the Highland Parties.

opposition to HMIT's Motion for Leave. (ROA 009657-009658, ROA 009766.) Thus, HMIT's claims concerning an alleged "*quid pro quo*" were admittedly based on rank speculation.

49. ***Third***, Seery testified that the agreed-upon incentive compensation plan for him and HCMLP's remaining employees was the product of "considerable negotiations" between him and the COB—including the "active involve[ment]" of the COB's independent member, Richard Katz—spanning a nearly five-month period. Seery's testimony was corroborated by documentary evidence showing the exchange of multiple proposals and counterproposals concerning the structure and amount of the incentive compensation plan. (ROA 006139-006141, ROA 006144-006149, ROA 006568-006573.) (the "Documentary Compensation Evidence").)

50. The Documentary Compensation Evidence includes Board minutes, contemporaneous e-mails between Seery and the COB (again, with the active participation of the independent member), and the final agreement. These documents directly contradict the existence of any "*quid pro quo*" or that Seery and the COB did anything but fulfill their duties by vigorously negotiating an incentive compensation plan that aligned the interests of Highland's employees (including Seery) with the Trust's beneficiaries.

L. Dondero's Changing Recollections Prove That HMIT's Allegations Are Contrived

51. Dondero testified that he had three separate conversations with representatives of Farallon in May and June 2021 concerning their purchase of certain claims. Between that time and January 2023, Dondero created five different written versions of his recollections of those conversations (collectively, "Dondero's Statements"), four of which were statements submitted in connection with the Rule 202 proceedings. Read chronologically, Dondero's Statements reflect an evolving tale and demonstrate that HMIT's case is based on fabricated "facts" derived from Dondero's subjective speculation—exactly the type of litigation the Gatekeeper Provision was intended to prevent.

52. Dondero's Statements include:

- Dondero's handwritten notes ("Dondero's Notes") allegedly taken of conversations he claims to have had with representatives of Farallon in May and June 2021 concerning their purchase of certain claims;
- Dondero's *Verified Petition to Take Deposition Before Suit and Seek Documents*, filed on July 22, 2021 (Cause No. DC-21-09534) (ROA 005350-005358.) ("Dondero's First Petition");
- Dondero's *Amended Verified Petition to Take Deposition Before Suit and Seek Documents*, filed on July 22, 2021 (Cause No. DC-21-09534) (ROA 005359-005372) ("Dondero's Amended Petition");
- *Declaration of James Dondero*, sworn to on May 31, 2022, and filed in support of Dondero's Amended Petition (ROA 005373-005549.) ("Dondero's First Declaration"); and

- *Declaration of James Dondero*, sworn to on February 15, 2023, and filed in support of HMIT's Rule 202 Petition (ROA 005595-005600.) ("Dondero's Second Declaration").

53. Although Dondero's Notes were supposedly "intended to be a written record of the important points from the telephone conversations" between Dondero and Farallon, Dondero conceded that the Notes (a) ***do not*** mention MGM; (b) ***do not*** state that Farallon told Dondero that they were "optimistic about MGM"; (c) ***do not*** state that Seery shared MNPI with Farallon; (d) ***do not*** describe or refer to any *quid pro quo*; and (e) ***do not*** refer to Seery's compensation. (ROA 000857.)

54. Further, even though HMIT's claims are ***all*** premised on the alleged "*quid pro quo*," Dondero also admitted (a) he had no "personal knowledge as to how Seery's compensation package . . . was determined because he was 'not involved,'" (ROA 000857 (citing ROA 009657-009658, 009665-009666.)), and (b) the idea that Farallon traded on MNPI originated with him, not Farallon. (ROA 009648.) Taken together, these admissions prove that HMIT's claims are based on pure speculation, not evidence.

55. A cursory review of the remainder of Dondero's Statements show how Dondero's speculative theories have now morphed into so-called "facts." For example, it was not until February 2023—more than 20 months after Dondero allegedly spoke with Farallon—that Dondero alleged for the first time that Farallon's

representatives "stated that they were particularly optimistic because of the expected sale of MGM." (ROA 000860 (citing ROA 005595-005600 ¶4).)

56. HMIT could not plausibly (a) explain why ***it took five tries*** before Dondero swore that he was told that Farallon purchased claims because of MGM, or (b) resolve the obvious conflict between that statement in Dondero's Second Declaration and (i) Dondero's admission that the idea that Farallon traded on MNPI originated with him and not Farallon, and (ii) the omission of any reference to "MGM" in Dondero's Notes.

57. In sum, the evidence at the Hearing, Dondero's own statements, and HMIT's own Complaint all demonstrate that HMIT's claims do not meet the "colorability" standard.

ARGUMENT

A. The Bankruptcy Court Correctly Held that HMIT Lacks Standing Under Delaware Law to Assert Its Proposed Claims[25]

1. HMIT Lacks Standing to Bring a Derivative Action

58. HMIT acknowledges that Delaware law governs whether HMIT may proceed derivatively on behalf of the Trust, a Delaware trust, and the Debtor, a Delaware limited partnership. (HMIT Br. at 34.) The Bankruptcy Court applied

[25] The Bankruptcy Court held that HMIT lacks both constitutional and prudential standing. (ROA 000900-000917.) This Section addresses only prudential standing. To avoid duplication, the Highland Parties do not address constitutional standing, which is separately addressed by the Claims Purchasers.

Delaware law and correctly held that HMIT lacked standing to sue derivatively on behalf of either entity.

59. Under the Delaware Statutory Trust Act ("DSTA"), which governs the Trust, only parties that are "beneficial owners" of a trust continuously from "the time of the transaction of which the plaintiff complains" through "the time of bringing the action" may sue derivatively on behalf of the trust. 12 Del. C. § 3816(b); *see also Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *19 n.123 (Del. Ch. June 15, 2011), *aff'd,* 38 A.3d 1254 (Del. 2012). The DSTA defines the phrase "beneficial owner" to mean "any owner of a beneficial interest in a statutory trust," with "the fact of ownership to be determined and evidenced . . . ***in conformity to the applicable provisions of the governing instrument of the statutory trust***." 12 Del. C. § 3801(a) (emphasis added). The Trust's "governing instrument"—the Claimant Trust Agreement ("CTA")—expressly states that the Trust's "sole beneficiaries" are the "Claimant Trust Beneficiaries," which are defined in the CTA and the Plan to include only holders of "Allowed General Unsecured Claims" (*i.e.*, "Class 8" claims) and holders of "Allowed Subordinated Claims" (*i.e.*, "Class 9" claims). (CTA §§ 2.8, 1.1(h); Plan Art. I.B.44.) HMIT does not hold any Class 8 or Class 9 claims and therefore is not a beneficial owner of the Trust. HMIT holds only contingent "Class 10" and "Class 11" claims, which cannot vest until "after Class 8 and Class 9 claims are paid in full with interest" (HMIT Br. at 8), and are expressly

excluded from the definition Claimant Trust Beneficiaries until that vesting occurs (CTA § 1.1(h); *id.* at Recitals n.2). Because the Class 8 and Class 9 claims indisputably have not been paid in full, HMIT is not a "beneficial owner" of the Trust and may not sue derivatively on its behalf.

60. HMIT has no response to the CTA's and DSTA's clear definitions of ownership and pretends they do not exist. HMIT selectively quotes the DSTA to omit that ownership is determined "in conformity to the applicable provisions of the governing instrument of the statutory trust." (HMIT Br. at 30–31.) HMIT then falsely asserts that "beneficiary" is "not defin[ed]" in this context and uses non-statutory sources—such as Black's Law Dictionary, Restatement (Third) of Trusts, and a handful of cases that do not discuss derivative standing under the DSTA—to invent a new definition. (*Id.* at 31–32.)[26] The Bankruptcy Court appropriately "follow[ed] the DSTA's direction that [it] determine the 'fact of ownership . . . in conformity to' the [Claimant] Trust Agreement" to hold that HMIT lacks standing to sue derivatively on behalf of the Trust. *In re Nat'l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 190 (Del. Ch. 2020).

[26] For example, HMIT misleadingly claims that "Delaware courts recognize that ***the statute*** 'uses the general term beneficiary, without any language restricting the class of beneficiary to whom it refers.'" (HMIT Br. at 31 (quoting *In re Estate of Tigani*, 2016 WL 593169, at *14 (Del. Ch. Feb. 12, 2016) (emphasis added)). HMIT leaves out that "the statute" referenced in *Tigani* was not the DSTA; it was a statute governing the Chancery Court's power to remove officeholders. 2016 WL 593169, at *14 (citing 12 Del. C. § 3327).

61. HMIT also argues, based on a selective mis-reading of certain financial disclosures, that Highland is "in the money," so HMIT's contingent interests should be deemed to have vested, which would give it derivative standing. (HMIT Br. at 27–29.) This fails as a matter of fact and law.

62. As a matter of fact, the Bankruptcy Court correctly found that HMIT ignores the "voluminous supplemental notes . . . that are integral to understanding the numbers" in the disclosures HMIT purports to rely upon. (ECF No, 3936 at 3). For example, one note explains that the Debtor's assets continue to be depleted by significant legal fees, administrative expenses, and indemnification obligations caused in considerable part by Dondero's relentless litigation tactics, and these substantial future costs are not accounted for in HMIT's speculative and self-serving calculations. (*Id.*)

63. As a matter of law, even if this Court accepted HMIT's bad math, the CTA unequivocally provides that HMIT's contingent claims do not vest until after the Class 8 and Class 9 claims have been paid in full, with interest. (CTA at Recitals n.2.) Because that indisputably has not happened, HMIT lacks standing. HMIT asks this Court to disregard the CTA's plain terms and treat HMIT as vested based vaguely on Seery's alleged "duties of good faith and fair dealing." (HMIT Br. at 34-37.) But none of the authorities HMIT cites provide any precedent for the

extraordinary step of conferring derivative standing on a party that is expressly foreclosed from exercising such standing under governing law.

64. The Bankruptcy Court also correctly held that HMIT lacked standing to sue derivatively on behalf of the Debtor, a Delaware limited partnership. (ROA 000913-00914.) To bring such derivative claims, Delaware law requires that HMIT "must be a partner or an assignee" continuously from "the time of the transaction of which [HMIT] complains" through "the time of bringing the action." 6 Del. C. § 17-1002.[27] HMIT indisputably was not a partner or assignee of the Debtor when it filed the Motion for Leave. HMIT admits that it "held a limited partnership interest" in the Debtor only "[p]rior to the Effective Date" on August 11, 2021. (HMIT Br. at 30.) "[A]fter the Effective Date, that interest was exchanged" for a contingent Class 10 claim in the Trust "under the CTA." (*Id.*) The Debtor and the Trust are separate legal entities, so HMIT's ownership in the Debtor was extinguished on the Effective Date and it "los[t] standing to continue a derivative suit" on behalf of the Debtor.[28]

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[27] The Fifth Circuit's decision in *Louisiana World Expo. v. Fed. Ins. Co.*, 858 F.2d 233 (5th Cir. 1988), "does not apply to a party's right to sue, derivatively, on behalf of the Reorganized Debtor or any entity that is the assignee of the former bankruptcy estate," because "federal bankruptcy law does not confer standing ***where the plaintiff otherwise lacks standing under applicable state law***." (ROA 000908-000909 (emphasis in original).) Even if *Louisiana World* applied, HMIT has not attempted to satisfy the additional requirement that the debtor must have "refused unjustifiably to pursue the claim," which requires courts to conduct a "cost-benefit analysis" as to whether the potential action is "valid and profitable." 858 F.2d at 253 n.20.

[28] Because HMIT lacks standing to sue on behalf of the Trust, HMIT cannot bring a "double derivative" action on behalf of the Debtor by acting through the Debtor's parent, the Trust. *See Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1079–81 (Del. 2011) ("parent level standing is required to enforce a subsidiary's claim derivatively").

El Paso Pipeline GP Co. v. Brinckerhoff, 152 A.3d 1248, 1265 (Del. 2016); *see also Schmermerhorn v. CenturyTel, Inc. (In re SkyPort Global Commcn's, Inc.)*, 2011 WL 111427, at *25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders "lack standing to bring a derivative claim" under Delaware law because they "had their equity interests in the company extinguished pursuant to the merger under the Plan"); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) ("[T]he cancellation of WorldCom shares under the Plan … prevents the required continuation of shareholder status through the litigation") (cleaned up).[29]

2. HMIT Lacks Standing to Bring Direct Claims

65. The Bankruptcy Court correctly held that HMIT's proposed claims are derivative, and not direct, so HMIT lacks standing to pursue its claims directly. (ROA 000914-000916.) Under Delaware law, a claim is direct, rather than derivative, only if a plaintiff's "claimed direct injury [is] independent of any alleged injury to the corporation" and the plaintiff "demonstrate[s] that the duty breached was owed to the [plaintiff] and that he or she can prevail without showing an injury to the corporation." *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1039 (Del. 2004).[30]

[29] HMIT mistakenly asserts that the "bankruptcy court cited no authority holding that a plaintiff fails the 'continuous ownership requirement' when" the plaintiff was a holder of prepetition equity in a debtor; the Bankruptcy Court cited *Schmermerhorn* and *WorldCom*. (ROA 000913 n.222,)

[30] Similarly, in the bankruptcy context, "[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate." *Meridian*

66. HMIT's conclusory assertion it seeks to bring "claims against the trustee of a trust for harms the trustee inflicted specifically upon HMIT" (HMIT Br. at 34) does not convert its derivative claims into direct claims. To the contrary, HMIT admits that "every dollar lost due to Seery's collusion is a dollar lost ***to the Claimant Trust and HMIT***" (*id.* at 28 (emphasis added)), so HMIT's claimed injury is entirely dependent on an injury to the Trust. HMIT also asserts that "a beneficial owner has standing and a right to assert individual claims against a trustee for misconduct and mismanagement," but the authorities HMIT cites to support this broad proposition do not even mention, let alone analyze, the distinction between direct and derivative claims. *See* Restatement (Second) of Trusts § 199 (discussing equitable remedies for trust beneficiaries); *Scanlan v. Eisenberg*, 669 F.3d 838 (7th Cir. 2012) (addressing whether trust beneficiary's claim constituted "injury in fact" for constitutional standing). In any event, as discussed above, HMIT is not a "beneficial owner" within the meaning of the DSTA and the CTA. (*See supra* at ROA 000842) In short, HMIT offers no support for its bald assertion that its proposed claims—the same proposed claims it insists it can pursue derivatively—are direct claims of HMIT.

Cap. CIS Fund v. Burton (In re Buccaneer Res., LLC), 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)).

B. HMIT's *Stern v. Marshall* Argument Fails

67. HMIT cursorily contends that, under *Stern v. Marshall*, 564 U.S. 462 (2011), the Gatekeeper Provision impermissibly allows the Bankruptcy Court to exercise jurisdiction over "non-core" matters. (HMIT Br. at 53.) HMIT is wrong.

68. For starters, HMIT's objection comes far too late. The Gatekeeper Provision was an express feature of the Plan, which the Fifth Circuit has already affirmed in relevant part. Indeed, the Fifth Circuit explicitly endorsed these provisions, holding that the "gatekeeping provisions are sound." *Highland Cap.*, 48 F. 4th at 435. Having failed to timely raise this argument at confirmation, HMIT is barred from raising it now.

69. In any event, HMIT fundamentally misapprehends the Gatekeeper Provision and *Stern*. Contrary to HMIT's contention that the Gatekeeper Provision "do[es] not invoke substantive rights provided by title 11" (HMIT Br. 52), the Gatekeeper Provision is part and parcel of the Plan itself. As the Bankruptcy Court concluded in confirming the Plan—and the Fifth Circuit has affirmed—establishment and enforcement of the Gatekeeper Provision was necessary to allow the Debtor to emerge from Chapter 11 in the first place. (Confirmation Order at 58.) The bogus allegations advanced by HMIT's Motion for Leave demonstrate the wisdom and necessity of such provisions—no rational person would be willing to assume duties for fulfilling the Claimant Trust's objectives without protection from

baseless litigation that HMIT (and other affiliates and allies of James Dondero) have proven all-too-willing to deploy. (*Id*. 57.)

70. Moreover, HMIT's putative lawsuit does not, as HMIT suggests, present mere garden-variety "state law" claims. (HMIT Br. at 52.) Rather, the lawsuit directly challenges actions purportedly taken in connection with implementation of the Plan and the Claimant Trust. The logical conclusion of HMIT's position is that a bankruptcy court lacks "core" jurisdiction to interpret and enforce its own orders and the terms of a confirmed plan, such that the court can offer no protection to even the limited universe of persons directly responsible for execution of their duties under the plan. *Stern* does not support such a sweeping proposition, nor does any other authority.[31]

C. The Bankruptcy Court Correctly Held That HMIT Must Satisfy A *Barton* Doctrine-Like Standard That Is More Demanding Than Rule 12(b)(6)

71. The Bankruptcy Court approved the Gatekeeper Provision, based on factual findings after an evidentiary hearing, on three grounds: (1) "the Supreme Court's 'Barton Doctrine,' *Barton v. Barbour*, 104 U.S. 126 (1881))"; (2) "the notion of a prefiling injunction to deter vexatious litigants[] that has been approved

[31] Moreover, as the Fifth Circuit has held, whether a bankruptcy court has jurisdiction to adjudicate the underlying action is irrelevant to whether the bankruptcy court may act as a gatekeeper. *See Villegas v. Schmidt,* 788 F.3d 156 (5th Cir. 2015); *Highland*, 48 F.4th at 439.

by Fifth Circuit," because "Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation"; and (3) "the effective and efficient administration, implementation and consummation of the Plan." (Confirmation Order ¶¶ 76–81).

72. The Fifth Circuit affirmed that the Gatekeeper is sound under "the '*Barton* doctrine,'" because they "screen and prevent bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness." *Highland*, 48 F.4th at 435, 439. The Fifth Circuit expressly "disagree[d]" that "*Barton* has no application here" where "Highland Capital is neither a receiver nor a trustee." *Id.* at 439 n.17. This Circuit, consistent with the majority of Circuits that have addressed the issue, has held that the *Barton* doctrine continues to apply post-confirmation, *see Foster v. Aurzada (In re Foster)*, 2023 WL 20872 (5th Cir. Jan. 3, 2023), and courts routinely apply the *Barton* doctrine to post-confirmation administrators and trustees. *See, e.g.*, *MF Glob. Holdings Ltd. v. Allied World Assurance Co. (In re MF Glob. Holdings Ltd.)*, 562 B.R. 866 (Bankr. S.D.N.Y. 2017) (applying the *Barton* doctrine to post-confirmation administrator); *In re Swan Transp. Co.*, 596 B.R. 127 (Bankr. D. Del. 2018) (post-confirmation trustees). Thus, HMIT's assertion that applying the *Barton* doctrine to the Gatekeeper Provision is an "impermissible extension of the *Barton* doctrine," which

"is limited to protect court-appointed trustees" (HMIT Br. at 41–42 (capitalization omitted)), is foreclosed by Fifth Circuit precedent.[32]

73. In light of the Fifth Circuit's decision, the Bankruptcy Court correctly applied the *Barton* doctrine standard to HMIT's Motion for Leave to assess whether its claims were "colorable" under the Gatekeeper Provision. (ROA 000919-000925.) Specifically, the Bankruptcy Court adopted the widely cited Third Circuit formulation that:

> [U]nder the *Barton* doctrine, "[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation," . . . [which] "involves a greater degree of flexibility" than a Rule 12(b)(6) motion to dismiss because "the bankruptcy court, which given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit," and "is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor's estate."

(ROA 000922 (quoting *In re VistaCare Grp., LLC*, 678 F.3d 218, 232–33 (3d Cir. 2012)); *see also id.* at 89 n.258 (citing nine Circuit Courts applying the *VistaCare*

[32] Courts around the country apply the *Barton* doctrine to more than just "court-appointed trustees." *See, e.g.*, *Tufts v. Hay*, 977 F.3d 1204, 1209–10 (11th Cir. 2020) (applying *Barton* doctrine to attorneys); *Lowenbraun v. Canary (In re Lowenbraun)*, 453 F.3d 314, 321 (6th Cir. 2006) (same); *Lawrence v. Goldberg*, 573 F.3d 1265, 1270 (11th Cir. 2009) (applying *Barton* doctrine to employees); *Carter v. Rodgers*, 220 F.3d 1249, 1252 & n.4 (11th Cir. 2000) (applying *Barton* doctrine to officers and directors); *Gordon v. Nick*, 1998 U.S. App. LEXIS 21519 (4th Cir. 1998) (applying *Barton* doctrine to general partners).

standard)).[33] Thus, as HMIT acknowledges, a showing of "colorability" requires only that its proposed claims have some "foundation, are not without merit, and are not being pursued for any improper purpose such as harassment." (HMIT Br. at 2, 20, 40 (quoting ROA.000925).) And, HMIT's repeated assertions and selective quotations that the Bankruptcy Court "fabricated a one-off standard" for "this bankruptcy case" (*id.* at 40; *see also id.* at 6, 41) are simply not true.

74. The Bankruptcy Court also referenced (but did not apply) the "vexatious litigant context," which was another basis for the Gatekeeper Provision. (ROA 000924.) While HMIT has not (yet) "been deemed a vexatious litigant" (HMIT Br. at 41), the context is instructive because, much like the Gatekeeper Provision, vexatious litigants must "seek leave to pursue claims" (ROA 000924.) However, the Bankruptcy Court did not treat HMIT like a vexatious litigant who must "show that the claims sought to be asserted have sufficient merit" and that "the proposed filing is both procedural[ly] and legally sound." (ROA 000924 (quoting *Silver v. City of San Antonio*, 2020 WL 3903922, at *1 (W.D. Tex. July 7, 2020))). Rather, as HMIT admits, the Bankruptcy Court applied "the *prima facie* proof

[33] HMIT's authority about the applicability of the *Barton* doctrine in the bankruptcy court (*see* Br. at 42–43 (citing *In re Provider Meds, LP*, 514 B.R. 473, 476 (N.D. Tex. 2014); *Chua v. Ekonomou*, 1 F.4th 948, 954 (11th Cir. 2021))) is irrelevant. The Bankruptcy Court applied the Gatekeeper Provision in light of the *Barton* doctrine and "acknowledge[d] that the *Barton* doctrine itself would not be directly applicable here because HMIT is proposing to bring the Proposed Complaint in the bankruptcy court – the 'appointing' court of Seery." (ROA 000922 n.250).

standard under the *Barton* doctrine" to assess whether HMIT's claims are "not without foundation." (HMIT Br. at 40–41 (cleaned up).)

75. The "*prima facie* case standard" must require "more than" "mere notice-pleading standards." (ROA 000922 (cleaned up; collecting cases)). All claims in federal court are subject to a "the plausibility standards under Fed. R. Civ. P. 12(b)(6)." (HMIT Br. at 44; *see also id.* at 6, 15). If the Bankruptcy Court applied the same standards to a motion for leave, "the leave requirement would become meaningless," which "would eviscerate the protections of the Gatekeeper Provision and Gatekeeper Orders." (ROA 000923 (cleaned up; collecting cases)). HMIT offers no response to the Bankruptcy Court's sound reasoning and no explanation for why the Dondero Entities objected to and appealed the Gatekeeper Provision if, as HMIT contends, it does not require additional review. Instead, HMIT repeats "a bevy of cases" in unrelated contexts that use the word "colorable"—"none of which implicate the *Barton* doctrine and vexatious-litigant concerns that were referenced by the court in the Plan as justifications for the gatekeeping provisions." (ROA 000923 & n.247 (distinguishing cases)); *see, e.g.*, *In re Deepwater Horizon*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly

interpreted class settlement agreement by permitting "claimants [with] no colorable legal claim" to receive awards).[34]

76. Courts "regularly hold evidentiary hearings on motions for leave to determine if the proposed complaint meets the necessary threshold for pursuing litigation." (ROA 000923.). HMIT asserts that "the bankruptcy court should not have required an evidentiary hearing" (HMIT Br. at 44), but "whether to hold a hearing is within the sound discretion of the bankruptcy court." (ROA 000923 (quoting *VistaCare*, 678 F.3d at 232 n.12) (cleaned up)). The Fifth Circuit has never held that "no evidentiary hearing was necessary to determine 'colorability.'" (HMIT Br. at 44 (citing *La. World Exposition v. Fed. Ins. Co.*, 858 F.2d 233 (5th Cir. 1988))). In *Louisiana World*, the Fifth Circuit held only that an "evidentiary hearing was unnecessary ***under the circumstances" of that case***, because the company's officers and directors "neither refuted any of the [Creditor] Committee's claims nor objected to them." 858 F.2d at 247 n.15 (emphasis added). In "the context of applying a *Barton* doctrine analysis as to a proposed lawsuit," the Fifth Circuit has repeatedly "affirmed a bankruptcy court's conducting of an evidentiary hearing" without "any

[34] *See also Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant's double jeopardy claim was "colorable" such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at *3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a "colorable claim" against proposed additional defendants in determining whether plaintiff could amend complaint); *Becker v. Noe*, 2019 WL 1415483, at *18 (D. Md. Mar. 27, 2019) (assessing whether plaintiffs "asserted a 'colorable' RICO claim" to "establish *in personam* jurisdiction").

concern that the inquiry was somehow improper." (ROA 000924 (citing *Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at *4 (Bankr. E.D. La. Apr. 11, 2019), *aff'd*, 799 F. App'x 271 (5th Cir. 2020))); *see also Foster*, 2023 WL 20872, at *1 (affirming dismissal of an action to sue a trustee under *Barton* "[a]fter a hearing [by] the bankruptcy court").

D. The Bankruptcy Court Correctly Applied the *Barton* Doctrine Standard That HMIT's Claims Are "Without Foundation"

1. The Record Overwhelmingly Demonstrated That HMIT Failed To Meet The *Prima Facie* Showing Under Barton

77. The Bankruptcy Court correctly exercised its gatekeeping function by denying HMIT's complaint for failure to satisfy the colorability standard, which required HMIT to make a *prima facie* showing that its proposed claims are "not without foundation, are not without merit, and are not being pursued for any improper purpose such as harassment." (ROA 000925.) The Bankruptcy Court, "after considering evidence admitted at the June 8 Hearing, including the testimony of Dondero, Patrick, and Seery, and the numerous exhibits offered by HMIT and the Highland Parties," found that HMIT could not satisfy this standard, and that HMIT's proposed claims fails under any standard. (*Id.*) The Bankruptcy Court's findings are overwhelmingly supported by the record.

78. ***First***, HMIT alleges Seery breached his fiduciary duty to HMIT (which does not exist) by (i) "disclosing material non-public information to Stonehill and

Farallon" before they purchased the Claims and (ii) receiving "compensation paid to him under the terms of the [CTA] since the Effective Date of the Plan in August 2021." (ROA 000926-00927 (citations omitted).) But, as set forth above and as found by the Bankruptcy Court, Seery did not disclose MNPI to any party, and HMIT's allegations to the contrary are "purely speculative [and] devoid of factual support." (ROA 000928-000930). HMIT also wholly failed to show (or even allege) that Seery received excessive compensation in exchange for the delivery of such information (which, again, he did not deliver). As the Documentary Compensation Evidence proves, Seery's compensation was the product of arm's length negotiations with the COB and complied with various Bankruptcy Court orders, including the explicit provisions of the Plan and Claimant Trust Agreement. (*See supra* ¶¶ 46-50). Thus, as the Bankruptcy Court properly found, HMIT's allegations that Seery's compensation was "excessive" and not "arm's-length" were "completely speculative, without any foundation whatsoever, and lack merit" and "are also simply not plausible." (ROA 000930.)

79. HMIT's allegations of breach of fiduciary duty also fail as a matter of law. (*See infra* ¶¶ 91-96)

80. ***Second***, because HMIT cannot support its allegation of breach of fiduciary duty, its secondary theories of liability fail as a matter of law. (*See infra* ¶¶ 97-99)

81. ***Third***, HMIT's allegations of "civil conspiracy" against Seery and the Claims Purchasers also fail. HMIT's allegations of civil conspiracy are premised on the alleged *quid pro quo* pursuant to which Seery is alleged to have provided MNPI in exchange for excessive compensation. In other words, HMIT's allegations are, again, "based entirely on Dondero's speculation and unsupported inferences" and are not colorable. (ROA 00931.) As discussed above, there was no disclosure of MNPI or any *quid pro quo*. (*See supra* ¶¶ 33-36; 46-50).

82. To avoid the facts, HMIT alleges there *must* have been a conspiracy because otherwise "[i]t made no sense for the [Claims] purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk." (ROA 000932.) (citations omitted). HMIT's allegations about potential profit are wholly speculative and contradicted by actual facts and basic arithmetic. As found by the Bankruptcy Court, the Claims Purchasers would have realized an approximately 30% return on their investment based on the projected recoveries to Class 8 creditors disclosed in connection with confirmation of the Plan. *See supra* ¶¶ 33-36; (ROA 000932-000934.) *Highland Parties' Reply in further Support of their Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully* (ROA 009446-009455.) Moreover, if the Claims Purchasers factored in the potential upside from the MGM sale (which information was publicly available *prior* to the acquisition of

any claims by the Claims Purchasers (*see supra* ¶¶ 33-36), their potential returns would have been even greater.

83. HMIT's allegations about Farallon and Stonehill's due diligence process are also controverted by the clear factual record. HMIT's allegations "that ***Farallon*** 'conducted no due diligence,' are based on Dondero's speculation" and are "contradicted by the testimony of Seery." (ROA 000933-000934.) (emphasis in original).) "[T]here are no allegations" regarding "whether Stonehill conducted due diligence," and "Patrick testified that neither he nor HMIT had any personal knowledge of how much diligence Farallon or Stonehill did prior to acquiring the Purchase Claims." (*Id.*) HMIT's allegations about an alleged civil conspiracy are completely speculative, unfounded, and not colorable.

2. HMIT's Miscellaneous Theories Fail

84. HMIT argues it has constitutional standing because it has viable equitable remedies under theories of (i) equitable disallowance, (ii) unjust enrichment, (iii) declaratory relief, (iv) disgorgement and constructive trust, and (v) punitive damages.[35] HMIT incorrectly pleaded a number of these "remedies" as causes of action. Regardless, none of these remedies are available under applicable law.

[35] In the Bankruptcy Court, HMIT also alleged equitable tolling. HMIT has not raised that issue in this appeal and has therefore waived it. *Highland Cap. Mgmt. Fund Adv., L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 57 F.4th 494, 500-01 (5th Cir. 2023).

85. **Equitable Disallowance**. Equitable disallowance, like equitable subordination,[36] is contingent on Seery having a bankruptcy claim, but Seery—an independent with no connection to the Debtor before he was appointed as an independent director—has no such claim. (Complaint ¶¶ 82-87). In any event, the Fifth Circuit has expressly rejected equitable disallowance as a remedy available under the Bankruptcy Code. *See Benjamin v. Diamond (In re Mobile Steel Co.)*, 563 F.2d 692, 699 (5th Cir. 1977) ("[E]quitable considerations can justify only the subordination of claims, not their disallowance");[37] *SED Holdings, LLC v. 3 Star Props.*, LLC, 2019 WL 13192236, at *5 (S.D. Tex. Sept. 11, 2019) ("[T]he claim may only be subordinated, but not disallowed").

86. HMIT cites *Pepper v. Litton*, 308 U.S. 295 (1939), and *In re Adelphia Communications Corp.*, 365 B.R. 24 (Bankr. S.D.N.Y. 2007), to support its

[36] If equitable subordination were relevant—and it is not—it is black letter law that a court may not subordinate a claim to an equity interest. *See, e.g.*, *In re Perry*, 425 B.R. 323, 380 (Bankr. S.D. Tex. 2010) ("Under the express language of 11 U.S.C. § 510(c), the Court may not subordinate a claim to an equity interest; it may only subordinate one claim to another claim and one equity interest to another equity interest."); *In re Winstar Commc'ns, Inc.*, 554 F.3d 382, 414 (3d Cir. 2009) ("Finally, Lucent contends that the Bankruptcy Court's equitable subordination holding was inconsistent with the Bankruptcy Code because § 510(c) does not permit the subordination of debt to equity. We agree.").

[37] HMIT argues *In re Mobile Steel Co*., did not foreclose equitable disallowance if the facts warrant it. HMIT Br. at 38. HMIT misquotes *Mobile Steel*. The full quotation from *Mobile Steel* is: "If the claimant's inequitable conduct is directed against the creditors, they are fully protected by subordination. If the misconduct directed against the bankruptcy is so extreme that disallowance might appear to be warranted, then surely the claim is either invalid or the bankruptcy possesses a clear defense against it …. ***Thus, where the bankrupt is the victim it has an adequate remedy at law. It follows that disallowance of a wrongdoer's claim on nonstatutory grounds would be an inappropriate form of equitable relief.***" *Mobile Steel*, 563 F.2d at 699 n.10. (emphasis added).

equitable disallowance claim. HMIT's citations are inapposite. *First*, and as set forth above, Fifth Circuit case law is crystal clear and precludes equitable disallowance. *Second*, in 2014, the Supreme Court in *Law v. Siegel* confirmed that a Bankruptcy Court's equitable powers are limited, holding a bankruptcy court cannot, through equity, "contravene specific statutory provisions." 571 U.S. 415, 421 (2014); *see also United Staters v. Sutton*, 786 F.3d 1305, 1308 (5th Cir. 1986) (finding 11 U.S.C. § 105(a) does not create a "roving commission" for a bankruptcy court "to do equity"). To the extent *Adelphia* was ever good law, following *Law*, it has effectively been overturned by the Southern District of New York. *See, e.g.*, *In re LATAM Airlines Grp. S.A.*, 2022 Bankr. LEXIS 1178, at *28 n.25 (Bankr. S.D.N.Y. Apr. 29, 2022) ("[S]ection 502(b) specifically enumerates the bases upon which the Court may disallow a claim and thus limits the Court to those bases when adjudicating an objection to a claim. The conduct of a creditor is not among those bases"); *In re Bernard L. Madoff Inv. Sec. LLC*, 515 B.R. 117, 157 (Bankr. S.D.N.Y. 2014) (a court "cannot disallow an otherwise valid claim based on general principles of equity"); *Harbinger Cap'l Partners LLC v. Ergen (In re Lightsquared Inc.)*, 504 B.R. 321, 339 (Bankr. S.D.N.Y. 2013) ("[T]his Court holds that the Bankruptcy Code … does not permit equitable disallowance of claims that are otherwise allowable under section 502(b) of the Bankruptcy Code"); *see also Opioid Master Disbursement Tr. II v. Coviden Unlimited Co. (In re Mallinckrodt PLC)*, 2024 Bankr. LEXIS 104, at

*176-80 (D. Del. Jan. 18, 2024) ("[T]he Trust points to a series of cases that begin with *Pepper v. Litton* … [that] conclude that equitable disallowance remains a viable remedy …. But the vast majority of [those] cases … predate [*Law*] …. [After *Law*,] it [is] sufficiently clear that equitable disallowance is no longer permissible").

87. **Unjust Enrichment; Disgorgement; Constructive Trust**. Under Texas law, "[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasicontractual obligation to repay." *Taylor v. Trevino*, 569 F. Supp. 3d 414 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).[38] Thus, "when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory." *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)). Here, and as found by the Bankruptcy Court, Seery's compensation is governed by express agreements (*see supra* ¶¶ 78–79), so unjust enrichment is unavailable as a theory of recovery. Because unjust enrichment

[38] Under the Plan, Texas law governs HMIT's "claim" for unjust enrichment because it is not a "corporate governance matter." (Plan Art. XII.M.) It also governs HMIT's "claim" for constructive trust, which "is merely a remedy used to grant relief on the underlying cause of action." *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

is unavailable, the remedies of disgorgement and constructive trust are also unavailable.

88. **Declaratory Relief.** HMIT brings "claims for declaratory relief, but a request for declaratory relief is not an independent cause of action, [and] in the absence of any underlying viable claims such relief is unavailable." *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at *2 (S.D. Tex. June 7, 2016) (citing *Collin Cnty. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)). Here, as correctly found by the Bankruptcy Court and discussed above (*see supra* ¶¶ 59-63), the CTA is clear that HMIT is not a "Claimant Trust Beneficiary" and will not be a Claimant Trust Beneficiary unless and until it has vested under the CTA.

89. **Punitive Damages**. HMIT has no basis to seek punitive damages. HMIT abandoned its fraud claim, so its sole claim for primary liability is breach of fiduciary duty. As a matter of Delaware law, the "court cannot award punitive damages in [a] fiduciary duty action." *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing G*esoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff'd* 682 F. App'x 24 (2d Cir. 2017).

3. The Bankruptcy Court Did Not Commit Clear Error In Finding That HMIT Was Doing Dondero's Bidding

90. Because HMIT's factual allegations are contradicted, in their entirety, by the factual record (*see* ¶¶ 26-57 *supra*), and because HMIT lacks standing, there

is no reason to reach the merits of HMIT's proposed Adversary Complaint. However, HMIT failed to adequately allege its claims under any standard. HMIT's claims are not colorable because they lack foundation, and HMIT's "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements" fail to "[]cross the line from conceivable to plausible." *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

E. HMIT Does Not Adequately Allege Any Breach of Fiduciary Duties (Count I)

91. HMIT alleges that Seery breached his fiduciary duties (i) "[b]y disclosing material non-public information to Stonehill and Farallon" before their purchase of certain Highland claims, and (ii) by receiving "compensation paid to him under the terms of the [Trust Agreement] since the Effective Date of the Plan in August 2021." (Compl. ¶¶ 64–67). Under Delaware law, "[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege '(1) that a fiduciary duty existed and (2) that the defendant breached that duty.'" *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at *91 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at *8 (Del. Ch. Feb. 28, 2020)). HMIT fails to plausibly allege either element.

92. ***First***, HMIT's "legal conclusion[]" that Seery "owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate" (Compl. ¶ 63) "do[es] not suffice"

to plausibly allege the existence of any actionable fiduciary relationship. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). Officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders. *See Gilbert v. El Paso Co.*, 1988 WL 124325, at *9 (Del. Ch. Nov. 21, 1988), *aff'd*, 575 A.2d 1131 (Del. 1990) ("[D]irectors' fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups"); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at *11 (Del. Ch. Nov. 7, 2013) (same). Because Seery did not owe any "duty" to HMIT directly and individually, the Complaint fails to state a claim for breach of fiduciary duty to HMIT.

93. ***Second***, to the extent Seery owed any fiduciary duties to the Debtor, he did not breach them by allegedly communicating with Farallon and Stonehill (which he did not). (*See* Compl. ¶ 64). As the Bankruptcy Court held, "What does the Bankruptcy Code dictate regarding claims trading? The answer is nothing.… [Claims trading] ***is mostly a matter of private contract between buyer and seller***." (emphasis in original)). In fact, the Bankruptcy Court correctly recognized that a court only addresses a claims transfer if the seller objects. (CITE (citing Federal Rule of Bankruptcy Procedure 3001(e)(2)). Because none of the Sellers objected to the Claims trades at issue, Seery's alleged actions in connection with them cannot constitute a breach of any fiduciary duties.

94. ***Third***, HMIT's "conclusory allegations" and "legal conclusions" are "purely speculative, devoid of factual support," and therefore "stop[] short of the line between possibility and plausibility of entitlement to relief." *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 384 (Bankr. N.D. Tex. 2011) (cleaned up). As to Seery's discussions with Farallon and Stonehill, HMIT asserts that Seery "disclose[d] material non-public information to Stonehill and Farallon," and they "acted on inside information and Seery's secret assurances of great profits." (ROA 001890-001906 (Comp.) ¶¶ 3, 64; *see also id*. ¶¶ 13–14, 40, 47, 50.) HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, or what "assurances" he made. The few facts HMIT provides contradict its own allegations (and are repeatedly contradicted by the record). The only purportedly "material non-public information" identified in the Complaint is the MGM E-Mail Dondero sent to Seery containing "information regarding Amazon and Apple's interest in acquiring MGM." (ROA 001905 (Comp.) ¶ 45). This information was widely reported in the financial press at the time (*see supra* ¶¶ 30–37), so it cannot constitute MNPI as a matter of law. *See, e.g.*, *SEC v. Cuban*, 2013 WL 791405, at *33 (N.D. Tex. Mar. 5, 2013) (holding that information is not "material, nonpublic information" and "'becomes public when disclosed to achieve a broad dissemination to the investing public'") (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)). HMIT asserts Farallon's and Stonehill's purchases

"made no sense" without access to "material non-public information." (Compl. ¶¶ 3, 50). But HMIT admits that Farallon and Stonehill purchased Highland claims at discounts of 43% to 65% to their allowed amounts, so they were therefore projected to make significant returns based on publicly available estimates in Highland's court-approved Disclosure Statement. (*Id.* ¶¶ 3, 37, 42).

95. As to Seery's compensation, HMIT asserts that it was "excessive" and speculates that compensation negotiations between Seery and the COB "were not arm's-length." (Compl. ¶¶ 4, 13, 54, 74). But those assertions are directly contradicted by the Documentary Compensation Evidence and HMIT (through Patrick) unconditionally admitted it has no information to rebut it. Further, the structure of Seery's post-effective date compensation, which includes a "Base Salary," "success fee," and "severance," was fully disclosed in the Claimant Trust Agreement, which was publicly filed in advance of the Plan confirmation hearing and approved by the Bankruptcy Court and the Fifth Circuit as part of the Plan (*see* ¶¶ 49-50 *supra*).

96. Thus, HMIT fails to allege facts that, even if true (and they are not), support a reasonable inference that Seery breached any purported fiduciary duty to HMIT (of which there is none) or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty. *See Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of

duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]though the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation").

F. HMIT's Theories of Secondary Liability Fail (Counts II and III)

97. HMIT seeks to hold the putative defendants secondarily liable for Seery's alleged breach of fiduciaries duties on an aid/abet theory (Compl. ¶¶ 69–74) and conspiracy theory of liability (*id.* ¶¶ 75–81). As a threshold matter, HMIT has not plausibly alleged any primary breach of fiduciary duties, so it cannot pursue secondary liability for the same alleged wrongdoing. *See English v. Narang*, 2019 WL 1300855, at *36 (Del. Ch. Mar. 20, 2019) ("As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability") (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at *28 (Tex. App. Jan. 25, 2022) ("[A] defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold

at least one of the named defendants liable") (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)).[39]

98. Even if HMIT could pursue secondary liability, it has not plausibly alleged any civil conspiracy (nor could it—HMIT's factual allegations are contradicted by the record and unsupportable). Under Texas law, "civil conspiracy is a theory of vicarious liability and not an independent tort." *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019). "[T]he elements of civil conspiracy [are] "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result." *Id.* at 141 (cleaned up)

99. HMIT has not plausibly alleged any "meeting of the minds." HMIT asserts that "Defendants conspired with each other to unlawfully breach fiduciary duties" (Compl. ¶ 76), which is precisely the sort of "legal conclusion" the Supreme Court held is "not entitled to the assumption of truth." *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66). HMIT repeats four times that Seery provided information to Farallon and Stonehill as a "as a quid pro quo" for "additional

[39] Because HMIT's breach of fiduciary duty claim is governed by Delaware law, its aid/abet theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas); by contrast, "conspiracy is not an internal affair" or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

compensation" (Compl. ¶ 77; see also id ¶¶ 4, 47, 74), but never provides "nonconclusory factual allegations" in support. *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 550 U.S. at 565–66). Instead, all HMIT can do is vaguely allege, "upon information and belief," that Seery "did business with Farallon" and "served on [a] creditors committee" with Stonehill. (Compl. ¶ 48). HMIT also asserts "[u]pon information and belief" that Farallon "conducted no due diligence but relied on Seery's profit guarantees." (*Id.* ¶ 40). These allegations "upon information belief" are "wholly speculative and conclusory," and therefore do "not satisfy the pleading requirements under Rule 8(a)." *Hargrove v. WMC Mortg. Corp.*, 2008 WL 4056292, at *7-8 (S.D. Tex. Aug. 29, 2008) (citing *Twombly*, 550 U.S. at 555).

G. The Bankruptcy Court Did Not Abuse Its Discretion in Its Discovery Rulings

100. HMIT recognizes that the Bankruptcy Court has "discretion regarding what discovery will be allowed" and the "admissibility of expert evidence," which "are reviewed for abuse of discretion." (HMIT Br. at 3–4, 49 (citing *Crosby v. La. Health Serv. & Indem. Co.*, 647 F.3d 258, 261 (5th Cir. 2011); *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 243 (5th Cir. 2002)).) Courts "apply a highly deferential standard of review to discovery matters." *United States v. Corp. Mgmt., Inc.*, 78 F.4th 727, 750 (5th Cir. 2023) (collecting cases). The Bankruptcy Court correctly exercised its discretion to address HMIT's "gamesmanship and deception" and efforts to "hide[]

the ball" throughout fact and expert discovery. *Hernandez v. Results Staffing, Inc.*, 907 F.3d 354, 363 (5th Cir. 2018) (cleaned up).

1. The Bankruptcy Court Properly Exercised Its Discretion To Limit Discovery

101. As discussed above (*see supra* ¶¶ 12-15), the purpose of the Gatekeeper Provision is to protect covered parties from harassing and costly litigation. Accordingly, on HMIT's Motion for Leave, the Bankruptcy Court properly exercised its discretion by granting reciprocal but limited discovery by permitting each side to depose the other's primary witness (*i.e.*, Seery and Dondero).[40] (Dkt. No. 3800.) In doing so, the Bankruptcy Court properly rejected HMIT's attempt to use its Motion for Leave to engage in a wide-ranging fishing expedition reflected in 45 documents requests (including subparts) served on each party and multiple corporate representative depositions covering 30 topics each (Dkt. No. 3788 ¶¶ 7–8 Exs. A–E), massive pre-suit discovery that would have turned the Gatekeeper Provision on its head. The Bankruptcy Court explained that this was "a cart-before-the-horse situation," because it is HMIT's burden to demonstrate that has "a colorable claim or claims in [its] proposed complaints," at which point "normal discovery rules will apply." (May 26, 2023 Conf. Tr. at 46:25–47:4, 52:10–17.)[41]

[40] While HMIT took the opportunity to depose Seery, Appellees did not depose Dondero.

[41] HMIT's authority (*see* HMIT Br. at 49–50) is irrelevant because it arises under the "normal discovery rules," not a gatekeeper or similar provision.

This in no way was a "blanket denial of discovery" preventing "discovery of any kind." (HMIT Br. at 49–50 (cleaned up).)

2. The Bankruptcy Court Properly Exercised Its Discretion by Excluding HMIT's Proffered Expert Testimony

102. The Bankruptcy Court correctly rejected HMIT's attempt to ambush the parties with two previously undisclosed "experts" "roughly 60 hours before the hearing." (June 16, 2023 Order at 14, Dkt. No. 3853.) The Bankruptcy Court recounted "two-and-a half months of activity regarding what type of hearing the bankruptcy court would hold and when," during which "HMIT never raised even the prospect of expert testimony." (Order at 8–10, 12–13.) HMIT acknowledges that "Bankruptcy Rule of Procedure 9014 governs this contested matter" (HMIT Br. at 54), and "FRCP 9014 does include FRCP 26(b)(4)(A)," which "provides that '[a] party may depose any person who has been identified as an expert whose opinions may be presented at trial.'" (Order at 13 (quoting Fed. R. Civ. P. 26(b)(4)(A)).) But, in "reliance on HMIT's representations, which omitted any reference to expert witnesses," the Bankruptcy Court "limited pre-hearing discovery" to two fact depositions (*Id.* at 13–14). By strategically waiting "to disclose the Proposed Experts" until right before the Hearing, HMIT ensured that Highland and Seery did not have "sufficient time to seek to modify the court's prior status/scheduling orders, let alone take two expert depositions." (*Id.* at 14.) Thus, "HMIT's expert evidence was not 'appropriately and timely disclosed,'" and HMIT's assertion that "the

bankruptcy court does not cite any rule or order with which HMIT did not comply" is demonstrably false. (HMIT Br. at 54.)

103. HMIT next claims that the Bankruptcy Court "was required to perform a *Daubert* inquiry," with "a hearing" before excluding its proposed experts. (HMIT Br. at 54–55, 57 (cleaned up).) That is not the law. Under Fifth Circuit precedent, "a district court is not always required to hold a formal *Daubert* hearing; often, it must only articulate its basis for admitting expert testimony." *Johnson v. Thibodaux City*, 887 F.3d 726, 736 n.11 (5th Cir. 2018) (cleaned up).

104. In effort to end-run the Bankruptcy Court's Orders, HMIT filed expert declarations *after* the Hearing in a purported "evidentiary proffer under Rule 103(a)(2)," which HMIT now admits was a strategic effort to paper the record "for purposes of appellate review." (HMIT Br. at 55.) But an "offer of proof" must be "made in ***pretrial*** hearing" or during trial so the "***trial judge*** can reevaluate h[er] decision." 1 Christopher B. Mueller & Laird C. Kirkpatrick, Federal Evidence §§ 1:13–14 (4th ed. 2023) (emphasis added; collecting cases). In any event, Rule 103(a)(2) does apply because "the substance" of the excluded evidence "was apparent from the context." Fed. R. Evid. 103(a)(2). HMIT effectively admitted that the excluded evidence "was apparent from the context," because it attached the same exhibits to its offer of proof that it sought to introduce into evidence at the Hearing, which the Bankruptcy Court reviewed and excluded.

CONCLUSION

For the foregoing reasons, the Bankruptcy Court's orders should be affirmed in their entirety.

Dated: March 6, 2024

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CERTIFICATE OF COMPLIANCE WITH RULE 8015

This document complies with the type-volume limit of Fed. R. Bankr. P. 8015(a)(7)(B)(i), as extended to 14,500 words pursuant to this Court's Order dated January 23, 2024, because, according to Microsoft Word, it contains 14,497 words, excluding the portions of the document exempted by FED. R. BANKR. P. 8015(g).

By: */s/ Zachery Z. Annable*
Zachery Z. Annable

CERTIFICATE OF SERVICE

I hereby certify that, on March 6, 2024, a true and correct copy of the foregoing document was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

/s/ Zachery Z. Annable
Zachery Z. Annable

CASE NO. 3:23-cv-02071-E

IN THE UNITED STATES DISTRICT COURT
FOR THE NOTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: HIGHLAND CAPITAL MANAGEMENT, L.P.,
Debtor

HUNTER MOUNTAIN INVESTMENT TRUST,
Appellant,

v.

HIGHLAND CAPITAL MANAGEMENT, L.P., et al

On Appeal from the United States Bankruptcy Court for the Northern District of Texas, Case No. 19-34054-slg11
The Honorable Judge Jernigan, Presiding

APPELLANT'S REPLY BRIEF

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III. Introduction[1]

HMIT's pleadings establish its constitutional and prudential standing to assert the colorable claims pleaded. HMIT alleged it is a vested beneficiary entitled to sue and asserted plausible tort claims against Appellees for dissipating trust assets to HMIT's and innocent beneficiaries' detriment. Rather than accept those pleadings as true, the bankruptcy court resolved HMIT's claims before it could pursue them—substituting an evidentiary analysis for the pleading-stage analysis the law required, while also denying HMIT any meaningful discovery. In doing so, the bankruptcy court erred as a matter of law.

Appellees raise numerous arguments to avoid this straightforward outcome but ignore the proper standard of review and HMIT's pleadings. For example, Appellees argue that HMIT lacks either constitutional or prudential standing because, purportedly, HMIT's interest under the CTA is "unvested." But HMIT specifically pleaded that it is a vested beneficiary with supporting facts; pleaded that all conditions precedent to suit had been satisfied; and even pleaded for a declaration acknowledging HMIT's vested status. Those pleadings control, and Appellees have

[1] Appellant HMIT uses the same defined terms as used in its Opening Brief, Docket No. 29 ("HMIT Brief"). Appellant refers to the Answer Brief of Appellees, the Highland Parties, (Dkt. No. 35) as the "Highland Brief" and the Brief of Claim Purchaser Appellees (Dkt. No. 34) as the "OP Brief." HMIT refers to Appellees collectively as "Appellees," unless indicated otherwise.

no answer for them. As a matter of law, Appellees may not manipulate the standing analysis by refusing to acknowledge HMIT's vested status and HMIT's pleadings.

Appellees similarly misstep in arguing that HMIT's claims are not "colorable." At least the Outside Purchasers acknowledge that the proper analysis is ***not*** evidentiary [*See* OP Brief, pp.19-20,37]—and, if it were, the bankruptcy court's denial of meaningful discovery would be a problem. Rather, the Outside Purchasers allege that HMIT's pleadings are "speculative" or "conclusory" and therefore not "colorable." *Id.*, pp.21,43. The Highland Parties diverge from the Outside Purchasers on the "evidence" issue, championing a full-blown evidentiary analysis even though HMIT had no meaningful discovery. No Appellee gets it right.

HMIT's pleadings are specific and robust—not bare-bones or formulaic that some courts deem conclusory. Nor are HMIT's pleadings speculative; instead, they allege sufficient factual detail to state plausible claims and allow reasonable inferences of liability. While Appellees may seek to rebut the allegations after discovery and with evidence at a later stage, the sole question now is whether HMIT pleaded colorable/plausible claims under the applicable standard, and HMIT has done so. As for the Highland Parties, they miss the mark entirely—offering an evidentiary-laden analysis perhaps appropriate for a *post-trial* appeal, but not a pre-suit inquiry on HMIT's right to sue at all.

Ultimately, Appellees fail to justify the error and patent unfairness of the bankruptcy court's rulings or its use of a heightened standard of "colorability" that is inappropriate at this early stage. The Court should reverse.

IV. Argument & Authorities

A. HMIT has constitutional standing

The OP Brief challenges constitutional standing as to HMIT's individual claims. Even then, the Outside Purchasers' constitutional standing challenges are incorrect because HMIT adequately pleaded the requisite injury-in-fact, traceability, and redressability.

1. Appellees urge an erroneous standard of review

Initially, Appellees' arguments ignore the controlling legal standard. Constitutional standing at the pleading stage is determined on the pleadings—not evidence or the merits of the pleaded claims. *Gen. Land Office v. Biden*, 71 F.4th 264, 272 (5th Cir. 2023) ("At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim.") (cleaned up) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)); *see Maxim Crane Works, L.P. v. Zurich Am. Ins. Co.*, 11 F.4th 345, 350 (5th Cir. 2021) Stated otherwise, standing arguments based on lack of evidence are *not appropriate at the pleadings stage*. *Lujan*, 504 U.S. at 561.

Despite these controlling authorities, Appellees masquerade merits challenges and fact disputes as constitutional standing challenges. Because HMIT's pleadings control, those arguments are irrelevant.

2. HMIT plausibly pleaded an imminent injury-in-fact

Under the *correct* pleading-centric analysis, HMIT sufficiently pleaded an imminent injury-in-fact because HMIT alleged "general factual allegations of injury" *and more. Lujan,* 504 U.S. at 561. HMIT alleged it suffered an injury-in-fact by the diminution of value of HMIT's interest in the Claimant Trust and because it has been deprived of its GUC Certification (and accompanying rights) evidencing its vested status.[2] Because HMIT effectively alleges it is in the money,[3] every dollar paid to Seery in excessive compensation is one dollar that will never flow (but should flow) to HMIT. No conjecture or speculation is required for the asserted injury, which is not only imminent, but immediate and ongoing.[4]

Moreover, HMIT's Motion to Modify (ROA.10062) sets forth new financial data not available until after the hearing—including previously withheld financial disclosures regarding the value of the estate's assets.[5] This data corroborates

[2] ROA.3339, 3362-67.

[3] ROA.3342.

[4] HMIT demonstrated why its allegations are not speculative or hypothetical, including identifying the *who, when* and *what* to satisfy relevant pleading requirements. HMIT Brief, pp.14,26-27.

[5] Appellees cite the bankruptcy court's ruling that these disclosures were "not materially different

HMIT's pleadings that it was in the money and should have been deemed vested. ROA.10064. This is also true of evidence at the hearing, which corroborated HMIT's pleadings. ROA. 009614-15 (testimony there was well over $100 million in assets available after payment of expenses and Classes 8 and 9 Claims). Appellees presented no contrary evidence.

3. HMIT alleged plausible, colorable facts supporting "traceability"

The Outside Purchasers argue that the asserted injury is not *traceable* to their challenged conduct because they owed no duties and were not statutory insiders (OP Brief, p.27). Both arguments misconstrue HMIT's claims.

HMIT alleged that Seery and the Outside Purchasers agreed to a *quid pro quo* arrangement, including by accepting MNPI, rubber-stamping Seery's ongoing compensation, aiding and abetting Seery's breaches of fiduciary duty, and delaying payment of Classes 8 and 9, which injured the Claimant Trust and HMIT. That injury is directly tied and traceable to the misconduct alleged.

To avoid this outcome, the Outside Purchasers rely on cases addressing a purported lack of duties owed by claims purchasers to bankruptcy estates in general. (OP Brief, pp.28-29). Those authorities are irrelevant because they do not address

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than information what was already on file in the bankruptcy." ROA.1046. The bankruptcy court was incorrect. The balance sheet attached to HMIT's Motion to Alter (ROA.10070) was not disclosed before the June 8 Hearing, and it included new financial disclosures for which HMIT was not allowed prior discovery or analysis. Regardless, if the disclosures were materially the same, each would only confirm that HMIT was "in the money" before the June 8 Hearing.

HMIT's core allegations, which include ongoing conduct, post-Effective Date, that damaged the Claimant Trust and HMIT.[6] This includes the Outside Purchasers' aiding and abetting breaches of fiduciary duty.[7]

A core element of HMIT's standing allegations is that Appellees' wrongful conduct directly injures the Claimant Trust by depleting its assets and directly injures HMIT because it delays HMIT's GUC Certification under the CTA.[8] The scheme to delay and prevent HMIT's GUC Certification and vesting as a "Claimant Trust Beneficiary" separately infringed on HMIT's rights under the CTA.[9] This Court need not look any further than the Appellees' briefs to evidence this injury—where Appellees urge this Court to find no standing, relying on Seery's bad faith refusal to perform a ministerial act he should have performed long ago.

4. HMIT has asserted plausible, colorable remedies

HMIT's proposed Complaint seeks viable remedies to redress the asserted injuries, some of which stem from the bankruptcy court's equitable powers of

[6] The bankruptcy court's Order Denying Leave mischaracterized HMIT's claims by focusing on general characterizations of claims trading as "highly unregulated." ROA.894. The bankruptcy court's determination that Outside Purchasers' "lack of due diligence in this context does not reasonably seem suspicious" is also not only an improper finding at the pre-pleading stage, but also non-sensical that Outside Purchasers would invest over $160 million without due diligence. ROA.9592-95, 9602-04.

[7] HMIT does not concede that the Outside Purchasers are not statutory insiders. But it is irrelevant to the outcome. The Outside Purchasers do admit they became fiduciaries after the Effective Date when HMIT's claims fully accrued. OP Brief, p.34.

[8] ROA.3335, 3339, 3341-42, 3357, 3359, 3363.

[9] *See* ROA.3335, 3339, 3362-63.

subordination and equitable disallowance. *In the Matter of Mobile Steel Co*, 563 F.2d 692, 699 n.10 (5th Cir. 1977); *accord Pepper v. Litton*, 308 U.S. 304-11 (1939). Others arise under common law.

The Outside Purchasers' argument that equitable subordination is unavailable under Bankruptcy Code 510(c) presumes HMIT has an equity interest. The Outside Purchasers admit, however, that "the Claims were exchanged for interests in the Claimant Trust." OP Brief, p.32. As a result, Section 510(c) and the Appellees' related authorities are inapplicable.[10] Equitable disallowance is also not precluded as a viable remedy, as the Fifth Circuit suggested in *Mobile Steele*, 563 F.2d at 699 n.10.[11]

Imposition of a constructive trust and disgorgement remain viable remedies. The Fifth Circuit's decision in *King v. Baylor University*, 46 F.4th 344, 367 (5th Cir. 2022), establishes that a party may plead unjust enrichment as a quasi-contract cause of action. As the Fifth Circuit held, "[t]he district court erred by implying that unjust enrichment is a facially invalid theory. Its availability in this circumstance is narrow, ***but the claim exists***." *King*, 46 F.4th at 367 (emphasis added). Thus, Appellees' assertion that unjust enrichment is unavailable misstates the law. *See* OP Brief, p.35.

[10] Outside Purchasers cite *In re Perry*, 425 B.R. 323, 380 (Bankr. S.D. Tex. 2010) and *In re Winstar Commc'ns, Inc.*, 554 F.3d 382, 414 (3d Cir. 2009) to suggest that a claim many not be subordinated to an equity interest; however, these cases are inapposite because they are pre-Effective Date, pre-reorganization cases. Here, there are no longer "claims and "equity interests."

[11] *See* HMIT Brief, pp.37-38.

Here, a constructive trust is also appropriate because the Outside Purchasers and Seery agreed to a *quid pro quo* arrangement for their mutual benefit; no contract governs that agreement. Disgorgement and constructive trust are also appropriate to redress HMIT's injury caused by a breach of fiduciary duties and the aiding and abetting of those breaches. *See* HMIT Brief, p.39. Appellees cite no authority to support their argument that "without equitable disallowance or equitable subordination … there will be nothing to disgorge." OP Brief, p.35. Disgorgement, constructive trust, and unjust enrichment are available under Delaware law regardless of disallowance or subordination. HMIT has alleged that the Claims Purchasers should, at a minimum, "be forced to disgorge all distributions over and above their original investment" in the Disputed Claims. HMIT's Proposed Complaint, ¶¶ 91-93, ROA.3361.

B. HMIT has prudential standing to assert both its individual and derivative claims[12]

[12] The OP Brief addresses the "person aggrieved" test, which is a species of standing applicable to appeals from bankruptcy court orders. OP Brief, p.23. This special bankruptcy appellate standing standard ensures that a party appealing a bankruptcy court order has a direct financial stake in it—and is not a mere bankruptcy participant that is only indirectly affected. ROA.899 (collecting cases). Here, the challenged order *directly* impacts HMIT; HMIT is the primary party harmed by the adverse order. Relatedly, the order "burdens" HMIT's "pocket," (OP Brief, p.37), because HMIT has alleged that it is in in the money—and the bankruptcy court's order allows depletion of further assets that should flow directly down to HMIT. Thus, HMIT's appellate standing is different from that of other former equity in other unrelated proceedings, which the bankruptcy court cited. ROA.899. HMIT asserted allegations that it has been directly and adversely affected pecuniarily. ROA.003335;ROA.003341,ROA.003357-67;ROA.001854-55;ROA.001880-82.

Appellees' next argument that HMIT is not a "beneficial owner" with prudential standing, either individually or derivatively, fails as a matter of both procedural and substantive Delaware law.

1. Appellees again urge an erroneous standard of review

Appellees attack prudential standing by relying upon factual allegations outside the four corners of HMIT's proposed Verified Complaint. ROA.003331-3367. Because the *pleadings* control, Appellees' arguments, and the bankruptcy court's adoption of them, are erroneous. *See Blanchard 1986, Ltd. v. Park Plantation, LLC,* 553 F.3d 405, 409 (5th Cir. 2008) (dismissal for lack of standing should be determined under Rule 12 pleading standards). Indeed, when prudential standing is resolved "at the motion-to-dismiss stage," the challenge is appropriately raised under Federal Rule of Civil Procedure 12(b)(6), and a court's "inquiry is limited to whether the plaintiff's complaint plausibly states a non-speculative claim for damages." *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 795-805 & nn. 2, 41 (5th Cir. 2011).

Here, HMIT alleged that its interest under the CTA is fully vested as a "Claimant Trust Beneficiary." *See* Proposed Complaint, ¶24 [ROA.3342]. The proposed Complaint also included factual allegations that:

- HMIT's "vested" status derived from "the current value of the Claimant Trust Assets;" ¶24

- Seery unreasonably delayed recognition of HMIT's vesting; ¶15
- all conditions precedent had been satisfied; ¶102 and
- requested declaratory relief to acknowledge its individual and derivative standing. ¶99(f)

Each of these allegations sufficiently pleaded HMIT's prudential standing. *Lujan*, 504 U.S. at 561 ("At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice…"). At this early stage, and particularly in the absence of meaningful discovery, HMIT's pleadings should have been taken as true. *Harold*, 634 F.3d at 795-805 & nn.2, 41.

As a matter of law, HMIT's prudential standing also derives from its capacity as a "beneficial owner" under the Delaware Statutory Trust Act ("DSTA"). Its standing as a vested beneficiary under the CTA is separately based on well-pleaded factual allegations that it was in the money and a breach of Seery's duty of good faith.[13] These factual averments should have been accepted. *See Morris v. Spectra Energy Partners (DE) GP, LP*, 246 A.3d 121, 136 (Del. 2021).

But, here, the bankruptcy court disregarded Fifth Circuit precedent by imposing an erroneous burden in an improper evidentiary proceeding. *See In re*

[13] HMIT effectively pleaded Seery has breached his duties of good faith and fair dealing, including his scheme "to delay recognition of HMIT's vesting of its interests under the CTA," disclosing MNPI to the Outside Purchasers in order to receive excessive compensation, and attempting to prevent HMIT from asserting its rights as a beneficial owner and as a vested contingent beneficiary. ROA.3335, 3339, 3341, 3348-54; HMIT Brief, p. 45.

Deepwater Horizon, 732 F.3d 326, 340-41 (5th Cir. 2013) (a "colorable" claim is one with "some possible validity") (citation omitted), *Harold H. Huggins Realty.*, 634 F.3d at 795-805 & n. 41 ("inquiry is limited to whether the plaintiffs' complaint plausibly states a non-speculative claim for damages"); *see also* ROA.904-905. The result was reversible error.

Although HMIT alleged it was in the money (*i.e.,* its interest should be declared as vested), the bankruptcy court and Appellees ignored this and related allegations. Highland Brief, ¶¶61-62. Regardless, even if "evidence" is considered, Appellees offered no evidence rebutting HMIT's "math" placing it "in the money."[14] In sum, the bankruptcy court relied upon a record devoid of evidence that the estate's assets were insufficient to pay Classes 8 and 9 in full—when HMIT's pleadings claim otherwise and when the *only* information Appellees had disclosed showed more than sufficient assets.[15]

2. Appellees fail to address HMIT's allegations that Seery purposefully delayed GUC Certification

Even assuming the bankruptcy court could look beyond HMIT's pleadings (it could not), the bankruptcy court still erred when it denied HMIT's prudential standing. Appellees (and the bankruptcy court) rely on Section 1.1(h) of the CTA,

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[14] *See* ROA.10065-66.

[15] ROA.10065-66.

arguing that because the "vesting" condition (issuance of the GUC certification), which they control, never occurred, then HMIT cannot have prudential standing. Highland Brief, p.28-29. But the foundation of this argument is illusory.

Seery, as Claimant Trustee, owed (and still owes) HMIT duties of good faith and fair dealing, which cannot be waived or disclaimed under the DSTA. DEL. CODE. ANN. TIT. 12, § 3806(c). Under binding Delaware law, Seery cannot unilaterally (and knowingly) prevent the occurrence of a condition precedent to insulate himself and deprive HMIT of expectancies under the CTA. *See Dunlap v. State Farm Fire and Cas. Co.*, 878 A.2d 434, 442 (Del. 2005). This legal principle applies with extra force here, where HMIT seeks a declaration that HMIT's interests under the CTA were fully vested and alleged that Seery is attempting to exhaust financial resources and delay recognition of HMIT's vesting.[16]

The Claimant Trustee is a proposed defendant, and he controls the ministerial act of issuing the GUC Certification triggering the CTA's vesting condition. But, as a trustee of a Delaware statutory trust, Seery has duties set forth in common law, including the duties of loyalty, good faith, and due care. *See* DTSA § 3809; *Rende v. Rende*, No. 2021-0734-SEM, 2023 WL 2180572, at *11 (Del. Ch. Feb. 23, 2023). Although a governing trust agreement (such as the CTA) may disclaim some of these

[16] *See* ROA.3335, 3339, 3362-63.

duties, Delaware law prohibits any disclaimer of the duty of good faith and fair dealing. *In re National Collegiate Student Loan Trusts Litigation*, 251 A.3d 116, 185-86 (Del. Ch. 2020) ("the DSTA forbids parties from eliminating the implied contractual covenant of good faith and fair dealing") (cleaned up) (citing DSTA § 3806(c)).

This duty of good faith is particularly important here, where HMIT's "vesting" status is purportedly dependent upon Seery's control. "Stated in its most general terms, the implied covenant requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain." *Dunlap v. State Farm Fire and Cas. Co.*, 878 A.2d 434, 442 (Del. 2005) (internal quotations omitted); *see Unit Trainship, Inc. v. Soo Line R. Co.*, 905 F.2d 160, 162-63 (7th Cir. 1990) ("[W]here a party's obligation is subject to a condition precedent, a duty of good faith and fair dealing is imposed upon that party to cooperate and to not hinder the occurrence of the condition.").

3. Appellees ignore legal authority rejecting a rigid analysis of standing where a defendant's conduct was undertaken to destroy standing

The Delaware Supreme Court has held that a standing analysis should be more flexible when a defendant controls the facts giving rise to standing. By way of example, although standing to assert derivative claims in the context of mergers

typically requires equity ownership, there are exceptions. One of these exceptions includes when "the merger itself is the subject to a fraud claim**, perpetrated to deprive shareholders of their standing to bring or maintain a derivative action."** *Morris*, 246 A.3d at 129 (Del. 2021) (citing *Lewis v. Anderson*, 477 A.2d 1040 (Del. 1984)) (emphasis added); *SDF Funding LLC v. Fry*, 2021 WL 4519599, at *2 (Del. Ch. Oct. 4, 2021) ("equitable standing . . . dr[aws] upon the principle that equity attempts 'to ... ascertain, uphold, and enforce rights and duties which spring from the real relations of parties.'") (citation omitted). *Morris* stands for the proposition that strict adherence to formulaic standing must yield where the defendant's unfair conduct attempts to destroy standing.

Here, HMIT alleges Seery is attempting to "exhaust financial resources in an effort to delay recognition of the vesting of HMIT's interests." *See* Proposed Complaint at ¶¶ 4-5, 14-16, 24, 74, 99; ROA.3335, 3339-40, 3342, 3359, 3362-63. Every dollar improperly spent on Seery was one less dollar available for distribution to HMIT because Seery was causing delay. This injures HMIT, individually, separate and apart from injuries to the Claimant Trust. Specifically, HMIT alleged that "[a]s part of the scheme, Seery is attempting to delay recognition of HMIT's vesting of its interests under the CTA," and that Seery is continuing self-serving tactics to "exhaust financial resources in an effort to delay recognition of the vesting of HMIT's interests," Proposed Complaint, ROA.3335,3339,3363. *See Shaev v.*

Wyly, 1998 WL 13858, at *4 (Del. Ch. Jan. 6, 1998) (*equitable standing* allowed to challenge excessive compensation of directors because "to deny standing on these facts would insulate defendants from potential liability for their alleged misdeeds"), *aff'd*, 719 A.2d 490 (Del. 1998); *In re AbbVie Inc. Stockholder Derivative Litig.*, No. 9983-VCG, 2015 WL 4464505, at *4 (Del. Ch. July 21, 2015) (reaffirming *Shaev*'s view of equitable standing). If Appellees' arguments were indulged, then Appellees scheme to delay and intentionally prevent HMIT's GUC Certification could prevent HMIT from ever obtaining "standing." Delaware law and policy do not allow this because courts "will not countenance a wrong to stockholders by fiduciaries that is both egregious and irremediable." *In re AbbVie Inc.*, 2015 WL 4464505, at *5.

4. Delaware law confers prudential standing on HMIT under the "Prevention Doctrine"

Delaware law is clear that parties are not allowed to breach duties of good faith and fair dealing and then later harvest the benefits from those breaches. Such is the case here, where Seery refuses to certify HMIT's vested status despite a good faith duty to do so. This is known as the "prevention doctrine," which is derived from the RESTATEMENT (SECOND) OF CONTRACTS, Section 245, which provides:

> Where a party's breach by non-performance contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused.

In *Snow Phipps Group, LLC v. Kcake Acquisition, Inc.*, No. CV 2020-0282-

KSJM, 2021 WL 1714202, at *1 (Del. Ch. Apr. 30, 2021) the Delaware Court of Chancery barred a contracting party from invoking the failure of a condition precedent as an excuse to kill an asset purchase agreement where that party (the buyer) manipulated financial data to prevent the occurrence of the condition precedent, *i.e.*, approval of lender financing. This holding was premised on the conclusion that there was an intent to sabotage the condition precedent. *Id.* at *56.

Here, Seery's failure, delay, and refusal to pay Classes 8 and 9 and issue the GUC Certification in a self-serving attempt to stall HMIT's vesting, is similar to the fact pattern in *Snow Phipps*. *Id.*; *see also Injective Labs Inc. v. Wang*, No. CV 22-943-WCB, 2023 WL 3318477, at *7 (D. Del. May 9, 2023). Here, HMIT has alleged that it is in the money and should be "vested,"[17] and, Appellees cannot alter this reality by parroting that the GUC Certification condition was not fulfilled. Delaware legal authorities are clear: "Delaware courts follow the principle that a party who wrongfully prevents a thing from being done cannot avail itself of the nonperformance it has occasioned." *W & G Seaford Associates, L.P. C. E. Shore Markets, Inc.*, 714 F. Supp. 1336, 1341 (D. Del. 1989). At a minimum, HMIT was entitled to seek declaratory relief on these issues.

Finally, although the pleadings are sufficient to support vested status under an

[17] *See Estate of Cornell v. Johnson*, 367 P.3d 173, 178 (Idaho 2016) ("[V]esting cannot be postponed by unreasonable delay in distributing an estate and [] when there is such delay, contingent interests vest at the time distribution should have been made." (emphasis added)).

appropriate standard of review, the uncontroverted evidence introduced by HMIT underscores this standing. *See, e.g.*, ROA. 009614-15 (testimony that there was approximately $150 million in assets available after payment of expenses and Class 8 and Class 9 Claims).

5. HMIT is a "beneficial owner" under the DSTA

Regardless, HMIT was and remains a "beneficial owner" under the Delaware Statutory Trust Act ("DSTA"). Section 3801 of the DSTA defines "beneficial owner" to mean "any owner of a beneficial interest in a statutory trust, the fact of ownership to be determined and evidenced … in conformity to the applicable provisions of the governing instrument of the statutory trust." Here, the CTA specifically recognizes HMIT's initial contingent interest in the CTA. CTA at 3, 27-28, ROA.7369,ROA.7393-94. A "beneficial interest" includes both ***vested and contingent*** interests. HMIT Brief, pp.30-33; *see also Scanlan v. Eisenberg*, 669 F.3d 838, 844 (7th Cir. 2012) (". . . a contingent beneficiary can bring an action against the trustee—even though his interest is remote and contingent—to protect his possible eventual interest"); RESTATEMENT (THIRD) OF TRUSTS 94, cmt. B.

Appellees incorrectly argue otherwise. Highland Brief, p.28. Although the CTA addresses when HMIT should be deemed a "Claimant Trust Beneficiary," nowhere does the CTA limit the broad statutory term "beneficial interest." Nor could it because the CTA specifically recognizes HMIT's "contingent" interests.

Section 5.1(c) states that, upon the Effective Date, "the Claimant Trust ***shall issue*** Contingent Interests to" HMIT (Emphasis added). Pursuant to Section 5.4 of the CTA, under the title "***Registry of Trust Interests***," the Claimant Trustee is required to keep "***a registry of*** the Claimant Trust Beneficiaries ***and the Equity Holders [HMIT]***." Thus, the language of the CTA, as the "governing document," is clear that HMIT was issued and maintains a "beneficial interest." Even if HMIT's interest is only "contingent," it is still a "beneficial interest." Accordingly, this Court should reject Appellees' argument that ignores controlling principles of contract and statutory construction.

If Delaware law was otherwise, Seery could refuse to recognize HMIT's vested status and breach his obligations of good faith with impunity. Indeed, if Appellees' argument were correct, Seery could improperly prolong the underlying bankruptcy, continue to collect exorbitant fees, and deplete assets that should be distributed to HMIT. "Essentially that rule, which the Appellees ask [this Court] to adopt, would insulate" Seery from bad faith actions that deteriorate the trust res until HMIT is left with nothing. *See Scanlan*, 669 F.3d at 844. No authority supports this self-serving suggestion, and HMIT's standing should not turn on whether Seery has declared HMIT a "Claimant Trust Beneficiary"—particularly when HMIT pleaded it is already vested and seeks a declaration to this effect.

6. HMIT's status as a beneficial owner has been "continuous"

The Highland Brief, paragraph 59, argues that "only parties that are 'beneficial owners' of a trust continuously from 'the time of the transaction of which the plaintiff complains through the time of bringing the action' they sued derivatively on behalf of the trust." As previously discussed, HMIT's status as a "beneficial owner" has been continuous. HMIT Brief, p.30. The "transaction" at issue culminated post-Effective Date with the creation of the Claimant Trust. Pursuant to the Plan, as of the Effective Date, HMIT's status as a beneficial owner under Delaware law was complete and remains so today. Its status as a beneficial owner was never impacted by the vesting language in the CTA. That is because HMIT's "beneficial owner" status is derived from statute and includes both vested and contingent interests. *See infra* at 10-11.

In any event, Delaware law holds that the "continuous" ownership requirement is properly suspended when the continuity of ownership is prevented by the defendant's wrongful conduct. That is, a defendant should not be allowed to expediently manipulate the facts giving rise to standing to insulate itself from liability. *See Shaev,* 1998 WL 13858, at *4, *Supra,* p. 15, *see also Bamford v. Penfold, L.P.*, 2020 WL 967942, at *29-30 (Del. Ch. Feb. 28, 2020) ("the continuous ownership requirement is itself a judicially created doctrine" that is subject to "equitable exceptions," including "equitable exceptions to standing doctrines").

7. HMIT has individual injuries distinct from the Claimant Trust

The Highland Brief, at p.33, challenges HMIT's individual standing with the misleading argument that HMIT's injury in fact is no different from the injury to the Claimant Trust. The OP Brief echoes this argument regarding a "particularized" and "concrete" injury. OP Brief, p.23. In doing so, Appellees ignore the fact that Appellees delayed the GUC certification which caused a unique, particularized harm directly to HMIT, and which did not otherwise impact the Claimant Trust or other interest holders.[18] This fact, alone, destroys their argument.

C. HMIT is "in the money"

Appellees argue that HMIT is not "in the money" because of HMIT's purported "selective misreading of certain financial disclosures." Highland Brief, p.30. This is ironic because Appellees presented no evidence that HMIT was wrong mathematically and, most important, Appellees previously declined to answer whether HMIT is in the money or not.[19]

Appellees' briefing also ignores the asset values that were disclosed, specifically that, as of July 2023 (and before), the Claimant Trust had $247 million

[18] The bankruptcy court also ignored HMIT's actual allegations and proposed pleadings by stating "HMIT can only point to Seery's excess compensation as injury." ROA.904. This simply is not true and ignores HMIT's well-pleaded allegations. ROA.3339 ("As part of the scheme, Seery is attempting to delay recognition of HMIT's vesting of its interests under the CTA.").

[19] *See* ROA.3396 (Highland Parties' Counsel: "Hunter Mountain…keep[s] telling the Court assets exceed liabilities. Assets exceed liabilities. And you know our position on that, Your Honor. ***They may; they may not***.") (emphasis added).

in assets and $139 million in remaining, unpaid Class 8 and 9 Claims.[20] Instead, Appellees then retreat to the bankruptcy court's incorrect reasoning that HMIT cannot be "in the money" because of "supplemental notes" purportedly "integral to understanding the numbers." Highland Brief, p.30; ROA.1047. However, these "supplemental notes" refer to non-specific financial information that has *not* been disclosed in the bankruptcy proceedings. It was thus impossible for the bankruptcy court to rely on the supposed "integral" but undisclosed data. This is particularly true because the only other evidence demonstrated that Seery expediently allocated approximately $125 million in "indemnity reserves," which will likely never be spent.[21] In effect, Seery took $125 million out of the cash pipeline to purportedly insulate himself from liability even though the Plan excludes his right to indemnification for "willful misconduct," which are the types of claims alleged in this case.[22] The only fair inference drawn from this gamesmanship is that Seery seeks to fabricate reasons *not* to certify and vest HMIT according to the CTA.

But what remains clear is that the financial disclosures show well over $100 million in assets *remaining* after full payment of the Classes 8 and 9,[23] and that Seery is obligated under the CTA to (a) pay the remaining Class 8 and 9 claims in full, (b)

[20] ROA.010033-34.

[21] ROA.10065-65.

[22] ROA.6779-80.

[23] *See* ROA.10062-10134.

file the beneficiary certification, (c) vest the Class 10 and 11 Equity Interests, and (d) "not unduly prolong the duration of the Claimant Trust."[24]

1. HMIT has standing to seek declaratory relief

Appellees' argument that HMIT is not entitled to pursue declaratory relief is incorrect. Highland Brief, p.47. HMIT has standing to seek declaratory relief, specifically regarding its rights under the CTA, and "[t]he existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate." Fed. R. Civ. P. 57.[25] At a minimum, there is a justiciable controversy and dispute and HMIT is entitled to seek declaratory relief concerning the vested status of its Contingent Interests under the CTA. *Kirkman v. Wilmington Tr. Co.*, 61 F. Supp. 651, 654 (D. Del. 1945).

D. The bankruptcy court impermissibly extended the Barton Doctrine

The bankruptcy court also erred when misconstruing the appropriate "colorable" claim analysis. As drafters of the Plan and the Gatekeeper provisions,

[24] *See* ROA.007377-81.

[25] The Highland Brief, at p.48 argues that HMIT brings "claims for declaratory relief, but a request for declaratory relief is not an independent cause of action, [and] in the absence of any underlying viable claims such relief is unavailable." (citing *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at *2 (S.D. Tex. June 7, 2016)). But *Green* is inapposite. There, the court dismissed a *pro se* plaintiff's complaint because plaintiff plead "the same hackneyed claims that were so popular among distressed mortgagors several years ago, but quickly debunked by the federal courts." *Id*. Despite acting *pro se*, the plaintiff sought a declaratory judgment and attorneys' fees. Here, the detailed factual allegations are supported by robust pleadings which form an actual controversy proper for declaratory relief, including a declaration that HMIT is a vested beneficiary.

the Highland Parties could easily have incorporated a *Barton* doctrine standard, but they did not do so. This choice must be construed as having consequence, particularly because the applied standard should be no more than what the Plan says: "*colorable*." *In re Phoenix Petroleum Co*., 278 B.R. 385 (Bankr. E.D. Pa. 2001) (noting the general rule that ambiguities in plans are interpreted against the drafters) *In re Deepwater Horizon*, 732 F.3d 326, 342 (5th Cir. 2013); *Richardson v. United States*, 468 U.S. 317 (1984); *Becker v. Noe*, No. CV ELH-18-00931, 2019 WL 1415483, at *18 (D. Md. Mar. 27, 2019). But the bankruptcy court, encouraged by Appellees, usurped the Plan it confirmed by straying from the "colorability" analysis.

The Gatekeeper Provision was previously appealed, but limited by the Fifth Circuit. *In re Matter of Highland Capital Management, L.P*., 48 F.4th 419 (5th Cir. 2022) (holding that the Plan's non-debtor exculpation provision violated the Bankruptcy Code to the extent it extended beyond the debtor, unsecured creditors committee, and "Independent Directors"). But Appellees misstate the Fifth Circuit opinion by suggesting that the Court confirmed a broad Gatekeeper Provision on the basis of the *Barton* standard. At page 10 of their Brief, the Outside Purchasers state: "The Fifth Circuit rejected those arguments and found that the Gatekeeper Provision was "sound." *In re Highland Cap. Mgmt.*, 48 F.4th at 435, 439.

Although the Fifth Circuit confirmed that the *Barton* doctrine supports the power of a bankruptcy court to require a party to obtain leave before filing certain actions,[26] the Fifth Circuit also made clear that this requirement applied to any action ***in district court*** when the action is against the trustee or other court-appointed officer, ***for acts done in the actor's official capacity***. *Id*. at 438-39 (emphasis added). Here, at a minimum, the bankruptcy court misapplied the Fifth Circuit's holding by extending *Barton* to a proposed adversary proceeding in the bankruptcy court and not the district court.

The *Barton* doctrine is a limited doctrine, and its underlying policy reasons do not apply here. The doctrine is rooted in the "concern that if debtors could sue the trustee in a foreign jurisdiction, the foreign 'court would have the practical power to turn bankruptcy losers into bankruptcy winners.'" *Carroll v. Abide,* 788 F.3d 502, 506 (5th Cir. 2015) (citation omitted). Here, however, HMIT requested leave to file the proposed claim in the same bankruptcy court that administered the underlying claims. Thus, the Appellees encouraged the bankruptcy court to commit error when they urged a one-of-a kind extension of the *Barton* doctrine in the same court that entered the Gatekeeper Provision.[27] No Fifth Circuit case has ever applied the

[26] *Id.* at 439 (citing *Barton v. Barbour*, 104 U.S. 126 (1881)).

[27] *See* ROA.3430, ROA.3463. All of the cases the bankruptcy court relied upon were in the context of protecting a bankruptcy trustee in an action outside the bankruptcy court--facts which do not exist here.

Barton doctrine to cloak corporate officers with judicial immunity and exculpate them from entire categories of claims against them—when the matter is filed within the bankruptcy court. *See id.*; *In re Provider Meds, LP*, 514 B.R. 473, 476 (N.D. Tex. 2014).[28]

The bankruptcy court also ignored Fifth Circuit precedent by indulging Appellees' arguments to use the Plan as a weapon to impose a vexatious litigation injunction. The Fifth Circuit recognized that the bankruptcy court *could* "follow[] the procedures" to designate Dondero or others as "vexatious litigations"—but held that "***non-debtor exculpation within a reorganization plan is not a lawful means to impose vexatious litigant injunctions and sanctions***." *In re Matter of Highland Capital Management, L.P.*, 48 F.4th at 439 n.19 (emphasis added). Despite this, the bankruptcy court wielded the Plan in precisely the way the Fifth Circuit rejected – and without ever declaring HMIT (or anyone) a vexatious litigant or "following the procedures" for that serious label.

[28] The Appellees mischaracterize the bankruptcy court's order when they suggest that evidentiary hearings under *Barton* are routinely conducted on motions for leave. This is not true as they are conducted (if at all) when a proposed case would be filed outside the bankruptcy court. Furthermore, Appellees' argument that an elevated standard of review is necessary to assure that the Gatekeeper Provision offers protection beyond Rule 12(b)(6) proceedings (and is not neutered) is also misleading. The Gatekeeper Provision still has utility. Among other functions, it allows the bankruptcy court to make preliminary determinations of colorability, bringing to the equation a generalized knowledge of bankruptcy processes and proceedings. It also ensures that the colorability determinations are consistent with prior bankruptcy rulings. *See Carroll*, 788 F.3d at 506.

Instead of following Fifth Circuit precedent, the bankruptcy court co-opted the entire process and imposed its own version of "colorability" to include an unprecedented evidentiary hearing. Appellees cite no case where a court has applied such a standard or imposed such a proceeding, and there is none. Besides co-opting the process, the bankruptcy court also imposed its own definition of "colorability" by relying on vexatious litigation precedent—a standard not supported in the Fifth Circuit or *Barton*. And, as noted, neither the bankruptcy court nor any other court has ever found HMIT to be vexatious—as Appellees admit. *See* Highland Brief, p.38.

Nor would the bankruptcy court have any basis to declare HMIT vexatious. While Appellees attempt to lump all so-called "Dondero Entities" together, the evidence conclusively shows that Mr. Dondero was not in control of or even consulted about HMIT's proposed Complaint.[29] Regardless, there has been (and can be) no vexatious litigation finding against HMIT based upon the record before the bankruptcy court and this appellate record. The bankruptcy court nevertheless punished HMIT by imposing an unauthorized, inflated standard. On the other hand,

[29] The bankruptcy court's statement that Dondero controls HMIT because he was the first witness at the hearing is an unreasonable inference without any foundation. Dondero stated he had never seen a draft of HMIT's proposed Complaint and Mark Patrick testified he was not involved in the decision making. ROA.9617 Likewise, the bankruptcy court's reference to other proceedings concerning other entities, not including HMIT (ROA.876)—are irrelevant to HMIT and these proceedings.

a colorable claim is one with "*some possible validity*" based on allegations and not merits-based proof. *See In re Deepwater Horizon*, 732 F.3d 326, 340-41 (5th Cir. 2013) (quoting *Richardson*, 468 U.S. at 326 n. 6)). Appellees satisfied that standard, and the bankruptcy court's refusal to follow it is reversible error.

The bankruptcy court also committed reversible error in how it applied its new arbitrary standard—by ordering that only two depositions would be allowed, no document discovery would be allowed, and no expert analysis would be considered. Once the bankruptcy court made its determination that the hearing would be evidentiary, full discovery and testimony was the only possible way to afford due process to HMIT – but HMIT was deprived of this right.[30] Because the bankruptcy court allowed evidence over HMIT's objection, the issue turned from whether the proposed Complaint presented colorable claims to whether HMIT would ultimately be successful in the prosecution of its asserted claims—all with extremely limited discovery where HMIT was denied any documentary discovery, and denied deposition testimony from the Outside Purchasers. ROA.4960.

The Outside Purchasers argue that HMIT is required "to show its claims are colorable *before* it is entitled to discovery." OP Brief, p.19. But this places the

[30] *Compare* ROA.4960 (holding "[n]one of the parties shall be entitled to any other discovery, including the production of documents…"), *with* ROA.6139, 6144, and 6568 (the purported "Documentary Compensation Evidence," which the bankruptcy court allowed the Highland Parties to cherry-pick and redact, despite denying HMIT related documentary evidence).

proverbial "cart before the horse" because the bankruptcy court considered evidence, and conducted a trial, without allowing any discovery, which turns due process on its head. The bankruptcy court then entered a 105-page opinion (filled with footnotes) weighing the credibility of witnesses and evidence, including findings of fact and considering evidence of events that were not presented at the hearing. *See, e.g.*, ROA.873-74. This also turned the judicial process upside down.

In this regard, the Highland Brief is a testament to the bankruptcy court's error. It is chock-full of self-serving characterizations of the "evidence" from the June 8 Hearing, and argues that the bankruptcy court "relied upon extensive and irrefutable evidence" to deny leave. Highland Brief, pp.14-15. Indeed, a majority of the Highland Brief fact section mischaracterized "evidence" that should never have been considered at this juncture.[31] To be sure, HMIT disputes the Highland Parties' characterizations. But, the fact that the bankruptcy court considered evidence providing Appellees with a platform to make self-serving arguments makes this entire proceeding (and Order) error.

E. HMIT has plead colorable and plausible claims

[31] By way of example, the Highland Parties mischaracterize Jim Dondero's "changing recollection" (Highland Brief, pp.25-27) that the so-called "Dondero Email" was false (pp. 13-17) and that it did not contain MNPI (pp.18-19), that compensation negotiations with Seery were purportedly "arm's length" (p.24), and that there was no *quid pro quo*. (p.4). Incredibly, the Highland Parties argue that HMIT actually attempted to "smuggle" evidence into the proceedings through its expert proffer. (p. 5). None of these are supported by the record.

Under any fair analysis, HMIT has plead colorable and plausible claims which are also supported by evidence. HMIT Brief, p.45. Appellees' argument that HMIT failed to allege facts supporting its claims for declaratory relief and breach of fiduciary duty is incorrect. HMIT Brief, pp.45-52. Appellees also ignore their unique control of relevant information, which allows more flexibility in a plaintiff's pleading. *See Chandler v. Phoenix Servs.*, 419 F. Supp. 3d 972, 988 (N.D. Tex. 2019) ("information and belief" pleadings permissible when the information is more accessible to the defendant).

As stated in HMIT's Opening Brief, p.45, HMIT alleged plausible and colorable claims that Seery breached his fiduciary duties and duties of good faith and fair dealing,[32] which include, but are not limited to avoiding delay of the distributions to Class 8 and 9 and distributing the assets in accordance with the CTA. HMIT's pleadings set forth plausible factual allegations that Seery breached these duties and HMIT's interest should be deemed vested.[33]

F. The Bankruptcy Court's Co-Opted Process is not Consistent with Fifth Circuit Precedent and Denied HMIT Due Process

The Order Denying Leave relies upon numerous "fact findings" and credibility determinations inappropriate in a pre-pleading stage. These types of

[32] *See also* Supra, FN 13.

[33] HMIT Brief at pp.44-52, *see also*, ROA.003335-57, ROA.010062-10134.

determinations are inappropriate even at the summary judgment stage. *Reese v. Bureau of Alcohol Tobacco Firearms & Explosives*, 647 F. Supp. 3d 508, 516 (W.D. La. 2022) (citing *Man Roland, Inc. v. Kreitz Motor Exp., Inc.*, 438 F.3d 476, 478 (5th Cir. 2006)).

As such, the bankruptcy court erred when it required HMIT to participate in a merits-based mini-trial, and then compounded this error when it ignored HMIT's uncontroverted evidence and excluded HMIT's expert witnesses. *See Reese*, 647 F. Supp. 3d at 516; *Williams v. Time Warner Operation, Inc.*, 98 F.3d 179, 181 (5th Cir. 1996) ("weighing the evidence, assessing its probative value, or resolving any factual disputes" inappropriate before trial). Appellees' briefs seek, but fail, to justify the bankruptcy court's many erroneous fact findings, credibility determinations, and assessments of the probative value of evidence.

1. Seery was in possession of MNPI

Appellees' briefs attack the credibility of Mr. Dondero when discussing the so-called "Dondero Email,"[34] and whether this email contains MNPI. Highland Brief, p.51. An email from an active member of MGM's Board of Directors concerning the *probable* sale of MGM is more than, and qualitatively different from, rumor, media speculation, and the varying news articles Appellees reference. *See*

[34] ROA.6691.

United States v. Contorinis, 692 F.3d 136, 144 (2d Cir. 2012) (emphasis added).[35] Despite this, the bankruptcy court resolved this fact dispute by attacking Mr. Dondero's credibility, akin to a factfinder at trial. But determination of the Motion for Leave should not have been based on a trial standard, much less on a mutated, unfair trial standard without meaningful discovery.[36]

Appellees also regurgitate the bankruptcy court's mischaracterization of Mr. Dondero's testimony that he allegedly "admitted" he did not communicate MNPI. Highland Brief, p.14; OP Brief, p.21; ROA.852. This is a gross mischaracterization. Dondero testified that his duty was to relay as little information as possible and any purported additional information that was not expressly in his email, such as "Amazon hit the price," was irrelevant and Mr. Dondero only "agreed" this information was not there because "***it doesn't have to and it's not supposed to [be***

[35] Appellees cite *SEC v. Cuban*, 2013 WL 791405, at *33 (N.D. Tex. Mar. 5, 2013) to suggest information is not MNPI when it is "disclosed to achieve a broad dissemination to the investing public." Highland Brief, p.51. This case is inapposite because it does not address the differences between rumor and "public dissemination," and, significantly, considered the information "publicly disseminated" upon a public announcement of a "private investment in public equity" offering by the company—not rumored reports of potential sales. *See id.* at *1.

[36] For example, the bankruptcy court relied on an October 2020 article reporting "mounting pressure to sell" and referenced Kevin Ulrich and reports that he is "working toward a deal." *See* ROA.851. But neither Kevin Ulrich nor anyone else is a named source for this purported information—thus implicating the exact "source unknown" article the Second Circuit contemplated in *Contorinis*. *See* ROA.5840. In fact, the article specifically states that none of Mr. Ulrich or representatives for Apple, ComCast, Amazon, or Facebook responded to requests for information. ROA.5841-42. Regardless, the bankruptcy court should not be weighing the credibility of news articles and determining the probative value of disputed facts.

included]."[37]

Appellees also argue that the fact that the UBS claims were purchased later than the other Disputed Claims somehow undercuts HMIT's claims. OP Brief, p.21. However, this is a "red herring" because it continues to ignore that MGM was ***not the only MNPI*** as part of the *quid pro quo* trade. HMIT Brief, p. 12-13.[38] The Appellees also ignore Mr. Dondero's testimony that one of the Outside Purchasers expressly relied on conversations with Mr. Seery to the effect they would never sell their newly-acquired claims because the claims were too valuable (per Seery).[39] So, even setting aside the Dondero Email, HMIT presented plausible (colorable) allegations, as well as supporting evidence, that Seery provided other MNPI to the Outside Purchasers. The bankruptcy court erred by disregarding these other factual averments.

2. Seery's Compensation is Excessive and Never Approved by the Court

Appellees argue that Seery's compensation was the product of "arms-length"

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[37] ROA. 9619 (emphasis added).

[38] The Outside Purchasers also attempt to ratify their behavior by alleging that the "Claims Sellers sold their claims and put their involvement behind them." OP Brief, p.24. However, there is no evidence of the negotiations, terms, waivers, or further involvement by the sellers in the record. Of course, this is because the bankruptcy court denied HMIT any document or deposition discovery, which was calculated to seek discovery concerning the terms and conditions that are not unusual in claims selling, including MNPI waivers, "Big Boy" letters, or further involvement from the claims sellers. *See* ROA.4696 n.18.

[39] ROA.9594-96, 9602-04; *see also* ROA.3349-50.

negotiations purportedly "fixed by the Plan and the Claimant Trust Agreement" Highland Brief, p.23, OP Brief, p.10. This is incorrect on both counts. Furthermore, whether the negotiations were "arm's length" was a merits-based defense, and the bankruptcy court's role was not to serve as a trial judge.

Seery's current compensation of $150,000 per month ($1.8 million annually), plus bonuses, was never approved by the bankruptcy court for post-Effective Date activities. Instead, Seery's compensation (as Trustee) was to be revisited after the Effective Date,[40] but this *never happened.*[41] Seery's compensation was also supposed to be reduced in 2022, but this also *never happened*.[42] Although these facts alone reinforce the colorability of HMIT's claims, there is even more.

Seery admitted he had no prior experience as a bankruptcy claimant trustee,[43] he did not conduct any market study to support the reasonableness of his compensation,[44] and he was not aware whether the Outside Purchasers (who control the Oversight Board and his financial package) conducted any market studies.[45] In short, there was no oversight or support for Seery's compensation as Trustee, post-

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[40] Section 3.13(a)(i) of CTA. ROA.7385, Order Confirming Plan. ROA.1693.

[41] *See* ROA.9709 (Seery still making $150,000 salary per month).

[42] ROA.9708-9709.

[43] ROA.9669-70.

[44] ROA.9711.

[45] ROA.9711.

Effective Date. These facts demonstrate that his compensation was inconsistent with the Plan which stated that Claimant Trustee compensation shall be "consistent with that of similar functionaries in similar types of bankruptcy cases." OP Brief, p.10. Also, Seery's job responsibilities as Claimant Trustee following the Effective Date were substantially diminished. Now, nearly three years after the Effective Date, Seery's duties remain reduced—but he continues to receive significant compensation despite refusing to conduct his limited remaining obligations and monetize all the assets to pay Claim 8 and Claim 9 Claimants.[46]

Appellees' briefs seek to bolster the bankruptcy court's "rulings" concerning Seery's compensation by arguing that HMIT had no "personal knowledge" of Seery's actual compensation. But HMIT is entitled to rely on circumstantial evidence, and—regardless, at this stage—HMIT is entitled to plead upon "information and belief" because the direct evidence is uniquely within the hands of Appellees. *See Chandler*, 419 F. Supp. at 988.

Lastly, the bankruptcy court allowed Seery to "cherry pick" and redact "Documentary Compensation Evidence" to bolster the Appellees' "arm's length" defense, but unfairly excluded HMIT's expert testimony that contradicted it.

[46] *See* ROA.3332-3367; HMIT Opening Br., pp. 28-29 ("Seery's duties under the CTA also have not been fulfilled, and these breaches further support standing. Seery is obligated to: (a) pay the remaining Class 8 and 9 claims in full, (b) file the beneficiary certification, (c) vest the Class 10 and 11 Equity Interests, and (d) 'not unduly prolong the duration of the Claimant Trust.'").

Highland Brief, p.24. Curiously, the so-called "arms-length" negotiations resulted in *no change* to Seery's compensation despite his diminished responsibilities.

The bankruptcy court's double standard was clearly unfair. The bankruptcy court excluded HMIT's experts as "unhelpful"—on the basis that the bankruptcy court had prior experience with claims negotiation. Yet a court may have personal experience with lots of things, but that does not negate a party's right to adduce an expert who holds a different view; after all, a court is required to rely on the record, not its extra-record personal experiences. Here, the bankruptcy court's reasoning is made even more unsound by the fact that it (1) credited Seery's testimony on the matter, (2) did not conduct a *Daubert* inquiry, (3) never heard HMIT's experts' opinions, and (4) struck HMIT's offer of proof.[47] Each of these errors destroyed HMIT's right to due process.

3. Public Information was insufficient to support Outside Purchasers' claims purchase

Appellees also challenge the significance of the pre-sale public information. Highland Brief, p.21. Each of the Disputed Purchases occurred prior to the Effective Date when HMIT still owned a 99.5% equity stake in HCM.[48] At that time, the only publicly available information was derived from the Debtor's Disclosure Statements,

[47] ROA.10025.

[48] ROA.001855, ROA.001864-65.

which publicly projected payment of only 71.32% for Class 8 claims and nothing for Class 9 claims.[49] Mr. Dondero separately testified that the Debtor's public disclosures were scant, and did not provide meaningful details concerning the Debtor's assets at that time.[50] He also testified there was no way third-party strangers to the bankruptcy, such as the Outside Purchasers, could actually appreciate the details of the Debtor's investments without substantial due diligence, but there was none.[51]

The uncontroverted evidence is that the Outside Purchasers invested over $160 million to buy[52] the Disputed Claims without conducting due diligence.[53] Seery (the Debtor's CEO) himself testified that there was no data room to allow due diligence.[54] Dondero separately testified that due diligence on such risky investments typically would involve the Debtor's legal staff, its business professionals, and third-party financial analysts and law firms.[55] But Appellees

[49] ROA.001866.

[50] ROA.9574.

[51] ROA. 9573-74.

[52] The Highland Parties' claim that these allegations were based on "rank speculation" (Highland Brief, p.24) is misplaced. HMIT is entitled to plead on information and belief. *Supra.* The Highland Parties cannot hide information and then proclaim a pleading is baseless—particularly here where evidence produced three days before the hearing proved that pleadings were accurate.

[53] ROA.001866; ROA 009698.

[54] ROA.009696-97.

[55] ROA.009586-87

presented no evidence that any of this happened.

As well-pled in HMIT's Complaint, and corroborated by Dondero's testimony, Farallon rejected selling its claims for a significant premium (40%) above what it initially paid ***just a few weeks before.***[56] While Dondero was understandably incentivized to regain control of the company he founded, the Outside Purchasers relied on Seery's promise that the newly acquired claims would be ***even more valuable***.[57] This was never controverted by the Outside Purchasers.

While Appellees and the bankruptcy court rely on mere projections in their analysis,[58] the real math is telling. The Outside Purchasers invested an estimated $160 million to acquire unsecured claims when the Debtor's public disclosures indicated a $0 return for Class 9 claims and, a substantial risk that the par value of the Class 8 claims would never be recouped.[59] The huge risks of the investment could never rationally justify the meager return projected from publicly available information – and absent the MNPI disclosed by Seery. Again, the bankruptcy court erroneously excluded HMIT's experts on this issue finding them "unhelpful."

Dondero also testified that distressed investments are typically the most "diligenced" items due to lower asset value, the reduced ability to and timing of

[56] ROA. 006693-95; ROA.009589-96.

[57] ROA.9594-96;ROA.3349.

[58] Highland Brief, p. 22.

[59] ROA.001866.

monetization of the assets, and associated litigation risks.[60] But, even within this context, the Outside Purchasers ***never*** explained how they justified their investments with the attendant economic risks and without due diligence, despite their fiduciary duties to their own investors to do so.[61]

4. Other mischaracterizations and merits based attacks

The Highland Brief, p.11, erroneously argues that the bankruptcy court properly denied leave because it was Dondero's "eighth" attempt to assert "insider trading" allegations. Not only is this statement false, it speculates concerning the undisclosed conclusions of two state court judges in unrelated proceedings that have no preclusive effect.

The purported "three Rule 202 petitions" to which the Highland Parties[62] refer actually involved only two separate proceedings, and only one involved HMIT. In that instance, the state court's general order did not state its reasoning, and the denial was without prejudice. That "without prejudice" denial makes sense because the Outside Purchasers' repeatedly argued to the state court that the bankruptcy court was a more efficient forum to address discovery issues. *See* ROA.002191-92. But when HMIT got to the bankruptcy court and requested virtually identical discovery,

[60] ROA.009587

[61] ROA.003334.

[62] Appellees mischaracterize these proceedings by suggesting that "Dondero filed" HMIT's prior Rule 202 Petition. OP Brief, p.12. This is not true.

the Outside Purchasers successfully opposed it. ROA.004959; *see* ROA.009884. The state court proceedings, therefore, offer Appellees no support and, instead, reflect the disingenuousness of their arguments.

The Highland Parties next argue that the closing of other investigations—such as the investigation by the Texas State Securities Board ("TSSB")—suggests that HMIT's Motion for Leave was meritless. Highland Brief, p.12. Although investigations such as that conducted by the TSSB may have some probative value, it is only one piece of a much larger mosaic. This is because the investigating agency's motivations are different. Moreover, the TSSB *opened* an investigation, which suggests that the allegations are, at least, colorable.

The Highland Parties next argue (Highland Brief, p.25) that Mr. Dondero's "changing recollections" somehow prove that HMIT's allegations are contrived. But they mischaracterize Mr. Dondero's testimony, and nothing in Dondero's contemporaneous notes, his Declarations, or his testimony, was rebutted by the Outside Purchasers. HMIT Brief, pp.18-19, 59. The Outside Purchasers' silence is deafening.[63]

The Highland Parties' attacks on Mr. Dondero's testimony are predicated, in part, on the notion that his notes do not mention every detail of his conversations.

[63] ROA.9564.

Highland Brief, p.26. In essence, the Highland Parties argue that Mr. Dondero should not be believed because he failed to transcribe his telephone conversations verbatim as a court reporter. But the fact that Appellees make this argument underscores the inherent error in the proceedings. Mr. Dondero's credibility—and Appellees' mischaracterizations about an earlier declaration Mr. Dondero had signed—should not have been at issue at this pre-pleading stage. *See Reese*, 647 F. Supp. 3d at 516 (credibility determinations, assessments of probative value of evidence and court's inferences drawn are not be considered before factfinding at trial).

G. The Bankruptcy Court Erred in Ignoring *Stern v. Marshall*

Appellees' citation-less arguments concerning *Stern v. Marshall,* 564 U.S. 462 (2011), miss the point. Highland Brief, pp.34-35. Appellees argue that HMIT's *Stern v. Marshall* objection "comes far too late" but they ignore that the bankruptcy court's hybrid "additional level of review" procedure is far outside the scope of the Gatekeeper Provision the Fifth Circuit actually considered. *See Highland Cap.*, 48 F. 4th at 435. By straying afield of the Gatekeeper Provision, and redefining "gatekeeper" to mean "trial judge," the bankruptcy court effectively "enter[ed] final judgment on claims that derive from state law and do not invoke substantive rights provided by title 11." *Stern v. Marshall*, 564 U.S. 462 (2011).

Appellees cannot avoid the simple truth that the Gatekeeper Provision does not allow the bankruptcy court to do what it did. It lacks constitutional authority to enter final orders or judgments in non-core claims. *See Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 31 (2014). As stated in HMIT's Opening Brief, p.52, HMIT's proposed claims for breach of fiduciary duty, aiding and abetting, conspiracy, and unjust enrichment are state law claims outside the bankruptcy court's jurisdiction. *See In re Allied Sys. Holdings, Inc.*, 524 B.R. 598 (Bankr. D. Del. 2015). HMIT's proposed claims do not challenge actions "in connection with implementation of the Plan and the Claimant Trust." As HMIT has made clear, HMIT's proposed claims focus on the abuses that occurred outside of the bankruptcy court—and its *Stern v. Marshall* challenge is therefore preserved and dispositive.

H. HMIT's Proposed Claims are Brought for a Proper Purpose and With Foundation

The Highland Brief, p.56, alleges that the "purpose" of the Gatekeeper Provision is to protect protected parties from harassing litigation, and that it is based on findings of fact which were "left undisturbed by the Fifth Circuit." Highland Brief, p.8. But as discussed, the Fifth Circuit expressly admonished that the Gatekeeper Provision, "is not a lawful means to impose vexatious litigant injunctions and sanctions." *In re Matter of Highland Capital Management, L.P.*, 48 F.4th at 439 n.19. Here, as applied, the bankruptcy court ignored the Fifth Circuit's admonition

and elevated the standard of review to include a standard intended for vexatious litigants. *See* ROA.922 ("[T]he court views jurisprudence applying the *Barton* doctrine and vexatious litigant injunctions—while not specifically addressing the 'colorability' standard under gatekeeping provisions in a plan—as more informative on how to approach 'colorability.'")

As discussed, HMIT is not—and has never been deemed—a vexatious litigant. *Supra*. Moreover, the record conclusively establishes that HMIT's Motion for Leave was filed for a proper purpose, and with foundation. Mr. Dondero also testified he has no legal control over HMIT, and he had never seen a draft of HMIT's proposed Complaint.[64] No evidence supports that HMIT is an "alter ego" of Mr. Dondero.[65] The bankruptcy court's claim that "Dondero is the driving force behind HMIT's Motion for Leave" is error and relies on unsupported speculation. *See* Order Denying Leave, p.42. By urging otherwise, Appellees invited reversible error. OP Brief, p.5 (noting that "Dondero or his [undefined] affiliated entities objected to settlements negotiated by the Debtor"). Simply put, the bankruptcy court ignored the conclusive evidence to fashion new "findings" based on incorrect, irrelevant and unrelated matters outside the record and not involving HMIT.

I. The notices under Bankruptcy Rule 3001 are irrelevant

[64] ROA.9570-71;ROA.9617.

[65] ROA.9570-71.

The Outside Purchasers' claim that there was no objection filed to the claims transfer notices under Federal Rule of Bankruptcy Procedure 3001 is another red herring. OP Brief, p.5. HMIT did not have knowledge at that time that the trades were part of a larger *quid pro quo* arrangement to exchange MNPI for an excessive compensation package for Seery. HMIT timely brought its Motion for Leave to address its tort claims which are separate and distinct from any generic claims trading objection.

V. CONCLUSION

Appellant, Hunter Mountain Investment Trust ("HMIT"), respectfully requests that the Court reverse the Order Denying Leave, reverse the Order Denying Further Relief, render a decision granting HMIT leave to bring its claims individually and derivatively and, based upon the appellate record before this Court, reassign this matter to a new bankruptcy court for further disposition upon remand. *See Miller v. Sam Houston State Univ.*, 986 F. 3d 880, 893 (5th Cir. 2021). Alternatively, to the extent necessary, in the unlikely event the Court determines that HMIT's factual allegations do not satisfy Rule 12(b)(6) pleading requirements, that the Court make its finding without prejudice and permit HMIT the opportunity to replead, consistent with the Federal Rules of Civil Procedure and Bankruptcy Rules of Procedure. HMIT also seeks such other and further relief, special or general, to which HMIT is justly entitled.

VI. CERTIFICATE OF COMPLIANCE

This document complies with the word limit of FED. R. BANKR. P. 8015(a)(7)(B) because, excluding the parts of the document exempted by FED. R. BANKR. P. 8015(g), this document contains 10,204 words; and

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/s/ Sawnie A. McEntire
Sawnie A. McEntire

No. 3:23-cv-02071-E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

In the Matter of Highland Capital Management, L.P.,

Debtor.

Hunter Mountain Investment Trust,

Appellant,

v.

Highland Capital Management, L.P., et al.

Appellees.

NOTICE OF SUPPLEMENTAL AUTHORITY

On Appeal from the United States Bankruptcy Court for the
Northern District of Texas, Case No. 19-34054-sgj,
Hon. Stacey G.C. Jernigan

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Pursuant to Rule 8014(f) of the Federal Rules of Bankruptcy Procedure, appellees Highland Capital Management, L.P. ("HCMLP"), Highland Claimant Trust ("Claimant Trust"), and James. P. Seery, Jr. (together with HCMLP and the Claimant Trust, the "Highland Parties") and appellees Farallon Capital Management, L.L.C., Stonehill Capital Management LLC, Muck Holdings, LLC, and Jessup Holdings LLC (collectively, the "Claim Purchasers"; together with the Highland Parties, "Appellees"), file this notice of supplemental authority to advise this Court of the Bankruptcy Court's recent Memorandum Opinion and Order in *Dugaboy Investment Trust, et al. v. Highland Capital Management, L.P., et al.*, No. 23-03038-sgj (Bankr. N.D. Tex. May 24, 2024), ECF No. 26 (the "Order"). A copy of the Order is attached to this notice as Exhibit A.

In its Order, the Bankruptcy Court dismissed an adversary proceeding filed in the underlying bankruptcy case by Hunter Mountain Investment Trust ("HMIT"), the appellant in this action. The Bankruptcy Court's discussion of: (1) its decision on appeal in this action (pages 13–16 of the Order), and (2) HMIT's lack of standing to bring claims against the Highland Parties (pages 8–11 and 28–32 of the Order) is "pertinent and significant authorit[y]" relevant to the issues on appeal in this action, Fed. R. Bankr. P. 8014(f), including the parties' standing arguments (*see* HMIT's Br. at 23-40, ECF No. 29; Highland Parties' Br. at 27–33, ECF No. 35; Claim Purchasers' Br. at 22–36, ECF No. 34; HMIT's Reply Br. at 3-22, EFC No. 38).

Respectfully submitted,

Dated: June 10, 2024

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CERTIFICATE OF COMPLIANCE

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/s/ Omar J. Alaniz

Omar J. Alaniz

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing has been served on all counsel of record via Electronic Case Filing on the 10th day of June 2024.

/s/ Omar J. Alaniz

Omar J. Alaniz

EXHIBIT A

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 24, 2024

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	**Case No. 19-34054-sgj-11**
Reorganized Debtor.	§	
	§	
	§	
DUGABOY INVESTMENT TRUST and HUNTER MOUNTAIN INVESTMENT TRUST	§	**Adv. Pro. No. 23-03038-sgj**
	§	
Plaintiffs,	§	
v.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P. and HIGHLAND CLAIMANT TRUST,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER GRANTING MOTION TO DISMISS ADVERSARY PROCEEDING IN WHICH CONTINGENT INTEREST HOLDERS IN CHAPTER 11 PLAN TRUST SEEK A POST-CONFIRMATION VALUATION OF TRUST ASSETS

I. INTRODUCTION

Before the court is a motion to dismiss ("Rule 12(b) Motion") the above-referenced adversary proceeding ("Adversary Proceeding").[1] The Rule 12(b) Motion was filed by the two Defendants named in the Adversary Proceeding: Highland Capital Management, L.P. ("Highland" or the "Reorganized Debtor") and the Highland Claimant Trust ("Claimant Trust"). Highland obtained confirmation of a chapter 11 Plan[2] on February 22, 2021 (which Plan went effective on August 21, 2021). The Claimant Trust was established pursuant to the terms of the Plan and the Claimant Trust Agreement approved pursuant thereto. The Claimant Trust was created for the benefit of "Claimant Trust Beneficiaries," which was defined under the Plan and the Claimant Trust Agreement to be the holders of allowed general unsecured (Class 8) and subordinated claims (Class 9) against Highland.

The Adversary Proceeding was brought more than two-years post-confirmation by Plaintiffs Hunter Mountain Investment Trust ("HMIT") and The Dugaboy Investment Trust ("Dugaboy," and, together with HMIT, the "Plaintiffs").[3] These two Plaintiffs are controlled by Highland's co-founder and former President and Chief Executive Officer, James D. Dondero ("Dondero"). The Plaintiffs held equity interests (i.e., limited partnership interests) in Highland. Pursuant to the terms of the Highland Plan, Plaintiffs now hold ***unvested contingent interests*** in the Claimant Trust—since the limited partnership interests in Highland were cancelled in exchange for unvested contingent interests in the Claimant Trust. These contingent interests will vest if, and

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[1] *The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust* ("Motion to Dismiss"), Dkt. No. 13. A memorandum of law in support of the Motion to Dismiss ("MTD Brief") was filed at Dkt. No. 14.

[2] Capitalized terms not defined in this introduction shall be defined later herein.

[3] *See Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiff's Interests in the Claimant Trust* ("Complaint"). Dkt. No. 1.

only if, the Claimant Trustee certifies that the Claimant Trust Beneficiaries (i.e., the Class 8 general unsecured claims and Class 9 subordinated claims under the Plan), have been paid in full ***and*** certain other obligations – primarily, the Claimant Trust's significant indemnity obligations – have been satisfied.

In this Adversary Proceeding, Plaintiffs seek: (1) an order from the bankruptcy court compelling the Reorganized Debtor and the Claimant Trustee to disclose certain information about the assets and liabilities remaining in the Claimant Trust, and, if they are compelled to disclose that information, (2) a declaratory judgment regarding the relative value of those assets and liabilities, and (3) if assets exceed liabilities, a declaratory judgment that HMIT's and Dugaboy's unvested contingent interests in the Claimant Trust are likely to vest at some point in the future.

To be clear, it is undisputed that neither HMIT nor Dugaboy are currently Claimant Trust Beneficiaries under the terms of the Plan and Claimant Trust Agreement and that the vesting conditions under the terms of the Plan and Claimant Trust Agreement have not occurred.

Highland and the Claimant Trust filed their Motion to Dismiss, seeking a dismissal, with prejudice, of all three counts of the Complaint. For the following reasons, the court grants the Motion to Dismiss.

I. JURISDICTION

This court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A) and (O) and 1334.

II. BACKGROUND

A. The Bankruptcy Case and the Plan

Highland was a Dallas-based investment firm that was co-founded in 1993 by Dondero and Mark Okada. It managed billion-dollar investment portfolios and assets, both directly and indirectly, through numerous affiliates that were owned or controlled by Dondero. On October

16, 2019 (the "Petition Date"), Highland, with Dondero in control[4] and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims, filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019.

Highland, a Delaware limited partnership, had three classes of limited partnership interests (Class A, Class B, and Class C) as of the Petition Date.[5] The Class A interests were held by the Plaintiff Dugaboy, and also Mark Okada's family trusts, and Strand Advisors, Inc. (the latter of which was an entity wholly owned by Dondero and was also Highland's only general partner). The Class B and C interests were held by the Plaintiff HMIT.[6]

Very shortly after the Petition Date, the official committee of unsecured creditors (the "Committee") threatened to seek the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement. Later, the United States Trustee actually moved for the appointment of a chapter 11 trustee. Under the specter of a possible appointment of a trustee, Highland engaged in substantial and lengthy negotiations with the Committee, resulting in a corporate governance settlement approved by this court on January 9, 2020.[7] As a result of this corporate governance settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,[8] although he stayed on with Highland as an unpaid portfolio manager.

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[4] Mark Okada resigned from his role with Highland prior to the Petition Date.

[5] *See Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* ("Disclosure Statement") Art. II(D)4, at 20. Bankr. Dkt. No. 1473.

[6] *Id.*

[7] Bankr. Dkt. No. 339.

[8] Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland's motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of*

Three independent directors ("Independent Directors") were chosen to lead Highland through its chapter 11 case: James P. Seery, Jr. ("Seery"), John S. Dubel, and retired bankruptcy judge Russell Nelms. Seery was appointed Highland's Chief Executive Officer and Chief Restructuring Officer in July 2020.[9] According to Seery's testimony at various hearings, it was during subsequent negotiations regarding a plan for Highland that Dondero made a threat to "burn down the place" if Dondero's own proposed plan terms were not accepted by the company and its creditors. Indeed, soon after Highland negotiated compromises with its major creditors in the case (*e.g.,* the Redeemer Committee of the Crusader Fund; Joshua Terry; Acis; UBS) and began pursuing a plan supported by those creditors, Dondero and entities under his control began engaging in substantial, costly, and time-consuming litigation in the Highland case.[10] As the Fifth Circuit has described the situation, after Dondero's plans failed, "he and others under his control began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland's management, threatening employees, and canceling trades between Highland and its clients."[11]

Highland's negotiations with the Committee eventually culminated in the filing of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the

Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course, Bankr. Dkt. No. 338.

[9] Bankr. Dkt. No. 854.

[10] As mentioned earlier, after January 2020, Dondero stayed on at Highland as an unpaid portfolio manager. In October 2020, Dondero resigned from all positions with Highland and its affiliates in response to a demand by the Independent Directors made after Dondero's purported threats and disruptions to the Debtor's operations.

[11] *NexPoint Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 48 F.4th 419, 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at *1, *26 (Bankr. N.D. Tex. June 7, 2021) where this court "h[eld] Dondero in civil contempt, sanctioning him $100,000, and comparing this case to a 'nasty divorce.'").

"Plan"),[12] which was confirmed[13] in February 2021 over the objections of Dondero and Dondero-controlled entities. The Plan, which became effective on August 21, 2021 ("Effective Date"), is essentially an "asset monetization" plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down Highland over a three-year period by monetizing its assets and making distributions to the "Claimant Trust Beneficiaries," as defined in the Plan and the CTA. General unsecured claims were classified as Class 8, and subordinated claims were classified as Class 9. Under the terms of the Plan, the holders of claims in Classes 8 and 9 received as of the Effective Date, in exchange for their claims, beneficial interests in the Claimant Trust and became "Claimant Trust Beneficiaries." HMIT's and Dugaboy's former limited partnership interests in Highland were classified as Class 10 and Class 11, respectively. Under the terms of the Plan, these interests were cancelled in exchange for ***unvested*** contingent interests in the Claimant Trust ("Contingent Trust Interests") that will vest if, and only if, the Claimant Trustee certifies that the Class 8 general unsecured claims and Class 9 subordinated claims have been paid in full, all disputed claims in Classes 8 and 9 have been resolved, ***and*** certain other obligations – primarily, the Claimant Trust's significant indemnity obligations – have been satisfied.[14] In other

[12] Bankr. Case Dkt. No. 1808.

[13] The Plan was confirmed on February 22, 2021. *See Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order"). Bankr. Dkt. No. 1943.

[14] *See generally* Plan, Arts. III & IV.

words, HMIT and Dugaboy will become "Claimant Trust Beneficiaries" if, and only if, the vesting conditions occur.

B. Information Rights under the CTA

The Claimant Trust is a Delaware statutory trust established pursuant to the terms of that certain *Claimant Trust Agreement* ("CTA"), effective August 11, 2021, for the benefit of Claimant Trust Beneficiaries, which are defined in the CTA to be[15]

> the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

Under the clear terms of the CTA, information rights are limited, and the Claimant Trustee has no duty to provide an accounting of the Claimant Trust's assets to any party, including the Claimant Trust Beneficiaries.[16] The CTA grants limited information rights solely to a "Claimant Oversight Board"[17] and the Claimant Trust Beneficiaries:[18]

> The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-

[15] CTA § 1.1(h). The CTA was expressly incorporated into and is a part of the Plan. *See* Confirmation Order ¶ 25, at 27; Plan Art. IV(J). The final form of the CTA was filed with the court at docket number 1811-2, as modified by docket number 1875-4.

[16] CTA § 3.12(a) ("Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting . . . ."); § 5.2 ("The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets ***or to require an accounting***.") (emphasis added).

[17] "Oversight Board" was defined in the CTA as "the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee's performance of his duties and otherwise serve the functions set forth in this Agreement and those of the "Claimant Trust Oversight Committee" described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker."

[18] CTA § 3.12(b).

> determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

Nothing in the Plan or the CTA grants any other information rights, and, in fact, the CTA makes clear that the Claimant Trust Beneficiaries do not have any information rights outside of those limited information rights set forth in the CTA,[19] which do not include rights to the granular asset and subsidiary level information that the Plaintiffs are asking for in their Complaint (as later further discussed).

As earlier noted, the Claimant Trust Beneficiaries are defined in the CTA to be only the holders of allowed Class 8 general unsecured claims and allowed Class 9 subordinated claims unless and until the Contingent Trust Interests held by the holders of the former limited partnership interests (classified in Classes 10 and 11 under the Plan) vest, at which point, the Class 10 and Class 11 claimants will become Contingent Trust Beneficiaries.[20] The CTA specifically provides that the holders of Contingent Trust Interests "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA and the Claimant Trustee files with the Bankruptcy Court a certification that all holders of general unsecured claims have been indefeasibly paid in full,

[19] CTA § 5.10(a) ("The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).").

[20] *See* CTA § 1.1(h); Plan Art. I.B.27.

including, as to Class 8 claims, "all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the 'GUC Payment Certification')."[21]

C. The Complaint and Motion to Dismiss

1. The Complaint

On May 10, 2023, HMIT and Dugaboy filed the Complaint in this Adversary Proceeding, asserting one claim for equitable relief and, if the court grants the request for equitable relief, two claims for declaratory relief.

In Count I,[22] entitled "First Claim for Relief - Disclosures of Claimant Trust Assets and Request for Accounting," Plaintiffs seek an order compelling Highland and the Claimant Trust "to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets, and details of all transactions that have occurred since the [alleged] wall of silence was erected, and all liabilities."[23] Plaintiffs acknowledge in their Complaint that, under the terms of the Plan and the CTA, they are not entitled to the information they seek: While "[t]he Plan requires the Claimant Trustee to determine the fair market value of the Claimant Trust Assets as of the Effective Date and to notify the applicable Claimant Trust Beneficiaries of such a valuation, as well as distribute tax information to Claimant Trust Beneficiaries as appropriate[,][24] . . . ***no like information regarding valuation of the Claimant Trust Assets is available to Plaintiffs as holders of Contingent Claimant Trust Interests*** . . . ."[25] Thus, Plaintiffs seek equitable relief

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[21] *See* CTA § 5.1(c).

[22] For ease of reference, the court will refer to the Plaintiffs' "First Claim for Relief," "Second Claim for Relief," and "Third Claim for Relief" as Count I, Count II, and Count III, respectively.

[23] Complaint ¶¶ 82-88.

[24] *Id.* ¶ 75 (citing Plan, Art. IV(B)(9)).

[25] *Id.* ¶ 76.

in Count I – an order compelling the Highland Parties to disclose information that Plaintiffs admit they are not otherwise entitled to under the terms of the Plan and the CTA.

In Count II, entitled "Second Claim for Relief – Declaratory Judgment Regarding Value of Claimant Trust Assets," Plaintiffs seek a declaratory judgment and "determination from the Court of the relative value of the Claimant Trust assets compared to the bankruptcy estate obligations," "[o]nce Defendants are compelled to provide information about the Claimant Trust assets."[26]

Finally, in Count III, entitled "Third Claim for Relief – Declaratory Judgment and Determination Regarding Nature of Plaintiffs' Interests," the Plaintiffs seek a declaratory judgment and determination, "[i]n the event that the Court determines that the Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid . . . that the conditions are such that their Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries."[27] HMIT and Dugaboy, by asking the court for a declaratory judgment that "the conditions are such that their Contingent Claimant Trust Interests ***are likely to vest*** into Claimant Trust Interests, making them Claimant Trust Beneficiaries"[28] (if the court first grants the equitable relief requested in Count I and the declaratory relief in Count II), admit and acknowledge that they are ***not*** Claimant Trust Beneficiaries and that their Claimant Trust Interests ***have not vested*** under the terms of the Plan and CTA. In fact, HMIT and Dugaboy clarify in footnote 6, with respect to Count III, that "[they] do not ask the Court to determine that they are Claimant Trust Beneficiaries or otherwise to convert their contingent interests into non-contingent interests[,]" and they

[26] *Id.* ¶¶ 89-92, at 26. The court notes that Plaintiffs' request for declaratory relief in Count II is predicated on the court granting the equitable relief sought in Count I.

[27] *Id.* ¶¶ 93-95, at 27. The court notes that Plaintiffs' request for declaratory relief in Count III is predicated on the court granting the declaratory relief sought in Count II, which (as noted) is, in turn, predicated on the court granting the equitable relief sought in Count I.

[28] *Id.* ¶ 94, at 27 (emphasis added).

acknowledge that "[a]ll of that must be done according to the terms of the Plan and the Claimant Trust Agreement."[29]

2. *The Valuation Motion, Precursor to the Complaint*

This is not the first time Plaintiffs have sought a valuation and accounting from the Claimant Trustee. In fact, the Complaint was filed after two prior efforts by the Plaintiffs to seek a valuation and accounting for the purported purpose of having the court determine that the Claimant Trust assets exceeded liabilities such that they were "in the money" and therefore, they argued, their Contingent Trust Interests were likely to vest in the near future. The first time was via a motion[30] that Dugaboy (with the support of HMIT)[31] filed in June 2022, that this court denied[32] on the ground that it was procedurally defective – that the claims for equitable and declaratory relief sought therein must be brought as an adversary proceeding. Specifically, this court held that, in asking the court to determine whether Dugaboy was "in the money" and whether "its status as a holder of a 'Contingent Trust Interest' [would] soon spring into the status of a 'Claimant Trust Beneficiary,'" the Valuation Motion was asking "for the court to ***determine*** the ***extent*** of Dugaboy's ***interest*** in the ***property*** in the Creditor's Trust," which is a "proceeding to

[29] *Id.* ¶ 94 n.6, at 27.

[30] On June 30, 2022, Dugaboy filed a *Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* in which Dugaboy sought "a determination by this Court of the current value of the estate and an accounting of the assets currently held the [sic] Claimant Trust and available for distribution to creditors" and, on September 21, 2022, a *Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* in which Dugaboy further stated that "the Court should conduct an evidentiary hearing and require disclosure by the Reorganized Debtor and Claimant Trustee of the value of the estate and all assets held by Claimant Trust that are available for distribution to creditors and residual equity holders." (together, the "Valuation Motion"). In the Valuation Motion, the movants sought a determination of the value of the assets of the Claimant Trust and the entry of "an order: (i) finding that Dugaboy has standing in these bankruptcy proceedings under 11 U.S.C. § 1109(b), Delaware trust law, and Article III of the United States Constitution; and (ii) setting an evidentiary hearing to ascertain the assets currently available for distribution to allowed claimants, to determine the current value of those assets, and to determine whether there is a potential for settling the estate now . . . . "

[31] HMIT filed a *Limited Response in Support of Certain Requested Relief* on August 24, 2022.

[32] *See Order Denying Motion [DE #3383] and Supplemental Motion [DE #3533] of Dugaboy Investment Trust Due to Procedural Deficiency: Adversary Proceeding is Required* ("Order Denying Valuation Motion"), entered on December 20, 2022. Bankr. Dkt. No. 3645.

determine the validity, priority, or extent of . . . [an] interest in property" under Fed. R. Bankr. P. 7001(2) that must be brought as an adversary proceeding.[33] Additionally, the court held that the movants' request for the court to make a determination of the current value of the estate and for an accounting of the Claimant Trust assets was a request for equitable relief that was not provided for in the Plan, and that such a request must be brought via an adversary complaint pursuant to Fed. R. Bankr. P. 7001(7).[34] Finally, the court held that the request in the Valuation Motion clearly was requesting a declaratory judgment as to the value of assets, the extent of Dugaboy's and HMIT's interests in assets, and ultimately, "a declaration as to Dugaboy's standing" that should be brought as an adversary proceeding under the terms of Fed. R. Bankr. P. 7001(9) as "a proceeding to obtain declaratory judgment relating to any of the foregoing [types of procedures listed in Rule 7001]."[35] Accordingly, the court denied the Valuation Motion "for procedural deficiency[,] without prejudice to the filing of an adversary proceeding."[36]

Next, Dugaboy and HMIT filed a motion seeking leave from this court to file the Complaint, pursuant to the "Gatekeeper Provisions" of the court's prior orders and the Plan (which have been discussed at length in various Highland opinions),[37] but then withdrew the motion for leave (the "Withdrawn Motion for Leave"), after Highland agreed at a status conference held on April 24, 2023 that leave of court was not necessary for the filing of this particular Adversary

[33] Order Denying Valuation Motion, 4.

[34] *Id.* Fed. R. Bankr. P. 7001(7) states that "a proceeding to obtain an injunction or other equitable relief, except when a . . . chapter 11 plan provides for the relief" is an adversary proceeding governed by Bankruptcy Rules 7001 *et seq.*

[35] *See id.* at 6 (quoting Fed. R. Bankr. P. 7001(9)).

[36] *Id.* at 6.

[37] *E.g., NexPoint Advisors, L.P. v. Highland Capital Management, L.P. (In re Highland Capital Management, L.P.)*, 48 F.4th 419, 439 (5th Cir. 2022) (Fifth Circuit upheld "Gatekeeper Provisions" approved by the bankruptcy court in this case, that required persons to obtain leave of the bankruptcy court before initiating action against certain parties).

Proceeding.[38] Plaintiffs then filed the Complaint that initiated this Adversary Proceeding on May 10, 2023.

3. Meanwhile, HMIT Files Gatekeeper Motion for Leave to File a Different Adversary Proceeding against the Claimant Trustee and Others Regarding Claims Trading

Meanwhile, HMIT filed a separate *Emergency Motion for Leave to File Verified Adversary Proceeding* ("HMIT Motion for Leave Regarding Claims Trading"),[39] which was later supplemented and modified.[40] HMIT's Motion for Leave Regarding Claims Trading should not be confused with its (and Dugaboy's) earlier Withdrawn Motion for Leave, just discussed. In the HMIT Motion for Leave Regarding Claims Trading, it sought leave pursuant to the Gatekeeper Provisions to sue Highland, Seery (i.e., the Claimant Trustee), and certain purchasers of large unsecured claims based upon allegations of "insider trading" and breach of fiduciary duty. A hearing was held on the HMIT Motion for Leave Regarding Claims Trading, following which the court took the matter under advisement.

While the matter was pending under advisement, Dondero and certain of his controlled entities (the "Dondero Parties") filed a *Motion to Stay and to Compel Mediation* (the "Mediation Motion"),[41] which was granted, in part, on August 2, 2023.[42] In compliance with an agreed-upon court order[43] and in furtherance of mediation, Highland filed a *pro forma* adjusted balance sheet

[38] In confirming that Highland had agreed that a gatekeeper motion would not be necessary "since the adversary would just be seeking a valuation and not monetary or other relief," Highland's counsel reported that Highland "does not believe [HMIT] or Dugaboy is entitled to any information whatsoever" and that "[t]hey certainly have no legal right to the information [which is] why they have to pursue . . . an equitable claim." Transcript of April 24, 2023 Status Conference, 4:7-23. Bankr. Dkt. No. 3765.

[39] Bankr. Dkt. No. 3699 (filed on March 28, 2023).

[40] *See* Bankr. Dkt. Nos. 3760, 3815, and 3816.

[41] Bankr. Dkt. No. 3757.

[42] Bankr. Dkt. No. 3897.

[43] Bankr. Dkt. No. 3870.

("Pro Forma Adjusted Balance Sheet") for the Claimant Trust,[44] which disclosed a May 31, 2023 point-in-time $152 million in assets (of which only $37 million was cash or restricted cash) and $130 million in liabilities, for a total equity value of $22 million. The information disclosed on the Pro Forma Adjusted Balance Sheet was consistent with information that had already been filed in the Bankruptcy Case in certain "Post-Confirmation Reports" as of April 2023.[45] Highland and the Claimant Trustee represent that the Post-Confirmation Reports were "enhanced" and publicly filed to provide interested parties substantially more information than was required, and that these disclosures should have resolved any good faith dispute around receiving sufficient information with which to make a global settlement offer.[46] In any event, the Pro Forma Adjusted Balance Sheet and Post-Confirmation Reports are now central to Highland and the Claimant Trustee's "mootness" argument later discussed herein.

On August 25, 2023, the court issued a 105-page memorandum opinion and order denying HMIT's Motion for Leave Regarding Claims Trading ("Order Denying Leave to Bring Claims Pertaining to Claims Trading")[47] on multiple grounds, including on the bases that: (a) HMIT lacked constitutional standing to bring the claims; (b) even if it had constitutional standing, it lacked prudential standing under Delaware trust law to bring the claims; and (c) the proposed claims also were not "colorable" claims that the court, pursuant to its gatekeeping function under the Gatekeeper Provisions, should allow HMIT to bring. The court found, among other things, that HMIT was not a "Claimant Trust Beneficiary" and not a "beneficial owner" of the Claimant Trust. The court further determined that HMIT should not be treated as a "Claimant Trust

[44] Bankr. Dkt. No. 3872 (filed July 6, 2023).

[45] *See* Bankr. Dkt. Nos. 3756 and 3757 ("Post-Confirmation Reports").

[46] MTD Brief ¶ 20, at 10.

[47] Bankr. Dkt. No. 3904.

Beneficiary" after both "considering the current value of the Claimant Trust Assets" and the allegations of wrongful conduct by the Claimant Trustee, as the court "does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested." The court noted that "HMIT's status as a 'beneficiary' of the Claimant Trust is defined by the CTA itself, pure and simple," and it was undisputed that HMIT's Contingent Trust Interest had not vested yet under the terms of the Plan and the CTA.

On September 8, 2023, HMIT filed a motion to reconsider ("HMIT's Motion to Reconsider Lack of Standing")[48] the Order Denying Leave to Bring Claims Pertaining to Claims Trading. HMIT argued that the court should reconsider its ruling because the Pro Forma Adjusted Balance Sheet, filed in July 2023 (after the court took the HMIT Motion for Leave Regarding Claims Trading under advisement, but before the court issued its August 2023 Order Denying Leave to Bring Claims Pertaining to Claims Trading, established that (1) the value of the Claimant Trust assets exceeded liabilities; (2) HMIT was "in the money"; and (3) its unvested Contingent Trust Interest was likely to vest and, therefore, HMIT had both constitutional and prudential standing as a Claimant Trust Beneficiary to bring the proposed claims.

On October 6, 2023, the court entered an order denying reconsideration ("Order Denying HMIT's Motion to Reconsider Lack of Standing"),[49] finding that the Pro Forma Adjusted Balance sheet did not "demonstrate that HMIT's contingent interest [wa]s 'in the money,'" noting that HMIT d[id] not give proper attention to the voluminous supplemental notes" in the Pro Form Adjusted Balance Sheet that are "integral to understanding the numbers therein."[50] In addition

[48] Bankr. Dkt. No. 3905.

[49] Bankr. Dkt. No. 3936.

[50] Order Denying HMIT's Motion to Reconsider Lack of Standing, 3 (citing Notes 5 and 6 of the Balance Sheet, which show that Highland will operate at an "operating loss prospectively," and that the administrative expenses and legal fees continue to deplete assets, with "significant and widespread litigation result[ing] in massive indemnification obligations, as well as massive, continuing legal fees and expenses").

this court also found that the Pro Forma Adjusted Balance Sheet did not constitute "newly discovered evidence" because it did not contain information that was materially different from the information disclosed in the Post-Confirmation Reports, filed three months earlier.[51]

4. The Rule 12(b) Motion

As noted earlier, this Adversary Proceeding was briefly stayed pending a court-ordered[52] mediation that ultimately proved to have been unsuccessful.[53] Then, on November 22, 2023, Highland and the Claimant Trustee filed their Rule 12(b) Motion that is now pending before the court.[54]

In their Rule 12(b) Motion, Highland and the Claimant Trustee seek a dismissal of Counts I and III pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure[55] (made applicable herein pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure[56]) for ***lack of subject matter jurisdiction***—specifically, Counts I and III based on ***mootness***, and Count III based on the additional ground that Plaintiffs seek an ***impermissible advisory opinion.*** Thus, there is no ***justiciable controversy*** with respect to either of these counts. In addition to the lack of subject matter arguments, Highland and the Claimant Trustee also seek dismissal of Count III on the basis that the Plaintiffs are ***collaterally estopped*** from bringing the claim for declaratory relief. Finally,

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[51] *Id.* at 2-3.

[52] See, Bankr. Dkt. No. 3879, which was entered on August 2, 2023, granting, in part, the April 20, 2023 *Motion to Stay and to Compel Mediation* [Bankr. Dkt. No. 3752] filed by Dondero and certain of his affiliates in the main bankruptcy case.

[53] *See Joint Notice of Mediation Report* (filed on November 7, 2023). Bankr. Dkt. No. 3964.

[54] *See Order Approving Stipulation and Proposed Scheduling Order* (entered on November 21, 2023). Dkt. No. 12.

[55] Hereinafter, the court shall refer to a rule of the Federal Rules of Civil Procedure as "Rule ___."

[56] Hereinafter, the court shall refer to a rule of the Federal Rules of Bankruptcy Procedure as "Bankruptcy Rule ___."

the Highland Parties seek dismissal of all three counts pursuant to Rule 12(b)(6) (made applicable herein by Bankruptcy Rule 7012) for ***failure to state a claim upon which relief can be granted***.[57]

The court has considered the Rule 12(b) Motion, HMIT's and Dugaboy's response[58] in opposition, and the reply thereto.[59] Oral arguments were heard on February 14, 2024, following which this court took the matter under advisement.[60] Having considered all of this, the undisputed facts set forth in the Complaint, and certain facts of which this court takes judicial notice, and for the following reasons, this court concludes that: (a) it does not lack subject matter jurisdiction over Count I of the Complaint but that HMIT and Dugaboy have failed to state a claim upon which relief can be granted as to Count I, and thus, Count I should be dismissed pursuant to Rule 12(b)(6); (b) that Count II of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1) and Rule 12(h)(3), Count II of the Complaint should be dismissed for lack of subject matter jurisdiction; and, (c) Count III of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1), Count III of the Complaint should be dismissed for lack of subject matter jurisdiction.

III. CONCLUSIONS OF LAW

A. Legal Standards

"When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (citation omitted). "Moreover, when a complaint could be dismissed for both lack of jurisdiction and failure to state a claim, the court

[57] *See generally* MTD Brief, 11-25.

[58] *The Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust* ("Response"). Dkt. No. 17.

[59] *The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint* ("Reply"). Dkt. No. 21.

[60] A transcript of the February 14 hearing was filed on February 20, 2024. Dkt. No. 25.

should dismiss only on the jurisdictional ground under Rule 12(b)(1), without reaching the questions of failure to state a claim under Rule 12(b)(6)"—a "practice [that] prevents courts from issuing advisory opinions." *Crenshaw-Logal v. City of Abilene, Texas*, 436 F. App'x 306 (5th Cir. 2011) (cleaned up). "The practice also prevents courts without jurisdiction 'from prematurely dismissing a case with prejudice.'" *Id.* (quoting *Ramming,* 281 F.3d at 161). Thus, the court will address the Rule 12(b)(1) issues and, then, to the extent the court finds that it has subject matter jurisdiction over any of the claims asserted by the Plaintiffs, the court will address the separate collateral estoppel argument and whether the Plaintiffs have failed to state a claim upon which relief can be granted.

1. *Rule 12(b)(1) – Lack of Subject Matter Jurisdiction*

As noted, the Defendants argue that the court lacks subject matter jurisdiction over Plaintiffs' claims asserted in Counts I and III of their Complaint, and, therefore, they must be dismissed pursuant to Rule 12(b)(1). The court notes that, pursuant to Rule 12(h)(3), the court "must dismiss the action" "if [it] determines at any time that it lacks subject matter jurisdiction," whether the issue is raised by a party or *sua sponte* by the court. This is so because federal courts have a "constitutional duty . . . to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not." *Abraugh v. Altimus*, 26 F.4th 298, 304 (5th Cir. 2022).

Under Article III of the Constitution, a federal court "may only adjudicate actual, ongoing controversies." *Shemwell v. City of McKinney, Texas*, 63 F.4th 480, 483 (5th Cir. 2023) (citing *Honig v. Doe*, 484 U.S. 305, 317 (1988)). and thus "[w]hether a case or controversy remains live throughout litigation is a jurisdictional matter." *Id.* (citations omitted). "If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006). As noted by the Supreme

Court, "the doctrines of [constitutional standing,] mootness, ripeness, and political question all originate in Article III's 'case' or 'controversy' language." *Id.* at 352 (citations omitted). The justiciability requirement found in Article III forms the basis of the overarching and, at times, overlapping well-settled rule that federal courts are not permitted to issue advisory opinions. *See Su v. F Elephant, Inc. (In re TMT Procurement Corp.)*, No. 21-20146, 2022 WL 38985, at *2 (5th Cir. Jan. 4, 2022) ("'[T]he federal courts established pursuant to Article III of the Constitution do not render advisory opinions,' and parties must articulate 'concrete legal issues, presented in actual cases, not abstractions.'") (quoting *Golden v. Zwickler*, 394 U.S. 103, 108 (1969) (quoting *United Public Workers of America (C.I.O.) v. Mitchell*, 330 U.S. 75, 89 (1947))). The Fifth Circuit in *Shemwell*[61] recently expounded on the "interplay among the justiciability doctrines" that are "rooted in the Constitution":

> Our justiciability doctrines – including mootness – are rooted in the Constitution. Under Article III of the Constitution, this court may only adjudicate actual, ongoing controversies. Accordingly, whether a case or controversy remains live throughout litigation is a jurisdictional matter. Reframed in the familiar taxonomy of standing and ripeness, this means that, throughout the litigation, the plaintiff must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision. Or, as the Court has sometimes articulated the interplay among the justiciability doctrines, standing generally assesses whether the [requisite] interest exists at the outset, while the doctrine of mootness considers whether it exists throughout the proceedings.

The Supreme Court has interpreted the "cases" and "controversies" language in Article III "to demand that an actual controversy be extant at all stages of review, not merely at the time the complaint is filed," and, thus, "[i]f an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot." *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160-161 (2016)

[61] 63 F.4th at 483.

(cleaned up); *see also Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006) ("Mootness is the doctrine of standing in a time frame. The requisite personal interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness).") (cleaned up). "A case becomes moot, however, only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Campbell-Ewald,* 577 U.S. at 161 (cleaned up). In other words, "A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for purpose of Article III—when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome" and "no matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute is no longer embedded in any actual controversy about the plaintiffs' particular legal rights." *Yarls v. Bunton*, 905 F.3d 905, 909 (5th Cir. 2018) (cleaned up).

As alluded to above, ripeness is another justiciability doctrine that originates in Article III's "case" or "controversy" requirement. *See also Orix Credit Alliance, Inc. v. Wolfe*, 212 F.3d 891, 895 (5th Cir. 2000) (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967) ("Ripeness is a constitutional prerequisite to the exercise of jurisdiction.")). "Ripeness 'separates those matters that are premature because the injury is speculative and may never occur from those that are appropriate for judicial review.'" *In re Boyd Veigel, P.C.*, 575 F. App'x 393, 396 (5th Cir. 2014) (quoting *United Transp. Union v. Foster*, 205 F.3d 851, 857 (5th Cir. 2000) and citing and quoting *United Pub. Workers v. Mitchell*, 330 U.S. 75, 89 (1947) on the doctrine of ripeness). The Fifth Circuit set forth the standard for determining whether a dispute is ripe for adjudication in *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 833 F.2d 583 (5th Cir. 1987): "A court should dismiss a case for lack of 'ripeness' when the case is abstract or hypothetical. . . . A case is generally ripe if any remaining questions are purely legal ones; conversely, a case is not ripe if

further factual development is required." *Orix*, 212 F.3d at 895 (quoting *id.* at 586-87) (additional citations omitted).

As noted by the *Orix* court, "[m]any courts have recognized that applying the ripeness doctrine in the declaratory judgment context presents a unique challenge." When considering a declaratory judgment action (and Plaintiffs here are seeking declaratory relief in Counts II and III), the court must first determine whether the action is justiciable, as the court must do in connection with all claims for relief. Under the federal Declaratory Judgment Act, "any court of the United States" is authorized to "declare the rights and other legal relations" of parties in "a case of actual controversy." 28 U.S.C. § 2201; Fed. R. Civ. P. 57; *see also Texas Cent. Bus. Lines Corp. v. City of Midlothian*, 669 F.3d 525, 534 (5th Cir. 2012). "That controversy must be of a justiciable nature, thus excluding an advisory decree upon a hypothetical state of facts." *Id.* (cleaned up).[62] The "unique challenge" that applying the ripeness doctrine to requests for declaratory judgment presents arises from the fact that declaratory judgments are "typically sought before a completed 'injury-in-fact' has occurred," *Orix*, 212 F.3d at 896 (quoting *Foster*, 205 F.3d 851, 857 (5th Cir. 2000)), and, "declaratory actions contemplate an 'ex ante determination of rights' that 'exists in some tension with traditional notions of ripeness.'" *Orix*, 212 F.3d at 896 (quoting *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 692 (1st Cir. 1994)). Notwithstanding this tension that exists in applying the justiciability requirements to declaratory judgment actions, "a declaratory judgment action, like any other action, must be ripe in order to be justiciable." *Id.* "Thus, courts will not grant declaratory judgments unless the suit is ripe for review." *Boyd Veigel*, 575 F. App'x at 396 (citing *Foster*, 205 F.3d at 857); *see also Mitchell*, 330 U.S. at 89 ("As is well known the federal courts established pursuant to Article III of the Constitution do not render advisory

[62] The Fifth Circuit "interprets the § 2201 'case or controversy' requirement to be coterminous with Article III's 'case or controversy' requirement." *Id.* (quoting *Hosein v. Gonzales*, 452 F.3d 401, 403 (5th Cir. 2006)).

opinions. For adjudication of constitutional issues, concrete legal issues, presented in actual cases, not abstractions are requisite. This is as true of declaratory judgments as any other field.") (cleaned up).

In addressing the ripeness doctrine in the declaratory judgment context, the Fifth Circuit has stated that "the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment," *Boyd Veigel*, 575 F. App'x at 396 (quoting *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941)), and that "[w]hether particular facts are sufficiently immediate to establish an actual controversy is a question that must be addressed on a case-by-case basis. *Orix*, 212 F.3d at 896 (citations omitted). "The controversy must be such that it can presently be litigated and decided and not hypothetical, conjectural, conditional or based upon the possibility of a factual situation that may never develop." *Val-Com Acquisitions Tr. v. Chase Home Fin., L.L.C.*, 434 F. App'x 395, 395-96 (5th Cir. 2011) (cleaned up).

"The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction, so the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist." *Shemwell v. City of McKinney, Texas*, 63 F.4th 480, 483 (5th Cir. 2023) (citing *id.*) (cleaned up) *see also Val-Com*, 434 F. App'x at 396 ("The plaintiffs have the burden of establishing the existence of an actual controversy under the [Declaratory Judgment] Act."). "Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

2. *Rule 12(b)(6) – Failure to State a Claim upon which Relief Can Be Granted*

As noted, Highland and the Claimant Trust also argue that all three counts of the Complaint should be dismissed pursuant to Rule 12(b)(6), made applicable herein by Bankruptcy Rule 7012, because Plaintiffs have failed "to state a claim upon which relief can be granted." To survive a motion to dismiss pursuant to Rule 12(b)(6), a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550 U.S. at 556). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557). "When well-pleaded facts fail to meet th[e] [*Twombly*] standard, the complaint has alleged—but it has not shown—that the pleader is entitled to relief." *Id.* at 679. "In ruling on a Rule 12(b)(6) motion to dismiss, the court cannot look beyond the pleadings and must accept as true those well-pleaded factual allegations in the complaint," *Hall v. Hodgkins*, 305 F. App'x 224, 227 (5th Cir. 2008) (cleaned up), but it is "not bound to accept as true a legal conclusion couched as factual allegation." *Randall D. Wolcott MD PA v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011) (cleaned up). The court "may also consider matters of which it may take judicial notice, and it is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record." *Hall v. Hodgkins*, 305 F. App'x at 227 (cleaned up). Dismissal is proper under Rule 12(b)(6), if, after taking the facts alleged in the complaint as true, "it appears certain that the plaintiff cannot prove any set of facts that would entitle it to the relief it seeks." *Test*

Masters Educ. Servs., Inc. v. Singh, 428 F.3d 559, 570 (5th Cir. 2005) (quoting *C.C. Port, Ltd. v. Davis-Penn Mortg. Co.*, 61 F.3d 288, 289 (5th Cir. 1995)).

3. Collateral Estoppel

Highland and the Claimant Trust also argue that Plaintiffs' claims for declaratory relief asserted in Count III should be dismissed for the additional reason that Plaintiffs are collaterally estopped from bringing the claim. Collateral estoppel, or issue preclusion, is a preclusive doctrine that falls under the umbrella of the res judicata doctrine, which affords preclusive effect to final judgments, orders, and decrees of a federal court, including those of bankruptcy courts. *See In re Reddy Ice Holdings, Inc.*, 611 B.R. 802, 808 (Bankr. N.D. Tex. 2020) (quoting *Test Masters*, 428 F.3d at 571 ("The rule of res judicata encompasses two separate but linked preclusive doctrines: (1) true res judicata or claim preclusion and (2) collateral estoppel or issue preclusion.") and citing *Bullard v. Blue Hills Bank*, 575 U.S. 496, 501-02 (2015)). Whereas "claim preclusion, or true res judicata, precludes parties from relitigating claims or causes of action that were or could have been raised in earlier litigation," *id.*, issue preclusion, or collateral estoppel, "prevents the same parties or their privies from relitigating [an issue of fact or law] . . . when: '(1) the identical issue was previously adjudicated; (2) the issue was actually litigated; and (3) the previous determination was necessary to the decision.'" *Bradberry v. Jefferson Co., Texas*, 732 F.3d 540, 548 (5th Cir. 2013) (quoting *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 290 (5th Cir. 2005)); *see also In re Reddy Ice*, 611 B.R. at 809-10 ("To establish collateral estoppel under federal law one must show: (1) that the issue at stake be identical to the one involved in the prior litigation; (2) that the issue has been actually litigated in the prior litigation; and (3) that the determination of the issue in the prior litigation has been a critical and necessary part of the judgment in that earlier action.") (quoting *Rabo Agrifinance, Inc. v. Terra XXI, Ltd.*, 583 F.3d 348, 353 (5th Cir. 2009)). "By precluding parties from contesting matters that they have had a full and fair opportunity to litigate, these two

doctrines protect against the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibility of inconsistent decisions." *In re Reddy Ice*, 611 B.R. at 808 (quoting *Taylor v. Sturgell*, 553 U.S. 880, 891 (2008)). Although as a general rule res judicata must be pled as an affirmative defense, Fed. R. Bankr. P. 7008; Fed. R. Civ. P. 8(c)(1), "[i]f, based on the facts pleaded and judicially noticed, a successful affirmative defense appears, then dismissal under Rule 12(b)(6) is proper." *Hall v. Hodgkins*, 305 F. App'x at 227-28.[63]

B. Application of the Legal Standards Here

1. Count I – Disclosure and Accounting

a) Plaintiffs' equitable claim for disclosure and accounting in Count I cannot be considered "moot"; Defendants' motion to dismiss Count I pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction must be denied.

As earlier noted, in Count I of their Complaint, Plaintiffs seek an order compelling Highland and the Claimant Trust "to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets, and details of all transactions that have occurred since the wall of silence was erected, and all liabilities."[64] Plaintiffs, as holders of Contingent Trust Interests, have neither a contractual right to an accounting of the Claimant Trust assets nor a contractual right to whatever limited information rights under the terms of the Plan and CTA that are afforded to the Claimant Trust Beneficiaries. Plaintiffs acknowledge that they are not "Claimant Trust Beneficiaries." But they ask the court, without any supporting facts or authority, to treat them as such and to order the Defendants to disclose not just information that

[63] A court may also raise the issue of res judicata or collateral estoppel *sua sponte* in dismissing a claim or cause of action "in the interest of judicial economy where both actions were brought before the same court" or "where all of the relevant facts are contained in the record and all are uncontroverted." *McIntyre v. Ben E. Keith Co.*, 754 F. App'x 264-65 (5th Cir. 2018) (cleaned up).

[64] Complaint ¶ 88.

Claimant Trust Beneficiaries are entitled to under the Plan and CTA but also information and an accounting that is not otherwise available even to the Claimant Trust Beneficiaries. To be clear, the Plaintiffs are asking this court to disregard the unambiguous and plain terms of the CTA and the Plan and grant the relief sought in Count I based upon equitable considerations.

Ignoring for a moment the Defendants' Rule 12(b)(6) "failure to state a claim upon which relief may be granted" argument, this court will first focus on Defendants' argument that Plaintiffs' claim for equitable relief in Count I is moot and, thus, nonjusticiable and must be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

Highland and the Claimant Trust take the position that their filing of the Pro Forma Adjusted Balance Sheet in July 2023, nearly two months after the filing of the Complaint on May 10, 2023, renders moot the Plaintiffs' request for equitable relief in Count I because the balance sheet provided Plaintiffs (and all parties) with the very information Plaintiffs are asking for in Count I. Thus, "the issue presented in Count I is no longer 'live.'"[65] Highland and the Claimant Trust add that the Post-Confirmation Reports, filed on the bankruptcy court docket in April 2023, prior to the Complaint being filed, "similarly disclose the financial information requested in Count One, including, *inter alia*, the cash and the identification of remaining assets." In essence, Defendants argue that the filing of these two items "ha[s] thus eliminated the 'actual controversy' at the core of Count One, and there is no conceivable relief available to Plaintiffs through this claim that has not already been provided."[66]

Plaintiffs argue that Highland and the Claimant Trust's mootness argument is exactly backward—that the filing of the Pro Forma Balance Sheet has not eliminated the "actual

[65] MTD Brief ¶ 25.

[66] MTD Brief ¶¶ 25-26.

controversy" between the parties precisely ***because of*** the Defendants' persistent "contentions and arguments that the Balance Sheet is not conclusive [as to the issue of whether Plaintiffs' Contingent Trust Interests are likely to vest]" – that whether assets exceed liabilities at any one given point in time and whether Plaintiffs appear to be "in the money" is irrelevant to the question of vesting under the terms of the Plan and CTA.[67] Plaintiffs point out that Defendants have argued that Plaintiffs should not rely on the balance sheet, which, again, gives pro forma values as of May 31, 2023, adding that it is not determinative of whether Plaintiffs Contingent Trust Interests will likely vest at any point in the future because, under the terms of the CTA and Plan, Plaintiffs' unvested, contingent interests in the Claimant Trust will vest if, and only if, the Claimant Trustee files the GUC Payment Certification, certifying that the Class 8 general unsecured claims and Class 9 subordinated claims, the Claimant Trust Beneficiaries under the CTA who are entitled to distributions of the Claimant Trust assets and have other rights under the terms of the CTA, have been indefeasibly paid in full (including as to Class 8, accrued and unpaid post-petition interest), all disputed claims in Classes 8 and 9 have been resolved, ***and*** certain other obligations – primarily, the Claimant Trust's significant indemnity obligations – have been satisfied. Because it is impossible to know or predict, in particular, what the indemnity obligations and the professional fees will be going forward, it would be just as impossible for the court to make any determination of whether Plaintiffs are "in the money" or whether their contingent interests are likely to vest.

This court cannot conclude that Defendants' production and filing of the point-in-time Pro Forma Balance Sheet (as of May 31, 2023) and the Post-Confirmation Reports has rendered Plaintiffs' current request in Count I for information and an accounting moot. A balance sheet and financial disclosures generally are fluid concepts. Relevant information in early 2023 may not

[67] *See* Response ¶¶ 17-18.

remain relevant in mid-2024. Thus, Plaintiffs' equitable claim is not mooted by these earlier filed items, and the Count I request is justiciable. Accordingly, Defendants' motion to dismiss Count I under Rule 12(b)(1) for lack of subject matter jurisdiction will be denied. This determination simply means that the court has subject matter jurisdiction here to address Count I. Thus, this court will now consider whether Plaintiffs have stated a claim (in Count I) upon which relief can be granted under Rule 12(b)(6) standards.

b) Plaintiffs have failed to state a claim upon which relief can be granted in Count I; dismissal of Count I is proper under Rule 12(b)(6).

As noted above, dismissal under Rule 12(b)(6) is proper if, based upon the facts alleged in the Complaint, taken as true, as well as any judicially noticed facts, "it appears certain that the [Plaintiffs] cannot prove any set of facts that would entitle [them] to the relief [they] seek[ ]." *Test Masters*, 428 F.3d at 570 (quoting *C.C. Port, Ltd.*, 61 F.3d at 289). As noted above, in Count I, Plaintiffs, as holders of unvested contingent interests in the Claimant Trust, seek an order from this court compelling Defendants "to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets," and a detailed accounting of "all transactions that have occurred since [an alleged] wall of silence was erected, and all liabilities." As also noted above, Plaintiffs have acknowledged[68] that their contingent interests in the Claimant Trust have not vested, and Plaintiffs are not Claimant Trust Beneficiaries; thus, under the terms of the CTA, they are not entitled to the information and accounting they seek and do not have even the limited information rights afforded to the Claimant Trust Beneficiaries under the CTA.[69]

The court takes judicial notice of its Order Denying Leave to Bring Claims Pertaining to Claims Trading, in which the court found that HMIT, as a holder of a "Contingent Claimant Trust

[68] *See supra* p.10.

[69] *See supra* pp. 7-9 (discussion of information rights under the terms of the CTA).

Interest" was not a Claimant Trust Beneficiary, who, under the terms of the CTA and Delaware law, are the "beneficial owners" of the Claimant Trust, and rejected HMIT's argument that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which, in turn, makes it a present "beneficial owner" under Delaware trust law.[70] The court concluded that, under Delaware Trust law, "HMIT's status as a 'beneficiary' of the Claimant Trust is defined by the CTA itself, pure and simple" and that under the terms of the CTA, the holders of Contingent Trust Interests have no rights under the agreement and will not "be deemed 'Beneficiaries'" under the CTA "'unless and until' they vest in accordance with the Plan and the CTA" and that "the court does not have the power to equitably deem HMIT's Contingent Trust Interest to be vested based on HMIT's unsupported allegation of wrongdoing on the part of . . . the Claimant Trustee."[71]

Now, as before, the court finds and concludes that under the terms of the CTA and Delaware law, Plaintiffs are not beneficiaries or "beneficial owners" of the Claimant Trust who would be entitled to assert rights under the CTA. The court specifically rejects an argument of Plaintiffs that Delaware trust law does not define "beneficiary," so the court should ignore the terms of the CTA and look to the definition of "beneficiary" under the Restatement (Third) of Trusts, under which they would be considered "beneficiaries" of the Claimant Trust, albeit a contingent beneficiary, who would be entitled under Delaware law to the relief they are requesting. The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act (the "Trust Act," Chapter 38 of Title 12 of the Delaware Code), and the Trust Act does define "beneficial owner" and uses that term exclusively to refer to the beneficiaries of a Delaware statutory trust. Specifically, under the Trust Act, a statutory trust's "beneficial owners" are "any

[70] Order Denying Leave, 77-78.

[71] *Id.*, 78.

owner[s] of a beneficial interest in a statutory trust, the fact of ownership ***to be determined and evidenced . . . in conformity to the applicable provisions of the governing instrument of the statutory trust***."[72] Thus, the question of whether Plaintiffs are "beneficiaries" of the Claimant Trust is (as the court concluded in the Order Denying Leave to Bring Claims Pertaining to Claims Trading) determined "by the CTA itself, pure and simple." And, under the terms of the CTA, "Claimant Trust Beneficiaries" is defined to exclude Plaintiffs, who hold Class 10 and 11 unvested, contingent interests in the Claimant Trust, unless and until the GUC Payment Certification has been filed by the Claimant Trust. Until then, Plaintiffs "shall not have any rights under [the CTA]" and will not "be deemed 'Beneficiaries' under [the CTA]."[73]

Plaintiffs ask the court to ignore the plain terms of the CTA and to grant them the relief they have requested on an equitable basis because they "are unable to determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests."[74] But, they have not alleged any set of facts that would entitled them to equitable relief either. The court makes the same observation regarding Plaintiffs as it made in its Order Denying Valuation Motion: It appears that Plaintiffs "may be frustrated that they did not negotiate or obtain the same oversight rights as the actual Claimant Trust Beneficiaries in the Plan and CTA." The Plan with the incorporated CTA was confirmed over three years ago now, and neither of the Plaintiffs objected to or appealed the terms of the Plan or CTA that dictate oversight rights.[75] The Fifth Circuit, in September 2022,

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[72] 12 Del. C. § 3801(a) (emphasis added).

[73] *See, e.g.*, Plan, Art. I.B.44; CTA §§ 1.1(h), 5.1(c).

[74] Complaint ¶ 83.

[75] HMIT did not file an objection to confirmation of the Plan and did not appeal the Confirmation Order. Dugaboy filed an objection to confirmation and appealed the Confirmation Order, but did not object to the terms of the CTA that limited oversight and information rights to "Claimant Trust Beneficiaries" and specifically excluded the holders of the unvested, contingent interests in the Claimant Trust – such as Plaintiffs – from having any rights under the CTA unless and until their interests vested, The CTA was filed prior to the confirmation hearing and Plaintiffs and other parties could have objected to the terms of the Plan or CTA; they could have complained then about any lack of transparency, oversight, and information rights they believe existed under the terms of the CTA. They did not.

affirmed the Confirmation Order and the terms of the Plan and its incorporated documents, including the CTA, in all respects other than striking certain exculpations. *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419 (5th Cir. 2022). As was the case when the court entered its Order Denying Leave to Bring Claims Pertaining to Claims Trading, "[i]t is undisputed that HMIT's [and Dugaboy's] Contingent Trust Interest[s] ha[ve] not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT's [and Dugaboy's] Contingent Trust Interest[s] to be vested."[76] The court did not have that power back in August 2023 (when it entered the Order Denying Leave to Bring Claims Pertaining to Claims Trading), and the court does not have that power now. Equitable relief is not available where, as here, the parties' rights and obligations at issue are set forth in the Plan and the CTA. *See In re Am. Home Mortg. Holdings, Inc.*, 386 Fed. Appx. 209, 212-13 (3d Cir. 2010) (affirming bankruptcy court's denial of equitable relief to distributions under trust documents where, among other things, the trust documents controlled distribution of monthly payments, and the Trust Certificate "cannot be rewritten on equitable grounds," and noting "[i]n interpreting the provisions of the Trust Documents, we apply Delaware law, which instructs that a party is bound by the plain meaning of clear and unequivocal contract terms.").

Plaintiffs' make an argument that an implied covenant of good faith and fair dealing under Delaware law necessarily means that the terms of the CTA that govern the parties' rights, here, including the information rights and rights to an accounting from the Claimant Trustee that Plaintiffs are seeking in Count I, can be overridden here. The court disagrees. Courts will not use the implied covenant of good faith to override the rights and responsibilities that were bargained for in a trust agreement. *See IKB Int'l S.A. v. Wilmington Trust Co.*, 774 F. App'x 719, 727-28 (3d

[76] Order Denying Leave to Bring Claims Pertaining to Claims Trading, 78.

Cir. 2019)(citing *Homan v. Turoczy*, 2005 WL 2000756 (Del. Ch. Aug. 12, 2005)); *see also Dunlap v. State Farm Fire and Cas. Co.*, 878 A.2d 434, 441 (Del. 2005) ("Existing contract terms control such that implied good faith cannot be used to circumvent the parties' bargain or to create a free-floating duty unattached to the underlying legal document.") (cleaned up); *Gilbert v. El Paso Co.*, 575 A.2d 1131, 1143 (Del. 1990) (holding that the "subjective standards [of good faith and fair dealing] cannot override the literal terms of an agreement.") (citation omitted). Because the terms of the CTA expressly address the Claimant Trustee's duties to provide, and parties' rights to receive, information and an accounting with respect to the Claimant Trust, and those duties do not inure to the benefit of the Plaintiffs, who are not Claimant Trust Beneficiaries, the implied covenant of good faith and fair dealing cannot be used by the Plaintiffs or the court to compel the Claimant Trustee to disclose the information or provide the accounting as requested in Count I.

After considering the facts alleged in the Complaint, taken as true, and the facts and record of which the court has taken judicial notice, the court has determined that Plaintiffs cannot prove any set of facts that would entitle them to the relief they seek. Thus, dismissal of their claim for disclosure of additional information and for an accounting in Count I under Rule 12(b)(6) is proper.

2. *Count II – Request for Declaratory Relief*

In Count II of the Complaint, Plaintiffs seek a declaratory judgment and "determination from the Court of the relative value of the Claimant Trust assets compared to the bankruptcy estate obligations," but this is only if "Defendants are compelled to provide information about the Claimant Trust assets" – in other words, this Count II request is conditioned on the court granting the equitable relief Plaintiffs seek in Count I.[77]

[77] Complaint ¶¶ 89-92.

Defendants seek dismissal of Count II under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Before the court can address Defendants' Rule 12(b)(6) motion, the court must first determine whether the claim for declaratory relief in Count II is justiciable such that the court has constitutional jurisdiction – subject matter jurisdiction – to consider and rule on the merits of Plaintiffs' claim.[78] As noted above,[79] Plaintiffs' request for declaratory relief in Count II is clearly predicated on the court first granting the relief requested in Count I: ordering the Defendants to disclose information about the Claimant Trust assets and liabilities (beyond what is contained in the Pro Forma Balance Sheet) and to provide to Plaintiffs a detailed accounting of all transactions involving the Claimant Trust. The court has concluded that Plaintiffs are not entitled to the information and accounting they have requested in Count I and that Count I should, thus, be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Because Plaintiffs' request for declaratory relief in Count II is predicated on the court granting the relief requested in Count I and the court has denied that relief, Count II has now been rendered moot or, at least, not ripe such that it is not justiciable. *See American Precision Ammunition, L.L.C. v. City of Mineral Wells*, 90 F.4th 820, 827 (2024) (where the Fifth Circuit affirmed the district court's Rule 12(b)(1) dismissal of a claim to reinstate an agreement as moot, where plaintiff's claim was predicated on a finding by the district court that the agreement was valid and

[78] Even though Defendants did not raise the issue of subject matter jurisdiction with respect to Count II, the court has an independent duty to assure itself that it has subject matter jurisdiction over a claim or cause of action before it addresses the merits of the claim under Rule 12(b)(6). *See supra* pp. 18-19; *see also Abraugh v. Altimus*, 26 F.4th 298, 304 (2022) (federal courts have a "constitutional duty . . . to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.").

[79] *See supra* note 26.

enforceable, and the Fifth Circuit agreed with the district court that the agreement was unenforceable).[80]

In summary, the court has determined that Defendants' request for declaratory relief in Count II is not justiciable and, as such, Count II must be dismissed pursuant to Rule 12(h)(3) for lack of subject matter jurisdiction. Anything this court might conclude with respect to Defendants' motion to dismiss Count II under Rule 12(b)(6) would be an impermissible advisory opinion, so the court will not address Defendants' arguments that Count II should be dismissed for failure to state a claim upon which relief can be granted.

3. *Count III – Request for Declaratory Relief*

In Count III of the Complaint, Plaintiffs seek a declaratory judgment and determination, "[i]n the event that the Court determines that the Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid . . . that the conditions are such that their Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries."[81]

Defendants argue that the court should dismiss Count III under Rule 12(b)(1) for lack of subject matter jurisdiction on the basis that their request for declaratory relief in Count III is not justiciable because it is moot and otherwise seeks an impermissible advisory opinion. Defendants also argue that, if the court determines that it does have subject matter jurisdiction over Plaintiff's claim for declaratory relief in Count III, Count III should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted, including on the ground that Plaintiffs

[80] Although Defendants did not argue in their briefing that Count II was not justiciable and so must be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, in so many words, Defendants did argue during oral argument that "Count II must . . . be dismissed because it depends on Highland being 'compelled to provide information about the Claimant Trust assets.' . . . So if the Court doesn't compel Highland, the Court has no ability to make the declaration that's sought." Feb. 14, 2024 Hrg. Trans., 17:9-13.

[81] *Id.* ¶¶ 93-95, at 27.

are collaterally estopped from asserting the claim for declaratory relief in Count III. The court agrees with Defendants that Count III is not justiciable and that Count III should be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, and, thus, the court does not have jurisdiction to issue any pronouncement regarding the merits of Plaintiffs' claim for declaratory relief in Count III (and so it will not address Defendants' motion to dismiss pursuant to Rule 12(b)(6) with respect to Count III).

Similar to Plaintiffs' request for declaratory relief in Count II, Plaintiffs' request for declaratory relief in Count III is a contingent request – this one being predicated on the court first granting the declaratory relief in Count II, which, itself, is predicated on the court granting the equitable relief requested in Count I. Because Counts I and II are being dismissed for failure to state a claim and lack of subject matter jurisdiction, respectively, Plaintiffs' claim for declaratory relief in Count III is, thus, rendered not justiciable. That Counts II and III fall, if Count I falls, is inherent in the way Plaintiffs framed their claims and causes of action in the Complaint. Because Plaintiffs are not entitled to the information and accounting they are requesting in Count I, Plaintiffs' claims for declaratory relief in Counts II and III are rendered moot and/or not ripe and, thus, not justiciable. Plaintiffs' request for a declaratory judgment in Count III is not ripe for adjudication for the additional reason that Plaintiffs are asking the court to issue an opinion based on a set of "hypothetical, conjectural, conditional" facts "or based upon the possibility of a factual situation that may never develop" – the "likely" vesting of Plaintiffs' contingent interests in the Claimant Trust, making them Claimant Trust Beneficiaries. This is something federal courts are not permitted to do, even in the context of a request for declaratory relief (as is the case here with

Counts II and III).[82] The court finds and concludes that Plaintiffs' claim for declaratory relief in Count III is not justiciable and thus must be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

This being the case, the court, as it must, declines to address the merits of whether Count III should be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted (including based on Defendants' collateral estoppel argument).

Accordingly,

IT IS ORDERED that Defendants' Motion to Dismiss Count I of the Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), be, and hereby is, **DENIED**;

IT IS FURTHER ORDERED that Plaintiffs have failed to state a claim upon which relief can be granted in Count I of the Complaint, and thus Count I of the Complaint is **DISMISSED** pursuant to Rule 12(b)(6);

IT IS FURTHER ORDERED that Count II of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1) and Rule 12(h)(3), Count II of the Complaint is **DISMISSED** for lack of subject matter jurisdiction;

IT IS FURTHER ORDERED that Count III of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1), Count III of the Complaint is **DISMISSED** for lack of subject matter jurisdiction.

###End of Memorandum Opinion and Order###

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[82] *See Val-Com Acquisitions*, 434 F. App'x at 395-96; *see also Boyd Veigel*, 575 F. App'x at 396 (quoting *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941)) (where the Fifth Circuit discusses the ripeness doctrine in the context of declaratory judgment actions and states that "the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.").